

# Standing Orders (including Procurement Policy)

February 2010

## **Foreword**

The Board of The Office of Health Professions Adjudicator (OHPA) has agreed Standing Orders (SOs) for the regulation of their proceedings and business.

OHPA's Standing Orders should be read in conjunction with the Standing Financial Instructions, which set out the financial rules adopted by OHPA, and Scheme of Assignment, which sets out arrangements for the delegations to other individuals and committees.

The Standing Orders, Standing Financial Instructions and Scheme of Delegation provide a comprehensive business governance framework. They fulfil the dual role of protecting the organisation's interests and protecting staff from any possible accusation that they have not acted properly. 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.

**FAILURE BY A MEMBER OF STAFF TO COMPLY WITH STANDING ORDERS IS POTENTIALLY A DISCIPLINARY MATTER WHICH COULD LEAD TO SANCTIONS UP TO AND INCLUDING DISMISSAL.**

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## **1. Introduction**

1.1 OHPA was established on 25<sup>th</sup> January 2010 in accordance with section 98 of the Health and Social Care Act 2008. It is:

- a public body, yet to receive formal classification by the Office of National Statistics / HM Treasury;
- managed by a team led by the Chief Executive (yet to be appointed), who is the Authority's Accounting Officer and accountable to Parliament. Prior to the appointment of a Chief Executive, the accounting officer role will be held by the Acting Director of Finance.

1.2 The headquarters of OHPA is currently Floor 7, 22 Upper Ground, London, SE1 9BW. This location is subject to change from April 2010.

1.3 OHPA shall exercise its statutory functions in connection with the more effective provision of relevant services to:

- Maintain public confidence in doctors' fitness to practise, by ensuring that adjudication on fitness to practice 'will be undertaken by a separate body which will be demonstrably independent from the regulator, the profession and from government.
- Provide the basis for an 'incremental, managed transition to independent adjudication in relation to healthcare professionals' by providing GOC and other healthcare regulators with an option allowing them to move to independent adjudication in the near future.
- Assist in the harmonisation of healthcare regulators' procedures for adjudication by establishing OHPA procedures as a model for regulators to follow, whether or not they move towards independent adjudication in the near term.
- Ensure a seamless transition of the doctors' adjudication service from GMC to its new home at OHPA, with current standards maintained throughout the transition process, in order to establish OHPA as an effective and credible organisation.
- Provide effective external communication to inform the media and public of OHPA's new independent role, plus effective internal communication throughout to retain the support of all current and future staff.

## **2. Interpretation**

2.1 Save as required by law, at any meeting the Chair of OHPA shall be the final authority on the interpretation of Standing Orders.

2.2 Meaning of terms used in this document are outlined below.

'Accounting Officer' means the Officer responsible and accountable for funds entrusted to OHPA. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For OHPA it shall be the Chief Executive, once appointed, and the Programme Director in the interim.

'Board' means the Chair, non-Executive Directors and Chief Executive.

‘Budget’ means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period (usually one year), any or all of the functions of OHPA.

‘Budget Holder’ means the Officer, as duly authorised, with delegated authority to manage finances (income and expenditure) for a specific area(s) of the organisation.

‘Chair or Chairman’ is the person appointed by the Privy Council to lead the Board and to ensure that it successfully discharges its overall responsibility for OHPA as a whole.

‘Chief Executive’ means the Chief Officer of OHPA.

‘Committee’ means a Committee appointed by the Board.

‘Committee Members’ are persons formally appointed by the Board to sit on or chair specific Committees.

‘Contracting and Procuring’ means the system for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for the disposal of surplus and obsolete assets.

‘Director’ means a person who leads a key workstream on behalf of the Board but he / she is not a member of the Board. It should be noted that directors do not sit on the Board and are distinct from Non-Executive Directors, who do sit on the Board.

‘Motion’ means a formal proposition to be discussed and voted on during the course of a meeting.

‘OHPA’ means the body corporate known as The Office of Health Professions Adjudicator.

‘OHPA Regulations’ means the Office of the Health Professions Adjudicator Regulations 2009, SI 2009/2722 as amended or replaced from time to time).

‘Non-Executive Director’ means the non-executive members of OHPA.

‘Nominated Officer’ means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

‘Seal’ means a physical attachment to an official document, which is applied by a hand-specific operated device.

‘Secretary/Legal Advisor’ means a person appointed by OHPA to act independently of the Board and monitor OHPA’s compliance with the law, SOs and observance of NHS and relevant public sector guidance.

‘SFIs’ means Standing Financial Instructions.

‘SOs’ means Standing Orders.

### 3. **OHPA Board**

#### 3.1 With regard to operation of the Board the following is deemed to apply:

- i) Membership of the OHPA Board is outlined in Schedule 6 of the Health and Social Care Act 2008 and the OHPA Regulations and shall comprise a Chairman; three non-executives plus a Chief Executive.
- ii) The powers of OHPA established under statute shall be exercised by the Board, meeting in public session. The Chairman shall be responsible for deciding whether certain agenda items may, by exception, need to be considered in private session – mainly where such consideration is in the public interest or concerns material which is confidential.
- iii) The public and representatives of the press shall be free to attend all formal meetings of OHPA Board but shall be required to withdraw upon the Board or Committee resolving as follows:  
  
 ‘that pursuant to the Public Bodies (Admission to Meetings) Act 1960 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’ (Section 1 (2) Public Bodies (Admission to Meetings) Act 1960)’.
- iv) Board meetings will be publicised by statements on OHPA’s web site and notice will be given for each meeting.
- v) The Chairman or a non-executive member may resign their office at any time during his / her term of office by giving notice in writing to the Privy Council.
- vi) Ordinary meetings of the Board shall be held at such times and places as the Board may determine, but shall be held at least quarterly and shall, at discretion of the Chairman, move venue.
- vii) Before each meeting of OHPA, a notice of the meeting which specifies the principal business proposed to be transacted at it together with accompanying papers, shall be delivered to each Board member, wherever possible, at least seven clear days before the day of the meeting.
- viii) Where and when necessary, the use of video / teleconference facilities to connect a Board member with a Board meeting shall be deemed acceptable.
- ix) The Minutes of the proceedings of a meeting shall be drawn-up and shall be signed and sealed at the next ensuing meeting by the person presiding at that next meeting.
- x) Minutes shall be circulated in accordance with members’ wishes. Where providing a record of a meeting held in public the Minutes shall be made available to the public including through the OHPA website.
- xi) No business shall be transacted at any meeting unless there is a quorum. The level of the quorum is deemed to be any three members of the Board.
- xii) Committees of the Board will be established as required and only by Board agreement. From the first year of its operation, OHPA will have an Audit Committee.

xiii) In the absence of the Chairman, a non-executive shall chair a Board meeting, after agreement on which one shall assume this responsibility has been reached at the said Board meeting.

3.2 The Chief Executive shall be appointed in accordance with the OHPA Regulations, that is:

- (a) The first Chief Executive shall be appointed by the Privy Council;
- (b) Subsequent Chief Executives shall be appointed by OHPA;
- (c) All Chief Executives shall be employees of OHPA; and
- (d) All Chief Executives shall meet requirements 3-12 set out in paragraph 3 of the OHPA Regulations.

3.3 Each Chair and Non-Executive member shall be appointed by the Privy Council and shall meet requirements 1-12 set out in paragraph 3 of the OHPA Regulations

#### **4. Declarations of Interest and Register of Interests**

4.1 The Code of Accountability requires Board members to declare interests which are relevant and material to the body corporate of which they are a member. All existing Board Members should declare such interests. Any Board members appointed subsequently shall do so on appointment.

4.2 Interests which should be regarded as 'relevant and material' are:

- a) Directorships, including Non-Executive Directorships held in private companies, LLPs 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 public sector;
- c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the public sector;
- d) a position of authority in a charity or voluntary organisation;
- e) any connection with a voluntary or other organisation contracting for public sector services;
- f) ministerial appointments and political activity.

4.3 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair.

4.4 At the time Board members' interests are declared, they shall be recorded in the Board Minutes. Any changes in interests shall be declared at the next Board meeting following the change occurring and be inserted into the Register of Interests.

4.5 Board members' Directorships of companies likely or possibly seeking to do business with public sector services shall be published in OHPA's annual report (under direction from the Privy Council). The information should be kept up to date for inclusion in succeeding annual reports.

4.6 The interests of the spouse or partner of a Board member should also be declared.

- 4.7 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned shall declare their interest, withdraw from the meeting and play no further part in the relevant discussion or decision. The declaration of interest shall be recorded in the Minutes of the meeting.
- 4.8 The Secretary, in liaison with the Chairman and on a case-by-case basis, shall decide when a conflict of interest is established. They will also ensure that where a Board member does have an established conflict of interest, that member does not participate in the meeting. If there is any doubt, the Chairman shall make the final decision.
- 4.9 The Chief Executive shall ensure that a Register of Interests is established and maintained to record formally declarations of interests of Board members.
- 4.10 The Register will be available to the public and the Chief Executive will ensure that it is published on OHPA's website.

## **5. Hospitality and Gifts**

- 5.1 Although casual gifts and hospitality offered to officers by contractors, organisations, firms or individuals may not be in any way connected with the performance of official duty so as to constitute an offence under the Prevention of Corruption Acts, they must nevertheless still be declined or disclosed. Special difficulties can occur at Christmas time when commercial custom and practice may lead to gifts being sent to customers. Items such as a calendar, diary, blotter or other simple item of office equipment of modest value can be accepted where it bears the company's name or insignia and can thus be regarded as being in the nature of advertising matter. Other gifts received through the post or received in person must be handed to Office Services who will raffle them and made available to all officers of OHPA.

## **6. Tendering and Contract Procedure**

- 6.1 A more detailed policy statement in respect of tendering and contracting under EU legislation can be found at Attachment 1 to this document.
- 6.2 OHPA 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 DH) in accordance with OHPA's own tendering and procurement policy. See attachment 1.
- 6.3 Formal tendering procedures must not ordinarily be waived. However, exceptionally, waiving can be undertaken by the Chief Executive or delegated to a named alternate where one of the following (non-exhaustive) conditions is met:
- a) the timescale genuinely precludes competitive tendering. i.e. there is a case of extreme urgency which was neither foreseeable by or imputable to OHPA. Failure to plan the work properly is not justification for single tender;
  - b) specialist expertise required and is available from only one source;
  - c) the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different contractors or suppliers for the new task would be disproportionate, in particular if it does not provide best value for money. In this case the value of the new task should not exceed 50% of the value of the original project.

d) maintaining continuity with an earlier project is advisably for technical or economic reasons. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering. Also, the value of the new task should not exceed 50% of the value of the original project.

6.4 The limited application of the single tender rules outside of a competitively appointed framework contract 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. Where it is decided that competitive tendering is not applicable and should be waived by virtue of (a) to (d) above the fact of the waiver the following should apply:

Amount up to £10,000 – waiving by the Director of Finance

Amount from £10,001 - £49,999 – waiving by the Chief Executive

Amount above £50,000 – reported to the Board

6.5 In all cases of waiving of competitive tendering, the Chief Executive shall report the circumstances of such waiving in full to the Board at the earliest opportunity.

6.6 OHPA shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists compiled e.g. an OGC Catalyst Framework. Where, in the opinion of the Budget Holder, it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Director of Finance.

6.7 Quotations are required where formal tendering procedures are waived and where the intended expenditure exceeds, or is reasonably expected to exceed the limits as set out in OHPA procurement guidelines. They shall also be used where formal tendering procedures have been waived under these Standing Orders, but where the intended expenditure is below the limits set out in the OHPA Procurement Policy. Where it is not possible to invite quotations from an approved list compiled in line with public procurement rules, requirements shall be subject to an open and competitive quotation exercise. In particular, invitations to quote shall be advertised to ensure sufficient competition and to allow the transparency of the procurement process to be reviewed. The closing date shall afford a potential tenderer a minimum of 5-10 days to complete the tender documentation wherever possible.

6.8 Quotations should be in writing unless the Chief Executive or the Director of Finance determine 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.

6.9 All quotations should be treated as confidential and should be retained for inspection by internal and external audit on an on demand basis, electronically whenever possible or by hardcopy where necessary.

6.10 The Chief Executive or their nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest price then this fact and the reasons why the lowest quotation was not chosen should be in a permanent electronic record where possible.

6.11 Non-competitive quotations in writing may be obtained for the following purposes:-

- a) the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his nominated officer, possible or desirable to obtain competitive quotations;
  - b) the goods/services are required urgently.
- 6.12 Where tendering or competitive quotation is not required the Chief Executive shall ensure that the terms outlined in Standing Financial Instructions and OHPA Procurement guidelines are fully met.
- 6.13 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 resource. OHPA may also determine from time to time that in-house services should be market tested by competitive tendering (excluding the adjudication function).
- 6.14 OHPA may only enter into contracts within the statutory powers delegated to it by the Secretary of State and shall comply with:
- a) these SOs,
  - b) OHPA's SFIs,
  - c) EU Directives and other statutory provisions,
  - d) OHPA Procurement Guidelines ,
  - e) OHPA Standard Contract Conditions as are applicable.
- 6.15 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.
- 6.16 In all contracts OHPA shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer (usually the Budget Holder) who shall oversee and manage each contract on behalf of OHPA.
- 7. Signature of Documents**
- 7.1 Where the signature of any document will be a necessary step in legal proceedings involving OHPA, it shall be signed and sealed by the Chief Executive or in their absence, the Director of Finance, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 7.2 The Chief Executive or nominated Officers, shall be authorised by resolution of the Board, to sign on behalf of OHPA any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Board or Committee or Sub-Committee thereof to which the Board has delegated their powers on its behalf.
- 7.3 The Director of Finance must sign all finance and operating lease agreements for the supply of goods and/or services which it is proposed that OHPA enters into, irrespective of their financial value.
- 7.4 Where a document is required to be executed as a deed, OHPA shall execute it by applying the OHPA Seal and by the signature of two OHPA Board members or one OHPA Board member and the Secretary.

**8. Annual Report**

- 8.1 The Chief Executive on behalf of OHPA shall prepare an annual report on the exercise of OHPA's functions during each financial year.
- 8.2 The annual report shall be provided to the Secretary of State and the Department of Health, Social Service and Public Safety in Northern Ireland as soon as possible after the end of the financial year.
- 8.3 The annual report will include any matters directed to be included by the Privy Council.

ATTACHMENT 1

Procurement Policy

**EU Procurement Directives**

The Office of the Health Professions Adjudication (OHPA) is subject to a series of EU procurement directives implemented in the UK by the [Public Contracts Regulations 2006 \(SI 2006 No5\)](#).

The Public Contracts Regulations detail how all public sector bodies, including OHPA, procures works, goods and services with an estimated total contract value exceeding £101,323 (excluding VAT) for supplies and services, and £3,927,260 (excluding VAT) for works.

[Click here](#) for details of the EU Procurement Thresholds applicable from 1<sup>st</sup> January 2010.

Under the EU Procurement Directives if the value of a contract proposal is expected to exceed the £101,323 threshold and / or the £3,927,260 threshold for works and it is not exempted by the Regulations, then OHPA has to publish a Contract Notice in the Supplement to the Official Journal of the European Union (OJEU).

Tenders Electronic Daily (TED) is an online supplement to the OJEU and can be accessed free of charge. [Search for tenders on the TED website](#).

If you wish to respond to any of the contract notices advertised in TED then you will need to follow the instructions contained in each notice.

Business Link provides a useful [overview on selling to government](#)

## **Frameworks**

Depending on OHPA's notified classification as an organisation, and where appropriate, OHPA can call off from suitable existing framework agreements for procuring goods, services and works for any value, including those that exceed the EU procurement thresholds.

Where such framework agreements contain a number of different suppliers capable of providing a particular category of goods, service or works then a mini competition between those suppliers will be carried out under the framework agreement.

OHPA will likely make extensive use of the [Office of Government Commerce Buying Solutions](#) (OGCBs) Catalyst Frameworks.

Other framework agreements created by central Government agencies, local authorities, or public bodies are also available to use by OHPA include, but not limited to:

The NHS Connecting for Health [Additional Supply Capability and Capacity](#) Frameworks and; the [Office of Government Commerce Contracts Database](#)

## **OHPA Procurement Practice**

OHPA is committed to good practice procurement techniques and will seek to comply with the principles contained in the Government Procurement Code of Good Practice, which are:

### **Fairness**

- OHPA will be objective, evenhanded and transparent when making decisions and making sure that each competition is run without favouring any one supplier.
- Applying UK domestic policy and meeting EU and international obligations

- Making sure of genuine competition by selecting the appropriate number of Tenderers taking account of the legal requirement, and seeking to reduce unnecessary costs by restricting competitions to a reasonable size.

### **Honesty and Openness**

- Indicating clearly when inviting suppliers to tender how their offers will be evaluated and stating the relative priorities of the selection and award criteria.
- Providing successful and unsuccessful tenderers with detailed de-briefs which are designed to promote future improvement.
- Making sure that formal competitions are launched only when there is a clear intent to award a contract.

### **Efficiency and effectiveness**

- Implementing best practice, as promulgated by government and other relevant organisations as appropriate.
- Making sure that requirements and outputs or benefits are specified in a way that enables suppliers to propose the best value for money solution, adopting innovative approaches where appropriate.
- Making sure that proposed timetables are realistic.

### **Professionalism**

- Continuing to award work on the basis of value for money (whole life cost and quality) criteria and not simply the lowest price.
- Behaving ethically in all business dealings.

### **OHPA Procurement Policy**

All contracts are awarded by competition between potential suppliers unless there are very compelling reasons why competition can be dispensed with.

All contracts with a value exceeding the EU Threshold for which a suitable approved framework agreement cannot be sourced, will be competed using the most appropriate EU award procedure, which for the NHS IC is predominately the 'Restricted Procedure'.

Each procedure has its own set of rules, which shall be observed as set-out below:-

#### **Open procedure**

Under this procedure, all interested parties submit a tender in response to the OJEU notice. Further, the open procedure does not allow you to have negotiations with bidders. This means that requirements will have to be set out right at the outset. Bidders will tender against the specification and the contract is then awarded.

#### **Restricted procedure**

Similarly to the open procedure, the restricted procedure does not allow to have negotiations with bidders. The difference to the open procedure is that only economic operators pre-selected in accordance with certain pre-selection criteria will be invited to bid. Bidders will tender against pre-set specifications and the contract is then awarded. As with the open procedure, this route is only suitable for straightforward and clearly specifiable requirements.

### **Negotiated procedure**

Negotiation is possible until tender completion under this procedure. However, the public procurement rules state that the negotiated procedure should be used only exceptionally and where competitive dialogue is not appropriate.

### **Competitive dialogue**

This is a relatively new procedure which has the advantage of allowing the input of those participating in the tender process. All interested parties express an interest in tendering for the contract. Those meeting the selection criteria will be invited to tender. During the "dialogue" phase, those tendering can discuss all aspects of the contract individually with the contracting authority. Once the dialogue has generated solutions to the agreed requirements, final tenders are invited based on each tenderer's individual solution. The best tender can then be selected, but there is very limited room for any further changes to be made once submitted.

***To be revised 30 April 2010.***