

**Wards Affected:***'All Wards'***Asbestos Procurement – Challenge from Woods Building Services Ltd**

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**Executive Summary:**

This report updates the Committee on the current position with regards to the Woods Building Services Ltd Procurement dispute and the position regarding settlement of their claim

**1. Recommendation)**

1.1 The Committee note the report

**2. Issues**

2.1 As previously reported to the Committee on 26 January 2016, Woods Building Services Ltd (“Woods”) successfully challenged the procurement process in awarding the Council Asbestos removal contract in 2015.

2.2 The Judgment awarded costs and damages to Woods to be assessed if not agreed between the parties.

2.3 The Council extended Wood’s existing contract by a deed of variation which ended on 31 May 2016 and also settled the costs of the High Court hearing decision of 14 July 2015 in the sum of £102,500.

2.4 Following the loss of the initial hearing and settlement of Woods legal fees, Freeth Solicitors were replaced by Sharpe Pritchard Solicitors to advise on the damages settlement.

2.5 Following a long delay from Woods, they finally submitted their claim for damages on 13 January 2017 seeking damages in the sum of £1,638,220 plus additional legal costs.

2.6 Forensic accountants were instructed to review the claim and found the majority of the claim to be unsubstantiated and speculative. Negotiations were undertaken through Counsel and external solicitors.

2.7 On 11 August 2017, a final settlement was reached with Woods in the sum of £800,000. This sum included the additional costs incurred by Woods which were estimated at approximately £25,000.

2.8 At the time of settlement the offer equated to a reduction of approximately £863,220 on Woods original claim for liability.

### 3. Options

3.1 In deciding to settle the claim, officers were faced with 3 options:

**Option 1** – Settle the claim as soon as possible. The advantages were that the matter would be finalised, no further officer time would be spent on this matter and the potential risk of additional costs and increased damages, including interest would be averted. A potential disadvantage of settling the claim as soon as possible would be the Council could pay higher damages than what a Judge would have awarded.

**Option 2** – Put forward an estimated 'Part 36' offer and either let the claimants accept or take this to a hearing if they did not. The advantage is that the payment of damages could be lower and if they take it to trial and they are not awarded more than the offer, then Woods would not be able to recover their legal costs from the date, 21 days after the offer was made and would have to pay the Council's legal costs. The potential disadvantage of putting forward an estimated Part 36 offer would be; as a majority of the claim was unsubstantiated, it was difficult to put forward an accurate Part 36 offer that would have put Woods under pressure to accept. And if this offer was not accurate, Woods could have bettered the offer at court, so the Council would have to pay higher damages than the offer, all our and Woods legal costs, plus the additional officer time spent on the claim.

**Option 3** – Insist Woods substantiate their claim in full and then put in a more calculated Part 36 Offer. The advantage of this option would be that the offer would be closer to what the Council feels it would be liable for, the disadvantage is that Woods would be entitled to recover all the legal costs in providing the evidence to substantiate the claim, which could be more than the saving in damages.

3.2 On advice from Counsel it was felt the most appropriate course of action was to seek an early settlement (option 1). Counsel estimated that the potential fees to run the damages trial to a full hearing could cost £100,000-£150,000 and the same again for Woods, which could increase the amount paid by a further £200,000 - £300,000.

3.3 Finance reviewed the figures and estimated an appropriate settlement sum would be up to £750,000 including costs. Following negotiations Woods would not settle below £800,000 and considering the risk of additional damages and the likelihood of the Council having to meet Woods costs, that a settlement at £800,000 was the most economically beneficial to the Council.

### 4. Financial Implications

4.1 The final settlement was agreed and the total amount paid to Woods under delegated powers afforded to the Council's Chief Finance Officer was £902,500. This includes the cost from the initial legal proceedings at £102,500 and the damages including costs of £800,000

4.2 Costs paid out by the Council for external legal advice are as follows:-

Freeths Solicitors including+ Counsel Fees – £116K

Sharpe Pritchard Solicitors including Counsel fees – £13K

BDO Forensic Accountant Fees – £4K

## 5. **Lessons Learnt**

5.1 Following the Judgement a report was produced by internal audit (copy attached at annex to the report) and a lesson learnt exercise carried out. The recommendation from officers in the lessons learnt session were as follows:-

- The Procurement Process training to be re-assessed and amendments made to improve market analysis and evaluation methods. This is to be made mandatory training for all those involved in procurement
- A crisis management protocol to be agreed if/when a challenge is received
- To conduct a peer review of our procurement process?
- ITT Model Answers to be considered for certain procurements?

5.2 Procurement confirmed that they produced a specific training package purely on evaluating tenders in addition to the Procurement Overview training following the incident and trained procurement staff on this. This training is now standard training for all new officers.

5.3 On the issue of model answers, the procurement training states “It is not unusual to produce model answers to assist with the scoring. However you must ensure that these do not introduce new, undisclosed criteria. The model answers must respond to the relevant questions in a manner which would be reasonably foreseeable by a reasonably informed and normally diligent bidder.” Therefore staff are trained that when model answers are considered appropriate that they are fully considered against the questioned posed by the bidder.

5.4 The Peer review was carried out and reported to Cabinet on 11<sup>th</sup> July 2016

5.5 A Crisis Management Protocol has been produced and recently refreshed following the final outcome of the litigation and circulated to officers

## 6. **Implications**

6.1 That the lessons learnt have been implemented to address the failing following this litigation

6.2 Policy - None

6.3 Resources and Risk – Financial implication with regards to the cost of settling the claim

X	Capital	Y	Revenue	X	Accommodation
X	IT	X	Medium Term Plan	X	Asset Management

6.4 Carbon and Energy Management - None

6.5 Legal – The implementation of a process to

6.6 Other Implications – As set out in the report.

X	Equalities/Diversity	X	Sustainability	X	Human Rights
X	E-Government	X	Stakeholders	X	Crime and Disorder