

Suppliers' code of practice: preventing fraud, bribery and corruption

NHS fraud prevention quick guide

v1.0 July 2019

The purpose of this code of practice is to highlight the role and responsibilities of NHS organisations and their suppliers with regard to preventing fraud, bribery and corruption in the procurement of goods and services supply chain.

Who is this code of practice for?

This guidance is intended for NHS procurement teams, who should share this document with the suppliers they work with. It is intended to complement existing guidance and codes of practice and provides direction to suppliers on what is expected from them when engaging with the NHS.

What is fraud, bribery and corruption?

Public procurement in the UK is directed by the EU treaty and the EU Procurement Directives, the UK Public Contract Regulations 2015 and the UK Public Procurement Regulations 2016 which implement the EU Directives. This legal framework is provided to ensure public procurement is conducted in a fair and transparent manner both in the UK and across the EU. The EU procurement requirements must be followed, in addition to the UK procurement regulations, in cases where the value of the procurement is over a certain monetary threshold.

Fraud

Fraud involves acting with dishonest intent and can occur at any point during the procurement lifecycle and is defined by the Fraud Act 2006, which outlines three different ways of



committing the offence:

- fraud by false representation
- fraud by failing to disclose information
- fraud by abuse of position

The following are examples of fraud that can occur during the procurement process:

- **Provision of inaccurate information:** this is done by the supplier or an individual to secure a contract, e.g. falsifying qualifications or past performance references, including false certifications and defective pricing (failure to disclose accurate, current and complete pricing data).
- **Provision of an intentionally low bid:** this may be done by suppliers with the intention to add costs, post award.
- **Cyber-fraud:** hacking into systems to obtain confidential and commercially sensitive information.

Bribery

The Bribery Act 2010 defines **bribery** as giving or receiving 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. The term 'improper performance' means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. The offering or accepting of bribes is a criminal offence. Bribery can range from the offer of a gift or cash or the use of any other inducement in exchange for preferential treatment.

It is an offence under the Bribery Act 2010 for an organisation to fail to prevent active bribery by not having adequate preventative procedures in place or by failing to prevent persons associated with them from committing active bribery on their behalf. An individual found guilty of bribery on indictment may face up to 10 years' imprisonment and an unlimited fine.

The following are examples of how bribery can occur during the procurement process:

- **Bribery or kickbacks for awarding a contract:** a bribe is given to an employee to secure the award of a contract. A kickback is a form of 'negotiated bribery' where a portion of the value of a contract is demanded by an official as a bribe for services rendered, for example securing the contract itself. For the purposes of the Bribery Act 2010, a kickback is equivalent to a bribe. The kickback might be said to vary from other kinds of bribes in that there is implied collusion between the two parties, rather than one party extorting the bribe from the other.
- **Bribery for disclosing confidential information:** a bribe is given to an employee to secure the disclosure of confidential and commercially sensitive information, such as the content of competing bids.

Corruption

Corruption is defined as dishonest or fraudulent conduct by those in power; this typically involves bribery to induce those individuals to abuse their position of power. The following are examples of how corruption can occur during the procurement process.

- **Bid rigging:** suppliers collude to ensure a particular bidder wins the contract, by reaching an agreement on the bids submitted. Bid rigging can involve:
 - » **Price fixing:** suppliers who collude to fix 'what price to charge'.
 - » **Bid rotation:** collusion by suppliers to rotate contracts between themselves, ensuring that a pre-selected bidder wins on a rotating basis.
 - » **Market sharing:** collusion by suppliers to divide the market (geographically or otherwise) and agree not to bid against each other.
 - » **Bid suppression:** collusion by suppliers to voluntarily reduce the number of bidders or use of coercive means to prevent others submitting bids.
 - » **Complementary bidding:** bidders submitting bids with no intention of winning, for example by submitting high cost bids.
 - » **Cover pricing:** submission of inflated bids by suppliers who have no intention of winning the contract, to assist 'winning' bidder.

- **Manipulation of specifications:** specifications manipulated to favour a particular bidder or specifications not fully developed before the contract is awarded. This can result from inappropriate involvement in the shaping of the requirement during preliminary market consultations.

- **Manipulation of procurement procedures:** This occurs when the procurement process is manipulated to ensure a particular bidder is successful. For example:
 - » Rigging of exclusion/selection (PQQ) criteria or contract award criteria.
 - » Unjustified recourse to single sourcing (direct negotiation).
 - » Contract scope change without the need for re-competition.
 - » Unjustified contract extension.
 - » Abuse of competitive dialogue procedure, negotiated procedure with competition or innovation partnership procedure (e.g. by disclosing confidential and commercially sensitive information about other bids to a particular bidder during negotiations).

The NHS expects suppliers to be vigilant and proactively look for fraud, including the risk of fraud in their own business.

Gifts and hospitality

Bribery does not necessarily involve cash, in a procurement context; it might involve suppliers providing procurement staff with gifts, hospitality, holidays or promises of future employment.

NHS suppliers are required to comply with the NHS organisation's gifts and hospitality policies and its standards of business conduct policies.

Conflicts of interest/abuse of authority

A conflict of interest can arise at any stage of the procurement process and exists where an individual has an economic or personal interest in a transaction. A conflict of interest can also occur when an employee does not disclose a pecuniary or other personal interest in a contract. This might be perceived to compromise their impartiality and independence in the context of the procurement or contract management process.

Possible conflicts of interest include individuals having:

- A direct financial interest
- An indirect financial interest
- A non-financial or personal interest
- A conflict of loyalties

All suppliers are required to declare any personal or family relations within the NHS organisation at the pre-contract stage.

Suppliers will be asked to complete a non-collusion declaration and non-canvassing declaration as part of the tendering process.

Nil return declarations need to be made, and will be routinely sought from suppliers throughout the tendering process, at both the commencement and conclusion of the process.

All disclosures should be in full and include the business interests of the family and close friends of those involved in the procurement process. Any changes to conflicts of interests that may arise during the procurement lifecycle

must be declared.

A supplier with a position of influence gained through contracted work should not use that position to unfairly disadvantage any other supplier or reduce the potential for future competition, for example by creating a technical solution that locks in the supplier's own goods or services.

Fair competition

The NHS is committed to ensuring that all procurement activity is conducted in an open and transparent manner with both parties displaying the utmost honesty and integrity. The NHS does not tolerate any form of fraudulent or corrupt practices.

The NHS expects a comparable commitment from all suppliers, who should be fully aware of UK fraud, bribery and corruption legislation and sign a declaration confirming this when submitting quotes or tenders.

Suppliers must adhere to all EU Procurement Directives and NHS policies and procedures when participating in any NHS tender exercise. The EU Procurement Directives require procurement exercises to be completed transparently and fairly.

Suppliers should also have their own robust processes in place to ensure that the subcontractors in their supply chain are also fully compliant.

Suppliers should not share specifications and detailed costs, and they should report any concerns if it is suspected that other suppliers are working together.

Suppliers should be made aware in writing of the NHS organisation's anti-bribery policies. Suppliers should sign a declaration confirming that they understand these policies when submitting quotes or tenders.

Raising concerns

As a supplier you should always ask yourself:

- Is it legal?
- Does it feel right and fair?
- Am I comfortable with it?
- Is it something that may be portrayed negatively in the media?

- If my actions were made public would they be represented in a positive way?

As a supplier delivering a service through the procurement process to the NHS, compliance with the legal framework is compulsory and breaching this could impair your status as a suitable NHS supplier.

If you suspect that fraud, bribery or corruption has occurred, immediate action is crucial. Suppliers must act immediately by alerting the NHS organisation involved or by contacting the NHSCFA. Suppliers and their staff should also ensure that they comply with their own organisation's whistleblowing policies.

How to report fraud

Report any suspicions of fraud to NHS Counter Fraud Authority online at <https://cfa.nhs.uk/reportfraud> or through the NHS Fraud and Corruption Reporting Line **0800 028 4060** (powered by Crimestoppers). All reports are treated in confidence and you have the option to report anonymously.

You can also report fraud to your nominated Local Counter Fraud Specialist.

Why take action?

Complying with this code of practice promotes the public service values which underpin the work of the NHS and reflects its core values and behaviours. Suppliers play an important role in the delivery of goods and services necessary for patient care; preventing any potential fraud ensures that precious NHS resources can continue to be used for their intended purpose – patient care.

Further information

- <https://cfa.nhs.uk/fraud-prevention/fraud-guidance>
 - » Pre-contract procurement fraud and corruption
 - » For further information visit the NHSCFA website: www.cfa.nhs.uk
- ~~Details of your Local Counter Fraud Specialist:~~

Organisation name:

Name:

Job Title:

Email:

Telephone:

Mobile:

Address: