



Guidance Notes

July 2012

Your suite of documents contains:

1. Guidance Notes
2. ITT Covering Letter
3. Invitation to Tender Template
4. Notification Letter to Successful Supplier
5. Order
6. Contract Conditions (ITT Appendix 3)



1. Free Schools and Procurement

With a tight timescale between approval and opening of any free school, securing appropriate high quality support is an immediate priority. Owing to the number of proposers that are likely to be seeking support, it is important that proposers are clear on what they require and are ready to 'go to market' as soon as possible after approval. This may require some consideration in advance of being approved to open by the DfE in order that the proposer group is ready to go to market and choose from the full range of resources that are available.

Free School proposers will need to decide how best to manage all of the tasks involved in opening and successfully operating their Free School. They will need to decide whether they have the capability and capacity to undertake all of these tasks themselves, or whether they will need to appoint external suppliers to assist them.

As a "contracting authority" for the purposes of EU and UK procurement law, Free Schools have certain responsibilities and must comply with certain rules and procedures when procuring goods and services. The type of procurement procedure that the Free School will need to follow to appoint a supplier will depend on the value of the goods / services contract that it wishes to procure. The following (which has been adapted from the Department for Education's Academies Financial Handbook) is useful guidance:

- (i) Goods / services contracts with an estimated value of over £1,000 but less than £10,000

At least three written quotations (using our standard Request For Quotation (RFQ) template) should be obtained to identify the best source of the goods / services. Written details of quotations obtained should be prepared and retained by budget holders for audit purposes. Telephone quotes are acceptable if these are evidenced and faxed confirmation of quotes has been received before a purchase decision is made

- (ii) Goods / services contracts with an estimated value of over £10,000 but less than the "OJEU Threshold" (currently £173,934, excluding VAT)¹

Such contracts must be subject to a formal, fair and transparent tendering process

- (iii) Goods / services contracts with an estimated value in excess of the "OJEU Threshold"

Such contracts must be advertised in the Official Journal of the European Union and competitively tendered in accordance with the procedures set out in the Public Contracts Regulations 2006 (commonly referred to as the "OJEU Regulations")

¹ Note: This threshold is revised by the EU Commission every 2 years, with the next revision due in January 2014.

2. Purpose of this Suite of Documents – when can they be used?

This suite of documents is a full set of template documents that a Free School can use to procure contracts for project management, educational support and “post opening” services and goods with an estimated value of over £10,000 but less than the OJEU Threshold (currently £173,934, excluding VAT). For contracts for goods and services below £10,000 it is recommended that the standard RFQ template referred to above be used.

The template documents have been designed so that they can be used to quickly and effectively procure a comprehensive package of support and services in relation to opening and successfully operating a Free School. They cover the range of requirements for a Free School from approval, through ‘pre-opening’ and into the life of the open school. The suite consists of the following documents:-

1. This Guidance document
2. Template Invitation to Tender (ITT) covering letter
3. Template Invitation to tender (ITT) document, including:
 - a. Comprehensive specification (to be tailored to specific requirements)
 - b. Evaluation module and scoring matrix
4. Form of goods / services contract between the Free School and the successful supplier (consisting of the Contract Conditions and Order for goods / services)
5. Template letters to the successful and unsuccessful suppliers notifying them of the outcome of the tender process.

3. Why has this Suite of Documents been prepared?

The Department for Education (DfE) has historically provided significant assistance to engage quality-assured consultancy support for most Free School openings. This support was procured via the DfE’s Project Management and Educational Services (PMES) Framework. While this framework will still exist, the DfE has indicated that it will not be taking as active a role in supporting procurement through it.

This change has created an opportunity for Free School proposers to be more prescriptive about the types of support they will need including areas that were not previously covered by the DfE process. An example of this is the management of the administration of admissions which is a complex, technical and a critically important piece of work.

4. Who has prepared the Suite of Documents?

The suite of documents has been prepared by the Schools' Buying Club (SBC), experts in schools procurement, contract management and creating efficiencies across schools' back office support requirements. The specification has been developed in consultation with a number of Free School proposers and with advice from a market leading education consultancy and DfE approved project management company.

While the original DfE documentation was wide-ranging, it could not be expected to cover the full breadth of requirements of a new proposer-led school. Such requirements are unique to the circumstances of each school and proposer group. SBC has ensured that the suite of documents that have been drafted cover all these requirements and are flexible enough to be adapted to any future changes in policy and legislation.

5. How should the Suite of Documents be used?

The suite of documents can be used to quickly and easily procure all services available under the existing DfE framework and a range of additional services and goods that will ensure that the school opens successfully and retains a focus on improvement from day one.

The documents provide Free Schools with a sound base for running a robust, fair and transparent procurement process to appoint a supplier, as required by the relevant EU and UK procurement legislation.

Completing the documents

The documents have been prepared as “templates”, and the **[yellow]** shading in each document clearly identifies the areas that the Free School needs to consider and complete before it issues the documents to the suppliers.

Overview of the tender process

In summary, the tender process has been designed to work as follows:

- The completed ITT Covering Letter and ITT document (including the specification and evaluation matrix) is sent out to the suppliers whom the Free School wishes to invite to tender
- Tenders are received from suppliers and the Free School evaluates them in accordance with the evaluation criteria set out in the ITT
- Interviews are held (if relevant)
- The Free School notifies the successful and unsuccessful suppliers of the outcome of the evaluation process using the forms of notification letter included in the suite of documents. The completed Order for goods / services is sent out with the letter to the successful supplier for them to sign and return to the Free School.

Timescales

There are no specific minimum tender timescales that the Free School must comply with under the legislation when procuring goods and services contracts with a value below the OJEU Threshold. The Free School is therefore free to set a tender submission deadline that it considers reasonable and appropriate, having regard to the complexity of the tender proposals being sought from the suppliers. As a guide, we suggest that 7 working days is the minimum amount of time to complete the response and 10 working days could be seen as good practice.

Note that the suite of documents cannot be used in isolation of each other and should not be used without a detailed understanding of the scope of work required. To accompany these documents the SBC is offering a range of advice and services that are free to proposers at the point of access.

6. When should the Suite of Documents not be used?

As outlined in section 2 above, this suite of documents should only be used where the Free School wishes to procure a contract for project management, educational support and “post opening” services and goods with an estimated value of over £10,000 but less than the OJEU threshold (currently £173,934, excluding VAT). (For contracts for goods and services below £10,000 it is recommended that the standard RFQ template be used.)

The suite of documents is generally not suitable for the procurement of goods, services, or works contracts with an estimated value in excess of the OJEU Threshold (currently £173,934 (excluding VAT) in the case of goods and services contracts, and £4,348,350 (excluding VAT) in the case of works contracts.) Such contracts must either be (i) advertised in the Official Journal of the European Union and competitively tendered in accordance with the specific procedures set out in the OJEU Regulations, or (ii) procured from an OJEU compliant framework agreement. A possible exception to this is where the contract in question is solely or mainly (in terms of £ value) for the provision of “Part B” services, as classified by the OJEU Regulations. Part B services include care, education and legal services. If the estimated value of the contract is above the OJEU Threshold but is solely or mainly for the provision of Part B services a full OJEU procurement process may not be necessary. Further guidance on this and the type of procurement process Free Schools should follow to procure contracts for Part B services can be sourced from SBC.²

² (Note that the EU has made recommendations to abolish Part B services. This move is currently going through legal transition and is expected to come into force in 2014. These documents will be updated to reflect any and all legislative and guidance changes.)

As far as Free Schools are concerned, the most common types of “above OJEU Threshold” contracts are contracts for building works and ICT Managed Services. Historically, these areas have been handled by Partnerships for Schools (now the Education Funding Agency) and have been procured from a number of established OJEU compliant framework agreements that avoid the requirement to go out to a lengthy and expensive EU tender process. However, in some cases (smaller Free Schools) these items, especially ICT, can be procured under the OJEU Threshold and SBC is happy to advise proposers on the availability of options in the marketplace.

Further guidance on the procurement of contracts with an estimated value in excess of the OJEU Threshold can be sourced from SBC.

7. Where can I get more advice?

For information on the tender documentation and the legislative and regulatory requirements, you can contact the Robbie O'Driscoll at Schools' Buying Club on 0845 257 7050 or contact@schoolsbuyingclub.com or at:

www.schoolsbuyingclub.com/freeschools

