



# Competitive Tendering Policy

## Review Summary

<b>Adopted:</b>	<b>March 2016</b>
<b>Review Cycle:</b>	<b>Bi-Annual</b>
<b>Last Review:</b>	<b>March 2018</b>
<b>Next Review:</b>	<b>March 2020</b>

## **1. Introduction**

- 1.1. This Policy sets out the Framework for ensuring that the Ted Wragg Multi Academy Trust maintains and develops competitive tendering processes and procedures, which meet the requirements of procurement legislation, financial accountability and managing public money.
- 1.2. The Trust is committed to buying practices in order to achieve value for money and to be worthy custodians of public money. The aim is to make efficiencies including savings and spend funds prudently in order to invest in teaching and learning.

## **2. Legal Framework**

- 2.1. This Policy takes its legal framework from the following legislation and statutory guidance:
  - a. The Trust's Model Funding Agreement;
  - b. The Trust's Articles of Association;
  - c. The Public Contract Regulations 2015;
  - d. The EFSA Academies Financial Handbook.

## **3. Extent and Application**

- 3.1. This policy applies to all spending on goods, services and works for and on behalf of the Trust, including ad-hoc one-off requirements and will be applied by any Trustee, governor or staff member, which is undertaking any purchasing or procurement activity on behalf of the Trust.

## **4. Why is Procurement Important**

- 4.1. The Trust spends public money, therefore it must ensure that the money is spent in a way that is fair, open and represents good value for money (VFM).
- 4.2. Poor procurement decisions and a failure to comply with procurement legislation could result in legal challenges from suppliers, contracts being cancelled and financial penalties, which can be costly, time-consuming and impact on the Trust's reputation.
- 4.3. Any non-compliance or breach of this policy can seriously impact upon the legal standing of the public money being spent and the resultant contract that is let and can increase the ability of unsuccessful Suppliers to seek redress through the courts.
- 4.4. The benefits of effective procurement practices include:
  - a. Financial savings that can then be re-invested in priorities;
  - b. Goods or services purchased are fit for purpose;
  - c. Suppliers deliver (and continue to deliver) as agreed;
  - d. Legal and financial obligations are complied with.

## **5. Procurement Planning**

- 5.1. Before a procurement process is commenced, the following will be considered:
  - a. Whether equipment can be loaned or resources shared with any other public body;
  - b. Are there any available collaborative opportunities which will increase the buying power;

- c. Are there any existing contracts or frameworks in place through the Local Authority or another Purchasing Consortium.

## **6. Estimating the Value of the Procurement**

- 6.1. The calculation of the estimated value of a procurement is based on the total amount payable including any Contract extension options. Account shall be made of the total estimated value for the Trust and not just for an individual school.
- 6.2. The procurement shall not be sub divided, nor should the choice of the method used to calculate the estimated value be made with the intention of avoiding the application of this policy, nor shall it be sub divided. Where a procurement is proposed to be awarded in the form of lots, account shall be taken of the total estimated value of all the lots.
- 6.3. The estimated value of the Procurement for goods and services is calculated by taking:
  - a. The value of the total amount payable for the full term of the Contract, including extensions and is for 48 months or less; or
  - b. The value of the total amount payable for each month multiplied by 48 if the term of the Contract, including extensions, is for more than 48 months, or over an indefinite period.

Or, where there is

- c. A requirement over a period of time for goods, or services that are for the same type or have similar characteristics and for that purpose a series or Contracts are entered into, or a Contract with renewable terms is being used, the value shall be calculated by taking the spend from the previous 12 months, taking into account any expected changes in the next 12 months;
- d. The estimated value of the procurement for works shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the Contractor and are necessary for executing the works.

## **7. EU Spend Threshold**

- 7.1. Where an estimated value of a procurement is equal to or exceeds the EU spend threshold values, then the Public Procurement Regulations 2015 apply to the procurement process. However there are exceptions whereby the Public Procurement Regulations 2015 also apply to certain aspects to a procurement which has been estimated at below the EU spend thresholds.
- 7.2. The Public Contract Regulations stipulate that the following applies to below EU spend threshold procurement processes:
  - a. Restricted Procedure is not permitted;
  - b. Selection Criteria used to assess the meeting of minimum standards or Criteria must be relevant to the subject matter of the procurement and proportionate;
  - c. Selection Criteria used to assess the meeting of minimum standards or Criteria must be in accordance with guidance issued by the Cabinet Office.

## 8. Selecting the Procurement Process

8.1. The procurement process selected must be in accordance with the table below:

<b>Goods/Works/Services Estimated Value of the Procurement</b>	<b>Procurement Process</b>
<b>£0 to £4,000</b>	Head teacher, Member of the Executive Leadership Team or authorised deputies to arrange directly. One quotation (email/written should be obtained and documentation held on file. Good practice to seek most favourable prices and terms by obtaining more than one quotation.
<b>£4,000 to £10,000</b>	Head teacher, Member of the Executive Leadership Team or authorised deputies to arrange directly. Two quotations (email/written should be obtained and documentation held on file. Good practice to seek most favourable prices and terms by obtaining more than two quotations.
<b>£10,001 to £50,000</b>	Offer the opportunity to at least <u>three</u> Suppliers via formal written quotations. Documentation must be held on file. Such expenditure to be reported to the Executive Leadership Team. A formal contract must be in place before commencement and signed by a member of the Executive Leadership Team.
<b>£50,001 to EU Spend Threshold</b>	Advertised invitation to Tender. Documentation must be held on file. Expenditure to be authorised by the Trust Audit, finance and resources committee. A formal contract must be in place before commencement and signed by a member of the Executive Leadership Team.
<b>EU Spend Threshold and Above</b>	Advertised invitation to Tender. Procurement process to be run in accordance with the Public Contract Regulations 2015. Documentation must be held on file. Expenditure to be authorised by the Trust Audit, finance and resources committee. A formal contract must be in place before commencement and signed by a member of the Executive Leadership Team.

## 9. PFI Schools

- 9.1. Procurement for PFI schools in some instances, in accordance with the project agreement, is undertaken by the FM provider. This will be for building maintenance, remodelling and improvements.
- 9.2. In this instance quotations will be obtained from their pre-approved suppliers list. Part of the approval process for this supplier list is to demonstrate value for money.
- 9.3. The quotation process selected will be in accordance with the table below:

<b>Goods/Works/Services Estimated Value of the Procurement</b>	<b>Procurement Process</b>
<b>£0 to £10,000</b>	One quotation (email/written should be obtained and documentation held on file. Value for money to be evaluated. Expenditure must be part of the approved school budget. Additional expenditure must be approved by the Finance Director.
<b>£10,001 to £25,000</b>	Two quotations (email/written should be obtained and documentation held on file. Value for money to be evaluated. Expenditure must be part of the approved school budget. Additional expenditure must be approved by the Finance Director.
<b>£25,001 to EU Spend Threshold</b>	Three quotations (email/written should be obtained and documentation held on file. Value for money to be evaluated. Expenditure must be part of the approved school budget. Additional expenditure must be approved by the Finance Director.
<b>EU Spend Threshold and Above</b>	Advertised invitation to Tender. Procurement process to be run in accordance with the Public Contract Regulations 2015. Documentation must be held on file. Expenditure to be authorised by the Trust Audit, finance and resources committee.

## **10. Planning the Procurement**

- 10.1. In order to avoid any distortion of competition and ensure equal treatment of Suppliers, the Trust is legally required to take all appropriate measures to effectively identify, remedy and prevent any conflicts of interest that may arise during the course of a procurement process.
- 10.2. The Trust must not disclose information which has been provided by a Supplier and designated as being confidential by that Supplier, this includes but is not limited to technical or trade secrets and the confidential aspects of Tenders unless it is required to do so under the Freedom of Information Act.

10.3. Where a procurement procedure requires the sharing of confidential information with Suppliers, such as details relating to the transfer of staff, this must not be disclosed unless the Supplier has signed and submitted an appropriate Confidentiality Agreement.

10.4. TUPE Regulations may apply when a service Contract is transferred from one external Supplier to another or where staff are being outsourced. Under both TUPE and Public Contract Regulations there is a requirement for the Trust to share anonymous information relating to the staff who may be eligible to transfer.

## **11. Preparing the Tender Documents**

11.1. Appropriate tender documentation must be used for advertised opportunities. These documents must include as a minimum:

- a. Suitable instructions for the Applicants;
- b. A specification of your requirements;
- c. Procurement Information and Evaluation Criteria;
- d. Pricing requirements;
- e. Tender submission requirements;
- f. Contract Terms and Conditions.

11.2. Value for money is not always about the lowest price. It's about getting the right balance between quality and cost. Consideration will be given on how these will be measured when setting the evaluation criteria.

11.3. Contracts must be awarded on the basis of the evaluation criteria laid out within the Tender documents. Selection and Award Criteria must be treated separately and all criteria, sub-criteria and weightings must be clearly detailed within the Tender documents, which consists of the following:

### **a. Selection Criteria**

- i. Mandatory Exclusions;
- ii. Discretionary Exclusions;
- iii. Economic and Financial Standing;
- iv. Technical and Professional Ability;
- v. Insurance;
- vi. Compliance with Equality Legislation;
- vii. Environmental Management;
- viii. Health and Safety.

### **b. Award Criteria**

- i. Pricing requirements;
- ii. Technical Questions/Method Statements;
- iii. Presentations;

- iv. Interviews;
- v. Site Visits.

## **12. Undertaking the Procurement Process**

- 12.1. All procurement processes over £50,000 and up to the EU spend threshold must be advertised appropriately by a form of public notice and out for at least ten working days. For example Trust website, newspapers or journals. The length of notice must be appropriate and proportionate to the nature and complexity of the Contract to allow sufficient time for Suppliers to submit a suitable and compliant Tender.
- 12.2. For above EU spend threshold procurements, all Tender documents must be offered unrestricted and with full direct access via an Electronic Tendering System or on the Trust Website, from the date the OJEU notice is published. There are exceptions regarding Procurement Documents which are confidential in nature. Email is not a suitable electronic means as this does not offer direct access and requires the Supplier to request information.
- 12.3. All procurement processes over £50,000 and up to the EU spend threshold must be conducted in a manner which enables all communication and information exchange to be provided by electronic means to ensure the process is conducted in a fair and transparent manner, ideally using an Electronic Tendering System. Where communication is via email, the anonymity of all Suppliers must be maintained.
- 12.4. For above EU spend threshold procurements, the process must be conducted using an Electronic Tendering System.
- 12.5. Tenders must be submitted in accordance with the requirements set out in the Tender documents. All Tenders over £50,000 and up to the EU spend threshold must be submitted in a way that enables them to be opened at the same time after the closing time and date for submission. The two options are an Electronic Tendering System or postal submission. For above EU spend threshold procurements, postal submissions are not acceptable. In this case the verifier must be independent of the procurement process.
  - a. Electronic Tendering System Submission**
    - i. The Electronic Tendering System is set up to electronically seal Tenders above £50,000. Verifiers are set up in the system who are able to electronically unseal Tenders. Verification may only be undertaken by an authorised Verifier who has duly been approved by the Audit, finance and resources committee.
    - ii. All Tenders shall be electronically unsealed at the same time, in the presence of the Chair of Trustees or a nominated Trustee and the Verifier, after the prescribed submission date and time.

- iii. The Electronic Tendering System keeps an electronic record of the Tenders opened and automatically classifies Tenders which have been received late, as in after the prescribed date and time.

**b. Postal Submission**

- i. Every tender advertisement must state that no tender will be accepted unless it is in an envelope which bears no external mark, e.g franking marks, which will indicate the sender. The envelope must bear the word TENDER, the Tender reference and the address to which it is to be delivered.
- ii. Envelopes returned must remain sealed and be endorsed with the date and time of receipt by the receiving officer at the point of receipt. They should be held in a secure place by a nominated senior employee until the opening date.
- iii. Tenders must be opened, after the closing time and date for submission, in the presence of the Chair of Trustees or a nominated Trustee. A list of tenders opened must be prepared recording the details of the proposed purchase, the date and time of opening, the name of the person tendering and the price tendered.

**13. Tender Evaluation**

- 13.1. All Tender submissions received must be evaluated in accordance with the pre-determined evaluation Criteria, set out in the invitation to tender documents issued. Criteria, sub criteria, weightings and the attributed breakdown must not be changed from what was published in the tender documents and must be applied consistently for all tender submissions.
- 13.2. Tender evaluation processes must be recorded on a suitable evaluation matrix. All criteria, sub criteria and scoring must be detailed for each tender submission to enable a complete assessment of what scores are attributed to each criteria set. Reasons for scores allocated must be recorded which provides an appropriate justification and is used to complete the tender outcome letter.
- 13.3. An evaluation process for every compliant tender received must be fully completed. It must not be stopped part way through because it has been assessed that they won't be successful. Suppliers are entitled to a full assessment of the submission, which must be provided in their tender outcome letter and available to facilitate a de brief if requested.

**14. Approval to Award the Tender**

- 14.1. For tenders over £50k, the decision to approve the tender award to the highest scoring supplier must be taken and the recommendation submitted to the Trust Audit, finance and resources committee on a Request for Decision Form. For all other Tenders, the award should be notified to the Trust Audit, finance and resources committee. Where approval isn't given no contract award can be made.
- 14.2. All successful and unsuccessful Suppliers must be notified of the tender award decision at the same time via a suitable tender award decision letter, including where a decision is not to award.

## **15. Contracts**

- 15.1. Crown Commercial Services Model Terms and Conditions will be used for procurements below EU Spend Thresholds. Legal advice will be sought for appropriate contract terms and conditions for EU spend threshold and above procurements. Suppliers own terms and conditions must not be utilised.
- 15.2. Prior to issuing a contract Staff must obtain from the Supplier evidence of compliance with any Contractual requirements, such as insurances, disclosure and barring service checks and policies and procedures.
- 15.3. Where a procurement process was undertaken, the Contract terms and conditions must be those that were issued within the Tender documents.
- 15.4. Every contract which does not exceed £50,000 in value must be signed by a member of the Executive Leadership Team.
- 15.5. Every contract which exceeds £50,000 in value must be signed by a member of the Executive Leadership Team and reported to the Trust Audit, finance and resources committee.
- 15.6. A supplier shall not be allowed to commence performing the contract prior to the formal contract documents being signed. In the case of Framework Agreements a supplier shall not be permitted to participate in any call-off from the Framework until such time as their agreement has been duly signed.

## **16. Contract Management**

- 16.1. The Trust must maintain a register of contracts.
- 16.2. Contracts awarded must be monitored and managed throughout the contract term to ensure delivery of the contracted goods, services or works in accordance with the contract requirements and performance standards.
- 16.3. Contract monitoring and management arrangements must be proportionate to complexity, value and risk associated with the contract.

## **17. Monitoring and Enforcement**

- 17.1. The Trust's Audit, finance and resources committee will undertake continuous monitoring of its activities to ensure that this policy is applied and value for money is being achieved.

## **18. Exemption from the Application of this Policy**

- 18.1. An application can be made for an exemption from this policy by submitting a Decision Request Form to the Trust Audit, finance and resources committee. The exemption will only be applied in the following circumstances:
  - a. The spend is urgently required and delay would cause loss, injury or damage, The urgency must be brought about by events that were unforeseeable by and not

attributable to the Trust and which will result in loss or damage to the Trust if the suspension or exemption is not allowed; and / or

- b. The spend is of such a special nature that no advantage would be gained by inviting competitive tenders; or
- c. There is no effective competition because payment is fixed under statutory authority or the item is a patented or proprietary article or is available from only one source.

18.2. The following must be considered before applying for an exemption:

- d. Lack of planning and / or internal process delays will not constitute special, exceptional or emergency circumstances;
- e. Exemptions from this policy must not be applied for retrospectively;
- f. Exemptions from this policy must not be applied for where spend will exceed the relevant EU Spend Threshold.

### **19. Policy Circulation**

19.1. This Policy will be published on the Trust's website and included in the Trust's Policy Monitoring Schedule

19.2. This Policy will be circulated to every Trustee, Local Governor and Senior Employee.

19.3. The Trustees are responsible for overseeing, reviewing and organising the revision of the Competitive Tendering Policy.

### **Adoption of the Policy**

This Policy has been adopted by the Trustees of the Ted Wragg Multi Academy Trust.

**Signed**



**(Chair of Trust)**

**Date** 14 March 2018