

<b>CONTRACTING AUTHORITY COMPLAINT AGAINST</b>	<b>ISSUE WITH PROCUREMENT</b>	<b>DESCRIPTION OF COMPLAINT</b>	<b>OUTCOME OF CASE / RECOMMENDATIONS</b>
Home Office / Her Majesty's Inspectorate of Constabularies	Small supplier having to sub-contract because the Department was using a framework agreement	A small supplier of accountancy services to HMIC complained that they were forced to sub-contract to a larger supplier who were party to a framework agreement which would lead to increased costs for government	In future this work will be advertised on Contracts Finder and small suppliers will be able to bid.
St George's Housing / Basildon Council	Pre-qualification questionnaire (PQQ) and financial assessment	A small construction firm was concerned that the scoring system for financial assessment would disadvantage small firms as more marks were given for higher turnovers.	Following the return of activities from St. George's Community Housing to an in-house provision supplied by Basildon Council, the Council made the decision to cancel the original process and is taking our recommendations into account when developing the PQQ process for the new procurement.
Devon and Cornwall Police	Pre-qualification questionnaire and financial assessment	An SME was unable to bid for an HR services contract because a minimum turnover threshold of £33 million was required.	Devon and Cornwall explained that this contract was very high risk and that is why a high turnover figure had been set. The mystery shopper team did not agree with this approach and recommended that the police adopt an holistic approach to financial assessment as set out in the Supplier Financial Appraisal guide, which recommends avoiding the rigid application of thresholds and formulae. Devon and Cornwall could not be persuaded to adopt that approach in this procurement but will in future.

Derby Hospitals NHS Foundation Trust	Complexity of Pre-qualification questionnaire(PQQ)	We received a complaint from a trade organisation concerning a PQQ for a pathology services procurement.	We recommended the use of the standardised model PQQ for future procurements. The trust accepted this recommendation.
Doncaster and Bassetlaw Hospitals NHS Foundation Trust	Complexity of Pre-qualification questionnaire (PQQ)	We received a complaint from a trade organisation concerning a PQQ for a pathology services procurement	We recommended the use of the standardised model PQQ and Supplier Financial Appraisal Guide for future procurements. The trust accepted these recommendations.
Aintree University Hospitals NHS Foundation Trust	Complexity of Pre-qualification questionnaire (PQQ)	We received a complaint from a trade organisation concerning a PQQ for a pathology services procurement	We recommended the use of the standardised model PQQ and Supplier Financial Appraisal Guide. The trust accepted these recommendations and said they will take them into account as part of a review of their processes.
East Hampshire Council	Financial assessment	An SME complained that they were required to submit 3 years of audited accounts to prove their financial strength in support of a bid for a cleaning contract. The company is below the Companies House threshold which requires auditing of accounts.	We pointed out the passage in the Supplier Financial Assessment guide which sets out an holistic approach to financial assessment and states that audited accounts should not be required from small firms under the audit threshold. The Council could not be persuaded to adapt their approach in this procurement. They did say they would consider the Supplier Financial Appraisal Guide in a review of their processes. The SME told the Mystery Shopper team that he had pointed other local authorities towards the guidance on audited accounts with some success.

Essex and Kent Police	Overly Complex Invitation to Tender	An SME complained that in order to compete for a police IT contract they would have to sub-contract to the Sprint II framework and complete a complicated ITT form in a short period of time.	We contacted Essex and Kent police who were procuring a joint service. They pointed out that they are obliged by law to use Sprint II. Following discussion with us Essex Police and Kent Police are taking steps to ensure that in future procurements of this type they will continue to tailor their ITTs for projects so that they are easy to complete within the specified time.
Transport for London	Pre-qualification questionnaire (PQQ)	An SME complained that a PQQ for Forensic Accountancy Services was overly complex.	We recommended the use of the model PQQ and Supplier Financial Appraisal Guide. The team met with TFL to discuss their approach. TFL are reviewing their processes and will take our suggestions into account. They also met the SME to discuss his concerns in depth.
Camden / Islington Council	Contract management and e procurement systems	An SME was not aware that its contract for taxi services was about to be re-competed. The SME had not received an alert from the council's e procurement system that a new contract was being let.	We recommended that the Council take up issues with their e procurement system with the supplier of the system and that, as a matter of good practice, should ensure that incumbent suppliers are told if their contracts are to be re-competed. The Council will consider our recommendations as part of an internal review of their processes.
YOR Construct / East Riding Council	An SME felt unable to bid for place on a construction framework	An SME attended a pre-procurement briefing but felt unable to compete. They raised their concerns about the scoring system apparently favouring larger suppliers.	The Contracting Authority stated they had included all recommended best practices to level the playing field for SMEs and provided a detailed explanation to support this. We are satisfied that the Contracting Authority is actively seeking the involvement of SMEs and working in line with the Government's new Construction Strategy.
London Fire Brigade	Financial assessment	A small supplier who had supplied water coolers to London Fire Brigade for some years failed the financial tests applied when the contract was re-	We recommended that the approach set out in the model Cabinet Office PQQ and Supplier Financial Appraisal guide be

		competed.	adopted in this procurement. London Fire Brigade responded that the SME had been subjected to a number. The Brigade decided they were not financially strong enough, as measured by these tests, to fulfil the contract although they have supplied the Brigade over a number of years. The Brigade stated they had used their approach successfully for a number of years but would shortly be reviewing their processes and would consider our recommendations as part of that review.
NHS Gloucestershire	Pre-qualification questionnaire (PQQ) and experience of working in the public sector	An SME was unhappy with the pre-qualification process undertaken for a printing services procurement. A particular concern was a question that the SME interpreted as one that called for NHS experience	We contacted NHS Gloucestershire through the Department of Health about the issues raised. We questioned them about the apparent bias towards suppliers with NHS experience. They responded that they did not look specifically for NHS experience but they did not consider examples cited of contracts the supplier had undertaken matched the complexity of the print requirements they had. We examined their PQQ.. Whilst the PQQ and process used was legally correct it was not aligned with the Cabinet Office model PQQ. Through the Department of Health we made a number of recommendations to NHS Gloucestershire, including adopting the Cabinet Office model PQQ. NHS Gloucestershire responded by stating although they appreciated an offer from us and the Department of Health to meet to discuss their processes, they were happy with process they follow for the three Trusts that they procure for, and have been complimented on the process by a number of bidders.
Ministry of Defence	Prompt payments to an SME sub-contractor	An SME complained about receiving late payments from a prime contractor in a Ministry of Defence construction procurement.	The team approached the MoD who investigated the case as part of their contract management process. They reminded the

			prime contractor of its responsibilities to pay sub-contractors promptly as part of their ongoing contract management.
Sandwell Homes	Pre-qualification questionnaire (PQQ)	An SME complained about the length and complexity of a PQQ in a low value procurement.	Sandwell Homes explained that they would not generally require suppliers to complete a PQQ for work of this low value, but in this instance, where they were seeking competitive rates for interpreting services, and where the successful operator would have direct contact with members of the public, they considered it to be wise to vet applicants. They will be using a more streamlined PQQ in future and we encouraged them to use the Cabinet Office standardised PQQ in developing it.
Local Government Group (LGID)	Complexity of pre-qualification questionnaire (PQQ) and number of suppliers admitted to framework	An SME complained about the length and complexity of a pre-qualification questionnaire.	The organisation accepted our recommendations to consider the model PQQ for future procurements and have, following a review, updated their internal procurement templates.
Cabinet Office	Pro-bono and commercially unviable pricing proposals	An SME tendering for a consultancy contract was concerned that an answer to a clarification question suggested that pro-bono or bids below cost price would be welcomed. This might be attractive for large suppliers positioning for future work but would not be sustainable for SMEs.	We contacted the Cabinet Office procurement team who clarified their answer. They had been looking for the best value for money from the bids submitted but did not want to encourage commercially unviable pricing proposals. Working with the Mystery Shopper team they have developed a clearer form of words for future use. Cabinet Office also reported that 3 of the 5 suppliers who passed through the PQQ stage were SMEs.

NHS Tameside and Glossop	Concerns about a new contract for intermediate care beds	A mystery shopper raised concerns about an advertisement for intermediate care beds. He stated that only one provider in the area could supply this service. The PCT responded that they were still undertaking market surroundings and that the final shape of the service was not settled.	As the PCT were still planning their procurement we recommended that they take account of our Supplier Financial Appraisal Guidance when assuring the financial strength of potential providers. This calls for an holistic approach and not one based on rigid formulae. We believe this approach has the effect of widening supply markets (including opening up opportunities for consortia based approaches) and leads to better competition and value for money. The PCT accepted these suggestions.
Marine Management Organisation / DEFRA	Requirement to send tender documents by CD Rom and in hard copy.	An SME complained that for a low value contract he had to return documents by hard copy and by CD Rom.	The Marine Management Organisation are reviewing their processes for low value tenders, in line with our recommendations that only one method is used. For tenders above £25,000 DEFRA's e procurement system applies.
West Mercia Housing Group	Complexity of pre-qualification questionnaire	Two SMEs raised concerns about the selection stage of a procurement for cleaning and grounds maintenance, suggesting that the type of style of the questions favoured larger organisations.	Following dialogue with us West Mercia decided to re-tender all lots.
Government Procurement Service (GPS)	Lack of competition	An SME raised concerns about GPS extending a framework agreement IT training for one year. They believed that due to mergers and acquisitions ownership of suppliers has been concentrated and therefore competition would be restricted.	GPS carried out a financial and ownership check which revealed there had not been mergers and acquisitions. The existing framework is being extended pending a new procurement for IT training in 2012.

Kent County Council	Clarity of language in an invitation to tender (ITT)	An SME raised concerns about an ITT for assessment centre services which appeared to limit bidders to those who have experience of running assessment centres in both the private and public sectors.	The council acknowledged that the wording may have been misunderstood, and that wording for future procurements will be checked. The council stated any supplier can at any time contact them for clarification but they accepted that sometimes deadlines for return of tenders may make this difficult. They said that more care will be taken in the future when documents are first issued to ensure the language is clear. The Council stated that either public or private sector experience will be considered, rather than the suggestion that experience should come from both sectors as they wish to see as many suppliers participate as possible. Kent stressed they make extensive use of advertising portals to ensure openness and transparency.
National Police Improvement Agency (NPIA)	Calling off from a framework	Concerns were raised about a call off from a framework agreement where it appeared that selection questions about the capacity of bidders were being included.	We explained to NPIA that selection criteria (assessing the capacity of the bidder) should not be carried out when calling off from a framework. Suppliers will have passed through this stage when admitted to the framework. NPIA took on board these recommendations and re-commenced the process.
Government Procurement Service (GPS)	Concerns about the Public Services Network (PSN) procurement	Concerns were raised that the PSN approach was working against SMEs.	The mystery shopper's concerns related to the procurement of PSNs by local authorities. GPS reassured the supplier that the PSN procurement they are developing will be designed to take into account issues of concern to SMEs.

Health Protection Agency (HPA)	Pre-qualification questionnaire (PQQ) issued for a low value procurement	Concerns were raised about a PQQ for a procurement for specialist equipment valued under £100,000.	The HPA removed the PQQ and extended the closing date for responses.
Marketing Birmingham	Problems with obtaining a pre-qualification questionnaire (PQQ)	An SME was having difficulty in obtaining a PQQ. When we obtained a copy we discovered some issues with the PQQ concerning scoring and financial information.	The issue was raised before the publicised deadline and all PQQs were sent out on the due date. Marketing Birmingham accepted the team's recommendations and made all necessary changes to the PQQ.
The Queen's Awards Office / Business Innovation and Skills (BIS) / Government Procurement Service (GPS)	Use of framework agreements	An SME raised concerns that he had been unable to compete for an IT contract with The Queen's Award Office because they would be using a framework. When it was suggested that he access opportunities through sub contracting to a framework provider he was told he was not big enough.	BIS explained that the requirement for which the SME had been an incumbent had changed and was now being delivered by another SME as part of the BIS website. The mystery shopper team do not currently investigate sub-contractor issues (apart from prompt payment) so we put the SME in contact with the GPS team who manage the framework which the SME had difficulty sub-contracting to so he could raise his concerns directly.
Transport for London (TFL)	Confusion over timescales for a return of a pre-qualification questionnaire (PQQ) and issues with financial selection.	An SME was confused over the timescales for the return of a PQQ and around minimum turnover thresholds required for the contract.	TFL explained that a corrigendum was issued to suppliers registered with their e procurement system that signalled that more time was being given to return the PQQ. They are reviewing their approach to financial appraisal and will take into account the messages in the Supplier Financial Appraisal guide in that review.



Government Procurement Service (GPS)	Procurement approach appears to favour larger suppliers	An SME raised concerns about the GPS Consultancy ONE framework. They believed the framework appears to have been set up in a way that counts against SMEs and suppliers that have consultancy skills in a variety of different specialist areas and instead favours the large professional service firms that have significant numbers of people.	GPS removed questions relating to supplier capacity which asked for staff numbers. GPS said this decision reflects their commitment to open and transparent procurement and their determination to ensure that all suppliers have an equal opportunity to compete for a place on the framework regardless of their size. In the interests of clarity they under took to revise the PQQ documentation, taking account of the feedback received, and they extending the deadline for submission to allow for all interested suppliers to prepare their responses. They also re-opened the Clarification Period and set a new deadline for submission of clarification questions. GPS ensured that all suppliers were informed of these developments.
Government Procurement Service (GPS)	Deadline for receipt of documents between Christmas and New Year	A supplier raised concerns that a deadline for tender responses fell in the holiday period and he asked if a longer deadline could be allowed if GPS staff would not be dealing with replies.	GPS confirmed that staff dealing with the procurement would be working on responses between Christmas and New Year.
Health and Safety Executive (HSE)	Pre-qualification questionnaire (PQQ) being used for a small contract	Concerns were raised about a PQQ being used in a small training contract valued under £100,000	HSE acknowledged they had made an error in issuing a PQQ and are revising processes to ensure it doesn't happen again. The procurement was too far advanced to remove the PQQ for the procurement underway.
South Tyneside NHS Foundation Trust	Complexity of Pre-qualification questionnaire (PQQ)	We received a complaint from a trade organisation concerning a PQQ for a pathology services procurement	The Trust have agreed to use the new model Cabinet Office PQQ for future procurements.

Denbighshire County Council	TUPE as an issue in contracts	A central heating and gas engineer raised concerns about a procurement. They were concerned that transfer of staff under the TUPE regulations had not been flagged as an issue and that extensions to the existing contract pending a new contractor starting were not covered in its terms.	We recommended that TUPE is flagged to the supply base as early as possible when it appears to be an issue in future procurements. We also recommended care should be taken to ensure there is contractual cover for any extensions to contracts. We noted that the council took an holistic approach to supplier financial appraisal, enabling a new supplier to win the contract. The Council now have standard wording in all tenders that may involve TUPE.
Walsall Council	Pre-qualification questionnaire (PQQ) and previous experience	An SME was concerned about a PQQ for a translation services contract. As well as being quite detailed it appeared to only call for previous public sector experience.	Walsall are adopting a more standardised approach to their PQQs and are looking at the Cabinet Office model and taking it into account as they finalise their approach. They confirmed that they do not discriminate between public and private sector experience and will ensure that is made clearer in future.
Environment Agency	SMEs and consortia in a framework agreement	An SME was concerned about obstacles a consortium may potentially face in bidding for a Environment Agency framework agreement for water and environmental management services.	We introduced the SME to the Environment Agency as part of their pre-competition market engagement. The Agency was able to take account of issues raised by the potential consortium when developing its procurement strategy for the framework and re-assure it that an SME friendly strategy was being developed giving consortia a equal chance of winning business.
Government Procurement Service	Invitation to Tender with tight timescales	A small supplier was concerned about the timescales and complexity of a procurement of a framework for Information Management and Learning Services. They were also unsure about how to describe an open source software solution as many of the questions related to software licences which are not relevant to open source.	We obtained an explanation from GPS about issues concerning clarification questions and the timescales involved as well as obtaining confirmation that suppliers of open source solutions would not be disadvantaged.

North East NHS Ambulance Trust	Confusion over the description of a contract opportunity	A small supplier missed an opportunity for ambulance and paramedic services because the posting on an on line portal had a confusing title.	The Ambulance Trust agreed to allow more time for suppliers who had missed the opportunity to complete a pre-qualification questionnaire..
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