



## **Part 4, Section 6b: Contract Procedure Rules**

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## **4.6b.1 CONTRACT PROCEDURE RULE 1 – INTRODUCTION**

4.6b.1.1 The purpose of these Contract Procedure Rules is to set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these Rules, the Council's Financial Procedure Rules, English law and European law in force in England. All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome. These Rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations; as such they must be followed in all procurement activity. If there is any change to the law which affects these Rules, then that change must be observed until these Rules can be revised. If these Rules conflict in any way with the law, then the law takes precedence.

These Rules do not apply in the following circumstances:

4.6b.1.2 The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This does not extend to any service, supplies or works contracts that may be required to make the land, existing buildings or immovable property ready for acquisition, disposal or leasing.

4.6b.1.3 Direct employment of permanent or fixed term employees, for the avoidance of doubt these Rules do apply to consultancy and employment and recruitment agency contracts.

4.6b.1.4 Instructing barristers or solicitors.

4.6b.1.5 The lending or borrowing of money by the Council.

4.6b.1.6 Contracts between Local Authorities as defined by Clause 12 of the Public Contracts Regulations 2015.

4.6b.1.7 Contracts between Local Authorities as defined by Clause 17 of the Concession Contracts Regulations 2015. However these contracts will need to be registered on the Councils Contracts Register.

4.6b.1.8 Section 75 NHS Act 2006 arrangements (although details must be recorded on the Council's Contract Register).

### **4.6b.1.1.1 Roles and Responsibilities**

4.6b.1.1.1.1 The Corporate Management Team (“CMT”) must make sure that everyone follows the Financial Procedure Rules.

CMT will work with Members, Service Managers and others to make sure that all Council resources are managed efficiently and effectively.

#### **4.6b.1.1.2 The Chief Finance Officer**

4.6b.1.1.2.1 The Chief Finance Officer (also known as the Responsible Financial Officer) is responsible for the Council’s financial affairs. They approve the form of accounts and records and review each Accounting System to make sure that it is efficient and works correctly.

4.6b.1.1.2.2 The Cabinet 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.

4.6b.1.1.2.3 The Monitoring Officer is responsible for maintaining an anti-fraud and corruption strategy.

#### **4.6b.1.1.3 The Monitoring Officer**

4.6b.1.1.3.1 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.

4.6b.1.1.3.2 They must make sure that all members of staff maintain the highest standards in the conduct of the Council’s affairs.

#### **4.6b.1.1.4 Chief Officers**

4.6b.1.1.4.1 All Chief Officers are responsible for setting up effective systems of internal control and checks for the Council. These systems must:

- i. safeguard the Council’s assets and interests.
- ii. make sure all record keeping is reliable and timely.
- iii. ensure that all transactions are recorded accurately; and
- iv. make sure everyone observes and keeps to the Council’s policies and instructions.

4.6b.1.1.4.2 All Deputy Chief Officers 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.

4.6.1.1.4.3 Where an Officer has a potential conflict of interest within a procurement process, the Officer must declare to the relevant Chief Officer and the Monitoring Officer. The Officer may be

required to withdraw from the procurement process. Any Officer who fails to declare such as conflict may be subject to disciplinary proceedings and sanctions.

## **4.6b.2 CONTRACT PROCEDURE RULE 2 – PROCURING, FINALISING, EXTENDING & VARYING CONTRACTS**

### **4.6b.2.1 Entering into Contracts**

4.6b.2.1.1 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. The Procurement Support Officer and/or the Monitoring Officer shall give or procure advice on procurement and entering contracts.

4.6b.2.1.2 Contracts must be procured and accepted only in accordance with the Commissioning and Procurement Statement of Required Practice ('the Procurement SORP'). The SORP can be found at Part 4, Section 6(a) of the Council's Constitution, which will be updated to ensure compliance with statute and regulations.

4.6b.2.1.3 The written approval of the Deputy Chief Officer for Legal Services on the contents of the contract is required.

4.6b.2.1.4 No Member of the Council must enter into a contract on behalf of the Council.

### **4.6b.2.2 Signing Contracts.**

4.6b.2.2.1 All contracts up to the value of £5,000 must comply with the requirements of 16.3 of the SORP

4.6b.2.2.2 All contracts up to the value of £50,000 must be in writing and signed by the relevant Deputy Chief Officer or in their absence by their Line Manager.

4.6b.2.2.3 A contract must be sealed where:

- i. The total value is over £50,000,
- ii. The Council wishes to enforce the contract for up to twelve years following its expiry (e.g., for land or construction works) or,
- iii. The price paid or received under the contract is a

nominal price and does not reflect the value of the goods, services or works,

- iv. There is any doubt about the authority of the person signing for the other contracting party,
- v. A Bond is established on behalf of the Supplier(s) or their guarantors, or Required by the Parties to the agreement or,
- vi. Where the Monitoring Officer deems it appropriate.

#### **4.6b.2.3 Contract conditions**

4.6b.2.3.1 The following conditions shall apply to all contracts:

4.6b.2.3.2 Unless the Monitoring Officer or Chief Financial Officer agree otherwise, provision for payment of liquidated damages for non-completion of work must be included in a contract which states:

4.6b.2.3.2.1 a start date and completion date; or

4.6b.2.3.2.2 a contract period

4.6b.2.3.3 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:

4.6b.2.3.3.1 state that this Act does not apply, or

4.6b.2.3.3.2 state the names or describe the third parties that it is thought might be affected.

#### **4.6b.2.4 Performance Bonds**

##### **4.6b.2.4.1 Construction contracts:**

Unless the Monitoring Officer or the Chief Finance Officer agree otherwise the contractor must provide a performance bond or other security. It must be for 10 per cent of the contract's estimated value where:

4.6b.2.4.1.1 the estimated cost of the contract is more than £100,000; or

4.6b.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.

**4.6b.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 Lead Officer of the procurement following

consultation with the Financial Services Manager demonstrate that:

4.6b.2.4.2.1 the estimated additional cost of re-establishing the service after the contract has failed will be relatively large; or

4.6b.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

4.6b.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.

4.6b.2.4.2.4 The value of the performance bond must be enough to meet the additional cost of re-establishing the service.

4.6b.2.5 Every contract must require that all goods, materials and workmanship must be at least of the standard required by either:

4.6b.2.5.1 British Standards Specification; or

4.6b.2.5.2 British Standard Code of Practice; or

4.6b.2.5.3 European Union directive.

4.6b.2.6 Every contract must state that the Council can cancel the contract and recover from the contractor any loss:

4.6b.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;

4.6b.2.6.2 if the contractor has favoured or dis-favoured any Person who has any dealings with the contract or any other contract'

4.6b.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

4.6b.2.6.4 if for any contract with the Council, the contractor or any Person employed by, or acting for them, have:

4.6b.2.6.4.1 committed corruption (any offence under the Prevention

of Corruption Acts 1889 to 1916); or

4.6b.2.6.4.2 given any illegal reward (the receipt of which is illegal under Section 117(2) of the Local Government Act 1972)

4.6b.2.6.4.3 Committed an offence under the Bribery Act 2010.

**4.6b.2.7 Health and Safety.** The current and extant Construction (Design and Management) Regulations and any other law must be applied to certain contracts.

4.6b.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.

4.6b.2.7.2 Tenderers must be advised in the tender documents that they have to comply with the CDM Regulations.

1.1.1. 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.

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

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

4.1.1 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.

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

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

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

**3. Safeguarding Vulnerable Adults and Children:** The Lead Officer in consultation with the Procurement Support Officer, is responsible for ensuring that any contract makes proper provision for the safeguarding of Vulnerable Adults and Children. The Lead Officer and Procurement Support Officer 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:

- 3.1. involves direct or indirect contact with children & young people or vulnerable adults, or access to data about them
- 3.2. 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.

#### **4. The Contract Register**

4.1. All contracts, agreements and licences relating to service provision will be recorded in the Contract Register which is maintained by the Procurement Support Officer and Legal Services team. It is the responsibility of officers to provide the following when entering into such legal agreements:

- 4.1.1. A signed copy of the contract.
- 4.1.2. The annual value of the contract.
- 4.1.3. The term of the contract.
- 4.1.4. The timescales for review.
- 4.1.5. The name of the officer responsible for management of the contract.

#### **5. Contract management**

- 5.1. The Deputy Chief officer 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 Deputy Chief Officer will delegate responsibility to a contract manager as appropriate.
- 5.2. The Deputy Chief officer will make appropriate arrangements for audit of contract compliance.



## **6. Payment**

- 6.1. For works contracts exceeding £20,000, contract certificates must be used. Official payment vouchers can be used for contracts £20,000 or below.
- 6.2. All payments must be made subject to the Council's Financial Procedure Rules; advice should be sought from the Deputy Chief Finance Officer.
- 6.3. All payments for goods, works and services to which these rules apply must be recorded in the appropriate contract register when the estimated cost of the work exceeds £500. Details must be kept of all quotes and tenders received for audit purposes for at least three years.

## **7. Changes to contracts (Variations)**

- 7.1. Any changes to contracts for works or services (variation orders) must comply with the provisions of the SORP and be in accordance the Financial Procedure Rules as applicable.
- 7.2. All amendments to work, goods or services that do not involve formal written variation of the contract must be agreed between the Parties in writing. Variations must be recorded in accordance with the requirements of the contract and signed.

## **8. Extensions to contracts**

10.1 Contract extensions will be dealt with in accordance with paragraph 7 of the SORP and in accordance with the Financial Procedure Rules as applicable.

## **9. Disputes**

- 9.1. 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 Deputy Chief Officer for Legal Services is advisable.
- 9.2. If the dispute cannot be resolved through negotiation with the provider, the contract manager should in conjunction with their line manager and Chief Officer seek advice from the Deputy Chief officer for Legal services and the Deputy Chief Financial Officer. 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 will require the

approval of the Monitoring Officer.

### **CONTRACT PROCEDURE RULE 3 - 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 Cabinet may set an amount below which this rule does not apply.

#### **2. Payment**

- 2.1 The relevant Deputy Chief Officer 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.
- 2.2 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.
- 2.3 The contract will identify the Person who must produce a final certificate, together with a detailed statement of accounts and all relevant documents.
- 2.4 The Chief Finance Officer may examine any documents, records and accounts and be given any information and explanations they ask for.
- 2.5 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.
- 2.6 Section 2.5 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**

- 2.7 Every variation, addition or omission must be authorised in accordance with paragraph 7 of the SORP.
- 2.8 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.
- 2.9 All variations must be able to stand up to close scrutiny and audit as to their purpose and need.

### **3. Liquidated Damages**

- 3.1 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 Monitoring Officer - 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.
- 3.2 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 Chief Officer and the Portfolio Holder(s);
  - (b) Between £1,000 and £10,000 – by the relevant Chief Officer, in consultation with their Portfolio Holder(s), Line Manager, Chief Finance Officer and the Monitoring Officer;
  - (c) Over £10,000 – by the Cabinet.

### **4. Overspending**

- 4.1 Where the total cost of work is more than the tender, a report must be made by the relevant Deputy Chief Officer, in consultation with their Line Manager and the relevant Portfolio Member(s), to the Cabinet.
- 4.2 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.

- 4.3 No report is necessary where the Council is acting as an agent, and has no financial liability.

#### **CONTRACT PROCEDURE RULE 4 - PROJECT MANAGEMENT**

1. The Council has put in place a Project Management Guide (“PMG”) to manage major projects undertaken by the Council. 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.
3. The PMG identifies the key stages of the project and covers all areas of the project which can include implementation of the project post contract award.
4. A Project Board for all major projects will be set up and will consist of the Project Sponsor who will be a member of Management team and the Project Manager who is responsible for organising and controlling the project, along with those who will contribute to the delivery of the project.
  - a)
5. The Portfolio Holder will ensure that there is appropriate political input into the project through their regular portfolio holder meetings. 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. The shadow portfolio holder will be kept informed of the project progress through their regular shadow portfolio holder meetings.
  - b)
6. In addition to the portfolio holder and shadow portfolio holder’s oversight there will also be further members oversight from a cabinet working group, focussed on the delivery of the whole of the councils project program. This will allow for a holistic view of the councils projects and for the prioritisation of resources and the management of risk across all projects.

7. Major project progress will be reported on periodically throughout the year as part of the planned performance management reporting mechanism.
8. Upon completion of the project the Project Board shall ensure that the objectives of the Project Initiation Document have been met, including an analysis of the benefits realised and lessons learnt to build into future projects.

## **CONTRACT PROCEDURE RULE 5 - CONSULTANCY AGREEMENTS**

### **1. Using consultants**

- 1.1 The appointment of any Person (other than an employee) or an external organisation to provide consultancy services, must comply with the SORP and the Financial Procedure Rules as appropriate.
  - c)
- 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 relevant Deputy Chief Officer.

## **CONTRACT PROCEDURE RULE 6 - 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 7 - 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.
    - d)
  - 4.2 Officers have an obligation to record and maintain accurate records relating to
    - e) Contracts, as well as complying with FOI requests.
  - 4.3 Bidders should be asked to identify any information they supply that is confidential or commercially sensitive, and detail why they consider this the case.
    - f)
  - 4.4 This justification should be considering when responding to FOI requests. Any queries should be discussed with the Council's Information Governance Officer
- 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 8 - 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 the Climate Emergency, and it is a responsibility of the Council to require tenderers to employ environmentally friendly policies.
3. Client Officers must seek advice from the relevant Deputy Chief Officer for advice and guidance on environmental issues.

