

## COMMUNITY RIGHT TO CHALLENGE GUIDANCE

### **1. INTRODUCTION**

The Community Right to Challenge came into force on 27 June 2012. Community Right to Challenge allows voluntary and community groups, charities, parish councils, and local and fire and rescue authority staff to bid to run local authority services where they believe they can do so differently and better. This may be a whole service or part of a service.

Applicants need to submit a written Expression of Interest. Authorities must consider and respond to Expression of Interest which, if accepted, will trigger a procurement exercise for that service. The applicant will then participate, alongside others. **A successful expression of interest does not therefore necessarily mean that the applicant will eventually be successful in the procurement process.**

### **2. TIMESCALES**

Expression of Interest can be submitted at any time.

The Council will notify the applicant of the date by which the decision will be made. This will be done within 30 days after the Expression of Interest has been submitted.

The maximum period between the date an Expression of Interest is received and the date by which the Council will notify the applicant of the decision is 26 weeks.

The minimum period between the Council's decision to accept an Expression of Interest and the date the procurement process will begin is 12 weeks. The maximum period is 26 weeks. This will allow sufficient time to get sufficient resources allocated to the procurement, to agree the appropriate procurement method and draft the tender documentation.

A summary of timescales is set out below:

Notify applicant of when decision will be made	30 days from when Expression of Interest submitted
Time between Expression of Interest being submitted to notification of outcome of Expression of Interest	26 weeks (maximum)
Notification of outcome of Expression of Interest to beginning of procurement process	12 to 26 weeks

### **3. PROCESS**

A process for receiving and reviewing Expressions of Interest has been developed. The following factors have been taken into consideration:

- Standardised format for Expressions of Interest

- Single point for submissions and feedback
- Considerations by relevant officers and managers who can ensure the applications are considered in a thorough, robust and transparent manner
- A clear decision making process
- Consistency of approach with other Authorities in the region

The flowchart at Appendix 1 sets out the Council’s Community Right to Challenge process.

The Community Right to Challenge panel will lead the process. The panel will include representatives from:

- Corporate Procurement
- Legal Services
- Audit & Risk
- Policy Unit

Membership of the Panel may be modified from time to time, especially if a Right to Challenge relates to one of the above activities.

The panel reserves the right to seek further clarification from the applicant, the affected service and/or other advisors.

#### **4. SUBMISSION OF EXPRESSION OF INTERESTS**

- Applicants are encouraged to discuss their potential Expression of Interest with the Council before it is submitted
- The Expression of Interest must be submitted in the format set out in the Expression of Interest template.
- All sections of the Expression of Interest must be completed.
- The Expression of Interest must be submitted to Corporate procurement at [corporate.procurement@kirklees.gov.uk](mailto:corporate.procurement@kirklees.gov.uk)
- Submission can only be to a relevant Authority. Kirklees Council is a relevant Authority.

#### **5. ASSESSMENT OF EXPRESSION OF INTERESTS**

The Council has set out below how it will assess the submitted Expression of Interest. The information contained in the Expression of Interest must be accurate and adequate or it will be rejected.

No	Information	Assessment
1	Name of body	Information only
2	Date of submission	Information only

No	Information	Assessment
3	Contact details	Must be provided so outcome of Expression of Interest can be communicated.
4	Type of body	<p>Must be a relevant body. If not, the Expression of Interest will be rejected.</p> <p>A relevant body is:</p> <ul style="list-style-type: none"> <li>• A voluntary body (An organisation that is not a public or local authority, carries out activities on a not for profit basis, and/or any profit is invested back into its activities or back into the community)</li> <li>• A community body (An organisation that is not a public or local authority, the activities of which are primarily for the community)</li> <li>• A body of persons or a trust which is established for charitable purposes only</li> <li>• Parish Council</li> <li>• In relation to a relevant body, two or more employees of that Authority</li> <li>• Other such person or body as may be specified by Secretary of State by regulations</li> </ul> <p>Applications by partnerships or joint ventures will be rejected if they do not meet the requirements of a relevant body.</p> <p>Applicant does not need to be an incorporated limited liability company when submitting an Expression of Interest, although they may be required to do this at a later stage. Additional time may be agreed between accepting Expression of Interest and starting the procurement process, to allow time for the applicant to achieve this.</p> <p>Where the applicant is from two or more employees, the Council will require an employee-led structure.</p>
5	Body who will deliver service	<p>An applicant can submit an Expression of Interest with other relevant and/or non-relevant bodies.</p> <p>Must provide information on all organisations involved in Expression of Interest so the Council can determine if it has come from a relevant body.</p> <p>A joint venture company or partnership must meet the definition of a relevant body.</p> <p>The applicant (Or any member of the consortium or sub-contractor) must be deemed suitable to provide the relevant service.</p>
6	Financial resources	Council will require appropriate information to make an informed judgement as to whether the applicant will have sufficient financial

No	Information	Assessment
		<p>resources to deliver services</p> <ul style="list-style-type: none"> <li>• Evidence will usually be in the form of annual accounts</li> <li>• Evidence could also be in the form of a business plan</li> <li>• Similar to the requirements the Council would have at a PQQ stage in the tender process</li> <li>• Requirements will depend on size, scale and complexity of the services the applicant proposes to deliver</li> <li>• Required from all parties who will form a partnership or joint venture</li> <li>• The Council may request additional information</li> </ul>
7	Capability of providing the service	<p>Council will require appropriate information to make an informed judgement as to whether the applicant will have sufficient capability to deliver services</p> <ul style="list-style-type: none"> <li>• Evidence could include structure charts, membership of relevant bodies, CV's or references from previous work</li> <li>• Similar to the requirements the Council would have at a PQQ stage in the tender process</li> <li>• Requirements will depend on size, scale and complexity of the services the applicant proposes to deliver</li> <li>• The Council may request additional information</li> </ul>
8	TUPE and continuation of pension rights	<p>The applicant must demonstrate that this has been considered and the financial and legal implications are understood and accounted for.</p>
9	Service area & Scope	<p>The applicant must set out what service area the Expression of Interest relates to. The applicant must also set out the scope which should be appropriate and suitable for delivery by the applicant. The following are reasons for rejection:</p> <ul style="list-style-type: none"> <li>• If the Expression of Interest relates to a Council function then it will be rejected. A function is generally a duty or power that requires decision making on behalf of the Council.</li> <li>• Expression of Interests which relate to services that are not commissioned by Kirklees Council</li> <li>• Procurement exercise currently underway</li> <li>• Decision has been made to stop or decommission a service</li> <li>• A third party has already entered into negotiations with the Council for the provision of this service</li> <li>• Council has published its intention to consider the provision of the relevant service by council employees</li> <li>• A relevant service commissioned or provide by a relevant</li> </ul>

No	Information	Assessment
		<p>authority in respect of a named person with complex individual health or social care needs</p> <ul style="list-style-type: none"> <li>• The continued integration of such services (With an NHS body) is considered by Kirklees to be critical to the well-being of those persons</li> <li>• Services which are commissioned and managed by individuals or their representatives using direct payments</li> </ul> <p>Currently the following services are excluded until 1<sup>st</sup> April 2014:</p> <ul style="list-style-type: none"> <li>• A relevant service commissioned in conjunction with one or more health services by a relevant authority or a NHS body under a partnership arrangement, or by a relevant authority and an NHS body or Strategic Health Authority, acting jointly</li> <li>• A relevant service commissioned by an NHS body on behalf of a relevant authority</li> </ul> <p>If it is a jointly commissioned service with another relevant Authority, this is still covered by Community Right to Challenge and the Council will engage with the other relevant Authorities.</p>
10	Geographical area	Must state the specific geographical area e.g. Kirklees, the ward, Parish or super output area
11	Outcomes that will be achieved and how they will be measured	<p>Must demonstrate the proposed methodologies that will be used, what outcomes will be achieved and how these will be measured. Must demonstrate that the proposed service will meet local needs and requirements.</p> <p>Could demonstrate this through reports, survey results, performance indicators, benchmarking.</p>
12	Promotion of social, economic or environmental well-being of Kirklees and how this will be measured	<p>Must demonstrate how proposal might deliver this and how it will be measured.</p> <p>Must demonstrate that this is over and above the provision of the service.</p> <p>Examples include local employment, trainees, skills development, volunteering, and carbon savings.</p> <p>The Council's <a href="#">Social Value Policy Statement</a> is available to view on the Council's website.</p>
13	How meets the needs of the end users of the service and how this will be	<p>Must demonstrate that the proposed service will meet the end users needs and requirements.</p> <p>Could demonstrate this through reports, needs assessments, survey results</p>

No	Information	Assessment
	measured	
14	Employees of the relevant authority engage with other relevant authority employees ( <i>Only for employee Expression of Interest</i> )	Must explain how they will engage with other relevant authority employees and the methods that will be used. This should be appropriate and proportionate to the size and nature of the service and the number of employees affected. There is no requirement for a ballot to demonstrate support for a proposal.
14	Is the Expression of Interest frivolous or vexatious?	Expression of Interest will be rejected if the Council consider the Expression of Interest to be frivolous i.e. not a genuine offer to provide the service. Expression of Interest will be rejected if the Council consider the Expression of Interest to be vexatious i.e. it is designed to cause distress and/or irritation without justification, or if it is aimed at disrupting the work of an Authority or harassing individuals in it.
15	Contravention of an enactment or rule of law	Expression of Interest will be rejected if the Council considers that the Expression of Interest is likely to lead to contravention of an enactment or other rule of law or breach of statutory duty

## **6. EMPLOYEE SUBMITTED EXPRESSION OF INTERESTS**

Two or more employees of Kirklees council are eligible to bid to take over running services which the council delivers. The employees will need to form an employee-led structure, but this does not need to be finalised before submitting an Expression of Interest.

The applicant should make it clear in the Expression of Interest how they intend to consult and engage with other employees. This should be appropriate and proportionate to the size and nature of the service and the number of employees affected.

It is important during the procurement stage that the management and contractual relationships are clear, and therefore the employees should form a separate legal entity before the procurement process begins.

The employees that submit the Expression of Interest will be in no way involved in the decision making process to ascertain whether the Expression of Interest should be accepted, accepted with modification or rejected. The employees will similarly not be involve in any procurement process. Where the Assistant Director believes there could be a conflict of Interest or the applicant will have access to information that will give them an unfair advantage, the Assistant Director will make suitable alternative arrangements for these employees.

## **7. NOTIFICATION**

If the Council believes it would otherwise reject an Expression of Interest it may seek to agree to it being modified. This will be agreed with the applicant. If agreement cannot be reached then the Council will reject the Expression of Interest. In many cases, the applicant will just need to provide supplementary information to help the Council make an objective assessment.

The Council will contact the applicant with the outcome of the Expression of Interest. Where the Council is rejecting an Expression of Interest it will provide the reasons for this to the applicant.

The Council will publish the notifications of the outcomes of all Expression of Interests on its website.

## **8. PROCUREMENT PROCESS**

When the Council accepts one or more Expression of Interest for a relevant service, it will carry out a procurement exercise for the service. This will be appropriate to the value and nature of the contract and will follow the requirements of the Public Contracts Regulations 2006 and the Council's Contract Procedure Rules and Financial Procedure Rules.

As part of the Expression of Interest the applicant will have had to set out how their proposal will improve the economic, social or environmental well-being of Kirklees. The Council will consider including social clauses into contracts provided they comply with the relevant requirements.

## **9. FURTHER INFORMATION**

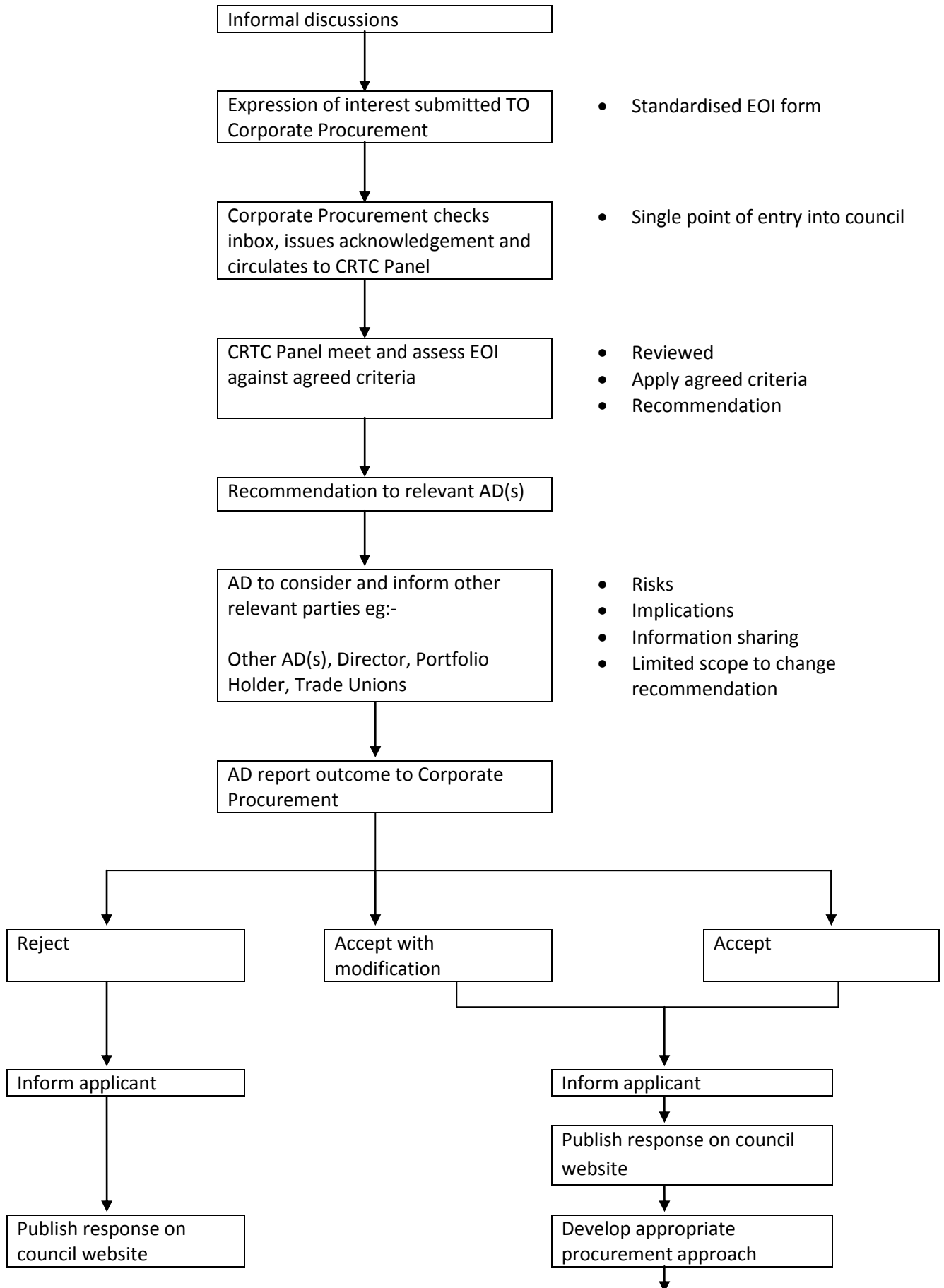
General information can be found at:

<http://communityrights.communities.gov.uk/>

Community Right to Challenge statutory guidance has been published which provides further explanation of the legislative framework for the Community Right to Challenge. This is available at:

<http://www.communities.gov.uk/publications/communities/righttochallengestatguide>

**APPENDIX 1: COMMUNITY RIGHT TO CHALLENGE PROCESS**





Undertake procurement