

## Cambridgeshire County Council Contract Regulations for Schools

**Under Section 135, Local Government Act 1972 and Sections 48 & 49 Schools Standards and Framework Act 1998**

8th Edition April 2008

**Issued by**

**Director of Planning & Development Office for Children & Young People Service (OCYPS)**

### **Background**

Section 135 of the Local Government Act 1972 requires the County Council to “make Standing Orders with respect to contracts made by them or on their behalf for the supply of goods or materials or for the execution of works”. These must include “provision for securing competition for such contracts and for regulating the manner in which tenders are invited”.

The School Standards and Framework Act 1998 requires the authority to lay down guidance, including financial controls and procedures for the management of delegated budgets, for all maintained schools. The normal process under Contract Regulations for ensuring fair and open competition will be by Quotation or Invitation To Tender, depending on the Total Value of the contract.

Contract Regulations exist to ensure that transactions involving public money receive an appropriate amount of care and attention, are conducted in an open and competitive environment and are not influenced (whether consciously or unconsciously) by any kind of personal interest.

Contract Regulations lay down minimum requirements and only in specified and limited circumstances is a transaction exempt from those requirements. All Schools are subject to these Contract Regulations as spending by schools forms part of the Council's overall budget.

However, the Director of Planning and Development has been given delegated authority to present Contract Regulations in a form appropriate for school use. So this document is specifically adapted to the school environment and forms an integral part of the overall Scheme of Financial Management for Schools.

## A Brief Guide to Contract Regulations

Contract Regulations promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

**For the purposes of these Regulations, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard-copy.**

*School* staff responsible for purchasing or disposal must comply with Contract Regulations. Contract Regulations lay down minimum requirements. A more thorough procedure may be appropriate for a particular contract.

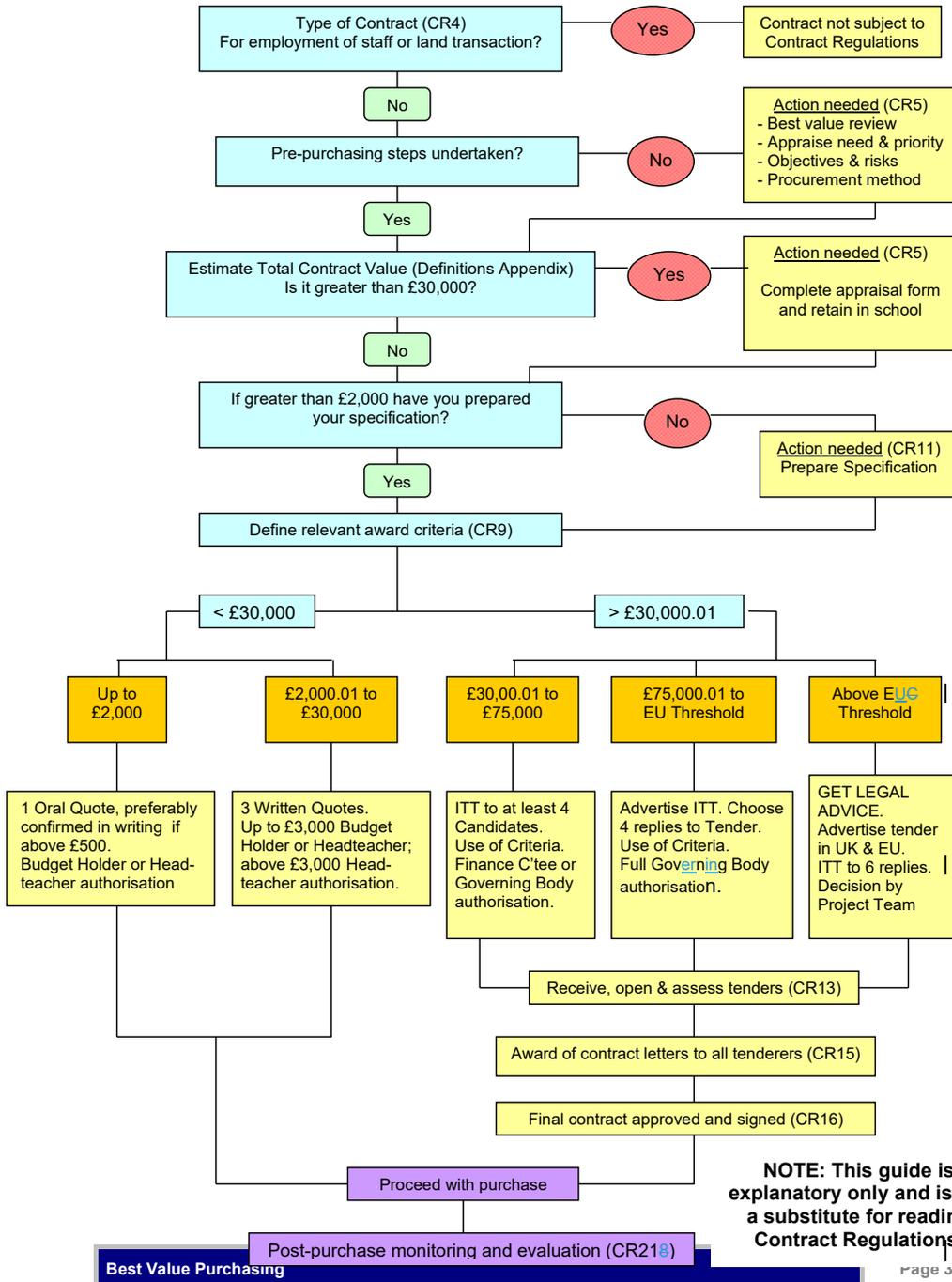
It is considered best practice to:

- Follow the rules set out in Contract Regulations if you purchase goods or services or order building work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Appraise the purchasing need.
- Check whether an existing Public Sector Contract, ESPO or the Office of Government Commerce (OGC) contract is available for use before undergoing a competitive process.
- Normally allow four weeks for submission of bids (not to be submitted by fax).
- Keep bids confidential.
- Do not negotiate with suppliers except if Regulation 14.2 applies.
- Complete a written contract or *School* order before the supply or works begin.
- Identify a Contract Manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and value for money requirements.

All *Relevant Contracts* (see Regulation 4) must be subject to competition, unless there is an exemption, as follows:

<b>Up to £2,000:</b>	One oral quote (confirmation in writing should be sought if over £500).
<b>£2,000.01 – 30,000:</b>	Three written quotes to a purchaser specification.
<b>£30,000.01 – 75,000:</b>	Formal <i>Invitation to Tender</i> , <u>including specification</u> (and normally the contract conditions) to at least four <i>Candidates</i> . See Para 5.6 (page 9) regarding requirements for advertising, any pre selected candidates must be approved by <i>Governing Body</i> .
<b>£75,000.01 – EU Threshold:</b>	Formal <i>Invitation to Tender</i> , as above, to 4 <i>Candidates</i> . Selection of <i>Candidates</i> after advertisement - (See Para 5.6, page 9).
<b>Above EU Threshold:</b>	<i>EU Procedure</i> .
<b>Disposals:</b>	See Regulation 8.6.
<b>Exemptions:</b>	See Regulation 3.

**Explanatory Flowchart**



**NOTE: This guide is explanatory only and is not a substitute for reading Contract Regulations.**



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### Further Advice is available from:

Legal Services  
Internal Audit  
Purchasing Advisory Service for Schools (PASS)

Finance and Performance (OCYPS)

Whenever DEFINED TERMS are used they are in *italics*, begin with a capital letter and are in the Definitions Appendix

## Section 1 – Scope of Contract Regulations

The *Governing Body* may delegate its responsibilities for management of purchasing transactions as follows:-

<i>Budget Holder or Headteacher</i>	Up to £3,000
<i>Headteacher</i>	All purchases over £3,000 to £30,000
<i>Finance Committee (or full Governing Body) and Headteacher</i>	All purchases over £30,000 to £75,000
<i>Full Governing Body and Headteacher</i>	All purchases over £75,000 to <i>EU Threshold</i>
<i>Multi-representative project team</i>	All purchases over <i>EU Threshold</i>

### 1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- Achieve *Best value* for money spent
- Be consistent with the highest standards of integrity
- Ensure fairness in allocating public contracts
- Comply with all legal requirements
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*

### 2. PURCHASER RESPONSIBILITIES

#### 2.1 Staff

2.1.1 All *Staff* responsible for purchasing (*Purchaser*) or disposal must comply with these Contract Regulations, *Financial Regulations*, *the Code of Conduct* and with all UK and European Union binding legal requirements.

2.1.2 The *Purchaser* should check whether a suitable, accessible, Public Sector Contract for example, *ESPO* or the *Office of Government Commerce (OGC)* contract is available for use before undergoing a competitive process.

2.1.3 The *Purchaser* must keep the records required by Regulation 6.

2.1.6 The *Purchaser* must also ensure that *Agents & Consultants* acting on their behalf

also comply.

- 2.1.7 The *Purchaser* must take all necessary legal, financial and professional advice.
- 2.1.8 When any employee either of the School or of a service provider may be affected by any transfer arrangement, the School must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal and HR advice before proceeding with inviting tenders or quotations.
- 2.1.9 **Contract Regulations must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for a particular contract.**

(For example, if Regulation 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally it may not always be appropriate to make use of an exemption under Regulation 3 even if one might apply or be granted.)

## 2.2 Headteacher

*Headteachers* must:

- 2.2.1 ensure that their staff comply with Regulation 2.1.
- 2.2.2 keep a **register** of,
- **contracts** completed by signature and arrange their **safekeeping** on School premises.
  - **exemptions** recorded under Regulation 3.

## 3. EXEMPTIONS

- 3.1 The *Governing Body* has the power to dispense with Contract Regulations where the usual competition requirements are not appropriate for a particular purchase. However, before doing so the *Governing Body* must ensure all members declare any personal, financial or any other conflict of interest in the purchase under consideration. No exemption can be used if the EU procedure applies.
- 3.1.1 Where a *Governor* declares such an interest, that *Governor* must withdraw from any discussions and not participate in any vote.
- Where the contract exceeds the EU Threshold, no exemption can be provided.**
- 3.2 All exemptions, and the reasons for them, must be recorded using the Dispensation from Normal Competition Form and signed by the *Headteacher* and Chair of Governors.
- 3.3 The *Governing Body* may authorise an exemption by direct negotiation with one or more suppliers where;
- 3.3.1 the subject matter of the contract can only be supplied by one **specialist** firm
- 3.3.2 an exemption is necessary because of an **unforeseen emergency** involving immediate risk to persons, property or serious disruption to *School* operations.
- 3.4 Where Regulation 3.3 does not apply the *Governing Body* should seek advice from the

Purchasing Advisory Service for Schools, but should also seek and consider, in good time, the written advice of the Head of Finance & Performance, OCYPS before approving an exemption. This would include when the *Governing Body* wishes to provide an **extension** to an existing contract where a change of supplier would cause:

- disproportionate technical difficulties
- diseconomies or
- significant disruption to the *School*.

- 3.5 All purchases from *ESPO* are deemed to comply with Contract Regulations and no exemption is required. However, purchases above the *EU Threshold* must be let under the *EU Procedure*, unless *ESPO* have satisfied this requirement already by letting their contract in accordance with the *EU Procedures*.
- 3.6 The Purchasing Advisory Service for Schools (PASS) must be consulted and an Exemption Form completed and signed prior to commencing any procurement process using Office of Government Commerce Buying Solutions Contracts (OGC). The Terms and conditions of Contract applicable to any OGC arrangement including the requirement to undertake competition between providers must be fully complied with.
- 3.7 Any exemptions granted for more than one year must be reviewed annually and either reconfirmed or amended.
- 3.8 In order to secure value for money the *School* may enter into **collaborative procurement arrangements**.
- 3.8.2 Any contracts entered into through collaboration with other Schools, Local Authorities or other public bodies, where a competitive process has been followed that complies with the Contract Regulations of the leading organisation (but does not necessarily comply with these Contract Regulations), will be deemed to comply with these Contract Regulations and no exemption is required. However, advice must be sought from The Purchasing Advisory Services for Schools (PASS).
- 3.9 Purchases made using Cambridgeshire County Council *corporate contracts* are deemed to comply.
- 3.10 Cambridgeshire County Council Departments who provide services to schools are exempt from Contract Regulations, as they are required to act in accordance with *Value for Money* regulations. However when using contractors recommended by a County Council Department schools should seek confirmation that the supplier was chosen following a competitive process compliant with *Contract Regulations*. If this has not been done then the school would have to undertake such an exercise itself.

#### 4. RELEVANT CONTRACTS

- 4.1 **All Relevant Contracts made by the School must comply with Contract Regulations.**
- 4.2 This means any arrangement under which the *School* pays or receives money or equivalent value but not a contract
- of employment making an individual a direct employee of the *School* or

- to convey or acquire an interest in land (land transactions).

It includes contracts for:

- the supply or disposal of goods
- hire, rental or *Lease* of goods
- execution of works
- services including (but not only) those related to
  - the recruitment of staff
  - land transactions
  - financial and consultancy services.

## Section 2 – Common Requirements

### 5. STEPS PRIOR TO PURCHASE

- 5.1 Before beginning a purchase, the *Purchaser* responsible for it must appraise the purchase and confirm certain matters set out in this Regulation 5.
- 5.2 The *Purchaser* **must** appraise the purchase by,
- challenging whether the purchase is both proper and necessary for the purposes of the *School* and consider how the purchase will meet the principles of *Value for money*;
  - appraising the need for the expenditure and its priority in meeting the *Schools* objectives;
  - carrying out all appropriate consultation;
  - assessing the risks associated with the purchase and how to manage them;
  - considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, sourcing through ESPO or collaboration with other purchasers;
  - selecting the most appropriate procurement method.
- 5.3 The *Purchaser* must set the appraisal out in writing if the Total Value exceeds £30,000. The Purchasing Appraisal Form in the School Forms Appendix can be used for this purpose and a copy must be retained in the school.
- 5.4 The *Purchasers* approach to the appraisal exercise must be proportionate to the complexity and value of the purchase.
- 5.5 *The Purchaser* shall ensure that where proposed contracts, irrespective of their *Total Value*, are likely to be of interest to potential *Candidates* located in other member states of the EU appropriate accessible advertising must take place. Generally, the greater the interest of the contract to such potential *Candidates* the wider should be the coverage of the advertisement which can be placed on the following;
- the County Council's website and/or;
  - portal websites specifically created for contract advertisements and/or;
  - National official journals and/or
  - the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED)  
[Even if there is no requirement within the *EU Procedure*]

## 6. RECORDS AND DEBRIEFING CANDIDATES

6.1 Where the *Total Value* is **less than £30,000**, the following documents must be kept:

- all invitations to quote and *Quotations*
- a written record
  - of any exemptions and reasons for it
  - of the reason if the lowest price is not accepted
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the *Total Value* **exceeds £30,000**, the *Purchaser* must record

- the method for obtaining bids (see Regulation 8.1)
- any *Contracting Decision* and the reasons for it
- any exemption under Regulation 3 together with the reasons for it
- the *Award Criteria* in descending order of importance
- tender documents sent to and received from *Candidates*
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- written records of communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.3 Written records required by this Regulation (6.2 above) must be kept for six years after the end of the contract. Documents, which relate to unsuccessful *Candidates* must be retained for 12 months and then may be destroyed, provided there is no dispute about the award.

6.4 *Candidates* must be notified simultaneously and as soon as possible of any *Contracting Decision*.

The notification must be in writing where the *Total Value* exceeds £30,000.

If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Purchaser* must give the reasons in writing within 15 days of the request (see further Regulation 15.3).

## 7. APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 *Approved Lists* may be used to select *Candidates* as an alternative to advertisement where the *Total Value* of a contract exceeds £75,000 (see Regulation 5.6 above). They may also be used to select *Candidates* where the *Total Value* is less. *Approved Lists* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procedure* applies.

7.2 *Schools* may draw up in consultation with the *Purchasing Advisory Service for Schools*:

7.2.1 *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms; and

7.2.2 Criteria for *Shortlisting* from the lists.

7.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.4 *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Regulation 7.3 are met.

7.5 The list and shortlisting criteria must be reviewed at least annually and re-advertised at least every three years. Review means

- the reassessment of the financial, technical ability and performance of those persons on the list unless such matters will be investigated each time bids are invited from that list, and
- the deletion of those persons no longer qualified, with a written record kept justifying the deletion.

**On re-advertisement, a copy of the advertisement must be sent to people on the list, inviting them to reapply.**

7.6 All *Approved Lists* shall be maintained in an open, fair and transparent manner and must be open to public inspection.

7.7 Lists maintained by Central Government under the New Qualification System (NQS) or any list maintained in substitution of the NQS will be deemed to be an *Approved List* for the purpose of these Contract Regulations and shall not be subject to the requirements of Regulation 7.2 and 7.6 inclusive.

### 7.8 Framework Agreements

7.8.1 The term of framework agreements should not exceed 4 years, except in cases duly justified by *Contracting Authorities*.

7.8.2 Where the framework agreement is concluded with several organisations, there must be at least 3 in number. Contracts based on framework agreements may be awarded either:

- By applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the framework agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure;
  - a) Inviting the organisations within the framework agreement who are capable of executing the subject of the contract to submit written\* tenders.
  - b) Fixing a time limit, which is sufficiently long, to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract.
  - c) Tenders shall be submitted in writing\*, and their content shall remain confidential until the stipulated time limit for reply has expired
  - d) Contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

**\* writing includes e-mail and fax**

## Section 3 – Conducting a Purchase and Disposal

### 8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The *Purchaser* must calculate the *Total Value*.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, *Purchasers* must seek the advice from the *Purchasing Advisory Service for Schools*:

#### 8.1 Purchasing – Competition Requirements

Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed.

*Shortlisting* shall be carried out by the persons specified in the third column.

Total Value	Award Procedure	Shortlisting
Up to £2,000	One oral <i>Quotation</i> (confirmed in writing where the <i>Total Value</i> exceeds £500)	Up to £3,000 <i>Budget Holder or Headteacher</i>
£2,000.01 - £30,000	Three written <i>Quotations</i>	Over £3,000 to £30,000 <i>Headteacher</i>
£30,000.01 - £75,000	<i>Invitation to Tender</i> to at least four <i>Candidates</i> . See Para 5.5 (page 9) regarding requirements for advertising. Any pre selected candidates must be approved by <i>The Chair of Governors</i> .	<i>Finance Committee</i> (or full <i>Governing Body</i> ) and <i>Headteacher</i>
£75,000.01 - EU Threshold	<i>Invitation to Tender by Advertisement/List</i> to at least four <i>Candidates</i> (See Para 5.5)	Full <i>Governing Body and Headteacher</i>
above EU threshold	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender by Advertisement/List</i> to at least six <i>Candidates</i>	Consult the <i>Head of Legal Services</i> – see Regulation 8.4

Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

- 8.2 All possible steps must be taken, as necessary, to obtain adequate competition and Value for Money.

8.3 If the *School* wishes to provide services to another *School* or third party, or engage in a partnership, it must consult the *Purchasing Advisory Service for Schools*.

8.4 A *Purchaser* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Regulations.

8.5 Where the *EU Procedure* is required the *Purchaser* shall consult the *Purchasing Advisory Service for Schools* and the *Head of Legal Services* to determine the method of conducting the purchase.

8.6 **Assets for disposal** must be sent to public auction except where better value for money is likely to be obtained by inviting *Quotations* and *Tenders*.

In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be determined as follows:-

<i>Total Value</i>	<i>Procedure</i>
Up to £100	one <i>Quotation</i>
£100.01 to £10,000	three written <i>Quotations</i>
£10,000.01 to £75,000	four written <i>Quotations</i>
£75,000.01 and above	<i>Invitation to Tender</i> to at least four <i>Candidates</i>

8.8 **Collaborative and partnership arrangements** are subject to all UK and EU Procurement legislation and should follow the usual principles in Contract Regulations. The advice of the *Head of Legal Services* and the *Purchasing Advisory Service for Schools* must be taken.

8.9 **The Appointment of Consultants to Provide Services**

The following procedure applies where in the opinion of the *Headteacher* because of the specialist nature of the services required, it is necessary to appoint a Consultant to provide the services to the *School*

This procedure does not apply when:-

- (a) the estimated *Total Value* of the services is equal to or exceeds the *EU Threshold* for the supply of services in which case the EU procurement procedure must be followed, or
- (b) when the services required may be obtained through *ESPO*.

8.9.1 If the *Headteacher* is of the opinion that in the interest of *Best Value* for the provision of the services it is necessary or expedient to secure the appointment of a Consultant to provide those services, they shall record that opinion in writing and authorise the *Purchaser* to submit *Invitations to Provide the Services* to at least 3 *Candidates* who may be

- (i) individuals or companies who are experienced in providing services of a similar type to the services required or

- (ii) agencies which provide Consultants with experience in providing services of a similar type to those required.

8.9.2 The Invitation to Provide Services must include:-

- (a) a specification for the services;
- (b) a questionnaire seeking details of the *Candidate's* experience in providing similar services;
- (c) a medical questionnaire;
- (d) the *Schools* standard contractual terms (for individuals, companies or agencies) on which it is intended to appoint the Consultant to provide the services; and
- (e) the *Award Criteria*.

8.9.3 If the *Headteacher* is of the opinion that the nature of the services required is so specialist that fewer than 3 *Candidates* would be able to provide the services they must record in writing the reason why the services are so specialist and, subject to the approval of the *Chair of Governors*, may send the Invitation to Provide the Services to 2 *Candidates* only.

8.9.4 Responses to the Invitation to Provide the Services shall be submitted to the *School* by the appointed time and shall be opened by the *Headteacher* and a representative of the *Chair of Governors*. The responses shall be evaluated in accordance with the *Award Criteria* to ascertain which response is most economically advantageous.

8.9.5 Prior to appointing the chosen Consultant to provide the services the *Headteacher* shall ensure that

- (a) 2 satisfactory references have been obtained;
- (b) a bankruptcy search has been undertaken against the name of the Consultant with a satisfactory result;
- (c) the Council's Medical Officer is satisfied of the Consultants medical fitness to provide the services.

## 9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 The *Purchaser* responsible for the purchase

- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters **provided** this does not prejudice any potential *Candidate*, but
- must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort

competition, and

- should seek advice from the *Purchasing Advisory Service for Schools*.

## 10. STANDARDS AND AWARD CRITERIA

10.1 The *Purchaser* must ascertain what are the relevant British, European or International **standards** which apply to the subject matter of the contract. The *Purchaser* must include those standards which are necessary to properly describe the required quality. The *Head of Legal Services* must be consulted if the *Purchaser* proposes to use standards other than European standards.

10.2 The *Purchaser* must define **Award Criteria** appropriate to the purchase. *Award Criteria* must be designed to secure an outcome giving Value for Money for the School. The basic criterion shall be:

- "lowest price" where payment is to be made by the School
- "highest price" if payment is to be received, or
- "most economically advantageous" offer (where considerations other than price also apply).

If the last criterion is adopted, it must be further defined by reference to sub-criteria.

Sub-criteria may refer only to relevant considerations. These may include;

- price,
- service,
- quality of goods,
- running costs,
- technical merit,
- previous experience,
- delivery date,
- cost effectiveness,
- relevant environmental considerations,
- aesthetic and functional characteristics (including security and control features),
- safety,
- after-sales services,
- technical assistance
- any other relevant matters.

10.3 *Award Criteria* must not include:

- *Non-Commercial Considerations*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

## 11. INVITATIONS TO TENDER/ QUOTATIONS

11.1 The *Invitation to Tender* or *Quotation* must include a specification. The specification must describe clearly the Schools requirements in sufficient detail to enable the submission of competitive offers.

In preparing specifications the *Purchaser* must have regard to any guidance in the *Schools Purchasing Handbook*.

11.2 The *Invitation to Tender* or *Quotation* must state that the School is not bound to accept any *Quotation* or *Tender*.

11.3 Except where the *Open Procedure* applies, all *Candidates* invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.4 The *Invitation to Tender* must specify the *Award Procedure* and forbid submission of *Tenders* by fax.

11.5 Where any prior advertisement has not defined the *Award Criteria*, *Invitations to Tender* must state the *Award Criteria* in objective terms and if possible in descending order of importance.

11.6 The *Invitation to Tender* must include a form of tender, tendering certificate and instructions to tenderers using appropriate paragraphs from the *Schools Purchasing Handbook*.

11.7 The *Invitation to Tender* should normally include the contract terms (see Regulation 16).

## 12. SHORTLISTING

12.1 Where *Approved Lists* are used, *Shortlisting* may be done by the *Purchaser* in accordance with shortlisting criteria drawn up when the *Approved List* was compiled (see Regulation 7).

However, where the *EU Procedure* applies, *Approved Lists* may not be used in this way (see the guidance in the *Schools Purchasing Handbook*).

12.2 Any *Shortlisting* must have regard to financial and technical standards relevant to the contract and may have regard to *Award Criteria*.

Special rules apply in respect of the *EU Procedure* (see guidance in the *Schools Purchasing Handbook*).

12.3 Purchasers may decide not to *Shortlist* but to send *Invitations to Tender* and to evaluate all possible *Candidates*.

The Purchasers responsible for *Shortlisting* are specified in Regulation 8.1.

### 13. SUBMISSION, RECEIPT AND OPENING OF TENDERS

#### 13.1 Period for *Candidates'* response:

*Candidates* invited to respond must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the urgency of the contract requirement. Normally at least **four weeks** should be allowed for submission of *Tenders*.

The *EU Procedure* lays down specific time periods (see guidance in the *Schools Purchasing Handbook*).

- 13.2 Where a tender has been received which is an *Irregular Tender* in that it does not fully comply with the instructions given in the *Invitation to Tenderers* because it is received after the appointed time for receipt or contains a mark of identification, the *Purchaser* shall, prior to opening any of the tenders, submit a report to the Chair of Governors giving details of the *Irregular Tender*. If, having considered that report, the Chair of Governors considers that the tenderer who submitted the *Irregular Tender* has gained no advantage from its irregularity he may determine to accept the *Irregular Tender* and authorise that it be opened and evaluated together with any other tenders in accordance with this Regulation 13. The Chair of Governors shall record in writing the reasons why each *Irregular Tender* has been accepted or rejected and sign and date the record.
- 13.3 Tenders received solely by e-mail must be rejected.
- 13.4 All Tenders must be returned to the *Governing Body*, which is responsible for the safekeeping of *Tenders* until the opening.
- 13.5 The *Purchaser* must not disclose the names of *Candidates* to any person involved in the receipt, custody or opening of Tenders.
- 13.6 *Tenders* by fax must be rejected.
- 13.7 The *Governing Body* shall be responsible for the safekeeping of *Tenders* until opening. Receipt of each *Tender* must be:
- date-stamped
  - initialled by the receiving Staff
  - logged immediately upon receipt in the *Tender Record Book*.
- 13.9 The *Governing Body* must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. The *Purchaser* or his representative must be present. *Tenders* must be opened in the presence of two people representing the *Governing Body* neither of whom can be the *Purchaser*. Where the *Total Value* is more than the *EU threshold* one must be the *Chair of Governors*.
- 13.10 Upon opening, a summary of the main terms of each *Tender* must be recorded in the *Tender Record Book*. The summary must be initialled on behalf of the *Governing Body*.
- 13.11 If there appears to be an error in a bid or supporting information, the *Candidate* must be invited to confirm or withdraw the bid. Where the error relates to the tender total as calculated from tendered rates and variable quantities, the bid will be regarded as the

tender total bid and the rate adjusted accordingly. The tenderer will be invited to confirm or withdraw the bid and resulting rate.

#### 14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

14.1 **Providing clarification** of an Invitation to Tender to potential or actual *Candidates* or seeking **clarification** of a *Tender* whether in writing or by way of a meeting is permitted.

However, the *Head of Legal Services* and the *Purchasing Advisory Service for Schools* must be consulted.

14.2 **Post-tender negotiation** means negotiations with any tenderer after submission of a *Tender* and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. It must not be conducted in an *EU Procedure* where this might distort competition particularly with regard to price.

Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

14.3 Only the following *Invitations to Tender* may include provision for post tender negotiations:

- Procurement exercises involving the purchase of **software**. (See the guidance notes in the *Schools Purchasing Handbook*.)
- The purchase of application software may occur separately from a hardware purchase. If appropriate, post-tender negotiation may be conducted also in respect of the related hardware purchase.
- For any supply of any goods or services where the leading bid is above budget, **price reduction measures** are necessary and the *Tender* cannot be clarified readily to produce a reduced price.

#### 14.4 Procedure

14.4.1 Post-tender negotiation must only be conducted in accordance with the guidance in the *Schools Purchasing Handbook*.

14.4.2 Do not plan or undertake any post-tender negotiations without prior consultation with the *Purchasing Advisory Service for Schools* who must be consulted.

14.4.3 A team of at least two people, normally the *Headteacher* and one of the *Governors* must conduct negotiations.

#### 15. EVALUATION AND AWARD OF CONTRACT

15.1 Apart from the debriefing required or permitted by this Regulation:

- **confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times**
- information about one *Candidate's* response must not be given to another *Candidate*.

15.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria*.

- 15.3 Where the Total Contract Value is over £30,000, the Purchaser must inform all *Candidates* of their Intention to Award the contract to the successful *Candidate*. The Purchaser must allow a period of not less than 10 days after announcing their Intention to Award to provide unsuccessful *Candidates* with a period in which to challenge the decision before the Purchaser awards the contract. If the decision is challenged by an unsuccessful *Candidate* then the *Purchaser* shall not award the contract and shall immediately seek the advice of the *Head of Legal Services* and inform the *Purchasing Advisory Service for Schools*.
- 15.4 The *Purchaser* shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. This should normally include:
- how the award criteria were applied;
  - the prices or range of prices submitted, in either case not correlated to *Candidates'* names; and
  - the names of *Candidates* where there were three or more *Candidates*.
- No other information should be given without taking the advice of the *Purchasing Advisory Service for Schools*
- 15.5 If requested, the *Purchaser* may also give the debriefing information required by Regulation 15.3 to *Candidates* who were deselected in a pre-tender shortlisting process.

## Section 4 – Contract and Other Formalities

### 16. CONTRACT DOCUMENTS

16.1 *Every Relevant Contract* must be recorded in writing or through an order placed using a *School's* financial system or a *Purchase Card* as appropriate for its value, and must state clearly:

- what is to be supplied (description and quality)
- payment provisions (amount and timing)

*Every Relevant Contract* over £2,000 must state clearly

- when the School will have the right to terminate the contract
- that the contract is subject to the law as to prevention of corruption (Regulation 18).

The *Schools* Order Form or standard terms and conditions must be used where possible.

16.2 *Every Relevant Contract* over £30,000 must state clearly:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- ombudsman requirements
- data protection requirements if relevant
- that charter standards are to be met if relevant
- race relations requirements
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- where agents are used to let contracts they must comply with the *Schools* Contract Regulations
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

16.3 The advice of the *Head of Legal Services* must be sought for the following contracts:

- those involving *Lease* arrangements
- where it is proposed to use the supplier's own terms
- where the *Total Value* exceeds £75,000
- those involving the purchase of application software with a *Total Value* of more than £30,000

- those which are complex in any other way

#### 16.4 CONTRACT FORMALITIES

16.4.1 Agreements shall be completed as follows:

<b>Total Value</b>	<b>Method of Completion</b>	<b>By</b>
Up to £3,000	Signature	<i>Budget Holder or Headteacher</i>
£3,001 to £30,000	Signature	<i>Headteacher</i>
£30,001 to £75,000	Signature	<i>Chair of Governing Body or Finance Committee</i>
Above £75,000	Either by affixing a <i>seal</i> and a signature, or by signing as a <i>deed</i> .	Chair of Governing Body

**All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Deputy Chief Executive*. An award letter is insufficient.**

#### 16.4.2 Signature

The *Purchaser* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

#### 16.4.3 Sealing

Where contracts are completed by each side adding their formal *Seal*, this will be carried out in accordance with the *Governing Body's* procedures, and the fixing of the *Governing Body's Seal* must be witnessed by or on behalf of the Chair of the *Governing Body*.

16.4.4 If a *Governing Body* resolves not to adopt a *seal*, it may still enter into contracts over £75,000 as a *Deed*.

### 17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The *Governing Body* must consult the Head of Finance & Performance (OCYPS):

- When a *Candidate* is a subsidiary of a parent company, the *Governing Body* does not think a *Parent Company Guarantee* is necessary and any of the following conditions are satisfied:
  - the total value exceeds £30,000, or
  - award is based on evaluation of the parent company, or
  - there is some concern about the financial stability of the *Candidate*; and

- about whether a *Bond* is needed
- where the *Total Value* exceeds £500,000, or
- where it is proposed to make staged or other payments in advance of receiving the whole of the subject matter of the contract.

## 18. PREVENTION OF CORRUPTION

- 18.1
- The *Purchaser* must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract.
  - It will be for the *Purchaser* to prove that anything received was not received corruptly.
  - High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Regulation 18.2.

18.2 The following clause must be put in every written School contract:

"The School may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other School contract (even if the Contractor does not know what has been done); or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other School contract whether alone or in conjunction with Staff members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause".

18.3 Register of Business Interests

The *Governing Body* must maintain a register that lists for each member of the *Governing Body*, the *Headteacher* and any members of staff who may be involved in making purchasing decisions on behalf of the school, any business interests they or any member of their immediate family may have. The register must be kept up to date with changes and an annual review of the entries carried out.

The register must be available for inspection by Governors, staff, parents and the *LA*.

18.4 Hospitality and Gifts

18.4.1 It is important that there is no possibility of offers of hospitality being interpreted as bribes or inducements. Therefore, offers of hospitality where any suggestion

of improper motive is possible must not be accepted without the prior approval of the Chair of the Governing Body.

18.4.2 Staff or Governors must not accept without prior approval, unreasonable or undue hospitality, e.g.

- Tickets for (or payment for) the theatre, sporting events or any other entertainment;
- Holiday accommodation; or
- Payment for travel, and/or overnight accommodation to attend a meeting, unless approval is given by the Chair of Governors. (The school will have a reimbursement scheme to cover these expenses.)

18.4.3 Staff or Governors may accept reasonable hospitality whilst they are working, e.g. a cup of tea or coffee, or other light refreshment when visiting sites, offices or people's homes. A working lunch of a modest standard is also acceptable if it allows those present to continue to discuss business.

18.4.4 Staff and Governors should be made aware of the difference between attending in their official capacity at a function organised by a public authority and accepting hospitality from a private individual or organisation who stands to benefit financially from the School. For example:

- if the invitation comes from an organisation likely to benefit from the goodwill of the School, then the offer must be declined;
- if the invitation comes from an organisation not likely to benefit from the goodwill of the School, then the offer may be accepted;
- If a visit is instructive, e.g. a demonstration of new equipment, it may be accepted; and
- If a visit is for social purposes only it must be declined.

18.5 Staff and Governors may attend relevant conferences and courses where:

- It is clear that the hospitality is corporate rather than personal; and
- the School has given prior authorisation; and
- the School is satisfied that purchasing/contracting decisions cannot be compromised.

18.6 Whether accepted or declined, all offers of hospitality must be declared so that the details can be noted in the appropriate register

## Section 5 – Contract Management

### 19. Managing Contracts

- 19.1 The *Headteacher* must name Contract Managers for all new contracts. All Contracts must have a named Contract Manager for the entirety of the contract.
- 19.2 Contract Managers must follow the procedures set out in the *Schools Purchasing Handbook*.

### 20. Risk Assessment & Contingency Planning

- 20.1 A Business case should be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 20.2 For all contracts with a value of over £30,000, Contract Managers must:
- maintain a risk register during the Contract period and,
  - undertake appropriate risk assessments and,
  - for identified risks, ensure contingency measures are in place.
  - ensure critical support and maintenance arrangements are documented in the Specification in order to avoid costly post-tender negotiation.

### 21. Contract Monitoring, Evaluation and Review

- 21.1 All contracts which have a value higher than the EU Threshold limits, or which are *high-risk*, are to be subject to regular formal review with the contractor.
- 21.2 During the life of the contract the *Purchaser* must monitor it in respect of
- performance
  - compliance with specification and contract
  - cost
  - any value for money requirements
  - user satisfaction and risk management
- and in accordance with any guidance in the *Schools Purchasing Handbook*.
- 21.3 Where the *Total Value* of the contract exceeds £30,000, the *Purchaser* must make a written report evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Regulation 5) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to the reletting of the subsequent contract.

## Section 6: General

### 22. TECHNICAL AMENDMENTS

- 22.1 The Director of Planning & Development, OCYPS shall have the power to make amendments from time to time to these Contract Regulations after consultation with the *Chief Finance Officer*.

## Definitions Appendix

"Agent"	Person or organisation acting on behalf of the School or on behalf of another organisation.
"Approved Lists"	Approved Lists are a tool for streamlining the procurement process and bypass the need for the pre-tender questionnaire, as this information will already be available. This means that the school can then go straight to the quotation/invitation to tender phase of the procurement process. An approved list is not a short cut around contract regulations. The procurement must go through the quotation or tender process unless an exemption has been made in line with section 3 of these regulations. (N.B. There are no County Council approved lists)
"Award Criteria"	The criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected (see further Regulation 10 and 11.5).
"Award Procedure"	The procedure for awarding a contract as specified in Regulation 8.
"Best Value"	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by <i>Value for Money</i>
"Bond"	An insurance policy: if the contractor does not do what it has promised under a contract with the School, the School can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the School against a level of cost arising from the contractor's failure.
"Budget Holder"	The person to whom the <i>Governing Body</i> has delegated budget responsibility
"Cabinet"	The Council's Cabinet as defined in the <i>Constitution</i> .
"Candidate"	Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> .
"Code of Conduct"	The code regulating conduct of Council employees issued by the Deputy Chief Executive – Corporate Services
"Constitution"	The constitutional document approved by the Council which: <ul style="list-style-type: none"><li>• allocates powers and responsibility within the Council and between it and others</li><li>• delegates authority to act to the <i>Cabinet</i>, Committees, Portfolio</li></ul>

Holders and officers;

- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

"Consultant"

Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the School has no ready access to employees with the skills, experience or capacity to undertake the work.

"Contracting Authority"

The organisation who is letting the contract in question.

"Contracting Decision"

Any of the following decisions:

- composition of *Approved Lists*
- withdrawal of *Invitation to Tender*
- whom to invite to submit a *Quotation* or *Tender*
- *Shortlisting*
- award of contract
- any decision to terminate a contract.

"Corporate Contract"

A contract let by the Council to support the Council's aim of achieving Value for Money. Such contracts are awarded following a competitive process and offer best value for money.

"Council"

For the purposes for these Regulations, "Council" refers to Cambridgeshire County Council (CCC).

"Deed"

A deed is a written document, which is signed by both parties and each signature is witnessed by a third party. The document must make it clear on its face that it is intended to be a deed and it is usual that if the party has a seal, this is also attached to the document.

A requirement that a contract be made by deed is usually for one of three reasons:

- The school may wish to enforce the contract more than six years after its end which it would not be able to do in respect of a contract not signed as a deed;
- For a contract, to be valid, both parties must make undertakings, e.g. one party states that it will supply services whereas the other promises to pay for them. This is called the contract "consideration". However, if a contract is entered into under seal, there does not have to be valid consideration and therefore a unilateral contract, such as a one-sided promise can still be legally enforced; or
- There is doubt as to whether the person who is purporting to represent a company or other organization and to have the necessary permission to enter into the agreement actually has that

authority and consent.

"ESPO"	The Eastern Shires' Purchasing Organisation.
"ESPO Contract"	A contract let by ESPO on behalf of the Council to support the aim of achieving Value for Money. See also " <i>Framework Agreement</i> "
"EU Procedure"	The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> (see the <i>Schools Purchasing Handbook</i> ).
"EU Threshold"	The contract value at which the EU public procurement directives must be applied (see the <i>Schools Purchasing Handbook</i> for current values).
"European Economic Area"	The members of the European Union plus Norway, Iceland and Liechtenstein.
"Finance Committee"	The sub-committee of the school's <i>Governing Body</i> with specific delegated responsibility for financial matters.
"Financial Regulations"	The financial regulations outlining Schools responsibilities for financial matters issued by the County Council.
"Framework Agreement"	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
"Governing Body"	The school's <i>Governing Body</i>
"Governor"	A member of the <i>Governing Body</i> .
"Government Procurement Agreement"	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
"Head of Legal Services"	As identified in the County Council's <i>Constitution</i> .
"High Profile"	A high-profile purchase is one which could have an impact on functions integral to School service delivery should it fail or go wrong.
"High Risk"	High-risk purchases are those that present the potential for substantial exposure on the Schools part should they fail or go wrong.
"High Value"	A high-value purchase is one where the value is greater than that if the EU

"Invitation to Tender"	Threshold values. Invitation to tender documents in the form required by Contract Regulations.
"Invitation to Tender by Advertisement/List"	An <i>Invitation to Tender</i> sent to <i>Candidates</i> shortlisted from among either <ul style="list-style-type: none"><li>those responding to advertisement of the contract inviting proposals placed in such publications as shall secure widest publicity among relevant suppliers; or</li><li>those included on an <i>Approved List</i> in respect of the type of purchase which is the subject of the <i>Invitation to Tender</i>.</li></ul>
"Irregular Tender"	An <i>Irregular Tender</i> is a Tender, which is received after the appointed time for receipt or contains a mark of identification.
"LA"	Local Authority, in this case Cambridgeshire County Council
"Lease"	A <i>Lease</i> is an arrangement whereby payment is spread or deferred over a fixed period of time these normally relate to one of the following <p style="text-align: center;"><u>Operating Lease</u></p> Schools should normally only enter into an "Operating Lease" which can be identified as follows <ul style="list-style-type: none"><li>It is for up to 90% of the cost of the equipment &amp;</li><li>Ownership of the equipment does not automatically pass on to the school at the end of the lease period</li></ul> <p style="text-align: center;"><u>Finance Lease</u></p> A "Finance Lease" is considered to be a form of borrowing money and under Schedule 1 of the Education Act 2002 can only be entered into with the written consent of the Secretary for State. The identifying factors of a "Finance Lease" are <ul style="list-style-type: none"><li>The money loaned covers the full, fair, value of the equipment and</li><li>Ownership automatically passes to the school on completion of the lease</li></ul>
"Nominated Suppliers and Sub-contractors"	Those persons specified in a main contract for the discharge of any part of that contract.
"Non-Commercial Considerations":	Except as provided below, the following matters are non-commercial considerations: <ul style="list-style-type: none"><li>(a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ("<i>Workforce matters</i>");</li><li>(b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals,</li></ul>

- contracts for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
  - (d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons
  - (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;
  - (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
  - (g) financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;
  - (h) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined above in paragraphs (a) and (d) of this definition, cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 ("TUPE") may apply.

"OCYPS"	Office of Children and Young People's Services – The Office of the County Council responsible for schools and education.
"OGC"	Office of Government Commerce – also known as "ogc buying solutions" – a central government purchasing consortium.
"Open Procedure"	All <i>Candidates</i> are invited to bid in response to advertisement.
"Parent Company Guarantee"	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the School, they can require the parent company to do so instead.
"Priority Services"	Those services required to be tendered as defined in the EU public procurement directives.
"Public Sale"	A sale open to members of the public, School or Council staff, conducted in person, by internal or public notice or by any other appropriate means.
"Purchaser"	The person to whom the purchasing responsibility is delegated under Contract Regulation 2.1.
"Purchasin	A service provided by Cambridgeshire County Council to advise schools

<i>g Advisory Service for Schools</i>	on all purchasing matters.
"Quotation"	A quotation of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i> ).
"Relevant Contract"	Contracts to which these Contract Regulations apply (see Regulation 4).
"Scheme of Financial Management for Schools"	The Scheme of Financial Management for Schools issued by the Director of Planning & Development, OCYPS on behalf of the <i>Chief Finance Officer</i> .
"School"	A school maintained by Cambridgeshire County Council namely community, foundation, voluntary aided and voluntary controlled schools within the Council's area.
"Schools Purchasing Handbook"	The guidance published on the Purchasing Advisory Service for Schools website on the Cambridgeshire Education Portal.
"Seal"	A seal is confirmation that the signatory is an official of the organisation and is empowered to sign such a document. It also confirms that the contract is between the two organisations who have both approached the business with serious intent. Seals have historical significance, they were used if people could not write, or to confirm that they were acting in an official capacity. Nowadays they are more symbolic, signifying seriousness of intent and a ceremonial conclusion of the tendering process.
"Shortlisting"	Where <i>Candidates</i> are selected: <ul style="list-style-type: none"><li>• to quote or bid or</li><li>• to proceed to final evaluation.</li></ul>
"Staff"	The member of staff designated by the <i>Head Teacher</i> to deal with the contract in question.
"Tender"	A <i>Candidate's</i> proposal submitted in response to an <i>Invitation to Tender</i> .
"Tender Record Book"	The log kept by the <i>School</i> to record details of <i>Tenders</i>

*"Total Value"*

- the whole of the value **or estimated** value (in money or equivalent value) for a single purchase or disposal
- whether or not it comprises several lots or stages
- to be paid or received by the School.

The *Total Value* shall be calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration by multiplying the monthly payment by 48;
- (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- (e) for nominated suppliers and sub-contractors: the *Total Value* shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

*"TUPE – Transfer of Undertakings (Protection of Employment)"*

TUPE refers to the Transfer of Undertaking (Protection of Employment) Regulations, 1981. These regulations were introduced to ensure the protection of employees when, for example, a service or business is taken over by another organisation (such as the provision of a schools catering service). Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

**Schools MUST seek Legal, HR & Pension Service advice in all matters relating to TUPE**

*"Value for Money"*

Value for Money (VfM) is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

*"Workforce Matters"*

*Schools* cannot focus on matters classed as 'non-commercial' considerations as part of the contractual process. However, the restrictiveness of the original definitions was considered too great, and so from 2001 authorities may consider the following matters to the extent that they are relevant to the delivery of best value or for the purposes of a TUPE transfer.

- the terms and conditions of employment by suppliers of their workers or the composition of, the arrangements for the promotion, transfer or training of or other opportunities afforded to, their workforces (Section 17(5)(a) Local Government Act 1988)
- the conduct of suppliers or workers in industrial disputes between them (Section 17(5)(d) Local Government Act 1988).

Restrictions on other non-commercial considerations listed in Section 17 of the Local Government Act 1988 remain in place.

## Appendix 1. SCHOOL PURCHASING APPRAISAL FORM

### REQUIREMENT UNDER CONTRACT REGULATION 3.2

**A Purchasing Appraisal form must be completed before commencing any purchase where the total value is over £30,000.**

Type/Description of Purchase

Contract length if more than one year

Estimated Total Value

Reason for purchase

Identified priority in School Development Plan

Consultation

Detail risks and any action needed to manage them

Purchase Option

ESPO     Quote     Short ITT     Full ITT     Other (please detail)

Signed ..... Date .....

Headteacher/Chair of Governing Body

A copy of this form must be retained in the school.

**Commented [GFU1]:** This form should be used to appraise the need for the expenditure and its priority (the appraisal must be in writing if the total value of the purchase exceeds £15,000 - See [SO.4](#).)

**Commented [GFU2]:** The whole of the value or estimated value (in money or equivalent value) for a single purchase, whether or not it comprises several lots or stages and/or to be paid or received by the Council or a Discrete Operational Unit within the Council.

The Total Value shall be calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration by multiplying the monthly payment by 48;
- (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- (e) for Nominated Suppliers and Sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.
- (f)

**Commented [GFU3]:** Consultation may include: consulting existing users of these products or services, including other schools; talking to trade associations and local chambers of commerce; attending trade fairs; consulting on-line databases; internet searches, eg supplier web pages; consultant advice; consulting trade journals and directories. Consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring.

Access to accurate and relevant commercial intelligence and knowledge of the marketplace is necessary in deciding which option is best for your purchase. You may need to research and understand the relevant market. However, care must be taken to ensure this does not distort competition or prejudice any bidder or potential bidder.

Possible market research tools might include:

- consulting existing users of these products or services, including other schools
- talking to trade associations and local chambers of commerce
- attending trade fairs
- consulting on-line databases
- internet searches, eg supplier web pages
- consultant advice

... [1]

**Commented [GFU4]:** Assess the risks inherent in the purchase and determine the appropriate risk management strategy. What risks are associated with the purchase and any implementation?

**Commented [GFU5]:** Which procedure in [Standing Orders](#) applies. If an Invitation to Tender is applicable, check the Schools Purchasing Handbook to select the most appropriate tender document.

**Commented [GFU6]:** This may include joint purchasing with one or more schools, purchasing from a consortium (please check that you are able to do so first) or purchasing from a corporate contract.

**Commented [GFU7]:** You must have authority to let contracts (including to satisfy Financial Regulations).

**Appendix 2. SCHOOL FILE RECORD DISPENSATION FROM NORMAL COMPETITION REQUIREMENTS UNDER CONTRACT REGULATION 3**

- COMPLETION NOT NEEDED FOR ESPO PURCHASES (see Contract Regulation 3.5)
- DISPENSATION NOT AVAILABLE FOR EU TENDERS
- COMPLETE IN DUPLICATE
- LA Action: RETURN AUTHORISED COPIES TO ORIGINATOR & CHAIR OF FINANCE CTEE

**Contract Description**

**Commented [GfU8]:** Please give a description of the purchase

**Contract Value** (**Total Value** - see Definitions Appendix to Contract Regs)

**Contract duration**

**Contract Regulations Exemption (please circle)**

Regulation 3.2  
(Standard Exemption)

Regulation 3.4  
(OCYPS written advice needed)

**Reason for Dispensation**

**Commented [GfU9]:** Please describe why an exemption is necessary.

**List of documents attached**

**Commented [GfU10]:** You may attach any papers, reports etc which may support your request.

**Request By:**

Headteacher Signature: ..... Date: .....  
School: ..... Date: .....

**Seen by:**

Head of Finance & Performance (OCYPS) Date: .....  
Signature: .....  
*(on the basis of the information and explanations provided)*

**Conclusion** \*Not supported/Supported

Written advice

**Any governor having a personal or financial or other conflict of interest withdrew from the discussion and did not vote**

\*Yes / No / N/A (please circle and if yes provide details)

Governing Bodies decision to exempt dated: .....

Chair of Governors signature: .....

Note: If the signatures required are not given the exemption may not be granted.

Please note that signatures must be those of the officer stated and must not be completed on their behalf.



Consultation may include: consulting existing users of these products or services, including other schools; talking to trade associations and local chambers of commerce; attending trade fairs; consulting on-line databases; internet searches, eg supplier web pages; consultant advice; consulting trade journals and directories. Consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring.

Access to accurate and relevant commercial intelligence and knowledge of the marketplace is necessary in deciding which option is best for your purchase. You may need to research and understand the relevant market. However, care must be taken to ensure this does not distort competition or prejudice any bidder or potential bidder.

Possible market research tools might include:

- consulting existing users of these products or services, including other schools
- talking to trade associations and local chambers of commerce
- attending trade fairs
- consulting on-line databases
- internet searches, eg supplier web pages
- consultant advice
- consulting trade journals and directories.

Any direct contact with suppliers must be handled carefully. Suppliers must understand that all contracts are subjected to competition. To demonstrate that all suppliers are treated equally, any questions received and information provided should be carefully recorded. If holding any meetings or seminars for consultation, ensure that they are minuted and circulated to all interested parties.

Any significant investigation should be done within the formal competition process (eg Invitation to Tender). Market research activity must not pre-empt that process.