

Company Handbook



Section 5: Trading between the council and its companies

Procurement status of council companies

A summary of the procurement status of each of the companies and what this means for them



Introduction

1. The council companies each have a different procurement status which affects how the council trades with them and how the council interacts with them. It also affects how those companies trade with third parties.
2. The purpose of this Guidance Note is to set out the procurement status of each of the companies and to explain the implications of this on trading and interacting with them, and on their own trading with third parties.

Overview of each company's procurement status

3. The following table summarises the procurement status of each of the council's companies.
4. For supporting analysis in respect of each status, please refer to **Appendix A**.
5. For the definitions of each procurement status, please refer to **Appendix B**.

	Body governed by public law	Teckal company
Holding Company	✓	✓
Bristol Waste	✓	✓
Goram Homes	✗	✗

Implications of being a body governed by public law

6. If a company is a 'body governed by public law' it must procure contracts in accordance with the Public Contract Regulations 2015 (**PCRs**) (or, if relevant, the Utilities Contracts Regulations 2016 (**UCRs**)). By virtue of being a public body, there is more direct scope for the council to set objectives for the company that are intended to achieve particular social outcomes for the benefit of citizens.
7. If a company is not a 'body governed by public law' it can procure contracts as any other private company can, which may mean procurements can be completed more quickly and flexibly.
8. However, in order to ensure the company is not deemed to be a 'body governed by public law', the council must ensure it does not exert a level of control or influence that undermines the commercial and industrial nature of the company (including, for example, by requiring it to prioritise social rather than financial returns). This would mean the company was deemed to be a body governed by public law, and that procurements would have to be conducted in line with the PCRs or UCRs.
9. The council continually monitors its interactions with those of its companies that are non-BGPL, to ensure that their status is not undermined.

Implications of being a Teckal company

10. If a company is a 'Teckal' company, it will, by virtue of its status, also be a body governed by public law and so must procure contracts in accordance with the PCRs or UCRs. For example, if a 'Teckal' company wants to buy a large number of vehicles, it would need to consider how it should carry out this procurement in compliance with the PCRs.
11. However, if the Council wishes to award that company a contract, it can do so directly, without following a PCR compliant procurement process. The council would, however, need to ensure that any such award represented value for money, which could be done, for example, by carrying out a benchmarking exercise or assessing what other value the proposed direct award brings (e.g. enhanced social value).
12. It is also worth noting that if a company is a 'Teckal' company, 80% of its activities must be derived from its local authority owner, whilst 20% can be derived from commercial activities. As a result, as the council awards more work to its 'Teckal' company, the company can in turn seek to secure a proportionate amount of commercial work from third parties.
13. If a company is not a 'Teckal' company, the council must ensure it complies with the PCRs before awarding a contract to it. The council therefore needs to consider carefully when setting up a new company whether one of the primary intentions is to be able to directly award it contracts. If this is the case, the council will need to ensure it will meet the criteria of a 'Teckal' company on an ongoing basis.
14. The council continually monitors the commercial and non-commercial balance of activities for its Teckal companies, to ensure that they continue to operate in accordance with the Teckal definition.

Further information

15. For more information on how the council trades with its companies, please see Guidance Note: Trading Strategy or contact the Shareholder Liaison Service:
ShareholderLiaison@bristol.gov.uk

Appendix A

Analysis of each company's procurement status

Holding Company	
Is it a BGPL?	Is it a Teckal company (as defined in Article 12 of the PCRs)?
Yes, so it must procure contracts in accordance with the Public Contract Regulations 2015 (PCRs).	Yes, so it can be directly awarded contracts by BCC.
Why?	Why?
<p>The company was set up to meet needs in the general interest (i.e. as a holding company to oversee the performance of the Council's companies in a way that aligns with the Council's strategic objectives) and it does not have a fully commercial or industrial character (for example, it is unlikely to bear the financial risk of its own activities as it has no operations outside of the Group).</p> <p>This situation is maintained through the company's objects and the extent of the Council's reserved matters and the way those reserved matters are implemented.</p> <p>The Holding Company is therefore a contracting authority for the purposes of the PCRs.</p>	<p>BCC controls the company to the same extent as it controls its own departments (for example, the independent Chair of the company provides reports to the Shareholder Representative, or its designated officer) and more than 80% of the company's activities are carried out at the direction of BCC and on its behalf (calculated by average total turnover), reflecting the council's decision to establish the Holding Company to provide oversight and assurance functions in respect of the council's subsidiaries.</p> <p>The Holding Company does not carry out any commercial activity so there is currently no risk that its portion of commercial activity exceeds the 20% permissible under the definition of a Teckal company.</p>
Bristol Waste	
Is it a BGPL?	Is it a Teckal company (as defined in Article 12 of the PCRs)?
Yes, so it must procure contracts in accordance with the PCRs.	Yes, so it can be directly awarded contracts by BCC.
Why?	Why?

<p>The company was set up to meet needs in the general interest (i.e. to provide waste services to the citizens of Bristol)¹ and does not have a fully commercial or industrial character (because, for example, the majority of its work is for the council and social value requirements are significant).</p> <p>This situation is maintained through the company's objects and the extent of the Council's reserved matters and the way those reserved matters are implemented.</p> <p>Bristol Waste is therefore a contracting authority for the purposes of the PCRs.</p>	<p>BCC controls the company to the same extent as it controls its own departments, and more than 80% of the company's activities (calculated by average total turnover) are carried out for BCC (under the Waste Services Contract and the Cleaning and Security Contract).</p> <p>Bristol Waste's commercial activity does not exceed the 20% permissible under the definition of a Teckal company.</p>
Goram Homes	
Is it a BGPL?	Is it a Teckal company?
No, so it does not need to procure contracts in accordance with the PCRs.	No, so BCC (and other public bodies) must go through a PCR compliant procurement process before awarding it contracts.
Why?	Why?
<p>The company was established to increase housing supply on a fully commercial basis and has an industrial and commercial character.</p> <p>The Council does not therefore require the company to align itself with the Council's policies or objectives (for example, Goram is not required to adopt the council's procurement policy or social value policy), and nor does it financially support the company in such a way that it ceases to operate in normal market conditions.</p> <p>Whilst the council does exercise a high level of control over the company, particularly through reserved matter approvals (in line with external legal advice received), the council ensures that the way that these decisions are taken does not undermine Goram's commerciality. It is understood that the Board may challenge a proposal from the council if they consider it to undermine the</p>	<p>Less than 80% of Goram Homes activities by turnover are for BCC and Goram Homes enters into its own profit-making joint venture arrangements in furtherance of its objects.</p> <p>BCC will not control the company in the same way as it controls an internal department, as this would threaten the company's status as a body not governed by public law. In particular, control cannot be exercised in such a way that would undermine Goram's commerciality.</p>

¹ Gemeente Arnhem v BFI Holding BV Case C-360/96 [1998] E.C.R. 1-06821.

company's purpose of increasing the supply of homes on a commercial basis.

Similarly, the Council cannot seek to control any of the company's joint ventures, as if they come under the Council's control, the Council should have procured those joint venture partners through a PCR compliant procurement process, rather than using the company to procure the partners outside of the PCRs.

Appendix B

Definitions of each procurement status

Bodies governed by public law

1. “Bodies governed by public law”² means bodies that have all of the following characteristics:
 - a) they are established for the specific purpose of meeting needs in the general interest, and not having an industrial or commercial character;
 - b) they have legal personality;
 - c) they have any of the following characteristics:
 - i. they are financed, for the most part, by the council (or other public bodies);
 - ii. they are subject to management supervision by the council;
 - iii. they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the council.
2. Although limbs (b) and (c) are likely to be met when considering council wholly-owned companies, limb (a) may not be. The company can only be a body governed by public law if limb (a) is met.

Utilities

1. “Utilities”³ means entities which:
 - a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 9 to 15;
 - b) are not contracting authorities or public undertakings, but whose activities include an activity referred to in regulations 9 to 15 and operate on the basis of special or exclusive rights granted by a competent authority.
2. Regulations 9 to 15 relate to: gas and heat; electricity water; transport services; ports and airports; postal services; and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels.
3. The reference to gas and heat (regulation 9) applies to the following activities:
 - a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
 - b) The supply of gas or heat to such networks.

Teckal company

4. A “Teckal company” means a company that meets all of the following conditions:
 - a) the council exercises over the company a control which is similar to that which it exercises over its own departments;

² The definition is set out in Regulation 2 of the PCRs.

³ The definition is set out in Regulation 5 of the UCRs.

- b) more than 80% of the activities of the company are carried out in the performance of tasks entrusted to it by the council or by other legal persons controlled by the council; and
 - c) there is no direct private capital participation in the company (subject to some exceptions).⁴
- 5. The council will be deemed to exercise over a company a control similar to that which it exercises over its own departments where:
 - a) it exercises a decisive influence over both strategic objectives and significant decisions of the company, or
 - b) the control is exercised by another legal person (e.g. Bristol Holding Limited) which is itself controlled in the same way by the council.
- 6. Calculating the percentage of activities can be done by reference to the 'average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the 3 years preceding the contract award.'

⁴ The definition is set out in Article 12 of the PCRs.

Table 1: Version Control Table

Version	Summary of edits	Editor	Date of version
V 1	First for publication	Shareholder Liaison Service	October 2023