

## Community Right to Challenge

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#### 1. Introduction

- 1.1 The Localism Act 2011 (“Localism Act”) introduced the Community Right to Challenge, which provides for certain groups (referred to as relevant bodies) to submit expressions of interest to deliver certain services on behalf of relevant authorities. This Policy sets out the procedure that Melton Borough Council will follow when considering such expressions of interest to deliver Council services.

#### 2. Legislative Background

- 2.1 The Community Right to Challenge (CRtC) came into form on 27<sup>th</sup> June 2012 (1) and is contained within Part 5 Chapter 2 of the Localism Act 2011, The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 and the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012.

#### 3. Scope

- 3.1 The CRtC refers to two sets of bodies – Relevant authorities (which are defined in paragraph of this Policy) and Relevant Bodies which are defined in paragraph 3.2). Relevant authorities must consider expressions of interest to carry out certain relevant services, received from Relevant Bodies. If a Relevant authority accepts such an Expression of Interest, a procurement exercise is triggered.

#### Definition of Relevant Authority

- 3.2 A Relevant Authority is :-

A County Council;

A District Council;

A London Borough Council; or

Any other person or body carrying out a function of a public nature specified by the Secretary of State in regulations.

Melton Borough Council is a Relevant Authority.

### 3.3 Definition of Relevant Body

A Relevant Body is :

- A) A voluntary or community body;  
A body of persons or a trust which is established for charitable purposes only;  
A parish council;  
Two or more employees of the relevant authority; or  
Any other person or body specified by the Secretary of State by regulations.

Further information on the scope of the CRtC provisions can be found in the Statutory Guidance and is also available from <http://communityrights.communities.gov.uk>

Whilst only relevant bodies can submit an expression of interest they may do so in partnership with other relevant bodies and/or non-relevant bodies.

### 3.4 Relevant Services

The CRtC applies to relevant services. A relevant service is a service provided by a Relevant Authority, in this instance Melton Borough Council, in the exercise of its functions (i.e. the things that relevant authorities are required to do or may do).

The right only applies to the provision of services; it does not provide for delegation of the functions of Melton Borough Council, and the responsibility for the function remains with Melton Borough Council. A number of exclusions apply which are detailed in Regulations and Statutory Guidance.

## 4. Community Right to Challenge Policy

- 4.1 Relevant Bodies (as defined in paragraph 3.2) can submit an Expression of Interest (EOI) to run a particular service that falls within the definition in paragraph 3.4. Melton Borough Council must consider each EOI it receives. Where the EOI meets the criteria set out in paragraph 5 and is accepted by Melton Borough Council, it must carry out a procurement exercise for the service.
- 4.2 For services currently delivered by Melton Borough Council, EOI can be submitted during April each year.
- 4.3 For Council Services delivered by another organisation under outsourced arrangements EOI can only be submitted during the period of three months starting 15 months and ending 12 months before the contract expiry date.
- 4.4 EOI received outside of this timescale are unlikely to be considered.

## 5. Submitting an Expression of Interest (“EOI”)

5.1 An EOI submitted to Melton Borough Council must be in writing and include the following information :

1. Information about the financial resources of the relevant body submitting the expression of interest.
2. Evidence that demonstrates that by the time that any procurement exercise the relevant body submitting the expression of interest will be capable to providing or assisting in providing the relevant service.
3. Information about the relevant service sufficient to identify it and the geographical area to which the EOI relates.
4. Information about the outcomes to be achieved by the relevant body, or, where appropriate, the consortium of which it is part, in providing or assisting in the provision of the relevant service, in particular :
  - (a) How the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority’s area; and
  - (b) How it will meet the needs of the users of the relevant service.
5. Where the relevant body consists of employees of the relevant authority details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the EOI.
6. Where the relevant body proposes to deliver the relevant service as part of a consortium or to use a sub-contractor for delivery of any part of the relevant service, the information in paragraphs 1 and 2 must be given in respect of each member of the consortium and each sub-contractor as appropriate.

5.2 Additional information – what do we want to assist us?

EOI should demonstrate how the proposal might offer social, economic or environmental benefits to the community.

Source user needs – consultation that has taken place.

5.3 When an EOI is received by Melton Borough Council it will notify the Relevant Body that has submitted an EOI of the timescale that it will notify the Relevant Body of its decision. Melton Borough Council will notify the Relevant Body of the timeframe within 30 days of receipt of the EOI. As a guide the timescale for determining an EOI will be between X + Y depending on the size and complexity of the service the EOI relates to.

## 6 Modifying an EOI

- 6.1 If Melton Borough Council believes that it would otherwise reject an EOI it may contact the relevant body who submitted the EOI to seek to agree a modification. Examples of when this could be appropriate would be if a request to operate two community activity projects was lodged when the Council had already resolved to stop operating one. It would be appropriate to seek agreement to amend the number. If agreement to modify cannot be reached Melton Borough Council may reject the EOI.

## 7. Grounds for rejecting an Expression of Interest

- 7.1 Melton Borough Council may only reject an EOI on one or more of the following grounds :-

7.1.1 The EOI does not comply with any of the requirements of the Act or in regulations

7.1.2 The relevant body provides information in the EOI which in the opinion of Melton Borough Council is in a material particularly inadequate or inaccurate

7.1.3 Melton Borough Council considers, based on the information in the EOI, that the relevant body or, where applicable –

- (a) any member of the consortium of which it is part, or
- (b) any sub-contractor referred to in the EOI is not suitable to provide or assist in providing the relevant service.

7.1.4 The EOI relates to a relevant service where a decision – evidenced in writing, has been taken by Melton Borough Council to stop providing that service.

7.1.5 The EOI relates to a relevant service –

- (a) provided, in whole or in part, by or on behalf of Melton Borough Council to persons who are 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 Melton Borough Council, critical to the well-being of those persons.

7.1.6 The relevant service is already the subject of a procurement exercise.

7.1.7 Melton Borough Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.

7.1.8 Melton Borough Council has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of Melton Borough Council propose to establish.

7.1.9 Melton Borough Council considers that the EOI is frivolous or vexatious.

7.1.10 Melton Borough Council considers that acceptance of the EOI is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

## 8 Commencing procurement

8.1 If Melton Borough Council accepts an EOI, it will automatically trigger an open procurement exercise. The relevant body that triggers the procurement exercise may not eventually be the provider for that service. The procurement exercise must be appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise and must comply with procurement law.

8.2 If the Public Contract Rules 2006 apply to the service, and/or is not listed in Part B of those regulations, the procurement exercise must follow the procedures for advertising, specifying and awarding contracts set out in those regulations.

8.3 In circumstances where the Public Contracts Regulations do not apply; the Council may decide how to procure the service. Melton Borough Council has adopted standing orders, set out in its Constitution, which may be appropriate.

8.4 Melton Borough Council must consider how expressions of interests and procurement exercises triggered by one or more expressions of interest being accepted would promote or improve the economic, social or environmental well-being of the borough of Melton. This must be consistent with the Law applying to the award of contracts.