

# Mystery Shopper Publication Table April - June 2017

## Contract Management

### Contracting Authority / Prime Contractor complaint against - Stockport NHS Foundation Trust

**Issue:** A supplier raised concerns about 60 day payment terms being applied.

**Outcome:** The Mystery Shopper team drew the Trust's attention to Regulation 113 of the Public Contracts Regulations and its associated statutory guidance, which sets out a requirement for invoices to be paid within 30 days of being regarded valid and undisputed. The Trust responded by stating that they have been applying 60 day payment terms to help alleviate their financial pressures but are willing to look at the circumstances of suppliers, especially SMEs, if this causes problems.

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

**Issue:** A supplier contacted the Mystery Shopper team to raise concerns in relation to sourcing of conference and events venues under the CCS Crown Venue Booking and Management Services, in particular whether small/independent venues were competing on a level playing field .

**Outcome:** The issues raised by the case will be addressed in the development of the upcoming replacement for the contract.

## Payment

### New

### Contracting Authority / Prime Contractor complaint against - Plymouth City Council

**Issue:** A supplier contacted the Mystery Shopper team asking us to help them resolve a late payment issue with the council.

**Outcome:** The outstanding payments were processed by the council.

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

**Issue:** A trade body contacted the Mystery Shopper team on behalf of one of their members. Interior Services Group PLC, as a Prime Contractor to Stockport Council had imposed 42 payment terms on the complainant, who were acting as a subcontractor.

**Outcome:** The shared procurement service for Stockport, Trafford and Rochdale, STAR Procurement, responded quickly to the issue raised and explained that the incident had resulted from a misunderstanding following a call-off contract under a regional framework agreement which had a reference to payment terms contained within their payment charter. The charter was intended as a guide for all clients to reflect their particular payment terms and not part of the framework terms and conditions as originally thought by the Prime Contractor. STAR Procurement have said they will rectify this issue by placing an instruction to the Prime Contractor to invoke the correct payment terms in accordance with the requirements under the Public Contract Regulations 2015.

## **Procurement Process**

### **New**

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

**Issue:** A complaint was received about a procurement being managed on behalf of Chelmsford City Council for the redevelopment of Riverside Ice and Leisure Centre because the tender documentation stated that consortia bids would not be accepted.

**Outcome:** The council explained that they had taken steps to make the procurement SME friendly but that they felt for the short scale nature of a one off project, a consortia bid would not be appropriate and would be difficult to evaluate. Mystery Shopper recommended that in line with Government SME policy, for future procurements, they did not explicitly disallow consortia bids.

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### **New**

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

**Issue:** A supplier raised concerns about some questions posed as part of the PQQ for the MOD Framework Agreement for Technical Support 5 (FATS 5). In particular they were concerned that about the requirement for Chief Engineers, Senior Engineers and Engineers needing to be Chartered / Incorporated (or equivalent) or that they were working towards this qualification. They felt that this was a change in requirement from previous iterations and did not allow enough time for them to start the process towards accreditation.

**Outcome:** The MOD provided a comprehensive explanation to the points raised by the supplier. They explained that for each iteration of FATS they incorporate lessons learned from previous FATS iterations and include improvements following consultation with their customers and suppliers which includes bodies representing SMEs. In addition, they had undertaken comprehensive pre-market engagement with Industry and trade organisations regarding the proposed changes to FATS 5 in the year leading up to the launch of the new framework. The requirement for Engineers to be Chartered / Incorporated were set by their own subject matter experts and were in line with the minimum standards that MOD expects from its own engineers. They deemed that for the nature of the work on this framework, it was appropriate that all suppliers should hold this. Suppliers had the opportunity to provide an equivalent status and or demonstrate that they were working towards it (if they did not currently hold it at the time of bidding).

### **New**

#### **Contracting Authority / Prime Contractor complaint against - London Borough of Croydon**

**Issue:** A supplier contacted the Mystery Shopper team about a construction contract the Council had signed with a prime contractor. The supplier had concerns over Social Value aspects of the bid which won the contract – whether these aspects had formed part of the tender evaluation, whether they'd been implemented and if not why.

**Outcome:** The Council responded fully to our communication indicating that while the prime contractor's tender had include some Social Value (SV) elements relating to the supplier no firm commitment had been given to use their services. In any event, the SV elements of the tender had not played a significant part in securing the business for the contractor.

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## New

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

**Issue:** A supplier contacted the Mystery Shopper team to raise concerns about the whole tendering process for Management Consultancy Contract 2. <http://ccs-agreements.cabinetoffice.gov.uk/management-consultancy-framework-rm3745>. They were specifically concerned that the amount of investment in person hours required to establish whether an organisation is qualified to submit a bid is unsustainable in organisations of fewer than 10 people. In addition, the clarification about the qualifying experience from 2200 hours of delivery to 2200 days over 3 years changed part way through the procurement meant that they had undertaken significant work before they were made aware that they would not be able to bid in their own right.

Furthermore, they commented that they found the Tendering portal difficult to read and navigate. They mentioned that it doesn't fully display on a standard monitor and does not allow you to save work part way through a set of questions.

**Outcome: Length of documentation:** Mystery Shopper team shared these concerns with the relevant CCS teams who highlighted that they have agreed a spend target of 20% via SMEs by 2020 via the Management Consultancy Framework Agreement. In addition, they commented that a detailed Invitation to Tender pack was issued which included guidance for suppliers on how to respond to the tender. Tenders were welcomed from any organisation which included sub-contracting arrangements. The revisions to the documents were only made where it was necessary and these were shared with bidders so that they were aware of the changes. The team confirmed the documents should have always stated 2200 days and issued a clarification message confirming this.

**Tendering portal:** With regard to the tendering portal, the eEnablement team responded to say that the navigation and reading of screen will be affected by the browser used and settings at the user's site. The team were not aware of any issues which would prevent a supplier from submitting a response. They explained that questionnaires can only be saved if all mandatory questions are answered and that these are indicated by a red asterisk. Once these have been answered, suppliers can work through the remainder and save at any time. If any question response is invalid (e.g. date in wrong format) the questionnaire will not be saved and an error message will be displayed. The team reiterated that they would be happy to talk through the supplier's experience to find out more and see what could be fixed in the future. They highlighted that they do provide both email and phone support to suppliers during the process to resolve any issues.

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**New**

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

**Issue:** A complaint was received about a Crown Commercial Service (CCS) Tech 2 procurement. Information input by the supplier for a question had been lost on the system due to a technical change made by the online portal operators. The supplier said this had caused a lot of extra work for an SME and more should have been done by CCS to help suppliers affected.

**Outcome:** The Sourcing team advised that other suppliers had been affected and as soon as they were aware of the issue they had extended the deadline by 23 hours to allow bidders to re-input data for the question that was affected. We agreed that the sourcing team had acted appropriately by extending the deadline.

**New**

**Contracting Authority / Prime Contractor complaint against - ESPO**

**Issue:** A supplier asked the Mystery Shopper team to investigate the evaluation of their tender for the ESPO Consultancy Services framework procurement.

**Outcome :** Following examination of the procurement documentation and the scores awarded we determined that the evaluation outcome was robust in view of the parameters specified in the ITT. We did recommend greater clarity in future on potential for exclusion of tenders failing to achieve specified minimum scores.

**Contracting Authority / Prime Contractor complaint against - Sussex Partnership NHS Trust**

**Issue:** A supplier contacted the Mystery Shopper team about the evaluation of some Selection Questionnaire questions. They suggested that the Trust's approach had been overly-demanding in terms of systems and processes required for a small business.

**Outcome:** The Trust responded very positively to our communication, indicating that it was keen to learn the lessons from the exercise and make adjustments for future procurements.

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**New**

**Contracting Authority / Prime Contractor complaint against - Blackpool and Fylde College**

**Issue:** A supplier asked the Mystery Shopper team to investigate the College's procurement of a Principal Consultant for Capital Projects. They suggested that the conduct of the exercise had departed from best practice in several areas and might have breached the College's obligations under the Public Contract Regulations.

**Outcome:** The college responded promptly and fully to our communication. It appeared that the complaint was founded in a misunderstanding of a part of the procurement documentation concerned with sourcing of professional advisors to be conducted by the successful Principal Consultant to meet the College's needs. The basic conduct of the procurement was sound, with the issues in question handled in a pragmatic, non-discriminatory manner.

**New**

**Contracting Authority / Prime Contractor complaint against - Cabinet Office (Government Communication Service)**

**Issue:** A supplier contacted the Mystery Shopper team to raise concerns about the limited feedback they had received for a low value tender for the **Government Communication Service digital capability assessment via the DOS framework**. The supplier was unsuccessful in their bid and did not make the shortlist. They asked for feedback, which when received contained very little information about exactly where they fell down against other bids and why.

**Outcome:** Mystery Shopper investigated this case and asked the Cabinet Office to provide some more information on the unsuccessful bid. They shared what information they had, however, this was still quite limited. We recommended for the future that they should offer debriefing to unsuccessful suppliers, noting where their scores differed from the successful bidders and the relative advantages and disadvantages of their bid. (Suppliers can then use this information to improve future bids). In addition, they should share exactly what the debriefing arrangements would be in any tender documentation so that the supplier has a clear level of information that they can expect back at the end of the process. The Cabinet Office accepted this recommendations.

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### **Contracting Authority / Prime Contractor complaint against - Department for Work and Pensions (DWP)**

**Issue:** The Mystery Shopper Team received a complaint about a DWP procurement for Contact Centre Services. The supplier queried why bidders had to include TUPE costs as part of their bid, when they had not had to do so previously for other government departments.

**Outcome:** We contacted DWP who explained that they were already holding several workshops with suppliers during the process to discuss what improvements could be made in this area for future procurements and that they were also working with other government departments to understand how they treated TUPE and training costs in bid evaluation. We recommended DWP uses this feedback from the supplier workshops together with discussions with other government departments on the issue, to inform future procurement strategy.

### **Contracting Authority / Prime Contractor complaint against - Department for International Trade (DIT)**

**Issue:** A supplier complained that an evaluation question for the Trade Remedies Discovery Team procurement made reference to the UK leaving the European Union. They felt this was 'political' and therefore did not comply with procurement regulations or government policy on procurement.

**Outcome:** DIT explained the question was related to systems currently in use within the EU that the successful supplier would need to make changes to in readiness for the UK exit from the EU. They said this point had been explained at a meeting with potential suppliers. MS recommended that for all future DIT procurements, any evaluation wording is clear and remains relevant to the subject matter of the contract.

### **Contracting Authority / Prime Contractor complaint against - London Borough of Merton**

**Issue:** A supplier contacted the Mystery Shopper team about a procurement for care services being undertaken. The supplier was concerned about a requirement for examples of past requirements with a value equivalent to the anticipated value of the relevant procurement lots. The supplier questioned whether this was reasonable, suggesting there were very few, if any contracts on such a scale in existence.

**Outcome:** The Borough responded to state that it considered the requirements appropriate for the contracts in question, given that this is a critical service for some of their most vulnerable customers. The Borough had shared its thinking on the procurement with suppliers during a process of market engagement and had structured the overall requirement such that suppliers unable to meet the relevant requirements for the three lots in question could still bid for two other lots. Overall, the Borough considered that the relevant requirements would minimise risk but attract the right supplier.

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### **Contracting Authority / Prime Contractor complaint against - Royal Borough of Greenwich**

**Issue:** A supplier contacted the Mystery Shopper team to advise that it was unclear in the tender documentation for the 'Store Supplies Contract' about how particular scores would be broken down on certain sections. They felt that it was left to the supplier to make assumptions about how the sub-elements of the questions are weighted and scored. In addition, they raised some concerns about the use of particular branding within this tender as they believed that a bidder would be deducted marks unless they had the particular brand specified in the tender documents.

**Outcome:** The Royal Borough of Greenwich swiftly provided comprehensive responses to the questions posed and clarified a number of points around the scoring and use of brands. They clarified that they do accept equivalents and these can still receive the top marks. Furthermore, they explained in more details the particular scoring breakdown and updated their clarification questions as a result. In turn they reiterated that they would be happy to take any further questions directly from the mystery shopper during the clarification period. They extended the deadline for the submission of clarification questions, and in turn extended the deadline for bids. This was communicated to all suppliers.

### **Contracting Authority / Prime Contractor complaint against - Health Trust England (HTE) Group**

**Issue:** A supplier contacted the Mystery Shopper team to ask us to examine the company financial assessment carried out as part of the evaluation of their bid for a framework procurement.

**Outcome:** We concluded that the assessment was sound based on the parameters set out in the procurement documentation.

### **Contracting Authority / Prime Contractor complaint against - Buckinghamshire New University**

**Issue:** A supplier contacted the Mystery Shopper team about a Facilities Management (FM) procurement undertaken by the University, querying the outcome of the evaluation of their Selection Questionnaire response.

**Outcome:** The University responded quickly, providing us with all necessary information. A review indicated that there were no grounds to consider the evaluation outcome was flawed.

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## **Contracting Authority / Prime Contractor complaint against - Hart District Council**

**Issue:** A supplier contacted the Mystery Shopper team about a Council procurement being administered on the Council's behalf by Capita under the 5Cs councils partnering agreement. The supplier was concerned at an apparent conflict of interest in that Capita were themselves likely to bid for the relevant requirement, a possibility that was only notified to interested suppliers at a late stage of the tendering process.

**Outcome:** The Council responded by indicating that this type of situation had been foreseen when the partnering arrangement with Capita was established, and that Capita and the participating councils were all subject to a specific management protocol obliging them to implement appropriate procedures to ensure that in practice no conflict of interest arose. Following review of the protocol the Council agreed to consider a couple of detailed clarifications we recommended.

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

**Issue:** A small supplier contacted the Mystery Shopper team to advise that they were experiencing payment issues in the supply chain at Devon County Council. In addition, the supplier was struggling to get a response from the Prime Contractor to the queries they had raised about the new Terms and Conditions they were required to sign.

**Outcome:** The Council were quick to respond and advised they have reminded the Prime Contractor about the importance of responding to their supply chain promptly with any queries raised. In addition, the Council told us that they were continuing to pay invoices for any suppliers who had not yet signed Terms and Conditions with the new Prime Contractor. The supplier shortly confirmed that all payment issues had been resolved and they were content with the outcome.

## **Contracting Authority / Prime Contractor complaint against - Medway NHS Foundation Trust**

**Issue:** A small supplier raised concerns about the payment of four invoices being late.

**Outcome:** The Trust investigated these outstanding invoices and confirmed that 1 had been paid and a further 2 would be paid imminently. One remaining invoice needed to be resubmitted with a Purchase Order attached. The Trust explained that delays often occur in their process when invoices arrive in the Trust without a Purchase Order. In some instances they do pay without a Purchase Order which involves a paper based invoice approval process which causes delay and the risk of misplacing invoices. The Trust recognised this as an issue and intends to:-

1. Strictly adhere to the 'no purchase order no pay' policy
2. Improve their processes by changing their electronic invoicing process early in FY 17/18 which will result in a more efficient and resilient accounts payable process.

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<p><b>Contracting Authority / Prime Contractor complaint against - West Hertfordshire Hospitals NHS Trust</b></p> <p><b>Issue:</b> A small supplier raised concerns about the payment of two invoices being late.</p> <p><b>Outcome:</b> The Mystery Shopper team contacted the Trust who investigated these outstanding invoices. They confirmed that one had been paid and that the other would be paid within the next few days. The Mystery Shopper soon confirmed that this remaining payment had been received. 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.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Culture Liverpool</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team asking us to investigate a procurement for photography services undertaken by Culture Liverpool. The Mystery Shopper indicated that the procurement had been cancelled after suppliers had invested effort in bidding and wanted to know why this was done.</p> <p><b>Outcome:</b> Culture Liverpool responded quickly and fully to our communication, indicating that organisational changes taking place after the procurement had started resulted in a reappraisal of the best way for the organisation to meet its needs in relation to photography services. It was decided that a different approach with each requirement being treated individually would be preferable. The decision to cancel the existing procurement was not taken lightly, and the organisation was mindful of the impact on suppliers that had chosen to bid, but ultimately the focus had to be on delivering the best outcomes for the business.</p>
<p><b>Procurement Strategy</b></p>
<p><b>New</b></p> <p><b>Contracting Authority / Prime Contractor complaint against - Driver and Vehicle Standards Agency (DVSA)</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team because they felt a DVSA procurement through the Digital Outcomes and Specialists framework was set up to favour larger suppliers, did not specify outcomes and that several suppliers would be appointed through a single procurement.</p> <p><b>Outcome:</b> DVSA responded explaining they saw the procurement as a tremendous opportunity for suppliers of any shape and size. They do not have a preference as to whether suppliers are big or small, they are looking for successful delivery. They need suppliers to help them deliver a challenging backlog of work. DVSA intend to appoint up to 5 suppliers ("Digital Partners") that will work and grow with them as they move through the agile delivery phases as defined by the Digital Standards. Mystery Shopper team consulted the DOS category team and recommended to DVSA that future procurements through DOS are broken up into smaller pieces of work. The DOS team also offered greater support in future procurements and to involve DVSA and DfT in future strategy planning.</p>

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

**Issue:** A supplier contacted the Mystery Shopper team asking us to contact Devon County Council about a procurement the Council was running under the Crown Commercial Services (CCS) Network Services Framework agreement. The supplier suggested that the framework lot under which the procurement was being run was not the best choice for this exercise.

**Outcome:** The Council responded quickly and fully to our communication and after thorough consideration they decided to cancel the framework further competition and to run an OJEU-advertised procurement.

### **Contracting Authority / Prime Contractor complaint against - Sovereign Housing Group**

**Issue:** A supplier contacted the Mystery Shopper team to ask us to investigate energy consultancy contracts used by Sovereign Housing Group following its merger with Spectrum Housing. The supplier suggested that contracts established by Spectrum were now being used by Sovereign when the business should have been put out to competition.

**Outcome:** Sovereign responded quickly to our communication indicating that only one contract had been awarded recently in the relevant field, this of a value well below the OJEU threshold and followed a competitive procurement.

### **Contracting Authority / Prime Contractor complaint against - Genesis Housing Association**

**Issue:** A supplier contacted the Mystery Shopper team to ask us to look at the Aggregator Framework procurement conducted by Genesis Housing Association. They questioned whether the broad scope of the projected single supplier framework could be reconciled with public procurement law. Consideration of the procurement documentation raised some further questions about the approach adopted.

**Outcome:** Genesis responded promptly and in detail to our communication, indicating that they were satisfied that they had addressed the relevant issues adequately in the design and conduct of the procurement. We indicated that we would expect potential public sector users of the framework to want to satisfy themselves that the establishment and operation of the framework satisfied relevant public sector procurement regulatory, policy and value for money considerations.

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<p><b>Contracting Authority / Prime Contractor complaint against - Northumbria, Tyne &amp; Wear NHS Foundation Trust</b></p> <p><b>Issue:</b> 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 and the justification for adoption of the accelerated open procedure to establish the frameworks.</p> <p><b>Outcome:</b> 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 award of framework agreements in time for sourcing of energy in advance of anticipated seasonal price changes.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Public Health England (PHE)</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team about a framework further competition being conducted by Public Health England. They asked us to consider whether the requirement was structured appropriately and whether all capable suppliers would have been given the opportunity to bid.</p> <p><b>Outcome:</b> PHE responded quickly to our communication, providing a detailed history of project, a robust rationale for the structure of the requirement and clear evidence that an inclusive approach had been adopted which would have given all capable suppliers the chance to compete if interested.</p>
<p><b>Transparency</b></p>
<p><b>Contracting Authority / Prime Contractor complaint against - London Borough of Waltham Forest</b></p> <p><b>Issue:</b> A supplier asked the Mystery Shopper team to investigate a procurement to establish framework agreements for the provision of recruitment services. They were concerned that the Contract Notice did not provide sufficient clarity on the intended users for the agreements, and that interested suppliers could not gain free and unrestricted access to the ITT documentation.</p> <p><b>Outcome:</b> The Borough responded promptly and positively to our communication indicating that they would publish a revised Contract Notice providing greater clarity on intended framework users. The ITT documentation was also made freely available on the London Tenders portal. Suppliers would need to register to respond to the documents and this was free with no restrictions placed on who can register.</p>

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**Contracting Authority / Prime Contractor complaint against - NHS Digital**

**Issue:** A supplier contacted the Mystery Shopper team to ask us to investigate a perceived lack of feedback to suppliers that had responded to an NHS Digital Request for Information (RFI) concerning the implementation of WiFi provision across the NHS.

**Outcome:** NHS Digital responded very promptly to our communication indicating that the RFI did not relate to a specific forthcoming procurement but had been intended to validate budgetary provision for NHS roll-out of WiFi services. This had been made clear to suppliers but if any stakeholder had any queries about the program they could submit these to the NHS WiFi mailbox ([nhswifi@nhs.net](mailto:nhswifi@nhs.net))