

## Mystery Shopper Publication Table April - June 2016

Procurement Process
<p><b>Contracting Authority / Prime Contractor complaint against - Public Health England</b></p> <p><b>Issue :</b> A supplier asked the Mystery Shopper team to investigate a specification for slide stainer laboratory equipment that appeared to lock out some suppliers.</p> <p><b>Outcome:</b> Public Health England responded immediately and adjusted the specification to enable other suppliers to bid.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Metropolitan Police Authority</b></p> <p><b>Issue:</b> Enquiry received in relation to the supply of Facilities Management services. The supplier was concerned that the Metropolitan Police had not adopted the CCS standardised supplier suitability questions in relation to financial assessment as they had requested three years of accounts rather than two years.</p> <p><b>Outcome:</b> As this was a live tender, the Metropolitan Police agreed to amend their financial assessment to bring this into line with CCS guidance and all bidders were alerted to the changes.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Doncaster Metropolitan Borough Council</b></p> <p><b>Issue:</b> Concerns were raised about the involvement of a supplier in the development of two specifications for work to two drainage boards supported by Doncaster MBC that was tendered through an Environment Agency framework, believing that this gave the incumbent supplier an unfair advantage in bidding for the contracts.</p> <p><b>Outcome:</b> The drainage boards required the incumbent consultant with knowledge of the workings and delivery of such services to draft the specification as neither they, nor the council have the expertise to do this. We agreed that this was appropriate in these circumstances. The supplier had no involvement in drafting the evaluation or weightings and the procurement was managed by the council on behalf of the drainage boards. The choice of framework lot seemed appropriate and whilst we could not find any evidence that the supplier's involvement disadvantaged other suppliers in the process. We reminded the Council of the need to ensure that any potential conflicts of interest are documented and that appropriate measures are put in place in mitigation. The Council accepted these points.</p>

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

**Issue:** A supplier contacted the Mystery Shopper team to raise a complaint that the procurement documents for the CCS Language Services framework were long, didn't flow through the sections very well, and were difficult to understand.

**Outcome:** Although there had been a workshop to assist suppliers with the completion of the document, CCS agreed that the document was long and explained that this was because the Language Service framework was broken into several lots, with each of the lots broken down further into regional lots to make this opportunity accessible for small suppliers. CCS has agreed that when procurement documents may be difficult to navigate through, that assistance to all suppliers can be offered through webinars and / or workshops, which will be built into the process.

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

**Issue:** A supplier raised concerns about the lotting structure in a tender for soft FM services. The Mystery Shopper team also noted that the procurement did not reference the 2015 regulations and did not make use of the CCS standardised suitability questionnaire. Additionally, we queried why the college sought to establish a framework for five years. Finally, the college had asked bidders to provide details of their proposed solution - a question that should be asked at the award stage rather than selection stage.

**Outcome:** The college explained that, due to a reduction in resources, they were unaware of the substantial changes introduced in the 2015 regulations and the bid documents had not been properly checked before release. In respect of the lotting, they explained this was an error and two lots had subsequently been combined (this had been reflected in most of the bid documents, but one reference to the old lot structure remained). The college clarified this to bidders. The college agreed to reduce the term of the framework to four years and informed bidders of this change. They also explained that they were not looking for a solution at the selection stage and committed to be clearer in the future, ensuring that they reference the new regulations and make use of CCS templates when suitability questions are asked.

### **Contracting Authority / Prime Contractor complaint against - Welsh Police Force**

**Issue:** A supplier raised concerns about communications made by North Wales Police to members of the public involved in running Neighbourhood Watch schemes advising them to register their schemes on a new national Neighbourhood Watch database at a time when they were procuring their own database for watch schemes. This gave the supplier the impression that the Police had already decided that they would award their database requirement to the supplier of the national website, with a view to merging the two systems.

**Outcome:** The police demonstrated that this was not in fact the case and that they had a genuine requirement for their own neighbourhood watch database. The Mystery Shopper team were satisfied that the police had taken appropriate steps to try and allay the concerns of the enquirer during the procurement.

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### **Contracting Authority / Prime Contractor complaint against - University of Surrey**

**Issue:** A supplier raised concerns about the financial assessment, questions related to capacity, and health and safety accreditation in a Pre Qualification Questionnaire for a procurement for architectural design services, believing that this unfairly disadvantaged SMEs.

**Outcome:** The University agreed to restart their procurement with an amended PQQ that addressed these concerns and was aligned to the Public Contracts Regulations 2015.

### **Contracting Authority / Prime Contractor complaint against - Walsall Council**

**Issue:** A supplier became aware of a procurement above the EU threshold that they believed had not been advertised.

**Outcome:** The Mystery Shopper team were able to confirm that the contract in question had in fact been advertised in the OJEU and provided a copy of the notice to the enquirer.

### **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 to that 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 the replacement framework. 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.

### **Contracting Authority / Prime Contractor complaint against - ShireGroup of Internal Drainage Boards (IDBs) (Danvm Drainage Commissioners)**

**Issue:** An enquirer raised concerns about the involvement of an incumbent supplier in the development of a specification for water level management implementation. A conflict of interest had been perceived as the incumbent intended to bid for the work.

**Outcome:** The Danvm Drainage Commissioners was able to demonstrate that appropriate ethical wall provisions had been established to ensure that the incumbent was not given an unfair advantage in bidding for the work. The Danvm Drainage Commissioners have committed to make available all previous studies and facilitate site visits to those bidders who request it. The Board commissioned North Lincolnshire Council not only as procurement agents to run the procurement process but also to conduct

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the tender evaluations on its behalf. They were also able to demonstrate that a healthy level of interest had been received from the market and no issues had been raised by suppliers as regards the incumbent's involvement.

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

**Issue:** A supplier was concerned about the financial assessment in a contract for Heating Upgrade and One Off Heating, specifically an annex attached to the Pre Qualification Questionnaire that set out a number of calculations to be applied to company accounts which they felt disadvantaged small businesses.

**Outcome:** The authority agreed that the financial calculations included as part of the PAS 91 questionnaire could give rise to ambiguity but confirmed these 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 current approach to financial assessment and will also include a further clarification statement in future procurements.

### **Contracting Authority / Prime Contractor complaint against - Wandsworth Council**

**Issue:** A small supplier complained that they had not received payment from Wandsworth Council within 30 days for translation services provided to the council.

**Outcome:** The Mystery Shopper team reminded the council of its obligations under late payment legislation and asked that if the invoice was undisputed, the payment and interest that was being requested by the complainant should be paid. The council agreed there had been an oversight and apologised and the head of procurement provided his contact details so the supplier could immediately contact him to resolve the issue. The supplier was paid for the work provided and was also paid late payment interest.

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### **Contracting Authority / Prime Contractor complaint against - Wandsworth Council**

**Issue:** A small supplier complained that they had not received payment from Wandsworth Council within 30 days for translation services provided to the council.

**Outcome:**

The Mystery Shopper team contacted the council who said there had been a problem with receipt of the invoice and agreed to provide a specific email address for future invoices to be sent to so they would be processed within 30 days. The supplier was paid for the work provided and was also paid late payment interest.

### **Contracting Authority / Prime Contractor complaint against - Leeds Crown Court**

**Issue:** A small supplier complained that they had not been paid by Leeds Crown Court for services provided.

**Outcome:** The Mystery Shopper team contacted the court, reminding them of their obligations under late payment legislation and asking why payment was late. The court confirmed that the invoice had been sent to the wrong office for processing and they contacted the supplier directly to explain the delay, arrange payment for the work and late payment interest and to provide the supplier with an address for future invoices.

### **Contracting Authority / Prime Contractor complaint against - Southwark Crown Court**

**Issue:** A small supplier complained that they had not received payment within 30 days for translation services provided to Southwark Crown Court.

**Outcome:** The Mystery Shopper team reminded Southwark Crown Court of its obligations under late payment legislation and sent them payment guidance explaining how payment features in the new procurement regulations. We asked the court to contact the supplier immediately to arrange payment. The supplier was contacted by the court and paid for the work provided and was also paid late payment interest.

### **Contracting Authority / Prime Contractor complaint against - NHS Property Services**

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**Issue:** A supplier raised concerns that the minimum requirements for turnover threshold and staffing for an asset management tender were not clearly articulated at the beginning of the procurement process, causing confusion during the bidding process.

**Outcome:** The National Health Service Property Services (NHS PS) agreed it could have been clearer in the first instance; however they did make efforts to clarify the concerns of bidders through the process and did extend the process to allow time for bidders to re-evaluate their proposals. NHS PS has confirmed that they will be reviewing tendering documentation to improve the openness and transparency of descriptions of methods of assessment for financial standing going forward.

### **Contracting Authority / Prime Contractor complaint against - Plymouth Hospitals NHS Trust**

**Issue:** A supplier raised concerns about the haematology element of a pan-pathology procurement, believing that the equipment that the preferred bidder was offering was untested in the UK market and therefore that there was a significant risk of service failure.

**Outcome:** The Haematology service was a small element of the pan-pathology requirement. In respect of the particular equipment in question, the Trust provided clarification during the tender process that they would accept equipment that did not have an established UK user base and that was not yet released to the market, subject to demonstrable evidence of satisfactory pre-market release technical and clinical feedback to support the bidder's response to the tender specification. The Trust has also ensured that appropriate contingencies are in place for replacement should the equipment fail to meet Trust KPIs and T&Cs.

### **Contracting Authority / Prime Contractor complaint against - Ministry of Defence (MOD)**

**Issue:** A supplier raised concerns that a procurement for unarmed guarding services unfairly favoured the incumbent supplier. They believed that without further information regarding current staffing levels, as TUPE applied, they would be unable to submit a fully costed bid.

**Outcome:** The Ministry of Defence (MOD) explained that they had worked with the incumbent to disclose as much information as possible in relation to current staffing levels, and provided additional feedback to the enquirer which explained that they were expecting bidders to submit their own resourcing solution to meet the output specification for each of the various sites and were expecting suppliers to take a calculated risk-based judgement as to how they were going to fulfil the specification requirements. The MOD also provided additional feedback on how the enquirer's bid was scored. We did make recommendations to MOD to provide further clarity on the evaluation criteria, which they have since amended.

### **Contracting Authority / Prime Contractor complaint against - South Devon Healthcare NHS Foundation Trust**

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**Issue:** A supplier raised concerns about the winning bidder's price for haematology equipment in a tender for Pathology Services at South Devon Healthcare NHS Foundation Trust and Northern Devon Healthcare NHS Trust. They asked whether the Trust had undertaken due diligence in their award of the lot.

**Outcome:** The Trust has confirmed it did challenge the 'abnormally low price' issue with the bidder. The Trust explained that the bidder had offered an innovative commercial model which enabled them to submit a very competitive price for this lot and the Trust were satisfied that the low price was justified and did not represent a significant risk to the long term viability of the company and their ability to deliver the contract. As a result, under regulation 69 (4) the Trust were content to accept the tender.

### Contract Management

#### Contracting Authority / Prime Contractor complaint against - Croydon Health Service NHS Trust

**Issue:** A supplier 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 Health Service NHS Trust.

**Outcome:** The Trust advised that there were significant benefits both to the Trust and suppliers in joining the scheme and had sought to encourage suppliers to join by waiving the registration fees. The Mystery Shopper team advised that membership could be encouraged, but not imposed on existing suppliers. The Trust also 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 chose not to join the scheme.

#### Contracting Authority / Prime Contractor complaint against - Suffolk County Council

**Issue:** A supplier, who is a sub-contractor in a roads maintenance contract, raised concerns about delays in payment from a larger contractor.

**Outcome:** The Mystery Shopper team discussed the situation with Suffolk County Council. The council explained the detail of the payment arrangements for sub-contractors under their contract. The council holds regular contract management meetings with their contractors and as part of their contract management processes they monitor and discuss supply chain payments. The council had already raised the issues in this referral with their contractor. The Mystery Shopper team explained the position to the supplier who reported improvements in the flow of payments.

### Procurement Strategy

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### **NEW**

#### **Contracting Authority / Prime Contractor complaint against - Duchy College**

**Issue:** A supplier raised a concern that three contracts with suppliers of training services had been awarded without competition, with other suppliers not having the chance to compete for the business.

**Outcome:** The College said that while the contracts in question were not established through competitive procurements, they were subject to due diligence processes, and therefore in line with Skills Funding Agency guidelines. Moreover, the College intends to refresh its approach to sourcing of training services; the plan is for these to be the subject of a Dynamic Purchasing System to be established in the near future.

### **NEW**

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

**Issue:** The Mystery Shopper team received a complaint from a supplier who had submitted a tender for an OJEU framework. They had incurred significant bidding costs and the framework competition was subsequently cancelled after the closing date. The complaint also included a concern that the existing framework was then extended past the 4 year maximum period.

**Outcome:** The contracting authority responded promptly to the issues raised, explaining that it was clear from the OJEU notice that they “reserve the right not to award a contract as a result of the procurement process and that there is no obligation for public bodies to award contracts following a public procurement exercise”. The contracting authority confirmed that due to a review of the service, there were significant variations made which resulted in the value of the framework being significantly reduced. It therefore became inappropriate to award the framework. The Mystery Shopper team recommended that improved forward planning in the future would reduce the likelihood of this occurring in the future. The Mystery Shopper team also concluded that, in this instance, the extension of the framework agreement was acceptable as the contracting authority had no alternative but to extend due to the nature of the service, the users of the service it was delivering and the significant changes made to the procurement exercise.

### **NEW**

#### **Contracting Authority / Prime Contractor complaint against - Liverpool Clinical Laboratories**



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**Issue:** A supplier raised concerns regarding Liverpool Clinical Laboratories' competitive dialogue procurement for an Automated Pathology Managed Service. Whilst having been divided into five lots, which facilitated SME participation, the supplier felt this would favour larger suppliers bidding for more than one lot to offer "multi lot discounts".

**Outcome:** The Trust confirmed they were keen to ensure a balance between encouraging SMEs and delivering value for money to the taxpayer. In order to encourage SME participation a decision had been taken to divide the contract into lots in accordance with Regulation 46. The tender evaluation was split 30% on overall cost and 70% on technical attributes. The Trust also confirmed that there would be no further down-selection of suppliers during subsequent dialogue phases. The Mystery Shopper team considered that as there are no rules preventing the use of multi-lot discounts, that the proposed approach by the Trust was sound.

### **NEW**

#### **Contracting Authority / Prime Contractor complaint against - Torbay and South Devon NHS Trust**

**Issue:** An incumbent supplier raised concerns that the Trust were unclear about transitional arrangements during a re-procurement for a service to clean and repair surgical instruments.

**Outcome:** The incumbent's contract ended before the re-procurement exercise had concluded, and the Trust continued to use the incumbent to provide services during this intervening period. The Trust accepted that they could have been more timely with the re-procurement exercise and that, if this wasn't feasible, they should have discussed transitional arrangements with the incumbent provider and in good time. This would ensure that the incumbent was clearer as to when their services would no longer be required.

### **NEW**

#### **Contracting Authority / Prime Contractor complaint against - Norfolk County Council**

**Issue:** A supplier contacted us raising a concern that the Council's approach for the Educational Psychology Specialist Support Services web development procurement was not in accordance with government best practice embodied in the Government Service Design Manual (GSDM).

**Outcome:** The Council pointed out that the GSDM is not mandated for local government, and that having reviewed their approach with their technical specialists they were content with the approach adopted, in particular with the manner in which user requirements had been identified. The Mystery Shopper team saw no grounds to question the Council's approach further and this was accepted by the supplier.

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### **NEW**

#### **Contracting Authority / Prime Contractor complaint against - National Savings and investments (NS&I)**

**Issue:** A supplier contacted the Mystery Shopper Team when NS&I put out to tender some work the supplier had been delivering under a framework agreement.

**Outcome:** NS&I responded quickly to the issues raised and explained that the supplier had been providing NS&I a service under a Government Procurement Service framework. The framework itself had expired in March 2013, and the arrangement with NS&I and the supplier was due to end in February 2016. The work was to be subsumed into an outsourcing agreement let by NS&I in 2013. NS&I have discussed with the Mystery Shopper Team strategies they may consider for the future use of framework agreements.

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

**Issue:** A supplier contacted the Mystery Shopper team to raise a concern about an expired CCS Facilities Management framework and the behaviour of large suppliers on that framework, in particular passing poor terms and conditions down the supply chain.

**Outcome:** The Mystery Shopper Team explained to the supplier that the expired framework had been replaced with a different Facilities Management agreement, with new terms and a broader range of suppliers. CCS shared with the supplier the new terms of the agreement and the supplier management strategy, both of which reflected prompt payment terms laid out by the 2015 regulations and measures to enforce these.

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

**Issue:** A supplier raised concerns about the contracting authority's requirement in a demolition contract that all bidders must be a member of the National Federation of Demolition Contractors (NFDC). The supplier felt they should have allowed for 'equivalent evidence' to be considered or other memberships bodies to be considered.

**Outcome:** Sheffield City Council responded comprehensively to the concerns raised 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. However, Sheffield City Council made the decision not to stop the current live procurement due to wider commercial implications of this construction contract.

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<b>Contracting Authority / Prime Contractor complaint against - London Borough of Tower Hamlets</b>  <b>Issue:</b> A Mystery Shopper raised concerns over the procurement strategy adopted by the Council, suggesting that the lotting strategy and intended number of providers to be appointed would render it very difficult for SMEs to compete effectively. <b>Outcome:</b> The Council provided a thorough explanation of the rationale behind the procurement strategy and of the considerations they believed would ensure that SMEs would not be critically disadvantaged by the approach adopted. This information was relayed to the Mystery Shopper.
<b>Transparency</b>
<b>NEW</b> <b>Contracting Authority / Prime Contractor complaint against - North Bristol NHS Trust</b>  <b>Issue:</b> A supplier raised concerns that their services for providing interpreters were suddenly no longer required by the Trust as they had put in place a new contract. <b>Outcome:</b> The Trust confirmed that an earlier procurement had been abandoned in August 2014 and at that time all suppliers who expressed an interest were advised that the Trust would advertise for a replacement contract later that year (2014). The contract was advertised in November 2014 and was subsequently awarded with a commencement date of 1 February 2016. We recommended that in the future, as a matter of good practice, the Trust should ensure that existing providers are made aware of any upcoming changes that may impact on the level of business provided. The Trust have accepted this recommendation.
<b>Payment</b>
<b>Contracting Authority / Prime Contractor complaint against - North Bristol NHS Trust</b>  <b>Issue:</b> A supplier raised concerns that a number of their outstanding invoices had not been paid by North Bristol NHS Trust.

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**Outcome:** The Trust responded quickly to the enquiry and all outstanding payments were made. They explained that practices in departmental teams were being improved to ensure managers were authorising invoices. The Mystery Shopper team reminded the Trust that they should have regard to their standard payment terms and make every effort to ensure payments are made promptly and where there are disputes to communicate these to the supplier to avoid delays.