



Community Right to Challenge (CRC) - Framework Updated August 2015

1. Introduction

- 1.1 The Localism Act 2011 introduced a Community Right to Challenge (CRC). This allows voluntary and community groups to express an interest in providing or assisting with the provision of a Council service which, if accepted by the Council, would require the authority to enter into a procurement process for that service. This power came into effect on 27 June 2012.
- 1.2 This framework sets out further details of the CRC and the Council's response to it. It does so in the context that the Council is strongly committed to supporting a healthy local voluntary sector, and believes it is preferable for early engagement and proactive collaboration with the voluntary and community sector in future service delivery. It is also preferable in terms of enabling positive dialogue and mutually beneficial outcomes. In addition this process is likely to be less prescriptive, bureaucratic and lengthy. As such this type of collaboration will be promoted where the Council feels the outcomes will offer Best Value to local Council Tax payers in terms of service improvement and increased value for money, and will improve the economic, social and environmental well-being of the authority's area.
- 1.3 This framework sits alongside the Council's Procurement Strategy for 2013-16, approved by Cabinet in January 2013. This makes a separation between procurement and commissioning, and covers both.
- 1.4 *Procurement* is process of securing the supply of goods and services from external suppliers that the Council requires in order to meet its overall objectives. Broadly speaking these are either:
 - Services and public facilities identified through commissioning plans to be sourced from external providers, or
 - Goods and services needed to support the delivery of directly provided services and the Council's wider community leadership function.
- 1.5 *Commissioning* is the process by which public bodies decide how to spend their money to get the best possible services for people, and involves anticipating future needs and expectations rather than simply reacting to present demand.
- 1.6 The authority has a formal grants application process which forms a key part of its overall commissioning and procurement strategy.
- 1.7 The Council will monitor the effect of the CRC on the voluntary and community sector, and will consider providing specific support to local organisations to maintain their capacity to compete effectively in competitive exercises.
- 1.8 The Council recognises that voluntary and community groups have a right to make expressions of interest for Council services under CRC and this sets out a practical framework in which any such expressions of interest may be submitted and considered.

1.9 The framework and associated procedure are consistent with and will have due regard to the Department of Communities and Local Government's Community Right to Challenge: Statutory Guidance:
<http://www.communities.gov.uk/publications/communities/righttochallengestatguide>

2. To whom does the CRC apply: Relevant Bodies.

2.1 The Localism Act sets out the groups that are able to invoke or submit a CRC. They are:

- Voluntary or community body (not-for-profit or groups where profits are re-invested into the groups' activities).
- Charitable body (a body or persons or a trust which is established for charitable purposes only).
- Parish Councils (including town councils).
- Two or more employees of the authority or,
- Any other person or body specified by the Secretary of State by Regulations.

2.2 The groups may submit Expressions of Interest (Eoi) proposing service delivery and partnership with a private sector partner as a joint venture. In circumstances where a consortium submits an Expression of Interest as a joint venture, a private sector company involved in this joint venture may make a profit. A charity involved in the joint venture may not make a profit.

2.3 Employees submitting a bid will be expected to form an employee-led structure to take on running services under CRC. They will not be expected to have finalised all of their arrangements before submitting an expression of interest but will probably need to form a separate legal entity in order to bid in a procurement exercise (so that management and contractual relationships are clear)[Statutory Guidance Para 1.13]

2.4 Employees intending to submit an Expression of Interest should discuss this in the first instance with their Head of Service who will consider potential conflicts of interest and ensure appropriate arrangements are put in place. The Head of Service will involve the Human Resources Unit at this stage.

3. Expression of Interest

3.1 The CRC applies to all relevant services, ie a service provided on or behalf of the relevant authority in the exercise of its functions. There is an obligation on the Council to consider a written Expression of Interest to provide or assist a service which is either currently being run by the Council or being delivered on the Council's behalf.

3.2 The CRC is solely concerned with the provision of services. The responsibility for the function remains with the Council. The term "function" refers to those activities for which the Council is statutorily responsible, including making decisions about those functions, governance and commissioning of service provision.

3.3 The following services are excluded:

- The public health advice services provided by the local authority to clinical commissioning groups
- Health visiting and related services for children under five (from 1 April 2015 to 1 April 2016)
- A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.

3.4 In deciding whether to accept an Expression of Interest, the Council must consider if and how the challenge and the procurement exercise that follows will promote or improve the economic, social or environmental well-being of the area. If the Expression of Interest is accepted the Council must carry out a procurement exercise relating to that service area.

3.5 The Council may modify an Expression of Interest on two grounds:

- It thinks that the Expression of Interest would not otherwise be capable of acceptance; and
- The relevant body agrees to the modification.

3.6 The Council may choose to specify periods during which Expressions of Interest can be submitted. This will be determined in conjunction with the authority's procurement and commissioning strategy. They are:

- If the service is subject to external procurement or commissioning, at the time the contract is put out to tender
- If the service is provided directly by the Council, in the two month period of **June to July** each year.

4. Expression of Interest Requirements

4.1 Expressions of Interest must be submitted in writing, to the Head of Legal & Democratic Services. The Council does not prescribe a format that Expressions of Interest need to conform to. **However, it does have an application form which can be used.**

4.2 The information that must be provided in Expressions of Interest is defined by the statutory guidance. As such all Expressions of Interest must include:

- The financial resources of the relevant body
 - Where this is a consortium this needs to be for each element of that consortium - including sub-contractors.
- The capability of the relevant body to provide the service
 - Evidence that demonstrates that by the time of the procurement exercise the submitting body will be capable of providing or assisting in the provision of the relevant service
 - Where a consortium this will apply to all elements of that consortium.
- The service and geographic area covered by the Expression of Interest
 - Sufficient information about the relevant service to identify it and the geographical area to which the Expression of Interest relates.
- The outcomes to be achieved by the relevant body or consortium in providing / assisting in the provision of the relevant service.
- How the provision or the assistance of the provision will:
 - improve the social, economic or environmental well-being (social value) of the area,
 - meet the needs of the users of the relevant service.

- Where the relevant body consists of employees, details of how they propose to engage with other employee of the authority who are affected by the Expression of Interest.

4.3 The authority may take into consideration a number of factors when determining an Expression of Interest, including the need to make any modifications, the Council's commissioning cycle, and its decision-making processes.

4.4 The Council may request further information from relevant bodies but cannot make the inclusion of this information a requirement in order for the Expression of Interest to be considered. The provision of this information is optional.

4.5 Expressions of Interest will be considered and accepted, accepted with further modification, or rejected by the Committee responsible for the service in question or, if received between meetings, by the Policy Committee which meets on a monthly basis.

5. Notifying Decisions on Expressions of Interest

5.1 The timescales below refer to Eols that are received within the time periods set out in para. 3.2 above. Where Eols are received outside those time periods, the timescale for their consideration will start from the beginning of the relevant time period.

5.2 The Council must notify the relevant body in writing, within 30 days of receiving the Eol, of the timescale for when it will give its decision. Given that there will be different levels of complexity associated with different services, the authority will make a judgment on the timescales for achieving a decision on a case-by-case basis.

5.3 The maximum period the Council will take to notify a relevant body of its final decision will be six months. This maximum period allows for the relevant body to modify and re-submit its bid and for the Council to come to a final decision. Most decisions will be achieved within a shorter timescale.

6. Grounds where an Expression of Interest may be rejected.

6.1 There are ten grounds which can lead to an Expression of Interest being rejected. They are:

- 1) The Expression of Interest does not comply with any of the requirements specified in the Localism Act or in Regulations made by the Secretary of State under Section 81(1) (b) - duty to consider expressions of interest.
- 2) The relevant body provides information in the Expression of Interest which in the opinion of the Council is materially inadequate or inaccurate.
- 3) Based on the information provided in the Expression of Interest, the relevant body or members of the consortium of which it is a part or any sub-contractor is/are not suitable to provide or assist in providing the relevant service.
- 4) The Expression of Interest relates to a service where the Council has made a decision, evidenced in writing, to stop providing that service.
- 5) The Expression of Interest relates to a relevant service:
 - (a) Provided, in whole or in part by or on behalf of the relevant authority to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service and

- (b) The continued integration of such services is, in the opinion of the Council, critical to the well-being of those persons.

(Note: Not all integrated services may be grounds for rejection of an EoI, specifically if they are not critical to the well-being of persons).

- 6) The relevant service is already the subject of a procurement exercise.
 - 7) The Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
 - 8) The Council has published its intention to consider the provision of the relevant service by a body that two or more specified employees of the Council propose to establish.
 - 9) The Council considers the Expression of Interest is frivolous or vexatious.
 - 10) The Council considers that acceptance of the Expression of Interest is likely to lead to contravention of an enactment or other rule of law or breach of statutory duty.
- 6.2 The Regulations referred to in 6.1(1) above are The Community Right to Challenge (Fire and Rescue Services and Rejection of Expressions of Interest) (England) Regulations 2012 (SI 2012 - 1647).
- 6.3 The Council will have to comply with its other legal duties when carrying out this function. On exemption (10), the Statutory Guidance refers to the duty to secure Best Value (under Section 3 of the Local Government Act 1999), and to consider social; value under the Public Services (Social Value) Act 2012.

7. Modifying an Expression of Interest

- 7.1 The Council can ask for the Expression of Interest to be modified if it believes it would otherwise reject the Expression of Interest. Any modification must be agreed with the relevant body submitting the Expression of Interest. If agreement cannot be reached the Council may reject the Expression of Interest.

8. Period between an Expression of Interest and a Procurement Exercise starting

- 8.1 This period must be specified. In doing so the Council needs to have regard to:
 - (a) The need to provide employees of the Council and other relevant bodies with a fair, reasonable and realisable opportunity to bid in the procurement exercise for the service;
 - (b) The nature, scale and complexity of the service being procured;
 - (c) The timescales for any existing commissioning cycle relevant to the service being procured or any other relevant Council process.
- 8.2 Because of the variable nature of the above, the Council is not setting a fixed period as an individual assessment will need to be made of the above in relation to each Expression of Interest. Having done this the Council will then specify to the body submitting the Expression of Interest, and publish on its website, details of each Expression of Interest received and the time period for each between the Expression of Interest being received and the procurement exercise starting.

8.3 Each Expression of Interest will also be submitted to the responsible Committee or Policy Committee. The Committee will receive a report and make a judgment as to the next steps regarding the Expression of Interest. If the Committee is happy with the terms of the Expression of Interest, a procurement exercise will be triggered as set out below.

9. The Procurement Exercise

9.1 Once the Committee has accepted an Expression of Interest, the authority must carry out a procurement exercise for the service. This exercise must follow procurement law and the Council's Contracts Procedure Rules.

9.2 Where the service is of a value where the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of the Regulations, the procurement exercise must follow procedures set out in those Regulations.

9.3 Where the service falls below the threshold value in the above regulations or is an exempt Part B service it is for the Committee to decide how to procure the service, with reference to the Council's Contracts Procedure Rules.

9.4 The Council will have regard to the DCLG's Code of Recommended Practice on publishing new contracts and tenders information as part of the government's transparency agenda.

10. Community Right to Challenge Process

See attached spreadsheet.

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