

Report of: Chief Officer Projects Programmes & Procurement Unit and Head of Customer Contact

Report to: Assistant Chief Executive Citizens & Communities

Date: 13 July 2015

Subject: Community Right to Challenge Expression of Interest – Interpreting and Translation Service

Are specific electoral wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity or cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If 'yes', access to information procedure rule number:10.4 (3)		
Appendix number: 1		

Summary of main issues

1. An expression of interest under Community Right to Challenge legislation for the Interpreting and Translation Service was received on 30 January 2015.
2. This expression of interest is the first expression processed by the council and the legislation has not been widely used nationally.
3. In accordance with the Leeds City Council approved process for consideration of an expression of interest, the Projects Programmes and Procurement Unit (PPPU), and the directorate have jointly considered the expression. A decision on the expression of interest may be made by the relevant Director or may be referred to Executive Board for a decision.
4. The decision on the expression of interest will be to accept, to reject or to accept with a modification and the council must notify the applying organisation of the outcome by 30 July 2015. This report considers the expression of interest against the criteria in the legislation.

Recommendations

5. To note the specific criteria set down in law, detailed in paragraph 3 and appendix 2, under which an expression of interest can be assessed.
6. Based on the information available, and the criteria for determining an acceptance or rejection of an expression of interest as set out in the legislation, to confirm that the expression of interest be accepted.
7. To note that following acceptance of the expression of interest a procurement will be triggered, and that the Assistant Chief Executive Citizens & Communities will be asked to consider a separate report with regard to the triggered procurement process in due course and in accordance with Contracts Procedure Rules.

1 Purpose of this report

- 1.1 This report considers the expression of interest received on 30 January 2015 for the Interpreting and Translation Service in its entirety against the criteria set out in the Community Right to Challenge legislation.

2 Background information

The Legislation

- 2.1 The Right to Challenge is part of the Localism Act 2011. The legislation allows voluntary or community bodies, parish councils and employees to express an interest in running a council service. If accepted, the council must undertake a procurement exercise and the normal procurement rules will apply. There does not appear to be any obligation to appoint following the completion of a tender exercise. If none of the tenders submitted represent a better position for the council than continuing with the current provision, they can be rejected.
- 2.2 The criteria for determining an acceptance or rejection of an expression of interest is specified under the legislation.
- 2.3 The Right to Challenge legislation has had limited take up nationally and the application of the legislation has not yet been tested through the courts. Government guidance on the Right to Challenge is not comprehensive or detailed in content. An assessment of an expression against the criteria and an assessment of the implications following a decision have not previously been undertaken by the council.

Leeds City Council Procedure

- 2.4 On 17 October 2012 Executive Board determined an approach to decisions on Community Right to Challenge expressions of interest. An outline of this process is provided below:
- 2.5 (i) The relevant Directorate and PPPU jointly consider any expression;
(ii) Relevant Members are consulted and the Executive Board Member who is responsible for the service area that is being considered in the expression of interest may refer the expression to Executive Board for a decision;

(iii) Liaison is undertaken with Area Leadership. In this case the service is council-wide and therefore this is not applicable;

(iv) A report is provided jointly by the PPPU lead and the directorate, taking account of feedback;

(v) The Chief Officer PPPU approves the report;

(vi) The relevant Director makes a decision on an expression except where referred to Executive Board.

2.6 An approach of engagement with voluntary and community sector organisations is supported.

Current position

2.7 An informal expression of interest was made by an organisation in November 2013 in relation to the council's interpreting and translation service. The organisation registering the expression of interest is a West Yorkshire based Community Interest Company limited by guarantee providing interpreting services, and training and employment opportunities.

2.8 Engagement with the organisation was undertaken during the period of November 2013 to July 2014. The engagement took the form of email exchange and a meeting between the service and the organisation to discuss how the service and the organisation could work together more closely.

2.9 On 30 January 2015 a formal expression of interest was received from the organisation in relation to provision of the 'Interpreting and Translation Service in its entirety'. The expression of interest is provided at appendix 1 (Exempt).

2.10 The Interpreting and Translation Team is based within Face to Face Contact, Citizens and Communities directorate. The service employs four full time equivalent staff - one coordinator and three administrative staff. The function of the team is to manage, control and monitor the interpreter list. The service manages a register of approximately 300 freelance interpreters and translators. A network of external providers is offered work if there are no interpreters and translators available. The cost of the service in 2014 - 2015 was just under £500,000, with an income from external charging of approximately £100,000, leaving the net cost to the council of £400,000.

2.11 On 26 February 2015 the applying organisation was notified that a decision would be made on the expression of interest within six months of 30 January 2015.

2.12 A team of PPPU and the service have considered the expression of interest in detail in accordance with the legislation.

2.13 A similar expression of interest has been received by Wakefield council for Wakefield Language Services. Information provided by the Wakefield Adult Transformation Team Quality Manager confirms that a decision to accept this right to challenge was made by Corporate Director Adults, Health & Communities in discussion with the relevant Cabinet Member and an email was sent to the applying organisation to confirm this in October 2014.

3 Main issues

Consideration of criteria

3.1 An analysis of the expression of interest against each individual requirement and ground for rejection as set out in the legislation has been undertaken. This analysis indicates that the expression of interest fulfils the criteria set down in legislation and the expression should be accepted. The details of this analysis are set out in appendix 2.

3.2 Three criteria have been subject to further consideration and this is detailed below, however, this does not affect the recommendation to accept the expression of interest.

3.3 The legislation requires that the expression of interest provides information about the financial resources and capability of sub-contractors for delivery of any part of the relevant service. It is considered there may be limited grounds for seeking further evidence or possible rejection under this criteria in relation to information provided on sub-contractors. The applying organisation's freelance interpreters may be termed 'sub-contractors'. The expression of interest states that the organisation has a bank of 200 + self-employed interpreters who are quality assured (DBS checked, language assessed or qualified with a relevant interpreting qualification, reference checked and insured). The expression of interest states that the bank is now able to cover over 100 different languages and dialects over a Yorkshire wide geographical area.

- The financial resources of the subcontractors have not been provided in the expression of interest. The details of the qualifications of the sub-contractors are similarly not provided.

- On these aspects, information could be sought from the organisation; the expression of interest could be rejected; or a modification could be requested.

- However it should be noted that in a procurement situation, the vetting of up to 200 freelance interpreters would not generally occur, particularly their financial standing (which would have little relevance to the exercise). Therefore, it is recommended that this would not prevent the expression of interest proceeding.

3.4 The legislation requires that the expression of interest provides information sufficient to identify the geographical area to which the expression of interest relates. The legislation also requires that the expression of interest provides information about how the provision or assistance will promote or improve the social, economic or environmental well-being of the council's area.

- It is confirmed that there is nothing in the applying organisation's objectives to prevent them from trading in Leeds.

- There is nothing in the legislation to prevent an organisation not from the Leeds area submitting an expression of interest. The well-being proposals included in the expression of interest address how the provision or assistance will promote or improve the social, economic or environmental well-being of the Leeds area.

- The organisation has restrictions upon fulfilling some of the 'well-being' commitments that they have made in relation to use of surplus. This should be addressed by the organisation during the procurement process.

3.5 The legislation requires that the expression of interest is considered as to whether acceptance is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty. The statutory duty of Best Value may be included in this consideration.

- Indications are that the costs of undertaking any resulting procurement could be taken into account in assessing Best Value, but these are not expected to be material in relation to a service of this size.
- The service currently recovers costs from externally-provided interpreting services to organisations such as the NHS and other organisations. However, the appropriate time to test these matters would be through a procurement exercise.

Summary of main issues

3.6 The expression of interest is considered valid in accordance with the legislation and should be accepted.

Implications if the expression is accepted

3.7 If the expression of interest is accepted this will have the following implications:

- A timeframe for undertaking a procurement must be set and notification of the timeframe published on the council's website.
- Communications with staff, and with interpreters and translators currently registered with the council service, will be required.
- A procurement process must be undertaken including development of tender documentation.
- Resourcing a procurement from both the service and from PPPU will be required.
- The consequences for interpreters and translators currently registered with the council service must be considered.
- The in-house service will be objectively assessed against tenders received.
- Possible TUPE transfer of staff may result from a procurement process.

4 Corporate considerations

4.1 Consultation and engagement

4.1.1 Citizens and Communities Leadership Team and the Chief Officer PPPU have been consulted.

4.1.2 The relevant Elected Lead Member has been consulted.

4.2 Equality and diversity, cohesion and integration

- 4.2.1 An equality and diversity, cohesion and integration screening is attached at appendix 3 and indicates that a detailed assessment will be undertaken pre-procurement.

4.3 Council policies and the best council plan

- 4.3.1 The Interpreting and Translation Service contributes to the best council plan objective of 'supporting communities and tackling poverty'. It will be important to ensure that tender specifications contribute to this objective.

4.4 Resources and value for money

- 4.4.1 An acceptance of the expression of interest will have resource implications in relation to the resulting procurement which would be triggered.
- 4.4.2 A rejection of the expression of interest may have resource implication if further expressions of interest are submitted by the relevant body or a legal challenge against the rejection is undertaken by the relevant body.

4.5 Legal implications, access to information and call-in

- 4.5.1 The constitution provides that the relevant Director may make decisions on expressions of interest in consultation with the Chief Officer PPPU.
- 4.5.2 Legal advice from the commercial team in PPPU has been incorporated into this report.
- 4.5.3 The council must consider the expression of interest in accordance with the legislation and statutory guidance and is open to challenge if it does not do so.
- 4.5.4 The maximum period it will take to notify the relevant body of a decision on the expression of interest is published on the council website. The decision on the expression of interest and the period set for any procurement triggered will be published on the council website.
- 4.5.5 The information in appendix 1 has been identified as exempt as it includes information relating to the financial or business affairs of the applicant organisation and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 4.5.6 The decision of this report will be published, and any consequent procurement will be advertised on the council's procurement website.
- 4.5.7 This decision is a significant operational decision and not subject to call-in. Any decision to procure, triggered by an acceptance, may be a key decision.
- 4.5.8 If the council carries out a competitive procurement process for the provision of the same or similar services TUPE may apply and if so the employees that are assigned to the provision of the services will transfer under TUPE to the new replacement provider. Whether or not employees are assigned will depend on a number of factors including the amount of time staff spend on providing the service

to be commissioned. The application of TUPE and its implications will be considered during the procurement scoping process.

4.6 Risk management

4.6.1 There is risk to accepting the expression of interest in relation to business continuity and staff morale. Implications for interpreters and translators currently registered with the council service will also have to be managed.

4.6.2 There is risk in rejection of the expression of interest in relation to possible legal challenge.

5 Conclusions

5.1 The expression of interest fulfils the requirements of the legislation and there are no clearly identified reasons to reject the expression of interest. The expression of interest should therefore be accepted.

6 Recommendations

6.1 To note the specific criteria set down in law, detailed in paragraph 3 and appendix 2, under which an expression of interest can be assessed.

6.2 Based on the information available, and the criteria for determining an acceptance or rejection of an expression of interest as set out in the legislation, to confirm that the expression of interest be accepted.

6.3 To note that following acceptance of the expression of interest a procurement will be triggered, and that the Assistant Chief Executive Citizens & Communities will be asked to consider a separate report with regard to the triggered procurement process in due course and in accordance with Contracts Procedure Rules.

7 Background documents¹

7.1 None

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.