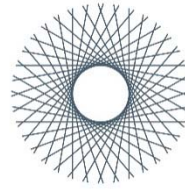


Competitive Tendering and Procurement Policy



HERTS FOR
LEARNING
**MULTI
ACADEMY
TRUST**

STATUS: Required by Academies Financial Handbook

DATE ISSUED: February 2018

REVIEW DATE: February 2020

APPROVED BY: Board of Trustees

APPROVAL
DATE: 21 February 2018

1 INTRODUCTION

1.1 This policy statement will cover:

- a. Key Principles
- b. Purpose
- c. Key requirements of process
- d. Quotations and tendering
- e. Procedures
- f. Acceptance of Tender
- g. Collaboration and Trust-wide Tendering
- h. Framework Agreements
- i. Related Party Transactions

1.2 The appendices contain: Forms of Tenders; Trading with Connected parties; and a Pro-forma statement of assurance for trading with connected parties.

2 KEY PRINCIPLES

2.1 When considering the procurement of, and tendering for goods and services, consideration should be given to **probity, accountability and value for money**. The values of transparency and fairness will inform our financial practices.

2.2 All capital expenditure must form part of the budget/financial planning process with discussion of the reasons for the expenditure and a 'top level' cost benefit analysis (CBA), if applicable, being compiled.

- 2.3 This policy must be read in conjunction with the HfL MAT Finance Manual and key principles outlined in the Anti-Fraud Policy must be adhered to.

3 PURPOSE

- 3.1 This policy has been produced to ensure that the Herts for Learning Multi Academy Trust manages public funds in a proper and effective manner as set out in the ESFA Academies Financial Handbook (latest version: September 2017).

4 KEY REQUIREMENTS OF PROCESS

- 4.1 All purchases with a value greater than **£50,000** must be put out to formal tender. For all purchases between £5,000 and £50,000, whilst not requiring a formal tender, must obtain three written quotations (see Appendix 1: Finance Manual).
- 4.2 Work specifications will be agreed by the Academy Headteacher and authorised by their Academy Governing Board (AGB).
- 4.3 For any major building works of a value greater than £50,000, the services of an architect would be engaged to deal with the handling of specifications and suitability to tender.
- 4.4 All tenders will be opened at the same time and details of the contractor, quotation and any other details recorded at the time of opening.
- 4.5 For purchases up to £50,000 the expenditure must be in accordance with the MAT's Financial Delegated Authority (see Appendix 1 of the MAT Financial Procedure Manual).
- 4.6 All purchases exceeding £50,000 must be recommended by the AGB and approved by the Multi Academy Trust Board.
- 4.7 Where expenditure is not included in the budget or anticipated expenditure exceeds the budget allocation, the decision as to which tender to accept will be taken by the Trust's Finance Audit and Risk Committee, in line with their terms of reference and then ratified by the full Trust Board.
- 4.8 The reasons for accepting a particular tender must be documented, especially if it is decided to accept other than the lowest tender. All decisions must be reported to the full Trust Board
- 4.9 Wherever possible and practicable the academies and MAT will collaborate so that resources or services can be tendered across the Trust, so greater value for money can be achieved.

- 4.10 The EU spending threshold for goods and services is currently £164,176. If the estimated cost of the contract is above this threshold, the Trust must follow the EU procurement directives and advertise the contract in the Official Journal of the EU (OJEU). Some services that are specifically for education provision may be subject to a higher threshold of £589,148. Legal advice should be sought or reference to the DfE to determine whether the procurement qualifies.

5. QUOTATION AND TENDERING

- 5.1 The minimum required number of tenders or quotations, from appropriate contractors, for a given **estimated value** of contract, are:

In budget

- Up to £5,000 **minimum of one oral or on-line quotation**
- Above £5,000 and up to £50,000, **three written quotations**;
- Above **£50,000** and up to EU thresholds, **three** tenders;
- Over EU thresholds, **four** tenders.

Unbudgeted

- Up to £2,500 **minimum of one oral or on-line quotation**
- Above £5,000 and up to £50,000, **three written quotations**;
- Above **£50,000** and up to EU thresholds, **three** tenders;
- Over EU thresholds, **four** tenders.

See the HfL MAT Finance Manual for sign-off requirements of the above.

- 5.2 The values are for single items or groups of items, which **must not be disaggregated artificially**.
- 5.3 For tenders expected to exceed EU thresholds, advertisements must also be placed in OJEU (the Official Journal of the European Union) and must follow EU procurement requirements with particular regard to be given to the timescale for such tenders.

6. PROCEDURES

- 6.1 All purchases with a value greater than **£50,000** must be put out to formal tender. The following procedures must be followed in such circumstances:
- 6.1.1 A specification will be prepared, authorised by the Chair of the Trust's Finance Audit and Risk Committee and Academy Headteacher, and sent to at least three suppliers. It is anticipated that for any major building works of a value greater than **£50,000** the services of an architect would be engaged to deal with the handling of specifications and suitability to tender.

- 6.1.2 Where appropriate, the suppliers invited to tender should be drawn from an approved list or from those agreed with the architect. Otherwise, invitations to submit tenders will be advertised in local newspapers and trade journals if appropriate. The invitations to tender will include:
- a. an introduction/background to the project
 - b. the scope and objectives of the project
 - c. any technical requirements
 - d. implementation details for the project
 - e. the terms and conditions of the tender
 - f. the form and date of response to the academy, or in the case of building works, to the School Business Manager, architect or quantity surveyor
 - g. the tender evaluation criteria
 - h. any risks associated with the project
 - i. any specific timing requirements
- 6.1.3 All replies, if to the school, should be addressed to the School Business Manager in a plain sealed envelope marked 'Tender' to reach her/him by a specified date. All replies must be kept sealed until that date.
- 6.1.4 All tenders will be opened at the same time and details of the contractor, quotation and any other details recorded at the time of opening,
- 6.1.5 No contractor will be allowed to amend the tender after the time fixed for receipt.
- 6.1.6 The School Business Manager will open a separate correspondence file for each tender, which will contain copies of all correspondence or other relevant information.
- 6.2 For purchases up to £50,000, the Financial Delegated Authority – Appendix 1 of the MAT Financial Procedures Manual must be followed.
- 6.3 For purchases exceeding £50,000, the expenditure must be recommended by the AGB and approved by the MAT Board.
- 6.4 Where expenditure is not included in the budget or anticipated expenditure exceeds the budget allocation, the decision as to which quotation/tender to accept will be taken by the Trust Finance Committee, in line with their terms of reference and then ratified by the Trust Board.
- 6.5 The reasons for accepting a particular tender must be documented, especially if it is decided to accept other than the lowest tender. All decisions must be reported to the full Trust Board.

6.6 The successful bid may not always be the cheapest.

7. ACCEPTANCE OF TENDER

7.1 The following points will be considered when deciding which tender to accept:

- a. The overall price and the individual items or services, which make up that price.
- b. Whether there are any 'hidden' costs; that is additional costs which the school/Trust will have to incur to obtain a satisfactory product.
- c. Whether there is scope for negotiation, whilst being fair to all tenderers.
- d. The qualifications and experience of the supplier, including membership of professional associations.
- e. Compliance with the technical requirements laid down by the school.
- f. Whether it is possible to obtain certificates of quality.
- g. The supplier's own quality control procedure; pre sales demonstrations, after sales service and, for building works, a minimum six month defects period and insurance guarantees.
- h. The financial status/stability and sustainability of the supplier.
- i. References from other establishments.
- j. Understanding & compliance with Health & Safety, CDM regulations and Child Protection issues related to working on a school site

7.2 For OJEU contracts, a mandatory Alcatel period will apply.

7.3 In the case of building works, where the tendering process is being carried out by the architect or quantity surveyor, they will be responsible for checking the documentation of the lowest tender before making a recommendation to the school/Trust.

7.4 Once a tender is accepted an order should be issued immediately to the supplier in the normal way.

7.5 The successful contractor should be provided and sign for a copy of the school's 'Contractors Guide' and reminded that the school is a NON SMOKING site.

The Academy's Funding Agreement should be considered when applying this policy

8. COLLABORATION AND TRUST-WIDE TENDERING

- 8.1 An ongoing programme of reviewing services across schools in the Trust is to be established in order to improve efficiencies and value for money. Where appropriate, for both new and established SLAs, suppliers will be asked to tender.
- 8.2 Where goods or services can be obtained of acceptable quality and competitive price on a Trust-wide basis, the decision to award the tender will reside at Trust level, but Academy Governing Bodies will be kept informed at all times
- 8.3 In the case of Trust-wide contracts, the Trust's Chief Financial Officer will lead the process. The Headteacher will have oversight of the process and make any recommendations to the Trust Board through the AGB.

9 FRAMEWORK AGREEMENTS

- 9.1 Where appropriate, for both new and established SLAs, the Trust may enter into framework agreements with contracting authorities
- 6.2 In all cases, the Trust will ensure that the agreement is made in line with EU procurement rules
- 6.3 In all cases, the selection will be made based on value for money criteria.

10. RELATED PARTY TRANSACTIONS

- 10.1 All staff, Governors and Directors must declare pecuniary interests annually and in any meetings where any issues are discussed that might involve the related organisation.
- 10.2 Further details of trading with connected parties are set out in Appendix B.

Forms of Tenders

There are three forms of tender procedure: **open**, **restricted** and **negotiated** and the circumstances in which each procedure should be used are described below.

1. Forms of Tender

- 1.1 **Open Tender:** This is where all potential suppliers are invited to tender. School management must discuss and agree with the Trust Finance Committee how best to advertise for suppliers, e.g. general press, trade journals or to identify all potential suppliers and contact directly if practical. This is the preferred method of tendering, as it is most conducive to competition and the propriety of public funds.
- 1.2 **Restricted Tender:** This is where suppliers are specifically invited to tender. Restricted tenders are appropriate where:
 - 1.2.1 There is a need to maintain a balance between the contract value and administrative costs
 - 1.2.2 A large number of suppliers would come forward or because the nature of the goods are such that only specific suppliers can be expected to supply the school/Trust's requirements
 - 1.2.3 The costs of publicity and advertising are likely to outweigh the potential benefits of open tendering
- 1.3 **Negotiated Tender:** The terms of the contract may be negotiated with one or more chosen suppliers. This is appropriate in specific circumstances:
 - 1.3.1 The above methods have resulted in either no or unacceptable tenders;
 - 1.3.2 Only one or very few suppliers are available
 - 1.3.3 Extreme urgency exists
 - 1.3.4 Additional deliveries by the existing supplier are justified

2. Preparation for Tender

In order to help with the transparency of the procurement and tendering process the academy will have a **register of business interests** for AGB Governors, Trust Directors and any other person that may be involved in the procurement and tendering process. The school/Trust need to be aware that the EU introduced a requirement for public bodies to follow a prescribed tendering procedure for contracts of a certain value which should be checked prior to the tendering process.

- 2.1 Full consideration should be given to:
 - 2.1.1 Objective of project – should be in line with a School Development Plan and any budget constraints
 - 2.1.2 Overall requirements – as set out in the Specification or Statement of Requirement

- 2.1.3 Technical skills required
- 2.1.4 After sales service requirements
- 2.1.5 Form of contract

2.2 It may be useful after all requirements have been established to rank requirements (e.g. mandatory, desirable and additional) and award marks to suppliers on fulfilment of these requirements to help reach an overall decision. Any current level of service should not be regarded as the standard needed.

3. Invitation to Tender

If a restricted tender is to be used then an invitation to tender must be issued. If an open tender is used an invitation to tender may be issued in response to an initial enquiry. An invitation to tender should include the following:

- Introduction/background to the project
- Scope and objectives of the project
- Technical requirements
- Implementation of the project
- Terms and conditions of tender, and
- Form of response

4. Aspects to Consider

4.1 *Financial*

- 4.1.1 Like should be compared with like and if a lower price means a reduced service or lower quality this must be borne in mind when reaching a decision
- 4.1.2 Care should be taken to ensure that the tender price is the total price and that there are no hidden or extra costs
- 4.1.3 Academy should consider the possible flexibility of a short-term agreement with the consistency and possibility of a lower price for longer term agreements
- 4.1.4 If there is scope for negotiation, this must be considered

4.2 *Technical/Suitability*

- 4.2.1 Qualifications of the contractor
- 4.2.2 Relevant experience of the contractor
- 4.2.3 Descriptions of technical and service facilities
- 4.2.4 Certificates of quality/conformity with standards
- 4.2.5 Quality control procedures
- 4.2.6 Details of previous sales and references from past customers

4.3 Other Considerations

- 4.3.1 Pre-sales demonstrations
- 4.3.2 After-sales service
- 4.3.3 Financial status of supplier. Suppliers in financial difficulty may have problems completing contracts and in the provision of after sales service. It may be appropriate to have an accountant or similarly qualified person examine audited accounts etc.

5. Tender Acceptance Procedures

The invitation to tender should state the **date** and **time** by which the completed tender document should be received by the Academy. Tenders should be submitted in plain envelopes clearly marked to indicate they contain tender documents. The envelopes should be time and date stamped on receipt and stored in a secure place prior to tender opening. Tenders received after the submission deadline should not normally be accepted.

6. Tender Opening Procedures

6.1 All tenders submitted should be opened at the same time and the tender details should be recorded. Two persons should be present for the opening of tenders.

6.2 A separate record should be established to record the names of the firms submitting tenders and the amount tendered. Both people present at the tender opening must sign this record.

7. Tender Evaluation

7.1 The evaluation process will involve at least two people. Those involved shall disclose all interests, business and otherwise, that might influence their objectivity. If there is a potential conflict of interest then that person must withdraw from the tendering process.

7.2 Those involved in making the decision shall not accept gifts or hospitality from potential suppliers that could compromise or be seen to compromise their independence

7.3 Full records will be kept of all criteria used for evaluation and for contracts over £10,000 a report should be prepared for the Local Governing Body highlighting the relevant issues and recommending a decision. For contracts under £10,000 the decision and criteria should be reported to the AGB Resources Committee

7.4 Where required by the conditions attached to a specific grant from the DfE/EFA, the department/Agency's approval must be obtained before the acceptance of tender

7.5 The accepted tender should be the one that is economically most advantageous to the academy. All parties shall then be informed of the decision

7.6 In the event that a tender other than the lowest is accepted, those involved in making the decision shall document and report the reasons for not accepting the lowest bid to the Governing Body.

8. Insurance Requirements

Generally, insurance requirements are stated within the PQQ/tender documents. However, as a minimum most contracts will require the contractor to be covered by an Employers and Public Liabilities Insurance to the value of £5,000,000.

9. Retention of Records

9.1 All relevant documents relating to the tender process (including minutes of meetings and a written record of the reasons for the decision made) shall be retained by the Academy for audit purposes and to use in defence, if any complaint or allegation of improper practice is made.

9.2 Document retention periods will be as follows:

- Pre-Qualification Questionnaires: 6 months
- Invitations to tender: 1 year
- Evaluation criteria/decision making documentation: 1 year
- Successful bid: 7 years from start of contract

Trading with connected parties

1. This deals with goods or services provided by individuals or organisations connected to the academy trust.
2. The 'at cost' requirement applies to contracts for goods and services from a connected party exceeding **£2,500**, cumulatively, in any one financial year of the Trust.
3. For these purposes, where a contract takes the Trust's cumulative annual total with the connected party beyond £2,500, the element above £2,500 must be at no more than cost.
4. In relation to organisations supplying legal advice or audit services to the academy trust, the 'at cost' requirement applies where the organisation's partner directly managing the service is a member or trustee of the trust, but not in other cases for those organisations. The Companies Act 2006 and the ethical standards of some professions also contain requirements, which may prevent certain professionals from acting as a trustee of the trust.
5. The 'at cost' requirement does not apply to the Trust's employees unless they are also one of the parties described at point 1.
6. The academy trust must ensure that any agreement with an individual or organisation referred to in point 1, to supply goods or services to the trust is properly procured through an open and fair process and is supported by a statement of assurance from that individual or organisation to the trust
7. When trading with connected parties, the overriding judgement is whether any transactions pose a potential risk to public funds
8. Evaluation of risk should include:
 - Value
 - Nature of transaction
 - Position of the connected party
 - Capacity of the connected party to control and influence the decision making process
 - Transparency
9. If the transaction is judged to be potentially irregular/improper then the contract should not be awarded to the individual or organisation connected to the Trust.
10. On an annual basis, all trading with connected parties should be reviewed and a pro-forma statement of assurance should be completed for each individual/organisation (see Appendix C).

Pro-forma statement of assurance

This form is for completion by an individual or organisation (the 'supplier'), defined in the Academies Financial Handbook (the 'handbook') as a 'connected party' to an academy trust. Individuals and organisations supplying goods or services to a connected trust must charge no more than cost (defined at the end of the form). This form will also help trusts comply with their funding agreement obligations

Section 1: Supplier details

Name and address of supplier	
Company number (if applicable)	
Start date	
End date	
Estimate of commercial price, including profit	<i>A reasonable and fair estimate</i>
Connection with trust, e.g. trustee is also a director of the supplier of goods and services	<i>Explain the nature of the connection between the supplier and academy trust</i>
Value of goods or services to trust	<i>£ At cost without profit</i>
Does this value include direct costs and indirect costs only?	<i>Yes / No</i>
Nature of contract	<i>Such as building supplies or professional services</i>

Section 2: Details of contract

Explanation of how the supplier is charging the academy trust

This should include a sufficiently detailed explanation setting out that the supplier understands its direct and indirect costs in such a way to demonstrate to the academy trust that it is supplying goods and services at cost, without any element of profit.

[Please extend the rows below if the contract is longer than three years]

	Direct costs	Indirect costs	Total
Year 1	£	£	£
Year 2	£	£	£
Year 3	£	£	£
Total	£	£	£

Section 3: Supplier certification

Certification of supplier
I certify, on behalf of [name of supplier] that: <ul style="list-style-type: none">▪ the goods and services detailed in this form will be supplied to the academy trust on the basis of direct cost plus indirect costs, with no element of profit;▪ we are supplying the goods and services on an open book basis and we will provide more information on request; and▪ we will make an adjustment in the following year if we identify a miscalculation on our direct or indirect costs, and supplied goods or services which included an element of profit.

Name and position	<i>Should be sufficiently senior to sign this declaration</i>
Date	
Signature	

Section 4: Academy signoff

Certification of academy trust
In signing this document I am satisfied that: <ul style="list-style-type: none">▪ the goods and services being supplied comply with the requirements on trading with connected parties as set out in the handbook, and represent value for money;▪ there is full compliance with the trust's scheme of delegation;▪ open and fair procurement and compliance with the trust's procurement procedures have taken place;▪ potential conflicts of interest within the academy trust have been robustly managed;▪ the trust's register of interest captures relevant business and pecuniary interests as set out in the handbook, and will be updated to reflect this contract (if not already);▪ the supplier understands that open book arrangements are in place and they will provide more information on request, if needed; and▪ both the trust's accounting officer and chair of board of trustees have agreed to trade with this connected supplier, and that the measures and safeguards listed above are in place.

Name and position	<i>Should be sufficiently senior to sign this declaration</i>
Date	
Signature	

Notes

Direct costs means the costs of any materials and labour used directly in producing the goods or services.

Indirect costs means a proportionate and reasonable share of fixed and variable overheads.

At cost means without profit as it includes direct and indirect costs only.

Estimate of commercial price acknowledges that the value of such contracts varies depending on a number of factors and negotiations. The supplier should identify a reasonable and fair price, e.g. from previous similar contract

