

SOUTH KESTEVEN DISTRICT COUNCIL **COMMUNITY RIGHT TO CHALLENGE SCHEME**

Introduction

1. This document sets out a Scheme for the receipt, consideration and implementation of expressions of interest for providing or assisting the provision of Council services submitted under sections 81 to 86 of the Localism Act 2011 (“the Community Right to Challenge”)
2. This Scheme complies with the Council’s obligations under
 - The Localism Act 2011(the Act);
 - The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (the Regulations); and
 - Statutory Guidance (The Statutory Guidance)

Services covered by the Scheme

3. The Council may consider expressions of interest for providing or assisting the provision of any service delivered by or on behalf of the Council in the exercise of any of its functions.
4. The Council reserves the right to reject any expression of interest on the grounds that it does not propose the provision of a service. For example, the processing of planning applications may be seen as the provision of a service. The determination of planning applications on the other hand is a function vested in the Council which cannot be exercised by a third party.
5. The Council will not consider expressions of interest in any service excluded from the scope of the Community Right to Challenge by the Regulations.

Who can submit an Expression of Interest?

6. The Council will consider expressions of interest from relevant bodies as defined in the Act, Regulations and/or the Statutory Guidance. As at the date of this Scheme these are:-
 - a voluntary or community body;
 - a body of persons or a trust which is established for charitable purposes only;
 - a parish council; and
 - two or more employees of the Council.
7. Any of the above may submit an expression of interest either on its own or as part of a consortium or on the basis that it will use sub-contractors.
8. The Council reserves the right to reject any expression of interest on the grounds that it is not submitted by one of the above bodies or persons.
9. The Council will consider the proposed legal structure of relevant bodies and in particular whether they are incorporated when considering any expression of interest.

When can an Expression of Interest be Submitted?

Services already the subject of a contract with a third party

10. Where any services are already delivered on behalf of the Council by a third party under a contract or other legally binding arrangement then any expression of interest must be submitted within the time periods which reflect the Council's contractual obligations and relate to the expiry and renewal dates of such arrangements.
11. The Council may from time to time publish specific periods in relation to specific contracts or categories of contract on its website. Where any such specific timeframe has been published the Council will not consider any expression of interest in respect the whole or any part of the services covered by the contract unless the expression of interest is submitted within the specified time period.
12. Where the Council has not specified a specific time period in relation to a particular contract or categories of contract, the Council will not consider any expression of interest in respect the whole or any part of the services covered by the contract which is submitted earlier than 24 or later than 21 months prior to the expiry date of that contract as specified in the Contracts Register on the Council's website at
13. Where any contract listed in the Contracts Register is shown as having an extension period the expiry date shall automatically be the extended expiry date if the Council exercises any such extension.

Services not already the subject of a contract with a third party

14. Where services are not already delivered on behalf of the Council by a third party under a contract or other legally binding arrangement any expression of interest will need, unless the Council otherwise decides, to fit into the Council's business planning and budget setting cycles.
15. Accordingly, unless otherwise decided by the Council, the Council will not consider any expression of interest unless it is submitted between 1 April and 30 June in any year.
16. If any expression of interest is submitted in respect of services, some of which are covered by an existing contract or other legally binding arrangement and some of which are not, the relevant time period will be that governing the services covered by a contract or other legally binding arrangement and if more than one contract or legally binding arrangement is involved the relevant period shall be established by reference to the latest applicable expiry date.

What must an Expression of Interest Contain?

17. A valid expression of interest must be in writing and contain the following:
 - Information about the financial resources of the relevant body 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.

- 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 will promote or improve the social economic or environmental well-being of the relevant authority's area; and
 - How it will meet the needs of the users of the relevant service.
 - Where the relevant body consists of employees, details of how the relevant body proposes to engage other employees of the relevant authority who are affected by the expression of interest.
18. The same information must be provided in relation to other members of any consortium or sub-contractors to be involved in the provision of the services.

Submitting an Expression of Interest

19. Three copies of expressions of interest must be submitted to the Council.
20. Expressions of interest may be submitted in hard copy by sending them to the Head of Finance at The Council Offices, St. Peter's Hill, Grantham, Lincolnshire, NG31 6PZ marked Community Right to Challenge – Expression of Interest.
21. Expressions of interest similarly marked may also be submitted electronically by e-mail -
22. Expressions of Interest will be acknowledged by the Council within 5 working days of receipt.
23. The Council will notify the relevant body in writing of the period within which it expects to notify the relevant body of its decision.
24. The Council will give this notification either within 30 days of receipt of the expression of interest or, if the Council has specified a period within which expressions of interest must be submitted, within 30 days of the end of that period.

Consideration Modification and Withdrawal of Expressions of Interest

25. The Panel detailed at clause 30 below will consider expressions of interest meeting the requirements of this Scheme. The Panel will either accept the expression of interest or reject it, although it may in certain circumstances modify the expression of interest.
26. The Panel will modify the expression of interest if the Panel thinks that the expression of interest would not otherwise be capable of acceptance and the relevant body agrees to the modification.
27. The Council will contact the relevant body to discuss any proposed modifications within 15 working days of receipt of the submitted expression of interest.

28. A relevant body may withdraw an expression of interest at any time after submitting it whether before or after a decision has been made to accept it. A withdrawal of an expression of interest must be in writing and may be submitted by any of the methods by which the expression of interest could have been submitted.
29. The withdrawal of an expression of interest or a refusal to modify the expression of interest does not prevent the Council from proceeding with a procurement exercise where the Council thinks that it is appropriate to do so.
30. All expressions of interest meeting minimum requirements will be considered by a Panel (the Panel) including:
 - Finance representative
 - Relevant Service Manager(s)
 - HR representative
 - Procurement Lincolnshire representative
 - Relevant Head(s) of Service
31. The decision whether or not to accept an expression of interest will be made in by the Strategic Director responsible for the service to which the expression of interest relates or the relevant Executive Councillor or full Executive depending on the nature of the Expression of Interest and in line with the Council's established decision-making processes.
32. The Authority will notify the relevant body of its decision within the period it has notified to the relevant body under paragraph 24 above.
33. If the Authority's decision is to modify or reject the expression of interest it will give the reasons for that decision in its notification.
34. The Authority will publish its notification (including on its website).

Rejection of an Expression of Interest

35. The Council may only reject an expression of interest on specific grounds specified in Regulations. These grounds are:-
 - the expression of interest does not comply with the requirements of a valid expression of interest;
 - the relevant body provides information in the expression of interest which, in the opinion of the Panel, is inadequate or inaccurate;
 - the Panel considers, based on the information in the expression of interest, that the relevant body or, where applicable, a consortium member or sub-contractor is not suitable to provide or assist in providing the relevant service;
 - the expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the Council to stop providing that service;
 - the expression of interest relates to a relevant service provided in whole or in part by or on behalf of the Council to persons who are also in receipt of a service provided or arranged by a NHS body which is integrated with the relevant service and the continued integration of such services is in the opinion of the Council, critical to the well being of those persons;

- the relevant service is already the subject of a procurement exercise;
 - the Council and a third party have entered into negotiations for the provision of the relevant service for which negotiations are, at least, in part conducted in writing;
 - the Council has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of the Council propose to establish;
 - the Council considers that the expression of interest is frivolous or vexatious; and
 - the Council consider that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of a statutory duty.
36. In considering an expression of interest the Panel will consider whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority's area.

What happens where an Expression of Interest is Accepted?

37. When an expression of interest is accepted, the Council must carry out a procurement exercise relating to the provision on behalf of the Council of the relevant service to which the expression of interest relates.
38. The procurement exercise will be appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise. In determining the nature of the procurement exercise the Council will have regard to its Contracts Regulations.
39. Unless the Council specifies a specific minimum and maximum period in respect of particular services on its website at [*to be confirmed*], in which case the minimum and maximum periods so specified will apply,
- the minimum period that will elapse between the date of the authority's decision to accept an expression of interest and the date on which it will begin the procurement exercise will be 3 months; and
 - the maximum period that will elapse between the date of the authority's decision to accept an expression of interest and the date on which it will begin the procurement exercise will be 12 months.