

Record of Officer's Decision

The Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Date of Decision:	30th June 2022
Decision Maker (Officer):	Anastasia Simpson, Assistant Director (Partnerships)
Authority for Delegated Decision (Cabinet/Committee Decision or Scheme of Delegation – provide reference):	<p>Part 3, Schedule 3 – Delegation of Executive Functions delegated to Officers 4.4 (1) – the Assistant Director has delegated authority to discharge executive functions within their respective service areas.</p> <p>The Assistant Director (Partnerships) has delegated authority to discharge executive functions within their respective service areas (Part 3.39).</p>
Identify which Portfolio Holder(s)/Committee Chairman consulted?	N/A
Ward Member(s) consulted?	N/A
Is it a Key Decision?	No
Is it subject to call-in?	No
Decision Made:	To seek an exemption from the Council's procurement rules to enter into a consultancy agreement with the EELGA (value £10,350.00).
Reason for Decision (if a report was produced to support the Decision, refer to or attach it):	<p><u>“Public contracts between entities within the public sector”</u></p> <p>Background – the “Teckal” test</p> <p>The “Teckal Test” is a reference to the court case Teckal s.r.l v the Commune of Viano C-107/98, 1999 concerning the award of a contract for the</p>

management of heating services for certain municipal buildings to a consortium (AGAC) set up by several local authorities (including the awarding authority) and without an EU public procurement tender procedure having been followed.

The court held that EU procurement rules do not need to be complied with by the contracting authority where the winning provider:

- Is controlled by the awarding authority/authorities in a manner “similar to that which it exercises over its own departments”, known as “structural control” AND
- Carries out the essential part of its activities “with the controlling authority or authorities”, known as “economic dependency”

Codification – Article 12, Public Contracts Regulations 2015

The outcome of the Teckal case is now codified in the updated EU Procurement Directives 2014 and applied in English Law under PCR2015, incorporating some amendment and clarification as follows:

1) A public contract awarded by a contracting authority to a legal person falls outside the scope of this Part where all of the following conditions are fulfilled:—*

(a) The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

(b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and

(c) There is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

Further to the above, there is a specific subsidiary Paragraph (#4) which covers awards of contracts where “*the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments*”.

	<p>Application of “Article 12” to the East of England LGA</p> <p>East of England LGA believes that it meets the requirements of Article 12, Para 4 in respect of supplying services, either directly or through our “Talent Bank” to the following organisations in the East of England:</p> <ul style="list-style-type: none"> • The County Councils of Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk (and their associated Fire and Rescue Authorities) • The Unitary Authorities of Bedford Borough, Central Bedfordshire, Luton, Peterborough, Southend-on-Sea and Thurrock • The 41 district and borough authorities within the counties of Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk <p><i>*in effect, “Legal Person” here and throughout refers to an organisation where applicable</i></p>								
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>No specific risks have been identified.</p>								
<p>Details of any Alternative Options Considered and rejected (together with reasons):</p>	<p>No alternatives could be considered as the East of England LGA are the only organisation that can supply this piece of work as the Regional Employers.</p>								
<p>Details of any declarations of interest (by Portfolio Holder/Committee Chairman who was consulted by the officer, which related to the decision)</p> <p>If relevant, a note of the dispensation granted by the Monitoring Officer:</p>	<p>N/A</p>								
<p>Reason Decision, or supporting Report, is not published:</p> <p><i>Tick one or more of the specific exemptions,</i></p>	<table border="1"> <tr> <td data-bbox="576 1715 635 1792"></td> <td data-bbox="635 1715 1372 1792">Not applicable – Decision [and report] to be published</td> </tr> <tr> <td data-bbox="576 1792 635 1827">:</td> <td data-bbox="635 1792 1372 1827"></td> </tr> <tr> <td data-bbox="576 1827 635 1904"></td> <td data-bbox="635 1827 1372 1904">The report supporting the Decision contains confidential information</td> </tr> <tr> <td data-bbox="576 1904 635 2009"></td> <td data-bbox="635 1904 1372 2009">The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:</td> </tr> </table>		Not applicable – Decision [and report] to be published	:			The report supporting the Decision contains confidential information		The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:
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<p><u>and</u></p> <p><i>Give more information in the final box with regards to why the exemption applies and outweighs the public interest test (which is in favour of disclosure).</i></p>		<ul style="list-style-type: none"> • Relates to an individual
		<ul style="list-style-type: none"> • Likely to reveal the identity of an individual
		<ul style="list-style-type: none"> • Relating to financial or business affairs of a person or organisation
		<ul style="list-style-type: none"> • Relates to a claim for legal professional privilege in legal proceedings
		<ul style="list-style-type: none"> • Reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment
		<ul style="list-style-type: none"> • Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
		<p><u>And</u> is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Reasons:</p>

Officer

Signed: 

Title: Assistant Director, Partnerships

Date: 30th June 2022