

Community Right To Challenge

Procedure for Handling Community Right to Challenge Expressions of Interest

Introduction

1 Background

- 1.1 The Community Right to Challenge (CRC) was introduced under Sections 81 to 86 of the Localism Act 2011 to enable community organisations to seek to run a service, or part of a service on behalf of certain public bodies.
- 1.2 The CRC is part of the government's Open Public Services agenda to open up public services to more diverse patterns of provision and to empower communities to take on and run public services themselves.

2 What Does the CRC Apply to?

- 2.1 The CRC applies to a Relevant Service, which is defined in Section 81(5) as:

'...a service provided by or on behalf of that authority in the exercise of any of its functions...'

The Secretary of State can, by Regulation, exclude services from the CRC, but to date has not done so in relation to any fire and rescue-related activities.

3 Who Can Apply?

- 3.1 Relevant Bodies are able to submit Expressions of Interest (EoI). They are defined as:
 - a) a voluntary or community body
 - b) a body of persons or a trust which is established for charitable purposes only
 - c) a parish council
 - d) two or more employees of the Authority that the EoI relates to
 - e) such other person or body as may be specified by the Secretary of State by regulations.

Administration

4 Responsibility

- 4.1 The Head of Legal and Democratic Services is responsible for the efficient handling of EoI submitted to the Authority.
- 4.2 The Head of Legal and Democratic Services is responsible for: securing a decision about whether to accept or reject an EoI; arranging for feedback to the Relevant Body that submitted the EoI; and ensuring that any further procurement actions arising from the decision are followed through.
- 4.3 The Head of Legal and Democratic Services in consultation with the Chief Fire Officer shall prepare a report for the Fire Authority to allow Members to decide whether to accept or reject an EoI.

5 Information

- 5.1 A central database of EoI will be maintained by the Head of Legal and Democratic Services and will be published on the Authority's website, with details of when an EoI will be considered, the outcome and a summary of the reasons for the decision to accept or reject an EoI.
- 5.2 Relevant Bodies that are considering submitting an EoI and those that have already submitted an EoI will be supplied with sources of information and advice and with details of organisations funded by the government to provide support.
- 5.3 All information provided in EoI will be handled sensitively. However, Relevant Bodies submitting EoI should be aware that the EoI will become open to public scrutiny. If elements of the EoI are considered to be sensitive the Relevant Body should indicate why when submitting the EoI.

Submission Process

6 Stages

- 6.1 The intention is to promote a two-part submission. There should be an Initial Submission (essentially an 'eligibility check') which is acceptable should then be followed by the submission of an EoI.

7 Assessment of Initial Submission

- 7.1 Relevant Bodies will be encouraged to make an Initial Submission (IS) before proceeding to submit a full EoI. From information in the IS the Head of Legal and Democratic Services will be able to determine whether an intended EoI will be from a Relevant Body and be in respect of a Relevant Service. This is intended to avoid unnecessary, abortive work on the part of the Relevant Body. At this point the Authority may also be asked to supply information to assist the Relevant Body in framing its IS and/or EoI.
- 7.2 If the IS is acceptable the Relevant Body will be supplied with an EoI template for completion. If the IS appears to be unacceptable, the Head of Legal and Democratic Services will provide written feedback to the Relevant Body outlining the reasons why the Authority believes that an EoI would be rejected.

The Head of Legal and Democratic Services will take into account the most up-to-date guidance relevant to determining questions related to 'eligibility'.

8 Assessment of EoI

- 8.1 Upon receipt of an EoI, the Head of Legal and Democratic Services will review the form and establish whether it contains all relevant information. He may request any omitted information that is required (taken from the supporting documentation published by the My Community Rights organisation).
- 8.2 The Head of Legal and Democratic Services will write to the submitting Relevant Body to acknowledge receipt of the EoI and explain when it will be considered and when the Relevant Body can expect to be informed of the outcome.

If no date is specified an EoI must be considered and a response made within 30 days of receipt.

Modification

- 8.3 In some instances, the Head of Legal and Democratic Services may determine that an EoI could be progressed, if it was modified. In such cases he will write to the Relevant Body to outline the modifications required and to seek agreement to the necessary changes.

Rejection

8.4 Where the EoI is rejected a written response will be provided to the Relevant Body outlining the reasons for rejection. The following paragraphs describe potential grounds for rejection of an EoI:

- Non-compliance with the requirements of Part 5, Chapter 2 of the Localism Act 2011 and/or any relevant regulations;
- Insufficient or inaccurate information supplied;
- Relevant Body not suitable to provide the service (including a sub-contractor or consortium member);
- Written evidence exists that the Relevant Service is no longer required;
- It relates to an integrated service (Authority and NHS) and the continued integration of which is essential to the well-being of the service recipient;
- Publication of an intention to consider provision of the Relevant Service by two or more of the Authority's employees has already taken place;
- Negotiations with a third party that wishes to provide the Relevant Service have already commenced (and there is written evidence of this);
- It is vexatious or frivolous;
- Acceptance would lead to a breach of law or problems in delivering a statutory duty.

The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 contain fuller descriptions of the reasons set out above and appear at [Appendix 4].

Acceptance

8.5 Where an EoI is accepted, the Head of Legal and Democratic Services will write to the Relevant Body to confirm acceptance and to notify it of when the Authority expects to conduct the procurement exercise and how it can participate. The notification will confirm the maximum period that it will take from acceptance to commencement of the procurement process (taking into account the need to provide sufficient time to prepare and submit a bid, the nature, scale and complexity of the service, whether the EoI proposes radical change and existing commissioning cycles).