

# **SPECIALIST LEARNING TRUST**

## **TENDERING POLICY**

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## **Contents**

- 1. Introduction**
- 2. Contract documentation**
- 3. Types of tender**
- 4. Contracts under £50,000**
- 5. Contracts between £50,000 and EU tendering thresholds**
- 6. Preparation for tender**
- 7. Pre-tender**
- 8. Shortlisting process**
- 9. Invitation to tender**
- 10. Opening of tenders**
- 11. Late tenders**
- 12. Changes to tenders**
- 13. Evaluation and approval of tenders**
- 14. Award of tenders**
- 15. Notification of tenders**
- 16. Non-conforming tenders**
- 17. Maintenance of a contract register**
- 18. Leases**
- 19. Trading with connected parties – at cost requirements**
- 20. Policy review**

## **Tendering Policy (Section 7 of Financial Procedures Manual)**

### **1. Introduction**

- 1.1 All academy staff and trustees involved in letting contracts must have regard to the provisions of the Academies Financial Handbook and academy finance policies concerned with school codes of conduct and in particular those areas associated with related/connected party transactions.
- 1.2 The academy may choose to engage the assistance of professional advice and guidance where tenders or contracts are complex and/or for significant sums of money.
- 1.3 No contracts shall be entered into unless there is uncommitted budgetary provision to meet the estimated cost, unless it relates to works or repairs carried out in extreme urgency.

### **2. Contract Documentation**

- 2.1 All contracts, irrespective of value, shall clearly specify:
  - what is to be supplied i.e. the works, materials, services, matters or things to be furnished, had or done;
  - The provisions for payment i.e. the price to be paid and when;
  - The time or times, within which the contract is to be performed;
  - The provisions for the academy to terminate the contract.
- 2.2 In addition, every contract over £50,000 must also state as a minimum:
  - That the contractor may not assign or sub-contract without prior written consent;
  - Any insurance requirements;
  - Health & safety requirements;
  - Sustainability requirements;
  - Ombudsman requirements;
  - Data protection requirements, if relevant;
  - Race relations requirements;
  - Disability Discrimination Act requirements;
  - Freedom of Information Act requirements;
  - Any appropriate measures required to support the academy in the event of the academy's business continuity plan being invoked.
- 2.3 All contracts over £50,000 must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Finance and Audit Committee or Board of Trustees in line with the Trust's Scheme of Delegation.
- 2.4 The headteacher must ensure that the person signing for the other contracting party has authority to bind it.

- 2.5 Only contractors registered with their professional or trade association will be employed to carry out major work at the academy.
- 2.6 Every contract shall contain a clause empowering the academy to cancel the contract and recover the amount of any loss resulting from the cancellation, if the contractor is guilty of improper conduct.

### **3. Types of Tenders**

#### **3.1 Open Tender**

3.1.1 This is where all potential suppliers are invited to tender. This is the method most conducive to competition and the propriety of public funds. The academy must consider either how best to advertise for suppliers i.e. online tendering sites, trade journals or whether to identify all potential suppliers and contact directly if practical.

3.1.2 At least 14 days' notice shall be given circulating adverts amongst persons who undertake the proposed contract giving details of the contract and the closing date for receipt of tenders. All tenders submitted by the due date shall be considered.

#### **3.2 Two Stage Tender Process**

3.2.1 Where a tender list is compiled after submission of a Business Questionnaire. This should be applied where certain suppliers are specifically invited to tender. A two stage tender processes appropriate for any one of the following circumstances:

- A large number of suppliers would come forward.
- The nature of the goods is such that only specific suppliers can be expected to supply the academy's requirements.
- The costs of publicity and advertising are likely to outweigh the potential benefits of open tendering or there is a need to maintain a balance between the contract value and administrative costs.

3.2.2 At least 14 days' notice shall be given in one or more local and/or national papers or trade journals circulating amongst persons who undertake the proposed contract giving details of the contract and inviting expressions of interest to be submitted by means of a completed questionnaire to be submitted by a specified date.

3.2.3 Invitations to tender shall be sent to three or more of these persons/organisations expressing an interest who meet the academy's minimum requirements as to financial standing, expertise and experience. A minimum of a further 14 days shall be permitted for return of completed tenders.

#### **3.3 Negotiated Tender**

3.3.1 The academy may negotiate the terms of the contract with one or more suppliers of their choice. This is appropriate in any of the following circumstances:

- Open and restricted tendering has resulted in either no or unacceptable tenders.
- Only one or very few suppliers are available and therefore direct negotiation will prove more effective with each supplier than attempting an open or even a restricted tender
- Extreme urgency exists

- Additional deliveries by the existing supplier are justified.

3.3.2 The Headteacher shall record the reasons for entering into such negotiations and the agreement of the Finance Committee shall be obtained and minuted.

3.3.3 Other European tender processes may be used, but advice on their application and requirement should only be considered after proper professional advice has been sought.

#### **4. Contracts under £50,000**

4.1 Every contract for goods, works or services up to £50,000 may be created by means of a written acceptance of a quotation. The acceptance must be effected by means of a written official order or its equivalent.

#### **5. Contracts between £50,000 and EU Tendering Thresholds**

**5.1 *EU Tendering Thresholds are reviewed on 1<sup>st</sup> January every two years in line with Sterling/Euro exchange rates but at 1<sup>st</sup> January 2018 £181,302 for supply, hire or leasing of goods and services and approximately £4.5m for works.***

5.2 Every contract for goods, services or works over £50,000 shall require written tenders with written acceptance signed by, or on behalf of, the Board of Trustees.

5.3 Where the value of a contract for the supply of goods, works or services is likely to exceed £50,000, at least three tenders shall be obtained by the academy using one of the three tendering procedures detailed above, as agreed by the Finance Committee.

#### **6. Preparation for Tender**

6.1 Tendering is a formal process in which suppliers are invited to submit a sealed bid to the academy. The bids are then evaluated against specified criteria. This process should be undertaken by a team normally comprising the headteacher, chief financial officer and/or finance manager and a technical expert if appropriate.

6.2 Clarity is essential to avoid misunderstanding. Initial specifications need to be drawn up as precisely as possible and the academy needs to ensure that all supplier' bids are based on exactly the same specification as the original invitation to tender. Full consideration should therefore be given to:

- Budgeted funds available
- Overall requirements
- Technical skills required
- After sales service requirements
- Form of contract
- Delivery dates/times

#### **7. Pre-Tender**

7.1 Where the headteacher or Finance Committee believes there is insufficient knowledge of an area to allow a sufficiently detailed specification to be prepared, external advice should be sought. Wherever possible this should be from an independent source. It is also possible to

consult with potential suppliers as part of a soft market testing process, in which case at least two potential tenderers should be approached/consulted.

7.2 Where potential tenderers request further details of the academy's requirements, full details of the enquiry and of the response given should be recorded. So far as reasonable, to ensure equality, details of any responses given to the enquiry should be circulated to other tenderers.

7.3 Where the academy intends to provide or make available goods, services or premises to contractor(s) the Board of Trustees shall provide appropriate valuations for rent or other charges to be met by contractor(s). The details thereof shall be included in the tender documents.

## **8. Shortlisting Process**

8.1 In the instance of a two stage tender process, the academy may want to consider the following criteria to shortlist business questionnaires following the advertising process:

- Qualifications of the contractor
- Relevant experience of the contractor
- Descriptions of technical and service facilities
- Certificates of quality/conformity with standards
- Quality control procedures
- Details of previous sales and references from past customers
- Pre-sales demonstrations
- After sales service
- Sustainability issues

## **9. Invitation to Tender**

9.1 If a Two Stage Tender process 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.

9.2 An invitation to tender should include the following:

- The Invitation to Tender shall state that no tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No tender delivered in contravention of this clause shall be considered.

9.3 All Invitations to Tender shall include the following:

- A specification that describes the academy's requirements in sufficient detail to enable the submission of competitive offers.
- A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.
- Notification that tenders are submitted to the academy on the basis that they are compiled at the tenderer's expense.

- A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance.
- Notification that no tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender.
- A stipulation that any tenders submitted by fax or email means shall not be considered, unless specifically provided for in the Invitation to Tender and with the prior agreement of the Board of Trustees and headteacher as to the process to be used.
- The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.
- All Invitations to Tender or quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply.
- The Invitation to Tender or quotation must state that the academy is not bound to accept any quotation or tender and may extend the closing date where appropriate.

9.4 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis. Tenders should be submitted as sealed bids and on receipt the academy should:

- Record the date and time of receipt on the envelope
- Store the tenders safely and securely, unopened until the specified date and time for opening.

## **10 Opening of Tenders**

10.1 Tenders should be opened as soon as possible after the specified deadline for receipt and this should only be undertaken by staff authorised to do so. The following information should be recorded:

- Date and time of opening
- Name and signature of those present
- Value of each tender
- Details of suppliers who declined the invitation, or failed to submit a tender
- Any omissions in the submission e.g. documents, signatures, missing data etc.
- Any changes made with correction fluid should be circled and initialled.

## **11. Late Tenders**

11.1 Late tenders should normally be rejected and retained unopened until the contract has been awarded and then returned to the tenderer together with an explanatory note.

## **12. Changes to Tender**

12.1 Providing clarification of an Invitation to Tender to potential or actual candidates or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a tender and before the award of a contract

with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.

- 12.2 If post-tender negotiations are necessary after a single-stage tender or after the second stage of a two-stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after all unsuccessful candidates have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers within the academy appointed by the Headteacher to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

### **13. Evaluation and Approval of Tenders**

- 13.1 In securing best value, the panel shall consider the most economically advantageous tender including the whole life cost for the period of the contract. The evaluation should be documented fully and the documents retained.
- 13.2 A tender evaluation matrix should be based on the award criteria in the contract notice or tender documentation and should be prepared before tenders are opened and thereafter completed by each member of the panel. All tenders must be opened at one time.
- 13.3 It may be appropriate to interview the three lowest priced tenderers. An evaluation report should be submitted by the panel to the Finance Committee identifying each of the (shortlisted) tenderer's strengths and weaknesses on financial, technical and operational grounds and detail all errors, modifications and correspondence with tenderers and results of rectifications (if any).
- 13.4 All tenders must be arithmetically checked.
- 13.5 Errors in tenders identified by the academy should be referred to the contractor concerned who should explain in writing the nature of the error to the satisfaction of the headteacher. The tenderer should normally then be dealt with in the following manner:
- The tenderer(s) should be given details of the error(s) found during the examination of the tender and shall be given an opportunity of confirming without amendment, or withdrawing the tender; or
  - Amending the tender to correct any genuine arithmetic error(s) apparent on the face of the document, providing that in this case, apart from these genuine errors no other adjustment, revision or qualification is permitted. Such amendments should only be made in circumstances agreed with the Finance Committee.
- 13.6 There may be a need for the academy to clarify tenders both in terms of prices and the academy's requirements or a tenderer's proposal. As a result of their discussions there may be changes to price.
- 13.7 Full details of all discussions should be promptly recorded and notified to all other (shortlisted) tenderers to ensure fair competition and no distortions in the procedures. Such records are to be retained for the same period as contract documentation.

### **14. Award of Tender**



14.1 Where the selected tender exceeds the approved budget by more than 5% the Headteacher shall determine whether to re-tender or seek approval of additional budget from the Board of Trustees.

## **15. Notification to Tenderers**

15.1 All organisations who submitted a tender should be advised of the outcome of the process as soon as is reasonably possible following evaluation of the submissions. Where an EU process has been used all those who expressed an Interest shall be informed of the contract award.

## **16. Non-Conforming Tenders**

16.1 Any tender that does not comply with the requirements such as arriving late and/or after the other tenders have been opened, should normally be excluded from consideration

## **17. Maintenance of a Contracts Register**

17.1 All contracts are recorded in a formal contracts register. The contracts register is supported by individual contract files that contain all relevant information, including:

- the signed contract
- all other related agreements
- correspondence regarding any agreed changes to the original contract
- details of the staff and Trustees involved in the tender process and their roles
- the tender documents
- any corresponding minutes or correspondence connected to the contract

17.2 This information is used to identify all on-going commitments for budget setting purposes, to determine whether the academy has made any prepayments that need to be reflected in the year-end accruals and the termination requirements if the academy wishes to cancel or change these arrangements. The contracts register and the supporting files are maintained and retained securely in each school.

## **18. Leases**

18.1 The academy is aware that it is only permitted to enter into operating leases and that all forms of financing are prohibited.

## **19. Related party transactions**

19.1 Trustees will avoid conflicts of interest, declare their interest in proposed transactions and arrangements, and will not accept benefits from third parties.

19.2 All members, trustees, local governors and senior employees will complete the register of interests.

19.3 No member, trustee, local governor, employee or related individual will use their connection to the trust for personal gain, including payment under terms that are preferential to those that would be offered to an individual or organisation with no connection to the trust.

19.4 Payments to trustees by the trust will only be made where permitted by the articles, or by the authority of the Charity Commission, and comply with any relevant agreement with the Secretary of State.

- 19.5 The trust will consider their obligations where payments are made to other businesses who employ a trustee, are owned by a trustee or in which the trustee holds a controlling interest.
- 19.6 Where the trust believes a significant advantage exists in paying a trustee for acting as a trustee, the Charity Commission's approval will be obtained prior to payment.
- 19.7 The trust will adhere to 'at cost' requirements.
- 19.8 The chair of the trustees and the accounting officer will ensure their capacity to control and influence does not conflict with related party transaction requirements.
- 19.9 Personal relationships with related parties will be managed in a manner that avoids both real and perceived conflicts of interest, promotes integrity and openness and is in accordance with the [seven principles of public life](#).
- 19.10 The trust will be aware of relationships with related parties that may attract greater public scrutiny, such as:
- Transactions with individuals in a position of control and influence, including the chair of the board and the accounting officer.
  - Payments to organisations with a profit motive, as opposed to those in the public or voluntary sectors.
  - Relationships with external auditors beyond their duty to deliver a statutory audit.

#### **19.11 Record keeping**

The trust will keep sufficient records, and make sufficient disclosures in the annual accounts, to show that related party transactions have been made in accordance with accountability and transparency standards.

#### **19.12. Approval by the ESFA**

The trust will obtain the ESFA's approval for related party transactions that are novel, contentious or repercussive. Transactions involving the chair of the board or the accounting officer will be carefully considered against this requirement.

- 19.13 The trust will obtain the ESFA's prior approval for contracts supplying goods or services by related parties agreed on or after 1 April 2019 where any of the following limits apply:
- The contract exceeds £20,000
  - The contract would take the total value of contracts with the related party to beyond £20,000 in the same financial year ending 31 August
  - The contract relates to a party already in receipt of contracts exceeding £20,000 individually or cumulatively in the same financial year ending 31 August
- 19.14 For the purposes of reporting to, and approval by, the ESFA, related party transactions do not include salaries and other payments made by the trust to a person under a contract of employment through the trust's payroll.
- 19.15 When seeking approval, the trust will ensure it has the relevant information about the supplier, including the supplier's name, address and company number. The trust will also:

- Confirm the statement which best describes the relationship between the supplier and the trust.
- Confirm that the supplier is listed in the trust's register of interests.
- Confirm that the trust has a statement of assurance from the supplier.
- Confirm that the trust has an open-book agreement with the supplier.
- Provide a short description of the goods or service, details of the proposed cost and the start and end date of any contract or agreement.
- Provide evidence of the following:
  - How the trust agreed to the related party transaction, e.g. minutes of meetings where it was discussed
  - That the trust followed its procurement policy
  - That the trust tested the market before making a decision
  - How the trust has managed any conflict of interest
  - Provide a copy of the agreement or proposed contract.
  - Upload any additional documents the trust feels are relevant as part of its submission.

19.16 The trust will ensure the information and documentation listed in [16.15](#) has been received before the trust completes the online related party transaction form.

#### **19.17. Register of interests**

The trust will document all relevant business and pecuniary interests of members, trustees, local governors and senior employees, including:

- Directorships, partnerships and employments with businesses.
- Trusteeships and governorships at other educational institutions and charities.
- For each interest, the name of the business, the nature of the business, the nature of the interest and the date the interest began.

19.18 The register of interests will identify all relevant material interests from close family relationships between the trust's members, trustees or local governors. It will also identify relevant material interests arising from close family relationships between those individuals and employees.

19.19 The trust will consider any other interests for inclusion on the register or interests.

19.20 The board of trustees will keep the register of interests up-to-date.

19.21 The trust will publish on their website the relevant business and pecuniary interests of members, trustees, local governors and accounting officers.

19.22 The publication of interests belonging to any other individuals named on the register is at the discretion of the trust.

#### **19.23 'At cost' requirements**

The trust will not pay more than 'cost' for goods or services provided by the following:

- Any member or trustee of the trust
- Any individual or organisation related to a member or trustee of the trust, namely:
  - A relative of a member or trustee: defined as a close member of the family, or member of the same household, who may be expected to influence, or be influenced by, the person. This includes, but is not limited to, a child, parent, spouse or civil partner.
  - An individual or organisation conducting business in partnership with the member, trustee or a relative of the member or trustee.
  - A company in which a member or the relative of a member (taken separately or together), and/or a trustee or the relative of a trustee (taken separately or together), holds more than 20 percent of the share capital or is entitled to exercise more than 20 percent of the voting power at any general meeting of that company.
  - An organisation which is controlled by a member or the relative of a member (acting separately or together), and/or a trustee or the relative of a trustee (acting separately or together) – an organisation is controlled by an individual or organisation if that individual or organisation is able to secure that the affairs of the body are conducted in accordance with the individual's or organisation's wishes.
- Any individual or organisation given the right under the trust's articles of association to appoint a member or trustee of the academy trust, or any body connected to the individual or organisation.
- Any individual or organisation recognised by the Secretary of State as a sponsor of the trust, or any body connected to the individual or organisation.

19.24 A body is connected to an individual or organisation if it is controlled by the individual or organisation, controls the organisation, or is under common control with the individual or organisation, namely any of the following:

- Holding a greater than 20 percent capital share or equivalent interest
- Having the equivalent right to control management decisions of the body
- Having the right to appoint or remove a majority of the board or governing board

19.25 'At cost' requirements do not apply to the trust's employees unless they are employed by one of the parties outlined in 19.23.

19.26 'At cost' requirements apply to contracts for goods and services from a related party agreed. 'At cost' requirements apply to contracts for goods and services from a related party exceeding £2,500, cumulatively, in any one financial year. Where a contract takes the trust's cumulative annual total with the related party beyond £2,500, the element above £2,500 must be at no more than cost.

19.27 If any of the parties outlined in 19.23 are based in, or work from, the trust's premises, the trust will agree an appropriate sum to be paid to the trust for use of the premises, unless the party is conducting work on behalf of the trust.

19.28 'At cost' requirements apply to legal advice or audit services when the organisation's partner directly managing the service is a member or trustee of the trust, but not in other cases.

19.29 The trust will ensure that any agreement with an individual or organisation referred to in 23.2 is procured through an open and fair process and is:

- Supported by a statement of assurance from the individual or organisation to the trust confirming their charges do not exceed the cost of the goods or services.
- On the basis of an open book agreement including a requirement for the supplier to demonstrate clearly, if requested, that their charges do not exceed the cost of supply.

19.30 The cost will be the full cost of all the resources used in supplying the goods or services and will not include any profit. Full cost includes:

- All direct costs – the costs of any materials and labour used directly in producing the goods or services
- Indirect costs – a proportionate and reasonable share of fixed and variable overheads

#### **19.31. Reporting**

The trust will report all related party transactions taking place on or after 1 April 2019 to the ESFA in advance of the transaction taking place, using the ESFA's online form.

#### **20. Policy review**

20.1 This policy is reviewed annually by the chief financial officer and the headteacher. The scheduled review date for this policy is summer 2020.