



## **Contract non compliance**

### **SUMMARY**

- 1.1 At its meeting on 4 December 2008, the Committee approved a revised procedure for the reporting of non-compliance with Contract Procedure Rules. It was agreed that cases would be reported to Committee on a half yearly basis.
- 1.2 In line with the new procedure, the Head of Procurement reviews all cases of apparent non-compliance, in conjunction with the Head of Audit and Risk Management. In each case, the responsible officer is contacted and an explanation sought.
- 1.3 Paragraphs 4.2 and 4.3 provide details of those contracts that have, in the last 6 months, been identified as not being let compliantly. It does not necessarily represent all non compliant contracts in operation at the point of this report being written.

### **RECOMMENDATION**

- 2.1 That Committee note the contents of this report.

### **REASONS FOR RECOMMENDATION**

- 3.1 The report is for information only.

### **SUPPORTING INFORMATION**

- 4.1 There are 2 contracts that have been found to be not compliant with the Council's Contract Procedure Rules. They are:
  - Provision of HR Services to undertake an investigation
  - Security Services for the Markets

Details of the non-compliance issue for each contract are detailed in paragraphs 4.2. and 4.3.

#### 4.2 Provision of HR Services to undertake an investigation

Due to resource constraints at the time that the investigation was required, Human Resources decided to put this investigation work out to the external contractor. It was estimated at that point that the value of the contract would be below £5,000 and therefore there was no requirement to get alternative quotes. The initial assumption on the scope of the work required proved to be inaccurate and consequently the work required increased. To date, expenditure with the contractor used to deliver the work has been approximately £23,000. No quotation process was undertaken to award the work and no waiver was sought to award without competition.

This was a one off requirement relating to a specific case and has been completed. The department has been reminded of its responsibility in ensuring compliance with the requirements of the contract procedure rules.

#### 4.3 Security Services for the Markets

The security services that were contracted for are funded from the service charge paid by the market traders and the Markets Section has therefore treated this as the traders' decision on who they have contracted with.

A number of contracts had been awarded to a security company to manage the security requirements of the different market sites without a compliant tender process. The combined expenditure on the three sites is over £120,000 per annum and is in breach of the European procurement regulations.

It has been agreed that the markets team will work with the central procurement team to put in a place a compliant contract let within the requirement of the European procurement directives that will meet the requirements of the market traders.

### **OTHER OPTIONS CONSIDERED**

5.1 Not applicable

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Richard Boneham, Head of Audit and Risk Management
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<b>For more information contact:</b>  <b>Background papers:</b> <b>List of appendices:</b>	Dawn Moran, Head of Procurement 01332 643271 e-mail dawn.moran@derby.gov.uk None Appendix 1 –Implications
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<b>IMPLICATIONS</b>
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**Financial and Value for Money**

- 1.1 Lack of a competitive process for a number of the contracts means that value for money has not been formally established.

**Legal**

- 2.1 One of the non compliances identified are in breach of the European procurement directives.

**Personnel**

- 3.1 None

**Equalities Impact**

- 4.1 None

**Health and Safety**

- 5.1 None

**Environmental Sustainability**

- 6.1 None

**Asset Management**

- 7.1 None

**Risk Management**

- 8.1 The lack of proper process in contracting increases risk to the Council in terms of risks that may not have been properly identified and assigned to one of the contracting parties. It also increases the risk of legal challenge to the Council regarding the award of the contract and the potential costs that the Council could incur in addressing this.

## **Corporate objectives and priorities for change**

- 9.1 Better management of procurement is critical in terms of the Council's ability to provide value for money in the services it delivers.