

Mystery Shopper Publication Table July - September 2017

Contract Management

Contracting Authority / Prime Contractor complaint against - Epsom and St Helier NHS Trust

Issue: A supplier raised concerns that the Trust were requiring contractors to be accredited with an accreditation service provider, Reset, in order to continue to supply to the Trust.

Outcome: The Trust advised that there were significant benefits to the Trust and to suppliers in joining the scheme and had sought to encourage suppliers to join by negotiating a discount on the first year's fees. From July the Trust would require contractors to join the scheme but that the requirement would be highlighted in procurement documentation so that it could be factored into bids. The vast majority of existing contractors had joined the scheme but if any declined the Trust would pay their fees until their contract with the Trust expired.

Payment

Contracting Authority / Prime Contractor complaint against - Home Office

Issue: A supplier contacted the Mystery Shopper team to advise that they were struggling to get purchase orders raised with the Home Office and as a result they were not getting paid, this was having a serious impact on their business because they still had to pay their contractors. They were on a GCloud 6 contract supplying contractors to the Home Office digital team and owed in excess of £700k between April - August this year.

Outcome: We contacted the Home Office who urgently looked into their processes to try and resolve these issues. Due to the merger of two large departments and subsequent budget allocation changes, new POs were required to make payment on existing contracts for the new financial year. They put steps in place to resolve the delays they had identified, took responsibility in tracking every RTP creation to ensure that a PO was raised and payment were made. Within 6 weeks of raising this case, the full £700k was paid to the supplier. The Home Office apologised and acknowledged that a new approvals process with split work areas had caused some elements of confusion and created delays. They have assured us that lessons will be learnt so that these issues do not re-occur.

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Contracting Authority / Prime Contractor complaint against - South Tees Hospitals NHS Foundation Trust

Issue: A supplier contacted the Mystery Shopper team to advise that they were experiencing delays in being paid for work carried out several months ago for South Tees NHS Foundation Trust, totalling over £2k.

Outcome: The Trust looked into this and paid all outstanding invoices to the mystery shopper within a week of the case being raised.

Procurement Process

New

Contracting Authority / Prime Contractor complaint against - Department for Education

Issue: A supplier contacted the Mystery Shopper team in early September in relation to a procurement run by the Department for Education (DfE) via the DOS 2 framework <https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/4732>. The supplier had submitted a bid on 31st July, but had never heard back from the department. They assumed that they had not been successful because work was due to commence on this procurement on 1st September and were keen to understand why their bid failed.

Outcome: Since raising this case, the supplier was subsequently informed on 6th September that there had been a delay in shortlisting and that DfE hoped to complete this by 1st week in October. DfE also advised us that a period of leave over the summer had contributed to the delay along with ongoing internal discussions about how to progress with the procurement after additional information came to light. DfE accepted that suppliers should have been better informed during this process and reassured us that for future procurements they would ensure this would happen.

New

Contracting Authority / Prime Contractor complaint against - NHS South Central and West Commissioning Support Unit (NHS SCW CSU)

Issue: A supplier contacted the Mystery Shopper team regarding a consultancy procurement promulgated by NHS SCW CSU. The supplier was concerned at the inclusion of a requirement that seemed to favour providers with previous experience of working with the customer organisation.

Outcome: The CSU responded promptly and fully to the case, indicating that the short timescales and low contract value for delivery of the required outputs would make previous experience of the relevant stakeholders beneficial. However, on reflection the requirement should have been challenged and alternative approaches explored. Existing procedures should ensure that this happens on future occasions.

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New

Contracting Authority / Prime Contractor complaint against - Salford City Council

Issue: A supplier asked the Mystery Shopper team to look at a procurement undertaken by Salford City Council, indicating that the deadline for receipt of tenders and that some aspects of the evaluation approach were unclear.

Outcome: The Council responded fully, clarifying how the confusion over the tender submission deadline had arisen and responding to the points raised regarding the evaluation approach. We suggested some adjustments that might be considered for future requirements.

Contracting Authority / Prime Contractor complaint against - North East Procurement Organisation (NEPO)

Issue: A supplier asked us to investigate North East Procurement Organisation's (NEPO) current consultancy procurement. They expressed concern over the contract management requirements for suppliers, suggesting these represented an excessive overhead for small suppliers. They also questioned the structure of the quality and charges evaluation.

Outcome: NEPO responded fully to our investigation, indicating that the relevant facets of the procurement had been put forward as part of the pre-market engagement process without attracting a negative reaction. Nevertheless, the organisation would review them as part of an overall lessons learnt process after the procurement to see if there was a significant case for change for future similar procurements .

Contracting Authority / Prime Contractor complaint against - Home Office (HO)

Issue: A supplier contacted the Mystery Shopper team about the fact that they were still waiting for responses to their clarification questions on an advert placed by the Home Office for Science Licensing via the DOS framework. They were concerned that it was the last day to submit responses and they had yet to receive answers to their questions.

Outcome: We contacted the Home Office to understand what the delay was and suggested that they extend the deadline for submission. However, they informed us that this opportunity was withdrawn as it needed to be subject to an internal approval process procedure.

Home Office explained that they had originally published on the Digital Marketplace to try and engage with the market and gain a broader understanding of what the market might be able to offer. Home Office have apologised for the confusion and advised that after removing the requirements from the marketplace, they were no longer able to contact the suppliers who had posed questions as there was no record of who had asked the questions and how they could be contacted. We updated the supplier of the situation and made them aware that the opportunity had been withdrawn.

In parallel, the Digital Marketplace were looking at what could be done to avoid this situation happening again and have advised that they are reviewing their guidance and communications for buyers about how to withdraw an opportunity from the Digital Marketplace.

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Contracting Authority / Prime Contractor complaint against - Department for Work and Pensions

Issue: A supplier contacted the Mystery Shopper team about a contract for DNA parentage Testing run by DWP. They felt the contract excluded businesses from outside the UK because it required an accreditation they felt was easier for UK suppliers to gain.

Outcome: The complaint was not upheld because DWP had allowed a significant period of time for suppliers to be accredited and whilst it is unfortunate the supplier had experienced difficulties gaining accreditation within the time frame, DWP had not known this could happen and the reasons for the supplier not gaining the accreditation have not yet been revealed. Therefore DWP had not knowingly excluded the supplier or narrowed the competition. Mystery Shopper recommended that DWP spoke with the Home Office (responsible for the accreditation) to better understand the timescales for accreditation for use in future procurements.

Contracting Authority / Prime Contractor complaint against - University of Hull

Issue: A supplier asked the Mystery Shopper team to look at a procurement the University had advertised on Contracts Finder. The supplier had been unable to locate an OJEU contract notice relating to the procurement.

Outcome: The University responded quickly to our communication to indicate that they are not a Public Contracting Authority for the purposes of the Public Contracts Regulations and were not therefore required to advertise in the OJEU.

Contracting Authority / Prime Contractor complaint against - Ofqual

Issue: A supplier asked the Mystery Shopper team to examine a GCloud procurement undertaken by Ofqual.

Outcome: Ofqual responded swiftly and in detail to the points raised, affirming that the procurement had been conducted in accordance with GCloud customer guidance, validated by the CCS framework team and had resulted in a robust outcome.

Contracting Authority / Prime Contractor complaint against - Sovereign Housing

Issue: A supplier asked the Mystery Shopper team to look at the re-qualification questionnaire for a procurement being undertaken by Sovereign Housing, suggesting that it contained unnecessary requirements for professional accreditations, and that the document as a whole was unnecessarily complex, making it difficult for SMEs in particular to respond.

Outcome: Sovereign Housing responded quickly and fully to our communications indicating that the relevant specific requirements were necessary for the type of work required and that they were currently conducting a refresh of their procurement documentation and that this should help to address the more general points made.

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Contracting Authority / Prime Contractor complaint against - HS 2

Issue: The Mystery Shopper team were contacted about a procurement HS2 were carrying out using the Digital outcomes and Specialists framework. It was suggested that several requirements seemed to present unnecessary obstacles to SMEs.

Outcome: HS2 responded quickly to our contact and after a period of consideration, indicated that they believed the relevant requirements were necessary and provided an explanation to suppliers of the rationale for the requirements in the procurement clarification log.

Contracting Authority / Prime Contractor complaint against - Department For International Development (DFID)

Issue: A supplier contacted the Mystery Shopper team about a procurement Department for International Development (DFID) had conducted under the Digital Outcomes and Specialists framework. The supplier had submitted an unsuccessful tender, wanted a debrief and had as yet not received the requested information.

Outcome: DFID responded quickly to our communication indicating that they were happy to respond directly to the Mystery Shopper's request.

Contracting Authority / Prime Contractor complaint against - University of Birmingham

Issue: A supplier asked the Mystery Shopper team to contact the University over a tendering opportunity that had appeared on Contracts Finder with a deadline for receipt of tenders only four days from the date of advertising

Outcome: The University replied swiftly to our communication, demonstrating that the opportunity had been published on the *Intend* portal 10 days earlier and appeared on Contracts Finder soon after. For an unknown reason it had then been published on Contracts Finder again several days later giving the misleading impression of a very short tender deadline. More than sufficient time had been allowed for what was a straightforward requirement.

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Contracting Authority / Prime Contractor complaint against - The Planning Inspectorate

Issue: A mystery supplier contacted the Mystery Shopper team to complain that they had invested a considerable amount of time preparing and submitting a response to a tender with The Planning Inspectorate for a Project Manager, which was subsequently withdrawn at a time well past the advertised contracting date. They reiterated that as a micro business this was extremely frustrating as they had invested a huge amount of time and resource onto this tender submission.

Outcome: We contacted the Planning Inspectorate to understand the reasons why this tender had been withdrawn. They advised that all of the tenders came in above their maximum advertised budget allocated to the project (£125K inc. VAT). This resulted in an initial delay whilst they determined if there was a way to continue with the procurement whilst maintaining the integrity of the competition process. At the same time, unexpected changes in business priorities meant that the amount of funding available for the project longer term was in question and a much reduced budget was allocated in the short term. To remain within this reduced budget would mean significantly changing their requirement. Commercially it was decided that it would be inappropriate to change the scope to the extent needed to stay in budget as to do so would compromise the competition. All suppliers were informed as soon as a decision had been agreed. They apologised for any inconvenience caused and for not being able to inform suppliers any sooner.

Contracting Authority / Prime Contractor complaint against - Department for Environment, Food & Rural Affairs (Defra)

Issue: A supplier contacted the Mystery Shopper team to complain that they had not been fairly evaluated on a procurement run by Defra for a Correspondence Management System via the Digital Marketplace. They believed that bids were not being evaluated on a 'like for like' basis and as a result they did not win this contract.

Outcome: The Mystery Shopper team investigated this case and were content that Defra had made it clear to bidders that they were assessing comparable systems from suppliers. Defra emphasised that a comparison of the services available from each supplier, including a small amount of customisation, was undertaken for this procurement.

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Contracting Authority / Prime Contractor complaint against - Driver and Vehicle Standards Agency (DVSA)

Issue: A supplier raised concerns about a recent procurement run by the Driver and Vehicle Standards Agency (DVSA) for *Digital Delivery Partners*. Within this tender, the DVSA required bidders to *'have coached on and implemented systems to Government Digital Service (GDS) standards for other government departments and to have Government experience'*. The supplier was concerned that asking for previous government experience stifled innovation and excluded any new entrants to the market.

Outcome: The DVSA quickly responded to reiterate that they always set out to be as inclusive, fair and transparent as possible when conducting procurement exercises. They recognised the importance in allowing new entrants with private sector experience to compete on a level playing field with those suppliers who had public sector experience, which is why they emphasised the importance of having *Digital Standards (which is general good practice and not sector specific)*. They explained that the reference to Government Departments was not there to deter private sector entrants, but to emphasise that the nature of the assignments would be heavily linked to legacy government systems which would be important for suppliers to understand and be aware of when considering their bids. In addition, they confirmed that the question about Government experience was raised at the pre-market engagement event, in particular around how this would impact the selection criteria and their response was included within the slide pack, which was available to all bidders.

Contracting Authority / Prime Contractor complaint against - Department for International Development (DfID)

Issue: A supplier contacted the Mystery Shopper team to complain about an advert that DfID had placed on the Digital Outcomes and Specialists 2 (DOS 2) framework for *User Research on the UK Development Tracker*. They raised concerns that DfID were asking for a 5 page proposal to be submitted by bidders, which they believed was not in the spirit in which DOS 2 was meant to be (an agile solution for buyers and suppliers) and felt that this was building back into the process, time and bureaucracy.

Outcome: DfID came back to us to explain that due to the constraints with the system on how much a supplier can provide, combined with the reassurance they needed that the personnel for this contract were suitably experienced, meant that a 5 page proposal was decided upon. However, they also commented that they are open to feedback to improve their future use of DOS. The CCS framework team highlighted that they were very happy to support them with any future adverts and shared the details of an upcoming buyer webinar on DOS 2, which they accepted. In addition, we shared DfID's user comments on the system with the team who are capturing feedback for their ongoing research.

Contracting Authority / Prime Contractor complaint against - The Landmark Trust

Issue: A supplier asked the Mystery Shopper team to look at a Design Contest procurement for Architectural Services, raising questions over the degree to which it complied with the anonymity requirements in respect of proposed evaluation.

Outcome: The Trust took our enquiry very seriously and responded very quickly to our communication indicating that throughout the assessment process strict anonymity of the identity of the bidders would be maintained in accordance with the applicable provisions of the Public Contracts Regulations of 2015, this would ensure the impartiality of the Jury process and the integrity of the process.

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Contracting Authority / Prime Contractor complaint against - Derwentside Homes

Issue: A supplier contacted the Mystery Shopper team to express concerns over a procurement for minor works carried out by Derwentside Homes. The supplier was unhappy that Derwentside had carried out two procurements addressing the same requirement in parallel without making this clear to suppliers.

Outcome: Derwentside Homes responded very quickly indicating that they'd carried out a framework further competition while advertising the same requirement on Contracts Finder, thinking that by advertising they were giving sufficient transparency in relation to the approach they'd adopted. We noted that parallel procurements are not generally regarded as good practice and if circumstances dictate that such an approach is thought defensible, then this should always be transparent to suppliers.

Contracting Authority / Prime Contractor complaint against - Department for Culture, Media and Sport (DCMS)

Issue: A supplier contacted the Mystery Shopper team to complain that a tender for UK Cyber Security Sector - Sectoral Analysis had been advertised over the May Bank Holiday weekend. The advert was placed on the Friday and bids were expected back in by noon on the Monday. They felt that this was an unreasonable deadline and given the tight turnaround over a key weekend, would mean that many suppliers would not have the opportunity to bid for this.

Outcome: The Mystery Shopper team contacted DCMS straight away and recommended that the deadline was extended. DCMS were already aware of the issue and had identified that an error was made on the Delta esourcing portal. They rectified the date immediately to reflect the timetable in the Invitation To Tender document which gave suppliers 2 weeks to complete their bids.

Contracting Authority / Prime Contractor complaint against - Sheffield City Region (SCR)

Issue: A supplier asked the Mystery Shopper team to investigate their exclusion from the Sheffield City Region (SCR) Growth Hub Enhancement Project Masterclass procurement. SCR had asked for three references to be emailed direct to them by the customers concerned but had indicated they had received only two in relation to the Mystery Shopper's bid.

Outcome: SCR responded very quickly to indicate that they had found no evidence to suggest that the supplier's third reference had been sent. On that basis they were bound to follow the rules set out in the ITT stating that failure to provide three references would result in exclusion from the procurement.

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Procurement Strategy

New

Contracting Authority / Prime Contractor complaint against - London Borough of Havering

Issue: A supplier asked the Mystery Shopper Team to look at a procurement for advocacy services, suggesting that the budget allocated was inadequate for the volumes of work specified.

Outcome: The Borough responded quickly and fully to our communication. They recognised that the budget was challenging, reflecting the Borough's tight financial constraints. Nevertheless they had reason to believe that viable bids were possible, potentially based on innovative delivery approaches.

New

Contracting Authority / Prime Contractor complaint against - London Boroughs of Newham and Havering

Issue: A supplier contacted the Mystery Shopper team asking us to investigate a procurement carried out by the Councils using the G-Cloud framework. We reviewed whether the procurement was within the scope of the framework and was in line with guidelines for use of the agreements.

Outcome: OneSource, the Councils' combined ICT operation, responded very thoroughly to our enquiries. We concluded that the contracting process (which concluded in October 2016), and the scope of the contract had to an extent departed from good practice (albeit such departure did not necessarily breach the requirements of procurement law). While specific circumstances had necessitated an urgent procurement to safeguard operational systems we noted that in future the Councils should ensure that they could clearly demonstrate close adherence to framework procurement guidelines.

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Contracting Authority / Prime Contractor complaint against - London Councils

Issue: A supplier asked the Mystery Shopper team to investigate the choice of the CCS Traffic Management Technology 2 framework agreement as the vehicle for satisfying a requirement for electric vehicle charging infrastructure. They suggested that the framework prime contractors would all need to use sub-contractors to meet the requirement and hence it would be better to undertake a full advertised procurement.

Outcome: The Contracting Authority responded promptly to our communication indicating that they had satisfied themselves that the use of the framework was a sound decision. It is normal practice for this framework for the prime contractors to use sub-contractors to meet specialist requirements and they explained that they had undertaken pre-market engagement to alert the primes to the imminence of the requirement and to allow them to establish supply chain relationships.

Contracting Authority / Prime Contractor complaint against - Intellectual Property Office (IPO)

Issue: A supplier contacted the Mystery Shopper team to raise concerns that an advert for *Digital Transformation Programme (TRIPOD) Scrum Team Services* placed by the Intellectual Property Office (IPO) was not procuring for a digital outcome and therefore the DOS 2 framework should not have been used.

Outcome: IPO provided us with a comprehensive response as to why they opted to use the DOS 2 route (as opposed to using a more generalist consultancy framework such as Contingent Labour). We worked with the DOS framework team on this case who advised that they were content for IPO to continue with the procurement via DOS in this instance, however, they recommended for the future that they advertised their requirement in a way which would be more suitable. They shared details of the upcoming DOS 2 buyer webinar and reiterated that they were happy to support them with any pointers in writing the requirement for any future opportunities. The framework team noted IPO's feedback on the challenges buyers have with the system when it comes to describing their requirements and have shared this with the relevant team who are capturing feedback for their ongoing research.

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Contracting Authority / Prime Contractor complaint against - Transport for Greater Manchester (TFGM)

Issue: A supplier contacted the Mystery Shopper team to advise that Transport for Greater Manchester (TFGM) had recently placed an advert via DOS 2 which asked suppliers to bypass the marketplace and email TFGM directly (rather than pressing 'apply') which they felt wasn't within the spirit of the DOS process.

Outcome: We contacted TFGM, who advised that the notice was placed to gauge interest from suppliers, rather than it being an advert for a competitive process. We worked with the CCS DOS framework team and fed back to TFGM that whilst we recognise and support the importance of buyers undertaking pre-market engagement, DOS is not the correct platform and this should be completed prior to placing an advert via DOS. We recommended for future competitions, that the transparency platform Contracts Finder <https://www.gov.uk/contracts-finder> is used for pre-market engagement activity. We explained that the DOS portal is not designed to gauge interest from suppliers, who have an expectation when they see an advert that this would be a competitive process. In addition, the framework team offered their support to TFGM for any future adverts and shared information on the upcoming buyer webinar on DOS 2 - <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1043iv>, which they accepted.