

## PROCUREMENT POLICY

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On: **20 December 2017**

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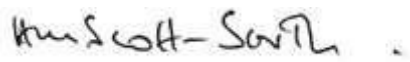
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- ✓ Essential Reading for: **All Directors, Associate Directors, Senior Managers and Department Heads**
- ✓ Information for: **All Staff**

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**Chief Executive**

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# Burton Hospitals NHS Foundation Trust

## POLICY INDEX SHEET

<b>Title:</b>	<b>Procurement Policy</b>
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<b>Consulted</b>	<b>Trust Executive Committee Head of Estates Head of Pharmacy</b>

## REVIEW AND AMENDMENT LOG

Version	Type of change	Date	Description of Change
3	Update	12/04/2012	Re-formatting and update of previous policy
4	Update	15/11/2012	Inclusion of LCFS recommendations with regard to counter fraud. Change of name of group in 5.1
5	Update	02/04/2015	General update of previous expired policy
6	Update	16/06/2015	Update of EU advertisement threshold following revised EU regulations
7	Update	26/01/2016	Update of EU advertisement threshold following revised limits due to currency fluctuations
8	Update	30/09/2017	Inclusion of sustainability requirements as per Sustainability Forum, general housekeeping updates and internal audit advice

# PROCUREMENT POLICY

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# Burton Hospitals NHS Foundation Trust

## PROCUREMENT POLICY

### 1. BACKGROUND

Burton Hospitals NHS Foundation Trust recognises its need to provide high quality care for all patients within a defined financial framework. The provision of patient care is supported in the Trust by using cost effective procurement processes that can deliver value for money. This will be achieved by developing supplier and customer relations that consider whole life cost, demand quality assurance and ensure appropriate competition. Support will be added by simplifying and speeding up the processes that staff use to obtain goods and services.

The Trust is part of the public sector and must be impartial, open and honest in the way it conducts its commercial activities. It is the Board of Directors' responsibility to ensure that mechanisms are in place to ensure commercial activity can deliver efficiency and ensure probity.

### 2. POLICY OBJECTIVES

This Policy sets out to ensure that the Trust provides effective procurement processes, good stewardship and value for money on an annual expenditure of approximately £30 million through Procurement, £5 million through Estates and £15 million through Pharmacy.

The total typically represents approximately 30% of total Trust annual expenditure. It sets out the parameters within which the Trust will manage procurement to meet its Procurement Strategy. It incorporates the commercial activities of the Head of Procurement, Head of Estates and the Head of Pharmaceutical Services.

### 3. DUTIES AND RESPONSIBILITIES

- ✓ The Chief Executive Officer has overall responsibility for ensuring good practice throughout the Trust.
- ✓ The Director of Finance, Information, Performance and Estates holds responsibility for developing strategy, agreeing work plans and setting and measuring performance targets for procurement.
- ✓ It is the responsibility of the Head of Procurement to develop procurement procedures to cover all the Trust's non-pay expenditure that encompass the requirements of Standing Orders, Standing Financial Instructions,

Delegated Financial Limits, EU Procurement Directives and all specific NHS policies relating to expenditure.

- ✓ It is the responsibility of the Head of Estates and Head of Pharmaceutical Services to ensure that all expenditure under their control complies with Standing Orders, Standing Financial Instructions, Delegated Financial Limits and the Guidance notes issued by the Director of Finance, along with working with Procurement to develop a contract work plan which covers this expenditure.
- ✓ Trust Managers must be conversant and comply with Standing Orders, Standing Financial Instructions, Delegated Financial Limits and Standards of Business Conduct and the Guidance notes issued by the Director of Finance.
- ✓ Trust Managers must ensure that Procurement is involved at the earliest opportunity in any new requirement to procure goods or services, in order to ensure compliance with procurement guidelines.
- ✓ Trust Managers must ensure that within their areas of authority, contracts are not agreed with external suppliers without the signature of the Head of Procurement, who will ensure that contracts are agreed on NHS Terms and Conditions, or are considered in the interest of the Trust.
- ✓ Trust Managers must ensure compliance with the Trust Representatives Policy, which dictates how medical and other sales representatives should be engaged.
- ✓ Trust Managers must ensure that verbal orders are not placed with suppliers, nor commitment to purchase given before an order is placed, without the prior agreement of the Chief Executive Officer.
- ✓ Staff involved in procurement must be appropriately trained and ensure compliance with Standing Orders, Standing Financial Instructions, Delegated Financial Limits, EU Procurement Directives and Standards of Business Conduct.
- ✓ It is the common responsibility of all Trust Managers and all staff involved in procurement to strive to achieve best value.
- ✓ Staff who have an interest, whether personal or business related, in any company with whom they have potential to come into contact with in their working role, must declare this to ensure that they are not involved in any related procurement process. This process is subject to periodical review.
- ✓ A declaration of interest form can be found as part of the Trust's Interests, Gifts, Hospitality and Sponsorship Policy and guidance can be given on completion upon request. For projects over the Contracts Finder

advertisement threshold, Procurement will request that all parties involved in evaluation complete a declaration.

- ✓ Procurement will ensure that the Trust's purchasing activity is documented appropriately and subsequently stored for the relevant appropriate timescale in line with the Records Management Policy.
- ✓ Failure to comply with this Policy could place the Trust at significant financial risk and therefore lead to action taken under the Disciplinary Policy.

## **4. COMPETITION REQUIREMENTS**

As a public sector organisation, the Trust must ensure that it acts in an open and transparent manner with regard to the expenditure of public funds. A key element of this is the requirement to make available contract opportunities to as wide a supply base as possible, allowing a range of offers to be considered and ensuring that familiar suppliers are not used without testing value for money.

The following thresholds apply with regard to the advertisement of contract opportunities:

i) Contracts over £10,000

Where over the life of a contract the value is expected to be over £10k, at least three quotations should be obtained through the Procurement department. This process generally takes up to one month.

ii) Contracts over £25,000

New Department of Health guidelines require that, where practically possible, all new contract opportunities above £25,000 over the life of the contract should be advertised in an appropriate manner. A standard pre-qualification document, the Standard Questionnaire (SQ), must be used as part of the tender process in order to pass or fail potential bidders. All bidders who pass the SQ must have their tender response evaluated. The process may take up to three months in total.

Where it is decided that advertisement is not practical, the Trust's Standing Financial Instructions dictate that requirements over £50k receive five tender responses.

iii) Contracts over £164,176 (or £4,104,394 for Works contracts)

Above this level requirements must be advertised in the Official Journal of the European Union where appropriate with set timescales that must be adhered to. The process is as described at point ii) but will take a minimum of six months and potentially up to one year to complete.

*Failure to comply with EU procurement could result in:*

- a) *The High Court setting aside a contract*
- b) *High Court claims for damages from companies denied the ability to participate in competitive tenders*
- c) *Infringement proceedings in the European Court of Human Justice.*

iv) Framework Agreements

Certain contracts have been let on behalf of the NHS through national or regional bodies through the EU process, meaning that the Trust can access them more expediently and potentially link into greater economies of scale.

The Procurement department will ensure that purchases are compliant with framework agreement terms where applicable.

v) Contract Splitting

Contracts must not be split into smaller requirements in order to award all elements to one supplier without a formal procurement process. Where this occurs it is referred to as 'deliberate disaggregation of spend' and instances of this would leave the Trust open to significant risk of challenge.

It is the responsibility of Trust Managers to ensure that the timescales above are considered when a new purchase is required.

Standing Orders and Standing Financial Instructions for competition requirements may only be waived in the following circumstances:

- ✓ Where the requirement is covered by an existing Trust contract
- ✓ Where there are genuine reasons for only one supplier being approached which will stand up to public scrutiny, in line with the Trust's Sole and Preferred Supplier Procedure
- ✓ Where timescales genuinely preclude the ability to invite tenders, where this urgency is not through lack of planning
- ✓ Where there is a clear benefit to maintaining continuity with a previous project.

Sole or preferred supplier waivers must not be used to deliberately circumnavigate competition requirements.



## 5. DEPARTMENT OF HEALTH (DoH) REQUIREMENTS

In August 2013 the DoH released a strategy document named 'Better Procurement, Better Value, Better Care' with the intention of ensuring that NHS procurement is optimised to meet ongoing financial challenges.

Specifically these requirements include:

- i) E-Procurement Strategy
- ii) Transparency Guidelines
- iii) Combatting Inflation
- iv) NHS Standards of Procurement
- v) NHS Procurement Dashboard.

The Trust will aim to meet the requirements of the strategy in entirety.

## 6. COUNTER FRAUD

Procurement activity is widely considered an area exposed to fraud and bribery. It is therefore essential that staff adhere to the principles of the Procurement Policy and Anti-Fraud and Bribery Policy, along with all relevant procurement practice documentation.

Definitions of Fraud and Bribery are provided below:

**Fraud** - *Any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006.*

**Bribery** - *Giving (or offering) or receiving (or requesting) a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith'. (Bribery Act 2010)*

**Misfeasance/Misconduct in Public Office** - *Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.*

## 7. FORUMS

The following forums will support the development, monitoring and delivery of procurement within the Trust and administer best practice.

### **7.1 Non-Pay Working Group**

This group, represented by Divisional Business Managers and Finance leads will be responsible for the delivery of savings identified through the contract work plan to meet its CIP targets. It will identify performance against the plan and identify other initiatives to meet its targets.

### **7.2 Divisional / Departmental Non Pay Groups**

Procurement will actively work to support or implement non pay review groups where appropriate throughout the Trust. These groups will be used to support the identification of savings and their implementation.

### **7.3 Medical Equipment Group**

This group will consider and prioritise bids for equipment, define a procurement plan for the replacement of old and the delivery of new equipment, developing a policy for equipment standardisation.

The Terms of Reference of these groups will be reviewed, where appropriate, to ensure that they support the delivery of this Policy.

### **7.4 Medical Devices and Product User Group**

This group will, under the leadership of the Deputy Director of Nursing, provide a forum to allow the review of new product opportunities and standardisation across the Trust, as well as means to challenge current preferences with regard to medical devices.

### **7.5 Drugs and Therapeutics Committee**

This group will agree the range of pharmacy products that may be added to the formulary.

## **8. POLICY EFFECTIVENESS**

The effectiveness of this Policy will be regularly monitored within the Procurement department and through Divisional meetings. Compliance with the process will also be subject to regular review by the Trust's Internal Auditors. The effectiveness of compliance of this policy will be monitored by the Trust's Executive Management Committee.

## **9. SUSTAINABILITY**

## i) Introduction

The Trust's Sustainable Development Policy outlines the intention to focus on sustainable developments and allows the Trust to gain a better understanding of its effects on the environment and how to mitigate any impact, by minimising the use of resources such as electricity, gas oil and water. In addition, the Trust intends to make more efficient and effective use of resources and promote health, wellbeing and sustainable lifestyles within the local community.

The policy is split into the below sections:

- ✓ Leadership, Engagement and Development
- ✓ Sustainable Clinical and Care Models
- ✓ Healthy, Sustainable and Resilient Communities
- ✓ Carbon Hotspots
- ✓ Commissioning and Procurement.

The Trust's Procurement team are responsible for procurement activity across a wide range of goods and services and are committed to pursuing the principles of sustainable procurement. This Policy sets out the parameters for meeting the requirements of the Trust's Sustainable Development Management Plan (SDMP) through all procurement activity under the department's influence.

The Trust is dedicated to ensuring that goods, supplies and services purchased are:

- ✓ Manufactured, delivered, used and disposed of in an environmental, sustainable and socially responsible manner, and
- ✓ Deliver long-term value for money for the Trust and Public Sector as a whole.

The right procurement choices can reduce harmful environmental impacts, waste, minimise transportation and reduce pollution. Sustainable procurement can also impact positively on an organisation's image; boosting reputation and inspiring staff, patients and visitors, therefore should be an essential consideration for the Trust.

## ii) Key Sustainability Objectives

- Include the provision for the review of sustainability, carbon reduction & adaption and waste reduction within relevant procurement projects
- Where pertinent to the contract, require that organisations provide examples of their own sustainability policies or SDMPs for evaluation as part of tender processes
- Where appropriate include clauses that require bidders to demonstrate how they will reduce emissions throughout a contract
- In the evaluation of tenders, consider a whole lifecycle costing approach to the award decision, taking into account energy costs and

other carbon related factors. The below diagram at Figure 1 shows the areas that will be considered in cost comparisons

- ↗ Ensure that investment decisions are made on the basis of net present value (NPV), return on investment (ROI) and marginal abatement cost (MAC) curves where appropriate
- ↗ Ensure that business cases for purchases include energy costs and comparisons where appropriate
- ↗ Seek to procure the more environmental friendly option when evaluated between two or more otherwise comparable bids
- ↗ Where possible procure food from local suppliers and identify opportunities to support the local economy in procurement decisions.

Figure 1 – Whole Lifecycle Costing Considerations



### iii) Encouraged Enterprises

The Trust will ensure that encouraged enterprises are given the opportunity to bid for contracts where possible and will ensure that it will:

- ↗ Advertise contract opportunities under OJEU levels and above £25k on Contracts Finder where possible to allow visibility for encouraged enterprises
- ↗ While following Trust Standing Financial Instructions, advertise below £25k opportunities as widely as possible using the Multiquote system
- ↗ Increase awareness of Trust processes in local businesses
- ↗ Use the apportion of Lots into contracts where appropriate to break an opportunity down into smaller elements

- Agree contracts on NHS Terms and Conditions where possible, which include provisions on companies to pay their sub-contractors within 30 days

#### iv) Social Value

The Public Services (Social Value) Act 2012 requires that commissioners and procurers consider the economic, social and environmental benefits of their approaches to the procurement of services at the pre-procurement stage.

The Act does not however cover;

- Contracts for goods and works
- Contracts below the OJEU thresholds
- Call offs from framework agreements.

Subsequently, for all new contracts for services above the thresholds detailed within Section 4 iii) above, the Trust needs to consider how the procurement can be used to positively impact the relevant area. This could be through things such as improved local services or creating new jobs in the local area.

The checklist provided at Appendix A will be completed and discussed with the Head of Procurement upon initiating any new procurement for services above OJEU levels.

#### v) Equality and Diversity

The Trust aims to ensure that Equality and Diversity are promoted in all of its activities. In line with this Procurement will ensure that:

- Trust wide equality and diversity policies and processes will be worked to
- The Trust's tender documentation will include the provision for bidders equality and diversity procedures to be reviewed, with bids being rejected where there is insufficient evidence of appropriate policy
- Equality and diversity tender evaluation criteria will be used where appropriate
- Compliance with Equality and Diversity, Health and Safety, Modern Slavery, and Environmental Management legislation will be considered a pass or fail criteria in Trust tenders.

#### vi) Modern Slavery

The Modern Slavery Act was passed in March 2015 with the aim of addressing slavery and human trafficking in the 21st century.




Although the Act focuses on victim identification and prosecutions it also highlights the role of business in tackling the global problem of slavery, forced labour and human trafficking through the 'transparency in supply chains' provision.

Obligations of the Act took effect from October 2015 when commercial organisations with a turnover above £36million a year must publish a 'Slavery and Human Trafficking Statement.' The statement must disclose what an organisation is doing to tackle modern slavery in their organisation and their supply chain.

As the Trust is an organisation that spends in excess of £60m per annum on a wide range of goods and services, the Trust needs to ensure that the risks of potential modern slavery within our supply chains are being appropriately managed.

Subsequently the Trust produces an annual 'Modern Slavery Statement' which outlines key actions taken with regard to addressing the potential for modern slavery.

Most recently some of the key actions taken have been:

-  Collaborative / National Agreements – The Trust's collaborative partners (who account for in excess of 50% of the Trusts spend) have been contacted and assurance received that modern slavery terms are included within their framework agreements. Our Partners have significantly more resource to be able to investigate supply chains more fully than an individual Trust.
-  Local Tenders – A pass/fail criteria is included within tender documentation (for both OJEU levels and below) that requires potential suppliers to confirm they meet the requirements of the Act. Where a supplier fails to meet the Act, they will be removed from the procurement process.
-  All other spend – a Supplier Code of Conduct has been developed outlining that the Trust expects compliance to the Act. This document is available on the Trust's website and all purchase orders refer to the code.

Considerations:

It is not realistic for a Procurement team of the Trust's size to fully investigate supply chains for modern slavery, and indeed this is not a legal requirement of the Act, however, the Trust will seek to ensure that any identification of modern slavery is addressed appropriately.

## **Appendix A**

### **Social Value Act Checklist**

#### **Consideration of Social Value (Economic, Social and Environmental Considerations)**

Under the **Public Services (Social Value) Act 2012** commissioners and procurers are required to consider the economic, social and environmental benefits of their approaches at the pre-procurement stage. This applies to public services contracts and framework agreements to which the Public Contracts Regulations apply.

*Note: the following are not covered by the Act:*

*Contracts for goods and works*

*Contracts below the relevant financial thresholds*

*Call offs from framework agreements*

**Q1** - Has consideration been given to the Social Value of this project, and how this could be legitimately reflected within this procurement (in line with the Public Contracts Regulations)?

**Q2** - Have we considered how what is to be procured may improve the social, environmental and economic well-being of the relevant area, how such an improvement might be secured and to consider any need to consult? Please provide any comments/further information:

**Q3** - What considerations may we want to make regarding Social Value (Economic, Social and Environmental Considerations)? Please provide any comments/further information: