

2. Who can submit an expression of interest - what is a relevant body?

The following are relevant bodies that are eligible to submit an expression of interest:

- 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.

In the Act “voluntary body” means a body that is not a public or local authority, the activities of which are not carried on for profit. The fact that a body’s activities generate a surplus does not prevent it from being a voluntary body so long as that surplus is used for the purposes of those activities or invested in the community.

A “community body” is a body which is not a public or local authority, the activities of which are primarily for the benefit of the community.

3. What is a relevant authority?

As a district council, Exeter City Council is a relevant authority. The following are also relevant authorities:

- A county council;
- A London borough council;
- Any other person or body carrying out a function of a public nature specified by the Secretary of State in regulations.

Certain fire and rescue authorities are also added as relevant authorities in the regulations.

4. What is a relevant service?

A relevant service is a service provided by, or on behalf of the council in the exercise of its functions (except services which are excluded from the right in secondary legislation).

The right only applies to the provision of services. It does not provide for delegation of the council's "functions". Generally speaking, a function is a duty or power that requires decision-making by, for example, a responsible member or officer or a council committee, whereas a service does not. For example, decisions on planning applications would be a function, but waste collection is a service.

Under the regulations, a number of health and children's services are excluded from the right, either permanently or in most cases, until 1 April 2014. Services that relate to named individuals with complex needs, and services managed through direct payments are permanently excluded or treated as not falling within the scope of the right to challenge.

5. When can expressions of interest be submitted?

The council is entitled to specify a period during which expressions of interest can be submitted either for all services or for particular services.

At present the council has decided not to specify a period and expressions of interest may therefore be submitted at any time. This position will be reviewed every 12 months (starting in July 2013).

For services or parts of services currently provided by bodies other than the council, those submitting expressions of interest should note that contractual obligations may mean there is an extended timescale for the council to make a decision on an expression of interest.

The community right to challenge is not a right to deliver the service if an expression of interest is submitted or accepted. It is for the council to decide, in line with statutory provisions, whether to reject or accept (with or without modification) an expression of interest.

6. How do I submit an expression of interest?

In order to initiate a challenge a relevant body must submit an expression of interest that includes the following information:

- (i) details of how they meet the definition of a relevant body;
- (ii) details about their financial resources;
- (iii) evidence that demonstrates that by the time of any procurement exercise the relevant body will be capable of providing or assisting in providing the relevant service;
- (iv) details of the relevant service sufficient to identify it and the geographical area to which the expression of interest relates;
- (v) details 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 services, 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.
- (vi) where the relevant body consists of employees of the council details of how that relevant body proposes to engage other employees of the council who are affected by the expression of interest.

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 under (ii) and (iii) must be given in respect of each member of the consortium and each sub-contractor as appropriate.

All expressions of interest should be sent to:

Corporate Manager
Policy, Communications and Community Engagement
Exeter City Council
Civic Centre
Paris Street
Exeter
EX1 1JN
policy.unit@exeter.gov.uk

7. What will the council do when it receives an expression of interest?

When an expression of interest is received by the council, we will notify the relevant body in writing of the timescale within which we will reach a decision. We will do this either within 30 days after the close of any period specified or, if no such period has been specified within 30 days of receiving the expression of interest. We will publish this on our web site. Different periods may be specified for different cases.

A panel consisting of the service manager responsible for the service, the relevant Portfolio Holder, the Assistant Director, an officer from the Contracts Unit with procurement expertise and one member from the two opposition groups will consider expressions of interest and make a recommendation to the Executive.

The panel will review the expressions of interest against the required information outlined above (see section 7) and the grounds for rejection (see section 9 below).

A report will be presented to Scrutiny Committees on an annual basis detailing expressions of interest received and the decisions made. The report will be published on the council's website.

8. When can the council reject an expression of interest?

Expressions of interest can be rejected on one or more of the following grounds:

- (i) the expression of interest does not comply with any of the requirements specified in the Act or in regulations
- (ii) the relevant body provides information in the expression of interest which in the opinion of the relevant authority, is in a material particular inadequate or inaccurate
- (iii) the relevant 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
- (iv) the expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service
- (v) the expression of interest relates to a relevant service -
 - a) provided, in whole or in part, by or on behalf of the relevant 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 relevant authority, critical to the well-being of those persons
- (vi) the relevant service is already the subject of a procurement exercise
- (vii) the relevant authority and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing
- (viii) the relevant authority has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of that authority propose to establish
- (ix) the relevant authority considers that the expression of interest is frivolous or vexatious

- (x) the relevant authority considers 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 statutory duty

If the council rejects an expression of interest it must give reasons in its notification to the relevant body and also publish the notification on the council's website.

There is no appeals process to the community right to challenge therefore it could be subject to judicial review.

9. What happens when the council accepts an expression of interest?

Where it accepts an expression of interest the council must carry out a procurement exercise relating to the provision of the relevant service in which the relevant body can bid alongside others. This means the relevant body that triggers the exercise may not eventually be the provider of that service.

10. What happens if the council wants to modify an expression of interest?

Any modification must be agreed with the relevant body submitting an expression of interest. If an agreement cannot be reached, the council may reject the expression of interest.

If the council accepts with modification an expression of interest it must publish the reasons for its decision which must include publication on the council's website. A procurement exercise must then be carried out.

11. How will relevant bodies be informed of the decision on the expression of interest?

The council will notify the relevant body in writing of its decision on an expression of interest and will specify the period between an expression of interest being accepted and a procurement exercise starting. This aims to allow relevant bodies the time they need to prepare to compete in the procurement exercise. Details of the expressions of interest received and the decisions made will be published on the council's website.

12. When will a procurement exercise be carried out?

A procurement exercise will be carried out when the council accepts one or more expressions of interest for a relevant service. The procurement exercise will be led by the Contracts Unit and will be appropriate to the value and nature of the contract.

Where the service is of a value or nature to which the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of those regulations, the procurement exercise must follow procedures for advertising, tendering and awarding contracts set out in those regulations.

Other organisations may bid in the procurement exercise that follows a successful challenge relating to the provision of the service – these could include other relevant bodies, or private sector organisations.

[Updated January 2016]