

EAST HERTS COUNCIL

LOCAL JOINT PANEL – 11 DECEMBER 2007

REPORT BY THE SECRETARY OF THE STAFF SIDE

6(B) RETENDERING OF LEISURE SERVICES - CONSULTATION

WARD(S) AFFECTED: None

RECOMMENDATION - that East Herts Council consults immediately with UNISON about the re-tendering process of leisure facilities and applies fully the Best Value Legislation Statutory Instrument 662/2003 and Best Value Performance Improvement Statutory Guidance (ODPM circular 03/2003), including union participation in the selection process

1.0 Purpose/Summary of Report

1.1 To remind the Council of its statutory obligation to consult with the recognised trade union and disclose all relevant information relating to workforce matters.

2.0 Contribution to the Council's Corporate Priorities/Objectives

2.1 Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.

3.0 Background

3.1 A decision was taken by the Council following a recommendation by the Executive at their meeting of 4 September to appoint Max Associates to manage the process of securing new management arrangements for leisure facilities.

Further to the authorisation granted by Council of 20 September 2006 (reference paragraph 3.4 below), authority for Officers to proceed with tendering arrangements for the management of the Council's leisure facilities in accordance with the process and timetable as set out in the report now submitted, be approved. The tender offer shall include Grange Paddocks and Hartham and, on a menu basis, options to include Castle Hall, the playschemes programme and the three joint-use facilities. The

tender to be developed to permit inclusion / extension of possible partners at a future date, should that be beneficial to the Council. Inclusion of all or any menu elements in the final agreement will depend on the outcome of negotiations and further Scrutiny appraisal and Executive approval.

3.3 The timetable agreed is set out below:

3.4 **October 2007** – expressions of interest

4 December 2007 – Corporate Business Scrutiny (tender specification)

18 December 2007 – Executive (tender specification and progress on negotiations on the joint use facilities)

January 2008 – invitations to tender

March 2008 – tender returns

April/May/June – negotiations, evaluation and Council approvals

October 2008 – start of new contract

4.0 Report

4.1 The duty to consult at the earliest opportunity is contained in two pieces of legislation the TUPE Regulations 2006 and the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts. The TUPE regulations have been revised slightly to include the joint and several liability of the transferor and the transferee in respect of compensation awarded for any failure to inform and consult employee representatives.

4.2 In the case of the leisure contract, there could be two transferors, East Herts and Stevenage, since the decision was taken to design a specification with built-in flexibility. If Castle Hall and the playschemes are included, the Council will be the transferor and in the case of the leisure centres Stevenage Leisure are of course the transferor. This places an obligation on both sets of employer to consult.

4.3 Legislation came into force on 3 April 2003, which amended the Best Value legislation, making it a duty for councils to consult trade unions and staff on Best Value reviews and during the Best Value process. This legislation is statutory instrument number 662/2003 entitled the Local Government (Best Value) Performance Plans Reviews (Amendment)(England and Wales) Order 2003. It applies to all Best Value authorities in England and police and fire authorities in Wales. The Best Value Performance Improvement Statutory Guidance provides councils with more detailed advice on this and

makes it clear that councils must provide full disclosure of information on all matters affecting the workforce. This means that before a decision is taken to contract out a service the local authority must consult trade unions and staff on the options available for the delivery of the service. Paragraph 53 of circular 03/2003 confirms that “in reviewing functions, authorities must consult recognised unions and employees’ associations, and staff engaged in that function.” Furthermore, “the mechanisms for involving staff and trade unions should be set out clearly, including how the views of staff will be taken into account in decision-making processes.”

- 4.4 Circular 03/2003 at Annexe C, paragraph 10, emphasises that Councils should involve staff and trade unions in procurement decisions, stating that:

“Procurement decisions by local authorities should take proper account of workforce issues. Staff and unions should be involved in the option appraisal stage, and where there is a decision to outsource, staff and unions should be involved in the selection process and in the subsequent detailed work around the transfer”.

5.0 Consultation

- 5.1 None to date, despite the fact that the timetable is well under way.

6.0 Legal Implications

- 6.1 Failure to implement the Best Value Code of Practice can result in the trade union making a complaint and if it has exhausted the local procedure it can ask for compliance by using the Alternative Dispute Resolution.

7.0 Financial Implications

- 7.1 None

8.0 Human Resource Implications

- 8.1 These are self explanatory since all staff who are transferred to a new employer under a new contract will be affected.

9.0 Risk Management Implications

- 9.1 None

Background Papers

None

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