

9.001 During 1998, we received a number of public enquiries about instances where (it was claimed) local authorities had failed to follow acceptable contracting procedures and practices. This caused us to have concerns about local authority compliance with the legislative requirements – the Local Government Act 1974 and the Public Bodies Contracts Act 1959.

9.002 Examples of situations referred to us were:

- A chief executive entered into a significant contract for the provision of advice. The contract was an oral contract, the value of which exceeded the limit for such contracts under the Public Bodies Contracts Act (see paragraph 9.005). In addition, as the contract was not subject to a tender process, it also breached the Local Government Act requirement to record in writing the reasons for the decision not to put a significant contract to tender.
- A divisional manager was responsible for monitoring a four-step contract. The council had delegated its authority only for the first step, and that authority was for \$150,000. The manager approved expenditure for all steps, and exceeded his authority by more than \$3 million.
- A council committee authorised expenditure on the employment of consultants where it had no delegated power to do so. A senior council employee then approved payments for those services, even though that person had no authority either.
- A divisional manager assumed that he held delegated financial authority up to the amount in his budget. However, the delegation clearly limited the amount that could be spent on any individual contract. The delegation limit was breached.
- A council accepted a tender other than the lowest because it wished to award the contract to a local supplier. The terms of the tender did not say that the council could exercise that discretion.

- A divisional manager did not call tenders for a consultancy contract. He had no authority to enter into a contract without calling tenders. The council could have done so, but would have had to record in writing the reasons why tenders were not called.

9.003 Broadly, these incidents caused us concerns about:

- failure to comply with some legislative requirements;
- failure to comply with delegated authority;
- acting without authority; and
- tendering processes that are less than rigorous.

9.004 As a result, we wrote to every local authority chief executive in May 1998. The letter asked them to reassess whether their authority had proper contracting procedures in place to ensure that the necessary legislative requirements were being met. The letter also asked them to consider briefing their council on our concerns. The purpose of this was to remind council committees that they too cannot exceed their authority.

9.005 The letter highlighted our two major areas of concern:

- Compliance with section 3(3) of the Public Bodies Contracts Act 1959, which states that *no oral contracts are to be made for any sum exceeding \$1,000*.
- Compliance with section 247E of the Local Government Act 1974, which covers significant contracts and situations where it is decided not to put such contracts to tender. This section requires the reason for the decision not to put a significant contract to tender to be recorded in writing.

9.006 In relation to section 3(3) of the Public Bodies Contracts Act, we appreciate that many would regard the \$1,000 limit as too low. However, that is the current legislative requirement. Until such time as it is changed, it must be complied with.

9.007 In relation to decisions not to put contracts to tender, the Local Government Act refers to the local authority as the decision-maker. If a council wishes to delegate that decision-making responsibility, then a specific delegation is required. Any delegation of power to enter into contracts

under the Public Bodies Contracts Act will not over-ride the requirements of section 247E.

- 9.008 A number of chief executives responded to our letter assuring us that the necessary procedures were in place. However, we have asked all auditors of local authorities to remain alert to this issue while conducting the 1998-99 audits.
- 9.009 Overall, we are concerned that some local authorities are not complying with legislative requirements in relation to contracting, and are not adopting rigorous tendering processes. Any decisions made in these circumstances are vulnerable to criticism and challenge for lack of due process.
- 9.010 We encourage all local authorities to regularly review their delegations, and to check that the terms of those delegations are being properly observed. We will be carrying out some work on this topic in the near future.

