

QUICKER, CHEAPER, BETTER

A SHORT GUIDE TO ACADEMY PROCUREMENT



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Congratulations, you're now an Academy...

...but has anyone told you that you're also a '*contracting authority*'?!

This strange phrase refers to an organisation funded from the public purse, such as central government, local government and the NHS. And because academies receive virtually all their funding from the Education Funding Agency ('EFA') it applies to you too.

This is very important, because as a contracting authority you need to think about the dreaded Public Contracts Regulations every time you place a significant order for goods, services or building works. In broad terms, these apply whenever the following thresholds are breached:

- for goods and most services - £172,514;
- for social and other specific services (including catering) - £625,050; and
- for building works - £4,322,012.

At first sight this seems OK; the thresholds are comparatively high. The problem comes, however, if the '*aggregation*' principle applies. Aggregation means that when valuing some contracts it's not just your immediate spend that needs to be checked - you have to tot up the value of all similar items purchased over strictly defined time-periods.

In the very worst case you may need to calculate the aggregate spend over four years!!



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Contracting with the Local Authority

You might think one easy solution is to continue buying everything from the Local Authority. Unfortunately that doesn't work.

Whilst you can continue a contract in existence before conversion, the Regulations apply as soon as the contract terminates or comes up for renewal. So staying with the Local Authority may be fine as an interim measure but it's very unlikely to provide the foundation for a sustainable long-term procurement strategy.

It's not just about complying with the law

Governors have strict legal duties under UK and European law, the terms of the Funding Agreement with EFA and the constantly changing requirements of the Academies Financial Handbook. However, it's not just about compliance.

A well-thought out procurement strategy can help deliver very significant benefits for your academy, including the following:

- immediate cost savings that can be re-invested in delivering top-notch educational outcomes;
- more effective long-term relationships with key suppliers that provide much greater value for money;
- shorter supply chains and quicker delivery of goods and services;
- opportunities to pursue social value outcomes; and
- a powerful incentive for other schools and academies to consider joining you.

A well-thought out procurement strategy will also tick the box when it comes to Ofsted inspection. Conversely a failure to observe the law may, in the most catastrophic of circumstances, result in the issue of a Financial Notice to Improve and other punitive measures.



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TOP TWELVE TIPS

1. When you decide to make a significant purchase check whether this takes you over the relevant threshold. Remember, it may not be just the initial spend you need to think about – if aggregation applies you may need to look at a much longer period.
2. For more complex purchases, consider ‘*soft market testing*’. Provided it’s done in a fair and transparent manner, the Regulations allow you to engage informally with potential bidders at an early stage. This will help you understand what the market can offer before you embark on a formal tender process.
3. Invest time and effort up-front to prepare high quality template documents for procurement. This should help ensure you start with a solid foundation and a sound game-plan, making the whole process much easier to run.
4. Be clear about the procurement procedure you choose and keep it simple. Complicated processes and unclear requirements can lead to increased bid costs and consequent increased prices from bidders.
5. Be clear about the outcomes you seek to achieve. This should help bidders respond to your requirements in a comprehensive and cost-effective manner. If they don’t, you know to look elsewhere.
6. Leave scope for bidder innovation and don’t be overly prescriptive in your approach. This may allow bidders to offer lower prices without undermining quality.
7. Think about whether the purchase is functional or strategic. This may help you decide how best to balance the scoring of bids in relation to lowest price or highest quality.
8. Establish and allocate key roles to those who will be involved in the procurement process so responsibilities are clear right from the outset. Don’t leave it to chance at a later date.
9. Train those who take on the key roles in relation to procurement. Making mistakes can generate bad publicity, lead to costly challenges from disgruntled bidders and trigger an EFA investigation.
10. Where appropriate, make use of existing frameworks for routine purchases, though be careful to ensure they are legally compliant and can meet your specific requirements.
11. Look to collaborate with academies or other organisations that possess strong in-house procurement expertise. We’re helping a number of our clients explore the possibility of setting up Procurement Clubs or out-sourcing procurement to social housing landlords.
12. If in doubt, take professional advice. Getting it wrong could prove very costly indeed.

ABOUT ANTHONY COLLINS SOLICITORS

ACS is a niche legal practice serving the not-for-profit sector and private individuals, often the most vulnerable in society. Our mission is the delivery of social justice.

With over forty years' experience in not-for-profit work we have one of the largest teams of procurement experts outside the City with recognised national leaders. We also have a thriving Education Team that's been involved in the academies sector since its very inception. This means we've built up a long and successful track record in helping social housing landlords, charities, Church bodies, social enterprises and now academies to structure and deliver a procurement strategy that's truly *'fit for purpose'*.

Perhaps we could help you with:

- designing your procurement strategy and policies;
- constructing effective template documentation;
- providing training to key members of your staff engaged in procurement activities;
- assisting with the running of major procurement exercises;
- advising on the creation and running of Procurement Clubs and other co-operative buying vehicles;
- providing ongoing support with procurement issues.



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FOR MORE INFORMATION



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