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CONTRACTING AUTHORITY / PRIME CONTRACTOR COMPLAINT AGAINST	ISSUE WITH PROCUREMENT	DESCRIPTION OF COMPLAINT	OUTCOME OF CASE / RECOMMENDATIONS
<p>New Sherwood Forest Hospitals NHS Foundation Trust</p>	<p>Non-payments to sub-contractor in the supply chain.</p>	<p>A Mystery Shopper contacted the service to complain that they had not received payment from a prime contractor to the Trust for pieces of work they had undertaken on two separate occasions in 2013 and 2014.</p>	<p>We investigated this case and the Trust informed us that they were aware of the work that was undertaken by the prime contractor, but explained that both of these pieces of work were made via the non-purchase ordering route because they were for such a low value (just over £5k for both). They reiterated that all purchase orders are placed against the NHS terms and conditions of contract, which requires prime contractors to pay their sub-contractors within 30 days. However, given that both of these purchases were very low value, meant that there were no terms and conditions attached and as a result, there was nothing further we were able to do in order to secure any payment between the prime contractor and the sub-contractor. Our advice was that the NHS Trust needed to ensure that for all future purchases that were undertaken via the non-purchase ordering route, they would need to have a sufficient audit trail of the purchase so that they are able to justify their procurement process if required. We reiterated that for all future procurements, they would need pay all undisputed invoices within 30 days, including down the supply chain.</p>
<p>New Home Office</p>	<p>Procurement Process</p>	<p>A Mystery Shopper contacted the service to raise concerns about the costs of accreditation to Cyber Essentials (CE) within a Home Office procurement which is potentially a cost burden for small suppliers.</p>	<p>Home Office commented that CE accreditation was Cabinet Office policy but accepted the recommendation that inline with guidance note PPN 09/14, CE accreditation will be requested at contract provision and not a pass/fail requirement at tender stage going forward.</p>
<p>New Cabinet Office</p>	<p>Procurement Process</p>	<p>A Mystery Shopper contacted the service to raise concerns about the tender document showing</p>	<p>Cabinet Office responded quickly to address the concerns raised. The new procurement and pilot were two different projects and recommendations have been made for future procurements on using</p>

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		unconscious bias towards the supplier who ran a pilot scheme on which a new procurement was based.	clear wording in tender documents drawing distinctions between a pilot and what is a new procurement, accepting CVs from all parties to prevent unconscious bias towards suppliers already worked with and accepting experience from both the public and private sectors equally. The recommendations were accepted.
New English Heritage	Procurement Strategy	A Mystery Shopper raised concerns about an apparent short timescale for a tender for an LGBT Heritage Project advertised on Contracts Finder.	English Heritage explained that the original notice was issued on the 16th December with a deadline for submission on the 26th January. Following a request to extend the deadline, which was accepted, English Heritage updated the notice through their online procurement system. An issue occurred with the way Contracts Finder treated the replacement notice, including it as a new opportunity in the Mystery Shopper's email alert. This gave the impression of a too short timescale. The actual period from notice to deadline was 43 days.
New Crown Commercial Service (CCS)	Late/delayed payments of sub-contractors in the supply chain	Late/delayed payments of sub-contractors in the supply chain	In one of these cases, the Mystery Shopper was happy to reveal their identity, which enabled us to investigate the individual invoices and late payments directly with the Neutral Vendor and the NHS Trusts. We acted quickly with the relevant CCS category team and the Neutral Vendor, resulting in all outstanding invoices being paid to the Mystery Shopper. In addition, in order to monitor payments going forward, a weekly meeting has been set up between the contract manager and Neutral Vendor to prevent this situation arising again. Going forward, the Department of Health is following up with the NHS Trusts to understand how quickly time sheets are being approved for work on this framework and will work with the relevant Trusts to unblock any delays occurring between the Trusts and the Neutral Vendor going forward. For the remaining 2 cases, both Mystery Shoppers opted to remain anonymous. Following the intervention on the case above and the actions put in place going forward, we received feedback from one of the Mystery Shoppers that the Neutral Vendor had since paid all their overdue payments and that their time-sheet backlogs were being cleared for the first time. For the remaining case, we have

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			advised of the steps being taken between the contract manager and the Neutral Vendor and have requested that they keep us informed if they experience any further delays to payments.
New West Midlands Police and Crime Commissioner	Pre-procurement engagement	A Mystery Shopper raised concerns that the procurement project to procure a national police ballistics matching and information system would not result in an open tendering process.	We recommended that testing the market through a compliant tendering process would be the most effective way of ensuring value for money. If the PCC considers that this is not a suitable and/or possible approach, and considers a negotiated procedure without prior competition or other alternative delivery approach is the right solution specialist advice should be sought to ensure this is a sound basis upon which to proceed. The PCC said this advice would be taken into account by their decision making officer.
New Crown Commercial Service (CCS)	Procurement Process	A supplier contacted the service because they did not receive feedback after submitting 3 bids on the Digital Services Framework (DSF).	CCS confirmed that the supplier was not eligible to bid for the opportunities and a meeting was brokered between DSF and the supplier. This clarification meeting helped the supplier understand that they had only responded to a Pre Tender Market Engagement and not submitted a bid in 3 instances (feedback is not given at this stage as it is not a further competition).
Care Quality Commission (CQC)	Tender documentation developed in a way which favoured suppliers who had previously worked within the organisation.	The Mystery Shopper raised concerns that the CQC tender for Visual Thinking was favouring suppliers who had previously worked within the organisation and was written with a particular bidder in mind. As a result, the Mystery Shopper decided not to submit a bid.	We investigated this case and the CQC told us that they did not intend to favour any particular suppliers in this tender and did not distinguish between public and private sector experience in order to not preclude a company that might add value. The CQC acknowledged that some of the drafting within the ITT could have made it clearer that particular experience within the organisation was not mandatory in order to be successful in this opportunity. Our recommendation was that for all future procurements, that they make it very clear in the ITT that an 'in-depth knowledge' need not be linked to previous experience within the specific organisation. The CQC accepted this recommendation.
UK Shared Business Services (UKSBS)	Procurement Timescales	A Mystery Shopper raised concerns about the deadline for questions in relation to a UK SBS tender. They also requested some additional feedback on their bid.	UKSBS confirmed that the question had been received before the deadline. The response to the supplier's question had been published about 2 1/2 hours after the official deadline for responses to questions as UKSBS had to receive information from the customer, Higher Education Funding Council for England (HEFCE). The bidder

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			was also provided with some additional feedback on their bid.
Department of Energy & Climate Change (DECC)	Procurement Process	A Mystery Shopper contacted the team due to the length of the ITT document for a DECC procurement.	The team found the document to be proportionate but felt the scoring needed further explanation and informed the supplier of this approach. An explanation as to the scoring was provided by DECC and this was provided to the supplier. There were no other recommendations to be made to DECC.
East Devon District Council	Procurement Strategy	A Mystery Shopper raised concerns that procurements associated with East Devon council's project to relocate its headquarters had not been carried out in accordance with the EU procurement rules and Public Contracts regulations.	We discussed the concerns raised with the council who confirmed that procurements had been carried out in accordance with the EU rules and Public Contracts regulations as well as the council's own standing orders and we were satisfied that this was the case.
Ordnance Survey (OS)	Ownership of Intellectual Property Rights (IPR)	<p>A Mystery Shopper raised the concerns about a re-let of a framework by the OS for the provision of Aerial Photography <i>'Remote Sensing Capture and Maintenance Services'</i>. Their two main concerns are as following:</p> <p>OS retaining sole IPR in the deliverables.</p> <p>The Mystery Shopper believes the OS did not consider any alternative solutions (such as the supplier retaining the IPR, but providing OS with an 'unrestricted license' at a discounted cost) at pre-procurement. They were also concerned that OS are duplicating work that DEFRA and the Scottish Executive have already competed through a public contract. This was particularly important for this</p>	<p>We investigated this case and the OS told us that they had discussions with DEFRA and the Scottish Government prior to them issuing their tender to identify whether there was any scope to harmonise requirements. The OS informed us that upon discussion it became apparent that they required a high detailed resolution of photograph, so would need to continue to let the tender. In addition, OS confirmed that they require wider and significantly different rights than those that are granted under license from the tender let by DEFRA and the Scottish Executive.</p> <p>In terms of the IPR ownership, OS informed us that under the existing framework, they already require ownership of the deliverables. In the establishment the new framework, they did not wish to unduly restrict the market and wanted to ensure value for money through real competition amongst as many suppliers as possible. They held a supplier information day before the framework was re-let and talked through all of the changes to their requirements with suppliers.</p> <p>OS explained that they decided to retain the IPR for various reasons including: to ensure that they are in a position to deliver changing Crown policy requirements, the ability to use the deliverables on an unrestricted basis, free from third party rights, to cover both its core operations today and in future requirements. They highlighted that</p>

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		<p>Mystery Shopper because they had already won contracts to supply imagery across Great Britain, so would be able to license this data at a reduced cost to OS. The Mystery Shopper believes this tender is therefore not seeking value for money and that the OS have opted to retain the IPR to commercially benefit themselves in this market.</p>	<p>wherever possible, OS aims to procure IPR ownership in all deliverables it procures, and this is particularly the case for bespoke deliverables such as these.</p> <p>Conclusion -In summary, OS have explained that the DEFRA/Scottish data did not meet their requirements. On the question of IPR, government's procurement policy position is that it should be retained by the party best able to exploit it. OS consider they are best placed to exploit IPR, which is why they came to their position. We have therefore concluded that those aspects of their procurement process are sound and that the procurement is being conducted in accordance with the Public Contracts Regulations.</p>
Department of Health (DH)	SME participation in winning bidders supply chain and the weighting criteria on price/quality in the tender	<p>We received two Mystery Shopper cases relating to the Department of Health reprocurement of the Electronic Staff Records project. Both Mystery Shoppers raised concerns that the winning bidder did not include subcontracting to SMEs in their bid, which was something that was clearly encouraged in the tender documentation. In addition, they were concerned that the winning bidder was selected purely on cost alone.</p>	<p>We investigated this case and DH informed us that a common theme across all the bids received at ITN stage was the use of SMEs in their solution, which was encouraged by DH. Different bidders used SMEs to provide different components, but they confirmed that all bidders at ITN stage proposed the use of SMEs. The winning bidder would be subcontracting a portion of the work to 4 different SMEs. In addition, DH explained that an evaluation approach was published in advance for the procurement which contained both price and quality considerations. At PITN and ITN quality was set at 70% of the evaluation score and price was set at 30%.</p>
Care Quality Commission (CQC)	Procurement Timescales	<p>A Mystery Shopper raised concerns about a tight 5 working day timescale to respond to a low value tender for Visual Thinking.</p>	<p>Care Quality Commission acknowledged that the short timescale was out of line with their normal practice of allowing at least 10 working days (2 weeks) to respond to a tender of this size and complexity. On this occasion there were a number of interdependencies with other projects which constrained the amount of time available. CQC have advised that they will learn from the challenges to try and plan a more realistic timeline in future.</p>
NHS England	Short timescales for submitting bids &	<p>The Mystery Shopper raised concerns about the fact that they</p>	<p>Timescales: We investigated this case and NHS England fed back to us that they always aim to provide a reasonable timeframe for</p>

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	feedback	<p>were only given 6 days in which to prepare responses to a number of quality questions and provide daily rates. They were unsuccessful in their bid and felt that the quality and amount of feedback received was significantly less than they had recently received on another NHS England tender. The Mystery Shopper felt that this was an inconsistent approach to feedback across NHS England procurements.</p>	<p>proposals to be submitted for any call-off process. There are however instances where the project requirements are urgent, which can impact on timescales. Where timescales are reduced NHS England take steps to give the market advance notice of the opportunity. For this requirement, all suppliers on the framework were notified 10 days prior to issuing the opportunity that the tender would be issued and the turnaround would be relatively short. Suppliers were also given access to the PIN and information pack in advance, enabling suppliers to consider the opportunity in advance. Feedback: NHS England told us that all requests for feedback are considered with proportionality and equal treatment in mind and that the level of feedback provided can vary depending on the complexity and timescales for the project, as well as the requirements of the particular framework agreement. The Mystery Shopper was provided with initial feedback and upon a further request, were provided with more detailed feedback. All suppliers that participated in the PCS legal tender were given the same level of feedback which was considered to be proportionate given the circumstances of the tender.</p>
Essex County Council	Procurement Process Issues with Specification	<p>A Mystery Shopper raised concerns about a tender for "Monitoring the attendance for children in care." believing that there was insufficient pre-market engagement to enable the council to fully understand the range of different services on offer. The Mystery Shopper therefore believes that the council ended up developing a specification for a telephone call system that only the current provider could meet in full.</p>	<p>Essex County Council explained that commissioning requirements were defined sufficiently to ensure a compliant service delivery for this service. In respect of pre-market engagement, relevant engagement / advertisement was undertaken (total time of 57 days) where there was opportunity for all bidders to seek clarification. All potential providers were invited to include sufficient information to enable a thorough assessment based on published evaluation criteria. All bids received were assessed using the published MEAT criteria within the specification which was based on the Council's identified needs of the service. The council advised that daily contact via telephone calls with schools was essential to ensure that where there is unexplained absence a rapid follow up to ensure the safety and wellbeing of the Council's children in care can be made.</p>

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Ministry of Justice (MOJ)	Procurement Process Issues with Specification	A Mystery Shopper received an email alert for an opportunity on Contracts Finder, but upon further enquiry found that this was not open to bidders as it was being called off from a framework agreement. The enquirer was concerned that this was not the best route to market.	The MOJ noted the error in publishing this call off as an opportunity. The authority provided a detailed explanation as to why they felt that this particular framework lot was suitable in this case, citing that of the 14 suppliers invited to bid for this opportunity, the majority had the experience and skills relevant to the MOJ's requirement. However we have advised the MOJ to consider other available frameworks for similar future requirements, for example the Crown Commercial Service's Consultancy One.
Suffolk County Council	Procurement Process Issues with Specification	A Mystery Shopper raised concerns about a procurement for Looked after children. The Mystery Shopper was concerned that there appeared to be insufficient pre-market engagement to enable the council to fully understand the range of different services on offer. For example, there was no opportunity given to potential providers to demonstrate the merits of their services and systems. The enquirer therefore believed that the council ended up developing a specification for a telephone call system that only one potential provider (the incumbent) could meet in full.	The Council accepted that, given a longer period of time it would have been possible to have a more in depth market engagement process, however due to timescales and the size of the contract they decided to limit this on this occasion. The current contract runs for two years with an option to extend and the Council have committed to commence the commissioning intentions / market engagement for the future contract from April 2015 to allow sufficient time for this. The Council were able to provide a reasonable explanation for their approach in this case and demonstrated that they considered all offers, including an alternative offer based on a data extraction solution. They provided strong justification for rejecting the alternative offer which did not demonstrate the level of safeguarding and resources required by the Council.
Central Bedfordshire Council	Procurement Process Issues with Specification	A Mystery Shopper raised concerns regarding feedback they received on their bid for Looked After Children Attendance Monitoring Service. They requested further information regarding a number of	The council provided a reasoned response to the scoring of the supplier's bid in most aspects. We did however highlight that the Council's approach to insurance requirements was out of line with our guidance in Procurement Policy Note PPN 02/13 in which we recommend that if at the selection stage a potential provider cannot provide the level of cover required, an undertaking to secure the

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		points in their bid.	insurance should be sufficient (the Council had indicated that only ½ the marks were available if a supplier were to secure an undertaking to raise their insurance). The Council have agreed to review their blanket approach to insurance levels in low value tenders but stand by their approach to scoring. The Council also offered to meet with the supplier to resolve any further queries that they might have.
Crown Commercial Service (CCS)	Procurement Timescales	A Mystery Shopper was looking to form a consortium to bid for a place on framework agreement for temporary medical staff. He was concerned that there was insufficient time in the procurement process to enable a consortium to be formed.	CCS explained that they issued a Prior Indicative Notice in July 2014 and followed this up with a supplier day on 7 August to communicate the structure and specification of the tender and to involve the market. The option for suppliers to enter in to a consortium was discussed at this event. CCS advised that they did not require parties to enter into a legal consortium arrangement prior to the notification of award to the tender. Successful suppliers will only be required to enter into a legal arrangement when they have been advised that they have been successfully appointed to the Framework.
Metropolitan Police Authority	Financial Assessment at Tender Stage	A Mystery Shopper raised concerns about the approach to assessing the financial strength of suppliers in a procurement of a framework agreement for the supply of uniforms.	We examined the pre-qualification questionnaire and concluded that the Metropolitan Police Service had adopted a reasonable approach to assessing supplier financial risk. The Mystery Shopper was content with this outcome.
Haringey Council	Procurement Process Issues with Specification	A Mystery Shopper raised concerns about a procurement by Haringey Council for "Provision for attendance tracking for Children in Care" They felt that the specification was written in a way that restricted competition as it did not consider equivalent ways of gathering this data other than via daily telephone calls, e.g. via electronic means.	We investigated this case with Haringey Council and the request for an 'extranet' system was a request for the Council to have access to an external internet system for immediate access to attendance data which could be accessed by a number of staff. They said this was the commissioners preferred method of enabling access to the information on a 24 hour basis. Daily calls were required in order to take note of immediate changes in school places and moves of children. Neither of these requirements were included to favour any supplier, but to ensure that a safe and effective service was provided that safeguards Looked After Children.

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London Borough of Bexley	Transparency	A Mystery Shopper raised concerns about a procurement by London Borough of Bexley for "Monitoring Attendance Data of Looked After Children". The enquirer raised concerns that three written quotes were not obtained when renewing the contract, as stated in Bexley Council Contract Procedure rules.	We investigated the case and asked the Council why the contract had not been advertised. Bexley Council advised that the annual value of the contract was under £10,000 (£9781.00) and, as such, did not require 3 quotations to be sought. The council have advised that they will carry out a (3 quote) procurement process for the service 1 st April 2015 to 31 st March 2016 as it is envisaged next year's spend will increase hence the requirement for the quotations.
Enfield Council	Procurement Process Issues with Specification	A Mystery Shopper raised concerns about a procurement by Enfield Council entitled "Supply of: An education attendance and attainment tracking system" They were concerned that they were told that there was no formal process for appealing the evaluation and are also concerned that Council has indicated in their feedback that the potential threat of an Ofstead investigation unduly influenced the Council's decision to award the contract to the incumbent supplier, Welfare Call. They argue that as this issue did not form any part of the evaluation it should not have been taken into consideration when evaluating the bids.	We investigated this case with Enfield Council and confirmed that this tender process was run in line with the Council's Contract Procedure Rules, whereby three quotes must be sought for contracts of this value. This was conducted via the London Tenders Portal. The Council advised the provider is entitled to ask for reasons to why their quotation was unsuccessful and they are keen to ensure that providers are given positive constructive feedback to help improve their performance in future competition. The Council offered to provide the Mystery Shopper with further feedback directly. This meeting took place and the concerns raised by the provider were addressed in full.
Suffolk County Council	Specification	A mystery shopper raised concerns about a procurement for Looked after children. The enquirer was concerned that there appeared to	The Council accepted that, given a longer period of time it would have been possible to have a more in depth market engagement process, however due to timescales and the size of the contract they decided to limit this on this occasion. The current contract runs for

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		<p>be insufficient pre-market engagement to enable the council to fully understand the range of different services on offer. For example, there was no opportunity given to potential providers to demonstrate the merits of their services and systems. The enquirer therefore believed that the council ended up developing a specification for a telephone call system that only one potential provider (the incumbent) could meet in full.</p>	<p>two years with an option to extend and the Council have committed to commence the commissioning intentions / market engagement for the future contract from April 2015 to allow sufficient time for this. The Council were able to provide a reasonable explanation for their approach in this case and demonstrated that they considered all offers, including an alternative offer based on a data extraction solution. They provided strong justification for rejecting the alternative offer which did not demonstrate the level of safeguarding and resources required by the Council.</p>
Halton Borough Council	Transparency	<p>A Mystery Shopper raised concerns about a procurement by Halton Borough Council for “Looked After Children – Attendance and Assessment Monitoring”. The enquirer raised concerns that three written quotes were not obtained when renewing the contract.</p>	<p>We investigated the case and asked the Council why the contract had not been advertised. Halton Borough Council advised that Waiving the Council’s standing orders and awarding to the incumbent supplier enabled surety and continuation of service, consistency of data for decision making, and reduced risk of instability in the provision of attendance and behaviour services and interventions to Children in Care / schools, during a period of transition within the business (adopting requirements for the Virtual School for Children in Care, and the Virtual Head teacher role, in line with new legislation – Children & Families Act). Also the procurement was under the EU threshold and on this occasion they acted within the councils own rules as applicable below that threshold.</p>
Sheffield City Council	Specification	<p>A Mystery Shopper raised concerns about a contract for an “In Care Support Programme/ePEP solution” that was extended contrary to the Council’s own standing order procedures on the basis of there being only one</p>	<p>The Council have advised that the decision to waive the Council’s own standing order requirement for the In Care Support Programme/ePEP solution was based on an attractive 2 year proposal being presented by the incumbent supplier. Waivers are only granted should the relevant officer feel a sound business decision and good commercial deal has been made. At the time of the extension the relevant officer believed that no other suppliers</p>

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		<p>provider in the market. They were concerned about the justification for this approach when a tender that was run concurrently for “Children missing education attendance monitoring” was openly competed.</p>	<p>were capable of delivering the service. In order to test this assumption the Council’s Commercial Service openly tendered for a similar service for “Children missing education attendance monitoring”. This confirmed that there were other potential suppliers in the marketplace, although in this case the same supplier who was awarded the extension also provided the most economically advantageous bid in this exercise. The Council considers the initial waiver remains justified in light of this competitive tender, but have also committed to conduct a further market test by November 2016. This will be carried out by a tender activity via YORtender. The Council also offered to meet the enquirer face to face to resolve any outstanding queries.</p>
<p>Capita, as supplier to Central Government (Ministry of Defence - MOD)</p>	<p>Procurement Timescales</p>	<p>A Mystery Shopper raised concerns about a short timescale for an opportunity for providing specialist training that was advertised by Capita on behalf of the MOD.</p>	<p>The MOD explained that an earlier procurement for this requirement in November 2014 did not deliver any complaint bids. As this training requirement is time critical, forming the first of three phases of the course, the MOD had no option but to restart the procurement under an accelerated timetable.</p>
<p>Competition & Markets Authority (CMA)</p>	<p>Procurement Timescales</p>	<p>A Mystery Shopper raised concerns about a short timescale for an opportunity for investigator training.</p>	<p>The CMA advised that they were trying to strike a balance between the time allowed for preparation of tenders and ensuring that there was sufficient time for mobilisation. The CMA agreed to extend the deadline, noting that the requirement still needed to be delivered from approximately the middle of January.</p>
<p>Midas Construction</p>	<p>Late Payment</p>	<p>A complaint was received from a supplier who is a sub contractor to Wiltshire Council concerning the payment terms of Tidworth Primary School and its late payment of invoices (60 day payment terms).</p>	<p>We made the Local Authority aware of the situation and they advised they will refer to the main contractor.</p>