

GREATER **LONDON** AUTHORITY

Request for Greater London Returning Officer (GLRO) Decision – GLRO 20-03

Title: GLA Elections 2020 – External Legal Advice

Executive Summary:

Specialist external legal advice is required to enable the effective preparation of an e-counting solution procurement, and related contract documentation, in the light of market and technological changes and in particular to reflect the use of Agile project methodologies to optimise delivery. The advice is being provided by Eversheds Sutherland. Approval of the related expenditure is sought from the GLRO.


Decision:

That the GLRO approves expenditure of £40,176 on specialist legal services from Eversheds Sutherland which are required to prepare an optimal e-counting solution tender.

Greater London Returning Officer

The above request has my approval.

Signature



Date

20.3.18

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE GLRO

Decision Required – Supporting Report

1. Introduction and Background

- 1.1 GLRO Form 20-02 approved the decision to commence a procurement exercise to appoint an e-counting contract for the 2020 Mayor of London and London Assembly Election, with the caveat that, should no tender prove satisfactory in terms of quality and/or affordability, a contract will not be awarded and consideration will be given to counting manually.
- 1.2 A contract notice advertising and setting out the details of the contracting opportunity will be published in the Official Journal of the European Union (“OJEU”).
- 1.3 The GLA requires the e-counting software to be developed using an Agile methodology; specifically, it is to be developed using the following, iterative, Agile ceremonies:
 - Initial discovery, followed by analysis workshops
 - User research workshops
 - Two to three-week sprints which include system testing
 - Backlog of stories
 - Sprint planning and prioritisation sessions
 - Daily stand-ups
 - Retrospectives
- 1.4 This along with significant technological, market and regulatory developments since e-counting services were last procured (for the 2012 and 2016 Mayoral and Assembly elections) has necessitated the specialist review of, and advice on, documentation required for the procurement of a 2020 e-counting solution.
- 1.5 An estimate has been sought and obtained, via TfL’s Legal Panel, from Eversheds Sutherland in this regard covering amongst other matters:
 - review the current contract, uplifting and redrafting as necessary to take account of technological, regulatory and other legal developments;
 - consideration of telecoms regulatory aspects and potential impacts for example, of the new Electronic Communications Code and drafting of additional clauses as may be required;
 - consideration of changing the data protection terms in line with forthcoming application of the General Data Protection Regulation;
 - reviewing wide and local area networking technical requirements and drafting WAN/LAN representations and warranties as may be required;

- high level review of other technical requirements from a legal perspective to seek to ensure any contractual alignment and flag any material legal issues including telecoms and IT legal review;
- assisting with legal clarification questions from bidders:
- high level legal review of Schedules produced by successful bidder once agreed by the GLA to the E-counting Agreement (as produced by GLA and/or its chosen supplier) to ensure consistency with front end terms for final contract and production of final contract version; and
- associated briefings, meetings and calls to go through draft contract with particular focus on legal areas for potential change/take instructions for areas of change

The estimate is presented as a range and it is acknowledged also that matters/issues may arise during the course of the project which may necessitate additional advice. In the event that additional advice is required further supplementary estimates and related approvals will be sought.

2. Issues for Consideration

Impact Assessments and Consultation

2.1 None

Equalities Comments

2.2 None

Risk

2.3 In light of significant technological, market and regulatory developments since e-counting services were last procured, preparing tender and contract documentation without securing specialist IT, telecoms and related legal advice risks the sub-optimal:

- procurement and delivery of an e-counting solution;
- discharge of the GLRO's duties; and
- protection of the GLA's interests.

3. Financial Comments

3.1 The GLRO is being asked to approve expenditure of £40,176.

3.2 It is anticipated any future expenditure will be contained within the elections budget. For reference, the e-counting award in 2012 amounted to £4.1m and in 2016 to £3.4m (a discounted rate, as it was the second election of a two-term contract). The overall cost of the election was £18.7m in 2012 and £18.2m in 2016.

4. Legal Comments

- 4.1 By section 29 Greater London Authority Act 1999 the Greater London Returning Officer ("GLRO") is the person appointed as the proper officer for the purposes of section 35(2C) Representation of the People Act 1983 ("RotPA") (returning officer at elections of Mayor and London members). The Mayor and Assembly have made the Head of Paid Service the GLRO as part of his terms and conditions of employment.
- 4.2 The GLRO is the returning officer for the Mayoral and London Member elections, and constituency returning officers are the returning officers for the election of a Constituency Member of the Assembly. The Authority must, under section 36(4B) of RotPA, pay for all expenditure properly incurred by a returning officer in relation to the holding of an Authority election, in so far as it does not, in cases where there is a scale fixed by the Authority, exceed that scale.
- 4.3 The Authority's Scheme of Delegation enables the GLRO to incur expenditure for the purposes of the preparation or conduct of any anticipated election as he considers necessary or expedient for that purpose. He is also able to authorise entry into contracts, licences or other instruments, in connection with an anticipated election in accordance with the Authority's Contracts and Funding Code and Financial Regulations.
- 4.4 The services in respect of which approval for expenditure relates to have been procured under TfL's panel for legal services.

5. Background/supporting papers

N/A

Public access to information

Although the GLRO is not subject to the Freedom of Information Act 2000 (FOI Act), the information in this form will be disclosed upon request and may be made available to the Mayor of London and the London Assembly. Any facts and advice that should not be made available upon request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where immediate release would compromise the implementation of the decision being approved.

Is the publication of this approval to be deferred? NO

If yes, for what reason:

Until what date:

Is there a part 2 form - NO

OFFICER APPROVAL:

	<i>Tick to indicate approval</i>
	✓
Deputy GLRO Alex Conway has reviewed the request and is satisfied that: <ul style="list-style-type: none">• The details are correct• The equalities issues/impact have been considered• Freedom of Information, Data Protection and other information access issues have been considered and the information contained in Part 1 of this form is suitable for publication• Where release of Part 1 has been deferred I confirm that the reason given and the date stated for release are appropriate.	✓

Executive Director, Resources

I have been consulted about the proposal and confirm that Financial and Legal advice have been taken into account in the preparation of this report.

Signature



Date

20.3.18

