

**Manchester City Council
Report for Resolution**

Report to: Executive – 13 September 2017

Subject: Revision of Community Right to Challenge Procedure

Report of: City Solicitor and City Treasurer

Summary

To propose changes to the procedure for considering Expressions of Interest under the Community Right to Challenge legislation.

Recommendations

The Executive is recommended to:

1. Note the statutory provisions around the Community Right to Challenge
2. Approve the revised Community Right to Challenge procedure at the Appendix to this report.
3. To grant delegated power to the City Treasurer to change this procedure in future, should the circumstances warrant changes.
4. To agree for the year 2017 the specified 'window' for the receipt of expressions of interest be 1 October - 1 November. For the year 2018 and thereafter that the 'window' be 1 September - 1 October.

Wards Affected

All

Manchester Strategy outcomes	Summary of the contribution to the strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	The Community Right to Challenge may have the potential to build new or improve on existing businesses.
A highly skilled city: world class and home grown talent sustaining the city's economic success	The legislation provides for external providers to bid for Council services and deliver them in new and different ways
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Community and Council employees are encouraged by this legislation to consider delivering Council services in new ways and submit Expressions of Interest in doing so.

A liveable and low carbon city: a destination of choice to live, visit, work	Not directly applicable.
A connected city: world class infrastructure and connectivity to drive growth	Not directly applicable.

Full details are in the body of the report, along with any implications for

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

None directly

Financial Consequences – Capital

None directly

Contact Officers:

Name: Liz Treacy
Position: City Solicitor
Telephone: 0161 234 3087
E-mail: l.treacy@manchester.gov.uk

Name: Carol Culley
Position: City Treasurer
Telephone: 0161 234 3406
E-mail: c.culley@manchester.gov.uk

Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

1. Part 5, Chapter 2, Sections 81 to 86 of the Localism Act 2011
2. The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (S.I 2012 No.1313)
3. The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (S.I 2012 No 1647)

4. Department for Communities and Local Government Statutory Guidance entitled: ***Community Right to Challenge***, published 27 June 2012.

1.0 Introduction

1.1 At a meeting on 11 September 2013, the Executive agreed to:

- Note the statutory requirement for the Council to implement the Community Right to Challenge introduced by the Localism Act 2011, and
- Approve the (then) draft Community Right to Challenge Procedure.

1.2 This report outlines the need to change the current procedure, obtain the approval of the Executive for the appended revised procedure and grant a delegation to the City Treasurer to change the procedure in future, should the circumstances warrant further changes.

2.0 Background

2.1 The Community Right to Challenge (CRtC) was introduced by the Localism Act 2011. The CRtC is the right for 'relevant bodies' to express an interest in 'providing or assisting in providing' a service that is currently provided by (or on behalf of) a local authority. Local authorities must then consider that expression of interest and, if it is accepted, must then carry out a full procurement exercise for the future running of that service in accordance with the usual legal requirements for tenders.

2.2 The Council procedure for dealing with these expressions of interest needs to be reviewed and amended. This is due to a number of factors:

- The integrated commissioning hub which was responsible for the receipt of any Expressions of Interest, and was within the previous Directorate for Children and Commissioning Services, no longer exists.
- The 'window' for receiving Expressions of Interests is considered to be too late to enable the proposals to be considered in the budget setting process.
- The ability to submit an Expression of Interest outside the 'window' could lead to uncertainty. The majority of Councils do not accept submissions outside of their specified 'window'.
- The current procedure does not make it clear what the maximum timeframe is for the Council to determine the validity of the Expression of Interest submitted.
- The current procedure does not specify how an organisation will be informed of when a decision on the Expression of Interest is expected to be reached (such time to be no later than the maximum timeframe).

- The experience of applying the current procedure to Expressions of Interest that have been received to date has identified a need to improve upon current processes.

2.3 Therefore, the following changes to the procedure are suggested:

- A dedicated e-mail address to be established for Expressions of Interest, with management of that address to be situated within the Council Procurement Team (in anticipation of revision of the procedure trialling of such a dedicated inbox has already been undertaken).
- A streamlining of the decision-making process in respect of Expressions of Interest.
- Change to the 'window' for accepting Expressions of Interest from 1 November – 1 December to 1 September – 1 October, for the year 2018 and thereafter. For the current year, the window will be 1 October - 1 November, in light of the timing of the proposed revision of the procedure.
- Removal of provision for acceptance of submission of Expressions of Interest outside the specified 'window'. Any Expression of interest received outside the window will instead be automatically rejected; the submitting organisation to be notified and asked to resubmit their expressions of interest during the prescribed timeframe.
- Specification of a maximum time-frame of three months within which the Council will determine the validity of an Expression of Interest.
- Specify that the submitting organisation will be informed within thirty days of the end of the window for submissions of Expressions of Interest of when a decision on the Expression of Interest is expected to be made by the Council.

2.4 At the moment there is no delegation allowing a change to this procedure to reflect changing circumstances such as those outlined in this report and any change must be approved by the Executive. It is therefore suggested that delegated power be given to the City Treasurer to amend this procedure should circumstances merit a change.

3.0 Contributing to the Manchester Strategy

3.1 (a) A thriving and sustainable city

The Community Right to Challenge may have the potential to build new or improve on existing businesses.

3.2 (b) A highly skilled city

The legislation provides for external providers to bid for Council services and delivering them in new and ways

3.3 (c) A progressive and equitable city

The Community and Council employees are encouraged by this legislation to consider delivering Council services in new ways.

3.4 (d) A liveable and low carbon city

Not directly applicable.

3.5 (e) A connected city

Not directly applicable.

4. Key Policies and Considerations

4.1 (a) Equal Opportunities

None.

4.2 (b) Risk Management

There is a need for robust contact management arrangements to be in place to deal with any communications between applicants and the Council in respect of Expressions of Interest made under the Community Right to Challenge. The procedure is a statutory requirement and failure to have one in place and follow it could leave the Council open to challenge

4.3 (c) Legal Considerations

Legal considerations are outlined in the report.

Appendix

Manchester City Council Draft Community Right to Challenge Procedure

1 Legislative Framework

1.1 Sections 81 to 86 of the Localism Act 2011 and Regulations made thereunder (“the Regulations”), and the DCLG’s Statutory Guidance entitled Community Right to Challenge (“the Statutory Guidance”), set out the rules that the Council must follow in operating the Community Right to Challenge (CRtC). This includes:

- Specifying the “Relevant Bodies” that may submit an “Expression of Interest”;
- Defining “Relevant Services” and stating the services which are excluded from the CRtC;
- Specifying the information required in an Expression of Interest
- Specifying the grounds whereby an Expression of Interest may be rejected.

This section of the Policy provides a brief summary of the key points within the legislation, but is not a comprehensive guide.

1.2 Relevant Bodies

These are the groups that are allowed to submit an Expression of Interest. The Government have currently limited this to:

- A voluntary or community body;
- A body of persons or a trust which is established for charitable purposes only;
- A Town or Parish council; or
- Two or more employees of the Council.

1.3 Relevant Services

These are the services that Relevant Bodies can express an interest in operating. They are defined as a service provided by or on behalf of the Council in the exercise of its functions.

1.4 Expressions of Interest

For an Expression of Interest to be valid it must include certain information, including:

- Information about financial resources;
- Evidence that demonstrates capability of providing or assisting in providing the Relevant Service;
- Information about the geographical area to which the Expression of Interest relates; and
- Information about the outcomes to be achieved, in particular how the provision of assistance will promote or improve the social, economic or environmental well-being of Manchester and how it will meet the needs of the users of the Relevant Service.

The Council requires a Relevant Body to submit an Expression of Interest by completing the Council's CRtC Form and sending it in to:
righttochallenge@manchester.gov.uk

1.5 Rejecting an Expression of Interest

The Government has set out 10 grounds on which an Expression of Interest may be rejected. These include:

- The Expression of Interest does not comply with any of the requirements specified in the Localism Act, the Regulations or the Statutory Guidance;
- The Council considers, based on the information in the Expression of Interest, that the Relevant Body is not suitable to provide or assist in providing the Relevant Service;
- The Expression of Interest relates to a service where a decision has been to stop providing that service; or
- The Council considers that the Expression of Interest is frivolous or vexatious.

1.6 Council Aims and Objectives

When an Expression of Interest is accepted the Council will ensure that the procurement exercise has a focus on:

- The quality of the service delivered;
- The value provided to the whole of Manchester;
- Ensuring that the service provider is committed and able to promote or improve the social, economic or environmental well-being of Manchester.

- 2 Procedure
- 2.1 Local authorities are able to designate certain times of year when Expressions of Interest can be submitted. Manchester City Council has agreed that Expressions of Interest may be submitted from 1 September to 1 October each year (other than in 2017 when it has been agreed that the period will be 1 October to 1 November). This is to allow the Council to take a decision as to whether to accept, reject or modify any Expressions of Interest ahead of the Council's annual budget-setting process.
- 2.2 The Council will ask Relevant Bodies to submit Expressions of Interest using the Council's standard Application Form. The Council will ask Relevant Bodies to submit their completed Application form to the Council's Procurement Team via e-mail to righttochallenge@manchester.gov.uk
- 2.3 The Procurement Team will acknowledge receipt of an Expression of Interest within 15 days of receipt by the Council and, if the Expression of Interest is received within the prescribed timescale specified in paragraph 2.1 above, forward a copy of the Expression of Interest to the relevant directorate and to the Democratic Services Legal Team. If the Expression of Interest has been received outside the prescribed timeframe then it will be rejected and the submitting organisation will be notified and asked to resubmit their Expression of Interest during the prescribed timeframe.
- 2.4 Any Expression of Interest that is received by the Council will be recorded by Democratic Services (including the date of receipt, the name of the submitting organisation, the relevant directorate and Council service to which the Expression of Interest relates) and this record will be updated as the Expression of Interest is processed. The procurement team will retain responsibility for the updating of this record.
- 2.5 Democratic Services will post brief details of any Expression of Interest received by the Council on the Council's website.
- 2.6 The relevant Directorate in consultation with the Democratic Services Legal Team will check any Expression of Interest that is received by the Council to ensure that it is valid (e.g. that the Expression of Interest has been submitted by a Relevant Body, that it concerns a current and continuing Relevant Service of the Council and that the Expression of Interest contains the information that is prescribed by the Regulations).
- 2.7 All Expressions of Interest will be considered by the relevant Directorate. In considering the Expression of Interest the relevant Directorate will have regard to how any subsequent procurement exercise can promote or improve the social, economic or environmental wellbeing of Manchester. This will ensure the Council takes account of the benefits that Relevant Bodies can provide over and above the delivery of the service. The relevant Directorate will also take account of the Best Value duty.

- 2.8 The relevant Directorate will report their recommendations to the City Treasurer, who will decide whether to accept, reject or modify the Expression of Interest in consultation with the relevant Directorate Executive Member.
- 2.9 The organisation submitting the Expression of Interest will be informed by the City Treasurer of her decision to accept, reject or modify its Expression of Interest and will be provided with reasons for any rejection or modification of its Expression of Interest. The Council has specified a “maximum period” of three months from the receipt of an Expression of Interest as the latest date on which the Council will notify the Applicant of the decision to reject, accept or modify an Expression of Interest.
- 2.10 The Council will notify the organisation submitting the Expression of Interest, within 30 days of the end of the window for submissions of Expressions of Interest, when a decision on the Expression of interest is expected to be made by the Council.
- 2.11 When the City Treasurer notifies an organisation of her decision in relation to an Expression of Interest, Democratic Services will also arrange for decision to be posted on the Council’s website.
- 2.12 If the City Treasurer in consultation with the relevant directorate Executive Member decides to accept an Expression of Interest a procurement exercise will be put in place, which will follow the normal Council procurement procedure. The City Treasurer in consultation with the relevant Directorate Executive Member will specify a “minimum” time period and a “maximum” time period between the date of the decision to accept an Expression of Interest and the date on which the Council will begin the procurement exercise required as a result of that acceptance.