



Audit and Accounts Committee
6 July 2016

Report of the Chief Executive

ITEM 8

Reporting of Waivers

SUMMARY

1.1 There are a total of 13 waivers within this report.

These cover the period 28 January 2016 to 22 June 2016

Broken down by directorate we have

Directorate	Number of Waivers	Classification	
		Unavoidable	Avoidable
Communities & Place	2	1	1
People Services	4	3	1
Organisation & Governance	7	3	4
Total Number of Waivers	13	7	6

Of these waivers:

7 were unavoidable

2 were avoidable but there were considered reasons for the Waiver

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

RECOMMENDATION

2.1 That the Chief Officers note the contents and approve the submission of the report to the Audit and Accounts Committee

REASONS FOR RECOMMENDATION

3.1 Approval is sought prior to submission to the Audit and Accounts Committee.

SUPPORTING INFORMATION

- 4.1 Appendix 2 lists those waivers that have been granted during the period 28 January 2016 to 22 June 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)	
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	<p>One of the key roles for the Strategic Asset management team is the delivery of property related savings identified through the property rationalisation programme and budget proposals.</p> <p>The asset survey is currently on long term sick leave.</p> <p>Approval was granted in October 2015 to employ an agency member of staff to primarily cover this sickness absence.</p> <p>We have been unable to recruit using the existing agency staff contract. Two reasons have been cited</p> <ul style="list-style-type: none"> • The current approved ceiling rate of pay • The unwillingness of agencies able to supply professional surveying staff to sign up to the contract and accept the low commission level 	£42,550	To contact agencies outside our existing contract who are able to provide the staff we require.	<p>There has been a considerable further delay whilst the correct channels have been used to try and secure the staff required.</p> <p>A tender process will be run to replace the existing contract as this has been proved to be unfit for purpose where professionally qualified specialist personnel are required.</p> <p>The waiver is unavoidable as we are at risk of not being able to deliver the property related savings that have been identified.</p>	22.01.2016
Departmental	Communities & Place	<p>The electric cars and bikes at the Mundy Play Centre were purchased over 15 years ago.</p> <p>We need to replace 2 cars and 2 bikes as they are regularly breaking down and spares are expensive and hard to obtain.</p> <p>We have only found 1 supplier in the UK and need the replacements before the</p>	£12,330	To purchase the goods from Leisure Engineering in Brixton, Plymouth and waive the requirement for 3 quotes.	The projected income for 2016/17 is £45-50,000 so the investment will be returned and income generated in the first year.	02.03.2016

		school Easter break to maintain income generation.				
Departmental	Communities & Place	<p>Customers who choose to buy our property maintenance package currently have to use the help desk to request information, place orders etc.</p> <p>The current provider of our existing Asset Management System (sam.net) can provide Client Portal Software which will allow a higher degree of self-service to our customers and access to information without the need for staff to manually provide it.</p> <p>This will also support the reduction of helpdesk staff from 2 down to 1.</p>	£10,800	To waive the requirement to obtain 3 quotes and award direct to Elf Software.	The portal has to link through the existing Asset Management Software and there is currently no provision for external companies to interface with sam.net	18.03.2016
Urgent	People Services	<p>Derby City Council is currently unable to consistently meet its statutory requirement to provide an Approved Mental Health Professional Service out of office hours.</p> <p>Soft market testing resulted in no expressions of interest.</p> <p>Derbyshire County Council has expressed an interest in providing the service using a Service Level Agreement for a period of 18 months.</p> <p>This would provide best value to the council as it has been necessary to pay for additional agency shifts to cover sickness</p>	£150,000	To waive the requirement for a tender process and enter into a SLA with Derbyshire County Council.	<p>This is an extremely specialised service and it is unlikely that any private sector organisation would have the expertise or resources to provide the required level of cover or governance of the service.</p> <p>Derbyshire already employs AMHPs and works within the same Health Authority.</p>	11.03.2016

		and fulfil our statutory responsibilities.				
Departmental	People Services	<p>Since the Council Cabinet decision to transform adult social care through personalisation in September 2011 there have been two distinct 'phases' of development. In April 2012 a restructure of fieldwork and assessment services went 'live' to support the implementation of self-directed support and personal budgets. A financial saving of approximately 10% was made from staffing budgets at that time. In April 2014 a wider restructure of assessment, enablement and support planning (AESP) services went live to support further progress with personalisation, prepare for the implementation of the 2014 Care Act and to deliver further financial savings from the staffing budgets.</p> <p>There is a requirement to continue the 'journey' of transformation by managing increasing demand, increasing productivity and reducing the cost of social care support to individuals. An opportunity has arisen to join a programme being uniquely offered by the NDTi to develop and implement community led support, based on the success of the approach in Shropshire.</p> <p>Participation in the programme will be fully funded from the Better Care Fund (BCF).</p>	£25,000	To waive the requirement for a tender process and join the Community Led Support Programme being offered by the National Development Team for Inclusion (NDTi)	<p>The programme is unique to the NDTi.</p> <p>The potential full cost of this contract has been reduced in the following ways. The full NDTi programme is offered at a cost of £85,140, but we have negotiated a reduced package on the basis of the progress towards community led support that we have already started to make – especially with younger adults and with local area coordination and by employing a temporary head of service on a fixed term contract to provide the in-house leadership and build on local knowledge and skills.</p>	21.03.2016

Urgent	Communities & Place	<p>The previous data manager left the Property Design & Maintenance Service in September 2015. Attempts to recruit a replacement have been unsuccessful.</p> <p>A new post has been created within the restructure and the intention is to go out to recruit within the next 9 months.</p> <p>Due to the immediate needs we have regarding data management to ensure property compliance we require an external resource to provide:</p> <ul style="list-style-type: none"> • Data management support services including data management, SQL support and CAD specialists • On-site support for remaining staff members to improve the application of the asset management software. • Provide training to the newly recruited Data Manager 	£35,000	To waive the requirement for a tender process and award a contract direct to Elf Software Ltd.	Elf Software are the current providers of the management system and are therefore best placed to provide a resource that understands the data base and provide the best support and training.	05.04.2016
Urgent	Peoples Services	<p>Hardwick Primary School and Da Vinci Community Schools are currently local community and Trust schools which were rebuilt through the Council's Private Finance Initiative project in 2006.</p> <p>The governors have been granted an academy order which will require a significant amount of legal work to amend the PFI contract before the schools can convert to academy status.</p> <p>Eversheds were the legal advisors throughout the PFI process working with the Council and the Department for Education</p>	£31,000	To waive the requirement for a tender process and award a contract to Eversheds	<p>No other legal advisor will have the background knowledge of the original Grouped Schools PFI which also included another 3 schools and a children's centre.</p> <p>The work needs to start in June 2016 in order to meet the DfE's preferred date for academy conversion (January 2017)</p>	17.05.2016

AVOIDABLE WAIVERS BUT WITH CONSIDERED REASONS						
Departmental	Communities & Place	<p>The Transport Planning Group needs to renew the licence for the national standard software it uses for trip generation analysis to provide information about potential development and regeneration projects. It supports the assessment of the potential impacts of proposed developments on the transport network and is required for the analysis of Transport Assessments submitted for new land use planning applications as part of a statutory function.</p> <p>The Council has used this software for the past 10 years.</p>	£6,250	To extend the existing agreement for a further 2 years	<p>It has widely been assumed that this is the only solution available.</p> <p>The department has listened to advice and set a realistic timetable to allow for soft market testing, a procurement process and implementation</p>	13.04.2016
Departmental	Organisation & Governance	<p>The Council has 4 sound level meters for the recording and potential collection of evidence for noise complaints that can result in the service of a legal notice and potential prosecution. We need to enter into a contract for calibration and maintenance of those meters.</p> <p>To replace the existing equipment would be expensive and there is currently no need to do this but there is only one UK based company that are licensed to offer this service.</p>	£11,532	To waive the requirement for 3 quotes and award a contract to Campbell Associates in Essex for 4 years	<p>It is estimated that the existing equipment will not need replacing for this length of time.</p> <p>Future procurement of equipment will include a product life span question and the cost of maintenance for that period.</p>	10.05.2016

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	Organisation & Governance	<p>The contract for the Environmental and Regulatory services and Planning IT Systems expires 31.03.2016</p> <p>The required business analysis and soft market testing have been completed and we are ready to commence the procurement process.</p> <p>In will not be possible to carry out the implementation work between January and March 2016 due to the end of the contract with Serco and the related workload to ensure the new service model related to the end of that contract is implemented.</p> <p>The revised plan entails going ahead with the procurement process but to defer the implantation to begin April 2016.</p>	£49000	To extend the existing contract for 6 months to accommodate the revised plan.	<p>An urgent waiver is required to schedule the tender process and to ensure we successfully manage the business as usual activities in the early part of 2016/17.</p> <p>Future project plans will take into account implementation requirements and how they can be scheduled in to departmental workloads.</p>	22.12.2015
Urgent	Organisation & Governance	<p>The Electronic Document Records Management Systems (ERDMS) was implemented in 2011 as the Council's corporate document solution. The legacy Sharepoint System (MOSS) has been running in parallel on the understanding that the business would transfer any documents by the end of March 2016.</p> <p>Environment and Regulatory Services and the Employee Services Centre will not meet this target.</p> <p>These records will now have to be</p>	£40,000	To direct award to Shiny Docs who can complete the work by 15 March 2016.	<p>The decision needed to be taken to ensure that there is continuity of access to the documents these 2 areas use.</p> <p>If the failing had been identified early a tender process could have been undertaken.</p>	11.01.2016

		transferred “on block” through the engagement of an external organisation.				
Urgent	Organisation & Governance	<p>The Council has completed a tender exercise to replace its Social Care Systems.</p> <p>The implementation of the new system ContrOCC is not yet complete as the Direct Debit function has not been delivered and the system is used to manage those for Residential costs for the Council.</p> <p>The old software, licencing, annual support and maintenance contract with Abacus eSolutions expires 31 March 2016 but the Direct Debit function with not be available for that date.</p>	£8562.00	To extend the services of Abacus eSolutions whilst the new system is implemented fully.	<p>The amount quoted would allow an extension of up to 12 months.</p> <p>The initial project plan did not allow for sufficient implementation and testing of the new system to allow the contract to terminate at the original date.</p> <p>This is the most cost effective way of ensuring continuity of service.</p>	14.03.2016
Urgent	Peoples Services	<p>In October 2015 an urgent waiver was requested to appoint Baltimore Consulting Group to carry out a specific piece of work in relation to the statutory duty to convert individual Statements of Specialist Educational Need and Learning Disability Assessments to the new Education, Health and Care Plans. 137 conversions were identified as requiring to be completed for the academic year 2014/15. The waiver was for £23,100 for a period from 27 October 2015 to 29 January 2016. This was report to Audit & Accounts Committee in January 2016.</p> <p>A further waiver has been requested to extend this arrange to 29 July 2016.</p>	£45,500	To extend the arrangement with Baltimore Consulting Group to complete all conversions and upskill Derby City Council's own staff to be able to complete the work from the end of this agreement.	<p>The original assessment of the situation was obviously misjudged thus leading to the requirement for a further waiver.</p> <p>The request for the second waiver was only received on the day the original contract expired</p>	29.01.2016

		Only 49 conversions had been completed at the end of the original contract. A further 169 conversions are required for the academic year 2015/16				
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