**Right to challenge Process - Guidance**

Making Bath & North East Somerset

an **even** better place to live, work and visit

The Council is committed to active engagement with the communities it serves. We are always interested to listen to suggestions and proposals from both individuals and organisations on ways in which our services can be improved or modified to improve their value, relevance and effectiveness.

The Council publishes a list of ‘Commissioning Intentions’ prior to the start of each financial year which sets out the areas of activity which will be the subject of commissioning reviews/plans and may give rise to subsequent procurement activity.

There is a formal ‘right to challenge’ process which enables a ‘relevant body’ to express an interest in providing specified services commissioned or undertaken directly by the Council. For information on the criteria for becoming a relevant body, see the guidance notes in the [expression of interest template](http://www.bathnes.gov.uk/sites/default/files/bnes_eoi_template_v4.doc). This is a process governed by statute which if the expression of interest is accepted only offers the relevant body the chance to compete to provide the service against all other interested parties at a future date, and there is no guarantee that a contract will be awarded at the end of the process. Note that there is a limited time period for submitting expressions of interest and only those services within the annual commissioning intentions list will be considered for challenge for the year in which they are listed.

More details of how this process works follows but our message to you if you have a good idea for service improvement is ***“come and talk to us first”.*** There may be ways in which we can help you to achieve what you want without having to submit an EOI.

The Council is structured into three Directorates:

* People and Communities,
* Place
* Resources.

Each of these strategic Directorates has a number of Divisional Directors who look after the various aspects of the Division’s work. Click on this link [contact us](http://www.bathnes.gov.uk/contact-us) to see the Council’s main web site for details of how the Council is structured:

If you have an improvement idea you would like us to consider, contact us by email: [rightochallenge@bathnes.gov.uk](mailto:rightochallenge@bathnes.gov.uk) or telephone the Council’s Procurement Helpline and we will put you in touch with the relevant Divisional Director.

1. Engagement with relevant bodies

We believe that maintaining a regular dialogue with relevant bodies is far more likely to lead to effective service improvements in a shorter timescale than the challenge process, which can be protracted. As an Authority committed to working with its local communities to deliver better outcomes for its citizens, we will take every opportunity to keep informal channels of communication open. After this period of informal communication a relevant body may still wish to submit a formal Expression of Interest (EOI) but note that there is a limited time frame of February 18th – March 31st each year for receipt of formal EOI’s and that the range of services and year in which challenges will be considered are specified in the Council’s [Commissioning Intentions Programme](http://www.bathnes.gov.uk/sites/default/files/master_list_commissioning_intentions_finalfeb_2013.docx).

1. Central monitoring and control

An EOI should be submitted to [rightochallenge@bathnes.gov.uk](mailto:rightochallenge@bathnes.gov.uk) in the prescribed format using the [EOI template](http://www.bathnes.gov.uk/sites/default/files/bnes_eoi_template_v4.doc) (click on link) to ensure that all EOIs are dealt with consistently. This email account is monitored by the Council’s Corporate Procurement and Commissioning team and will be centrally logged then passed to the relevant Divisional Director to action.

1. Consideration of EOI

The relevant Divisional Director will consider the EOI either individually or in conjunction with a cross service panel. The final decision as to whether an EOI will be accepted, rejected or accepted with modifications will be taken after consultation with other Council Officers and Elected Members as appropriate.

Where an EOI is received from 2 or more Council staff, those evaluating the EOI will be independent from that service.Additionally, when an EOI is received from a relevant body to deliver what is currently an in house service; those making the recommended response will be independent from the in house service. Where a service, which is the subject of an EOI, is currently delivered with other partners, external and/or internal, these partners will be notified that the EOI has been received by the service area that is subject to challenge.

1. What will Evaluators look for when considering EOI’s?
   1. Does the EOI comply with the Regulations\* The Council may refuse to consider an expression of interest submitted outside the specified January to March period each year. Further information may be requested but any information supplied voluntarily outside the scope of the Regulations will not be used as a ground for rejection.

\*(The [DCLG Statutory Guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf) provides more details and advice on how EOI’s are to be evaluated)

* 1. Has the definition of a ‘relevant body’ been met by the group expressing interest?
  2. Where the proposal is to deliver the service as part of a consortium or to use a sub-contractor for delivery of any part of the service, information described in 4.4.1 and 4.4.2 (below) must be given in respect of each member of the consortium and each sub-contractor as appropriate.
  3. Does the EOI provide:
     1. Information about the financial resources of the body submitting the EOI
     2. Evidence that demonstrates that by the time of any procurement exercise, the body submitting the EOI will be capable of providing or assisting in providing the relevant service.
  4. Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates.
  5. The Council is required to consider the social value of expressions of interest in carrying out procurement exercises. This is reflected in the Public Services (Social Value Act) 2012. Expressions of interest should demonstrate how the proposal might offer the social, economic or environmental benefits to the community and take into account social considerations, over and above the provision of the service. This could, for example, include creating local jobs, improving local skills, increasing local volunteering opportunities, or improving environmental conditions.
  6. Information about other 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 it will meet the needs of the users of the relevant service.
  7. The Council is required to consider the social value of expressions of interest in carrying out procurement exercises. This is reflected in the Public Services (Social Value Act) 2012 Expressions of interest should demonstrate how the proposal might offer the social, economic or environmental benefits to the community and take into account social considerations, over and above the provision of the service. This could include creating local jobs, improving local skills, increasing local volunteering opportunities, or improving environmental conditions.
  8. The Council also has a general duty of best value in accordance with the Local Government Act 1999. Any Expressions of Interest must not conflict with the Council’s statutory duties including the need to ensure proposals will deliver value for money. Proposals must show how services can be improved at the same or lower levels of cost.
  9. It is important that proposals meet the needs of service users. In demonstrating how they will deliver outcomes that meet these needs, relevant bodies may refer to evidence such as needs assessments prepared by the Council, or other sources. They may, for example, include a survey of service users conducted by the relevant body itself.
  10. Separate arrangements will apply to employees wishing to submit an expression of interest; in particular the way in which other employees are engaged will need to be agreed as part of the response. The level of engagement will however need to be appropriate and proportionate to the size and nature of the service and the number of employees directly affected by the expression of interest.

1. Accepting, modifying or rejecting an EOI

The time taken to evaluate EOI’s will vary according to the nature and complexity of the EOI. A decision will be made and communicated to the relevant body in writing after evaluation by the Council. The anticipated timescale for communicating a decision on the outcome of the EOI will be issued within 30 days of the end of the specified period (i.e. 30th April). Once decided, the outcome of the EOI evaluation will also be published on the Council’s website.

There are three possible outcomes, following evaluation:

**(i) Accept EOI**

If the EOI is accepted, the relevant body will be notified in writing and given a date by which the procurement process will start.

The date by which a procurement process starts must be reasonable, realistic and achievable for all parties. It will commence when sufficient time has been allowed for preparatory commissioning and procurement activities in accordance with the Council’s commissioning framework. The period is anticipated to be different for each procurement process on the basis that services being procured could range from being small to very large and complex. Staff working within a relevant service will also need to be notified and given time to prepare an in-house bid should they wish to compete as part of a procurement process.

**(ii) Reject EOI**

The relevant body will be notified in writing if the EOI has been rejected and the reasons why. This will be published on the website as well. There is no appeal procedure although further challenge may be possible by means of a judicial review.

**(iii) Modify EOI**

If it is deemed prudent for an EOI to be modified, once the agreement of the relevant body has been obtained the relevant Divisional Director will make the modification and process the evaluation in the usual way

1. Time period for EOI receipt/Commissioning Intentions

The Council’s position for receipt of an EOI is that services will only be open to an EOI during the period February 18th (or nearest working day) – March 31st each calendar year.

This will help ensure Council resources are effectively deployed and allow for work on reviewing or tendering services to fit with normal planning cycles. The specific time when a service is scheduled for review, will be published as part of the Council’s ‘[Commissioning intentions](http://www.bathnes.gov.uk/sites/default/files/master_list_commissioning_intentions_finalfeb_2013.docx)’.

1. Excluded services; i.e. services exempt from an EOI

All services can be the subject of an EOI and the Council will list the year in which it intends to consider specific services on its [Commissioning Intentions](http://www.bathnes.gov.uk/services/business/selling-council/right-challenge-0) pages. Certain Statutory Functions are excluded from EOI’s such as the duties of the Section 151 Officer

[[1]](#footnote-1)– or determining a planning decision. In addition the following services are excluded, either for a limited period or permanently:

(i) Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by the Council or by a Primary Care Trust, NHS trust or NHS foundation trust (an “NHS body”) under a partnership arrangement or by a relevant authority and an NHS body or a Strategic Health Authority, acting jointly.

(ii) Until 1 April 2014, a relevant service commissioned by an NHS body on behalf of a relevant authority.

(iii) A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.

1. Process flow diagram

Have you a Service Improvement idea? Come and talk to us first.

We want to ‘Listen and engage’ with potential providers

We could agree ways to improve

without the need for an

EOI process!

Submitter advised of decision and informed of procurement start date Decision published

Amendment requested and re-evaluated

Submitter advised of decision and informed of reasons for rejection Decision published

Reject

Modify

Accept

Decision to approve, approve with modification(s) or reject communicated within scheduled timescale

The Council will register your EOI, send you an acknowledgement with a scheduled date of response and evaluate your proposal

Expression of Interest form submitted via dedicated email address: righttochallenge@bathnes.gov.uk

1. Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs. The Section 151 officer is usually the local authority’s treasurer and must be a qualified accountant belonging to one of the recognised chartered accountancy bodies. The Section 151 officer has a number of statutory duties, including the duty to report any unlawful financial activity involving the authority (past, present or proposed) or failure to set or keep to a balanced budget. The Section 151 officer also has a number of statutory powers in order to allow this role to be carried out, such as the right to insist that the local authority makes sufficient financial provision for the cost of internal audit. [↑](#footnote-ref-1)