

**To the Chair and Members of the
AUDIT COMMITTEE**

FINANCIAL AND PURCHASING & CONTRACT PROCEDURE RULES

EXECUTIVE SUMMARY

1. This Report provides Members with details of Waivers and Breaches to Contract Procedure Rules (C.P.R's) for the period 1st October 2014 to 31st March 2015,
2. The table below identifies the number of new waivers and breaches recorded by each Directorate since the last audit report presented in November. The details of each waiver and breach are summarised in the appendices of this report.

| Period 1st October 2014 – 31st March 2015 | Breaches | Waivers |
|--|-----------------|----------------|
| Adults, Health & Wellbeing | 5 | 1 |
| Learning & Opportunities: Children & Young People | 1 | 2 |
| Finance & Corporate Services | 2 | 4 |
| Regeneration & Environment | 1 | 5 |
| GRAND TOTAL | 9 | 12 |

RECOMMENDATION

3. To note the information and actions contained in this report, regarding waivers and breaches of C.P.R's

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. There are no specific implications within this report, with regards to waivers or breaches.

BACKGROUND

5. The Director of Finance and Corporate Services monitors compliance with

Contract Procedure Rules (C.P.R.s) via an update from the Corporate Procurement team, detailing any reported waivers of C.P.R.s and instances of breach

Contract Procedure Rules (C.P.R's)

6. C.P.R.s set various value thresholds (detailed in paragraph 8 below) where commensurate competition should be undertaken by officers to ensure that value for money is being achieved and that all tender opportunities are fairly and appropriately advertised to suppliers.
7. The thresholds within C.P.R.s are set at the Council's discretion as:
 - Under £30,000 – use of an in-house supplier, Council wide contract (these have been established centrally or nationally for everyone to use), framework agreement or approved list or obtain **three verbal** quotes one of which must be from a Doncaster firm where the above is not available and record these quotes in writing as evidence;
 - Between £30,000 and EU threshold currently £172,514 (for goods and services) and £4,332,012m (for works) – use of an in house supplier, council wide contract, framework agreement or approved list or obtain **three written** quotes one of which must be from a Doncaster firm where the above is not available;
 - Over EU £172,514 (for goods and services) or £4,332,012m (for works) – use of an In-house supplier, Council wide Contract, framework agreement or carry out an Open, Restricted or Competitive Dialogue Tender procedure. This includes what are known as Part B Services, which generally covers many of the care based services, where the OJEU regulations are less stringent allowing for more flexibility in approach.
8. Whilst the EU thresholds are set within the legislation and, therefore, cannot be waived, it is recognised that from time to time discretionary thresholds within C.P.R's may be a barrier to the delivery of the service and, therefore, Council officers can request that the C.P.R's are waived in specific instances via a C.P.R waiver report, which is approved by the Director of Finance and Corporate Services in accordance with the following permissible exemptions.
 - a. the goods, services or works are proprietary in nature (i.e. where only one supplier can supply the product or services);
 - b. the contract is for goods, services or works that are required in circumstances of extreme urgency;
 - c. the circumstances of the proposed procurement are covered by legislative exemptions (whether under EU or UK. law);
 - d. there are other circumstances that are genuinely exceptional.

Breaches to CPR's

9. Breaches arise from either the aggregation of spend with one supplier going over pre prescribed limits, a complete absence of any identifiable contract, a failure to comply with requirements to obtain adequate competition or an extension of contract beyond its agreed term or lifetime.
10. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position. A summary report is produced for each breach and detail actions required to be taken, including where necessary the decommissioning of contracts.
11. Nine breaches to CPR's have been reported this period (see detail of each breach at appendix 1).

Waivers to CPR's

12. Twelve waivers to CPR's have been approved this period (see appendix 2 for the detail of each waiver).
13. The waivers detailed in this report have been reviewed and agreed either by the Assistant Director of Finance and Performance, the Director of Finance and Corporate Services or the Chief Executive (for Finance and Corporate Services Directorate).

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £30,000

14. The Corporate Procurement Team continues to work closely with all Directorates to improve procurement generally, but to also provide assurance that arrangements are robust and compliant with CPR's. Where waivers and breaches are identified, they are recorded and appropriate procurement plans are agreed and developed if/where appropriate.

OPTIONS CONSIDERED

15. Each waiver is examined and where appropriate challenged for alternative options prior to approval.

REASONS FOR RECOMMENDED OPTION

16. It is clearly important that the Council's Contract Procedure Rules are adhered to and that from a governance and procurement perspective, where breaches are identified a robust corrective plan is put in place to protect the council's commercial interests through contracts.

IMPACT ON THE COUNCIL'S KEY OBJECTIVES

| | Priority | Implications |
|--|--|--|
| | <p>We will support a strong economy where businesses can locate, grow and employ local people.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Be a strong voice for our veterans</i> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> | <p><i>Please see Appendix 1 for an explanation of each waiver.</i></p> |
| | <p>We will help people to live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> | |
| | <p>We will make Doncaster a better place to live, with cleaner, more sustainable communities.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> | |
| | <p>We will support all families to thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> | |
| | <p>We will deliver modern value for money services.</p> | |
| | <p>We will provide strong leadership and governance, working in partnership.</p> | |

RISKS AND ASSUMPTIONS

17. With regards to the ongoing review of commercial arrangements with suppliers the risks of breach of CPR'S potentially exposes the Council to reputational, legal and commercial risk. The review and plans arising from its aim to remedy this and mitigate any remaining open risk.

LEGAL IMPLICATIONS

18. There are no specific legal implications arising from this report. However, Legal Services provide advice and assistance on the specific context of CPR breaches and waivers and reviewing existing commercial arrangements.

FINANCIAL IMPLICATIONS

19. There are no specific implications within this report, as each waiver or breach is considered on its own merits. Where financial implications arise from the wider review of commercial arrangements with suppliers these will be reviewed on a case by case basis.

EQUALITY IMPLICATIONS

20. The author of each waiver would need to consider all equality implications.

CONSULTATION

21. This report has significant implications in terms of the following:

| | | | |
|-------------------------------|---|------------------------------|--|
| Procurement | ✓ | Crime & Disorder | |
| Human Resources | | Human Rights & Equalities | |
| Buildings, Land and Occupiers | | Environment & Sustainability | |
| ICT | | Capital Programme | |

BACKGROUND PAPERS

22. None

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BREACHES

This appendix details the C.P.R. breaches that have been identified to the end of March 2015, together with a brief explanation of the reasons for the breach.

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|--|--|---|--|---|---|--|
| <p>Adults, Health & Wellbeing</p> <p>Shane Hayward Giles</p> | <p>Doncaster MIND & Changing Lives</p> | <p>Doncaster MIND £175,000</p> <p>Changing Lives £117,000</p> | <p>These services are grant funded</p> | <p>These community mental health services were identified as an efficiency saving in 2014-15.</p> <p>However, it was subsequently agreed to undertake a review of mental health services with the CCG, along with a wider review of DMBC's relationship with RDaSH. The efficiencies were therefore suspended pending the</p> | <p>An ODR will be in place to cover the funding arrangements from the Better Care Fund.</p> <p>The review will determine the strategic direction for mental health services and DMBC's relationship with RDaSH and decision re these services will be made in the light of their relevance to this direction.</p> | <p>These will be determined by the outcomes of the review.</p> |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|--|--|---------------------|--|--|------------------------|---|
| | | | | <p>outcome of that review.</p> <p>Temporarily these services are being funded through the Better Care Fund as a grant.</p> | | |
| <p>Adults, Health & Wellbeing</p> <p>Shane Hayward Giles</p> | <p>Older People's alarm only and scheme managed support with alarm (various suppliers and various schemes)</p> | <p>£232,099</p> | <p>There has been an implied contract with a range of suppliers since 2006 and regular contract monitoring has taken place</p> | <p>This Supporting People (SP) funded older people's provision was identified as an efficiency saving in 2014-15.</p> <p>However in implementing the saving it became clear that doing so could lead to inconsistent funding arrangements, so a review has been put in place to resolve the issues</p> | <p>Review in place</p> | <p>Outcome of review will determine timescales.</p> |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|---|--|---------------------|-------------------|---|--|--|
| <p>Adults and Health and Wellbeing</p> <p>Shane Hayward Giles</p> | <p>Care and Support Contract for Charles Court Extra Housing</p> | <p>£227,940</p> | <p>31/3/12</p> | <p>Considerable work has taken place with relevant partners (including colleagues in Regeneration & Environment and providers) on determining a model of care and support for extra care housing to address the different offers within existing provision.</p> <p>This new model will be applied to Charles Court.</p> <p>Delays have incurred due to legal issues identified with the extra care framework that will be used to</p> | <p>Utilise the existing extra care framework to hold a mini-competition between the three framework providers in order to identify a provider to deliver 24/7 care and support services at Charles Court</p> | <p>Mini competitions to take place in 2015 pending agreement with Legal over extra care framework providers.</p> |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|---|--|---------------------|---|---|---|--|
| | | | | implement the new model. | | |
| Adults and Health and Wellbeing Shane Hayward Giles | Keyring (Two schemes) - Bentley and Rossington | £75,012 | There has been an implied contract with this provider since 2006 and regular contract monitoring has taken place. | A tender exercise has never been undertaken due to the uniqueness of the service being delivered. | To review the service and market to determine whether there is an alternative provider for this type of service. Dependent on the outcome of the market test, if it is found that there is alternative suppliers able to offer this type of service an open tender exercise will be undertaken. If it is found that there are no alternative suppliers a single tender exercise with Keyring will be undertaken. | End of July 2015 |
| Adults & Health & Wellbeing Shane Hayward Giles | Springwell Lane and Lanark Drive | £50,000 Approx | No contact in place | These services formed part of a larger block supported living contract provided by RDaSH that was tendered in | Discussion to take place with the CCG in terms of the future funding of these services. | Discussion to take place during May 2015 with a view to resolution on future funding requirement by July 2015. |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|---|--|---------------------|-------------------|--|---|--|
| | | | | 2013. These specific services fell out of scope of the tender due to them being primarily health funded placements. | | |
| Finance & Corporate Services Julie Grant | Records Management With Business Storage Solutions (BSS) | £93,156 | Not known | Contract was originally let in 2004 by Adult & Communities. This contract expired and was identified by F&CS as being in breach of CPR's following the transfer of responsibility for records management to F&CS | A long term solution is being sort to record management. Currently documents are being stored in various locations across the Borough. Some records are stored in Council owned locations e.g. Copley House, with BSS also storing records on the Council's behalf. We are currently in the process of identifying the records that can legally be destroyed and also seeking to identify an appropriate building which will enable a long term | The two options currently being considered are:- <ul style="list-style-type: none"> • In-source records management from BSS • Retender the BSS element of the service. The anticipated timescale for this work to be completed is 12 months (i.e. dependent upon the condition of the building and any remedial work needed). The timescale will reduce to 6 months should the BSS service be re-tendered. |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|---|--|---------------------|-------------------|---|--|---|
| | | | | | record management solution to be put in place (i.e. for all records management including the records being managed by BSS). | |
| Finance & Corporate Services Roger Harvey | Mortuary Services with Doncaster & Bassetlaw Hospital | £188,588 | 06/01/15 | When this service was last tendered in 2012, the cost rose from circa £100k to £200k for a 12mth period. There is currently a concern that a new tender will result in further increased costs of this service (as current costs are being held at the expired contract rates). | Current Mortuary and Post Mortem services are being re-modelled to gain service efficiencies. We are seeking to extend the current contract, on the same terms and condition, for a further 12 months to contractually protect the Council. | Following remodelling the contract will be subject to a European tender exercise to take place late summer, early autumn of 2015. |
| Learning & Opportunities: Children & Young People Riana Nelson | Autism Family Practitioners | £150,000 | No contract | There has been a gap between the original collective decisions for the delivery of the service and any | The costs of the service to date have been requested and clarified and actual costs accrued for 2014/15. . Service review to be | The intention is for the service to continue and with a view to go to formal tender at the earliest possible opportunity |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|--|-------------|---------------------|-------------------|---|--|---|
| | | | | contracting activity by DMBC so RDaSH have secured delivery of the service by recruiting staff and committing their expenditure prior to any formal tender process and conformation of contract. In terms of procurement it was agreed with DCCG that we would use RDaSH as the providers and the workers would sit within CAMHs service for clinical supervision and peer support. | undertaken and future commissioning | |
| Regeneration & Environment Gill Gillies | Symology | £34,335 | 30/12/14 | Symology was originally procured and implemented in 2004, with the support and maintenance being extended year on | The Symology system is predominately used by Highways and Street Scene. Although the current contract for the initial Symology software has expired. | The outcome of the review will determine whether we tender or not for a replacement system. The current support and maintenance contract has |

| Directorate & Responsible Officer | Description | Annual Breach Value | Contract End Date | Reason for breach | Proposed action | Timescale for resolution |
|-----------------------------------|-------------|---------------------|-------------------|---|--|--|
| | | | | <p>year. This breach was identified when the street lighting asset management system was being acquired from Mayrise.</p> | <p>The support and maintenance package for this software has been renewed on an annual basis. As this breach has recently been identified we are in the early stage of a review of the software to determine whether the system needs to be replaced or can be superseded by the current Mayrise asset management system..</p> | <p>been extended for a further year.</p> |

APPENDIX 2

WAIVERS

This appendix details the C.P.R. waivers that have been agreed since the last report covering the period 1st November 2014 to the end of March 2015, together with a brief explanation of the reasons for the waiver.

| Department | Value | Reason |
|--|----------|---|
| Finance and Corporate Services CPR/14/10/0002 | £12,000 | <p>Waiver request to directly award a contract to Capita to enable Schools FMS databases to be updated to reflect the new accounting coding structure.</p> <p>The waiver has been granted on the basis that the Schools FMS system is propriety to Capita.</p> |
| Regeneration and Environment CPR/14/12/0001 | £48,836 | <p>Waiver request to directly award a two year contract to Mayrise for their streetlight asset management system.</p> <p>The waiver has been granted on the basis that the Mayrise Streetlight asset management system had a proven track record of working well with the proposed smart light solution and would prevent a delay in the smart light projects implementation.</p> |
| Adults and Communities CPR/14/12/0003 | £390,000 | <p>Waiver request to reallocate 44 packages of domiciliary care from Choice Healthcare to Human Support Group as the current provider went into administration.</p> <p>Waiver granted on the basis that Human Support Group was able to take over the current contract within the required timescales to ensure safe, continuity of service to service users.</p> |
| Finance and Corporate Services CPR/15/01/0001 | £137,458 | <p>Waiver request to procure WebCapture a product of GovTech that extends channel shift efficiencies through transforming content from online self-service web forms using a fully automated process which validates the data and updates into the back office.</p> <p>Waiver granted on the basis of letting a 12 month contract to allow time for the Council to develop an alternative solution.</p> |
| Children and Young People CPR/15/01/0004 | £35,000 | <p>Waiver requested to appoint a Consultant following a review of Children with Disabilities and Special Educational Needs & Disabilities service.</p> <p>Waiver granted on the basis that additional support was required to address number of areas that required immediate attention in order to improve Ofstead inspection readiness.</p> |
| Regeneration and Environment | £2,846 | <p>Waiver requested to award a contract to Integrated Water services to carryout essential remedial legionella maintenance within Doncaster Town Centre Market which has been identified as part of</p> |

| Department | Value | Reason |
|--|--------------|---|
| CPR/15/01/0002 | | <p>a Health and Safety Audit.</p> <p>Waiver granted to address immediate health and Safety Concerns.</p> |
| Finance and Corporate Services CPR/15/01/0011 | £650.00 | <p>Waiver request to Appoint an Interim Electoral Services Manager from the Association of Electoral Administrators due to the Electoral Services Manager resigning.</p> <p>Waiver granted on the basis that Electoral Management expertise was required immediately to manage the May 2015 Elections.</p> |
| Children and Young People's Services CPR/15/02/0003 | £25,000 | <p>Waiver requested to award a contract to The Education Foundation to carry out consultation activity for Future Doncaster programme.</p> <p>Waiver granted on the basis that no other organisation had the necessary skills to carry out the work within the allotted timeframe.</p> |
| Finance and Corporate Services CPR/14/04/0008 | £76,000 | <p>Waiver requested to extend the current ERDMS support an maintenance contract with Northgate to allow the Council to consider its options prior to tender and allow for inclusion in the 2015/16 Capital programme.</p> <p>Waiver granted on the basis the support and maintenance for the ERDMS system is propriety to Northgate.</p> |
| Regeneration and Environment CPR/15/02/0002 | £22,300 | <p>Waiver requested to award a contract to Proteus Equipment Limited for the provision of a static hot box.</p> <p>Waiver granted on basis that this was only product that met the Council needs.</p> |
| Regeneration and Environment CPR/15/03/0002 | £6,996 | <p>Waiver requested to award a contract to Co Star for the provision of their online property database module as part of the suite of services provided by Tractivity</p> <p>Waiver granted on the basis that the Co Star property database is propriety.</p> |
| Regeneration and Environment CPR/15/03/0003 | £5,000 | <p>Waiver request to appoint Archomai Ltd in the pursuit of key strategic consultancy services associated with developing international trade routes and inward investment opportunities for the Borough through use existing linkages within the rail sector.</p> <p>Waiver granted on the basis of the bespoke services to be supplied to the Council by Archomai Ltd and the potential for Latin American investment opportunities within Doncaster.</p> |