

THE COMMUNITY RIGHT TO CHALLENGE

Background

The Localism Act 2011 (the Act) introduces a right for certain bodies to submit an expression of interest in taking over the provision of a service on behalf of the Council.

This policy sets out the arrangements which the Council has adopted in order to operate the Community Right to Challenge.

A flowchart, annexed to this policy, sets out the process to be followed to determine expressions of interest.

A. Inviting expressions of interest

1. The Act provides that the Council can choose to specify periods during which an expression of interest can be submitted. This can be for all services or specified individual services. In order to fit in with the Council's business planning and budget cycles the Council will invite expressions of interest during the period 1 June to 30 September in each calendar year (the invitation period). The Council can, at its discretion, specify additional invitation periods during which an expression of interest can be submitted. Any expression of interest received outside of an invitation period will not be considered by the Council and will be rejected.
2. The Council will invite expressions of interest by posting an appropriate notice on its website, in the local press and in such other places as the Council deems appropriate for the services. The notice will include the following information:
 - the services for which expressions of interest are invited. This may be for all services or specified individual services;
 - details of the invitation period;
 - details of how the expression of interest should be made (on the prescribed form available from the Council);
 - details of the maximum period the Council will take to notify the submitting body of its decision on the expression of interest. (The period for decision may vary depending on the nature of the service under consideration);
 - the time period between an expression of interest being accepted and a procurement exercise starting. (To permit relevant bodies time to prepare for the procurement exercise and to take into account the scale and complexity of the service); and
 - relevant contact details.
3. To ensure there is a co-ordinated and consistent approach in dealing with the Community Right to Challenge all expressions of interest will be processed via one point of contact – the Procurement and Contract Management Unit (PCMU).

B. Who can submit an expression of interest?

1. An expression of interest can be submitted by a “relevant body”. “Relevant body” is defined in the Act as:
 - a parish council;
 - a voluntary body – a body, other than a local authority, the activities of which are not carried on for a profit;
 - a community body – a body, other than a local authority, which carries on activities primarily for the benefit of the community;
 - a body or trust established for charitable purposes;
 - two or more employees of the Council, whether or not they have formed themselves into a body for this purpose; or
 - such other persons or bodies as may be specified by the Secretary of State by regulations. To date, no such regulations have been made.
2. A parish council is not restricted to services or facilities which fall within its area and there is no requirement for a voluntary or community body to have any local connection. Any of the bodies listed above can submit an expression of interest in partnership with any other organisation, including a commercial organisation, or propose to sub-contract the work to a commercial organisation. Providing that this is done, there is no requirement for the relevant body to undertake the majority of, or any particular share of the work.

C. For which services can an expression of interest be submitted?

1. The expression of interest must relate to the provision of, or assisting in the provision of, a “relevant service”, which means any service which is currently provided by or on behalf of the Council. The following services are “excluded services” and cannot be the subject of an expression of interest:
 - services provided in partnership with NHS bodies, or by an NHS body on behalf of the Council;
 - a service provided to a named person with complex individual health or social care needs; or
 - a service which includes the exercise of a statutory power which cannot be delegated. So, the setting of the council tax level or the determination of a planning application is not legally capable of being undertaken by anyone other than the Council, and so cannot be the subject of an expression of interest.

D. What information must the expression of interest contain?

1. The expression of interest must be in writing and meet certain requirements. These requirements include the provision of:
 - information about the financial resources of the relevant body which is submitting the expression of interest;
 - evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service. This is particularly important

when dealing with an emergent staff mutual or voluntary body, which may not be fully operational at the date of submitting an expression of interest;

- information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates;
- information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of which it is a part, in providing or assisting in the provision of the relevant service, in particular:
 - how the provision or assistance will promote or improve the social, economic or environmental well-being of the Council's area; and
 - how it will meet the needs of the users of the relevant service; and
- where the relevant body consists of employees of the Council, details of how that relevant body proposes to engage other employees of the Council who are affected by the expression of interest.

2. The expression of interest must be made on the form provided for that purpose and available on the Council's website. This will ensure the relevant body provides all the information the Council requires to assess the expression of interest.

E. What happens after the closure of the invitation period?

1. When the invitation period has closed the Council will in relation to each expression of interest received:
 - carry out an initial check of the expression of interest form;
 - validate the expression of interest;
 - assess the expression of interest against the criteria set out in the legislation;
 - notify the submitting body of its decision on the expression of interest within the timescale set out in the notice.
2. After closure of the invitation period PCMU will, within 5 working days, carry out an initial check to ensure that all sections of the expression of interest form have been completed and all supporting documentation has been provided.
3. If the expression of interest form has not been completed as required or supporting documentation has not been provided the expression of interest will be rejected.
4. If PCMU is satisfied the expression of interest form has been completed properly and all supporting documentation has been provided, it will, pass the expressions of interest to the PCMU Strategic Manager and the relevant Head of Service (the Assessment Panel).

Validating the expression of interest

5. The Assessment Panel, (or their respective nominated deputies or such other persons as they deem appropriate) will validate each expression of interest.
6. Validation of an expression of interest requires the council to check that it is submitted by a "relevant body" **and** that it is for a "relevant service" which is not an

“excluded service”. The Assessment Panel will carry out the validation within 15 working days of the expressions of interest being received from PCMU.

7. If the expression of interest fails to meet both of the requirements in paragraph 6 above, the Council will, within 5 working days of the validation being completed, notify the person who submitted the expression of interest that it is not a valid expression of interest. The Council is not required to take any further action in relation to that expression of interest.
8. If the expression of interest meets both the requirements set out in paragraph 6 above, it is deemed to be a valid expression of interest and progresses to the next stage.

Assessing the expression of interest

9. The next stage will require the Assessment Panel (together with such other officers as they deem appropriate), within 20 working days of the validation of the expression of interest being completed, to conduct a review of the expression of interest to determine whether it falls within any of the 10 grounds – listed below – which are set out in the legislation, and upon which the Council **may** reject a valid expression of interest.
 - that the expression of interest does not meet the statutory requirements, because it is not from a relevant body **or** is not for a relevant service;
 - that the supporting information is inadequate or incorrect;
 - that any member of the body making the bid, or of their consortium, is not suitable to provide the service. This would cover absence of a necessary qualification, or past conduct;
 - that the Council has already taken a formal decision to cease to provide the service. So an expression of interest cannot be used as a means to challenge an Council’s decision to close a facility or cease a service;
 - that taking this service in isolation would result in a loss of integration with NHS services to the detriment of users of the integrated service. This prevents expressions of interest un-picking integrated Section 75 arrangements;
 - that the service is already the subject of a procurement exercise;
 - that the Council is already in negotiations in writing with a third party for the provision of the service;
 - that the Council has already published its intention to consider the provision of the service by a body to be set up by 2 or more employees;
 - that the expression of interest is vexatious or trivial; and
 - that the acceptance of the expression of interest is likely to lead to a breach of law or statutory duty. This would cover an expression of interest which would require delegation of statutory powers which cannot be delegated or where it

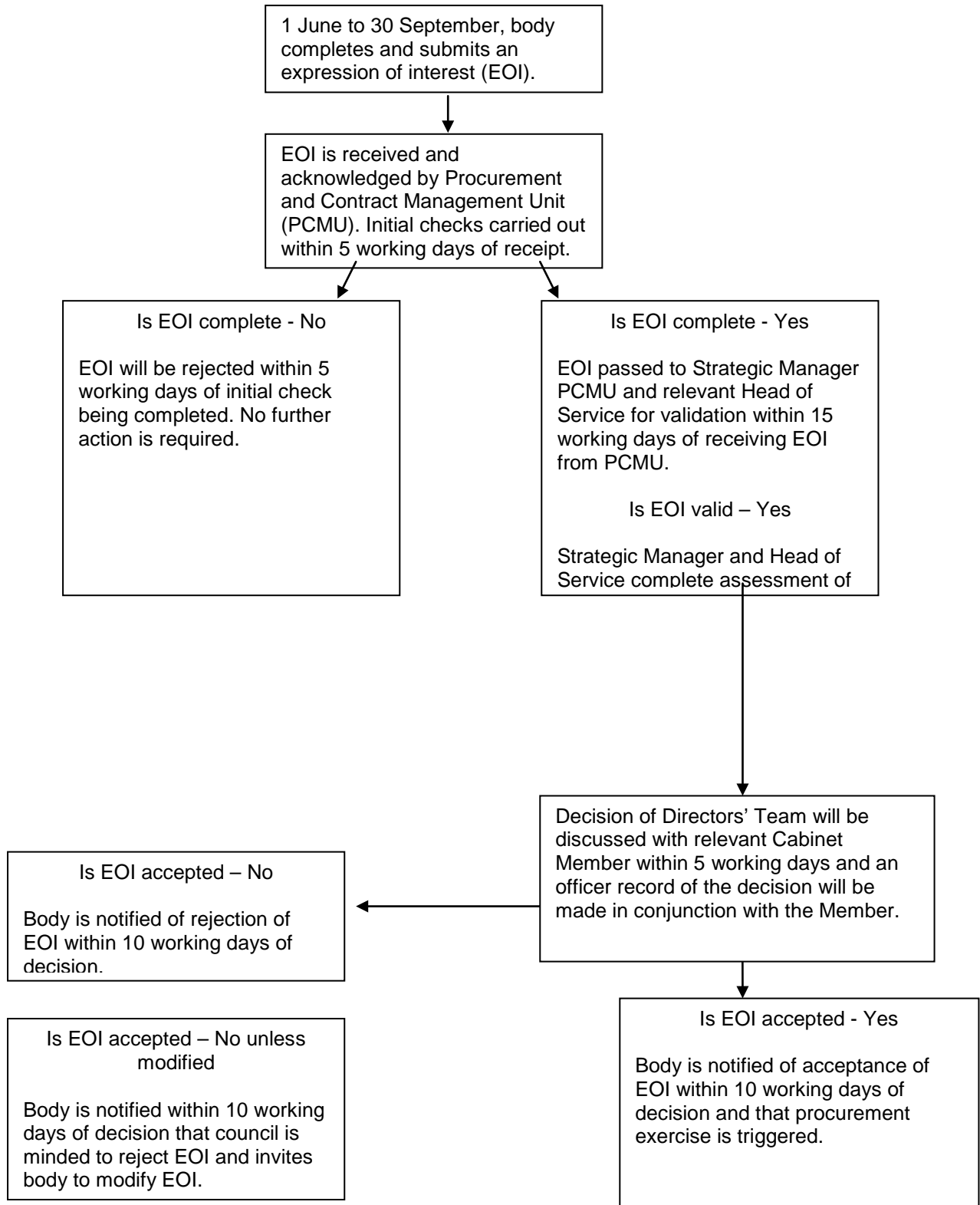
would lead to a breach of the Council's duty to secure best value, for example by causing greater cost by the break-up of shared service arrangements.

10. The grounds listed in paragraph 9 above are the only grounds upon which a valid expression of interest can be rejected. No other ground or reason for rejection is permitted.
11. Where an expression of interest falls within one of these grounds for rejection, the Council has the discretion to accept the expression of interest anyway. The Council must then notify the persons or body who submitted the expression of interest of its decision and of the reasons for that decision within the timescale set out in the notice.
12. If the Council believes it would otherwise reject an expression of interest, it may seek instead to agree with the persons or body that submitted the expression of interest that the expression of interest is modified. If any agreement to modify the expression of interest cannot be reached, the Council may reject the expression of interest.
13. If the expression of interest is valid and there are no grounds for rejection, then the expression of interest is accepted and a procurement exercise is triggered. The Council must commence the procurement within the timescale set out in the notice.
14. The Assessment Panel will complete the assessment of the expression of interest within 20 working days of the validation exercise being completed. No later than 10 working days after completion of the assessment, the Head of Service will prepare and submit a report to the Directors' Team for a decision. The report will set out the relevant details of the expression of interest, the outcome of both the validation exercise and the assessment and make a recommendation as to whether the expression of interest should be rejected or accepted or whether modification should be sought.
15. Within 5 working days of the report being considered by the Directors' Team, the relevant Director will discuss the decision of the Directors with the relevant Cabinet Member, leading to an officer record of decision being made in conjunction with the member.
16. Within 10 working days of the discussion between the Director and the Cabinet Member taking place the body that submitted the expression of interest will be notified of the Council's decision as to whether the expression of interest is rejected or accepted or whether the Council invites the body to modify its expression of interest.
17. It is anticipated that the maximum period which will elapse between receipt of an expression of interest and the Council notifying the body which submitted the expression of interest of its acceptance or rejection of that expression of interest will be no longer than 3 months.
18. It is anticipated that the maximum time period between an expression of interest being accepted and a procurement exercise starting will be 9 months.

F. The procurement exercise

1. Once a valid expression of interest has been accepted, a procurement exercise is triggered and the Council moves into procurement mode, and must conduct an appropriate procurement exercise.
2. The scale of the procurement exercise will be dictated by the nature and value of the service concerned. So, for a Part A service which exceeds the procurement thresholds, the Public Contracts Regulations 2006 (as amended) (the Regulations) will require a formal OJEU procurement. For Part B services, the Regulations still apply but prescribe lower levels of formality. For Part B services, or for services which fall below the procurement thresholds, the Council will need to comply with its Contract Standing Orders and Procurement Code.
3. The procurement process will be started in the same way as other procurement processes are started within the Council i.e. with the appropriate report to Procurement Board.

Community Right to Challenge Determination of Expressions of interest



When all EOIs have been determined a Cabinet Member Delegated Decision will be published setting out the decision reached in relation to each EOI, for endorsement.