



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	DSFRA/12/27
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	5 NOVEMBER 2012
SUBJECT OF REPORT	COMMUNITY RIGHT TO CHALLENGE (LOCALISM ACT 2011)
LEAD OFFICER	CLERK TO THE AUTHORITY
RECOMMENDATIONS	<p>(a) <i>that, subject to any amendments that may be indicated at the meeting:</i></p> <p>(i) <i>the Policy and Procedure as appended to this report for determining Expressions of Interest submitted under the Community Right to Challenge (introduced by the Localism Act 2011) be approved; and</i></p> <p>(ii) <i>the wording for publicising the window for submission of Expressions of Interest as set out at paragraph 4.5 of this report, be approved for publication on the Authority's website, in accordance with the requirements of the Act;</i></p> <p>(b) <i>that the policy and procedure so approved be reviewed after twelve months and revised as necessary in light of actual experience in determining expressions of interest.</i></p>
EXECUTIVE SUMMARY	<p>The Localism Act 2011 introduced, amongst other things, the "Community Right to Challenge" – specifically, a duty for relevant authorities (including combined fire and rescue authorities) to consider and determine as appropriate any "expressions of interest" made in writing by relevant bodies wishing to provide, or assist in providing, a service on behalf of the relevant authority.</p> <p>These provisions of the Act were brought into force on 27 June 2012. In light of this, a policy and procedure has been drafted for administering any expressions of interest so received.</p>
RESOURCE IMPLICATIONS	Any resource implications associated with operation of the policy and procedure, once adopted, will be contained from within existing resources.

EQUALITY RISKS AND BENEFITS ASSESSMENT (ERBA)	Not applicable to this report although, should an expression of interest prove successful, it would be appropriate to undertake an ERBA in relation to any associated procurement exercise.
APPENDICES	A. Localism Act 2011 – Draft Policy and Procedure for administering Expressions of Interest made under the Community Right to Challenge
LIST OF BACKGROUND PAPERS	<p>The Localism Act 2011 – Sections 81 to 86 inclusive.</p> <p>The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest)(England) Regulations 2012</p> <p>Community Right to Challenge – Statutory Guidance published by the Department for Communities and Local Government (CLG) June 2012</p> <p>“Community Right to Challenge” report to the County Durham & Darlington Fire & Rescue Authority</p> <p>“Community Right to Challenge” report submitted to Plymouth City Council Cabinet meeting, 14 August 2012</p>

1. INTRODUCTION

- 1.1 This report focuses on the “Community Right to Challenge” as provided for by Sections 81 to 86 of the Localism Act 2011 and Regulations made thereunder. These provisions came into force on 27 June 2012.
- 1.2 Appended to the report is a draft policy and procedure for determining any “expressions of interest” submitted under the Community Right to Challenge.

2. THE COMMUNITY RIGHT TO CHALLENGE

- 2.1 In essence, the Act imposes a new duty on relevant authorities (including combined fire and rescue authorities) to consider and determine as appropriate any expressions of interest made in writing by relevant bodies wishing to provide, or assist in providing, a service on behalf of the relevant authority.
- 2.2 In relation to the Community Right to Challenge, the Act and Regulations made thereunder:
1. Define “relevant authority” (this includes combined fire and rescue authorities);
 2. Define what is meant by a “relevant body”;
 3. Define “relevant service” (any service – other than those specified in Regulations – provided by or on behalf of a relevant authority in the exercise of its functions);
 4. Provide for a relevant authority to specify and – as a minimum – publish on its website details of any period/periods during which expressions of interest must be submitted. The Statutory Guidance indicates that specifying such periods would help authorities manage the flow of expressions of interest and allow for synchronisation with, for example, other commissioning cycles or budget setting;
 5. Require a relevant authority to specify and – as a minimum – publish on its website details of:
 - a. the maximum period of time to elapse between receipt and notification of the authority’s decision to the relevant body on any expression of interest submitted; and
 - b. the minimum and maximum period of time to elapse between acceptance of an expression of interest and commencement of the associated procurement exercise;

For both (a) and (b) above, different periods of time may be specified in different cases (i.e. for different services);
 6. specify timeframes for the relevant authority to notify the relevant body in writing as to when it should expect to be informed on whether an expression of interest it has submitted has been accepted or rejected (within 30 days of the end of any period specified for receipt of expressions of interest; otherwise within 30 days of receipt of the expression of interest);
 7. allow a relevant authority to modify, in certain circumstances, an expression of interest received; and
 8. provide for expressions of interest to be either accepted or rejected. If accepted, a procurement exercise must be undertaken in which the relevant body submitting the initial expression of interest must be invited to participate.

2.3 Regulations published subsequently under the Act specify the only grounds on which an expression of interest may be rejected. Additionally, the Department for Communities and Local Government (CLG) published, in June of this year, Statutory Guidance on the community right to challenge covering each of the areas listed in paragraph 2.2 above.

3. POLICY FOR ADMINISTERING EXPRESSIONS OF INTEREST SUBMITTED UNDER THE COMMUNITY RIGHT TO CHALLENGE

3.1 As indicated, the Community Right to Challenge provisions of the Localism Act 2011 came into force in June of this year, with statutory guidance issued the same month. It is appropriate, therefore, that the Authority has in place a policy for administering any expressions of interest made under the new provisions. A draft policy and procedure, is attached at Appendix A to this report. The draft policy reflects the requirements of the Localism Act, Regulations made thereunder and the CLG Statutory Guidance in relation to the Community Right to Challenge. It also takes account of policies and procedures adopted by other fire and rescue authorities in relation to this issue.

4. PERIOD FOR SUBMITTING EXPRESSIONS OF INTEREST

4.1 As indicated at paragraph 2.2 (point 4) above, the legislation allows an relevant authority to stipulate a period (or periods) for submission of expressions of interest and further provides (Section 82(4) of the Localism Act):

“The relevant authority may refuse to consider an expression of interest submitted outside a period specified...”

4.2 The Statutory Guidance referred to elsewhere in this report indicates that defining a period/period(s) would assist relevant authorities in managing the associated process involving consideration of expressions of interest submitted and, as necessary, undertaking procurement exercises.

4.3 It is intended, therefore, that such period is defined for this Authority and that this should be the month of August. This would allow sufficient time of any expression of interest received to be considered holistically and for any potential impacts (e.g. on the budget setting process for the following financial year) to be addressed. Any relevant body submitting an expression of interest at any other time will be advised that the expression will only be considered in accordance with the Authority’s procedure and which in turn provides only for consideration of expressions of interest submitted during the month of August.

4.4 As indicated previously, the Act requires the Authority:

- if it has determined a period for submission of expressions of interest, to publish (as a minimum, on its website) details of any period so specified;
- to notify the relevant body of when it can expect to receive the decision on the expression of interest submitted – this must be no later than 30 days after the end of any period specified for submission of expressions of interest; and
- to specify the maximum period to elapse between the date it receives an expression of interest and the date on which it notifies the relevant body of its decision in relation to the expression of interest so submitted.

- 4.5 To comply with the above, it is proposed that the following wording be published on the Authority's website:

"COMMUNITY RIGHT TO CHALLENGE (LOCALISM ACT 2011)

The Devon & Somerset Fire & Rescue Authority has adopted a policy and procedure for determining any expressions of interest submitted under the Community Right to Challenge introduced by the Localism Act 2011. In accordance with the provisions of the Act, the Authority has determined that it will only consider expressions of interest submitted in August of any given year, for the delivery of a service to commence at the earliest in April of the following year.

Any relevant body submitting an expression of interest during the month of August will, in accordance with legislative requirements, be notified:

- (a) by no later than 30 September as to when it is anticipated that the decision on the expression of interest so submitted will be made; and
- (b) by no later than 31 January of the year in which delivery of the service could commence in April at the earliest, of the final decision in relation to any expression of interest submitted during the preceding August."

5. CONCLUSION

- 5.1 The Authority is required to have in place a policy and procedure for determining any expressions of interest submitted under the Community Right to Challenge introduced by the Localism Act 2011.
- 5.2 This policy and procedure has now been drafted, having due regard to the legislative requirements, statutory guidance and similar policies and procedures in place for other combined fire and rescue authorities. This draft policy and procedure is now appended for adoption, subject to any amendments as may be suggested at the meeting.
- 5.3 It remains, however, that the Community Right to Challenge is a new statutory requirement with only limited guidance available at present on its practical application. Consequently, it is proposed that – once adopted – the policy and procedure for administering it be reviewed in twelve months' time and revised as appropriate in light of actual experience.

MIKE PEARSON
Clerk to the Authority

LOCALISM ACT 2011 – DRAFT POLICY AND PROCEDURE FOR ADMINISTERING EXPRESSIONS OF INTEREST MADE UNDER THE COMMUNITY RIGHT TO CHALLENGE

A. POLICY OUTLINE

1 *What is the Policy about?*

1.1 The Community Right to Challenge, introduced under Sections 81 to 86 of the Localism Act 2011, 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.

1.2 The Community Right to Challenge enables “relevant bodies” to express an interest in running a service or part of a service on behalf of a relevant authority. The relevant authority is obliged to consider such expressions of interest and – where they are accepted – undertake a procurement exercise for the service concerned. The Devon & Somerset Fire & Rescue Authority is a “relevant authority” for the purpose of the legislation.

2. *Relevant Bodies*

2.1 “Relevant bodies” are defined in the legislation 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 a relevant authority; or
- (e) such other person or body as may be specified by the Secretary of State by regulations.

3. *Scope of Community Right to Challenge*

3.1 The Community Right to Challenge extends to all services provided by or on behalf of a relevant authority in the exercise of its statutory functions. The right applies only to the provision of services – it does not delegate responsibility for the function itself, which remains with the relevant authority. Fire and rescue services fall within the scope of the Community Right to Challenge.

4. *Responsibility*

4.1 The Senior Management Board is collectively responsible for the efficient and effective handling of Community Right to Challenge expressions of interest submitted to the Authority.

4.2 The Board will determine whether to accept or reject a Community Right to Challenge expression of interest. In the case of acceptance, the Board will also determine the appropriate procurement exercise to be undertaken.

5. *Monitoring*

5.1 A central database of all expressions of interest made under the Community Right to Challenge will be maintained by the Director of Corporate Services and will be published on the Authority’s website, together with details of when expressions of interest will be considered and information on decisions – including reasons in summary form for those decisions – on any expressions of interest made.

6. Support

6.1 The legislation provides for the Secretary of State to do anything considered appropriate to advise or assist relevant bodies with the submission of expressions of interest, participation in a procurement exercise and provision of a relevant service on behalf of the Authority. Any advice so published will be made available on request to any relevant body considering submitting an expression of interest.

6.2 “Locality”, the leading UK network of community enterprises, development trusts, settlements and social action centres, has published guidance on the Community Right to Challenge for anyone considering submitting an expression of interest. This guidance may be accessed at the following website:

<http://mycommunityrights.org.uk/community-right-to-challenge/>

7. Confidentiality

7.1 All information provided in Community Right to Challenge expressions of interest will be handled sensitively and used only for its proper purpose.

7.2 Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

8. Publicising/distribution of the policy and procedure

8.1 A copy of this will be made available to employees and interested parties on request.

9. Reviewing the policy and procedure

9.1 This policy and procedure will be subject to annual review and revision by the Senior Management Board as necessary.

10. Equality and Diversity

10.1 The Authority is committed to including equalities in everything that it does. This includes the elimination of unlawful discrimination, promoting diversity as a positive force and valuing and celebrating a diverse workforce and community.

10.2 Any expression of interest accepted will be subject to an Equality Risks and Benefits Assessment (ERBA) as part of the associated procurement exercise.

B. PROCEDURE

1. *Introduction*

1.1 The Authority recognises its legal obligations under the Localism Act 2011 and will consider any expression of interest submitted during the month of August (see paragraph 10.2) by a relevant body (see Section A2 above). In line with legislative requirements, such expressions must be made in writing and should be submitted to the following address:

Director of Corporate Services
Devon & Somerset Fire & Rescue Authority
Service Headquarters
The Knowle
Clyst St. George
EXETER EX3 0NW

1.2 Any expression so received will be acknowledged within ten working days. The acknowledgement will indicate the date by which initial screening of the application will be completed.

2. *Initial Screening*

2.1 Initial screening will be undertaken by the Director of Corporate Services, in consultation with the Director of Financial Services and Legal Adviser to the Authority as necessary. The purpose of the initial screening will be to satisfy that:

- the expression of interest has been submitted by a relevant body as defined by the legislation; and
- that the service concerned is not excluded from the Community Right to Challenge.

2.2 In determining whether an expression of interest has been submitted by a relevant body, the officers concerned will have regard to the statutory definitions (see Section A2 above) and to Section 1 of the Statutory Guidance issued by the Department for Community and Local Government.

2.3 Regulations¹ define the following services as excluded from the Community Right to Challenge, either for a limited period or permanently:

- until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by the Authority, or by a Primary Care Trust, National Health Service (NHS) Trust or NHS Foundation Trust under a partnership agreement; or by the Authority and an NHS Body or Strategic Health Authority acting jointly;
- until 1 April 2014, a relevant service commissioned by an NHS body on behalf of the Authority;
- a relevant service commissioned by the Authority in respect of a named person with complex individual health or social care needs; and
- services which are commissioned or managed by individuals or their representatives using direct payments (e.g. under The Community Care, Services for Carers and Children's Services (Direct Payment) (England) Regulations 2009).

¹ The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012

- 2.4 The submitting body will be notified in writing of the outcome of the initial screening process within ten working days of completion of the process.
- 2.5 If the submission is successful at the initial screening, the submitting body will be invited to submit any additional information (if not already provided) necessary to enable the expression of interest to be fully considered and notified of the timescale for submission of this information (see Section B3 below on information required for full consideration of an expression of interest).
- 2.6 In the event that the submission fails the initial screening, the submitting body will be provided with summary reasons for this.

3. Information required for Full Consideration of an Expression of Interest

- 3.1 In accordance with the relevant Regulations², any written expression of interest must contain the following information to enable full consideration to be given to it:
- (a) information about the financial resources of the relevant body submitting the expression of interest;
 - (b) evidence demonstrating 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;
 - (c) where the relevant body proposes to deliver the relevant service as part of a consortium, or use a sub-contractor, the information specified in (a) and (b) above must be given for each member of the consortium and for each sub-contractor as appropriate;
 - (d) information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates;
 - (e) 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:
 - (i). how the provision or assistance will promote or improve the social, economic or environmental well-being of the area served by the Devon & Somerset Fire & Rescue Authority; and
 - (ii). how it will meet the needs of users of the relevant service; and
 - (f) where the relevant body consists of employees of the Devon & Somerset Fire & Rescue Service, how the relevant body proposes to engage with other employees of the Service who are affected by the expression of interest.
- 3.2 Once the full expression of interest has been received, the submitting body will be notified in writing, within 30 days of its receipt, of the maximum period of time to elapse between receipt and determination of a full expression of interest. In accordance with legislative requirements, this timeframe will also be published on the Authority's website. The notification will also set out the expected time period for determination of the expression of interest.

² The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012

4. Full Consideration of Expression of Interest

4.1 Receipt of a full expression of interest will be acknowledged in writing to the submitting relevant body. The Senior Management Board will consider any full expression of interest submitted in writing by a relevant body and in doing so will first satisfy itself that it has all the required information, as set out in Section B3 above.

4.2 The Board will either:

- accept the expression of interest;
- modify the expression of interest; or
- reject the expression of interest.

5. Acceptance of Expression of Interest

5.1 If the expression of interest is accepted, the Board will determine the appropriate procurement exercise to be followed. The submitting relevant body will be notified in writing:

- of the minimum and maximum periods of time to elapse between acceptance of the expression of interest and the commencement of the associated procurement exercise. These details will also be published on the Authority's website; and
- of how it may participate in the associated procurement exercise.

6. Modification of Expression of Interest

6.1 In accordance with legislation, the Board may only modify the expression of interest if:

- it feels that the expression of interest would not otherwise be capable of acceptance; and
- if the submitting relevant body agrees to the modification.

6.2 The submitting relevant body will be notified in writing of any decision to modify an expression of interest and the reasons for that decision. This notification will be published on the Authority's website.

7. Rejection of Expression of Interest

7.1 A full expression of interest may only be rejected on one of the grounds as contained in the relevant Regulations³. These are set out in the Annex to this Policy and Procedure for ease of reference.

7.2 In determining whether to reject an expression of interest the Senior Management Board will pay due regard to the statutory grounds for rejection as set out in the relevant Regulations³ together with Section 6 of the Statutory Guidance issued by the Department for Communities and Local Government.

7.3 The submitting relevant body will be notified in writing of any decision to reject an expression of interest and the reasons for that decision. This notification will be published on the Authority's website.

8. Responsibility for Written Notifications

8.1 The Director of Corporate Services will be responsible for providing all written notifications referred to in this Policy and Procedure.

³ The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012

9. Expressions of Interest submitted by employees of the Devon & Somerset Fire & Rescue Service

9.1 The legislation provides that two or more employees of the Devon & Somerset Fire & Rescue Service may be considered as a relevant body for the purposes of submitting an expression of interest to assist in providing or assisting to provide a relevant service.

9.2 The following extract from the Statutory Guidance issued by the Department for Communities and Local Government is, however, drawn to the attention of any such staff grouping considering submission of an expression of interest under the Community Right to Challenge:

“The Government is committed to giving public sector workers the right to bid to take over running the services they deliver. Two or more employees of the relevant authority are eligible to use the Right. We expect employees to form an employee-led structure to take on running services under the Right. Employees using the Right are not 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)”.

10. Timing of Expressions of Interest

10.1 Section 82 of the Localism Act 2011 enables the Authority to specify periods during which expressions of interest may be submitted and to refuse to consider any expression of interest submitted outside any period so specified.

10.2 The Authority has determined that it will only consider expressions of interest submitted during the month of August for delivery of a relevant service commencing at the earliest in April of the following year.

10.3 Any relevant body submitting an expression of interest during the month of August will, in accordance with legislative requirements, be notified:

- (a) by no later than 30 September as to when it is anticipated that the decision on the expression of interest so submitted will be made; and
- (b) by no later than 31 January of the year in which delivery of the service could commence in April at the earliest, of the final decision in relation to any expression of interest submitted during the preceding August.

COMMUNITY RIGHT TO CHALLENGE POLICY AND PROCEDURE – ANNEX

GROUNDINGS FOR REJECTION OF EXPRESSIONS OF INTEREST

Any full expression of interest submitted in writing may only be rejected on the basis of one or more of the of the grounds set out in The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012. These grounds are (words in square brackets indicate textual amendments to the original text of the Regulations aimed at aiding clarity):

1. The expression of interest does not comply with one or more of the requirements specified in Section 81(1) [of the Localism Act 2011] or in regulations made by the Secretary of State under Section 81(1)(b) [of the Act] (duty to consider expressions of interest).
2. The relevant body provides information in the expression of interest which, in the opinion of [the Authority], is in a material particular inadequate or inaccurate;
3. [The Authority] considers, based on the information in the expression of interest, that the relevant body or, where applicable:
 - (a). any member of the consortium of which it is a part; or
 - (b). any sub-contractor referred to in the expression of interestis not suitable to provide or assist in providing the relevant service.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by [the Authority] 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 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 Authority], critical to the well-being of those persons;
6. The relevant service is already the subject of a procurement exercise.
7. [The Authority] and a third party have entered into negotiations for the provision of the relevant service, which negotiations are at least part conducted in writing.
8. [The Authority] has published its intention to consider the provision of the relevant service by a body that two or more specified persons of [the Devon & Somerset Fire & Rescue Service] propose to establish.
9. [The Authority] considers that the expression of interest is frivolous or vexatious.
10. [The Authority] considers that acceptance of the expression of interest is likely to lead to a contravention of an enactment or other rule of law or a breach of statutory duty.