

Report to the Ministry of
Education

Assurance over the
procurement of Daily and
Technology Bus Services:
Tender 2

27 May 2021

Contents

Conclusion	3
Background.....	4
Summary of work completed	5
Appendix 1: Scope and expectations	14
Appendix 2: Good practice guidance and policy	16

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 2 of a two-tender approach to market. We reported separately in December 2020 on the probity of Tender 1.

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 2.

It also marks the completion of our work providing assurance over the Ministry's programme to procure providers of Daily and Technology Bus Services.



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, was completed in December 2020. 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, Tender 2, has recently been completed to award the remaining daily and technology routes in packages known as route groups. Route groups are organised in regions, with each region comprising a number of route groups. Routes groups were awarded to the supplier evaluated as providing the best public value, subject to tests of market concentration, and the supplier's capacity to take on the volume of work for which they were successful. The market concentration test was applied to ensure that a competitive market for school transport was maintained both nationally and within regions. The approach to applying this market concentration test was explained in tender documents.

Our 2 December 2020 interim report on Tender 2 provided our feedback and conclusions on the RFP document. Tender 2 was released on 7 December 2020, with the deadline for proposals to be received being 29 January 2021.

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



As we reported in relation to Tender 1, 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 first 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 with respect to Tender 2. Our 18 December 2020 report covered the implementation of Tender 1. Taken together the two reports cover the probity by which the entire procurement strategy and plan was put into practice.

Our second interim report dated 19 June 2020 covered evaluation planning. A single evaluation plan covered tenders 1 and 2. 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 G). Our 2 December 2020 interim report on Tender 2 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. It was important to ensure respondents fully understood the number and form of documents they needed to provide in support of their proposals, particularly given the lessons learned from Tender 1.

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. There were two GETS listings, one for general communication, and one specifically for Tender 2.

On 3 December 2020 the Ministry published on GETS a market briefing, providing notification that the RFP was shortly to be published and providing details of market briefings to be held in Christchurch, Auckland and online using the Zoom platform.

The RFP was published as signalled on 7 December 2020. An addendum to the original school bus GETS listing provided a link to a new listing on which the tender documents were released, which seemed appropriate for clarity of communication.

We attended the briefing held over Zoom on 14 December 2020. It was a well-run session with good detail provided on requirements and the RFP process. There was a good opportunity for attendees to ask questions to further clarify the briefing. Overall, the briefing should have left participants well informed and ready to respond to the RFP.

There were clear and appropriate arrangements for interested parties to ask questions to clarify any of the Ministry's requirements while the tender was in the market. Clarification questions were answered via GETS, with a process in place to consider any questions deemed commercially sensitive and therefore confidential. We reviewed all questions to ensure that they were appropriate and confirmed that there were no probity issues apparent in them.

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 number of addenda to the RFP documentation were published ahead of the RFP being released, or during the period that the RFP was live in the market. Addenda published under the original GETS listing but relevant to Tender 2 were as follows:

- Addendum 23 (3 December 2020) provided notification that Tender 2 was shortly to be published and gave details of the supplier briefings.
- Addendum 24 (7 December 2020) notified interested parties that Tender 2 was live.
- Addendum 25 (14 December 2020) provided an initial high level debrief on Tender 1. In fairness to Tender 2 Respondents, the Ministry will not provide detailed feedback to Tender 1 respondents until Tender 2 is concluded. The Ministry encouraged suppliers to note and apply the information provided in the high level debrief and in Section 10 of the Tender 2 RFP when completing Proposals for Tender 2.

Addenda to Tender 2 were published as follows:

- Addendum 1 (10 December) clarified directions for a specific route
- Addendum 2 (14 December) provided a weekly log of Q&A as well as copies of the material shared at the RFP briefing
- Addendum 3 (15 January) provided a weekly log of Q&A, reiterated the deadline for responses and attached an updated price response form
- Addendum 4 (21 January) provided the week's Q&A Log. Also attached were revised directions for one route. It also provided a reminder that the deadline for questions was the following day, the date by which answers would be provided and a reminder of the submission deadline.
- Addendum 5 (26 January) provided the final Q&A log, summarising all clarifications issued while the tender was live, corrected descriptions for one route, and provided a final reminder of the deadline for proposals.

We were satisfied that the management of communications was robust with a clear commitment to providing the market with the information required to respond to the tender.

Closing of submissions



Tenders closed as planned on 29 January 2021 at 5:00pm via GETS. A late response period was active between 5.00 pm and 6.00 pm to allow for late proposals to be submitted. After 6.00 pm, the GETS tender-box was locked to the submission of any further proposals.

The Ministry documented its approach to tender closing and registering responses in School Bus Procurement Tender 2 Closing and Submissions Report. We reviewed this report and concluded that it was a good, clear representation of the process.

One proposal was received after the 5:00pm deadline had passed, but before the 6:00pm cut-off. (The proposal was submitted at 5:37 pm.) Given the tender-box was open until 6:00 to allow for this situation, the proposal was accepted for evaluation. This seemed reasonable, although there remains a small residual probity risk in accepting any late response. In this case it seems unlikely that the company concerned received material advantage from the additional 37 minutes. The supplier had contacted the Ministry prior to the deadline with some technical issues with respect to file conversion and the price submission form indicating that their proposal was ready, and the issue related to its upload.

On 15 February 2021 the Ministry received correspondence from a barrister asking if a late proposal could still be accepted. This was considered but ultimately rejected by the Ministry. In our view this was the correct course of action given the lateness of the request.

The Ministry had a formally documented process for checking that proposals were complete and complied with the conditions of tendering. The Completeness and Compliance Team: Guide and Terms of Reference was updated from Tender 1 noting some minor changes to the process between tenders 1 and 2.

Following completion of the completeness and compliance checks, the Ministry produced a report setting out the conclusions of the assessment. All respondents were assessed as being materially compliant and their submissions passed to full evaluation. Notwithstanding there were a number of compliance matters identified for all respondents which were the subject of clarifications. The Ministry adopted a process consistent with that used in Tender 1 to ensure that all required information was provided. There were no issues arising.

The Ministry struck a good balance between enforcing the conditions of tender whilst clarifying 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



Consistent with Tender 1, the Ministry had a Quality Evaluation Team (QET) reporting to a Tender Evaluation Panel (TEP). The QET was supported by a Health & Safety SME who would evaluate only the Health and Safety section. Price was evaluated by a separate team, with the outputs from the price and quality evaluations coming together into the Price Quality Method (PQM) evaluation model.

Throughout the evaluation period we joined regular meetings of the TEP at which progress with the evaluation was monitored, and any issues arising discussed and resolved. These were good meetings and a valuable part of ensuring that the process ran well with no probity issues left unresolved.

A briefing was held for the quality evaluation team on 27 January 2021. This was a good a detailed briefing covering the requirements, the tender documentation, evaluation plan, methodology and scoring approach. Probity issues were discussed. The briefing should have left evaluators well prepared to play their roles effectively.

A series of clarification questions were drafted, reviewed and asked of respondents to inform the evaluation process. In each case we reviewed the clarification questions to confirm that there were no probity issues apparent in them.

On 3 March 2021 the Ministry identified an issue whereby some providers had not supplied Health and Safety Audits, despite this being requested. The Ministry identified cases where an audit had taken place, and therefore its results should have been supplied. We provided feedback on the fairest way to deal with this issue, which in our view involved clarifying the position with the affected companies and ensuring that the evaluation was as well informed as possible.

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

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

We joined the evaluation moderation meetings and concluded that there was:

- Good management of the session enabling each evaluator to put forward the rationale supporting their individual scores;
- Collaborative discussion leading to agreement on a consensus score representing the group's united view – reflecting the range of insights and judgements across the group;
- Consistency with scoring scales as defined; and clear rationales agreed to support the moderated scores.

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

Provisionally Preferred Suppliers, market concentration and confirmations



A quality evaluation report was drafted, setting out the results of the quality evaluation process. We reviewed the report and provided feedback on a few minor matters for the Ministry to consider. The Ministry addressed our feedback appropriately and a final, updated version of the report was produced. There were no outstanding probity issues with the final version of the report.

A separate price report was also documented, setting out the results of the price evaluation and recording the prices that would form the input to the evaluation model. We clarified a few matters with respect to the detail of the report. There were no probity issues arising.

The results documented in the two reports were input to the PQM model. Following the application of the PQM model, the Ministry documented a Provisional Preferred Supplier (PPS) report setting out the results of the model. Whilst for most regions this led to a clear result, in Otago it was apparent that the regional market share test was breached by the initial outcome.

A 24 March 2021 meeting of the TEP discussed the impact of the market concentration tests and determined the fairest way to apply the limit set in the RFP based on the PPS results. This led to reallocation of one route group from the initial PPS to an alternative supplier to bring the market concentration back within the limits set out in the RFP. We confirmed that the decision of which group to reallocate, and to which supplier, was reasonable. It was consistent with the process set out in the RFP and associated planning, and in our view, consistent with the principle of fairness. Clear documentation by the Ministry also means that the principle of accountability is met.

The Ministry notified suppliers of their PPS status and asked them to confirm whether they would accept the route groups identified for them. One supplier notified the Ministry that, for commercial reasons, it would not. The supplier decided to withdraw from the school transport market. The Ministry considered the fairest way to address this consistent with the procurement plan and tender documents. We provided our views on the probity of the options being considered and confirmed that the chosen option was consistent with the principles of fairness and the process set out in the Ministry's planning.

The development of inputs to the PQM model, and its application to identify the suppliers providing the best public value for each route group was robust.

Application of the market concentration test was applied rigorously and in our view the reallocation of one route group was fair and consistent with the planned process.

Similarly, the reallocation of one route group declined by the original PPS was done fairly and was consistent with the planned process.

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. The Ministry's commercial advisers carried out financial due diligence on the suppliers identified as PPS. We did not review this part of the process other than noting the outcome and reviewing the resulting report.

On 3 May 2021 the Ministry consulted us regarding potential ethical or human rights violation risks in the supply chain. We provided our view on the probity of the Ministry carrying out due diligence on the issue or seeking confirmations from suppliers as to how they were managing the risk. The Ministry's objective was to manage the risk and ensure compliance with the Supplier Code of Conduct, which was a commitment made by all suppliers as part of the conditions of tendering. All suppliers confirmed that they would comply with the Supplier Code of Conduct.

Approvals and contracting



We reviewed the draft overall Recommendation Report received on 14 May 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 2 Completeness and Compliance Report;
- School Bus Procurement Tender 2 Quality Evaluation Report;
- School Bus Procurement Tender 2 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.

We subsequently reviewed the final School Bus Procurement Request for Proposal Tender 2: Tender Evaluation Panel Recommendation Report and the final Tender Evaluation Panel Due Diligence Report. We confirmed that both were consistent with the drafts, reflected the process well and confirmed the outcome of the process as we had observed it. Finally we reviewed the School Bus Procurement Request for Proposal Tender 2: School Bus Procurement Governance Board Contract

Award Report. This report summarised the outcome of the entire process with links to the more detailed reports supporting it. There were no probity issues with the reports.

Recommendations for contract award were 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 the conflict of interest declarations, including the mitigation strategies proposed for the disclosures made as part of the early planning for the process, and again as part of Tender 1. We were satisfied that the mitigation strategies were appropriate for the circumstances declared.

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

Conflict of Interest declarations were refreshed for Tender 2. Two new circumstances were declared, one by an evaluator and one by a project team member. In both cases we concluded that the agreed management plans were appropriate and that there was minimal residual probity risk.

Issues arising during Tender 2



Amongst the many issues that the Ministry had to managed during Tender 2, four merit specific comment in this report.

Unfortunate communications

One respondent to Tender 2 was, understandably, annoyed to hear via the media that the outcome of Tender 1 had led to them losing some routes. They communicated their frustrations to the Ministry’s contract manager. Such contact was not consistent with the terms and conditions of the RFP. However, we concluded that it provided no competitive advantage and therefore was not a material probity matter.

Indications of harassment

The Ministry became aware that a supplier, successful through Tender 1, had become subject to harassment in the form of anonymous phone calls. Neither the Ministry nor the supplier had evidence that this harassment was from another supplier. We suggested to the Ministry that the supplier could take their complaint to the Police. We concluded that it was not an issue for the procurement process unless there was evidence of who was behind the harassment. We were not in a position to gather such evidence.

A social event

One of the external evaluators contracted by the Ministry was leaving his main employment around the time he was carrying out the evaluation. The issue was whether people from supplier companies being present at a leaving function for this person constituted a probity issue or risk. We concluded that any related risk was low and that the measures identified by the Ministry were sufficient to manage the risk appropriately. Attendees at this function were unaware that the person was acting as an evaluator for the Ministry so the likelihood of lobbying or other inappropriate contact was low.

Concerns raised by the Bus and Coach Association (BCA)

On 16 April 2021 the Ministry received a letter from the Bus and Coach Association (BCA) raising some issues with the process. The BCA was not a respondent but is an industry body representing a number of suppliers. In essence, the issues raised related to:

- The application of Government Procurement Rules 17 and 19;
- Market share and the fair allocation of contracts;
- Driver wages; and
- The period allowed for suppliers to indicate whether they would accept the routes provisionally allocated to them.

We reviewed the BCA letter, the Ministry's draft response, and some legal advice provided by the project's legal advisers. We joined a meeting of the TEP to discuss the response and provided probity input to the discussion.

We confirmed that there were no probity issues arising from the letter and the Ministry's response to the BCA. We concluded that there were no issues raised by the BCA that were not appropriately addressed by the Ministry. In particular, the Ministry contacted those suppliers whose response to the PPS notifications had not yet been received and allowed extensions where this was needed. This seemed a fair and appropriate course of action.

Actual or potential probity issues arising during Tender 2 were dealt with appropriately and well. We are not aware of any residual or outstanding issues at the conclusion of the Tender 2 process. All issues were addressed and resolved at the time.

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 second stage of a two tender procurement process - Tender 2.

Our interim reports covered procurement planning (dated 27 March 2020), evaluation planning (dated 19 June 2020), Tender 1 Request for Proposals documents (also dated 19 June 2020), the results of Tender 1 (18 December 2020), and Tender 2 Request for Proposals documents (2 December 2020).

This report covers the management of Tender 2. This process was designed to award the remaining daily and technology routes in packages known as route groups. Route groups are organised in regions, with each region comprising a number of route groups. Routes groups were awarded to the supplier evaluated as providing the best public value, subject to tests of market concentration, and the supplier's capacity to take on the volume of work for which they were successful.

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).

AUDIT NEW ZEALAND

Mana Arotake Aotearoa

PO Box 99
Wellington, 6140
Phone: 04 496 3099

<http://www.auditnz.parliament.nz/>

