

Mystery Shopper Publication Table January - March 2017

Contract Management

New

Contracting Authority / Prime Contractor complaint against - Kent County Council

Issue: A trade association, on behalf of a supplier, contacted the Mystery Shopper team to express concerns over Kent County Council's payment retentions policy for minor works contracts.

Outcome: The council explained that for minor works contracts, their policy was to implement a 10% payment retention policy for during the works and 5% on practical completion. This was considered reasonable in terms of protecting the Council's interests in the event of contract performance problems. The Council offered to discuss the matter if the supplier wanted to contact them directly.

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

Issue: A supplier contacted the Mystery Shopper team about a procurement to upgrade the Council's call centre technology. The Council used the CCS Network Services Framework, which the supplier is not on and the supplier was unhappy that, as an incumbent, they had not been specifically told about the procurement.

Outcome: The Council responded in detail with an explanation of the need for the procurement and the rationale for using the Network Services framework. The Council noted that although there is no obligation to advise non-framework suppliers of the further competition, in future it might be beneficial to ensure incumbent suppliers were given appropriate, timely notification of forthcoming procurements impacting on their relationship with the Council.

Contracting Authority / Prime Contractor complaint against - London and Quadrant Housing Trust

Issue: A supplier contacted the Mystery Shopper team about a contract for cleaning services let by London & Quadrant Housing Trust. The contract had been extended to include staff accommodation at Wexham Park Hospital. The supplier suggested that this was outside the scope of the original procurement.

Outcome: London and Quadrant Housing Trust (L&Q) co-operated fully with our investigation. After examining the OJEU contract notice and the Invitation To Tender documentation for the original procurement, we concluded that London & Quadrant Housing had reasonable grounds for considering the Wexham Park site to be within the defined scope. Although we recommended that for future procurements they pay attention to defining the intended scope in very clear and unambiguous terms.

Mystery Shopper Publication Table January - March 2017

Payment
<p>Contracting Authority / Prime Contractor complaint against - University Hospital Leicester</p> <p>Issue: A small supplier raised concerns about late paid invoices.</p> <p>Outcome: The Trust worked to pay the outstanding invoices. They are also putting in place a point of contact to field queries about outstanding invoices.</p>
<p>Contracting Authority / Prime Contractor complaint against - Sandwell NHS Trust</p> <p>Issue: A referral was made to the Mystery Shopper team concerning the flow of payments under a temporary staff contract.</p> <p>Outcome: The Trust worked with its prime contractor to ensure payments were made.</p>
<p>Contracting Authority / Prime Contractor complaint against - Hinchingsbrooke NHS Trust</p> <p>Issue: A referral was made to the Mystery Shopper team concerning the flow of payments under a temporary staff contract.</p> <p>Outcome: The Trust worked with its prime contractor to ensure payments were made.</p>
<p>Contracting Authority / Prime Contractor complaint against - Heart of England NHS Trust</p> <p>Issue: A referral was made to Mystery Shopper team concerning the flow of payments to sub-contractors under a temporary staff contract.</p> <p>Outcome: The temporary staff agency had not been making requests for payment on the Trust's on line system. The Trust has offered clarification of the required process for requesting payments with this provider.</p>
<p>Contracting Authority / Prime Contractor complaint against - Milton Keynes Hospital Trust</p> <p>Issue: A small supplier was concerned that invoices had not been paid.</p> <p>Outcome: The Trust took steps to ensure that outstanding invoices were paid and payment has been made.</p>

Mystery Shopper Publication Table January - March 2017

<p>Contracting Authority / Prime Contractor complaint against - London Borough of Tower Hamlets</p> <p>Issue: A supplier contacted the Mystery Shopper team about the late payment of an invoice for cancellation charges.</p> <p>Outcome: The council responded promptly and provided a solution that would allow for payment of the outstanding charges.</p>
<p>Contracting Authority / Prime Contractor complaint against - London Borough of Newham</p> <p>Issue: A small supplier reported delays in payment of invoices</p> <p>Outcome: The Council took action to ensure that invoices were paid.</p>
<p>Contracting Authority / Prime Contractor complaint against - North Tees & Hartlepool NHS Foundation Trust</p> <p>Issue: A small supplier raised concerns about slow payment of invoices.</p> <p>Outcome: Mystery Shopper got in touch with the Trust who acted quickly to pay outstanding invoices.</p>
<p>Contracting Authority / Prime Contractor complaint against - Shropshire Council</p> <p>Issue: A small supplier raised concerns regarding invoices which had not been paid.</p> <p>Outcome: When Mystery Shopper drew this to the Council's attention they acted quickly to ensure that payment was made.</p>
<p>Contracting Authority / Prime Contractor complaint against - Poole Council</p> <p>Issue: A small supplier raised concerns that invoices for translation services had not been paid within 30 days.</p> <p>Outcome: The Mystery Shopper team contacted the council who confirmed that there had been delays as invoices were awaiting approval from appropriate colleagues. The council acted quickly, following Mystery Shopper contact, and all invoices have now been paid.</p>

Mystery Shopper Publication Table January - March 2017

Contracting Authority / Prime Contractor complaint against - Isle of Wight Council

Issue: A small supplier raised concerns that a number of invoices had not been paid within 30 days.

Outcome: The Isle of Wight Council acted quickly and confirmed that payment delays had occurred because, on some invoices, Purchase Order numbers had not been raised and some invoices had not been sent to the designated email address. This meant the invoices could not be processed for payment. Following our intervention, all outstanding payments have now been made and the council agreed to implement steps to prevent future payment delays. This includes contacting suppliers when billing information needs updating and ensuring Purchase Order numbers are allocated before providing services. Refresher training for council staff on the ordering and payments procedure will be rolled out along with a reminder to all council employees of the importance of raising timely Purchase Orders.

Contracting Authority / Prime Contractor complaint against - Ministry of Defence (MoD)

Issue: A supplier raised concerns that payments, under their contract, were being delayed.

Outcome: Ministry of Defence (MoD) reported that they were experiencing technical problems but reacted quickly to ensure that payments were made.

Contracting Authority / Prime Contractor complaint against - Thurrock Council

Issue: A small supplier raised concerns that an invoice for translation services had not been paid within 30 days. As a result the supplier was also claiming statutory interest on the late payment.

Outcome: When the Mystery Shopper team contacted the council they confirmed that there had been a delay but the invoice, including the statutory interest claim, would be processed for payment and would be paid within the next few days.

Mystery Shopper Publication Table January - March 2017

Procurement Process

New

Contracting Authority / Prime Contractor complaint against - Norwich City Council

Issue: A supplier contacted the Mystery Shopper team about a procurement for a contract to run firework displays for the Council over the next two years. They were unhappy with the evaluation of a couple of the responses and with the evaluation of prices, which seemed to incorporate errors.

Outcome: The Council responded in detail explaining the basis for the scores for the relevant responses. The Council accepted that while the marks awarded were sound, there could have been greater clarity on the considerations to be taken into account when scoring. There were anomalies in the price evaluation due to incorrect figures being entered for some suppliers. However, correcting these anomalies had no impact on the outcome of the procurement.

New

Contracting Authority / Prime Contractor complaint against - Somerset County Council

Issue: A supplier contacted the Mystery Shopper team about the selection criteria for a Dynamic Purchasing System for Passenger Transport Services run by Somerset County Council. The supplier questioned whether one element of the selection criteria could be reconciled with the parameters set by the Public Contract Regulations.

Outcome: The Council responded promptly and fully to our communications, clarifying the rationale for the selection criteria in question. The Council pointed to an upcoming reformatting of the criteria in order to reflect the latest version of Standard Selection Questionnaire and this resolved the issue for the supplier

New

Contracting Authority / Prime Contractor complaint against - Stoke City Council

Issue: A supplier contacted the Mystery Shopper team expressing concerns over the payment terms mandated by the Council for a requirement for family Group Conferencing services.

Outcome: The Council responded promptly to our communications, explaining the rationale for the payment terms adopted and emphasising their continued commitment to ensuring access to business for SMEs and VCSEs

Mystery Shopper Publication Table January - March 2017

New**Contracting Authority / Prime Contractor complaint against - Southern Housing Group**

Issue: A supplier contacted The Mystery Shopper team to express concerns over the minimum supplier turnover requirement for the Group's consultancy services framework procurement.

Outcome: The Group responded promptly to our communication explaining the rationale for the requirement and providing details of a pre market engagement trial with the potential supply base, so that consortia could be formed where appropriate. We reminded the Group that public sector guidance generally advises against the adoption of minimum turnover requirement and that they should always take care to ensure that minimum requirements for supplier financial capacity should be proportionate and not present unnecessary barriers to SMEs in particular

Contracting Authority / Prime Contractor complaint against - Crown Commercial Service (CCS)

Issue: The Mystery Shopper team received a complaint that “a price on asking” statement spotted on G-Cloud did not comply with the G-Cloud framework terms of use.

Outcome: The assurance team found that in this instance a supplier’s service description was at fault and the affected supplier was asked to rectify.

Contracting Authority / Prime Contractor complaint against - Crown Commercial Service (CCS)

Issue: A small business hoping to become a supplier on more than one lot of the Technology Products 2 framework made two complaints. Firstly, they said the partnership status required to gain the highest marks was unachievable for SMEs, as it required a certain level of spend to achieve them. Secondly, the supplier felt the CCS maximum profit margin of 3.5% was too low for SMEs to consider the framework beneficial.

Outcome: Crown Commercial Service explained that suppliers need to deliver against all requirements on the lot and so 3 other partnership levels were allowed. Also, where an organisation does not have the required vendor partnership levels, the status of sub-contractors could be used. CCS added that smaller suppliers may be suited to lot 6 on the framework. On the issue of a maximum margin of 3.5%, the team explained the previous margins had been reviewed and discussed with suppliers at pre-market engagement and that 2.5% on software and 3.5% on hardware were in line with best practice. No margin caps exist on Lot 6.

Mystery Shopper Publication Table January - March 2017

Contracting Authority / Prime Contractor complaint against - Crown Commercial Service (CCS)

Issue: A small supplier complained that Lot 6 of the Technology Products 2 framework was not SME friendly because SMEs will find it difficult to upload pricing and product data regularly onto the Technical Products 2 catalogue.

Outcome: Crown Commercial Service explained that the team had offered assistance and advice to any suppliers on Lot 6 who required help uploading content and pricing. This lot is designed to allow all suppliers from sole traders to large businesses to simply upload pricing against uniform industry standard and centrally managed content. There are no margin restrictions on this lot.

Contracting Authority / Prime Contractor complaint against - Forward Swindon

Issue: A supplier contacted the Mystery Shopper team regarding a procurement for design services. They were concerned that the two-stage approach taken would raise unnecessary barriers to SMEs.

Outcome: Forward Swindon responded quickly to the case. They contacted the supplier and clarified some misunderstandings whilst also outlining the reasons for their approach. Following these discussions the supplier was content to close the case.

Contracting Authority / Prime Contractor complaint against - Sandwell Metropolitan Borough Council

Issue: A supplier contacted the Mystery Shopper team about the Council's Telephony System Support Services procurement. They were concerned that the Council had specified that the successful supplier would need to hold the highest level of supplier accreditation from the system manufacturer. The supplier suggested that this was disproportionate and would unnecessarily limit competition.

Outcome: The Council responded quickly to our communications explaining the rationale behind the requirement. However, the Council agreed to look carefully at any similar requirements for future procurements to ensure they are not overly-demanding.

Mystery Shopper Publication Table January - March 2017

Procurement Strategy

New

Contracting Authority / Prime Contractor complaint against - Northumbria, Tyne & Wear NHS Foundation Trust

Issue: A supplier asked the Mystery Shopper team to investigate pan-public sector energy supply framework agreements managed on behalf of the Trust by Inenco. The specific issues raised were how Inenco were appointed by the Trust, the justification for adoption of the accelerated open procedure to establish the frameworks, and whether non-health sector bodies could legitimately use the frameworks.

Outcome: The Trust explained that Inenco were appointed via a Places for People Energy Consultancy framework and clarified how the activities Inenco undertook on their behalf, related to the scope of that framework. The accelerated open procedure had been adopted to allow for the award of these energy framework agreements in advance of anticipated seasonal price changes. The Trust indicated that the focus of their framework agreements was the supply to the health and care sectors, particularly the NHS Northern & Yorkshire Energy group. We expressed reservations as to whether non-health care customers could safely use these frameworks, if the OJEU notice did not expressly name them as customers. The Trust affirmed that such organisations should always take their own legal advice on the issue, if considering using the agreements.

New

Contracting Authority / Prime Contractor complaint against - Construction Impact Framework

Issue: A supplier contacted the Mystery Shopper team to question whether the Construction Impact Framework (CIF) had been established by a body that could legitimately be considered a public contracting authority, as is mandatory to be able to act as a central purchasing body establishing frameworks for use by other contracting authorities.

Outcome: CIF responded promptly and in detail to our enquiries, providing information on the procurement that established the framework, and the characteristics of Safe Regeneration, who are the signatory to the framework. On the basis of the information provided the supplier agreed to close the case. We also noted that potential users of any collaborative framework should always take legal advice to assure themselves of its legitimacy in procurement law terms.

Mystery Shopper Publication Table January - March 2017

Contracting Authority / Prime Contractor complaint against - Sanctuary Housing Association

Issue: A supplier contacted the Mystery Shopper team about a contract for Energy Management Services let by Sanctuary Housing Association. The supplier suggested that this was in a series of one year contracts with the same supplier that when added together exceeds the threshold for advertising under the Public Contracts Regulations.

Outcome: Sanctuary Housing Association responded very thoroughly to our enquiries. The relationship with the relevant supplier had been established some time ago and the staff managing this relationship had since left the organisation. A recent audit by Sanctuary Housing had been unable to locate any written contract documentation so a 12 month contract, running until March 2017, was awarded to bring the relationship onto a regular footing. Sanctuary Housing explained that this will then be replaced by a contract let via an open and competitive procurement. In parallel Sanctuary Housing are also examining the option of bringing these services in house.

Contracting Authority / Prime Contractor complaint against - Birmingham Children's Hospital

Issue: A supplier contacted the Mystery Shopper team to raise a concern that payment terms between Birmingham Children's Hospital's (BCH) contractor Interserve and some of their sub-contractors breached Regulation 113 of the Public Contract Regulations (PCR) 2015 in that they specified 42 day payment terms rather than 30 days.

Outcome: The Mystery Shopper team contacted BCH via Department of Health. They explained that this issue had already been brought to their attention and had been resolved with Interserve. At the time of the enquiry, Interserve had reviewed their sub-contracts to identify where there were departures from the requirements of Regulation 113 and had ensured that these were corrected.