



Audit & Accounts Committee
27 January 2016

Report of the Chief Executive

ITEM 6

Reporting of Waivers

SUMMARY

1.1 There are a total of 15 waivers within this report.

These cover the period 5 September 2015 to 6 January 2016

Broken down by directorate we have

Directorate	Number of Waivers	Classification	
		Unavoidable	Avoidable
Communities & Place	10	2	8
People Services	2	1	1
Organisation & Governance	3		3
Total Number of Waivers	15	3	12

Of these waivers:

3 were unavoidable

6 were avoidable but there were considered reasons for the Waiver

6 were avoidable if measures such as better planning had taken place.

RECOMMENDATION

2.1 That the Committee note the contents of the report

REASONS FOR RECOMMENDATION

3.1 The information is for reporting purposes only; no decision is required by the committee.

SUPPORTING INFORMATION

- 4.1 Appendix 2 lists those waivers that have been granted during the period 5 September 2015 to 6 January 2016

OTHER OPTIONS CONSIDERED

- 5.1 Not applicable.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Emily Feenan Martyn Marples – Director of Finance and Procurement Richard Boneham – Head of Governance and Assurance
For more information contact: Background papers: List of appendices:	Name Linda Spiby 01332 64 3274 e-mail linda.spiby@derby.gov.uk None Appendix 1 – Implications

IMPLICATIONS

Financial and Value for Money

- 1.1 Each decision to waive competition requirements, where competition exists, has a financial impact which is taken into account when preparing the application for the waiver.

Legal

- 2.1 The report complies with the requirements of contract procedure rules to report waivers to the Audit and Accounts Committee.
- 2.2 Any waiver that increases the overall contract value or which is a direct award of a contract without competition, even where the value is below EU procurement thresholds, is contrary to the overarching principles of the Treaty for the Functioning of the European Union (i.e. transparency, equal treatment, proportionality, non-discrimination and mutual recognition) and therefore exposes to the Council to a risk (albeit this risk will in most cases be low) of a legal challenge. The grant of a waiver in accordance with the Council's Contract Procedure Rules does not remove this risk.

Personnel

- 3.1 None.

IT

- 4.1 None.

Equalities Impact

- 5.1 None.

Health and Safety

- 6.1 None.

Environmental Sustainability

- 7.1 None.

Property and Asset Management

- 8.1 None.

Risk Management

- 9.1 Any risks associated have been considered by the Head of Procurement and are being managed as part of the procurement process.

Corporate objectives and priorities for change

- 10.1 None.

Appendix 2

Type of waiver	Department/ Division seeking the waiver	Background/Description of the Contract	Value	Request submitted through the waiver	Additional comments and/or reasons the waiver is needed	Date of Approval
UNAVOIDABLE WAIVERS						
Urgent	Communities & Place	The procurement of temporary resources in the Structures team within the Engineering Section via agencies or specialist consultants where that resource is not available through the Matrix contract or existing consultancy frameworks	£135,200	To be able to respond to the market as and when appropriate candidates are identified outside the existing channels to be able to appoint interim staff.	A use of consultants approval is in place but states the route to market as the existing temporary staff contract or consultancy frameworks. The lack of available suitable candidates through those routes is having an effect on the ability of the team to deliver high profile projects. There are currently 3 vacant post in the team which are being advertised but these are proving difficult to fill due to a recognised industry wide shortage of skilled operatives.	11.09.2015
Urgent	Communities & Place	To produce a market assessment of the scope for a new multi-event performance facility in the Becketwell area of Derby. Whilst the study would be focused on that area it will be relevant to other city centre sites	£12,000	To award this work directly to NEC who have been involved in the early discussions surrounding this project and are a leading multi-event facility company	Senior Officers and the Lead member are currently involved in discussions with a potential developer together with this company. If we do not go ahead with this it is likely that neither party will consider that we are serious in our exploration of this opportunity and it will therefore be lost	22.09.2015

Urgent	People Services	To employ a specialist worker to complete a specific piece of work in relation to the statutory duty to convert individual Statements of Special Educational Need and Learning Disability Assessments to new Education, Health and Care Plans	£23,100	To direct award to Baltimore Consulting Group	A number of external agencies were contacted but only Baltimore Consulting Group were able to source the most appropriate candidate. This organisation is not part of our existing agency agreement. Derby City Council Legal Team have reviewed the supplier terms and conditions. The statutory timeline for completing conversions in academic year 2014/15 was 14 weeks. There are 137 conversions not completed and we are therefore at risk of complaints.	30.10.2015
AVOIDABLE WAIVERS BUT WITH CONSIDERED REASONS						
Urgent	Organisation & Governance	Maintenance and support for the primary Business Intelligence tool used by the council to extract management information from the new Social Care System	£72,980	.To award the contract direct to Eden House therefore avoiding an administration charge and saving £2,736 per year	Liquid logic provide the system but the maintenance is provided through a business partner. The first year cover was brokered through Liquid Logic but a continuation of this agreement will now incur the administration charge. To avoid this situation in the future, any third party partnership administration costs will be clearly defined at the tender stage	12.10.2015
Urgent	People Services	A 2 year contract to provide help to families at the edge of care where one of the children in the household is aged 10 or under. The service targets early help interventions and is a continuation of the first phase of delivery which was funded by DfE.	£120,000	To direct award to Safe Families for Children (SFFC) who have provided the first phase of the delivery.	SFFC is a volunteer based organisation who, as a result of the funding, will have developed a cohort of local volunteers to deliver the programme and are in a unique position in terms of being able to provide this service.	21.10.2015
Urgent	Communities &	To provide advice on the most appropriate	£15,000	To award the	NP Law were recently procured	30.11.2015

	Place	Compulsory Purchase powers to acquire land to deliver the proposed flood defences and the wider regeneration of the development sites contained within work package 1 of the Our City Our River Flood Alleviation and Regeneration Scheme		contract direct to NP Law.	through the EM Lawshare Framework by means of a further competition for the A52 scheme and have demonstrated value for money. Following planning approval for the scheme in October 2015, this process needs to be initiated without delay to ensure completion of the works in 2018.	
Urgent	Organisation & Governance	Elections and Electoral Registration IT System.	£8,500	To extend the existing contract for a period of 6 months to allow for the election to be completed and to allow for electoral registration activities to continue whilst any new system is implemented.	The required business analysis, cost model and soft market testing have been completed and we are ready to commence the procurement exercise for a new system. With an election in May 2016 and the added profile of the City Council managing the Police and Crime Commissioner election for Derbyshire there are risks if we implement a new system before their completion. In future we will attempt to ensure any change of system occurs between July and December.	04.12.2015
Urgent	Communities & Place	An extension to the existing Car Club contract providing electric vehicles for use in the city.	£40,000	To extend the existing contract with Co-Wheels Car Club increasing its value from £75,000 to £115,000 to include additional services not covered in the original tender.	The additional service is for fleet management to use 2 additional vehicles located at the Council House and will include the operation of the existing vehicles to be moved into the car club operators management. Clear evidence is available that the Council need this extra capacity. The existing provider is best placed to provide the additional requirements.	04.12.2015
Urgent	Communities &	To repair and replace a section of the	£50,000	To award a contract	It is important that the facility is	06.01.2016

	Place	Mundy Play Centre Pirate Ship damaged by arson in summer 2015.		directly to Proludic Limited who originally built the installation.	available for the start of the main season, typically the Easter school holidays, as this is an important source of revenue income. The original contractor is best placed to achieve this timeline as they are in possession of all the original drawings and have the supply chain in place to provide the necessary materials.	
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Type of waiver	Department/ Division seeking the waiver	Background/Description of the Contract	Value	Request submitted through the waiver	Additional comments and/or reasons the waiver is needed	Date of Approval
AVOIDABLE WAIVERS WITH BETTER PLANNING						
Urgent	Communities & Place	To re-develop parts of the training centre and gatehouse at Kedleston Road to accommodate additional staff from Peoples Services and Work Force Development who are vacating other council buildings as part of the property rationalisation process.	£15,000	To direct award to YD Boon who carried out the feasibility study and whose initial outline design has been approved.	The contract is to cover design services (including M&E and structural services with full design drawings, specifications and activity schedules), tendering the project and undertaking site inspections. The value of the entire scheme is £375,000. The project has to be delivered by March 2016. Provision for the possibility of direct award of this work should have been allowed for when the process was undertaken for the feasibility study as it should have been recognised that other architects would not wish to take on another parties design.	09.10.2015

Urgent	Communities & Place	To provide staff for the active monitoring of CCTV.	£25,000	To award a contract direct to Atlas Security Limited for 1 year commencing 23 October 2015.	Active monitoring of the CCTV ended 31 May 2015 following reduction of budget. Following consultation with the Leader and Cabinet Members, it was agreed that the service should be active before the end of October so that it could be tuned to peak efficiency before Christmas 2015 which is the time of greatest need.	23.10.2015
Urgent	Communities & Place	To employ contractors to carry out works at Arboretum House and Royal Oak House to accommodate staff and services users moving from the Wetherby Centre and Middleton House.	£76,000	The work would normally be awarded using the EMPA framework. The only contractor within the price bracket has decline the work. Due to the short timescales remaining, the projects will be awarded via the use of three written quotes rather than an open tender exercise.	The work needs to be completed before Christmas 2015. The contractor will have to place orders for specialist materials which have a lead in period of up to 4 weeks. It is expected that the works will take a further 4 to 5 weeks. The 3 contractors chosen are Derby or Derbyshire based and have confirmed their ability to meet this schedule.	03.11.2015
Urgent	Communities & Place	Housing Options and Advice Management Service Software Support and license costs.	£14463.60	We are currently working with an existing provider (CDPSoft) of other housing related software to negate the need for this additional required. This alternative solution will not be available until	The invoice has already been received as the annual license period is 1/11/2015 to 30/10/2016.	12.11.2015

				midway through 2016 therefore the system is still required as we cannot risk deactivation without an alternative in place.		
Urgent	Communities & Place	Resettlement and Referral System Software Support.	£7,449.96	To extend the existing contract with CDPSO for a period of 9 months.	Please see comments above in relation to the extension to the Housing Options and Advice Management Service Software.	10.12.2015
Urgent	Organisation & Governance	Managed Service – Temporary Agency Staff	£1,700,000	To extend the existing contract with Matrix for a period of 6 months to allow sufficient change management activity to be undertaken across the Council. This will also align a new supplier to start with the introduction of job evaluation changes to terms and conditions.	Several waivers are in place due to the current contract being not fit for purpose. This extension will allow the procurement process to address the requirements covered in those waivers and ensure that a contract or contracts are in place that will negate the need for future waivers.	18.12.2015