

Amended Rules
FINANCIAL PROCEDURE RULE 8
PROCUREMENT FOR WORKS, GOODS AND SERVICES

This Rule must be read in conjunction with the Harborough District Council Statement of Require Practice for Procurement ('The Procurement SORP') and Contract Procedure Rules.

General

The Chief Finance Officer will determine and/or approve revised procedures and processes in electronic systems, providing that they do not weaken existing controls.

The Council's e-procurement system and approved Market Places' shall be used to procure works, goods and services in accordance with the Procurement SORP. The Service Manager, Commissioning is responsible for the Procurement SORP.

1. Official order forms

- (i) The Chief Finance Officer, or their nominated Deputy, will approve the design of all official order forms.

- (ii) All work, goods or services must have an official order. There are presently exceptions (see below). However, the Chief Finance Officer, or their nominated Deputy, may determine that these exceptions are no longer applicable when an electronic system is used. The present exceptions are:
 - (a) supplies of public utility services;
 - (b) payments such as rent and rates;
 - (c) items bought with petty cash;
 - (d) anything else that the Chief Finance Officer may approve; or
 - (e) items bought with a procurement card and/or a corporate credit card.

- (iii) The Council's ordering system must not be used to order or seek quotes or estimates for works, goods or services for personal use. **Any abuse of the Council's ordering**

system for personal use will be regarded as a serious breach of trust, and will result in disciplinary action against the member of staff.

2. Raising orders

- (i) An order for goods or services must not be raised if the cost is not covered by an approved budget, or if it contravenes a standing order, contract rule or financial rule.
- (ii) Before they are issued, all orders must be signed manually or authorised electronically by the appropriate authorised budget holder or Head of Service (or, in their absence, a member of the Management Board or one of the employees listed in accordance with Rule (iii) below). The electronic authorisation procedure must be that approved by the Chief Finance Officer.
- (iii) Heads of Service must send a list of names, signatures and authorised limits of staff allowed to sign or authorise orders on their behalf, to the Chief Finance Officer or their nominated Deputy.
- (iv) Official orders must clearly show the materials, work or services together with an estimated total value. They must also show whether the materials, work or services are covered by a 'Contract Price' or by an 'Agreed Price'.
- (v) Suppliers must be asked to send invoices direct to the Council and to show on invoices the official order number and where they have delivered the goods or services.
- (vi) In exceptional cases where sometimes orders are placed by phone or, in case of emergency, by verbal instruction; these must be confirmed by an official order (which may be an electronic order) the next working day at the latest.
- (vii) Full advantage must be taken of any contract that has been arranged centrally, e.g. for stationery, and to make sure that the standard and quality of goods or services ordered is right for what is wanted.

Heads of Service must use contractors or suppliers for works, goods or services procured in accordance with the Procurement SORP.

3. Information and Communications Technology

- (i) All information and communications technology (ICT) equipment, digital equipment, computer programs, or IT consultancy must be acquired through the Head of Change, so as to ensure best price and system compatibility.
- (ii) Before purchasing or implementing any new computer application or system, the Chief Finance Officer or the Head of Financial Services must be told whether the equipment or program(s) is to be used for recording, holding, or processing financial transactions or information.
- (iii) Before implementing any new computer application or system, the Head of ICT (the Council's Data Protection Officer) must be told if the equipment or program(s) are to be used for recording, holding, or processing personal information. Any such application or system shall not be operated with live data until the Head of ICT has confirmed in writing that the requirements of the Data Protection Act, in respect of registration, and security have been met.

4. Mobile telephones

- (i) Subject to (ii) below, the Head of Change is responsible for the procurement of all mobile telephones and deciding the best tariffs so as to obtain value for money.
- (ii) The Head of Change shall, in arriving at their procurement decision in (i) above, include suppliers and contracts procured by the Welland Procurement Unit and procurement market places that are available to the Council at the time.

Amended Contract Procedure Rules

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5.	Contract Procedure Rule 7 – Consultancy Agreements	Retained
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7.	Contract Procedure Rule 9 – Human Rights/ Race Relations/ Crime and Disorder and Other Matters	Retained
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CONTRACT PROCEDURE RULE 1

GENERAL

The Management Board

1. The Management Board must uphold and maintain the highest standards in the conduct of the Council's financial affairs, and ensure that all members of staff comply with these standards. It must make sure that there is honesty and integrity in the way we work, and that agreed rules are followed.
2. The Chief Finance Officer is responsible for the Council's financial affairs.
3. The Management Board must make sure that everyone keeps to the Financial Procedure Rules.
4. The Management Board will work with Members, Heads of Service and others to make sure that all Council resources are managed efficiently and effectively.

The Chief Finance Officer

5. The Chief Finance Officer (also known as the Responsible Financial Officer) is responsible for the Council's financial affairs. He or she approves the form of accounts and records, and reviews each Accounting System to make sure that it is efficient and works correctly.
6. The Executive may decide what accounting records and systems will be used. The Chief Finance Officer will make sure these records and systems are introduced, and everybody uses them.
7. The Head of Legal Services is responsible for maintaining an anti fraud and corruption strategy.

The Monitoring Officer

8. The Council's Monitoring Officer is responsible for carrying out duties under Section 5 of the Local Government and Housing Act 1989, and must make sure that internal rules are followed.

9. He or she must make sure that all members of staff maintain the highest standards in the conduct of the Council's affairs.

Heads of Service

10. All Heads of Service are responsible for setting up effective systems of internal control and checks for the Council. These systems must:
 - safeguard the Council's assets and interests;
 - make sure all record keeping is reliable and timely;
 - ensure that all transactions are recorded accurately; and
 - make sure everyone observes and keeps to the Council's policies and instructions.

All Managers must uphold and maintain the highest ethical and operational standard in the conduct of the Council's financial affairs, and ensure that all members of staff similarly comply with these standards.

Additional Contract Procedure Rule

1. Entering into Contracts

- 1.1. Every contract or agreement entered into by, or on behalf of, the Council shall comply with UK law; the Council's constitution and rules; any relevant financial regulations; and the Scheme of Delegations. European Union (EU) Regulations must also be followed where applicable. The Service Manager, Commissioning and/or the Head of Legal Services shall give or procure advice on procurement and entering into contracts.
- 1.2. Contracts must be procured and accepted only in accordance with the Commissioning and Procurement Statement of Required Practice ('the Procurement SORP'). This will be made available on the Council's intranet and will be updated to ensure compliance with EU and UK Government regulations and statute.
- 1.3. The written approval of the Head of Finance and Assets and the Head of Legal Services on the contents of the contract is required.
- 1.4. No Member of the Council must enter into a contract on behalf of the Council.
- 1.5. Signing Contracts.** All contracts up to the value of £40,000 must be in writing and signed by a Head of Service or in their absence by their Line Manager. Contracts with a value of £40,000 and over must be sealed.

2. Contract conditions

- 2.1. The following conditions shall apply to all contracts:
- 2.2. Unless the Head of Finance and Assets or Head of Legal Services agree otherwise, provision for payment of liquidated damages for non-completion of work must be included in a contract which states:
 - 2.2.1. a start date and completion date; or
 - 2.2.2. a contract period
- 2.3. Contracts (Rights of Third Parties) Act 1999: In certain circumstances a *Person* who is **not** a party to a contract may enforce its terms. The contract must either:
 - 2.3.1. state that this Act does not apply, or
 - 2.3.2. state the names or describe the third parties that it is thought might be affected.

2.4. Performance Bonds

2.4.1. **Construction contracts:** the contractor must provide a performance bond or other security. It must be for 10 per cent of the contract's estimated value where:

2.4.1.1. the estimated cost of the contract is more than £100,000; or

2.4.1.2. where the estimated cost is less than £100,000, but the appropriate Lead Officer and their line manager considers it appropriate.

2.4.2. **Contracts for the supply of services:** A performance bond will only be required for a contract for the supply of services if the appropriate Client Officer and Technical Officer demonstrate that:

2.4.2.1. the estimated additional cost of re-establishing the service after the contract has failed will be relatively large; or

2.4.2.2. the nature and length of the contract is such that the risk of failure is sufficiently high enough to need a bond; or

2.4.2.3. the financial and technical standing of the contractor is such that the risk of failure is sufficiently high enough to need a bond.

2.4.2.4. The value of the performance bond must be enough to meet the additional cost of re-establishing the service.

2.5. Every contract must require that all goods, materials and workmanship must be at least of the standard required by either:

2.5.1. British Standards Specification; or

2.5.2. British Standard Code of Practice; or

2.5.3. European Union directive.

2.6. Every contract must state that the Council can cancel the contract and recover from the contractor any loss:

2.6.1. if the contractor has offered some kind of reward to any Person, so that they can win the contract or any other contract with the Council;

2.6.2. if the contractor has favoured or dis-favoured any Person who has any dealings with the contract or any other contract'

2.6.3. if (a) and/ or (b) above is done by any Person employed by the contractor or who acts for them, whether or not the contractor knows; or

2.6.4. if for any contract with the Council, the contractor or any Person employed by, or acting for them, have:

2.6.4.1. committed corruption (any offence under the Prevention of Corruption Acts 1889 to 1916); or

2.6.4.2. given any illegal reward (the receipt of which is illegal under Section 117(2) of the Local Government Act 1972).

2.7. Health and Safety. The current and extant Construction (Design and Management) Regulations and any other law must be applied to certain contracts.

2.7.1. In Tender documents, the Client for CDM purposes will be Harborough District Council. A Client Officer, who must be competent to undertake the role, must be named as the Council's Officer responsible for ensuring compliance with the CDM regulations.

2.7.2. Tenderers must be advised in the tender documents that they have to comply with the CDM Regulations.

2.7.3. The documents must:

2.7.3.1. list the information tenderers will need to provide so their tender can be considered; and

2.7.3.2. state that the successful tenderer will be the Principal Contractor under the CDM Regulations.

2.7.4. Tenderers must be told that if a tender does not make sufficient provision for health and safety it will be rejected.

3. Sub-contractors. Where a sub-contractor or supplier is nominated to a main contractor, the following must apply:

3.1.1. where the estimated value of the sub-contract is £40,000 or less, tenders may be invited; alternatively, quotations or estimates may be sought, or an appropriate framework agreement may be used.

3.1.2. where the estimated amount of the sub-contract is above £40,000 then, unless the Executive decides that it is unreasonable to get tenders, tenders must be invited;

3.1.3. The HDC Procurement SORP applies to tenders invited under this rule.

3.2. 'Nominated sub-contractors' include nominated suppliers, and any Person named by the Council in a contract as a sub-contractor.

4. **Safeguarding Vulnerable Adults and Children:** The Lead officer in consultation with the Service Manager, Commissioning is responsible for ensuring that any contract makes proper provision for the safeguarding of Vulnerable Adults and Children. The Lead Officer and Service Manager, Commissioning must seek advice from the Lead Designated Safeguarding Officer or other nominated officer with responsibility for safeguarding at the Council if the contracted work either:

4.1. involves direct contact with children & young people or vulnerable adults, or access to data about them

or

4.2. the work to be contracted take place in, or overlooks, an area which children and young people or vulnerable adults regularly use:

4.3. In either circumstance, a clause should be inserted into the contract requiring the contractor to make appropriate and proportionate provision of the protection of Vulnerable Adults and Children.

5. The Contract register

5.1. All contracts, licences and agreements will be recorded in the Contract Register which is maintained by the Service Manager, Commissioning and Legal Services team. It is the responsibility of officers to provide the following to the Service Manager, Commissioning when entering into such legal agreements:

5.1.1. A signed copy of the contract.

5.1.2. The annual value of the contract.

5.1.3. The term of the contract.

5.1.4. The timescales for review.

5.1.5. The name of the officer responsible for management of the contract.

6. Contract management

- 6.1. The Head of Service responsible for a contract will determine arrangements for its management, ensuring that the services, goods or works procured are delivered to the Council's specifications and taking any remedial action required; the Head of Service will delegate responsibility to a contract manager as appropriate.
- 6.2. The Head of Service will make appropriate arrangements for audit of contract compliance.

7. Payment

- 7.1. For works contracts exceeding £20,000, contract certificates must be used. Official payment vouchers can be used for contracts £20,000 or below.
- 7.2. All payments must be made subject to the Council's Financial Procedure Rules; advice should be sought from the Head of Finance and Assets
- 7.3. All payments must be recorded in the appropriate contract register when the estimated cost of the work exceeds £10,000. Details must be kept of all quotes and tenders received for audit purposes for at least three years.

8. Changes to contracts (Variations)

- 8.1. Any changes to contracts for works or services (variation orders) must be authorised in writing by the relevant member of Corporate Management Team
- 8.2. Any change which increases the amount of an accepted Tender or estimate by the limits shown at Finance Procedure Rule 4 (2) must be reported to the Executive as soon as practical, in consultation with the Head of Finance and Assets.
- 8.3. All variations in the work, goods or services that do not involve formal variation of the contract must be agreed between the Contract Manager and the Contractor or Supplier in writing. Variations must be recorded in accordance with the requirements of the contract and signed.

9. Extensions to contracts

- 9.1. Extensions to contracts (other than extensions which are already facilitated as an integral part of that contract) shall not be made more than twice; the

value of any extension must not exceed the original contract price, and shall be at the original contract rates. Any extension is subject to adequate budgetary provision being available prior to agreeing the extension;

9.2. Extensions worth £5,000 or less shall be reported by the Head of Service to their Line Manager prior to the extension being formally agreed, together with details of the additional costs involved together with funding proposals;

9.3. Other variations which increase the Contract Price by more than £5,000, or which involve substantial changes in the character of the works/ goods/ services involved shall also be reported by the Head of Service and their Line Manager to the Executive for approval.

10. Disputes

10.1. If a dispute arises in relation to performance of a contract the contract manager should, in the first instance, seek advice from their line manager and attempt to resolve the dispute through negotiation with the provider. Reference should be sought to any provision for dispute resolution in the contract and legal advice from the Head of Legal Services is advisable.

10.2. If the dispute cannot be resolved through negotiation with the provider, the contract manager should in conjunction with their line manager and Head of Service seek advice from the Head of Legal Services and the Head of Finance and Assets. If a decision is taken to seek damages or other penalties under the terms of the contract or to consider termination or other formal legal action, this may require approval of the Corporate Management Team and Council Executive.

CONTRACT PROCEDURE RULE 5

POST TENDER STAGE

1. Financial control of contracts

- 1.1 This rule applies to contracts for building, construction and engineering work, and the supply of goods or services. However, the Executive may set an amount below which this rule does not apply.

2. Reporting to the *Executive*

- 2.1 A report to the Executive under Section 4 (Variations, additions and omissions) below and Section 6 (Overspending) below must be made when costs are more than the accepted tender by a certain amount. Current amounts are shown below in Rule 4, Section 4.3 and in Rule 4, Section 6 of the Financial Procedure Rules.

3. Payment

- 3.1 The relevant Head of Service must keep a register of payments made under the contract showing the position of the account between the Council and the contractor. Other payments and professional fees must also be shown.

- 3.2 Payments to contractors must only be made:

- (a) on a certificate (the format agreed by the Chief Finance Officer) signed by the Client Officer; and
- (b) in accordance with Financial Procedure Rules.

- 3.3 The contract will identify the Person who must produce a final certificate, together with a detailed statement of accounts and all relevant documents.

- 3.4 The Chief Finance Officer may examine any documents, records and accounts and be given any information and explanations they ask for.

- 3.5 Claims by contractors for additional payments for work undertaken or goods or services supplied outside a contract must be considered by the Chief Finance Officer and the Monitoring Officer before a settlement is reached.

3.6 Section 3.5 above does not apply to the claims submitted by contractors for additional work done under the contract which are negotiated by the Client Officer into the final account.

Variations, Additions and Omissions

3.7 Every variation, addition or omission must be authorised in writing by the Person named in the contract for that purpose, or someone that they have authorised.

3.8 Variations may be authorised by the *Person* named in the contract for that purpose, if he or she thinks they are essential to allow the project to proceed.

3.9 If the effect of the variation is to increase the cost of the contract by more than the amount shown in the table below, a report must be made by the relevant Head of Service in consultation with their Line Manager and the relevant Portfolio Member(s) to the Executive at the next earliest available opportunity.

Accepted Contract Sum	Report to Executive if excess is equal to or greater than:
£40,000 or less	Either 10 per cent of accepted contract sum or £2,000, whichever is the greater
£40,001 to £100,000	Either 7.5 per cent of accepted contract sum or £4,000, whichever is the greater
Greater than £100,000	Either 5 per cent of accepted contract sum or £7,500, whichever is the greater

3.10 Variations which are not essential and/ or cannot be justified either on objective technical or financial grounds and which when taken with all variations, increase the cost of the contract must not be authorised.

3.11 All variations must be able to stand up to close scrutiny and audit as to their purpose and need.

4. Liquidated Damages

- 4.1 Where a contract provides for liquidated damages and it is not completed on time, the Client Officer - in consultation with the Chief Finance Officer and the Head of Legal Services - may consider taking action to recover damages when they become due. This does not mean they must be deducted immediately, but the contractor must be served with the appropriate notice.
- 4.2 A decision not to claim liquidated damages may be taken where the amount is:
- (a) Up to £1,000 – by the Client Officer, in consultation with and the approval of the relevant Head of Service and the Portfolio Holder(s);
 - (b) Between £1,000 and £10,000 – by the relevant Head of Service, in consultation with their Portfolio Holder(s), Line Manager, Chief Finance Officer and the Monitoring Officer;
 - (c) Over £10,000 – by the Executive.

5. Overspending

- 5.1 Where the total cost of work is more than the tender (see Rule 3, Section 2.1), a report must be made by the relevant Head of Service, in consultation with their Line Manager and the relevant Portfolio Member(s), to the Executive.
- 5.2 The report must be made at the next earliest available opportunity after the date of the final payment, unless a report has already been made and approval to the increase has been obtained.
- 5.3 No report is necessary where the Council is acting as an agent, and has no financial liability.

CONTRACT PROCEDURE RULE 6
PROJECT MANAGEMENT

1. The Council has put in place a Project Management Guide (“PMG”) to manage major projects undertaken by the Council. The current version of the PMG is Version 1.3 dated October 2010. The current Project Management Guide will be used for all projects.
2. The aim of the PMG is to help reduce and manage the risk associated with major projects and to put in place clear lines of accountability and define the responsibilities of the officers and members involved in the project. The PMG is the protocol to be followed with respect to all major projects carried out by the Council. The main elements of the PMG to be followed are set out below.
3. The PMG identifies the key stages of the project – 1) concept, 2) Investigation, 3) Initiation, 4) execution, 5) closure and 6) Review. The PMG covers all areas of the project which can include implementation of the project post contract award.
4. A Project Board will be set up at stage 2) and will consist of the Project Sponsor who will be a member of Management Board, the Project Manager who is responsible for organising and controlling a project and Portfolio Holder (as appropriate). The Portfolio Holder ensures that there is appropriate political input into the project. In the event that there is a change of portfolio holder during the life of the project, the existing portfolio holder will carry out a formal handover to the successor portfolio holder or leader. If this is not possible the handover will be carried out by the project Sponsor. It is at Stage 2 that the necessary resources for any project will be identified.
5. In order to progress between the stages identified in paragraph 3 above Gateway Approval will need to be given. The Gateway Approvers will consist of an officer who is not on the Project Team. If the Portfolio Holder is on the Project Board the shadow portfolio holder will usually be invited to be the gateway reviewer. The timing of the Gateway Reviews are set out on page 8 of the PMG. The Gateway Reviews will ensure that the project is closely monitored throughout its lifecycle.
6. Stage 3) – Initiation, consists of producing the Project Initiation Document (PID) and the Risk Log. The PID defines the project and the Risk Log details the risks identified with the project and the possible impacts. Stage 4) – Execution, provides for the allocation of work and monitoring of the project including maintenance of an Issue log and regular monthly project reports.
7. At Stage 4 of the PMG consideration should be given to the involvement of the Council’s statutory officers in the project which should be clearly identified in the allocation of work by the Project Manager. Regular meetings of the Project Board

will be set up to allocate work and monitor progress. Monthly Project Progress Reports will be compiled by the Project Manager.

An Issues Log is to be maintained to record any problem, query or change that arises during the project. Each issue will be assessed for its impacts on the project. Sensitive issues that arise during the project will be raised with the Portfolio Holder.

8. Upon completion of the project (Stage 5 – Closure) the Project Board shall ensure that the objectives of the Project Initiation Document have been met. An End Project Report, Follow-On Actions Report will be produced and Post-Project Review Plan will be produced prior to Stage 6 Review
9. Stage 6 Review requires the Project Board to consider the project exit strategies and implement the Post Project Review Plan and produce a Lessons Learnt Report.

CONTRACT PROCEDURE RULE 7
CONSULTANCY AGREEMENTS

1. Using consultants

- 1.1 If the Executive has authorised the appointment of any Person (other than an employee) or an external organisation to provide consultancy services, then such an appointment must:
- (a) be in writing and approved by the Chief Finance Officer or the Chief Executive, whichever is the Strategic Line Manager for the Service;
 - (b) include a full description of the consultant's responsibilities;
 - (c) say when the consultant has to prepare their report; and
 - (d) name the employee of the Council to whom the consultant should report.
- 1.2 If consultants are required to negotiate, settle or supervise a contract then the appointment must also:
- (a) require the consultant to follow these rules as though they were an employee of the Council, unless the conditions of appointment state otherwise;
 - (b) require the consultant to produce for the Chief Finance Officer on request, all contract records maintained by them and at the end of the contract give them to the officer named in Rule 5, Section 1.1(d).
- 1.3 Where the contract involves building, landscaping or engineering works, consultants must only be appointed if the Chief Finance Officer or the Chief Executive, whichever is the strategic line manager for the service, gives their approval.
- 1.4 Building, landscaping or engineering works include works for the alterations or improvement of buildings and design works for internal fitting out.
- 1.5 Where the contract involves either Legal, Financial or Information Technology work, consultants must only be appointed with the approval of the Chief Finance Officer or the Chief Executive, whichever is the strategic line manager for the service.
- 1.6 In the absence of the Chief Finance Officer, the Chief Executive's approval must be sought.

CONTRACT PROCEDURE RULE 8
AGENCY WORK

Agency work

1. Where the Council has agreed to act as an agent for doing work or supplying services, these rules must apply if they do not conflict with either:
 - (a) the terms and conditions of the agency agreement or contract; or
 - (b) any instruction of the agency company or agency authority.

CONTRACT PROCEDURE RULE 9
HUMAN RIGHTS/RACE RELATIONS/CRIME & DISORDER
AND OTHER MATTERS

1. Race Relations

- 1.1 The Race Relations Act places upon the Council a statutory duty to promote race equality which means that, in carrying out its functions, the Council must pay “due regard” to the need to eliminate unlawful racial discrimination, promote good equal opportunities and promote good relations between people from different racial groups.
- 1.2 If a contract relates to a service that has been assessed as relevant to the duties under the Race Relations Act, the Council is entitled to specify that the contractor make arrangements comparable to those set out in the Council’s equalities policies.
- 1.3 This would include arrangements to:
- monitor all aspects of the service provided under the contract for any adverse impact on promoting race equality;
 - publish the results of this monitoring; and
 - make sure people have access to information about the service, and to the service itself.
- 1.4 When dealing with a contract it must be ensured that the duties are properly considered at each stage of the process, starting with an assessment of the function/service going out to contract. It is also recommended that requirements to promote race equality are specified within the contract itself.

2. Crime and Disorder

- 2.1 The Council’s current Community Safety Policy should be referred to in tender and contract documents where appropriate.

3. Human Rights Act

- 3.1 The Council’s current policy and procedures in respect of the Human Rights Act should be referred to in tender and contract documentation where appropriate.

4. Freedom of Information

- 4.1 All tender and contract documentation must have provision for the contractor to provide information as required by the Council in respect of the current Freedom of Information law.

5. Ethical Governance

- 5.1 The requirements or guidance as set out by the Monitoring Officer must be included in contract documents.

CONTRACT PROCEDURE RULE 10
ENVIRONMENTAL ISSUES

1. The appropriate policies and strategies of the Council should be referred to in tender and contract documentation.

2. The Council has signed up to the 'Nottingham Declaration' on Climate Change, and it is a responsibility of the Council to require tenderers to employ environmentally friendly policies.

3. Client Officers must seek advice from the Heads of Environmental Services, Head of Built Environment and Head of Street Scene Services for advice and guidance on environmental issues.