



Competitive Tendering Policy

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Statutory Policy – No (ATH Requirement)



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1. Introduction

- 1.1. The Trust is committed to procurement practices that achieve value for money, and to be worthy custodians of public money. The following sets out the framework for ensuring that the Trust maintains and develops compliant procurement processes and procedures, which meet the requirements of procurement legislation and financial accountability.
- 1.2. The Trust takes its legal framework from the following legislation and statutory guidance:
 - a. The Trust's Funding Agreement.
 - b. The Trust's Articles of Association.
 - c. The Procurement Act 2023
 - d. The EFSA Academies Trust Handbook.

2. Extent and Application

- 2.1. This guidance 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, or staff member, who is undertaking any purchasing or procurement activity on behalf of the Trust.

3. Why is this Important?

- 3.1. 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). 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.
- 3.2. Any non-compliance or breach of this guidance can seriously impact upon the legal standing of the public money being spent and the resultant contract that is let which can increase the ability of unsuccessful suppliers to seek redress through the courts.
- 3.3. 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.

4. Contracts Register

4.1. The CFO and / or Director of Operations shall maintain a Contracts Register for the Trust to:

- a. Ensure an accurate picture of tendering and contracts across the Trust.
- b. Demonstrate greater accountability & transparency regarding contracting activity.
- c. Enable a full understanding of liabilities and compliance with procurement rules.
- d. Identify which contracts need to be re-let and to program work.
- e. Support understanding of areas where efficiency gains may be sought.
- f. Identify where contracts are not in place and should be.

5. Spend Category Management

5.1. The Trust follow a category management approach to the procurement of their goods and services. Category Management is a strategic approach which organises procurement resources to focus on specific areas of spend. This enables the Trust to focus their time and conduct in-depth market analysis to fully leverage their procurement decisions on behalf of the whole organisation. The results can be significantly greater than traditional transactional based purchasing methods.

6. Establishing the Value of the Purchase or Contract

6.1 Section 4 and Schedule 3 of the Procurement Act (PA) 2023 collectively provide the relevant rules on valuation of contracts.

6.2 Section 4 of the PA 2023 requires contracting authorities to estimate the value of contracts, in accordance with the methodology set out in Schedule 3, and restricts manipulation of the estimated value of a contract in order to avoid the requirements in this legislation. The effect is that the Trust will have an estimated value for their contract and thus be

able to determine whether they are above or below the relevant threshold and in turn determine which rules have to be followed.

- 6.3 Schedule 3 provides a methodology that the Trust must use when estimating contract values in order to discharge obligations under section 4. The provision also protects the Trust from artificially subdividing contracts for the purposes of evading any of the requirements of the Act. The methodology can be found at <https://www.legislation.gov.uk/ukpga/2023/54/schedule/3>

7. Procurement Act 2023 Spend Thresholds

- 7.1. Spend Thresholds for establishing if the Procurement Act 2023 (PA 2023) applies to a purchase, are reviewed annually and released January each year. The key change for January 2022 is that VAT is now included in contract estimates.
- 7.2. Refer to the CFO and / or Director of Operations to seek support with establishing if the value of your purchase or contract may be near or over the PA 2023 spend thresholds. Purchasing near or over the spend threshold must be procured in accordance with the PA 2023.

Contract Type	Threshold from January 2022 (incl.VAT)	Threshold from January 2024 (incl.VAT)
Public Works	£5,336,937	£5,372,689
Supplies & Services*	£213,477	£214,904
Light Touch Regime Services	£663,540	£663,540

8. Purchasing & Contract Spend Threshold Requirements

- 8.1. Once the estimated value of the purchase or contract spend has been established, refer to the appropriate spend threshold in the table below which identifies the actions and approval process to be followed.
- 8.2. All capital procurement should comply with the procedures and delegations as set out below.

Estimated Value (Capital & Revenue)	Purchasing Process	Purchasing Approval Process	Spend Approval Process	Contract Signing Process	Contract Termination Approval Process
£0 - £1,000	Obtain one quotation. Good practice is to obtain more than one quotation.	No restriction on who can undertake the process. Check that a Trust wide Contract is not already in place.	Raise PO in the Finance System Automated 1 (under £500) and 2 (between £500 and £1000) step budget holder approval process in the finance system. Budget Holder must: <ul style="list-style-type: none"> Ensure that a Trust-wide Contract is not already in place; Ensure PO value/details match purchase	The Approved Purchase Order is classified as the Contract.	No restriction on who can undertake the process.
£1,001 - £5,000	Obtain two written quotation to ensure best value. Quotation must be electronically stored for audit purposes.	No restriction on who can undertake the process. Check that a Trust wide Contract is not already in place.	Raise PO in the Finance System Automated 3 step budget holder approval process in the finance system. Budget Holder must: <ul style="list-style-type: none"> Ensure quotation is stored electronically; Ensure that a Trust-wide Contract is not already in place; Ensure PO value/details match purchase 	The Approved Purchase Order is classified as the Contract.	No restriction on who can undertake the process.

			its match purchase		
£5,001 - £20,000	<p>Obtain two written quotations to ensure best value.</p> <p>Good practice is to obtain more than quotation.</p> <p>Quotations must be electronically stored for audit purposes.</p>	<p>Headteachers or Category Spend Lead can undertake the process.</p> <p>Check that a Trust wide Contract is not already in place.</p>	<p>Raise PO in the Finance System</p> <p>Automated 3 step budget holder approval process in the finance system.</p> <p>Budget Holder must:</p> <ul style="list-style-type: none"> • Ensure quotations are stored electronically. • Ensure that a Trust-wide Contract is not already in place 	<p>The Approved Purchase Order is classified as the Contract.</p> <p>If a Contract is available:</p> <p>Signed Contract must be in place.</p> <p>Contract signed by CEO, CFO and/or Director of Operations</p> <p>Contract stored electronically on the Contracts Register.</p>	<p>Contract Termination Request referred to the CFO and / or Director of Operations for Review and Approval.</p> <p>Category Spend Lead to undertake the Process</p> <p>Contract Register Updated</p>
£20,001 - £75,000	<p>Obtain three written quotations. to ensure best value.</p> <p>Quotations must be electronically stored for audit purposes.</p>	<p>Director of Operations or Category Spend Lead can undertake the process.</p> <p>Check that a Trust wide Contract is not already in place.</p>	<p>Raise PO in the Finance System</p> <p>Automated 3 step budget holder approval process in the finance system.</p>	<p>Signed Contract must be in place.</p> <p>Contract signed by CEO, CFO and/or Director of Operations</p> <p>Contract stored electronically on the Contracts Register.</p>	<p>Contract Termination Request referred to the Director of Operations for Review and Approval.</p> <p>Category Spend Lead to undertake the Process</p> <p>Contract Register Updated</p>
£75,001 – PA 2023 Threshold	<p>Formal procurement process to be followed in accordance with process laid out in this policy.</p> <p>Procurement documents</p>	<p>Director of Operations or Category Spend Lead can undertake the process.</p> <p>Check that a Trust wide Contract is not already in</p>	<p>Raise PO in the Finance System</p> <p>Automated 3 step budget holder approval process in the</p>	<p>Signed Contract must be in place.</p> <p>Contract signed by CEO, CFO and/or Director of Operation</p>	<p>Contract Termination Request referred to the Director of Operations for Review and Approval.</p>

	electronically stored for audit purposes.	place. Procurement Outcome to be approved by FARC by submitting a Tender Evaluation Report.	finance system.	s Contract stored electronically on the Contracts Register.	Category Spend Lead to undertake the Process Contract Register Updated
PA 2023 Spend Threshold & Above	Procurement process to be run in accordance with the PA 2023 including the use of a Framework Agreement or CCS G Cloud. Procurement documents electronically stored for audit purposes.	Director of Operations or Category Spend Lead can undertake the process. Check that a Trust wide Contract is not already in place. Procurement Outcome to be approved by FARC by submitting a Tender Evaluation Report. Procurement Outcome reported to Strategic Board for information.	Raise PO in the Finance System Automated 3 step budget holder approval process in the finance system.	Signed Contract must be in place. Contract signed by CEO, CFO and/or Director of Operations Contract stored electronically on the Contracts Register.	Contract Termination Request referred to the Director of Operations for Review and Approval. Category Spend Lead to undertake the Process Contract Register Updated

9. Formal Procurement Planning

10.1. Before a formal procurement process is commenced, the following will be considered:

- Whether equipment can be loaned or resources shared with any other public body;
- Whether there are any available collaborative opportunities which will increase the buying power;
- Whether there are any suitable existing contracts or frameworks in place.

10.2. 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.

10.3. 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

the Trust is required to do so under the Freedom of Information Act.

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

10.5. 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. Formal Procurement Route to Market

11.1. The most suitable procurement route to market must be selected, which takes into consideration the complexities of the requirements, estimated value of the contract, whether PA 2023 applies and any associated timescales. This may be through an existing Framework or CCS G Cloud Agreement, or through running your own tender process.

11.2. Where contracts have been set up to enable it, additional or remedial works will be commissioned from the Supplier who has the servicing contract in place. These works will not be guaranteed. The Trust will periodically test best value by seeking alternative quotes.

12. Formal Procurement Tender Document Suite

12.1. Appropriate tender documentation must be used when running a formal procurement process. 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.

- 12.2.Value for money is not always about the lowest price. It is about striking the right balance between quality and price. Consideration will be given on how these will be measured when setting the evaluation criteria.
- 12.3.Contracts must be awarded based on 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.
- 12.4.For tender processes conducted via a Framework or CCS G Cloud, the tender documents must be formulated in accordance with the Framework or G Cloud guidance.
- 12.5.For tender processes above the PA 2023 spend threshold procurements, the tender documents must be formulated in accordance with the Procurement Act 2023.

13. Purchases covered by the Procurement Act 2023(PA 2023)

- 13.1.The procurement process must be conducted in accordance with the PA 2023 and the Procurement Regulations 2024, using a tendering portal. Procurement Guidance can be found at Procurement Act 2023 - Guidance documents - GOV.UK
- 13.2.When carrying out a procurement covered by the PA 2023, the Trust must have regard to the procurement objectives as laid out in Section 12 of the PA 2023 which are:
 - a) delivering value for money.
 - b) maximising public benefit.
 - c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions.
 - d) acting, and being seen to act, with integrity.
- 13.3.In carrying out a covered procurement, the Trust must treat suppliers the same unless a difference between the suppliers justifies different treatment. If the Trust considers that different treatment is justified in a particular case, the Trust must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.
- 13.4.In carrying out a covered procurement, a contracting authority must—

- e) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and
- f) consider whether such barriers can be removed or reduced.

14. National Procurement Policy Statement

14.1. The NPPS places a statutory obligation on contracting authorities to have regard to its policy priorities and determine how procurements can contribute to the delivery of these wider policy objectives. This means that a contracting authority must consider whether the procurement can contribute to achieving one or more of the policy objectives stated in the NPPS in a manner that is appropriate, proportionate and relevant; and take steps to address this where possible. This could include, for example, changes to the way the procurement is structured, or the process is carried out, the specification of the goods, services or works to be purchased, or the award criteria which will determine the most advantageous tender.

14.2. While contracting authorities have a duty to consider whether and how to address the policies, there is no absolute obligation to do so. There may be cases where the priorities are irrelevant to a specific procurement, or it would be disproportionate to introduce measures to address them.

15. Identifying Conflicts of Interest

15.1. Section 81(1) of the Act provides that the Trust must take all reasonable steps to identify, and keep under review, in relation to a procurement, any conflicts of interest, or potential conflicts of interest. The Trust must also be aware of their obligations in relation to perceived conflicts of interest. Section 81(4) defines an 'interest' as including a personal, professional or financial interest that may be direct or indirect.

15.2. A 'conflict of interest' arises where there is an actual conflict of interest. For example, where a person assessing tenders in a procurement owns shares in a supplier that has submitted a tender. A 'potential conflict of interest' exists where a conflict of

interest will arise in future if certain circumstances occur. For example, the spouse of someone who will be assessing tenders is the CEO of a business that is in the process of acquiring ownership of another company, and that company has recently submitted a tender.

15.3. Section 83(1) provides that a conflicts assessment must be prepared before publishing a tender. A conflicts assessment is a record to be kept by the contracting authority which must include (as required by section 83(3)) details of the conflicts or potential conflicts of interest identified and any steps taken, or to be taken, to mitigate them.

15.4. Section 83(4) requires that if a perceived conflict of interest exists, the Trust must also include in the conflicts assessment details of any steps that the contracting authority has taken or will take to demonstrate that a conflict or potential conflict does not exist. As set out at paragraph 4, a perceived conflict of interest is where there are circumstances which the Trust considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest.

15.5. When publishing the tender notice the Trust must, confirm that it has been prepared and revised in accordance with section 83. This does not mean that the actual conflicts assessment must be published, just confirmation that it has been prepared and revised.

16. Competitive Tendering Procedures

16.1. Before awarding a contract under section 19, of the PA 2023 the Trust must carry out a competitive tendering procedure in accordance with a tender notice and any associated tender documents. The tendering procedures are:

- a) a single stage tendering procedure without a restriction on who can submit tenders (an “open procedure”), or
- b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a “competitive flexible procedure”).

16.2. The Trust must ensure that the procedure is a proportionate means of awarding the contract, having regard to the nature, complexity and cost.

17. Time Periods

17.1. The PA 2023 specifies certain minimum time limits, which the Trust must comply with during a competitive tendering procedure. The Act also sets out the considerations that apply in setting time periods more generally.

17.2. As well as ensuring that suppliers have reasonable time to prepare, for example, for the submission of tenders, the minimum time limits set out in the PA 2023 ensure compliance with the UK's international obligations on public procurement.

18. Central Digital Platform

18.1. The online system referenced in the Procurement Act 2023 and named in the Procurement Regulations 2024 as the central digital platform is available at <https://www.find-tender.service.gov.uk/>

18.2. The Trust is required to obtain confirmation of registration and submission of core supplier information on the platform from suppliers who wish to participate in a covered procurement.

18.3. The central digital platform will enable:

- a) the Trust and suppliers to register and receive a unique identifier.
- b) the Trust to publish notices and other information as required under PA 2023 for covered and below-threshold procurements.
- c) suppliers to submit and store certain core organisational information as required by the regulations to participate in a covered procurement. This information will only be available to those contracting authorities that a supplier chooses to share it with; it cannot be freely accessed.
- d) anyone to view the notices and access related public procurement data.

19. Setting & Publishing KPIs

19.1. Before entering into a contract with an estimated value of more than £5 million, section 52(1) generally requires that the Trust must set at least three KPIs in respect of the contract.

- 19.2. The obligation to set at least three KPIs does not apply if the Trust considers that the supplier's performance could not appropriately be assessed by reference to KPIs. This might include, for example, where the contract is for a one-off delivery of on or off-the-shelf goods.

20. Contract Terms and Conditions

- 20.1. Suitable terms and conditions will be used for procurements below the PA 2023 Spend Thresholds. Legal advice will be sought for appropriate contract terms and conditions for procurement processes above the PA 2023 spend threshold.
- 20.2. Prior to issuing a contract, staff must obtain from the Supplier evidence of compliance with any contractual requirements, e.g., insurances, disclosure and barring service checks and policies and procedures.
- 20.3. Where a procurement process was undertaken, the contract terms and conditions must be those that were issued within the Tender documents.
- 20.4. A supplier shall not be allowed to commence performing the contract prior to the formal contract documents being signed. With reference to Framework Agreements, or CCS G Cloud processes, a supplier shall not be permitted to participate in any call-off until such a time that their agreement has been duly signed.

21. Contract Modifications

- 21.1. Following the award of a contract, changes (referred to as modifications in the PA 2023) may need to be made to that contract to ensure it can be successfully fulfilled, as demands and circumstances change throughout its lifetime. The PA 2023 gives contracting authorities legal certainty when making modifications, setting out ten grounds in total on which contracts may be modified during their term, provided the relevant requirements are met and a contract modification notice is published.
- 21.2. If a modification cannot be justified on at least one of the grounds, the modification is not permitted, and a new procurement must be carried out if the Trust wishes to implement the subject-matter of the modification.

22. Contract Termination

22.1. The Trust is required to publish a contract termination notice for a covered procurement. Whilst there are many reasons why a contract may come to an end, the Act provides, at section 80(3), that 'termination' for the purpose of the publication of a contract termination notice encompasses all of the circumstances in which a contract may come to an end and sets out the following non-exhaustive list:

- a) discharge: including for example, where the contract obligations / deliverables are fulfilled, payments made and any disputes settled, by mutual agreement or contract frustration.
- b) expiry: where the contract has reached its end date (which may include periods of extension).
- c) termination by a party: where one party exercises a contractual or implied right to terminate the contract.
- d) rescission: where the contract ends, and the parties restored to the position they were in before the contract was entered into; or
- e) set aside by court order: where the contract is declared to be invalid by legal judgement.

23. Exemption from the Application of the Procurement & Contract Spend Threshold Requirements

23.1. An application can only be made for requirements under the spend threshold for the PA 2023.

23.2. An application can be made for an exemption from this procurement and spend threshold requirements by submitting a request to the Strategic Board. 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.

15.3 The following must be considered before applying for an exemption:

- a. Lack of planning and / or internal process delays will not constitute special, exceptional or emergency circumstances;
- b. Exemptions from this guidance must not be applied for retrospectively;
- c. Exemptions from this guidance must not be applied for where spend will exceed the relevant PA 2023 Spend Threshold.

24. Review

16.1 This Policy has been adopted by the Trustees of the Strategic Board.

25. Links with Other Policies

17.1 The links with other policies include:

- a. Financial Regulations Policy.