

The future of UK manufacturing:

Finding the value

A report published by the Commons Trade and Industry Select Committee has found that weak public procurement practices too often lead to taxpayers not getting best value for money, explains *GO* Features Editor **Morven MacNeil**.

The UK public sector spends nearly £125 billion a year purchasing goods and services. The manufacturing sectors most heavily involved in selling to government include paper and printing, pharmaceuticals, construction products, aerospace and environmental technology.

In the autumn of 2006 the House of Commons Trade and Industry Select Committee began a series of inquiries examining issues of concern to manufacturing industry under the broad heading of 'The future of UK manufacturing'. The Committee had already published reports into two of these issues – skills shortages in manufacturing industry and government support for exporters. They then turned to the question of whether the rules and practices relating to the procurement of goods and services by public authorities hinder or help UK manufacturers in obtaining public contracts. The Committee presented its conclusions in November 2007 in the report *The future of UK manufacturing: public procurement*.

Overall, the Committee found that UK Government policy on public procurement was clear and appropriate, but less satisfactory in practice. Applying this policy to every contract demanded skills and experience not available in every one of the 2000 public

bodies in the UK that procure goods and services. Instead, some officials took refuge in bureaucratic procedures and opted for the lowest cost, not the best value, bid. The Committee found that this deterred competition and innovation among suppliers, often ruled out environmentally sustainable options, and was particularly harmful to small businesses which do not have the resources to deal with often long and complex tendering processes. The report called for better trained and higher quality procurement officials throughout the public service, supported by floating teams of experts in particular procurement areas.

During the course of its inquiries the Committee found that many of those involved in public procurement are too timid. This is because those buying goods and services are often either insufficiently acquainted with the sector concerned to know or understand what options are available, or are too afraid of failure to try anything new, even if it might provide better whole-life costs or additional benefits.

The Committee found that in some respects, the Government's current efficiency drive – involving centralising purchasing and the use of framework contracts – is making it more difficult for small and medium-


sized enterprises (SMEs) to compete for public contracts, further reducing competition. The Committee also criticised the fact that some public bodies, including HM Treasury, have a poor record on the timely payment of bills. The Committee called on the Treasury to set a better example.

The Committee accepted that the Office of Government Commerce (OGC – the body charged with overseeing procurement policy) had issued a number of comprehensive guides to best practice and had drawn up useful standard forms, for example in relation to pre-qualification for tendering. However, until recently the OGC did not have the authority to enforce implementation of best practice. The Committee expects it to do so now.

The Committee was also concerned that in one area – the use of public procurement to further the Government's social policy and equality aims – the OGC's guidance did not go far enough. It recommended that the relevant guidance be reviewed.

Commenting on the report, Committee Chairman Peter Luff said: "The Government is finding it difficult in practice to balance its different aims in public procurement. There is a danger that SMEs will be squeezed out from even

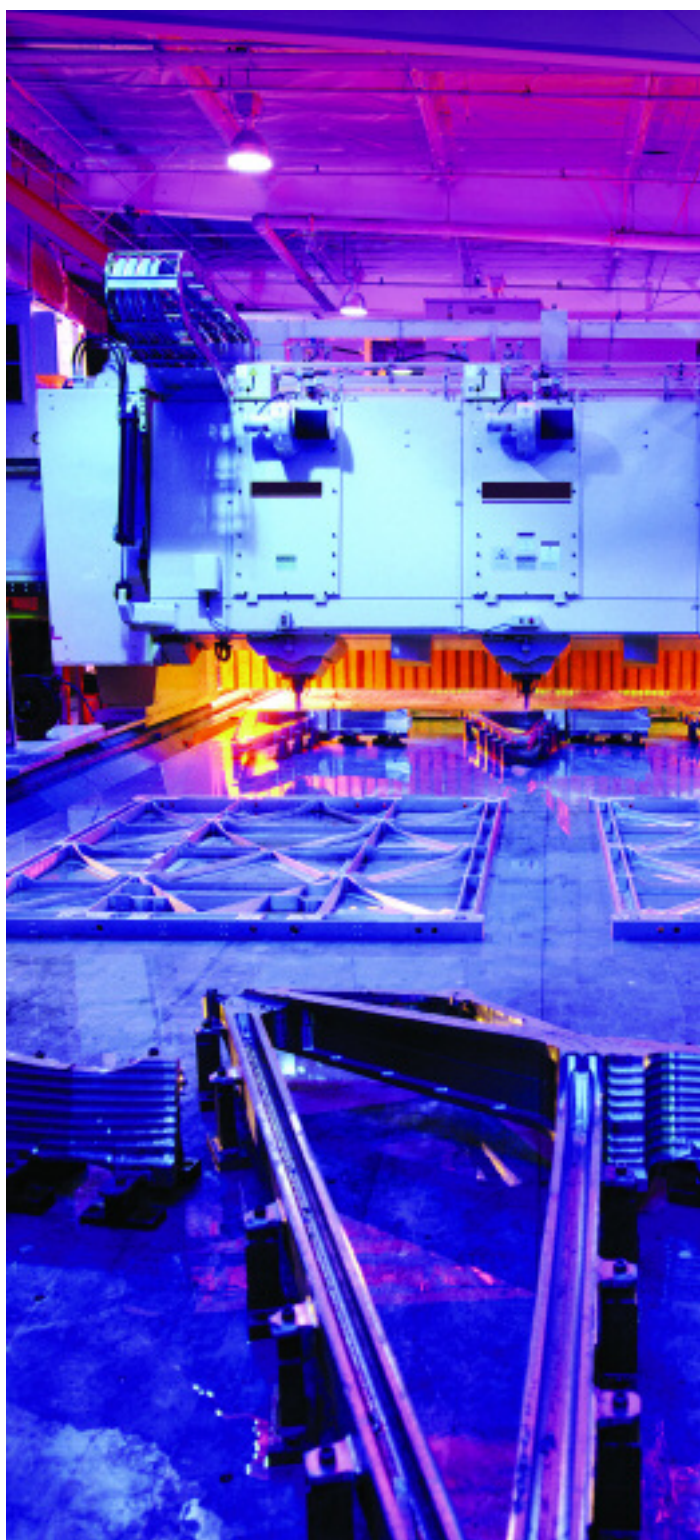
tendering for contracts because of the centralisation imposed under the Government's efficiency drive. The bureaucracy around tendering runs the risk of reducing competition for contracts in future. In addition, too often purchasers see 'cheapest cost' as being the same as 'best value for money', and they fail to use the discretion already given to them to promote innovation or to achieve environmental or social aims through public procurement.

"We need greater professionalism among those engaged in buying goods and services for the public sector. HM Treasury must also be more sensitive to the effects of its policies on competition among companies that supply the public sector." 

A feature on the Trade and Industry Select Committee report, providing a detailed examination of the positive and negative aspects of it, has been written by Ron Burges, CEO of leading public procurement solutions provider BiP Solutions.

public procurement

A manufactured report?



Ron Burges looks at the report *The future of UK manufacturing: public procurement* and uncovers some interesting findings.

In November 2007, the House of Commons Trade and Industry Committee published its thirteenth report *The future of UK manufacturing: public procurement*.

The report relied heavily on oral evidence from trade associations and industry specialists, as well as written evidence from companies and other professional associations. Business Secretary John Hutton said: "We need a greater understanding of [UK manufacturing's] existing contribution and what more

Does the public sector buy on price?

Yes and no.

The EU Regulations provide for authorities to buy through either lowest price or most economically advantageous tender (MEAT). If an authority intends to buy on price they are required to say so up front in the initial advertisement. If they use MEAT, they cannot select candidates on lowest price alone but they can take the lowest price of those selected to tender, if price and the weighting given to other

I fully concur with the evidence given by senior government officials that the EU Regulations are not in themselves a barrier to competition

government can do, as a policy maker, regulator and procurer to get the best results."

The Committee's conclusions may well be considered by many, including this writer, as depressing for competition, SMEs and the delivery of value for money to the taxpayer.

Despite the many issues discussed few concrete proposals are suggested, and some of the evidence is provided in a manner which may well be avoiding the issue rather than addressing it. Let me focus on a few of these matters.

criteria identify them as delivering MEAT. They should, however, ensure that when using MEAT they do not weight the percentage of the score given to price so high that effectively they are buying on price – and could therefore be in breach of the Regulations. I would counsel that any weighting over 30 per cent could distort in favour of price only.

However, many in the public sector are poor at understanding that price does not equal cost. Lifetime costing has to be considered, as do all the elements that contribute to such costs. That ▷

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▷ is effectively the difference between purchasing and procurement: purchasing is spending money, procurement is evaluating total cost. One other area of concern is that buyers still do not focus enough on achieving outcomes. Rather, they are still focused on outputs. The difficulty is that outcomes can be much further downstream than areas within the control of the buyer. Much greater investment has to be made by authorities in promoting outcome specifications, particularly through the adoption of innovation and greater partnering with other public authorities where the outcome may deliver greater value to them than the buyer's organisation. For instance, raising educational skills will reduce unemployment and the Department for Work and Pensions' costs. This is a macro-effect, but there are many other areas at the micro-level where interdepartmental approaches can deliver better outcomes.

International agreements

I fully concur with the evidence given by senior government officials to the Trade and Industry Committee that the EU Regulations are not in themselves a barrier to competition or to securing best value – when understood and used wisely they can be a substantial benefit.

While many consider that the UK is far more compliant with

but to open competition for EU Member State procurement.

This is not only done through the Public Procurement Directives but also through the European Court of Justice (ECJ)'s interpretation of EC Treaty obligations. This recently resulted in the Court ruling that all contracts, regardless of their value, should be subject to open advertising and competition.

competition. And public authorities in the UK are as guilty as any in the EU in this regard. However, this does not need to be the case.

In Scotland the new public procurement regulations include a requirement to advertise lower-value contract announcements. Unfortunately, in England the regulations make no such requirement, even though the UK Government has introduced the www.supply2.gov.uk portal – the ideal medium for advertising lower-value contracts free of charge. This represents an opportunity lost. If the Office of Government Commerce (OGC) actively promoted this, say through issuing guidance to all government bodies addressing the ECJ requirement to appropriately advertise all contract opportunities, then competition from SMEs for public contracts could be dramatically improved and better value for money achieved for the taxpayer.

The European Commission has recently welcomed the adoption by the European Council and the European Parliament of the Commission's Directive reviewing EU rules on remedies in the area of public procurement. This new Directive improves the national review procedures that businesses can use when they consider that a public authority has awarded a contract unfairly.

According to the Directive, contracting authorities need to wait for at least ten days after deciding who has won a public contract before the contract can actually be signed. This 'standstill period' is designed to give bidders time to examine the decision and to assess whether it is appropriate to initiate a review procedure. If this standstill period has not been respected, the Directive requires national courts under certain conditions to set aside a signed contract, by rendering the contract 'ineffective'.

For contracts based on framework agreements and dynamic purchasing systems, where speed and efficiency

Approximately 90 per cent of contracts let by the public sector can be deemed lower value

the EU Public Procurement Regulations than other Member States, we still do on occasion manage to incur the wrath of the European Commission, which has raised infraction cases against the UK over the last seven years (albeit a lot less frequently than with some other Member States).

EU procurement legislation, while not perfect, should be seen as a benefit to suppliers as its prime intention is not to deliver perfect procurement

Approximately 90 per cent of contracts let by the public sector can be deemed lower value (not subject to the European Public Procurement Directives). Although they are not covered by the Directives, they nevertheless should comply with the Internal Market principles of transparency and non-discrimination.

Lower-value contracts present significant opportunities for European businesses, in particular for small and medium-sized enterprises (SMEs) and start-up companies. Competition for these contracts would allow public authorities to choose from a broader range of potential suppliers and gain from better-value offers.

Such contracts may be of lower value in terms of the Directives, but to SMEs they can be hugely meaningful and their securing by a company often leads to the company developing their skills to deliver high-value contracts of a similar nature in the future.

Restricting contracts to local bidders means that companies across the EU are missing out on potential opportunities and governments are not getting value for money. And ultimately it's the taxpayer who loses out.

Even though the ECJ has developed minimum standards of transparency and non-discrimination for the award of lower-value contracts, in many instances public authorities continue to award these contracts directly to local providers without any open



public procurement

may be particularly relevant, the Directive provides for a specific review mechanism. For these types of contract, Member States may choose to replace the standstill obligation with a post-contractual review procedure.

Through OGC guidance, this standstill period has already been incorporated in UK public procurement processes. However, this was only as a result of the ECJ ruling in the 'Alcatel' case. Again, UK competition has benefited from its international obligations.

Cross-border trade

While there is an acceptance that international rules are necessary to discourage discrimination against suppliers, the evidence considered by the Trade and Industry Committee led to the conclusion that SMEs were being disadvantaged by the Regulations and that they had not contributed greatly to cross-border trade. The report quotes figures for 2003 of only ten per cent of total EU Member State procurement being cross-border. This figure fails to address the fact that many EU businesses set up subsidiary companies in other Member States and win contracts as if they were local companies. Many companies also win business within the supply chain of a local provider. My own company has engaged in many cross-border

opportunities, and mostly this is as a sub-contractor.

Is the system more unfair to UK suppliers seeking EU contracts than it is to other nationals? Having spoken to many Member State companies, they all seem to be of the same opinion – local business is won by local companies, and it doesn't matter much what country you are looking at.

A case in point is the defence market, where you might expect a national bias due to the issue of national security. The cry from Britain's defence industry is that they are not working on a level

playing field when tendering for other Member State contracts and that the Regulations should promote greater openness in defence procurement. Indeed, the European Defence Agency (EDA) is helping to open up such opportunities.

The EDA secured approval by European Ministers of a voluntary Code of Conduct on defence procurement in November 2005. This decision marked a turning-point, changing the established practice of exempting defence procurement from cross-border competition under Article 296 of the EC Treaty. On 1 July 2006 the Code of Conduct became operational. The subscribing Member States (including the UK) now publish their contract opportunities on the Agency's website (the so-called Electronic Bulletin Board).

In truth, the UK's spend on defence is by far the largest of any Member State; more open publication of defence opportunities, while reducing barriers, may mean that other Member State suppliers win more UK defence business than defence business gained by UK companies from other Member States.

Preferential treatment

The debate has gone on for some time as to whether it would be better to have a quota system for reserving contract opportunities for

achieving greater involvement of SMEs in public procurement will bring wider benefits to the economy through promoting competition and supplier innovation.

The OGC-issued guidance *Smaller supplier...better value?* states that the benefits to the public sector of contracting with SMEs are that they can deliver better levels of service, innovative business solutions and increased competitiveness in the longer term.

SMEs have short management chains and approval routes, so they can respond quickly to changing requirements. They may be highly focused on particular markets, making them particularly responsive to changes in those markets. They may also be more willing and able to tailor a product or service to meet specific customer needs than a large firm that sells an established offering.

Many SMEs, including social enterprises, Voluntary and Community Organisations (VCOs) and Black and Ethnic Minority Enterprises (BMEs), supply higher-quality specialist products or services than larger suppliers, either because larger suppliers are discouraged by the limited demand, or because the SME has skills, originality and commitment in that field that are greater than those found in

I doubt if many within small businesses would regard their abilities in such a manner.

Given such comments it is hardly surprising that SMEs feel there is little focus from OGC on getting them engaged in public sector contracts.

Thankfully, in his evidence, David Evans, Director of Innovation at the Department for Innovation, Universities and Skills, reasserted the value of SMEs: *"You can find good and bad small businesses in the same way you can find good and bad big businesses, but you can also find a lot of innovation, a lot of flexibility, and a lot of benefit with small businesses, and if our systems of procurement are biased against small businesses, we will be losing out as well as the small businesses."*

Risk aversion

Yes, public sector buyers spending public money need to be cautious and risk-averse. However, they often see risk where no – or at least no more – risk is inherent. And, to be truthful, this is down to the supplier not doing a prior risk assessment or at least not presenting one to the purchaser along with a risk management/mitigation plan.

It would be easy for a buyer to make it a requirement in the invitation to tender that a supplier should identify all risks and propose a plan in mitigation. This can then be considered by the buyer who can make their procurement decision accordingly from a position of knowledge, not ignorance.

And innovation by its very nature is often regarded as carrying an increased risk rather than increased benefits that far outweigh the risk escalation – if there is any.

Working in the supply chain

When high-value contracts are entered into by the ▷

Many SMEs, including social enterprises, VCOs and BMEs, supply higher-quality specialist products or services than larger suppliers

SMEs. However, while this might stimulate SME growth it might not deliver better value for money.

It is far better, in my opinion, for SMEs to be made more aware of lower-value contract opportunities. This can be done through the adoption of a range of initiatives.

Procurement practice

The UK Government states that it is keen to support and encourage this sector of the market in the belief that

their larger business competitors.

In evidence to the Trade and Industry Committee, Peter Fanning, then Acting Chief Executive of the OGC, stated: *"My main observation about small organisations is that it is very difficult to get anything done because the management is very thin, the management band-width is very narrow, and the experience of people at the top of the organisation is usually very constrained."*

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▷ public sector they invariably lead to sub-contractor opportunities. Most often the chosen prime contractor already has a preferred relationship with other suppliers. However, this does not necessarily mean these suppliers are the best candidates to either deliver the service or create best value for the taxpayer.

The London Olympic Authority has taken a lead by creating in its tenders a requirement for the prime contractor to openly advertise through www.competefor.gov.uk their sub-contractor opportunities and indeed to then pass this advertising obligation on down the supply chain.

The MoD has a similar strategy to get their prime

contractors to publish their downstream opportunities through the publication *MoD Defence Contracts Bulletin (MoD DCB)*.

These initiatives give far greater visibility to SMEs of opportunities that arise from a prime contract, and if adopted by other public sector organisations could go a long way to addressing the problem created by the public sector awarding more high-value prime contracts, without affecting the delivery of value for money; in fact, these initiatives may well improve it.

Barriers to and support for SMEs PQQs and supplier accreditation

The Trade and Industry Committee report discusses the provision of accreditation services as a barrier to SMEs yet states on numerous occasions that the constant requirement to complete pre-qualification questionnaires (PQQs) is also a barrier.

No one considers that requiring companies to achieve ISO xxx is a barrier

to doing business; they see it as a benefit. The reason is that it is a universally accepted standard, even though its accreditation is offered by numerous bodies. No matter which monitoring body a supplier signs up to the standard is a common one, and once achieved through one body can be used as a passport to all others.

And companies achieving such a standard only need do so once, annually; not for every public body seeking evidence of compliance.

The problem with accreditation services in the past is that they were sold as a different standard for different authorities, requiring suppliers to seek

contract over, say, a five-year period, they would realise that the true annual value would only be £50,000 – easily within their range.

It is up to government, procurement officials and trade associations to make this clear to the supply base. If they do, many SMEs currently put off tendering will begin to do so.

Innovation

The need for innovation is often talked about by the public sector, but then forgotten when it comes to seeking a service.

OGC guidance makes much of seeking innovation, but how often do they themselves invite it in their tender announcements?

Innovation may not be appropriate in all instances, but who are buyers to say that there is not a better way of achieving their goals than through rigid adherence to their often outdated and inaccurate specifications?

The EU Public Procurement Directives and the UK Regulations derived from them allow for innovation – but it has to be stated in the contract announcement otherwise it cannot be offered. Once a procurement process is announced, if innovation is offered but it has not been invited in the notice it cannot be accepted.


Why do authorities not therefore stipulate that innovation will (unless there are exceptional circumstances) be considered, provided it meets the outcome specification?

To reduce the risk of receiving inappropriate offerings authorities could easily stipulate that a compliant bid must also be provided. That way the authority can be assured that the supplier understands the

requirement fully, and any innovation offered should accordingly meet the need.

Take a simple analogy. Why do we concentrate on buying bandages to bind a wound? The longer the wound takes to heal the more money the bandage supplier makes – should we not be focusing our procurement on healing the wound and paying for the healing, not the bandaging?

In summary

Overall, should we be despondent about the ability of the EU and the UK Government to deliver better value for money and more open competition? Well, yes, if no one is prepared to make meaningful change happen. But not if the public sector adopted a more pragmatic approach to its procurement, one that sought to be inclusive rather than exclusive. As the Government consistently states, competition is good for delivering value for money. Unfortunately, the delivery mechanisms are not in place and unless real action is taken they may never be. 

There has to be greater clarity provided to SMEs as to the true value of a contract

accreditation to each authority. This problem has now been addressed by the introduction of Select, an online supplier registration and accreditation service which is transparent and accredits suppliers to the same standard as set for Constructionline. Therefore when a company is registered as a Constructionline-accredited supplier they are automatically considered as having achieved the Select Accredited status, and vice versa.

Contract valuation

It is easy for a supplier to understand the value of a contract if they are told it is lower value (usually under £100,000). It is far harder when the contract is announced through the OJEU and only an overall price is stated along with the contract duration.

There has to be greater clarity provided to SMEs as to the true value of a contract. Take a notice for a contract with a value of £250,000. This may deter many SMEs at first sight. But if they took time to consider that £250,000 may be the total value of a



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What's your view?

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