

Procurement and Contract Governance Rules: Breach Procedure.

NOTE: This Procedure forms part of the Procurement and Contract Governance Rules and shall be read in conjunction with the Rules and any associated Procedures

Background

- 1) This Procedure outlines steps to be taken where a suspected Breach of the Procurement and Contract Governance Rules (the Rules) has taken place.
- 2) A Breach of the Rules will be considered as a failure to comply with these Rules through not applying process set out within the Rules, this could include (but not limited to):
 - i. Failure to commence procurement process in time where not as a result of circumstances which could not have been foreseen
 - ii. Failure to seek appropriate governance approvals and authorisations
 - iii. Disaggregation within a service area where multiple low value contract awards are placed with an aggregate value of more than 10% Above Threshold
 - iv. Failure to observe the Rules in whole or in part
 - v. Non-disclosure of a conflict of interest
 - vi. Acting outside of authority as set out within the Constitutional Scheme of Delegations
 - vii. Advising bidders of the outcome of a procurement process prior to the decision being approved
- 3) The primary aim of the Breach Procedure is to help ensure compliance and accountability around the application of the Rules and learn lessons on future arrangements, including training and performance management.
- 4) Steps to be taken in the event of a suspected Breach will be proportionate to value and risk associated with this Breach, which would include the significance of the Breach as well as the failure around process.
- 5) Where an Officer (or Officers) does not act in accordance with the Procurement and Contract Governance Rules (either wilfully or unintentionally) this may result in review around Conduct and Performance.
- 6) Where an Elected Member does not act in accordance with the Rules (either wilfully or unintentionally) this will result in the Leader being notified of the Breach.

General

- 7) Where a suspected Breach of the Procurement and Contract Governance Rules has taken place, or an individual has become aware that they themselves have breached the Rules, initial referral is made to the Assistant Director (Procurement) with immediate effect from a suspected Breach.
- 8) A suspected Breach of the Rules can be raised by anyone, either internal or external to the Council.
- 9) In raising a suspected Breach of the Rules sufficient information shall be provided to enable the allegations to be suitably investigated, an opinion formed around the seriousness of the Breach and a decision taken as to the actions which shall be taken. The information required at minimum will include:
 - i. The nature of the suspected Breach;
 - ii. Potential or actual value involved;
 - iii. Name of any Supplier / Contractor or other 3rd party involved;
 - iv. Any existing or expired contractual arrangements;
 - v. Responsible officer and line manager.
- 10) When notified of a suspected Breach the Assistant Director (Procurement) shall arrange for an initial investigation into the matter. The intent, the individual circumstances and the impact of the alleged Breach shall be considered with the investigation proportionate to the nature of the Breach.
- 11) An investigation to be conducted with necessary expediency and a formal decision around the investigation should be sought as soon as is practical depending on the nature and complexity of the matter from the date the Assistant Director (Procurement) was notified. This should not exceed 1 month unless an extension to this is agreed by Assistant Director (Procurement).
- 12) The findings should indicate whether a Breach has occurred or not.
- 13) In the case of a Breach being deemed to have occurred then it will be notified to the lead Officer(s) and Director along with a series of recommended actions to remedy such a Breach.
- 14) Corporate Procurement Service to record outcomes of overall findings from any investigation for auditing and accounting purposes.
- 15) Similarly, where a suspected Breach is not deemed to have occurred a record of findings should be captured for audit and accounting purposes.

- 16) A summary report on upheld Breaches should be presented to:
 - a. Individual Directorate Management Teams (Assurance)
 - b. Corporate Leadership Team
 - c. Cabinet Member (Finance and Resources) and
 - d. Resources Overview and Scrutiny Committee.
- 17) The report shall include the following information
 - i. Number of Breaches upheld within the reporting period
 - ii. Directorate
 - iii. Nature of Breach (Process failure / Non-compliance)
 - iv. Summary of key findings / Key lessons
 - v. Key dates (e.g. reported / determined)
 - vi. Remedial action \ action being undertaken
- 18) Acting retrospectively to the Rules, including contracting with a supplier outside of authorisations, would be deemed a process failure. Acting without due consideration of the Rules would be deemed as non-compliance.

Other points to note

- 19) Where the Assistant Director (Procurement) considers the matter to be a significant and serious failure to comply with the Rules, then this shall be highlighted to the Line Manager of the Officer(s) responsible for the Breach for further consideration.
- 20) Where it is suspected that fraud, corruption and / or financial irregularity have taken place, the Assistant Director (Audit and Risk Management) shall be notified immediately.
- 21) In the event that the failure to comply with the Rules appears to relate to the Senior Responsible Officers listed above (e.g. Assistant Director (Procurement) / Assistant Director (Audit and Risk Management / Section 151 Officer) further advice and guidance shall be sought from the Chief Executive or appropriate Strategic Director.
- 22) The Line Manager of the Officer who was responsible for the Breach shall be required to inform the Assistant Director (Procurement) as to all relevant actions taken to rectify the Breach. These outcomes shall be recorded by the Corporate Procurement Service for audit and accountability purposes.
- 23) A quarterly record of all upheld Breach decisions is to be taken by the Assistant Director (Procurement) to Cabinet.

- 24) The overall reporting process does not eliminate the need to complete a Waiver and where necessary table individual Cabinet reports where compliance is required in line with the Council's Constitution.