

GLOUCESTERSHIRE HOSPITALS NHS FOUNDATION TRUST

STANDING ORDERS

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STANDING ORDERS

Foreword

NHS Trusts are required by law to make Standing Orders (SOs), which regulate the way in which the proceedings and business of the Trust will be conducted. Standing Orders are part of its corporate governance arrangements.

The Standing Orders, Standing Financial Instructions and the "Schedule of decisions reserved to the Board and the Scheme of Delegation" provide a comprehensive business framework that can be applied to all activities. They fulfil the dual role of protecting the Trust's interests and protecting staff from possible accusation that they have acted less than properly.

Members of the Board of Directors and all members of staff should be aware of the existence of and work to these documents.

STANDING ORDERS

Contents

	Foreword	2
1.	Interpretation	4
2.	The Trust	4
3.	Meetings of the Board of Directors	5
4.	Arrangements for the Exercise of Functions by Delegation	9
5.	Committees	10
6.	Declarations of Interests and Register of Interests	11
7.	Standards of Business Conduct	14
8.	Tendering and Contract Procedure	15
9.	Disposals	19
10.	In-House Services	20
11.	Custody of Seal and Sealing of Documents	21
12.	Signature of Documents	22
13.	Miscellaneous	23
	Annex A:Tendering Procedure	24

**STANDING ORDERS
FOR THE REGULATION OF PROCEEDINGS AND BUSINESS
OF THE BOARD OF DIRECTORS**

1. Interpretation

- 1.1 Save as otherwise permitted by law, the Chair shall be the final authority on the interpretation of the Standing Orders (on which they should be advised by the Chief Executive and/or the Director of Corporate Governance).
- 1.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts or the Trust Constitution shall have the same meaning in this interpretation.

2. The Trust

- 2.1 The Trust has the functions conferred on it by the NHS Act 2006 and by its Authorisation.
- 2.2 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Schedule of decisions reserved to the Board and the Scheme of Delegation" and have effect as if incorporated into the Standing Orders.

3. Meetings of the Board of Directors

- 3.1 **Admission of the Public and the Press** – subject to Standing Order (SO) 3.2 below, all meetings of the Board are to be open to members of the press and public.
- 3.2 The Board may resolve to exclude members of the press and/or public from any meeting or part of a meeting on the grounds:
- 3.2.1 That publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- 3.2.2 The special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 3.3 The right of attendance referred to above carries no right to ask questions or otherwise participate in the meeting.
- 3.4 The Chair (or other person presiding under the provisions of SO 3.17) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the business of the meeting shall be conducted without interruption and disruption. The Chair may exclude any member of the public or press from a meeting of the Board if they are interfering with, or preventing the proper conduct of the meeting.
- 3.5 Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.
- 3.6 **Calling Meetings** - Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 3.7 Meetings of the Board may only be called in accordance with this paragraph. The Chair may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to them, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.8 The Board may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. The Board shall agree a protocol to be applied in the case of such meetings.
- 3.9 **Notice of Meetings** - Before each meeting of the Board, a Notice of the Meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their behalf, shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to them at least fourteen clear days before the meeting.
- 3.10 Subject to SO 3.12, lack of service of the notice on any Director shall not affect the validity of a meeting.
- 3.11 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

- 3.12 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or email.
- 3.13 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted (such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).
- 3.14 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten clear days before the meeting, subject to Standing Order 3.9. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.15 Agendas will be sent to members six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.
- 3.16 **Chair of Meeting** - The Chair, or in their absence, the Vice-Chair, shall preside at meetings of the Board and shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.
- 3.17 If the Chair and Vice-Chair are absent from a meeting of the Board, the Directors shall appoint another Non-Executive Director to preside over that meeting and they shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.18 **Notices of Motion** - A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This standing order shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.11.
- 3.19 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.20 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director(s) who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.21 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.22 Subject to SO 3.23, when a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- 3.22.1 An amendment to the motion.
 - 3.22.2 The adjournment of the discussion or the meeting.
 - 3.22.3 That the meeting proceed to the next business.
 - 3.22.4 The appointment of an ad hoc committee to deal with a specific item of business.
 - 3.22.5 That the motion be now put.

- 3.22.6 A motion to exclude the public (including the press).
- 3.23 The motions specified in paragraphs 3.22.3 and 3.22.5 may only be put by a Director who has not previously taken part in the debate.
- 3.24 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 3.25 **Chair's Ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
- 3.26 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and members present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.27 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.28 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.29 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.30 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.31 An officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.
- 3.32 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.33 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.34 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 3.35 **Joint Directors** - Where the office of a member of the Board is shared jointly by more than one person:
- 3.35.1 either or both of those persons may attend or take part in meetings of the Board;
- 3.35.2 if both are present at a meeting they should cast one vote if they agree;
- 3.35.3 in the case of disagreements no vote should be cast;

- 3.35.4 the presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.43 (Quorum).
- 3.36 **Suspension of Standing Orders** - Except where this would contravene any provision of the Constitution or any statutory provision or any direction made by NHS Improvement (Monitor), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 3.37 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.38 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 3.39 No formal business may be transacted while Standing Orders are suspended. Formal business shall include the proposal of motions and the determination of questions and resolutions, by voting or otherwise.
- 3.40 The Audit and Assurance Committee shall review every decision to suspend Standing Orders.
- 3.41 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- 3.41.1 a notice of motion under Standing Order 3.18 has been given; and
 - 3.41.2 no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
 - 3.41.3 at least two-thirds of the Directors are present; and
 - 3.41.4 the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.
- 3.42 **Record of Attendance** - The names and job titles of the Directors present at the meeting shall be recorded in the minutes.
- 3.43 **Quorum** - No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the Chair and Directors appointed (including at least one Executive Director and one Non-Executive Director) are present.
- 3.44 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.45 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Orders 6 and 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.46 **Frequency** – The Trust shall hold meetings of the Board of Directors at least six times in each calendar year.

4. Arrangements for the Exercise of Functions by Delegation

- 4.1 Subject to a provision in the authorisation or the Constitution, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5 below or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 4.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 2.2) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for ratification.
- 4.3 **E-Governance** – Where agreed by any of the office holders described in SO 4.2 decisions may also be made by way of a written resolution. In such cases the document or issue in need of review should be sent to Directors and the Board of Directors should have a specified number of days to register their approval via email or other means to the Director of Corporate Governance. The document should not require extensive discussion, although the Board of Directors may choose to ask specific questions to the document author. The email will need to clearly specify the approval that is sought. A document or issue will be considered approved when three-quarters of the Board of Directors has approved it. As in a Board meeting, the Chair shall have the casting vote in the event of an evenly split vote. Notice of all decisions taken by written resolution will be reported to the following formal Board or Committee meeting.
- 4.4 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The Constitution and terms of reference of the committees and their specific executive powers shall be approved by the Board.
- 4.5 **Delegation to Officers: Schedule of decisions reserved to the Board and the Scheme of Delegation** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still be accountable to the Board.
- 4.6 The Director of Corporate Governance shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board, subject to any amendments agreed during the discussion. The Director of Corporate Governance may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board as indicated above.
- 4.7 Nothing in the “Reservation of decisions to be reserved to the Board and the Scheme of Delegation” shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Executive Directors to provide information and advise the Board in accordance with any statutory requirements.

5. Committees

- 5.1 **Appointment of Committees** - Subject to such directions as may be given by NHS Improvement (Monitor), the Trust may and, if directed by NHS Improvement (Monitor), shall appoint committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 5.2 A committee appointed under SO 5.1 may, subject to such directions as may be given by NHS Improvement (Monitor) or the Board, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Board committee (whether or not they include Directors of the Trust).
- 5.3 The Standing Orders of the Board as far as they are applicable shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.
- 5.4 Each Board committee shall have such terms of reference and powers and be subject to such conditions as the Board shall decide. Each sub-committee shall have such terms of reference and powers and be subject to such conditions as the appointing committee shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 5.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State or NHS Improvement (Monitor) and where such appointments are to operate independently of the Trust, such appointment shall be made in accordance with the regulations laid down by the Secretary of State.
- 5.8 Without prejudice to the formation of any other committees or sub-committees as the Board may see fit, the following committees shall be established by the Board:
- a) Audit and Assurance Committee
 - b) Remuneration Committee
- 5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 5.10 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

6. Declarations of Interests and Register of Interests

6.1 Declaration of interests

6.2 Each Director shall comply with paragraph 11 of the Constitution regarding conflicts of interest.

6.3 Interests that are required to be declared by a Director in accordance with paragraph 11 of the Constitution are:

6.3.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in SOs 6.6 and 6.10 (subject to SO 6.7);

6.3.2 any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in SOs 6.8 and 6.10; and

6.3.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in SOs 6.9 and 6.10.

6.3.4 An interest must be declared under paragraph 11.3 of the Constitution to the Director of Corporate Governance at the time of the Director's appointment or as soon thereafter as the interest arises, and in any event within seven clear days of becoming aware of the existence of that interest.

6.3.5 If during the course of a meeting the Board, a Director has an interest of any sort in a matter which is the subject of consideration the Director concerned shall disclose the fact, and the Chair shall decide what action to take. This may include excluding the Director from the discussion of the matter in which the Director has an interest and/or prohibiting the governor from voting any such matter.

6.3.6 Subject to SO 6.3.4 if a Director has declared a financial interest in a matter (as described in SOs 6.6 and 6.7) they shall not take part in the discussion of that matter nor vote on any question with respect to that matter.

6.3.7 Any interest declared at a meeting of the Board and subsequent action taken should be recorded in the meeting minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

6.3.8 This SO 6 applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Board and applies to a member of any such committee or sub-committee (whether or not they are also a member of the Trust) as it applies to a member of the Trust.

6.4 Nature of interests

6.5 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by NHS Improvement (Monitor).

6.6 A financial interest is where a Director may receive direct financial benefits (by either making a gain or avoiding a loss) as a consequence of a decision that the Board makes. This could include:

6.6.1 Directorships, including non-executive Directorships held in any other organisation

- which is doing or is likely to be doing business with an organisation in receipt of NHS funding;
- 6.6.2 employment in an organisation which is doing or is likely to do business with an organisation in receipt of NHS funding; or
- 6.6.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing or is likely to do business with an organisation in receipt of NHS funding.
- 6.7 A Director shall not be treated as having a financial interest in any a matter by reason only:
- 6.7.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
- 6.7.2 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts;
- 6.7.3 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
- 6.7.4 of any remuneration or allowances payable to a Director in accordance with the Constitution.
- 6.8 A non-financial professional interest is where a Director may receive a non-financial professional benefit as a consequence of a decision that the Board makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a Director is:
- 6.8.1 an advocate for a particular group of patients;
- 6.8.2 a clinician with a special interest;
- 6.8.3 an active member of a particular specialist body; or
- 6.8.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 6.9 A non-financial personal interest is where a Director may benefit personally as a consequence of a decision that the Board makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where a Director is:
- 6.9.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
- 6.9.2 a member of a lobbying or pressure group with an interest in health and/or social care.
- 6.10 A Director will be treated as having an indirect financial interest, indirect non-financial professional interest or indirect non-financial personal interest where they have a close association with another individual who has a financial interest, non-financial professional interest or a non-financial personal interest in a decision that the Director is involved in making. This includes material interests of:
- 6.10.1 close family members and relatives, including a spouse or partner or any parent, child, brother or sister of the Director;
- 6.10.2 close friends and associates; and
- 6.10.3 business partners.
- 6.11 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.

6.12 Register of interests

6.13 The Director of Corporate Governance will ensure that a register of interests is established to record formally declarations of interests of Directors.

6.14 Details of the register will be kept up to date and reviewed annually.

6.15 The register will be available to the public.

7. Standards of Business Conduct

- 7.1 **Policy** - Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff'. The following provisions should be read in conjunction with this document.
- 7.2 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors of the Trust, directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 7.3 A Director or Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 7.4 Informal discussions outside appointments, panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 7.5 **Relatives of Directors, Governors or Officers** - Candidates for any staff appointment shall, when making application, disclose in writing whether they are related to any Director, Governor or the holder of any office in the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 7.6 The Directors, Governors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 7.7 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 7.8 Where the relationship of an officer or another Director to a Director or Governor is disclosed, the SO 6 shall apply.

8. Tendering and Contract Procedure

- 8.1 **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.39 (Suspension of SOs) is applied).
- 8.2 **EU Directives Governing Public Procurement** - Directives by the Council of the European Union, as implemented in English Law, for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
- 8.3 The Trust shall comply as far as is practicable with the requirements of the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the Trust shall comply as far as is practicable with NHS Improvement (Monitor) guidance on Consultancy Spending published 2 November 2016.
- 8.4 **Competition** - The Trust shall ensure that competitive tenders/quotations are invited, either directly or via a framework, for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals. Competitive quotations are not required for expenditure under £5,000 but expenditure must not be disaggregated to avoid a competitive procurement process. The Director of Finance or nominated officer shall maintain a list of applicable exemptions from waiving competition.
- 8.5 Competitive tendering/quotation procedures may be waived, subject to prior review by Procurement and by the Director of Finance only where:
- 8.5.1 the estimated expenditure or income is above or is reasonably expected to be above £5,000 excluding VAT and does not, or is not reasonably expected to, exceed £25,000 excluding VAT and;
- 8.5.2 there is an urgent requirement and/or;
- 8.5.3 the goods, services or works are of a special characteristic that, in the opinion of the Chief Executive or the nominated officer, it is not possible or desirable to undertake a competitive process and/or;
- 8.5.4 where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with.
- 8.6 Formal tendering procedures over £25,000 excluding VAT and under the thresholds of the EU Procurement Directives may be waived, subject to prior review by Procurement, by the Director of Finance and the Chief Executive where:
- 8.6.1 the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
- 8.6.2 specialist expertise is required and is available from only one source; or
- 8.6.3 the task is essential to complete the project, AND arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
- 8.6.4 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
- 8.6.5 Where provided for in the Capital Investment Manual.
- 8.7 The limited application of the waiving of these competition rules should not be used to avoid competition or for administrative convenience or to award further work to a supplier originally appointed through a competitive procedure.

- 8.8 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SO 8.6.1 to 8.6.5, the fact of the waiver and the reasons should be documented and reported to the Audit and Assurance Committee in the Single Tender Action Report.
- 8.9 Except where SO 8.5 to 8.8, or a requirement under SO 8.2 applies, the Board shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 8.10 The Board shall ensure that the organisations invited to tender / quote for building and engineering works shall be those on an approved list in accordance with Annex A section 5. Where, in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.
- 8.11 Tendering procedures are set out in Annex A.
- 8.12 **Quotations** - are required when the intended expenditure is reasonably expected to exceed £5,000 excluding VAT but less than £25,000 excluding VAT.
- 8.13 Where quotations are required under SO 8.12 they should be sought from at least three firms/individuals as per Annex A based on specifications or terms of reference prepared by, or on behalf of, the Board.
- 8.14 Quotations should be in writing unless the Chief Executive or the nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 8.15 All quotations should be treated as confidential and should be retained for inspection for the period of the contract awarded.
- 8.16 The Chief Executive or the officer nominated by them should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 8.17 **Where tendering or competitive quotation is not required** - Where tenders or quotations are not required, because expenditure is below £5,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board.
- 8.18 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board may also determine from time to time that in-house services should be market tested by competitive tendering.
- 8.19 **Private Finance** - When the Board proposes, or is required, to use finance provided by the private sector the following should apply:
- 8.19.1 The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector. The proposal must be specifically agreed by the Trust in the light of such professional advice as should reasonably be sought in particular with regard to vires.
- 8.19.2 The selection of a contractor/finance company must be on the basis of competitive

tendering or quotations.

8.20 **Contracts** - The Trust may only enter into contracts within its statutory powers and shall comply with:

- a. these Standing Orders;
- b. the Trust's SFIs;
- c. EU Directives and other statutory provisions;
- d. any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;
- e. such of the NHS Standing Conditions of Contract as are applicable.
- f. any framework agreement terms and conditions that apply to contracts made under frameworks, such as the Government Procurement Service.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

8.21 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money.

8.22 **Personnel and Agency or Temporary Staff Contracts** - The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise regrading of staff, and to enter into contracts for the employment of agency staff or temporary staff.

8.23 **Contracts for Services with Individuals or Personal Services Companies** - The Chief Executive shall nominate officers to assess the tax status on individuals/personal services companies to ensure compliance with HMRC Self-Employment/IR35 status, prior to entering into any contracts of this nature.

8.24 **Healthcare Services Contracts** - Service contracts with NHS commissioners for the supply of healthcare services shall be drawn up in accordance with the National Health Service Act 2006.

8.25 The Chief Executive shall nominate officers with power to negotiate for the provision of healthcare services with commissioners of healthcare.

8.26 **Cancellation of Contracts** - Except where specific provision is made in model Forms of Contracts or Standing Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 8.2 and 8.3 there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010 and other appropriate legislation.

8.27 **Determination of Contracts for Failure to Deliver Goods or Material** - There shall be inserted in every applicable written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the

event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

8.28 **Contracts Involving Funds Held on Trust** – As management processes overlap, the preceding requirements in respect of contracts equally apply to contracts involving funds held on trust.

8.29 All personnel involved in tendering and contracting activities must be aware of the Bribery Act 2010 and must ensure that all dealings with other organisations and their staff do not bring them in breach of the Act that could leave them open to criminal proceedings being. All Trust staff involved in the tendering of a project shall complete the Conflicts of Interest Form.

8.30 **The Bribery Act (2010)** – Under the Bribery Act and the terms and conditions of an employee's contract, it is an offence for staff to accept any inducement or reward for:

8.30.1 doing, or refraining from doing anything in their official capacity; or

8.30.2 showing favour or disfavour to any person in their official capacity.

8.30.3 The Bribery Act 2010 replaces the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916. This broadly defines the two sections below:

8.30.3.1 two general offences of bribery:

- i. offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly;
- ii. requesting or accepting a bribe either in exchange for acting improperly or where the request or acceptance is itself improper;

8.30.3.2 the corporate offence of negligently failing by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation.

9. Disposals

9.1 Competitive Tendering or Quotation procedures shall not apply to the disposal of:

- a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or their nominated officer;
- b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- c) items to be disposed of with an estimated sale value of less than £500, this figure to be reviewed annually; and
- d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract.

10. In-House Services

- 10.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- 10.1.1 Specification group, comprising the Chief Executive or nominated officer(s) and specialist(s).
- 10.1.2 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
- 10.1.3 Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £200,000, a Non-Executive Director should be a member of the evaluation team.
- 10.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 10.3 The evaluation group shall make recommendations to the Board.
- 10.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

11. Custody of Seal and Sealing of Documents

- 11.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Director of Corporate Governance in a secure place.
- 11.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof, or where the Board has delegated its powers.
- 11.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by them) and authorised and countersigned by the Chief Executive (or an officer nominated by them who shall not be within the originating Division).
- 11.4 Where it is necessary that a document be sealed (in accordance with SO 11.6), the seal shall be affixed in the presence of the Director of Corporate Governance and will be attested by them.
- 11.5 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a register provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. The register of sealing shall be maintained by the Director of Corporate Governance. A report of all sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).
- 11.6 **Sealing Policy** - The following contracts should have the seal applied:
- 11.6.1 All contracts for the purchase/lease of land and/or building;
- 11.6.2 All contracts for capital works exceeding £1,000,000;
- 11.6.3 Any contract or agreement with organisations other than NHS or other government bodies including local authorities where the whole-life value exceeds or is expected to exceed £10,000,000, except for contracts within the Group; and
- 11.6.4 Any contract where the other party requests a seal.

12. Signature of Documents

- 12.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 12.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed), the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

13. Miscellaneous

- 13.1 **Directors acting as a corporate trustee** All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust. Directors acting on behalf of the Trust as a corporate trustee are acting as a quasi-trustee. Full recognition must be given to the guidance and regulation as determined by the Charity Commission Accountability for charitable funds held on trust is to the Charity Commission and to Monitor. Accountability for non-charitable funds held on trust is only NHS Improvement (Monitor).
- 13.2 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.
- 13.3 **Documents having the standing of Standing Orders** - Standing Financial Instructions, "Schedule of decisions reserved to the Board and the Scheme of Delegation" and Board committee and sub-committee Terms of Reference shall have the effect as if incorporated into Standing Orders.
- 13.4 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

Annex A: Tendering Procedure

1 Invitation to Tender

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted electronically, via the Trust E-Tendering system. Approval from the Head of Procurement must be obtained for exceptional circumstances where the E-Tendering system cannot be used. Where tenders are not submitted through the E-Tendering system, they must be submitted in a plain, sealed package bearing the word 'Tender' followed by the Tender Reference Number and the latest date and time for the receipt of such tender. A minimum of two people must open tenders. At least one person must not be involved in the tender process. Neither must be from the originating department.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or NEC terms amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The Standing documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the Department of Health.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Conditions of Contract, or other appropriate public sector Conditions that may apply. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

2 Receipt, Safe Custody and Record of Formal Tenders

- 2.1 Formal competitive tenders shall be submitted on the Trust's E-Tendering system or addressed to the Head of Procurement, Victoria Warehouse where approved in accordance with 1.1 above.
- 2.2 The date and time of receipt of each tender together with the details of the date, time and persons opening the documents will be recorded in the E-Tendering system.
- 2.3 Where tenders are received outside the E-Tendering system in accordance with 1.1, the Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his/her behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.

3 Opening Formal Tenders

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department.
- 3.2 A permanent record shall be maintained to show for each set of competitive tender

invitations despatched:

- a) the names of firms/individuals invited;
- b) the names of and the number of firms/individuals from which tenders have been received;
- c) the total price(s) tendered;
- d) closing date and time;
- e) date and time of opening;
- f) and the record shall be signed by the persons present at the opening, or recorded electronically in an E-Tendering system.

3.3 Where an electronic tendering package is used all actions by both procurement staff and suppliers are recorded within the system audit reports

3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.

3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.

4 Admissibility and Acceptance of Formal Tenders

4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.

4.2 Tenders received after the due date and time (whether hard copy or via electronic means) may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.

4.3 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.

4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his/her own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.

4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his/her offer.

4.6 Necessary discussions with a tenderer of the contents of his/her tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.

4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under

consideration and while the tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.

- 4.8 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 Should a request be made to the Board for acceptance of a tender that has not offered the most economically advantageous tender then the Board shall investigate and consider whether the request can be accepted or whether the tendering exercise should be completed again. Where the Board accepts that the reasons for accepting a tender that is not the most advantageous it shall document these reasons, together with any reference to risks to the Trust in accepting or rejecting the initial request.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.
- 4.11 All Tenders should be treated as confidential and should be retained for inspection for the period of the contract awarded. Successful tenders should be retained for six years after the expiry of the contract awarded.

5 Lists of Approved Firms

- 5.1 The Trust shall use the Constructionline as its list of approved firms for Building and Engineering works, from whom tenders and quotations may be invited. For other services where tenders or quotations are required the Trust will use the processes established by the countywide Procurement Shared Service.
- 5.2 The Chief Executive's prior approval shall be obtained where a firm not on an approved list is asked to tender and a report shall be submitted to the Audit and Assurance Committee on the reasons why the firm has been chosen.
- 5.3 Any Director may request a report on the financial standing of the favoured tenderer which will be carried out by an independent firm of financial advisers.

6 Conflicts of Interest

- 6.1 All Trust staff that are involved in a formal tender process shall sign a declaration of Conflict of Interest. Declarations should be retained with Tender records.