

# Procurement Regulations for Schools

July 2016

## **Procurement Regulations for Schools**

### **Introduction by the Director of Finance and Resources**

These Procurement Regulations for Schools aim to:

- a protect you, the governors and staff of the school, when you are making decisions on buying goods and services;
- b ensure that you, the governors and staff of the school can demonstrate that you have provided value for money when buying goods and services and that you have done so in a clear and open manner, using absolute probity in spending public money; and
- c demonstrate that we, the County Council, have proper protection and controls in place for making sure schools provide value for money when buying goods and services.

When you apply these Procurement Regulations for Schools you must also take account of the Financial Regulations for Schools and The Disclosure of Pecuniary Interest Guidance document.

In Annex B we have provided a flow chart of the main procedures you need to follow under these Procurement Regulations for Schools.

If you are in any doubt about keeping to these procedures, please contact the Entrust Finance Services team.

Andrew Burns  
Director of Finance and Resources

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## **Section A - General**

### **What is covered**

- A1 These Procurement Regulations apply to all contracts with other organisations for the supply of goods and services using money from budgets delegated to you, or other money set aside by us, but not to contracts of employment.
- A2 “Other organisations” specifically excludes us as there cannot be a formal contract between a maintained school and the County Council in the technical sense because we cannot contract with ourselves. However, we can have formal arrangements with you through service-level agreements. “Other organisations” specifically include Entrust. Supply by us includes obtaining goods or services from another school we maintain.

### **Definitions**

- A3 “Supply” includes buying, leasing, hiring or any form of credit arrangement.
- A4 “Quotation” means a written offer for supply without needing to use the formal procedures of tendering (see paragraph E1).
- A5 “Tendering” means a formal procedure for getting written offers (tenders) for supply. Under these Procurement Regulations there are two tendering procedures - the full and the shortened procedure (see paragraphs G1 to G6).
- A6 A “Pecuniary Interest” is where a member of staff or member of the governing body has an interest in a person or business that could benefit from a procurement process.
- A7 A “Contract” is a legally binding agreement between two or more people or organisations.
- A8 “We” includes “Us” and “Our” and is defined as the Director of Finance and Resources. “You” includes “Your” and is defined as the governing body.

### **Responsibility for contracts**

- A9 Under the Staffordshire Scheme for Financing Schools, you, the governing body of the school, are responsible for contracts covered by these Procurement Regulations. Unless we state otherwise, you may delegate your responsibilities to committees, the head teacher or other staff within the school. As such, when we refer in these Procurement Regulations to you, it includes those committees and staff to whom you have delegated any of your

responsibilities.

- A10 To help you prepare a scheme of delegation, we have provided a schedule, of all areas that you could delegate to others. This is available on the Staffordshire Learning Net (SLN). You must review the schedule regularly (at least every year) to make sure that the delegations are still appropriate to the needs of the school.
- A11 While you may take decisions about contractual matters, putting those decisions into practice (for example, by placing orders or getting tenders) will be the responsibility of the head teacher or members of staff authorised by you in your scheme of delegation. You, the governing body, are not authorised to sign orders or other contract documents. Any head teacher, who is also a governor of the school, exercises these responsibilities in their capacity as head teacher.

## **Section B - Legal requirements**

- B1 Every contract you make on our behalf must comply with:
- a all relevant statutory or other legal requirements including those of the European Community;
  - b these Procurement Regulations for Schools unless there is an exemption under section D;
  - c the Staffordshire Scheme for Financing Schools; and
  - d Financial Regulations for Schools.
- B2 In some circumstances contracts may be governed by legal requirements particularly under European Community law. The most important European requirements for public bodies, including maintained schools, are that:
- a contracts for more than a predetermined value (£164,176 threshold values at January 2016) must be advertised in the Official Journal of the European Union (OJEU)); and
  - b you must not discriminate by requesting a nationally recognised standard (for example, British Standards Institute Standard) or to specify a particular product, unless you indicate that a product meeting an equivalent standard or equivalent specification will be acceptable.
- B3 You must have written evidence of every contract, which you must keep in



accordance with the Retention Guidelines for Schools on the SLN.

- B4 In legal terms, a contract can arise from a spoken arrangement just as much as from written documents. For contracts made across the counter and paid for at that time, for example buying items using petty cash or a procurement card, the written evidence will normally be a till or trader's receipt. For contracts made by placing an official order, after getting a spoken or written quotation, the order form and the resulting invoice will be the written evidence. Where there is a spoken request for goods a confirmation order must be issued to the supplier within 7 days. If the contract is made by accepting a tender, the written evidence will be your acceptance letter (which may be a purchase order) and the accepted tender documents.
- B5 If you are a community or controlled school and are considering carrying out any major work to the premises, our approval must be sought before you proceed. All construction and maintenance work should be carried out using a recognised standard form of building contract, for example, Joint Contracts Tribunal (JCT), which must be suitable for the size and complexity of the work to be undertaken.
- This paragraph does not apply to contracts at voluntary aided schools, foundation schools or trusts as it does not involve work on buildings that we own. In these instances the Diocese or Trustees will need to give approval.
- B6 In undertaking any building work you need to ensure the competency of consultants and contractors appointed. There is a pre-qualified contractors list on the SLN which is a list of contractors with minimum levels of approved insurance, health and safety checks and construction line accreditation. Schools still need to tender when using these contractors as no formal tender process has been carried out by the County Council.
- B7 If you place work with a contractor that is not "pre-qualified" you must ensure that the contractor has a limit of indemnity of £5 million for public liability insurance and £10 million for employers liability insurance and these insurance conditions should be contained in the conditions of contract. In addition, where design works are undertaken, you must ensure the contractor has a limit of indemnity of £5 million (each and every claim) for professional indemnity insurance and that this cover is maintained for a period of up to 6 years following termination of the contract.
- B8 You must include, or refer to, our general conditions of contract in all tenders other than those made across the counter or via the use of the procurement card. You should let prospective contractors or tenderers know about the general conditions before you make a contract. You should also include other

conditions that are specific to the contract.

- B9 Our general conditions of contract are published on the SLN and SCC website. It is not practical or possible to apply this requirement to across the counter contracts or purchases made on the World Wide Web using procurement cards. Purchase orders do refer to the general conditions of contract.
- B10 Any employee of the school or governor that has a pecuniary interest in a contract must declare their interest and abstain from any decision about the contract. This information needs to be appropriately recorded in governors' minutes and school records. Schools must ensure they keep a register of pecuniary interests in accordance with The Disclosure of Pecuniary Interest Guidance document on the SLN.
- B11 You should not accept any gifts or hospitality from anyone tendering for a contract.

### **Section C - Contract values**

- C1 You must decide on contract values in the following way.
- a. If the contract is to buy a single item, which is not related to buying other items, the value of the contract is the price, or estimated price of the item, including all related fees. You must not break up a single contract into smaller contracts to avoid contract value thresholds.
  - b. If the contract is to buy a related group of items, the value of the contract is the total price, or estimated total price, of all the items in the group. For example, this will apply if the contract is for a quantity of textbooks, computer equipment or for building repairs or a building project and the various items are priced separately, but you are buying them to be used together. It is in your interest to package contracts as you are likely to be able to take advantage of economies of scale when getting quotations or tenders.
  - c. If the contract is for specific services, the value of the contract is the price, or estimated price, of the services.
  - d. If the contract is for a fixed term with an option to extend, the value of the contract is the total price over the whole life of the contract, i.e. the initial term plus the extension period.





If the contract is for goods or services to be provided by lease or hire, the value of the contract is the capitalised value of the goods or services to be provided. You can work out the capitalised sum by multiplying the regular payment you will make to the lease or hire company by the minimum number of payments you will have to make under the contract. For example, when reviewing photocopier leases the contract value will be the amount you pay each month over the total number of years of the contract.

Schools must not enter into finance leases without the prior written agreement of both the Director of Finance and Resources and the Secretary of State for Education.

- f. If the contract is a framework agreement, (also known as call-off agreement) the value of the contract is the expected total value of goods or services that you will take under that contract during the life of the contract (see paragraph F4).

A framework agreement (or call-off agreement) is one where the terms of supply are fixed but it does not involve the supply of goods or services until you place an order for the supply. An example of this is where a school has a contract with an oil fuel supplier.

- g. If the contract is entered into by a group of schools “collaborative purchasing” the value of the contract is the total price of all the schools within the group over the whole life of the contract.

- C2 The value of a contract does not include VAT unless you cannot reclaim the VAT. Aided schools cannot recover the VAT on any capital purchases out of devolved formula capital or the revenue budget where the purchase is premises related and Governors responsibility. Foundation schools and Trusts will need to check with the VAT Manager if carrying out building projects.

## **Section D - Exemptions from getting quotations or tenders**

### **General**

- D1 Where the value of the contract is less than £15,000, the way in which you get goods or services needs to be decided by governors and recorded in your





scheme of delegation (see section E).

- D2 There are instances (listed below and further details available on the SLN) where a tender process has already been carried out. For these contracts you do not need to follow the tender procedure subject to your scheme of delegation. However, if using these, you still need to ensure you are getting value for money.
- Public Sector Buying Organisations (West Mercia Supplies, Eastern Shire Purchasing Organisation, Yorkshire Purchasing Organisation, Central Buying Consortium)
  - Staffordshire Procurement Approved Supplier List
  - Services transferred to Entrust under the original OJEU notice. Further guidance can be obtained from Staffordshire Procurement or from Entrust Finance Services.

The Property “pre-qualified contractor list” is not a list of contracts tendered.

- D3 You do not need to follow the tender procedure where in-house providers are being used or if these have been passported through Entrust, (other than when involved in a competitive exercise) or where goods and services are being provided by another Staffordshire maintained school (including Staffordshire school companies).

#### **Other exemptions from tendering**

- D4 If you meet the circumstances described in paragraphs D6 to D9 below, you can decide not to tender.
- D5 If you delegate the responsibility in D4 to the head teacher, the head teacher must report the full details of the contract and why they have decided not to tender to your next meeting of the governing body (or committee in accordance with your scheme of delegation).
- D6 Governors may grant an exception to these regulations for contracts under £40,000 using the waiver form at Annex A. This must be taken to a governors meeting for approval and appropriately recorded before any contract is entered into. You must not continually waive the same contract as this may break EU law. Lack of time caused by poor forward planning is not an appropriate reason for governors granting a waiver.
- D7 You do not have to tender if there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if the tender or



quotation procedure were followed.

- D8 You do not have to tender if you can achieve value for money by buying used vehicles, equipment or materials. However, there may be hidden costs in purchasing used goods and the decision to do so must be approved by the governing body.
- D9 You do not have to tender if for technical reasons, the goods, work or services can be bought from only one provider. This needs to be justified. You need to show that you tried various providers.

### **Section E - Your discretion to enter into contracts valued below £15,000**

- E1 You can decide how you obtain goods, work or services with a contract value below £15,000. However, you must document your arrangements within a written scheme of delegation that includes the:
- number of quotations or tenders you will be inviting;
  - method you will use for inviting quotations or tenders;
  - way you choose suppliers or contractors; and
  - staff authorised to accept tenders.
- E2 For low value items, you can show that you have achieved value for money by comparing prices across several suppliers using the SAP catalogue system or the internet. In order to demonstrate value for money on more significant purchases you may wish to get quotations in writing from at least three suppliers or contractors and also from any of our services or services from Entrust if we or Entrust offer the particular goods or services. You may also wish to consider tendering on some contacts valued below £15,000 where you feel this will give the best value for money.

### **Section F - When you must get tenders**

- F1 You must follow a formal tendering procedure for all contracts valued at more than £15,000, unless any of the exemptions under section D apply. Where services were not included in the original OJEU notice of the setting up of Entrust then schools will need to go out to tender on these goods/services.
- F2 If the value of a contract is more than £40,000 you must use the full tendering procedure set out in paragraphs G1 to G5.
- F3 If the value of a contract is between £15,000 and £40,000 you must use either the full tendering procedure or the shortened tendering procedure set out in



- F4 Each framework agreement (see C1 (f)) must not last for longer than three years and you must review it at least each year.

## **Section G - Tendering procedures**

### **Full procedure**

- G1 You can use the procedure set out in paragraphs G2 to G5 for all contracts (with the exception of EU contracts – see Section I). However, the procedure must be used if the value of a contract is more than £40,000 and when you choose not to use the shortened procedure for contracts valued between £15,000 and £40,000. If you expect the total value of a contract to approach the £40,000 limit then you should follow the full procedure.
- G2 You can invite tenders for the contract itself or, as a first step, you can invite applications using the pre-qualification questionnaire. We would normally expect you to invite applications for the pre-qualification questionnaire if the contract involves goods or services of a specific quality or if the character or standing of the successful contractor is particularly important.
- G3 When you give notice inviting people to tender or using the pre-qualification questionnaire, you must do so in one or more newspapers or trade journals available in the county or on an appropriate website, or both if you wish.
- G4 If the public notice invites people to apply using the pre-qualification questionnaire, the notice must meet the requirements of paragraph G7. After the closing date you must consider all the applications you receive. You must choose any applications from any of our business units, together with at least three other applicants (or all applicants if there are fewer than three).
- G5 If using the pre-qualification questionnaire, once you have selected the applicants, you must send out the tender documents as described in paragraph G8. If you are not using the pre-qualification questionnaire you must send your tender documents to each applicant as described in paragraph G8.

### **The shortened procedure**

- G6 If the value of the contract is less than £40,000 you do not need to invite tenders by public notice if you invite tenders in writing from at least three people together with any of our business units which offers the goods or services you require. This procedure allows you to get competitive tenders for

contracts under £40,000 without having to advertise publicly.

### **Tender documents**

G7 Every invitation to tender using a Pre-Qualification Questionnaire (PQQ) should include:

- a the nature and purpose of the contract and, if it applies, how long the contract will last;
- b an outline of the specification of the goods or services to be supplied;
- c a statement of the procedures for getting tenders (paragraph G9);
- d a requirement for the applicant to provide information about their technical, commercial and financial standing;
- e a closing date for receiving applications;
- e. the evaluation criteria (with weightings);
- f. an outline process and timetable; and
- h. a statement that we do not have to accept the lowest or any tender.

G8 Every invitation to tender must include:

- a the nature and purpose of the contract, start date and period of the contract;
- b a detailed specification and quantities of the goods or services to be supplied;
- c the times and places at which the goods or services will be supplied;
- d a copy of the conditions of contract which the successful contractor will have to comply;
- e. information on TUPE (if relevant);
- f. the evaluation criteria (with weightings) for awarding the contract;
- g. the closing time and date and address for receiving tenders; and
- h. a statement that we do not have to accept the lowest or any tender.



- G9 We have designed these rules to make sure that a contractor is fully aware of what the contract is about, what they are tendering for, what the contract will require of them, any formal documents needed, and what the tendering procedures are. Remember when putting your specification together that if you don't ask for something you can not assume it will be provided.

### **Procedures for getting tenders**

- G10 You must send to every person who wants to tender documents that satisfy the requirements of paragraph G8 together with a returnable tender form. The tender form must include:
- a the tenderer's offer price (or prices) for the goods or services;
  - b the tenderer's signature or seal;
  - c information that the tender form must be returned to the head teacher by a stated date and time;
  - d the condition that every tender must be sent in a plain envelope with the word TENDER on it and details of the subject to which the tender relates and the closing date for receiving tenders; and
  - e a condition that you will not consider any tender sent by fax or e-mail.
- G11 You must not be able to identify any tenderer before the tenders are officially opened. Wherever possible, you should allow at least 10 working days for the return of the tenders. You may want to help contractors by sending envelopes which meet the requirements of paragraph G8d with the tender documents.

### **Opening tenders and PQQ's (Pre-Qualification Questionnaires)**

- G12 You must keep all tenders you receive in a secure place until they are opened.
- G13 You must not open any tender you receive after the stated closing time under paragraph G8g or which does not comply with paragraphs G8d or e.
- G14 You must not open tenders before the stated closing date and time. They must all be opened at one time and only by a member of staff you have appointed in writing for the purpose. This must be done in the presence of another member of staff. The person opening the tenders must immediately record in writing the name of the tenderer and the amount of their tender. The record must then be signed and dated by both members of staff as complete

and correct. They must make a note on the record of the number of tenders, if any, not opened and the reasons for not opening them. We need these procedures to make sure we deal properly with tenders. The person opening the tenders must always be accompanied by another member of staff.

- G15 If you consider the circumstances are appropriate, you may delay for a reasonable period the closing date and time for receiving tenders. However, you must inform everyone invited to tender of the delay in the same way and you must not have opened any tenders. This condition will cater for circumstances, for example a postal strike, where you need to extend the closing date for receiving tenders. You should not delegate the powers in this paragraph to anyone other than a committee of you, the governing body.
- G16 You must not accept any amendment to any tender you receive. You must not allow any significant alteration or amendment to any tender you receive. This means that a tenderer must stand by, or withdraw, their tender, but cannot change it. You must check the tender to make sure the figures add up. If they do not, you must correct the figures to the true amount in order to decide which tender is in fact the lowest. However, the tendered prices or rates must not be changed.

## **Section H - Accepting quotations and tenders**

- H1 You must record in writing the results of the tender-evaluation process and the decision to award a contract.
- H2 You may accept the most suitable quotation or tender, subject to your evaluation criteria, whatever the value of the contract. Your evaluation criteria should include the criteria description, the scoring mechanism and the weighting applied. Further guidance can be found in the tender toolkit on the SLN.
- H3 If you have delegated responsibility for accepting tenders to the head teacher, you must receive at your next meeting full details of any contract where other than the lowest quotation or tender was accepted, including the estimated extra cost. You may use your discretion so that head teachers only have to report cases under this paragraph where the contract value is more than £15,000. Under normal circumstances you must accept the lowest quotation or tender
- H4 You may negotiate with a contractor to reduce the quotation or tender provided that the contractor has sent in the lowest quotation or tender which you could otherwise accept.



- H5 If you have delegated the responsibility for negotiating to reduce a tender to the head teacher, they must report full details of the negotiation process (including the amount of any reduction they have achieved) to your next meeting. You may wish to exercise your discretion so that head teachers are only required to report in cases where the contract value is over £15,000.
- H6 Where schools procure in accordance with the Public Contracts Regulations 2015 then the contract awarded can require the supply chain to pay on terms as stated in these Regulations, i.e. 30 days.

### **Section I - Tender Procedures (over the EU thresholds)**

- I1 This is a very complicated area and these Procurement Regulations for Schools only provide a summary.
- I2 If you are inviting tenders for contracts over or close to the EU procurement threshold then it is strongly advised that you seek professional procurement advice (which you may need to pay for) regarding the procurement procedure.
- I3 For all contracts tendered under EU directives you must have a 10-day standstill period between the decision to award and entering into any contract. Once a decision to award has been made you must write to each company that provided a tender with the outcome of the tender process, including:
- a. details of the criteria for awarding the contract;
  - b.
  - c. the score or ranking the company achieved against those criteria;
  - d. the score or ranking the winning company achieved;
  - e. the name of the winning company; and
  - f. a de-brief on the tender process.
- I4 You must announce all contracts awarded under the EU directive using a contract award notice in the OJEU, which must be sent no later than 48 calendar days after the date you award the contract.
- I5 It is very important that the rules regarding the EU directive are followed correctly as any financial penalty of not adhering to these rules would fall on the schools budget. Therefore it is strongly advised that you always get advice from procurement advisors in undertaking tenders in the EU.



## **Section J - Employment issues and Transfer of Undertaking Protection of Employment Regulations (TUPE)**

- J1 Entering into new contractual arrangements or changing existing arrangements can give rise to TUPE implications. You must contact the County Council HR advisor to ensure that any relevant TUPE arrangements are in place before starting the tender process. This ensures that the correct information is included in the tender.
- J2 The TUPE process can take 6 months or more. You need to ensure adequate time is available.
- J3 At the end of the contract, it is likely that there will need to be a further TUPE transfer. The contract must include conditions to ensure that information concerning employees is made available in good time prior to the end of the contract to allow this further TUPE transfer.
- J4 TUPE transfers will almost always give rise to pensions issues. You will need an actuarial statement on pension information for any proposed TUPE transfers. You can get this from the pensions section but it is your responsibility to get this and the cost will be charged to the school budget.

## **Section K - Federations, Trusts and Collaborations**

- K1 When applying these Procurement Regulations for Schools it is suggested that Governors of federated schools agree a single scheme of delegation that applies to all schools involved in the federation. The governing bodies of schools within a trust or collaboration must each individually agree their own scheme of delegation.
- K2 Where schools are procuring goods and or services together as a group, then the contract value is the total value over the life of the contract at all of the schools involved. It is expected that each of the schools follow their scheme of delegation and these procurement regulations.
- K3 All of the schools involved in a procurement process must have an agreed specification. It is also advised that where schools are collaborating that there is an agreement in place between the collaboration ensuring progress is reported by the lead school on a timely basis and what would happen should one school want to pull out of the arrangement. There is further guidance on the SLN regarding collaboration agreements.

## **Section L - School Companies**

- L1 Under the Education Act 2002, schools or groups of schools can form companies to purchase collectively goods and services or sell their expertise to other schools. As the “Supervising Authority” we are responsible for providing a protective financial framework. Therefore, any Staffordshire school company must follow these procurement regulations.

## **Section M - Lettings and Joint Ventures**

- M1 This section applies when allowing the school property to be used by an external provider. This could be arranged either as a letting (for a market rent or lower) or by you entering into a commercial agreement with a business partner.
- M2 Examples of this are where a school chooses to let space within the school to a nursery provider so that they can operate a (voluntary controlled) nursery on the school site or where rooms/facilities are let to a leisure company to operate a gym.
- M3 These procurement regulations do not apply when letting property that does not belong to us, for example, the use of a room at an aided school. However it is recommended that similar provisions are applied with the permission of the Diocese.
- M4 Income from such arrangements should be received into the school budget (except for the letting of buildings that belong to the governing body, e.g. aided schools).
- M5 If the income received over the life of the contract exceeds £15,000 then it is strongly recommended that you use formal tendering under Section G to obtain the most suitable business partner. However, you must substitute the word “highest” for “lowest” in paragraphs H2 – H5.
- M6 Whether or not formal tendering procedures have been followed you must ensure that a formal letting agreement is in place. This must include:
- a conditions of use;
  - b charges to be made; and
  - c insurance arrangements.

- M7 Costs attributable to the arrangement (e.g. energy, extra cleaning) should be taken into account when the agreement is made. For aided schools where the income is payable into governor fund, the governor fund must compensate the school budget for the costs paid from the school budget.
- M8 There are sample letting agreements on the SLN, however, where there is a regular or long term use it is strongly recommended that you get legal advice.

### **Section N – Entrust**

- N1 This section seeks to clarify the use of Entrust goods/services by Staffordshire schools.
- N2 Entrust is a company in its own right and was set up between SCC and Capita. To do this SCC carried out a competitive tender process which involved an OJEU notice being issued. This OJEU notice covered the provision of a number of services that would be novated over to the Entrust company, thus ensuring that schools could use these without the need for them to tender, see D2.
- N3 The contract that SCC holds with Entrust provides for the option to passport a number of SCC services through Entrust. This in effect means that Entrust act as subcontractor. Schools do not need to tender for the use of these passported services.
- N4 In the future Entrust may decide to expand into other areas of service provision that weren't contained within that original tender. If schools wanted to buy into these services then Entrust would need to be treated as any other private contractor and schools would need to ensure that they followed the procedures in this document.

## **Glossary**

BACS Banker's Automated Clearing Services, electronic transfer of money

DfE Department for Education

EU European Union

HMRC Her Majesty's Revenue & Customs, the tax collection agency for the UK

HR Human Resources

ICT Information and Communication Technologies

MLRO Money Laundering Reporting Officer

OJEU Official Journal of the European Union

PQQ Pre-Qualification Questionnaire

PSBO Public Sector Buying Organisation

PTA Parent Teacher Association, a fundraising organisation for the school

SAP The County Council's finance system

SCC Staffordshire County Council

SLN Staffordshire Learning Net, the intranet for schools in Staffordshire

SLT Staffordshire Learning Technology

TUPE Transfer of Undertaking Protection of Employment Regulations

VAT Value Added Tax

**Waiver Form for Schools Use**

We, the Governing Body of .....School  
approve to waive the need for a tender process for the contract to

.....

The length of the contract is.....

The proposed supplier is.....

The estimated value of the contract is.....

Has this contract been waived before? Y/N

Description as to why the waiver is required.....

.....

.....

.....

How have Governors ensured value for money?

.....

.....

.....

.....

**This waiver was discussed at the governors meeting  
on.....**

**Signed by Chair of  
Governors.....**

Date.....



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