

**AGENDA ITEM:**

<b>REPORT TO:</b> Meeting of the	<b>MERSEYSIDE FIRE &amp; RESCUE AUTHORITY</b>
<b>DATE:</b>	<b>3 JULY 2012</b>
<b>REPORT NO.</b>	<b>CFO/095/12</b>
<b>REPORTING OFFICER:</b>	<b>DIRECTOR OF LEGAL, PROCUREMENT AND DEMOCRATIC SERVICES</b>
<b>CONTACT OFFICER:</b>	<b>JANET HENSHAW EX 4301</b>
<b>OFFICERS CONSULTED:</b>	<b>SHARON MATTHEWS HEAD OF PROCUREMENT</b>
<b>SUBJECT:</b>	<b>THE NEW COMMUNITY RIGHT TO CHALLENGE</b>

**APPENDIX A                      TITLE                      STATUTORY DRAFT GUIDANCE**

**ATTACHED – HARD COPY**

Purpose of Report

1. To request that Members consider the recommendations of this report relating to the new Community Right to Challenge and its potential implications for Merseyside Fire and Rescue Authority

Recommendation

2. That Members;
  - a) Note the report and its implications
  - b) Approve the specification of time periods for submission of expressions of interest to coincide with meetings of the Social Growth and Localism sub committee.
  - c) Approve the publishing of any rejections of an expression of interest.
  - d) Instruct the Clerk to the Authority to report to the Social Growth & Localism sub committee with draft processes and procedures for this matter.

Introduction & Background

3. The Localism Act 2011 was granted Royal Assent in November 2011 and sections 81 to 86 are concerned with the “Community Right to Challenge” which at the time of Royal Assent being given, applied to County Councils, District Councils and “such other person or body carrying on functions of a public nature as the Secretary of State may specify by regulations”

4. Members will recall that the Government, via the Department for Communities and Local Government, undertook a consultation last year on extending this Right to Challenge to Fire and Rescue Authorities. MFRA responded to this with concerns about the effect that it may have on procurement resources and other areas of the Service and particularly in terms of statutory functions and the training required to ensure safety.
5. However Draft Regulation and Draft Statutory Guidance have now been published and Metropolitan Fire and Rescue Authorities as well as combined Fire Authorities have now been included. Finalised Regulations was due be published on 27 June 2012. The draft Guidance states that as the Regulations are subject to Parliamentary approval, they may be amended and a final version of the Guidance will be published when the Regulations come into force.
6. The Guidance covers who may apply to the Fire Authority with an expression of interest to provide services on behalf of the Authority, the process which must take place when such an expression of interest is received and the procurement procedures which must be undertaken.
7. Voluntary bodies, charitable trusts, parish councils or potentially two or more employees may express an interest. This is to deliver services but will allow delegation of actual statutory functions, however those services which are perhaps connected to or incidental to such functions will be subject to the Community Right to Challenge. So for example, it is duty to provide **advice, on request**, about—
  - (i) how to prevent fires and restrict their spread in buildings and other property;
  - (ii) the means of escape from buildings and other property in case of fire but it is not a statutory duty to provide for example home fire safety checks or smoke alarms. Equally the provision of many support services would be subject to potential expressions of interest.
8. Authorities must consider all expressions of interest that are made in writing and meet other requirements under regulations and these can be made at any time unless an Authority specifies time periods for submission. It is proposed that MFRA specifies time periods to coincide with meetings of the Social Growth & Localism Committee so that this committee may consider these submissions.
9. Some procurement rules have been slightly relaxed however authorities must provide notification of the timescale within which it will consider an expression of interest within 30 days, if it proposes to specify time periods as above.
10. The Authority may only reject an expression of interest on one of the grounds listed in regulations The applicable for Fire and Rescue Authorities are listed below:
  - That it does not comply with the Act or Regulations
  - That the information provided is in a material way inadequate or inaccurate
  - That the authority has already made a decision to stop the provision of the service in question
  - The service is already subject to a procurement exercise

- The Authority is involved with discussions regarding the provision of the service with a third party
- The Authority has already published its intention to consider a proposed expression from 2 or more employees
- The expression of interest is frivolous, vexatious or contravenes the law

If an expression of interest is rejected the reasons must be published in such a manner as it thinks fit, which must include publication on the Authority's website.

11. Authorities must specify the period of time between expressions of interest being accepted and when the procurement exercise will begin and this must comply with the Public Contract Regulations 2006 where the relevant thresholds apply.

#### Equality & Diversity Implications

12. An EIA will be completed when the Regulations are published and the Statutory Guidance is finalised however it is clear that any potential provider of services on behalf of the Authority will need to ensure that they do not prevent the Authority from compliance with its public equality duties as laid out in the Equality Act 2011.

#### Staff Implications

13. There are clear staffing implications if an expression of interest is accepted as transfer of staff to a different entity under TUPE Regulations may apply.

#### Legal Implications

14. The legal implications are fully set out in this report and the Draft Guidance attached as Appendix A.

#### Financial Implications & Value for Money

15. There are clear financial implications for the future if any expression of interest is accepted as the costs for any service will need to be developed before any procurement exercise can be taken.

#### Risk Management, Health & Safety, and Environmental Implications

16. There are clear implications for Health and Safety and there are environmental implications in terms of the need to ensure that any potential provider of services complies with relevant legislation and other obligations. This feeds into the potential risks for the Authority both financially and for reputational reasons.

Contribution to Our Mission – To Achieve; Safer Stronger Communities – Safe Effective Firefighters”

17. The Authority will need to ensure that any potential provider of services complies with the Mission of the Authority.

**BACKGROUND PAPERS**

Report CFO/037/11