



Agenda item:

**Decision maker:** Resources Decision meetings  
**Subject:** Claim against Portsmouth City Council in respect of unpaid invoices  
**Date of decision:** 25 November 2010  
**Report by:** City Solicitor  
**Wards affected:** All  
**Key decision:** No  
**Budget & policy framework decision:** No

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- 1. Summary** Proceedings were received from ESG Ltd (formerly Environmental Contamination Sciences Ltd) for outstanding invoices in relation to asbestos inspections in Portsmouth City Council's properties.
- 2. Purpose of report:** To seek approval of a settlement of the claim against Portsmouth City Council on terms which are favourable to the City Council.
- 3. Background** Portsmouth City Council had a three year contract with ESG Ltd for Type 2 Asbestos surveys and re-inspections of Portsmouth City Council properties. The contract was worth £195,284.65 and began in 2007. Although a formal tender process was carried out, a written contract was never entered into.

The terms that were originally agreed were subsequently changed as more properties were added and more work was needed. The additional work was required due to problems with the council's database for the properties. As a consequence of this, it was agreed that ESG Ltd would need longer to undertake the work and that they should be paid at a higher rate for the additional work. This was agreed, and Portsmouth City Council was to be informed of the additional costs. ESG Ltd did not inform Portsmouth City Council of the additional costs prior to incurring them; however, they submitted detailed invoices for the work and these were paid. Approximately £275,000 has been paid so far as a result.

The invoices continued to be paid without query until May 2009. In May 2009, on the retirement of the officer managing the contract, the management of the contract was taken over by another employee. The new manager noticed that the invoices were not following the schedules shown in the original tender document and queried the higher payments with ESG Ltd.

This is the basis of the dispute for the outstanding sum of £105,932.43. Portsmouth City Council has paid £32,207.90 of the outstanding sum which leaves £73,724.53 unpaid (plus interest and legal costs, which are estimated to be in excess of £37,000, should this matter proceed to a hearing). Negotiations have taken place over the last few months and both parties attended a mediation appointment in September 2010 which proved unsuccessful.

It is proposed that in future the management of asbestos will be managed within AMS.



**4. Recommendations**

1. That the City Council accepts the commercial settlement of this dispute on the basis that it pays the sum of £47,000 plus costs of £15,000.

2. Future management of asbestos by PCC be undertaken by AMS Asbestos Surveyor appointed in June 2010

**5. Reasons for recommendations** To bring an end to a contractual dispute and reduce the potential for further costs to the City Council. See attached Exempt Appendix 1

**6. Options considered and rejected** See attached Exempt Appendix 1

**7. Duty to involve** Not applicable

**8. Implications** these are set out above

**9. Corporate priorities** None

**10. Equality impact assessment (EIA)** Not applicable

**11. Legal implications** set out above

**12. Head of finance's comments** proposed settlement figure of £47,000 for additional survey work and a contribution of £15,000 towards the claimant's costs can be funded from the Landlord's Maintenance revenue budget 2010/11.

**13. Reason for the matter being dealt with if urgent** To prevent further escalation of costs

Signed

**Appendices**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
1 Legal file of papers	LLR

The recommendation(s) set out above were approved/ approved as amended/ deferred/  
rejected by Cabinet Member for Resources on 25 November 2010.

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Signed