

Mystery Shopper Publication Table January to March 2016

CONTRACTING AUTHORITY / PRIME CONTRACTOR COMPLAINT AGAINST	ISSUE WITH PROCUREMENT	DESCRIPTION OF COMPLAINT	OUTCOME OF CASE / RECOMMENDATIONS
NEW Ministry of Justice (MOJ)	Procurement Process	A supplier contacted the Mystery Shopper Team about a call-off from the Digital Services Framework. The customer, the Ministry of Justice, had not considered the option of several suppliers partnering to deliver the requirement, and as a result the opportunity was too large for the supplier to bid for.	Both CCS and MoJ responded quickly to the issue raised. MoJ were not aware that the choice to include a partnering option was theirs to make. We have agreed that, for Digital Services Three (that will replace the current framework shortly), the customer guidance is strengthened to increase awareness and underline the benefits of partnering as a solution on this framework.
NEW University of Southampton	Procurement Strategy	A supplier raised concerns about an OJEU procurement for a digital slide scanner that was abandoned.	The University received 5 bids, all substantially below the OJEU threshold. However, none were considered to have met the specification. Therefore the procurement was abandoned. The University chose instead to purchase a used machine that met their technical requirements and budget. The University recognises that additional pre-market engagement would have been beneficial in determining the most appropriate procurement route and specification for this requirement and has committed to undertake an extensive education programme in procurement practice.

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<p>NEW Homes and Communities Agency (HCA)</p>	<p>Procurement Process</p>	<p>A supplier raised concerns about the lack of a "limitations of liability" clause in a contract for administration of Equity Loan Mortgages, believing this to be at odds with the Crown's model services contract.</p>	<p>The Homes and Communities Agency (HCA) explained that in the Financial Conduct Authority (FCA) regulated environment, agreeing a cap on the contractor's liability could leave the Agency exposed to paying out sums to third parties in the event of a contractor failure. HCA also pointed to previous similar contracts that had proved acceptable to the market and had not resulted in lengthy negotiations or inflated pricing. We were satisfied that their approach was well thought out and appropriate to the services being sought.</p>
<p>NEW Ministry of Justice (MOJ)</p>	<p>Procurement Strategy</p>	<p>A supplier raised a concern about an MoJ Approved Enforcement Agency (AEA) contract being extended for a second time, from November 2014 to May 2016. This followed a 2-year extension in 2012, which was included as part of the contract.</p>	<p>The MoJ advised that there has been a delay with a new Compliance and Enforcement contract, which was supposed to include an Enforcement Agency offering. As a result, the current AEA contract had been extended. MoJ advised that as this is a service concessions contract, it is outside the scope of the 2006 Public Contracts Regulation and so extensions are not prohibited. The plan is to recomplete the AEA contract in the near future. To allow sufficient time for the competition and mobilisation to take place it has agreed further extensions of the current contract to 31 May 2017.</p>

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<p>NEW Department for Communities and Local Government (DCLG)</p>	<p>Procurement Process</p>	<p>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.</p>	<p>CCS and DCLG responded quickly to the issues raised. CCS explained that DCLG had set the evaluation model and that on this occasion, DCLG needed 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 specific issue for next time.</p>
<p>NEW NHS Property Service</p>	<p>Procurement Strategy</p>	<p>A supplier raised concerns about the service specification and lotting of an NHS property service framework. The supplier felt that 'gritting services' should not have been included within 'hard landscaping services' and instead should have been tendered separately.</p>	<p>The NHS Property Service tendered for 33 lots across the country and conducted a number of market engagement events to inform their strategy. Feedback from the market was that suppliers favoured the breakdown of the framework into geographical lots, which provided opportunities for local SMEs. Within each lot there were several service pillars, with 'gritting' bundled in with 'hard landscaping'. The NHS view was that gritting was not sufficiently specialist to warrant separating out and we agreed with this assessment. We did, however, recommend that supplier days were structured more formally so that the authority can effectively seek views and document the input from potential</p>

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			<p>bidders and stakeholders in order to ensure discussion is captured and shared with all potential bidders, including those who were unable to attend. We also suggested that the contracting authority do more to encourage smaller suppliers to form consortia, for example by sharing details of those suppliers registered on their e-tendering portal.</p>
<p>NEW Crown Commercial Service (CCS)</p>	<p>Procurement Process</p>	<p>A supplier raised concerns relating to the suppliers on the Spend Analysis and Recovery Services Framework and whether they had the skills to deliver "Recovery Audit" work. The supplier had inferred from the title of the framework that the suppliers on the framework did not have the skills to deliver.</p>	<p>The Mystery Shopper team responded quickly to advise the supplier on the remit of the framework. The supplier was misled by the generic framework title which covered a bundle of accountancy and audit type services. The individual services are listed separately by CPV codes and give an accurate view of the framework services. The team invited them to register as a supplier for future CCS opportunities on the e-sourcing suite and on Contracts Finder. The category lead accepted a recommendation to consider the name of the framework next time to ensure it is clear what CCS is procuring.</p>
<p>South Western Ambulance Service NHS Foundation Trust</p>	<p>Procurement Process</p>	<p>A supplier contacted the service to raise concerns that a tender for the 'supply of vehicle spare parts' had been designed in a way which gave preference to Mercedes parts (rather than</p>	<p>The Trust highlighted parts of the tender documentation where they had made it clear that equivalent parts were accepted and treated equally. The Mystery Shopper team fed back to the Trust that there was one worksheet in</p>

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		<p>equivalents). In addition, the supplier had been knocked out at tender stage because they failed to meet a mandatory requirement to deliver parts within a certain timescale, which in their view was impossible to meet.</p>	<p>the Invitation to Tender where Mercedes parts numbers were listed and where it could have been made explicit that equivalents were accepted to reinforce the point throughout the whole tender. We reviewed the tender documentation and were content the requirement for delivery timescales was necessary and that the Trust had been clear that suppliers would be excluded if they were unable to meet it. The Trust let the Mystery Shopper team know that the winning bidder was able to meet this requirement and it has been carried forward as a Key Performance Indicator of the contract.</p>
Cumbria County Council	Procurement Process	<p>A supplier complained that a question they had asked about a Cumbria County Council procurement had not been answered quickly enough to allow their company the time to bid.</p>	<p>Cumbria County Council explained that they had answered the question later than planned due to staffing issues but had replied to the supplier directly in the first instance and then later in the public forum so all bidders could see the answer.</p> <p>Mystery Shopper team recommended for future procurements that any answers should only be given in the public domain and if answers are given late, a proportionate extension to the deadline should be considered. Cumbria County Council accepted this recommendation.</p>
Ministry of Defence (MOD)	Procurement Process	<p>A supplier contacted the Mystery Shopper team when their</p>	<p>The Ministry of Defence (MoD) responded quickly to the issues raised</p>

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		<p>expression of interest was not accepted in a recent Ministry of Defence (MoD) competition. Feedback the supplier had received from the MoD seemed to be based on criteria not previously clear from the advert and weightings had not been included in the advert.</p>	<p>and explained that the initial responses received by the MoD had shown that companies had interpreted the advert in different ways. As a result, even before receipt of the Mystery Shopper query, the MoD recognised there were some irregularities with this procurement and had already decided to start the process again. The MoD said that a new advert would be submitted which would more clearly detail how the process would be run.</p>
BBC	Procurement Process	<p>A supplier contacted the Mystery Shopper team when they learned that the BBC wanted to use a Crown Commercial Service (CCS) framework RM1037 (Spend Analysis and Recovery Services) that the supplier was part of, rather than tender for an opportunity via Contracts Finder.</p>	<p>The BBC responded quickly to the issues raised and explained that they would choose to use a CCS framework where it represents the most appropriate method for them to procure the required services, for example where there are efficiencies compared to other procurement processes.</p>
Care Quality Commission (CQC)	Procurement Process	<p>A supplier raised concerns that they were excluded from a tender for Experts by Experience as they did not pass the financial assessment and felt there was some confusion over what evidence could be provided to meet the financial requirements.</p>	<p>After investigating, the Mystery Shopper team accepted CQC's reasoning for the approach taken on financial assessment; however, we recommended that some aspects could have been explained in more detail in the invitation to tender. During clarification stage, CQC had introduced some unintentional ambiguity about what additional evidence could be provided to meet the financial requirement. We</p>

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			recommended that in the future CQC review responses to supplier questions to understand how responses may be interpreted. CQC accepted our recommendations.
Kent and Essex Police	Procurement Strategy	A supplier raised concerns that an urgent requirement for web site design, hosting and support was not in line with the Government's Digital by Default Strategy i.e. not agile and did not make use of the Government's Digital Services framework.	Kent Police & Essex Police are not central government bodies and are therefore not required to meet the Digital by Default standard, although they have made use of CCS digital frameworks in the past. In this case Kent and Essex Police chose to go directly to market via OJEU, due to the nature of the requirement. The Mystery Shopper team made a number of recommendations regarding the scope of the requirement and the approach to market which the Kent and Essex Police have accepted and will seek to adopt in future procurement activity.
West Midlands Combined Authority	Technology / Systems	A supplier contacted the Mystery Shopper team concerned that their messages had not been responded to in the procurement process for Dynamic Economic Impact Model run by the West Midlands Combined Authority (WMCA) using the CCS RFX procurement platform.	The WMCA and CCS responded quickly to the issues raised, and advised that messages had successfully been received by the WMCA via the RFX system. However the messages in question were not dealt with immediately as the sole procurement contact was not available at that point. All bidders were informed of the final outcome at the conclusion of the procurement. WMCA have agreed that a second contact will be available on the CCS RFX to avoid this issue in the future.

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Cleveland Police	Procurement Strategy	A supplier was concerned that Cleveland Police had informed suppliers that an in-house bid from their strategic partner would be evaluated along with suppliers bidding under a CCS framework for network services.	Upon investigation, Cleveland Police confirmed that their strategic partner would not be bidding. CCS also provided advice on which lot on the CCS framework was appropriate for Cleveland Police's requirement.
The Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust	Procurement Strategy	A supplier raised concerns about a live mini-competition and about the Trust's requirement for suppliers to provide a Cisco-based infrastructure, which the Mystery Shopper felt excluded other vendors.	The Trust responded quickly to the concerns and agreed that the framework used was not the most appropriate for this procurement and made the decision to stop the current procurement and re-issue using a more appropriate framework. The Mystery Shopper team also upheld the Trust's requirement for a Cisco-based infrastructure due to the need for integration with the existing estate, monitoring and management tools.
South West Ambulance Service Trust	Procurement Process	A supplier requested that the case was re-opened in light of an Information Commissioner's Office decision that required the Trust to publish pricing information which demonstrated that the supplier's bid was significantly lower than that of the winning bidder.	The Trust reiterated their mandatory requirements around delivery timescales and the Mystery Shopper team upheld the original view that these requirements were justified. The Trust were also able to confirm that the two suppliers were meeting all Key Performance Indicators in relation to the delivery timescales. Additionally, the evaluation model showed that the award criteria gave a 50% weighting to commercial (price) criteria, and in line with government policy, the Trust's

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			decision had been based on 'most economically advantageous tender', not lowest price.
University Hospitals of Leicester NHS Trust	Procurement Process	A supplier raised concerns about the procurement route taken for an upgrade of the Trust's electronic blood tracking and traceability system and also the lack of an appropriate level of competition. The Trust used the CCS Technology Products Framework.	The Trust confirmed they had sought legal advice as to the appropriate procurement route. Following investigation the Mystery Shopper team took the view that, as the procurement was open to all 15 suppliers on the framework, an appropriate and competitive procurement route was pursued. The Trust was provided with advice on the benefits of pre-procurement market engagement as a mechanism to help inform their future procurement strategies.
Rushbottom Lane Doctors Surgery, Benfleet, Essex	Procurement Process	An incumbent supplier raised concerns regarding poor procurement practice in a tender for a commercial on-site cleaning contract.	The result of the investigation found no evidence to suggest that the Surgery did not follow the correct procurement procedures in line with the Public Contracts Regulations 2015. However the Mystery Shopper team recommended that in any future procurements the surgery should advertise on Contracts Finder to ensure that all potential suppliers are aware of new contracts.
The Money Advice Service	Technology Systems	A supplier felt that a contract had been advertised on Contracts Finder with insufficient information to gain an understanding of the	The Money Advice Service (MAS) advised that the opportunity was very simple and the process light touch and so they felt the timescale was appropriate. The tender documents

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		requirement and also that the timescale was very tight.	were freely available on their e-tendering portal, linked from Contracts Finder. Free registration was required in order to view the documents. The Mystery Shopper had registered but still couldn't view the opportunity. The team brought the MAS and the customer together to ensure that the supplier was registered correctly.
Ministry of Justice (MOJ)	Technology Systems	A supplier raised a concern about another supplier that had won work with MoJ by offering a different price to that already agreed on G Cloud.	The MoJ responded quickly to the concerns raised and explained that the winning supplier had not bid lower than their G Cloud price: rather the supplier had won the bid by providing the service for fewer hours than offered by competitors and this is why the cost was different.
Ealing Council	Procurement Process	A supplier raised concerns about the number of changes made to an existing OJEU procurement and the short timescales given to bidders to respond.	The live procurement was cancelled and the process will be restarted in the very near future.
Crown Commercial Service (CCS)	Procurement Process	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.	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.