



Procurement and Contract Policy

Document provenance

This policy was approved by Trustees as follows –

Finance Committee	Date: 18 May 2018
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ELT Owner: Chief Financial Officer	Author: National Procurement Manager

Summary of changes at last review:

- 1.4 – Word retained added – to ensure approval audit trail is in place.
- 3.2 – Simplified and referred to scheme of delegated authority.
- 4.5 – Hyperlink input
- 5.5 – GDPR compliance May 2018: Additional clause inserted to bring procurement policy in line with GDPR
- 6.3 – Updated list of framework providers
- 8.3 – New
- 11.1 - Amended DFR to Procurement Manager
- 12-16 –Highlighted frameworks as the default option if viable.
- 12.3 – Changed to justifiable on request
- 14.2 – Amended to new requirements only and clarified emails were acceptable (making it more practical)
- 14.4.3 - Tense amended to proposed, previous document read as though it had already occurred.
- 14.4.4 – Tense amended proposed, previous document read as though it had already occurred.
- 15.3 – CFO, PM, CEO/Board added
- 19.2.2 – Requirement for all minutes to be retained amended to upper threshold only.
- 19.2.7 – Added in
- 20.5 – Changed to engagement as opposed to before payments are made.
- Appendix 1 – GDPR compliance May 2018: Template Privacy Impact Assessment (PIA) added, in relation to clause 5.5

Procurement and Contract Policy

1. Background

- 1.1 This document sets out the core guidelines by which E-ACT (the Trust) spends money, and explains the Trust's approach to the purchase of goods, works and services for its academies
- 1.2 The Trust is obliged to comply with the Academies Financial Handbook, Funding Agreements with the Department for Education (DfE), any DfE guidance including buying-for-schools and the Public Contracts Regulations 2015 (the Regulations). Under our Funding Agreements and as a registered charity, the Trust's board of trustees have specific obligations to ensure value for money.
- 1.3 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.
- 1.4 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.
- 1.5 **Non-compliance with this policy may lead to disciplinary procedures.**

2. Basic principles

- 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.
- 2.2 The basic principle is that procurement should deliver best value for money to the Trust at all time.
- 2.3 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)
- 2.4 All bidders in a competition ("Bidders") should be treated in a way which ensures equality of treatment, non-discrimination and transparency, for example:
 - 2.4.1 all Bidders must be given the same information at the same time, and no Bidder should be treated more favourably than another; and
 - 2.4.2 there must be clear and transparent timescales, requirements, specifications and deadlines to comply with any competition.

3. Budget expenditure and tender approval

- 3.1 Who can buy?
- 3.2 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 delegated decision making authority.

- 3.3 Academies should follow E-ACT Procurement rules and the E-ACT scheme of delegated decision making authority.

4. Exemptions to this document

- 4.1 This document must be followed in all but exceptional circumstances.
- 4.2 Some types of arrangements fall outside of the procurement rules, such as employment contracts. This may also include some types of Special Education Needs provision, but you should check with the CFO in each case.
- 4.3 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 delegated decision making authority.
- 4.4 Any exemptions should only be relied upon with express written consent from the appropriate delegated authority. You should check with E-ACT's Procurement Manager if you are unsure about any procurement, before you place any orders/sign any contracts.
- 4.5 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 E-ACT Procurement Manager

5. Actions before purchase

- 5.1 Whenever practical for expenditure above £10,000 check with the other academies and E-ACT's Procurement Manager whether any other Academies or departments in the Trust need to make the same purchase. If so, your expenditure must be included within the same contract.
- 5.2 Consider how the purchase is going to be sourced. Can the Trust use an existing framework agreement (see section 6 below), or can another Academy provide the requirement?
- 5.3 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.
- 5.4 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.
- 5.5 Should any proposed procurement include any personal data then a data protection impact assessment (DPIA) is required to help you identify and minimise the data protection risks of a project. It is also good practice to do a DPIA for any project which requires the processing of personal data.

Your DPIA must:

- describe the nature, scope, context and purposes of the processing;
- assess necessity, proportionality and compliance measures;
- identify and assess risks to individuals; and
- identify any additional measures to mitigate those risks.

A template DPIA is included in Appendix 1.

The procurement cannot proceed until the DPIA has been completed and approved by the Data Protection Officer – for guidance please speak to your Regional Operations Director. For further guidance, please refer to the ICO Code of Practice for conducting privacy impact assessments:

6. Using existing framework arrangements

- 6.1 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.
- 6.2 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.

6.3 Where can I find a framework?

6.4 Once you've [developed a specification](#), 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 \(CPC\)](#)
- [Crown Commercial Service \(CCS\)](#)
- [ESPO](#)
- [YPO](#)

6.5 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

6.6 More information can be found on the [DfE website](#).

6.7 In each case, it is important that the Trust is entitled to call off from the arrangement.

6.8 You should check in each case;

- the specification and the contract terms are suitable for your particular needs. The terms and conditions from frameworks are generally set in advance and cannot be changed beyond the mechanism set out in the framework; and
- you must follow the framework's guidance, particularly about how orders should be placed. This will either generally permit (1) direct awards of contracts to a supplier and/or (b) mini competitions between all suppliers with capacity to deliver the requirement on the framework.

7. Extending or varying existing contracts

7.1 You may be considering extending an existing contract or using an existing Trust contract for your purchase. You must contact E-ACT's Procurement Manager to agree to any such extension or variation.

8. Executing the procurement

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

8.2 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 16 of this document.

Value of expenditure	Which rules apply?	Tender Process Required
£0.00 - £1,000	Low Value (See section 12)	Best Value for Money
£1,001 to £5,000 (goods & services)	Low Value (See section 13)	Three quotes local
£1,001 to £10,000 (works	Low Value (See section 13)	Three quotes local

only)		
£5,001to £25,000 (goods and services)	Medium Value (see section 14)	Business Case Approval Three written quotes
£10,001 - £25,000 (works only)	Medium Value (see section 14)	Business Case Approval Three written quotes
Over £25,000 (goods, services and works)	High Value (see section 15)	Formal tender process UK
Over EU threshold (see Appendix 1)	Upper Threshold (see section16)	OJEU tender process

8.3 Final sign off of any spend must be in line with the E-ACT scheme of delegated decision making authority.

9. Valuing your contract

9.1 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.**

9.2 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.

9.3 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.

9.4 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.

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

9.6 You must check with E-ACT's Procurement Manager if you are unsure about how to calculate contract value.

10. Procurement cards

10.1 Trust procurement cards should only be used for low value, one off purchases.

10.2 Travel should be booked via the trust wide travel management consultants.

10.3 **Please see the Procurement Card Policy for more detail.**

11. Sustainability

11.1 The Trust is committed to ensuring sustainability in its contracts and will comply with

the Academies Buying Resource to include relevant sustainability criteria in its contracts. You must check with the E-ACT Procurement Manager if you are unsure.

12. Low value transactions (£0.00-£1,000)

12.1 **Low value procurements should be made via a framework where possible.**

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

12.3 Expenditure below £1,000 should use the best value for money approach. The Value for money rationale should be justifiable on request. Where a purchase order is required, approval should be sought before making the purchase.

13. Low value transactions (£1,001-£5,000 goods and services, £1,001-£10,000 works)

13.1 **Low value procurements should be made via a framework where possible.**

13.2 For transactions between £1,001 and £5,000 for Goods and Services, or up to £10,000 for Works. If not using a framework, you should compare prices and options on at least three suppliers by obtaining written quotes/emails at local level.

13.3 You should read and clearly understand any terms and conditions of the purchase carefully before signing referring any concerns to the Regional Operations Director in the first instance who will liaise with colleagues. Some standard T+Cs from suppliers are particularly onerous so you need to ensure that we are able to sign up to.

14. Medium value transactions (from £5,000-£25,000 goods and services / £10,001-£25,000 works)

14.1 **Medium value procurements should be made via a framework where possible.**

14.2 For Medium Value Transactions you must obtain at least three written quotes, when the requirement is new, you must produce a business case. (email is acceptable)

14.3 The business case must be authorised at the pre-order stage.

14.4 Each business case will be considered by the ROD and must include as minimum:

- Specification of Requirements/Scope of Works;
- Benefits to the organisation and best value for money;
- Proposed method of procurement; and proposed advertisement route
- Proposed evaluation criteria and panel.

14.5 An advertisement must be placed to seek expressions of interest from interested Bidders unless there is a business reason for not doing so. The decision about to advertise must be taken on a case-by-case basis and should be proportionate and reasonable to the value of the contract. Lower value contracts may not require advertising. You should check with E-ACT's Procurement Manager in each case.

14.6 Such advertising could include, for example, the Trust's or Academy's website or any E-tendering platform being utilised by the trust. Relevant trade journals and

newspapers should also be considered.

- 14.7 Bidders must be allowed suitable time to respond to the advertisement. This should be clearly set out together with any submission requirements, including but not limited to the proposed evaluation criteria you will use.
- 14.8 Once the final cost is known the business case must be amended and authorised prior to raising the purchase order.

15. High value transactions (goods/services between £25,000 and the OJEU Threshold and works up to the current OJEU threshold)

All High Value Transaction Tenders will be managed with assistance from E-ACT Head Office Procurement and the following process is for reference only.

- 15.1 Prior to undertaking any High Value transaction, you must produce a business case for the expenditure. See 14.4 above.
- 15.2 High value procurements should be made via a framework where possible
- 15.3 The business case will be considered by the Regional Operations Director prior to COO, CFO, E-ACT Procurement Manager or CEO/Board approval as necessary:
- 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 - Please seek advice or consult with E-ACT Procurement Manager
- 15.4 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. Relevant trade journals and newspapers should also be considered. You should check with E-ACT's Procurement Manager in each case.
- 15.5 Bidders must be allowed suitable time to respond to the advertisement. This must be clearly set out together with any submission requirements.
- 15.6 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 and you must check with the E-act Procurement Manager if you are unsure; and

- a draft set of terms and conditions.

16. Upper threshold – above current OJEU thresholds

All Upper Threshold Tenders will be managed with assistance by E-ACT Procurement and the following process is for reference only.

16.1 Upper Threshold procurements must not be undertaken by individual Academies and must be referred to Head Office.

16.2 **High value procurements should be made via a framework where possible.**

16.3 Prior to undertaking any Upper Threshold transaction, you must produce a business case for the expenditure. The CFO & E-ACT 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.

17. Capital works

17.1 Capital works are not exempt from any of the above procedures.

17.2 All capital projects will have an assigned project manager from the outset who will work collaboratively with the Capital & Estates Manager and E-ACT procurement Manager.

18. Rules on opening tenders

18.1 Rules on opening tenders

18.2 Every quotation for a Low Value over £1,000, Medium Value, High Value or Upper Threshold procurement may be:

- provided in hard copy, on CD ROM or via email; and
- in the case of hard copies and CD ROMs, must bear no external markings to identify the tenderer.

18.3 The Trust or Academy must keep tenders secure until the time specified for all tenders to be opened. If an E-tendering platform is utilised by the trust then this should be used, as this can ensure compliance.

19. Audit trail

19.1 This section applies to all contracts, regardless of value or duration. The Trust's accounting officer must complete a DfE value for money statement each year.

19.2 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;

- full minutes of any upper threshold procurements.
- who was responsible for evaluation of tenders, and details of the evaluation, if applicable;
- who was responsible for receiving and checking the goods or services and for authorising and making payment. Note that in all cases the person responsible for the decision to procure must not be the sole person who authorises payment;
- details of the purchase itself, for example, what was purchased, from whom and for what price; and
- 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.

19.3 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.

20. Dealing with conflicts of interest

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

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

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

20.4 All trustees must complete the register of business interests and keep this updated at least once per year.

20.5 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.

20.6 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.

20.7 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.

21. Further information

21.1 You must always check with E-ACT's Procurement Manager if you are unsure about how this document may apply to you.

21.2 This document will be reviewed annually by the Trust. Any changes will be communicated to all Head Office and Academy staff.

22. Notification and reporting

- 22.1 Regional Operations Directors & E-ACT Procurement Manager must be notified of all high value transaction procurements planned.
- 22.2 The Audit & Risk Committee will receive an annual report on high value transaction procurements and contract awards across the trust for full oversight.

Appendix 1: Template Data Privacy Impact Assessment (PIA)

Please refer to clause 5.5 of this policy regarding the completion of a PIA. This template is an example of how you can record the PIA process and results. You can start to fill in details from the beginning of the project, after the screening questions have identified the need for

a PIA. The template follows the process that is used in this code of practice. You can adapt the process and this template to produce something that allows your organisation to conduct effective PIAs integrated with your project management processes.

Step one: Identify the need for a PIA

Explain what the project aims to achieve, what the benefits will be to the organisation, to individuals and to other parties.

You may find it helpful to link to other relevant documents related to the project, for example a project proposal.

Also summarise why the need for a PIA was identified (this can draw on your answers to the screening questions).

Step two: Describe the information flows

You should describe the collection, use and deletion of personal data here and it may also be useful to refer to a flow diagram or another way of explaining data flows. You should also say how many individuals are likely to be affected by the project.

Consultation requirements

Explain what practical steps you will take to ensure that you identify and address privacy risks. Who should be consulted internally and externally? How will you carry out the consultation? You should link this to the relevant stages of your project management process.

You can use consultation at any stage of the PIA process.

Step three: Identify the privacy and related risks

Identify the key privacy risks and the associated compliance and corporate risks. Larger-scale PIAs might record this information on a more formal risk register.

Annex three can be used to help you identify the DPA related compliance risks.

Privacy issue	Risk to individuals	Compliance risk	Associated organisation / corporate risk

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Step four: Identify privacy solutions

Describe the actions you could take to reduce the risks, and any future steps which would be necessary (eg the production of new guidance or future security testing for systems).

Risk	Solution(s)	Result: is the risk eliminated, reduced, or accepted?	Evaluation: is the final impact on individuals after implementing each solution a justified, compliant and proportionate response to the aims of the project?

Step five: Sign off and record the PIA outcomes

Who has approved the privacy risks involved in the project? What solutions need to be implemented?

Risk	Approved solution	Approved by

Step six: Integrate the PIA outcomes back into the project plan

Who is responsible for integrating the PIA outcomes back into the project plan and updating any project management paperwork? Who is responsible for implementing the solutions that have been approved? Who is the contact for any privacy concerns that may arise in the future?

Action to be taken	Date for completion of actions	Responsibility for action

Contact point for future privacy concerns

Additional guidance: Linking the PIA to the data protection principles

Answering these questions during the PIA process will help you to identify where there is a risk that the project will fail to comply with the DPA or other relevant legislation, for example the Human Rights Act.

Principle 1

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

- a) at least one of the conditions in Schedule 2 is met, and**
- b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.**

- Have you identified the purpose of the project?
- How will you tell individuals about the use of their personal data?
- Do you need to amend your privacy notices?
- Have you established which conditions for processing apply?
- If you are relying on consent to process personal data, how will this be collected and what will you do if it is withheld or withdrawn?
- If your organisation is subject to the Human Rights Act, you also need to consider:
 - Will your actions interfere with the right to privacy under Article 8?
- Have you identified the social need and aims of the project?
- Are your actions a proportionate response to the social need?

Principle 2

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

- Does your project plan cover all of the purposes for processing personal data?
- Have you identified potential new purposes as the scope of the project expands?

Principle 3

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

- Is the quality of the information good enough for the purposes it is used?
- Which personal data could you not use, without compromising the needs of the

project?

Principle 4

Personal data shall be accurate and, where necessary, kept up to date.

- If you are procuring new software does it allow you to amend data when necessary?
- How are you ensuring that personal data obtained from individuals or other organisations is accurate?

Principle 5

Personal data processed for any purpose or purposes shall not be kept for longer than necessary for that purpose or those purposes.

- What retention periods are suitable for the personal data you will be processing?
- Are you procuring software that will allow you to delete information in line with your retention periods?

Principle 6

Personal data shall be processed in accordance with the rights of data subjects under this Act.

- Will the systems you are putting in place allow you to respond to subject access requests more easily?
- If the project involves marketing, have you got a procedure for individuals to opt out of their information being used for that purpose?

Principle 7

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

- Do any new systems provide protection against the security risks you have identified?
- What training and instructions are necessary to ensure that staff know how to operate a new system securely?

Principle 8

Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

- Will the project require you to transfer data outside of the EEA?
- If you will be making transfers, how will you ensure that the data is adequately protected?

