



House of Commons
Business, Enterprise &
Regulatory Reform Committee

**The future of UK
manufacturing:
public procurement:
Government Response
to the Thirteenth
Report from the Trade
and Industry
Committee,
Session 2006–07**

**First Special Report of Session
2007–08**

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The Business, Enterprise & Regulatory Reform Committee

The Business, Enterprise & Regulatory Reform Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Business, Enterprise & Regulatory Reform.

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Committee staff

The current staff of the Committee are Eve Samson (Clerk), David Slater (Second Clerk), Robert Cope (Committee Specialist), Ian Townsend (Inquiry Manager), Anita Fuki (Committee Assistant), Jim Hudson (Senior Office Clerk) and Lorna Horton (Committee Secretary).

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First Special Report

The Trade and Industry Committee published its Thirteenth Report of Session 2006-07 on 8 November 2007. The Government's response was received by its successor, the Business, Enterprise and Regulatory Reform Committee, on 14 December 2007. It is published as an Appendix to this Report.

Government response

1. The UK is the 6th largest manufacturing country in the world and the sector is integral to the UK economy. It represents 14% of our GDP, and accounts for more than half of our exports and the Government is fully committed to providing support for the sector through the Manufacturing Strategy, working in partnership with business and the trade unions to develop a modern knowledge driven manufacturing sector.

2. On 22 November 2007 John Hutton, Secretary of State for Business, Enterprise and Regulatory Reform, announced that the Government is reviewing its Manufacturing Strategy to ensure that it continues to meet the changing needs of the sector and that we are well-placed to take advantage of the economic opportunities emerging in the future. This Review will look at all key areas necessary for a strong and successful technology driven manufacturing sector.

3. We believe that many of those involved in public procurement are too timid, and that taxpayers may often fail to receive best value for money. This is because those buying goods and services are either insufficiently well-acquainted with the sector concerned to know or understand what options are, or could become, available, or are too afraid of failure to try anything new even if it would provide better lifetime costs or additional benefits. We were particularly struck by the evidence that, by concentrating on specifying means rather than ends, purchasers were both reducing competition among tenderers and failing to promote innovation and sustainability. We recommend the OGC to use its powers to promote best practice in this area in the course of its procurement capability reviews. (Paragraph 40, 70)

4. The Government accepts this recommendation. OGC's Procurement Capability Review (PCR) programme is designed to help departments drive up procurement capability and meet the standards required to deliver the world class procurement operations as set out in Transforming Government Procurement (TGP).¹ Each review takes a strategic look at a department's capability based on a robust model containing a standards framework against which departments are assessed. The model includes a judgement on the department's approach to both innovation and sustainability - in particular whether the department has a robust sourcing strategy and its approach to making and managing markets, and the alignment between procurement and the broader policy goals of the UK Government.

¹ http://www.hm-treasury.gov.uk/documents/enterprise_and_productivity/public_services_productivity/ent_services_procurement.cfm

5. ... the sheer number and variety of people involved in public procurement poses a huge challenge, and the target which we endorse — that the majority of public sector purchasers be professionally qualified is unlikely to be fulfilled for a very long time, until there are enough high quality people spread throughout the public sector, in local as well as national government, the problems set out in this report will persist. (Paragraphs 28 and 79)

6. The Government notes the concerns of the Committee. OGC is working to improve professionalism within the procurement community through the Government Procurement Service (GPS) reform programme for central civil government. The GPS focuses on increasing capacity by raising and maintaining capability and improving the profile of the procurement profession. The GPS work plan is designed to enable and assist departments to drive up skills and capability in their procurement functions, but is ultimately dependent upon implementation by departments themselves.

7. SMEs face even greater difficulties in securing public contracts than larger businesses and these difficulties may increase as a result of the Government's efficiency agenda— implementation of which is no longer the responsibility of the OGC. SMEs need an obvious champion within government. At present, it is not clear which department has responsibility for protecting their interests in relation to public procurement, or whether the responsible body has the necessary influence over the many central government procurement authorities to bring about a real improvement in practice. (Paragraph 72)

8. The Government notes the concerns of the Committee. The Small Business Service ceased to have Executive Agency status in April 2007 and has subsequently become the Enterprise Directorate within the Department for Business, Enterprise and Regulatory Reform. The Enterprise Directorate continues to lead on small business issues in Government. It works with OGC, and other departments as appropriate, to protect and promote small business interests in matters relating to public procurement.

9. The Government continues to be committed to levelling the playing field for business seeking to bid for public contracts and to this end has implemented a wide programme of work aimed at reducing the barriers that SMEs face when competing for government contracts. OGC has overall responsibility within government for setting the procurement policy and best practice framework, standards and performance measures against which departments will be measured. OGC will audit those standards through its programme of capability reviews of departments' procurement functions ensuring that departments meet the required standards and helping to build and increase professional procurement capacity where necessary. This ensures that procurement practices remain competitive and open to the advantages that small firms can offer particularly in terms of innovation.

10. In the last six months, the Government has launched an on line training package for small firms called "Winning the Contract" on www.learn-direct-business.co.uk. The package uses material developed for, and knowledge gained from, the West Midlands SME pilot training programme and seeks to provide small firms with the skills to equip them to compete effectively for public procurement opportunities.

11. The unpredictability of order flows from the public sector creates problems for suppliers. We endorse the efforts to provide more information about likely future demand. Although it is useful for purchasing authorities to deepen their understanding of the markets in which they are buying and, in some cases, to develop their contract specifications after engagement with potential suppliers, they should be aware of the danger of ‘capture’ by suppliers, with possible deleterious effects on competition in future. (Paragraph 32)

12. The Government has produced a whole suite of guidance² relating to market assessment, understanding and analysis, which highlight a range of potential pitfalls including supplier dependency.

13. As it is impossible for all purchasers to be knowledgeable in all procurement areas, there is a need for teams of experts who could be called in to assist with specific procurement decisions. We understand that this is being developed within the Transforming Government Procurement process. (Paragraph 41)

14. The Government notes the concerns of the Committee. New processes have been developed to harness government’s purchasing power through collaborative procurement of common goods and services. There are two themes to this work: enabling government to speak with a single voice to suppliers; and exploiting the benefits of aggregation in buying common goods and services which OGC expects to deliver major efficiency gains. On aggregation, OGC has moved from the use of tactical initiatives to a strategic work programme, based initially around pilots in collaborative procurement across Whitehall and the wider public sector for the purchase of energy, fleet, travel and office services. An example of speaking with a single voice to suppliers is OGC’s work with the CIO Council to engage with major IT suppliers to ensure that government knows as much about its business with suppliers as suppliers know about their business with government.

15. The OGC is working on a new External Resources Framework that will be able to provide experts who can go into departments to help them develop procurement capability. However, it is right that procurement decisions remain with the purchasing authority.

16. There can be tension between achieving environmental goals and procuring goods and services at low initial cost. The OGC has produced guidance on sustainable procurement, and government departments have initiated a number of projects designed to promote innovation, environmental objectives and sustainability. Again, the problem appears to be disseminating best practice more widely. The OGC’s determined response to the NAO report on the government estate is to be commended. It will take longer to engage departments fully in the task of preventing, rather than curing, such failures. However, we believe the OGC’s approach of involving the heads of department to be the right strategy (Paragraph 46)

17. The Government welcomes the Committee’s support for OGC’s approach.

² http://www.ogc.gov.uk/introduction_to_procurement.asp

http://www.ogc.gov.uk/documents/Early_Market_Engagement.pdf

18. There is clearly scope for greater use of public procurement to promote social policies such as vocational training and the public duty to promote equality. However, there are awkward legal requirements and the best practice guidance just highlights the complexity of the area and the difficulty of complying with the rules. We recommend that the Government look again at its best practice guidance to see if more helpful advice can be given as to how public authorities could pursue social policy and the promotion of equality through procurement. (Paragraph 51)

19. The Government accepts the Committee's conclusion and is examining how it can give clearer and more succinct messages to departments on when and how social issues could be legitimately reflected in the procurement process, while ensuring value for money. Practical guidance on this and other policies will be included in OGC's new Procurement Policy and Standards Framework (PPSF).

20. While there is no doubt considerable room for improvement in the UK's record for the award of government contracts to SMEs, evidence of how it compares with similar countries is mixed. We believe that serious efforts should be made to improve the situation in order to capture the benefits identified by the Small Business Service of greater innovation and competition. (Paragraph 55)

21. Centralising procurement, bundling tenders and seeking economies of scale appear to conflict with the Government's aim of increasing SMEs' access to public procurement contracts. The findings of the National Federation of Builders about the overall decline in SME participation in construction work and the failure of frameworks to provide the sub-contracting opportunities hoped for indicate that it will be difficult to avoid disadvantaging SMEs (and therefore, in the medium term, reducing competition and innovation) as the efficiency drive in procurement goes ahead. (Paragraph 68)

22. As the Committee's report recognises in paragraph 60, the Government has made significant progress in helping SMEs compete for public sector contracts through a number of initiatives. These include taking steps to simplify procurement processes and reduce the barriers that disproportionately affect small businesses. Moreover, since June 2006, the Government has been improving the visibility of potential contracts through the Supply2.gov.uk portal through which lower value contracts (typically below £100,000) can be accessed. The Government is actively considering ways to achieve greater usage of the site and thereby make it easier for SMEs to access more opportunities.

23. With regard to innovation, OGC and DIUS published guidance for policy makers and procurers *Finding and Procuring Innovative Solutions* in Summer 2007, which outlines how innovative solutions can be sought and, where appropriate, procured to achieve better value for money within the EU procurement rules. The guidance uses evidence from several public sector case studies, including from the NHS, HM Prison Service, and the London Fire and Emergency Planning Authority.

24. The Government is aware that an improved Small Business Research Initiative (SBRI) could provide support to early stage companies, thereby encouraging innovation and is taking forward the recommendations from Lord Sainsbury's Review.

25. The Government believes that SMEs can often provide better value than large, less flexible, organisations. Aggregation of demand does not necessarily lead to aggregation of supply. OGC's guidance, *Aggregation – is Bigger Always Better?*,³ helps departments ensure that where public contracts are aggregated it is done appropriately i.e. where it is likely to result in the best value for money.

26. Better performance against the Government's objective of increasing SME participation in public procurement therefore depends on two things that we strongly support: better trained and more experienced personnel in charge of procurement, and a change in the emphasis of the OGC from advice to enforcement. (Paragraph 70)

27. The Government notes this conclusion. The GPS reform programme is actively addressing skills, capability, and capacity within the central government procurement profession, and is taking into account both the technical and non-commercial skills required when making individual decisions. Market and supplier management (including SMEs) is recognised by the GPS and by procurement leaders in departments as a mainstream element of procurement training.

28. Moving forward, the programme of PCRs will enable OGC to monitor and report on the extent to which best practice to be included in the PPSF is adopted by the procurement community across Whitehall. Allied to this, OGC will be working with government departments to increase procurement capability.

29. Government policy has long been that public authorities should set a good example by paying bills promptly — a policy underlined by actions such as the Late Payment of Commercial Debts (Interest) Act 1998. Statistics compiled by the Government show that government departments consistently fail to meet the required standard. There is no excuse for this: apart from questions of justice, such exercise of power by purchasers is likely to deter potential suppliers and diminish competition. It is not clear whether departments' poor performance is attributable to inefficiency on the part of their finance departments or the perverse incentive to retain money owed in order to make their financial position appear better than it is. (Paragraph 57)

30. The Government takes seriously its responsibility to pay correctly rendered invoices on time, in accordance with agreed contractual terms. *Managing Public Money* makes clear that public sector organisations should observe the Better Payment Practice Code (published on payontime.co.uk), which advocates agreeing payment terms at the outset and adhering to them. Under the Late Payment of Commercial Debts (Interest) Act 1998 there is a statutory right for suppliers to claim interest on late payments of commercial debt. Payment is regarded as late if made outside the agreed terms, or 30 days after receipt of a valid invoice where no terms are agreed.

31. OGC, together with the Public Sector Construction Clients' Forum, has established a fair payment guide⁴ and charter to implement substantial improvement in payment practice within those supply chains contracted to government. This has received cross industry support.

³ http://www.ogc.gov.uk/documents/CP0072_Aggregation-is_bigger_always_better.pdf

⁴ <http://www.ogc.gov.uk/documents/CP0159FairPaymentPractices.pdf>

32. HM Treasury has a responsibility for implementing government policy in this area; it needs to adopt a more vigorous approach and it could start by giving a better example itself. (Paragraph 57)

33. The Government notes the concerns of the Committee. The target for HM Treasury is to pay all invoices, not in dispute, within 30 days of acceptance of the relevant goods or services, or the receipt of a legitimate invoice if that is later. For 2006-07 the Treasury group achieved 97% against this target (compared to 96% for the previous year). Performance is monitored on a monthly basis throughout the year and the annual performance rate published in the Department's Resource Accounts. The overall payment performance for Government was 96.87% in 2005-06 (the last year in which cross-government data is available) compared to 97.09% in 2004-05.

34. The Government should commission research to determine whether, if practices were changed so that payment could be made incrementally for work in progress, more small businesses would be able to compete for long-term contracts. (Paragraph 58)

35. The Government notes the Committee's conclusion. Payment terms are a matter for negotiation and what is appropriate is likely to vary considerably depending on the nature of the goods or services being procured. At present the Government does not regard this as a research priority. *Managing Public Money* sets out the circumstances where advance or interim payments to contractors are likely to be appropriate or, alternatively, inappropriate, for example where such payments would substitute for other forms of finance available to contractors such as loan finance.

36. There is a good case for updating the Wood Review on procurement in other EU Member States. We also accept that there may be more that companies could do to fit themselves for competing for overseas public procurement tenders, such as ensuring that their agents have appropriate language skills and seeking advice from bodies such as UK Trade and Investment. The UK Government must continue to encourage the spread of best practice in procurement by public authorities throughout Europe. (Paragraph 16)

37. The Government notes the Committee's conclusion. The Government will continue to encourage the spread of best practice in public procurement by public authorities in Europe in line with the recommendations in the Wood report, by using the Public Procurement Network (PPN) as a vehicle to promote best practice. The PPN is a network of government officials responsible for public procurement in European countries, one of whose aims is to exchange best practice (through the exchange of views at conferences and by written contact). Following a Conference in Lisbon under the Portuguese Presidency in November 2007, the PPN is looking at ways to improve the exchange of best practice and OGC will be actively involved in taking this work forward.

38. The Wood report also made recommendations about best practice developments in the UK, particularly regarding relationships with suppliers. Developments since the report have included:

- the launch of Supply2.gov.uk;

- data gathering on demand in the major government markets of Information Technology and Construction following the Kelly programme (and will set out in its Procurement Policy and Standards framework best practice for stimulating and managing markets); and
- the launch of OGC's Supplier Feedback Service aimed at identifying and tackling serious or systemic complaints concerning procurement practice.

39. There is also a role for Chambers of Commerce or trade associations in helping to identify potential mentors for smaller or new-to-export companies. (Paragraph 16)

40. The Government thinks that the Committee's suggestion is an interesting one. The Government will consider further the opportunities to promote peer to peer and other forms of mentoring in the context of the refreshed enterprise strategy, which it plans to publish in Spring 2008.

14 December 2007