

Report to the Ministry of
Education

Assurance over the
procurement of Daily and
Technology Bus Services:
Tender 1

December 2020

Contents

Conclusion	3
Background.....	4
Summary of work completed	5
Appendix 1: Scope and expectations	13
Appendix 2: Good practice guidance and policy	14

Conclusion

We reviewed The Ministry of Education's procurement process to select preferred suppliers of Daily and Technology Bus Services to schools. Specifically, our conclusion relates to Tender 1 of a two tender approach to market.

We considered information provided by The Ministry. We also undertook our own review as set out in this report.

We considered whether the procurement process was conducted in accordance with:

- the Ministry's policy, planning, and published procurement documentation;*
- applicable rules and good practice for public sector procurement; and*
- probity principles.*

Nothing has come to our attention to indicate this has not been achieved.

This is our final report on Tender 1.

Further reporting will follow on the conduct of Tender 2.



If there are any aspects that you wish to discuss further, please contact Martin Richardson on 021 222 6102, or e-mail martin.richardson@auditnz.parliament.nz.

Background



School transport assistance is provided under Section 139D of the Education Act 1989. It is a means for providing equity of access to education for students from the age 5 to 19 (21 in the case of Specialised Transport needs) regardless of geographic location or particular special needs. Planning to procure new providers of these services has been underway since mid-2018. A first tender, intended to provide an opportunity for small and regional providers, has recently been completed. Tender 1 was designed to award up to 10 or 10% of daily bus routes per region along with a number of technology routes.

A second tender has recently commenced to award the remaining daily and technology routes. Routes are grouped for award through this tender process, unlike the first tender which considered routes individually. There are also restrictions on participating in the second tender applicable to providers awarded routes through tender 1.

Once planning was complete for Tender 1 the Ministry of Education (the Ministry) found itself subject to an Official Information Request and an application to the High Court in relation to the tender process (June 2020). The Ministry won its case in the High Court meaning that the injunction to prevent the procurement failed and the tender release could go ahead. Tender 1 was released on 9 July 2020.

Ministry of Education engaged Audit New Zealand to provide independent assurance over the procurement process to consider whether:

- the planning for the procurement process addressed key probity risks and provided an effective framework for the procurement;
- the processes for the identification, mitigation and management of conflicts of interest complied with documented required practice;
- the procurement process was robust and compliant with the Ministry of Education Procurement Policy and the Government Procurement Rules;
- risk controls and processes conform to accepted good practice in procurement;
- the Evaluation Plan was consistent with the RFP and the evaluation process was carried out consistently with the RFP and Evaluation Plan, or if the Evaluation Plan or evaluation process differed from the RFP, whether respondents were sufficiently notified; and
- the approach to clarification, due diligence and contract award were appropriate.

Summary of work completed

In reaching our conclusion about the probity of the Ministry’s process to procure Daily and Technology Bus Services, the following section provides a summary of the elements that we reviewed and the issues we considered. Our report identifies the aspects of good practice that we observed, suggests the kind of probity risks that can emerge and identifies how these were avoided, mitigated or managed.

Planning



We have attended and contributed to the project steering group since May 2018 to understand the evolution of the plan for procuring daily and technology bus services. Our interim report dated 27 March 2020 covered procurement planning including the procurement strategy. In that report we concluded that planning was documented:

- in a way that was practicable and capable of being implemented fairly;
- in accordance with applicable good practice; and
- with due regard to probity.

At that stage it remained incumbent on the Ministry to ensure that the planning was implemented robustly and fairly. This report covers that implementation.

Our interim report dated 19 June 2020 covered evaluation planning. We concluded that evaluation planning was consistent with the overall planning for the process. Moderation to ensure consistency of evaluation was explicitly covered with good principles set out. There was appropriate provision made for subject matter expertise to inform the evaluation. The evaluation plan had good coverage of the need to manage risks from conflict of interest with a clear process to do so. A structured evaluation methodology had been chosen, being Price Quality Method (PQM).

Again we confirmed that nothing had come to our attention to indicate that the evaluation planning could not be implemented fairly and with due regard for probity.

Planning was good, detailed and appropriate.

The Request for Proposals (RFP)



The Ministry developed a detailed Request for Proposal document together with associated Appendices (A to H). Our 19 June 2020 interim report provided our feedback and conclusions on the RFP document. We applied our checklist of expectations for a good practice tender document, as well as confirming that all the

expected terms and conditions of tendering had been defined, and appropriate rights reserved by the Ministry.

Overall we concluded that the RFP document was clear and well structured.

We noted that while submission requirements were clear, they were quite detailed. We noted that it would be important to ensure respondents fully understood the number and form of documents they needed to provide in support of their proposals, particularly given that tender 1 is targeted at smaller providers.

The Request for Proposals was a clear yet detailed document, but submission requirements were complex, meaning it was important for the Ministry to ensure that these were well understood.

Publishing the RFP and managing communications



Ministry used GETS as its principal means of communicating with the market. This is standard practice and allowed equal access for all parties to information. It had two GETS listings, one for general communication, and one specifically for Tender 1.

Between April and December 2020 Addenda 11 to 22 were published on the general GETS listing (Addenda 1 to 10 related to earlier stages of the process before the project was re-set and the two tender approach developed).

These addenda provided updates at various stages of the procurement including:

- Addendum 11 (9 April) asking for feedback on the impact of the COVID-19 pandemic on the market's ability to respond to the tender.
- Addendum 12 (8 May) providing feedback from a survey of market participants.
- Addendum 13 (11 May) providing a video presentation on the two tender approach.
- Addenda 14-17 providing further information and responding to queries ahead of the RFP's publication.
- Addendum 18 (9 July) advising that Tender 1 was live.
- Addendum 19 (10 July) providing details of the tenderer briefings.
- Addenda 20-22 providing various updates towards contract award.

We were satisfied that the management of communications was robust with a clear commitment to being open with the market.

Tender 1 was published on GETS on 9 July 2020 under the new, dedicated GETS listing referenced above.

Tenderers were invited to attend an online RFP briefing on Thursday 16 July, 10am – 12pm. The Ministry also offered regional RFP briefings during the week of 20 July. Face to face briefings were held in Dunedin (22 July) and Wellington (23 July) in response to demand. We attended the Wellington briefing to observe its content and conduct. It was a well-run session with informative content presented, and provided a good opportunity for interested parties to ask questions and seek clarification. There were no probity issues arising.

The RFP was appropriately published with good communication to support its release to the market. RFP briefings supported publication, with clear efforts to ensure that all interested parties could access them. The level of information provided was good, with plenty of opportunity for suppliers to ask questions or clarify any issues.

A large number of questions were asked during the period that Tender 1 was in the market. Generally these were seeking clarification on requirements and the technicalities of submitting a response.

Between 17 July 2020 and 25 August 2020 we reviewed all these questions and answers in real time throughout the period that the Tender was open to questions. The Ministry responded to questions openly and well with answers distributed to all interested parties via GETS. There were no probity issues arising.

There was a clear process to ask further questions of the Ministry whilst the tender was live. Questions were answered appropriately with all parties getting access to the answers.

A total of twelve addenda were added to the specific Tender 1 GETS notice, some rolling up a compilation of Q&A, others providing additional information of relevance to potential tenderers:

- Addendum 1 (10 July) provided details of the supplier briefings.
- Addendum 2 (15 July) provided further details on the supplier briefings as well as instructions on the use of the Vendor Panel system that was used to receive submissions.
- Addendum 3 (17 July) provided a Q&A log to that date.
- Addendum 4 (20 July) provided a compilation of Q&A, details of in person briefings, and a video from the online briefing.
- Addendum 5 (24 July) provided updated route maps, a compilation of Q&A, corrected due diligence coverage, provided updated vendor panel instructions, and provided updated briefing slides.
- Addendum 6 (31 July) provided further updated route maps, an updated price response form, a compilation of Q&A, and a reminder to register with vendor panel.

- Addendum 7 (7 August) provided a reminder that the deadline for questions was coming up, provided a compilation of the week's Q&A, provided updated wording for two aspects of the tender document, updated the route map for Gisborne, provided guidance to new applicants, and provided a reminder about vendor panel.
- Addendum 8 (12 August) provided a week's extension to the deadline for responses from 21 August to 28 August. The deadline for Q&A was similarly extended. Guidance on the pricing spreadsheet was provided.
- Addendum 9 (14 August) provided a compilation of Q&A.
- Addendum 10 (19 August) provided a reminder about the upcoming deadline for tenders to be received.
- Addendum 11 (25 August) provided a further reminder about the deadline, provided guidance on submission, and corrected an omission of two routes from the route maps which had come to light late during the tender process.
- We discussed the issue of the two missing routes and agreed that the Ministry would seek expressions of interest to see if any suppliers were interested in bidding for them. This clarified that there was interest, but those parties felt that additional time was not required in order to bid for them. As a result the tender timeline was unchanged by this issue.
- Addendum 12 (14 October) provided a market update. The same market update was posted on the GETS notice being used for general communication.

Communication was clear and comprehensive.

Closing of submissions



Tenders closed as planned on 28 August 2020 through the Vendor Panel system. The Ministry produced a School Bus Procurement Tender 1 Closing and Submissions Report to the Tender Evaluation Panel (TEP) which presented the respondents and summarised the tender closing process. We reviewed the report and concluded that it set out a good summary of the receipting process.

On the same day the three Vendor Panel tender-boxes were unlocked by the Evaluation Process Manager and Administrator:

- Appendix A Quality Response Form;
- Appendix B Price Response Form, and Financial Ratios;
- Appendix C Due Diligence, and Additional Material.

Forty Six submissions were received, including some which the Ministry identified as potential duplicates. Following tender closing the Ministry carried out a compliance review of the submissions. Through this it identified a number of compliance issues.

In each case we discussed the compliance issues with the Ministry and confirmed that a fair and reasonable approach was being taken to dealing with them. The Ministry judged three submissions to be grossly incomplete and these were set aside from further evaluation. The Ministry went to considerable effort to resolve the majority of compliance issues with the remaining respondents.

In our view the Ministry struck an appropriate balance between being fair to non-compliant respondents (for example by seeking missing information) and being fair to compliant respondents (who had provided a complete submission in the first place).

On 10 September the Ministry made us aware that the Bus and Coach Association had raised concern with the timeframe the Ministry allowed respondents to provide information missing from their original responses. We provided feedback on the need to be reasonable whilst also ensuring that the process continued to progress. There were no issues arising.

The Ministry went to considerable effort to make sure all responses were complete and complied with requirements to ensure a well-informed robust evaluation could take place. In our view the approach taken was fair and reasonable.

Evaluation of submissions



Recognising the scale of the evaluation task, the Ministry developed an evaluation team structure comprising Quality Evaluation Teams (QET) reporting to a Tender Evaluation Panel (TEP). Two QETs (QET 1 and QET 2) were commissioned to undertake the evaluation of Tender 1. Two QET members (including one QET Lead) would evaluate all of the Proposals, while the remaining four members were planned to each evaluate 50% of the Proposals. One QET member, a Health & Safety SME, would evaluate only Section 4 – Health and Safety.

We had no probity concerns with the design or membership of the QETs.

We observed the briefing held for evaluators on 28 August 2020. An output from the briefing was the need to hold a series of meetings to discuss and clarify the scoring guidance, the purpose being to ensure that the Quality Evaluation Team(s) consistently applied the scoring guide. The scoring guidance was updated ahead of evaluation commencing.

The evaluation process, including specialist Health and Safety expertise and the moderation of individual scores to reach consensus was carried out fairly and robustly.

A series of moderation meetings were held for each of the two Quality Evaluation Teams to bring together and discuss their individual evaluations with a view to agreeing a score which represented the group consensus.

Each meeting commenced with a briefing on the process. We also provided our own briefing on probity considerations for the two teams to bear in mind as they carried out their roles. Together these briefings left the team members well informed and prepared for the moderation process.

We observed the majority of the moderation meetings, observing a sample of the later meetings once we were assured that the evaluation methodology was being followed as designed in a way that was both robust and evidence based. The Ministry’s Health and Safety specialist joined the meetings to contribute to the evaluation of Health and Safety related criteria.

A series of Tender Evaluation Panel (TEP) meetings were held to discuss and agree the approach to issues arising from the evaluation process, predominantly to ensure that all respondents were treated fairly and equitably, as well as to resolve ongoing needs for clarification. We joined these meetings and were comfortable that an appropriate approach was being taken.

To inform evaluation, a large number of clarifications were sought from respondents. In each case we reviewed these clarifications and confirmed that they were appropriate with no probity issues apparent in them before they were issued to the relevant respondents.

One of the issues that arose related to clarification of pricing submissions. In essence the Ministry identified a number of respondents with a mismatch between the tendered rates as applied to the route metrics and the estimated annual costs also submitted by respondents. A series of clarification sessions with individual respondents were held to resolve this mismatch. To ensure the probity of this process we attended each of the clarification sessions and observed their conduct. The meetings, together with subsequent clarification questions, resolved this issue.

Issues identified during the evaluation process, including the need to further clarify issues with respondents, were dealt with appropriately and well.

Due diligence



There was a structured, well defined due diligence process adopted by the Ministry. This was set out in the Due Diligence Team Guide and Terms of Reference.

A series of due diligence questions were asked of respondents during this phase of the process. We reviewed these to confirm that they were appropriate with no probity issues apparent in them.

There was a rigorous approach to conducting due diligence on potential suppliers.

Provisionally preferred suppliers



A TEP meeting on 16 October considered a Provisional Preferred Supplier (PPS) report and the further due diligence issues arising. The PPS report was a good, clear well written report consistent with the process we had observed.

Further TEP meetings on 23 October, 29 October, 5 November, 11 November, 13 November and 17 November covered the impact of final due diligence on the make-up of the PPS list. This included adding an orphaned technology route to the routes identified to be offered to one of the suppliers.

The identification of Provisionally Preferred Suppliers was consistent with the outcome of the procurement process we had observed.

Approvals and contracting



We reviewed the overall Recommendation Report received on 27 November and confirmed the same day that it was a good report, with recommendations arising that reflected the outcome of the process. The report included links to supporting reports being:

- School Bus Procurement Tender 1 Business Continuity Pre-Conditions Assessment Report;
- School Bus Procurement Tender 1 Completeness and Compliance Report;
- School Bus Procurement Tender 1 Quality Evaluation Report;
- School Bus Procurement Tender 1 Price Evaluation Report;
- School Bus Procurement Provisional Preferred Supplier Report;
- School Bus Procurement Due Diligence Supplier Report;

all of which we had previously reviewed and confirmed had no material probity risks associated with them.

Some suppliers declined the routes they were provisionally offered, generally for commercial reasons. None cited a probity concern in their decision to reject offers. On 16 December we reviewed the School Bus Procurement Governance Board Contract Award Report and confirmed that there were no probity issues with it. The report confirmed that 106 Daily and 37 Technology Routes were awarded to 28 suppliers.

This confirmation marked the completion of our involvement in Tender 1.

Contract award was consistent with the outcome of the procurement process.

Managing risks from conflicts of interest



Managing the risks related to conflicts of interest was an essential planning element for the Ministry. We had previously reviewed all of the conflict of interest declarations, including the mitigation strategies proposed for the disclosures made as part of the early planning for the process. We were satisfied that the mitigation strategies were appropriate for the circumstances declared.

Consistent with good practice, the Ministry required staff and advisers to update their conflict of interest declarations at any time they became aware of changes requiring disclosure. Specifically for Tender 1 on 29 November 2019 the Ministry provided an updated Conflict of Interest register. A total of 58 declarations were included in the register, of which 12 included issues which could represent actual, potential or perceived conflicts. We reviewed these and confirmed that management plans had been documented for each. There were no new material conflicts identified at this stage.

External evaluators brought in specifically for Tender 1 were required to complete a conflict of interest declaration. No material issues were declared.

On 9 September 2020 the Ministry's Director, Commercial Procurement became aware of circumstances (contact with a friend who it later turned out has some involvement in a school transport operator). She was concerned that this may conflict or appear to conflict with her role on the TEP. She notified the procurement team and ourselves as well as completing an updated COI declaration form. We concluded that the agreed management plan was effective for managing what we judged to be a relatively minor conflict.

In our view Ministry of Education's processes for managing the risks from conflicts of interest were robust.

Appendix 1: Scope and expectations



Audit New Zealand was engaged through an April 2018 Consultancy Service Order to provide independent assurance over the probity of the process to select providers of daily and technology bus services. This report sets out our findings and conclusion on the first stage of a two tender procurement process - Tender 1. Our interim reports covered procurement planning (dated 27 March 2020) evaluation planning (dated 19 June 2020) and the Request for Proposals documents (also dated 19 June 2020). This report covers the management of the first of two Request for Proposals (RFP) stages. Tender 1 was designed to provide opportunities for small and regional operators to compete.

Our services were designed to provide assurance over the key probity and process risks for the procurement. We also considered compliance with the Government Procurement Rules and Ministry of Education policies and planning.

Audit New Zealand is a business unit of the Controller and Auditor-General. This assurance is provided in accordance with Section 17 of the Public Audit Act 2001. It complies with the Auditor-General's Standard AG-5 (Performance Audits, Other Auditing Services and other work carried out by or on behalf of the Auditor General).

What our work did not include

Our assurance review did not include:

- Assurance over the outcome of the procurement process (identifying the suppliers the Ministry wishes to contract with is the role of the evaluation teams, panel and Ministry of Education's approving authority).
- Assurance over risks from conflicts of interest at senior executive/approving authority level. We did not review declarations from those approving the final decision.

An assurance review of this kind helps an entity understand the risks it faces and assists it to manage those risks, but it does not remove the responsibility of the entity itself for ensuring that its actions comply with all relevant legal and other standards.

Our expectations

This report is based on the expectation that Ministry of Education:

- provided all information that we requested;
- made available all information that was in its possession and relevant to our engagement; and
- advised us of any circumstances that may have been material and significant in relation to our work.

Appendix 2: Good practice guidance and policy



In addition to our internally developed methodologies for review of procurement, our primary references for good practice for this procurement were:

- The Government Procurement Rules, 4th edition, effective 1 October 2019 (Ministry of Business Innovation and Employment).
- Procurement guidance for public entities (Office of the Auditor-General, 2008).
- Public sector purchases, grants, and gifts: Managing funding arrangements with external parties (Office of the Auditor-General, 2008).
- Managing conflicts of interest: A guide for the public sector (Office of the Auditor-General, 2020).

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