

Trust Board meeting: Wednesday 9 January 2013

TB2013.15

Title	Proposed update to Standing Orders / Scheme of Delegation / Standing Financial Instructions
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Status	A paper recommending changes to the Standing Orders/Scheme of Delegation/Standing Financial Instructions.
History	This report proposes an update to the documents approved by the Trust Board on 3 November 2011. It has already been considered by the Audit Committee at its meeting on 14 November 2012.

Board Lead	Mark Mansfield, Director of Finance & Procurement			
Key purpose	Strategy	Assurance	Policy	Performance

Summary

1	The Paper recommends changes to the suite of documents approved by the Trust Board in November 2011 to reflect subsequent changes to the committee structure, to address concerns raised within a recent Internal Audit report by CEAC in respect of budgetary control and to reflect improvements proposed by the Interim Head of Procurement.
2	In line with the current protocol, the Trust Board are asked to approve these proposed changes.

Proposed changes to Standing Orders / Scheme of Delegation / Standing Financial Instructions – January 2013

1 Introduction

- 1.1 It is good practice to keep the Standing Orders/Scheme of Delegation/Standing Financial Instructions under review and to update them as and when required.
- 1.2 Since the adoption of the initial Standing Orders/Scheme of Delegation/Standing Financial Instructions by the Trust Board in November 2011, a number of changes have occurred, which need to be reflected in the documents. These include changes to the committee structure as set out in paper [TBC2012.83].
- 1.3 In addition, the work of Internal Audit (CEAC) has highlighted that the section on budgetary control in the Standing Financial Instructions (section 13) should be reviewed and aligned more closely with the budgetary procedures in operation within the Trust.
- 1.4 As a consequence, the opportunity has been taken to rewrite section 13.
- 1.5 The Interim Head of Procurement has also reviewed and amended section 17 to bring it in line with current best practice.

2 Proposed Changes to Standing Orders/Scheme of Delegation/Standing Financial Instructions

- 2.1 It is proposed that the November 2011 document should be amended to reflect:-
 - 2.1.1 Changes to the committee structure, with the cessation of the Board in Committee and the creation of the separate Audit Committee and Finance and Performance Committee.
 - 2.1.2 Section 11.5 has been amended to remove references to the Secretary of State Directions as these have been replaced by the NHS Contract Section 37 and to strengthen the reference to the 2010 Bribery Act.
 - 2.1.3 The rewrite of the section on budgetary control (section 13) in line with the actions agreed as a result of Internal Audit report 11/ORH/7 – Financial Management recommendation twelve.
 - 2.1.4 The rewrite of section 17 on Tendering and Contracting Procedures.
- 2.2 A schedule of the proposed changes is attached at **Annex 1**, the proposed revised section 13 is attached at **Annex 2** and the revised section 17 is attached at **Annex 3**.
- 2.3 A full version of the revised Standing Orders / Scheme of Delegation / Standing Financial Instructions is available on request and subject to Trust Board approval, will be uploaded to the intranet.

3 Conclusion

- 3.1 This paper has identified a number of changes required to the November 2011 documents, in order to bring them up to date.

- 3.2 Subject to the approval of the recommendation outlined above, the master copy of the document held on the intranet will be updated and divisional teams and corporate managers will be alerted to the updated document.
- 3.3 The Audit Committee considered these proposed changes at its meeting on 14 November and agreed to recommend these changes to the Trust Board.

4 Recommendation

- 4.1 **Trust Board is asked to approve the amendments to Standing Orders/Scheme of Delegation/Standing Financial Instructions as set out in Annex 1, Annex 2 and Annex 3.**

**Mark Mansfield
Director of Finance and Procurement
December 2012**

Annex 1: Proposed changes to SFIs

Changes to Standing Orders/Scheme of Delegation/Standing Financial Instructions

Ref	Page No	Proposed Change	Reason
4.8	24-26	Reflect revised Board Committee structure and terms of reference as agreed at Trust Board.	
7.1.2(i) (i)	30	Addition of royalties that may be received by an individual or their department to the list of interests which are material and relevant.	
7.1.2 (ii)	30	Addition of new paragraph:- Where there are any declared interests with a third party, the individual concerned should take no part in any procurement decisions which involve that third party.	
7.1.3		Replace Board Secretary with Head of Corporate Governance	
7.4.2.(i) i)		Replace Board Secretary with Head of Corporate Governance	
8.1		Replace Board Secretary with Head of Corporate Governance	
8.2.2		Replace Board Secretary with Head of Corporate Governance	
Section C	40	Removal of clause in respect of policy determination which requires the Board Secretary to list and append a copy of policies to the Standing Orders.	Review by Head of Corporate Governance
Section C	42 - 43	Amendment of the existing terms of reference of the Audit and Finance Committee to reflect the change to an Audit Committee. and insert terms of reference of Audit Committee and Finance and Performance Committee	Changes to Board structure.
Section C	44 - 45	Insertion of the terms of reference of the Finance & Performance Committee	Changes to Board structure.
Section C	45 - 46	Amendment to the terms of reference of the Quality Committee	Changes to Board structure.
Section C	44-45	Delete existing terms of reference of the Board in Committee	Changes to Board structure.
Section C 1.3.2.5	51	Amend reference to Audit & Finance Committee	Changes to Board structure.
Section C 3.13	53	Amend reference to Audit & Finance Committee	Changes to Board structure.
Section C 11.1.1, 11.1.2,11.1.3,	56	Amend reference to Audit & Finance Committee	Changes to Board structure.

Ref	Page No	Proposed Change	Reason
11.2.1 & 11.4			
11	71-74	Amend references to Audit & Finance Committee	Changes to Board structure.
11.5.1	73	Insertion of ...” ensure compliance with the Standards for Providers for Countering Fraud and Corruption (published by NHS Protect 2012). In addition they will ensure the Trust complies with the NHS Contract in respect of fraud and corruption and provide commissioners with appropriate assurances regarding counter fraud provision “	Removal of reference to SOS Directions
11.5.3	73	Insertion of second sentence “Investigations will be carried out where appropriate within the context of the Bribery Act 2010 and the Fraud Act 2006.”	Addition of reference to Bribery Act 2010 & Fraud Act 2006
13	76 - 77	Revised section 13 – see annex 2	Implementation of agreed internal audit recommendation.
17	83-96	Revised section 17 – see annex 3	Review by Interim Head of Procurement.
21.2.1	102	Revised wording to identify recognisable exceptions to requisitioning.	Review by Interim Head of Procurement.
21.2.3	102	Insert reference to Limits of Delegation Policy	Review by Interim Head of Procurement.
21.2.6	104	Insert reference to Limits of Delegation Policy	Review by Interim Head of Procurement.
25.2.6	111	Correct cross reference to Disposals and Condemnations, Losses and Special Payments SFI.	correction
26.2.9	113	Amend reference to Audit & Finance Committee	Changes to Board structure.
31.2	119	Insertion of a new paragraph :- All research and development activities undertaken by the Trust shall be subject	Best Practice guidance

Ref	Page No	Proposed Change	Reason
		to these Standing Orders/ Scheme of Delegation/ Standing Financial Instructions.	

Annex 2: Revised Section 13**13. ALLOCATIONS, PLANNING, BUDGETS, BUDGETARY CONTROL, AND MONITORING****13.1 Preparation and Approval of Plans and Budgets**

13.1.1 The Chief Executive will compile and submit to the Board an annual Integrated Business Plan which takes into account financial targets and forecast limits of available resources. The annual Business Plan will contain:

- (a) a statement of the significant assumptions on which the plan is based;
- (b) details of major changes in workload, delivery of services or resources required to achieve the plan.

13.1.2 The Director of Finance & Procurement shall, on behalf of the Chief Executive, and in advance of the financial year to which they refer, prepare and submit budgets within the forecast limits of available resources and planning policies to the Board of Directors for its approval. Budgets will be in accordance with the aims and objectives set out in the Trust's service strategy and the business plan.

13.2 Budgetary Control and Reporting

13.2.1 The Chief Executive shall require the Director of Finance & Procurement to devise and maintain systems of budgetary control. All officers whom the Board of Directors may empower to engage staff, to otherwise incur expenditure, or to collect or generate income, shall comply with the requirements of those systems. The systems of budgetary control shall incorporate the reporting of, and investigation into, financial, activity or workforce variances from budget. The Director of Finance & Procurement shall be responsible for providing budgetary information and advice to enable the Chief Executive and other officers to carry out their budgetary responsibilities.

13.2.2 The Director of Finance & Procurement shall keep the Chief Executive and the Board of Directors informed of the financial consequences of changes in policy, pay awards and other events and trends affecting budgets and shall advise on the financial and economic aspects of future plans and projects.

13.3 Budgetary Delegation

13.3.1 The Chief Executive may delegate management of a budget or part of a budget to officers to permit the performance of defined activities. The Schemes of Delegation shall include a clear definition of individual and group responsibilities for control of expenditure, exercise of virement, achievement of planned levels of services and the provision of regular reports upon the discharge of those delegated functions to the Chief Executive.

13.3.2 In carrying out their duties the Chief Executive shall not exceed the budgetary or virement limits set by the Board of Directors, and officers shall not exceed the budgetary limits set them by the Chief Executive. The Chief Executive may vary the budgetary limit of an officer within the Chief Executive's own budgetary limit.

13.3.3 Except where otherwise approved by the Chief Executive, taking account of advice of the Director of Finance, budgets shall be used only for the purpose for which they were provided and any budgeted funds not required for their designated purpose shall revert to the immediate control of the Chief Executive, unless covered by delegated powers of virement.

13.3.4 Expenditure for which no provision has been made in an approved budget and which is not subject to funding under the delegated powers of virement, shall only be incurred after authorisation by the Chief Executive or the Board of Directors as appropriate.

13.4 Capital Expenditure

13.4.1 The general rules applying to delegation and reporting shall also apply to capital expenditure. (The particular applications relating to capital are contained in SFI section 24).

13.5 Monitoring Returns

13.5.1 The Chief Executive is responsible for ensuring that the appropriate monitoring forms are submitted to the requisite monitoring organisation.

Annex 3: Revised Section 17**17. TENDERING AND CONTRACTING PROCEDURE****17.1 Duty to comply with Standing Orders and Standing Financial Instructions**

The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders and Standing Financial Instructions (except where Standing Order No. 3.13 Suspension of Standing Orders is applied).

- 17.1.2 Prior to tenders being invited, it must be confirmed that funding approval has been granted by the relevant board committee or budget holder; the proposed goods, services or works have been adequately specified; as appropriate, the design brief and drawings have been approved and signed off by the primary users; any required statutory approvals have been obtained.

17.2 EU Directives Governing Public Procurement

- 17.2.1 European Community Treaty principles, and specifically Community Directives regarding how public bodies may award contracts (each as enacted in the UK by Parliament), shall have effect as if incorporated in these Standing Orders and Standing Financial Instructions.
- 17.2.2 In the event of exceptional circumstances, the Chief Executive, the Director of Finance or one of his / her nominated deputies may authorise non-compliance with the Directives on a specific, time-limited basis where strictly necessary, provided plans are put in place to amend the non-compliance wherever possible.

17.3 Reverse eAuctions

The Trust should have policies and procedures in place for the control of all tendering activity carried out through Reverse eAuctions and by means of electronic quotation or tendering. For further guidance on Reverse eAuctions refer to www.ogc.gov.uk

17.4 Capital Investment Manual and other Department of Health Guidance

The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estate code" in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS".

17.5 Formal Competitive Tendering (contract value of £50,000 excluding VAT or more)**17.5.1 General Applicability**

The Trust's Procurement Department should be consulted for advice relating to all expenditure with a contract value of £50,000 (excluding VAT) or more, other than for pharmacy or works contracts.

Where the value of a contract over the life of the contract is £50,000 (excluding VAT) or more, the Trust shall ensure that, unless national contracts or valid framework agreements or similar procedures are followed, competitive tenders are invited for:

- the supply of goods, materials and manufactured articles;
- 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);
- The maintenance of equipment

- for disposals.

17.5.2 Health Care Services

Where the Trust elects to invite tenders for the supply of healthcare services these Standing Orders and Standing Financial Instructions shall apply as far as they are applicable to the tendering procedure and need to be read in conjunction with Standing Financial Instruction No. 18 and No. 19.

17.5.3 Exceptions and instances where formal tendering need not be applied

Formal tendering procedures **need not be applied** where:

- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed **£50,000**; (exclusive of VAT) (this figure to be reviewed annually);
- (b) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with;
- (c) regarding disposals as set out in Standing Financial Instructions No. 25;
- (d) Where NHS Supply Chain, the Government Procurement Service or any other public sector led agreement (such as by a collaborative procurement hub) are in place which are legally constructed to permit the Trust's participation
- (e) Where a consortium or a national agreement or contract is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members where the Director of Finance and Procurement or their nominated deputy is satisfied that the arrangements conform to statute and represent best value.

Formal tendering procedures **may only be waived** in the following circumstances:

- (f) in very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate Trust record;
- (g) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender;
- (h) where there is only one supplier of the goods or services or where specialist expertise is required and is available from only one source. This includes compatible or proprietary product for existing machinery or equipment;
- (i) when 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;
- (j) 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;
- (k) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

The Director of Finance and Procurement will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

- (l) where allowed and provided for in the Guidance issued by the Department of Health.
- (l) For the provision of equipment maintenance with the original equipment manufacturer (OEM)
- (m) To support standardisation within the Trust which reduces clinical risk, training requirements and time to use.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

However, non-competitive tenders will still be sought in cases where anticipated expenditure or income exceeds £50,000 but competitive tendering is waived under (f) to (n) above. Where special arrangements referred to in (b) above or national arrangements referred to in (e) & (f) above apply, then non-competitive tendering procedures will not be required. Similarly, where the Guidance issued by the Department of Health so provides, non-competitive as well as competitive tendering may be waived.

Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate Trust record and reported to the Audit Committee at each meeting.

17.5.4 **Fair and Adequate Competition**

Where the exceptions set out in SFI Nos. 17.1 and 17.5.3 apply, the Trust 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.

17.5.5 **Building and Engineering Construction Works**

Competitive Tendering cannot be waived for building and engineering construction works and maintenance (other than in accordance with Concode) without Departmental of Health approval.

17.5.6 **Items which subsequently breach thresholds after original approval**

Items estimated to be below the limits set in this Standing Financial Instruction for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the Chief Executive, and be recorded in an appropriate Trust record. Authorisation to procure and subsequent award of contract must be directly correlated. That is, the value and the period of contract that is awarded must be the same as that was given mandate in the original requirement. If the period of the contract is to be extended, this is only permitted if the original authorisation and value included the value of the extensions. Where this authority was not provided in the original mandate, further authorisation must be sought in accordance with the Limits of Delegation policy.

17.6 **Contracting/Tendering Procedure**

17.6.1 **Invitation to tender**

- (i) All invitations to tender shall state the date and time as being the latest time for the receipt of tenders.

All invitations to tender shall state that no tender will be accepted unless:

- (a) submitted in a plain sealed package or envelope bearing a pre-printed label supplied by the Trust (or the word "tender" followed by the subject to which it relates) and the latest date and time for the receipt of such tender addressed to the Chief Executive or nominated Manager;
- (b) 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.
- (iii) Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practices.
- (iv) Every tender for building or engineering works (except for maintenance work, when Estmancode guidance shall be followed) shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building Contract or Department of the Environment (GC/Wks) Standard forms of contract amended to comply with concode; or, when the content of the work is primarily engineering, the General Conditions of Contract recommended by the Institution of Mechanical and Electrical 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 Institute of Civil Engineers, the Association of Consulting Engineers and the Federation of Civil Engineering Contractors. These documents shall be modified and/or amplified to accord with Department of Health guidance and, in minor respects, to cover special features of individual projects.

17.6.2 Receipt and safe custody of tenders

The Chief Executive or his/her nominated representative will be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening unless the tender has been carried out on an electronic tendering system in which case this activity is controlled by the system.

The date and time of receipt of each tender shall be endorsed on the tender envelope/package.

17.6.3 Opening tenders and Register of tenders

- (i) As soon as practicable after the date and time stated as being the latest time for the receipt of tenders, they shall be opened by two senior officers/managers designated by the Chief Executive and not from the originating department.
- (ii) A member of the Trust Board will be required to be one of the two approved persons present for the opening of tenders estimated above £1,000,000. The rules relating to the opening of tenders will need to be read in conjunction with any delegated authority set out in the Trust's Scheme of Delegation.
- (iii) The 'originating' Department will be taken to mean the Department sponsoring or commissioning the tender.
- (iv) The involvement of Finance Directorate staff in the preparation of a tender proposal will not preclude the Director of Finance and Procurement or any approved Senior Manager from the Finance Directorate from serving as one of the two senior managers to open tenders.
- (v) All Executive Directors/members will be authorised to open tenders regardless of whether they are from the originating department provided that the other authorised person opening the tenders with them is not from the originating department.

The Trust's Head of Corporate Governance, should the Trust have one, will count as a Director for the purposes of opening tenders.

- (vi) Every tender received shall be marked with the date of opening and initiated by those present at the opening.
- (vii) A register shall be maintained by the Chief Executive, or a person authorised by him/her, to show for each set of competitive tender invitations despatched:
- the name of all firms individuals invited;
 - the names of firms individuals from which tenders have been received;
 - the date the tenders were opened;
 - the persons present at the opening;
 - the price shown on each tender;
 - a note where price alterations have been made on the tender.
- Each entry to this register shall be signed by those present.

A note shall be made in the register if any one tender price has had so many alterations that it cannot be readily read or understood.

- (viii) 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 own initiative either orally or in writing after the due time for receipt, but prior to the opening of other tenders, should be dealt with in the same way as late tenders. (Standing Order No. 17.6.5 below).

17.6.4 **E-Tendering**

E-Tendering is the Trust's preferred method for sending and receiving tenders. In the case of goods and services procured via E-tendering, the above procedure will be modified to reflect that:-

- Tenders are received electronically by the E-tendering system
- Tenders will be opened at the official opening time / date by procurement staff and the system will maintain a log of access.
- The system will log any documents added during the procurement period and all communication between the parties using the system
- Any amendments to documents post opening will be logged manually along with the identity of the person making the change and the reason for the change.
- The system's audit log and the manual log will be periodically reviewed by a senior officer and will be available for inspection by Internal Audit as and when required.

Recent EU Legislation dictates that all activities and communications relating to the entire tendering process are disclosable to third parties so it is essential that sound records are kept, principals of transparency and competition are adhered to and all communication documented

17.6.5 **Admissibility**

- i) If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (for example, because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the Chief Executive.
- (ii) Where only one tender is sought and/or received, the Chief Executive and /or Director of Finance and Procurement or their nominated deputy shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

17.6.6 **Late tenders**

- (i) Tenders received after the due time and date, but prior to the opening of the other tenders, may be considered only if the Chief Executive or his/her nominated officer decides that there

are exceptional circumstances i.e. despatched in good time but delayed through no fault of the tenderer.

- (ii) Only in the most exceptional circumstances will a tender be considered which is received after the opening of the other tenders and only then if the tenders that have been duly opened have not left the custody of the Chief Executive or his/her nominated officer or if the process of evaluation and adjudication has not started.
- (iii) While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, recorded, and held in safe custody by the Chief Executive or his/her nominated officer.
- (iv) Any acceptance of a late tender must be clearly documented along with the reason for acceptance and kept with the tender records.

17.6.7 Acceptance of formal tenders (See overlap with SFI No. 17.7)

- (i) Any discussions with a tenderer which are deemed necessary to clarify technical aspects of their tender before the award of a contract will not disqualify the tender and must be recorded in a permanent record.
- (ii) Prior to the release of the tender document, selection and award criteria must be clearly defined and articulated to the tenderers. The criteria for award should be made up of both price and quality aspects unless there is a very good reason for selecting the lowest price tender in which case this must be declared in the tender documents. The successful tender will be awarded on the Most Economically Advantageous Tender criteria as defined by best practise in procurement. The criteria may include (but not be limited to):
 - a. Quality
 - b. Technical properties
 - c. Experience
 - d. Functional qualities
 - e. After sales service
 - f. Delivery
 - g. Price

The Trust recognises that the lowest price does not always represents 'best value' and as such will award tenders based on the requirements of the goods and / or services which for homogenous, simple products may be lowest price but is usually based on an assessment of a combination of criteria.

- (iii) No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive.
- (iv) The use of these procedures must demonstrate that the award of the contract was:
 - (a) not in excess of the going market rate / price current at the time the contract was awarded;
 - (b) that best value for money was achieved.
- (v) Subject to the Freedom of Information Act, all tenders should be treated as confidential and should be retained for inspection.

17.6.8 Tender reports to the Trust Board

Reports to the Trust Board will be made on an exceptional circumstance basis only and in accordance with the Limits of Delegation Policy.

17.6.9 Building and Engineering Construction Works

- (i) Invitations to tender shall be made only to firms included on the separate maintenance lists compiled in accordance with Estmancode guidance (Health Notice HN(78)147).
- ii) Firms included on the list shall ensure that when engaging, training, promoting or dismissing employees or in any conditions of employment, shall not discriminate against any person because of colour, race, ethnic or national origins, religion or sex, and will comply with the provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disabled Persons (Employment) Act 1944 and any amending and/or related legislation.
- iii) Firms shall conform at least with the requirements of the Health and Safety at Work Act and any amending and/or other related legislation concerned with the health, safety and welfare of workers and other persons, and to any relevant British Standard Code of Practice issued by the British Standard Institution. Firms must provide to the appropriate manager a copy of its safety policy and evidence of the safety of plant and equipment, when requested.

17.6.10 Financial Standing and Technical Competence of Contractors

The Director of Finance and Procurement may make or institute any enquiries he/she deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director with lead responsibility for clinical governance will similarly make such enquiries as is felt appropriate to be satisfied as to their technical / medical competence.

17.7 Quotations: Competitive and non-competitive

17.7.1 General Position on quotations

Quotations are required where formal tendering procedures are not adopted and where the intended expenditure or income exceeds, or is reasonably expected to exceed £5000 but not exceed £50,000. For intended expenditure less than £5000, a single written quote is sufficient.

Where the potential supplier has the ability to use an e-quote system, this should be used in preference to a manual system.

17.7.2 Competitive Quotations

- (i) Quotations should be obtained from at least 3 firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Trust.
- (ii) Quotations should always be in writing and subject to NHS Terms and conditions.
- (iii) **Subject to the Freedom of Information Act**, all quotations should be treated as confidential and should be retained for inspection.
- (iv) The Chief Executive or his/her nominated officer should evaluate the quotation and select the quote which gives the best value for money and most adequately meets the specification of requirements.
- (v) Staff should not sign agreements or accept quotations on supplier terms and conditions which could be disadvantageous to the Trust.

Formal tendering and competitive quotation must be carried out with the support of the Trust's Strategic Procurement department. This does not wholly preclude Divisions from undertaking

activities themselves however legislative complexities are such that Procurement advice should be sought in all instances.

17.7.3 **Non-Competitive Quotations (contract value under £5,000 excluding VAT)**

Non-competitive quotations in writing may be obtained in the following circumstances:

- (i) the supply of proprietary or other goods of a special character and the rendering of services of a special character, for which it is not, in the opinion of the responsible officer, possible or desirable to obtain competitive quotations;
- (ii) the supply of goods or manufactured articles of any kind which are required urgently and are not obtainable under existing contracts;
- (iii) miscellaneous services, supplies and disposals;
- (iv) where the goods or services are for building and engineering maintenance the responsible works manager must certify that the first two conditions of this SFI (i.e.: (i) and (ii) of this SFI) apply.

17.7.4 **Quotations to be within Financial Limits**

No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with Standing Financial Instructions except with the authorisation of either the Chief Executive or Director of Finance and Procurement.

17.8 **Authorisation of Tenders and Competitive Quotations**

Providing all the conditions and circumstances set out in these Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be ratified by the following staff to the value of the contract as follows:

Head of Procurement up to £113,057 (current OJEU Threshold from 1st January 2012 but subject to regular change)
Director of Finance & Procurement / Chief Executive up to £999,999
Trust Board over £1 Million

These levels of authorisation may be varied or changed and need to be read in conjunction with the Trust Board's Scheme of Delegation and the Limits of Delegation Policy.

Formal authorisation must be put in writing. In the case of authorisation by the Trust Board this shall be recorded in their minutes.

17.9 **Signing of Documents**

Section 8.4 of Standing Orders sets out the requirements in respect of signing documents.

17.10 **Instances where formal competitive tendering or competitive quotation is not required**

Where competitive tendering or a competitive quotation is not required the Trust should seek best value from a range of supply routes to include but not be limited to NHS Supply Chain, Government Procurement Service, any other collaborative procurement hub to which the trust has right to access.:

The procurement of goods and services across the Trust shall be in accordance with the Limits of Delegation Policy and these Standing Financial Instructions. Members of staff must not commit the Trust to expenditure with a supplier or sign contracts if they are not permitted to do so in accordance with these policies.

17.11 Private Finance for capital procurement (see overlap with SFI No. 24)

The Trust should normally market-test for PFI (Private Finance Initiative funding) when considering a capital procurement. When the Board proposes, or is required, to use finance provided by the private sector the following should apply:

- (a) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
- (b) Where the sum exceeds delegated limits, a business case must be referred to the appropriate Department of Health for approval or treated as per current guidelines.
- (c) The proposal must be specifically agreed by the Board of the Trust, in the light of such professional advice as should reasonably be sought in particular with regard to vires.
- (d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

17.12 Compliance requirements for all contracts

The Board may only enter into contracts on behalf of the Trust within the statutory powers delegated to it by the Secretary of State and shall comply with:

- (a) The Trust's Standing Orders and Standing Financial Instructions;
- (b) EU Directives and other statutory provisions;
- (c) any relevant directions including the Capital Investment Manual, Estatecode and guidance on the Procurement and Management of Consultants;
- (d) such of the NHS Standard Contract Conditions as are applicable.
- (e) contracts with Foundation Trusts must be in a form compliant with appropriate NHS guidance.
- (f) 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.
- (g) In all contracts made by the Trust, the Board shall endeavour to obtain best value for money by use of all systems in place. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

17.13 Personnel and Agency or Temporary Staff Contracts

The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

17.14 Healthcare Services Agreements (see overlap with SFI No. 18)

Service agreements with NHS providers for the supply of healthcare services shall be drawn up in accordance with the NHS and Community Care Act 1990 and administered by the Trust. Service agreements are not contracts in law and therefore not enforceable by the courts. However, a contract with a Foundation Trust, being a PBC, is a legal document and is enforceable in law.

The Chief Executive shall nominate officers to commission service agreements with providers of healthcare in line with a commissioning plan approved by the Board.

17.15 Disposals (See overlap with SFI No. 26)

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/her 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 £5000, this figure to be reviewed on a periodic basis;
- (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 DH guidance has been issued but subject to compliance with such guidance.

All disposals of items on the asset register which originally cost not less than £5000 must be notified to the Finance Department.

17.16 In-house Services

- 17.16.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.
- 17.16.2 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- (a) Specification group, comprising the Chief Executive or nominated officer/s and specialist(s).
 - (b) In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
 - (c) Evaluation team, comprising normally a specialist officer, a supplies officer and a Director of Finance and Procurement representative. For services having a likely annual expenditure exceeding £1 Million, a non-executive director should be a member of the evaluation team.
- 17.16.3 All groups should work independently of each other and individual officers may be a member of more than one group but no member of the in-house tender group may participate in the evaluation of tenders.
- 17.16.4 The evaluation team shall make recommendations to the Board.
- 17.16.5 The Chief Executive shall nominate an officer to oversee and manage the contract on behalf of the Trust.

17.17 Applicability of SFIs on Tendering and Contracting to funds held in trust (see overlap with SFI No. 29)

These Instructions shall not only apply to expenditure from Exchequer funds but also to works, services and goods purchased from the Special Trustees trust funds and private resources.

17.18 Cancellation of Contracts

Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service, 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, given or agreed to give to 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 or acting on his 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 or acting on his behalf shall have committed any offence under the Bribery Act 2010 or other appropriate legislation.

17.19 Determination of Contracts for Failure to Deliver Goods or Materials

There shall be inserted in every 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.

All contracts for building and engineering works shall include provision for Liquidated damages having regards to the CONCODE provisions. Where a sum above the minimum is required, this shall be determined by the Project Officer in accordance with an estimate of the damages the Trust is likely to incur through late completion of the works by the contractor provided that the amount so derived does not in the opinion of the Project Director or their nominee amount to a penalty.

The Project Director shall determine when liquidated damages shall be enforce after consultation with the Design Team and, if the Project Director considers it necessary with lawyers.

17.20 Use of Electronic Auctions

17.20.1 The Trust at its discretion may, if the category of procured goods or service is suitable, use an electronic auction to obtain tender submissions. The Government Procurement Service (formerly Buying Solutions) definition of suitability identifies procurements that are of sufficient value to attract competition, with a requirement that can be accurately specified and for which there is a competitive market. It is important when deciding on a category that a firm specification is available. There must be no ambiguity as to the Trust's requirements prior to the eAuction. It must be possible to compare the products on a like for like basis.

17.20.2 Under Article 54 (Use of eAuctions) of the Public Sector Directive 2004/18/EC (which is adopted in the UK by the Public Contracts Regulations 2006), in open, restricted or negotiated procedures in the case referred to in Article 30 (1) (a) the Trust may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

17.20.3 The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price; or
- on prices and/or on the new values of the features indicated in the specification when the contract is awarded to the most economically advantageous tender.

17.20.4 Should it decide to hold an electronic auction, the Trust shall state that fact in the contract notice.

17.20.5 The specifications shall include, inter alia, the following details:

- (a) the features of the products whose costs shall be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

17.20.6 Before proceeding with the electronic auction, the Trust shall make a full initial evaluation of the specification in accordance with the award criteria set and the weighting fixed for them. Clarification will also be sought via the paper-based tender route that the tenderers accept the proposed terms and conditions and that the non-collusion document has been completed.

17.20.7 All tenderers who have been selected shall be invited simultaneously by electronic means to submit prices and/or values. The invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

17.20.8 Throughout each phase of an electronic auction the Trust shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. The Trust may also communicate points of clarification via the electronic auction process provided that the specification is not changed in any way and that the information is sent to all participants. The Trust may also at any time announce the number of participants in that phase of the auction. In no case, however, may the Trust disclose the identities of the tenderers during any phase of an electronic auction, nor the values of their bids.

17.20.9 The Trust shall close an electronic auction at either of the following times:

- (a) in the invitation to take part in the auction, the date and time shall be indicated, fixed in advance;
- (b) closure will be when no more new prices are received, or new values which meet the requirements concerning minimum differences (in this case the Trust shall state in the invitation to take part in the auction the time which will be allowed to elapse after receipt of the last submission before the electronic auction is closed).

17.20.10 When the Trust has closed an electronic auction and satisfied itself as to specification compliance and value for money, the Trust shall award the contract in accordance with the Trust's Standing Orders and Standing Financial Instructions.

17.20.11 The Trust may not have improper recourse to electronic auctions nor may they be used in such a way as to prevent, restrict or distort competition or to change the subject of the contract as put up for tender in the published contract notice and defined in the specification.

17.20.12 Following tender approval / contract award the electronic tender documents shall be stored by the electronic auction service provider for the appropriate time period in accordance with Department of Health guidance concerning the preservation, retention and destruction of records.

17.20.13 The selection of the eAuction service provider shall meet the following standards:

- Means of communication must not restrict access to a tendering procedure for potential participants. They must be non-discriminatory, generally available and capable of operation with IT products in general use.
- The communication and storage of tenders must protect the integrity of the content.

17.20.14 The Trust must satisfy itself annually that the appointed service provider has the necessary protocols in place to meet the above requirements along with satisfactory archive and retrieval processes. The process shall be fully documented by the service provider with agreed service levels. Furthermore, the Trust shall obtain a formal and independent affirmation of the controls operated by any service provider which supports electronic auctions and receive periodic updates of this assurance.

17.20 **ICT procurement**

There is a need for a consistent approach to ICT procurement, security, development and practice in the Trust, to ensure value for money and that opportunity and risks associated with the above are properly managed. The Trust will have a number of standard policies and procedures.

Compliance with these policies and procedures is compulsory. Systems (hardware/software) purchased or in use without due authority from the Director of Planning & Information will not be supported and may result in disciplinary action being taken.