

Mystery Shopper Publication Table July to September 2014

CONTRACTING AUTHORITY / PRIME CONTRACTOR COMPLAINT AGAINST	ISSUE WITH PROCUREMENT	DESCRIPTION OF COMPLAINT	OUTCOME OF CASE / RECOMMENDATIONS
New Leicester Council	Procurement process- deadline for submission of tenders	A supplier complained that Leicester Council had advertised a contract and the closing time for tenders to be received was 12pm – an hour before Royal Mail Special delivery delivers.	As there was no opportunity for e-tendering, the mystery shopper felt this was unfair and showed how the public sector can be inflexible when setting requirements. The authority said they had allowed plenty of time for responses, other courier services were available, the closing time differs for each procurement and they are moving to greater use of e-procurement.
New University of Brighton	Procurement process- contract classification, PQQ	A mystery shopper raised concerns that a PQQ for telephony services did not set out a clear scoring system. He was also concerned that the value of the contract had not been disclosed and that the contract had not been classified as a services contract, which would require examination of the Public Services (Social Value) Act 2012 in the pre-procurement phase.	The University stated it was their policy to not be prescriptive about contract values as they wanted the market to respond innovatively and not make offers based on an expected contract value. They confirmed that they estimated that hardware (goods) supplied would outweigh the value of the service element of the contract. We found that the PQQ used did have a scoring system.
New Crescent Purchasing Consortium (CPC)	Procurement process- approach to Insurance requirement	A mystery shopper raised concerns about the use of a pass/fail criteria for Professional Indemnity Insurance for a contract to supply musical instruments to schools.	We liaised with CPC concerning their decision to allocate a pass/fail criteria to this requirement in the context of the supply of musical instruments and setting the value of insurance at £5m. CPC explained that the decision was due to the need for advice and guidance to be provided by suppliers to public sector organisations and the potential for financial loss to the contracting authority if inappropriate guidance was given and large purchases were made as a result of this. We recommended that given the risk of this scenario occurring and the alternative options available, including warranties and having a specified returns policy, CPC reconsider the appropriateness of asking for this kind of cover in future.

Mystery Shopper Publication Table July to September 2014

			CPC noted our comments but maintained that it was appropriate to ask for this kind of cover on this occasion. CPC confirmed that insurance requirements are reviewed by them on a tender by tender basis and they take on board our recommendations which will be considered in similar future tender exercises.
New Skills Funding Agency	Procurement process- approach to financial evaluation	A mystery shopper raised concerns that the Skills Funding Agency's approach to financial investment disadvantaged social enterprises, in particular, with regard to the categorisation of social investment loans as debt rather than equity on the audited accounts.	The overall aim of the financial health assessment is to ensure organisations are sufficiently financially robust to deliver any contract awarded and should the need arise to repay any funds associated with the contract. Many organisations, especially during the current austerity climate cannot expect to achieve an outstanding grade, but in the interests of learners and protecting public funding there is an expectation that the organisation can achieve satisfactory financial health. Skills Funding Agency explained that audited accounts have to be taken at face value and in this case the mystery shopper's own accountants had categorised the loans as debt and were therefore assessed as such in the financial evaluation. Skills Funding Agency were able to demonstrate that their approach overall did not disadvantage Voluntary, Community and Social Enterprises, evidencing this by demonstrating a slightly higher pass rate against commercial organisations in this assessment overall. In addition, Skills Funding Agency demonstrated that where, for whatever reason, an organisation falls below this threshold in mitigation the Agency have allowed organisations to evidence that they have robust plans for addressing the issues.
New Northern Lincolnshire and Goole NHS Foundation Trust / North of England NHS Commercial Procurement Collaborative NOE (CPC)	Procurement Strategy, tenders being cancelled	The mystery shopper raised concerns that a tender for 'Biochemistry and Immunoassay Analytical Equipment' was abandoned for the 2 nd time in a year by the NHS and sought an explanation as to why this happened.	We investigated this case and were informed that these adverts were in fact 2 separate procurements undertaken by 2 separate Contracting Authorities. The names of the tenders used by both Contracting Authorities were very similar, 'Path links' and 'Pathlinks+ (Plus)' which would have led to the confusion. We received an explanation for why both exercises collapsed and shared these with the Mystery Shopper. One of the requirements has since been re-advertised, with a closing date for bids

Mystery Shopper Publication Table July to September 2014

			September 2014.
New NHS England	Procurement strategy favouring larger suppliers	The mystery shopper raised concerns that re-tendering for the Provision of PET-CT Services nationally was not being run in a way that supports SMEs. They felt that because the procurement strategy was being broken down into 4 large regional areas, it would therefore preclude smaller potential providers who will not be able to deliver service over such a large geographical area. The mystery shopper felt that this strategy is lending itself to the current incumbent duopoly suppliers.	NHS England explained the process of pre-procurement engagement for this particular procurement, which included SMEs and charities. They explained how the results of the market sounding exercise were used to develop lot configurations which informed the overall procurement strategy. The Trust provided a detailed response to all questions posed by the mystery shopper and we were satisfied with the approach taken on this procurement.
New Cambridge University Hospitals NHS Foundation Trust	Transparency	The mystery shopper raised concerns that the Trust had a pre-determined winner in mind for this contract as a reference to a manufacturers name was included in the specification. They were concerned that as a result, the process was not being run in open and transparent manner.	Following investigation, the Trust informed us that the specification was being updated following feedback from suppliers during the clarification period and that the reference to a manufacturers name was an unintentional inclusion within the specification. The Trust have since amended the relevant section of the invitation to tender and ensured us that this opportunity is open to all suppliers. In addition, the deadline for submitting bids was extended by another 2 weeks to allow suppliers to develop a bid following a response to the clarification questions.
New Cambridge University Hospitals NHS Foundation Trust	Procurement Process	The mystery shopper raised concerns that the Trust had yet to respond to their clarification questions about the inclusion of a manufacturers name in the specification. They were concerned that they would not have enough time to complete the tender	Following investigation, the Trust informed us that the specification was being updated following feedback from suppliers during the clarification period and that the reference to a manufacturers name was an unintentional inclusion within the specification. The Trust have since amended the invitation to tender and ensured us that this opportunity is open to all suppliers. They have responded to all clarification questions and have

Mystery Shopper Publication Table July to September 2014

		between receiving a response to their questions and submitting a response to the tender.	extended the deadline for submitting bids by 2 weeks to allow suppliers to develop a bid following a response to the clarification questions.
Ordnance Survey	Procurement process/PQQ	A mystery shopper raised concerns about the use of a commercial due diligence document. The enquirer was concerned that the document was out of line with Government Policy for conducting below threshold procurement and was not SME friendly in a procurement where Ordnance Survey had specifically highlighted that the requirement was suitable for SMEs.	Ordnance Survey have committed to amend their approach to align with government best practice on assessing supplier suitability as part of their tender process.
DVLA	Procurement strategy favouring larger suppliers	A mystery shopper raised concerns that DVLA had previously used local opticians but had consolidated their requirements and awarded a national contract to a single major chain.	Historically DVLA dealt with upwards of 2000 opticians across the UK. This work was allocated by region and on average equated to 20 referrals per optician per year. In the spirit of ensuring greater efficiency, DVLA sought to rationalise this supply base and drive greater economies of scale. We examined DVLA's approach to the market and in particular looked at their approach to lotting. DVLA had given consideration to dividing the contract into regional lots, however, they determined that this would result in an overly-cumbersome contract and would not deliver value for money. Where lotting is not an attractive option, we recommend that contracting authorities consider what steps can be taken to encourage SMEs in the supply chain. In this case DVLA were able to demonstrate that they had encouraged SMEs to participate both through the supply chain and by supporting them with opportunities to network and form consortia in order to bid. At least one of the bids was from a consortium of independent opticians. DVLA also included a requirement that it was a pre-

Mystery Shopper Publication Table July to September 2014

			requisite for the successful bidder to report on spend with SMEs at all levels.
Wiltshire County Council	Procurement strategy/frameworks	A mystery shopper raised concerns about the arrangements for procuring management information services (MIS) for schools.	The council has confirmed that they do act as lead for schools MIS and currently have a contract which schools can call off from. This will run to April 2016 at which point they intend to put in place new arrangements. The council is currently gathering information to inform the specification for the new requirement. In the interim the council has made schools aware of the BECTA recommendations to ensure that they use the existing arrangement appropriately.
Derbyshire County Council	Procurement strategy/frameworks	A mystery shopper raised concerns about delays in announcing the award of a contract for Schools MIS, which was provisionally set for July 2014 in the tender documents.	The council has advised that, following the evaluation of the tenders and Usability & Connectivity testing in the first quarter of 2014 the Council was able to internally identify a Highest Scoring Tenderer who was subject to Audit Testing and due diligence. This process was outlined in the tender documents. The successful tenderer was put forward as the recommended supplier for approval by the Council on 15th July 2014. After completion of the Council's internal call back period the award notice and Alcatel letters notifying Tenderers of the decision to award were released on August 8th 2014.
Leicestershire Partnership Trust / Neutral Vendor	Late payment of sub-contractors in the Supply Chain	A mystery shopper raised concerns about receiving late payments 60-90 days after submitting invoices to the Neutral Vendor	The Mystery Shopper wished to remain anonymous, so we were unable to resolve any specific details about payment of invoices for this particular supplier without them disclosing their name and details. However, we did investigate the Trusts and Neutral Vendors policy and approach to payment of their suppliers and supply chain. At the time of investigation the contract with the Neutral Vendor was still being finalised. Our key recommendation was that as a matter of priority, this contract was put in place and a contract manager assigned so that any problems and queries relating to the Neutral Vendor can be dealt with through a formal

Mystery Shopper Publication Table July to September 2014

			<p>contract management process. In addition, the Trust and the Neutral Vendor have also committed to the following actions to resolve any payment concerns raised by suppliers.</p> <p>The Neutral Vendor have:</p> <ul style="list-style-type: none"> · Implemented of a dedicated email inbox specifically for payment issues. · Expansion of the payment team · Set up of an Escrow account to guarantee payments will be made · Advance payment for exceptional cases. <p>The Trust have: committed to encouraging their staff to follow their internal processes for bringing in staff and to not bypass the system, which causes confusion and exacerbates the problem of suppliers submitting invoices directly to the Trust.</p>
E2BN	Procurement strategy/Lotting	A mystery shopper raised concerns about a procurement for educational cloud services, citing that it did not seek to assess suppliers abilities to meet an industry standard definition for cloud software which has been adopted centrally but is currently not mandated in the wider public sector	The contracting authority advised that the procurement was wider than just cloud services and as such the definition cited by the supplier had limited applicability to the range of services and goods being sought. E2BN committed to review the title of their procurements to avoid this ambiguity going forward and also provided further clarification to potential bidders.
UKCES	Timescales	An enquirer raised concerns about a short timescale of six working days to provide tender responses to a low value procurement run by UKCES.	UKCES have advised that it is their policy to advertise all service-based opportunities of this value for a minimum of two weeks or 10 working days – and longer depending on the complexity of the requirement. In this case, the authority advised that it made a clerical error in calculating the total number of days. In mitigation, UKCES have stated that this was a very simple tender looking for a small number of experts in a very specific area. Applicants were asked for minimal evidence, often comprised of a list or link, with only 1 question requiring a thoughtful response (of a maximum 3 pages). Whilst the authority is confident that value for money in this procurement will still be achieved, the authority has

Mystery Shopper Publication Table July to September 2014

			committed to ensure that a final quality check is done on all Invitations to Tender to ensure this situation does not arise again.
Arun District Council	Procurement process/ specification	A mystery shopper raised concerns about a development contract for over £100m awarded in 2006; the development had not yet gone ahead and had recently been valued at £25-40m, which the mystery shopper contended was a substantial deviation from the winning bid, constituting a breach in the EU Directives.	We discussed the mystery shopper's concerns with Arun District Council who told us that the existing development agreement as tendered had been amended to require the submission of a valid planning application by 31 December 2014 and that the Council are exploring a number of options, including but not limited to a new OJEU process. The minutes of the Council record that both the Council and St Modwen both recognise that a new OJEU procedure would need to be undertaken if the outcomes of those other options would be beyond the boundaries of the existing procurement process. Where contracts have been entered into several years ago and under which construction work has not yet commenced, the Cabinet Office recommend that authorities consider if they continue to represent best value for money and that a new procurement is initiated if they do not. The Cabinet Office recommendation is non-binding and the Cabinet Office are not instructing the Council to terminate its current contract. The Council confirmed that they would make all officers and members dealing with the matter aware of the Cabinet Office recommendation and agreed to update the Cabinet Office when a decision had been reached by the Council. The investigation found no evidence of any breach in the EU Directives and the recommendation was made on the basis of achieving best value for money.

Mystery Shopper Publication Table July to September 2014

DFE	Transparency	A mystery shopper requested that DFE take on a strategic role to investigate issues in the schools MIS market that had been highlighted in a recent OFT report.	The Crown Commercial Service is already undertaking work in this space and as such we agreed that this request would be taken forward in that workstream
Wycombe District Council	Procurement process/ Bureaucracy	A mystery shopper raised concerns about the development of a proposal for workshops aimed at preventing radicalisation in schools and the approach taken subsequently during a competitive procurement process.	The Council acknowledged that the lines of communication in the run up to this procurement process could have been clearer. The Council agreed to review their communications process and approach to Intellectual Property Rights going forward.
South West Ambulance Trust	Frameworks	A mystery shopper raised concerns about use of the Sprint II agreement/framework prevented suppliers bidding	We investigated this case and recommended to the Trust that they need to ensure that any pre-procurement activity is clearly identified as pre-procurement engagement (as set out in PPN 04/12) and care should be taken not to lead suppliers to believe that they are in a formal procurement process before one has been launched. The Trust accepted this recommendation.
Nottingham City Council	Frameworks/process favour incumbent	A mystery shopper raised concerns about the arrangements for procuring management information services (MIS) for schools.	The Council advised that they are in the process of re-competing their existing requirements and aim to complete the procurement exercise for Nottingham City Schools MIS before the end of this calendar year in accordance with Becta advice.
North Tyneside Council	Frameworks/process favour incumbent	A mystery shopper raised concerns about the arrangements for procuring management information services (MIS) for schools.	The Council advised that they were not aware of any potential issues with their existing schools MIS provision but nevertheless will be conducting a review of their MIS arrangements and will share the outcome of the review and next steps with the Mystery Shopper service by April 2015. This will include consideration of the recommendations of the 2010 Becta report, and whether use of the IMLS framework may be an appropriate route for their schools.

Mystery Shopper Publication Table July to September 2014

Somerset County Council	Frameworks/process favours incumbent	A mystery shopper raised concerns about the arrangements for procuring management information services (MIS) for schools.	The Council reviewed their existing provision during 2013 where a number of options were considered including the IMLS framework. The council did not determine these to be a viable option for their schools. In 2014, the decision was made to restructure school facing services and an Options Appraisal has commenced identifying suitable frameworks and alternative MIS solutions. We have advised the council to move as swiftly as possible towards implementing their new arrangements to avoid having to extend their existing provision beyond the next one year period and ensure the council do not extend outside the terms of the original contract.
Morson	Contract Management	A mystery shopper raised concerns that an employment agency was advertising a vacancy for a programme manager that required applicants to be in possession of security clearance before applying	The Mystery Shopper team contacted the employment agency concerned and reminded them of the policy requirements as outlined here which states that security clearances should not be requested in advance of appointment or contract award unless there are any mitigating circumstances (for example where a requirement is urgent). The agency agreed to ensure that future advertisements were in line with this guidance.
Shropshire Council	Frameworks	A mystery shopper raised concerns about the arrangements for procuring management information services (MIS) for schools.	Shropshire Council advised that their current arrangements are contracted to April 2015 and that they were planning to re-compete these requirements during the course of 2014. In the meantime the council has ensured that maintained schools are aware that there are alternatives to Capita SIMS by making reference to the Government Procurement Service (GPS) Information Management and Learning Services (IMLS) framework in their SLA literature for 2014-15.

Mystery Shopper Publication Table July to September 2014

Suffolk County Council	Frameworks	A mystery shopper raised concerns about the approach taken by a number of councils to procuring MIS for schools	Suffolk County Council confirmed that existing arrangements for schools remained compliant with the BECTA recommendations i.e. Suffolk County Council's arrangement with their existing supplier was set up on the basis of a managed service provided through the LEA. Licences are agreed by the Council for schools using this service and have been extended within the terms of the original agreement. Suffolk County Council also advised that they are due to re-procure this requirement and this process will begin with a full engagement with schools during this financial year, culminating in a compliant procurement that will incorporate the BECTA recommendations in their strategy for this procurement; considering both the GPS IMLS Framework and a move to Cloud Based solutions.
NHS Supply Chain	E-procurement systems	A mystery shopper raised concerns about technical difficulties with e-tendering system and tender deadlines	After investigation, we were satisfied with the approach taken by NHS Supply Chain for this framework. They provided a comprehensive response to the mystery shopper on queries raised about the e-tendering system and tender deadlines.
Birmingham NHS Trust	PQQ/Financial requirements	A mystery shopper raised concerns about exclusion on financial grounds	After investigation, we concluded that their approach to pre-qualification was broadly aligned with our advice set out in PPN 02/13 . We recommended for future procurements that the Trust considers a standard approach to asking financial questions (as set out in PPN 01/12) and only asks for relevant Insurance levels to be in place upon successfully winning the contract. Both of these recommendations were accepted by the Trust and changes were made to documentation for future procurements.

Mystery Shopper Publication Table July to September 2014

University Hospitals Coventry & Warwickshire NHS Trust	PQQ/Financial requirements	A mystery shopper raised concerns about Financial criteria at the pre qualification stage	After investigation, we drew the Trust's attention to our advice on undertaking financial assessment – as set out in PPN 02/13. The Trust accepted our recommendations and agreed that for future procurements, they will adopt a more holistic approach to financial assessment and not exclude bidders purely on the basis of turnover alone or their failure to provide three years accounts'
Mid Yorkshire Hospital NHS Trust	Procurement strategy/ supply chain	A mystery shopper raised concerns about variant bids on managed service contract	We reviewed this case and were satisfied with the approach taken on this procurement. The Trust provided a detailed response to all questions posed by the Mystery Shopper.
United Lincolnshire Hospitals NHS Trust	Procurement process/Financial	A mystery shopper raised concerns about financial limits not being stated upfront	The Trust had subsequently withdrawn this procurement and are considering alternative routes to market. The Trust agreed that for future procurements they will make it clearer up front what the minimum requirements are, so that suppliers are fully aware what is expected of them when submitting their bid and are updating their procurement documentation as a result.
Essex County Council	Frameworks	A mystery shopper raised concerns about a number of councils concerning the arrangements for procuring management information services (MIS) for schools	Essex County Council has confirmed that council does not procure MIS systems for schools nor have they in the past. Schools do this themselves directly with the suppliers. If the need should arise in the future, the council have committed to ensure that procurements are conducted in line with the BECTA recommendations.
Cambridgeshire County Council	Frameworks	A mystery shopper expressed concern about the evaluation of a Schools MIS procurement by Cambridgeshire County Council specifically that the evaluation did not give consideration to the government's "Cloud first" policy and would favour a large incumbent	The council advised that, in line with the BECTA recommendations, it considered the government –recommended IMLS Framework as a potential replacement but found that it did not meet the particular requirements of the schools in its catchment area. The council remains open to both cloud-based and non-cloud based offerings and emphasised that any solution will be procured on the basis of its ability to meet the needs of its schools. The council has committed to ensure that providers offering a cloud based solution

Mystery Shopper Publication Table July to September 2014

		supplier.	are not disadvantaged and will ensure that the final outcome reflects the proficiency of the solutions on offer. To this end the council has weighted the scoring 60/40 in favour of quality versus price and has allowed whole life costs to be spread over six years, to lessen the impact of migration costs to a potential new supplier.
Natural England/DCLG	Timescales	A Mystery Shopper raised concerns about short timescales	An enquirer received notification of an opportunity on Contracts Finder on 12 June with a deadline of 16 June and raised concern about the short turnaround time. Investigation revealed that a notice advertising the opportunity was created on Contracts Finder on 4 June, but user error resulted in failure to publish the notice until 12 June. The opportunity was also advertised from 4 June on Natural England's own e-tendering portal, Bravo solutions which resulted in a healthy competition. Natural England recognise that the advert only allowed just over seven days for bidders to provide a response. The shorter timeframe was due to the needs of one particular customer and Natural England have advised that they would normally aim for a 2 to 3 week window. Natural England will be reviewing their process for publication to ensure the error does not reoccur. We have also recommended that Natural England educate their customers on ensuring adequate lead time for bidders to respond to competitive procurements.
Dorset County Council	PQQ/Financial requirements	A mystery shopper raised concerns about a procurement for the supply of vehicle parts.	We discussed the approach the council are taking. In particular we focused on the financial assessment of bidders where the council specified that suppliers would have a turnover of £4 million in order to fulfil the contract. An evaluation of risk from other financial criteria was also included. We discussed the advice in PPN 02/13 which advises against excluding bidders on the grounds of turnover alone and Dorset will be taking this advice into account

Mystery Shopper Publication Table July to September 2014

			in future procurements.
Land Registry	Transparency	A Mystery Shopper raised concerns regarding the Land Registry's use of an incumbent supplier's architect in the disaggregation of the contract.	The Land Registry confirmed that, as creators of the Land Registry's distributed IT infrastructure, an architect from the incumbent supplier was required to provide the technical knowledge of the system architecture. To avoid a conflict of interest, the architect was seconded to the project team that was handling the service disaggregation under a non-disclosure agreement which is a common practice in such situations. On this basis he would not be available to the incumbent supplier to respond to any subsequent tender invitations. The original aim of the project was to break the integrated service down into nine lots and re-compete these using appropriate Government vehicles (for example G-Cloud/Digital services Framework from The Crown Commercial Service or XMA etc from SBS). In April, the project changed and it was decided to bring the entire service back in house and TUPE the existing supplier's team into Land Registry. At a later stage the Land Registry will then consider breaking components out and tendering them against a realistic timetable using the above frameworks.