



Contract Procedure Rules

Revised February 2024 by Corporate Assurance Manager

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1. Introduction

- 1.1 Procurement is the process of acquiring goods, works and services. The process spans the whole life cycle from the identification of a need, through to the end of a contract or the useful life of an asset. It involves options appraisal and the critical make or buy decision.
- 1.2 These Contract Procedure Rules (the Rules) provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts. All relevant contracts for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules.
- 1.3 A relevant contract is any arrangement by or on behalf of the Council to procure the carrying out of works or provision of supplies or services. This includes arrangements for:
- Purchasing goods, supplies or materials
 - The hiring, renting or leasing of goods or equipment
 - Executing works, including building or engineering works
 - Purchasing of any services, including consultancy services
 - Concession contracts
- 1.4 Relevant contracts do not include:
- Contracts of employment with individual employees
 - Land and property transactions
 - The payment of grants to third parties. However, contracts with voluntary organisations for supplies, services or works are covered by these Rules
 - Treasury management deals for borrowing or investment
- 1.5 In the context of these Rules a supplier is a contractor who supplies works, goods or services to the Council.
- 1.6 In the context of these Rules, a local supplier is defined as being located preferably in the Mansfield District Council boundaries and if not then within Nottinghamshire or Derbyshire.
- 1.7 In the context of these Rules, the lead officer for the procurement project is the Authorised Officer.

1.8 Compliance with the Rules ensures that:

- All providers are treated fairly and equally and that all procurement takes place in an open and transparent way, encouraging competition.
- The rules and procedures governing the procurement process are set out clearly for Council Members, Officers, third parties buying or commissioning on behalf of the Council, providers and other interested stakeholders.
- All elements of procurement, from identifying the need through to disposal of goods or ending of contracts, are governed to ensure sound, robust procurement practice.
- The Council complies with Public Contracts Regulations 2015, the Public Services (Social Value) Act 2012 and any other legislation governing public sector procurement.
- The Council can defend against allegations of incorrect or fraudulent procurement practice, should the need arise.

2. Basic Principles

2.1 Every contract made by the Council, or any officer or external consultant / advisor acting on its behalf must comply with the following basic principles:

- Be in line with the Council's vision and priorities
- Be aligned to the Council's Procurement Strategy
- Meet the procurement need and achieve best value
- Ensure fairness and transparency in the allocation of public contracts
- Comply with all appropriate legal requirements
- Ensure that all risks in the process are appropriately assessed and managed
- Engage with the Council's Procurement Service (whether provided internally or externally) as detailed in these Rules
- Actively engage with local businesses
- Promote and maximise the delivery of social value as detailed in the Council's Procurement Strategy
- Only an Authorised Officer as specified by the Scheme of Delegation procures goods, services or works.
- Maximise use of the Council's procurement portal when selecting suppliers / contractors for procurement exercises with an estimated

- contract value of below £100,000 for construction related projects and £50,000 for non-construction related projects
- Orders are raised and payments made for goods, services and works in accordance with the Council's Financial Regulations
 - There is sufficient approved budgetary provision
 - A Data Protection Impact Assessment has been completed where applicable
- 2.2 For any procurement activity with an IT implication regarding any IT related services e.g. software, hardware, notify the Information Technology Manager for guidance on how to proceed.
- 2.3 For any decision there needs to be an Equality Impact Assessment (EIA) screening or full assessment, as appropriate, completed.
- 2.4 Where the Council acts in partnership with another organisation then, if agreed in writing by the Head of Law and Governance, the contractual and tendering procedures of the partner organisation may be used in substitution, in whole or in part, for the Rules. Where the Council is the lead authority these Rules are to be followed.
- 2.5 If a Head of Service wishes to nominate a particular sub-contractor to a main contractor, these Rules must be followed to select the sub-contractor as well as the main contractor
- 2.6 Heads of Service are responsible for ensuring that all employees in their departments receive any required training and guidance and fully comply with these Rules. In addition to their roles as managers, Heads of Service are also responsible for monitoring compliance.
- 2.7 Heads of Service will be responsible for investigating breaches of these Rules, in liaison with the Corporate Assurance Manager who will report them to the Head of Law and Governance and the Governance and Standards Committee.
- 2.8 Breaches will be taken seriously, and action in respect of breaches may be taken in line with the Council's Disciplinary Rules.
- 2.9 Where responsibility has been assigned within these Rules this does not replace line management responsibilities as determined in job descriptions and contracts of employment.

- 2.10 All employees involved in procurement must be aware of the requirement for openness and transparency when undertaking procurement and in the documentation of decisions and actions.

3. Declaration of Interests and Avoidance of Corruption

- 3.1 Any officer who has a conflict of interest or any material interest, financial or otherwise which may affect the procurement process must declare that interest in accordance with the Council's Employee Code of Conduct and shall take no further part in the procurement process unless written approval is given by the Head of Law and Governance.
- 3.2 No officer shall accept any gift, fee, hospitality or reward in return for favourable treatment in a procurement exercise.
- 3.3 All officers shall comply with the Council's Anti-Bribery Policy and Procedures.

4. Determining the Contract Value

- 4.1 The estimated value for a contract should be the highest total value that you expect to spend over the life of the contract in order to complete its objectives, calculated at the point at which the procurement of or engagement with the supplier commences. This figure should include any anticipated optional elements, including extensions and renewals that are allowed for in the terms of the contract.
- 4.2 In respect of Public Contract Regulations' thresholds, contract value estimations need to be calculated inclusive of VAT. However, for the Council's own thresholds the calculation is exclusive of VAT.

Authorised officers need to be aware of the VAT % and requirements in respect of individual procurement projects and should seek appropriate advice if needed

Whether or not any of the thresholds are exceeded, the contract value should be stated exclusive of VAT in advertising or contract award notices

- 4.3 If the expenditure on an item, service or with a particular supplier is recurring then the likely expenditure over a 12 month period must be determined and multiplied by the length of the contract. Where the contract is for an uncertain duration the requirements of the Procurement Regulations are to be followed and advice should be sought from Legal Services.

- 4.4 Where the requirement covers several suppliers providing the same goods, services or works the contract value shall be the combined sum of all the individual contracts. The effect of this rule is that if the aggregation of such contracts exceeds the relevant threshold, then those individual contracts will be subject to the Procurement Regulations even though individually they are below the threshold.
- 4.5 Where the Council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies' requirements.
- 4.6 Where it is intended to package the contract into several different "lots" then the contract value shall be the total value of all the combined "lots".
- 4.7 In the case of Concession contracts (i.e. where the service users as opposed to the Council make payments to the contractor for use of the service) then the total value (i.e. turnover) of the contract to the supplier must be used to determine the contract value.
- 4.8 The estimated value for a framework agreement is the highest total value that you expect to be spent across all call-offs from the framework over its term, including any optional elements and renewals that are allowed for in the terms of the agreement.
- 4.9 Requirements or projects may not be artificially sub-divided into smaller components with the aim of reducing the individual contract values and by doing so to avoid or distort competition.

Framework Call-offs

- 4.10 Where a framework covering the requirement(s) is already in place, then any number of contracts can be awarded for any value, so long as all contracts so awarded are in accordance with the terms of the agreement.
- 4.11 Aggregation of individual contract values under the framework will not apply, except in so far as the framework itself will have a maximum value (as above) and once this is reached, no more contracts can be awarded until the framework has been retendered.

5. Decision Making Process

- 5.1 Provided there is an established budget for the proposed procurement and the procurement will be undertaken in accordance with these Rules, a delegated decision is not required before a procurement process can commence unless –
- a) the proposed procurement route will either incur additional expenditure or commit the Council to incur expenditure i.e. fees associated with use of a framework; or
 - b) the procurement proposed is otherwise than in accordance with paragraphs 13 and 14 of these Rules (i.e. an exception is relied upon as set out at paragraph 16)

In these instances a formal decision must be taken prior to commencement of the procurement process. This applies to both key and non-key decisions.

- 5.2 The Council's Procurement Instruction Form must be completed for all procurement projects with a value of £5,000 and above and must be forwarded to the Corporate Assurance Manager prior to commencement of the procurement process to ensure compliance with the Transparency Code
- 5.3 A decision must be taken by way of a Delegated Decision or recorded through Officer Decision Record prior to award of a contract. This should set out the procurement route followed and compliance with these Rules or reference the previous decision where authority was obtained to apply an exemption to these Rules.
- 5.4 The Council's approved decision making guidance must be fully complied with.

6. Contracts Finder

- 6.1 The Authorised Officer is responsible for ensuring that the obligations as detailed below in respect of Contracts Finder are complied with in respect of all contracts with a value in excess of £30,000 (inclusive of VAT) or where the contract opportunity has been publically advertised.
- 6.2 The Procurement Regulations include obligations on all local authorities to make public sector opportunities available in one place, on Contracts Finder. Contract award information relating to the winning contractor should also be made available on Contracts Finder.

- 6.3 Contracts Finder is free to use and is accessible at www.gov.uk/contracts-finder.
- 6.4 Publication obligations for below-threshold procurements apply to local authorities where the contract value is at least £30,000 inclusive of VAT.
- 6.5 The requirement to publish a contract opportunity on Contracts Finder applies where a local authority advertises an opportunity, either by publishing a Contract Notice or by advertising in another way, for example on another website, trade publication or newspaper.
- 6.6 Where a local authority is satisfied it is lawful not to advertise an opportunity and chooses not to advertise the opportunity at all (e.g. where quotations are sought, single tender action is being considered, a framework agreement is used), the requirement to publish an opportunity notice on Contracts Finder does not apply to that procurement if the value of the contract is less than £30,000 (inclusive of VAT).
- 6.7 Once a contract with a value over £30,000 inclusive of VAT has been awarded (whether by open competition or otherwise) a local authority is required to publish at least the following information on Contracts Finder:
- the full company name of the winning contractor;
 - the date on which the contract was entered into (award date);
 - the total value of the contract in pounds sterling; and
 - an indication of whether the contractor is an SME or a VCSE16.
- 6.8 This information is also required to be published in relation to contracts awarded as a result of a Framework Agreement (e.g. as a result of a mini competition) as well as awards that have not been openly competed (e.g. where quotations have been sought, single tender action has been undertaken etc).
- 6.9 If an opportunity notice already exists on Contracts Finder, this should be updated with the award details. If no opportunity notice exists on Contracts Finder (for example if the contract was not openly competed, or is a direct award or mini competition call off from a framework agreement or via a DPS) then a separate awarded opportunity notice should be published.
- 6.10 The Procurement Regulations requires a local authority to publish the required information on Contracts Finder within 90 calendar days after the contract award date which means the date on which the contract was signed by the last contractual party.

7. Data Protection

- 7.1 Where any supplier is given possession of or access to any personal data, the Authorised Officer must ensure compliance with the Council's Data Protection Policies and related procedures and carry out a Data Protection Impact Assessment (DPIA) in consultation with the Council's Data Protection Officer. The contract must comply with the requirements under the UK GDPR and Data Protection Act 2018.

8. Partnerships

- 8.1 The Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.
- 8.2 In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided.
- 8.3 The Rules provide a framework for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).
- 8.4 Where the Council is not the lead partner in a joint venture or partnership, it may use the Contract Procedure Rules of the lead partner, provided agreement in writing is given by the Head of Law and Governance.

9. Frameworks

- 9.1 Before using a framework consideration must be given as to whether it will deliver best value, including social value and wherever possible not preclude existing contractors and local SMEs from engaging with the procurement process
- 9.2 Framework agreements procured by other local authorities, public bodies or purchasing consortia may only be used where the Council is either a named participant or where the Council is considered a recognisable class of contracting authority under the terms of the framework agreement

- 9.3 Procurement through frameworks must be in line with the terms and conditions of the framework chosen which may not require quotations or tenders to be invited. The Authorised Officer must consult with Legal Services before proceeding with the use of a framework.

10. Soft Market Testing

- 10.1 Potential suppliers may be consulted prior to the issue of a request for quotation or invitation to tender in general terms about the nature, level, standard and packaging of the supplies, services or works and other relevant matters so as to best ensure competition and value for money, provided that this does not distort competition or prejudice any potential supplier.
- 10.2 When carrying out soft market testing, it must be made clear to potential suppliers that they will not receive preferential treatment in the quotation or tender process and that there is no guarantee that any procurement exercise will take place.
- 10.3 Soft market testing does not negate the need to undertake a formal procurement process such as a request for quotations or tender.

11 e-Auction

- 11.1 An e-Auction (an electronic auction) may be used where authorised by the Head of Service with the approval of the Head of Law and Governance and in consultation with Legal Services. This is a procurement tool where potential suppliers can compete online in real time to give prices for supplies or services under auction.

12 Specifications and Standards

- 12.1 All quotes and tenders shall, except to the extent that the Council in a particular case or specified categories of contract otherwise decides, be based on a definite specification that describes the Council's requirements in sufficient detail to enable the submission of competitive bids and objective evaluation.
- 12.2 The specification should be written in consultation with key stakeholders as appropriate.

- 12.3 Where an appropriate British Standard Specification or British Standards Code of Practice is current at the date of the quote / tender, every contract shall require that all goods and materials used or supplied and all the workmanship shall be at least of the standard required by the appropriate British Standards Specification or Code of Practice
- 12.4 Specifications should not include product names and can only reference trade names and marks where it is necessary to adequately specify the Council's requirements and equivalent products must be accepted

13. Normal Procedure

- 13.1 The Rules relate to four categories of procurement based on the estimated value of the contract:
- (a) Less than £15,000
 - (b) Between £15,000 and £50,000 for non-construction related contracts and £100,000 for construction related contracts
 - (c) Over £50,000 for non-construction related contracts and £100,000 for construction related contracts and the Public Contract Regulations threshold
 - (d) Above statutory procurement thresholds
- 13.2 In all instances, goods, services or works should be obtained by one of the methods outlined below:
- (a) In-house services
 - (b) Established corporate contracts
 - (c) The Council's approved procurement methods including tendering or obtaining quotations
 - (d) Framework
 - (e) Approved e-procurement solutions
 - (f) For low-value purchases, Procurement Cards may be used

14. Invitations to Suppliers

- 14.1 Requests for Quotations (RFQs) or Invitations to Tender (ITTs) should be transmitted electronically wherever possible using the Council's approved RFQ or ITT template.

Contracts up to £15,000 (excluding VAT)

- 14.2 Where the estimated value of a contract over the whole life of the contract is under £15,000, a minimum of **1** written quotation is required – written confirmation of the price by email is acceptable and completion of the Council's approved RFQ form is not required. This should be obtained, wherever possible, from a local SME as defined in the Rules.
- 14.3 A purchase order must be raised, unless this is not possible due to the use of a procurement card.

Contracts between £15,000 and £50,000 for non-construction related projects and £100,000 for construction related projects (excluding VAT)

- 14.4 Where the estimated value of a contract over the whole life of the contract is between £15,000 and £50,000 for non-construction related projects and £100,000 for construction related projects, a minimum of **3** written quotations should be requested using the Council's approved RFQ form or Invitation to Tender (ITT) form (where appropriate) from local SMEs as defined in the Rules unless this is not possible due to local market limitations, which need to be reported to the Corporate Assurance Manager.
- 14.5 A purchase order must also be raised

Contracts above £50,000 for non-construction related projects and £100,000 for construction related projects

- 14.6 Where the estimated value of a contract over the whole life of the contract is above £50,000 for non-construction related projects and £100,000 for construction related projects, a tendering exercise should be carried out using Nottinghamshire County Council's procurement portal and the approved ITT documentation completed except where a framework as detailed in paragraph 4 above or another legally compliant route is taken.
- 14.7 A purchase order must also be raised

Contracts above the Regulation thresholds (including VAT)

14.8 Where the estimated value of a contract over the whole life of the contract exceeds the statutory thresholds, an open tender exercise must be conducted by Nottinghamshire County Council's Procurement Service in accordance with the Regulations using the approved ITT documentation except where a framework as detailed in paragraph 4 above or another legally compliant route is taken.

14.9 A purchase order must also be raised

15. Vetting of Suppliers

15.1 The Authorised Officer must ensure that the proposed supplier is adequately vetted for financial stability, technical competence, ethical standards, previous performance, insurance cover and ability to comply with relevant legislation and health and safety standards.

15.2 The vetting process will need to be proportionate to the type and value of the contract.

16. Exceptions

16.1 The following exceptions do not apply to a proposed contract that exceeds the statutory thresholds, where the procedures set out in the Procurement Regulations apply. Written quotations or tenders need not be invited in accordance with this Rules in the following exceptions:

(a) The work to be executed or the goods or services to be supplied are provided exclusively by a statutory body.

(b) The contract is for the execution of work or the supply of goods or services certified by the appropriate Head of Service to be required so urgently as to preclude the invitation of tenders.

(c) The work to be executed or the goods or services to be supplied constitutes an extension to an existing contract in respect of time period or scope where the existing contract and original procurement process allows for an extension and, subject to the Head of Service deciding that it would not be in the interest of the service or the Council to tender the contract. If a Contract does not specifically include an option to extend its term and a

Head of Service decides that there are exceptional circumstances, namely circumstances which could not have been reasonably foreseen, then the term of the Contract may be extended but only where the extension does not alter the overall nature of the Contract and provided that any increase in price does not exceed 50% of the value of the original Contract.

Extensions cannot be approved where the total contract value as defined above, including previous extensions since the previous contract end date exceeds the Procurement Regulations' thresholds

- (d) In the case of the supply of goods or services that are specialised and in the opinion of the appropriate Head of Service no reasonably satisfactory alternative is available.
- (e) The work to be executed or goods / services to be supplied consists of repairs, enhancements or parts for existing proprietary articles that can only be provided by that supplier or manufacturer.
- (f) The contract is funded by time limited grant funding from an external body and the Head of Service is satisfied that the time limitation will not allow a full tender process to be completed
- (g) The goods are to be purchased at a public auction
- (h) The works, supplies or services can be supplied only by a particular supplier because:
 - (a) the aim is the creation or acquisition of a unique work of art or artistic performance;
 - (b) there would be no competition for technical reasons; or
 - (c) the supplier has exclusive rights, including intellectual property rights but only in the case of (b) and (c) where no reasonable alternative or substitute exists and the absence of genuine competition is not as a result of an artificial narrowing down of the parameters of the procurement
 - (d) falls within the defects liability period or is covered by a warranty / guarantee
- (i) The contract to be awarded is for legal counsel or other legal and financial advisors excluding consultants

16.2 The Council's approved Contract Exceptions Form must be completed and authorised by the Head of Service before the contract is entered into, with a copy being forwarded to the Corporate Assurance Manager.

16.3 Use of contract exceptions will be monitored by the Corporate Assurance Manager and reported to CLT – Performance Clinic on a quarterly basis with an annual report being presented to the Governance and Standards Committee

17. Probity

17.1 In every instance a record of the process should be retained securely by the Authorised Officer in accordance with the Council's Retention and Disposal Policy and will include the following:

- (a) Any information that may be required for submitting annual reports to the Government or other agencies
- (b) A copy of all documentation relevant to the decision making process
- (c) The rationale for the procurement route taken
- (d) The rationale for the social value elements included
- (d) A copy of all relevant procurement documentation
- (e) A copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender
- (f) A copy of the award letter (including the applicable standstill period and other notification letters).
- (g) A copy of the final contract.

18 Contracts Register

18.1 A register of all contracts exceeding £5,000 shall be kept and maintained by the Corporate Assurance Manager. The register shall for each contract specify the name of the supplier, the works to be executed or the supplies or services to be provided and the contract value

18.2 Authorised Officers are responsible for ensuring that the Corporate Assurance Manager is notified of the details stated in 18.1.

19 Prevention of Bribery

- 19.1 Except in exceptional circumstances and then only with the prior written consent of the Monitoring Officer, there shall be inserted in every written contract, a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
- a) if the contractor shall have offered, promised or given a financial or other advantage to another person; and either the contractor intends the advantage to induce a person to perform improperly, or reward a person for the improper performance of a relevant function or activity in relation to obtaining or execution of the contract or any other contract with the Council; or the contractor knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the contract or any other contract with the Council; or
 - b) if the like acts shall have been done by any person associated with the contractor or acting on his/her behalf (whether with or without the knowledge of the contractor); or
 - c) if in relation to any contract with the Council the contractor or any person associated with him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

20. Receipt & Evaluation of Quotations / Tenders

- 20.1 The Authorised Officer shall ensure that the confidentiality of quotations / tenders received and the identity of the corresponding supplier is preserved at all times and that information about one supplier's offer is not given to another supplier
- 20.2 The award of any contract as an outcome of the evaluation of a quotation / tender should reflect best value and maximise social value wherever possible.
- 20.3 The method used to achieve this outcome will consider price, quality and delivery of social value with the highest combined score being the winning bid.
- 20.4 The method of evaluation and relevant weightings must be made clear in the RFQ / ITT. Therefore it is important that all areas of the quotation / tender are addressed in the evaluation criteria to assess a successful quotation.
- 20.5 The Authorised Officer shall ensure that errors or discrepancies found in quotations / tenders shall be appropriately dealt with.

- 20.6 The Authorised Officer shall keep a record of the withdrawal of a quotation / tender together with details of the circumstances of the withdrawal
- 20.7 A quote / tender that is qualified or expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract must be treated as non-compliant and rejected. Non-compliant quotations / tenders must not be evaluated. This does not prevent the Council from inviting variant bids. If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to quote / tender so that all bids may be compared fairly.
- 20.8 Prior to final contract award, the bidder must provide evidence of adequate insurance to cover public and employers' liability and any other applicable insurance required by the Council, and produce such evidence during the life of the contract at the reasonable request of the Authorised Officer.
- 20.9 The unsuccessful bidders should be notified in a letter or e-mail which should contain:
- (a) The award criteria
 - (b) The score the bidder obtained against those award criteria
 - (c) The score the winning bidder obtained
 - (d) The name of the winning bidder
 - (e) The relative advantages / disadvantages of the bid against the successful bid
 - (f) The Standstill period (if applicable)

21. Tendering Process

- 21.1 The entire tendering process in respect of contracts in excess of £50,000 for non-construction related projects and £100,000 for construction related projects will be administered by Nottinghamshire County Council's Procurement Service in liaison with the relevant Authorised Officer.
- 21.2 Tenders may be sought by the Authorised Officer using the Council's ITT form as required for construction related projects.

- 21.3 Client officers must not liaise with bidders directly and must provide Nottinghamshire County Council's Procurement Service with all necessary documentation and information required in a timely manner.

22. Performance Bonds, Guarantees and Advance Payment Bonds

- 22.1 In the case of all contracts valued above £500,000 the Authorised Officer shall determine, based on advice from the Head of Finance, the degree of security (if any) required to protect the Council from a contractor default. This may be a performance bond or some other form of financial or performance guarantee.
- 22.2 In the case of contracts valued below £500,000 the Authorised Officer will decide whether a bond or guarantee is required after completing an adequate risk assessment.
- 22.3 Where a performance bond and / or parent company guarantee is required, then the advert / tender documents must provide for this.
- 22.4 Where payment, or part payment of a contract is required before the goods, services or works have been supplied, the Authorised Officer shall consider if an Advance Payment Bond is required. This shall be determined in consultation with the Head of Finance.

23. Liquidated Damages

- 23.1 For any contract a provision for liquidated damages should be considered. However where it is estimated to exceed £100,000 in value or amount, and is for the execution of works, or for the supply of goods or materials by a particular date or series of dates, provision shall be made for liquidated damages. The amount to be specified in each such contract shall be determined by the appropriate Head of Service in consultation with the Head of Finance.

24. Contract Formalities

Signatures

- 24.1 Signatures may be affixed to a Contract either using physical, handwritten means or an Electronic Signature, as appropriate and in accordance with UK law.

24.2 Electronic Signatures may only be affixed using the Council's chosen electronic signature system or an approved alternative.

24.3 The use of Electronic Signatures is not permitted in circumstances where:

- the Contract is to be sealed;
- a physical, handwritten signature needs to be filed;
- there is a proviso in the Contract which prevents the use of an Electronic Signature;
- the Contract may need to be enforced in a jurisdiction where Electronic Signatures are not accepted;
- the Contract needs to be notarised.

Sealing

24.4 Every contract over £50,000 shall be under seal in any of the circumstances listed below and signed by the Head of Law and Governance or some other person authorised by him/her unless (s)he is satisfied that an agreement under hand is appropriate.

24.5 Contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by the Head of Law and Governance or some other person authorised by him/her. Every Council seal will be consecutively numbered, recorded and signed by the person witnessing the seal. A contract must be sealed in any of the following circumstances:

- (a) The Council may wish to enforce the contract more than six years after its end;
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- (c) Where there is any doubt about the authority of the person signing for the other contracting party;
- (d) The Total Value exceeds £50,000.

Archiving & lodgement of records

- 24.6 The original signed contract (not sealed) must be kept securely in the Authorising Officer's Section.
- 24.7 The original sealed contract must be deposited, by the Authorised Officer, with Legal Services.

25. Domestic Reverse Charge

- 25.1 The domestic 'reverse charge' is an anti-fraud measure that has been introduced for certain services and goods by HMRC. The reverse charge mechanism shifts the liability for accounting for output VAT from the supplier to the customer.
- 25.2 From 1 March 2021 the domestic VAT reverse charge must be used for most supplies of building and construction services.
- 25.3 The charge applies to standard and reduced-rate VAT services:
- for individuals or businesses who are registered for VAT in the UK
 - reported within the Construction Industry Scheme
- 25.4 When procuring a contract or placing an order with a supplier where the above applies; you will need to consider Domestic Reverse Charge and inform the supplier whether we are the end user and normal VAT rules applies or whether the Domestic Reverse Charge rule applies.
- 25.5 Notification of end user or intermediary status can be made to the supplier:
- on paper and sent by post
 - electronically in an email
 - in a contract
- 25.6 The notification should be kept as part of normal business records and show clearly what supplies are covered. Contracts can be either for specific supplies or it can be a Heads of Agreement or call-off type contract for supplies that are to be made at some time in the future.

An example of the wording to use is:

'We are an end user for the purposes of section 55A of the Value Added Tax Act 1994 reverse charge for building and construction services. Please issue us with a normal VAT invoice, with VAT charged at the appropriate rate. We will not account for the reverse charge.'

When the reverse charge applies

- 25.7 The reverse charge must be used for the following services:
- constructing, altering, repairing, extending, demolishing or dismantling buildings or structures (whether permanent or not), including offshore installation services
 - constructing, altering, repairing, extending, demolishing of any works forming, or planned to form, part of the land, including (in particular) walls, roadworks, power lines, electronic communications equipment, aircraft runways, railways, inland waterways, docks and harbours, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence
 - installing heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection systems in any building or structure
 - internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration
 - painting or decorating the inside or the external surfaces of any building or structure
 - services which form an integral part of, or are part of the preparation or completion of the services described above - including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works

When the reverse charge doesn't apply

- 25.8 Do not use the charge for the following services, when supplied on their own:
- drilling for, or extracting, oil or natural gas
 - extracting minerals (using underground or surface working) and tunnelling, boring, or construction of underground works, for this purpose
 - manufacturing building or engineering components or equipment, materials, plant or machinery, or delivering any of these to site
 - manufacturing components for heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection systems, or delivering any of these to site
 - the professional work of architects or surveyors, or of building, engineering, interior or exterior decoration and landscape consultants
 - making, installing and repairing art works such as sculptures, murals and other items that are purely artistic signwriting and erecting, installing and repairing signboards and advertisements

- installing seating, blinds and shutters
- installing security systems, including burglar alarms, closed circuit television and public address systems

End users and Intermediary supplier businesses

End users

- 25.9 For reverse charge purposes consumers and final customers are called end users. They're businesses, or groups of businesses that are VAT and Construction Industry Scheme registered but do not make onward supplies of the building and construction services supplied to them.
- 25.10 The reverse charge does not apply to supplies to end users where the end user tells their supplier or building contractor in writing that they're an end user.

Intermediary suppliers

- 25.11 Intermediary suppliers are VAT and Construction Industry Scheme registered businesses that are connected or linked to end users. If intermediary suppliers buy construction services and re-supply them to a connected or linked end user, without making material alterations to the supplies, they're all treated as if they're end users and the reverse charge does not apply. To be connected or linked to an end user, intermediary suppliers must either:
- have a relevant interest in the same land where the construction works are taking place, for example, landlord and tenant
 - be part of the same corporate group or undertaking as defined in [section 1161 of the Companies Act 2006](#)
- 25.12 The reverse charge does not apply to supplies to intermediary suppliers where the intermediary supplier notifies their supplier or building contractor in writing that they're intermediary suppliers. Intermediary suppliers can refer to themselves as end users.

Local authorities and other public bodies

- 25.13 The end user exclusion will usually apply to supplies to public bodies. Most supplies will either be:
- related to works to the public body's property and land

- provided to the public body so it can discharge its responsibilities under a special legal regime

25.14 If the public body is acting on a commercial basis, and selling on the construction service, the end user exclusion will not apply. The public body will receive a reverse charge supply and have to account for the VAT to HMRC. It will also have to establish the end user status of its customer.

Information on the changes can be found on the HMRC website at:
<https://www.gov.uk/guidance/vat-domestic-reverse-charge-for-building-and-construction-services>

