

MYSTERY SHOPPER CASES – AUGUST 2013

Contracting Authority / prime Contractor complaint against	Issue with Procurement	Description of complaint	Outcome of case / recommendations
Herefordshire Council	Procurement strategy	A mystery shopper raised concerns about a contract to supply personnel services under a single tender.	The Council explained that single tender action had taken place to put a short-term contract in place for personnel related services. They are satisfied that this contract complied with the EU rules and the Council's own standing orders. We recommended that in future the Council ensured that any single tender action is carefully checked. The Council accepted this recommendation and explained that in future these services will be procured through a company who are controlled by the Council which will use a transparent tendering process with appropriate advertising for future contracts.
NHS Bournemouth and Poole	Procurement strategy	<p>A mystery shopper raised concerns about the procurement process being followed by NHS Bournemouth and Poole for adult mental health services. Points of concern raised were:</p> <ul style="list-style-type: none"> • The lack of consultation before the procurement process started. • A number of questions posed concerning the procurement were not answered before the cut-off point for bids. • A Pre-Qualification Questionnaire (PQQ) was used contrary to government policy. • The pricing structure was established without consultation. • Terms and conditions of the contract were unclear. 	<p>The Trust and Department of Health made the following points:</p> <p>They had engaged with the market before starting the procurement but the mystery shopper had not responded to that exercise. A consultation with patients and the public also took place as well as workshops with GPs and other health professionals.</p> <p>A number of questions were not answered; mainly relating to the standard NHS terms and conditions. These were passed to the NHS contracting team who explained they had to prioritise due to the number of questions received. They have strengthened their processes to ensure this does not happen again.</p> <p>A PQQ was not used; certain questions are asked as part of the Any Qualified Provider process.</p> <p>The pricing structure was established following the Department's rules for Co-operation and Competition.</p> <p>The terms and conditions used were the standard NHS terms and conditions.</p> <p>There had been some technical issues with the Any Qualified Provider website. We recommended that in future procurements, if issues occurred with the website that caused problems for providers, additional time is given to enable them to complete their bids. The Trust accepted this recommendation.</p>

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		<ul style="list-style-type: none"> Problems were encountered with the Any Qualified Provider website. 	
University of Liverpool / Provelio	Pre-Qualification Questionnaire (PQQ): insurance	A supplier was concerned about the complexity of a PQQ and the requirement for unlimited liability insurance in a procurement for a works' framework agreement.	We recommended that the University adopts a PQQ based on PAS 91, the Construction industry standard, and ensures that insurance requirements are proportionate. The University accepted these recommendations.
Doncaster Metropolitan Borough Council	Accreditation requirement	A Housing Association expressed concerns that the requirement for CHAS accreditation in a contract for the provision of Supported Lodgings accommodation and support for young people at risk of homelessness, could make it difficult for smaller companies to engage in the process. They commented that the accreditation is a time consuming process with costs associated with it and that other commissions allow for alternative evidence to be provided.	Doncaster Council explained that the Invitation to Tender (ITT) supplied with the tender made it clear to contractors that they would need to be CHAS registered before the contract was awarded, and prior to work commencing and therefore is a contractual condition rather than a selection criteria. The Council explained that as these services involve looking after and supporting young people below the age of 18, then the Council needs to be assured that contractors have competent Health & Safety (H&S) policies in place. The Council pointed out that their H&S policy requires that contractors are CHAS registered, but does not mandate CHAS accreditation. The Council confirmed that this approach is consistent with the approach taken by neighbouring authorities.
University of Sunderland	Charging for Invitation to Tender (ITT)	We received two complaints from SMEs that a University had asked for a £50 up-front payment charge before documents were provided for a Coaching and Training Framework.	We strongly recommended for future procurements that a fee is not charged to enter the tender process as it creates a barrier to SMEs and for the University to make use of Contracts Finder, or a protected area on their website, for suppliers to download the tenders for free. The University accepted these recommendations.
University of West London (UWL)	Tender evaluation and scoring	A supplier raised concerns about the answers to substantiate the score given on the evaluation of a Marketing, Advertising and Print Services Framework, as they believed they were random and completely irrelevant to the	The University of West London provided us with a breakdown of the scoring and an explanation of the scoring mechanism used on the Invitation to Tender (ITT). The Cabinet Office could not find any fault with the UWL scoring method but noted that it was not a standard method of evaluating a response. We also recommended that the University discuss their approach with the supplier to help improve the level of response for future bids, which they agreed to.

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		sections scored. This led the supplier to conclude that the scores had been manipulated overall in favour of the preferred supplier.	
North East Lincolnshire Council	Tender evaluation and scoring	A small supplier raised concerns about a procurement of a strategic housing market assessment.	We investigated concerns expressed about the lack of a standstill period before contract award and the rejection of the SME's bid on quality grounds. The Council explained that the contract value was well below the threshold above which the Public Contracts Regulations apply, so no standstill period was required. The Council gave a detailed explanation of the way they had scored bids and we were satisfied that they had conducted the procurement in a proper manner. The Council has given detailed feedback to the SME.
Health Trust Europe (HTE)	Framework agreements	A mystery shopper raised concerns about the scope and description of a framework agreement for managed maintenance services for specialist medical equipment.	We recommended that in future procurements for frameworks, the scope and estimated value is clearly described in the advert in line with guidance published on the Cabinet Office website - http://www.cabinetoffice.gov.uk/sites/default/files/resources/ogc-guidance-framework-agreements-sept08.pdf . We also recommended that effective pre-procurement engagement takes place before any further procurements, to enable the views of the market to be taken into account when shaping the procurement. HTE accepted these recommendations. They subsequently met with the trade body, AxREM, and will be procuring a new framework soon.
North London Waste Authority (NLWA)	Procurement strategy	A mystery shopper raised concerns about NLWA's procurement project for a waste facility at Pinkham Way in North London. Concerns were raised about the length of the contract and the guaranteed minimum tonnage of waste that the plant will handle.	We examined the procurement strategy being followed and found that it was in line with advice from Defra and that there were no recommendations we could make which would be of benefit to the procurement process. The length of proposed contract is standard for PFI contracts of this type, which are typically long-term and over 20 years due to the financing and pay-back requirements. NLWA are proposing a guaranteed minimum tonnage of 70% of the current amount, which is more favourable than the norm of 80% for this type of contract.
Derbyshire County Council	Contract advertisement	A mystery shopper queried why a contract for transport services for people with special needs had not been advertised in the Official Journal of the European Union (OJEU) and why a standstill period had not been applied	The Council explained that a number of different contracts had been let for transport to a particular day centre for adults with special needs. They had carefully considered the aggregation rules in the Public Contracts regulations, which stipulate that contracts of a similar nature should be advertised together, but decided that the specific nature of the individual routes and the particular needs of the people to be picked up on each route required the contracts to be advertised separately. The contracts advertised therefore fell under the threshold for the

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		immediately before contract award.	Public Contracts regulations to apply so they were not advertised in OJEU and the statutory standstill period did not apply. We agreed with the Council's approach.
Department for Environment, Food and Rural Affairs (Defra)	Procurement strategy	A mystery shopper raised concerns about the approach taken for the procurement of a Central Equine Database for Defra and its subsequent withdrawal. A Prior Information Notice (PIN) had been issued with an agreed budget but it was subsequently decided to deliver the services in-house. The mystery shopper was concerned about the time and effort lost in competing for an opportunity which was then withdrawn.	We were not critical of Defra issuing a PIN because it is very much a part of the process of deciding how to shape a procurement and that process in itself might lead to a decision being made not to proceed. Defra should carry on engaging with the market pre-procurement, in line with Procurement Policy Action Note 04/12: http://www.cabinetoffice.gov.uk/resource-library/procurement-policy-note-0412-procurement-supporting-growth . For future procurements, full financial analysis should be carried out earlier on in the process, with the initial 'make or buy' decision being made at the end of the Business Need and Analysis stage, before going to market and before a formal advertisement of a contract is made. This is in line with Cabinet Office standard lean operating processes: http://gps.cabinetoffice.gov.uk/about-government-procurement-service/lean-capability/lean-sourcing . Defra accepted these recommendations.
Department for Communities and Local Government (DCLG)	Contracts for sole trader	We were contacted by an individual who provides support for a departmental employee. The prime contractor for whom the individual works went into liquidation and hence we were asked whether it was possible for them to work as a sole trader?	We contacted the Department and advised them that there is no bar under the EU procurement rules with regards to contracting with sole traders. In this case, the mystery shopper was employed by an alternative agency and continues to provide support for the departmental employee.
Altius Services	Prompt payment	A sub-contractor raised concerns about the late payment in a government supply chain.	Cabinet Office intervened to ensure all outstanding payments were met.
Tendring District Council	Procurement strategy	A mystery shopper raised concerns about uneconomic bids in a procurement for a strategic housing market assessment.	When we contacted the Council they had already received some concerns about this procurement and decided to get further references before making a decision on which supplier to appoint. They explained that this was a low-value procurement but it had been openly advertised on their procurement portal to ensure transparency. We agreed with the Council's approach.
Department for Environment, Food and Rural Affairs (Defra)	Contract advertisement	A supplier raised concerns about a consultancy contract which was advertised on Contracts Finder but was a 'mini competition' from a framework agreement and	We recommended that for future procurements, in order to aid increased SME participation in the supply chain, Defra should encourage their prime contractors to register on the Contracts Finder website and advertise any sub-contracting opportunities they have over the life of the procurement. The Contracts Finder team advised us that if a Department wishes to identify that SME friendly sub-

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		because the supplier is not listed on the framework he was told he could not bid for the work.	contracting opportunities are likely to be available on a specific contract, they could do so in the additional information section of the new opportunity notice on Contracts Finder. Defra accepted these recommendations.
Barts Health NHS Trust	Prompt payment	A mystery shopper raised concerns about the late payment of invoices.	We recommended to the Trust that they impress upon their staff that Purchase Orders must be raised for work commissioned and that they also impress upon their suppliers that goods or services must not be supplied unless a valid order number has been provided, as payment will be held until the proper processes relating to the purchase are put in place. We have further suggested that it might be useful to create a forward Purchase Order, which could then be called off against, in order to facilitate the payment procedure for this supplier. The Trust accepted these recommendations.
Forestry Commission	Pre-Qualification Questionnaire (PQQ): assessment and scoring	A mystery shopper raised concerns about a lengthy and overly-complex PQQ. He felt that the scoring in Part E was potentially disadvantageous against small suppliers, as it focused on the organisational experience and capabilities of suppliers in relation to the contract specification, as bigger organisations may score more points, since they have more capacity and resource.	The Forestry Commission explained that the Cabinet Office PQQ is the template for all their PQQs. In addition to the standard Cabinet Office questions, Forestry Commission's PQQs also include some specific questions relevant to the contract being tendered. In this case these were the Health & Safety section (given the site visit risks) and the questions in Part E regarding the organisational experience and capabilities of suppliers in relation to the contract specification. We recommended that the Forestry Commission reviewed the complexity and length of their PQQ and its additional sections and also re-phrase some of the wording within Part E, so that it is clear that the capacity / resource being referred to alludes to supplier agility and their ability to 'scale up' if necessary during the term of the contract, as opposed to their having sufficient capacity / resource to undertake the contract. Forestry Commission accepted these recommendations.
City Hospitals Sunderland	Tender evaluation	A supplier raised concerns about a procurement for surgical gowns and drapes. Issues raised included the structure of the tender documentation and the way that a clinical evaluation of the product quality was undertaken.	The Trust decided to cancel this procurement, on the basis of cost effectiveness, and are now utilising the framework agreement in place via NHS Supply Chain.
Barking Havering and Redbridge University Hospitals NHS Trust	Transparency	A mystery shopper expressed concerns that a procurement exercise run for the Trust by its PFI provider may result in products and services being	The Trust explained that the PFI provider has robust arrangements in place to ensure that an open and transparent procurement takes place and the Trust ensures that its own staff develops specifications and ensures appropriate clinical evaluation takes place. We agreed with the Trust's approach.

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		purchased from a company within the same group as the PFI provider without fair competition.	
London Legacy Development Corporation (LLDC)	Financial requirements	We received two complaints regarding LLDC. Both complainants raised issues concerning the financial appraisal of separate contracts.	We discussed LLDC's approach to financial appraisal and recommended that going forward they apply the financial advice in PPN 02/13 - https://www.gov.uk/government/publications/procurement-policy-note-02-13-supplier-financial-risk-issues - to which it seemed reasonably well aligned and that they adopt a risk-based approach to financials and examine a range of measures. We agreed it would be helpful for LLDC to signal their approach on their website and forthcoming engagement day. LLDC accepted these recommendations.
Greater London Authority / Transport for London (Tfl)	Pre-Qualification Questionnaire (PQQ)	A small supplier was concerned that they had not received a response to their PQQ.	Tfl explained that they had received a high level of response which had taken some time to work through. They expected to issue an Invitation to Tender (ITT) to short-listed suppliers shortly.
Department for Education	Invitation to Tender (ITT): timescales	A mystery shopper was concerned that there was insufficient time to respond to a contract opportunity, especially as it straddled the Christmas and New Year holiday period which might disadvantage his ability to respond.	The Department considered the points made by the mystery shopper and extended the deadline for the return of bids for all bidders. They made the point that they were committed to running an open and transparent procurement process, which would not show bias to any particular supplier and/or groups of suppliers.
Thames Valley Police	Financial requirements	A mystery shopper raised concerns about the approach taken to financial assessment in a Pre-Qualification Questionnaire (PQQ) for a contract for classroom-based driver education. A minimum turnover of the expected value of the contract of £27 million was required.	We explored the Thames Valley Police's approach to financial appraisal and recommended they adopt the approaches set out in PPN 02/13 - https://www.gov.uk/government/publications/procurement-policy-note-02-13-supplier-financial-risk-issues . The police responded by saying this procurement had progressed but they have reviewed the advice given for this and future procurements. They pointed out that they needed to select suppliers who have the capacity, resources and experience to deliver a high volume of relevant training courses at appropriate venues. They said they include within the terms and conditions of the contract, the ability to engage sub-contractors to encourage working partnerships with smaller suppliers.
The Oil and Pipelines Agency (part of MoD)	Procurement strategy	A supplier raised concerns about a small consultancy contract which was awarded on a pro bono basis. He had been invited	The Agency confirmed they had approached a number of suppliers to provide quotes and one supplier offered to do the work on a pro bono basis. We recommended that the Agency should not in future approach the market in this way if it was contemplating accepting a pro bono offer. The Agency accepted this

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		to submit a quote for the work and believed his time had been wasted.	recommendation.
West Berkshire Council	Pre-Qualification Questionnaire (PQQ)	A mystery shopper raised concerns that a contract for Healthwatch Services required bidders to complete a PQQ. He understood that PQQs should not be used in contracts below the ERU threshold.	Procurement Policy Note 01/12 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62093/PPN-01-12-Use-of-PQQ.pdf - announced that PQQs are not to be used in central government for procurements below the EU thresholds. The Cabinet Office advises public bodies outside central government to adopt a similar approach. In this case the contract value was above the relevant threshold so we found no fault with the Council's approach.
Olympic Delivery Authority c/o Lend Lease	Contract management	An SME complained that Lend Lease was retaining performance bonuses and financial bonds.	We contacted Lend Lease and they confirmed that they were only holding monies that were tied to outstanding matters, which were still being worked upon.
Barts and the London NHS Trust	Certification as a pre-requisite	A mystery shopper raised concerns that he needed to have N3 certification for a computer support and consultancy services contract. He was concerned that he could only achieve this if his company had already won an NHS contract.	The Trust reviewed their tender documents and adjusted their approach. They informed suppliers that they did not need to have N3 certification to bid but would be required to achieve it if they won the contract. The mystery shopper was satisfied with this response.
University of the Arts London	Financial requirements	A mystery shopper raised concerns about the approach taken to assessing the financial strength of suppliers in a Pre-Qualification Questionnaire (PQQ) for an ICT contract.	When we examined the PQQ we found that the financial strength of suppliers was scored. The Cabinet Office's model PQQ and procurement Policy Note PPN 02/12 - https://www.gov.uk/government/publications/procurement-policy-note-02-12-guidance-on-ict-contracts-that-exceed-100m - advise that Contracting Authorities should adopt a risk based approach to assessing financial strength and this should be a pass/fail criterion. This is to ensure that suppliers who are "strong enough" are able to progress to the next stage of the procurement process and helps smaller suppliers, including SMEs. The University considers that on this occasion the evaluation of the PQQ has not in any way worked to the disadvantage of small suppliers, however the University will be mindful of this advice going forward, depending on the specific circumstances of each procurement.
Capita	Prompt payment	A sub-contractor raised concerns about the late payments from Capita on the Civil Service Learning contract.	Capita have ensured that all payments to sub-contractors on this contract are being made within 30 days.
Office of the	Contract	A mystery shopper raised	OCC told us that they received a very healthy response to their advert, with 17

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Children's Commissioner (OCC)	advertisement	concerns that a small tender for an educational firm had been advertised very widely and would lead to the industry as a whole incurring large bid costs. The mystery shopper also doubted that the indicative contract value was sufficient to generate a quality response	tenders received. It is Government policy to advertise opportunities widely and we explained that to our mystery shopper. OCC had advertised through the Creative Choice framework agreement and online more generally. We recommended that OCC should not mix an open tendering approach with a framework-based approach as this can confuse the market. Our advice is to opt for one route only, depending on the suitability of an available framework, such as Creative Choice, and whether it is considered that would deliver value for money or online advertising which, as this procurement demonstrated, can also generate good results. OCC accepted these recommendations.
The Royal Wolverhampton NHS Trust	Pre-Qualification Questionnaire (PQQ)	A mystery shopper was concerned that the PQQ for a construction procurement demanded overly-prescriptive criteria in regard to evidence of experience of similar projects / frameworks. There was also a requirement to have worked within a specific number of miles from Wolverhampton.	We suggested that the key criteria that contractors need to prove would be their ability to work within a partnering framework and therefore, that they are asked for examples demonstrating their behaviour and working co-operatively, rather than specifically asking for experience of frameworks. We strongly recommended following PAS 91, the Construction industry standard, for NHS Trust construction contract PQQs; this is a requirement for Central Government. The Trust accepted these recommendations.
Slough Borough Council	Procurement strategy	A mystery shopper raised concerns about the Council's approach to procuring schools Management Information Services (MIS).	Slough confirmed that they had procured using the Government Procurement Service's IMLS framework agreement. This is in line with our advice to authorities to consider the use of the IMLS framework when developing their procurement approach for schools' MIS and we found no fault with their approach.
NHS Shared Services	Non-acceptance of e-invoices	A mystery shopper would like to email invoices but is unable to do so.	NHS SBS have confirmed that it is not possible to email invoices to them at this time. NHS SBS would, however, be happy to take the supplier details in order to record their interest to move to their future electronic solutions.
Shrewsbury and Telford Hospital NHS Trust	Timescale and certification as a pre-requisite	A mystery shopper raised concerns that he needed to have N3 certification for a computer support services contract. He was concerned that he could only achieve this if his company had already won an NHS contract. He further raised the issue of the tight deadline for the PQQ response.	The Trust reviewed their tender documents and adjusted their approach. They informed suppliers that they did not need to have N3 certification to bid but that it would be a requirement if they won the contract. The Trust also agreed to extend the timeline for the PQQ closing date. The mystery shopper was satisfied with this response.

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Leicestershire County Council	Framework agreement	A mystery shopper raised concerns that non-commercial operators bidding to be on a small passenger vehicle framework agreement might be operating outside the restrictions placed upon them by Section 19 of the Transport Act 1988.	Leicestershire discussed the issues raised with the Vehicles and Operators Service Agency (VOSA). Following those discussions the Council has undertaken to remind the operators on their small passenger vehicle framework who use Section 19 permits that where there is no element of separate fares if they are using a permit vehicle to undertake the Council's contract work the vehicle must have more than 8 passenger seats.
H M Revenue & Customs (HMRC)	Procurement strategy	A mystery shopper was concerned that an HMRC ICT procurement was not using G Cloud.	We asked HMRC if G Cloud had been considered in line with the Government policy that cloud solutions should be considered first in all ICT procurements - https://www.gov.uk/government/news/government-adopts-cloud-first-policy-for-public-sector-it . HMRC have confirmed that they investigated the possibility of using G Cloud as a solution but that, at this stage, none of the G Cloud suppliers engaged with were able to provide sufficient assurances that their products could fulfil all of the specific essential requirements applicable to the service being procured.
Hertfordshire County Council	Framework agreement	A mystery shopper raised concerns that the PQQ for a schools Management Information Services (MIS) framework agreement included a requirement that they must have experience of delivering a similar contract for at least 50 educational establishments.	The Council re-considered this requirement and decided to ask for experience of delivering to a significant number of educational establishments, which would be a requirement of the framework, rather than a set number of 50.
Department for Energy and Climate Change (DECC)	Invitation to Tender (ITT): documentation	A mystery shopper raised concerns about the requirement to provide hard copies, as well as an electronic copy, of tender documents in a DECC procurement.	DECC explained that where the evaluation team consider it is necessary, DECC ask for hard copies, as well as electronic copies of tender documents. They explained that they are moving swiftly to using e-tendering systems which will remove the need to ask for hard copies.
Ministry of Justice	Feedback request	A small supplier requested a de-brief session following a procurement from G – Cloud and experienced a delay in the discussion being arranged.	A new project leader had been appointed and he arranged for a de-brief session as soon as this issue was drawn to his attention.
Government	Procurement	A mystery shopper who is a small	GPS explained that ConsultancyONE was limited to contracts up to £2 million for

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Procurement Service (GPS)	strategy	supplier on the ConsultancyONE framework agreement asked why a consultancy requirement for the Ministry of Justice (MoJ) was not being procured through ConsultancyONE.	central government departments. As MoJ's requirement was for £4 million an alternative framework agreement was used. GPS confirmed that the advertisement for ConsultancyONE clearly set out the £2 million threshold and this was reinforced in meetings with the suppliers on the framework.
Environment Agency	Pre-Qualification Questionnaire (PQQ)	A mystery shopper raised concerns about a PQQ being used in a procurement below the EU threshold.	The Environment Agency immediately retracted the original PQQ, reviewed and amended the questions that they needed to ask and the response time to make them more relevant to the specific contract and more SME-friendly and discussed the issues and actions taken with the mystery shopper who was very happy with this response.
Bank of England Recruitment (BoE)	Advertisement	An advertisement for a position with the BoE was brought to the attention of the Mystery Shopper team. It states that applicants require Security Clearance prior to applying for the job.	On investigation the BoE discovered that one of their Agencies had placed the advertisement. They have now reiterated to all their Agencies that advertisements requiring Security Clearance as a pre-requisite are not to be used unless specifically requested: https://www.pcg.org.uk/news-events/press-release/2013/03/28/new-cabinet-office-notice-security-clearance-contractors . Additionally the BoE has taken the opportunity to update their in-house recruitment team with the security policy note that gives the reasons for holding open recruitment.
Three Rivers District Council	Prompt payment	A mystery shopper raised concerns about slow payments of an invoice. He does not wish to be specific about the details of the invoice concerned.	As the mystery shopper did not wish to reveal details about the invoices concerned, the Council were not able to check the position. They commented that they take prompt payment very seriously and that over 98% of valid invoices are paid within 30 days. As a result of this referral a notice was promptly issued to all relevant staff reminding them of the importance of processing invoices promptly.