PROCUREMENT OF GOODS AND SERVICES PROCEDURE

January 2017
# PROCUREMENT OF GOODS AND SERVICES

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1. **BACKGROUND**

The Trust's Policy is to seek to maximise value for money in the procurement of goods and services whilst ensuring that operational requirements are fulfilled and statutory obligations met.

**All Trust Officers have a duty to comply with the provisions of this Policy.**

The Policy is a part of Trust Standing Orders/Standing Financial Instructions which themselves are part of the Constitution and Terms of Authorisation of the Foundation Trust along with such directions given by the Independent Regulator.

This Document states the key rules and process with respect to the above whilst assisting Trust Officers to achieve compliance.

For the purposes of this Policy 'Trust Procurement' will be defined as the Trust's Senior Officer with responsibility for Procurement or his/her delegated Deputy as evidenced in the Procurement Department Operational Procedures Manual.

2. **QUOTATIONS AND TENDERS**

Trust Officers will as a matter of course seek to use NHS or other Public Body Contracts. The use of these Contracts negates the need for some or all of the Trust Quotation and Tender Procedures.

In cases where NHS or other Public Body Contracts are either not available or inappropriate for use the following rules by value apply. All values are for the total procurement value over the life of the goods/services:

- From £5,000 to £19,999 - competitive quotations required, a minimum of three to be sought
- From £20,000 to £164,176 - competitive tenders required, a minimum of four to be sought
- Goods above £164,176 - EU Legislation applies
- Services above £164,176 - EU Legislation applies
- Works above £4,104,394 - EU Legislation applies

**It should be noted that;**

Both quotations and tenders are formal requests from the Trust to potential suppliers to provide prices/costs against a defined procurement.

Quotations will usually comprise a single document. The use of quotations provided by potential suppliers to satisfy the requirement for 3 Quotations may be provided on request by the Procurement Department. This discretion will be exercised based upon the knowledge of the potential supplier and proposed procurement and should be requested through the Operational Buyers.

Tenders representing a greater value and potentially more complicated procurements will comprise a range of standard documentation as advised by the Department of Health and Cabinet Office.
In cases where the Trust, by prior agreement, uses another Public Body to undertake procurement then the Statutory Framework of that Body will apply to the procurement – the Trust having agreed and documented this in advance.

In cases where the Trust, by prior agreement, undertakes procurement on behalf of another Public Body the Trust's Statutory Framework will apply – all parties having agreed and documented this in advance.

Mini and further competitions undertaken within existing Frameworks can either be undertaken by the Trust or by the Framework awarding body.

3. **WAIVING ALL OR PART OF THE COMPETITION REQUIREMENTS.**

All Trust Officers should seek, wherever possible, to satisfy the requirements for competition as detailed above.

In exceptional cases where this is not deemed possible, Trust Officers may seek the approval of the Trust to waive these requirements. All proposed Waivers will be requested by means of the Waiver request form [waiver form](#).

The following Approval process for the waiving of competition requirements applies:

- Trust Procurement will consider all requests and review based upon both the information presented and appropriate research.

- The Trust Waiver approval procedures apply including the provision for Waivers below £164,176k in value to be approved by the Director of Procurement.

Waiving of tender requirements may be considered in the following circumstances:

i. Where goods or services are only available from one or two sources

ii. Where genuine and unforeseen urgency exists that precludes compliance to the process as identified in 2 above

iii. Where it is in the commercial and/or operational interest of the Trust

iv. Where there is clear benefit to be gained from maintaining continuity with an earlier procurement and with the benefits of that continuity outweighing any potential financial advantage which could be gained by competitive tendering;

A Waiver Request form should be completed and the reasons should be documented and recorded within this form.

Waiver forms still require authorisation in line with the Trust’s Scheme of Delegation. This is set out in the table below:
<table>
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<tr>
<th>Financial Limit (including VAT)</th>
<th>Waiver Authorised by</th>
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<tbody>
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<td>Up to £164,176</td>
<td>Director of Procurement</td>
</tr>
<tr>
<td>Up to £1,000,000</td>
<td>Chief Finance Officer &amp; Chief Executive</td>
</tr>
<tr>
<td>Over £1,000,000</td>
<td>Trust Board</td>
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It should be noted that European Procurement Law applies at all times and in particular to proposed procurements in excess of the financial threshold appertaining at the time (£164,176 in total value excl VAT as from 1st January, 2016).

European Procurement Law cannot be waivered and the Trust Procurement will advise Budget holders as to how compliance can be achieved.

It should be noted that procurements estimated to be below limits set out as above for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the appropriate Trust Senior Officer.

4. IDENTIFYING POTENTIAL BIDDERS

Trust Procurement will support Budget holders in sourcing and identifying potential suppliers. Sources of potential suppliers will include:

- NHS or other Public Body contractors
- Respondents to Notices placed in the Official Journal of the European Union
- Respondents to Notices placed in appropriate Journals
- Those advised by Trust Officers based upon their operational and technical knowledge

In accordance with Department of Health and Cabinet Office, a pre-selection process will usually be undertaken including, where appropriate, indicative costing methodologies.

A list of the suppliers invited to submit a Tender will be provided for the Exec. Director of Finance’s office and includes the tender reference and the closing date and time for receipt of tenders.

5. TENDERING PROCEDURE

Tender Documents will be issued according to one of Three Methods:

**Method One - Electronically via the Trust Tender Management (TM) System**

This involves giving Tenderers electronic access to Tender Documents and their return electronically.
The Trust may also elect to utilise the Electronic Auction option as part of this Method. This involves facilitating an online reverse auction where against an agreed range of products/services tenderers submit prices within a timescale with an expectation that suppliers submitting the lowest prices will achieve the highest score for the pricing elements of the Tender. The Trust may also invite non-price Tender submissions in addition to the Electronic Auction.

Electronic Auctions will be operated in accordance with the protocols of the TM System provider and the Trust Procurement/E-commerce Department.

**Method Two - Electronically from an approved Trust Officer e-mail address**

This involves the electronic dissemination of the Tender Documents including the Return label and the return of a paper hard copy.

**Method Three - By paper hard copy**

This involves the posting of paper hard copy Tender Documents and the return of paper hard copy.

In all cases an acknowledgement of receipt will be requested usually by electronic means or e-mail. In the case of hard copy Tender Documents an acknowledgement slip will be included in the Tender Pack for completion/return.

Tenders issued electronically as per Method One should be submitted and opened in accordance with the Tender management protocols as agreed by the Trust's Internal Audit Service prior to implementation.

Tenders issued as per Method Two and Method Three must be returned in accordance with the following requirements:

i. Addressed to the Chief Financial Officer and submitted in accordance with the notified tender deadline;

ii. Submitted in a plain sealed package or envelope bearing a pre-printed return address label that also states the tender reference and return date and time (supplied by the Trust);

iii. That tender envelopes/packages shall not bear any names or marks indicating the sender. The use of courier/postal services must not identify the sender on the envelope or on any receipt so required by the deliverer;

iv. Every tender of goods, materials, services or disposals shall embody the relevant NHS Conditions of Contract, as are applicable;

v. Every tender for building or engineering works shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building contract, or for engineering works, the general conditions of contract recommended by the Institution of Mechanical and Electrical Engineers, or another institution of similar standing.
6. **RECEIPT OF TENDERS**

Tenders issued and returned under Methods Two and Three require the Chief Financial Officer or their nominated representative to be responsible for the receipt, endorsement and safe custody of the tenders received until the time appointed for opening.

The date and time of the receipt of each tender shall be endorsed on the tender envelope or package by the person receiving the tenders.

Tenders issued and received under Method One will remain within the TM System under a password controlled and time locked secure electronic environment.

7. **OPENING OF TENDERS**

The Trust will as soon as practicable after the deadline time for the submission of the tenders (allowing 24 hours for tenders to be delivered from the post room to the Chief Executives office under Methods Two and Three).

They should be opened by two senior officers/managers (from separate departments) of the Trust as designated by the Chief Financial Officer and not from the originating department. The ‘originating’ department will be taken to mean the department sponsoring or commissioning the tender.

All Executive Directors will be authorised to open tenders regardless of whether they are from the originating department provided that the other authorised person is not from the originating department. The Trust’s Director of Corporate Services Secretary will count as a Director for the purposes of opening tenders.

Every tender received shall be marked with the date of opening and initialled by those present at the opening. In the case of Tenders under Method One a system based procedure applies.

8. **REGISTER OF TENDERS**

Tenders received from suppliers should be cross-referenced to the list received from the Procurement Department.

Submissions from suppliers other than those listed must be excluded.

A register shall be maintained, showing for each set of tenders dispatched:

i. the name of all firms/individuals invited;

ii. the names of firms/individuals from which tenders have been received;

iii. the date the tenders were opened;

iv. the persons present at the opening;
v. the price shown on each tender;

vi. a note where price alterations have been made on the tender. If the tender has had so many alterations that it cannot be readily read or understood this should be noted in the register.

Each entry to this register shall be acknowledged by those present.

Incomplete tenders shall be dealt with in the same way as late tenders – see below.

9. ADMISSIBILITY OF TENDERS

If the designated officers are of the opinion that the tenders received are not strictly competitive (e.g. due to insufficiency in numbers or due to alterations on the tender), then the approval of the Chief Financial Officer is required.

Where only one tender is sought/received, the Chief Financial Officer shall (in conjunction with the Trust Procurement/Property & Estates Department) review the tender to ensure that the price to be paid is fair and that the Trust will be receiving value for money.

Late tenders will only be considered where there are exceptional circumstances:

- Tenders received post submission deadline but prior to the opening of the other tenders may be considered after the designated officers have concluded that the delay was no fault of the tenderer.

Only in the most exceptional circumstances will a tender be considered which is received after the opening of the tenders and only then if the tenders that have been duly opened have not left the custody of the Chief Financial Officer or their nominated officer or if the process of evaluation has not started.

All late tenders should be kept in the safe custody of the Chief Financial Officer or a nominated officer during the period that the admissibility is considered.

The TM System will require the Trust’s authorised officers to approve the opening of Tenders received past the Tender Return date – until this is agreed they will be stored securely online.

10. CRITERIA FOR AWARD OF BUSINESS

The Tender Document will normally state that the award is to be based on the most economically advantageous bid. This will normally include full life cycle costs.

In cases where the EU Thresholds apply, the Award Criteria must be included in either the Notice in the Official Journal of the European Union or in the Tender.

Contract Award criteria are agreed by Trust Officers as part of the procurement process. In projects of significant value/risk this will include Budget holders; Finance staff and Procurement officers along with any other appropriate Trust Officers.
11. **PRE OFFER AND POST TENDER BIDDER ENGAGEMENT**

The procurement process must allow sufficient time for pre-offer (tender) engagement with potential suppliers including the application of indicative pricing methodologies. These will be conducted in accordance with Department of Health / Cabinet Office Guidance.

Post tender negotiation/pre contract negotiation is not permitted within the OJEU tendering process. In exceptional cases at the discretion of Trust Procurement it may be undertaken for below OJEU threshold tendering exercises.

Post tender clarification is permissible where it is deemed reasonable to clarify aspects of a tender without fundamentally changing or renegotiating the contents. These clarifications will be conducted in accordance with Department of Health / Office of Government Commerce Guidance.

12. **CAPITAL AND PROPERTY DEVELOPMENT**

Trust Procurement Policy applies to all activity within this remit albeit that the European Union value threshold for works differs from Goods and Services (£4,104,394 excl VAT)

The Trust will comply with Department of Health and other Public Body Guidance including the Independent Regulator of NHS Foundation Trusts

13. **FORMAL AWARD OF BUSINESS**

Provided all of the above conditions and circumstances set out above have been fully complied with, formal authorisation and award of a contract may be agreed under the authorisation limits defined in Section 3 of the Trust’s Scheme of Delegation. In the case of authorisation by the Board of Directors, this shall be recorded in their minutes. Award of business after a formal further/mini competition will be subject to the same authorisation limits as above.

14. **DISPOSALS**

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 his nominated officer;

(b) obsolete or condemned articles and stores, which may be disposed of in accordance with appropriate Trust Policy;

(c) items to be disposed of with an estimated sale value of less than £10,000, this figure to be reviewed annually;
(d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;

(e) land or buildings concerning which Department of Health guidance has been issued but subject to compliance with such guidance.

(f) Any matter which the Independent Regulator of NHS Foundation Trusts has issued specific guidance.