



Education Learning Trust Multi Academy Trust

Tendering and Procurement Policy

Policy owner	Richard O'Connell, DFO
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Next review	Sept 2023

Policy statement

The Trust aims to achieve value for money on all its tendering and procurement activities.

Scope and purpose

This policy has been created to establish procedures to ensure all members of staff involved in tendering and procurement are aware of the standards that they are expected to follow.

Suppliers and services purchased by the Trust should be obtained in the most cost effective manner whilst ensuring value for money and ethical procurement is achieved.

Tendering procedures and guidelines are outlined within this document to ensure delegated budget holders are aware of the appropriate process based on the level of spend and in line with the wider PCR2015 regulations, to ensure compliance.

Legal framework

This policy has due regard to legislation and national guidance including, but not limited to, the following:

- ESFA 'Academy Trust Handbook'
- The Academies Act
- The Public Contracts Regulations (PCR2015)
- DfE 'Governance Handbook'
- ESFA 'Declare or seek approval for related party transactions: summary guidance' 3.2

This policy will be implemented in conjunction with the Trust's:

- Scheme of delegation
- Finance policy
- Investments policy

Procurement processes

The budget holder is informed of the overall budget before the start of the academic year.

Where a relevant approved supplier list exists, approved suppliers can be used, however this must be in line with the procedures. The route is determined by the anticipated contract value, or order value if this is a one off.

The Budget Holder is responsible for overseeing the arrangements for the delivery of supplies and checking items upon delivery.

All receipts and invoices should be sent to the Central Finance.

Details are recorded whenever goods are rejected or returned, such as the reasons for rejection, along with a description of the supplies and their value.

A record of supplies rejected and delivered should be kept against the order on the finance system.

Procurement thresholds

Managers and delegated budget holders must comply with the Trust's tendering procedures, as detailed below. Staff should note that values shown below relate to contract values, not annual spend and thresholds are excluding VAT.

Number of quotes / tenders	Limits
The budget holder shall obtain at least one quotation and have the discretion to decide whether to obtain further quotations or not, but value for money must always be paramount.	Up to £3,000
<p>The budget holder shall be required to obtain at least two written quotations (to be retained by the budget holder).</p> <p>Procurement of goods and services for Facilities and ICT over £5k to be agreed in advance of procurement exercise commencing with the DFO.</p>	From £3,000 - £10, 000
The budget holder shall be required to draw up a specification for the supplies / services; to obtain at least three written quotations (to be retained by the budget holder).	From £10,00 to £49,999
The budget holder shall be required to draw up a specification for the supplies / services for inclusion in a competitive tender process . The tendering process must consider both cost and quality and provide clear instruction to tenderers of what is required and the award criteria to be applied, along with the Terms and Conditions that will apply to the contract if successful. At least 3 suppliers are to be invited to participate.	<p>From £50,000 - £177,897 (Good and Services)</p> <p>From £50,000 - £4,447,447 (Works)</p>
The budget holder is legally required to ensure all purchases with a contract value over the threshold are	Over £177,897 (the Public Contract)

<p>competitively tendered in line with PCR2015 regulations. The opportunity must either be advertised via Find a Tender 'FTS' carrying out a full tender exercise or by utilising an existing framework and performing a mini competition.</p>	<p>Regulations 2015 (PCR2015) threshold for supplies and services</p> <p>Over £4,447,447 (the Public Contract Regulations 2015 (PCR2015) threshold for works.</p>
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Public Contract Regulations 2015 (PCR2015)

The threshold is currently £177,897 (excluding VAT) as of 1 January 2022 for supplies and services and £4,447,447 (excluding VAT) for works.

Staff should note the threshold of £177,897 relates to the contract and/or aggregated value of purchases, so the following instances should be noted:

- estimated purchase cost for supplies and services over the value of £177,897 require a PCR2015 compliant procurement process
- repeat purchases of supplies and services over a four year period, not covered by a contract, require a PCR2015 compliant procurement process
- the aggregated value of purchases of supplies and services over a four year period, requires a PCR2015 compliant procurement process, i.e. the total cost of bus services, not the cost per route, would be considered

All communication and information exchange for above-threshold procurement must be carried out using electronic means of communication. This should be via an e-tendering portal.

When using an e-tendering portal opportunities can be advertised as required and communication can be shared easily amongst all tenderers to ensure fairness and transparency.

Opening of tenders are via the e-tendering system and only once the deadline is reached can any responses be downloaded.

Forward planning will ensure that adequate time can be allowed to follow a compliant process which meets the requirements of PCR 2015. Typically, 3-4 months are required to complete this process once the specification has been developed.

Developing a tender

Once it has been established a tender process is required, the following considerations must be identified and included within the Invitation to Tender (ITT):

Specification

- award criteria and weightings. Identify how the response submitted by the tenderers will be evaluated. This should include a combination of quality and cost, and any subcategory weighting should also be identified
- quality questions. Ensure the questions asked are relevant to the process and the overall objective*
- assessment of responses. Clearly outline how the responses will be evaluated, i.e. 0: unacceptable to 4: excellent, meets all requirements.
- indicative timetable for tender and contract award
- schedule of prices to be completed
- a copy of the Terms and Conditions that will apply to the contract
- any other relevant information such as conflict of interest declaration form, non-collusion, non-cavassing etc *for any tender exercise that exceeds the PCR2015 threshold, it will be necessary to also include a Standard Questionnaire (SQ) that contains questions set by the Government as part of the regulations

Find a Tender Service

Find a Tender Service (FTS) is used to advertise all high value contracts that exceed the PCR2015 value.

Find a Tender Service has replaced the EU's Tenders Electronic Daily from 1 January 2021 for high value contracts in the UK

Tender processes

There are various routes you can consider for tenders that exceed the PCR2015 threshold. Below are the most regularly used methods.

- Open Procedure. In an open procedure the opportunity is advertised via FTS, and anyone may submit a full tender response. The response will include both the SQ and the ITT. This must be advertised for a minimum of 30 days.
- Restricted Procedure. In a restricted procedure the opportunity is advertised via FTS, and anyone may express interest and complete the Stage 1 SQ. However, only those who are successful at this stage will be invited to ITT stage 2. The SQ must be advertised for a minimum of 30 days and the ITT a further 25 days.
- Framework. There are several frame works that can be used to purchase supplies, services, or works developed for public sector users and some designed specifically for education clients. Using a framework, you can run a mini competition direct with the supplier on that lot

Frameworks

Use of purchasing consortia groups or otherwise known as Frameworks, enable staff to access PCR2015 compliant contracts without the need to advertise this to the wider market, therefore can significantly reduce the timeframes. The framework has already carried out this work for you and shortlisted those that scored highest in the process, as per the award criteria.

When using purchasing consortia frameworks you will need to follow the rules set out in the framework. In some cases direct award is possible, in other cases a mini competition may be required.

To prepare for a mini competition, you would complete the tender documents as previously outlined however you will need to check the framework guidance to understand the quality and cost weighting and allowance for variation. There is often flexibility in the criteria however each framework is different

Contract award criteria and evaluation

Tenders must be assessed on the optimum balance of quality elements and who life costs that meet the Trust's needs.

Tenders will be evaluated by assessing the quality and cost (i.e. an assessment of their respective value for money). The lowest cost tender should be awarded unless approved by the Headteacher, DFO or CEO. The evaluation of the tender is clearly documented using a tender scoring sheet.

When evaluating a tender this must be done in line with the award criteria stated within the ITT.

When scoring the tender this must also be done according to the assessment criteria stated, i.e. 0 – 4. Where a tenderer doesn't score full marks for a particular question, a clear explanation must be provided as to why.

Full feedback should be provided to all tenderers. This should provide their overall score, how this compares to the number 1 ranking supplier and how this is further broken down per question.

For evaluations following a PCR2015 over threshold process, you must allow a 10-day standstill period from the point of notification to the official award. This is to allow any supplier the opportunity to challenge a decision. Provided the evaluation has been done in accordance with the publicised award criteria, then there should be no challenge.

The standstill period is not mandatory for frameworks or under PCR2015 threshold tenders. However, it is good practise to include this when time allows.

Contract documents

The Terms and Conditions that are to be used for the contract need to be included with the ITT at the start of the process to ensure the supplier is clear and happy with the proposed terms before they agree to participate in the process.

Contracts awarded without competition

Only in limited circumstances shall a procurement process be undertaken without the appropriate level of competition being applied, for example:

- In the event of an emergency
- Where there is only one supplier/contractor in the market or there are less suppliers in the market that the scheme of delegation requires
- Where the warranty or existing asset/system requires the use of a particular supplier/contractor

In such an event, a **direct award form** should be completed in advance of the order being placed for approval by the DFO or CEO.

Any direct awards over £10k will be reported to the Audit and Risk Committee at least once a year.

Related party transactions

Trustees will avoid conflicts of interest, declare their interest in proposed transactions and arrangements, and will not accept benefits from third parties.

All members, trustees, local governors and senior employees will complete the register of interests.

No member, trustee, local governor, employee or related individual will use their connection to the trust for personal gain, including payment under terms that are preferential to those that would be offered to an individual or organisation with no connection to the trust.

Payments to trustees by the trust will only be made where permitted by the articles, or by the authority of the Charity Commission, and comply with any relevant agreement with the Secretary of State.

The trust will consider their obligations where payments are made to other businesses who employ a trustee, are owned by a trustee or in which the trustee holds a controlling interest.

The trust will adhere to 'at cost' requirements.

The chair of the trustees and the accounting officer will ensure their capacity to control and influence does not conflict with related party transaction requirements.

The trust will be aware of relationships with related parties that may attract greater public scrutiny, such as:

- transactions with individuals in a position of control and influence, including the chair of the board and the accounting officer
- payments to organisations with a profit motive, as opposed to those in the public or voluntary sectors
- relationships with external auditors beyond their duty to deliver a statutory audit

Record keeping

The trust will keep sufficient records, and make sufficient disclosures in the annual accounts, to show that related party transactions have been made in accordance with accountability and transparency standards.

Approval by the ESFA

The Trust will obtain the ESFA's approval for related party transactions that are novel, contentious or repercussive. Transactions involving the chair of the board or the accounting officer will be carefully considered against this requirement.

The Trust will obtain the ESFA's prior approval for contracts supplying goods or services by related parties agreed on or after 1 April 2019 where any of the following limits apply:

- the contract exceeds £20,000
- the contract would take the total value of contracts with the related party to beyond £20,000 in the same financial year ending 31 August
- the contract relates to a party already in receipt of contracts exceeding £20,000 individually or cumulatively in the same financial year ending 31 August

For the purposes of reporting to, and approval by, the ESFA, related party transactions do not include salaries and other payments made by the trust to a person under a contract of employment through the trust's payroll.

When seeking approval, the trust will ensure it has the relevant information about the supplier, including the supplier's name, address and company number. The trust will also:

confirm the statement which best describes the relationship between the supplier and the trust

- confirm that the supplier is listed in the trust's register of interests
- confirm that the trust has a statement of assurance from the supplier
- confirm that the trust has an open-book agreement with the supplier
- provide a short description of the goods or service, details of the proposed cost and the start and end date of any contract or agreement
- provide a copy of the agreement or proposed contract
- upload any additional documents the trust feels are relevant as part of its submission

Register of interests

The trust will document all relevant business and pecuniary interests of members, trustees, local governors and senior employees, including:

- directorships, partnerships and employments with businesses
- trusteeships and governorships at other educational institutions and charities
- for each interest, the name of the business, the nature of the business, the nature of the interest and the date the interest began

The register of interests will identify all relevant material interests from close family relationships between the trust's members, trustees or local governors. It will also identify relevant material interests arising from close family relationships between those individuals and employees.

The trust will publish on their website the relevant business and pecuniary interests of members, trustees, local governors and accounting officers.

‘At cost’ requirements

The trust will not pay more than ‘cost’ for goods or services provided by the following:

- any member or trustee of the trust
- any individual or organisation related to a member or trustee of the trust, namely: - a relative of a member or trustee: defined as a close member of the family, or member of the same household, who may be expected to influence, or be influenced by, the person. This includes, but is not limited to, a child, parent, spouse or civil partner - an individual or organisation conducting business in partnership with the member, trustee or a relative of the member or trustee - a company in which a member or the relative of a member (taken separately or together), and / or a trustee or the relative of a trustee (taken separately or together), holds more than 20 percent of the share capital or is entitled to exercise more than 20 percent of the voting power at any general meeting of that company - an organisation which is controlled by a member or the relative of a member (acting separately or together), and / or a trustee or the relative of a trustee (acting separately or together) – an organisation is controlled by an individual or organisation if that individual or organisation is able to secure that the affairs of the body are conducted in accordance with the individual’s or organisation’s wishes
- any individual or organisation given the right under the trust’s articles of association to appoint a member or trustee of the academy trust, or anybody connected to the individual or organisation
- any individual or organisation recognised by the Secretary of State as a sponsor of the trust, or anybody connected to the individual or organisation

A body is connected to an individual or organisation if it is controlled by the individual or organisation, controls the organisation, or is under common control with the individual or organisation, namely any of the following:

- holding a greater than 20 percent capital share or equivalent interest
- having the equivalent right to control management decisions of the body
- having the right to appoint or remove a majority of the board or governing board

‘At cost’ requirements apply to contracts for goods and services from a related party exceeding £2,500, cumulatively, in any one financial year. Where a contract takes the trust’s cumulative annual total with the related party beyond £2,500, the element above £2,500 must be at no more than cost.

‘At cost’ requirements apply to legal advice or audit services when the organisation’s partner directly managing the service is a member or trustee of the trust, but not in

other cases. 13.26 The cost will be the full cost of all the resources used in supplying the supplies or services and will not include any profit. Full cost includes:

- all direct costs – the costs of any materials and labour used directly in producing the supplies or services
- indirect costs – a proportionate and reasonable share of fixed and variable overheads Reporting

The trust will report all related party transactions taking place on or after 1 April 2019 to the ESFA in advance of the transaction taking place, using the ESFA's online form