Mystery Shopper Progress Report: Trends from the first three years

February 2014

Background

The Mystery Shopper Service was launched in 2011 to help anyone (but especially suppliers) who had come across poor procurement practice in the public sector. SMEs in particular have made good use of this opportunity. With over 580 cases brought to our attention, we have worked to lift the barriers to supplying the public sector and policy gaps are now being identified and addressed.

Contracting authorities have also taken on the challenge of working with the Mystery Shopper service to resolve issues. Sometimes this means correcting live procurements and often authorities are changing procurement behaviour for the future. All sides have played a part in making Mystery Shopper a huge success.

The service has now expanded to include ‘spot checks’ – where 20 sets of procurement documents are checked each month on Contracts Finder and any issues found are highlighted with the relevant department. The service is therefore now looking to not only resolve issues but also to try to prevent issues affecting suppliers.

In 2012 we published an 18 month on progress report, the full details of which can be viewed here with highlights of the report available below - 2012 report

This progress report advises contracting authorities of the main issues raised under the scheme, including a comparative look at the previous year and our recommendations to tackle them.

December 2012 report – highlights

The main trends identified in the 2012 report were:

**Pre-Qualification Questionnaires (PQQs)** - The most common type of case involved the use of pre-qualification questionnaires (PQQs) and particularly the approach that contracting authorities took to the assessment of a supplier’s financial capacity to perform a contract.

**Procurement Strategy: pre-procurement engagement** - We saw a number of cases where, due to a lack of pre-procurement engagement, bidders raised technical issues and changes were made to documentation, which in turn made the procurement process longer than necessary.

**Framework Agreements** - We had a number of mystery shopper referrals concerning the design of framework agreements. These included concerns that the approach to dividing different specialisms into lots did not go far enough. Smaller suppliers also raised concerns about having to sub-contract to larger suppliers who are party to a framework agreement in order to continue to provide services.

**Consortia and sub-contracting** - Other cases included issues where suppliers were concerned that they did not have sufficient early warning of the opportunity to form a consortium.
Prompt payment of contractors and sub-contractors - We also received referrals where payments due have not been made in accordance with the terms of the contract.

Specifications - Cases were referred where specifications were very tightly drawn and did not allow for equivalents.

E-procurement systems - We saw how e-procurement systems were increasingly used and we had referrals where problems with the administration of e-procurement systems led to suppliers not having PQQs and tenders considered.

Allowing suppliers sufficient time to respond to low value tenders - We had referrals where suppliers did not have sufficient time to respond to lower value tenders.

Contract Management - We had referrals where suppliers approaching the end of contracts were not told what would happen next in a timely manner.

Charging for procurement documents and inclusion in catalogues - We saw referrals where contracting authorities made charges to send documents to potential suppliers or levy charges to include suppliers’ products in catalogues or other advertising material associated with framework agreements.

Trend shifts from 2012

The 2012 report covered the first 18 months of the service (February 2011 to August 2012) whereas this 2013 report covers the period from September 2012 to February 2014. Issues that have been raised over the past 18 months are set out below.

Procurement Process and Pre-Qualification Questionnaires (PQQ)

In this last reporting period we saw a reduction in the percentage of procurement process issues. These made up around half of the issues raised whereas in the earlier period, procurement process issues accounted for over three quarters of the issues raised. However, within the decline of overall process issues, we saw a rise in PQQ issues from about a third to half of all process problems being raised.

Issues regarding PQQs often related to the assessment of bidders’ financial strength. We saw contracting authorities asking for three years of audited accounts and using levels of turnover as single assessment criterion. We used the evidence from a number of referrals to inform the content of a procurement policy note on supplier financial risk - PPN 02/13

Other PQQ issues included a lack of understanding in how the document would be scored and what constituted a good response. These issues were raised with contracting authorities who were using their own PQQs where considerable text and data input was required (instead of tick boxes of Yes or No). We recommend that contracting authorities make use of the standard PQQ for goods and services for larger procurements, where appropriate, and do not use PQQs at all for lower value procurements as explained in the Procurement Policy Note on PQQs - PPN 01/12

We have also seen referrals concerning PQQs used in construction procurements. Issues raised included the length and relevance of the questions being asked and also the
experience of similar projects. We advise contracting authorities to follow PAS 91, the construction industry standard PQQ in construction procurements - PAS-91.

Procurement Strategy and Frameworks

In central government there has been a further move towards more centralised procurement of common goods and services. We have seen more cases where suppliers have told us that frameworks were not used where one exists. This is common in the ICT field. In a number of cases we have advised authorities of the 'Cloud First' policy under which cloud based solutions should be considered as a first step.

We still see issues where suppliers feel that frameworks favour larger or incumbent suppliers. The issues here are demonstrated by overly short timescales being set for mini competitions when calling off from framework agreements and the acceptance of ‘pro bono’ bids. Our advice is to allow sufficient time for the market to respond to mini-competitions and to be careful not to encourage uneconomic bids which can waste the time of smaller suppliers.

Contract Management and prompt payment

The majority of issues falling below the first tier were payment issues. Suppliers have contacted the scheme regarding average payment days increasing or where payment has not been made at all. We draw the attention of contracting authorities to the advice available on the Cabinet Office website regarding prompt payment - buying and managing government goods and services

Further issues seen over this reporting period

We have seen an increase in, and an even distribution of, issues relating to bureaucracy of the process, procurement strategy and concerns about contract management and IT systems. The service has become increasingly busy with almost as many cases received in 2013 as received in the previous two years combined.

The following topics were prominent in the new cases received:

Security Clearance

We saw central government contracts where contractors were insisting that temporary staff should be security cleared upon application for work on Government projects. The Cabinet Office security secretariat confirmed that security clearance in advance should only be required under exceptional circumstance. As a result of these referrals, guidance was strengthened and reiterated that this also applies to Government supply chains and prime-contractors - security checks for temporary staff. This is mandated in central government.

Schools Management Information Services (MIS)

We received a number of referrals concerning the procurement of schools MIS in England. The mystery shoppers were concerned that ICT services were not procured in line with recommendations made in the 2010 report by the former government agency BECTA.
During discussions with the Department for Education we agreed the following general advice:

That authorities review their approach to schools MIS procurement; they take account of the recommendations of the 2010 BECTA report, (BECTA report) ensuring that contracts, including extensions, are compliant with the EU procurement regime; consider using the Crown Commercial Service Information Management and Learning Services framework first (IMLS) and if this route is not taken that reasons are documented; decisions are made on the basis of obtaining best value for money and that cloud based solutions are considered; and the whole life cycle costs should be considered including software and hardware.

**Treatment of incumbent suppliers**

We have seen an increasing number of complaints from suppliers who are holders of existing contracts, but who are not being given the chance to bid for new ones. It seems some incumbents are not being made aware that contracts will be changing in size or structure and are not told when, how or where they will be advertised. Often no rules have been broken, but the problem is simply a lack of communication. The concern is that this is not only poor procurement practice, but can also lead to time consuming complaints for authorities and potential legal challenges. Our advice therefore is to talk to incumbents. This does not mean giving them an unfair advantage, but just making sure that as the end of their contract approaches, suppliers know what is happening.
Annex A – Mystery Shopper trends

From September 2012 to February 2014 we received over 270 cases covering both central government and the wider public sector, which we have classified into the following groups of higher level issues:

- Issues with the procurement process
- Issues with the bureaucracy of the whole process
- Issues with contract management
- Issues with technology and systems

53% of all cases related to issues with the procurement process which is a reduction on last year’s 81%. This also means that we saw a rise in the other areas of concern.

Within the procurement process group of issues, there is an increase in the number of complaints regarding PQQ, which has risen from 33% last year to 50% of all cases this year. 35% of the PQQ issues relate to financial requirements.
Issues within the wider public sector account for 70% of all our cases, and within these wider public sector issues, the biggest concern remains the procurement process and PQQs in particular.

Issues by Government Sector

- Central Civil Government: 70%
- Supplier to Central Government Dept: 24%
- Supplier to Wider Public Sector: 4%
- Wider Public Sector: 2%
A key area of concern for the education sector within the wider public sector has been the procurement of Management Information Systems in schools. We have uncovered a number of issues that we are working to resolve with both the education authorities, framework providers and suppliers alike.

The issues within central government are in line with those of the wider public sector; the procurement process makes up the largest area of concern in this sector.

Issues within the supply chain predominantly relate to prompt payment.
The impact of the Mystery Shopper scheme

79% of all our closed cases result in a positive outcome. This includes changes being made to a live procurement, recommendations accepted to change future procurement practice or cases where we find nothing wrong with the procurement process but we are able to assist our mystery shopper in understanding what has happened.