

NORTH TYNESIDE COUNCIL

Community Right to Challenge Policy 2013/14

Introduction

The Localism Act 2011 (the Act) introduced a new Community Right to Challenge (CRTC). This allows various groups to express an interest in providing services on behalf of the Authority.

The Act sets out the rules that the Authority must follow in relation to the CRTC, this includes, specifying the relevant bodies that may submit an expression of interest; defining the services which are expressly excluded from the CRTC; specifying the information required in an expression of interest and specifying the grounds whereby an expression of interest may be rejected.

This policy sets out the circumstances and conditions by which North Tyneside Council will consider expressions of interest in running Council services under the CRTC.

This policy outlines the nature of organisations that the Council will consider expressions of interest from and the criteria by which applications will be determined. It establishes a clear process by which expressions will be considered. The policy will be reviewed on a regular basis and at least annually.

Relevant Services

The CRTC applies to all relevant services i.e. a service provided on or behalf of the Authority in the exercise of its functions. There is an obligation on the Authority to consider a written Expression of Interest (EoI) to provide or assist a service which is either currently provided by the Authority or being delivered on behalf of the Authority.

The Authority's statutory functions are out of scope and therefore not subject to the CRTC. In the same way they could not be contracted out to third parties. In this instance functions refers to services which the Authority has responsibility for, including making decisions about those functions, governance and commissioning of service provision.

The following services are excluded:

- 1) Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by an authority or by the Primary Care Trust;
- 2) Until 1 April 2014, a relevant service commissioned by an NHS body on behalf of an authority;

- 3) A relevant service commissioned or provided by an authority in respect of a named person with complex individual health or social care needs.

It is open to the Authority to specify a period during which Eols may be submitted, either for all services, or for particular services. The Authority will accept Eols between 1 June and 31 July in each year in relation to services which are currently undertaken in-house by the Authority. The Authority will not consider any Eol submitted outside of this time.

In relation to services which are currently subject to third party contracts:

- The Authority's revised Contracts Register will indicate, in respect of each contract for delivery of an authority service, the time window for receipt of Eols in respect of that service;
- An annual notice will be published indicating which services are due to be subject to a procurement exercise in the following 12 months, and specifying a period for receipt of Eols in respect of each such service.

Who can submit an Eol?

The Act sets out the groups that are able to submit an Eol. They are:

- Voluntary or community bodies (i.e. not for profit or groups where profits are re-invested into the groups' activities);
- A body, 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.

These groups may submit an Eol proposing service delivery and partnership with a private sector partner as a joint venture. In circumstances where a consortium submits an Eol, a private sector company involved in this joint venture may not make a profit. A charity involved in the joint venture may not make a profit.

Employees submitting a bid would be expected to form an employee-led structure to take on running services under the CRTC. They would not be expected to have finalised all their arrangements before submitting an Eol but may need to form a separate legal entity in order to bid in a procurement exercise (so that management and contractual relationships are clear).

Staff intending to submit an Eol should discuss it in the first instance with their Head of Service who will consider potential conflicts of interest and ensure appropriate arrangements are put in place.

Submission and consideration of Eol

This section sets out how the Authority will respond to, assess and determine the Eols it receives. The government has issued statutory guidance to assist with the consideration of Eols: “Communities and Local Government, Community Right to Challenge (June 2012)” at:

www.communities.gov.uk/communities/communitiesrights/righttochallenge

All requests should be made in writing, the Authority will not prescribe a format that Eols need to conform to although they must contain the information set out in statutory guidance. All Eols must initially submitted to the Head of Law and Governance and clearly marked ‘Community Right to Challenge – Expression of Interest’.

Any Eol submitted to the Authority would in the first instance be checked to ensure that it meets the statutory requirements and any other requirements specified by the Authority (e.g. that it has been submitted during a valid period for receipt of Eols for the service in question).

Where information is missing or an expression of interest is unclear, the Authority will advise the applicant body of this to provide an opportunity for the Eol to be appropriately amended to secure that it is technically compliant.

Information that must be provided in the Eols is set out in the statutory guidance. Eols must include:

- a) Information about the financial resources of the relevant body submitting (where this is a consortium this needs to be for each element of that consortium);
- b) 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 submits an Eol this will apply to all elements of that consortium);
- c) Sufficient information about the relevant service to identify it and the geographical area to which the Eol relates;
- d) Information about the outcome to be achieved by the relevant body or consortium in providing/assisting in the provision of the relevant service;
- e) How the provision or the assistance of the provision will improve the social, economic or environmental well being (social value) of the area and how it will meet the needs of the users of the relevant service;
- f) Where the relevant body consists of employees – details of how that body proposes to engage with other employees of the authority who are affected by the Eol.

Determining Applications

All technically compliant Eols will be formally forwarded to the relevant Head of Service for detailed consideration in consultation with the relevant Cabinet Member.

The decision as to whether an Eol is accepted or rejected by the Authority must be provided within 6 months of receipt of the Eol.

Decisions in relation to the acceptance or rejection of Eols relating to contracts with an estimated value of up to £500,000 will be the responsibility of the relevant Head(s) of Service; while decisions relating to the acceptance or rejection of Eols relating to contracts with an estimated value in excess of £500,000 will be referred to Cabinet for determination.

Accordingly, following referral of an Eol to the relevant Head of Service, he/she will in consultation with the relevant Cabinet Member, consider the Eol and will provide a report detailing:

- Any recommendations on whether to accept or, reject the Eol;
- Where rejection is proposed, any relevant grounds for rejection of the Eol, under the specified grounds provided for in the legislation;
- Whether the expression of interest will enhance or promote the social and economic well being of residents of the Borough of North Tyneside
- Whether and in what way the expression of interest is consistent with North Tyneside's strategic objectives as detailed in the Sustainable Community Strategy and/or any relevant Council Plan (or other strategic document);
- Whether the expression of interest presents any potential conflict with planned procurement;
- Any financial implications arising from the recommended decision;
- Where relevant, a proposed timetable for procurement arising from the Eol.

Where the total value of the contract is up to £500,000, the report will formalise and substantiate the Head of Service's decision as to the acceptance or rejection of the Eol. Where the total value of the contract exceeds £500,000, the report with the Head of Service's recommendations as to acceptance or rejection of the Eol, will be submitted to Cabinet for consideration and determination.

Notifying decisions on Eols

Where an Eol is received, in accordance with the statutory guidance the applicant body must be notified within 30 days of the timescale within which the Authority will provide its decision as to whether the Eol is accepted or rejected. Given that there will be different levels of complexity associated with different services the Authority will make a judgement on the timescales for achieving a decision on a case by case basis.

The maximum timescale the Authority will take to notify a relevant body of its decision will be six months. The maximum period allows for the relevant body to modify and resubmit its bid and for the Authority to come to a final decision.

The Authority can seek modification to the Eol if it believes it would otherwise reject the Eol. Any modification must be agreed with the relevant body submitting the Eol. If agreement cannot be reached the Authority may reject the Eol.

Rejection of Eol

Authorities may only reject an Eol on one or more of the grounds specified in the regulations, as follows:

1. The Eol does not comply with the requirements of the Act or the regulations.
2. The applicant body provides information in the Eol which in the opinion of the Authority is inadequate or inaccurate in a material way.
3. The Authority considers, on the basis of the Eol, that the applicant body (or any member of a consortium of which the applicant is part, or any sub-contractor referred to) is not suitable to provide or assist in providing the relevant service.
4. The Eol relates to a service which the Authority has determined to stop providing.
5. The Eol relates to a service which is provided (in whole or in part) by or on behalf of the 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 the continued integration of such services is, in the opinion of the Authority, critical to the well being of those persons.
6. The service is already subject to a procurement exercise.
7. The Authority 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 Authority has published its intention to consider the provision of the service by a body that two or more specified employees of the Authority propose to establish.
9. The Authority considers that the Eol is frivolous or vexatious.
10. The Authority considers that acceptance of the Eol is likely to lead to contravention of an enactment, or other rule of law, or a breach of statutory duty.

The procurement exercise

If the expression of interest is accepted, the resulting procurement process must commence (in the case of contracts with an estimated value of up to £500,000) no earlier than 3 months and no later than 6 months from the date of acceptance, and (in the case of contracts with an estimated value in excess of £500,000) no earlier than 3 months and no later than 12 months from the date of acceptance.

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

Where the service falls below the threshold value in the above regulations or is an exempt part B service the Authority will decide how to procure the service.

All procurements must comply with the Authority's Contract Standing Orders.

Any queries relating to this policy should be directed to:

Head of Law and Governance

Quadrant

Cobalt Business Park

North Tyneside

NE27 0BY

commercial.team@northtyneside.gov.uk

Tel: 0191 643 5456