

Mystery Shopper Publication Table January - March 2018

Payment
<p>Contracting Authority / Prime Contractor complaint against - Bridgewater Community Healthcare NHS Trust</p> <p>Issue: A supplier contacted us to advise that they were owed over £5k from Bridgewater Community Healthcare NHS Trust for work carried out several months ago</p> <p>Outcome: Within 4 weeks, the Trust had managed to pay all outstanding invoices. We were keen to understand why these delays had occurred, however, despite contacting the Trust several times they did not respond to explain what has caused the delay.</p>
<p>Contracting Authority / Prime Contractor complaint against - Shrewsbury and Telford Hospital NHS Trust</p> <p>Issue: A supplier had been advised that the Trust was operating on 68 day payment terms.</p> <p>Outcome: The Trust was forecasting a deficit of nearly £13m greater than planned, and thus a shortfall in cash of nearly £13 million to cover this deficit. In order to protect the running of key clinical services, the Trust made a decision to reduce the outflow of cash in payments to non-NHS Creditors, resulting in extended payment terms. The Trust advised this had been a short term position and that it has now secured some cash support which negates the requirement for such an extended payment period.</p>
<p>Contracting Authority / Prime Contractor complaint against - Rotherham General Hospital</p> <p>Issue: A supplier was advised their invoice had been approved but the Trust could not pay until they received more funds. The supplier was paid once legal action was threatened.</p> <p>Outcome: Rotherham General Hospital confirmed that it did have funding issues and that they are working with the Department of Health & Social Care and NHS Improvement to rectify this, they confirmed that whilst they are behind in payment terms, outstanding invoices up to the end of November have now been paid. Mystery Shopper will continue to monitor payment timescales and report cases like these to Department of Health & Social Care.</p>

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Contracting Authority / Prime Contractor complaint against - Medway Community Healthcare Trust

Issue: We were contacted with regards to an outstanding invoice for £89.66 dated 27 July 2015.

Outcome: The Trust advised payment had been made following our contact.

Contracting Authority / Prime Contractor complaint against - Walsall Healthcare NHS Trust

Issue: A supplier contacted us to advise that they were experiencing delays in being paid for services totalling over £7k

Outcome: The Trust advised that they are in financial deficit and as a result they have to borrow from Department of Health and Social Care to maintain payments to creditors. They confirmed that they are unable to pay all creditors within the required 30 days and had extended payment terms to almost all suppliers. The outstanding invoices were paid in January, within or as close to the 30 day deadline.

We will continue to monitor payment timescales and report cases like these to Department of Health and Social Care.

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

Issue: We were contacted by a supplier to help them recover an outstanding payment of £1.9k from Stockport NHS Foundation Trust.

Outcome: The Creditor Payments Department within the Trust advised that they have never received the Invoice. The Mystery Shopper team sent a copy of the statement of outstanding invoices, and payments have since been made to the supplier.

Contracting Authority / Prime Contractor complaint against - Cabinet Office

Issue: The supplier completed work for the Cabinet Office on 30 November 2017. The invoice was paid two months late and they had claimed interest for late payment which had not been paid.

Outcome: The Cabinet Office responded promptly, contacted the supplier directly to apologise for the delay and advised that payment would be made within 5 days.

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Contracting Authority / Prime Contractor complaint against - Thames Valley Police and Crime Commissioner

Issue: A supplier felt their opportunity to tender for a contract with Thames Valley Police and Crime Commissioner (PCC) for the Emotional Support and Advocacy (ESA) Service was affected by having to clarify the Transfer of Undertaking (protection of Employment) (TUPE) information that was not included at the start of the procurement.

Outcome: Thames Valley PCC explained the supplier had missed the clarification deadline and the tender submission deadline could not be extended due to the pressing need for the ESA Service to start. Thames Valley accepted the Mystery Shopper's recommendation that for future procurements where TUPE will come into effect, all information should be provided at the start of the procurement to allow suppliers to clarify points early, so they can use this to inform their tender.

Contracting Authority / Prime Contractor complaint against - City University London

Issue: A supplier contacted us regarding a procurement for Architectural Services for City University of London. They were unable to register an expression of interest although the notice stated it was still open with a deadline of midday 2 January 2018.

Outcome: City University confirmed that the tender had 2 stages. Stage 1 was a standard Selection Questionnaire (SQ) open to all suppliers. Only those meeting the criteria were invited to the Invitation To Tender (ITT). There was an error in the advertisement that incorrectly implied that the first stage was open but it had closed on 11 December 2017. The ITT stage opened to shortlisted suppliers on 8 January 2018 and was scheduled to close 8 February 2018. Unfortunately the Mystery Shopper missed the deadline for Stage 1 (SQ). In future we recommend clear advertising ensuring accurate dates are published.

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Contracting Authority / Prime Contractor complaint against - Manchester City Council

Issue: A supplier provided linguistic services to Manchester City Council, who failed to set the supplier up correctly therefore preventing payments for additional work.

Outcome: The Council advised that the first invoice was paid on a form used for a one time vendor, as they thought it was a one off purchase. Further services were provided, at this point the Council requested information from the supplier to allow them to set the supplier up as a Vendor on their financial system, the supplier refused to provide the required information as stated in the Council's Financial Regulations therefore the invoices remained outstanding. Payment has now been made. We would recommend that services are not procured without the Vendor being established on the correct financial system.

New

Contracting Authority / Prime Contractor complaint against - NHS Property Services

Issue: A supplier contacted us to advise that they were experiencing delays in being paid by NHS Property Services for invoices with approx. £183K outstanding. Some invoices had been outstanding for over a year.

Outcome: NHS Property Services advised that they had changed their accounts payable systems in mid-2017, which had created some payment delays. They made a significant payment (approx. £100k) to the supplier in the two weeks since we raised the issue and have the remaining £83k scheduled for payment.

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Procurement Strategy

Contracting Authority / Prime Contractor complaint against - Carillion Amey / HMS Raleigh

Issue: A supplier tendered to install a screed on the Ajax Galley Floor. The Supplier was unable to respond to the tender as the requirement was specified as an Altro Resin system with no other equivalents allowed.

Outcome: The Public Contracts Regulations 2015 state that unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Carillion Amey responded fully to the claim and confirmed that alternative products are always considered for their suitability, cost, quality and after-care, warranties etc. All suppliers were given the opportunity to provide alternative recommendations along with samples and an assessment of the material in a real life environment. The final product decision was based on the level of confidence that the product would perform as required and, that there were sufficient warranties in place should things go wrong. We would recommend that this is clearly stated in all procurements.

Contracting Authority / Prime Contractor complaint against - Trafford Council

Issue: A supplier contacted the Mystery Shopper team following their unsuccessful bid for the procurement of Statutory Advocacy Hub Services run by Trafford Council. Their main concern was that they had scored poorly on Social Value and they felt that had that score been higher, they would have secured the contract.

Outcome: We confirmed with the Authority it followed an open and transparent process, giving equal treatment to each bidder and that the bidders' tender submissions were scored fairly by an appropriate evaluation panel. There was a similar challenge received during the standstill period that was also verified by the Council's Legal Service. The supplier confirmed that they would not be pursuing the matter any further and the case was closed.

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Contracting Authority / Prime Contractor complaint against - Countess of Chester Hospital

Issue: A supplier contacted us to highlight that the Trust had recently published a tender for a “National Framework Agreement for the Provision of Asset and Contract Lifecycle Management Services” using a similar fee structure to one used before. Complaints had been made about the previous fee structure, and the Trust had agreed to address complaints in future frameworks.

Outcome: Countess of Chester Hospital highlighted that 57% of their current framework suppliers are SMEs. They stated that they are striving to offer streamlined and alternative frameworks to allow quick and easy access over other frameworks already in the marketplace. This requires resource and introduces a level of financial risk to themselves as the frameworks are often for bespoke and or innovative products and services. The fee model looks to balance risk across the Trust and potential suppliers, it ensures the Trust are able to offer framework opportunities to suppliers who would otherwise have to bid for contracts at an individual hospital or other public sector authority level. We advised the Supplier that we would continue to monitor this situation.

Contracting Authority / Prime Contractor complaint against - Salford City Council

Issue: A supplier contacted us with regards to the procurement for the “Provision of Parking Enforcement and Associated Services”. The Supplier did not apply for the opportunity, partly because they felt that the timescales were tight, but also because there was a minimum level of turnover stated that they could not meet.

Outcome: The timescales were set by the Council and met the requirements for the Official Journal of the European Union (OJEU). This procurement was for core services for two Authorities and the basis of the financial evaluation was included within the supplier questionnaire to ensure that the process was transparent to any potential tenderers. The Authority assesses financial capacity in line with the types of service and the risk of failure to the Council using accepted financial ratios, in this case the minimum threshold was based on yearly turnover, which was in accordance with [Regulation 58](#) (Economic and financial standing) of the Public Contracts Regulations 2015. The Authority did not receive any clarification questions through their e-tendering system in relation to the minimum threshold.

Mystery Shopper team highlighted [PPN 02/13](#) which is a procurement policy note on financial risk issues raised by suppliers. This highlights the importance of making a holistic assessment of a supplier’s financial standing and that suppliers should not be deselected on the basis of turnover size alone. Mystery Shopper team will follow up on future procurements to ensure compliance with current public sector procurement guidelines.

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New

Contracting Authority / Prime Contractor complaint against - Royal Marsden NHS Foundation Trust

Issue: A supplier believed previously undisclosed criteria had been used at the evaluation stage for a procurement for the Provision of Routine Chemistry Solution: inclusive of equipment, maintenance, reagents and consumables, run by the Royal Marsden NHS Foundation Trust. They felt the Trust had not complied with the EU Procurement Rules or EU Treaty principle of fairness.

Outcome: Mystery Shopper team found that the Trust had issued an output-based specification and had set out the characteristics of the winning bid in the notification of contract award decision, which the supplier had mistaken as undisclosed award criteria. The Trust confirmed that all bids had been evaluated against the published award criteria which did not change throughout the procurement process.

Procurement Process

Contracting Authority / Prime Contractor complaint against - Crown Commercial Service

Issue: The Mystery Shopper team received an enquiry regarding the SARS (Spends Analysis and Recovery Services) II Tender. The supplier had been asked to provide a financial guarantor. They had been told it would be sufficient for the company founder to be the guarantor, but were later told personal guarantors would not be accepted. In addition they felt that the tender documentation was excessively long and not particularly SME friendly.

Outcome: The financial criteria were set out clearly in the tender documents, which explained that bidders who failed a financial risk assessment would be required to provide a guarantor or banker's guarantee. No bidders sought clarification during the tender period.

The CCS Policy Implementation team developed the new simplified bid pack which was used for this procurement. The simplified bid pack aims to be easier to follow, it is shorter, simpler and clearly sets out the customer's and CCS's requirements, so that bidders can spend more time developing their best offer. In this case, the documentation was designed to accommodate the seven different lots.

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Contracting Authority / Prime Contractor complaint against - Barking, Havering and Redbridge NHS Trust

Issue: The supplier was invited to tender for a call off for Barking, Havering and Redbridge NHS Trust. The approach being adopted was to evaluate the written submissions and then invite the top three scoring tenderers to the presentation/interview stage, which was allocated 25% of the evaluation score. The main concern was that the presentation stage could have the potential to distort the competition in favour of a preferred supplier, with no objective way to validate this.

Outcome: The Trust took on board the concerns about the presentation stage and changed this element to be weighted at zero.

New

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

Issue: A supplier wanted to tender for a contract with the Council and were experiencing delays in receiving responses to clarification questions raised. This was hindering them in putting together a comprehensive bid submission.

Outcome: The Council responded promptly to our enquiry and provided updates on the number of clarification questions outstanding. They extended the tender submission deadline, this allowed time for other clarification questions to be raised, for responses and sufficient time for potential suppliers to finalise their bids before submitting.

New

Contracting Authority / Prime Contractor complaint against - Hackney Council

Issue: A supplier submitted a tender and was not provided with feedback when they were notified of being unsuccessful at the shortlisting stage. Hackney Council were contacted and advised to provide feedback and given guidance from the Digital Outcomes and Specialists Buyers Guide.

Outcome: Hackney Council confirmed that they would provide feedback as per the guidance provided.

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New

Contracting Authority / Prime Contractor complaint against - Arts Council England

Issue: A supplier complained that the Arts Council funded 'Prosper' Business Support Programme was managed by a company but no competition was held to win this work.

Outcome: The Arts Council confirmed that there was a grant for the Business Support Programme and therefore it does not fall under the remit of the Public Contracts Regulations.

New

Contracting Authority / Prime Contractor complaint against - OFGEM

Issue: A supplier received the results for shortlisting and queried the process used for scoring as it did not seem to be compliant with GDS guidelines: <https://www.gov.uk/guidance/how-to-evaluate-digital-outcomes-and-specialists-suppliers>. They asked us to investigate this with OFGEM and confirm the scoring was valid.

Outcome: The CCS Commercial Agreements Team reviewed the communication and confirmed that the guidance is not prescriptive but that in this case the Authority was compliant. The Commercial Agreements Team agreed to remind the Authority of the processes and guidance available, and will also run further webinars to clarify guidance for future procurements.

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New

Contracting Authority / Prime Contractor complaint against - Swindon Borough Council

Issue: A supplier queried the financial requirement set by Swindon Borough Council for their 'Children Social Care Case Management system' required an annual turnover of at least £700k despite the total contract value of £764k, over 8 years.

Outcome: The Authority confirmed they undertook a pre-tender risk assessment of the contract opportunity and consciously set the minimum turnover requirements at a level less than the potential maximum amount they could have set within Public Contract Regulations [Regulation 58](#) ((3) Economic and Financial Standing and its Capping), with the ambition of ensuring a high level of competition including SMEs.

Key factors when setting the economic and financial criteria for this contract were:

- a) recognition of the business critical nature of the subject matter and
- b) the operational and financial impact to the Authority resulting from failure of the successful bidder to perform the contract.

Given these factors, the Authority considers this a proportionate, objective and non-discriminatory test of economic and financial standing. The Authority provided a clarification response to this question, which was raised on the 28th February via the supplyingthesouthwest.org.uk portal, this included a statement that if a bidder does not meet the specified financial test they can provide a bank guarantee.

New

Contracting Authority / Prime Contractor complaint against - Crown Commercial Service on behalf of Home Office

Issue: A supplier contacted us to regarding an opportunity that Crown Commercial Service had run for the Home Office for an Independent Complaints Reviewer for their Disclosure and Barring Service. The ITT/Contracts Finder Notice was issued 16th May 2017 and stated that Tenders were due to be returned 8th June 2017 but the Invitation To Tender stated returns were due 15th May 2017.

Outcome: The procurement team confirmed that the supplier had been looking at the document "Early Notification of Procurement Opportunity". This document asked potential providers to submit their interest by 15th May 2017, however as this was only to register an interest and it had no reflection on the procurement closure deadline. The procurement ran from 19th June 2017 to 4th July 2017 as stated on the contracts finder website and within the tender documentation.

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New

Contracting Authority / Prime Contractor complaint against - Brent London Borough Council

Issue: A supplier contacted about a Brent London Borough Council procurement for an architect-led design team. The supplier considered the social value criteria to be unclear and onerous for SMEs in comparison to larger businesses.

Outcome:

The local authority are legally obliged to include social value considerations in all procurements (<https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources>). The Council has used similar wording as published by the National Themes Outputs and Measures (TOMs) and the measures have been published in line with the Social Value policy (<http://socialvalueportal.com/national-toms/>). The social value action plan represented 5% of the award with 5% for the Social Value method statement. Suppliers were not obliged to complete all social value measures but to select what they felt was appropriate to this contract. The guidance the council provided in the ITT and the appendix itself did explain this, however we recommended in future procurements these could be made clearer.

New

Contracting Authority / Prime Contractor complaint against - MOD

Issue: A supplier contacted us regarding the MOD Framework Agreement for Technical Support / 5 (FATS/5). The supplier completed an online Pre-Qualification Questionnaire (PQQ) but was not invited to the next stage despite previously supplying services to the MOD at the published required levels.

Outcome: The Authority provided a response advising us they did not provide sufficient evidence within PQQ. Potential suppliers need to be clear what evidence is required and if suppliers are in doubt they should seek clarification during the tender process.

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New

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

Issue: A supplier wanted to tender for a contract with the Council and had not received responses to raised clarification questions, this was hindering them in putting together a comprehensive bid submission.

Outcome: The Council responded promptly to our enquiry and was able to provide regular updates as to the number of clarification questions outstanding. They extended the tender submission deadline to allow extra time for clarification questions to be raised, responded to and sufficient time for potential suppliers to finalise their bids before submitting.

New

Contracting Authority / Prime Contractor complaint against - Sanctuary Housing

Issue: A supplier raised concerns about the Sanctuary Housing Architects (Housing) Development Consultancy Framework that included a zero fee clause in its standard contractual terms as they felt it would require architects to carry out substantial amounts of unpaid work. They also queried the specified minimum turnover threshold, as they believed these values to be excessive in view of the likely level of architects' fees.

Outcome: Sanctuary Housing, an organisation regulated by the Homes and Communities Agency, confirmed that they had used a zero fee provision as a mechanism to meet the Homes & Communities Agency's requirement to secure best value. They amended their position following requests for clarification from bidders and made it clear that they did not intend the zero fee provision to apply if a detailed planning application was submitted, they confirmed that they will ensure this is clear from the outset in any future procurements. The methodology used to set the minimum turnover thresholds was confirmed as meeting the requirements of the Public Contracts Regulations but they agreed to undertake an assessment on any future procurement to ensure the most appropriate method is used.

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New

Contracting Authority / Prime Contractor complaint against - Places for People

Issue: The supplier expressed concern about a recent OJEU procurement being undertaken by Places for People (ref. 47577-2018) for a Major Projects Hub including construction works and consultancy services. Their concern was that according to the notice it would be awarded to a single supplier.

Outcome: Places for People confirmed that the works and services will comprise all types of building construction works and associated civil, mechanical, electrical and services works and may also include design and other services required to develop a construction design and build. The Major Projects Hub framework is intended to select a single supplier with the relevant expertise, capacity and experience to manage the supply chain either on behalf of, or in conjunction with the contracting authority. By taking this approach the Authority was attempting to develop projects which otherwise may not have come to fruition. The supplier met with the Authority and had a fruitful discussion and will now be working together in order to address some of these concerns.

New

Contracting Authority / Prime Contractor complaint against - University College Hospitals NHS Foundation Trust

Issue: A supplier raised a concern that the introduction of a minimum turnover of £1m on a number of the lots in a procurement prevents SMEs from participating. The procurement was run by the University College London Hospitals NHS Foundation Trust for a consultants Framework (OJEU Title, Consultants Framework (2018 — 2022). Reference number: CA4197)

Outcome: The Trust confirmed the minimum turnover values were set following the development of a procurement strategy which considered the varying requirements of this framework. The financial assessment did not rely on turnover alone as the framework is also open to partners. Minimum turnover requirements set, were deemed appropriate for the supplier to be able to deliver the requirements of the Trust and other named Authorities over the life of the framework.

The use of turnover requirements has long been an issue for smaller businesses and the Mystery Shopper team highlighted PPN 02/13 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/137569/PPN_Supplier_financial_risk_Feb-18.pdf This stresses the importance of making a holistic assessment of a supplier's financial standing and that a supplier should not be deselected on the basis of turnover size alone.

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New

Contracting Authority / Prime Contractor complaint against - Department for Business, Energy and Industrial Strategy

Issue: A supplier contacted us about an opportunity for Technical Assessors of Applications to the Energy Entrepreneurs Fund, Thermal Efficiency and Low Carbon Technology Heating Fund (TRN 1377/10/2017) advertised by the Department for Business, Energy and Industrial Strategy (BEIS). The closing date was stated as 25th November in three places despite the notice being published on 24th November.

Outcome: The Contract was published on Contracts Finder on 6th November with a closing date of 24th November at 5pm and provided time for suppliers to submit a bid. Unfortunately, due to an administrative error, the deadline for the notice on Contracts Finder was extended for a day on 24th November. This caused the 'publication date' to be overwritten, giving the impression that suppliers only had 1 day to submit a bid. BEIS apologised for the error and confirmed that this did not reflect the actual situation where there had been 18 days available to bid.