



Procurement and Contracts Policy

Document provenance

This policy was approved by Trustees as follows –

Approver: Finance Committee

Date: November 2019

ELT Owner: Chief Financial Officer

Unless there are legislative or regulatory changes in the interim, this policy will be reviewed every 2 years. Should no substantive changes be required at that point, the policy will move to the next review cycle.

Policy purpose and summary

This Policy sets out core guidance and principles regarding how E-ACT spends money. It explains the Trust's approach to the purchase of goods and services for its Academies, and the Trust as a whole.

Summary of changes at last review:

- Removal of unnecessary and/or duplicated content
- Updated hyperlinks to support access to up to date information
- Addition of section 21.3
- 4.3 – amended to clarify application to a tender scenario
- 4.2 from the old policy has been removed
- 6.4 – amended to clarify consequences of a breach
- 6.5 – amended to reflect partnership arrangements
- 5.1 from the old policy has been removed
- 8.3 – amended to include DfE's endorsed frameworks link
- 10 – Changed to bring tender thresholds in line with DfE guidance. Values increased in section 10 and 14
- 16 – rules on opening tenders simplified
- Section 17 – condensed
- 18.3 – addition of the word immediately
- 21.1 – Prior to commitment added
- Appendix 1 – values updated as per current legislation

Related policies or guidance

The following regulations or guidance applies to this policy:

- [The E-ACT Scheme of Delegation](#)
- [Procurement Card Policy](#)
- [Gifts and Hospitality Policy](#)

Procurement and Contracts Policy

1. Introduction and purpose

- 1.1. It is important to note that the Trust is the sole legal entity which can enter into contracts for itself and any Academies. The Academies themselves are not separate legal entities and any contracts awarded by individual Academies will be binding on the Trust. All expenditure is recorded by the Trust to comply with DfE audit requirements as set out in this document.
- 1.2. It is essential that the correct level of authority is sought, obtained and retained before entering in to any contract as set out in this document. These guidelines apply to everybody in the Trust and Academies who are responsible for purchasing, whether as an employee or contractor. Please refer to scheme of delegation.

2. Scope

- 2.1. This document applies to any contract for services, supplies or works which results in a payment being made by the Trust or an Academy. It is therefore important that all staff are aware of it.

3. Legislation and Regulations

- 3.1. The following legislation and regulations apply to this policy:
 - The Department for Education Academies Financial Handbook¹
 - The Department for Education's Buying for School's Guidance²
 - The Public Contracts Regulations 2015, hereafter referred to as "The regulations"³
 - The E-ACT Master Funding Agreement with the Department for Education⁴

4. Basic Principles of Procurement

- 4.1. The basic principle is that procurement should deliver best value for money to the Trust at all time.
- 4.2. The procurement process should be considered before any purchase is made. There are specific rules in the Academies Financial Handbook in relation to some types of leasing arrangements and novel/contentious transactions which require Secretary of State consent. Leases of Land are outside of the scope of this document and you should seek guidance from the Chief Financial Officer (CFO).

¹<https://www.gov.uk/guidance/academies-financial-handbook>

²<https://www.gov.uk/government/collections/buying-for-schools>

³<http://www.legislation.gov.uk/uksi/2015/102/contents/made>

⁴<https://www.e-act.org.uk/wp-content/uploads/2017/07/Full-funding-agreement.pdf>

- 4.3. For over £40k and tender scenario all bidders in a competition ("Bidders") should be treated in a way which ensures equality of treatment, non-discrimination and transparency, for example:
- All Bidders must be given the same information at the same time, and no Bidder should be treated more favourably than another; and
 - There must be clear and transparent timescales, requirements, specifications and deadlines to comply with any competition.
- 4.4. In a "three quote" scenario all bidders must be given a fair amount of time vs. other bidders.

5. Budget Expenditure and Tender Approval

- 5.1. Although budgets are delegated to individual Academies, not all employees of the Trust can buy for the Trust. The details of the individuals, and the maximum value of the contract(s) authorised to enter into contracts for the Trust are set out at in the E-ACT Scheme of Delegation.
- 5.2. Academies should follow E-ACT Procurement rules and the E-ACT Scheme of Delegation.

6. Exemptions from this Policy

- 6.1. This document must be followed in all but exceptional circumstances.
- 6.2. An SSJ request (single source justification) form can be submitted if it's felt an exemption is required. This needs to be approved in line with the E-ACT Scheme of Delegation.
- 6.3. Any exemptions should only be relied upon with express written consent from the appropriate delegated authority. You should check with the Procurement Manager if you are unsure about any procurement, before you place any orders/sign any contracts.
- 6.4. Purchase orders are generally required in all instances. A list of approved exemptions is included in the E-ACT Finance Manual, if you are unsure or believe it's not practical to raise a PO please discuss with the Procurement Manager. Failure to request a PO will be deemed a breach of process and may be treated as a disciplinary matter or deemed personal liability.
- 6.5. E-ACT has negotiated a partnership with ESPO & YPO therefore any purchases from these are deemed as compliant with no need for three quotes, unless purchase is over £40k.

7. Actions before purchase

- 7.1. Consider how the purchase is going to be sourced. Can the Trust use an existing framework agreement (see section 8 below), or can another Academy provide the requirement?
- 7.2. As set out below, wherever possible and if suitable, existing framework agreements (particularly for Upper Threshold Contracts) should be used, in preference to a new procurement exercise.
- 7.3. As a minimum requirement, you must set out clearly what you want to buy. This means knowing in advance what you want the goods, works or services to do, together with the quantity, maximum cost and delivery / completion requirements.

8. Using Existing Framework Arrangements

- 8.1. Wherever possible and in accordance with the Academies Financial Handbook and DfE policy, the Trust should avoid running its own procurement processes, and instead use an existing framework arrangement.
- 8.2. From time to time the Trust may also set up its own framework agreements which can be used by all Academies. Such frameworks will be notified to Academies.

8.3. Where can I find a framework?

8.3.1. Once you've developed a specification⁵, look at a range of framework agreements that are suitable for the type of goods, works or services you need to buy. Check with the following organisations:

- The Crescent Purchasing Consortium (CPC)⁶;
- Crown Commercial Service (CCS)⁷;
- ESPO (Catalogue items have also been through a full OJEU tender and are compliant)⁸;
- YPO (Catalogue items have also been through a full OJEU tender and are compliant)⁹.

8.4. Once you've selected a framework, you should read the framework's process guidelines carefully. You may need to register with some of these organisations, but this is a simple process.

8.5. More useful information can be found on the DfE website. Including a list of DfE endorsed frameworks.

⁵ <https://www.gov.uk/guidance/buying-for-schools>

⁶ <https://www.thecpc.ac.uk/>

⁷ <https://www.gov.uk/government/organisations/crown-commercial-service>

⁸ <https://www.espo.org/Home>

⁹ <https://www.ypo.co.uk/>

8.6. In each case, it is important that the Trust is entitled to use the framework.

9. Extending or varying existing contracts

9.1. You may be considering extending an existing contract or using an existing Trust contract for your purchase. You must contact the Procurement Manager to agree to any such extension or variation.

10. Executing the Procurement

10.1. Different rules apply depending on the value of the purchase you want to make. The Trust's current expenditure thresholds are set out below.

10.2. If your contract is of a value which exceeds the Upper Threshold, the Regulations will apply and you must follow the procedure set out in section 14.4 of this document.

Value of expenditure	Which rules apply?	Tender Process Required
£0.00 - £2,000	Low Value (See section 14.1)	Best Value for Money
£2,001 to £40,000 (goods, works & services)	Low Value (See section 14.2)	Three quotes local
Over £40,000 (goods, services and works)	High Value (see section 14.3)	Business case Engage Trust Procurement Manager Formal tender process UK
Over EU threshold (see Appendix 1)	Upper Threshold (see section 14.4)	Business case Engage Trust Procurement Manager OJEU tender process

10.3. Final sign off of any spend must be in line with the E-ACT Scheme of Delegation.

11. Valuing your contract

11.1. It is important that contracts are properly assessed for value. In particular, you must not deliberately divide one contract into smaller contracts with the effect of avoiding the procurement rules.

11.2. The contract value is based on the total value of the expenditure which is the subject of the procurement. All Academies' needs should be combined into one procurement if they are the same or similar. This is especially important as we drive to contract more on a regional basis for our Academies.

11.3. If you do not know what your exact expenditure is going to be over the life of the contract, you must take an average annual expenditure and multiply by the estimated duration of the contract.

11.4. For example - If a service contract is for four years or more, the value is estimated by multiplying the amount it is expected will be paid each month by 48.

For example: £750 x 48 = contract value of £36,000.

11.5. The estimated duration of the contract must include any extensions or options to renew.

11.6. Further support can be obtained from the Procurement Manager if you are unsure how to calculate a contract's overall value.

12. Procurement cards

12.1. Trust procurement cards should only be used for low value, one off purchases or where other payment methods are not possible.

12.2. Travel should be booked via the trust wide travel management providers.

12.3. Reference can be made to the Procurement Cards Policy for more detail on the above.

13. Sustainability

13.1. The Trust should consider, where possible sustainability in its contracts and will comply with the Academies Buying Resource to include relevant sustainability criteria in its contracts.

14. Procurement Thresholds

14.1. Procurement Threshold 1 (£0.00 - £2,000) (Use of a public sector framework must be considered)

14.1.1. Competitive quotes are not needed but a written quotation must be obtained from the supplier before a purchase order can be issued.

14.1.2. Expenditure below £2,000 should use the best value for money approach. The Value for money rationale should be justifiable on request. It is expected that the region will analyse this spend and rationale and take appropriate action on an on-going basis.

14.2. Procurement Threshold 2 (from £2,001 - £40,000 goods, services & works) (Use of a public sector framework must be considered)

14.2.1. You must obtain at least three written quotes.

14.3. Procurement Threshold 3 - High Value transactions (goods, services & work between £40,000 & the current OJEU Threshold) (Use of a public sector framework must be considered - These will be managed with support from the National Team, and are included within this policy for reference only.)

14.3.1. Prior to undertaking any High Value transaction, you must produce a business case for the expenditure.

14.3.2. The business case will be considered by the Regional Operations Director prior to CFO, Procurement Manager or CEO/Board approval as necessary and should identify:

14.3.3. Why there is the need to spend - identify the need;

- Best value for money;
- Benefits to the Organisation (Financial/Non-Financial);
- Specification of the requirement;
- Market Testing; and
- Procurement strategy - The Procurement Manager will be able to provide support on this.

14.3.4. An advertisement must be placed to seek expressions of interest from interested Bidders. The decision about where to advertise must be taken on a case-by-case basis and should be proportionate and reasonable. Such advertising could include, for example, the Trust's or Academy's website or any E-tendering platform being utilised by the trust. You should check with the Procurement Manager in each case.

14.3.5. Bidders must be allowed suitable time to respond to the advertisement. This must be clearly set out together with any submission requirement.

14.3.6. Bidders requesting more information must be sent a tender pack. This should contain the information about the requirement and needs, together with the information required from bidders. This will need to be bespoke in each case but could include, for example:

- Details of pricing;
- Details of method statements;
- Details of product characteristics;
- The evaluation criteria which will be used to evaluate the tenders received, including disclosure of the criteria, sub criteria and weightings that will be applied to select the best Bidder(s). This is a complex area, the Procurement Manager can provide support if required, and
- A draft set of terms and conditions.

14.3.7. Above current OJEU Thresholds (Use of a public sector framework must be considered - Procurement above threshold will be managed exclusively by the National Team, and must not be undertaken by academies)

14.3.8. Prior to undertaking any Upper Threshold transaction, you must produce a business case for the expenditure. The CFO & Procurement Manager will review the business case and will notify the Academy on the decision to procure and the most appropriate way to make the purchase.

15. Capital Works

15.1. Capital works are not exempt from any of the above procedure.

15.2. All capital projects will have an assigned project manager from the outset who will work collaboratively with the Capital & Estates Manager and Procurement Manager.

16. Rules on opening tenders

16.1. Every tender over £40k must be run through the E-ACT Delta portal.

17. Audit Trail

17.1. This section applies to all contracts, regardless of value or duration.

17.2. A clear audit trail must be kept for all purchases. The level of detail required will increase with the value of the procurement. The written record must include:

- Who was responsible for making the decision to procure, and details of their decision-making process;
- Who was responsible for evaluation of tenders, and details of the evaluation, if applicable;
- Be available to Head Office at all times for audit purposes.
- All purchases must be raised on a purchase order excluding those exceptions referenced in the finance manual.

17.3. In each case, the written record must include copies of all original documentation used during the procurement such as tender packs, quotes, contracts and invoices.

18. Conflicts of Interest

18.1. This section applies to all contracts, regardless of value or duration.

18.2. The Academies Financial Handbook puts strict obligations on the Trust to ensure that conflicts of interest in procurement are managed.

18.3. Any interest which may affect the outcome of a procurement process must be declared to the CFO immediately.

- 18.4. All trustees must complete the register of business interests and keep this updated at least once per year.
- 18.5. There are rules in the Academies Financial Handbook in relation to payments to individuals/organisations which are "connected" to a member or trustee. In any such case the CFO must be informed before any engagement with such suppliers
- 18.6. A record of all such declared conflicts of interest must be sent to the CFO who will determine what if any action can be taken to seek to remedy any such conflict of interest.
- 18.7. No gifts or hospitality should be accepted by any service provider as an inducement to award a contract to that supplier. This may be an offence under the provisions of the Bribery Act 2010. This includes free IT equipment. You must inform the CFO immediately on becoming aware of any such gifts or hospitality.

19. Training

- 19.1. The Procurement Manager and CFO will be able to provide further support and advice on this policy. You are advised to seek clarification if you are unsure.

20. Responsibilities

- 20.1. The following responsibilities apply in relation to this policy:

- Board of Trustees – The Board of Trustees have a responsibility to ensure value for money, and that the Trust is, and remains financially viable;
- Chief Executive – Responsibility for ensuring value for money and policy compliance Trust-wide;
- RODs / REDs – Responsibility to ensure policy compliance within their region;
- Headteachers – Responsibility to ensure policy compliance within their academies;
- All staff – Responsibility for ensuring compliance within areas of individual scope and delegated decision-making authority.

21. Monitoring and Compliance

- 21.1. Regional Operations Directors & Procurement Manager must be notified of all high value transaction procurements planned - prior to commitment.
- 21.2. The Audit & Risk Committee will receive an annual report on high value transaction procurements and contract awards across the trust for full oversight.
- 21.3. Non-compliance with this document may lead to disciplinary procedures, this will depend on the nature of the breach; but may include verbal or written warnings. HR guidance supersedes this policy in respect of dealing with breaches of this policy.

Appendix 1 - EU thresholds, procedures and timescales and services

Current thresholds¹⁰ are net of VAT and are updated every two years. The current thresholds (between 1 January 2018 – 31 December 2019) are below:

Supplies	Services	Light Touch Regime	Works
£189,330	£189,330	£663,540	£4,733,252

Tender procedures and periods under the Regulations

Procedures	Standard timescale from publication	Tenders submitted electronically
Open	35 days	5-day reduction can be applied.
Restricted	30 days	5-day reduction can be applied.
Competitive Dialogue	30 days	N/A
Negotiated	30 days	5-day reduction can be applied.

If you are unsure about which framework to use, the Procurement Manager will be able to provide support. Further help is available via the Mills and Reeve Procurement Portal.¹¹

¹⁰ <https://www.ojeu.eu/thresholds.aspx>

¹¹ <http://www.procurementportal.com/choosing-a-procedure/>