

5.0 Procurement and Contracts

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PROCUREMENT OF WORK, GOODS AND SERVICES

Why is this important?

Public money should be spent with demonstrable probity and in accordance with the Council's policies. Local authorities have a statutory duty to achieve best value, in part through economy and efficiency. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements and reduce the following risks:

Risks:

- Goods or services may be ordered for personal use and later paid for by the Council;
- The incorrect volume, number or quality of goods and services may be received;
- The Council may be committed to spending on goods and services for which no budgetary provision has been determined;
- Officers failing to follow contract and tendering procedures may leave both themselves and the Council open to accusations of favouritism, unfair contract terms and legal challenge
- Goods or services ordered may fail to meet the Council's environmental, health and safety and other strategies and policies.

The procedures which should be followed when considering any spend of Council money are set out in the Contract Procedure Regulations.

5.1 CONTRACT PROCEDURE REGULATIONS

Why do we have Contract Procedure Regulations?

- 5.1.1 The Council is obligated by Section 135 of the Local Government Act 1972, to make Contract Procedure Regulations for the supply of goods or services or for the execution of works.
- 5.1.2 The purpose of Contract Procedure Regulations is to provide a framework within which the Council can get value for money when obtaining supplies of goods, services and works.
- 5.1.3 Officers must comply with these Contract Procedure Regulations, which lay down minimum requirements for procuring goods, services and works. Guidance on the procurement process can be obtained from the Procurement Team. Officers must always seek advice from the Procurement Team in the first instance and from the Council's Legal Services department when in any doubt and in particular for all contracts where European Law applies. If any authorising officer has any questions about the Contract Procedure Regulations, they should contact the Head of Finance.

- 5.1.4 Every contract made by the Council shall comply with these Contract Procedure Regulations.
- 5.1.5 Every Contract made by the Council shall comply with European Directives. In the event of any conflict between the Contract Procedure Regulations and European Directives the European Directive shall prevail.
- 5.1.6 Contract Procedure Regulations must be followed unless the law (in particular, European Procurement Directives, but also UK law) requires something different.

Who do the Contract Procedure Regulations apply to?

- 5.1.7 These Contract Procedure Regulations apply to:
 - a. All contracts made and to all orders placed by, or on behalf of the Council for the procurement, hire and commissioning of goods, services and works including where the Council is acting on behalf of public bodies;
 - b. All Officers and Members of the Council;
 - c. Any person or organisation engaged to manage a contract or undertake work that involves procurement on behalf of the Council. In each case the requirement to comply with the Contract Procedure Regulations is to be included in the terms of engagement;
 - d. The selection of sub-contractors where these are nominated by the Council under a main contract.

Reviewing and Changing the Contract Procedure Regulations

- 5.1.8 The Head of Finance is responsible for maintaining a continuous review of the Contract Procedure Regulations and submitting any additions or changes necessary to the Council for approval. The Head of Finance is also responsible for reporting, where appropriate, breaches of the Contract Procedure Regulations to the Council via the Cabinet.
- 5.1.9 Any non-compliance with the Contract Procedure Regulations must be reported to the Head of Finance or his representative. Any Officer that breaches the Contract Procedure Regulations may be subject to the Council's disciplinary procedures.
- 5.1.10 Anyone wishing to act outside the provisions of these Contract Procedure Regulations in a specific instance not covered by these Contract Procedure Regulations must seek the prior written approval of the Head of Finance and use the designated [FIN300](#) Waiver Form.

- 5.1.11 All instances of working outside these rules will be reported to the next meeting of the Cabinet, Audit, and Scrutiny Committees.

Compliance with the Contract Procedure Regulations

- 5.1.12 Service managers are responsible for ensuring that all of their staff fully comply with the Contract Procedure Regulations and other internal regulatory documents such as Procurement policies and procedures. The Contract Procedure Regulations is available on a centrally accessible ICT location and hard copies can also be made available.
- 5.1.13 Staff required to use Contract Procedure Regulations as part of their job will be required to confirm that they have read and understood the Contract Procedure Regulations as part of their induction. If further clarification or training is required, this can be provided by the Procurement Team.

Procurement Principles

- 5.1.14 The Council will adopt the following principles relating to the procurement of goods, services and works:-
- Base its procurement requirements on the principles of Best Value to ensure that it achieves efficiency, effectiveness and value for money.
 - Take a long-term strategic view of how it procures its requirements including the potential for alternative methods of service delivery, innovative funding methods and partnership working.
 - Expect that externally sourced requirements will be procured as a result of a competitive process unless there are compelling or practical reasons to the contrary.
 - Ensure that sustainability is an important criterion in any procurement activity and that so far as possible procurement operates in accordance with the Council's Procurement Strategy guidance on Sustainability.
 - Where appropriate develop procurement on a partnering basis in which both the Council and the supplier seek to achieve continuous improvements and maximise mutual benefit through longer term clearly worded contracts. These contracts will be based on measurable outcomes and performance that define the obligations of both parties.
 - Where appropriate seek to work with others and through legitimate consortia in the procurement of its requirements in order to widen the scope of its experience and focus expertise, maximise purchasing power and harness economies of scale.

~~5.1.15~~—The Council acknowledges that cheapest is not always best and shall award the contract based on ~~either:~~

~~5.1.16~~—

~~5.1.17~~—~~Value for money, including price and quality~~

a. The most economically advantageous tender (to the Council)

5.1.16 The method of contract evaluation will be included in the quotation specification or the invitation to tender.

Application and Interpretation of Contract Procedure Regulations

Definitions

Definitions with regard to these Contract Procedure Regulations can be found in the Glossary.

Aggregation of Orders

5.1.17 It is an offence under the European Directives to disaggregate the value of a contract so as to deliberately avoid the European Directive.

Exemption

5.1.18 Exemption from any Contract Procedure Regulations may be authorised by the Head of Service and Head of Finance, provided that:

- The decision maker or authorised officer is satisfied that the exemption is justified by special circumstances; and
- The exemption is reported in writing to the decision maker specifying the circumstances justifying the exemption.

~~Compliance to Contract Procedure Regulations and exceptions to Contract Procedure Regulations~~

~~5.1.19~~—~~All contracts shall comply with these Contract Procedure Regulations. No exception shall be made from any of the following otherwise than by direction of the Cabinet or in an emergency by the Chief Executive or in his absence a Head of Service, in consultation with the relevant Cabinet Member, where he is satisfied that there are.~~

~~5.1.20~~—~~The Cabinet shall be informed of the circumstances of every emergency exception made in accordance with these Contract Procedure Regulations and a record of any such exceptions shall be made in the minutes of the Cabinet.~~

Exceptional cases where Contract Procedure Regulations shall not apply (urgency etc.)

5.1.215.1.19 Contract Procedure Regulations shall not apply where in exceptional circumstances approval to proceed would be needed from The Leader, the Chief Executive, the Cabinet Member, the Head of Finance and the Chair of Scrutiny and that:

(i) The work, goods or materials are urgently required, and loss would be entailed by delay in advertising; or

(ii) The work, goods or materials required are of such special nature that no advantage would accrue by inviting competitive tenders; or

(iii) There is no effective competition for the goods or materials required by reason of the fixing of prices under statutory authority or that such goods or materials are patented or proprietary articles or materials.

(iv) Transactions, which, because of special circumstances, may (either individually or as a class) be excepted from time to time by the Cabinet of the Council.

Transactions effected through public sector purchasing organisations

5.1.225.1.20 Contract Procedure Regulations shall still apply to transactions effected through well-established public sector and other purchasing and distribution organisations. A full list of these is kept by the Procurement team. The procedure will depend on the nature of the framework agreement;

5.1.235.1.21 Further Competition Procedure should be used where the statement of requirements when developed, cannot be met by the standard catalogue of goods or services or if there is no such catalogue. The contract procedure rules will then apply to the further competition process.

5.1.245.1.22 Advice must be sought from the Procurement Team, prior to purchasing through any purchasing organisation or consortia.

Contracts and Official Orders

5.1.255.1.23 The table below provides an overview of the approach to be applied to the different thresholds of spend along with a reference to where the process is explained within these regulations :

Value	Form of Agreement	Methodology	Reference to Regulations	<u>Decision Route</u>
>£1,000	Official Purchase Order	Best endeavours	5.1.28	Budget holder
£1,000 - £50,000	Official Purchase Order	Minimum of 3 Quotations	5.1.35	Budget holder
£50,000 – EU Threshold	Formal Written Contract & Purchase Order	Tender(advertised locally)	5.1.41	Assuming that there is agreed budget in place, Budget holder may approve up to £250k.
Over EU Threshold	Formal Written Contract & Purchase Order	Tender(advertised in OJEU)	5.1.44	Contracts in excess of £250k will require approval by Cabinet

5.1.265.1.24 Prior to commencing any procurement or raising any order, the Officer must be assured that there is sufficient budget in place for the proposed purchase and establish the expenditure code relating to where the budget is held.

5.1.275.1.25 Consideration to both the value of the contract and the risk of exposure to the Council should be made by the relevant Head of service when deciding whether to execute a formal written contract.

Estimated Contract value less than £1,000

5.1.285.1.26 In the case of goods, where the Authority purchases a significant number of items and the aggregate total spend exceed £1,000 per year, prices must be renegotiated with supplier annually. If the total spend exceeds £50,000 per year, a contract should be executed in line with the **tender process** below.

5.1.295.1.27 In the case of works or services, where the Authority appoints a supplier for a significant number of low value jobs and the aggregate total spend exceeds £1,000 per year, quotations for rates should be obtained in line with the **quotation process** outlined below. If the total spend exceeds £50,000 per year, a contract should be executed in line with the **tender process** below.

5.1.305.1.28 In the case of a contract whose total does not exceed £1,000, the officer may place a single order without inviting quotations provided they are satisfied that they have used their Best Endeavours to ensure that the most favourable prices and terms are obtained, having regard to the principles of value for money and that the supplier is financially sound and technically competent.

5.1.315.1.29 If the contract is related to a service or works provision, appropriate pre-qualification of suppliers must be carried out to ensure that their status in relation to Health and Safety, financial standing, customer care, contract management and provision of insurance is suitable for the level of the contract.

5.1.325.1.30 Pre-qualification through an industry recognised method such as Constructionline or Exor will be deemed acceptable although the relevant Head of Service may require further checks to be carried out in this regard.

5.1.335.1.31 In the event that competitive tenders or quotations are sought, these shall be obtained from such number of contractors/suppliers as the relevant Head of Service deems appropriate having regard to the principles of Best Value

5.1.345.1.32 The officer is required to obtain written evidence of the quotations and the evidence is required to be kept in accordance with the Councils Document Retention guidance. [This is 12 months or the life of the contract, whichever is the greater.](#)

Estimated Contract value between £1,000 and £50,000

5.1.355.1.33 Competitive quotations shall be invited unless a Head of Service considers that it is not in the best interests of the Council to seek competitive tenders.

5.1.365.1.34 Where possible quotations should be sought from three contractors. For further details on quotations refer to the section on the quotation process.

5.1.375.1.35 The officer is required to obtain written evidence of the quotations/tenders and the evidence is required to be kept in accordance with the Councils Document Retention guidance.

Quotation Process

5.1.385.1.36 Where possible at least three written quotations will be sought.

5.1.395.1.37 The Service Manager will ensure all appropriate documentation is provided. The [FIN301 Request for Quotation form](#) should be used; however this may be supported by additional supplementary information which will further assist the supplier in providing their quotation. The Service Manager should ensure that such contract documentation shall be approved by Legal Services if required before quotations are requested.

5.1.405.1.38 The information contained in the request for a quotation will state:-

- The description or specification of the requirement avoiding the use of proprietary or brand names and using available recognised standards.
- The quantity required
- The delivery time and place
- The basis of the price to be quoted
- Which conditions or contract or other approved condition will apply to any order
- The date by which quotations are to be received by the Council this will normally be not less than 5 working days from the date of the request.

5.1.45 Suppliers shall be required to address their quotations to the Service manager.

5.1.46 Quotations may be requested and received using recommended electronic methods. The retention and administration is dealt with under the document retention policy.

5.1.47 Quotations received late will be disallowed. They will be retained unopened until after the quotations properly received have been opened and will be returned to the sender with an explanation. Prior to award the Head of Service in consultation with the Cabinet Member may meet with one or more of the lowest tenderers to finish and quantify the value for money being obtained for the Council.

5.1.48 The quotation from the Supplier who has offered the lowest acceptable price taking into consideration the required quality, delivery, cost of use and cost of disposal will normally be accepted provided this is within the estimated total cost.

5.1.49 Written acceptance will be notified to the Supplier by the officer from the service dealing with the procurement. They will also be responsible for notifying the Procurement Team in order for them to update their records with details of the Contract and how they have selected the chosen supplier.

5.1.50 If the contract is for goods currently maintained or which are going to be maintained on the eProcurement catalogue, a full list of products should be forwarded to procurement on the [FIN302 Product Upload Template](#) to allow them to be added to the catalogue prior to ordering.

5.1.51 The relevant Service Manager may accept a quotation other than the lowest where it is in the best interest of the Council and best value is achieved. Such a decision and its reasons shall be recorded and this information submitted to the Procurement Team.

- 5.1.52 An order will be raised on the Councils eProcurement system at the point of awarding the contract.
- 5.1.53 If requested the unsuccessful suppliers can be notified and given reasons without breaching the commercial confidentiality of the other suppliers.

Estimated Contract value over £50,000 but below European thresholds

[5.1.39 The contract opportunity shall be advertised on the Councils eTendering portal and on UK Contracts Finder in line with UK Procurement legislation.](#)

~~5.1.41~~5.1.40 Competitive tenders shall be invited. Where possible tenders shall be invited from four contractors.

~~5.1.42~~ ~~Where possible there shall be two reserves in the event that any contractor withdraws or is unable to tender.~~

~~5.1.43~~5.1.41 Where it can be demonstrated that there are insufficient suitably qualified contractors to meet the competition requirement set out above all suitably qualified contractors should be invited so far as is practical.

Estimated Contract value exceeds European Thresholds

~~5.1.44~~5.1.42 Where the estimated Value of the Contract exceeds the thresholds laid down in the European Directive Appendix A - Table I, EU procurement rules will apply

~~5.1.45~~5.1.43 The opportunity will be advertised in the Official Journal of the European Union (OJEU) and all legislative requirements must be met.

~~5.1.46~~5.1.44 A full description of the EU procurement rules can be found on the Authorities website.

The Tender Process

- 5.1.55 Before starting a tender process, and with suitable advance notice, the relevant Officer will inform the Procurement Team of the proposed contract details using the [FIN303](#) Tender Initiation Form..
- 5.1.56 Unless the relevant Service manager decides otherwise, all draft contract documents to be sent out with a request for tender shall be approved by Legal Services prior to being sent to any supplier.
- 5.1.57 Consultation will occur between the Procurement Team, Head of Service and where necessary Legal Services, and where relevant agree:

i) The roles and responsibilities in respect of:

- The selection process
- The tender process
- The evaluation of the outcomes
- Post tender negotiations
- The contract award
- Contract management

ii) A procurement plan that:-

- Identifies scope for working with others
- Identifies the use of the best practice contracting and procurement methods including partnerships and partnering
- Reflects any additional requirements and choice of procedure for a contract that exceeds the EU procurement thresholds.
- Identifies the use of European standards where these are available.
- Details timescales and major events
- Identifies and allocates responsibilities.

iii) The selection criteria for suppliers to be invited to tender are based on commercial consideration and include:

- Financial viability and capacity
- Operational capacity
- Technical competence and capacity
- Relevant environmental issues
- The council's policies
- Legislative compliance
- Health and Safety

iv) The evaluation and award criteria for the contract to achieve Value for Money or MEAT taking into account such aspects as:

- Proposed methods and approach
- Total costs to the Council over the life of the contract including disposal costs
- Quality
- Delivery
- Sustainability
- Risk including the suppliers insurance details
- Health and Safety

5.1.58 In the case of contract values in excess of £250,000, and any contracts in respect of which the relevant Service Manager may so direct depending on the strategic relevance of the contract, the evaluation and award criteria to be used for award will be agreed in advance of the Invitation to Tender being issued, by the Head of Service and relevant Cabinet Member.

5.1.59 Tenders will be advertised and submitted electronically via Supplying the Southwest Procurement Portal using the Council's Standard Form of Tender. Any amendment to this form must be approved in advance by Legal Services.

~~5.1.60 If any tenderer is unable to submit their Tender in this way, a written tender will be accepted.~~

Tenders – manner of submission

~~5.1.61 Every invitation to tender shall state that tenders will be only considered if it is received either electronically via Supplying the Southwest Procurement Portal, or by hard copy as described at 5.1.60 above by the date and time specified unless a valid reason is supplied.~~

~~5.1.62 Where a written tender is to be accepted, it must:~~

- ~~▪ Be received in a plain sealed envelope ; and~~
- ~~▪ Bear the word "Tender" followed by the subject to which it relates; and~~
- ~~▪ Bear no name or mark indicating the sender; and~~
- ~~▪ Bear the date and time for the return of the tender as specified in the invitation.~~

~~5.1.63 Such tender envelopes shall remain in the custody of Member Services, until the time appointed for their opening.~~

5.1.65 No tender received by any means after the time and date specified in the invitation shall be accepted or considered under any circumstances

Tenders – Procedures for opening

5.1.66 All tenders for a Contract shall be opened via the verification process within the eTendering portal.

5.1.67 The designated Verifier for the tender will be a member of the Internal Audit section and only those Officers delegated with Verifier status will be able to access the tenders and remove the Tender seal.

5.1.68 The tenders may then be accepted and released for evaluation or declined and reasons given.

5.1.69 Documentation from the eTendering portals audit log should be produced to show the following:

- a) The name of the Tenderers who submitted their tender on-time
- b) The name of the Tenderers who submitted their tender late
- c) The name of the Tenderers who opted out of the Tender process and the opt out reason (if supplied)

- d) The date and time of the submission
- e) The Tendered price for each on-time submission as it appear on the Form of Tender.

~~5.1.70 Where a written tender is to be accepted, all tenders for a Contract shall be opened in the same place and at the same time. Any such tenders shall only be opened in the presence of a minimum of three officers who shall include:-~~

- ~~a) A representative from Member Services; and~~
- ~~b) An officer from the procuring service; and~~
- ~~c) A representative from Internal Audit.~~

~~These should include the same Officer who has verified any electronic tenders received for the same contract.~~

~~5.1.72 During the opening process tenders will not be accepted if:~~

- ~~▪ The submission provided by the company wishing to tender is different to the basis on which tenders have been invited; or~~
- ~~▪ The company submitting the tender cannot be identified from the tender paperwork.~~

~~5.1.73 Details of all written tenders received shall be recorded in a register maintained by the Internal Audit section. That register shall be open to inspection by Members of the Council.~~

Tenders – Procedures for acceptance

~~5.1.74 Prior to award the Head of Service in consultation with the Cabinet Member may meet with one or more of the lowest tenderers to finish and quantify the value for money being obtained for the Council.~~

~~5.1.75~~5.1.73 Where tenders have been invited in accordance with these Contract Procedure Regulations, the winning tender based on ~~VFM or~~ MEAT as defined at 5.1.15 ~~(a) and (b)~~ shall be awarded the contract.

~~5.1.76~~5.1.74 The winning tender will be defined as the one who scores highest based on the pre-defined evaluation criteria which was agreed at 5.1.57 and published with the Invitation to Tender.

~~5.1.77~~5.1.75 For contracts under £250k the Head of Service will authorise.

~~5.1.78~~5.1.76 For contracts above £250k, or where there is 10% excess on the budgeted tender provision, the Head of Service will refer to Cabinet prior to authorising the acceptance.

Tenders- Record Retention

5.1.795.1.77 A full record of the procurement process followed for Quotation and Tenders will be maintained, including but not limited to:

a. Quotations:

- Invitation to Quote
- Submitted quotation
- Waivers
- Reason for not accepting lowest price and post quotation clarification including establishing value for money.
- Communication with successful supplier
- Feedback (if requested) supplied to unsuccessful suppliers

b. Tenders:

- Business case
- Pre-tender market research
- Method of obtaining bids
- Contracting decisions/ reasons
- Waiver
- Award criteria
- Tender documents
- Tender submissions
- Post tender clarification and establishing value for money
- Legal Advice
- Evaluation
- Post contract monitoring

Standing Lists of Selected Suppliers

5.1.805.1.78 Where quotations or tenders are regularly obtained for the same or similar types of goods, services or works that are below the EU tender process value a standing list of selected suppliers may be used in the interest of efficiency and value for money.

5.1.845.1.79 Each Head of Service is authorised to compile maintain and review in consultation with the Procurement Manager such standing lists as are appropriate for the contracts for which they are responsible.

5.1.825.1.80 Each standing list shall be reviewed and updated by the relevant Head of Finance at least once in any 24-month period and copy sent to procurement.

5.1.835.1.81 A list of the established select lists is held by Procurement.

Orders for Goods, Works and Services

Once a contract has been awarded or a quotation accepted, the following rules in relation to transactional process of ordering through to payment should be followed.

Rules:

- 5.1.83 The system to be used for the ordering of works, goods and services shall be the eProcurement Corporate Finance System or any successor system as agreed by the Head of Finance. Only orders in a format agreed by the Head of Finance shall be used.

Includes:

- Hire/ rent/ lease of goods (See 6.6 Asset Leasing arrangements)
- Delivery of recruitment/ consultancy
- Appointment of Counsel
- Obtaining Finance

- 5.1.84 Any amendments or changes in procedure to the agreed system must be approved by the Head of Finance in consultation with the Head of ICT if appropriate, prior to being updated.

- 5.1.85 Every officer and member of the Authority has the responsibility to declare to the Monitoring Officer any links or personal interest that they may have with purchasers, suppliers and/or contractors (including sub-contractors) if they are engaged in contractual or purchasing decisions on behalf of the Authority in accordance with the appropriate Codes of Conduct.

Ordering

- 5.1.86 Official orders, either in whole or in part, must not be used to obtain goods or services for private use. Any officer found to be breaching this Rule, will be subject to disciplinary proceedings.

- 5.1.87 Official eProcurement orders shall be raised for all work, goods and services to be supplied to the Council. No work is to be placed to an outside contractor without an order being raised.

- 5.1.88 All ordering must be conducted through the Procurement Team. Under no circumstances are verbal orders to be placed except as at 5.1.89.

- 5.1.89 In the case of an emergency situation, the order must be placed as soon as is reasonably possible and in all cases prior to the supplier submitting their invoice.

- 5.1.90 Guidance must be sought from the Procurement Team for any officers placing an emergency order or orders relating to exceptional circumstances.

- 5.1.91 Prior to engaging any new supplier, Officers should consult with the Procurement Team to ensure that there is not already a contract in place which could meet their requirement.

To use the new supplier, a [FIN304](#) Request for Supplier set up form should be completed with all relevant details for verification with HMRC including where applicable:

- UTR (unique tax reference)
- National Insurance number
- Company registration number
- VAT registration number

Consideration of employment status, see 5.2 below and if the work involves construction, 5.3 below, also needs to be made before a new supplier is created.

- 5.1.91 All orders must be raised, in advance of the works, goods or services being received by the Council. A designated authorised signatory, will need to authorise orders prior to the order being raised and placed by the Procurement Team.

- 5.1.92 It is the responsibility of the designated service Authoriser to confirm with the relevant budget holder and / or Accountant as to whether there is budget available prior to requisitioning the works, goods or services.

- 5.1.93 Spending limits must be observed at all times and officers must not avoid overspending on the correct expenditure code by applying an incorrect underspend code to an order.

- 5.1.94 Spending limits will be reviewed and approved by the Head of Service on an annual basis.

- 5.1.95 Officers initiating an order must consult the appropriate Accountant and jointly decide if a virement is required from an underspent code to the correct code before the ordering process continues. Any doubt or difficulty in correctly coding an order shall be referred to the appropriate Accountant for advice.

- 5.1.96 Orders are not to be split into smaller orders solely to avoid the value limits and procedures laid down in the Council's Contract Procedure Rules.

- 5.1.97 Orders are not required for:

- a) Rents;
- b) Rates;
- c) Supply of Utility Services (Gas, Mains Water, Electric, Telephone);
- d) Petty Cash reimbursements; and
- e) S151 treasury transfers.

Variations to official orders can be made by submitting a properly completed [FIN305](#) variation order to the Procurement Team.

Full details of how to use the eProcurement system can be found in the eProcurement User Guide which is available on Sharepoint.

5.2 Employment Status - Use of Consultants and Others

- 5.2.1 Employment status of non Mid Devon District Council employees should be a concern for all service managers. This guidance lays out the basic position and shows how to work out the status of an engagement.
- 5.2.2 It is vital to resolve the issue of status and inform the individual how they will be paid, **before** they undertake the work. This will prevent delays in payment and disagreements if someone is paid subject to deductions via payroll, when they were expecting to be paid gross, against invoices submitted via the Creditors system. .
- 5.2.3 The service manager engaging someone to perform a task has the responsibility of determining their employment status and whether they should be paid via payroll. It is not up to the individual being asked to perform the task to indicate what their status is. If the Council treats someone incorrectly, and HMRC imposes interest and penalties these will fall on the service that has commissioned the work. (HMRC will normally go back as far as six years plus the current for unpaid tax, NI, interest and penalties.)
- 5.2.4 Even if an individual can demonstrate that they are registered with HMRC as self-employed this does not mean that they should necessarily be treated as such when they undertake an engagement for Mid Devon District Council. It depends upon the contractual arrangement with the individual (See Below)
- 5.2.5 If the working arrangement is such that the individual is deemed to be employed by the Council then the HR Manager needs to be informed so the appropriate contract of employment can be drawn up and issued **before** the individual commences any work for the Council.
- 5.2.6 If you engage an individual via a registered company or employment agency then so long as payments are made to the registered company or agency name the Council do not have to consider employment status. Payment must not be made to the individual employed in this circumstance
- 5.2.7 Employment status can still be an issue for individuals who fall under the Construction Industry Scheme. (CIS). To avoid this complication the Council should not provide tools and equipment, and ensure these individuals have other self-employment in addition to the works they do for the Council. This will ensure tax is only payable under CIS, and the Council does not have to consider whether they could be employees or not.

Points to consider

- 5.2.8 The following are extracts from: “Are your workers employed or self-employed for tax and National Insurance contributions” HM Revenue and Customs leaflet ES/FS2.

An individual worker is likely to be **employed** if the answer is ‘**yes**’ to most of the following questions:

- Does the worker have to do the work themselves?
- Can you tell the worker where to work, when to work, how to work or what to do?
- Can you move the worker from task to task?
- Does the worker have to work a set number of hours?
- Is the worker paid a regular wage or salary?
- Can the worker get overtime pay or bonus payments?
- Is the worker responsible for managing anyone else engaged by you?

Your worker is likely to be **self-employed** if the answer is ‘**yes**’ to one or more of these questions:

- Can the worker hire someone to do the work, or take on helpers at their own expense?
- Can the worker decide where to provide the services of the job, when to work, how to work and what to do?
- Can the worker make a loss as well as a profit?
- Does the worker agree to do a job for a fixed price regardless of how long the job may take?

If you can’t answer ‘yes’ to any of the above questions, your worker is still likely to be **self-employed** if you can answer ‘**yes**’ to most of the following questions:

- Does the worker risk his own money?
- Does the worker provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?
- Does the worker have to correct unsatisfactory work in their own time and at their own expense?

An example:

If an individual contracts to paint Phoenix House for £20k and to complete the work in eighteen months at times that suit him with as many workers as he sees fit to employ it would indicate self-employment. The costs incurred could generate either a profit or a loss and there is a financial risk to him.

However, if he is to report to a service manager on Monday and paints the building using our paint and equipment, cannot contract others to do the work, and effectively works the hours we decree, then there is no financial risk to him and this would be employment.

There is an online tool that can be used to help determine the status of individuals at:

www.hmrc.gov.uk/calcs/esi.htm

However the online ESI tool should **not** be used for determining the status of:

- individuals who provide their services through a limited company (known as IR35)
- contracts with agencies to provide services to another person (client).

If you have any doubt as to the correct treatment, the matter should be referred to the Head of Finance or Head of HR and Development without delay.

5.3 Construction Industry Scheme

- 5.3.1 Under current tax legislation the Council is a deemed Contractor and those working for the Council are sub-contractors. The Head of Finance will arrange for nominated staff to check the validation at the HMRC website when Procurement have advised of a new potential CIS subcontractor.
- 5.3.2 Payment in full can **only** be made to such a sub-contractor (company or individual) in the construction industry who has been validated by HMRC and is allowed to be paid Gross. Procurement will check the status of individuals with HMRC when creating new suppliers
- 5.3.3 Those classified to receive monies net by HMRC, will be paid with a tax deduction of 20% from the labour element of the invoice. These individuals or companies should submit invoices which clearly apportion the materials element of the charge from other elements before VAT is added. A failure to do so will mean that the invoice is not paid and returned to the supplier.
- 5.3.4 If the subcontractor is not validated the payment can only be made with 30% tax deduction.
- 5.3.5 Monthly electronic returns of CIS deductions will be made to HM Revenue and Customs by no later than 19th of each calendar month by officers nominated by the Head of Finance.

Retentions

- 5.3.6 Payments to contractors will only be made on a certificated invoice of the designated service manager, or where engaged by the Council, the Private Architect, Engineer or Consultant. Certificated invoices shall show the value of the work, retention money, amounts previously certified and amounts now certified.
- 5.3.7 All variations to contracts are to be in writing and in the form of a properly authorised [FIN305](#) Variation Order.

- 5.3.8 The final payment for any contract will not be issued until the Head of Service has had a copy of the final account and has carried out such examination as he/she considers necessary in order to satisfy themselves as to the accuracy of the account.
- 5.3.9 It is recommended that for contracts in excess of £100,000, best practice would be to include a standard retention of 5% until practical completion of a contract and then 2.5% to be held until 12 months after practical completion of the contract, which should be specified in the contract.
- 5.3.10 It is the responsibility of the Service Manager in conjunction with the Head of Finance to agree a suitable level of retention for the specific contract on a case by case basis.

5.4 Receipt of Goods and Services

- 5.4.1 Goods works and services received by the Council will be “delivered” by approved staff on the financial system upon **receipt** of the goods or services so as to ensure the liability is promptly recorded on the financial ledger.
- 5.4.2 Certification of work undertaken by external contractors engaged by the Council is to be authorised by suitably experienced and qualified staff prior to delivery being entered on the financial system.
- 5.4.3 Documentation relating to deliveries such as Delivery notes or Job completion sheets should be kept in accordance with the Councils Document Retention guidance.
- 5.4.4 Where possible the delivery note should be scanned and attached to the eProcurement system at the point of entering the Good Received Note.

5.5 Authorisation for Payment

- 5.5.1 The Head of Finance will ensure that procedures are in place to ensure that orders made for goods and services on behalf of the Council can only be placed by suitably trained authorised individuals, up to authorised limits, covered by an appropriate budget provision.
- 5.5.2 The limits for approval of expenditure are set out in Appendix A.
- 5.5.3 Service managers will be responsible for the authorisation of orders raised in the pursuit of their agreed service plans. All requests to add or amend authorisation amounts must be made to Head of Finance in advance and approved prior to their use..
- 5.5.4 HR are to supply a monthly report to the Head of Finance to ensure prompt removal of former employees.

- 5.5.5 Contract retentions in accordance with contractual arrangements are always to be made and the Accounts Payable section is to be authorised only to pay net amounts due.

5.6 Payments

Why is this important?

The Council spends significant amounts of public money on the purchase of goods and services in order to provide its services in accordance with statute and policy decisions. .

Risks:

- The Council pays for goods and services that have not been received;
- The Council pays for goods and service twice or more in error;
- The opportunity for fraud or loss is increased;
- Financial and accounting records are not correctly updated.

Regulations:

- 5.6.1 The Council will pay invoices within 30 days from receipt of invoice or on other terms as maybe agreed. All staff involved with paying creditors shall ensure that invoices are dealt with promptly.
- 5.6.2 In the cases of invoices relating to work which is covered by the Construction Act 2009, payment will be made in accordance with the protocol set out in the statutory scheme for Construction Contracts.
- 5.6.3 No amendments, changes or avoidance of the system laid down for the processing of invoices for payment must be undertaken without the approval of the Head of Finance.
- 5.6.4 Invoices will only be accepted on which details are written in ink, typewritten, printed or generated by computer. Payment against faxed or photocopied invoices require the prior approval of the Head of Finance, or his/her appointed representative..
- 5.6.5 All Invoices must be received centrally in the Accounts Payable section of Financial Services.
- 5.6.6 It is the responsibility of the paying department to check the following:
- That an order has been raised, where appropriate and in accordance with
5.1 Procurement of Work, Goods and Services.

- The invoice is addressed to Mid Devon District Council
- That the details listed on the invoice match the order, including the description, units, amount and VAT and that they are within the acceptable validity limit of +/- 5%.
- That the goods and services have been supplied/delivered to the Council and recorded via the 'enter goods receipt' section of the eProcurement system.

5.6.7 It is the responsibility of the Accounts Payable section to check the following:

- That any trade and cash discounts have been deducted
- That the invoice is a genuine invoice and is not faxed or photocopied
- That the invoice has not previously been paid.

5.6.8 The refunding of any payment made by a member of the public can only be considered if there are genuine reasons for doing so, e.g. cancellation of event, overpayment of Council Tax, etc. The refund request must be correctly authorised and accompanied by proof that a payment was made to the Council.

5.6.9 Payments on Council pre-printed forms, e.g. pro forma invoices such as Petty Cash reimbursement are to be signed by the appropriate authorising officer and checked for correct completion by the appropriate Officers and Accounts Payable staff before payment.

5.6.10 The Internal Audit Section will carry out checks on the Creditors system in accordance with the Audit Plan.

5.6.11 Payment for goods and services not yet received i.e. training courses should only occur in exceptional circumstances and with the prior approval of an authorising officer. A record of the payment should be made on the order and checks should be carried out to ensure that delivery subsequently takes place.

5.6.12 All Creditors cheques returned to the Council, whether by hand or by post, shall be passed immediately to the Accounts Payable section of Financial Services and not to the instigating officer. The instigating officer is, however, to be informed of any cheque having been returned.

5.6.13 Creditors will be paid by BACS whenever possible with a remittance advice forwarded within 24 hours of payment. All Bank details to enable payment will be held on the Creditor's individual file records and amended by Procurement staff only on receipt of official notification in writing, from the Creditor.

5.7 Contracts Register

- 5.7.1 Upon award of any contract, a [FIN306](#) Contract Award Notification will be sent by the Procurement Team to the relevant Head of Service, Service Manager, Cabinet Member and Accountant and to the Head of Finance to notify them of the award.
- 5.7.2 It will remain the responsibility of the Procurement Team to maintain a contract register of all contracts awarded on behalf of the Council.
- 5.7.3 The register will document the supplier, value and duration of the contract and be available for review on a centrally held electronic file by Officers and Members.