



Doncaster and Bassetlaw  
Teaching Hospitals  
NHS Foundation Trust

# Standing Orders

## Board of Directors

### March 2019

NHS Foundation Trusts must agree Standing Orders (SOs) for the regulation of their proceedings and business. The Board of Directors are also required to adopt schedules of reservation of powers and delegation of powers. These documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework. All executive and non-executive directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

*Provisions within the Standing Orders which are not subject to suspension under SO 5.40 are indicated in italics.*



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## 1 INTRODUCTION

- 1.1 Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust is a Public Benefit Corporation that was established by the granting of Authorisation by Monitor (now NHS Improvement).
- 1.2 The principal purpose of the Trust is set out in the 2012 Act, and the Trust Constitution.
- 1.3 The Trust is required to adopt Standing Orders (SOs) for the regulation of its proceedings and business.
- 1.4 The powers of the Trust are set out in section 4 of the Constitution.
- 1.5 The Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to NHS Improvement. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.6 **Failure to comply with SFIs and SOs is a disciplinary matter which could result in dismissal.**
- 1.7 **Delegation of Powers**  
The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation.
- 1.8 Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 6) the Board of Directors may exercise its powers to 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 7 or by an executive director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit or as NHS Improvement may direct.
- 1.9 Delegated Powers are covered in the Scheme of Delegation, which has effect as if incorporated into the Standing Orders.

## 2 INTERPRETATION AND DEFINITIONS

- 2.1 Save as permitted by law, at any meeting the Chair of the Trust, advised by the Chief Executive, shall be the final authority on the interpretation of Standing Orders.
- 2.2 These Standing Orders shall only be applied in accordance with the Constitution. Where any provision in these Standing Orders contradicts any provision in the Constitution, the Constitution shall be paramount.
- 2.3 In these Standing Orders:

“the 2006 Act”	means the National Health Service Act 2006 as amended from time to time;
“the 2012 Act”	means the Health and Social Care Act 2012 as amended from time to time;
"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“Board of Directors”	means the board of directors as constituted in accordance with the Trust Constitution;
“Chair”	means the Chair of the Trust appointed in accordance with the Trust Constitution;
“Chief Executive”	means the Chief Executive Officer of the Trust appointed in accordance with the terms of the Trust Constitution;
“Committee”	means a committee appointed by the Board of Directors;
“Committee members”	means those persons formally appointed by the Board of Directors to sit on or to chair specific committees;
"Constitution"	means the Trust Constitution and all annexes to it;
“Corporate Director”	A non-voting director with executive responsibilities, appointed by the Board of Directors;
“Director”	means a director on the Board of Directors;
“Director of Finance”	means the chief finance officer of the Trust;
“Executive Director”	means an executive director of the Trust appointed in accordance with the Trust Constitution;
“Funds held on Trust”	means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument or chooses to accept under powers derived under S.90 of the 2006 Act;
“Member”	means a member of the Trust;
“NHS Improvement”	means the body corporate known as NHS Improvement.
“Motion”	means a formal proposition to be discussed and voted on during the course of a meeting;
“Nominated Officer”	means an officer charged with the responsibility for

	discharging specific tasks within the SOs and SFIs;
“Non-Executive Director”	means a non-executive director of the Trust appointed in accordance with the Trust Constitution;
“Officer”	means an employee of the Trust;
“Secretary”	means the Trust Board Secretary or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
“SFIs”	means Standing Financial Instructions;
“SOs”	means Standing Orders;
“the Trust”	means Doncaster & Bassetlaw Teaching Hospitals NHS Foundation Trust.

### **3 THE BOARD OF DIRECTORS**

- 3.1 All business of the Board of Directors shall be conducted in the name of the Trust.
- 3.2 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.
- 3.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to NHS Improvement. Accountability for non-charitable funds held on trust is only to NHS Improvement.
- 3.4 **Composition of the Board of Directors**  
In accordance with the 2006 Act, the 2012 Act, and the Constitution, the composition of the Board of Directors of the Trust shall be:
- (a) The Chair of the Trust
  - (b) 6 non-executive directors
  - (c) 6 executive directors including:
    - the Chief Executive (the Accounting Officer)
    - the Director of Finance (the Chief Finance Officer)
    - the Medical Director
    - the Director of Nursing

3.5 The Board of Directors may appoint corporate directors in addition to the six executive directors described above. Non-voting Corporate directors shall attend meetings of the Board of Directors but shall not have a vote (see SO 5.19).

3.6 **Non-executive Directors**

Non-executive Directors are appointed by the Council of Governors. The appointment shall be in accordance with the Constitution.

3.7 The regulations governing the tenure of office of the Non-executive Directors shall be in accordance with the Constitution.

3.8 **Joint Directors**

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons shall become appointed as an executive director jointly, and shall count for the purpose of Standing Order 3.4 as one person.

**4 CHAIR OF THE BOARD OF DIRECTORS**

4.1 The Chair of the Trust is the Chair of the Board of Directors.

4.2 The Chair is appointed by the Council of Governors. The appointment shall be in accordance with the Constitution.

4.3 The regulations governing the tenure of office of the Chair shall be in accordance with the Constitution.

4.4 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair shall preside.

4.5 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside.

4.6 **Deputy Chair**

Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair in the Schedule to these Regulations shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair. In such cases the Deputy Chair shall act as Chair of the Board of Directors.

4.7 The appointment of the Deputy Chair shall be as prescribed in the Constitution.

- 4.8 The regulations governing the tenure of office of the Deputy Chair shall be in accordance with the Constitution.

## **5 PRACTICE AND PROCEDURE OF MEETINGS**

- 5.1 All business at meetings of the Board of Directors shall be conducted in the name of the Trust.

### **5.2 Annual Members Meeting**

The Trust will publicise and hold an annual meeting of its members in accordance with the constitution and the 2012 Act.

### **5.3 Admission of the Public and Press**

The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

*“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.*

- 5.4 The Chair (or Deputy Chair when acting as Chair) 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 Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

*“That in the interests of public order the meeting adjourns for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public.”*

- 5.5 Members of the public or representatives of the press are not permitted to record proceedings in any manner unless with the express prior agreement of the Chair (or Deputy Chair when acting as Chair). Where permission has been granted, the Chair (or Deputy Chair) retains the right to give directions to halt recording of proceedings at any point during the meeting. For the avoidance of doubt, “recording” refers to any audio or visual recording, including still photography.

### **5.6 Calling Meetings**

Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.

- 5.7 The Chair may call a meeting of the Board of Directors 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 such one third or more directors may forthwith call a meeting. In such cases meetings shall be held at the Trust's designated headquarters.
- 5.8 **Notice of Meetings**  
Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 5.9 The 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 at least three clear days before the meeting.
- 5.10 Lack of service of the notice on any director shall not affect the validity of a meeting.
- 5.11 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.
- 5.12 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 the post.
- 5.13 **Chair of Meeting**  
At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and is present, shall preside. If the Chair and Deputy Chair are absent such non-executive director as the directors present shall choose shall preside.
- 5.14 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.
- 5.15 **Quorum**  
*No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the directors are present including at least one executive director and one non-executive director.*

*Directors can participate in meetings by telephone or through the use of video conferencing facilities, where such facilities are available. Participation in a meeting through any of these methods shall be deemed to constitute presence in person at the meeting.*

- 5.16 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.
- 5.17 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, he 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 i.e. lack of a quorum for specific items will not invalidate the whole meeting.
- 5.18 The requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting.
- 5.19 **Voting**  
Each executive and non-executive director shall be entitled to exercise one vote. Corporate directors who are not executive directors (as described in SOs 3.4 and 3.5) shall not have a vote.
- 5.20 Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 5.21 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.
- 5.22 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.
- 5.23 If a director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.24 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.

- 5.25 An officer who has been appointed formally by the Board of Directors 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 of Directors 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.
- 5.26 **Setting the Agenda**  
The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted.
- 5.27 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. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 5.28 **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.
- 5.29 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.
- 5.30 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.
- 5.31 **Record of Attendance**  
The names of the directors present at the meeting shall be recorded in the minutes.
- 5.32 **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 paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 5.11.
- 5.33 **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.

**5.34 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 who gives it and also the signature of four other directors. When any such motion has been disposed of by the Board of Directors, 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 he considers it appropriate.

**5.35 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.

**5.36** When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- (i) An amendment to the motion.
- (ii) The adjournment of the discussion or the meeting.
- (iii) The appointment of an ad hoc committee to deal with a specific item of business.
- (iv) That the meeting proceed to the next business.\*
- (v) The appointment of an ad hoc committee to deal with a specific item of business.
- (vi) That the motion be now put to a vote.\*

In the case of sub-paragraphs denoted by \* above, to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate.

**5.37** 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.

**5.38 Chair's Ruling**

Statements of directors made at meetings of the Board of Directors 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, relevancy, regularity and any other matters shall be observed at the meeting.

**5.39 Joint Directors**

Where a post of executive director is shared by more than one person:

- (a) both persons shall be entitled to attend meetings of the Trust:

- (b) either of those persons shall be eligible to vote in the case of agreement between them;
- (c) in the case of disagreement between them no vote should be cast;
- (d) the presence of either or both of those persons shall count as one person for the purposes of SO 5.15 (Quorum).

**5.40 Suspension of Standing Orders**

Any one or more of the Standing Orders may be suspended at any duly constituted meeting, provided that:

- (i) at least two-thirds of the Board of Directors are present, including one executive director and one non-executive director;
  - (ii) a majority of those present vote in favour of suspension; and
  - (iii) the variation proposed does not contravene any statutory provision or direction made by NHS Improvement.
- 5.41 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 5.42 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the directors.
- 5.43 No formal business may be transacted while SOs are suspended.
- 5.44 The Audit Committee shall review every decision to suspend SOs.

**6 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

6.1 Subject to SO 1.5 and such directions as may be given by NHS Improvement, the Board of Directors 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 1.5 or 6.3 or by an executive director of the Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

**6.2 Emergency Powers**

Those powers of the Trust which the Board of Directors has retained to itself may in urgent circumstances be exercised by the Chief Executive after having consulted the Chair. A decision is urgent where any delay would seriously prejudice the Trust's or the public's interests. The exercise of such powers by the Chief Executive shall be reported to the next formal meeting of the Board of Directors for ratification.

**6.3 Delegation to Committees**

The Board of Directors 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 these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

**6.4 Delegation to Officers**

Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain an accountability to the Board of Directors.

6.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved by the Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.

6.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive director to provide information and advise the Board of Directors in accordance with any statutory requirements.

6.7 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

**7 COMMITTEES****7.1 Appointment of Committees**

*Subject to SO 1.5 and such directions as may be given by NHS Improvement, the Board of Directors may and, if directed to, shall appoint committees of the Board of Directors, consisting wholly or partly of directors of the Trust or wholly of persons who are not directors of the Trust.*

7.2 *A committee appointed under SO 7.1 may, subject to such directions as may be given by NHS Improvement or the Board of Directors 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 Trust committee).*

7.3 The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors.

- 7.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 7.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.
- 7.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors 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 of Directors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined.
- 7.7 Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by NHS Improvement, and where such appointments are to operate independently of the Board of Directors such appointment shall be made in accordance with the regulations laid down by NHS Improvement.
- 7.8 The committees and sub-committees established by the Board of Directors are:
- (a) Audit and Risk
  - (b) Quality and Effectiveness
  - (c) Nominations and Remuneration
  - (d) Charitable Funds
  - (e) Finance and Performance
  - (f) Working Together Partnership Committee in Common
- 7.9 **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 of Directors or shall otherwise have concluded on that matter.
- 7.10 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

## 8 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Pursuant to Section 20 of Schedule 7 of the 2006 Act, a register of Directors' interests must be kept by the Trust.

8.2 Pursuant to Section 152 of the 2012 Act, Directors have a duty:

- a) to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- b) not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

### 8.3 Declaration of Interests

Directors are required to declare interests, which are relevant and material. All existing Directors should declare relevant and material interests. Any Directors appointed subsequently should do so on appointment.

8.4 Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in any organisation, including charity or voluntary organisations, in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.

8.5 If directors have any doubt about the relevance of an interest, this should be discussed with the Chair.

- 8.6 At the time the interests are declared, they should be recorded as appropriate. Any changes in interests should be declared at the next Board of Directors meeting as appropriate following the change occurring. It is the obligation of the Director to inform the Trust Board Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 3 working days.
- 8.7 During the course of a Board of Directors meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, majority will resolve the issue with the Chair having the casting vote.
- 8.8 There is no requirement for the interests of directors' spouses or partners to be declared.
- 8.9 **Authorisation of Conflict of Interest**  
Where a director has a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (in contravention of the duty outlined at SO 8.2), this may be authorised if a majority of directors vote in favour of authorisation. If there is a dispute as to whether a conflict or potential conflict of interest exists, majority will resolve the issue with the Chair having the casting vote.
- 8.10 If a director has a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust that is not authorised by the Board of Directors, the director in question will be deemed to be in breach of the statutory duty outlined at SO 8.2.
- 8.11 **Register of Interests**  
The details of directors' interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Secretary, during which any changes of interests declared during the preceding month will be incorporated.
- 8.12 Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.

## **9 DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 9.1 *If a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting*

*and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.*

9.2 *The Trust shall exclude a director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.*

9.3 *For the purpose of this Standing Order directors shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:*

(a) *they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;*

*or*

(b) *they are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;*

*and in the case of married persons, persons in a civil partnership, or unmarried persons living together as partners, the interest of one spouse or partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.*

9.4 *A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:*

(a) *of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;*

(b) *of an interest in any company, body or person with which they are connected as mentioned in SO 9.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.*

9.5 *Where a director:*

(a) *has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and*

(b) *the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and*

- (c) *if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,*

*this Standing Order shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.*

- 9.6 *SO 9 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or sub-committee (whether or not they are also a director of the Trust) as it applies to a director of the Trust.*

## **10 STANDARDS OF BUSINESS CONDUCT**

### **10.1 Policy**

Directors shall act in accordance with the Nolan Principles Governing Conduct of Public Office Holders at all times.

- 10.2 The Trust has adopted as good practice the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff' and staff must comply with this guidance. The following provisions should be read in conjunction with this document.

### **10.3 Interest of Officers in Contracts**

If it comes to the knowledge of a director or an officer of the Trust that a contract in which they have any pecuniary interest not being a contract to which they is themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 10.4 An officer must also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

- 10.5 The Trust shall require interests, employment or relationships so declared by staff to be entered in a register of interests of staff.

### **10.6 Canvassing of, and Recommendations by, Directors in Relation to Appointments**

Canvassing of directors of the Trust or members of any committee 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.

- 10.7 A director of the Trust 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.
- 10.8 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 10.9 **Relatives of Directors or Officers**  
Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 10.10 The directors 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 Board of Directors any such disclosure made.
- 10.11 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.
- 10.12 Where the relationship of an officer or another director to a director of the Trust is disclosed, the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (SO 9) shall apply.
- 10.13 In accordance with paragraph 1.1.2 of the Trust's Standards of Business Conduct and Employees Declarations of Interest Policy, any Board member or member of staff who receives or is offered and declines hospitality in excess of £50.00 is required to enter the details of the hospitality in the Trust's Hospitality Register.

## **11 TENDERING AND CONTRACT PROCEDURES**

### **11.1 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 5.40 (Suspension of SOs) is applied).

### **11.2 EU Directives Governing Public Procurement**

Directives by the Council of the European Union promulgated by the Department of Health (DoH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.

11.3 The Trust shall comply as far as is practicable with the requirements of the Capital Investment Manual and with guidance contained in "The Procurement and Management of Consultants within the NHS".

#### 11.4 Financial Thresholds

The Trust shall set financial thresholds above which competitive quotations and tenders are to be invited. The value to be compared to the threshold is the estimated full amount of the goods and/or services to be paid during the life of the contract exclusive of vat.

11.5 The estimated value of the requirement is calculated with reference to the following:

- a) all possible options under the contract need are included;
- b) where volumes and prices are known in advance, then the value of the contract is the full amount which will be paid during the life of the contract;
- c) where the contract is for an indefinite period, or for a period of time which is uncertain when the contract is entered into, or the volumes are uncertain, then the estimated amount to be paid is the estimated monthly value multiplied by 24;
- d) where it is proposed to enter into two or more contracts for goods or services of a particular type, then the estimated value of each of the contracts must be added together. This aggregate value is the one which must be applied and assessed against the threshold. Where the aggregate value is above the threshold, each contract has to be put to competition, even if the estimated value of each individual contract is below the threshold;
- e) for building or engineering works this is the estimated value of the whole works project, irrespective of whether or not it comprises a number of separate contracts for different activities. For example if the construction of a new building is divided into three phases, site clearance, construction and fitting out, the threshold must be applied to the value of all three phases, even though the activities are different and different contractors may be used.

11.6 If the estimate proves to have been flawed, for example, because bids or the eventual contract value are significantly higher than estimated, there may be a breach of the Regulations and the competition may have to be stopped and started again. There may, for example, be unfairness to contractors who relied upon a flawed estimate in reaching a decision not to bid for a particular contract.

11.7 The current thresholds (exclusive of vat) are 3 written quotes up to £25,000, formal quotes up to £50,000; local tenders £50,000 to EU Threshold and measured term contract for works £250,000.

**11.8 Formal Competitive Tendering and Quotations**

The Trust shall ensure that competitive tenders are invited 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 DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); where the value is expected to exceed the financial threshold (11.7) and for disposals.

11.9 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:

- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed the financial threshold (11.7); or
- (b) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with.

11.10 Formal tendering procedures are not required where:

- (a) the requirement is covered by an existing contract;
- (b) the requirement is covered by an existing framework

11.11 Formal tendering procedures may be waived by the Chief Executive where:

- (a) where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- (d) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
- (e) specialist expertise is required and is available from only one source; or
- (f) 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
- (g) 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
- (h) where provided for in the Capital Investment Manual.

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (d) to (g) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Audit and Risk Committee in the next formal meeting.

- 11.12 The limited application of the single tender rules (11.9 and 11.10 above) 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.
- 11.13 Quotations are required from at least three suppliers where formal tendering procedures are waived under SO 11.9 (a) and where the intended expenditure or income exceeds, or is reasonably expected to exceed the financial threshold (11.7).
- 11.14 If a framework agreement is to be used, the selection of the best supplier for the particular need is to be made on the basis of either:
- (a) the supplier offering the most economically advantageous offer (using the original award criteria) for the particular need where the terms of the agreement are precise enough; or
  - (b) through mini competition between those suppliers on the framework capable of meeting the particular need using the terms of the original terms, supplemented or refined as necessary.
- 11.15 Works requirements falling below the MTC financial threshold (11.7) can be placed with the measured term contract supplier, following the process set out in that contract.
- 11.16 Except where SOs 11.10 and 11.11, or a requirement under SO 11.2, applies, the Board of Directors shall ensure that invitations to tender are sent to a sufficient number of suppliers to provide fair and adequate competition as appropriate, and in no case less than three written competitive tenders must be obtained, having regard to suppliers capacity to supply the goods or materials or to undertake the services or works required.
- 11.17 The number of suppliers to be invited to tender for building and engineering schemes valued above the financial threshold (11.7) will be a minimum of six, of which four written competitive tenders must be obtained, unless the requirement is waived in writing by the Chief Executive or Director of Finance.
- 11.18 The Board of Directors shall ensure that normally the suppliers invited to tender (and where appropriate, quote) for building and engineering schemes are among those on approved lists (see Annex 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.

- 11.19 Tendering procedures are set out in the Annex.
- 11.20 Quotations should be in writing or via the e-tendering system for quotes above £25,000 unless the Chief Executive or their 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.
- 11.21 All quotations should be treated as confidential and should be retained for inspection.
- 11.22 The Chief Executive or their nominated officer should evaluate the quotations and select the one that is either the lowest cost or is the most economically advantages to the Trust taking into account quality. If this is not the lowest or economically advantages then this fact and the reasons why should be in a permanent record.
- 11.23 **Where tendering or competitive quotation is not required**  
Where tenders or quotations are not required, because expenditure is below the financial threshold (11.7), the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.
- 11.24 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 of Directors may also determine from time to time that in-house services should be market tested by competitive tendering (SO 11.8).
- 11.25 **Private Finance**  
When the Board of Directors 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) The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires.
  - (c) The selection of a private sector partner must be on the basis of competitive tendering or quotations.
- 11.26 **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;

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.

11.27 In all contracts made by the Trust, the Board of Directors shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

**11.28 Personnel and 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 enter into contracts for the employment of temporary staff.

**11.29 Healthcare Services Contracts**

Healthcare Services Contracts made between two NHS organisations are subject to the provisions of the 2006 Act.

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

**11.31 Contracts Involving Funds Held on Trust**

Contracts Involving Funds Held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

**11.32 Legality of Payments**

It is the responsibility of the Director of Finance to ensure that all payments made by the Trust fall within its powers.

**12 DISPOSALS**

12.1 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 Trust's condemnation policy;
- (c) items to be disposed of with an estimated sale value of less than £5,000;
- (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 DoH guidance has been issued but subject to compliance with such guidance.

### **13 IN HOUSE SERVICES**

13.1 In all cases where the Board of Directors 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 group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £250,000, a non-executive director should be a member of the evaluation team.

13.2 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.

13.3 The evaluation group shall make recommendations to the Board of Directors.

13.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

### **14 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

#### **14.1 Custody of Seal**

The Common Seal of the Trust shall be kept by the Secretary in a secure place.

**14.2 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 of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.

14.3 The legal requirement to "seal" documents executed as a deed has been removed. The Board of Directors' may however, choose to continue to use the seal.

14.4 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) and authorised and countersigned by the Chief Executive (or an officer nominated). Officers nominated to approve the use of the seal on behalf of either the Director of Finance or Chief Executive shall not be within the originating directorate.

**14.5 Register of Sealing**

An entry of every sealing shall be made and numbered consecutively in a book 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. A report of all sealing shall be made to the Board of Directors at least quarterly. (The report shall contain details of the seal number, description of the document, date of sealing, and the directors authorising the use of the seal).

**15 SIGNATURE OF DOCUMENTS**

15.1 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 of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

15.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, 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 of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

**16 MISCELLANEOUS**

**16.1 Standing Orders to be given to Directors and Officers**

It is the duty of the Chair to ensure that existing Governors and all new Directors are notified of and understand their responsibilities within SOs and SFIs. Updated copies shall be issued to Directors designated by the Chair. New Directors shall be informed in writing and shall receive copies where appropriate of SOs.

**16.2 Documents having the standing of Standing Orders**

Standing Financial Instructions shall have effect as if incorporated into SOs.

**16.3 Review of Standing Orders**

Standing Orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in SOs.

**17 VARIATION AND AMENDMENT OF STANDING ORDERS**

17.1 These Standing Orders shall be amended only if:

- (i) at least two-thirds of the Board of Directors are present; and
- (ii) a majority of those present, including no fewer than half the total of the Trust's non-executive directors, vote in favour of amendment; and
- (iii) the variation proposed does not contravene any statutory provision or direction made by NHS Improvement.

## Annex - TENDERING PROCEDURE

### 1 INVITATION TO TENDER

- 1.1 All invitations to submit a tender on a formal competitive basis by utilising the E-Tender Portal and shall include:
- (a) clear instructions of documentation to complete, including pricing information, technical specifications and business continuity plans
  - (b) details of the closing date, time and place of receipt of submission with a named lead of who to contact should there be submission problems.
- 1.2 Extensions of time for the period allowed for receipt of tenders shall only be considered where no tenders have been received or, if tenders have been received, on the basis that all parties are notified and all agreed to the proposed extension . Suppliers may re-submit if they wish by the new deadline.
- 1.3 Each invitation shall include as a minimum (where appropriate) the following:
- (a) Instructions to Offer
  - (b) Terms of offer including Evaluation Criteria
  - (c) Specification of goods/service
  - (d) Terms and conditions of contract as appropriate.
  - (e) Offer schedule(s)
  - (f) Form of offer
- 1.4 Other than in exceptional circumstances, all preparation in relation to the specification and the evaluation of product should be conducted prior to invitation to tender.
- 1.5 Other than in exceptional circumstances, all preparation in relation to the specification and the evaluation of product should be conducted prior to invitation to tender.
- 1.6 There shall normally be no contact between Officers of the Trust and the candidates invited to tender in relation to the tender or the proposed contract between the issue of the tender documentation and the award of the contract other than via the use of the Electronic Portal to:-
- (a) clarify questions relating to the specification, or
  - (b) clarify questions relating to the completion of the tender documents, or
  - (c) offer all parties invited to tender a briefing on the Trust's requirements with the opportunity for the Officers of the Trust and such persons as deemed appropriate and parties invited to tender representatives to ask questions of each other at a meeting arranged by the Trust specifically for this purpose:

- where this happens an electronic record should be made and retained for future inspection, or
- (d) arrange trials of supplies and/or equipment.

No clarification by Officers of the Trust shall be sought with candidates in relation to financial matters including pricing until after tenders have been opened.

## **2 RECEIPT, SAFE CUSTODY AND RECORD OF FORMAL TENDERS**

2.1 All communicating with candidates between invitation to tender and receipt of tender by the Trust shall be channelled through the e-tendering portal.

2.1.1 Unsuccessful tenderers will be notified via the e-tendering portal.

2.1.3 All tenders received and associated documents (or copies of) will be retained by those seeking the tender and stored on the E-Tendering Portal against the unique Contract reference number for future reference, inspection and audit where required along with the evaluation scoring and details of the evaluation team.

2.1.4 By utilising the E-Tendering Portal procedures shall be adopted to ensure that all tenders received are retained in the secure electronic Portal and remain unopened until such time as they are officially opened which shall be as soon as is reasonably practicable following the latest date and time set for receipt of tenders.

2.2 The tenders will be opened and recorded electronically in the e-tendering portal by two Procurement officers.

2.3 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 their offer.

2.4 Where the lowest tender submitted is so much below the estimate it prompts doubts as to whether an error has been made in tendering, especially where it differs substantially from the other tenders, confirmation of price may be sought from the tenderer via the e-tendering portal without disclosing that it is the lowest tenderer, and an assurance that the contractual arrangements and technical documentation have been fully understood. If the tenderer has made an error, they may withdraw their tender. If they stand by their original price, it must be decided whether acceptance would carry too great a risk of subsequent failure before establishing an order of preference.

2.5 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.

- 2.6 Wherever the invitation to tender does not demonstrate sufficient competition by reason of an inadequate response to the invitation, the supervising officer/project manager concerned shall set up a fresh competition, and all tenderers submitting a tender from the original invitation shall be invited to re-tender.

### **3 WORKS TENDERS**

- 3.1 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 either the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract or NEC3 form of contract 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, 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 Institution of Civil Engineers. The standard 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 DoH.
- 3.2 Works to a maximum value of £250,000 may alternatively be procured through an agreed Measured Term Contract, based on the provisions of the Joint Contracts Tribunal (JCT) contract form. The current Measured Term Contract award should be renewed in February 2017.
- 3.3 Works of value greater than £1m may be procured under an EU Public Procurement compliant Procure 21+ process. This process will be reviewed in April 2016 (as P22\_ and is likely to be of similar form to P21+ and will be a route available for procurement of works greater than £1m.

### **4 LISTS OF APPROVED FIRMS**

- 4.1 A manager nominated by the Chief Executive shall on behalf of the Trust maintain lists of approved firms from whom tenders and quotations may be invited. These shall be kept under frequent review. The lists shall include all firms who have applied for permission to tender and as to whose technical and financial competence the Trust is satisfied. All suppliers must be made aware of the Trust's terms and conditions of contract and their selection for invitation to tender or quote, must be effectively rotated.

#### **(a) Building and Engineering Construction Works**

- (i) Invitations to tender shall be made only to firms included on the approved list of tenderers compiled in accordance with this Instruction or on the separate maintenance lists compiled in accordance with Estmancode guidance (Health Notice HN(78)147).
  - (ii) Firms included on the approved list of tenderers 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 current legislation and regulations.
  - (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 and CDM2007. Firms must provide to the appropriate manager a copy of its safety policy and evidence of the safety of plant and equipment, when requested.
- (b) **Financial Standing and Technical Competence of Contractors**  
The Director of Finance may make or institute any enquiries he deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director of Facilities and Commercial Development will similarly make such enquiries as is felt appropriate to be satisfied as to their technical competence.
- 4.2 The Trust shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 4.3 If in the opinion of the Chief Executive or the Director of Finance it is impractical to use a list of approved suppliers (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.
- 4.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

## **5 NEGOTIATED TENDERS**

- 5.1 The use of a negotiated tender leading to a 'continuation' or 'run-on' contract may be appropriate where the need arises for additional work which, if authorised as variation on the existing contract or let to another contractor would be undesirable or unduly

disruptive and expensive. This situation can arise in two circumstances:

- (a) when the need is for further work of a similar nature to that already being executed and normally on the same or a closely adjoining site; and
- (b) when the need is for alteration to the works executed in the original contract which it is important should be carried out by the same contractor in order to safeguard the Trust's rights with regard to defects in the works.

5.2 The following criteria must be observed when considering the use of negotiated tender procedure:

- (a) The initial contract must have been awarded as a result of competitive tendering.
- (b) The new work must not be of a disproportionately high value (i.e. as a general rule not more than 50%) in relation to the value of the initial contract.
- (c) For further work of a similar nature a high proportion (at least 60%) of the value of the new work must be covered by rates included in the initial contract that can be used as basis of negotiation of new rates.
- (d) For alteration works, the rates must be based as far as practicable on the same fundamental costing data used for rates in the initial contract.
- (e) The aggregate value of contracts awarded for additional works may not exceed 50% of the value of the original contract.
- (f) During the negotiations the contractor's agreement must be obtained that the addition of further work will not later be raised by them as a ground for a claim for disruption of the initial contract. (The costs of any necessary reorganisation of the initial contract so as to accommodate the further work must be raised during the negotiations and, if agreed, included in the negotiated amount).
- (g) At the conclusion of the negotiations the Trust must have reasonable evidence to show that the negotiated amount is no less favourable than a freshly obtained competitive tender would be.
- (h) The procedure must not be used simply to recover time lost during the initial contract or as a means of bringing forward a later scheme, or as a substitute for good planning.
- (i) The details of the further work should be fully prepared and meet the normal requirements of readiness to proceed to tender.

- (j) The timetable for the negotiations should be linked with the planning of capital expenditure so that this does not place any additional constraint on the Trust's freedom of action.

## **6 TENDERS NOT STRICTLY IN ACCORDANCE WITH SPECIFICATION**

- 6.1 Tenders not strictly in accordance with the specification may be considered if a marked financial advantage to the Trust would otherwise be lost. A marked financial advantage is a saving in excess of £1000 or 1% of the tender price, whichever is the greater.
- 6.2 Provided there is no reason to doubt the bona fides of the tenderer, the lowest tenderer to specification may be asked to revise their tender to conform to the revised specification.
- 6.3 If they are willing to do so but refuses to abide by their original price, their tender must be rejected.
- 6.4 If they decline to revise their tender to conform with the specification then, in the case of professional Services Contracts or Supplies Contracts, post tender negotiations may be undertaken in accordance with the procedures below. Otherwise the tender should be rejected and the second lowest (or second highest in the case of a sale) should be considered.
- 6.5 If so many of the tenderers fail to conform with the specification that the whole basis of the competition is invalidated or post tender negotiations do not take place then consideration should be given to re-commencing competition and inviting further tenders.

## **7 POST TENDER NEGOTIATION**

- 7.1 At any time prior to acceptance of a tender by the Trust the Chief Executive or any officer authorised, may authorise post tender negotiations if it appears that a marked financial advantage as defined above may accrue to the Trust, or, if subsequently there has been a bona fide change in specification which is not so significant as to warrant abandonment of the procedure and the invitation of further tenders.
- 7.2 Where the negotiation is carried out by officers of the Trust each tenderer shall be notified that the Trust wishes to enter into post tender negotiations, and at least each of the three lowest (or highest in the case of a sale) tenderers, or all the tenderers if less than three submitted valid tenders, shall be invited to attend a separate meeting at the Trust's offices (unless an adverse financial report has been received from the Director of Finance in respect of any tenderer, in which case that tenderer shall be excluded from the invitation). At each such meeting the Trust shall be represented by at least two

officers, one of whom shall write a minute of the meeting, which, as soon as practicable thereafter, shall be confirmed as correct by the other officer and each tenderer shall be given equal opportunity on an equal footing insofar as it is reasonably practicable to negotiate the tender, whether as to price, quality or in any other respect. Negotiations with each tenderer may continue over a series of meetings and any amendment finally negotiated shall be confirmed by the tenderer in writing to the Trust.

- 7.3 The time during which all negotiations shall be completed by receipt of written confirmation of any amendments shall be specified in the invitation referred to in 8.2 above and may be extended by notice in writing from the Trust to all tenderers at any time.
- 7.4 Post tender negotiation in relation to Estates contracts shall only take place in accordance with the guidance given in the current edition of the Code of Procedure Single Stage Selective Tendering issued by the National Joint Consultative Committee for Building.
- 7.5 Upon the expiration of the time for negotiation, or any extended period, any amended tender shall be considered in accordance Section 4 on the Acceptance of Tenders.

## **8 PRESERVATION AND DESTRUCTION OF DOCUMENTS**

### **8.1 Estates' Tenders**

Documents relating to the successful tender shall not be destroyed. Documents relating to unsuccessful tenders will be destroyed after six successive financial years following the financial year of origin.

### **8.2 Supply of Goods and Services**

Documents relating to the successful tender shall not be destroyed. Documents relating to unsuccessful tenders will be destroyed six years after the end of the financial year of origin.

## **9 FORMS OF CONTRACT**

- 9.1 Supplies contracts may be executed under hand.
- 9.2 An Official Order or Letter of Acceptance will be sent to the successful tenderer in respect of contracts for estates services up to and including £250,000 in value. In the case of estates services which exceed £250,000 in value but do not exceed £500,000, contracts may be executed underhand.
- 9.3 Those exceeding £500,000 in value will be executed under the Common Seal of the Trust.

- 9.4 Every contract for building and engineering works (except contracts for maintenance work only, where Estmancode guidance should be followed) shall embody or be in the same terms and conditions of contract as those on the basis of which tenders were invited.
- 9.5 In the case of Consultants' commissioning agreements relating to building and engineering works, to which a professional service contract for consultant design services relates, the contract shall be evidenced in writing, so far as is possible having regard to the custom and practice of the profession concerned.

## APPENDIX 1 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	CSU/Executive Directorate and Department	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Standing Orders Board of Directors 2016 – CORP/FIN 1 (A) v.9	CE/Finance	Jon Sargeant/Matthew Bancroft	Existing Policy	March 2019
<b>1) Who is responsible for this policy?</b> Name of CSU/Directorate – Finance Department				
<b>2) Describe the purpose of the service / function / policy / project/ strategy?</b> Who is it intended to benefit? What are the intended outcomes? To provide standing orders for the Board and a framework for the delegation of powers from the Board.				
<b>3) Are there any associated objectives?</b> Legislation, targets national expectation, standards No				
<b>4) What factors contribute or detract from achieving intended outcomes?</b> – Compliance with the policy				
<b>5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief?</b> Details: [see Equality Impact Assessment Guidance] - No				
<ul style="list-style-type: none"> <li>• If yes, please describe current or planned activities to address the impact [e.g. Monitoring, consultation] – N/A</li> </ul>				
<b>6) Is there any scope for new measures which would promote equality?</b> [any actions to be taken] N/A				
<b>7) Are any of the following groups adversely affected by the policy?</b> No				
<b>Protected Characteristics</b>	<b>Affected?</b>	<b>Impact</b>		
a) Age	No			
b) Disability	No			
c) Gender	No			
d) Gender Reassignment	No			
e) Marriage/Civil Partnership	No			
f) Maternity/Pregnancy	No			
g) Race	No			
h) Religion/Belief	No			
i) Sexual Orientation	No			
<b>8) Provide the Equality Rating of the service / function /policy / project / strategy – tick (✓) outcome box</b>				
<b>Outcome 1</b> ✓	<b>Outcome 2</b>	<b>Outcome 3</b>	<b>Outcome 4</b>	
<i>*If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a Detailed Equality Analysis form in Appendix 4</i>				
<b>Date for next review:</b> March 2020				
<b>Checked by:</b> Jon Sargeant/Matthew Bancroft			<b>Date:</b> March 2019	