



# **TFT Procurement Policy 2023**

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## **1. Introduction**

- 1.1 This policy covers all individuals working in The Futures Trust (TFT) and its member schools, including those who are employed, contractors, volunteers, directors and local governors. It sets out the rules by which the Trust spends money on goods, contracts and services.
- 1.2 The Futures Trust is committed to ensuring that the governance of the Trust is conducted in accordance with the highest standards of integrity, probity and openness.
- 1.3 The intention of the policy is to ensure that the Trust can demonstrate all contracts entered into by the Trust have been done so in a way that is fair to potential suppliers, avoids the opportunity for private gain, is in line with the regulations and represents value for money for the Trust.
- 1.4 The Trust is obliged to comply with the ESFA Academy Trust Handbook, Trust and school funding agreements and the Public Contracts Regulations 2015.

## **2. Principles**

- 2.1 More attention to the procurement process will be needed for higher value or contentious contracts. Contentious contracts are those that might give rise to criticism of the Trust, perhaps because they are with connected parties.
- 2.2 Achieving the best value for money does not always mean choosing the cheapest price. Other factors such as quality, longevity, timing and whether the contract is fit for purpose should be considered.
- 2.3 The Trust considers the full cost of purchase, including administration time and effort.
- 2.4 It is allowable to purchase from connected parties, but the individual in the Trust with the connection should not form part of the decision-making process.
- 2.5 The use of framework contracts is recommended.
- 2.6 The Trust is always aware that the money being spent is public money and consideration is always given as to whether the purchase is a good use of public money and is seen to be a good use of public money.

- 2.7 Businesses may be fragile and so we make sure we understand our obligations under the contracts that we are entering into and avoid significant payment in advance wherever possible.
- 2.8 Care is taken to ensure contract terms are not disadvantageous to the Trust.
- 2.9 The end of the contract is considered fully before entering into it.
- 2.10 Rolling over a single year contract repeatedly is unlikely to provide best value. These contracts should first be recorded and then re-procured for value.
- 2.11 In a tender process all suppliers are treated fairly, given the same information and time limits and no favouritism is shown.

### **3. Valuing the Contract**

- 3.1 It is important that contracts are properly assessed for value. The total value of the contract is obtained by making reasonable assumptions on:

*The annual spend x the number of years of the contract x the number of schools in the Trust that the contract is being awarded for*

- 3.2 It is not permissible to split the value of the contract in order to appear to be below procurement thresholds.
- 3.3 If a contract is for a number of years with the option to extend at the end of that time then the number of years of the contract is the maximum time it could run. A typical example would be for a contract that is 3 years with an option to extend for a further 2; the total number of years that needs to be considered in determining value is then 5 years.
- 3.4 Care must be taken concerning the number of schools entering into a contract. If the Trust enters into a contract for all the schools in the Trust then the number should be considered to be the total number of schools in the Trust together with any schools reasonably expected to join the Trust if they would be included in the contract when they join. Even if each school individually signs their own contract, the procurement should be considered to be for all the schools involved in the process.
- 3.5 Similarly, if a group of schools in the Trust enter into a contract together (eg: all primary schools) then the number of schools should be the number of primary schools in the Trust or reasonably expected to join the Trust.

3.6 When the Trust enters into a framework contract available to all schools in the Trust for purchases, then it should take into account a reasonable estimate of the number of schools in the Trust together with those likely to join over the length of the contract in order to calculate the cost of the contract.

3.7 Recoverable VAT is excluded from the assessed value of the contract.

#### **4. Connected parties**

4.1 The Trust has a process in place where all members, trustees, governors and staff must declare their pecuniary interests. This is done annually in the autumn term and individuals must update them through the year should interests change.

4.2 The pecuniary interests of members, trustees, and governors are published on the Trust website, [www.thefuturetrust.org.uk](http://www.thefuturetrust.org.uk) and are kept up to date with all notified changes after every Board meeting. The pecuniary interests of staff are kept locally in each school and in the Central Team. When carrying out a procurement exercise, it is important to check both the Trust register of interests and the local register to identify any potential conflicts. Any person with a pecuniary interest in a supplier or potential supplier must not take part in the procurement process.

4.3 Under the ESFA Academy Trust Handbook the Trust must pay no more than “cost” for goods and services provided to it by a member, trustee or a connected party of a member or trustee. The rules on this are very specific so if a procurement potentially involves a person or organisation declared by a member or trustee as being a pecuniary interest then advice should be sought from the Finance Director before any procurement decision is made.

#### **5. Using Frameworks**

5.1 Framework contracts are those where a number of suppliers have been pre-procured with all the public sector rules complied with. It is therefore possible to purchase directly from frameworks with no further procurement process being necessary, irrespective of the value being procured. This can be very efficient as it saves a significant administration costs as well as ensuring tendered low prices.

5.2 There is also often the opportunity to run a mini-competition through a framework which can be much quicker than a full procurement tender. This is where a number of suppliers have been pre-approved by the framework and then compete to fulfil the contract with the contract being awarded to the offer that gives best value for money.

5.3 Examples of frameworks that the Trust has used include Crown Commercial Services, Eastern Shires Purchasing Organisation (ESPO) and frameworks developed by Local Authorities. There are others. The Trust can also create frameworks for Trust schools to purchase from.

5.4 Despite frameworks being a very attractive way to procure, it is sensible to make some open market comparisons between what is on offer to ensure value for money, particularly for purchases where the price may fluctuate over time. It is also important to make sure that the framework is set up to allow us to purchase (ie: it applies to academies), the specification and contract terms are suitable for our needs and that we understand the framework mechanism of purchase (how to order, etc) so that we are compliant.

## **6. Contracts over 1 Year**

6.1 Under the Trust's Scheme of Financial Delegation, all contracts over one year must be signed by the Accounting Officer. All contracts over one year must be approved according to the Trust's Scheme of Financial Delegation.

## **7. Purchasing collaboratively**

7.1 It is expected that collaborative purchasing on a Trust or hub basis will lead to economies of scale. The Trust may also procure collaboratively with other Trusts.

7.2 The Trustees and Central Team may make procurement decisions on behalf of all schools in the Trust, whether the cost is paid from the central budget or from the budgets of individual schools.

7.3 When purchasing collaboratively it is necessary to ensure that:

- There is commitment from the schools involved at the start of the process to a collaborative procurement

- The lead person driving the procurement is identified
- Contract valuation is carried out correctly
- The specification is agreed on behalf of all parties
- Decisions on awarding the contract are clear and made according to the scheme of delegation
- Consideration is given on what to do if the best value contract is not the best value for each individual participant in the procurement

## **8. TUPE**

8.1 There are some contracts that involve the provision of services to the Trust which mean that members of staff employed in the provision of these services may have employment rights when the contracts are re-negotiated. Examples include cleaning and catering contracts but may extend further to estate management and extended schools provision. If considering the letting of contracts such as these then the Trust's HR team should be contacted well in advance to advise on the TUPE (Transfer of Undertaking Protection of Employment) transfer process. It should be noted that TUPE increases the complexity of letting the contract and therefore the time allowed should be extended.

## **9. Low Value Contracts (less than £10,000)**

9.1 For purchases and contracts under £10,000 excluding VAT, the purchase can be made under the Scheme of Financial Delegation without the need for competitive quotes. However, it is often beneficial to obtain quotes to ensure good value for money or to browse framework agreements or the internet to reassure the purchaser that the price is competitive. Decisions on these actions are made locally.

9.2 Corporate cards are provided to key individuals in the Trust to enable purchases at this level to be made efficiently, including taking advantage of online prices or where time is of the essence. The TFT Corporate Charge Card Policy deals with the matters that should be taken into account when purchasing in this way, but care should be taken to make sure that value for money is obtained regardless of the purchasing method.

## 10. Medium Value Contracts (up to £164,000)

10.1 For purchases and contracts up to £164,000 excluding VAT, at least 3 written quotations should be obtained. A written specification must be provided in advance of the quotation that details as a minimum:

- A description of the requirement
- Quantity required
- Timescale for provision or completion
- Deadline to submit quotation and all details of how to submit
- Details of schools to which the contract applies

10.2 The purpose of the specification is to be fair to all potential suppliers.

10.3 The quotations should be considered to provide the best available outcome taking into account price, quality and timing and this choice should be justified in writing when seeking approval. Authorisation limits specified in the Trust's Scheme of Financial Delegation should be complied with.

Note: If purchasing from a framework there is no requirement to obtain 3 written quotations. It is also acceptable to go to a full tender process rather than quotations if it is felt this will obtain a better result.

## 11. High Value Contracts (over £164,000)

11.1 For purchases and contracts over £164,000 it is necessary to either purchase from a valid framework as previously discussed, or to use a full tender process. A full tender can be a complicated process and the use of procurement consultants or project managers who specialise in the area should be considered. The contract for the use of procurement consultants should itself be procured correctly in line with this policy, which means ample time should be allowed to complete the procurement cycle.

11.2 The formal stages of a tender process are:

- Put together a detailed **invitation to tender** including information on how the tender is going to be evaluated
- Either advertise as an **open tender** or operate a **restricted tender**
- **Accept** and **open** the tenders
- **Evaluate the tenders** in accordance with the criteria in the invitation to tender
- **Award the contract**

11.3 These stages are discussed further in **Appendix 1**.

## 12. Public Sector Procurement Thresholds

12.1 Following the UK's exit from the EU, the UK government overhauled public procurement policies and practices, to an updated and simplified framework for public procurement.

12.2 The UK is no longer subject to EU regulations and now follows UK domestic legislation. From the 1st of January 2021, the UK were no longer subject to EU procurement regulations and therefore no longer follow rules outlined for OJEU tenders. Tenders will now be published on a new e-tendering portal, called Find a Tender Service (FTS) instead of on OJEU

12.3 New procurement thresholds are summarised below. It is important to note that these values are now inclusive of VAT, which effectively reduces the thresholds from their previous EU 2020/21 values. The effect of these changes will therefore be to bring more procurements within the scope of the fully regulated regime.

Supply, Services & Design Contracts	£213,477 incl VAT	
Light touch (services where there is little EU interest)	£663,540 incl VAT	(includes catering, training, legal advice or educational services for pupils)
Works contracts	£5,336,937 incl VAT	Buildings, renovations and development projects

12.4 Once a contract is assessed as being valued above these thresholds then either it can be purchased through a framework that has already been to EU tender, or the latest procurement rules must be complied with. The rules are stringent, including the requirement to advertise the contract in the Find a Tender Service (FTS). If the Trust does not follow the regulations for purchases above the current thresholds, suppliers may be able to challenge spending decisions and contracts on the grounds that they have been treated unfairly. This can lead to large fines and compensation payments.

12.5 When the Trust enters into an FTS process then it will ensure that specialist procurement advice is used to make the purchase, either internally or by the use of external procurement consultants. Therefore, before beginning a procurement over the size of the procurement limit, advice must be sought from the Finance Director in order to ensure any subsequent procurement is compliant.

### 13. Scheme of Financial Delegation Summary

Approval	Procurement	Best Value Process
<b>Board of Trustees</b>	£300k + Competitive Tender unless light touch	Public contracts regulations (PCR) compliant process
<b>TFT FRC</b>	£164,176-£300k goods and services £589,148 services used solely to deliver education (e.g. staff salaries)	Public contracts regulations (PCR) compliant process
<b>CEO</b>	£30-£164k	*3 quotations minimum or formal tender (framework)
<b>HT &amp; Trust FD</b>	£20-£30k	* 3 quotations
<b>HT</b>	£5-£20k	* 3 quotations over £10,000 and if under £10,000: <ul style="list-style-type: none"> <li>• compare similar products and prices</li> <li>• choose the supplier that offers best value for money</li> </ul>
<b>SBM</b>	£2-£5k	<ul style="list-style-type: none"> <li>• compare similar products and prices</li> <li>• choose the supplier that offers best value for money</li> </ul>
<b>Budget Holder</b>	£0-£2k	<ul style="list-style-type: none"> <li>• compare similar products and prices</li> <li>• choose the supplier that offers best value for money</li> </ul>

\*Where 3 quotations are not possible or appropriate then justification for this should be documented on the finance system.

*Note: Decision to appoint staff is delegated to Headteachers regardless of financial value in accordance with the Trust's Scheme of Delegation*

## 14. Record Keeping

14.1 For all purchases, a clear audit trail should be kept. The level of detail required will increase with the value of the procurement. The written record must include:

- details of the purchase itself, for example, what was purchased, from whom and the assessed value of the contract
- information on the framework used for purchasing and why it was suitable for this contract; or copies of the quotations or tenders submitted
- how the supplier complies with data protection (GDPR) requirements and agreements on any data sharing
- who was responsible for evaluation of tenders, and details of the evaluation scoring, if applicable
- tender and response from successful supplier
- who was responsible for making the decision to procure, and details of their decision making process
- where the lowest cost is not adopted the reason for this must be documented
- either full minutes or a link to the minutes of any Board/ LGB meeting at which the procurement was discussed and/or approved
- where the contract is for more than one year, the appropriate approval and a copy of the contract signed by the Accounting Officer
- a record of the order, of receipt and checking the goods or services and of authorising payment

14.2 The Trust holds a central contract register in order to monitor all contracts for compliance and to determine where there is an opportunity to merge contracts to achieve better value for money across the Trust. All contracts over 1 year and single year contracts that are renewable (including Service Level Agreements (SLAs)) should be entered onto this register. Information required:

- A description of the contract and what it is for
- The name of the supplier
- The date the contract was entered into and the date the contract expires
- The value of the contract
- A scanned copy of the contract

## **15. Exceptions to this Policy**

15.1 Occasionally it is necessary to procure without following this policy. This may be done with the authorisation of the Finance Director for procurements up to £40,000 and with the authorisation of the Accounting Officer over this amount. Authorisation will only be given on very rare occasions and such authorisations will be reported to the next meeting of the Board of Trustees.

15.2 Potential reasons for an exceptional procurement are:

- In an emergency to resolve an issue that has a Health & Safety or other consequence where a proper procurement process would take too long.
- Where there is only a single supplier of the goods or services and this can be demonstrated.
- Where no suitable suppliers have come forward through the tender process it may be acceptable to negotiate a contract with a suitable alternative supplier.

## **16. Management of Contracts**

16.1 For ongoing contracts (particularly services contracts), it's important to hold regular contract management meetings to:

- make sure both parties involved in the contract understand their responsibilities and fulfil them as effectively as possible
- check progress against contract requirements and deal with any issues preventing those requirements from happening

16.2 It should be agreed as soon as possible after awarding the contract who should attend these meetings and what the agenda items are likely to be.

16.3 In the meetings following may be discussed:

- progress against the contract's requirements
- the service-level agreement (the standards of service agreed with the supplier)
- any key performance indicators (how the performance of that service is measured)
- identifying areas of concern as early as possible and what the supplier will do about them
- discussing necessary changes
- how to manage planned maintenance

- possible upgrades or improvements to the product or service
- unforeseen problems and what to do about them
- exit from the contract if not fulfilling requirements

16.4 Any actions and timescales agreed with the supplier should be noted and circulated promptly after the meeting. If the supplier isn't doing enough to address poor performance, the matter may need to be escalated according to the contract terms and conditions.

## **17. Contract Variations or Extensions**

17.1 Any changes to a contract should be made using a variation agreement. Such variations must be agreed with the supplier. The most common variation is to extend the contract.

17.2 The contracts register details the date when each contract comes to an end. Preparation to let a new contract should be made in good time as the procurement process can be lengthy.

17.3 If there is an option to extend a contract in the original invitation to tender, it can be extended for the length of time set, using a variation agreement.

17.4 If this option is not included, the contract can only be extended in certain circumstances. Seek advice from the Trust's Finance Director.

## **Appendix 1 – Stages of a tender process**

### **Invitation to Tender**

An invitation to tender should give potential suppliers all the information they need to bid for the work. Suggested contents are:

- an introduction about the school and/ or the Trust
- a precise description of the goods, works or services required
- if appropriate, an explanation of what the goods, works or services should do to meet the requirements (sometimes known as an 'output specification')
- the quantity
- the quality
- the length of the contract
- when you want the supplier to deliver it by
- data sharing requirements under GDPR
- details of the implementation of the project

- The KPIs that will measure performance of the contract
- the terms and conditions of the contract
- TUPE information if relevant
- the criteria by which tenders will be evaluated including information on how the various criteria will be weighted
- precise information about how the tender should be submitted and the closing date
- a form of response

### **Advertise an open tender**

Advertisements are placed in trade journals, websites and on the Trust and/ or school website to invite interested suppliers to make contact and tender. Open tender is considered to be the most open and competitive method for receiving tenders. The decision as to where to advertise should be taken on a case by case basis and should be proportionate and reasonable with the aim to elicit a good response from qualified suppliers. A sensible amount of time should be left from the advert for interested parties to respond.

### **A restricted tender**

Specific suppliers are identified and asked to bid by completing a tender. This method avoids the cost of advertisement and can be useful where there are a limited number of specialist suppliers.

### **Acceptance of tenders**

Invitations for tender always state the date and time the completed tender documents are to be received. Suppliers are required to submit documents in one of the following ways:

- in clearly marked envelopes, which state that they are tender documents.
- By email to a designated email address; or
- On electronic storage media in a clearly marked envelope; or
- On a secure electronic portal that can be secured at the end of the procurement period

All tenders are clearly marked upon arrival and securely stored. Tender documents received after deadlines are not considered, unless the supplier provides proof of exceptional circumstances.

## **Opening of tenders**

The following procedure ensures that all potential suppliers are treated fairly:

- all offers for tender are opened at the same time, with a minimum of two members of staff present.
- a record is kept of all the suppliers who submitted tenders, along with the amount tendered.
- the record is signed by all members of staff who are present at the opening of a new tender.

## **Evaluation of tenders**

The tenders are evaluated against the criteria and weighting stipulated in the original tender document. Such criteria should include:

- price
- financial stability of the supplier
- insurance cover
- ability to supply the contract
- best match of the goods or services to the specification required
- quality control procedure
- conformity with required standards
- references from current or previous customers
- helpdesk or other responsive services
- how well supplier can match timescales

At least 2 people should independently evaluate the submitted tenders and their combined scores should be moderated to award the contract to the highest scoring bidder.

## **Award the contract**

The final contract that both parties sign should include:

- a copy of the goods, works or services
- a pricing schedule completed by the supplier
- the terms and conditions agreed with the supplier
- data sharing arrangements and protections
- the SLA, if agreed with the supplier

- any contract management agreements
- an 'implementation plan', with the responsibilities of the Trust and supplier
- the tender specification as an appendix

It is also necessary to debrief unsuccessful suppliers. Feedback should concentrate solely on the supplier's bid and not provide commercial information on other suppliers.