



Procurement Policy Note – Requirements for contracting authorities to assist with procurement investigations

Information Note 09/15 1 June 2015

Issue

1. This note explains new statutory requirements for certain contracting authorities to ensure they comply with procurement investigations. These investigations are currently conducted by the Crown Commercial Service Mystery Shopper service on behalf of the Minister for the Cabinet Office. If investigated, a contracting authority covered by the statutory requirements must give reasonable assistance and must provide information and documents required by Mystery Shopper within 30 calendar days.

Dissemination and Scope

2. This PPN applies to all contracting authorities covered by Section 40 of the Small Business Enterprise and Employment Act 2015 (the SBEE Act). This includes contracting authorities as defined by the Public Contracts Regulations 2015 but with some specific exceptions. Exceptions include:
 - bodies exercising functions that are wholly or mainly devolved, namely Northern Irish, Scottish or Welsh devolved functions;
 - schools and academies; and
 - procurement of Healthcare Services for the purpose of the NHS¹.
3. Whilst not covered by section 40 of the SBEE Act, central government departments, their arms-length bodies and non-departmental public bodies are still expected to comply with Mystery Shopper investigations through normal interdepartmental cooperation.
4. Please circulate this PPN within your organisation, drawing it to the attention of those with a purchasing role.

¹ within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013.

Timing

5. The SBEE Act received Royal Assent on 26 March 2015 and the provisions in section 40 came into force on 26 May 2015.

Background

6. The Mystery Shopper service investigates and addresses concerns raised about public sector procurements. It also undertakes proactive investigations - 'spot checks' - of procurement processes and documentation. The service was launched in February 2011 as part of a range of measures to build the commercial capability of contracting authorities through their adoption of good procurement policy and practice; and to ensure that public procurements do not impose unnecessary barriers to small businesses when bidding for public contracts.
7. The SBEE Act introduces a strengthened Mystery Shopper service, providing a statutory basis for its procurement investigations. Section 40 of the Act includes provisions requiring contracting authorities to assist investigations and to provide relevant information and/ or documents within 30 days of a formal notice requiring them. Section 40 also explains that Mystery Shopper may publish the results of investigations on GOV.UK.
8. When an investigation starts, the Mystery Shopper team will ask the contracting authority to respond as soon as possible, usually within two weeks when the issue relates to a procurement that has already concluded. If an investigation relates to a live procurement (in particular if it relates to a concern regarding a short timescale), the Mystery Shopper team will ask an authority to respond to a shorter timetable in order for the service to address concerns raised before the conclusion of the procurement process.
9. If the authority fails to respond, or fails to assist the Mystery Shopper team with their investigation, the team may issue a notice under Section 40 requiring information and / or documents. There is no prescribed form for the notice; Mystery Shopper can direct the form or manner in which the information and / or documents must be provided by the contracting authority. Section 40 requires the contracting authority to comply with the notice within 30 days of the day on which it is given. This requirement also applies to any subsequent notice sent during the course of the investigation, which requires information and/ or documents.

Contact

10. Enquiries about this PPN should be directed to the Crown Commercial Service customer service desk (telephone 0345 410 2222, email info@crowncommercial.gov.uk).