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Contract Procedure Rules and School to School Procurement Guidance

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Derby City Council



Introduction

The note contains important information on the legal position on procurement in relation to schools purchasing good or services from other schools. It is essential the schools comply with EU Procurement Legislation and the Council's Contract Procedure Rules. Where EU Procurement Legislation is not followed, schools may be open to legal challenge.

Procurement: Schools purchasing services from other schools including schools meals, personnel advice and financial advice.

All schools are subject to public standards of accountability. Basic rules of procurement aim to ensure that public funds are spent openly and fairly, and make the most of every budget, while protecting schools against legal challenges and financial penalties.

EU Procurement legislation and the Council's Contract Procedure Rules (CPR) must be considered whenever schools purchase works, goods or services. This includes where schools are buying services from other schools, for example, school meals, HR advice, financial advice etc.

As schools (acting through their governing bodies) are separate legal entities, a direct award of a contract by one school to another school is not a legal option. It should be noted that, if a school has a valid collaboration agreement in place for the purchasing of services from another school or if two or more schools have set up a School Company for the delivery of such services, then the EU Procurement Regulations and Contract Procedure Rules are avoided (subject to compliance with the relevant legislation that applies to those two scenarios) – see further below:

Schools must consider the legal implications of buying services directly from other schools, including the purchasing of school meals, as follows:

- Where School B wants to buy meals from School A there are three options available:
 - in compliance with the Council's Contract Procurement Rules, School B undertakes a formal procurement exercise for a contract for the supply of school meals and School A bids for that contract and may or may not following fair evaluation of bids be awarded that contract. Schools should be aware that the financial threshold above which contracts should be tendered has been reduced to £25,000 in line with the Public Contracts Regulations 2015 (in determining the contract value the aggregate value of the services over the life of the contract should be used, therefore in an open ended arrangement is proposed, the value will almost certainly exceed £25,000);
 - School A and School B enter into a formal collaboration agreement under which they agree to collaborate on the provision of school meals; or
 - School A and School B set up and become shareholders in a School Company, the purpose of which is the provision of school meals. School A and School B then enter into a shareholders

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agreement (very similar in nature to a collaboration agreement) which governs their relationship.

Entering into a collaboration agreement or forming a company, avoids the award of a contract by School B to School A and are therefore the provision of the shared service is not governed by CPR and EU Procurement Legislation.

Where schools have chosen to purchase their school meals from another school, they must ensure that one of the above three options has been followed. Where schools wish to put a Collaboration Agreement in place (this is significantly more straight forward than pursuing the School Company option), a summary of the steps required is set out below:

1. School A and School B agree to enter into a Collaboration Agreement for the provision of school meals;
2. a formal written agreement is put in place between the governing bodies of Schools A and B, setting out each School's respective responsibilities, rights and liabilities;
3. a Joint Committee is established to oversee arrangements;
4. delegation of functions to Joint Committee (provision of school meals, provision of free school lunches, provision of milk etc.); and
5. funding and a Kitchen Maintenance Fund is considered.

Please note that 3 and 4 above are statutory requirements set out in the legislation governing inter-school collaborations. A precedent Collaboration Agreement drafted and is available for schools to use.

In the context of school meal provision, schools will also need to ensure compliance with CPR and EU Procurement Legislation when purchasing food stuffs and kitchen equipment.

The Department for Education has recently published a guide for schools on buying practices and how to achieve better value for money. The guidance will assist schools with understanding their obligations in relation to the rules of procurement when spending public money. The guidance can be accessed by clicking on the link below:

[DfE Guidance: Effective Buying for Schools](#)

Contact

If you have any queries regarding the procurement of services from another school or how to put a collaboration agreement in place, please contact:

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