**Procurement Services**

**Contract Novation’s**

1. **Introduction**

This process sets out what actions Service Departments must take when a contract is novated to another supplier. Novation falls under the CPRs, Council governance and Procurement Legislation, and therefore Notifications maybe required to be published to meet mandatory requirements.

1. **Background**

A contract novation involves the transfer of a party's rights and obligations under a contract to a third party. Technically, novation cancels the original contract and replaces it with a new contract, under which a third party takes up rights and obligations which mirror those of the outgoing party. The outgoing party surrenders its rights and is released from its obligations in the process. This means where a contract with the Council is novated, there are three parties involved - the Council, the existing supplier, and the new supplier.

Contract Novations often occur when a supplier has sold off parts of its business or has been bought out by another company. Novation’s can often come ‘out of the blue’, or the existing supplier may have informed the Service Department that a novation may be needed in the future. If this is the case, then the Service Department will have time to develop a strategy in response to this. It maybe that the supplier is looking to end the contract and may suggest a novation to another supplier as a way of continuing provision.

Remember that suppliers should seek approval for the novation to go ahead. All 3 parties (including the Council) must agree and enter into the novation agreement. The Service Department needs to consider the impact of the novation on the service and the Council and review all options available.

* Novate to the new contract.
* Terminate and procure a new service.
* End the service (saving)
* Novate to the new contract and negotiate some terms (de scope)

It is important to look at the original contract to see what clauses are available. There may be clauses in the original contract where a novation can allow for termination of the contract. This may be an opportunity to stop the provision and make savings. If it is decided to cancel the contract, please complete the [Contract Termination pro form](https://enfield365.sharepoint.com/:w:/r/sites/intranetprocurement/_layouts/15/Doc.aspx?sourcedoc=%7BA9363A00-1135-40DF-9D17-2C16721B1365%7D&file=Contract%20Novation%20Pro-forma%20Jan%202025.docx&action=default&mobileredirect=true)  and instruct Legal prior to taking any action.

Where the Service Department is not happy to novate to the new supplier, then alternative provision will need to be compliantly procured. This may be a challenge if timescales are tight. Complete the Novation Pro-Forma and instruct Legal. It is a good idea to see what other suppliers are in the market to look at options and strategy.

Where is has been decided to novate then it is a good opportunity to review the contract specification and the term (e.g. shorten it and go back to the market) to ensure that it still meets the needs of the service/Council and whether savings/efficiencies or de-scoping could be made.

1. **Novation Process**

Once it has been decided to novate the contract, Service Departments must ensure that Council governance is followed as this is effectively entering into a new agreement. This will be a [Non-Key Officer Decision Report](https://enfield365.sharepoint.com/:w:/r/sites/intranetlawandgovernance/_layouts/15/Doc.aspx?sourcedoc=%7B4F6DF736-B68E-4207-9B03-B32F57EB287A%7D&file=Non-Key-Officer-Decision-Report-Template.docx&action=default&mobileredirect=true) if under £499k, if over then the [Standard Corporate Report Template](https://enfield365.sharepoint.com/:w:/r/sites/intranetlawandgovernance/_layouts/15/Doc.aspx?sourcedoc=%7BE19161CE-751C-43D5-96EF-1C0031B5FDF1%7D&file=Report-Template-2023-Amended.docx&action=default&mobileredirect=true) and Key Decision process.

Complete the [Novation pro forma](https://enfield365.sharepoint.com/:w:/r/sites/intranetprocurement/_layouts/15/Doc.aspx?sourcedoc=%7BA9363A00-1135-40DF-9D17-2C16721B1365%7D&file=Contract%20Novation%20Pro-forma%20Jan%202025.docx&action=default&mobileredirect=true) and send to Procurement Support. This will then be reviewed at Procurement Assurance Group (PAG). This will also trigger support for a getting the new contract on the procurement system and getting a reference number when novating (which will be needed to get the supplier created).

Service Departments need to ensure:

* There is a copy of the original contract.
* There is a novation agreement (signed by all three parties)
* Financial due diligence & financial checks on the new supplier have been carried out.
* Governance as per the Service Departments Scheme of Delegation (SOD), and Council Policy have been carried out.
* The procurement system and other records are updated.
* The new supplier is set up and close the old one off.

If it has not been possible to find the copy of the old agreement, or evidence that the contract was properly procured then Service Departments must consider if it is possible to novate. Under a Novation agreement all the responsibilities and obligations are transferred from the original supplier to the new supplier. It is important to ensure that the new contract ‘mirrors’ the original contract terms and conditions. Should the new supplier change the terms and conditions then the Service Department need to decide if these are agreeable or negotiate changes. Remember that any changes should fall within permitted changes under procurement legislation, or the Council could expose itself to procurement risk.

Contact Legal Services if the new supplier is unwilling to take on all contractual responsibilities. Also consider if there is a reduction in service provision which should be reflected in the cost of the contract. Contact Procurement Services for support on this.

Prior to signing the novation agreement, ensure that any financial checks or due diligence checks on the supplier are carried out (like those carried out during the original procurement) to minimise risk to the Council. Do not sign the contract if the new supplier does not meet economic standing tests. Contracts over £100,000 (use the pro forma to arrange this) must have an economic standing test carried out.

If the original contract used LBE terms and conditions, then the Service Department needs to seek a template novation agreement from Legal Services to complete (if over £500K then Legal Services will manage this). If the suppliers’ terms & conditions were used, then the new supplier will probably supply the novation agreement, please read it carefully and obtain advice from Legal Services if required.

The signature of the novation agreement must follow the same Scheme of Delegation as the original contract, and if over £500,000 be under seal.

The contract manager must arrange for the Procurement System to be updated. This will be done by Procurement Services where the [Novation Pro-form](https://enfield365.sharepoint.com/:w:/r/sites/intranetprocurement/_layouts/15/Doc.aspx?sourcedoc=%7BA9363A00-1135-40DF-9D17-2C16721B1365%7D&file=Contract%20Novation%20Pro-forma%20Jan%202025.docx&action=default&mobileredirect=true)a has been used and will update the Procurement System as needed. The Procurement System must be updated for ALL contracts over £30,000 to meet the Councils transparency regulations. By completing the [Novation pro-form](https://enfield365.sharepoint.com/:w:/r/sites/intranetprocurement/_layouts/15/Doc.aspx?sourcedoc=%7BA9363A00-1135-40DF-9D17-2C16721B1365%7D&file=Contract%20Novation%20Pro-forma%20Jan%202025.docx&action=default&mobileredirect=true)a this will be done by Procurement Services, and any Notifications to meet procurement legislation will be published. Contact [Procurement.support@enfield.gov.uk](mailto:Procurement.support@enfield.gov.uk) if support is needed to update the Procurement System.

Where the contact is not in the Procurement System or is exempt from procurement, then this process still must be followed to ensure that Due Diligence is carried out. If the contract is under £30,000 and a new Procurement System reference is not required, this process must still be followed, and an email will be sent to vendors with the approval and novation agreement.

Once a copy of the signed novation agreement and the new Procurement System reference from Procurement Services are in place then the Service Department can request the new supplier be set up, and the old supplier to be closed. Exchequer Services will not set up the new supplier without:

* A new Procurement System reference
* Copy of the novation agreement
* Authority Report (NKOD or SCT) signed off.

For exempt from procurement contracts:

* An email from Procurement Services to confirm contract is exempt.
* Copy of the novation agreement
* Authority Report (NKOD or SCT) signed off.

Where it has been decided to terminate the contract and not novate please complete the [Contract Termination pro forma](https://enfield365.sharepoint.com/:w:/r/sites/intranetprocurement/_layouts/15/Doc.aspx?sourcedoc=%7B08A0C85D-AD69-4BEF-8BA2-081B02E5A654%7D&file=Contract%20Termination%20Pro%20forma%20Jan%202025.docx&action=default&mobileredirect=true), and follow Council governance for a termination.