

# Mystery Shopper Follow up cases - October 2016 - March 2017

## Payment

### Cumbria County Council

**Issue:** A supplier contacted the Mystery Shopper service to complain that they had not received payment for work carried out in May 2015. The supplier did not want to be named, but we offered to contact Cumbria Council to ask if there had been a problem with payment recently and to remind Cumbria of their obligations to pay suppliers within 30 days.

**Outcome:** Cumbria Council explained that there had not been an overall issue and Cumbria shared their current supplier terms and conditions with us. It was recommended that Cumbria Council updated their supplier's terms and conditions in line with r113 of the PCRs 2015 for future contracts. Cumbria Council passed the legislation on to Accounts Payable to adhere to.

**Result of Follow-up:** *Cumbria County Council were quick to respond to our request and shared with us their updated T&Cs, highlighting the revised section on the late payment of commercial debts, which they had updated back in August 2015.*

## Procurement Process

### New

#### Contracting Authority / Prime Contractor complaint against - DCLG

**Issue:** A supplier contacted the mystery shopper service regarding a procurement for banking and investment services run on behalf of the DCLG by CCS. The supplier was concerned that they had been excluded from the procurement on grounds of not being large enough to establish Economic and Financial Standing, and for not providing a Parent Company Guarantee.

**Outcome:** CCS and DCLG responded quickly to the issues raised and CCS explained that DCLG had set the evaluation model as appropriate to the requirement and that on this occasion DCLG would need extra assurance that any suppliers providing the service would be in a sound position financially to mitigate the risks DCLG had identified. CCS have agreed to look at the way procurements are run on behalf of other departments as part of a process review and DCLG have agreed to consider the supplier financial assessment guidance in the light of this issue for next time.

**Result of Follow-up:** *Following our reminder about this recommendation, DCLG advised that they have taken steps to ensure that all policy colleagues are aware of the agreed recommendations from this mystery shopper case and the need to consider financial assessment implications for future relevant procurements. They shared with us the communication note written out to their policy officials in February 2017 which clearly explained this.*

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### **New**

#### **Contracting Authority / Prime Contractor complaint against - Wirral Borough Council**

**Issue:** A supplier complained about the inclusion of clauses on a contract which appeared to give weighting for public sector experience.

**Outcome:** We drew the Council's attention to the Public Procurement Note 01/12 - Use of Pre Qualification Questionnaires which stresses that all contract experience (public & private) can be provided as experience and this should be made clear to bidders in future procurements.

**Result of Follow-up:** *Wirral Borough Council confirmed that they now ensure that public and private sector experience is treated equally and their guidance has been updated to reflect this. In addition, they shared with us their latest tender which confirmed that they use the CCS standard Selection Questionnaire which makes it clear that bidders can provide both private and public sector experience.*

### **New**

#### **Contracting Authority / Prime Contractor complaint against - Home Office**

**Issue:** A Mystery Shopper contacted the service to raise concerns about the costs of accreditation to Cyber Essentials (CE) within a Home Office procurement which is potentially a cost burden for small suppliers.

**Outcome:** Home Office commented that CE accreditation was Cabinet Office policy but accepted the recommendation that inline with guidance note PPN 09/14, CE accreditation will be requested at contract provision and not a pass/fail requirement at tender stage going forward.

**Result of Follow-up:** *Following our reminder about this recommendation, the Home Office issued a note from their Policy Director to remind all staff about the importance of accepting CE accreditation as a contract provision, rather than a pass/fail requirement at tender stage. In addition, they updated their contracts manual which highlighted the importance of adhering to the guidance set out in PPN 09/14 on CE accreditation*

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#### **Contracting Authority / Prime Contractor complaint against - Bristol City Council**

**Issue:** A mystery shopper raised concerns that the council decided to establish a single supplier framework for Transport and Highways Professional Services - despite pre-market engagement with suppliers who encouraged the council to consider dividing the framework into smaller lots to enable SMEs to participate. The enquirer was also concerned that, although the council was keen to encourage consortia, the timescales were prohibitive to enable this.

**Outcome:** The council provided a reasonable explanation for their decision. This was primarily due to the need for a fully integrated service. The council was able to demonstrate steps taken to encourage consortia bids including, allowing consortia to aggregate their financial standing and capacity and capability experience, by setting a longer deadline than the minimum prescribed period for pre-qualification responses and only required minimum questions about consortium members. The Council has committed to communicate their strategic decisions more effectively following an early market engagement in the future and has been alerted to the new requirements in the Public Contracts Regulations 2015 to have due consideration for dividing contracts into lots or providing an explanation if they don't.

**Result of Follow-up:** *Bristol City Council provided us with several recent examples of how they had considered and implemented lotting within their tender opportunities, following our recommendation.*

### **New**

#### **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service**

**Issue:** A Mystery Shopper raised concerns regarding their bid for inclusion on the Network Services Framework - MS believes the approach does not accord with policy.

**Outcome:** *CCS accepted the following recommendations - that the financial assessment process is re-drafted and published online. This process can be used to supplement the information in future ITTs as information to all tenderers.*

**Result of Follow-up:** *CCS advised that there has been significant work undertaken and the financial assessment process has been updated. The process for how a supplier's financial standing is assessed is now clearly explained within the tender documentation. An example of this can be seen within the Management Consultancy Framework - published [here](#) in February 2017*

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### **Contracting Authority / Prime Contractor complaint against - Croydon Hospital Trust**

**Issue:** A Mystery Shopper raised concerns that they had received a letter from a Health and Safety certification scheme provider called Reset stating that suppliers must sign up to the scheme in order to continue to supply Croydon Hospital 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 waiving the registration fees. We advised that membership could be encouraged, but not imposed on existing suppliers and the Trust confirmed that alternative forms of evidence to demonstrate contractor competence at both company and individual levels and liability/indemnity insurance cover to enable the Trust to fulfil its Health & Safety and Fire Safety statutory obligations would still be accepted for those suppliers who choose not to join the scheme.

**Result of Follow-up:** *Croydon Hospital Trust responded to confirm that they do not impose membership of RESET as a requirement for working with Croydon. They acknowledged that they encourage membership as one possible option, but make it clear in their tender documentation that alternative forms of evidence are permitted to demonstrate compliance with relevant Insurance and Health and Safety requirements.*

### **Contracting Authority / Prime Contractor complaint against - South Essex Homes**

**Issue:** A Mystery Shopper was concerned about the financial assessment in a contract for Heating Upgrade and One Off Heating, specifically an annex attached to the Prequalification Questionnaire that set out a number of gearing ratios which they felt disadvantaged small businesses.

**Outcome:** The authority confirmed that the annex was included in error in this instance and that the gearing ratios were not used as part of the supplier financial appraisal. The issue had arisen because the authority had used a modified version of the industry standard questionnaire PAS 91. The authority had, however applied a turnover cap in accordance with the Public Contracts Regulations 2015. Whilst this is permitted under the Regulations, we recommend that turnover alone should not be used to exclude companies from bidding and that a range of financial measures should be considered. The authority has agreed to review their approach to financial assessment.

**Result of follow-up:** *South Essex Homes responded to confirm that they have reviewed and modified their approach to financial assessment including clarifying the use of PAS91 and clearly explaining the range of financial checks available to suppliers.*

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### **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service**

**Issue:** RM1045, Network Services A supplier has raised concerns over four frameworks currently being run by CCS at the same time.

**Outcome:** Following feedback from suppliers during the clarification period, we made amendments to the Network Services (RM1045) OJEU contract notice. As a result, the deadline for the submission of tender documentation was extended to ensure suppliers had sufficient time to respond to the amended requirement.

**Result of follow-up:** *Mystery Shopper team contacted the CCS technology team on learning that several OJEU notices in the tech category would be advertised at roughly the same time (Cloud and Digital Strategy, DOS2, Cyber Security 2 and AQ&Test)*

*The CCS technology team provided reassurance that they have put measures in place to ensure suppliers have plenty of time to respond to the tenders when there are several frameworks being run in parallel, for example, staggering the deadline date for submission of bids. Furthermore, in the longer term, CCS also advised that they are looking at ways to further streamline the bidding process for all suppliers.*

### **Contracting Authority / Prime Contractor complaint against - South London & Maudsley NHS Foundation Trust**

**Issue:** A mystery shopper raised concerns that the Trust would be using a third party accreditation system, for which a charge to suppliers is payable, to pre-qualify bidders for contracts

**Outcome:** The Trust confirmed that they would not be using the system to pre-qualify bidders or alter the terms of existing contracts. The Trust had issued a communication to suppliers about the use of a third party accreditation system and they are issuing a new communication to clarify their position.

**Result of follow-up:** *South London and Maudsley NHS Foundation Trust responded quickly to advise that they no longer use the RESET scheme for supplier certification and therefore any perceived barriers to supplier participation in their contracts have been removed.*

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### **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service**

**Issue:** A Mystery Shopper raised concerns that the process for submitting a bid for G-Cloud 6 was overly complex as suppliers were expected to provide submissions on two separate systems. The enquirer was particularly concerned that the process for submitting a service on the GDS platform did not make it clear when a service had been formally submitted.

**Outcome:** We found that instructions for using the two systems were clear and appropriate to the audience of IT suppliers. CCS had contacted all bidders prior to the deadline reminding them to submit their service information and tenders on time. We acknowledge that having two separate systems adds complexity to the process and we have recommended that the process is consolidated into one system. We also made a number of recommendations to improve the usability of the GDS platform in the interim. GDS have accepted these recommendations and are already redesigning the system to make it simpler to use for G-Cloud 7 submissions which are expected to begin in August. GDS will be discussing improvements to this process through a blog at: <https://digitalmarketplace.blog.gov.uk/>. The Mystery Shopper team will continue to monitor progress of addressing these concerns throughout programme of spot checks.

**Result of follow-up:** *GDS accepted that two systems added complexity and the supplier process has been re-designed on the digital marketplace. This issue should not therefore arise again.*

### **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service**

**Issue:** A supplier failed to win a Defence Science and Technology Laboratory call off from the CCS Digital Services Framework. The supplier felt it was not clear in the documentation that partnering was a requirement on this contract.

**Outcome:** CCS explained how the partnering arrangement works on the Digital Services Framework. The Mystery Shopper team made some suggestions to improve the advice to suppliers when partnering is required so that it is clearer going forward. The CCS procurement team accepted and implemented these suggestions

**Result of follow-up:** *CCS outlined to us that any previous issues raised by suppliers around partnering arrangements on the Digital Services 1 framework had been rectified by adding it as a clear requirement for the Digital Services 2 framework. Furthermore, the principles of partnering and collaboration of suppliers is currently being factored into the next iteration of the framework (called Digital Outcomes and Specialists 2 - which is due to go live in February 2017). This is being addressed through guidance which will be made available to buyers and suppliers on how this should be managed.*

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## **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service**

**Issue:** A supplier contacted the Mystery Shopper Team when NHS England ran a competition under the Digital Services Framework that seemed to suggest that potential bidders were required to absorb extra costs into their framework rates but on a different basis on which those rates were set. The supplier felt this was not in the spirit of the terms of the framework and did not bid on that basis.

**Outcome:** CCS responded quickly to the issues raised and explained that while the current framework does not allow for any extra costs to be included within the pricing matrix, this issue has been corrected for DSF 3 (called DOS). In this instance, CCS was aware of the problem and worked with NHS England to agree a way for suppliers to price the bid. CCS also explained that where suppliers have concerns or wish to propose a different method then they are welcome to propose this or ask questions if they have any.

### **Result of follow-up:**

***CCS explained to us that several elements have changed in the structure and mechanics of DOS (Digital Outcomes and Specialists) from Digital Services 1 & 2, which mitigates against this type of issue arising again.***

- ***Firstly, DOS was implemented as a 'self-service' framework, which meant that buyers had the flexibility to state within their requirements how they will evaluate suppliers. This could include price and requiring a supplier to provide a breakdown of costs. Guidance clearly sets this out for buyers.***
- ***Secondly, the DOS framework has changed the stage in which it evaluates pricing, which is now undertaken through further competition (as opposed to being part of the framework bid as it was for Digital Services 1&2.)***

## **Contracting Authority / Prime Contractor complaint against - University Hospitals Coventry & Warwickshire NHS Trust**

**Issue:** A mystery shopper raised concerns about financial criteria at the pre qualification stage

### **Outcome:**

'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'.

**Result of follow-up:** ***The Trust provided evidence to demonstrate that they had implemented our advice and recommendations on their approach to financial assessment. They had revised their Selection Questionnaire and highlighted the relevant section where changes had been made on the use of turnover and audited accounts.***

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### **Contracting Authority / Prime Contractor complaint against - Sheffield City Council**

**Issue:** The complaint was regarding the contracting authorities requirement for all bidders to be members of the National Federation of Demolition Contractors (NFDC) without allowing for 'or equivalent'. PCR 2015 section 42 (11) (b) that when contracting authorities list technical specifications and standards that they require the statement must include, but each reference shall be accompanied by the words 'or equivalent'.

**Outcome;** The Contracting Authority responded comprehensively to the concerns raised by Mystery Shopper about the live procurement and agreed with the Mystery Shopper that all future procurements will consider what requirements are imposed and how they may be evidenced, based on the nature of the work involved. The contracting authority made the decision not to stop the live procurement due to wider commercial implications of this construction contract.

**Result of follow-up:** *Sheffield City Council responded promptly to this request and reiterated that the Mystery Shopper recommendation had already been implemented. They shared with us their updated guidance, which made it clear where certain accreditation is requested, that equivalent standards are also accepted.*