

Report to the Cabinet

Report reference: C/093/2006-07.

Date of meeting: 18 December 2006.



**Epping Forest
District Council**

Portfolio: Leisure and Young People.

Subject: Leisure Management Contract.

Officer contact for further information: Derek Macnab (01992 – 564260).

Democratic Services Officer: Gary Woodhall (01992 – 564470).

Recommendations:

(1) That, in compliance with European Union regulations, the action taken to advertise the Award of the Council's Leisure Management Contract in the European Journal be noted; and

(2) That, in accordance with the District Auditors recommendations, Contract Standing Order C(19) be waived with respect to the Leisure Management Contract.

Report:

1. In September of this year, District Audit undertook an audit of the Council's Leisure Management Contract Tender. Whilst generally satisfied with the robustness of the process, two considerations were highlighted:

- That a Contract Award Notice had yet to be published in the Official Journal of the European Union, as required by European Union Regulations.
- The Council's Financial Regulation C(19)(a) prohibits the amendment of Tenders after they have been formally submitted. This was waived during the Leisure Management Tender process as all Tenders were found to have errors. However, this was not formally agreed by Full Council.

European Journal Notification:

2. After an extensive period of review by the Ad Hoc Working Group on Leisure, the Council elected to seek an External Partner, by means of a Competitive Tender to undertake the Management of four of its Sports and Leisure Facilities. As such Formal expressions of Interest were sought through the Leisure Media.

3. However, as a "Contract for Services" there was not a requirement to formally advertise the Tender in the European Journal. Despite this Exemption there is a requirement in line with European Union Regulations, to advertise any Award of Contract in the Journal.

4. At the time of the Audit, this was yet to take place but has subsequently been undertaken, thus ensuring that full compliance has been achieved. District Audit have been forwarded a copy of the Notification placed in the Journal.

Waiving of Contract Standing Order C(19)(a):

5. After seeking Expressions of Interest, the Council shortlisted a number of companies who were invited to formally Tender, for the Leisure Management Contract. When the Invitation to Tender was issued by the Council, it was envisaged that there would likely be a need to enter into Post Tender Negotiations, particularly given the size and complexity of the

service being externalized. However, to select the Preferred Tenderer, the Contract documentation was developed to enable an equitable “like for like” comparison to be undertaken.

6. However, on the initial Evaluation of the three Tenders submitted, it was found that all of the Tenderers had failed to comply fully with the Tender Process by way of omission and/or by submitting a Tender that did not fully comply with the Invitation to Tender.

7. Whilst the Council could therefore elect not to consider any Tender that did not comply or contained significant omissions, the Ad Hoc Policy Working Group, recommended the evaluation of all three Tenders. The Group felt that they wished to retain as many options as possible, in pursuit of Best Value for the Council.

8. It was also clear that, given the number of points of clarification required from all Tenderers and the number of proposed amendments, it would not have been possible to assess any of the Tenders simply based on the original submissions. Therefore, as part of the overall evaluation process, all Tenderers were given the same opportunity to clarify issues and the same timescales to submit final adjustments.

9. Members were advised that as the opportunity to revise Tenders had been afforded, in the event of the Council seeking to award a contract, there would be a need to formally agree to waive Standing Order SO19(a)

10. As Members may recall, the timescales with respect to the Full Council reaching a final decision to Award the Contract to Sports and Leisure Management Ltd., was protracted. Unfortunately, there was an omission in the final report to Council with regard to the need to seek a formal waiver of Standing Order 19(a). This fact has been highlighted by District Audit, who have requested that a retrospective Minute is achieved to this effect.

Other Options for Action:

11. That a formal waiver of Contract Standing Order C(19)(a) with respect to the Leisure Management Contract is sought from Council.

Statement In Support of Recommended Action:

12. District Audit have generally been satisfied with the Leisure Management Tender Process, but have highlighted the omission of the Standing Order 19(a) waiver and have requested that a Formal Minute is sought to this effect.

Consultation Undertaken:

13. District Audit.

Resource Implications:

Budget Implications: The Leisure Management Contract has achieved Best Value with lower annual revenue costs and £1.5million of external capital investment in the Council's Leisure Facilities.

Personnel: Nil.

Land: Nil.

Community Plan/BVPP Reference: To provide access to accessible leisure opportunities to enable people to lead a more active life.

Relevant Statutory Powers: Local Government Act 1977.

Background Papers: None.

Environmental/ Human Rights/Crime and Disorder Act Implications: None.

Key Decision Reference: N/A.