



Procurement Manual for Schools

Hackney Education

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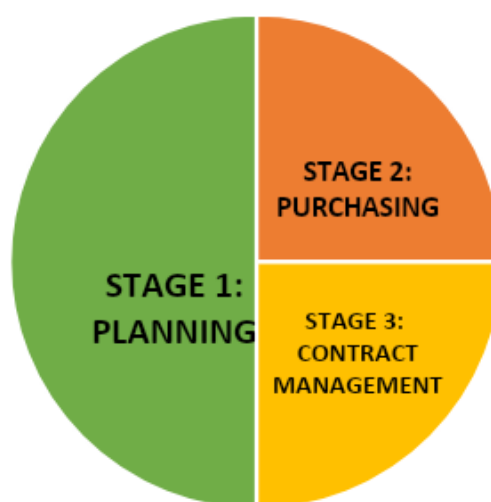
Introduction

The purpose of this manual is to provide the reader with a detailed overview of how to achieve best value and execute a transparent procurement process when purchasing goods or services.

The manual is designed in a way that splits the decision-making process into three stages:

- I. Planning;
- II. Purchasing; and
- III. Contract management.

Stages of the buying process



The resources required to carry out procurement will depend on the value and complexity of the goods / services/ works you are buying. As illustrated in the diagram above, planning is the most important stage - the more time and effort you invest at this stage, the more efficient and effective the next two stages will be.

As public bodies, schools are responsible for how they manage public money and must be mindful of fairness and transparency principles to ensure compliance with EU procurement laws (these laws are written into UK law, specifically the [Public Contract Regulations 2015](#)). Schools need to protect themselves from the possibility of legal challenges and potential damage to their reputation.

Decision-makers in schools should be familiar with procurement processes approved by school governors. They should ensure that purchases are compliant with processes and procedures in place at their school.

Stage One: Planning – how to decide what to buy

Organisations can often make the mistake of assuming that best value is about buying goods or services at the cheapest price – this is not the case. Best value is mainly concerned with allocating the right amount of resources to the right activities which maximise the achievement of your objectives.

The basic rule in finance is that there are never sufficient financial resources to invest in everything that organisations want to do. Therefore, organisations need to decide the best investments to make, within available resources.

The budget approved by school governors should be driven by the School Development Plan (SDP) and should include both new initiatives highlighted in the SDP as well as routine purchases necessary for the running of the school. The budgeting process is extremely important and schools should use their budget planning software tool to facilitate effective decision making in relation to budget planning and setting. If this process works well, schools should be able to split purchases into two types:

- I. New investments to secure improvements to the schools' performance as identified in the SDP; and
- II. Routine purchases which are in the school's existing cost base budget but not necessarily in the SDP.

When school leaders were developing the SDP and the budget they should have given a good level of consideration to resources available and affordability.

New investments

School leaders should have considered the best activities and initiatives to invest in to improve performance in targeted areas. For example, if maths attainment is an area identified as in need of improvement, school leaders should have given careful consideration to what the best initiative to address this is. It could be investing in equipment/applications for children and young people to take home or investing in additional tuition after school. If the tuition option is taken, school leaders would have thought about whether or not this is best achieved through engaging a third-party company or if it is better to recruit additional teaching capacity directly.

So one can assume that, if the SDP has been properly designed, then the activities identified have gone through sufficient thought processes to suggest they are the right activities.

Routine purchases

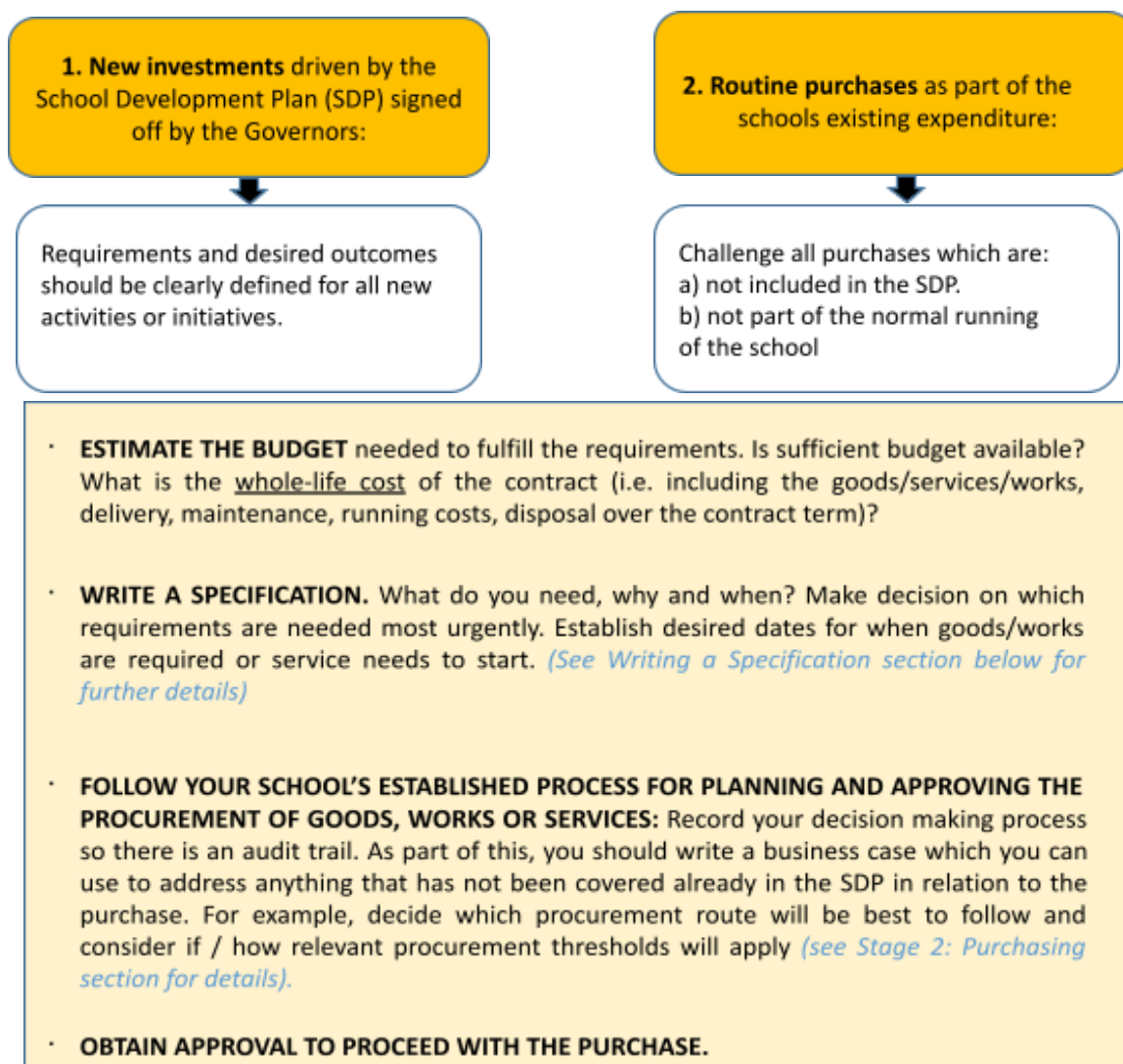
There are routine purchases that are necessary for the running of the school which governors may not have spent much time thinking about. For example, cleaning or food and drink provision needed for school meals. For these items of expenditure the executive leaders of the school (head teacher, deputy, department heads, business manager etc.) should consider the structure and design of these services and whether

or not those services are critical for the running of the school. Once agreed, schools should note when these purchases/supplies need to be re-tendered and ensure that they are periodically reviewed throughout the contract.

Schools should not get into the habit of making purchases simply because they made a similar purchase in the past. For essential expenditure such as cleaning – suppliers should be periodically reviewed and the services tendered to ensure schools are getting the best possible rates and service levels. You should also consider joining other schools to increase your purchasing power. For non-essential services, such as contractors who provide schools with after-school services, schools should be regularly assessing impact to decide whether or not this should continue. The default position should be to discontinue unless there is a good enough reason to continue – that reason normally being significant positive impact and affordability.

NB: Contracts must have a defined start and end date. Rolling contracts should not be used as they could put you in breach of EU procurement regulations or tie you in for longer than you intended. Refer to the **ROLLING CONTRACTS** section for more detail.

Planning your procurement process



Writing a specification

A specification should be written clearly so suppliers understand exactly what your school needs to buy, including the quality and delivery date.

This ensures that your school receives the right standard and scope of product or service. The specification should be included as an appendix to the terms and conditions to form part of the legal agreement with the supplier.

The length of your specification will vary depending on what you're buying. For example, requirements for stationery are likely to be very short, while requirements for an ICT system are likely to involve a significant amount of technical detail. Consider whether you need external expert help to develop your specification and/or run the procurement process.

Once schools decide what to buy they need to document a specification outlining the detail behind their requirements. To use the example where school leaders decided to recruit additional tuition capacity, they might consider: what type of maths tuition they want to instruct the supplier to provide; when they want the supplier to provide it; how many students it will be provided to, venue etc.

A specification should include:

- a precise description of the goods, works or services you need.
- the quality, quantity, timescales, delivery requirements, and any relevant information about end use.
- if appropriate, an explanation of what the goods/works/services should do to meet your needs (sometimes known as an 'output specification'). Leave it to the supplier to decide **how** to provide the product or service – just ensure you specify what you **want the outcome** of the purchase to be.

As you develop your requirements, it is recommended that you:

- Talk to the potential users in your school to find out what they need and how they plan to use it.
- Include feedback from any stakeholders who will need to approve the specification.
- Avoid over specifying but think carefully about the level of detail you include, so that extra costs are not incurred by:
 - missing something out
 - including things you want but you do not need
- Refrain from using specific brand names (or, if this is unavoidable, include "or equivalent" to ensure competition is fair), jargon and abbreviations.
- If the supplier has to meet any legal criteria (e.g. safeguarding, health and safety, insurance levels), say so. Also include information about how you will measure the supplier's performance and how payments will be made.

Spending Thresholds

I) QUOTATIONS & NON-EU TENDERS

Once you have estimated the total contract value, check whether it exceeds any spending thresholds. Spending thresholds are found within your school’s financial rules and are set by School heads and governors. As an example, your ‘rules’ might be designed as follows:

Low-value purchase – between £0 - £5,000, a minimum of 1 quote is required (although school should be able to demonstrate value for money which can be ascertained by seeking more than 1 quote)

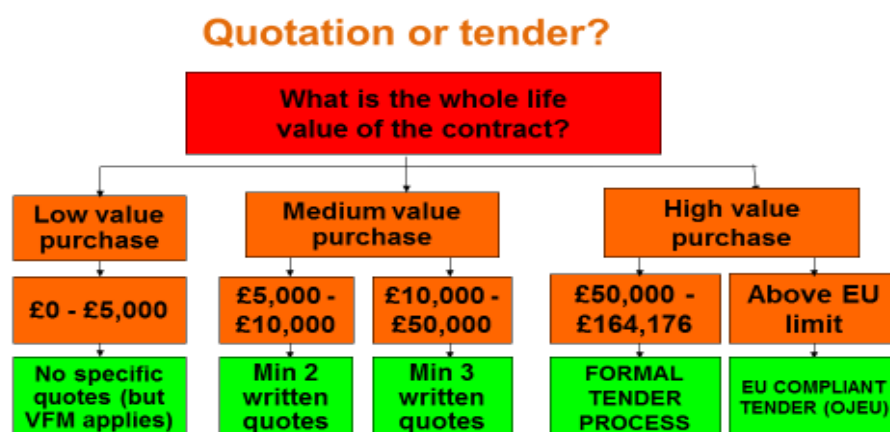
Medium-value purchase:

- Between £5,000 and £10,000 – minimum 2 written quotes are required
- Between £10,000 and £50,000 – minimum 3 written quotes are required

High value purchase:

- All purchases over £50,000 must be subject to formal tender process
- All purchases over EU thresholds – full EU compliant tender process is required

NB: The quotation thresholds stated above are for illustrative purposes - the number of quotes you are required to seek will depend upon the financial thresholds set by your particular school.



II) EU PROCUREMENT THRESHOLDS

If the estimated whole-life cost of your contract exceeds the EU procurement thresholds set out below, you must follow an EU-compliant tender process. Please contact the Hackney Education Procurement Manager if you are signed up to the Procurement Service, for advice if you require any assistance with running an EU tender process. Refer to [Appendix B](#) for more information on running an EU compliant tender process.

NON-EDUCATION SPECIFIC GOODS AND SERVICES

e.g. cleaning, ICT, building maintenance

The threshold for goods and services is £189,330. If your contract value is above this threshold, you are legally required to advertise the tender opportunity on the [Find a Tender Website](#). If you don't follow the regulations for purchases above the EU threshold, suppliers may be able to challenge your spending decisions and contracts on the grounds that you've treated them unfairly.

NB: You must not split your requirements into smaller orders to avoid EU regulations applying.

EDUCATION SPECIFIC SERVICES

e.g. education training, primary & secondary education services, special education services

A 'light touch regime', with a higher threshold of £663,540 applies for some services that are **specifically for education provision**. You should seek advice from the Hackney Education Procurement Manager to determine whether your procurement is subject to the light touch regime. There is no need to apply the usual OJEU timescales and procedures but EU Treaty principles of transparency and fairness still apply and timescales for bidders to respond must be reasonable. See the [full list of services falling under the light touch regime](#).

WORKS CONTRACTS

The EU threshold for Works contracts is set at £4,733,252. Please contact the Hackney Education Property Team for advice concerning any Works contracts that are subject to EU Regulations.

Email: PMO.educationproperty@hackney.gov.uk

Tel: 020 8356 5778

Stage Two: Purchasing – how to decide where to buy and supplier selection

In the previous stage the decision of what to buy was made. The next stage concerns where to buy the goods / works / services from.

Things to consider

Now that the specification is written, the school is ready to start thinking about selecting a supplier. The things a school should consider are:

- I. **Can you collaborate with another school?**
- II. **Are the goods/services available through a framework or catalogue?**
- III. **Is the preferred option/only option to procure directly?**
- IV. **Do you require a Single Tender Action?**

How supplier selection will work across the various options

I. COLLABORATION

Schools have identified the benefits of working together to procure, which can result in saving time and cost due to economies of scale.

If you are interested in a collaborative approach, talk to other local schools about your procurement needs so that you can find efficient ways to work together and get a better deal with suppliers. Consider whether you can:

- borrow equipment
- share resources and staff expertise
- share knowledge of markets
- compare prices and experiences from previous purchases
- buy together so that you can:
 - use your joint influence to get a good deal (e.g. on price or service levels)
 - reduce the effort involved in managing multiple contracts

This knowledge-sharing is useful even if collaboration turns out not to be the right option as you can use it should you need to conduct your own tender exercise.

II. FRAMEWORKS

The easiest and quickest option is to buy goods, works or services through an existing framework agreement. A framework is a contract set up by an organisation who procures suppliers to get the best compliant deals and makes these deals available to schools and other public bodies.

Where possible, it is recommended you use a framework, especially for low value purchases as it will save you the time and resources of conducting your own tender

process. Furthermore, you are likely to benefit from more competitive pricing due to economies of scale from the volume of orders going through the framework.

ADVANTAGES OF USING FRAMEWORKS

- Competitive tendering process already undertaken
- Prices more competitive than if you tendered the provision yourself
- Quicker to purchase goods and services – direct award or ‘further competition’ required instead of full tender process
- Assurance that you are complying with public sector procurement regulations
- Favourable terms and conditions that have already been negotiated
- Support and guidance available if you have any problems

WHERE CAN I FIND A FRAMEWORK?

Once you’ve developed a specification, look at a range of framework agreements to find those that are suitable for the type of goods, works or services you need to buy. Check with the following organisations:

- [Hackney Education](#)
- [Crown Commercial Services \(CCS\)](#)
- [Eastern Shires Purchasing Organisation \(ESPO\)](#)
- [The Crescent Purchasing Consortium \(CPC\)](#)
- [North East Procurement Organisation \(NEPO\)](#)
- [Yorkshire Purchasing Organisation \(YPO\)](#)

NB: Each framework has specific guidelines you must follow to select a supplier and place an order. For details on how to purchase from a framework refer to [Appendix A](#) – How to Procure via a Framework.

PROCURING FROM THE ESPO CATALOGUE

In addition to using existing frameworks, schools also have the option to purchase from the [ESPO catalogue](#). Benefits include:

- Even simpler than procuring via a framework
- Aimed at use by schools
- OJEU compliant method of purchasing goods
- Competitive prices
- Wide range of goods available e.g. stationery, office equipment, art supplies, playground equipment, furniture, catering and cleaning supplies
- Can order online, via email, phone or through your own finance system

III. DIRECT PROCUREMENT

In some circumstances, you may wish to conduct your own tender process to select a supplier. Bear in mind that this is likely to take longer, use more resources and cost more than using a framework.

The first step is to estimate the total contract value over the whole life of the contract – this will determine which process you need to follow, which must be in accordance with your school's procurement thresholds and processes.

In summary:

- For a low or medium-value purchase, you may seek a range of quotes from relevant suppliers.
- For a high-value purchase, you will need to hold a more formal competitive tender process.
- If the estimated whole-life cost of your contract is above the EU public procurement threshold, you must use an EU-compliant competitive tender process.

For details on how to procure goods or services directly refer to [Appendix B – How to Run Your Own Procurement](#).

IV. SINGLE TENDER ACTION

There are specific occasions where it may not be feasible to undertake a competitive quotation or tender exercise. These are:

1. If the specialist service or product required is only available from one supplier.
2. If you have an existing product which needs a specific brand of parts in order to be repaired.
3. If there is an extreme urgency for works, supplies or services to protect the immediate functioning of the school and there is not sufficient time to undertake a tender process.

In all of the above cases the reasons for direct award to a specific supplier should be written down and reported to your finance committee and/or Governing Body, and a copy of this should be kept on your record for audit purposes.

Template: [Single Tender Action Form](#)

Once a Single Tender Action request has been approved the school will still be required to have a specification and contract documents in place for the appointed supplier, which should reflect the school's requirement. The school must still negotiate with the supplier in the absence of competition to secure best value for the goods or services.

Award of contract

Once you have procured your goods, services or works you will need to ensure that a formal contract is put in place and signed by both parties. The final contract that both parties sign should include:

- a copy of the goods, works or services you've agreed to buy
- a pricing schedule
- the terms and conditions that you've agreed with the supplier
- the SLA (if you have agreed one with the supplier)
- any contract management agreements
- an 'implementation plan', with your responsibilities and those of your supplier (e.g. if buying ICT equipment, who will clear the necessary space, do any re-cabling and install the equipment?)
- your specification as an appendix

You should always ask the supplier to sign your terms and conditions as their terms are unlikely to be in your favour.

Template: [Goods Terms & Conditions](#)

Template: [Services Terms & Conditions](#)

If you are procuring via a framework, favourable terms and conditions will have already been negotiated that you can use.

If the supplier agrees to use your terms and conditions, be sure to check that the signed copy they send back to you is exactly the same as the copy you sent them. The last copy of the terms and conditions sent by either side is the one that is legally binding, so ensure that you are last to sign.

Employing individuals or companies with a single director/ member/ employee

Please note that if you wish to award a contract to an individual, or a company with a single Director/ member / employee, then you will need to determine the worker's employment status (i.e. whether they're employed by the school or self-employed) **before** the contract is awarded. This is to ensure that their personal tax and National Insurance contributions are paid in the appropriate manner. [Appendix C](#) explains the process that needs to be undertaken to ensure that HMRC regulations aren't contravened.

NB: If HMRC deem the employment status to be incorrect your school could end up having to pay extra tax, NIC, interest and penalties.

Stage Three: Contract Management – how to ensure suppliers deliver

Regularly review supplier performance

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

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

Agree as soon as possible after awarding the contract who should attend these meetings and what the agenda items are likely to be. The meetings should become less frequent once you feel confident that the supplier is performing satisfactorily and is on course to meet your requirements.

In the meetings you should discuss the following, where appropriate:

- progress against the contract's requirements
- the service-level agreement (the standards of service you have agreed with your supplier) and any key performance indicators (how you measure the performance of that service):
- acknowledging where the supplier has performed satisfactorily
- identifying areas of concern as early as possible and what the supplier will do about them
- discussing necessary changes
- how to manage planned maintenance
- possible upgrades or improvements to the product or service
- unforeseen problems and what to do about them

You should note the actions and timescales that you agree with the supplier, and circulate those notes promptly after the meeting. If the supplier produces these notes, you should make sure that they include all the areas from the discussion and what the respective actions are.

If you think the supplier isn't doing enough to address poor performance, you may need to escalate the matter according to your contract's terms and conditions.

Varying the contract

If you need to make any changes to the contract, you should use a variation agreement. You may need to vary the contract if:

- your school or the supplier needs to change the contracting authority, name, address or named individual in the contract

- you wish to extend the contract for a period beyond the originally agreed end date

You should agree to any variations with the supplier before making any changes

Template: [Contract Variation Form](#)

Renewing the contract

You should start preparing for the next contract period well before the end of the existing contract. This way you can allow sufficient time for negotiating a contract extension or, if necessary, running a new procurement process, so that you can make sure a new contract is in place when the old one ends.

If you need to extend the contract beyond its end date, and if the existing contract is below the EU public procurement threshold, you can choose to extend it to a reasonable point in the future. Generally, the extension should be no longer than half the time of the original time agreed.

If your existing contract is above the EU procurement threshold, you must undertake a new tender process and should not simply renew the existing contract. However, you can extend the contract as long as you have a plan for running the new procurement process in a reasonable timescale.

Ending the contract

You should start preparing for the end of the contract period well in advance. You may need to consider what you'll need to do to:

- return suppliers' equipment
- end any joint arrangements with suppliers
- remove or dispose of any unwanted items

If you need to end the contract early, you should follow the exit process according to the contract's terms and conditions. Check that the contract doesn't include penalties for early exit.

TUPE may also be applicable. This relates to the rights of staff who are employed through the contract to move over to a new contract which replaces it. If it is, you will need to share the relevant workforce information with prospective bidders, following the receipt of a confidentiality agreement.

Template: [TUPE Workforce Information Request \(to be sent to the incumbent\)](#)

Template: [TUPE Confidentiality Agreement \(to be sent to bidders\)](#)

Reviewing your procurement process

At the end of a contract, or when you're planning to renew a contract, you should carry out a formal review, talking to stakeholders and, where appropriate, a sample of users of the product or service. Make sure that you update your procurement documentation

so that anyone managing similar procurements in the future can take this into account. You should discuss how the supplier performed and what you have learned during the life of the contract, such as:

- what went well
- what didn't go well
- what you could do to improve the next procurement

Useful points to note

ROLLING CONTRACTS

A rolling contract is a contract that has no defined cancellation date and ends only upon the request of one of the involved parties.

Rolling contracts should not be used as they could put you in breach of EU procurement regulations if you exceed the EU threshold. This is because certain procurement procedures apply depending on the value over the total life of the contract.

For example, if you've had a cleaning contract on a rolling basis for the past 5 years at a cost of £50k per year, the value will have exceeded the EU threshold of £181,302. Breaching EU procurement regulations can incur serious penalties including fines, dismissal and reputational risk to your school.

Furthermore, rolling contracts do not incentivise the contractor to perform well or ensure that their pricing remains competitive as they are not being subjected to any form of competition.

Big spend areas such as catering and cleaning are most at risk of breaching spending thresholds so it is important to check whether these contracts are compliant.

What to do if you have a rolling contract:

Alert your provider and explain that you may be in breach and that you are obliged by law to re-tender the provision. Be aware that you will need to give the required notice period that is stipulated in the termination clause of your contract, you cannot terminate the contract with immediate effect. You may wish to liaise with the Hackney Education Procurement Manager before you contact the provider to check which tender route you will need to adopt and how long the tender process is likely to take (this will depend on the nature of the contract and level of spend).

Contracts should always have a specified start and end date.

GPDR IN CONTRACTS

The procurement of any contract that involves the handling of personal data should consider privacy, and how that data will be managed. One tool that helps you to do this is completing a [Data Protection Impact Assessment](#) (DPIA).

SUSTAINABILITY IN CONTRACTS

The Council's strategic objectives in relation to achieving sustainability and social value in contracts are outlined in the [Hackney Sustainable Procurement Strategy](#) which may provide useful guidance for schools, along with the Ed Exec [Sustainability in School Procurement](#) page and the [The Government Buying Standards \(GBS\)](#).

LEASE AGREEMENTS

Leasing enables schools to keep hold of existing funds which could perhaps be better spent elsewhere e.g. to meet growing ICT demands, leasing may allow a school to upgrade to the latest technology at less cost than if the school purchased the equipment outright.

Operating v Finance Lease

An **operating lease** is the only type of lease a school can enter into. These leases involve the school paying a rental fee for the hire of an asset for a fixed period of time, and are similar to a rental agreement. Leases are notoriously easier to get into than out of. Make sure your school knows the termination terms before entering and understands the total cost of the agreement being signed up to. Any offerings of 'cash back' or 'marketing support' mean that lease is not a bona fide operational lease.

The features of an operating lease are:

- ownership remains with the leasing company providing the finance (they are responsible for the depreciation risk and disposal);
- there is no option to buy at a price below market value;
- the term is fixed and should not represent the major part of the economic or useful life of the asset involved;
- as a general rule of thumb, the whole cost should not exceed 90% of the value of the equipment;
- financial risk remains with the leasing company.

Finance leases must not be entered into by the school as this is a form of borrowing which is not permitted.

Features of a finance lease include:

- the leasing company owns until fully repaid then ownership transfers to the school;
- financial risk remains with the schools.

Schools should not expect a leasing company to be aware that schools are unable to enter into a finance lease.

The DFE has summarised the differences in the table below:

Is lease Operating or Finance	Yes	No
Does the lease transfer ownership of the asset to the lessee (i.e.school) by the end of the lease term?	Finance lease	Operating lease
Does the lessee have the option to purchase the asset at a price which is expected to be sufficiently lower than fair value at the date the option becomes exercisable such that, at the inception of the lease, it is reasonably certain that the option will be exercised?	Finance lease	Operating lease
Is the lease term for the major part of the economic life of the asset, even if title is not transferred?	Finance lease	Operating lease
At the inception of the lease does the Net Present Value of the minimum lease payments amount to at least substantially all of the fair value of the leased asset?	Finance lease	Operating lease
Are the leased assets of a specialised nature such that only the lessee can use them without major modifications being made?	Finance lease	Operating lease
If the lessee is entitled to cancel the lease, are the Lessor's losses associated with the cancellation borne by the lessee?	Finance lease	Operating lease
Do any gains or losses from fluctuations in the fair value of the residual fall to the lessee (e.g. in the form of a rebate equalling most of the sales proceeds at the end of the lease)?	Finance lease	Operating lease
Does the lessee have the ability to continue to lease for a secondary period at a rent that is substantially lower than market rent?	Finance lease	Operating lease
Are you responsible for maintaining and insuring the asset?	Finance lease	Operating lease

The main points to be aware of are:

The length of the lease should not exceed the expected useful life of the equipment. As a general rule, **3 years** is the maximum rental period that should be entered into for reprographic equipment.

If it is a fixed term rental agreement – make sure there is no commitment to pay full contract amount even if you want to terminate the agreement before the end of the contract.

Schools should not roll over leases (i.e. settle a lease part way through the minimum term and refinance the settlement value under the new lease). In these cases the current lease is terminated and the settlement cost of this will be rolled over into the new rental agreement. The new rental contract will include the capital cost of the new equipment, the settlement from the previous contract (capital and interest), plus the interest on the total amount of finance being provided under the new lease. This means the school is paying compound interest and the cost of the liability can quickly escalate.

To avoid the risk of roll over leases, schools should always stick to the original contract length wherever they can. With most operating leases bought through framework agreements, the supplier is liable for repairing or replacing the equipment for the length of the lease.

Schools should also be aware of '**evergreen contracts**' which are similar to a rollover contract. This can mean that every time a school gets a new machine, the contract is automatically extended by a number of years. This makes it very hard for a school to get out of a contract.

Ensure cost includes consumables, service call outs, spare parts etc.

Ensure there are no clauses in the contract that allow the price to be increased annually.

Do not pay additional insurance charges. Provided your school has updated its asset register and passed it onto LB Hackney's insurance department you will have cover for the equipment.

Watch out for '**free**' numbers of copies may be getting a good deal, but the advantage of such arrangements to suppliers is that it makes it hard to compare quotes easily.

Pay annually rather than quarterly if you can for a better rate.

Leave sufficient time to procure replacement equipment.

MFD's / Photocopiers

MFD's or Photocopiers can prove a complex and costly purchase for schools if it goes wrong. Consider the options available:

1. **Purchase** - A school buys the machine
 - *Pros:* no contractual issues and one simple cost to compare
 - *Cons:* The school will need to have enough money to buy the machine, which may be several thousand pounds. The school will also need to agree to a maintenance contract.
2. **Rental** - A school pays a certain amount a month for a machine
 - *Pros:* Is not tied into a contract (apart from giving a notice period of a few months)
 - *Cons:* this option is usually only available with old machines that have very little resale value
3. **Operating lease** - A school rents the machine for a period of time e.g. 3 years
 - *Pros:* Most common type of arrangement - the school gets use of an asset for most of its useful life without having to find the capital cost upfront; Usually the lease will include maintenance, as responsibility for the machine remains with the supplier; Rentals charged to revenue on a straight line basis over the term of the lease.
4. **Use of a public sector framework agreement**
 - *Pros:* Compliantly tendered; Provides complete transparency - pricing, terms and pre-defined service levels; Excellent savings on lease costs, per-page rates, fixed price; Choice of mono or colour output; Extensive range of machines e.g. [ESPO MFD Framework RM3781](#).

CONFLICT OF INTEREST

It is important that all purchasing decisions are perceived to be free of any conflict of interest. A conflict of interest may arise where someone involved in the purchasing

decision has a close connection with a potential supplier (or other party involved) which could influence the outcome of the buying process. For example:

- Someone choosing to buy goods and services on behalf of a school, or involved in the process of choosing the supplier or negotiating terms of business, has an interest in one of the suppliers' businesses. This interest may be financial or relational and may include significant business done by the individual with that supplier in their own right;
- One of the suppliers might have an interest in the school e.g. membership of the governing body or parent school association.

The school's finance policy should specify how such conflicts of interests should be managed, e.g. it might require any decision in which the head teacher has a conflict of interest to be referred to the governing body.

Both staff/governors and suppliers must declare all real and potential conflicts of interest and these should be recorded, in order to minimise the scope for challenge and reputational damage to individual or school. For example, the school might hold a register of the governing bodies and Head Teachers business interests. You should also consider whether relevant interests of other senior staff should be included, where those staff have purchasing responsibilities.

The fact that a supplier may be subject to a conflict of interest does not mean that that supplier should not be considered, so long as the conflict is declared, recorded, its potential impact assessed, and the risks appropriately managed. For example, staff with such a conflict of interests should not have access to ordering systems or to financial reports.

LONDON LIVING WAGE

The Council is working towards making Hackney a fair pay borough where no one gets paid less than they can reasonably live on. Hackney Council already pays all directly employed staff the London Living Wage. When tendering, you may wish to consider requesting that the supplier makes a commitment that all contracted staff will also be paid at least the London Living Wage which will assist in the recruitment and retention of better qualified staff.

Useful resources

PROCUREMENT AND CONTRACT TEMPLATES

You can download the following templates from google drive to support you with your procurement processes:

- [Single Tender Action Form](#)
- [Model Goods Terms & Conditions](#)
- [Model Services Terms & Conditions](#)
- [Contract Variation Form](#)
- [TUPE Workforce Information Request \(to be sent to the incumbent\)](#)
- [TUPE Confidentiality Agreement \(to be sent to bidders\)](#)
- [Standard Selection Questionnaire](#)
- [Expression of Interest Form \(EOI\) \(sub OJEU\)](#)
- [Invitation to Tender Form \(ITT\) \(OJEU\)](#)
- [Successful bidders debriefing letter](#)
- [Unsuccessful bidders debriefing letter](#)

PROCUREMENT RESOURCES

The following links will offer useful information in relation to procurement:

- [DfE Schools Buying Strategy](#)
- [DfE Buying for Schools Guidance](#)
- [DfE Approved Framework Search Tool](#)
- [DfE Planning and Organising your Estate Resources](#)
- [Integrated curriculum and financial planning \(ICFP\)](#)
- [Schools Financial Benchmarking](#)
- [Maintained Schools and Academies – Exemptions from the Public Contracts Regulations 2015](#)
- [Government Online Contract Management Capability Training Programme](#)

WHO TO CONTACT

If you have any procurement related queries, need further information, or require any assistance with running a tender please refer to the [Services for Schools Website](#) or contact the Hackney Education Procurement Manager:

Email: procurement.education@hackney.gov.uk

Tel: 0208 820 7038.

Appendix A - How to Procure from a Framework

Each framework has specific guidelines you must follow to select a supplier and place an order. There are two methods for calling off from a framework – direct selection or further competition:

Direct selection of a supplier from a framework (Direct Award)

This means that you can go directly to one particular supplier on a framework for your requirements without having to undertake any competitive process. Once you've chosen a framework, read the framework's process guidelines carefully to make sure you can make a direct selection of a supplier (not all frameworks permit this) and to understand what the rules are for doing so.

Identify the best-value option and place your order

Follow the framework's guidelines for selecting a supplier and placing an order.

If you've chosen a direct selection framework, this will involve:

- identifying the best-value option for your requirements from a list of suppliers
- placing an order based on your specification

If the best-value supplier can't supply your requirements or doesn't make you a satisfactory offer, you should use the next best-value supplier, or you may decide to undergo a competitive tender process.

The framework terms and conditions will have already been set as part of the framework agreement and are written in favour of the purchaser. You won't usually be allowed to change them.

Run a further competition between suppliers on a framework

If a framework requires you to run a further competition among suppliers, you must:

- Send an 'invitation to tender' (also known as an 'invitation to quote') to all suppliers capable of meeting your requirements.
- Evaluate the suppliers' bids using award criteria, a scoring system and weightings.
- Choose the 'most economically advantageous tender' (MEAT) (i.e. combining cost and quality).
- Award the contract to the winning bidder

The following points describe the further competition process in more detail:

1. **Set out what you need** in a clearly written specification (see the [Specification](#) section of the manual for details).
2. **Look for suitable framework agreements** via the links provided on page 10 of the manual or by speaking to the Hackney Education Procurement Manager.
3. **Compile a Service Level Agreement (SLA)**, if required, setting out the service levels you require from the provider. You should use an SLA if you require ongoing support or maintenance. You may write your own bespoke SLA or you may be offered the provider's SLA which you can accept or amend as appropriate. The SLA should include key performance indicators (KPIs) that clearly define how you will monitor the provider's performance. NB: If you accept a provider's SLA there may be a charge and it may be more favourable to them rather than you.
4. **Establish the award criteria** (which should include price and quality elements), scoring system and weightings you will use to assess the bids. Each of the criteria should have a range of possible scores (e.g. from 1 to 5) and a weighting (i.e. a figure by which to multiply the score depending on its relative importance to you). For example, if price is the most important criterion for you, give it a higher weighting than the other criteria.
5. **Reduce the number of bidders** by using an expression of interest (EOI) process (only if this step is required and is permitted by the framework you wish to use).
6. **Create a timeline** for the tender process.
7. **Send the invitations to tender (ITT)** to all suppliers on the framework who are capable of meeting your requirements (unless you've already reduced the number of potential bidders by using an EOI process). You must only contact suppliers on the same framework, not a mix of suppliers from different frameworks. If a framework is divided into 'lots' that cover different goods, works or services, you only need to invite suppliers from the lot that corresponds to your requirements.
8. **Run the further competition** and provide any necessary clarifications.
9. **Evaluate suppliers' tender responses** in accordance with the evaluation criteria, scoring and weightings set out in your ITT. It is best practice to have at least 2 people evaluating the bids. A consensus score must be agreed by the evaluation panel. The contract must be awarded to the bidder who scores highest overall. To avoid any legal challenges, you should:
 - not open any tenders before the deadline
 - treat all bidders suppliers equally

- ensure that you clearly record how you've made your decisions so that you're able to defend them, if required
- keep confidential, secure and auditable records of all the documents involved in the evaluation
- be aware that you may have to disclose these records under the Freedom of Information Act

10. **Notify suppliers of the outcome at the same time and award the contract.** If an unsuccessful bidder asks for the actual cost of the winning bid, you should provide it to them, but not a detailed breakdown of costs. You must debrief the unsuccessful suppliers if requested. In your notification letter, you should include:

- the name of the winning bidder
- the award criteria you used
- the scores for the winning bid
- why you think the winning bid is the most economically advantageous
- when notifying unsuccessful bidders, their scores and feedback on their bid
- when the standstill period ends (if applicable)

11. Once the standstill period has expired (if applicable), you and the winning provider must then **sign the call-off contract terms and conditions.**

Appendix B - How To Run Your Own Procurement

Where possible, whether you have a high or low value requirement, it is advisable that you call-off from an existing framework agreement as this will save you the time and resources of conducting your own tender exercise. However, if you feel that using a framework won't allow you to meet your particular requirements, you may wish to run your own procurement.

Low – Medium Value Tenders

To make a low to medium-value purchase for your school, you can follow the procurement process outlined below. **Please ensure that you obtain the relevant number of quotes as specified by the spending thresholds within your school's financial rules.**

1. **Specify what you need** - Issue a statement of your requirements so all suppliers are treated equally – include quantity, quality, timescales, delivery requirements and relevant information on end use. You should finalise your specification before contacting suppliers for quotes. See the [Specification](#) page in the manual for more information.
2. **Assess the market** - Once you've developed a specification, you may want to develop your knowledge of the market by comparing a range of suppliers, including their reputation and what deals they offer. You should find at least 3 suppliers to approach for written quotes in order to make a fair and informed decision.
3. **Set out evaluation criteria** - Before you invite suppliers to quote, you should decide what award criteria you'll use to assess the suppliers' bids. Each of the criteria should have a range of possible scores (e.g. from 1 to 5). You should also decide who will be evaluating the quotes against your award criteria. More than one person should evaluate bids – ideally 3 people. Criteria may include:
 - how well the supplier meets your specification
 - the whole-life cost of the contract, which may include:
 - the sale price of the goods, works or services
 - VAT
 - delivery charges
 - maintenance costs
 - running costs
 - the cost of removing and disposing of an item or service once you no longer need it
 - value for money (if you're looking for a quote that offers a good price and good quality, rather than just the lowest quote)

- supplier's ability to meet the necessary timescales
 - experience of the proposed team to deliver requirements
4. **Ask suppliers to quote** - We recommend getting at least 3 suppliers to give you quotes. Bear in mind that the number of quotes you are required to seek will depend upon the financial thresholds set by your particular school. When you contact suppliers, send all of them the same information, including:
- your specification
 - when you need to receive the quote by and when you plan to make a decision by
 - any instructions for how they should ask clarification questions about your requirements or the procurement process
 - information on how you will be assessing the bids i.e. the evaluation criteria, scores and weightings you will be using so this is clear to bidders from the outset
 - if appropriate, a link to your school's policies, procedures and standard terms and conditions on your website
5. **Evaluate the quotes** - Reject any quotes that arrive after your deadline. When evaluating the quotes against your award criteria, you must treat all suppliers equally. Keep a record of your decision-making process (e.g. scores, reasons for decisions made) as an audit trail in case you require them for future reference.
6. **Place your order** - Once you've identified the best-value quote, send a simple contract (e.g. a purchase order) to the supplier you've chosen, including details of the:
- goods, works or services that you're purchasing
 - price
 - delivery address
 - delivery deadline and any other important dates
 - payment schedule (i.e. payment amounts and when they will be payable)

High-value & EU Tenders

For high value and EU tenders, you will need to advertise your requirement to give suppliers the option to compete for business e.g. newspapers, educational publications/ websites or trade magazines. If your contract is over the EU procurement threshold you **must** advertise on the [Find a Tender Website](#) to comply with the law. The Hackney Education Procurement Manager can assist you with your advertising requirements.

You will also need to set out your requirements in a full 'invitation to tender' rather than a simple quotation document.

You can use the procurement process set out below to select the Most Economically Advantageous Tender (MEAT) - i.e. the bid that best combines cost and quality - from suppliers:

1. **Specify what you need** - Develop a more detailed specification to ensure you receive the right standard and scope of product/service.
2. **Assess the market** – it is useful to develop your knowledge of the market before going out to market as this will help you to understand how many potential suppliers are available and where would be best to advertise your tender.
3. **Check if the contract value exceeds the EU procurement thresholds to decide how you will advertise** – you will need to advertise on the [Find a Tender Website](#) if your contract exceeds the **EU THRESHOLDS** set out in the manual.
4. **Develop your service-level agreement (SLA) requirements** - set out the standard of service you expect from the provider. You should use an SLA if you require ongoing support or maintenance. You may write your own bespoke SLA or you may be offered the provider's SLA which you can accept or amend as appropriate. The SLA should include key performance indicators (KPIs) that clearly define how you will monitor the provider's performance. Consider whether you need to include any requirements in case the supplier performs poorly (e.g. money back or service credits). Effective KPIs should:
 - cover any important operating targets (e.g. you may need a supplier to fix any critical issues with an ICT service within 24 hours of reporting them)
 - specify all aspects of quality that are important to you (e.g. timeliness, reliability)
 - be measurable
 - define the level of service you require
 - allow you to assess whether you are getting value for money
5. **Develop your contract** – compile your terms and conditions which will be sent to bidders as part of the Invitation to Tender document, liaising with the Hackney Education Procurement Manager / Legal team where necessary. For complex, high-value and high-risk contracts you should include an exit strategy which should allow you to end the contract effectively and efficiently if necessary.

Email: tit.s4s@hackney.gov.uk

Tel: 020 8356 6196
6. **Decide whether to use an expression of interest (EOI) process and /or a selection questionnaire (SQ) to reduce the number of bidders invited to tender** – You may choose to advertise for EOI to determine how many bids you are likely to receive which will help you plan the level of resources you'll require for the tender process. If there are a large number of potential possible suppliers,

you may wish to use a selection questionnaire to reduce the number of bidders that are invited to tender. For example, you could specify that only the 5 highest-scoring suppliers from the SQ stage will go on to the award / Invitation to Tender (ITT) stage. In the SQ you can ask about suppliers about their:

- technical capabilities
- resources
- relevant experience
- accreditations
- financial standing

You can ask about the suppliers' general suitability for the contract, but not about how they would implement your contract (this information is requested and evaluated at ITT stage, if they pass the SQ stage)

NB: SQs are only permitted for contracts which exceed the EU threshold, although suitability questions can be asked of bidders for contracts below this value (seek advice from Hackney Education Procurement Manager).

Template: [Expression of Interest \(EOI\)](#)

Template: [Standard Selection Questionnaire](#)

7. **Decide on the award criteria, scoring system and weightings that will be used to assess suppliers' bids** – choose award criteria that will allow you to evaluate each bidder's response to the tender specification i.e. how they would implement this specific contract. Award criteria that evaluates the bidder's general capability should not be used as this will have been assessed at SQ stage (if required). You must include the criteria, scoring system and weightings in your ITT. Award criteria can include:
 - the supplier's quoted price
 - how the supplier plans to meet your requirements
 - how well the supplier will meet your timescales
 - the quality of the goods or services the supplier is offering
8. **Create a timeline for the tender process** – It is important that the timescales given are reasonable and give sufficient time for bidder's to respond fully. If you are conducting an EU tender process then specific timescales apply depending on which EU procurement route is being followed. You should set out the following deadlines in your ITT:
 - dates of the clarification period (i.e. when suppliers can ask you questions about your requirements), with deadlines for a) suppliers' final questions and b) when you'll provide your final responses
 - deadline for submitting tenders
 - date when you expect to award the contract

9. **Prepare the invitation to tender (ITT)** – i.e. the set of documents that you issue to potential suppliers to invite them to bid for your contract. The ITT documents form the basis of your final contract. An ITT should include:
- a covering letter with a timeline for the process
 - instructions on how suppliers:
 - can ask questions about your requirements for their clarification
 - should submit the tender
 - your specification
 - a pricing schedule (i.e. a list of items that you want the supplier to give costs for)
 - any SLA requirements
 - your contract's terms and conditions
 - any contract management requirements, such as exit strategy procedures for:
 - when your contract finishes
 - terminating the contract early
 - your award criteria, scoring system and weightings
 - if appropriate, an invitation for suppliers to give a practical demonstration their goods, works or services

Template: [Invitation to Tender Form \(ITT\)](#)

10. **Advertise the contract** - where most appropriate e.g. newspapers, educational publications / websites, trade magazines etc. If your contract exceeds the EU procurement threshold you must publish a 'contract notice' on the [Find a Tender Website](#) to comply with the law. To do this, register on the website and use an online tool for preparing public procurement notices and publishing them. Or speak to the Hackney Education Procurement Manager who can assist you with the advert.

The most common ways to tender contracts under the EU public procurement regulations are 'open' and 'restricted' procedures. If you know there aren't many suppliers available and you want to encourage as many responses as possible, use the open procedure. This is where you publish a contract notice to advertise your ITT and suppliers send you their responses. If you have a large range of potential suppliers that you wish to narrow down, use the 'restricted' procedure. This is where you advertise a two stage process with a selection stage (using a SQ) and an award stage (using an ITT). You must indicate in the advert which procedure you are using.

11. **Run the tender process and provide clarifications** - Allow time for a clarification stage where suppliers can ask questions about your requirements. Please note that, for fairness and transparency, you must respond to all bidders with the same information, anonymising questions and answers so that all

bidders are aware of the questions asked and your responses. It is recommended that you ask bidders to submit questions by email and that you keep a question and answer log, so that you can keep track of all the questions suppliers have asked and circulate all answers to all suppliers.

12. **Evaluate suppliers' tender responses** – in accordance with the evaluation criteria, scorings and weightings set out in your ITT. It is best practice to have at least 2 people evaluating the bids. A consensus score must be agreed by the evaluation panel. The contract must be awarded to the bidder who scores highest overall. To avoid any legal challenges, you should:

- not open any tenders before the deadline
- treat all bidders suppliers equally
- ensure that you clearly record how you've made your decisions so that you're able to defend them, if required.
- keep confidential, secure and auditable records of all the documents involved in the evaluation
- be aware that you may have to disclose these records under the Freedom of Information Act

13. **Notify suppliers at the same time and award the contract** - For unsuccessful bidders, you need to include the following information in your debriefing letter to comply with EU Legislation:

- the name of the winning bidder
- the evaluation criteria you used
- the scores for the winning bid
- why you think the winning bid is the most economically advantageous
- the individual bidder's scores and feedback on their bid
- when the 10 calendar day standstill period ends

If an unsuccessful bidder asks for the actual cost of the winning bid, you should provide it to them, but not a detailed breakdown of costs. You must **debrief** the unsuccessful suppliers if requested, only commenting on their tender (i.e. don't share specific details of other bidders' tenders). For EU-compliant tenders, you must provide feedback within 15 days of a request by an unsuccessful bidder.

Template: [Debriefing Letter Unsuccessful Bidders](#)

Send a notification letter to the successful bidder identifying them as the winning bidder. The letter is an invitation to finalise a contract. However, you should make it clear that:

- you'll only award them the contract if the standstill period passes without a challenge from another supplier

- there are no commitments, and no work should begin, until both parties have signed the contract

If for any reason the winner refuses to go ahead with the contract, you may award the contract to the second-highest scoring bidder or you may wish to rerun the procurement process.

Template: [Debriefing Letter Successful Bidders](#)

14. **Apply standstill period and deal with any challenges from suppliers** - It is best practice to apply a standstill period of at least 10 calendar days between notifying the bidders of your decision and formal award of the contract. This standstill period is sometimes known as the 'Alcatel' period and allows for any unsuccessful supplier to challenge the decision if they believe it is unfair. This standstill period is compulsory for EU tenders. If an unsuccessful bidder challenges the fairness of the contract award decision or process, you should contact the supplier making the challenge, explaining that you have conducted a fair evaluation process and have kept good records. If the supplier then makes a legal challenge within the standstill period, you shouldn't finalise the contract and must seek legal advice.
15. **Finalise the contract and advertise the contract award** - The final contract that both parties sign should include:
 - a copy of the goods, works or services you've agreed to buy
 - a pricing schedule
 - the terms and conditions that you've agreed with the supplier
 - the SLA, if you have agreed one with the supplier
 - any contract management agreements
 - an 'implementation plan', with your responsibilities and those of your supplier (e.g. if you're buying ICT equipment, who'll clear the necessary space, do any re-cabling and install the equipment)
 - your specification as an appendix

If the supplier agrees to use your terms and conditions, be sure to check that the signed copy they send back to you is exactly the same as the copy you sent them. The last copy of the terms and conditions sent by either side is the one that is legally binding, so try to make sure that you are the last to sign. If you placed an advert for the contract in Contracts Finder, you should place a notice of your contract award there too. For EU-compliant tenders, you must publish a notice of the contract award on the [Find a Tender Website](#) within 30 days of signing the contract. You may want to set up an early meeting with the contractor to finalise commercial aspects such as the management and payment arrangements, clarify key performance indicators and agree how both parties will work together.

16. **If you need to abandon the tender process** - On rare occasions, you may need to halt the tender process. For EU-compliant tenders, you must send a notice to Find a Tender telling them what has happened. If you abandon the process while suppliers are preparing their bids, or have submitted their bids, you should notify them with your reasons. If this occurs very late in the procurement process (i.e. from the evaluation period onwards), you may be at risk of a legal challenge. You can't abandon the tender process on the basis that the highest-scoring bidder in the evaluation process is not the supplier you want.

Appendix C - Using Individuals Or Companies With A Single Director, Member Or Employee

1. Introduction

Schools are required to ensure that payments to individuals who provide a service to their school are treated appropriately in respect of personal tax and National Insurance contributions (NIC).

Determining whether or not an individual's payment should be subject to PAYE (Pay As You Earn) tax and NIC must be carried out by a representative of the school **prior** to any contracts being issued whether they are written, verbal or implied and before any work is undertaken.

The following HMRC guidelines are to support school managers in determining the employment status of current and future workers providing services to the school. They should also assist in developing good practice and minimising the risk of contravening HMRC regulations.

2. Background

When the school takes a worker on, it is the school's responsibility to determine the worker's employment status i.e. whether they're employed by the school or self-employed. This applies for all workers, whether they're full-time, part-time, permanent, temporary or casual.

It is important for the school to get their workers' employment status right, because it affects the way tax and NIC are calculated for them. And it determines whether or not the school has to operate PAYE on their earnings. If HMRC deem the employment status to be incorrect the school could end up having to pay extra tax, NIC, interest and penalties.

It may be difficult to make a judgement whether someone should be treated as being employed or self-employed, especially where that individual may have been working at the school on a regular, ad-hoc basis or for a lengthy period of time. However, HMRC are clear that employment status isn't a matter of choice for either the school or its workers. It's a matter of fact, based on key terms and conditions of the working relationship and even if a contract says a worker is self-employed if the facts indicate otherwise then the worker may be the school's employee.

3. Determining employment status

HMRC publishes guidance for employers to assist in determining the employment status of their workers. Given this HMRC advice, it is absolutely necessary for the school as employer to examine the real nature of the relationship between the school

and individuals especially in terms of what the parties call their relationship, or what they consider it to be, if it is not immediately clear.

As a general guide, if the answer is “yes” to most of the following questions, then HMRC would determine that the individual is probably a worker and should be employed by the school and be paid and taxed through payroll:

- Do they have to do the work themselves?
- Can the school tell them how, when or where the work is to be carried out?
- Are they required to work a set amount of hours?
- Can someone move them from task to task?
- Are they paid by the hour, week or month?
- Can they receive overtime pay or bonus payments?
- Does the school provide the major equipment or tools to carry out the work?

If the answer is “No” to the above questions but “yes” to the following questions, it usually means that individual is self-employed for the service that they are providing:

- Can they hire someone to do the work or engage helpers at their own expense?
- Do they risk their own money in the business if they fail to deliver the service?
- Do they provide the main items of equipment they need to do their job, not just the small tools that many workers can provide themselves?
- Do they agree to do a job for a fixed price regardless of how long the job may take?
- Can they decide what work to do, how and when to do the work and where to provide the service?

It should be noted that a person who is categorised as self-employed doing one type of work should not automatically be treated as self-employed for all types of work that they undertake.

To find out if someone is employed or self-employed, look at the Inland Revenue’s website: [HMRC Employment Status](#). You can use the Employment Status Indicator Tool to check an individual’s employment status: [Check Employment Status for Tax](#). If in doubt, schools should seek advice from the Inland Revenue.

4. Types of work to consider that will determine the individual’s engagement

The UK’s legislation in respect of income tax, social security, employment or discrimination sometimes distinguishes between certain types of worker by giving rights to some types and imposing duties on their engager. There is also no single definition of ‘worker’ which means that each body of legislation (e.g. employment and tax law) may define ‘worker’ and indeed ‘employee’ and ‘employer’ in quite different ways.

The school is required to make a decision based on the facts of each particular engagement. This procedure is designed to ensure that the school makes the correct decision and so minimises the risk to the school if the wrong type of employment status is determined (the financial implication is that the school would be liable for any tax and NI due on the payments made without recourse on the individual, plus interest and a penalty charge).

The employment status decision is taken by the Engaging Officer. This person is a school employee who acts as the school's representative in leading the particular piece of work an individual is being asked to provide. This person must have a clear understanding of the nature of the engagement.

5. The procedure

This procedure only applies when engaging individuals. It does not apply to contracts that the school enters into with limited companies with more than one director, member or employee or partnerships (where there would be no tax or NIC risk to the school).

Before a contract for service is issued, service managers must check the employment status of the individual. It is important that the check is carried out even if the individual has declared themselves as self-employed. The onus is on the school to determine this.

If the individual is employed in more than one job then the same exercise has to be undertaken for each job or each establishment i.e. an individual may work in 3 different schools on the same basis but each school must make an assessment of the employment status of the person. A person may be self-employed in one job but an employee in another (for example a self-employed carpenter may also work as a sports coach in a school as an employee).

For each engagement the Engaging Office, who must have knowledge of how the individual shall be engaged, should complete the HMRC's Employment Status Indicator. At the end of the test it determines whether the individual is deemed self-employed or employed.

Schools must complete and record the outcome of the [Check Employment Status for Tax Tool \(CEST\)](#). If the worker's employment status is questioned in the future, HMRC will only be bound by the CEST outcome if the outcome of the CEST can be produced and the actual engagement arrangements reflect what was stated in the test.

It is suggested to note the reference number generated at the start of the test in case the HMRC site crashes. If you have the CEST reference you will then be able to go back into the test rather than having to start again.

Answer all the questions, as they refer to the specifics of the engagement, and at the end of the test the calculator determines the employment status of the worker. Save a screen print or print the 'CEST Result' and the 'CEST Details'.

If the Engaging Officer is in any doubt as to the individual's employment status, the Engaging Officer should contact Hackney Education School Finance or HR teams for advice and assistance:

Email: schools.finance@hackney.gov.uk

Tel: 020 8820 7457

Email: education.hr@hackney.gov.uk

Tel: 020 8820 7617

If the individual is deemed to be an employee, they must be paid via the school's payroll and will be subject to statutory deductions as appropriate. The school may put the individual on a zero hour's contract. Alternatively, the individual could register with a temporary staff agency or an umbrella company, both of which would manage the tax and NIC arrangements to ensure compliance with legislation.

If the individual is deemed to be self-employed then the HMRC CEST results page should be retained by the school and the individual can invoice the school for their work. Self-employed individuals are responsible for calculating and paying their own tax and NICs on any payments made to them.

Information about off payroll workers can be found on the [Understanding off-payroll working \(IR35\)](#) website.

6. HMRC enquiries or audit of the school

It is very important that the school is able to show an accurate audit trail in the event of a HMRC enquiry or audit concerning decisions made as to whether an individual was self-employed or not.

Should HMRC audit the school's process for determining employment status they are likely to consider the following:

- Did the process for determining the employment status of the worker begin as soon as the school decides it has a piece of work to be done, but has no employee in post to undertake the work?
- A piece of work is required. At what level in the school is this specified?
- If there is a written document describing what work is required, does this follow a standard format? Does each department have a separate method of achieving a job specification?
- What is the approval, costing and advertising/tendering procedure followed? Is this centralised or done within departments? Does the costing process include an element for NICs etc?

- What is actually offered (requirements, rewards, supervision and reporting, longer term prospects) to the candidates for the work? How is this recorded by the school?
- Is CEST used prior to selecting the worker? If not, why not? If it is used, by whom and with what information available? What happens if a question comes up where the answer is not known?
- Do you allow the worker to dictate/influence any or all of the terms and conditions? Does this need approval and at what level?
- What happens if the worker disputes the employment decision you reach?

The school will be liable to pay extra taxes, NIC, interest and a penalty charge if HMRC deem that the school has not correctly determined the employment status of a worker.

7. Written contracts not verbal

The Engaging Officer should ensure it has a written contract in place with a self-employed individual/consultant and must not rely on a simple verbal agreement. The written contract should record the reference to the HMRC Employment Status Indicator questionnaire result.

8. Particular categories of potential self-employment

Careful consideration will need to be given to the following areas of potential self-employment:

- Visiting lecturers, teachers and tutors
- Personal Service Companies
- Managed Services Companies

This is because the type of work being carried out especially when using a Personal or Managed Services Company is not always classed as self-employment. For example, in some cases a person may be being paid for certain work as an individual but then produces an invoice for the same type of work using a Personal Services invoice.

NB: [From 6 April 2021](#), all public sector clients and medium or large-sized clients outside the public sector are responsible for deciding the worker's employment status. If the off-payroll working rules apply, the worker's fees will be subject to Income Tax and National Insurance contributions.