**Contract Procedure Rules**

Revised June 2021

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**1. Introduction**

* 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.
	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. Every contract 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.
	3. In the context of these Rules a supplier is a contractor who supplies works, goods or services to the Council

1.4 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

1.5 Compliance with the Contract Procedure 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 Regulations”), 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 Nottingham City’s Procurement Service 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.
* Orders and payments for goods, services and works shall be undertaken in accordance with the Council’s Financial Regulations
* There is sufficient approved budgetary provision

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 The Rules do not apply to contracts of employment, contracts for the acquisition or disposal of interests in land, and contracts for unique artistic performances or unique art work. Exemption is also permissible where work of an emergency nature is required or where only one supplier could carry out the work e.g. software maintenance.

2.5 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.

2.6 If a Head of Service wishes to nominate a particular sub-contractor to do a main contractor, these Rules must be followed to select the sub-contractor as well as the main contractor

2.7 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.

2.8 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.

2.9 Breaches will be taken seriously, and action in respect of breaches may be taken in line with the Council’s Disciplinary Rules.

2.10 Where responsibility has been assigned within these Rules this does not replace line management responsibilities as determined in job descriptions and contracts of employment.

2.11 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.** **Aggregation & Contract Values**

Contract Value

3.1 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 and renewals that are allowed for in the terms of the contract.

Framework Value

3.2 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.

Aggregation

3.3 Where a contract is for a standalone and self-contained requirement, then the total value is that of the requirement alone.

3.4 Where a contract is for requirements that are recurring or regular in nature, or that you intend to renew within a given period, or for a number of related requirements of a similar nature, the total value is the aggregated value of all such requirements over either:

* The total expected life of the contract for fixed-term contracts.
* For supplies and services, the total value of all such requirements over a 12-month period.
* For services and supplies that do not have a total price or defined duration, the total value of all such requirements over 4 years.

3.5 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

3.6 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.

3.7 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.

**4. Decision Making Process**

4.1 The Delegated Decision must be taken prior to commencement of the procurement process and must consider all potential procurement routes. This applies to both key and non-key decisions. Delegated authority to award the contract to the successful supplier shall be included in this decision

4.2 The Council’s approved decision making guidance must be fully complied with.

**5. Contracts Finder**

5.1 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 £25,000

5.2 The PCRs 2015 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.

5.3 Contracts Finder is free to use and is accessible at www.gov.uk/contracts-finder

5.4 Publication obligations for below-threshold procurements apply to local authorities where the contract value is at least £25,000 net of VAT.

5.5 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.

5.6 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.

5.7 Once a contract with a value over £25,000 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.

5.8 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).

5.9 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.

5.10 The PCRs 2015 requires a local authority to publish the required information on Contracts Finder within 90 calendar daysafter the contract award date which means the date on which the contract was signed by the last contractual party.

**6. General Data Protection Regulation (GDPR)**

6.1 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 Legal Services.

**7.** **Partnerships**

7.1 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.

7.2 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.

7.3 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).

7.4 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.

**8. Frameworks**

8.1 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

8.2Procurement 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. Where this route is being proposed the Authorised Officer should consult with Nottingham City’s Procurement Service.

8.3 Where it is proposed to use a framework for a contract value over £50,000, Nottingham City’s Procurement Service will carry out the procurement process as detailed in Section 10

8.4 Where either the proposed framework is new to the Council or there will be a contract or agreement under seal, the Authorised Officer must obtain the agreement of Legal Services before proceeding.

**9. Normal Procedure**

9.1 The Rules relate to four categories of procurement based on the estimated value of the contract:

1. Less than £5,000

(b) Between £5,000 and £50,000

(c) Between £50,000 and the Public Contract Regulations threshold

(d) Above Public Contract Regulations threshold

9.2 In all instances, goods, services or works should be obtained by one of the methods outlined below:

1. In-house services
2. Established corporate contracts
3. The Council’s approved procurement methods including tendering or obtaining quotations
4. Framework
5. Approved e-procurement solutions
6. For low-value purchases, Procurement Cards may be used

**10. Invitations to Suppliers**

10.1 Requests for Quotations (RFQs) should be transmitted electronically wherever possible.

Contracts up to £5,000

10.2 Where the estimated value of a contract over the whole life of the contract is under £5,000, a minimum of **1** written quotation is required – an 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.

10.3 A purchase order must be raised, unless this is not possible due to the use of a procurement card.

Contracts between £5,000 and £50,000

10.4 Where the estimated value of a contract over the whole life of the contract is between £5,000 and £50,000, a minimum of **3** written quotations should be requested using the Council’s approved RFQ form 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.

10.5 Nottingham City’s Procurement Service will provide advice on the procurement process in respect of contracts with a value over £25,000.

10.6 A purchase order must also be raised

Contracts between £50,000 and the PCR thresholds

10.7 Where the estimated value of a contract over the whole life of the contract is between £50,000 and the PCR thresholds, a minimum of **3** written tenders should be obtained using Nottingham City’s Procurement Service and the approved ITT (Invitation To Tender) documentation except where a framework as detailed in paragraph 4 above or another legally compliant route is taken.

10.8 A purchase order must also be raised

Contracts above the PCR thresholds

10.9 Where the estimated value of a contract over the whole life of the contract exceeds the PCR thresholds, a minimum of **5** written tenders should be obtained using Nottingham City’s Procurement Service and the approved ITT (Invitation To Tender) documentation except where a framework as detailed in paragraph 4 above or another legally compliant route is taken.

10.10 A purchase order must also be raised

**11. Vetting of Suppliers**

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

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

11.3 For all contracts that exceed £50,000 the Corporate Assurance Manager will carry out an assessment of the financial viability of the proposed contractor to deliver the value of contract being awarded.

**12. Exceptions To These Rules**

12.1 Subject to statutory requirements, written quotations or tenders need not be invited in accordance with the Rules in the following cases:

(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. The appropriate Portfolio Holder shall be kept informed of such decisions. A Contract Exemption form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry

(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. If the value of the extension is over £50,000 per annum the decision to award the extension Contract must be reported to the Head of Law and Governance. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry.”

Extensions cannot be approved where the total contract value as defined above, including previous extensions since the previous contract end date exceeds the Public Contracts Regulation 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. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the appropriate Head of Service and referenced on the appropriate Corporate Contracts Register entry.

1. 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. A Contract Exemption Form must be completed at the earliest opportunity and be supported by the Head of Service and referenced on the appropriate Corporate Contracts Register entry.

See Appendix I for the Contracts Regulations Exemptions Form.

**13. PROBITY**

13.1 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.

13.2 All contracts for goods, services and works over £5,000 must be registered on the Corporate Contracts Register,

**14. RECEIPT & EVALUATION OF QUOTATIONS**

14.1 The Authorised Officer shall ensure that the confidentiality of quotations 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

14.2 The award of any contract as an outcome of the evaluation of a quotation should reflect best value and maximise social value.

14.3 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.

 14.4 The method of evaluation and relevant weightings must be made clear in the Request for Quotation (RFQ). Therefore it is important that all areas of the quotation are addressed in the evaluation criteria to assess a successful quotation.

14.5 The Authorised Officer shall ensure that errors or discrepancies found in quotations shall be appropriately dealt with.

14.6 The Authorised Officer shall keep a record of the withdrawal of a quotation together with details of the circumstances of the withdrawal

14.7 A quote that is qualified or expressed to be conditional upon the Council’s acceptance or alterations to the specification or the terms and conditions of contract must be treated as non-compliant and rejected. Non-compliant quotations 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 so that all bids may be compared fairly.

14.8 Prior to final contract award, the bidder must provide evidence of adequate insurance to cover both public and employers’ liability, and produce such evidence during the life of the contract at the reasonable request of the Authorised Officer.

14.9 The unsuccessful bidders should be notified in a letter or e-mail which should contain:

1. The award criteria
2. The score the bidder obtained against those award criteria
3. The score the winning bidder obtained
4. The name of the winning bidder
5. The relative advantages / disadvantages of the bid against the successful bid
6. The Standstill period (if applicable)

**15. TENDERING PROCESS**

15.1 The entire tendering process in respect of contracts in excess of £50,000 will be administered by Nottingham City’s Procurement Service in liaison with the relevant Authorised Officer.

**16. PERFORMANCE BONDS AND GUARANTEES**

16.1 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.

16.2 Where a performance bond and / or parent company guarantee is required, then the advert / tender documents must provide for this.

**17. LIQUIDATED DAMAGES**

17.1 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 Law and Governance and the Head of Finance.

**18. CONTRACT FORMALITIES**

 Signatures

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

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

18.3 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

18.4 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 and some other person authorised by him/her and a Head of Service unless (s)he is satisfied that an agreement under hand is appropriate.

18.5 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 and a Head of Service. 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:

1. The Council may wish to enforce the contract more than six years after its end;
2. The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
3. Where there is any doubt about the authority of the person signing for the other contracting party;
4. The Total Valueexceeds £50,000.

Archiving & lodgement of records

18.6 The original signed contract (not sealed) must be kept securely in the Authorising Officer’s Section.

18.7 The original sealed contract must be deposited, by the Authorised Officer,with Legal Services.

**19. Domestic Reverse Charge**

19.1 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.

19.2 From 1 March 2021 the domestic VAT reverse charge must be used for most supplies of building and construction services.

19.3 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

19.4 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.

19.5 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

19.6 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 VAT 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**

19.7 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**

19.8 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**

Endusers

19.9 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.

19.10 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.

Intermediarysuppliers

19.11 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](https://www.legislation.gov.uk/ukpga/2006/46/section/1161/2007-01-20)

19.12 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**

19.13 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

19.14 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

**Contracts Regulations Exemptions Form**

|  |
| --- |
|  **NATURE OF PROPOSED EXPENDITURE** |
| **ESTIMATED VALUE** **(£)** |
| **REASON WHY COMPETITIVE TENDERING IS NOT VIABLE** |
| **PREFERRED CONTRACTOR(S)/SUPPLIER(S) TO BE USED** |
| **AUTHORISATIONS****Name of Service Requesting Exemption …….……………………………………………** **Date ………………………………………………….** **Head of Service**  **………………………………………………….**  |