

Procurement Policy

Introduction

Procurement is the purchase of goods and services from another party. Procurement of goods and services at the required quality and at the best possible cost is an integral part of business management.

In order to obtain best value for money and to ensure compliance with public procurement and associated legislation clearly defined procurement roles, responsibilities and procedures are essential. This procurement policy is intended to enable budget holders to obtain goods and services in an efficient, effective and economical manner.

Aims and Objectives

The policy shall ensure:

- Pursuance of the strategic objectives notably: an outstanding financial profile without any compromise in the need for investment in delivering activities to meet the defined aims. Relentless review and promotion of excellent value for money and utilisation of resources efficiently and effectively whilst resourcing learning to the highest possible level and maintaining accommodation that meets the current and future needs of staff and students to leading edge standards.
- Roles, responsibilities and procedures relating to procurement are clearly defined, documented and communicated.
- The achievement of value for money i.e. the optimum combination of whole-life cost and quality to meet the user's requirements .
- Accountability: as a publicly funded body, the College has a responsibility to secure and demonstrate value for money. In addition all tenderers and suppliers must be treated equitably and procurement must be free from corruption, bribery and any malpractice.
- All relevant legislation applicable to procurement is adhered to. This includes, but is not limited to EU Procurement Legislation, the Freedom of Information Act, Anti-Bribery Act, Modern Slavery Act and Environmental legislation (see section The Law and Guidance).
- Roles and Responsibilities

Financial Regulations detail the College's purchasing procedure and cross-refer to this policy. Individual roles at each stage of the process are clearly defined.

Standing Orders Relating to Contracts provide a comprehensible framework for procurement and state the limits of an individual's authority and their responsibilities.

All College staff must comply with the requirements of Financial Regulations, Standing Orders Relating to Contracts and associated policies.

The College's financial procedures and the internal control framework should enable the College Accountant and Director of Finance and Corporate Services to identify any incidents of non-compliance and, in addition, the College's Internal Audit function is tasked with ensuring compliance with regulations as part of its remit to provide assurance on key financial controls. Although budget holders have a responsibility for ensuring the effective and efficient use of resources under their stewardship, procurement of certain items may mean that additional assistance is required. The Retail and Procurement Manager will work with budget holders and maintain an approved list of suppliers. Tenders must always be conducted in association with the Director of Finance and Corporate Services or their representative.

The College is a member of several purchasing consortia and hence has access to professionally procured 'framework agreements' under which the College can procure goods and services under 'call-off contracts'. Use of framework agreements through purchasing consortia is encouraged to ensure that the most competitive price and best value are always achieved. Protocols are in place regarding becoming a member of a consortium (see Appendix D).

Legal and Regulatory Considerations

Financial Regulations state that the Director of Finance and Corporate Services shall be responsible for the arrangement of all official purchase orders issued for supplies and services required by the College. All purchase orders are subject to the College's contractual terms and conditions of trade which are reviewed as necessary by the College's solicitors and considered annually as part of the Standing Orders Relating to Contracts review. It is the responsibility of the Director of Finance and Corporate Services to ensure that the standard terms and conditions of trade are available to all suppliers either via the internet or via a paper copy requested from the Finance team. Every official College purchase order must provide clear instructions.

A copy of the College's terms and conditions of trade are attached in Appendix A.

College procurement/credit cards shall only be issued to budget holders or their representative as approved by the Principal to procure goods/services in this manner. When utilising alternative purchasing arrangements, budget holders must observe all applicable regulations and continue to seek best value. The Director of Finance and Corporate Services and College Accountant conduct an annual review of procurement/credit cards.

The College will continue to explore the benefits of e-procurement in accordance with the digital strategy and the requirements of the Public Contracts Regulations 2015 (PCR 2015), described below. From April 2017 the College must comply with the mandatory requirement that all European Single Procurement Documentation must be available exclusively in electronic form.

Complex and frequently changing legislation regulates procurement. If the College's officers or budget holders experience any queries or problems with any aspect of contract law or other law relating to the procurement of goods and services, the Director of Finance and Corporate Services shall refer the matter to solicitors with public procurement expertise.

The Public Contracts Regulations 2015

Procurement of goods and services by public bodies (which include central government, local government as well as non-commercial organisations which are predominantly state-funded) is regulated throughout the EU. This is to ensure that the main legislation is the Public Procurement Directive (Directive 2014/24/EU). This Directive has been implemented in the UK under the Public Contracts Regulations, SI 2015/102 (PCR 2015).

The PCR 2015 requires that the College lets contracts by publishing tenders in the Supplement to the Official Journal of the European Union (OJEU) when the contract value is above their designated threshold limits, which are currently:

▪ Supply Contracts	£164,176 (€208,884)
▪ Works Contracts	£4,104,394 (€5,228,630)
▪ Service Contracts	£164,176 (€208,884)
▪ Service Contracts under the 'light touch' regime'	£589,148 (€750,000)

The estimated value of the contract is calculated net of VAT.

Standing Orders relating to contracts state that all procurement procedures and tenders must comply with the PCR 2015.

The PCR 2015 also applies to extensions, renewals or amendments of existing contracts where the relevant thresholds are breached. A supplier spend analysis will be carried out annually by the Retail and Procurement Manager. Where a supplier's band (as defined in the criteria for approved suppliers) has changed, the Retail and Procurement Manager will ensure that all necessary documentation is in place. The Director of Finance and Corporate Services is responsible for ensuring that procedures for advertisement in the OJEU is complied with whenever required and appropriate notices placed. The College must comply with the PCR 2015.

The PCR 2015 also requires that the requirements of Lord Young including publishing all contracts with an estimated value of between £25,000 and the OJEU value threshold (net of VAT) are published on the Contracts Finder website, 24 hours from OJEU publication.

In addition, to aid small and medium sized enterprises (SMEs) to participate in the procurement process, tenders must be split into lots wherever possible.

OJEU procurement procedures and associated processes are contained in Appendix B.

The College should deal with suppliers fairly and in a transparent and impartial manner. In accordance with College policies, equality and diversity shall be promoted in the contracting/tender process.

As part of the tender process the candidate's Equality and Diversity statement/policy is requested and this forms part of the scoring matrix.

For contracts above the OJEU value threshold, Section 7 of the mandatory Standard Selection Questionnaire (SQQ) allows candidates to self-assess compliance with equality legislation.

Following an invitation to tender stage, additional documentation may be requested, and the tenderer may be required to provide evidence of their self-assessment if they are successful at contract award stage.

A similar approach will be taken for environmental and health and safety compliance.

All requests made for quotations/tenders should be based on a serious intention to buy.

When evaluating tenders the evaluation criteria must be established, weighted and made known to tenderers prior to requests for quotations/tenders and a tender evaluation panel must be appointed prior to tenders being opened.

Documentation relating to tender evaluation shall be retained by Director of Finance and Corporate Services. Unsuccessful tenderers must be provided with feedback on the tender exercise within 15 days of receiving the request.

Note, for OJEU tenders a standstill period will apply between notification of the intention to award the tender and the completion of the contract. The Standstill period is 10 days.

Value for Money

The College has a Value for Money policy which defines objectives and states roles and responsibilities.

Value for Money is the optimum combination of whole-life cost and quality to meet the user's requirements.

Achieving value for money includes a recognition that the lowest price is not necessarily best value for money and being expensive does not guarantee quality. Key, best value, factors to be considered in purchasing decisions other than price include:

- capacity of provider and experience of key personnel;
- quality of output;
- responsiveness;
- reliability, which may include an assessment of design-life and cost of maintenance;
- compatibility of College values e.g. equality and diversity;
- environmental and sustainability factors;
- ethical procurement.

Financial Regulations state that it is the budget holder's responsibility to obtain value for money. Indeed, requirements of the Standing Orders provide robust parameters to ensure this is achieved. Standing Orders detail the minimum requirements, but even relatively minor purchase costs may be reduced if challenged.

The budget holder must balance the cost of the time required to make the enquiry against the likelihood of achieving price savings. Budget holders may engage in preliminary market consultations with a supplier, consultant or independent expert in order plan the conduct of the procurement process. This type of soft market testing can lead to more effective purchasing but the information must be available to all participants in the procurement process and must not distort competition. Discussions must be documented to demonstrate that actions taken do not result in an advantage for a supplier. A clear rationale must also be documented to ensure that any incumbent supplier does not have an unfair advantage.

If the procurement exercise leads to a formal tender then the soft market testing must be included in the Regulation 84 report which documents the procurement process. This report cannot remain confidential and is available to participants throughout the process. A pro forma to record this information has been distributed to all budget holders (see Appendix E).

Appendix F details procedures for approving new suppliers.

When seeking quotations the budget holder should record in detail all telephone calls and retain all written correspondence for audit purposes.

The achievement of value for money is not necessarily achieving the cheapest price but the right quality and quantity of goods at the most competitive price. It is therefore imperative that any product or service the College intends to procure is described accurately by the budget holder so that the supplier can respond to the purchase order without ambiguity. The tender specification must be clear and accurately describe the goods and/or services required. The specification should be sufficiently detailed yet still generic so as not to preclude any participants nor give others unfair advantage hence cannot specify branded or bespoke products. Any variation or addition will have to be tendered for separately to ensure the contract is not challenged as an illegal award.

Value for money focuses on economy, efficiency and effectiveness. When purchasing goods and services, the College should also adopt the principles of best value; challenge, compare, consult and compete:

- **Challenge** if it is appropriate to be purchasing the goods or service. There may be a more appropriate alternative; or the goods or services may no longer be required.
- **Compare** methods of obtaining goods and services, e.g. through a purchasing consortium or bulk purchase to obtain discounts.
- **Consult** stakeholders to ensure goods and services are appropriate.
- **Compete**: test the market to secure the best quality at the best price.

When tenders are required, any clarification and amendments to the tender submission must be conducted by the Director of Finance and Corporate Services or their representative, and always in accordance with Financial Regulations and Standing Orders Relating to Contracts. This should not be used as a short cut to a full tendering process or re-tender. The quotation/ tender remits limits are detailed in Standing Orders Relating to Contracts.

Environmental and Sustainability Issues

When procuring goods, budget holders should give due consideration to environmental and sustainability issues. Wherever possible and practical to do so, budget holders should reduce the level of procurement by cutting down on waste and repairing or re-using existing goods and use environmentally friendly goods whenever practical, taking into account best value for money. Budget holders must balance environmental and social factors alongside economic consideration to achieve value for money on a whole-life basis (see Appendix C).

Ethical Procurement

The College has an Anti-Slavery Statement and Policy which includes ensuring a transparent supply chain and that contractors and suppliers are not engaging in any form of slavery, human trafficking or violation of human rights.

When producing goods and services outside of the European Economic Area the College will seek advice on any risk factors which should be considered in ensuring statutory and moral obligations are discharged in relation to the 2015 Modern Slavery Act.

Tenderers tendering to supply goods and services to Halesowen College will be asked to provide their policies and statements. Where the College is purchasing goods the supplier will be asked about the first layer of their supply chain. When procuring services the supplier will be asked to supply relevant HR policies. Risks will be assessed on a case by case basis.

Accountability

The College is funded by public money and as such is accountable to the Skills Funding Agency (SFA) and ultimately the public, and subject to audit by the National Audit Office. The purchasing process must be free from any form of corruption, bribery and irregularity, hence be completely transparent.

The College has an Anti-Bribery Policy and Financial Regulations state the College's position on gifts and hospitality. It is an offence for a supplier to attempt to bribe a procurement officer by the offer of gifts or money. College staff must never accept corrupt gifts or payments and shall report any incidents in accordance with the policy. Where College staff have business links which may cause a conflict of interest they must declare this and withdraw from the procurement process as appropriate. All tender opening will be conducted at a predetermined time/location by a panel of three people, one of whom will be totally independent from the tender process. The College has a corporate responsibility to prevent bribery.

The Law and Guidance

- Sale of Goods Act 1979 (as amended)
- Supply of Goods and Services Act 1982 (as amended)
- Bribery Act 2010
- Public Services (Social Value) Act 2012
- Public Contracts Regulations 2015

Review

The Procurement Policy will be reviewed at least annually and re-affirmed by the Corporation should there be any significant changes.

Review

Reviewed/Approved	By	Date
Updated by	Jacquie Carman	08.11.16

Procurement Policy

Halesowen College Terms and Conditions of Contract

1. DEFINITIONS

1.1 In these conditions:

Adequate Procedures	shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issues under section 9 of that Act).
Anti-Slavery Policy	the College's Anti-Slavery Policy is available on request from the Director of Finance and Corporate Services and as amended by notification to the Supplier from time to time.
Associate Persons	shall have the meaning ascribed to it in section 8 of the Bribery Act and shall include but is not limited to any employees, agents and/or subcontractors of the Agent.
Authorised officer	is a member of staff designated by the Principal.
Bribery Act	means the Bribery Act 2010 (and any amendment thereto).
College	means Halesowen College of Whittingham Road, Halesowen, West Midlands, B63 3NA
College Materials	means equipment owned by the College which is loaned to the Supplier for the purposes of the Contract
Conditions	means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the College and the Supplier.
Confidential Information	means all information designated as such by either party in writing and all other information which relates to the business affairs, properties, assets, trading practices, goods, services, developments, trade secrets, know-who, personnel, customers and suppliers of either party which may reasonably be regarded as the confidential information of the disclosing party.
Contract	means the contract for the purchase and sale of the Goods and/or the Service; the agreement between the College and the supplier consisting of these conditions where appropriate, the specification, invitation to tender, the suppliers tender and any other documents (or parts thereof) specified by the College.
Contract Period	means the period of duration of the contract.

Contract Price	means the price exclusive of any applicable tax payable to the supplier by the College.
Data Protection Act	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Data Protection Principles	means the data protection principles under the Data Protection Act.
Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specifications and reports (including drafts).
Exempt Information	means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Supplier which potentially falls within an exemption to FOIA (as set out therein).
FOIA	means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause 19; and
FOIA Notice	means a decision notice enforcement notice and/or an information notice.
Foreign Official	Shall be determined in accordance with section 6(5) of the Bribery Act 2010 (and any guidance issues under section 9 of that Act).
Goods	means the goods (including any instalment of the Goods or any parts for them) which the Supplier is to supply in accordance with these Conditions.
Invitation to Tender	means an invitation for suppliers to bid for the goods or services required by the College.
Order	means the College's purchase order set out overleaf.
Quotation	means an offer which may be written or verbal unless otherwise stated.
Service	means any service which the Supplier is to supply in accordance with these Conditions.
Supplier	means the person, firm or company with whom the College contracts, subject to these Conditions.

Tax	means Value Added Tax, customer duties and any other taxes or duties.
Tender	means a written offer to execute works or supply goods or materials or services for a stated sum of money; the supplier's response to the invitation to tender.
Writing	includes telex, cable, facsimile transmission, email and comparable means of communication.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2. **PLACING AND ACCEPTANCE OF ORDERS**

2.1 The acceptance (whether in Writing or by the commencement of any work relating to the College's order) by or on behalf of the Supplier of the College's Order includes the acceptance of these Conditions. No other terms or conditions (including, but without limitation any terms or conditions put forward by the Supplier and/or by the Supplier's agents which are in conflict with these Conditions) shall be incorporated into the Contract unless expressly agreed in Writing by the College and signed by an authorised officer of the College.

2.2 Without prejudice to the provisions of the above paragraph no variation of or addition to these Conditions, whether written or oral, shall have effect unless and until agreed in Writing by the College and signed by an authorised officer of the College.

2.3 The Supplier shall in connection with the sale of Goods and/or provision of any Service comply with:

2.3.1 all and any College standing orders (copies of which are available on request) unless an authorised officer of the College has given prior approval in Writing for non-compliance in respect of a particular matter;

2.3.2 all and any directives, requirements and guidance issued by the Skills Funding Agency or Education Funding Agency;

- 2.3.3 all and any applicable financial regulations (copies of which are available on request);
- 2.3.4 all applicable laws, including, without limitation, those of the European Union.

3. **SPECIFICATION**

- 3.1 The Goods and/or Services shall, subject as provided in these Conditions, be of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification supplied or advised by the College to the Supplier.
- 3.2 The Supplier shall ensure that all activities carried out pursuant to the Contract shall be documented in accordance with the requirements of the College and shall provide such documentation to the College as the College shall request from time to time.
- 3.3 The Supplier shall keep in place a system for dealing with any failure to provide the Goods and/or Services at the level and to the standard required by the College and shall carry out a review of such system and report the results to the College at such times as the College shall reasonably require.
- 3.4 The Supplier shall make available for the purposes of the provision of the Goods and/or Services any individuals named in the specification as key personnel. The Supplier shall provide the College with a list of names and addresses of all others regarded by the Supplier as key personnel and, if instructed by the College, any other persons who may be at any time concerned with the provision of the Goods and/or Service or any part of them, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the College may reasonably require. The College may at any time by notice to the Supplier designate any person concerned with the supply of the Goods and/or Service or any part of them as a key person. The Supplier shall not without the prior written approval of the College make any changes in the key personnel referred to in this paragraph.
- 3.5 The Supplier shall take any steps reasonably required by the College to prevent unauthorised persons being admitted to College premises. If the College gives the Supplier notice that any person is not to be admitted to or is to be removed from College premises or is not to become involved in or is to be removed from involvement in the Contract, the Supplier shall take all reasonable steps to comply with such notice. The Supplier shall bear the cost of any notice, instruction or decision of the College under this condition.
- 3.6 The College's rights under these Conditions are in addition to the statutory conditions implied in favour of the College by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

4. **INTELLECTUAL PROPERTY**

- 4.1 The Supplier agrees to assign to the College with full title guarantee free from all third party rights all right, title and interest in and to any intellectual property made, originated or developed during the course of or otherwise related to the provision of the Goods and/or Service including the Deliverables, and to do everything necessary to effect such an assignment. Intellectual property includes all copyright,

design rights or any other intellectual property rights in all designs, drawings, data and specifications including, without limitation, all readable or computer or other machine readable data or material and any other material submitted to the College under the terms of the Contract. All intellectual property rights in all materials submitted under the terms of this Contract by the College shall remain with the College at all times. Such material shall not be reproduced or disseminated for any other purpose by the Supplier without the written permission of the College.

- 4.2 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 4.3 The Supplier shall, promptly at the College's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the College may from time to time require for the purpose of securing the College the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the College in accordance with clause 4.1.
- 4.4 All College Materials are the College's exclusive property.

5. **PRICE AND PAYMENT TERMS**

- 5.1 The price shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the College subject to receipt of a VAT invoice) and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and any duties, costs, imposts or levies other than value added tax.
- 5.2 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) and no extra charges shall be made without the prior consent of the College in writing.
- 5.3 The Supplier shall be entitled to invoice the College on or at any time after delivery of the Goods or performance of the Services, whichever shall be the later and each invoice shall quote the number of the Order. Unless otherwise stated in the Order, the College shall pay the price of the Goods within 30 days from the date of receipt of a proper invoice or receipt of the Goods whichever is later and the College shall be entitled to set off against the price any sums owed to the College by the Supplier by means of a credit note. The College aims to satisfy the terms of the Public Sector Prompt Payment Policy but time for payment shall not be of the essence of the Contract.
- 5.4 Where a cash discount is to be allowed to the College by the Supplier the cash discount period shall commence from delivery of the Goods, performance of the Service or the date of the Supplier's invoice, whichever shall be the later.

6. **OWNERSHIP OF GOODS**

- 6.1 The property in the Goods shall pass to the College at the time of delivery unless payment for the Goods is made prior to delivery, when property shall pass to the College once payment has been made and the Goods have been appropriated to the Contract. The acceptance of the ownership of the Goods under this clause is

without prejudice to any right of rejection which the College may have or which may become available to the College. Risk in any Goods shall pass to the College at the time of delivery.

- 6.2 If the College supplies goods to the Supplier for the Supplier to perform any Service upon those goods, the property in those goods shall remain with the College at all times and the Supplier hereby waives any implied lien which the Supplier may have in respect of the same. Risk of loss of or damage to such goods shall be with the Supplier from the time of receipt until redelivery in accordance with the College's instructions.

7. **DELIVERY**

- 7.1 The Supplier shall deliver the Goods to the address specified in the College's Order; unless otherwise stipulated by the College in the order, delivery must be made between the hours of 8.30am and 4.30pm Monday to Friday inclusive and delivery shall take place when the Goods have been unloaded by the Supplier. Where the date of delivery of the Goods is to be specified after the placing of the Order, the Supplier shall give the College reasonable notice of the specified date and shall deliver the Goods on that date in accordance with these Conditions. The time of delivery of the Goods is of the essence of the Contract. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable. Any delivery note accompanying the Goods shall quote the College's Order number.
- 7.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the delivery location.
- 7.3 If the Supplier:
- 7.4 delivers less than [95] per cent of the quantity of Goods ordered, the College may reject the Goods; or
- 7.5 delivers more than [105] per cent of the quantity of Goods ordered, the College may at its sole discretion reject the Goods or the excess Goods,
- 7.6 The Supplier shall perform the Service at the address specified in the College's Order. Unless otherwise stipulated by the College in the order, performance must be made between the hours of 8.30am to 4.30pm inclusive. Where the date of performance is to be specified after the placing of the Order, the Supplier shall give the College reasonable notice of the specified date and shall perform the Service on that date in accordance with these Conditions. The time of performance of the Service is of the essence of the Contract. If the Service is to be performed in stages, the Contract will be treated as a single contract and not severable.
- 7.7 The Supplier shall not deliver the Goods in instalments without the College's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the College to the remedies set out in these terms and conditions.

8. **LATE DELIVERY**

8.1 The College shall be entitled to reject the Goods or any part thereof and to treat the Supplier as in breach of contract if the Supplier fails to make delivery in accordance with these Conditions. Non-delivery of the Goods shall also be grounds for rejection. If, as a result of the late or non-delivery of the Goods, the College has to obtain the Goods elsewhere, the College reserves the right to claim from the Supplier any and all reasonable costs incurred by reason of having to so obtain the Goods.

8.2 The College shall be entitled to treat the Supplier as in breach of contract if the Supplier fails to perform the Services in accordance with these Conditions. If as a result of the late or non-performance of the Services, the College has to procure the provision of the Services from elsewhere the College reserves the right to claim from the Supplier any and all reasonable costs incurred by reason of having to so procure the Services.

9. **WARRANTIES**

9.1 The Supplier warrants to the College that the Goods:

9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the College or made known to the College in Writing on or before the time the Order is placed;

9.1.2 shall conform to all the British and International Standards relevant for such goods current at the time of delivery;

9.1.3 will be free from defects in design, material and workmanship;

9.1.4 do not infringe any patent, registered design, copyright trademark, intellectual property right, or any other right of any third party;

9.1.5 will correspond with any relevant specification or sample; and

9.1.6 will comply with all statutory requirements and regulations relating to the sale of the Goods.

9.2 The Supplier warrants that the Services shall be performed with reasonable care and skill, by properly qualified personnel and that the Supplier will take all reasonable measures in the management of Health and Safety and comply with all relevant Health and Safety legislation and all other applicable statutory requirements.

10. **INSPECTION**

10.1 The right is reserved to the College and those authorised by the College to inspect and test the Goods and the Supplier shall provide the College with all facilities reasonably required for inspection and testing. Any such inspection or testing shall not relieve the Supplier of its obligations hereunder nor imply acceptance of the Goods by the College.

11. REJECTION

- 11.1 If any Goods delivered do not conform to the Contract, the College shall be entitled (but not bound) to return the Goods to the Supplier at the Supplier's risk and expense and either to treat the Contract as discharged and require repayment within seven days of any part of the price which has been paid or require the Supplier to replace the Goods in accordance with the Contract within seven days as the College may require. The College shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the College. The College also reserves the right to claim the cost incurred by the College in making good defects in the Goods in addition to any other right the College has arising therefrom.
- 11.2 The College shall not be deemed to have accepted the Goods until it has had seven days to inspect them following delivery. The College shall also have the right to reject the Goods as though they had not been accepted for seven days after any latent defect in the Goods has become apparent.
- 11.3 If any Service is not performed in accordance with the Contract, the College shall be entitled (but not bound) to treat the Contract as discharged and to require repayment within 7 days of any part of the price which has been paid or require the Supplier to re-perform the Service in accordance with the Contract within 7 days. The College also reserves the right to claim the cost incurred by the College in making good any failure of defect in the performance of the Service in addition to any other right the College has arising therefrom.

12. DEFECTIVE GOODS AND/OR SERVICE

- 12.1 The Supplier will within 7 days replace any Goods proving in any way defective at any time within 15 months from the date of delivery or 12 months from the date of supply to the end user, whichever is the later, at the sole cost of the Supplier.
- 12.2 Without prejudice to any other right or remedy of the College the Supplier will, at the College's option, within 7 days of notification by the College remedy any defect in or failure to perform the Service at the sole cost of the Supplier.
- 12.3 The conditions, warranties and remedies provided for in these Conditions shall be in addition to those implied by or available at law and shall exist notwithstanding the College's acceptance of all or any part of the Goods or Service.

13. INSURANCE

- 13.1 The Supplier shall effect and maintain during the term of the Contract and for a period of six years thereafter a reputable insurance company a comprehensive policy or policies of insurance providing full cover in respect of any default for which it may become liable to indemnify the College under this Contract.
- 13.2 Where appropriate, the Supplier will hold:
- 13.2.1 professional indemnity insurance in the sum of [£1 million] at least in respect of any one incident, unless this is otherwise agreed in writing by the College;

- 13.2.2 employer's liability insurance in the sum of £5 million (or amount as required by law) at least in respect of any one incident;
- 13.2.3 third party and public liability insurance in the sum of [£5 million] at least in respect of any one incident and in the annual aggregate, unless this is otherwise agreed in writing by the College;
- 13.3 The Supplier shall provide copies of any insurance certificates to the College upon request including, without limitation, professional indemnity, employer's liability and public liability insurance.

14. **RECORDS**

- 14.1 The Supplier shall maintain proper books, vouchers, accounts and records in respect of the Goods and/or Service at its place of business and shall make them available for inspection by the College, its employees and agents at reasonable times during the Contract and thereafter for a period of two years from delivery of the Goods or performance of the Service, whichever shall be the later.
- 14.2 The Supplier shall also, when requested, provide oral or written explanations and all other reasonable assistance to representatives of the College, the Secretary of State and any other relevant statutory authority for the purposes of the examination and certification of the College's accounts and for the purpose of any examination of the economy, efficiency and effectiveness with which the College has used its resources.

15. **INDEMNITY**

- 15.1 Without prejudice to the College's other rights and remedies, the Supplier will indemnify the College against all losses, liabilities, actions, demands, claims, costs, damages and expenses of any kind whatsoever and howsoever arising or arisen and whether direct, consequential or special, including without limitation any injury, loss or damage resulting from or arising out of or incidental to:
 - 15.1.1 any negligence of the Supplier or any of its employees or agents;
 - 15.1.2 the Supplier's performance of or failure to perform or breach of any of its obligations, whether express or implied, under the Contract;
 - 15.1.3 any defect in any Goods or any claim under Part 1 of the Consumer Protection Act, 1987;
 - 15.1.4 the Supplier's failure to deliver the Goods or perform the Service within the time specified;
 - 15.1.5 any claim that the Goods and/or their sale and/or use infringes any intellectual property rights (including without limitation copyright, patent, trade mark, registered designs, or in respect of passing off) of any third party.
- 15.2 This clause 15 shall survive termination of the Contract.

16. TERMINATION

- 16.1 The College shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon the College may return or reject at the Supplier's risk and expense any Goods already delivered and all work on the Contract shall be discontinued. The College shall pay to the Supplier the value of any Goods not so returned or rejected and fair and reasonable compensation for work in progress at the time of termination provided that such compensation shall not include loss of anticipated profits or any consequential loss.
- 16.2 The College shall be entitled (without prejudice to any other rights and remedies available to it under these Conditions or otherwise) forthwith to terminate the Contract, to return or reject at the Supplier's risk and expense any Goods already delivered and to recover any monies paid by the College in respect of any Goods and any additional expenditure incurred by the College in any of the following events:
- 16.2.1 if any Goods are not delivered within the time specified for delivery;
- 16.2.2 if any Service is not performed within the time specified for performance;
- 16.2.3 if the Supplier commits any breach of any contract between the College and Supplier;
- 16.2.4 without prejudice to the generality of the foregoing, if any Goods are defective or otherwise fail to conform to specification or sample or otherwise fail to meet the requirements of the Order or the quality and/or workmanship is not to the College's reasonable satisfaction;
- 16.2.5 if the Supplier commits an act of insolvency which shall be deemed to mean and include any one or more of the following:
- (a) the making of a voluntary arrangement by the Supplier with its creditors (within the meaning of the Insolvency Act 1986); or
 - (b) the bankruptcy of the Supplier (being an individual or firm); or
 - (c) the Supplier (being a company) becoming subject to an administration order; or
 - (d) the liquidation of the Supplier (otherwise than for the purpose of amalgamation or reconstruction); or
 - (e) an encumbrancer taking possession or a receiver being appointed of any of the property or assets of the Supplier; or
 - (f) the Supplier ceasing or threatening to cease to carry on business; or
 - (g) the College reasonably apprehending that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.
- 16.2.6 this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

- 16.2.7 the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- 16.2.8 this Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 16.3 if the College becomes aware that the Goods and/or their sale and/or use infringe and/or are alleged to infringe the intellectual property rights (including without limitation copyright, patent, trade mark, registered designs or in respect of passing off) of a third party.
- 16.4 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the College accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 16.5 On termination of the Contract however arising the Supplier shall deliver to the College all Deliverables whether or not then complete and return all College Materials to the College. If the Supplier fails to do so, then the College may enter the Supplier's premises and take possession of them until they have been returned or delivered the Supplier shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract.

17. **PROHIBITED ACTIVITIES**

- 17.1 The Supplier shall procure that persons associated with it or other persons who are performing services in connection with this agreement shall:
- 17.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption ('Relevant Requirements'), including but not limited to the Bribery Act 2010;
- 17.1.2 [comply with the College's Anti Modern Slavery, Ethics, Anti-bribery and Anti-corruption Policies, in each case as issued and updated by the College from time to time ('Relevant Policies');]
- 17.1.3 not do, or omit to do, any act that will cause or lead the College to be in breach of any of the Relevant Requirements or Relevant Policies;
- 17.1.4 promptly report to the College any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;
- 17.1.5 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and, the Relevant Policies, and will enforce them where appropriate;
- 17.1.6 if requested, provide the College with any reasonable assistance, at the College's reasonable cost, to enable the College to perform any activity required by any

government or statutory body for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;

- 17.1.7 within three months of the date of this agreement, and annually thereafter, certify to the College in writing signed by an officer of the Supplier compliance with this clause 17 by the Supplier and all persons associated with it or other persons who are performing services in connection with this agreement. The Supplier shall provide such supporting evidence of compliance as the College may reasonably request.
- 17.2 The Supplier shall prepare and deliver to the College, no later than 31 December each year, an annual slavery and human trafficking report setting out the steps the Supplier has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 17.3 The Supplier shall not enter into any Contract with any political or religious organisation if the effect of that Contract would be to promote a particular political or religious point of view.
- 17.4 The Supplier shall not hold itself out as acting on behalf of the College without the College's permission.
- 17.5 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 17 ('Relevant Terms'). The Supplier shall in any circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in any circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Terms howsoever arising.
- 17.6 Breach of this clause 17 shall be deemed a material breach of this agreement.
- 17.7 For the purpose of this clause 17, whether a person is associated with another person shall be determined in accordance with section 8 of that Act. For the purposes of this clause 17 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
- 17.8 Halesowen College is committed to countering bribery and has zero tolerance of bribery. Integrity and College values are made clear as fundamental and non-negotiable. Halesowen College prohibits bribery and will not tolerate its staff, students or third parties in their relationship with the College being involved in bribery, whether by offering, promising, soliciting, demanding, giving or accepting bribes or behaving corruptly in the expectation of a bribe or an advantage.

18. **DATA PROTECTION**

The Supplier shall ensure that it complies at all times with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by the Supplier from the College shall be returned to the College on request. The Supplier hereby acknowledges that performance by the College of a duty imposed by the Act, shall not constitute a breach of any obligation in respect of confidentiality which

may be owed to the Supplier. This clause shall not affect the College's ability to make a search with a credit reference agency.

19. **FREEDOM OF INFORMATION**

19.1 Freedom of Information

19.1.1 The Supplier acknowledges and agrees that The College is subject to legal duties under FOIA which may require the College to disclose on request information relating to this Contract or otherwise relating to the Supplier.

19.1.2 The Supplier acknowledges and agrees that the College is required by law to consider each and every request made under FOIA for information.

19.1.3 The Supplier acknowledges and agrees that all decisions made by the College pursuant to a request under FOIA is solely a matter for and at the discretion of the College.

19.1.4 Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the College shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the College shall use reasonable endeavours (but shall not be obliged) to consult the Supplier and shall not:

(a) confirm or deny that information is held by the College; or

(b) disclose information requested

to the extent that in the College's opinion the information is eligible in the circumstances for an exemption and therefore the College may lawfully refrain from doing either of the things described in parts (a) and (b) of this Clause.

19.1.5 In relation to information relating to the Supplier or the Contract which the Supplier requests should be exempt under the FOIA the Contractor shall indemnify the College for any and all costs (including legal fees) incurred by the College in:

(a) assessing the application of any exemption under FOIA; and/or

(b) responding to any FOIA notice; and/or

(c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

where such costs are incurred pursuant to efforts by the College to withhold Exempt Information.

19.2 The College shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the Supplier.

19.3 The Supplier shall assist the College as reasonably necessary to enable the College to comply with its obligations under FOIA.

20. **CONFIDENTIALITY**

- 20.1 The Supplier shall treat as confidential all documents and information provided by the College during or in connection with the performance of this Contract which contain Confidential Information. Such documents and information shall not be used by the Supplier except for the purposes for which they were made available and shall not be disclosed by the Supplier to any other person without the prior written consent of the College. The Supplier shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation of confidentiality in respect of the relevant documents and information.
- 20.2 The obligations in this clause 20 shall not apply to information which:
- 20.2.1 is or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Contract;
 - 20.2.2 is disclosed to sub-contractors contracted to deliver all or part of the Services; or
 - 20.2.3 is required to be disclosed by applicable law, regulation, judicial order or other governmental authority.
- 20.3 The College reserves the right to share information about the Supplier's performance under this Contract with the Department for Education and Skills and any other government department or government agency or other public body.
- 20.4 The Supplier shall not make any announcement about this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 20.5 The provisions of this clause 20 will apply for the duration of the Contract and after its termination.

21. **AUDIT**

- 21.1 The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:
- 21.1.1 the Goods and Services provided under it;
 - 21.1.2 all expenditure reimbursed by the College;
 - 21.1.3 all payments made by the College.
- 21.2 The Supplier shall on request afford the College or its representatives such right to audit and access to those records as may be required in connection with this Contract.

22. **FORCE MAJEURE**

Neither party shall have any liability whatsoever for any failure to perform or for any delay in performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control including (but without limitation) shortage of raw materials, components or services, Acts of God, war, national emergency, laws or regulation of any country, industrial dispute, civil commotion, fire, tempest or flood. If the performance is substantially prevented for a continuous period of six months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

23. **DISPUTES AND SET-OFF**

23.1 Any liability of the College under the Contract shall be subject to and conditional upon the due performance and observance by the Supplier of all its obligations under these Conditions, and, subject to these Conditions, the Supplier shall not be entitled to withhold or delay supplying the Goods or performing the Service or exercise any right of set-off whatsoever and howsoever arising or arisen which might otherwise be available to it.

23.2 The College may without notice set off any sums from time to time owed to the Supplier towards the satisfaction of all and any liabilities of the Supplier to the College whether the liability is present or future, liquidated or unliquidated, and whether or not liability arises under this Contract.

24. **GENERAL**

24.1 Subject to clause 23.2, the Supplier shall not be entitled to assign the whole or any part of its rights and/or obligations under the Contract and may not transfer, mortgage charge, sub-contract or declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the College.

24.2 The Supplier may assign to a third party the right to receive payment of the price or any part thereof due to Supplier under the Agreement.

24.3 Where the College has consented to the placing of sub-contracts, the Supplier shall not be relieved of any obligation or duty attributable to it under the Contract or these Conditions and shall send copies of the sub-contract to the College if requested to do so.

24.4 If the Supplier proposes to enter into any sub-contract in connection with this Contract, the Supplier shall provide to the College the following information about the proposed sub-contractor:

24.4.1 its name, registered office and company registration number, contact details and legal representatives;

24.4.2 a copy of the proposed sub-contract; and

24.4.3 any further information reasonably requested by the College.

- 24.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant on this provision to the party giving the notice. A notice shall be deemed to have been received, in the case of a facsimile, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.
- 24.6 No waiver by the College of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 24.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby unless such provision goes to the root of the Contract.
- 24.8 The Conditions and all documents referred to herein shall constitute the entire agreement in relation to the sale of the Goods and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by an authorised officer of the College and of the Supplier.
- 24.9 A waiver of any right or remedy under the Contract or law is effective if given in writing and shall not be deemed a waiver at any subsequent breach or default.
- 24.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 24.11 The Contract shall be governed by the laws of England and the Supplier agrees to submit to the non-exclusive jurisdiction of the English courts.
- 24.12 Nothing in this Contract shall have the effect of making the Supplier the servant of the College. The Supplier (if any individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the College against tax, national insurance contributions or similar impost for which the College may be liable in respect of the Supplier by reason of this Contract.
- 24.13 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 24.14 The College when procuring goods and services takes account of equality and diversity requirements for users.

Every order notifies the supplier that the order is bound by these conditions and directs the supplier to the College's website where the terms and conditions of trade can be found. A paper copy is also available from finance.

Procurement Policy

Procedures for Tender via OJEU and Compliance with Lord Young's Reforms

1. OVERVIEW OF THE RULES

OJEU stands for the Supplement to the Official Journal of the European Community and is the publication in which all tenders from the public sector, including organisations funded by public money, which have an estimated valued above a certain financial threshold, are published. The website [Tenders Electronic Daily](#) provides a gateway for suppliers who wish to search for new business opportunities throughout the EU and EEA. The term journal is misleading as tenders are only published online. The hard copy journal was discontinued in 1997.

There are five standard OJEU procurement procedures:

- Open
- Restricted
- Competitive with negotiation
- Competitive dialogue
- Innovation partnership

In addition to OJEU publication the Lord Young reforms which are set out in the PCR 2015 now require all tenders opportunities between £25,000 and the OJEU financial threshold to be advertised on Contracts Finder: www.gov.uk/contracts-finder. This should be published 24 hours after it first advertises the opportunity in any other way.

2. THRESHOLDS

The financial thresholds applicable to Halesowen College (inclusive of VAT) for mandatory tenders via OJEU are:

▪ Supply Contacts	£164,176 (€208,884)
▪ Works Contracts	£4,104,394 (€5,228,630)
▪ Service Contracts	£164,176 (€208,884)
▪ Service Contracts under the 'light touch' regime'	£589,148 (€750,000)

The estimated value of the contract is calculated net of VAT.

The thresholds are for the total value for the life of the contract. Failure to aggregate may lead to the College making an illegal award. Failure to advertise in OJEU as required will lead to an ineffectiveness breach. If the contract is below the thresholds there is still an obligation as a matter of general legal principle under the Treaty on the Functioning of the EU to advertise the opportunity appropriately.

3. PRE-PROCUREMENT

Under the terms of the Public Services (Social Value) Act 2012 the College must give consideration to the economic, environmental and social benefits to its approach to procuring services and how these may improve the well-being of the local area.

The College may undertake preliminary market consultation in order to identify the likely cost and availability of the goods and services to tender and to assist in drawing up a specification. Care must be taken to ensure that any advice used in the process does not have the effect of distorting competition or result in a violation of the principles of non-discrimination and transparency.

4. **PURPOSE OF THE NOTICE**

To advertise in OJEU a contract notice in the appropriate must be completed. The purpose of the contract notice is:

- to convey clear and comprehensive information
- to allow suppliers to express an interest
- to seek information from suppliers

In accordance with the Public Contracts Regulations 2015 (PCR 2015), at the point the OJEU notice is published, all contract documentation must be made available. This must include:

- any pre-qualification tests including exclusion grounds, selection criteria and scoring (note SSQ format is prescribed)
- the specification
- the invitation to tender
- the evaluation criteria, process and scoring methodology
- the contract documentation

The OJEU notice must avoid burdensome/disproportionate questions. In order to help SMEs participate in procurement, tenders will be split into lots wherever possible. If the contract opportunity is not split into lots then the rationale must be recorded on the Regulation 84 report.

The College uses the specialist website www.mytenders.com to place all OJEU advertisements. Passwords for this site are held by the Retail and Procurement Manager and the Director of Finance and Corporate Services. The notice must not be longer than 650 words. The College is at liberty to copy the advert to any supplier once it has been placed in OJEU. The contract notice must be placed on Contracts Finder within 24 hours.

At this stage the College must determine how it will assess the most economically advantageous tender (MEAT) and this must be communicated to potential suppliers in the notice together with, if the MEAT criteria are to be used, the relative weighting of each criteria.

5. **INFORMATION FROM SUPPLIERS**

When procuring goods and services it is necessary to request certain information from candidates which is relevant to the contract. All information must be on a common basis and all suppliers must be treated equally. The OJEU SSQ is a prescribed document. Requests for information must be relevant and proportionate.

Information requested by the public sector is under the following headings:

- legal status – if the company has ever been insolvent or if an individual has any convictions etc
- financial capacity – how financial robust a candidate is
- technical ability – whether the candidate has the resources and knowledge to complete the contract

It is not permissible to include a pre-qualification stage in a procurement in respect of a contract with a financial value between £25,000 and the OJEU value threshold.

6. **CONTRACT PROCEDURES**

The College may routinely use both open and restricted procedures for above OJEU value threshold procurements. Use of competitive dialogue/negotiation or innovation partnership may only be used on the advice of the Director of Finance and Corporate Services and supported by a procurement legal expert.

- The open procedure allows all interested parties to tender.
- The restricted procedure allows the College to select a number of candidates who have expressed an interest to submit a tender.

7. **COMMON PROCUREMENT VOCABULARY (CPV)**

The College uses the CPV which is mandatory. When completing a notice up to date CPV codes must be used to indicate the nature of the contract. If these are omitted then this may lead to inaccuracies.

8. **TENDER TIMESCALES (STANDARD NOTICES)**

The timescales that apply to Halesowen College for restricted and negotiated tenders are:

Open Tender (minimum timescales)

- | | |
|---|---------|
| ■ Contract notice to receipt of tenders | 35 days |
| ■ Standstill | 10 days |

Restricted Tender (minimum timescales)

- | | |
|--------------------------|---------|
| ■ Request to participate | 30 days |
| ■ Receipt of tenders | 30 days |
| ■ Standstill | 10 days |

Shortlisting criteria for use of the Restricted Procedure must be predetermined and published. Usual College procedures for tenders are always applicable. Halesowen College usually completes a restricted tender which allows the College to invite a minimum of 5 and maximum of 20 tenderers, from the list of those who expressed an interest to tender.

The College must observe a standstill period of at least 10 days between notification of intention to award and contract award. This provides an opportunity

for both the College and bidder to deal with any compliance issues before a contract is signed. Any legal challenge of the contract award decision during this period automatically triggers suspension of the contract award. This remains in force until either the Court terminates the suspension or proceedings are closed. In the event of any legal challenge the Director of Finance and Corporate Services will inform the Principal and refer the matter to the solicitors.

9. URGENT/AMENDING AND CANCELLATION NOTICES

If a contract needs to be completed urgently then an accelerated notice may be allowable. The timescales are:

- 15 days for requests to tender/participate
- 10 days to receive tenders

Justification for urgent notices must be provided and then this will be considered before publication in the OJEU. The College will seek to avoid placing any urgent notices. If a notice needs to be amended there is no official format.

If there are changes to the specification or timescales then the notice should be cancelled and started again.

There is no official format for cancellation notices but all contract notices require either an award or cancellation notice, reasons must be given for not awarding a notice.

10. TENDERER SELECTION AND TENDER EVALUATION

It is important to maintain a clear distinction between the two-stages of selection of the tenderer and evaluation of the tender. It is not permissible to apply selection criteria to the evaluation of the tender.

The first stage is to assess each candidate who request to participate (restricted procedure) or submits a tender (open procedure) via a set of predetermined closed questions and collection of generic information. Certain questions are mandatory and should the candidate fail to meet one or more of these criteria will automatically be excluded from the procurement process.

Under the Restricted Procedure, candidates will be invited to submit a Standard Selection Questionnaire (SSQ). The format of the SSQ is prescribed. In order to select bidders to submit a tender the SSQ will be evaluated using predetermined weighted selection criteria determined by the College at the point the OJEU contract notice is published in advance of the SSQ submission deadline. Any query raised by a candidate regarding the SSQ must be forwarded together with the appropriate information to all companies who expressed an interest. The College will supply reasonable feedback to unsuccessful companies on request. The College will also contact in writing (including email) all companies who were successful at SSQ stage.

Prior to posting an OJEU contract notice the College must determine weighted criteria on which the tender will be evaluated. A tender panel must also now be in place. Note that all previous scores/evaluation form no part of this stage. At this point the College must inform **all** tendering companies whether there will be a presentation/practical demonstration stage at the point of OJEU contract notice and

ideally the dates of these presentations should they be successful. Moreover the College may request that the companies commit to adhering with all relevant policies of Halesowen College.

The tender criteria will differ for each type of service/goods but must include as a minimum:

- quality
- financial evaluation of the price¹ (including additional running costs/maintenance etc)
- technical merit
- environmental impact
- evaluation of equality and diversity aspects provided they are tied to the subject matter of the contract
- after sales service/relationship
- other statutory requirements e.g. health and safety

All tenderers participating in the procurement will be informed of the weighted selection criteria and scoring matrix at the point of the OJEU contract notice.

The scoring method is a four point scale:

- 1 Major non-compliance
- 2 Does not meet requirements but may be adaptable
- 3 Meets requirements except for minor aspects
- 4 Meets requirements

A score of 5 may be awarded in exceptional circumstance to reflect innovation and when the specification is exceeded. All bidders must be made aware that points may be awarded for innovation prior to documentation being submitted.

The College will inform companies of the tender outcome as soon as is practically possible (observing the standstill period as defined in section 7). This correspondence must include the name of the successful tenderer and the relevant scores of the tenderer and the successful tender and the characteristics and relative advantages of the successful tender.

Any tenderer requiring a debrief must contact the College in writing and this must be fulfilled within 10 days of the notice. Should this be in the form of a meeting, the Director of Finance and Corporate Services will nominate at least two members of staff to be present. This meeting will be minuted.

All participating companies can request a copy of the Section 84 report.

¹ The College may exclude abnormally low price tenders and if the company cannot satisfactorily explain the offer the tender may be rejected.

11. **CONTRACT AWARD**

The preferred supplier will be informed in writing and required to sign a contract prior to the delivery of goods/commencement of the service. No contractual arrangement demands the College's exclusivity.

All unsuccessful tenderers will be informed throughout the tender process when they have been de-selected. This complies with the current guidance on standstill periods. At tender stage, the College will issue a notice of de-selection comprising the following information:

- criteria for award
- reason for decision (including characteristics and relative advantages of the successful tender)
- scores of recipient and successful tender
- name of successful tenderer
- date that standstill period will end

as soon as possible after the decision has been made. The PCR 2015 demand that unsuccessful bidders have to receive bespoke feedback which is sufficiently detailed for them to determine whether or not a decision is well founded. This must be balanced against the need to not compromise confidentiality or intellectual property of the successful tenderer. The Director of Finance and Corporate Services will approve all correspondence. If bidders have further questions and demand additional information the College may consider restarting a standstill period.

12. **KEEPING RECORDS**

Records must be retained at each stage of the process in case of challenge in the Courts or for reporting to the European Commission. This is particularly important in view of the Remedies Directive and the Section 84 report.

Retention of documentation must be accordance with the College's Financial Regulations.

Procurement Policy

Definition of Sustainable Procurement

Sustainable procurement is a process whereby the College should meet its needs for goods and services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the College but to society and the economy whilst minimising damage to the environment.

Practically it involves the consideration of environmental and associated factors when making purchasing decisions, looking at what products are made of, where they come from and who has made them. More fundamentally it is questioning whether the purchase needs to be made at all.

Hence the College should always look for opportunities to reduce the negative environmental and social impacts of its purchasing choices.

Consideration for Sustainable Purchasing

- Use of non-renewable materials
- Manufacture and production methods
- Re-use, recycling and disposal options
- Delivery options
- Reduction of landfill and carbon dioxide emissions
- Suppliers approach to social and economic issues
- Reduction in energy/CO2 emissions

Budget holders should always consider sustainability and indeed a positive environmental or social impact may justify that lowest price does not equate to best value.

Budget holders should always consider:

- whether goods/services are required
- what the goods are made from
- how goods are transported
- who the supplier is
- methods of manufacturer

Procurement from companies who promote environmental issues should be encouraged and budget holders may specify environmental conditions.

Products with an Eco label – awarded to goods and services which meet strict criteria to minimise the impact of consumer products on the environment – are desirable providing they are fit for purpose. Many environmental labels operate on a national basis and care should be taken to ensure that any environmental requirement is described on a non-discriminatory basis or permit the tenderer to demonstrate compliance of an equivalent standard by other means.

All tenders must include environmental/sustainable factors as appropriate and the tenderers response to this must be scored as part of the overall evaluation.

Procurement Policy

Protocol for joining a Purchasing Consortium

Background

Halesowen College is committed to purchasing goods and services using a value for money approach². One way to achieve value for money is the procurement of goods and services through purchasing consortia.

A purchasing consortium is a group of two or more independent organisations that join together either formally, informally or through an independent third party for the purposes of combining their individual requirements for purchased goods and services to obtain better, value-added pricing, service and technology from external suppliers than could be obtained if each contracting authority purchased goods and services alone.

Protocol

In order to join and use a purchasing consortium the following conditions must be applied and adhered to:

- The consortium must have a head office within the European Union.
- The College must not knowingly trade via consortia that support businesses and industries that have objectives that are not compatible with the College's strategic objectives and values e.g. equality and diversity, and environmental strategies
- The consortium must be active within the public sector, preferably with an FE member base (consortia operating in the private sector will not automatically be discounted, however unless the organization which procured the framework agreement is itself a body governed by the PCR 2015, the College will not be able to enter into a contract with that body unless it has itself undertaken a procurement exercise which complies with the PCR 2015).
- When using any consortium, the College's approach to value for money remains fundamental.
- There must be no obligation to use the consortium.

Procedures

There are two ways in which the College can join and use purchasing consortia.

Some consortia use a 'no obligation' approach, or require the College to sign up as an associate member in order to achieve the benefits of membership. Individual College users can then sign up and purchase goods or services as necessary. The use of this type of consortia must be approved in advance of any purchase or show of intent to purchase by either the College Accountant or the Director of Finance and Corporate Services.

² Value for money in a college environment means procuring goods and services to the required standard in a way which is economical, efficient and effective.

Other consortia require the College to sign up to them as a legally binding member of a company limited by either by share or guarantee. In these circumstances a case must be put to and considered by the College Executive and then approved by the College Corporation prior to the consortium being used.

Related Policies and the College Framework

The College already has a robust framework in place to ensure that recourses are used effectively, and that budget holders take responsibility for securing best value for goods and services purchased.

- Financial Regulations clearly state responsibilities, principles and procedures and outline the scheme of delegation.
- Standing Orders Relating to Contracts state the requirements to obtain tenders and estimates.
- Procurement policy states the principles of value for money and the responsibility of budget holders.

Procurement Policy

Compliance with Standing Orders/Value for Money Monitoring

Quotation Form

Please use this form to ensure that value for money is achieved and that Standing Orders Relating to Contracts are observed.

These records may be subject to audit inspection.

Item(s)			
	Value	Company	Has quote been obtained
Company 1	£		
Company 2	£		
Company 3	£		

Should you obtain written quotations please attach to this form.

Please observe the College Procurement and Value for Money Policies.

I confirm that the above are bonafide quotations from legitimate suppliers

Signed _____ Date _____

Finance use only

Quotations verified <input type="checkbox"/>	Signed: Print Name:
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Date:	Order no:
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Procurement Policy

Protocol for Approving New Suppliers

Background

Halesowen College is committed to trading with suppliers that are financially secure and whose own objectives are compatible with the College's strategic objectives and values.

With this in mind, the following procedure has been developed for the approval and use of new suppliers.

Procedure

In order to use a supplier that the College has not dealt with before the requisitioner must complete an 'Approval Form for New Suppliers' form (attached). Depending on the estimated annual spend with the proposed supplier, the Retail and Procurement Manager will carry out the requirements set out in the 'Criteria for Approved Supplier List' (attached). The Retail and Procurement Manager will contact the supplier to obtain any necessary information and inform the requisitioner within two working days of receipt of the information with the outcome. Should there be a significant delay in the receipt of information from the supplier, the Retail and Procurement Manager will keep the requisitioner informed.

If the College already trades with a supplier that can supply the required goods/services, then the Retail and Procurement Manager will establish with the requisitioner the need to use a new supplier. This will be documented.

All new suppliers will be subject to financial checks as appropriate. Specialist software may be used to access supplier information. Should a supplier not be listed on the software (for example they may be a sole trader or an LLP) then it will be necessary for the 'Approved Supplier Application Form' (attached) to be completed. Prior to any order being placed, the Retail and Procurement Manager will communicate with the supplier in order to capture the business details necessary (dependent on size of the order) in the form, together with:

- A copy of the most recent two years' financial statements.
- Details of two trade references the College may contact (these would not be sought without obtaining the supplier's permission first).

An analysis of the information will be carried out by the Retail and Procurement Manager who will then pass recommendations on to the College Accountant or Director of Finance and Corporate Services for approval. This process should be done as expeditiously as possible to prevent delays in goods being ordered.

Approval Form for New Suppliers

To	Retail and Procurement Manager
From	

Please add the following supplier to the approved supplier list

Company Name	
Address and Postcode	
Telephone Number	
Email Address (for receipt of documents)	
Company Number	
Commodity (details of intended purchase)	
Initial Order Value	
Estimated Annual Spend with Company	

Reason for addition

- | | |
|---|--|
| <input type="checkbox"/> Best Value | <input type="checkbox"/> Current suppliers cannot supply goods |
| <input type="checkbox"/> Discounts | <input type="checkbox"/> One off purchase eg hotel for student visit |
| <input type="checkbox"/> Delivery speed | <input type="checkbox"/> Other (please specify) |

Declaration of Interests

To the best of your knowledge, does the above supplier including any individual spouse, partner, close family friend or relative associated with the supplier hold any association with Halesowen College that may, or could be seen to, conflict with either the proposed supply of goods/services or any role they may hold at the College.

Yes No

If yes, please provide further details below

Signed _____

Name _____

Date _____

For Finance Use

Approved Supplier Category		Commodity Category	
Added to approved list (if No, reason why not)	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Requisitioner Informed	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Signed			
Date			

Criteria for Approved Supplier List

Estimated Value of Order	Threshold	Requirements
Up to £500	A	<ul style="list-style-type: none"> Supplier should have EU trading address else checks in band C required.
£500 to £3,000	B	<ul style="list-style-type: none"> As band A plus supplier to be subject to financial checks using specialist software. Scores below 25 points to be referred to the College Accountant. Should the purchase not be a one off and include ongoing warranties/services then if score is below 25 points then College Accountant will assess: <ul style="list-style-type: none"> length of time supplier has traded profitability profile liquidity profile <p>A minimum score of 6 should be achieved based on the matrix below.</p> <p>In exceptional circumstances the Director of Finance and Corporate Services or the College Accountant may waive the requirement for financial information to be collected. Rationale for decisions must be fully documented on a risk based model.</p>
£3,000 to £10,000	C1	<ul style="list-style-type: none"> As band B plus Trade Reference Anti-bribery strategy³
£10,000 to £25,000	C2	<p>As band C1 plus</p> <ul style="list-style-type: none"> Insurance cover regarding goods/services supplied to the College (if appropriate) Environmental/Sustainability Policy Health & Safety Policy Equal Opportunity Policy/Statement Trade reference (ideally from a FE College or similar) Most recent Audited Accounts (containing at least two years financial information)

³ Note the College's anti-bribery statement is communicated to all suppliers.

£25,000 to £150,000 or OJEU limit whichever is lower	D1	▪ As C2
Over £150,000 or OJEU limit whichever is lower	D2	▪ As C2

Band A: Checks to be carried out on set up only

Band B: Checks to be carried out on set up only unless there is an ongoing service/warranty relationship then every five years

Band C: Checks to be carried out every three years

Band D: Checks to be carried out at tender (else three years)

NB: Please note that if a supplier is only used once during a 24 month period they will be removed from the Approved Supplier List

Financial Evaluation Matrix

Criteria	Score
Length of time trading	<p>< 1 yr = 0</p> <p>1 yr – 3 yrs = 1</p> <p>> 3 yrs = 3</p>
Profitability	<p>> 5% surplus as a % of income =5</p> <p>> 1 - 4.9% surplus as a % of income =3</p> <p>breakeven =1</p> <p>deficit =0</p>
Liquidity	<p>>3=5</p> <p>1-2.9=3</p> <p>0 – 0.9 = 1</p> <p>< 0 = 0</p>

Approved Supplier Application Form

Business Details

Name of Business	
Business Address	
Postcode	
Telephone:	Fax: Email:
Time in Business _____ years _____ months	Time at this Address _____ years _____ months
If less than 2 years please supply previous address	
Previous Postcode	

Proprietor Details

Applicant Surname _____ Forenames _____	
Second Proprietor (if any) Surname _____ Forenames _____	
Applicant's Home Address (if different from Business Address)	
Postcode	

Other Details

Do you have Public Liability Insurance	Yes <input type="checkbox"/> No <input type="checkbox"/>
Company insurance held with	
Value of Public Liability insurance	
Policy Number	
Copy of most recent two years financial statements enclosed	Yes <input type="checkbox"/> No <input type="checkbox"/>

Please note: it is unlikely that the College will be able to trade with the supplier without copies of two years financial statements. In line with the Data Protection Act, this commercially sensitive information will never be disclosed to a third party.

Details of two trade references the College may contact

Name of Referee (1)	
Surname _____ Forenames _____	
Supplier Name	
Referee's address and postcode	
Telephone Number	

Name of Referee (2)	
Surname _____ Forenames _____	
Supplier Name	
Referee's address and postcode	
Telephone Number	

The College will not contact the above referees without first obtaining your permission.

Signature	_____
Name	_____
Position	_____
Date	_____