




19 June 2020



Tēnā koe 

Thank you for your letter of 19 May 2020 to the Ministry of Education, and your clarification of 10 June 2020 requesting the following information:

- *the information generated or received by the Ministry in developing the new approach. This will include internal communications between Ministry officials and also communications between Ministry officials and external parties such as MBIE, officials in Ministers' offices and Ministers themselves.*

Your request has been considered under the Official Information Act 1982 (the Act).

Further to Tom Dibley's email of 17 June 2020, I am providing you with 13 documents, as the first tranche of documents for release in response to your request and withholding three documents in full. These are outlined, together with my decision as to their release, in the table attached as **Appendix A**.

Some information has been withheld from the documents under the following sections of the Act:

- 9(2)(a), to protect the privacy of natural persons;
- 9(2)(b)(ii), where the making available of the information would prejudice the commercial position of the person who supplied or is the subject of the information;
- 9(2)(f)(iv), maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials;
- 9(2)(g)(i), maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; and
- 9(2)(j), to protect the Ministry's ability to carry out, without prejudice or disadvantage, commercial negotiations.

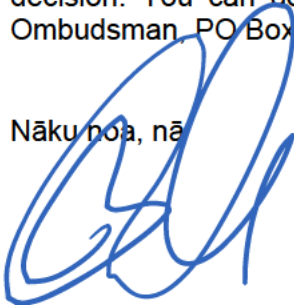
As required under section 9(1) of the Act, I have considered the public interest in release of this information. However, I have identified no public interest considerations sufficient to outweigh the need to withhold this information at this time.

We will be in contact with you regarding the release of the next tranche of documents early in the week beginning 22 June 2020.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Nāku noā, nā



Rob Campbell
Acting Head of Education Infrastructure Service

Appendix A

Doc #	Date	Document title	Decision on release
1	12 Mar 20	Discussion Document: Including Tech Bus routes in Tender One	Release in part. Information has been withheld under section 9(2)(j) of the Act.
2	26 Feb 20	Discussion Document: items needing refinement for procurement docs	Release in part. Information has been withheld under sections 9(2)(b)(ii) and 9(2)(j) of the Act.
3	5 Mar 20	How to compare two options for different things	Release in part. Information has been withheld under section 9(2)(j) of the Act.
4	28 Dec 19	Info for procurement approach meeting	Release in part. Information has been withheld under section 9(2)(j) of the Act.
5	Withhold in full under sections 9(2)(g)(i) and 9(2)(j) of the Act.		
6	27 Jan 20	Memo: Justification for 10% / 10 Daily routes split of market	Release in part. Information has been withheld under section 9(2)(j) of the Act.
7	May 20	School bus procurement: Market Engagement Plan post-lockdown	Release in full.
8	Apr 20	Stakeholder Engagement and Communications Plan Procurement Stage v1.2	Release in full.
9	Mar-20	School Bus Procurement: Procurement Plan	Release in part. Information has been withheld under sections 9(2)(b)(ii) and 9(2)(j) of the Act.
10	Mar 20	PROBITY PLAN: School Transport Procurement Services Tender	Release in part. Information relating to the upcoming tender is withheld under section 9(2)(j) of the Act.
11		SME Local Provisions Research	Release in full.
12		Detailed analysis of options	Release in part. Information has been withheld under section 9(2)(j) of the Act.
13	5 Mar 20	Discussion Document: School Bus Procurement Objectives	Release in part. Information has been withheld under section 9(2)(j) of the Act.
14	Withhold in full under section 9(2)(j) of the Act.		

Doc #	Date	Document title	Decision on release
15		Withhold in full under sections 9(2)(g)(i) and 9(2)(j) of the Act.	
16	13 Mar 20	Memo: Two Tender Approach: Including Technology Routes in Tender One	Release in full.



MEMO

To: James Meffan
From: Jonathon Gear
Date: 12 March 2020
Subject: Including Tech Bus routes in Tender One

Background

The Ministry has been developing a procurement process for Daily Bus and Tech Bus services delivered through two tenders, the first tender offering up to the higher of 10 or 10% of all Daily Bus routes in a region (targeting small regional suppliers), the second offering all remaining Daily Bus and all Tech Bus routes to the market as groups.

On 4 March 2020 the Ministry sent a paper to the Minister of Education seeking agreement on the proposed two tender approach. On 10 March 2020 the Minister agreed to the two tender approach but noted "I don't agree to [Tech Bus routes only being offered in Tender Two]. If small businesses currently have Tech routes they should be given the opportunity to keep them".

The note from the Minister has prompted the Ministry to review whether Tech Bus routes should be available in both tender rounds rather than just Tender Two as currently designed. This document proposes a means by which the Ministry could include Tech Bus routes in Tender One.

Including Technology routes in Tender One

Proposed solution (change to current approach identified in bold)

Tender One

- Any operator (current and new) can tender for any or **all routes** in a single region that must be the region where its head office resides or an adjacent region.
- Operators will need to choose whether to participate in Tender One based on the tender constraints and conditions.
- Up to 10% or 10 routes (whichever is higher) of all Daily Bus routes in each region **and 10% of all Tech Bus routes** can be awarded in this tender round.
- Successful tenderers can decide whether to accept or decline the bus routes offered to them in this tender round.

Tender Two

- All routes** declined or not awarded in Tender One will be placed in groups within regions, and offered through open tender in Tender Two.
- Tender Two is open to current and new transport operators, except for those tenderers who accepted routes offered in Tender One.

Key objectives

In developing this solution it was assumed that key objectives in designing the procurement approach were;

- 1) adhering to the direction provided by the Minister;
- 2) complying with the government rules of sourcing;
- 3) treating new entrants & incumbents consistently; and
- 4) retaining as much consistency as possible across Tender One and Tender Two.

Advantages of the proposed solution

This proposed solution will provide the following advantages over other options considered:

- Consistent with approach being applied to Daily Bus routes.
- Provides a competitive process, delivering public value in the context of Broader Outcomes.
- Treats all market participants in each tender equally by allowing any operator (incumbent or new entrant) to tender for Tech Bus routes in Tender One and Tender Two
- Doesn't link the award of Tech Bus routes to a corresponding Daily Bus route

Implications of the proposed approach

The following implications should be noted with the proposed change:

- Technology bus routes will now be offered in Tender One as well as Tender Two.
- There is no opportunity for incumbent bus operators to directly negotiate new contracts for their current routes.
- The Ministry cannot say with any certainty how many, if any incumbent operators would be successful in obtaining a similar level of Ministry business as they currently hold.
- It is difficult to estimate how many of the 38 incumbent Tech Bus operators expected to participate in the procurement process could choose to participate in Tender One, but we know that 18 operators are within the maximum regional route thresholds for Daily Bus routes and so may decide to participate.

Synergies from operating Daily Bus and Tech Bus routes.

The Ministry wants to design a procurement that provides the best public value in context. It is expected that operators will price the recovery of vehicles and depots through their tenders for Daily Bus routes, with the tenders for Tech Bus routes recovering the marginal cost of the service (ie Tech Bus pricing will not include any recovery of vehicles and depot costs). This pricing synergy is expected to play out if operators can have confidence they won't be awarded a Tech Bus route unless they have a service (eg Daily Bus) through which they can recover the vehicle and depot costs. To provide clarity to operators the three options below should be considered in addition to the proposed solution:

Option A: Allow tenderers to specify in their tender return if the award of a Tech Bus route is contingent on them winning an identified Daily Bus route(s).

This will provide the Ministry with information that it can use to eliminate outcomes that are not acceptable to tenderers before identifying preferred suppliers. It will increase the complexity of evaluation but reduce the likelihood of operators declining award.

Option B: Allow tenderers to reject the award of individual Tech Bus routes if they aren't awarded the corresponding Daily Bus routes.

Under this option the Ministry would identify the preferred outcome but operators are more likely to decline an awarded Tech Bus route that they would be under option A.

Option C: Specify Tech Bus routes that must be awarded to the same operator as Daily Bus routes.

This will require the Ministry to determine where a dependency exists between a Daily Bus and Tech Bus route. It will provide the benefit of not leaving an orphan Tech Bus route that requires a vehicle to travel significant distance to provide the service.

[NOTE: TO DISCUSS AND AGREE THE PREFERRED OPTION ABOVE. NOTING THAT SYNERGIES ARE LIKELY TO BE RELATIVELY LIMITED, ONLY 9(2)(j) OF TECH BUS ROUTES (WORTH 9(2)(j)) IN 2018/19) WILL BE MADE AVAILABLE THROUGH TENDER ONE. 9(2)(j)]

If Tech Bus routes are offered for award but rejected by the operator the Ministry will consider the next best public value outcome for award.

Justification for the 10% of Tech Bus routes limit

The statement made by the Minister was that "If small businesses currently have Tech Bus routes they should be given the opportunity to keep them". The table below shows the likely impact on small businesses under the proposed 10% of Tech Bus routes limit for Tender One.

Table: Likelihood of existing Tech Bus route operators tendering in Tender One

Commented [JM1]: Assuming the current high level ability to decline award remains, this is always an option regardless isn't it?

Commented [JG2R1]: We need to agree on whether tenderers can cherry pick the routes they want from what is awarded or whether they must accept all.

What we discussed last week was that tenderers would need to state a maximum viable award in their submission so that we could eliminate non-viable awards in evaluation. Then if they declined we would move to next best.

Pros of cherry picking

- Operators given flexibility to determine whether award of individual routes works for them

Cons of cherry picking

- Suggests operators not committed to deliver routes they are tendering for.
- Time/effort in award cycles.
- A decline may have impact on them or another operator in next offer. Eg someone else declined so in the second round I am offered 4 routes but I declined 4 in the first, can I now have all 8 as together they make more sense?

9(2)(j)

The analysis in the table above shows 9(2)(j)

This can be seen in the second to last column; a value of <1 indicates that not all Tech Bus routes available in Tender One will be fulfilled given the filter applied. 9(2)(j)

The analysis suggests to us that a cap of 10% of all Technology Bus routes in each region is appropriate in the circumstances and should give small business the opportunity to retain their existing routes through a competitive tender process.

Other points to note:

- The information presented attempts to identify which operators will tender for Tender One and which for Tender Two based on the Daily bus routes they hold. It is not possible to say with certainty which tender operators will choose to respond to as it is expected their decision will be based on their aspirations and expected competition for the routes available.
- The analysis does not take account of new entrant operators and their likely choice of tender round. This could have a significant impact on the outcome of Tender One.
- The 3rd to last column of the table shows the % of Daily Bus routes available in Tender One. The rules mean that in the Gisborne region no Technology routes will be available in Tender One.
- There is a possibility through the proposed approach that Daily Bus routes are let through Tender One, but the related Tech Bus routes being left for Tender Two. This may create inefficiencies for operators and inflate their tender prices.

Alternatives considered

Alternatives to the proposed solution were considered but discounted on the grounds that they did not comply with the stated objectives. These options are listed below:

- No change to the existing approach
- Offer Technology routes to incumbent operators at existing prices.
- Offer Tech Bus routes to incumbent operators only where they are successful in winning Daily Bus routes at the same school in Tender One
- Offer Tech Bus routes where any tenderer is awarded Daily Bus Routes at same school in Tender One.
- Incumbent operators are able to submit prices for Tech Bus routes in Tender One which will be evaluated if the operator is also awarded Daily Bus routes

Supporting Tech Bus route analysis

The information is provided below as reference material which illustrates the nature of Tech services.

- Tech Bus routes are currently delivered by 38 operators that will be providing services in 2021,
- The cost to the Ministry for Tech Bus services was \$4.6M in 2018/19.

- 9(2)(j) [REDACTED]

- 9(2)(j) [REDACTED]

- 9(2)(j) [REDACTED]

- 9(2)(j) [REDACTED]
[REDACTED]
[REDACTED]

9(2)(j) [REDACTED]

Discussion document

Elements for the bus services procurement needing revision under a two tender approach

February 2020

This discussion document sets out commercial elements of the bus procurement that must be revised due to the recent change to procure using a 2 tender approach. The topics covered are:

- 1) Preserving competition
- 2) Ability to accept or reject award in tender 1
- 3) Definition of a tenderer for tender 1&2 restrictions
- 4) Tender 1 evaluation approach

It is assumed that readers are familiar both with the two tender approach and also the single tender approach that was designed in 2019.

Once a position has been agreed for each of the elements covered in this document the procurement documents (procurement plan, RFP and evaluation plan) will be updated on this basis.

Preserving competition

Problem statement

A decision has been made to pursue a two tender approach for the bus services procurement. This has implications for the existing market share tests that were designed for a single tender procurement by testing the market share of operators based on the number of route groups they hold. Under the two tender approach we won't know how many route groups there will be, or how many routes will be let individually until the completion of the first tender evaluation and route group review is complete.

Tender 1

For tender 1 it is proposed that:

- No market share tests apply. It's not possible to breach existing market share caps of 75% of groups in a region and an HHI of 25% nationally based on # of routes available and tenderers being restricted to bid for a single region only. And it is not considered appropriate to limit operators' potential share of the total routes on offer.
- RFP to advise that a market share test will be applied in tender 2.

Tender 2

For tender 2 it is proposed that the following should apply regardless of which of the four options presented below is chosen:

- 75% regional market share cap (no change to previous)
- 25% national HHI cap (no change to previous)
- Chatham Islands (3 Daily Routes) excluded from tests (no change to previous)
- Great Barrier Island (2 Daily Routes) will be excluded from the market share tests. Great Barrier Island has been defined as the 88th route group since the original tests were developed and forms part of the Auckland region. It should be excluded for the same reason as the Chathams: it's remoteness to other groups in the region.
- Market share tests for tender 2 will be calculated using routes available for tender 2 and those let in tender 1; i.e. a test of total market concentration rather than a test based on what is available in tender 2.

Four options have been prepared for how the market share tests can be performed once the preferred suppliers for tender 2 are known:

Option 1: Determine outcome of tender 1 before confirming approach:

- Groups will be recut based on route grouping principles. Recut could produce more or less groups than previously advised.
- The Ministry will test the impact of various options for applying market share caps before confirming approach (i.e. a choice between using groups, routes or a combination of the two).
- The Ministry will ensure any outcomes of this exercise are well documented and refereed to avoid any perception of bias.

Option 2a: Apply market share tests/caps based on number of routes:

- Tests carried out based on number of routes (Daily & Tech).
- Was previously groups but;
 - difficult to design fair test when an unknown number of routes will be let through tender one.

- groups not representative of overall share given groups range from 4-36 daily routes and 1-69 Tech routes.
- This approach may further restrict ability of some larger operators to maintain their current share (eg 9(2)(b)(ii)) during tender 2.
- Daily and tech routes treated same in market share tests even though relatively different.

Option 2b: Apply market share tests/caps based on number of Daily routes:

- Same as option 2a except market share tests ignore technology routes.
- Recognises that technology routes account 9(2)(j) of cost currently and are not considered core business for operators.

Options 3: Apply market share tests/caps based on route groups:

- Tests carried out based on number of groups regardless of size.
- For the purpose of carrying out the tests all routes let through tender 1 will be treated as a single group (ie up to 10% of a region but potentially delivered by multiple operators).
- This will simplify the approach. However, it must be noted:
 - A single route could be let through tender one which would be equal to groups with up to 36 daily routes or 69 tech routes.
 - The test of market share may be inconsistent across regions, for example in regions with three groups being tendered in tender 2 a single operator could be successful in winning all but a single tendered route or 10% of routes in the region.

To be agreed

- Acceptance of proposed approach OR agree an alternative
- To select from options 1, 2a, 2b, and 3 to be taken forward and drafted into the procurement documents.

Ability to accept or reject award in tender 1

Problem statement:

In designing the two tender approach a decision was made to allow operators to accept or decline an award for tender 1, with any routes that were declined being put into tender 2. A constraint needs to be designed to ensure operators don't tender in tender 1 with no intention of accepting any award to drive a perverse outcome.

Tender One current approach

- Any operator (current and new) can tender for any or all Daily Bus routes in a single region that must be the region where its head office resides or an adjacent region.
- Operators will need to choose whether to participate in Tender One based on the tender constraints and conditions.
- Up to 10% or 10 routes (whichever is higher) of all Daily Bus routes in each region can be awarded in this tender round.
- Successful tenderers can decide whether to accept or decline the bus routes offered to them in this tender round.
- Any award declined by tenderers will result in the routes being put into Tender Two. The Ministry will not attempt to select the next best outcome to award all routes available in this round.

Potential issue

- Operators tender in Tender 1 with no intention of accepting them if they are awarded. Eg 9(2)(b)(ii) , or 9(2)(b)(ii) .
- This could reduce (or potentially eliminate) the pool of routes available to operators who see Tender One as their only choice.

Data:

Summary of routes available in Tender I and II

Region	Routes available			Tender I award cap (Daily routes only)			Tender II minimum routes		
	Daily Bus	Tech Bus	Total	Daily Bus	Tech Bus	Total	Daily	Tech	Total
Northland	170	40	210	17	-	17	153	40	193
Auckland	76	72	148	10	-	10	66	72	138
Bay of Plenty	113	37	150	11	-	11	102	37	139
Waikato	167	99	266	17	-	17	150	99	249
Gisborne	42	4	46	10	-	10	32	4	36
Hawke's Bay	96	35	131	10	-	10	86	35	121
Taranaki	58	16	74	10	-	10	48	16	64
Whanganui/Manawatu	122	56	178	12	-	12	110	56	166
Wellington/Wairarapa	75	103	178	10	-	10	65	103	168
Nelson/Marlborough/Tasman	112	26	138	11	-	11	101	26	127
West Coast	48	12	60	10	-	10	38	12	50
Canterbury	112	132	244	11	-	11	101	132	233
Otago	161	31	192	16	-	16	145	31	176
Southland	113	12	125	11	-	11	102	12	114
Total	1,465	675	2,140	166	-	166	1,299	675	1,974

Options:

Options for mitigating the potential issue are:

Option	Remaining risk
It tenderers are offered [10] routes they are required to accept.	Tenderer bid for up to 9 routes, be awarded all but not accept.
If tenderers are offered all routes they tender for they are required to accept.	Tenderer bid for more routes than available, could be awarded number available in a region but not accept.

If tenderers are offered [10] routes or all routes they tendered for they are required to accept.	Could tender for 10, be awarded 9, and decline all. Leaving only [1] route available for other tenderers in some groups.
If routes are declined in tender one then re-award to next best outcome until routes available fully subscribed.	Award declined by one operator could impact award to other operators, potentially influencing operator's decisions, delaying the process and introducing complexity.
Ask operators to specify in their response a minimum viable number of routes which must be accepted if awarded.	Adds complexity to evaluation Will provide inconsistent limits Gives certainty to the operator and the Ministry as to what number of routes must be accepted There is no requirement to confirm with operators what they will accept after tenders have been evaluated

Proposed approach:

Successful tenderers awarded less than [## routes or XX% of Daily routes] or less than the number of routes they tendered for can decide whether to accept or decline the routes offered to them from Tender One. All other routes awarded in Tender One must be accepted. Any award declined by tenderers will result in the routes being put into Tender Two.

To agree:

- Acceptance of proposed approach OR agree an alternative
- Minimum number/percentage of routes that need to be awarded before the award must be accepted

Definition of a tenderer for tender 1&2 restrictions

Problem statement

The two tender approach has been designed to target small regional operators in tender 1, and the rest of the market in tender 2. If tenderers accept award of routes from tender 1 then they will not be able to participate in tender 2. Without implementing any controls on ownership tenderers could circumvent the intent of this approach by setting up companies with different names that are related/controlled by the same owners. Thus a control should be considered to treat related companies as one.

Options

To control for related companies and ownership it is useful to consider control but also how companies may enter into joint ventures or subcontracting arrangements. The table below sets out three options for how the Ministry could test for inter-company relationships.

Option	Analysis
Use tenderer name	<ul style="list-style-type: none">- Simplest option- Will not mitigate the problem, operators will be able to manipulate the outcome by tendering under multiple company names.
Use definition of control	<ul style="list-style-type: none">- Will restrict operators who hold a significant share in other operators.- However, operators would be able to have an interest in multiple tendering companies where they don't have a controlling share and still comply with the requirements.
Use Interconnected Body Corporate definition from the Commerce Act 1986	<ul style="list-style-type: none">- This option was used by the Greater Wellington Regional council when assessing a market share limit in their bus procurement (see below).- In effect it restricts operators with any financial/ownership relationship, eg subsidiaries of subsidiaries or part ownership.- Out of the 3 options this will require the most information for the Ministry to enforce.

GWRCs example

For a market share test the Greater Wellington Council linked tenderers in their bus procurement as follows.

Each:

- Consortium Member and Interconnected Body Corporate of each Consortium Member of a Tenderer included in the [preferred outcome]; and
- Interconnected Body Corporate of a Tenderer included in the [preferred outcome] will be separately assessed against the market [share cap] as if that relevant body was itself the Tenderer included in the Initial Preferred Tender Outcome

To agree:

- Which option will be taken forward
- Whether this same approach to linking tenderers should also be used for the market share tests

Tender 1 evaluation approach

Problem statement

In tender 1 it is likely that the Ministry will receive only one tender submission for multiple routes and it will need to perform value for money analysis to determine which submissions will be successful if a region is oversubscribed. Typically value for money assessments are designed to compare similar outcomes (eg two submissions for the same route) but in this situation it will need to compare value for money across different outcomes (eg one route award with another). The Ministry needs to design a method to determine relative value for money across multiple routes.

Previous discussion

A discussion was held between the Ministry and Deloitte in January to confirm that a value for money test would be possible for tender 1. From this meeting it was agreed that (conclusion open to challenge if required):

- A quality only evaluation to test value for money would not be appropriate.
- A value for money test was possible for tender 1.
- PQM could provide a method for evaluation but would require a price and quality benchmark for every route (see example on following page).
- We will have existing prices for every route. However route and market changes from the tender 12 years ago mean they are not necessarily the best reflection of the benchmark of prices for each route.
- If we continue with PQM we should review the price and quality weightings for both tenders and it would be good if both phases had the same weightings. The table below shows the potential price premium for a 20% change in quality scores under different weight combinations.

9(2)(j)



- Tenderers pricing submissions should require price component transparency for negotiation and any analysis that is required during and after the evaluation
- A price cap should be applied during tender 1 to ensure that the Ministry isn't required to pay an unreasonable price for route(s). This could happen if a region is undersubscribed.

To agree (for tender 1 and 2):

- The evaluation method.
- The price/quality weightings.
- The benchmark that will be used for value for money tests/price cap - one of the following:
 - o The current route price
 - o Benchmark of 2008 tender prices
 - o Shadow bid
 - o Combination of the above
- The benchmark for quality (from 0%-100%).
- Confirm the price cap methodology (ie what % above the benchmark).
- Confirm the implications of exceeding the price cap.

Comparing responses for different routes to determine whats preferred

Assumes there is only a single response received for two different routes

	Route A	Route B	Best metric
METRICS FROM RESPONSE			
Distance (km)	100	50	
Respondents price			
\$/route	\$ 100	\$ 100	
\$/km	\$ 2.0	\$ 2.0	
Price for evaluation			
Trip price	\$ 300	\$ 200	
Ave \$/km	\$ 3.0	\$ 4.0	Route A
Respondents quality score	60	80	Route B

	Route A	Route B	Best metric
USING PQM FOR EVALUATING RESPONSES WITHOUT COMPARISON			
Weightings			
Price	9(2)(j)		
Quality			
Benchmark			
Trip price	\$ 250	\$ 210	
Quality average	70	70	
SQP			
Respondent	\$ -	\$ 13	
Expected in open tender	\$ 17	\$ -	
Adjusted evaluation price			
Respondent	\$ 300	\$ 187	
Expected in open tender	\$ 233	\$ 210	
Delta \$	\$ 67	-\$ 23	Route B, greater saving over expected result
Preferred value for money outcome	No	Yes	

Comparing responses for different routes to determine what's preferred

Assumes there is only a single response received for two different routes

	Route A	Route B-Long	Route B-Short	Route B-expensive	Route B-cheap
METRICS FROM RESPONSE					
Distance (km)	100	50	5.0	50	50
Respondents price					
\$/route	\$ 100	\$ 100	\$ 100	\$ 101	\$ 99
\$/km	\$ 2.5	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0
Price for evaluation					
Trip price	\$ 350	\$ 200	\$ 110	\$ 201	\$ 199
Ave \$/km	\$ 3.5	\$ 4.0	\$ 22.0	\$ 4.0	\$ 4.0
Respondents quality score	60	80	80	80	80

	Route A	Route B-Long	Route B-Short	Route B-Long	Route B-Long
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USING PQM FOR EVALUATING RESPONSES WITHOUT COMPARISON

Weightings

Price

Quality

9(2)(j)

Expected in open tender

\$/route	\$ 100	\$ 110	\$ 110	\$ 110	\$ 110
\$/km	\$ 2.2	\$ 2.2	\$ 2.2	\$ 2.2	\$ 2.2
Trip price	\$ 320	\$ 220	\$ 121	\$ 220	\$ 220
Quality average	70	70	70	70	70

SQP

Respondent	\$ -	\$ 13	\$ 7	\$ 13	\$ 13
Expected in open tender	\$ 21	\$ -	\$ -	\$ -	\$ -

Adjusted evaluation price

Respondent	\$ 350	\$ 187	\$ 103	\$ 188	\$ 186
Expected in open tender	\$ 299	\$ 220	\$ 121	\$ 220	\$ 220
Delta \$	\$ 51	-\$ 33	-\$ 18	-\$ 32	-\$ 34
Delta %	14.7%	-17.9%	-17.9%	-17.3%	-18.4%

Preferred value for money outcome

On \$	5th	2nd	4th	3rd	1st
On %	4th	2nd =	2nd =	3rd	1st

Baseline: Negotiate with 54 'small' operators and tender remaining routes

Proposal

The Ministry will direct negotiate with 54 current 'small' operators of Daily and Technology routes and tender the routes held by the 10 largest Daily and Technology route operators.

Points to note

- The split of 'small' and 'large' operators using this approach is based on the Daily and Technology routes currently held by operators; this is not reflective of the operators overall business size or nature. The table below shows four significant operators that are included in this definition of 'small' operators under this approach. But they are they are clearly not small, and in one instance is a very large multinational business.

	Mana Coach Services	Howick and Eastern Buses Ltd	Red Bus	Ritchies Murphy Transport Solutions Ltd
Business size	9(2)(j)			
Region of Daily and Tech routes				
Owner				
Owner size				
Owners operations				

- Does not comply with the government procurement rules

Alternative option 1: Rationale based direct appointment

Proposal

The Ministry will direct negotiate with 'small regional' operators of Daily and Technology routes and tender the remaining routes as groups:

- 'Small' is defined a [<20 FTEs], or another similarly configured benchmark
- 'Regional' is defined as head office in region or adjacent region

Points to note

- XX

Metrics

- XX

Alternative option 2: Preference small regional operators but still procure through a competitive tender

Proposal

The Ministry procures through a two phase tender:

Phase I will award a capped portion of the available routes in each region to regional operators.

Phase II will tender all routes not awarded in Phase I through an open tender.

Market cap available per region

The higher of:

- 10% of Daily routes being procured in a region
- and
- 10 Daily routes in a single region

Rules of participation

- Operators must choose whether they want to bid in Phase I or Phase II
- If tenderers are successful in Phase I they cannot tender in Phase II
- If tenderers are unsuccessful in Phase I they can tender in Phase II

Phase I Tender

- All routes offered as individual routes
- Tenderers can only bid for routes within one region
- The tenderers head office must be in the region or adjacent to the region they are tendering for. If the company is part of a larger group this test will be applied to the head office of the group
- Routes will be awarded using existing evaluation approach
- If cap fully subscribed the selection of which tenders prevail will be performed on a Value for Money basis up to the cap

Phase II tender

- All Tech routes and those daily routes not awarded through Phase I will be grouped and tendered through Phase II
- Existing evaluation approach applies

Points to note

- At risk small regional operators can tender for the Daily routes they currently hold
- Existing smaller operators could substantially increase their market share within a region
- New operators could enter market through Phase I with little regard to existing market share. This could be mitigated to some extent by applying an incumbency bias in evaluation
- There is potential for some regions to be significantly oversubscribed and others significantly under subscribed

All Technology routes should be tendered

All tech services should be considered supplementary to core business and should therefore be tendered.

Rationale;

- Tech routes are typically low value. I.e. reduces the risk of claims that we are removing someone's livelihood in a region as they would generally need to have significant other business in-order to maintain a tech service.
- Majority of Tech routes run only once a week. I.e. these services do not provide full time employment.
- Services provided during off-peak bus transport periods (during school hours) when excess capacity is available in public transport and other bus fleets. I.e. best public value to be obtained from sourcing services from operators who have buses surplus to requirements during the time the services run.

Current technology routes;

- There are 40 operators providing technology routes currently
- 70% of current technology operators service more than 2 routes

9(2)(j)

Metrics

Summary of routes available in Phase I and II

Region	Routes available			Phase I award cap (Daily routes only)			Phase II minimum routes		
	Daily Bus	Tech Bus	Total	Daily Bus	Tech Bus	Total	Daily	Tech	Total
Northland	170	40	210	17	-	17	153	40	193
Auckland	76	72	148	10	-	10	66	72	138
Bay of Plenty	113	37	150	11	-	11	102	37	139
Waikato	167	99	266	16	-	16	151	99	250
Gisborne	42	4	46	10	-	10	32	4	36
Hawke's Bay	96	35	131	10	-	10	86	35	121
Taranaki	58	16	74	10	-	10	48	16	64
Whanganui/Manawatu	122	56	178	12	-	12	110	56	166
Wellington/Wairarapa	75	103	178	10	-	10	65	103	168
Nelson/Marlborough/Tasman	112	26	138	11	-	11	101	26	127
West Coast	48	12	60	10	-	10	38	12	50
Canterbury	112	132	244	11	-	11	101	132	233
Otago	161	31	192	16	-	16	145	31	176
Southland	113	12	125	11	-	11	102	12	114
Total	1,465	675	2,140	165	-	165	1,300	675	1,975

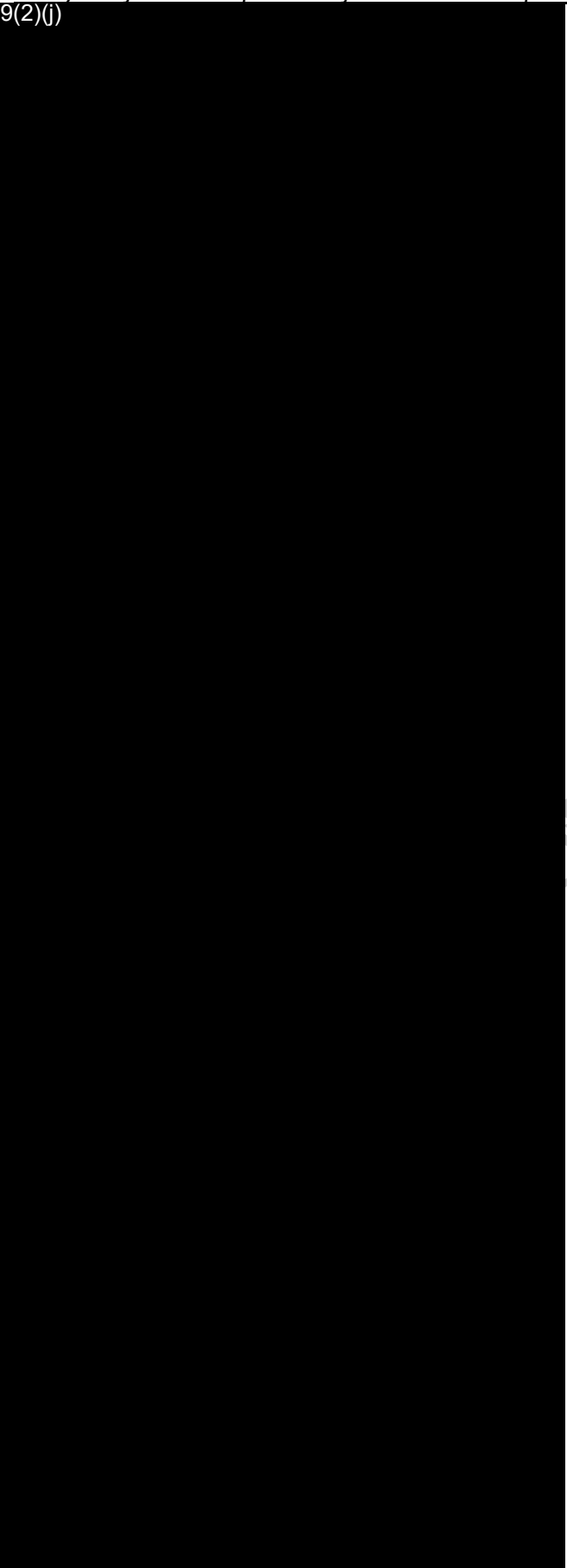
9(2)(j)



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1982

Analysis of current operators for alternative option 2
9(2)(j)



MEMO

To: James Meffan, Delaney Myers
From: Jonathon Gear
Date: 27 January 2020
Subject: Justification for 10% / 10 Daily routes split of market

Background

In November 2019 the Minister of Education presented a paper to cabinet that gained endorsement to exempt the Ministry of Education from the Government Procurement Rules to allow a split procurement approach to be undertaken. Under this exemption the Minister of Education and the Minister for Economic Development are to confirm the definition of the small regional operators (refer CAB-19-MIN-0623).

To support the Ministers in their decision the Ministry has developed (as an option) a split procurement approach that allows for two tenders; Tender One is to target small regional operators, Tender Two will be open to any operator not successful in Tender One. It is proposed that Tender One will have the following features:

- i. Up to 10% or 10 routes (whichever is higher) of all Daily routes in each region can be awarded through this tender;
- ii. Tenderers can tender for any or all routes in a single region only, determined with reference to their head office location;
- iii. Operators who win routes in Tender One will be excluded from participation in Tender Two.

This memo explains how point i. above was calibrated.

Justification for 10% or 10 route split

The purpose of Tender One is to meet the objective of “increasing the likelihood of success for small regional operators”, effectively guaranteeing that successful tenderers are small regional businesses. Thus filters are required that allow for small regional operators to tender for Tender One but limit the attractiveness for large multiregional operators.

To calibrate the Daily route limit for Tender One analysis was prepared on the Ministry’s existing Daily bus operators to determine what “small” means in this situation. This involved mapping existing operators to their likelihood of tendering in Tender One based on the number of routes they currently hold and the number of regions in which they operate. The findings of this analysis are shown in table 1.

In preparing this analysis the following observations were made:

- The number of groups in a region range from 3 to 11, with the range of Daily routes in a region ranging from 42 to 170. This range in groups and Daily routes by region means that a percentage allocation is required to scale the available routes in the region, but at the same time a minimum number of routes available in a region is recommended to account for viable business sizes and the size of operators in smaller regions. This resulted in the filter being based on the higher of a specific number and a percentage of routes.
- The intention for Tender two is to group routes, with operators only able to tender for groups and not individual routes. Groups range in size from 4-36 Daily routes plus technology routes. The use of groups for Tender Two is likely to pose barriers to entry for smaller operators that don’t have the scale, financial support, or aspiration to tender for groups. The majority of groups which contain Daily routes (78%) are currently configured with more than 10 Daily routes. Therefore, it was

assumed that operators with 10 or less Daily routes today are likely to struggle in scaling up for route groups in their area and the filter for tender 1 should take account of this.

Table 1: Likelihood of existing Daily route operators tendering in Tender One

9(2)(j)



The analysis in table 1 shows that for all existing operators that are likely to tender in Tender One there will be sufficient routes available such that all operators that are likely to tender for Tender One could be successful. This can be seen in the second to last column; a value of <1 indicates that not all Daily routes available in Tender One will be fulfilled given the filter applied. The subscription rate for likely + possible operators exceeds the available routes in 9(2)(j), but the mid-size “possible” operators may choose for option II given the scale of their existing operations.

The analysis suggests to us that a cap of 10% or 10 routes (whichever is higher) of all Daily routes in each region is appropriate in the circumstances and should increase the likelihood of success for small regional operators.

Other points to note:

- The information presented attempts to identify which operators will tender for Tender One and which for Tender Two. It is not possible to say with certainty which tender operators will chose to respond to as it is expected their decision will be based on their aspirations and expected competition for the routes available.
- The analysis does not take account of new entrant operators and their likely choice of tender round. This could have a significant impact on the outcome of Tender One.
- The 3rd to last column of the table shows the % of Daily routes available in Tender One. The rules mean that where a region has less than 100 Daily routes the percentage of Daily routes that are available in Tender One will exceed 10%. The highest percentage awarded available for Tender One is in the Gisborne region (24%) as the region only contains 42 Daily routes.

School bus procurement

Market Engagement Plan post-lockdown

Communications objectives under COVID-19

As we commence market engagement on the revised procurement approach, our communications aim to:

- Demonstrate that we have listened to their survey feedback and that this has informed our decisions and planning
- Acknowledge current COVID-19 environment, drawing attention to the staged, two tender timeline, and extended RFP response times and indicating how these may alleviate some of the concerns expressed, in particular, by larger operators
- Use simple and accessible online platforms for engagement, engage more often and encourage active interaction in lieu of face-to-face discussion.

Proposed activities and timeline

Timeframe	Activity	Audience	Method / Channel	Status
9 – 17 Apr	Invite market feedback on the timing of the procurement	Incumbents and GETS followers (incumbents and new entrants)	GETS Phone calls to incumbents who hadn't responded to survey	Completed
20 – 24 Apr	Based on market preferences, recommendation to Governance Board.	Ministry Governance Board	Email	Completed
29 April	Update to Minister's office on next steps	Minister Hipkins office	Email	Awaiting response
4 May	Brief BCA on survey responses Communicate results of survey to survey respondents and outline next engagement planned.	BCA Survey respondents and GETS followers	Phone call Email all respondents GETS Notice	Planned

6 May	<p>Link to pre-recorded video* introducing two tender approach. Slide available as download.</p> <p>Provide draft contract with summary of key terms for review.</p> <p>Online Q&A forum planned</p>	GETS followers	GETS Market Update, with link to video on YouTube	In development
13 May	Invite and registration details for Online Q&A forum	GETS followers	GETS Market Update	In development
20 May	<p>Host online Q&A forum**</p> <p>Publish minutes/Q&As, and invite further questions.</p>	GETS followers	<p>Skype or Facebook (tbc)</p> <p>GETS</p>	In development
Week of 1 Jun	Commence procurement – Tender 1 RFP		GETS	In development

*Video to be pre-recorded, edited, Ministry-branded and published to Ministry's YouTube channel as a private link. Video format would use the same style as 2019 roadshow ie. introduction by Delaney to camera, handover to James to camera, James voiceover to slide show. Slides available as download with supporting notes

*Online forum. Tender team on video answering questions received to date, then take new live questions. Attendees on audio only, posting questions in Comments pane.



Proposed GETS Notice

Monday 4 May 2020

Market update (+ email all survey respondents)

Survey results and next steps

Thank you to everyone who completed our recent survey and told us whether you're ready to engage with the school bus procurement yet. In this market update, we wanted to relay the results of that survey, and to inform you of our next steps.

What you told us in the survey

The survey asked you to choose a statement that best represented your current thinking, either:

- A. Yes, provide us with information about the procurement now, or
- B. No, we are not ready to think about procurement yet.

Most businesses who have current contracts with the Ministry and who are interested in future opportunities responded to the survey. We also heard from a small number of suppliers who do not hold current contracts with the Ministry.

Just over half of you (53%) told us you want us to proceed immediately and the remaining 47% asked us to delay further engagement. To get a clearer picture of the results, we divided the responses by supplier size. This showed us that three quarters (73%) of smaller suppliers asked us to proceed immediately. For larger operators, it was the reverse, with three quarters (77%) telling us they were not ready to engage just yet.

While we are committed to keep all responses confidential, some common themes emerged. Some felt that the procurement should be delayed until normality has returned to the industry and the economy has stabilised, with suggestions to delay the procurement. For some this meant waiting until all pandemic alert levels have been lifted. Others proposed time delays. It was also suggested that the pandemic response and the economic uncertainty would make it difficult to price a tender response.

How will we use this?

We asked you to respond to our survey because it has been a long time – December 2019 – since we last discussed the school bus procurement with our supplier market. Since then we have been working to revise our procurement approach to ensure opportunities for small regional operators, having received a clear message from the industry asking for this.

Once again, we were prepared to use your feedback to adjust our approach if necessary. Fortunately our revised procurement approach fits very well with the survey feedback we have received.

In order to ensure opportunities for both smaller and larger suppliers we are taking a two tender approach, with an earlier tender designed to meet the aspirations of smaller suppliers and a later one for larger suppliers.

On the basis of feedback received we felt it important to share the detail of this revised approach as soon as possible, assuring smaller suppliers that their wish for early engagement will be met, while reassuring larger suppliers that there will be some delay before they need to engage with an active procurement. This decision to commence engagement on the School Bus Procurement has been confirmed by project governance and the Minister of Education.

We will tell you more about the revised procurement in a video presentation that will be made available through GETS on Wednesday 6 May. Following this you will have the opportunity to raise any questions you may have.

Next steps

- Wednesday 6 May – Publication of video presentation, draft contract and key terms on GETS
- Wednesday 20 May –Live Q&A session to provide an opportunity to ask questions and provide feedback both during and afterwards. A record of all questions and answers will be published on GETS.
- Friday 22 May – Feedback on draft contract and key terms closes.

We look forward to re-starting our engagement with you all over the next few weeks. If you have any questions, please email the Bus Procurement team at Bus.Tender@education.govt.nz
Regards.

The School Bus Procurement team

Reactive Q&As

1. **Why is the Ministry asking us to engage with its school bus procurement given the challenges being faced by transport businesses as a result of the COVID-19 pandemic response?**

We acknowledge that many businesses will be currently focused on managing through the crisis. And we also understand that businesses will be looking for some certainty about future opportunities. The school bus procurement presents an opportunity for longer term stability that may provide reassurance in these uncertain times.

2. **Why has the Ministry asked the market to re-engage with its procurement when I clearly explained in my response to their survey that now is not a good time?**

We received a wide variety of responses to our survey, from those strongly in favour to those strongly against immediate re-engagement. Over all, there were slightly more responses in favour of proceeding with the procurement than against. Most of those who asked us not to proceed just yet were larger operators. We believe that these concerns will be addressed when we announce the structure of the procurement and the timeline which will not require their attention until later in the year.

3. **How can we be expected to price our offers given the uncertainty surrounding numerous economic factors?**

We understand that uncertain times make pricing difficult and that as a result we may see some "risk pricing" in the offers we receive. However government procurement will be an important part of this country's economic restoration by creating long-term opportunities for businesses and encouraging future investment.

4. **Your survey was just lip service – you were going to proceed with the procurement regardless.**

Prior to lockdown we were ready to re-engage the market and start the procurement, but we genuinely wanted to hear the market's views (hence the survey) and were prepared to delay the procurement if the overall results were stronger in favour of delaying the procurement.

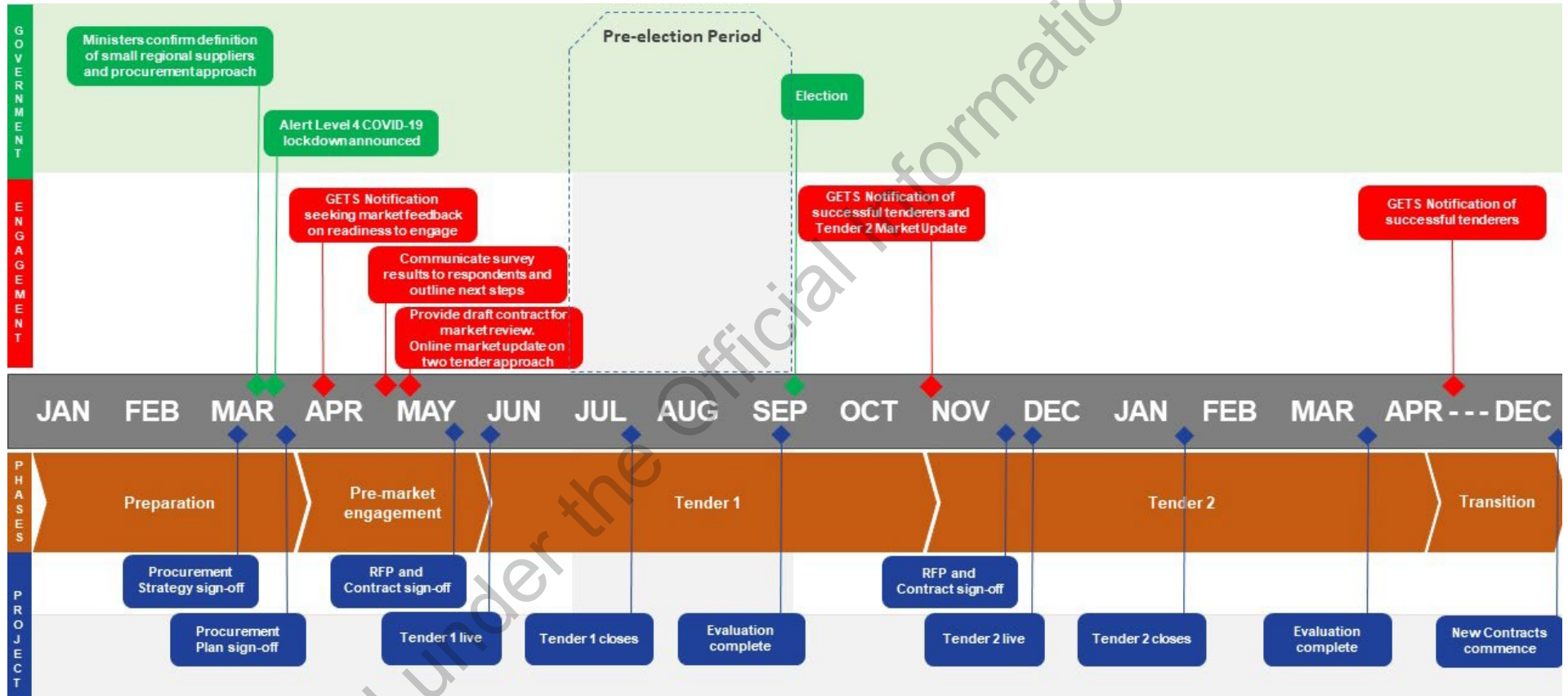
5. **How will we receive more information and will there be an opportunity and enough time to ask questions?**

We'll start by providing the market with a link to a brief video presentation outlining the procurement approach and timeframe for this year. At the same time, we'll share a draft contract for the industry to review. Two weeks later, we'll host an online Q&A forum and take questions which you can ask 'live' or send us your questions in advance.

6. **The Ministry could create much more certainty for the industry by rolling over existing contracts for an extended period. Why doesn't it do that rather than adding the uncertainty of a tender to everyone's worries?**

By December 2021 many operators will have enjoyed the stability of Ministry contracts for 13 years. It is an important principle of government procurement that the access to government contracts should be made as widely available as possible to New Zealand businesses. The current disruption is significant but temporary. Locking up contracts for a further three to six years as has been suggested may seem ideal to current suppliers who are happy with their existing workload but would not be fair to new entrants or existing suppliers with growth aspirations.

Timeline





School Bus Tender

Engagement & Communications Plan

Two Tender Procurement

April 2020

Released under the Official Information Act 1982

Document Information

Identification

Document Subject:	Stakeholder Engagement & Communications Plan for: Pre-tender engagement, tender and contract award for Tender 1 (May – October 2020)
Document Title:	Procurement Stage - Stakeholder Engagement & Communications Plan
Authors:	Wendy Goldswain, Senior Engagement Advisor - Business Services
Date Created:	23 August 2019
Date Last Saved:	

Document History

Version	Date	Description
0.1	23 Aug 2019	First draft to James Meffan, Megan Hubbard
0.2	2 Sep 2019	Internal review – Delaney Myers, Alison Murray, Project Team Working Group
0.3	11 Sep 2019	Governance Board - endorsed
1.0	16 Sep 2019	Steering Group – for noting
1.1	15 Oct 2019	To reflect changes to procurement approach (not released)
1.2	27 Apr 2020	To reflect the final two tender approach

Internal Reviewers

The following people to review this document prior to version being released.

Name	Position
James Meffan	Project Director, School Bus Tender
Megan Hubbard	Team Leader, Engagement, EIS
Delaney Myers	Group Manager, School Transport
Working Group	Procurement, Commercial

Related documents

Name
Procurement Strategy
Procurement Plan
Project Initiation Document

1. Background

This is the largest transport tender in the Ministry's history, and a large investment in taxpayer's money. The current contracts for Daily Bus services have been in place since 2008 and are due to expire on 31 December 2021. The tender is buying services for the Ministry's contracted Daily and Technology bus services. It excludes Direct Resourcing, SESTA services for students with complex mobility needs, and Conveyancing Allowances.

Market engagement has been prolonged since 2018. Following pre-tender market engagement in August 2019 on a single open tender approach, industry concern was raised that the tender would disadvantage some small regional operators. A decision was made in October 2019 to redesign the procurement approach, which resulted in the need to extend contracts with incumbents to December 2021.

The Ministry has designed the procurement around a two tender approach that addresses industry feedback and is equitable for all operators. The revised approach has been endorsed by MBIE and relevant Government Ministers.

2. Purpose

This stakeholder engagement and communications plan supports:

1. The market announcement of the Two Tender School Bus procurement approach
2. Tender 1 procurement process

This plan will guide all stakeholder engagement and communication efforts to ensure consistent, considerate and timely communications to stakeholders in line with the agreed Procurement Strategy and Procurement Plan. Key timings are:

Announce Two Tender approach and pre-Tender 1 market engagement	May 2020
Tender 1 period	Jun - Jul 2020
Tender 1 Evaluation and contract award	Aug - Oct 2020

This plan will be updated for the Tender 2 procurement process which will commence in November with pre-tender market engagement.

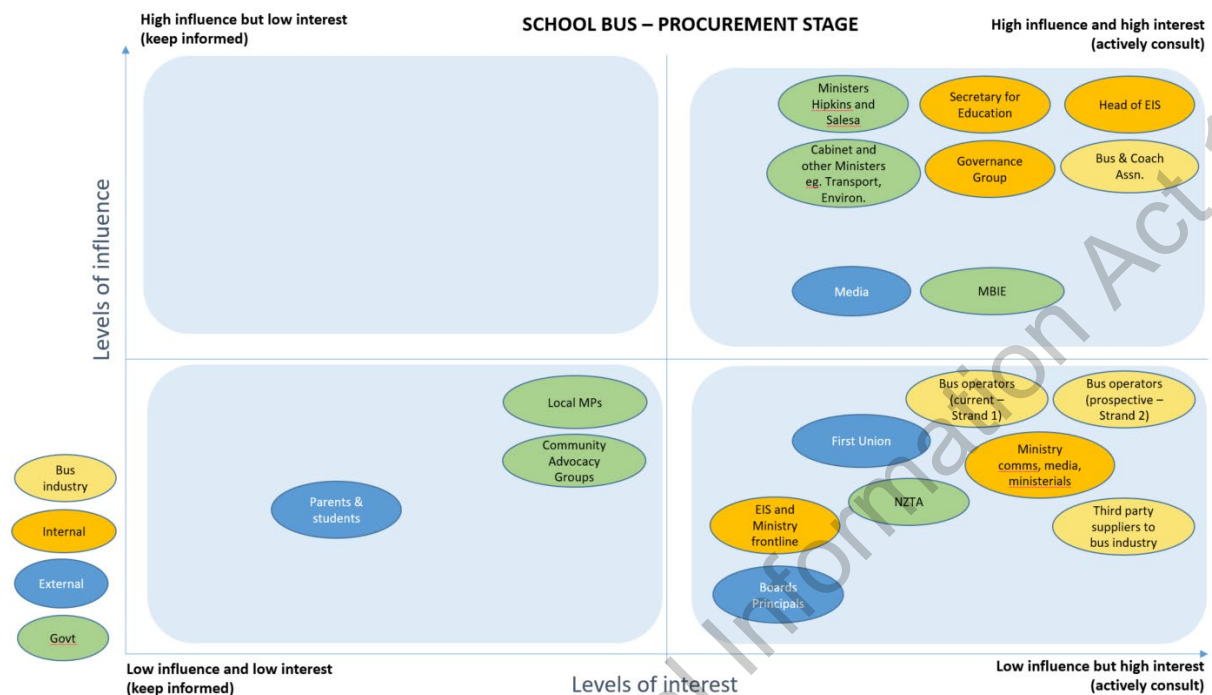
3. Procurement Objectives/Strategy

The key objective of this procurement is to ensure seamless continuity of Daily Bus and Technology Bus School Transport services that deliver eligible students to and from school, safely, reliably and ready to learn, while meeting the following government public value outcomes:

- Enabling access to Government procurements for small regional businesses
- Improving conditions for workers and future-proofing the ability of New Zealand business to trade
- Contributing to efforts to transition to a net-zero emissions economy, and
- Delivering value for money.

4. Stakeholder Analysis

For this procurement stage, we have identified the key stakeholders and grouped them into levels of influence and interest. Those in the High Interest and High Influence have the highest communication needs.



5. Engagement and communications objectives

In 2020, the primary objective is to restore market confidence in the Ministry's bus procurement process and set new expectations for school bus procurement. With this in mind, the communications and engagement objectives are:

- Ministers are kept informed of procurement progress and are proactively informed of relevant issues
- Bus industry (current and prospective operators and industry representatives) receive clear and regular messages so they are well informed and:
 - feel they are listened to and the procurement process is being run transparently without bias
 - understand the revised procurement approach and stages, and when they need to make decisions and take action
- Schools and students are reassured that there will be no compromise to service levels during the extension year (2021) and as we transition to new contracts and services (from 2022)
- Official Information Act requests and media requests are anticipated where possible, and managed with consistent and accurate messaging
- School Transport staff are fully briefed on the procurement requirements and process, comply with probity requirements, and know the process and channels for referring enquiries to for more information and questions.

6. COVID-19 considerations

Given the timing of our re-entry to the market coinciding with the COVID-19 pandemic response (when transport businesses would be preoccupied with managing their businesses through the pandemic), we

conducted a survey to gauge their views on whether they were prepared to engage with the procurement at this time.

Three quarters (73%) of small suppliers asked us to proceed immediately, while three quarters (77%) of large operators told us they were not ready to engage just yet. However, because of the two-part tender approach, we can meet the needs of all operators: small operators will have the earlier opportunity to participate in Tender 1 in June, while large operators will not have to engage with a live procurement until later in the year.

With the above in mind, our initial pre-tender engagement will aim to:

- Demonstrate that we have listened to their survey feedback and that this has informed our decisions and engagement planning
- Acknowledge current COVID-19 environment, drawing attention to the staged, two tender timeline, which will alleviate some of the concerns expressed, in particular, by larger operators
- Use simple and accessible online platforms for engagement, engage more often and encourage active interaction in lieu of face-to-face discussion.

7. Engagement approach

The engagement and communications approach is informed by the agreed procurement strategy, and importantly at this same, by the current COVID-19 restrictions around travel and physical distancing.

GETS will be the primary channel for all tender communications to ensure we follow strict probity requirements. For reasons of probity and transparency, all communication between the Ministry and tenderers will be managed through the GET

'Raise Question Here' function. While there will be a bus tender email address for general enquiries, there will be no 1-1 communications with transport providers; answers to any relevant questions received through the bus tender inbox will be standardised to preserve anonymity and consistency, and made available to all interested parties through GETS.

Ministers will be advised not to accept any meeting requests from prospective tenderers or industry groups.

School Transport staff (Transport Commercial Managers and Transport Advisors) who are interacting with current providers on current contracts will be asked to direct any specific tender-related enquiries to the project team or GETS.

The following activities are planned:

Proposed activities and timeline

Timeframe	Activity	Audience	Method / Channel	Status
9 – 17 Apr	Invite market feedback on the timing of the procurement	Incumbents and GETS followers (incumbents and new entrants)	GETS Phone calls to incumbents who hadn't responded to survey	Completed
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**Online forum. Tender team on video answering questions received to date, then take new live questions. Attendees on audio only, posting questions in Comments pane.

8. Key Messages

- The Ministry of Education is the second largest provider of passenger services in New Zealand. We assist over 100,000 students safely to and from school every day, and manage contracts for 78 transport providers for bus services, specialised transport, and ferry services.
- The current daily bus and technology bus contracts expire on 31 December 2021.
- The Ministry listened to industry feedback on a previously-proposed single tender approach where smaller regional suppliers could potentially have been disadvantaged.
- The Ministry will announcing a two-stage tender that creates two level playing fields for operators of all sizes and with differing aspirations.
- The tender includes around 1,500 daily bus routes and 700 technology routes. Specialised School Transport Assistance (6,000 students with complex mobility needs) and Direct Resourcing (bulk funding for 293 schools to manage their own transport assistance) is not part of this tender.
- The first open tender will be release in June 2020, designed for small regional operators, and where 10% of all bus routes will be awarded. The remaining routes will form the basis of Tender 2 which is designed for larger or more ambitious operators and this will be live at the end of the year.
- To ensure there is no compromise to school transport service delivery, the Ministry will be working with current and new suppliers to maintain a seamless continuity of service from the end of 2021 when current contracts end to the start of the school year in February 2022 when services commence - possibly with a number of new operators.

9. Reactive Q&As

1. **Why is the Ministry asking us to engage with its school bus procurement given the challenges being faced by transport businesses as a result of the COVID-19 pandemic response?**

We acknowledge that many businesses will be currently focused on managing through the crisis. And we also understand that businesses will be looking for some certainty about future opportunities. The school bus procurement presents an opportunity for longer term stability that may provide reassurance in these uncertain times.

2. **Why has the Ministry asked the market to re-engage with its procurement when I clearly explained in my response to their survey that now is not a good time?**

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We understand that uncertain times make pricing difficult and that as a result we may see some "risk pricing" in the offers we receive. However government procurement will be an important part of this country's economic restoration by creating long-term opportunities for businesses and encouraging future investment.

4. **Your survey was just lip service – you were going to proceed with the procurement regardless.**

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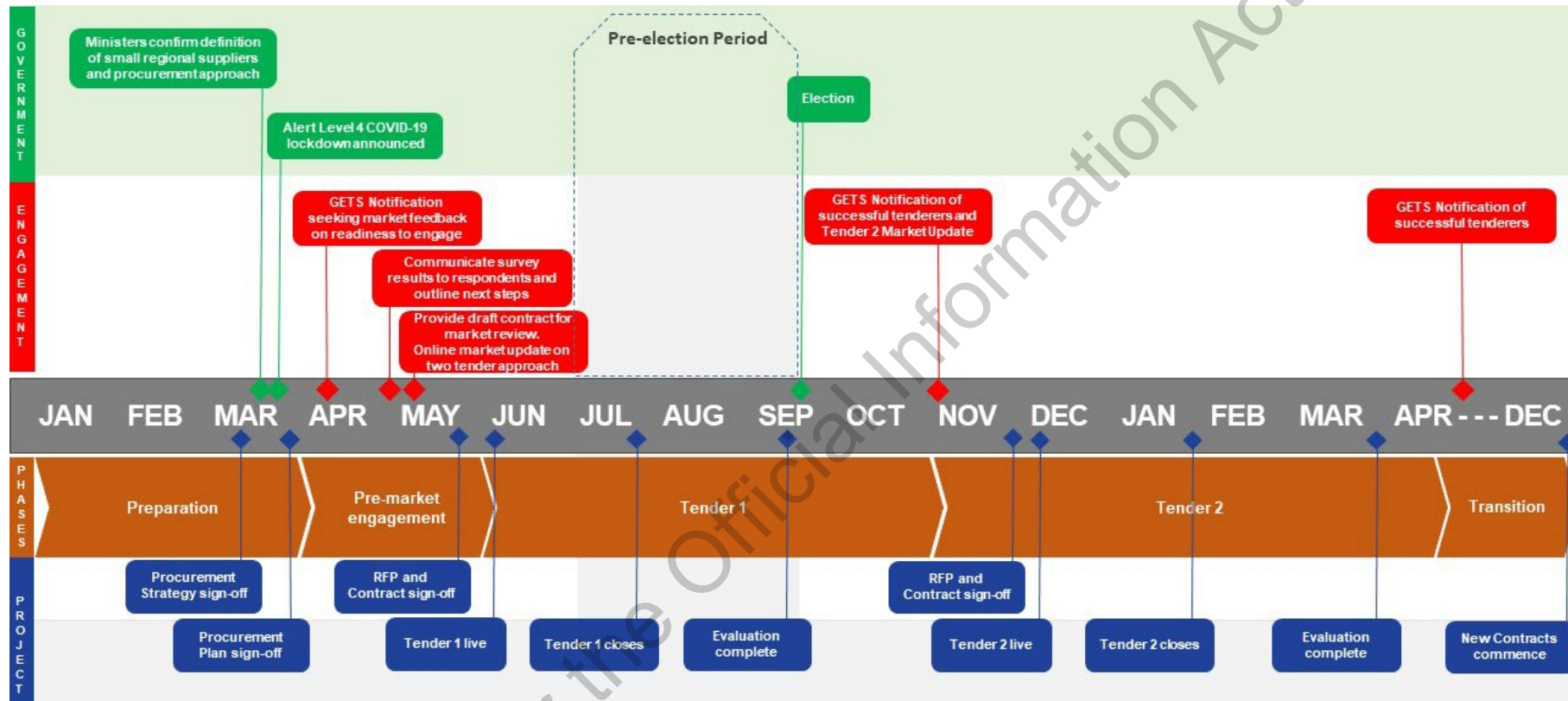
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10. Project timeline





School Bus Procurement Procurement Plan

Commercial Procurement

Education Infrastructure Service

March 2020, Final

Released under the Official Information Act 1982

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Completed External Reviews

MBIE - NZGP	<i>Procurement Functional Lead – Significant Procurement Plan review (See Appendix A)</i>
Deloitte	<i>Subject Matter Expert – Letter of Assurance (See Appendix B)</i>
External Legal	<i>External Legal Provider – Letter of Assurance (See Appendix C)</i>
Audit NZ	<i>External Probity Auditor – Letter of Assurance (See Appendix D)</i>

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1. Background

1.1. Purpose

The purpose of this document is to outline the plan for the procurement of School Bus Services for the Ministry of Education's (the **Ministry**) School Transport Team.

The procurement will be conducted through a two tender procurement approach (**Tender 1** and **Tender 2**) competitive Request for Proposals (**RFP**) processes on the Government Electronic Tender Service (**GETS**).

Due to the value of this procurement and the designation of the Ministry as a Public Service Department, this procurement must apply the Government Procurement Rules¹ (the **Rules**).

This document sets out a number of provisional commercial decisions that may be refined over the course of the project – e.g. evaluation criteria and weightings. These reflect the Ministry's views at the point in time this plan was developed but are subject to change and validation – e.g. through development of the detailed Evaluation Plan, Contract refinements, or a change in the current policy settings.

Details pertaining to the evaluation, selection and award process will be confirmed and presented through the Evaluation Plan. This document presents a high level overview of the proposed process.

1.2. Related documents

Documents relating to this procurement plan:

- School Bus Procurement Strategy
- School Bus Procurement Stakeholder Engagement and Communications Plan
- School Bus Procurement Probity and Conflicts of Interest Management Plan
- School Transport Bus Services Project Risk Register

1.3. Ministry Mandate

School Transport assistance is provided under Section 139D of the Education Act 1989, which allows the Secretary of Education to assist in the provision of transport to and from school.

1.4. Operational Context

The Ministry is the second largest purchaser of passenger services in New Zealand (after Auckland Transport) and has been managing the transport of children to and from school for over 130 years. While the ultimate responsibility for getting students to and from school sits with the caregiver, the Ministry offers assistance to students who don't have access to public transport, and where distance from their closest school is a barrier.

The Ministry provides School Transport assistance through the following mechanisms:

- **Daily Bus Services:** Contracts suppliers to convey students between schools and designated bus stops within an established proximity of students' homes,
- **Technology Bus Services:** Contracts suppliers to convey Year 7 and Year 8 students between schools to allow access to technical education facilities,
- **Specialised School Transport Assistance (SESTA):** Contracts suppliers to convey students with complex mobility needs between schools and student's homes,
- **Conveyance Allowance:** Making a payment to caregivers to assist with transport costs for eligible students where other School Transport services are impractical,
- **Student / bus ferries:** Contracts the Ministry has with two ferry companies for the transportation of students and/or buses, and

¹ <https://www.procurement.govt.nz/assets/procurement-property/documents/government-procurement-rules.pdf>

- **Direct Resourcing:** Directly funds schools/kura to make their own arrangements for students. Normally this is schools contracting transport suppliers or through the use of a Passenger Service Vehicle (**PSV**) owned and operated by the school/kura.

In summary, the Ministry is currently responsible for:

- Spending over \$200m each year on transport services
- Overseeing around 7,000 daily vehicle movements with around 40m passenger journeys each year
- Assisting over 100,000 students to school and home again safely every school day
- Managing contracts with around 80 transport suppliers (including bus, total mobility, and ferry services)
- Providing funding to around 400 schools/kura that organise transport assistance for their students
- Offering SESTA services to over 7,000 students with complex mobility needs
- Paying conveyance allowances for around 5,000 students who cannot access School Transport services
- Transporting 25,000 Year 7 and Year 8 students to offsite technical education facilities

1.5. Service Distribution

The core services are largely provided in rural New Zealand. This reflects eligibility, demand and the nature of rural communities and their schools. Students in cities are less likely to be eligible for School Transport as they are more likely to live relatively close to schools or have alternative forms of transport available, including public transport.

1.6. School Transport Operational Objectives

The operational objective of School Transport is to ensure that eligible students are transported to and from school (or between schools). The provision of School Transport will:

- be safe, reliable and reasonably comfortable, getting students to their destination, on time and 'ready to learn',
- provide confidence to all stakeholders (government, caregivers and schools) that it is fit for purpose,
- represent appropriate and sustainable public value through both the quality of the service and the way it is delivered, and
- be achieved through a fair, open and transparent procurement process and managed through clear contract responsibilities.

1.7. Procurement Scope and Objectives

The key objective of this procurement is to ensure seamless continuity of Daily Bus and Technology Bus School Transport services that deliver eligible students to and from school, safely, reliably and ready to learn, while meeting the following government public value outcomes:

- Enabling access to Government procurements for small regional businesses;
- Improving conditions for workers and future-proofing the ability of New Zealand business to trade;
- Contributing to efforts to transition to a net-zero emissions economy; and
- Delivering value for money.

The Ministry also wishes to use the procurement to deliver the following outcomes:

- Simplifying supplier relationships (including contractual relationships) and using scale economies to ensure a market for all routes;
- Maintaining a competitive supplier market for current and future service requirements;
- Improving service performance and monitoring; and
- Improving safety and quality of services.

2. What we are buying

2.1. Services

This procurement is for Daily Bus Routes and Technology Bus Routes only.

2.1.1. Daily Bus Routes

Daily Bus is the most common form of transport assistance, where bus Routes are contracted to commercial transport operators, taking students to and from school. Students are picked up at a variety of roadside stops along the Route and delivered to their school, and vice versa in the afternoon. There are 1,465 of these Routes.

2.1.2. Technology Bus Routes

Technology transport assistance is provided for year 7 and 8 students to enable them regular access to specialised educational facilities at other schools so they can learn such things as woodwork, sewing, cooking and metalwork. Most often this will include students from rural full primary (year 1-8) schools and from intermediate schools to larger schools. Providing transport is a more economical approach than building expensive facilities at all schools. There are 678 of these Routes.

2.1.3. Out of scope school transport provisions

The following services are out of scope for this procurement. See Section 1.4 for more information.

- SESTA
- Conveyance Allowance
- Student / bus ferries
- Direct Resourcing

2.2. Service requirements and specifications

The Ministry requires respondents to provide the services using suitable vehicles and drivers. The Ministry has defined its service requirements and specifications, and these are set out in the draft Contract for Services. The draft contract ([I:\2. School Transport\S Tender 2020\Commercial\Contract](#))

File name of latest version: *Contract for School Transport Services - DRAFT 20200317.docx*

The Ministry intends to seek industry feedback on the draft Contract for Services and make any further changes prior to the tender being issued to the market.

2.3. Route Groups

In preparation for Tender 2, the Ministry intends to bundle Routes into Groups, in order to:

- Allow schools more flexibility to access the technology curriculum, at the start and end of day, by having one supplier for all the transport services being procured.
- Create efficiencies and economies of scale for both the Ministry and suppliers. Aggregating the bus routes into Route Groups is more attractive to suppliers and offers better value for money to the Ministry.

The Daily and Technology Routes will be bundled as Groups in accordance with a set of principles which will be communicated to the market:

Principle 1

Routes shall be grouped together to encourage economies of scale and simplify engagement between the schools, suppliers and Ministry.

Principle 2

The alignment of these Groups shall be consistent with the natural formation of a group of schools within a defined geographical Region and aligned with Regional Council boundaries. Exceptions to this principle will be

made when a Group of schools crosses regional boundaries or when Ministry boundaries do not match Regional Council boundaries. In these cases Ministry boundaries will be given precedence.

Principle 3

The size of the group of Routes shall include all Daily and Technology Bus services required of a group of schools, and support a sustainable business model with enough size and scope for competitive tensions to exist. When the volume of Technology Routes significantly outweighs the number of Daily buses, the Groups will be split into two offerings.

Principle 4

Routes awarded through Tender 1 will be removed from the provisional Groups published with Tender 1.

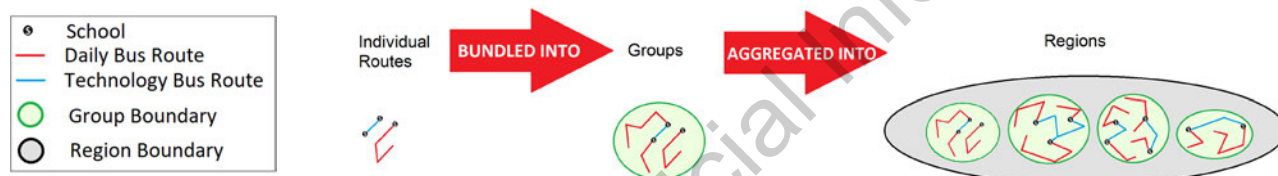
Principle 5

If the number of Routes in a Group is reduced after the Tender 1 process is completed the Ministry will reserve the right to consolidate or rationalise Groups in support of principles 1 -3

Principle 6

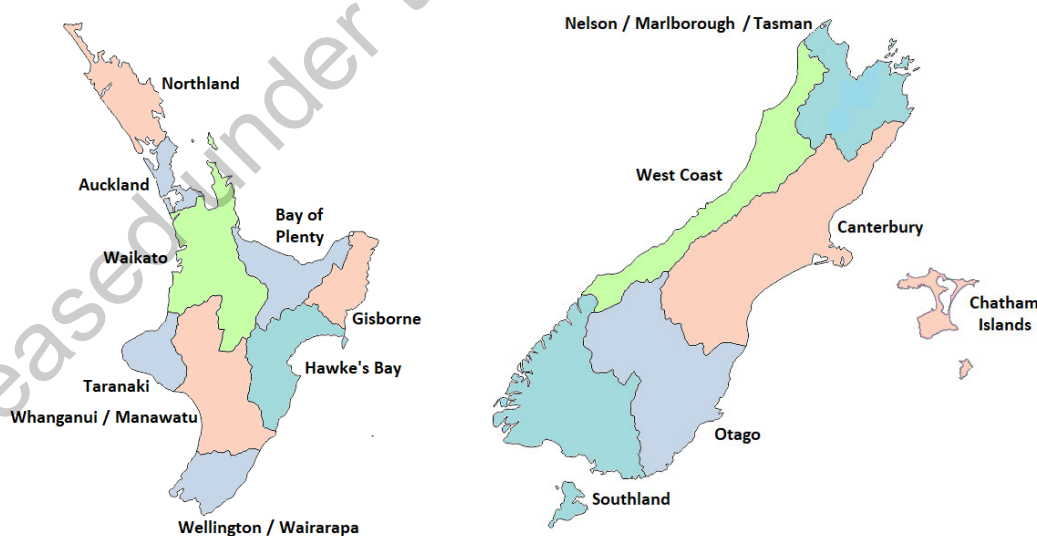
The Ministry retains the ability to determine which group any given bus Route will belong to.

The School Transport team has documented the process for bundling Routes and this has been approved by the Business Owner and presented to the Governance Board which has oversight over this project.



2.4. Regions

The maps below illustrate the Regions and boundaries as defined for the purposes of this procurement.



Generally these regions follow Regional Council boundaries but there are some exceptions. Of note is the grouping of Marlborough, Nelson and Tasman into a single Region, and grouping of the Chatham Islands with Canterbury.

3. Procurement Approach

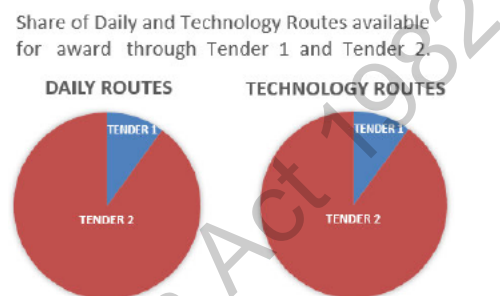
3.1. The two tender approach

3.1.1. Background

The procurement process will progress through two tenders;

Tender 1 will make available for award up to 10% or 10 routes (whichever is higher) of all Daily Bus Routes and 10% of all Technology Bus Routes in each Region.

Tender 2 will allow suppliers to tender for Groups of Daily and Technology Routes made up of all Routes not awarded and accepted through Tender 1.



3.1.2. Tender 1 approach

- This is the first stage of the two tender procurement approach. This is a Regionally open competitive tender.
- All suppliers will be eligible to participate in Tender 1, within one eligible Region.
- Suppliers will be restricted to tender within certain Regions based on the location of the supplier's Head Office; suppliers will be able to tender either within the Head Office Region, or any one of the adjacent Regions (**Regional Eligibility**).

In the example, the supplier's Head Office is located in the Bay of Plenty; therefore the supplier may tender in only one of the following Regions: Bay of Plenty, Waikato, Hawke's Bay or Gisborne:



Head Office: means a place where the Chief Executive, owner, parent company, or the governing body or individual(s) usually transact business and manage operational activities. It is usually the administrative, decision-making and policy-making centre of an organisation, or its parent. The Ministry reserves the right to approve, or disapprove the tenderer's designated Head Office location if it does not, in the Ministry's opinion, represent an accurate designation. A tenderer can only nominate one Head Office location and one Region to tender in.

- Due to the procurement approach, it is expected that the Tender 1 process will cater to suppliers wishing to operate a limited number of Daily and/or Technology Routes within one specific Region only – a demographic best representing small regional suppliers.
- Within the chosen Region, suppliers will be able to tender for one or more individual Daily and/or Technology Routes.
- The maximum number of Routes available to be awarded via Tender 1 will be 10% or 10 Routes (whichever is higher) of all Daily Bus Routes and 10% of all Technology Bus Routes in each region. The following table shows the allocation of Routes across Tender 1 and Tender 2.

Region	Routes available for tender			Tender 1 award cap (Daily routes only)			Tender 2 minimum routes		
	Daily Bus	Tech Bus	Total	Daily Bus	Tech Bus	Total	Daily Bus	Tech Bus	Total
Northland	170	40	210	17	4	21	153	40	193
Auckland	76	72	148	10	7	17	66	72	138
Bay of Plenty	113	37	150	11	4	15	102	37	139
Waikato	167	99	266	17	10	27	150	99	249

Gisborne	42	4	46	10	-	10	32	4	36
Hawke's Bay	96	35	131	10	4	14	86	35	121
Taranaki	58	16	74	10	2	12	48	16	64
Whanganui/Manawatu	122	56	178	12	6	18	110	56	166
Wellington/Wairarapa	75	103	178	10	10	20	65	103	168
Nelson/Marlborough/Tasman	112	26	138	11	3	14	101	26	127
West Coast	48	12	60	10	1	11	38	12	50
Canterbury	112	132	244	11	13	24	101	132	233
Otago	161	31	192	16	3	19	145	31	176
Southland	113	12	125	11	1	12	102	12	114
Total	1,465	675	2,140	166	68	234	1,299	675	1,974

- Routes will be awarded based on a satisfactory tender responses and acceptance of the Ministry's offer. The total number of awarded Routes may fall below the award cap if:
 - there is insufficient interest
 - the quality of the responses falls below an acceptable standard, and/or
 - the pricing threshold is breached and this, after consideration, is found to be unacceptable / unjustifiable

See Appendix E for examples of Tender 1 contract award scenario examples.

- Where more than one supplier tenders for a Route, that Route will be allocated to the supplier whose offer represents the highest Public Value.
- Any Routes not awarded due to lack of interest, unacceptable quality and pricing responses, or failure of the respondent to enter into an agreement with the Ministry will be made available to the next best suitable respondent, until the maximum number of Routes available for award through Tender 1 is reached. See Appendix F for examples of how this may work in practice.
- For Technology Routes respondents will need to define in their submission whether their operation of a Technology Route is contingent on also being awarded an associated Daily Route.
- If a respondent is awarded Route(s) through Tender 1 but chooses not to accept the award, the respondent will be eligible to participate in Tender 2.

3.1.3. Tender 2 approach

- This is the second stage of the two tender procurement. This is an open competitive tender.
- Suppliers who accept an offer in Tender 1 will be excluded from consideration in Tender 2.
- Suppliers who were offered routes in Tender 1 but chose not to enter into an agreement with the Ministry will be eligible to participate in Tender 2.
- Routes not awarded via Tender 1 will be made available to Tender 2 suppliers, with available Daily and Technology Routes bundled into Groups. The Groups will be aggregated within their respective Regions. Suppliers must tender for complete Groups.
- Due to the procurement structure, it is expected that Tender 2 will cater to suppliers wishing to operate a substantial number of Daily and Technology Routes, as bundled into large Groups, across one or multiple Regions. These are most likely to be medium or larger suppliers although small regional suppliers may respond collaboratively with other suppliers (of any size) to tender for one or more Groups in Tender 2.
- Suppliers will be able to submit a proposal for one or more Groups. There are no restriction on which or how many Groups a supplier may tender for. However, suppliers will need to indicate the maximum expected capacity to service each Group through the RFP response.

3.1.4. Tender 1 Supplier Debriefs

As per the Rules, Tender 1 supplier debriefs must be delivered within 30 days of the date the contract was signed by all parties or 30 business days of the date of the request, whichever is later.

If debriefs were to be delivered in line with this requirement, the suppliers who were not successful in Tender 1 and are planning to bid though Tender 2 would receive a debrief and valuable feedback regarding their submission. Thus those suppliers would be materially advantaged with respect to Tender 2.

Suppliers who did not tender through Tender 1 but who do plan to tender through Tender 2 would be unfairly disadvantaged by not receiving the debrief and feedback.

To ensure a fair process, an exemption will be sought to delay the delivery of Tender 1 debriefs until the Tender 2 submission process has concluded. However, if through the delivery of Tender 1 the project team identifies improvements that could facilitate the process or improve the quality or competitiveness of the Tender 2 responses, this will be shared with the market prior to Tender 2 release and/or incorporated into the RFP and returnables.

3.1.5. Related companies

The conditions developed for Tender 1 and Tender 2 mean that a supplier cannot be successful and accept an offer in both tenders, with the intent that related tenderers are to be treated as the same supplier. The Ministry must define what a supplier is for the purpose of enforcing the relevant conditions.

To apply the conditions for each respondent the Ministry will treat respondents as the same respondent where they are deemed to be related, with the relationship test defined in the RFP to be applied. If it is determined that a respondent is related to another they will be treated as the same for the purpose of applying the conditions of each tender.

3.1.6. Process Flow

See Appendix G for process flow diagrams.

3.1.7. Case Studies

See Appendix H for process case studies.

3.2. Development of the two tender procurement approach

3.2.1. Background

In November 2019, Cabinet endorsed an exemption from the Rules for the Ministry to undertake a two stage procurement approach, involving two phases, to give sufficient recognition of the Government's commitment to support 'thriving and sustainable regions' by ensuring the success of existing small regional operators. Cabinet authorised the Minister of Education and the Minister for Economic Development to confirm the definition of 'small regional operators'.

On 7 February 2020, the Ministry provided the Minister advice on potential options to define 'small regional operators'.

The Minister indicated a preference for the two tender, split procurement approach outlined in this plan and this approach was subsequently confirmed by the Minister of Education and Minister for Economic Development on 19 March 2020.

3.2.2. Two stage procurement approach options

The following options have been explored and discarded:

Methodology	Summary of process	'Small regional operator' definition	Pros	Cons
1. Single Stage Competitive Process	<ul style="list-style-type: none">A single open competitive RFP stage for detailed quality and price proposals.Mandatory criteria and vehicle requirements clearly identified to ensure respondents do not fill out a detailed proposal.	N/A	<ul style="list-style-type: none">Compliant with the Rules.Most fair and transparent option.Simplest process.	<ul style="list-style-type: none">Does not effectively support government's commitment to thriving and sustainable regions: large Groups may act as barrier to small regional operators who may not have the will, capacity or capability to scale up or to enter into joint procurement.

2. Direct Negotiation then competitive process – small regional providers defined by in scope (\$) revenue	<ul style="list-style-type: none"> Direct negotiation with suppliers classified as small regional operators for their current Routes. All other operators compete in an open competitive process after the Routes have been allocated to the small regional suppliers. 	<ul style="list-style-type: none"> Annual revenue from current School Bus Services ^{9(2)(b)} or less. Meets Regional Eligibility criteria 	<ul style="list-style-type: none"> Supports government's commitment to thriving and sustainable regions: will allow small regional operators to single tender for the Routes they currently hold, ensuring that those operators receive a fair opportunity to retain their business. 	<ul style="list-style-type: none"> Non compliant with the Rules. May lead to lower quality and higher pricing for directory negotiated Routes. Complex and lengthy process. Some of the operators classified as 'small regional operator' under this methodology are owned by large multinational operators. Denies existing small regional operators the opportunity to grow their business. Denies new small regional operator entrants the opportunity to tender. Mid size and large suppliers may be disadvantaged by allocation of Routes to small regional operators.
3. Direct Negotiation then competitive process – small regional providers defined by in scope (%) revenue		<ul style="list-style-type: none"> All Daily and Technology Routes currently contracted account for over ^{9(2)(b)} of supplier's revenue. Meets Regional Eligibility criteria 		<ul style="list-style-type: none"> Non compliant with the Rules. May lead to lower quality and higher pricing for directory negotiated Routes. Complex and lengthy process. Denies existing small regional operators the opportunity to grow their business. Denies new small regional operator entrants the opportunity to tender.
4. Two Stage Competitive Process – ROI open and competitive process.	<ul style="list-style-type: none"> An initial Registration of Interest (ROI) to pre-qualify suppliers and identify which Groups the supplier wants to bid for. A second open competitive stage, available only to suppliers who qualified in the ROI stage. 	N/A	<ul style="list-style-type: none"> Compliant with the Rules. Eliminates non-compliant / unsuitable candidates, saving time and effort for suppliers and MoE. 	<ul style="list-style-type: none"> Does not effectively support government's commitment to thriving and sustainable regions.

The following option has been explored and accepted:

5. Two Stage Competitive Process – two open competitive tenders	<ul style="list-style-type: none"> Open competitive process with respect to a limited number of Daily and Technology Routes in each Region. Open competitive process with respect to remaining daily Routes and Technology Routes that have been bundled into Groups. 	<ul style="list-style-type: none"> Those who choose to compete in the first (limited) process. 	<ul style="list-style-type: none"> Compliant with the Rules. Supports government's commitment to thriving and sustainable regions. 	<ul style="list-style-type: none"> Mid size and large suppliers may be disadvantaged by being functionally excluded from the first tender. Complex procurement process, in effect two separate open competitive processes. May put a strain on Ministry's and suppliers' resources.
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3.3. Procurement systems

3.3.1. Procurement system allocation

Both Tender 1 and Tender 2 will use two procurement enabling technologies for different tasks:

- Government Electronic Tender System (**GETS**)
- VendorPanel (**VP**)

The GETS system will be used to:

- Maintain an active Notice of Information to provide project information and distribute updates
- Advertise the Tender 1 and 2 opportunities to the supply market
- Distribute the RFP, forms, supporting documents, and returnables
- Distribute any addenda
- Distribute automated emails and reminders
- Receive suppliers' questions and publish answers
- Post the contract award notice.

The VP system will be used to:

- Receive tender responses including all forms and returnables.
- Securely store all responses until downloaded by the Ministry, at which point those responses will be permanently deleted from the system.

3.3.2. VP system engagement

Project planning which took place in 2018 and 2019 anticipated that the procurement complexity, projected volume and size of the responses would likely exceed the capacity and capability of GETS. An RFQ process was held in 2019 to select a suitable procurement system provider capable of securely collecting, holding and managing all required tender forms and returnables. Following an evaluation of three respondents, the contract was awarded to VP.

The VP system will be accessible by suppliers via links contained in the GETS tender notice and within the RFP document, and will be utilised to accept all tender responses and returnables. Clicking the link will take suppliers to the VP registration page where they will be prompted to register a login and password with the VP system. Successful registration will give suppliers the ability to securely upload, edit, and delete their responses up until the tender closing time and date. Upon tender close all responses will be locked, then downloaded onto internal Ministry systems and permanently deleted from VP.

To keep the process simple and avoid duplication, VP will be used in the role of a 'document depository' only. Functions such as question and answer, addenda distribution, etc will be performed through GETS (see Section 2.5.1).

The proposed national roadshow will elaborate on the two procurement systems, and will allow attendees to ask clarifying questions with detailed guidance made available via the GETS tender notice. If required, the national roadshow will be delivered remotely.

If at any time VP is unable to meet the Ministry's requirements, the Ministry will utilise GETS. This will require a number of possible modifications or process changes, such as requesting an increase to the tenderbox size. The GETS team has been engaged in regard to options and feasibility of any tenderbox size modifications requested by the Ministry.

3.3.3. ICT Certification and Accreditation

The VP system is expected to secure, in late March, the Ministry's Certification and Accreditation (C&A) requirements. The award of the C&A accreditation was contingent on VP completing an outstanding systems audit. The systems audit report has been delivered to the Ministry on 18 March 2020, and finalisation of the C&A award is in process. The C&A process has been led by the EIS Business Systems unit.

4. Assurance

4.1. Ministry of Business, Innovation and Employment – New Zealand Government Procurement group (MBIE) review of the proposed two tender procurement approach

MBIE has been engaged throughout the procurement process in the context of their role as a Government Procurement Functional Lead and procurement subject matter experts.

MBIE has:

- Participated in a number of meetings and workshops to develop the proposed two tender approach
- Prepared a Ministerial Memo to the Minister of Economic Development in support of the proposed definition of 'small regional suppliers', which allowed for self-selection through this proposed two tender approach
- Reviewed this Procurement Plan (see [Appendix A](#) for the MBIE Significant Procurement Plan Review)

4.2. Deloitte

Deloitte has been engaged throughout the procurement process as subject matter experts.

Deloitte has:

- Participated in a number of meetings and workshops to develop the proposed two tender approach
- Participated in a number of meetings and workshops to develop various commercial and procurement approaches and methodologies
- Reviewed the Procurement Strategy
- Reviewed this Procurement Plan (see [Appendix B](#) for the Deloitte Assurance Letter).

4.3. Russell McVeigh (external legal services provider)

Russell McVeigh has been engaged throughout the process in their role as external legal services providers.

Russell McVeigh has:

- Participated in a number of meetings and workshops to advise on the two tender approach
- Reviewed a number of commercial aspects of the procurement
- Provided feedback on this Procurement Plan (see [Appendix C](#) for the Russell McVeigh Assurance Letter)

4.4. Audit NZ (project External Probity Auditor) review of the proposed two tender approach

Audit NZ has been engaged throughout the procurement process in the context of their role as the project External Probity Auditor. This role is exercised through the inclusion of the External Probity Auditor on the project Steering Group. Through this involvement the auditor is able to provide feedback on probity risks and issues as they become apparent.

Audit NZ has, through their membership on the project Steering Group, has:

- Participated in the discussions regarding possible procurement approaches through Steering Group and ad-hoc meetings and workshops
- Reviewed and provided feedback on the Procurement Strategy and has confirmed that the Ministry has satisfactorily addressed this feedback
- Reviewed and provided feedback on this Procurement Plan (see [Appendix D](#) for the Audit NZ Assurance Letter).

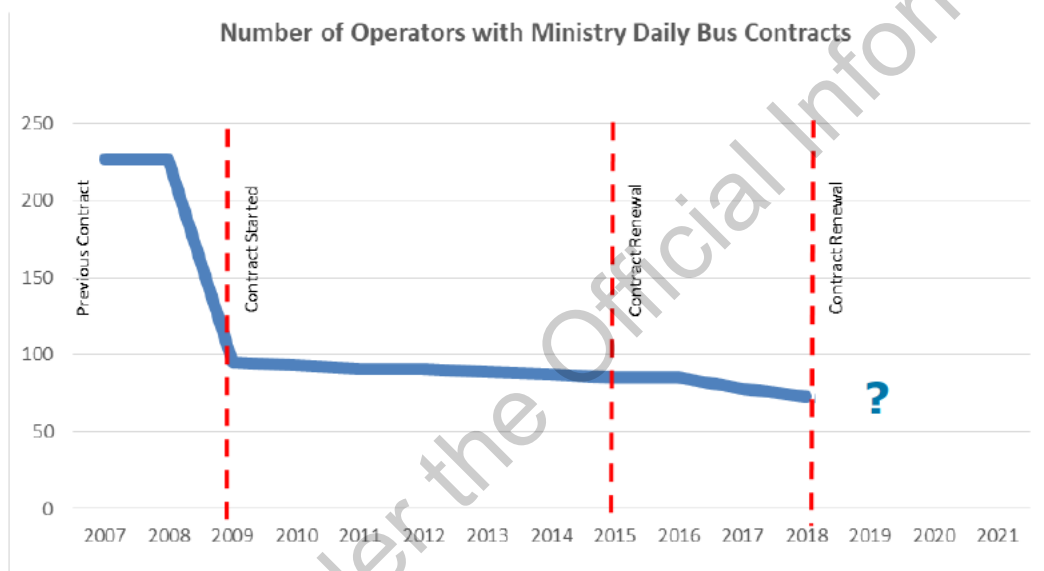
5. Market Analysis

Daily Bus services are significantly greater in frequency, value and number than Technology Bus services, which only run on around 40 days each year. Generally, suppliers with Daily Bus contracts also provide Technology Bus services, leveraging the bus capacity that is already in place. In urban centres with Public Transport providers, many of the Technology Bus services are provided by suppliers who are also Public Transport providers, as Technology Bus services are generally off-peak.

This section focuses on Daily Bus suppliers, as this is the largest part of the Ministry's services, in particular for the analysis of market share and market concentration. The number of Daily Bus routes has been used as an indicator of market share as Technology Bus routes are not readily comparable and generally provided by suppliers of Daily Bus services.

5.1. Historic changes

The number of Ministry contracted Daily Bus suppliers has undergone consolidation over the time from the previous contract which commenced in 2009, from 227 down to the current 58 participants. This reduction is shown in the graph below.



A number of factors have driven this market change:

- Over the contract term approximately 85 routes have been novated to other existing suppliers (e.g. through sale of ownership or suppliers existing the market). This has resulted in a reduction in the number of suppliers.
- For both renewals of the Contract and with the introduction of new legislation such as the Health and Safety at Work Act (2015) and the Children's Act (2014), safety and operating standards has increased the level of compliance required reducing the attractiveness of service delivery for some organisations.

5.1.1 Further consolidation

It is expected the market will consolidate further – in part because consolidation is an organic trend within the industry, and in part because of the greater capacity and capability requirements for the Ministry's services. Three incumbents have recently chosen to exit the market by not accepting the 12 month extension offered by the Ministry in December 2019 for the 2021 school year.

5.2. Significant differences in capacity and capability

The current suppliers of Daily Bus services can be classified as follows:

- **Large:** Multiple regions serviced, multiple depots with all vehicle servicing in-house, 100 or more routes, diverse operations (urban services/charters): 9(2)(b)(ii)
- **Medium:** Single region serviced, 9(2)(j) with only general vehicle servicing in-house, 9(2)(j), some additional operations.
- **Small:** Local area serviced, often 9(2)(j), or fewer routes, few if any other operations.

5.3. Market concentration

The table below provides an indication of market concentration for each region and nationwide – it lists the number of operators providing Daily Bus services, the largest market share held by a single operator, and the Herfindahl-Hirschman Index (HHI). The HHI is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each operator (based on number of Daily Bus routes) competing in a market and then summing the resulting numbers. Overseas, an HHI of over 25% is considered a relatively high degree of concentration. See Appendix 1 for an example of how the HHI is calculated.

The table below illustrates that currently the majority of the Regions show a relatively high or very high degree of market concentration. However when calculated nationally the market concentration is relatively low.

Region	Number of suppliers	Largest market share	HHI
Northland	6	64%	45.6%
Auckland	7	78%	63.3%
Waikato	10	34%	22.0%
Bay of Plenty	4	37%	27.8%
Hawke's Bay	5	45%	38.1%
Gisborne	3	69%	52.7%
Taranaki	3	67%	53.9%
Whanganui/Manawatu	6	49%	35.4%
Wellington/Wairarapa	5	85%	73.7%
Nelson / Marlborough / Tasman	5	48%	35.0%
West Coast	5	79%	63.8%
Canterbury	9	35%	22.0%
Otago	11	43%	33.8%
Southland	6	49%	40.7%
Nationwide	58 ²	27%	13.0%

5.4. Key changes

The Ministry is planning a number of changes through this procurement that are expected to impact the market, as operators will need a minimum level of capability and capacity to meet the Ministry's requirements.

5.4.1. Fleet Age

In an effort to reduce emissions for the school fleet, the Ministry is encouraging operators to meet a maximum age limit of less than 23 years and a maximum average age of less than 15 years for Large Passenger Service Vehicles (to apply for each Group). The current maximum age is less than 26 years, and respondents will be asked to select from three options:

- **Option A:** The operator commits to maintaining a maximum vehicle age of less than 26 years for all vehicles during the term of the contract (i.e. no change from current state)
- **Option B:** The operator commits to maintaining a maximum vehicle age of less than 23 years for all vehicles during the term of the contract
- **Option C:** The operator commits to maintaining a maximum vehicle age of less than 23 years for all vehicles and a maximum average age of 15 years for each route group during the term of the contract.

The option a respondent selects will be taken into account as part of the quality evaluation (refer 9.8 below).

² Note that for market concentration analysis suppliers with common ownership / control have been grouped as a single supplier – e.g. Ritchies and Ritchies / Murphy.

The market may respond by updating their fleet to meet their commitments. As many vehicles in the current fleet are approaching 26 years of age, even where operators select Option A some renewal will be required. The Ministry will aim to provide a transition period of not less than 9 months to enable suppliers to comply with their fleet age commitments from commencement of the new contract.

5.4.2. Groups

In Tender 1, suppliers will be able to bid on individual Daily and Technology Routes.

Small suppliers who are not successful under Tender 1, or who wish to expand their operations beyond what is available through Tender 1, should tender under Tender 2. As Groups are composed of multiple Routes, small suppliers may need to:

- Partner – e.g. subcontracting or entering into a joint venture – in order to remain in the market;
- Grow, by acquiring the vehicle capacity and employing operational staff needed to provide services across a whole Route Group, subject to their financial capacity; and/or
- Consider Groups where they do not currently operate.

5.4.3. Compliance

Since the last nationwide tender round in 2008, the compliance and capability expectations of operators has continued to increase. For example, there are now new Health & Safety legislation and Child Protection expectations.

The costs of having appropriate capability and compliance regimes is a fixed cost that operators with smaller capacity may struggle with, having fewer services to spread the costs across.

6. Spend Analysis

The Ministry's expenditure on the services has increased steadily in recent years. In part, this is because the contracts are indexed, which is common practice for transport procurements. The table below summarises expenditure, with increases predominantly due to indexation adjustments (based on NZTA diesel bus index).

\$ millions	Daily Bus	Tech Bus	Total	Comments
FY 15/16	\$95.32	\$4.43	\$99.75	0.36% indexation applied across year
FY 16/17	\$94.31	\$4.22	\$98.53	3.04% indexation applied across year
FY 17/18	\$98.81	\$4.48	\$103.29	3.39% indexation applied across year
FY 18/19	\$104.47	\$4.59	\$109.06	3.87% indexation applied across year
FY19/20				Indexation, increase

Due to delays in the procurement process in late 2019 the Ministry negotiated a 12 month extension to the existing contracts which now expire on 31 December 2021. The Ministry was successful in negotiating the extension with 61 operators; 3 operators did not wish to continue beyond 2020. In doing so the Ministry agreed to increase payments to operators by 2% in the 2020 calendar year and 6% (4% in addition to the 2% in 2020) in the 2021 calendar year.

7. Market Communications

7.1. Communications management

The project has developed and maintains a tender communication plan, regularly reviewed by the Project Working Group and informs any communications being released to the market, including guidance for responding to media and Official Information Act enquiries. The Project Working Group has a dedicated Communications resource to support this project.

Communication through the tender process will be centrally managed by the EIS Procurement Team and the designated Procurement Lead for the tender. The tender will be published on the Government Electronic Tender Service (GETS). The Ministry has historically used GETS for all school transport service tenders and has used it for pre-market engagement.

7.2. Market engagement

- The Procurement Strategy, market analysis, roadshow briefing sessions and consultation with and feedback from industry in 2018 and 2019 have informed the development of our ongoing engagement and communications for the revised two tender approach.
- A notice to market announcing the two tender procurement approach (high level) will be released on GETS. This notice will be accompanied by a draft Contract for review, and update prospective suppliers on the timeframes and supplier briefing sessions that will be scheduled.
- Tenders 1 and 2 will be openly advertised on GETS - the primary channel for managing information releases and fielding and responding to questions in relation to the procurement.
- Tender briefing sessions will be held before the tender/s are released. During these briefings, suppliers will be informed of the two tender approach particulars and allowed to voice their feedback, which will be considered by the Ministry. In the event that regional meetings are prevented by pandemic-related restrictions on travel and assembly a contingency plan involving online delivery will be activated.
- The Bus and Coach Association and First Union continue to be engaged as new information becomes available.

7.3. Market positioning and key messages

The two tender procurement approach will be announced at a high level via a GETS notice. The detail and discussion on how the two tender procurement approach will work will be reserved for the supplier briefings. The briefing (which will be distributed via video broadcast if necessary) will acknowledge the resetting of the procurement approach in response to market feedback regarding risks to small regional businesses posed by a single open tender, signalling that the Government has listened.

Our strategy is to present the revised approach as a positive move designed to deliver public value in line with priorities identified by Government in response to industry feedback. We do not intend to dwell on the past or invite comment on the previous approach; instead we will front-foot the new approach as one that responds directly to broadly agreed procurement objectives.

7.3.1. Key messages

Reset

- Our previously proposed single open tender involving route groups raised much concern from your industry, specifically around small regional operators being disadvantaged.
- We've spent the past six months analysing and investigating possible options to minimise this potential disadvantage and deliver an equitable outcome for all operators, including small regional businesses.
- The Government (that's the Ministry of Education, Ministry of Business Innovation and Employment, Cabinet and relevant Ministers) has engaged to design a new procurement approach that addresses your feedback and delivers the public value objectives and broad outcomes that the procurement aims to achieve for the country.

Two tender approach

Tender 1

- Any operator (current and new) can tender for any or all Routes (including Technology routes) in a single Region that must be the Region where its Head Office resides or an adjacent region.
- Operators will need to choose whether to participate in Tender 1 based on the tender constraints and conditions.
- Up to 10% or 10 routes (whichever is higher) of all Daily Bus Routes and 10% of all Technology Bus routes in each Region can be awarded in this tender round.
- Successful tenderers can decide whether to accept or decline the bus routes offered to them in this tender round.

Tender 2

- All Routes declined or not awarded in Tender 1 will be placed in groups within Regions, and offered through open tender in Tender 2.
- Tender 2 is open to current and new transport operators, except for those tenderers who accepted Routes offered in Tender 1.

- We've recognised that the market is diverse in size and capacity. The two tenders will create two level playing fields – businesses competing with businesses with similar aspirations.
- The two tenders provide all bidders with a choice based on their operations and ambitions e.g. bid in Tender 1 or choose to compete for groups of routes in Tender 2.
- We recognise that the finalised composition of Groups on offer in Tender 2 will not be known until the outcome of Tender 1. The Group principles will provide you with a clearer vision of what is likely to be on offer in Tender 2. Provisional route groups based on these principles will also be provided to give bidders a general idea of likely offerings in Tender 2.
- Approximately 10% of Routes will be allocated through Tender 1, leaving approximately 90% to be awarded through Tender 2.

Broader outcomes

- What has remained constant in our procurement requirements is the need for tenderers to consider not only the price, quality and whole-of-life costs of the procurement, but also the costs and benefits to society, the environment and economy, the “public value” of the procurement outcomes.
- Delivering public value requires us to think about how the procurement will deliver quality of service at an appropriate cost while also keeping the following broader outcomes in mind:
 - Improving access to government procurement contracts for New Zealand businesses, with particular focus on those less able to access opportunities and those working in priority sectors;
 - Improving the conditions for workers and future-proofing the ability of New Zealand business to trade;
 - Supporting the transition to a net-zero emissions economy and assist the Government to meet its goal of significant reduction in waste by 2020 and beyond.
- This means thinking about how your bid will contribute to these outcomes as they are represented through the tender evaluation criteria.

7.4. Planned activity

Key project steps that require proactive communication management are outlined in the table below.

Process Step	Responsible Function
<ul style="list-style-type: none"> Announce the two tender procurement approach – internally in EIS and provide BCA and First Union advance notice 	<ul style="list-style-type: none"> Minister's Office: Endorse Governance Board: Approval to proceed Tender project team: Content SRO and HEIS: Content Approval Tender project team: Publish
<ul style="list-style-type: none"> GETS Notice announcing revised procurement approach, draft Contract for industry review and notify dates of regional roadshow. 	<ul style="list-style-type: none"> Tender project team
<ul style="list-style-type: none"> Pre-roadshow focus group Market engagement nationwide roadshow briefings <p>A contingency plan is in place to deliver these sessions online to mitigate pandemic risks.</p>	<ul style="list-style-type: none"> Tender project team: Content and Approval Endorsed by: Procurement
<ul style="list-style-type: none"> Release of the tender documentation 	<ul style="list-style-type: none"> Approval to Release RFP Memo signed by Tender project team and Procurement
<ul style="list-style-type: none"> Tender Submission by suppliers is uploaded via third party secure web provider VendorPanel 	<ul style="list-style-type: none"> Procurement
<ul style="list-style-type: none"> Questions and Answers throughout the tender process 	<ul style="list-style-type: none"> Procurement with content advice from School Transport All questions will be raised via the Question and Answer function of GETS A dedicated email address is available to suppliers and will be used during the tender Supplier queries will be managed by Procurement and will follow a sign out process before information is released back to the supply market
<ul style="list-style-type: none"> Clarifications, amendments or Notice to Tenderers 	<ul style="list-style-type: none"> Procurement with content advice from School Transport project team and Engagement Team
<ul style="list-style-type: none"> Notice of tender outcomes to respondents 	<ul style="list-style-type: none"> Procurement
<ul style="list-style-type: none"> Debriefs 	<ul style="list-style-type: none"> Procurement

8. Pricing

8.1. Current pricing approach

The Daily and Tech School Bus Contracts are currently paid on per km rates that are disaggregated for:

- Fuel
- Wages
- Road User Charges (RUC)
- Tyres
- Repairs
- Remaining Other Costs (ROC)

ROC recognises that some of the costs for operators are fixed – while it is a “per km” rate, it is adjusted when there are changes to routes to remain essentially fixed. This is an administrative burden and requires completion of forms each time route kilometres are adjusted.

For the most part, pricing is by route although there are some examples of “fleet rates” with a single set of rates for a group of routes. All prices are indexed using the NZTA diesel bus index.

Payments are monthly for Daily Bus, based on annual school days and distance, and based on days of operation and distance for Tech Buses.

8.2. New pricing model

The new contracts will use the pricing model set out in the table below.

Pricing Component	Daily Route	Tech Route	Example of costs
Fixed price per Route Group (required only for Tender 2)	Fixed price per year, \$ per Route Group <i>Does not vary between Daily and Tech</i>		<ul style="list-style-type: none">• Depot costs• Head office staff• Systems, such as payroll• Transition costs
Fixed price per route	\$ per route per year, one fixed price for all Daily routes	\$ per route per day, one fixed price for all Tech routes	<ul style="list-style-type: none">• Bus capital costs• Financing costs• Insurance
Variable cost per km	\$ per km, one variable price for all Daily routes	\$ per km, one variable price for all Tech routes	<ul style="list-style-type: none">• Fuel, oil and lube• Driver wages• RUC• Repairs and Maintenance

For tender 1 the fixed price per Route Group will be removed as it is not relevant to operators tendering for individual routes. Operators will be instructed to include cost items listed against the fixed price per route group in the fixed price per route.

8.3. How pricing will be treated in the tender

Respondents will be required to complete a pricing response template for each route they are tendering for in Tender 1 or Route Group they are tendering for in Tender 2. Pricing will be evaluated separately from quality attributes.

Respondents will also be asked to provide cost information by key cost component in support of their pricing. This is useful to the Ministry on an “as-required” basis to help ensure tenders are priced sustainably and may inform subsequent negotiations.

8.4. Changes over the term of the contracts

8.4.1. Route changes, additions and removals

If the design of a route changes, this will impact the service km the supplier needs to deliver. Fixed prices will remain the same, but suppliers will receive higher or lower payments based on their variable prices, calculated on the new service km.

If the Ministry wants a route delivered by a Tender 1 operator, the supplier will be invited to submit a rate to the Ministry for review. The Ministry will be under no obligation to accept the rate or award the route to the Tender 1 operator.

If a route is added within a Group awarded through Tender 2, the supplier for that Group is expected to deliver it. Payments would be at the same fixed and variable prices for other routes within that Group.

If a route is removed from a Group then the Ministry would not pay any further fixed or variable prices relating to that route.

8.4.2. Bus capacity and standing

While the contract will include general clauses for price review and renegotiation for factors outside the control of suppliers (e.g. Government policy), changes to required route capacity (vehicle size) will not automatically be grounds for renegotiation of pricing. Suppliers will be expected to manage demand / capacity risk across their fleets. The requirements will include:

- Vehicles supplied at contract commencement will provide a seat for every student, based on the expected passenger numbers specified by the Ministry in the tender documents for each route.
- The number of seats provided on a vehicle servicing a route may only be reduced if all passengers can be seated.
- The operator will need to notify the Ministry if it reduces the seating capacity provided on a route (based on tendered capacity) and the justification for doing so.
- The operator may only transport ineligible students if all students (eligible and ineligible) can be seated.
- Where the number of eligible students passengers on a Route exceeds 50 on a regular basis the Ministry may:
 - add run-back kilometres;
 - split the route; or
 - allow the operator to carry all eligible student passengers subject to vehicle capacity being available.

8.4.3. Indexation and other changes

The NZTA's diesel bus index will be used to adjust pricing annually for all price elements, applied in the same way as current practice. The use of the NZTA diesel bus index to account for cost changes is consistent across the bus transport industry in New Zealand.

Tender pricing will be sought in tender close date dollars and indexed to the commencement of the contract.

9. Evaluation

9.1. Two tender approach evaluation methodologies

The Ministry has standardised the evaluation of Tender 1 and Tender 2 as far as practicable. However, Tender 1 and Tender 2 while sharing similar evaluation criteria and weightings, differ in terms of:

- Scope
- Process
- Pricing Methodology
- Expected number of responses
- Expected level of competition
- Expected size of suppliers

Due to these differences, the approach to evaluating each tender will differ where necessary. A confirmation of the evaluation approach, and detailed information, will be presented in the Evaluation Plan.

9.2. Evaluation Quality Assurance

Detailed evaluator guidance and related evaluator briefing will be provided to the evaluation teams prior to the commencement of the evaluation process. This will include:

- Guidance relating to the PQM Quality Scoring Scale
- Guidance relating to the expected length and detail of responses
- Examples of what a satisfactory and unsatisfactory answer would look like, taking into account key expected differences in supplier characteristics that may affect the answer

The suppliers will be offered guidance, for each relevant question, with respect to the length/detail of expected response and whether examples should be provided.

The two stage procurement methodology is likely to steer smaller regional suppliers towards responding to Tender 1, and medium to large suppliers towards responding to Tender 2. Because of this it is expected that suppliers will be evaluated consistently and on a like-for-like basis within Tender 1 and within Tender 2. Expectations of answer quality and length against Tender 1 and Tender 2 will be outlined to the evaluation team; however any potential inconsistencies in the evaluation will be identified and rectified through the moderation sessions.

9.3. Quality Scoring Scale

Both Tender 1 and Tender 2 will use the PQM quality scoring scale:

Award	Criteria
90, 95 or 100	Demonstrates exceptional compliance or ability to convey exceptional provision of the requirement
75, 80 or 85	Requirements are fully covered in all material aspects
60, 65 or 70	Requirements are adequately covered
50 or 55	Adequate, with some deficiencies that are not likely to have any adverse effect
40 or 45	Barely adequate and would need considerable improvement in this attribute, if selected
35 or less	Total non-compliance or inability to convey provision of the requirement

9.4. Tender 1 and Tender 2 methodologies

9.4.1. Methodology common to Tender 1 and Tender 2

The common evaluation elements between Tender 1 and Tender 2 are:

- The use of Price Quality Method (**PQM**) methodology
- A Quality / Price % weighting of 9(2)(i)
- Quality tested against the PQM scoring guidance
- Responses that achieve a quality score of 35 or less for any criteria **will** be excluded from further evaluation or selection; and
- Responses that achieve a quality score of 35 or less for any sub-criteria **may** be excluded from further evaluation or selection.

9.4.2. Tender 1 Methodology

In addition to Section 9.4.1:

- Public Value of tenders will be tested against a Price Benchmark and Quality Benchmark for that Route. A benchmark of price and quality must be included in this calculation to allow a Public Value comparison to be made across Routes with different characteristics and where there is only a single tender received for a Route.
- The Price Benchmark for each Route will be the higher of either the current Route price and/or a formulated Route price.
- The Quality Benchmark for each Route will be 9(2)(i), the point at which the scoring indicates requirements are adequately covered.
- The Public Value of tenders will be ranked using the percentage difference in Public Value offered by a tender over the Price Benchmark and Quality Benchmark for that Route.
- If any preferred supplier submits pricing that is 9(2)(i) above the Price Benchmark the Ministry may at its discretion either:
 - discard the proposal
 - investigate the reason behind the price/quality score
 - explore alternate approaches

9.4.3. Tender 2 Methodology

In addition to Section 9.4.1:

- Public Value will be tested using price comparison and quality, at a group level, using the PQM approach detailed in Section 9.5.
- Application of a market concentration tests.

9.5. PQM

The Ministry has considered a range of evaluation methodologies and selected the Price Quality Method (**PQM**). The methodology is promoted for Public Transport by the NZ Transport Agency, and is publically available in its Procurement Manual (also see [Appendix J](#) for a working example). This model has been successfully used in Public Transport for many years.

9.5.1. High level summary of PQM

Essentially, the PQM converts the difference in quality scores between tenders into a dollar amount, which is then deducted from the total price to enable comparison of tenders in dollar terms. The PQM is similar to the weighted attribute model, weightings are applied to evaluation criterion and price is a weighted attribute.

- Following the quality evaluation, the PQM uses the quality and price weightings to calculate a dollar value, called the Supplier Quality Premium (**SQP**). This is a dollar price estimate of the additional value that the Ministry would be prepared to pay for an improved quality outcome.
- The SQP is then deducted from the tendered price to determine a Quality Adjusted Price (**QAP**) for each Tender. The lowest QAP for a Route Group is considered the best value for money, and is selected as the Preferred Tender for that Bundle Route Group.

9.5.2. Options considered

In selecting the PQM, the Ministry has considered a number of alternatives:

A) Weighted Attribute with Value Narrative	B) Weighted Attribute with Formula-based conversion of price to score	C) PQM
<ul style="list-style-type: none">Quality criteria are weighted and scoredQuality scores are then considered against price, with a value narrative to determine best value for money	<ul style="list-style-type: none">Quality criteria and price are weightedQuality scores are aggregatedA formula is used to convert price into a weighted scoreThe price score is added to quality scores, and the highest scoring tender is preferred	<ul style="list-style-type: none">Quality criteria and price are weightedQuality scores are aggregatedA formula is used to convert the difference in quality between tenders into a \$ amountThe above \$ amount is subtracted from prices tendered for each respondent to provide a "Quality Adjusted Price" (QAP)The lowest QAP tender is preferred

The approach used in the 2008 tender round was discarded early, as it was bespoke to that tender and has been superseded by the more common use of the approaches above, which are generally recognised as more sophisticated.

Option A was rejected as it would require a value narrative process across each of the Route/Group evaluations. It would be difficult and time consuming to apply such an approach consistently. Therefore, the Ministry preferred a more mechanistic approach. PQM was preferred over option B because it has been used in Public Transport successfully and enables the Ministry to consider the \$ premium it is willing to pay for higher quality. By yielding results in \$, the PQM also provides a common basis for comparing results across different Route Groups, whether larger or smaller.

9.5.3. Additional points

The Ministry will use the PQM with some differences to NZTA's standard approach:

- 9(2)(j) [REDACTED]
- The Benchmark Price will be used as the Internal Cost Estimate to determine the initial estimate of the SQP.
- Price evaluation and quality evaluation will be carried out in parallel, though no price information will be shared with those evaluating quality.
- The process includes an opportunity to check and revise quality scores after the initial SQP has been reviewed, but before price evaluation is included (refer steps 7 and 8 below). This provides for a double check of quality moderation and score consistency. The Ministry would only make changes to quality scores (or initial SQPs) at this point for compelling reasons and provide strict rationale for such changes. The actual SQP for the PQM evaluation will then be calculated from the Benchmark Price (Tender 1) or lowest conforming price (Tender 2) tender for each Route Group.
- Following PQM evaluation, the Ministry will apply tests of market concentration (Tender 2) before confirming the preferred suppliers who should be offered contracts (refer below), and review the maximum capacity provided by each respondent to identify any adjustments that need to be made (e.g. if a respondent is preferred on more Route Groups than they have capacity for).

9.6. Evaluation Process

The high level process for the evaluation phases both tenders is as follows. A more detailed process will be developed as part of the Evaluation Plan:

1. Evaluation team briefing (pre tender receipt).

2. Tender received and reviewed by Procurement for completeness. If required, clarifications sought. Some responses may be discarded at this point due to not meeting mandatory requirements.
3. Tender responses issued to evaluation teams.
 - a. Non-Price information issued to Quality Evaluation Team (**QET**)
 - b. Price information issued to Price Evaluation Team (**PET**)
4. Process for clarification questions and answers communicated.
5. Individual assessments carried out by Evaluators (separately for QET and PET). If required, clarifications sought.
6. Moderation meetings held by QET. If required, clarifications sought. Some responses may be discarded at this point due to not receiving adequate quality scores.
7. Initial SQPs prepared using the internal price estimates, reviewed and adjusted if necessary.
8. Quality evaluation finalised through final moderation. If required, clarifications sought.
9. Price evaluation finalised.
10. Price information input to determine QAPs for each Route/Route Group and tender.
11. QAPs reviewed to identify Provisional Preferred Suppliers (**PPSs**) for each Route Group
12. Market concentration tests (Tender 2 only) and maximum capacity tests are applied.
13. PPSs updated as appropriate for each Route (Tender 1) or Group (Tender 2).
14. Due diligence checks
15. Initial negotiations with PPSs.
16. Recommendation Report developed and provided for approval.
17. Following approval of the Recommendation Report, Preferred Suppliers are confirmed.
18. Final negotiations with Preferred Suppliers (if required).
19. Award of Routes (Tender 1) or Groups (Tender 2).

9.7. Evaluation Team

A cross-functional team will be involved in the evaluation of bids and recommending the preferred supplier(s). The Evaluation Team composition may change as the tender documentation and evaluation process is refined. The Evaluation Plan (which will be endorsed by the project Steering and Governance Group and signed by the same signatories as this Procurement Plan) will provide more detail. The Evaluation Plan will be subject to endorsement by Audit NZ, the probity auditors for this procurement.

Two evaluation teams will be required:

- Quality Evaluation Team (**QET**)
- Price Evaluation Team (**PET**)

The PET will work separately from the QET, and there will be no sharing of any price information until the QET has concluded its scoring.

Members of the QET will be required to evaluate the tenders received against the determined criteria and will have adequate skills and experience to appropriately evaluate the tender or proposal. Some of the proposed criteria will require technical knowledge to evaluate, such as fleet management or health and safety. In these circumstances subject matter expertise will be sought for assessment of the information and recommendations or reports provided to the Evaluation team(s).

The recommendations from the PET and QET will be reviewed and confirmed by an Evaluation Panel, which will include members of the project's Steering Group, chaired by the Business Owner.

9.7.1. Evaluation team membership and roles

The below will be confirmed through the Evaluation Plan.

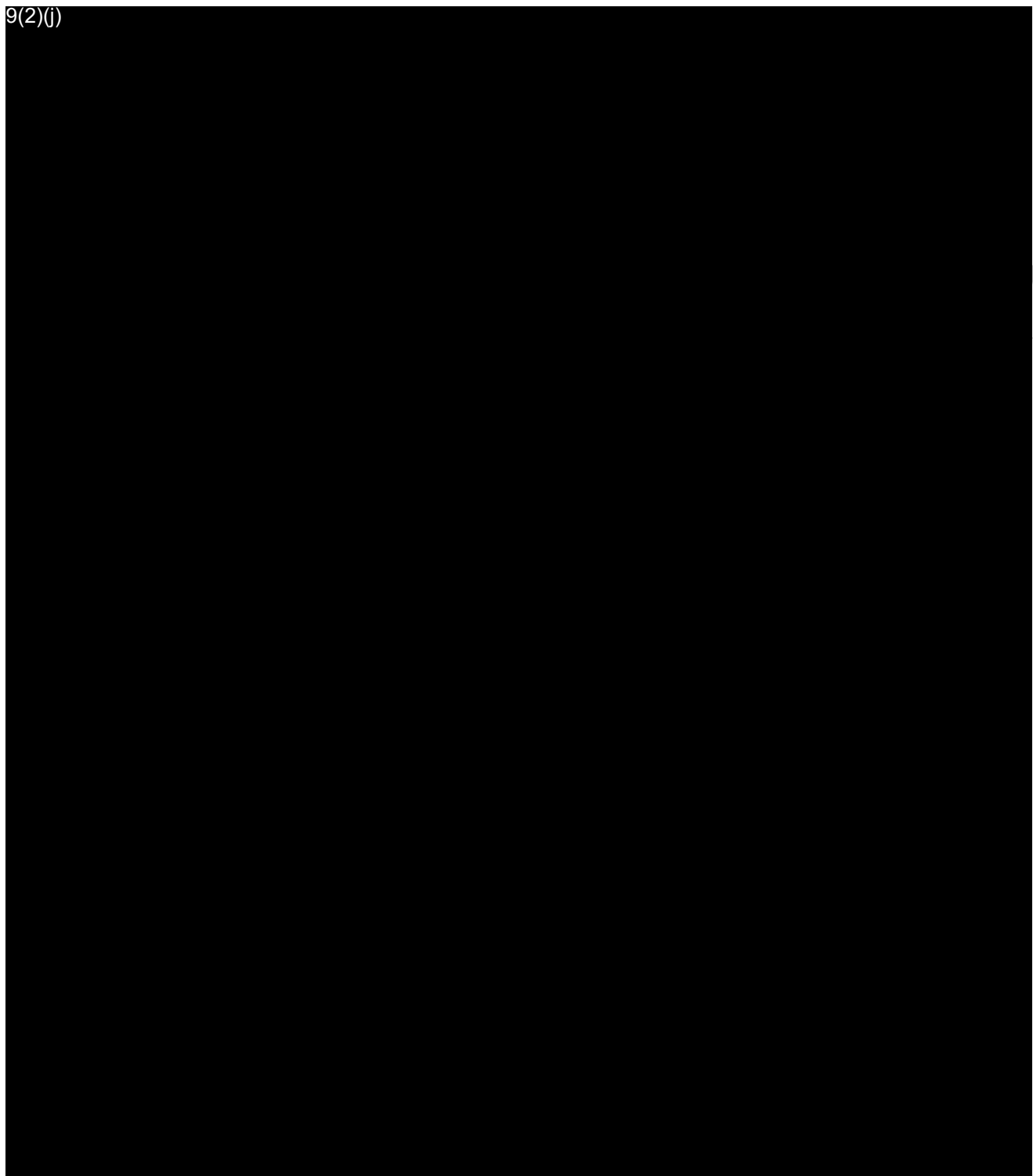
Role	Name	Organisation
Chair of the QET	9(2)(j) Does not carry out evaluation, but facilitates and leads the process	Ministry of Education
Chair of the PET	TBD Does not carry out evaluation, but facilitates and leads the process	TBD
Administrative support (both QET and PET)	9(2)(j) Does not carry out evaluation, but supports the process	Ministry of Education
Legal advisor (both QET and PET)	9(2)(j) Does not carry out evaluation, but supports the process	Ministry of Education
Probity auditor (both QET and PET)	9(2)(j) Does not carry out evaluation, but supports the process	9(2)(j)
Business group/owner (QET)	School Transport Team Members Carry out quality evaluation	Ministry of Education
Subject matter expertise	9(2)(j) 9(2)(j)	Ministry of Education
Financial analyst (PET)	9(2)(j) Assist with price evaluation	Ministry of Education
Business representative (PET) group	School Transport Team Member Assist with price evaluation	Ministry of Education

9.8. Evaluation Criteria

9.8.1. Pre-conditions and mandatory requirements

The first step in the evaluation process will be to assess that responses meet pre-conditions or mandatory requirements. These will be scored on a “pass / fail” basis. Each supplier must pass all of these before their bid will be considered for further evaluation.

A checklist will be provided in the tender that helps suppliers to understand the tender opportunity and the requirements for providing School Bus Services. This will help suppliers to self-select whether they would like to participate in the process. The tender documentation will clearly state that the Ministry is open to sub-contracting and partnership arrangements’.



9.8.2. Scored Criteria

The table below outlines the quality criteria that respondents will be evaluated against. The Criteria, Sub Criteria and Sub Criteria weightings will be confirmed through the Evaluation Plan.

9(2)(j)



9.8.3. Quality criteria and weightings

The quality Criteria and weightings will be the same across both tenders. The draft weightings (total = 100%) quality Criteria are below with further sub-criteria to be developed in the RFP document:

9(2)(j)



NZTA's templates will be reviewed, and the Ministry will also seek input from recent PTOM procurements to tailor these for this procurement and each criterion, as part of the detailed Evaluation Plan.

9.8.4. Price evaluation

Price evaluation will be based on estimating the annual price for each tender and Route/Route Group based on:

- 192 days of Daily Bus services
- 40 days of Technology Bus services

The PET will also carry out sensitivity testing and explore outliers (e.g. respondents with unusually high or low variable vs fixed pricing). These results may be subject to clarification or further due diligence

9.8.5. Negotiation

The Ministry will preserve the right to enter into negotiations with a respondent where required. This may be supported by benchmarking tendered pricing from that respondent with other tendered pricing.

9.9. Maximum capacity

Respondents will be encouraged to tender for all Routes/Groups they are interested in. However, respondents may not have sufficient capacity to deliver services across all of the tenders they have made, should they be successful in all (or a large majority) of them.

Therefore, respondents will be asked to provide a "maximum capacity" as part of their tenders, which will be expressed in a number of Daily Bus routes. This is a better measure than total routes (as Technology Bus services are commonly provided by Daily Buses) or Route Groups (as these may have quite different capacity requirements). The number of Daily Bus routes is expected to be similar to the total number of vehicles needed to provide services.

Where a respondent is the Provisional Preferred Supplier (PPS) for a number of Daily Bus routes that exceeds their maximum capacity, the Ministry will determine for which of the Route Groups the respondent remains PPS. This will take into account:

- The tests for preserving competition noted below
- The loss of value in terms of QAP
- The number of routes in each Route Group the respondent was PPS for

These decisions will be at the Ministry's discretion – i.e. the supplier would not be able to "select" which Route Groups they are allocated.

9.10. Preserving competition

The Ministry seeks to ensure that competition is preserved through this procurement. To avoid excessive market concentration, the Ministry will apply tests at a regional level as well as national level. These tests reflect that:

- No single operator should be awarded all Daily Routes in a region
- No single operator should dominate the market nationwide
- No small group of large operators should dominate the market nationwide

The tests will be carried out and enforced where appropriate to ensure competition is preserved for Daily Routes only. This accounts for Daily Routes being the core business that is being tendered; they account for 96% of 2018/19 cost of the services being tendered, and Technology Routes commonly use buses that are used to provide other services in peak periods thus not important to determining ongoing competition.

Under the two tender approach no market share tests are required on the Tender 1 results as any successful tenderer will hold less than 25% market share in any region, and significantly less nationally. The tests will therefore be applied once evaluation of Tender 2 is complete but before any award is made.

9.10.1. Regional test

For each region (as defined by the Ministry) no supplier should have more than 75% of the Daily Routes in that region. This will help ensure there is at least a second supplier in each local market.

The table below sets out the expected number of Daily Routes to be tendered and the maximum a single supplier should be awarded by region. Mapping the existing suppliers for these routes (or the existing equivalent) the proposed supplier cap of 75% is exceeded in Auckland (78%), Wellington/Wairarapa (85%), and West Coast (79%). The number of routes held by these existing suppliers would have to be reduced if they are to fit within the 75% threshold. Note the number of Daily Routes may change from time to time due to operational reasons and the test will be performed against the number of routes included in the tender.

Region	# Daily Routes	Daily Route Cap
Northland	170	127
Auckland	76	57
Bay of Plenty	113	84
Waikato	167	125
Gisborne	42	31
Hawke's Bay	96	72
Taranaki	58	43
Whanganui/Manawatu	122	91
Wellington/Wairarapa	75	56
Nelson/Marlborough/Tasman	112	84
West Coast	48	36
Canterbury	112	84
Otago	161	120
Southland	113	84

9.10.2. National test

The national test of market concentration should not exceed a nationwide HHI of 25% calculated using the number of Daily Bus routes held by each operator. An HHI of 25% is considered "moderately concentrated" in overseas markets.

In effect, capping the national HHI at 25% in isolation would mean:

- No single operator can be awarded 50% total market share.
- If there were only four operators, they would need to each have 25% market share.
- If there were only five operators, one could hold 40% if the remaining distribution is 15% each.
- A maximum of two operators could have 35% market share each, if the remainder is split amongst a larger number of other operators.

The national test in addition to the two tender approach mean that the extreme situations listed above are unlikely but still possible if no awards are made through Tender 1.

9.10.3. Application

The tests above for preserving competition will be carried out concurrently with the maximum capacity tests. The loss of value to the Ministry by selecting the "next best" combination of suppliers can be established through the change in QAP from the PQM results.

The tests will be used as guidelines for determining ongoing market competition. If either of the tests are breached the Ministry will review the loss in value and determine, in its absolute discretion, whether it will favour an alternative outcome where the loss in value is offset by the ongoing competitiveness of the respective markets.

The decisions for allocating Route Groups will be at the Ministry's discretion – i.e. the supplier would not be able to "select" which Route Groups they are allocated.

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10. Due Diligence

10.1. Summary

An initial review of all submissions will be conducted in order to ensure completeness of the responses. This will be conducted by Procurement upon receipt of tenders. Further due diligence will be conducted as determined by the Evaluation Team.

Due diligence may involve investigation into whether entering into a contract with a Supplier may expose the Ministry to significant risk, e.g. relating to:

- Validity of the Proposal
- Suppliers' financial viability
- Suppliers' ownership / structure
- Suppliers' business practices

The Ministry will consider a range of due diligence activities including:

- Review of further evidence sought
- Site visits
- Broader reference checks
- Information sharing with other Government agencies
- Media checks

10.2. Financial Health

Given the scale and opportunity that this tender represents to some respondents and the combined category spend, financial information will be requested of respondents during the tender process. It is proposed that an internal SME is utilised to provide an assessment of respondents' ability to meet the demands of their potential awarded contracts.

It is anticipated this will be done in two phases:

10.2.1. High-level analysis

Respondents will be required to submit financial information of their company operations and complete the Financial and Commercial Response Form. Information to be provided **may** include:

- Director's declaration they are not aware of any going concern issues or other factors that would prevent effective service delivery
- Audited Financial Statements for the last 3 years available (unaudited statements may be accepted where suppliers do not have annual audits)
- Submission of three financial ratios (Current, Debt-to-Equity and Interest Coverage) for the last three years
- A letter from the respondent's accountants or bank to confirm it is a going concern
- Details of ownership structure
- Outline of how growth / new investment required to meet the services will be achieved (relevant for respondents who are seeking to grow their operations or make investments)

This information will enable high-level analysis to flag any significant risks. It is proposed the high-level assessment will be carried out on all respondents in parallel with evaluation activities, and the analysis may be performed by an external consulting company.

For new entities (e.g. a Joint Venture), details of the structure and shareholdings / financing will be provided. The Ministry can only conduct high-level analysis on members of such rather than the entire entity. For sub-contracting relationships, the prime respondent will provide details of how retentions, payments and any guarantees will be managed, but the Ministry will not seek to review the financial information of each sub-contractor.

10.2.2. Further analysis

The Ministry will reserve the right to conduct more detailed analysis before confirming Group allocations to respondents. This would be for PPSs only and might include:

- Obtaining evidence of financing capability / capacity and plans
- Follow up on any points identified as part of the high-level analysis
- Follow up on any points identified as part of Price Evaluation

The Ministry will reserve the right to reduce the number of Groups allocated to a respondent, or discard their tender, if it cannot satisfy itself about the financial sustainability of the respondent. However, this is expected to be a “last resort” and should only be invoked in extreme circumstances.

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11. Probity

11.1. Summary

Refer to the School Bus Services Tender Probity Plan for a detailed probity management plan.

The probity principles for this procurement project are as follows:

- Acting fairly, impartially, and with integrity
- Being accountable and transparent
- Being trustworthy and acting lawfully
- Managing conflicts of interest
- Protecting the supplier's commercially sensitive and confidential information

11.2. Process integrity

Probity in this procurement will be managed by:

- Ensuring compliance with the agency's code of conduct³
- Ensuring that financial authority for the procurement is approved before proceeding to tender
- Ensuring everyone involved in the process signs a confidentiality agreement and declares any actual, potential or perceived conflict of interest
- Identifying and effectively managing all conflicts of interest
- Treating all suppliers equally and fairly
- Providing each supplier with a comprehensive debrief at the end of the tender process

11.3. Conflict of Interest

All personnel involved in the procurement process will submit a completed Conflict of Interest and Confidentiality Agreement upon commencement of their involvement. All involved personnel are required to immediately report any Conflict of Interest that arises at any time during the procurement process (including once participating Suppliers have been identified).

For any Conflict of Interest identified, a Conflict Management Plan must be approved by the Procurement Lead (or the Procurement Lead's manager for any Conflict of Interest relating to the Procurement Leader).

Conflict of Interest status will be regularly reviewed throughout the procurement process by the External Probity Auditor.

11.4. Probity Report

A final Probity Report will be provided by the External Probity Auditor at the end of the procurement process.

³ <https://intranet.moe.govt.nz/assets/Uploads/Code-of-Conduct-March-2017docx.pdf>

12. Project management and governance

As a high value, high profile procurement the Ministry has put appropriate levels of oversight and control in terms of governance and project management in place.

- Information regarding the governance structure is documented in Terms of Reference ([I:\2. School Transport\S Tender 2020\Governance\Governance Board\Terms of Reference](#))
File name of latest version: *Governance Structure and TOR Memo To Governance Board FINAL.docx*

12.1. Tender activity approvals

All project documentation is first reviewed by the Project Director and then circulated for review by the responsible business unit. Depending on the significance of the document, the following three approval models are invoked:

- Procurement procedure, commercial and business decision documents: Final versions are issued to the SRO and/or Procurement Sponsor for approval and to the Steering Group for noting
- Functional plans: Final versions are issued to the Steering Group for approval and the Governance board for noting
- Foundational documents, strategies and key plans: Final versions are issued to the Steering Group for endorsement and the Governance Board for approval

Document / Activity	Approval Authority
Procurement Plan	Governance Board
Probity Plan	Governance Board
Evaluation Plan	Governance Board
Conflict of Interest Management Plans	Procurement Sponsor
RFP documentation (prior to release)	Governance Board
Evaluation Workbook	Procurement Sponsor / SRO
Notices (e.g. clarifications)	Procurement Sponsor / SRO
Exclusion of a proposal from evaluation	Procurement Sponsor / SRO
Selection of Preferred Supplier	Procurement Sponsor / SRO
Final form of contract	SRO
Contract signatory	SRO / Suppliers

12.2. Risks and issues

The project team has developed (and continues to maintain) a risk register and issues register. These are reviewed and revised regularly as part of project management activities.

- For details, please refer to: [I:\2. School Transport\S Tender 2020\Project Office\Risks and Issues](#)
File name of latest version: *High Level Risk Register.docx*

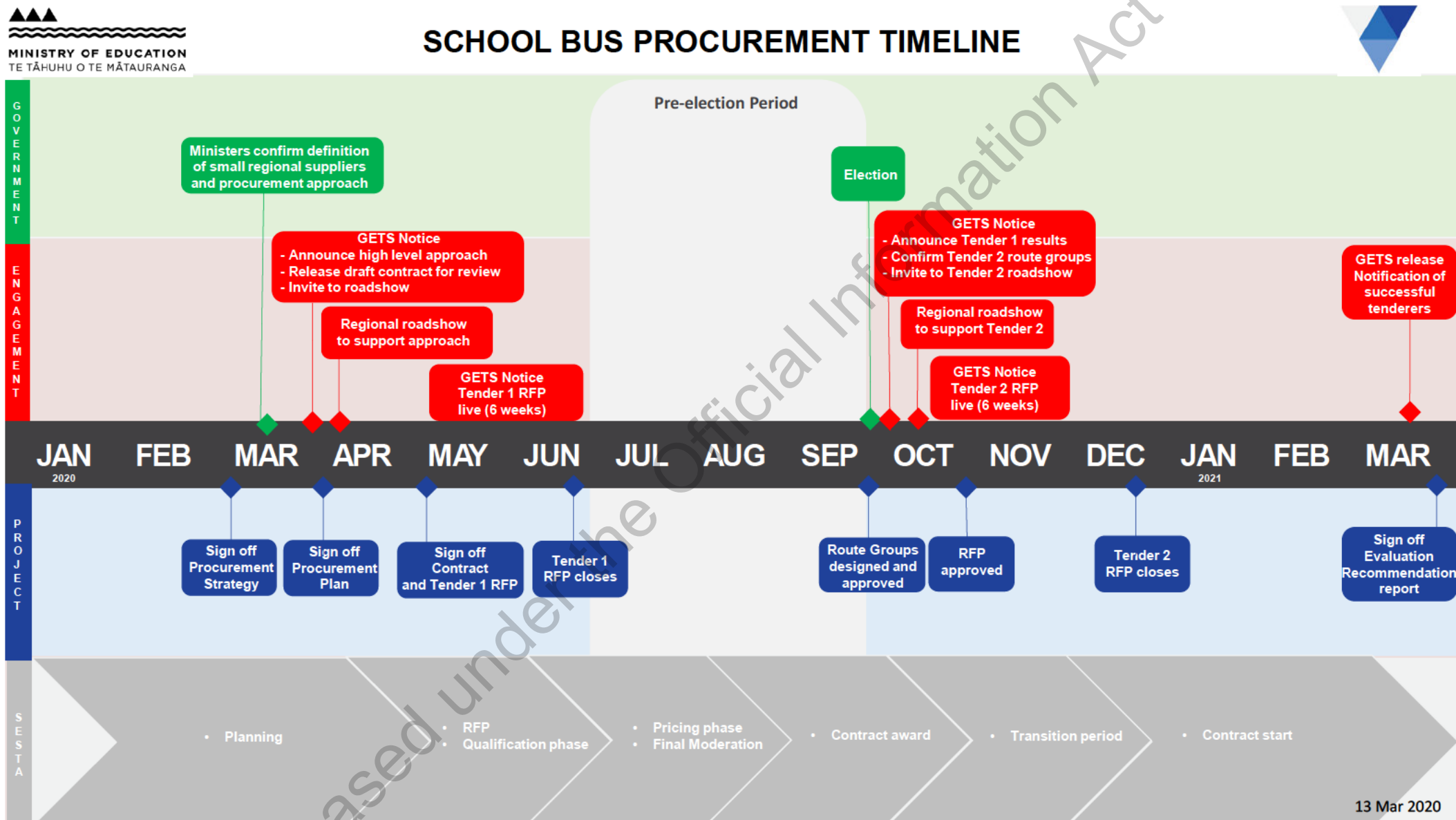
12.2.1. Procurement risks

The following high level risks relate to this procurement:

Risk Description	Risk Level (Before treatment)	Additional treatment/mitigation to manage the risk.	Risk Level (After treatment)
Government Minister(s) seek redefinition of project objectives impacting project time, cost and/or quality.	High	Project team and Policy to brief Ministers and seek appropriate mandate for Procurement Strategy to ensure clarity of procurement objectives.	Medium
Suppliers and industry advocates seek redefinition of project objectives impacting project time, cost and/or quality.	High	Project team to engage with suppliers and industry groups (as detailed in Comms and Project plans) to seek feedback on proposed terms of engagement and to make clear objectives and supporting rationale.	Medium
Delays to procurement tasks and key decisions diminish time available for operator transition, putting continuity of service at risk.	Medium	Resource all tasks appropriately (including use of external expertise) to ensure expedient completion of tasks. Align key decision making tasks with Governance availability to ensure timely delivery of key decisions and approvals.	Low
Two-tender approach leads suppliers to challenge fairness and equity of procurement process, leading to legal action, lobbying and ministerial intervention and/or reputational damage.	Medium	Align with MBIE and seek external expert advice (procurement and legal) to ensure approach is configured to deliver most equitable access and transparent process while also delivering the benefits to regional suppliers that the two-tender approach that the two-tender approach is designed for.	Low
Changes to School Transport (or other government) policy settings require revision to procurement objectives and/or approach.	Low	Make it clear in contract and service specifications that any policy changes will be reflected in contract terms if and when they come into force.	Very Low
Lack of clarity in governance structure and authorising environment.	Medium	Clarify roles, responsibilities and approval requirements (RASCI) and support all key approvals with documented SME validation.	Low
Pandemic response requirements limit ability for "in-person" meetings, limiting ability to work through tender requirements with industry.	High	Prepare industry briefing materials for online delivery. Allow longer period for Q & A responses and record follow-up briefings to reflect Q & A back to market.	Medium
Pandemic response requirements lead to restrictions on imports, impacting new bus supply lines.	Medium	Make allowance for delays to new vehicle implementation.	Low
Pandemic impacts operational staff availability, challenging operator resilience, creating barriers to entry for smaller suppliers and putting continuity of service at risk.	High	Work with ST BAU on contingency plan.	High

12.3. Timeline

The following table outlines the key activities relating to the tender process, the timeframes are indicative only.



13. Contract

13.1. Summary

Contracts will commence by mid-2020 to ensure the Ministry has contractual levers to ensure suppliers are completing their transition activities effectively. The new contracts will be largely based on existing contracts, as these have been considered appropriate for the strong relationship / partnership approach sought by the Ministry.

Key contract information is outlined in the table below.

Contract Features	Detail
Initial Term	6 years from January 2022
Number and Length of additional terms	2 further rights to renew of 3 years each
Maximum Contract Term	12 years
Contract Start Date	1 January 2022
Services Commence	Transition will occur throughout 2021, after tender award. Delivery of Daily Bus and Technology Bus services will commence Term 1 2022 (January).
Anticipated number of suppliers	The number of suppliers will be determined through tenders.
Contract type	Bespoke Services Agreement created by the Ministry with assistance from Meredith Connell. While schedules to the contracts may vary to record service specific detail (eg pricing), it is anticipated the contract terms will be identical for each contract.
Reporting	Reporting requirements will be specified in a schedule to the contracts.
Performance management	Performance will continue to be managed using a relationship / partnership approach. Payment abatements may be made by the Ministry for: <ul style="list-style-type: none">• Failure to meet reporting obligations• Incorrectly reporting performance• Failure to deliver on obligations under the contract The Ministry preserves rights of termination if there is persistent failure to meet the requirements of the contracts or major failure to meet legal obligations.
Estimated total value of all contracts	9(2)(j) [REDACTED]

13.2. Transition

All respondents are required to complete a Transition Plan for their Routes (Tender 1) or Groups (Tender 2) they are tendering for. It is expected that even incumbent suppliers will need to specify their plans as:

- Tender 1: Services may become fragmented, or Routes may be added / removed through the tender process.
- Tender 2: New Groups may mean there are new routes / schools they will provide services for
- Routes change
- New fleet / fleet changes are likely to be required
- The new contracts include new requirements (e.g. reporting and compliance)

Transition arrangements may also be addressed during the negotiations with respondents.

Significant transition risks that have been identified and have mitigation plans, include:

- Disruption to services
- Back-up plans in the event that services are affected
- Availability of vehicles that meet Ministry standards and specifications
- Supplier requirement for suitably qualified drivers

The Ministry's rights under the contract will include monitoring supplier progress on their Transition Plans. This will take a milestone approach and requires the Ministry to have adequate resources with subject matter knowledge to manage continuing contract management of the legacy contracts as well as the new contracts. The Ministry maintains the ability to terminate the contract between it and an operator if the operators is at serious risk of not being capable of performing the services from the commencement date.

13.3. Contract Management

Contract Management Plans will be developed by the School Transport team and will cover the following areas:

- Supply market information
- Exit strategy / provisions
- Governance, assurance and relationship management: key personnel, escalations
- Finance, payment models, pricing information
- Transition and implementation considerations
- Supplier and market engagement plans
- Performance management and service levels
- Contract monitoring and management
- Reporting

13.4. Key Performance Indicators

Key Performance Indicators (KPIs) are considered to be an effective way for the Ministry to manage performance in the Daily Bus and Technology Services contracts. Performance in the current contract is detailed in Schedule 3 – Contract Monitoring & Evaluation Framework, contracts are monitored through audit checks conducted by Transport Contract Managers and suppliers are required to conduct a self-audit.

Traditionally performance management has been tactical in nature with no regular reporting provided. The upcoming contract provides an opportunity to introduce more strategic contract management approaches that could enhance value and performance from our contracted suppliers.

The contract will set out obligations for operators to provide monthly reporting on service performance to the Ministry. This information can then be used by the Ministry to monitor service performance across all services and work with the operators to improve performance where necessary.

13.5. Contract completion

13.5.1. End of term

At the end of the initial term of six years, there will be an option to extend the contract by a further three years, subject to good performance by the supplier, and continued best value-for-money over the whole-of-life delivery.

13.5.2. Exit strategy

Our responsibility to deliver transport services will continue beyond the expiry of this contract if current policy settings remain.

14. Glossary

Term	Definition
Current small supplier	means supplier who services a local area, often does not utilise a depot, often vehicle servicing is out-sourced, and who services 9(2)(i) with few if any other operations.
Current medium supplier	means a supplier who services a single region, often operates 9(2)(i) depots with only general vehicle servicing in-house, and services 9(2)(i) Routes with some additional operations.
Current large supplier	means a supplier who services multiple Regions, operates 9(2)(i) depots with all vehicle servicing in-house, and services 9(2)(i) or more Routes with diverse operations (urban services/charters). Eg: 9(2)(b)(ii).
Daily Route	means school transport assistance, where a bus route is contracted to commercial transport operators, taking students to and from school. Students are picked up at a variety of roadside stops along the route and delivered to their school, and vice versa in the afternoon. Some services will include a change in bus along the journey. There are 1,465 of these routes.
Group	means a bundle of Daily and/or Technology Routes within a defined Region.
Head Office	means a place where the Chief Executive, owner, parent company, or the governing body or individual(s) usually transact business and manage operational activities. It is usually the administrative, decision-making and policy-making centre of an organisation, or its parent. The Ministry reserves the right to approve or disapprove the tenderer's designated Head Office location if it does not, in the Ministry's opinion, represent an accurate designation. A tenderer can only nominate one Head Office location and one Region to tender in.
Public Value	means a measure of the relative costs and benefits of an outcome, given the desired outcomes that are being sought. For the purpose of Tender 1, Public Value is defined in terms of the Quality Adjusted Price discount as compared to the benchmark or current price per each Route. For the purpose of Tender 2, Public Value is defined as the Quality Adjusted Price.
Region	means a defined geographical area referenced in the allocation of Routes in Tender 1 and Groups 1 Tender 2.
School, Transport Services	<p>School Transport Services include the following:</p> <ul style="list-style-type: none"> • Daily Bus Services: Contracts suppliers to convey students between schools and designated bus stops within an established proximity of students' homes, • Technology Bus Services: Contracts suppliers to convey Year 7 and Year 8 students between schools to allow access to technical education facilities, • Specialised School Transport Assistance (SESTA): Contracts suppliers to convey students with complex mobility needs between schools and student's homes, • Conveyance Allowance: Making a payment to caregivers to assist with transport costs for eligible students where other School Transport services are impractical, • Student / bus ferries: Contracts the Ministry has with two ferry companies for the transportation of students and/or buses, and • Direct Resourcing: Directly funds schools/kura to make their own arrangements for students. Normally this is schools contracting transport suppliers or through the use of a Passenger Service Vehicle (PSV) owned and operated by the school/kura.
Technology Route	means school transport assistance for year 7 and 8 students where a bus route is contracted to commercial transport operators, taking students between schools to enable them regular access to specialised educational facilities at other schools so they can learn such things as woodwork, sewing, cooking and metalwork. Students are picked up at their daily school and delivered to the technology school, and vice versa. Some services will include a change in bus along the journey. Most often this will include students from rural full primary (year 1-8) schools and from

	intermediate schools to larger schools. Providing transport is a more economical approach than building expensive facilities at all schools. There are 678 of these routes.
Tender 1	means the first stage of the two stage procurement approach. In Tender 1, up to the greater of 10 or 10% of the Daily Routes and 10% of the Technology Routes are available for award by Region. Suppliers bid with respect to one or more Daily and/or Technology Routes within a single Region.
Tender 2	means the second stage of the two stage procurement approach. In Tender 2, remaining Daily and Technology Routes are bundled into Groups within Regions. Suppliers bid with respect to one or more Groups within one or more Regions.

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Appendix A – MBIE Significant Procurement Plan Review

MBIE has been in the process of reviewing this Procurement Plan as part of a Significant Procurement Plan (SPP) Review. MBIE staff who were undertaking the review have been reassigned into the COVID incident response tasks, as part of the critical workforce team. While MBIE has indicated that the SPP will be delivered, it is unlikely that this will happen for a number of weeks or months.

MBIE staff have been present during critical meetings and workshops which steered the development of the two tender procurement approach. MBIE has also been sent earlier drafts of the Procurement Plan as guidance before meetings and workshops.

The Minister for Economic Development, the Minister responsible for MBIE, has endorsed the two tender approach (METIS No: 1220698) on 18/03/2020.

Appendix E – Tender 1 Contract Award Scenario Examples

- a. **Insufficient Interest:** In this example, 20 Routes are available for award in the Region. But only 7 bids are received. The bids present acceptable quality and price. 7 Daily Routes are awarded for this Region.

Routes bid for in Tender 1	Acceptable Quality	Acceptable Price	Outcome
Route 1	YES	YES	Awarded
Route 2	YES	YES	Awarded
Route 3	YES	YES	Awarded
Route 4	YES	YES	Awarded
Route 5	YES	YES	Awarded
Route 6	YES	YES	Awarded
Route 7	YES	YES	Awarded
Route 8	No Response	No Response	Not awarded - available in Tender 2
Route 9	No Response	No Response	Not awarded - available in Tender 2
Route 10	No Response	No Response	Not awarded - available in Tender 2
Route 11	No Response	No Response	Not awarded - available in Tender 2
Route 12	No Response	No Response	Not awarded - available in Tender 2
Route 13	No Response	No Response	Not awarded - available in Tender 2
Route 14	No Response	No Response	Not awarded - available in Tender 2
Route 15	No Response	No Response	Not awarded - available in Tender 2
Route 16	No Response	No Response	Not awarded - available in Tender 2
Route 17	No Response	No Response	Not awarded - available in Tender 2
Route 18	No Response	No Response	Not awarded - available in Tender 2
Route 19	No Response	No Response	Not awarded - available in Tender 2
Route 20	No Response	No Response	Not awarded - available in Tender 2

- b. **Low response quality:** In this example, 20 Routes are available for award in the Region. 20 bids were received, and all presented acceptable pricing but only 9 of them were of an acceptable quality. 9 Routes are awarded for this Region.

Routes bid for in Tender 1	Acceptable Quality	Acceptable Price	Outcome
Route 1	YES	YES	Awarded
Route 2	YES	YES	Awarded
Route 3	YES	YES	Awarded
Route 4	YES	YES	Awarded
Route 5	YES	YES	Awarded
Route 6	YES	YES	Awarded
Route 7	YES	YES	Awarded
Route 8	YES	YES	Awarded
Route 9	YES	YES	Awarded
Route 10	NO	YES	Not awarded - available in Tender 2
Route 11	NO	YES	Not awarded - available in Tender 2
Route 12	NO	YES	Not awarded - available in Tender 2
Route 13	NO	YES	Not awarded - available in Tender 2
Route 14	NO	YES	Not awarded - available in Tender 2
Route 15	NO	YES	Not awarded - available in Tender 2
Route 16	NO	YES	Not awarded - available in Tender 2
Route 17	NO	YES	Not awarded - available in Tender 2
Route 18	NO	YES	Not awarded - available in Tender 2
Route 19	NO	YES	Not awarded - available in Tender 2
Route 20	NO	YES	Not awarded - available in Tender 2

- c. **Pricing above threshold:** In this example, 20 Routes are available for award in the Region. 20 bids were received and all of them presented acceptable quality, but only 9 of them presented both acceptable quality and price. 9 Routes are awarded for this Region. 11 bids with pricing above threshold were further investigated but it was found that the higher pricing was not justified.

Routes bid for in Tender 1	Acceptable Quality	Acceptable Price	Outcome
Route 1	YES	YES	Awarded
Route 2	YES	NO	Not awarded - available in Tender 2
Route 3	YES	YES	Awarded
Route 4	YES	NO	Not awarded - available in Tender 2
Route 5	YES	YES	Awarded
Route 6	YES	NO	Not awarded - available in Tender 2
Route 7	YES	NO	Not awarded - available in Tender 2
Route 8	YES	YES	Awarded
Route 9	YES	YES	Awarded
Route 10	YES	NO	Not awarded - available in Tender 2
Route 11	YES	YES	Awarded
Route 12	YES	NO	Not awarded - available in Tender 2
Route 13	YES	NO	Not awarded - available in Tender 2
Route 14	YES	YES	Awarded
Route 15	YES	NO	Not awarded - available in Tender 2
Route 16	YES	YES	Awarded
Route 17	YES	YES	Awarded
Route 18	YES	NO	Not awarded - available in Tender 2
Route 19	YES	NO	Not awarded - available in Tender 2
Route 20	YES	NO	Not awarded - available in Tender 2

Appendix F – Tender 1 Route Allocation Example

The table below illustrates how Routes will be allocated through Tender 1. In this example, 11 Routes are available for award in a fictional Region, and 4 suppliers have been evaluated to meet the quality and price thresholds with respect to one or more Routes. 13 Routes received bids and 11 have been offered to the suppliers. The Routes are distributed to suppliers based on the highest Public Value across all Routes:

Supplier 1 secured 8 Routes

Supplier 2 did not secure any Routes

Supplier 3 secured 1 Route

Supplier 4 secured 2 Routes

Route 12, while attracting acceptable bids, is not available for award as the maximum number of Routes available for award is 11 and the highest Public Value score received for Route 12 is lower than the best scores received for each of the other 11 Routes. Route 13 did not attract any acceptable bids.

	Route 1	Route 2	Route 3	Route 4	Route 5	Route 6	Route 7	Route 8	Route 9	Route 10	Route 11	Route 12	Route 13
Supplier 1	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓	✓✓	✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓✓	✓	✗
Supplier 2	✓✓✓✓✓	✓✓	✓	✓✓	✓	✓✓	✓✓	✓✓	✗	✗	✗	✓	✗
Supplier 3	✓✓	✓✓✓✓✓	✓✓	✓	✓✓✓✓✓✓✓✓	✓	✓✓	✓✓✓✓✓	✓✓✓✓✓	✗	✗	✓✓	✗
Supplier 4	✓	✓✓	✓✓✓✓✓	✓✓✓✓✓	✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓	✗	✗	✗	✓	✗

After the offer, Supplier 1 has decided not to accept any Routes through Tender 1, instead they have chosen to bid through Tender 2. The Routes won by Supplier 1 are thus distributed to the supplier holding the next highest Public Value score, if any.

Supplier 1 has not accepted award of any Routes

Supplier 2 secured 1 Route

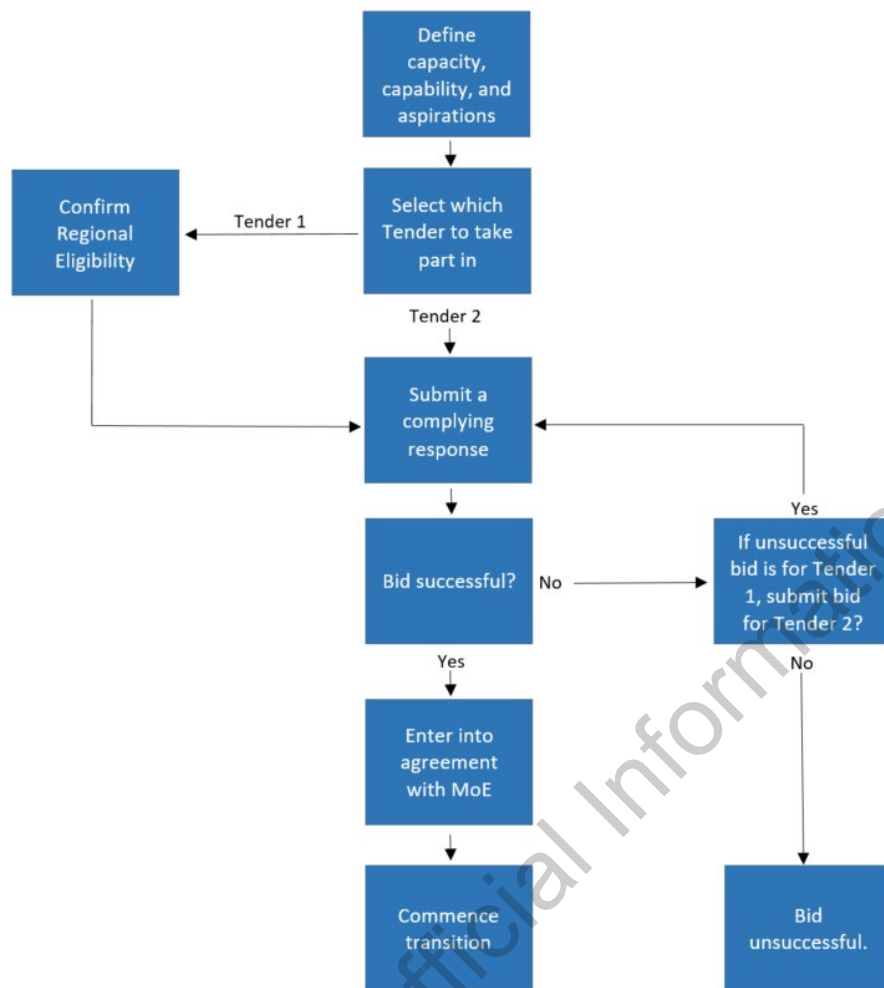
Supplier 3 secured 5 Routes

Supplier 4 secured 4 Routes

Routes 10 and 11 are not offered as no other supplier has offered an acceptable bid. These Routes, together with Route 13 which did not attract any acceptable bids, will be made available in Tender 2. Because of this, Route 12 can now be offered. The maximum number of Routes earmarked to be allocated is not reached in this scenario.

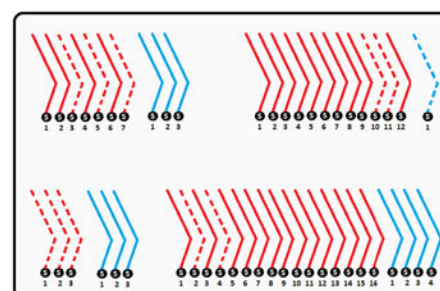
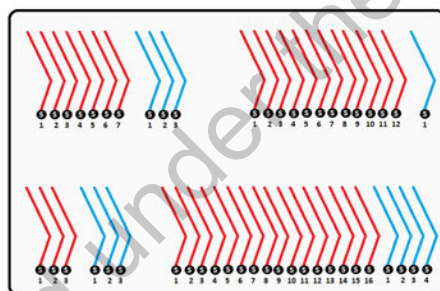
	Route 1	Route 2	Route 3	Route 4	Route 5	Route 6	Route 7	Route 8	Route 9	Route 10	Route 11	Route 12	Route 13
Supplier 1													
Supplier 2	✓✓✓✓✓	✓✓	✓	✓✓	✓	✓✓	✓✓	✓✓	✗	✗	✗	✓	✗
Supplier 3	✓✓	✓✓✓✓✓	✓✓✓✓✓	✓✓	✓✓✓✓✓✓✓✓	✓	✓✓✓✓✓	✓✓✓✓✓	✓✓✓✓✓	✗	✗	✓✓✓	✗
Supplier 4	✓	✓✓	✓✓✓✓✓	✓✓✓✓✓	✓	✓✓✓✓✓✓✓✓	✓✓✓✓✓✓✓✓	✓	✗	✗	✗	✓	✗

Appendix G – Process Flow Diagrams

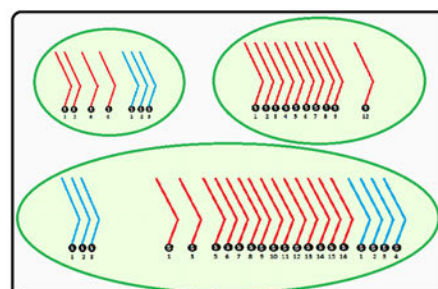
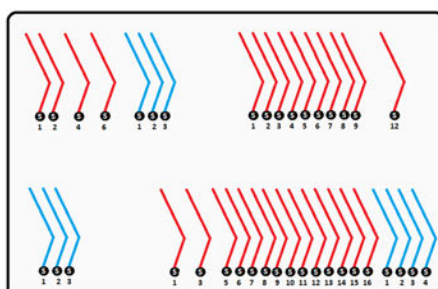


● School — Daily Bus Route — Technology Bus Route ● Group Boundary ○ Region Boundary

TENDER 1



TENDER 2



Appendix H – Case Studies

1. Case Study 1: Kāpiti Bus

Kāpiti Bus is a small local business, their aim is to keep serving their 2 current Routes.

Kāpiti Bus operates 2 buses in a Region which contains a total of 50 Routes. 12 Routes are available for award through Tender 1.

Scenario 1:

Kāpiti Bus decides to tender under Tender 1.

A bid is submitted for the 2 Routes that Kāpiti Bus currently operates.

Outcome if successful:	Kāpiti Bus enters into a contract with the Ministry and continues to service their 2 current Daily Routes. Kāpiti Bus becomes ineligible to tender under Tender 2. They're happy with this as they don't have the capacity to service a Route Group. And they're not interested in growing their business so they can.
Outcome if partially successful	Kāpiti Bus is offered 1 Route and enters into a contract with the Ministry. Kāpiti Bus becomes ineligible to tender under Tender 2.
Outcome if unsuccessful:	Kāpiti Bus can choose to: <ul style="list-style-type: none">• Bid under Tender 2, or• Not compete for the services available in Tender 2. <p>If the Daily Routes they currently serve are awarded to another supplier as a result of Tender 1, they will not be available for tender in Tender 2. However, other similar or nearby Routes may be available within a Tender 2 Group.</p> <p>Because Kāpiti Bus don't have the capacity to service a Group on their own, Kāpiti Bus could consider partnering with another business to put in a tender for a Group.</p> <p>Before putting in a tender, Kāpiti Bus and their partner would need to decide which of the Routes within the Route Group they will each do if successful.</p>

Scenario 2

Kāpiti Bus partners with another operator.

A joint bid is submitted for a Group under Tender 2.

Outcome if successful:	Kāpiti Bus and their partner(s) enter into a contract with the Ministry. Kāpiti Bus continues to service the 2 Routes they are currently servicing (if available via Tender 2) or whichever 2 available Routes they agreed to service as part of the joint tender.
Outcome if unsuccessful:	Kapiti Bus will no longer provide Daily Bus or Technology Bus services for the Ministry.

2. Case Study 2: Palmy Bus

Palmy Bus is a medium sized business servicing 8 Routes, but they could easily serve up to 20 Routes. They want to increase their school transport business.

Palmy Bus operates 25 buses in a Region which contains a total of 120 Routes. 12 Routes are available for award through Tender 1.

Scenario 1:

Palmy Bus decides to bid for the maximum number of Routes available under Tender 1, which is 12. The company chooses not to bid under Tender 2 as it is aware that a local Tender 2 Group may be too large for Palmy Bus to service in its entirety. Palmy Bus could submit a joint Proposal or increase their fleet and personnel in order to be able to service an entire Group, however the company does not wish to do either.

Outcome successful	if	Palmy Bus is awarded all 12 Routes and enters into a contract with the Ministry. This increases their business by 4 Routes. Palmy Bus is not eligible to tender under Tender 2. Palmy Bus misses out on the opportunity to tender for one or more Group under Tender 2, which if successful, could have increased their business by 12 Routes.
Outcome if partially successful		Palmy Bus is awarded between 1 and 11 Routes and enters into a contract with the Ministry. Palmy Bus becomes ineligible to tender under Tender 2.
Outcome unsuccessful	if	Palmy Bus can choose to: <ul style="list-style-type: none"> • Bid under Tender 2, or • Not compete for the services available in Tender 2.

Scenario 2:

Palmy Bus decides to tender for 3 Groups under Tender 2. Each of The Groups is made up of 5 Daily Routes and 3 Technology Routes, or 24 individual Routes in total. This is more than the maximum number of Routes available for award under Tender 1, which is 12. Palmy Bus decided to use their capacity and increase their fleet and personnel. They also could have submitted a joint bid instead.

They also realise that entering into a contract with the Ministry for the smaller number of Routes under Tender 1, would make them ineligible to tender for the larger number of Routes available in Tender 2.

Palmy Bus could also choose to take part in Tender 2 if they are unsuccessful in Tender 1, and decide to submit a joint bid or to increase their fleet and personnel.

3. Case Study 3: Kiwi Bus Company (KBC)

KBC is a large national operator servicing 80 Routes, but they could easily serve up to 110 Routes. They want to increase their school transport business.

KBC operates 120 buses in multiple Regions. A maximum of 22 Routes are available for award through Tender 1 in the Region where KBC's Head Office is located.

Scenario 1:

Bidding under Tender 1 would allow KBC to win a maximum of 22 Routes, much less than the number of Routes currently being serviced (80 Routes) and KBC's future aspiration (110 Routes).

KBC decides to bid for 15 Groups, across multiple Regions, under Tender 2. Each of the Groups is made up of 5 Daily Routes and 3 Technology Routes, or 120 Routes in total. This is more than the maximum number of Routes that KBC can currently service, however KBC is open to a small increase in their fleet and personnel to meet the demand if they win all the Groups. KBC could have submitted a joint bid instead, but they chose not to.

Outcome successful	if	KBC is awarded 15 Groups and enters into a contract with the Ministry. As desired, this increases their business by 40 Routes.
Outcome if partially successful		KBC is awarded between 1 and 14 Groups and enters into a contract with the Ministry. KBC becomes ineligible to tender under Tender 2.
Outcome unsuccessful	if	KBC will no longer provide Daily and/or Technology bus services for the Ministry.

4. Case Study 4: Otago Bus

Otago Bus is a small local business servicing 7 Routes, but due to growth in other business areas they wish to decrease their school transport business to 4 Routes.

Otago Bus operates 10 buses in a Region which contains 140 Routes. 13 Routes are available for award through Tender 1.

Scenario 1:

Bidding under Tender 1 would allow Otago Bus to bid for fewer Routes than they are currently servicing. Otago Bus bids for 4 Routes that they are currently operating through Tender 1.

Outcome successful	if	Otago Bus is awarded 4 Routes that they are currently operating and enters into a contract with the Ministry. As desired, this decreases their business by 3 Routes.
Outcome if partially successful		Otago Bus is awarded between 1 and 3 Routes that they are currently operating and enters into a contract with the Ministry. Otago Bus becomes ineligible to tender under Tender 2.

Outcome unsuccessful	if	<p>Otago Bus can chose to:</p> <ul style="list-style-type: none"> • Bid under Tender 2 for a Group through a joint proposal, seeking to service their current (if available) or similar or nearby 4 Routes; or • No longer provide Daily and/or Technology bus services for the Ministry.

Scenario 2

Otago Bus partners with another operator.

A joint bid is submitted for a Group under Tender 2.

Outcome successful:	if	<p>Otago Bus and their partner(s) enter into a contract with the Ministry.</p> <p>Otago Bus services 4 of the 7 Routes they are currently servicing (if available via Tender 2) or whichever 4 similar or nearby Route(s) they agreed to service as part of the joint tender.</p>
Outcome unsuccessful:	if	Otago Bus no longer provide Daily and/or Technology bus services for the Ministry.

Appendix I – HHI examples

The national test of market concentration will be to not exceed a nationwide Herfindahl-Hirschman Index (HHI) value of 25%.

The HHI is calculated by squaring the market share of each operator (based on number of Daily Bus Routes) and then summing the resulting numbers, to arrive at a numerical point value which is then converted to a % value. The Index ranges from '0' to '10,000' where '0' = '0%' (low % values indicate high competition) and '10,000' = '100%' (high % values indicate low competition). The reference value of '25% or below' corresponds a highly competitive national market. The table below illustrates an example of the Index calculations:

Example 1	Example 2	Example 3
This is a competitive market as the HHI value is below '25%'. One supplier has a moderate market share while four have lower but still significant market shares. The HHI is 2,200 or 22.0% .	This is an uncompetitive market as the HHI value is above '25%'. One supplier has a high market share, one has a moderate market share while three have low levels of market share. The HHI is 3,800 or 38.0% .	This is a very uncompetitive market as the HHI value is well above '25%'. One supplier has a very high market share, while the other four have a very low market shares. The HHI is 8,126 or 81.3% .
Supplier 1 = 30% Supplier 2 = 20% Supplier 3 = 20% Supplier 4 = 20% Supplier 5 = 10% $= 30^2 + 20^2 + 20^2 + 20^2 + 10^2 =$ $900 + 400 + 400 + 400 + 100 =$ 2,200 or 22.0%	Supplier 1 = 50% Supplier 2 = 35% Supplier 3 = 5% Supplier 4 = 5% Supplier 5 = 5% $= 50^2 + 35^2 + 5^2 + 5^2 + 5^2 =$ $2,500 + 1,225 + 25 + 25 + 25 =$ 3,800 or 38.0%	Supplier 1 = 90% Supplier 2 = 3% Supplier 3 = 3% Supplier 4 = 2% Supplier 5 = 2% $= 90^2 + 3^2 + 3^2 + 2^2 + 2^2 =$ $8,100 + 9 + 9 + 4 + 4 =$ 8,126 or 81.3%

Appendix J – Simplified PQM example

The evaluation model that will be used is based on the Price Quality Method (**PQM**). The PQM is publicly available in New Zealand Transport Agency's (**NZTA's**) Procurement Manual⁴. Essentially, the PQM converts the difference in quality scores between tenders into a dollar amount, which is then deducted from the total price to enable comparison of tenders in dollar terms. The following example illustrates the PQM process, with the following assumptions:

- Quality Criteria is worth 40% of the total
- Price is worth 60% of the total
- Respondent A receives a Quality Score of 80% (or 32/40)
- Respondent B receives a Quality Score of 50% (or 20/40)
- Respondent A prices the Group at \$115
- Respondent B prices the Group at \$105
- Internal cost estimate for the Group is \$10



1. Quality Criteria is worth 40% of the total, while the price criteria is worth 60% of the total
2. Respondent A receives a Quality Score of 80% (or 32/40) and Respondent B receives a Quality Score of 50% (or 20/40)
3. A Weighted Sum Margin (WSM) is calculated by subtracting, from the Quality score of Respondent A (32/100) the score of Respondent B (20/100). Respondent A thus retains a Weighted Sum Margin of '12'.
4. A Supplier Quality Premium (SQP) is calculated as follows:
(WSM / Price Weighting) * (Internal Cost estimate for the Group)
Respondent A = (12/60) * \$100 = 0.20 * \$100 = \$20
Respondent B = (0/60) * \$100 = 0 * \$100 = \$0
5. Respondent A priced the Group at \$115 and Respondent B prices the Group at \$105.
7. Quality Adjusted Price (QAP) is calculated by subtracting the SQP from the pricing provided by the Respondents.
Respondent A = \$115 - \$20 = \$95
Respondent B = \$105 - \$0 = \$105
8. The Preferred Supplier for each Group is selected based on the lowest QAP. Based on the above example Respondent A would be selected as the Preferred Supplier due to the lowest QAP.



Lifting aspiration and raising educational
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PROBITY PLAN

School Transport Procurement Services Tender

Draft

March 2020

Released under the Official Information Act 1982

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1. Introduction

- 1.1 This Probity Plan has been developed to assist the Ministry of Education (the **Ministry**) to conduct a robust, open and fair procurement process for the provision of School Bus Services (the **Procurement**).
- 1.2 Probity is the evidence of ethical behaviour in a particular process. The term probity refers to fairness. For employees of government Ministries, maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying public sector values such as impartiality, fairness, accountability, and transparency. It is part of every public official's (and those acting on their behalf) duty to adopt processes, practices and behaviour that enhance and promote public sector values and interests to ensure probity in public sector activities.
- 1.3 Details presented in this document are subject to change and validation through the development of the Evaluation Plan, Contract Refinements, or a change in current policy settings.

2. Purpose

- 2.1 The purpose of this Probity Plan is to ensure, through the identification of key risks and the adoption of a set of guiding principles and specific controls, that probity issues are taken into account throughout, and reflected in activities undertaken in respect of the Procurement. This includes:
 - ensuring that the processes and decision-points of the procurement are relevant to the needs of the Procurement, readily identifiable, and well understood by all those associated with it
 - ensuring that roles and responsibilities within the Procurement are clearly and appropriately allocated, providing a strong basis for decision-making and enabling those responsible to be held accountable for their actions
 - ensuring compliance with all process requirements, including any relevant rules, thereby promoting the use of best practice and minimising the risk of procedural or other challenge
 - minimising the risk of material conflicts of interest not being identified and appropriately managed
 - managing the procurement process in a way that is fair to all parties involved;
 - maintaining public sector integrity by generating and preserving confidence in the process
 - enabling the Procurement to result in an outcome which best meets the needs of the Ministry and the users of the services:
 - be safe, reliable and reasonably comfortable, getting students to their destination, on time and 'ready to learn'
 - provide confidence to all stakeholders (government, caregivers and schools) that it is fit for purpose
 - represent appropriate and sustainable public value through both the quality of the service and the way it is delivered
 - be achieved through a fair, open and transparent procurement process and managed through clear contract responsibilities

3. Implementation of the plan

- 3.1 The 9(2)(j) will draft and implement this Probity Plan and monitor probity, with assistance from Audit NZ. Audit NZ will assist in the monitoring of adherence to this Probity Plan as well as review of various documents and processes. The 9(2)(j) will ensure all personnel involved in the procurement including consultants, external advisors and Ministry staff understand their obligations and need to comply with this Probity Plan. The implementation of specific actions under this Probity Plan will be the responsibility of the 9(2)(j).
- 3.2 All activities in this procurement will be undertaken within the framework of this Probity Plan. If the procurement is showing potential to deviate from the Probity Plan significantly, this will be considered and if necessary an amendment will be made and the Probity Auditor will be informed prior to any deviation being communicated or actioned.
- 3.3 The 9(2)(j) will check Conflict of Interest Status, and implement management plans as required, at key milestones in the tender process for example during development of the tender and evaluation criteria, when the list of respondents are known and before responses are distributed, before each evaluation meeting and at other key meetings. The 9(2)(j) will also monitor all Conflict of Interest Management Plans.
- 3.4 For clarity, the 9(2)(j), EIS Commercial Procurement team.

4. The Procurement

4.1 The Ministry's procurement objective is to purchase quality school transport services for those Students who are eligible for school transport assistance. The Ministry currently provides daily school transport assistance for approximately 100,000 Students.

This procurement covers the following service types:

- Daily Bus Service Routes
- Technology Service Routes

The procurement will be conducted through a two tender approach: Tender 1 and Tender 2.

4.2 Tender 1:

This is the first stage of a regionally open competitive two tender process. In this stage, all suppliers will be able to tender for one or more individual Daily or Technology Routes within only one specific Region. The maximum number of Routes available to be awarded via Tender 1 will be limited to, within the boundary of each Region, 10 Daily Routes or 10% of the Daily Routes, whichever is greater, and 10% of Technology Routes.

Suppliers will be restricted to tender for Routes within certain Regions based on the location of the supplier's Head Office, and will be limited to tendering in one Region only.

It is expected that the structure of Tender 1 will attract mostly small regional suppliers.

Any Routes not awarded due to lack of interest, unacceptable responses, or failure to sign a contract with the Ministry will be made available to the market via Tender 2.

4.3 Tender 2:

This is the second stage of the two tender process. Routes not awarded via Tender 1 and all will be bundled into Groups. Suppliers will bid for one or more Groups within one or multiple Regions.

It is expected that the structure of Tender 2 will attract mostly medium and large national or international suppliers.

Suppliers successful in Tender 1 will be excluded from participation in Tender 2.

4.4 Submissions:

Request for Proposals (**RFP**) process on the Government Electronic Tenders Service (**GETS**). All communications that are released on GETS are also supplied on the Ministry's website.

Refer to the Procurement Plan for detailed information in regards to this procurement process.

9(2)(j)

[REDACTED]

5. Probity Management

Procurement Phase – probity management treatments

5.1 Measures will be put in place to manage probity related risks identified in the Procurement Phase of the Project including:

- designing the process so that sufficient and timely information is provided to potential respondents, and reasonable timeframes are given for questions and answers for respondents compiling their responses
- managing the evaluation process in a manner that is fair to all parties and provides the necessary assurance to the Ministry that high standards of probity are being met, for example:

- ensuring evaluators are clear on their responsibilities including assessing each response fairly and equally against the evaluation criteria
- not discussing the procurement with people outside of the project team
- ensuring consistency of evaluation between the evaluators
- managing the evaluation processes appropriately, including development and disclosure of evaluation criteria and weightings, development of an evaluation plan which can be consistently applied by all evaluators, an evaluator briefing to ensure evaluators understand the process and their responsibilities
- managing any gifts and hospitality protocols in line with the Ministry's standard policies
- managing conflicts of interest appropriately throughout the process
- managing contact with Respondents formally and appropriately throughout the tender process, in particular by limiting contact between tender evaluation team members and Respondents during the procurement phase

6. Roles and Responsibilities

6.1 Role of the Probity Auditor

The external Probity Auditors in this project:

- 9(2)(j) of Audit New Zealand and
- 9(2)(j) of Audit New Zealand, will:
 - attend project steering group meetings
 - undertake independent scrutiny, in real time, of key procurement processes to provide assurance that prescribed processes are adhered to and best practices met
 - raise any concerns in regard to the conduct of the Procurement to support remedial action being taken to maintain probity
 - as instructed, provide opinions and guidance on probity risks and issues that arise during the procurement process and confirm, in writing, whether the process is consistent with the requirements outlined in this Probity Plan and with regard to general probity principles. If necessary, suggest solutions and monitor their implementation
 - provide a report at the end of the process, which records an independent professional view of the way in which the procurement process was managed from a probity perspective

6.2 The 9(2)(j) will monitor probity and use this Probity Plan throughout each stage of the procurement process. When probity issues arise the Probity Auditor will provide real time assurance on each stage of the procurement process to assess compliance with the principles of probity and good practice and provide feedback on any potential issues as they arise.

6.3 The RFP directs Respondents to raise any concerns and complaints with the Point of Contact as indicated in Section 1.9 of the RFP. If an issue or complaint remains unresolved following best endeavors at resolution with the Point of Contact, Section 1.9 of the RFP informs the Respondent that the issue or complaint may be escalated by emailing the Ministry Education Infrastructure Service Procurement Team, providing the email address and subject text to be used by the Respondent. All concerns or complaints received through the Point of Contact or email will also be forwarded to the External Probity Auditors, who are employees of Audit New Zealand.

6.4 For clarity, the RFP Point of Contact is 9(2)(j), EIS Commercial Procurement team.

7. Specific Probity Issues

7.1 The following principles and approaches will be applied throughout the procurement process. Each of these will be kept under review, and used as part of the sign-off process of documentation and process design:

- All participating Project personnel and respondents should have an appropriate level of knowledge about the planned approach to the procurement process, including:
 - evaluation criteria
 - communication protocols
 - gifts and hospitality protocols
 - scheduled procurement activities
 - approach to questions of clarification and information provision to all respondents
 - details of project members and their roles, responsibilities and key contacts
 - decision making processes
- The procurement process should be designed in a way that gives sufficient flexibility on internal programme dates, while enabling overall timetables to be adhered to
- The RFP should clearly identify the main point of contact, and state the potential consequences of inappropriate communication during the process
- The RFP should contain appropriate statements of reserved rights for the Ministry, and clear statements about matters such as the acceptability or otherwise of late responses, etc. This material should be reviewed by the Probity Auditor
- Specific steps should be taken to ensure that any proposals and ideas in an RFP response that are proprietary to a respondent are not shared with other respondents or operators (including other parts of the Ministry)
- The 9(2)(j) will ensure the involvement of the Probity Auditor in all probity issues, and at key stages and activities of the timetable
- The 9(2)(j) will take specific steps to ensure that all personnel with an active role in the Procurement are fully familiar with their probity obligations
- All personnel involved in the evaluation process will be expected to comply with the Evaluation Plan (to be separately developed), and will be briefed on the importance of this Probity in the Procurement
- The 9(2)(j) will record probity issues as they arise in the Issues Register. The Probity Auditor will be informed and advice sought to determine an appropriate management response to any significant probity issue
- The 9(2)(j) should ensure that all unsuccessful respondents are offered a debrief following the procurement process. The 9(2)(j) should then ensure these debriefs are delivered.

8. Probity Plan

The following table identifies the key probity tasks and related management approach to be implemented by the Ministry for the open tender.

Tenders 1 and 2		
Task	Management Approach	Action/ Responsible
Shared Workspace Protocols – Filenet	<p><u>Shared drive</u></p> <ul style="list-style-type: none"> - The shared drive will only be used for non sensitive information. - No commercial information or tender information will be stored there as the access is wide. <p><u>Filenet</u></p> <ul style="list-style-type: none"> - Ensure appropriate permissions are in place to prevent unauthorised users having access to, and within, the shared workspace. - Ensure adequate instructions/ user guide is provided to users of the shared workspace. 	9(2)(j)
Pre RFP release	<ul style="list-style-type: none"> - Ensure project team are familiar with procedures and information security of the VendorPanel system. - Establish the project and evaluation team. - Check COI status for all project members. - Review evaluation methodology (weightings, criteria, scoring mechanisms, response format, and shortlisting process) and ensure methodology is applied correctly and consistently. - Ensure GETS is used for RFP release. - Draft, agree and document a process on dealing with responses that are late, non-conforming or require clarification or amendment. - Ensure the communications plan is adequate for all RFP process interactions, including protocols to manage phone enquiries, meeting requests, one-on-one meetings, documentation of communications, protocols on offering and accepting hospitality etc. - Ensure staff involved in the procurement process are reminded and aware of their code of conduct, conflict of interest guidelines, and the Ministry's gifts policy. - Training on record-keeping is conducted with staff involved in the project on a needs basis. - Ensure physical and electronic storage arrangements are in place to prevent unauthorised access to documentation. - Establish and maintain a document management framework to ensure key documents are controlled. - Ensure information is included in the RFP as to how respondents can raise any issues if they have a probity concern. 	9(2)(j)
Pre-RFP closing procedures	<ul style="list-style-type: none"> - Ensure appropriate evaluators and advisors are finalised and conflict of interest declarations are completed, reviewed and necessary mitigating/management action is undertaken. - Ensure that the evaluation process is approved and any minor modifications that may have been made are not unfair to any respondents. - Ensure that the evaluation guidelines are provided to evaluators and evaluators are adequately trained and briefed. - Ensure all questions raised by respondents have been 	9(2)(j)

	<p>appropriately addressed and made available to all potential respondents as appropriate.</p> <ul style="list-style-type: none"> - Ensure that any extension of the closing date has approval of the Procurement Owner - Ensure that the RFP opening procedures are established. 	
Receipt of RFPs	<ul style="list-style-type: none"> - Ensure the RFP opening procedures are followed and witnessed. - Ensure RFPs are assessed by two people to determine whether they are compliant. - Set aside RFPs that are non-compliant. Obtain approval from delegated authority to exclude them or include them if required. Clarifications may be sought from Respondents before RFPs are set aside. - Ensure receipted RFPs are securely stored. - Ensure conflict of interest declaration forms are updated once respondents are known. - Ensure that RFPs and evaluation materials are given only to those evaluation panel members who have completed declaration forms that have been assessed under the conflict of interest guidelines. - Ensure the original of each RFP is held in a form that is secure and unable to be annotated or amended. 	9(2)(j)

Task	Management Approach	Action/ Responsible
Initial Price and Quality Evaluation of RFPs	<ul style="list-style-type: none"> - Ensure Evaluators have sufficient time to conduct evaluations and their appropriate line managers have released them from other responsibilities. - Ensure that the approved evaluation methodology is adhered to. - Review conflicts of interest declared by respondents in RFPs. - Ensure that all individual scores are captured on the VendorPanel system and moderation score sheets. Procurement will manage strict access to VendorPanel. - Ensure all comments from evaluators are captured on the evaluation score sheet, to assist with providing debrief information to unsuccessful respondents. - Ensure feedback to respondents following the initial evaluation is clear and consistent. - Ensure a full audit trail of the evaluation process exists to support a probity audit. 	<p>Steering Group to support directive to appropriate line managers</p> <p>9(2)(j)</p>
Final Evaluation of RFPs	<ul style="list-style-type: none"> - Ensure that the approved evaluation methodology is adhered to. - Ensure that all individual scores are captured on the moderation score sheets. - Ensure all comments from evaluators are captured on the moderator score sheet, to assist with providing debrief information to unsuccessful respondents. - Ensure a full audit trail of the evaluation process exists to support a probity audit. - Issue and receive clarification requests from respondents whose responses lack - Set aside responses that still have a lack of information to 	9(2)(j)

	<p>evaluate. Clarifications may be requested before setting aside those responses. Obtain approval from delegated authority to exclude them.</p>	
Post RFP evaluation	<ul style="list-style-type: none"> - Prepare a recommendation to select to seek approval for selection of preferred respondents. - Obtain approval from delegated authority for appointment. - Send out successful letters to successful respondents and offer a debrief session to them. - Inform unsuccessful respondents and offer a debrief session to them. 	9(2)(j)
Communications Protocol	<ul style="list-style-type: none"> - The 9(2)(j) will conduct all respondent interactions in accordance with the Communications Protocol (Appendix D). 	9(2)(j)
Communications outside the process	<ul style="list-style-type: none"> - The Ministry will ensure that all interactions or communications with participants outside the procurement process, including informal and unsolicited communications, are handled and documented in accordance with Appendix D. 	9(2)(j)
Conflict of Interest Process Management	<ul style="list-style-type: none"> - Conflicts of interest are to be managed in accordance with the Conflicts of Interest Guidelines: see Appendix B and C. 	9(2)(j)
Disclosures of interests by respondents	<ul style="list-style-type: none"> - RFP documentation will be designed to ensure that respondents and associated parties declare relevant interests in accordance with the Ministry's Protocol for the management of conflicts of interest. - Interests will be reviewed as part of the eligibility and evaluation processes, and the Probity Auditor will review and provide independent, real time assurance on those measures. 	9(2)(j)
Gifts and Hospitality	<ul style="list-style-type: none"> - As a general principle, the Ministry and advisors participating in the process should not accept gifts or hospitality, as a perception of undue benefit, conflict of interest or inappropriate gain can be easily generated. - The 9(2)(j) will carefully consider the implications of acceptance or rejection of any offer of hospitality in such situations and may seek advice or the advice of the Probity Auditor. The Probity Auditor will be consulted without fail for material offers. - All costs associated with travel and accommodation for any visits to potential participants by any personnel involved in evaluation will be borne by the Ministry. 	9(2)(j)
Documentation	<ul style="list-style-type: none"> - It is important that any documents received from respondents that are of a commercially sensitive nature, contain a high degree of intellectual property, or form part of tender responses are retained securely and in confidence solely by the Project Team. - The Probity Auditor will review and provide assurance on these steps. - The Ministry may elect to publicly release a tender report by the Probity Auditor as it alleviates potential allegations that external parties are shaping the approach and outcomes of the Ministry. - The Ministry will not release any commercially confidential material. - All documentation will be issued under a Ministry brand and any association to external advisors will be removed. 	9(2)(j)

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Appendix A: Probity Principles

Achieving an ethical, transparent approach requires that the probity processes and procurement rules are clear, open, well understood and applied equally to all parties. This Probity Plan recognises and addresses the following key probity principles:

Fairness and impartiality	<p>Respondents often invest considerable time, effort and resources in preparing and submitting offers (especially for large contracts). In return, they are entitled to expect fair treatment at every stage of the procurement process. Any form of bias could jeopardise the integrity of the procurement process. There is a risk that respondents who believe the process to be unfair or the outcomes tainted by bias may take legal or other action to redress the situation. Regardless of the result, this can cause delays which could have reputational and financial consequences.</p>
Accountability and Transparency	<p>Demonstrated accountability and transparency reduces the likelihood of unethical behaviour, and instils confidence in all stakeholders concerning the integrity of decisions. Accountability is the obligation to account for the way particular duties have been performed. Accountability in procurement is being able to explain how the procurement has achieved its objectives in a manner consistent with the legislation and policy.</p> <p>Transparency refers to the openness of a procurement activity to scrutiny by interested parties. It involves providing documented reasons for decisions and the provision of appropriate information to relevant stakeholders. Transparency also underpins the principle of open competition. The awarding of a contract should be decided through the application of a rigorous and well documented competitive selection process.</p> <p>In probity terms, opening an activity to scrutiny means scrutinising the process and not necessarily the specific contents of the procurement documentation.</p>
Use of an appropriately competitive process	<p>A procurement process should be carefully planned, so as to maintain competitive tension throughout the tender while keeping bidding costs within reasonable limits. For a complex procurement or where bidding will be done through consortia, it is important to structure the process and bidding requirements in a way that encourages consortium formation but provides sufficient certainty about respondent identity to meet the Ministry's interests.</p>
Conflict of interest management	<p>The way in which conflicts of interest are managed – and are seen to be managed – will significantly impact on perceptions of the Project's integrity. As such, active management of any conflict of interest situation is very important. Guidelines should be available</p>

	to ensure a consistent, professional, timely, and risk-based approach is taken to the identification and management of conflicts of interest involving Project personnel (including organisational advisors).
Confidentiality and security of information	The integrity of competitive procurement relies on maintaining appropriate confidentiality and security arrangements that will protect information and give respondents the confidence to do business with Government.

Appendix B: Conflict of interest guidance

Please see this link for the Ministry of Educations Conflict of Interest policy and guidance;

Internal: <https://intranet.moe.govt.nz/purchasing-and-finance/purchasing-goods-and-services/other-useful-guides-and-tools-for-procurement/procurement-conflicts-of-interest-2/>

External: <http://www.education.govt.nz/school/property/state-schools/project-management/procurement/conflict-of-interest-management/>

Appendix C: Conflict of Interest Declaration and Confidentiality and Agreement

Conflict of Interest Definition	
<p>A procurement Conflict of Interest (COI) is a circumstance where a person has a personal interest, obligation, loyalty or relationship that may influence or be perceived to influence the performance of their duties/responsibilities in a procurement activity. COIs may:</p> <ul style="list-style-type: none"> • be actual, potential or perceived • result in positive or negative undue bias • call a person's independence, objectivity or impartiality into question • include past, current or possible future interests, obligations, loyalties, bias or relationships that a person involved in a procurement activity or someone associated with that person (e.g. family member, friend) may have • include gifts, hospitality or any other benefit offered to or received by a person involved in a procurement activity or someone associated with that person from a respondent or potential respondent. <p>For procurement activities of \$50,000 or more: everyone involved must immediately submit a COI Declaration and Confidentiality Agreement to the Procurement Officer at the start of their involvement (regardless of whether they have a COI to declare). If a COI arises thereafter, a further COI Declaration must immediately be submitted to the Procurement Officer.</p> <p>For procurement activities under \$50,000: everyone involved must immediately declare any COI they become aware of by submitting a COI Declaration to the Procurement Officer.</p>	

Procurement Conflict of Interest Declaration	
Procurement title	
Name (Person making declaration)	
Role in procurement activity	
Do you or any person associated with you have any personal interest (actual, potential or perceived) in the outcome of this procurement activity?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Do you or any person associated with you have any personal obligation, loyalty or bias that could (actually, potentially or be perceived to) influence the way you perform the duties/responsibilities of your role in this procurement activity?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Have you or any person associated with you received or been offered any benefit or inducement (e.g. gift, hospitality, discount) by any respondent or potential respondent to this procurement activity within the last 12 months?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Are you aware of any circumstance that could give the appearance that you may have any bias towards or against any respondent or potential respondent to this procurement activity?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Are you aware of any actual, potential or perceived COI that any other person involved in this procurement activity may have?	<input type="checkbox"/> No <input type="checkbox"/> Yes
If 'Yes' to any of the above, detail the COI/circumstances Note: a COI Management Plan must be implemented for each COI declared/identified	

I confirm/agree/acknowledge that:

- I have read and understand the Conflict of Interest Definition
- I make this declaration in good faith
- I will not accept any benefit or inducement (e.g. gift, hospitality, discount) from any respondent or potential respondent during this procurement and/or as a consequence of this procurement activity
- I will immediately report to the Procurement Officer any circumstance that arises that could represent a COI including:
 - any attempt by a respondent or potential respondent to communicate with me in regard to this procurement activity (e.g. meeting or information requests other than in an official capacity as part of the procurement process)
 - any communication between a respondent or potential respondent and me or anyone associated with me that could be perceived as a COI (e.g. communication relating to prospective employment with a respondent)
 - the offering or receiving of any benefit or inducement by any respondent or potential respondent
- accepting any benefit or inducement from a respondent or potential respondent during this procurement activity, making a false declaration or failing to immediately report to the Procurement Officer any circumstance that could represent a COI may be regarded as serious misconduct
- to the best of my knowledge, all of the above details are correct.

Signature

Name

Date

Procurement Confidentiality Agreement

I confirm/agree/acknowledge that:

- all discussions, meetings and information (e.g. written and electronic documentation) relating to this procurement is/are confidential
- I will maintain the confidentiality of all confidential information relating to this procurement activity
- I will keep all confidential information relating to this procurement safe and secure at all times
- I will not breach the confidentiality of this procurement by giving any information relating to this procurement to anyone who has not signed a Confidentiality Agreement for this procurement and without the prior approval of the Procurement Officer
- contact with respondents and potential respondents is restricted until this procurement activity has been concluded (i.e. limited to only that required for normal business purposes)
- I will not meet or otherwise communicate with any respondent or potential respondent in relation to this procurement activity other than in an official capacity as part of this procurement activity
- breaching the confidentiality of this procurement activity (e.g. communicating about this procurement activity with respondents, potential respondents or persons not involved with this procurement activity) may be regarded as serious misconduct.

Signature

Name

Date

Procurement Officer Confirmation

I confirm that I have received this Confidentiality Agreement and/or COI Declaration and have noted the contents.

Signature (Procurement Officer)

Name

Date

Note: For Procurement Officer's declaration/agreement, confirmation is to be signed by the Procurement Sponsor

Procurement Conflict of Interest Management Plan		
Procurement Title		
Name (Person with COI)		
Role in procurement activity		
Description of the COI/circumstances		
Plan for managing the COI Report Advise all involved and request that any perceived undue bias is reported Restrict involvement in the process Recruit an independent third party to oversee part or all of the procurement Remove the individual from the procurement Relinquish the private interest that causes the conflict Resign from the organisation		
[Delete this box if no action is required by the person with the COI (e.g. person is to relinquish a private interest)] I agree to comply with this COI Management Plan.		
Signature (Person with the COI)	Name	Date
I approve this COI Management Plan.		
Signature (Procurement Sponsor)	Name	Date
I agree to implement this COI Management Plan.		
Signature (Procurement Officer)	Name	Date

Notes:

- For a COI declared by the Procurement Sponsor, the COI Management Plan must be approved by Procurement Sponsor's Manager
- All COIs identified, their COI management plans and the outcome for each (e.g. no undue bias reported or perceived) must be summarised in the Recommendation Report.

Appendix D: Communication Protocols

Background

These communication protocols have been developed to provide guidance to the Procurement Team and its advisors when conducting any form of communication during the procurement phase with potential participants, including presentations, workshops, meetings, site visits, one-on-one discussions (telephone or in person), and written communications.

The communication protocols provide a framework that ensures that the principles of probity, fairness and transparency are adhered to.

Specific advice in regards to Business as Usual communication with existing service providers is being provided to the School Transport team.

The Communications and Stakeholder Management Plan for this procurement provides further detail.

Notices of Information

If the Procurement Team considers it appropriate to publish a notice of general significance to all interested parties then it will do so using a notice through GETS and publish the information on the Ministry's website.

Roadshows

Any pre-tender roadshows are covered by a separate Communications plan.

Written enquiries

Respondents will be required to make any written enquiries to the 9(2)(j) [redacted]. The relevant e-mail addresses will be provided in the RFP and any correspondence will be retained to provide clarity for the audit trail of the communication process.

In the tender phase all Respondents will be asked to submit questions through GETS. The Questions will be received and distributed by the 9(2)(j) [redacted] to the appropriate areas of the business, the answers will be collated and issued as a notice on GETS by Procurement. The Ministry may publish notices of information on GETS at any point during the tender to provide clarification or correct any errors that have been made in the tender documentation suite.

Telephone enquiries

It is important that telephone enquiries from respondents are minimised and all are transferred to the 9(2)(j) [redacted]. Telephone calls should then be treated as follows:

- » Any communication of importance or where a decision is made will be followed up with an email to the Respondent summarising the facts, which will be kept in a dedicated folder.
- » If the communication cannot be followed up by an email a file note will be produced and recorded.
- » If the communication has implications of a serious nature or implications for the Ministry an entry will be put in the Project Issues Register. If the communication is deemed to

have very serious implications for the Ministry an entry will be put in the Ministry's Issues Register.

- » If the communication takes place while the tender is open on GETS, is relevant to the procurement, and within the GETS question and answer period, the Ministry will ask that the communication be submitted via GETS.

Released under the Official Information Act 1982

	Country	Jurisdiction	Provision - local / SME suppliers	Details	Document
1	NZ	Timaru District Council	Price Credit - local	"Local" means a ratepayer of the Timaru District Council and/or an organisation that employs Timaru District residents. "Tenders for the supply of materials or plant and/or carrying out of works be accepted on the basis generally of the lowest satisfactory tender, but that a tolerance in favour of a local tender of up to 5% with a maximum of \$2,000 on any one tender, may be allowed."	Procurement Policy
2	NZ	Ruapehu District Council	Chunk down procurement - local	In 2014, Council committed to retaining local expertise in deciding on its new vendors for road maintenance services. In doing so, it unbundled its local road maintenance services contract and divided it across six separate suppliers	Procurement Strategy
3	NZ	Far North Local Council	Preferent Selection - local	When suppliers are equal on price and quality attributes, preference may be given to the local supplier where appropriate.	Procurement Policy
4	NZ	South Taranaki Council	Preferent Selection - local	Local Suppliers The Council will seek to promote the South Taranaki economy by providing full and fair opportunity to compete for Council business. This will be achieved by: <ul style="list-style-type: none"> • Ensuring local suppliers are included within invitations to tender and quote wherever practicable • Publically advertising tender opportunities when appropriate • Considering potential commercial and practical advantages in purchasing locally produced goods and services • Considering local economic implications when planning major procurement activities and packaging work for contracts 	Contractor information
5	NZ	Christchurch City Council	Criteria Credit - local	If local value benefits are to be included in Council procurement processes these will be made clear in the information the Council provides regarding its requirements. This will include clear information on any weighting approach to be included.	Procurement Policy
6	NZ	Whanganui District Council	Price Credit - local	1) For procurements of up to \$100,000 in value, the tendered or quoted price from a supplier deemed "local" by the WDC, will be allowed to be a maximum variation of 5% (in addition) of all other tenders or quotes. 2) For procurements of over \$100,000 in value, the tendered or quoted price from a supplier deemed "local" by the WDC, will be allowed to be a maximum variation of \$5,000 (in addition) of all other tenders or quotes.	Procurement Policy
7	NZ	Hawkes Bay Regional Council	Preferent Selection - local	A decision to purchase goods, works or services from a supplier where the locality of the supplier is the determining factor (rather than price and/or quality factors) should give consideration to one or more of the following: - The importance of the goods or service being available locally (due to factors such as time constraints or availability of key personnel to respond to requests for service from HBRC). - The importance of local knowledge of the Hawke's Bay regional environment. Hawke's Bay Regional Council Procurement Policy Page 4 - The importance of supplier knowledge and understanding of HBRC's operational practices, processes and systems. Where the locality of the supplier is the determining factor in a purchase, HBRC will document that this was the determining factor and include the justification for approving the purchase on this basis. In a Major Procurement that may include a number of interested suppliers (including local and non-local) via a competitive process, the importance of local presence and/or knowledge should be clearly highlighted in HBRC's procurement documentation and submissions should be evaluated accordingly.	Procurement Policy
8	NZ	Western BOP District Council	Encourage to participate - local	Local suppliers should be encouraged to compete for business where they are competitive in respect of price and quality. Council will consider all supplier proposals equally based on the stated evaluation criteria. Council will make a balanced decision, considering the social, environmental and economic effects of any proposal. While the budget may have been allocated in the Annual or Long Term Plan, the procurement plan provides a final opportunity for management to determine if and how that budget should be spent. Procurement plans must also detail: <ul style="list-style-type: none"> • the budget source and cost code; • the identity of the evaluation team and its Chair (the Procurement Lead will be a member of all competitive tender evaluation processes); • whether the expenditure is Capex or Opex; • what consideration has been made of and what capability exists within the local supplier market. 	Procurement Manual

	Country	Jurisdiction	Provision - local / SME suppliers	Details	Document
9	NZ	Clutha District Council	Price Credit - local	<p>BUY LOCAL</p> <ul style="list-style-type: none"> o Encourage the procurement from suppliers within the Clutha District, except where "value for money" is better achieved by providers from outside of the region. o Apply the agreed "Buy Local" premium of 5% or up to \$5,000 per any contract that is not local. 	Policy on Procurement
10	AUSTRALIA	City of Gold Coast	Criteria Credit - local	<p>2.2.2.1 Local Content</p> <p>A 15 per cent weighting related to the business locality will be included in Council's capability scoring evaluation criteria, allocated as shown in Table 2 following.</p> <p>Table 2: Local content scoring</p> <p>Score Category Description</p> <ul style="list-style-type: none"> - 15% A Developing or established Gold Coast business - 12% B Branch office on the Gold Coast directly employing a minimum of 10 FTEs (not contractors) - 9% C Branch office on the Gold Coast, established for a minimum of six months, directly employing less than 10 FTEs (not contractors) - 4% D Adjacent local government (Logan, Scenic Rim, Redland or Tweed Shire) business - 2% E Queensland business - 1% F Interstate business - 0% G Overseas business 	Procurement Policy and Contract Manual
11	AUSTRALIA	Redland City Council	Preferent Selection - local	<p>Preference for local suppliers</p> <p>Council encourages competitive local businesses, and aims to promote and support competitive local industry in its procurement. Therefore, as well as price, performance, quality and suitability, Council may also consider:</p> <ul style="list-style-type: none"> - employment opportunities for the region - economic growth for the region - readily available goods, services and support - the benefit to Council of contracting with local suppliers and the associated local commercial transactions flowing from that contracting. - Council is also committed to supporting the Quandamooka People in local business initiatives in line with the above sound contracting principles. 	'How Council chooses suppliers'
12	UK	North Somerset Council	Preferent Selection - SME	<p>2.1 Small and medium sized enterprises (SME) spend</p> <p>In 2010, the government announced an aspiration for 25% of its spending to go to SMEs by 2015. In August 2015, the government announced that it would extend this target to 33% by 2020. The target covers both direct contracts with SMEs and spending that reaches SMEs indirectly (where the government's contract is with a larger provider that subcontracts SMEs as part of its supply chain). In 2016/17 North Somerset Council spent 35% with SMEs, so is already exceeding the target.</p>	Our local supply policy

	Country	Jurisdiction	Provision - local / SME suppliers	Details	Document
13	AUSTRALIA	Latrobe City Council	Encourage to participate - local	<p>Latrobe City Council is committed to buying from local businesses where purchases can be justified against Value for Money grounds, while remaining compliant with the Competition and Consumer Act 2010 and other fair trading legislation requirements.</p> <p>Wherever practicable, Latrobe City Council will fully examine the benefits available through purchasing goods, services and works from suppliers within Latrobe City.</p> <p>To ensure that value for money is achieved through use of local suppliers when purchasing, Latrobe City Council shall:</p> <ul style="list-style-type: none"> - Encourage a 'buy local' culture within Council; - Encourage local suppliers to participate in Council business by advertising in local newspapers and other means considered appropriate; - Ensure that procurement policies and procedures do not disadvantage local suppliers; - Ensure transparency in Council procurement practices; - Encourage the use of local suppliers by contractors. - Local Economic Development <p>Latrobe City Council will also seek from prospective suppliers/contractors, where applicable, what economic contribution they will make to the Latrobe City region. Latrobe City Council will assign weighting percentage up to a maximum of 15% to this criteria element. The quotation or tender evaluation panel will determine the percentage applied to any procurement.</p> <p>Such examples may include a supplier/contractor who:</p> <ul style="list-style-type: none"> - Engages and contracts with local suppliers - Engages local sub-contractors - Participates in apprenticeship schemes or employs apprentices when tendering for projects upon award - Contributes to the financial, social and environmental wellbeing of the region - Enables the expansion, growth and servicing of local businesses and contractors - Uses existing local businesses 	Procurement Policy
14	AUSTRALIA	Logan City Council	Criteria Credit - local	<p>Engaging our local businesses</p> <p>We introduced a Buy Local Policy in February 2019 to highlight the importance of supporting local businesses within Logan. The Buy Local Policy now includes a range of initiatives to assist Council staff when engaging with local suppliers/businesses.</p> <p>The new policy includes seeking quotes from local suppliers to including a mandatory Local business tender weighting for all future tenders</p>	Doing business with Council'
15	AUSTRALIA	Moreland City Council	Preferent Selection - local	<p>2.2 Policy Objectives</p> <p>The objectives of the procurement policy are to:</p> <ul style="list-style-type: none"> • Ensure that all purchasing activities support Council's corporate strategies, aims and objectives; • Provide a mechanism for continuous improvement in the provision of services for the community; • Ensure that Council's resources are used efficiently and effectively; • Collaborate with other Councils to take advantage of economies of scale; • Achieve compliance with relevant legislative requirements; • Achieve high standards of probity, transparency and accountability; • Manage risk associated with procurement; • Facilitate preferential treatment to procurements which provide environmentally sustainable benefits and social benefits; and • Facilitate preferential treatment to local suppliers. 	Procurement Policy

	Country	Jurisdiction	Provision - local / SME suppliers	Details	Document
16	AUSTRALIA	Brisbane City Council	Criteria Credit - local	<p>(b) Requirement for tenders, proposals and quotes Except as provided in sections 3.2 and 3.3, Council will invite tenders, proposals, quotes and expressions of interest from the supply market in accordance with the following thresholds.</p> <p>(i) For purchases reasonably estimated to be worth less than \$10,000, price information is to be obtained from one or more suppliers. When seeking and or evaluating quotes, preference will be applied to local suppliers. Where only one quote is obtained from those invited, VFM is to be demonstrated.</p> <p>(ii) For purchases reasonably estimated to be worth more than \$10,000 and less than \$250,000, at least three written quotes are to be invited from suppliers who are considered able to meet the requirements. When seeking and or evaluating quotes, preference will be applied to local suppliers. Where only one quote is received from those invited, VFM is to be demonstrated.</p> <p>(iii) For purchases reasonably estimated to be worth \$250,000 or more, Council will publicly invite tenders, proposals or expressions of interest. A local weighting of up to 30% may be applied and reflected in the VFM assessment.</p> <p>‘Worth’ means the total amount (exclusive of GST) to be paid to the supplier for the goods, services or works for the full term including known options and/or optional periods. For contracts under which Council receives revenue, the thresholds above apply and ‘worth’ refers to the total amount to be paid to Council.</p> <p>‘Local’ means (in descending order of preference):</p> <p>(i) the Brisbane City Council Local Government Area</p> <p>(ii) South East Queensland</p> <p>(iii) Queensland.</p> <p>Where quotes from non-local suppliers are sought or evaluated, the officer with the delegation relevant to the procurement, will need to be satisfied that such an approach reflects the most advantageous outcome for Brisbane.</p>	Procurement Policy and Plan

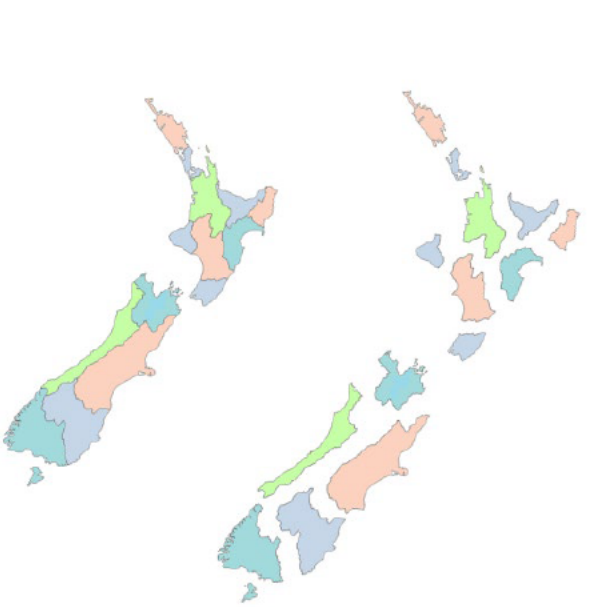
				BENEFITS (for Phases 1 and 2)				RISKS (for Phases 1 and 2)	
Option:	Description:	Restrictions on Tenderers:	Forecast (approx.) participation, by % split between Phase 1 and Phase 2:	Consistent with approach selected by Minister	Maximises success likelihood small / regional operators	Targets small / regional operators	Consistent with Government Procurement Rules	Likelihood of negative media publicity	Likelihood of litigation
Phase 1:									
Option 1 Phase 1	Competitive tender process	- Head Office in Region, or Region adjacent to the Region in which the supplier wishes to tender. - If above not met, supplier can tender via the Phase 2 process.	Phase 1: 9(2)(j) Phase 2: 9(2)(j)					MEDIUM	LOW
Option 2 Phase 1	Direct Negotiation – based on reliance on MoE business	- Hold less than ten Daily Routes; and - Meet Regional Criteria (Head Office in Region, or Region adjacent to the Region in which the supplier wishes to tender); and - All Routes being tendered account for more than 50% of supplier’s annual revenue. - If above not met, supplier can tender via the Phase 2 process.	Phase 1: 9(2)(j) Phase 2: 9(2)(j)					MEDIUM	MEDIUM
Option 3 Phase 1	Direct Negotiation – based on cost to Ministry	- Less than 9(2)(j) invoiced for school transport services in FY 2018/2019. - If above not met, supplier can tender via the Phase 2 process.	Phase 1: 9(2)(j) Phase 2: 9(2)(j)					HIGH	HIGH
Phase 2:									
Option 1,2,3 Phase 2	Competitive tender process	No restrictions however excessive market concentration will be controlled through market concentration tests.	Based on which Option will be selected, between 9(2)(j) and 9(2)(j)	N / A					

* Description of options needs to be the same as James is using in the Ministerial paper.

OPTION 1: TWO TENDER PROCESS – PHASE 1 overview

New Zealand will be divided into Geographical Regions closely resembling the New Zealand Local Government Regions. Main deviations are the grouping of Marlborough, Nelson and Tasman Regions into a single Region, and including the Chatham Islands as part of Canterbury Region.

Routes within each Region will be tendered for separately.



Regional Criteria:

Tendering in a Region is restricted to suppliers with Head Office* in that Region, or a Head Office in an adjacent Region. A supplier can nominate only one Head Office.

Suppliers can tender in a single region for which they meet the above criteria. There are no business size limits on tenderers.



* Head Office means the place where the Chief Executive Officer, owner, parent company, or the governing body or individual(s) usually transact business and manage organisational activities.

It is usually the administrative, decision-making and policy-making centre of an organisation or its parent.

The Ministry reserves the right to approve or disapprove a tenderer's designated Head Office location if it does not, in the Ministry's opinion, represent an accurate designation.

A tenderer can nominate only one Head Office location and region.

Within each region, a maximum of 10% of all Routes, or 10 Routes, whichever is greater, will be awarded to successful suppliers. The ultimate number of awarded Routes will depend upon tenderer interest and quality of responses.

Tenders can be submitted for any or all Routes within a single Region they are eligible to tender in.

Suppliers who are successful* in PHASE 1 will not be allowed to participate in PHASE 2.

* Have been awarded at least one Route, regardless of the number of Routes tendered for.

Region:	Total Daily Routes	PHASE 1 Award (max # of Routes)	PHASE 2 Award (min # of Routes)
NTL	170	17	153
AUK	76	10	66
WKO	167	17	151
BOP	113	11	102
GIS	42	10	32
HKB	96	10	86
MWT	112	12	110
TKI	58	10	48
WGN	75	10	65
MBH/ NSN /TAS	112	11	101
CAN	112	11	101
WTC	48	10	38
OTA	161	16	145
STL	113	11	102

If the number of Daily Routes tendered in a region exceeds the route cap then contract award will be based on Value for Money Principles (VFM).

A minimum VFM score will be required for tender to be considered a viable tender.

All routes not awarded in PHASE 1 will be made available for tender in PHASE 2, to PHASE 2 tenderers (see examples on next page).

Tenders are treated as binding; a tenderer cannot decline an award for PHASE 1.

OPTION 1: TWO TENDER PROCESS – PHASE 1 examples

EXAMPLE: a small Region contains 14 Routes. As the higher of a maximum of 10% of all Routes or 10 Routes will be awarded in **PHASE 1**, a maximum of 10 Routes are available for award in **PHASE 1** with respect to this Region. The minimum VFM score has been set at **50%**. Any routes not awarded in **PHASE 1**, regardless of the reason for the non-award, will be made available for award in **PHASE 2**.

Example 1. **Ten Routes awarded.** Region was over-subscribed and VFM score values have been used to select the top 10 Routes, by highest tender quality score received, for award to the highest scoring suppliers within each Route.

Routes for which tender were submitted in PHASE 1	Highest VFM score received	Outcome
Route 1	90%	Awarded
Route 2	88%	Awarded
Route 3	85%	Awarded
Route 4	85%	Awarded
Route 5	81%	Awarded
Route 6	80%	Awarded
Route 7	79%	Awarded
Route 8	75%	Awarded
Route 9	75%	Awarded
Route 10	72%	Awarded
Route 11	71%	Not Awarded – due to maximum cap
Route 12	66%	Not Awarded – due to maximum cap
Route 13	61%	Not Awarded – due to maximum cap
Route 14	55%	Not Awarded – due to maximum cap

Example 2. **Seven Routes awarded.** Region was over-subscribed however VFM score considerations have excluded a number of Routes from award, thus the maximum number of Routes available for award has not been reached.

Routes for which tender were submitted in PHASE 1	Highest VFM score received	Outcome
Route 1	90%	Awarded
Route 2	88%	Awarded
Route 3	85%	Awarded
Route 4	85%	Awarded
Route 5	81%	Awarded
Route 6	80%	Awarded
Route 7	79%	Awarded
Route 8	40%	Not awarded – due to low quality
Route 9	39%	Not awarded – due to low quality
Route 10	39%	Not awarded – due to low quality
Route 11	36%	Not awarded – due to low quality
Route 12	35%	Not awarded – due to low quality
Route 13	33%	Not awarded – due to low quality
Route 14	33%	Not awarded – due to low quality

Example 3. **Six Routes awarded.** Region was under-subscribed, thus the maximum number of Routes available for award has not been reached.

Routes for which tender were submitted in PHASE 1	Highest VFM score received	Outcome
Route 1	90%	Awarded
Route 2	88%	Awarded
Route 3	85%	Awarded
Route 4	85%	Awarded
Route 5	81%	Awarded
Route 6	80%	Awarded
Route 7	Not Tendered for	Not Awarded – due to lack of interest
Route 8	Not Tendered for	Not Awarded – due to lack of interest
Route 9	Not Tendered for	Not Awarded – due to lack of interest
Route 10	Not Tendered for	Not Awarded – due to lack of interest
Route 11	Not Tendered for	Not Awarded – due to lack of interest
Route 12	Not Tendered for	Not Awarded – due to lack of interest
Route 13	Not Tendered for	Not Awarded – due to lack of interest
Route 14	Not Tendered for	Not Awarded – due to lack of interest

OPTION 1: TWO TENDER PROCESS – PHASE 2 overview

New Zealand will be divided into Geographical Regions closely resembling the New Zealand Local Government Regions. Main deviations are the grouping of Marlborough, Nelson and Tasman Regions into a single Region, and including the Chatham Islands as part of Canterbury Region.

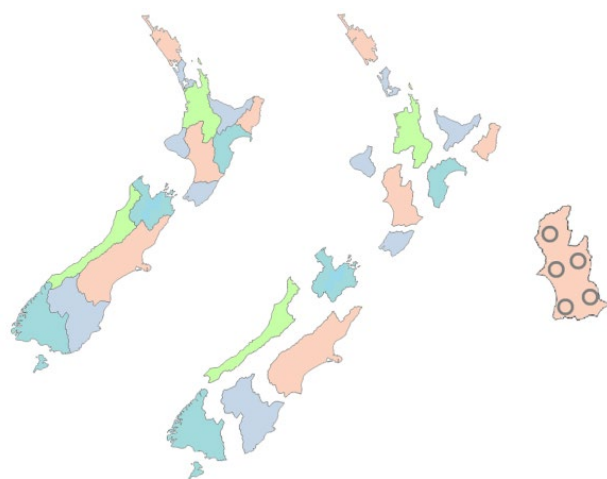
Each Region will be sub divided into Route Groups: Each Route Group will be tendered for separately and contain Daily and/or Technology Routes (see 'Routes and Route Groups' below).

There will be no restrictions on how many Route Groups a supplier can tender for; however the Ministry will ensure that market competition is preserved through this procurement. To avoid excessive market concentration the Ministry will apply tests* for all Groups to determine market share at a regional and national level.

Tenders are treated as binding: suppliers **must** expect to be ready to deliver services to all Route Groups successfully tendered for following services commencement.

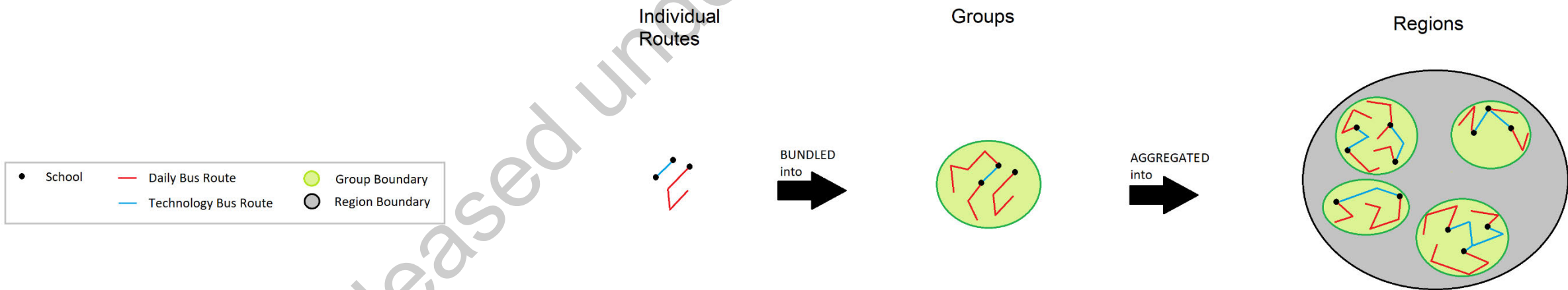
Any Routes not awarded in **PHASE 1** will be made available for award in **PHASE 2**. The available Routes will be aggregated into Route Groups.

The minimum number of Routes available for **PHASE 2** award is presented below. The table presents the minimum anticipated number of Routes available for each Region; the number of Routes may be higher if the maximum allocation of Routes was not achieved in **PHASE 1**.



- *These tests reflect that:
- No single operator should be awarded more than [a set percentage] of all Routes in a Region.
 - No single operator should dominate the market nationwide.
 - No small group of large operators should dominate the market nationwide.

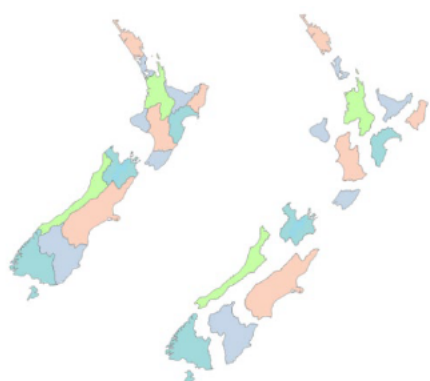
Routes and Route Groups



OPTION 2: DIRECT NEGOTIATION – BASED ON RELIANCE ON MINISTRY BUSINESS: PHASE 1 overview

New Zealand will be divided into Geographical Regions closely resembling the New Zealand Local Government Regions. Main deviations are the grouping of Marlborough, Nelson and Tasman Regions into a single Region, and including the Chatham Islands as part of Canterbury Region.

Routes within each Region will be tendered for separately.



*Regional Criteria:

Tendering in a Region is restricted to suppliers with Head Office* in that Region, or a Head Office in an adjacent Region. A supplier can nominate only one Head Office.

Suppliers can tender in a single region for which they meet the above criteria. There are no business size limits on tenderers.



* Head Office means the place where the Chief Executive Officer, owner, parent company, or the governing body or individual(s) usually transact business and manage organisational activities.

It is usually the administrative, decision-making and policy-making centre of an organisation or its parent.

The Ministry reserves the right to approve or disapprove a tenderer's designated Head Office location if it does not, in the Ministry's opinion, represent an accurate designation.

A tenderer can nominate only one Head Office location and region.

Despite only engaging one qualified supplier with respect to each Route, Value for Money, quality and pricing will still be tested through a completion of an RFP response by each qualified supplier.

For Discussion

A minimum VFM score will be applicable to each Route. A benchmarked price will be used as a reference with respect to each Route, allowing for a set maximum pricing deviation from this value.

If either or both the VFM score and pricing do not meet Ministry requirements, the relevant Route will not be awarded to the qualified supplier and will be made available for tender in **PHASE 2**, to **PHASE 2** tenderers.

For Discussion

Up to XXX Routes can be awarded to successful suppliers. The ultimate number of awarded Routes will depend upon tenderer interest and quality of responses.

Suppliers who are successful* in **PHASE 1** will not be allowed to participate in **PHASE 2**.

All routes not awarded in **PHASE 1** will be made available for tender in **PHASE 2**, to **PHASE 2** tenderers.

Tenders are treated as binding; a tenderer cannot decline an award for **PHASE 1**. Thus tenderers must bid only for the Routes they expect to have the capacity and capability to service at the start of services.

* Have been awarded at least one Route, regardless of the number of Routes tendered for.

A direct negotiation with qualified current suppliers*, for their currently held Routes, will take place. The Routes belonging to qualified suppliers who choose to exit the School Transport market, or who cannot meet Ministry requirements with respect to quality, VFM, and price will be made available to **PHASE 2** tenderers.

*Qualified current suppliers are suppliers that:

- Hold a total of **fewer than ten** Daily Routes; and
- Meet **Regional Criteria**⁺; and
- All Daily and Technology Routes being tendered for account for more than **50%** of the supplier's annual revenue.

OPTION 2: DIRECT NEGOTIATION – BASED ON RELIANCE ON MINISTRY BUSINESS: PHASE 2 overview

New Zealand will be divided into Geographical Regions closely resembling the New Zealand Local Government Regions. Main deviations are the grouping of Marlborough, Nelson and Tasman Regions into a single Region, and including the Chatham Islands as part of Canterbury Region.

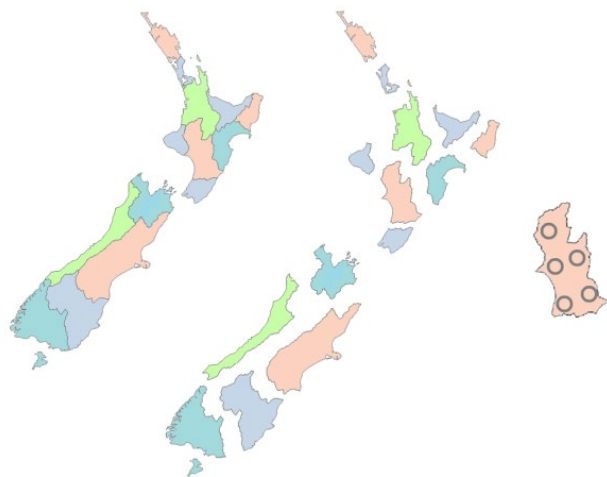
Each Region will be sub divided into Route Groups: ○ Each Route Group will be tendered for separately and contain Daily and/or Technology Routes (see 'Routes and Route Groups' below).

There will be no restrictions on how many Route Groups a supplier can tender for; however the Ministry will ensure that market competition is preserved through this procurement. To avoid excessive market concentration the Ministry will apply tests* for all Groups to determine market share at a regional and national level.

Tenders are treated as binding: suppliers **must** expect to be ready to deliver services to all Route Groups successfully tendered for following services commencement.

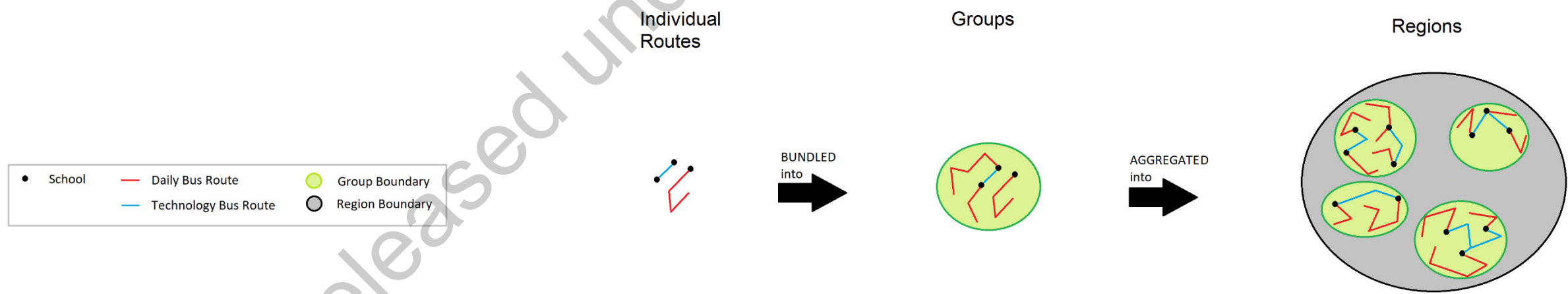
Any Routes not awarded in **PHASE 1** will be made available for award in **PHASE 2**. The available Routes will be aggregated into Route Groups.

The number of Routes available for **PHASE 2** award is dependent upon the **PHASE 1** tenderer interest and quality of responses. The table below presents the XXX



- *These tests reflect that:
- No single operator should be awarded more than [a set percentage] of all Routes in a Region.
 - No single operator should dominate the market nationwide.
 - No small group of large operators should dominate the market nationwide.

Routes and Route Groups



OPTION 3: DIRECT NEGOTIATION – BASED ON COST TO MINISTRY: PHASE 1 overview

A direct negotiation with qualified current suppliers*, for their currently held Routes, will take place.

The Routes belonging to qualified current suppliers who choose to exit the School Transport market, or who cannot meet Ministry requirements with respect to quality, VFM, and price will be made available to **PHASE 2** tenderers.

***Qualified current suppliers** are suppliers that:

- Invoiced for less than 9(2)(i) for school transport services delivered to the Ministry FY 2018/2019.

Despite only engaging one qualified supplier with respect to each Route, Value for Money, quality and pricing will still be tested through a completion of an RFP response by each qualified supplier.

For Discussion

A minimum VFM score will be applicable to each Route. A benchmarked price will be used as a reference with respect to each Route, allowing for a set maximum pricing deviation from this value.

If either or both the VFM score and pricing do not meet Ministry requirements, the relevant Route will not be awarded to the qualified supplier and will be made available for tender in **PHASE 2**, to **PHASE 2** tenderers.

For Discussion

Up to XXX Routes can be awarded to successful suppliers. The ultimate number of awarded Routes will depend upon tenderer interest and quality of responses.

Suppliers who are successful* in **PHASE 1** will not be allowed to participate in **PHASE 2**.

All routes not awarded in **PHASE 1** will be made available for tender in **PHASE 2**, to **PHASE 2** tenderers (*see examples on next page*).

Tenders are treated as binding; a tenderer cannot decline an award for **PHASE 1**. Thus tenderers must bid only for the Routes they expect to have the capacity and capability to service at the start of services.

* Have been awarded at least one Route, regardless of the number of Routes tendered for.

OPTION 3: DIRECT NEGOTIATION – BASED ON COST TO MINISTRY: PHASE 2 overview

New Zealand will be divided into Geographical Regions closely resembling the New Zealand Local Government Regions. Main deviations are the grouping of Marlborough, Nelson and Tasman Regions into a single Region, and including the Chatham Islands as part of Canterbury Region.

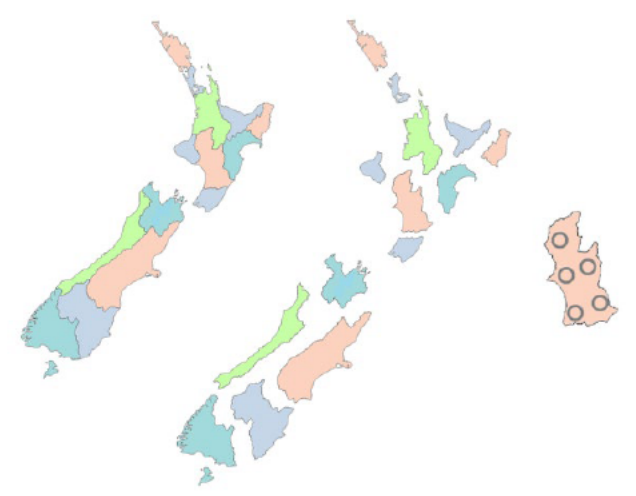
Each Region will be sub divided into Route Groups: ○ Each Route Group will be tendered for separately and contain Daily and/or Technology Routes (see 'Routes and Route Groups' below).

There will be no restrictions on how many Route Groups a supplier can tender for; however the Ministry will ensure that market competition is preserved through this procurement. To avoid excessive market concentration the Ministry will apply tests* for all Groups to determine market share at a regional and national level.

Tenders are treated as binding: suppliers **must** expect to be ready to deliver services to all Route Groups successfully tendered for following services commencement.

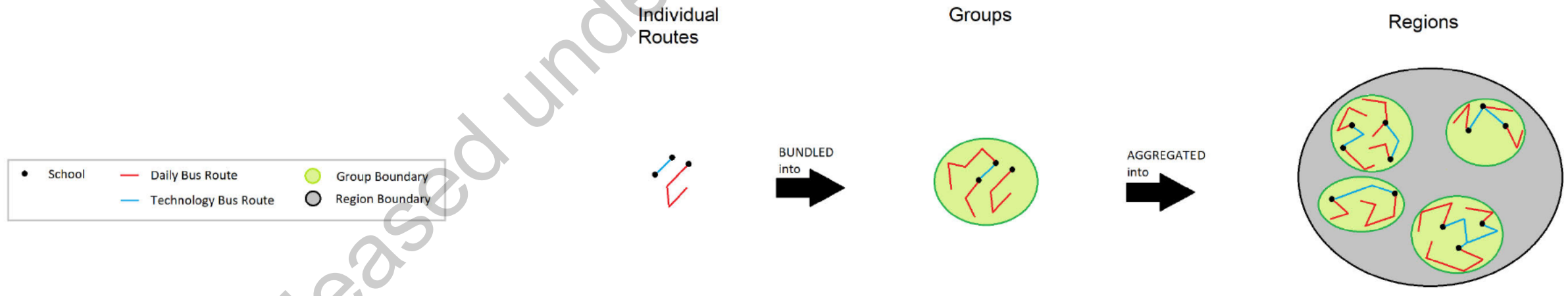
Any Routes not awarded in **PHASE 1** will be made available for award in **PHASE 2**. The available Routes will be aggregated into Route Groups.

The number of Routes available for **PHASE 2** award is dependent upon the **PHASE 1** tenderer interest and quality of responses. The table below presents the XXX



- *These tests reflect that:
- No single operator should be awarded more than [a set percentage] of all Routes in a Region.
 - No single operator should dominate the market nationwide.
 - No small group of large operators should dominate the market nationwide.

Routes and Route Groups





School Bus Procurement Objectives

Meeting Date:	5 March 2020
Attendees:	Fleur D'Souza, Greg Williams, Hayden Berkers, Laurence Pidcock, Delaney Myers, Andrew McLean, Richard O'Reilly, Katherine Littler, Wendy Goldswain, Patrick Bodzak, Jono Gear, James Meffan
Author(s):	James Meffan, Patrick Bodzak

Purpose

This paper provides information to support a discussion on three objectives of the School Bus procurement that are still provoking discussion. The aim of the meeting is to align all parties on the strategic and operational articulation of these objectives.

Context

Procurement Objectives

The School Bus Procurement objectives are articulated in the Procurement Strategy as follows:

The key objective of this procurement is to ensure seamless continuity of Daily Bus and Technology Bus School Transport services that deliver eligible students to and from school, safely, reliably and ready to learn, while meeting the following government public value outcomes:

- Enabling access to Government procurements for small regional businesses;
- Improving conditions for workers and future-proofing the ability of New Zealand business to trade;
- Contributing to efforts to transition to a net-zero emissions economy; and
- Delivering value for money.

The Ministry also wishes to use the procurement to deliver the following outcomes:

- Simplifying supplier relationships (including contractual relationships) and using scale economies to ensure a market for all routes;
- Maintaining a competitive supplier market for current and future service requirements;
- Improving service performance and monitoring; and
- Improving safety and quality of services.

The first public value outcome listed above represents a refinement of the Broader Outcome articulated in Rule 17 of the Government Procurement Rules: Increase New Zealand businesses' access to government procurement. The narrower focus on small regional businesses has been indicated by ministers. The



proposed mechanism is a two tender approach that aims to create two level playing fields to account for the significant spread in operator size. With the introduction of the two tender approach it is prudent to review other objectives that have had involvement from Ministers to ensure that the appropriate strategic balance is being maintained and that the delivery mechanism is workable. The following table outlines the current view of the level of involvement consistent with ministers' expectations:

Objective	In scope	Out of scope	Comments
Contribution to emissions reduction goals	Maintaining the current maximum vehicle age of 26 years. Using evaluation criteria to advantage proposals that offer to adopt lower vehicle age limits.	Mandating lower vehicle age limits for all services under new contracts.	Ministers had previously agreed a max. vehicle age of 23 years and a max. average age of 15 years. Government has since signalled that it is not prepared to make a budget commitment to cover the cost of mandated lowering of all vehicle age limits (required as this would represent a policy change).
Driver wages	9(2)(j)	Mandatory introduction of a wage floor through the procurement; this may however result from industry-wide decisions.	9(2)(j)
Seating eligible students	The Ministry aims to ensure a seat for all students by requiring operators to provide capacity for current estimated student numbers (plus a margin). In support of the priority of leaving no student uncollected, the Ministry retains the option for operators to carry standing passengers, but commits to reviewing services to increase capacity if demand persists.	Mandated "no standees" rule to require all students to be seated at all times.	Government has signalled that it is not prepared to make a budget commitment to cover the cost of mandated "no standees" rule (required as this would represent a policy change). Strong public/school demands to mandate "no standees" are being voiced in Wanaka, so the Ministry will need to clarify this position and begin proactive messaging to regain control of the narrative.

Means of realising these outcomes through the tender

The first table outlines the Quality Criteria and weightings which been proposed with respect to both Tender 1 and Tender 2. The second table shows the detailed sub criteria and questions, together with the relevant weightings, as well as RFP and Contract references which support the objectives.



9(2)(j)



Released under the Official Information Act 1982

Objective	Reference, maximum score awarded (if applicable)	Specific Criteria or Reference
Contribution to emissions reduction goals	9(2)(j)	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Driver wages	9(2)(j)	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Seating eligible students	REPORTING (RFP Section 2.6.4):	<p><i>Monthly reporting (by working day 5 after month end)</i></p> <ul style="list-style-type: none"> Cancelled trips Routes with standees Number of H&S incidents and remedies Complaints received/resolved CoF compliance DL9 compliance Training compliance Maximum vehicle age and average fleet age
	CONTRACT:	<p>19.7 The Contractor acknowledges that it may become aware, or the Ministry may notify the Contractor, from time to time of a change in the number of eligible Students on a given Route or in a Group. Within a reasonable time determined by the Ministry (but in any event no less than 10 days) of the Contractor becoming aware or being advised by the Ministry of such change in the number of eligible Students, the Contractor shall ensure that any Vehicle used in the provision of Services has the capacity to convey the numbers of eligible Students requiring transportation at any time during the Term of this Contract.</p> <p>22 Subject to clauses 2020 and 2121, the Contractor may only transport Ineligible Students if:</p> <p>22.1. the transport will only be provided if there is excess seating capacity after all eligible Students have been catered for;</p> <p>158. The Contractor shall ensure that, as at the Commencement Date, every Vehicle used in providing the Services provides seating for the expected initial passenger numbers specified by the Ministry in respect of each Route (as shown in Schedule 5 – Pricing Schedule), plus a margin of at least 10% excess seating capacity.</p> <p>159. The Contractor may, throughout the Term, reduce the seating capacity on a given Route below that allowed for in clause 157156 only in the following circumstances:</p> <p>159.1. After the reduction in capacity, all passengers can still remain seated while the Vehicle is moving; and</p> <p>159.2. The Contractor has given the Ministry prior written notice that it intends to reduce the seating capacity on the Route and sets out its reasons for doing so.</p> <p>160. Where bench seats or lightly moulded touching seats are provided to enable "two/three seating", only Students in years 0 to 6 may sit three across (in line with the certificate of loading) whereas Students in years 7 to 13 (or one Student in years 0 to 6 and one Student in years 7 to 13) must only sit two across. If the seating configuration is not a bench seat, or "lightly moulded touching seats" two/three seating may not be used for any aged Student.</p> <p>179. Where the number of eligible Student passengers on a given Route exceeds 50 on a regular basis the Contractor shall promptly notify the Ministry. Upon receiving the Contractor's notice, the Ministry may (but shall not be obliged to):</p> <ol style="list-style-type: none"> add run-back kilometres to the Route; split the Route into two Routes; or allow the Contractor to carry all eligible Student passengers, subject to sufficient Vehicle capacity (seated and standing) being available, until further notice by the Ministry. <p>180. Where the number of eligible Student passengers for a given Group increases by more than 10% above the initial passenger numbers for that Group, the Contractor may request a rate adjustment from the Ministry. The Ministry will enter into good faith discussions with the Contractor in relation to the Contractor's request and shall act reasonably at all times, but the Ministry's agreement to any rate adjustment may be given at the Ministry's discretion.</p> <p>181. The Ministry will not be obligated to change Route(s) or prices if approached by the Contractor where the request is due to a change in eligible Student passenger numbers and it is not accounted for by clauses 179 and 180.</p>

MEMO

To: Kim Shannon, Head of Education Infrastructure Service
From: James Meffan, Project Director School Bus Procurement
Cc: Laurence Pidcock, Chief Procurement Officer
Date: 13 March 2020
Subject: Two Tender Approach: Including Technology Routes in Tender One

Background

Education Report '*Confirmation of the revised procurement approach for school transport*' seeks the Minister of Education and Minister of Economic Development's agreement on the proposed two tender approach.

On 10 March 2020 the Minister of Education agreed to the two tender approach but noted "I don't agree to [Tech Bus routes only being offered in Tender Two]. If small businesses currently have Tech routes they should be given the opportunity to keep them". The School Bus Procurement team is now working through a process redesign to enable this opportunity.

The purpose of this paper is to provide you with an overview on the proposed solution for introducing technology routes in Tender One in context of the wider Tender One design.

Including technology routes in Tender One – proposed solution

The two tender approach is outlined below, with changes to current approach to allow for inclusion of Tech routes in Tender One identified in bold.

Tender One

- Any operator (current and new) can tender for any or **all routes (including Tech routes)** in a single region that must be the region where its head office resides or an adjacent region.
- Operators will need to choose whether to participate in Tender One based on the tender constraints and conditions.
- Up to 10% or 10 routes (whichever is higher) of all Daily Bus routes in each region **and 10% of all Tech Bus routes** can be awarded in this tender round.
- Successful tenderers can decide whether to accept or decline the bus routes offered to them in this tender round.

Tender Two

- All routes** declined or not awarded in Tender One will be placed in groups within regions, and offered through open tender in Tender Two.
- Tender Two is open to current and new transport operators, except for those tenderers who accepted routes offered in Tender One.

In developing this solution, the following key objectives have been applied:

- 1) Adhere to the principle of opportunity indicated by the Minister
- 2) Comply with Government Procurement Rules
- 3) Treat new entrants and incumbents consistently, and
- 4) Retaining as much consistency as possible across Tender One and Tender Two.

The following features and implications of Tender One should be noted:

- Tech routes will now be offered in Tender One as well as Tender Two
- Because Tech routes are very low value and would generally be considered unsustainable without integration with some other task (such as servicing Daily Bus routes) it is important that bidders in Tender One have the ability to decline Tech routes if they are awarded without Daily Bus routes also being awarded.
- The Ministry cannot say with any certainty how many, if any incumbent operators will be successful in obtaining a similar level of Ministry business as they currently hold, and this includes how many who win Daily Bus routes will also win Tech routes.
- It is difficult to estimate how many of the 38 incumbent Technology Bus operators will choose to participate in Tender One, but we know that 18 operators are within the maximum regional route thresholds for Daily Bus routes and may decide to participate.



26 June 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Tēnā koe [REDACTED]

Thank you for your letter of 19 May 2020 to the Ministry of Education, and your clarification of 10 June 2020 requesting the following information:

- *the information generated or received by the Ministry in developing the new approach. This will include internal communications between Ministry officials and also communications between Ministry officials and external parties such as MBIE, officials in Ministers' offices and Ministers themselves.*

Your request has been considered under the Official Information Act 1982 (the Act).

As advised in Rob Campbell's letter of 19 June 2020, I am providing you with 3 documents, as the second tranche of documents for release in response to your request. These are outlined, together with my decision as to their release, in the table attached as **Appendix A**.

Some information has been withheld from the documents under the following sections of the Act:

- 9(2)(a), to protect the privacy of natural persons;
- 9(2)(b)(ii), where the making available of the information would prejudice the commercial position of the person who supplied or is the subject of the information;
- 9(2)(g)(i), maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; and
- 9(2)(j), to protect the Ministry's ability to carry out, without prejudice or disadvantage, commercial negotiations.

As required under section 9(1) of the Act, I have considered the public interest in release of this information. However, I have identified no public interest considerations sufficient to outweigh the need to withhold this information at this time.

We will be in contact with you regarding the release of the next tranche of documents in the week beginning 29 June 2020.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

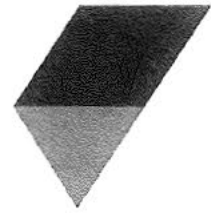
Nāku noa, nā



Kim Shannon
Head of Education Infrastructure Service

Appendix A

Document #	Document Date	Document Title	Decision on release
1	7 Feb 20	Education Report: Defining small regional operators for the school bus procurement process	Release in part. Information has been withheld under sections 9(2)(a), 9(2)(b)(ii), 9(2)(g)(i) and 9(2)(j) of the Act.
2	4 Mar 20	Education Report: Confirmation of the revised procurement approach for school transport	Release in part. Information has been withheld under sections 9(2)(a), 9(2)(b)(ii), 9(2)(g)(i) and 9(2)(j) of the Act.
3	4 Mar 20	Rapid Response: thresholds for tender one	Release in full.



Education Report: Defining small regional operators for the school bus procurement process

To:	Hon Chris Hipkins Minister of Education		
Cc:	Hon Jenny Salesa Associate Minister of Education		
Date:	7 February 2020	Priority:	High
Security Level:	Commercial In Confidence	METIS No:	1219714
Drafter:	Anaru Silao	DDI:	9(2)(a)
Key Contact:	Rob Campbell	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This report provides you with advice on options to define small regional operators for the school transport procurement process. A definition is needed to determine which of the incumbent operators will be offered the opportunity to directly negotiate new contracts for their current routes as part of the split procurement approach.

Recommended Actions

Note that you have directed the Ministry to undertake a revised procurement approach that gives sufficient recognition of the government's commitment to support thriving and sustainable regions by ensuring the success of existing small regional operators.

Noted

Note that Cabinet endorsed an exemption from the Government Procurement Rules for the Ministry to undertake a split procurement approach involving two phases to award contracts:

- i. offering to negotiate new contracts with 'small regional operators' for their current routes (i.e. direct negotiations with incumbent operators with no opportunity for any other operator to participate unless a new contract cannot be agreed with the incumbent), and then
- ii. putting the remaining routes out for open competitive tender (including any routes of 'small regional operators' where new contracts could not be agreed).

Noted

Note that a decision on the definition of small regional operators is needed to determine which of the incumbent operators will be offered the opportunity to directly negotiate new contracts for their current routes.

Noted

Note that Cabinet has authorised you and the Minister for Economic Development to confirm the definition of small regional operators.

Noted

Note that this report presents three potential options to define small regional operators to decide which operators will be offered the opportunity to directly negotiate new contracts for their current routes:

Option 1: The Ministry defines small regional operators as those that have less than 9(2)(j) per annum of annual contract revenue from Daily Bus and Technology Bus services. This would result in 51 existing operators being classified as small regional operators.

Option 2: The Ministry defines small regional operators as those with less than 10 currently contracted Daily Bus routes, within the same or adjacent region to their head office location, Ministry contracted work represents more than 30 percent of its total revenue, and Ministry has discretion to include other operators. We estimate this would result in approximately 32 existing operators being classified as small regional operators.

Option 3: The Ministry defines small regional operators as those with less than 10 currently contracted Daily Bus routes. This would result in 40 existing operators being classified as small regional operators.

Noted

Note that, 9(2)(g)(i)

Noted

Note that we have been working with officials from the Ministry of Business, Innovation and Employment and have developed an alternative procurement approach (Option 4) that could also support thriving and sustainable regions and also minimise risks associated with direct negotiation and the Ministry defining small regional operators:

Option 4

- Any transport operators, including those not currently contracted to the Ministry, can self-define as small and regional, allowing them to participate in a first phase tender involving small regional parcels of bus routes.
- Up to 10 percent or 10 routes (whichever is higher) of all Daily Bus routes in each region can be awarded through the first phase tender
- These small regional operators can tender for any or all routes in a single region only, determined with reference to their head office location (either in the region of its head office or an adjacent region)

- Successful tenderers could decide whether to accept or decline the parcel of work offered to them as a result of the first phase tender. All remaining routes, including those declined by successful tenderers, would be open tendered in the second phase of the split approach.
- Tenderers that accept routes in the first phase of the procurement would not be permitted to participate in the second phase.

Noted

Note that Option 4 would require changes to the split approach (and would require a further paper to Cabinet) as the first phase would be a tender for self-defined small regional operators rather than direct negotiations for new contracts with existing operators for their current routes.

Noted

Agree to discuss any feedback on this advice at your next strategy session with officials on 12 February 2020.

Agree / Disagree


Note that you will need to consult with the Minister of Economic Development on your preferred option, and following your discussion with officials on 12 February regarding your feedback on the options, a briefing can be prepared for Ministers to obtain the decisions needed to confirm the definition.

Noted

Agree that this briefing will not be proactively released at this time because it relates to matters that are commercially sensitive.

Agree / Disagree


Kim Shannon
Head of Education Infrastructure Service
7/2/2020


Hon Chris Hipkins
Minister of Education
11/2/20

Background

School transport and revised procurement process

1. The Ministry of Education (the Ministry) offers transport assistance to students who do not have access to public transport and where distance from their closest school is a barrier to education.
2. The Ministry has an appropriation of over \$200 million per annum for transport assistance, \$110M of which covers the current costs of the Daily Bus and Technology Bus services. These services are currently delivered by 63 transport operators.¹
3. In November 2019, you advised Cabinet of a proposed split procurement approach for school transport that would help to progress the Government's commitment to 'support thriving and sustainable regions' [CAB-19-MIN-0623 refers]. The split approach involves two phases to award contracts:
 - i. offering to negotiate new contracts with the incumbent 'small regional operators' for their current routes (i.e. direct negotiations with these operators with no opportunity for any other operator to participate unless a new contract cannot be agreed with the incumbent), and then
 - ii. putting the remaining routes out for open competitive tender (including any routes of 'small regional operators' where new contracts could not be agreed).
4. Cabinet endorsed an exemption from the Government Procurement Rules requirement for open tender for the Ministry of Education to undertake the split procurement approach.
5. The current contracts for Daily Bus and Technology Bus services were due to expire on 31 December 2020 but a 12 month contract extension was agreed with most of the current transport operators to provide the time needed to develop and undertake the revised procurement process.²

Decision still to be taken on the definition of small regional operators

6. The split approach requires the Ministry to apply a definition of small regional operators to determine eligibility for invitation to directly negotiate new contracts for incumbent operators on currently held routes.
7. Cabinet authorised you and the Minister for Economic Development (as the Minister responsible for Procurement Functional Leadership) to confirm the definition of the small regional operators. Cabinet was advised that the Ministry would be providing you with advice by the end of January 2020 on the definition of small regional operators in order to best align with the government's regional outcomes.

Scope of advice provided in this report

8. This report provides you with advice on three potential options for defining small regional operators to identify operators that will have the opportunity to directly negotiate new contracts for their existing routes.

¹ The paper considered by Cabinet in November noted that there were 66 operators. Since that time three operators have changed from providing Daily Bus services to direct resourcing.

² Two operators decided not to take up the extension offer.

- 982
9. In addition, officials have developed an alternative option that involves a revised split approach. We consider that this alternative option could minimise risks associated with a direct negotiation approach while still meeting the broader outcome of supporting thriving and sustainable regions and ensuring the success of small regional operators. It would however mean changing the split approach you have directed us to undertake and that Cabinet has endorsed.
 10. Each of the options is described below, including discussion of their key advantages and disadvantages.
 11. We have engaged with officials from the Ministry of Business, Innovation and Employment in the development of this advice, and where appropriate, its views are reflected in the paper.

Options to define small regional operators for the purposes of direct negotiation of new contracts

Option 1 - Simple distinction based on revenue earned from Ministry services

12. As noted in the Cabinet paper, a simple distinction could be drawn between large operators and others based on the amount of revenue earned from Ministry services. A line could be drawn between the 10 large operators working for the Ministry (that each earn in excess of 9(2)(i) per annum from the Ministry and collectively service around 80 percent of the Ministry's routes) and the 51³ other operators (that together account for the remaining 20 percent of the Ministry's bus routes)."
13. However, as we have previously advised, splitting the market in this way could produce some highly anomalous results. For example, some of these 51 operators are not small businesses (i.e. Ministry contracted routes and revenue only make up a small part of their business)". 9(2)(b)(ii) Recognising these operators as small regional operators would result in giving preferential treatment to a multinational firm when smaller New Zealand businesses would be required to compete to win contracts.
14. After undertaking further analysis of this option, we consider that the value of a business's contract with the Ministry is not the most reliable indicator of the size of that business, and therefore the impact on the business if it is not successful in securing the routes for a further term.

Option 2 - More targeted distinction focusing on principles of 'small' and 'regional'

15. We have developed an option for defining small regional businesses based on principles of 'small' and 'regional'. Option 2 could incorporate the following sequential tests to define small regional operators:
 - i. Operator holds fewer than 10 Daily Bus routes;
 - ii. Operator meets regional criteria (routes are in the same or adjacent region to the operator's head office);

³ At the time of the Cabinet paper, there were 66 transport operators providing Daily Bus and Technology Bus services. Since then three operators have opted out of their current contracts. A further two operators declined the opportunity to a one year contract extension in the 2021.

- 982
- iii. Daily Bus and Technology Bus routes they operate account for more than 30 percent of the business owners' annual revenue (a measure of how reliant they are on Ministry contracts for their business's survival);
 - iv. Further information will be gathered during an Expression of Interest round, as part of which, operators who are excluded by any of the above criteria will be able to make a case for inclusion, this case to be accepted or declined at the Ministry's discretion.
 16. Our modelling suggests that applying these criteria could result in approximately 32 incumbent operators being offered the opportunity to directly negotiate new contracts for their current routes:
 - i. We know that 21 operators do not meet the first test (i.e. have 10 or more Daily Bus routes)
 - ii. We know that 1 operator does not meet the second test (i.e. it has routes in regions that are not in the same or adjacent region from its head office).
 - iii. We have undertaken a desktop assessment of the third test and estimate that 7 operators do not meet this requirement (i.e. its Ministry work represents less than 30 percent of their total revenue) and the remaining 32 operators meet the threshold. However these numbers could change once relevant financial information has been collected from operators and verified.
 - iv. We do not know how many operators might potentially be approved through the fourth test (make a successful case for inclusion despite not meeting the prior three test) but would expect it to be a relatively small number. It should be noted that application of this test would only increase the number of operators offered direct negotiation, not decrease it.
 17. The key advantage of Option 2 is that it is clearly targeted at "small" and "regional" operators. In this respect it is arguably less arbitrary and more defensible than Option 1.
 18. We are reasonably confident that the number of operators classified as small and regional under this option will be around 30. However, we will not know exactly how many operators will meet the tests in Option 2 until relevant financial information has been collected via an Expression of Interest Process, assessed and any cases from operators seeking to be included have been decided by the Ministry.

Option 3 - Simple distinction based on the number of Daily Bus routes

19. While Option 2 provides a more targeted distinction to focus on small regional operators, arguments could be made as to the appropriateness or effectiveness of some of its elements:
 - The revenue test in Option 2 is concerned with the vulnerability of the operator if it lost its Ministry work, but it could be argued that this is not relevant in determining whether an operator is small or regional.
 - The regional test in Option 2 only affects one operator and it might well consider it has been significantly disadvantaged (even though it has less than 10 routes, the fact that it has routes in regions that are not the same or adjacent to its head office means it fails the test).
 - Although the discretionary test means that the Ministry can nevertheless include operators that do not meet the earlier tests, it is possible for negatively affected

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operators to challenge the process or considerations of the Ministry in applying this discretion.

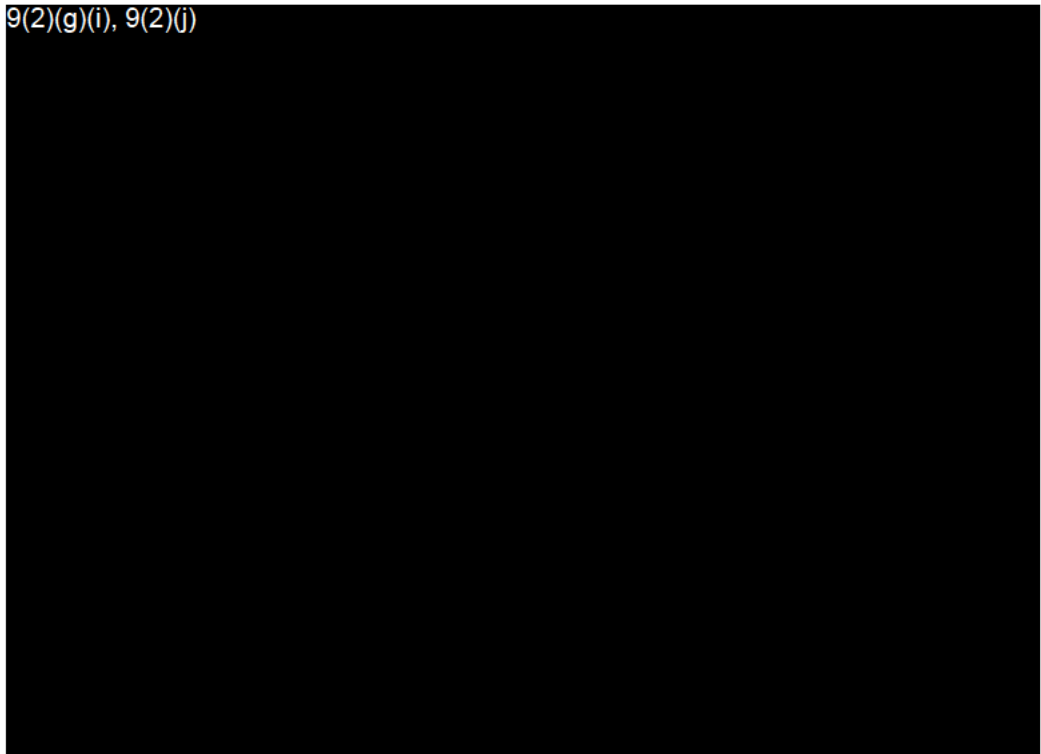
20. Given these potential challenges, Option 3 simply focuses on the number of bus routes held by an operator. For example, less than 10 Daily Bus routes would result in 40 existing operators being offered the opportunity to directly negotiate new contracts for their current routes.
21. It would also be possible to adapt this option (e.g. factoring into the route threshold Technology Bus routes, including additional elements) but this would require some further analysis and follow up advice could be provided to you for consideration.

An alternative approach - operators can self-define as small and regional to participate in a first phase tender process

Disadvantages and risks with direct negotiation and defining small regional operators

22. As we have noted in our previous advice, there are implications and risks associated with the split approach and direct negotiation of new contracts with incumbent operators in a part of the market. Some of the key risks and disadvantages are as follows:

9(2)(g)(i), 9(2)(j)



An alternative option can minimise risks and support regional outcomes

23. We consider that a split approach could be redesigned to mitigate risks associated with direct negotiation and defining small regional operators above, while still progressing the broader outcome of supporting thriving and sustainable regions but not ensuring the success of existing small regional operators. We have worked closely with MBIE on an alternative split approach that could maximise benefits to regional economies while minimising the risks of a split approach and consider that such an approach would:

- Provide an opportunity for small regional operators to participate without the pressure of competition from larger, inter-regional operators;
 - Allow operators to self-define as small and regional (rather than having this definition enforced on them by the Ministry);
 - Allow new entrant small regional operators an opportunity to compete for Ministry business;
 - Give small incumbent operators with growth aspirations the opportunity to expand;
 - Retain competitive tension in phase one of the split approach.
24. Based on these considerations, officials have designed an alternative option (Option 4) with the following elements:
- Operators can self-define as small and regional, allowing them to participate in a first phase tender involving small regional parcels of bus routes
 - Up to 10 percent or 10 routes (whichever is higher) of all Daily Bus routes in each region can be awarded through the first phase tender
 - These small regional operators can tender for any or all routes in a single region only, determined with reference to their head office location (either in the region of its head office or an adjacent region)
 - Successful tenderers could decide whether to accept or decline the parcel of work offered to them as a result of the first phase tender. All remaining routes, including those declined by successful tenderers, would be open tendered in the second phase of the split approach.
 - Small regional operators that accept the routes offered to them in the first phase tender would not be permitted to participate in the second phase tender.

advises

Key advantages and disadvantages of Option 4

25. The key benefits of Option 4 include significantly reduced risks (identified in paragraph 22) and potentially better regional outcomes. The configuration of Option 4 effectively ensures that successful operators in the first phase tender will be small and regional as:
- Routes awarded to an operator will be in a single region;
 - The number of routes potentially awarded are capped; and
 - Successful tenderers that accept awarded routes are restricted from entering the second phase tender.
26. These elements of the first phase tender mean that only those operators with modest aspirations for Ministry work will choose to participate in the first phase tender.
27. Option 4 would involve changes to the split approach as previously directed by you and endorsed by Cabinet (and would require a further paper to Cabinet). The key change would be configuring the first phase of a split approach as a tender (open to any operators that self-define as small and regional including those not currently

Re

contracted by the Ministry) rather than direct negotiation of new contracts with incumbent small regional operators for their current routes. The key implication of this is that there is no guarantee of success of new contracts for any incumbent operators (compared to options 1-3, which would decide the existing operators that would be offered the opportunity to directly negotiate new contracts for their current routes).

Next steps

28. Officials will be available to discuss any feedback on this advice at your next strategy session on 12 February 2020.
29. You will need to consult with the Minister of Economic Development on your preferred option, and following your discussion with officials on 12 February, a briefing can be provided to obtain the decisions needed to confirm the definition.

Proactive Release

30. We recommend that this briefing is not proactively released as it relates to matters that are commercially sensitive. The Ministry will release this briefing once final decisions on the school transport procurement process are made.
-

Education Report: Confirmation of the revised procurement approach for school transport

To:	Hon Chris Hipkins Minister of Education		
	Hon Phil Twyford Minister for Economic Development		
Cc:	Hon Kelvin Davis Associate Minister of Education		
	Hon Jenny Salesa Associate Minister of Education		
	Hon Tracey Martin Associate Minister of Education		
Date:	4 March 2020	Priority:	High
Security Level:	Commercial In Confidence	METIS No:	1220698
Drafter:	Anaru Silao	DDI:	9(2)(a)
Key Contact:	Richard O'Reilly	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This report seeks agreement from you and the Minister for Economic Development to a revised procurement approach for school transport.

Recommended Actions

Agree to forward this report to the Minister for Economic Development following your decisions on the proposals.

Hon Hipkins

Hon Twyford

Agree /
Disagree

Note that in November 2019 Cabinet endorsed an exemption from the Government Procurement Rules for the Ministry to undertake a split procurement approach, which included directly negotiating new contracts with the Ministry's incumbent small regional operators for their existing routes [CAB-19-MIN-0623 refers].

Noted

Noted

Note that Cabinet authorised you and the Minister for Economic Development to confirm the definition of small regional operators.

Noted

Noted

Recommended Actions

Hon Hipkins

Hon Twyford

Note that officials from the Ministry and MBIE have developed, and recommend, an alternative procurement approach (two tender approach) that could maximise benefits to regional economies while minimising the risks associated with direct negotiation and the Ministry defining small regional operators.

Noted

Noted

Agree to the following two tender approach for the school transport procurement process:

- i. Tender One: Any bus operator can self-define as small and regional to participate in a tender process involving the higher of 10 routes or 10 percent of Daily Bus routes in each of the 14 regions. These small regional operators can tender for any or all routes in a single region only. Successful tenderers can decide whether to accept or decline the routes offered to them. If the offered routes are accepted, that operator would not be permitted to participate in Tender Two.
- ii. Tender Two: Putting groups of the remaining routes out for open competitive tender.

Agree /
Disagree

Agree /
Disagree

Note that the proposed two tender approach has the following implications:

- i. There is no opportunity for incumbent bus operators to directly negotiate new contracts for their current routes as provided for in the split approach considered by Cabinet last year.
- ii. It is difficult to estimate how many of the 56 incumbent operators expected to participate in the procurement process could choose to participate in Tender One, but we know that the number of routes held by 35 operators are within the maximum regional route thresholds and so may decide to participate.
- iii. The Ministry cannot say with any certainty how many, if any, incumbent operators would be successful in obtaining a similar level of Ministry business as they currently hold under the two tender approach.
- iv. Technology Bus routes will only be offered in Tender Two, so any incumbent small regional operators wanting to retain this part of their business will need to compete with other operators in Tender Two for groups of routes.
- v. Although the proposed two tender approach helps to reduce risks, negatively affected operators may still raise concerns in the media, take judicial review proceedings or challenge the Ministry through litigation.

I don't agree to this. If small businesses currently have Tech routes they should be given the opportunity to keep them.

Noted

Noted

Recommended Actions

Hon Hipkins

Hon Twyford

Agree that a further paper to Cabinet is not required, as directed by you at your meeting with Ministry officials on 17 February, to advise it of or seek approval for the two tender approach.

Agree /
Disagree

Agree that this briefing will not be proactively released at this time because it relates to matters that are commercially sensitive.

Agree /
Disagree



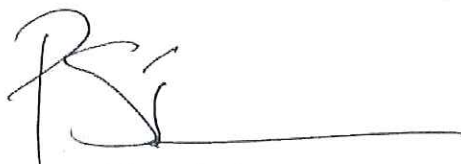
Kim Shannon
Head of Education Infrastructure Service

1/1



Hon Chris Hipkins
Minister of Education

10/3/20



Hon Phil Twyford
Minister for Economic Development

18/3/20

Background

1. The Ministry offers transport assistance to students who do not have access to public transport and where distance from their closest school is a barrier to education.
2. The Ministry has an appropriation of over \$200 million per annum for transport assistance, \$110M of which covers the current costs of the Daily Bus and Technology Bus services. These services are currently delivered by 63 transport operators and we have provided a breakdown of these operators at the regional level in Annex One for your information.¹
3. Concerns were raised by small regional operators and the Bus and Coach Association about the previously proposed open competitive procurement process. The concerns raised were that larger operators would have been favoured due to routes being packaged into large groupings, putting small regional operators at a disadvantage when competing for new contracts. For some of these small regional operators, school bus services are a key part of their operations and losing this work would likely have a significant impact on their businesses.
4. In November 2019, you advised Cabinet of a proposed split procurement approach for school transport that would help to progress the Government's commitment to 'support thriving and sustainable regions' [CAB-19-MIN-0623 refers]. The split approach involved two phases to award contracts:
 - Phase 1: Offering to negotiate new contracts with the incumbent 'small regional operators' for their current routes (i.e. direct negotiations with these operators with no opportunity for any other operator to participate unless a new contract cannot be agreed with the incumbent), and then
 - Phase 2: Putting the remaining routes out for open competitive tender (including any routes of 'small regional operators' where new contracts could not be agreed).
5. Cabinet endorsed an exemption from the Government Procurement Rules requirement for open tender for the Ministry of Education to undertake the split procurement approach. Cabinet authorised you and the Minister for Economic Development (as the Minister responsible for Procurement Functional Leadership) to confirm the definition of the small regional operators. Cabinet was advised that the Ministry would be providing you with advice by the end of January 2020 on the definition of small regional operators in order to best align with the government's regional outcomes.
6. The current contracts for Daily Bus and Technology Bus services were due to expire on 31 December 2020 but a 12 month contract extension to the end of 2021 was agreed with most of the Ministry's current transport operators to provide the time needed to develop and undertake the revised procurement process.²

¹ The paper considered by Cabinet in November 2019 noted that there were 66 operators. Since that time three operators have changed from providing Daily Bus services to direct resourcing.

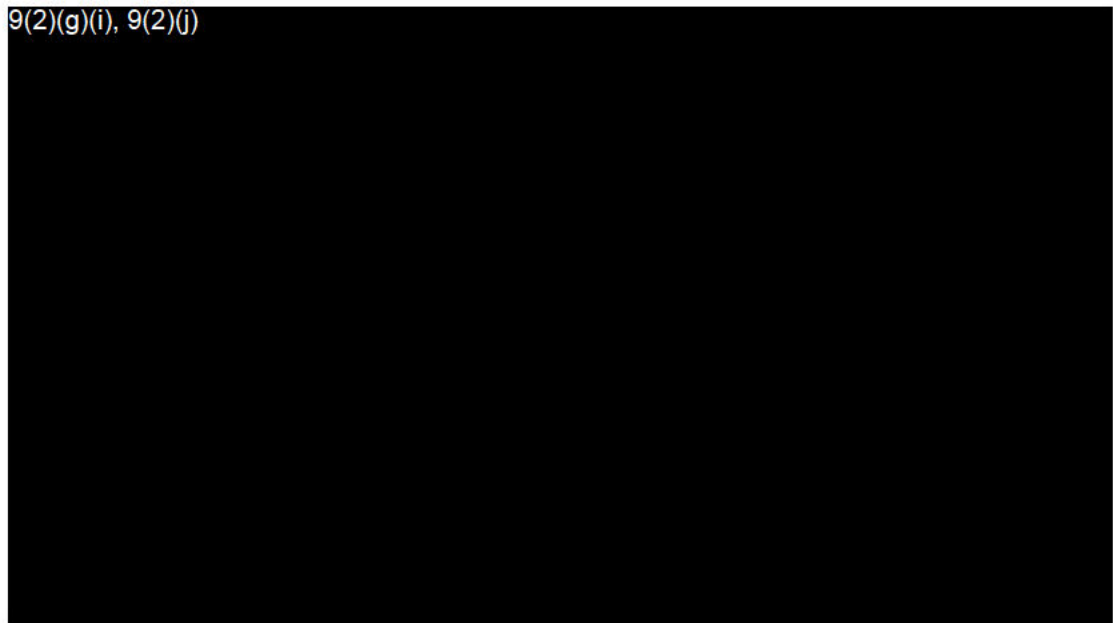
² Two operators decided not to take up the Ministry's offer of an extension.

Alternative split approach to support regional outcomes and minimise risks

Risks associated with direct negotiation and defining small regional operators

7. As noted in our previous advice, there are implications and risks associated with the split approach and direct negotiation of new contracts with incumbent operators in a part of the market. Some of the key risks and disadvantages include:

9(2)(g)(i), 9(2)(j)



Description of an alternative procurement approach

8. On 7 February 2020, we provided you with advice on potential options to define small regional operators [METIS 1219714 refers] and also outlined an alternative procurement approach (two tender approach) that could maximise benefits to regional economies while minimising the risks described in paragraph 7 above. The development of the two tender approach was jointly undertaken with MBIE officials.
9. Officials consider the following factors and attributes are important for maximising benefits to regional economies and minimising procurement related risks:
- Allowing operators to self-define as small and regional rather than the Ministry needing to decide a determinative line;
 - Enabling small regional operators to participate without the pressure of competition from larger, inter-regional operators;
 - Providing new entrant small regional operators an opportunity to compete for Ministry business;
 - Giving small incumbent operators with growth aspirations the opportunity to expand; and
 - Retaining the potential for competitive tension in the first phase of the two tender approach.
10. Based on these considerations, the split procurement approach could be reconfigured as a two tender approach. Tender One would be configured with the following elements:

- Any bus operator (including incumbent Ministry contracted operators or any other bus operators) can self-define as small and regional to participate in a tender process involving the higher of 10 routes or 10 percent of Daily Bus routes in each of the 14 regions;
 - These self-defined small regional operators can tender for any or all routes in a single region only, determined with reference to their head office location (either in the region of it or its parent's head office or an adjacent region);³ and
 - Successful tenderers (within a threshold) can decide whether to accept or decline the routes offered to them. If the offered routes are accepted, that operator and its related companies would not be permitted to participate in Tender Two. Routes that are offered but not accepted in Tender One would then be included in Tender Two.
11. The combination of these elements mean that only those operators with modest aspirations for Ministry work would likely choose to participate in Tender One (i.e. small and regional operators). The Ministry is currently working through some of the detailed rules that might be needed to ensure that Tender One delivers its intended outcome for small regional operators. These include:
- measures that help to maximise opportunities for small regional operators through Tender One (e.g. reducing the likelihood of routes being offered but not accepted); and
 - rules that prevent potential abuse of the Tender One process by some bus operators seeking to serve their own interests (e.g. larger operators establishing subsidiaries in different regions to win Tender One work).
12. Tender Two would basically remain the same as previously proposed in the split approach (i.e. all remaining routes would be offered through an open competitive tender). A summary table of the number and type of bus routes that would be offered in Tender One and Tender Two at a regional level is attached in Annex Two.
13. At your meeting with education officials on 17 February, you indicated your preference for the two tender approach and directed the Ministry to provide a briefing seeking agreement from you and the Minister for Economic Development to that approach.

Implications of the proposed two tender approach

14. The proposed two tender procurement approach has some differences from the approach endorsed by Cabinet last year and there are some specific implications of the proposed approach that should be noted, including:
- There is no longer the opportunity for incumbent bus operators to directly negotiate new contracts for their current routes. The trade-off benefit for this is that new small regional operators (i.e. those without a current Ministry contract) can compete for Ministry Daily Bus business and some incumbent small regional operators will have the opportunity to compete for more of this type of work and grow their businesses.

³ The country is separated into 14 regions for the procurement. There would be a maximum of 166 Daily Bus routes offered to small regional operators through Tender One (a total of 1,465 Daily Bus routes are planned for the overall procurement). However, there is no guarantee that this number of routes will be offered as bids may not meet minimum requirements, such as required quality standards.

- The proposed two tender procurement approach draws lines that impact on the ability of bus operators to win or lose work. The segmenting of routes for Tender One (i.e. the higher of 10 routes or 10 percent of all Daily Bus routes in a region) is based on analysis of current operators existing routes and the proposed grouping of routes for the open competitive tender. We estimate that operators with 10 or less Daily Bus routes would likely struggle to scale up to compete in the route groups for the open competitive tender. We considered it reasonable to include the 10 percent of routes in the region, as the routes groupings differ in size and this provides what we consider to be an appropriate share of routes for small regional operators to compete for between themselves. The lines for the two tender approach could reasonably be drawn at other points, so some stakeholders may be unhappy with the settings. There is therefore still a risk that negatively affected operators raise concerns in the media, take judicial review proceedings or challenge the Ministry through litigation.
- It is difficult to estimate how many incumbent operators are likely to participate in Tender One as decisions will be based on their individual circumstances, levels of ambition and the extent to which they are on the margins of our thresholds. As a rough indication, of the 56 current operators that provide Daily Bus services and which we expect to participate in the procurement process:⁴
 - The routes held by 35 operators are within the maximum regional route thresholds for and so may decide to participate in Tender One; and
 - The routes held by remaining 21 operators are in more than one region or exceed the maximum route thresholds within a single region so we consider they are unlikely to participate in Tender One.
- We are not able to estimate how many new small regional operators might participate in Tender One. But based on the number of routes held by the current 35 bus operators that could participate in Tender One, demand from self-defined small regional operators could exceed the supply of routes being made available in Tender One for some regions regardless of any new entrant competitors that may enter the market. There is therefore the potential for some self-defined small operators to be unhappy with the outcome of the Tender One process even though they were able to participate. At this time the Ministry cannot say with any certainty how many, if any, existing operators would be successful in obtaining a similar level of Ministry business as they currently hold under the two tender approach.
- Technology Bus routes will only be offered in Tender Two and so there will be no opportunity for small regional operators to bid for these in Tender One.⁵ The approximate average Daily Bus route value is 9(2)(j) whereas the average Technology Bus route value is only 9(2)(j). The Ministry considers that it is appropriate for Technology Bus routes to only be offered in Tender Two as they are very unlikely to determine the ongoing financial sustainability of any bus operators because they are relatively low value and utilise buses during off-peak periods. However, this means that any incumbent small regional operator that wants to retain or grow their Technology Bus routes will need to compete with other operators through the regional route groups in Tender Two. We note that there are currently 5 operators that only provide Technology Bus services

⁴ Of the currently contracted 63 bus operators, 9(2)(j)

On this basis, there are 56 operators that provide Daily Bus services that we expect to participate in the procurement process.

⁵ A total of 678 Technology Bus routes are planned for the procurement.

and a number of bus operators that provide a mix of Daily Bus and Technology bus services.

15. Despite the proposed approach differing in a number of areas from the one endorsed by Cabinet, the focus of the proposed two tender approach remains on small regional operators (including new small regional operators and incumbents) and the overarching objective of supporting thriving and sustainable regions.
16. At your meeting with officials on 17 February, you advised the Ministry that the changes in approach were in line with previous Cabinet decisions and so there was no need to advise or seek further approval from Cabinet regarding this decision.

Next steps

17. We are seeking Ministers agreement to the proposed two tender approach through this briefing.
18. Following Ministerial agreement, the Ministry's next key steps involve re-engaging with the market and to notify stakeholders of our final procurement approach. We will provide your office with our proposed engagement programme and indicative timeframes. Engagement has been suspended since December 2019 when we notified the market that contract extensions had been secured to enable a review of the procurement approach.

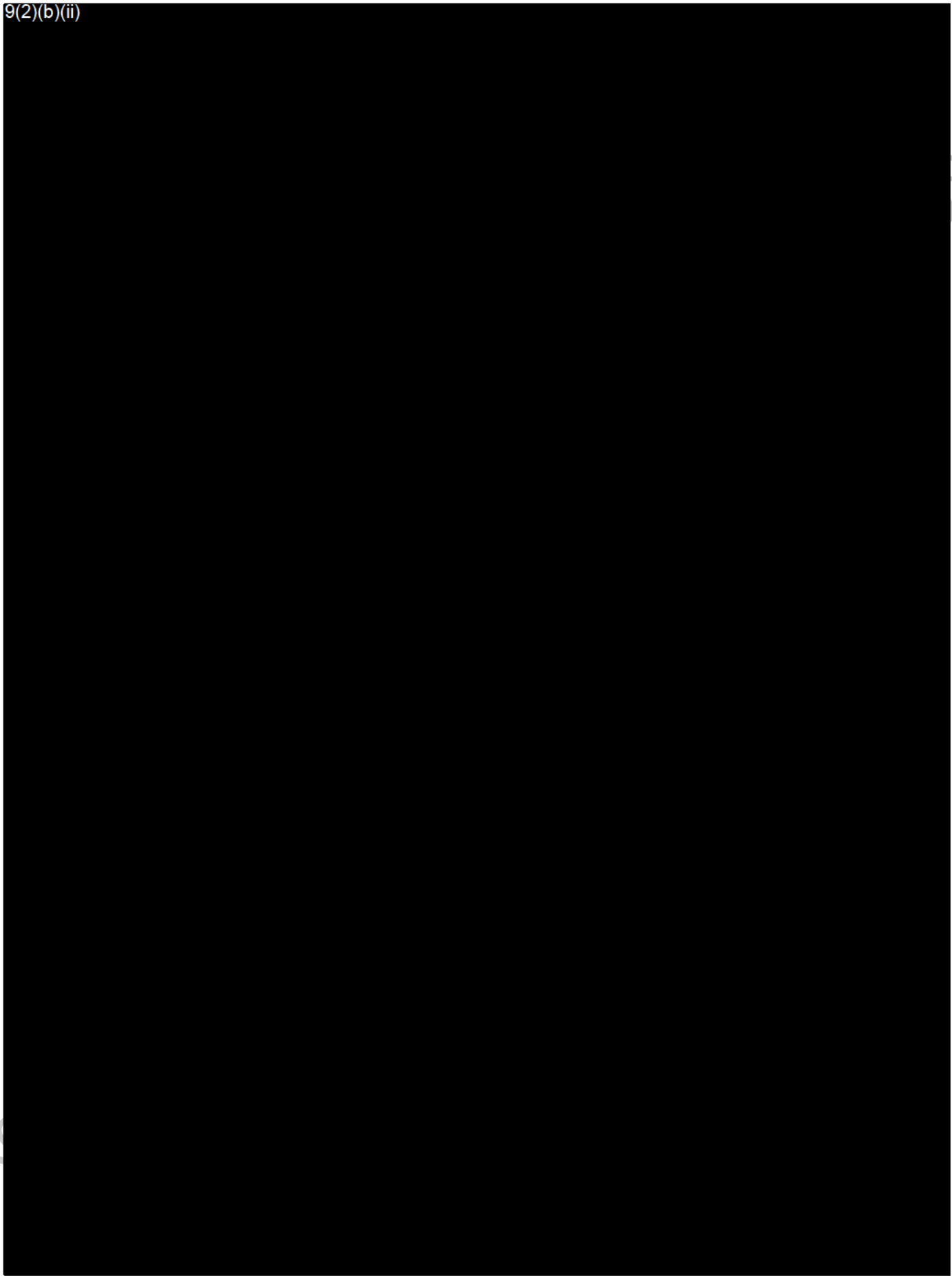
Proactive Release

19. We recommend that this briefing is not proactively released as it relates to matters that are commercially sensitive. The Ministry will release this briefing once final decisions on the school transport procurement process including awarding of all new contracts have been made.

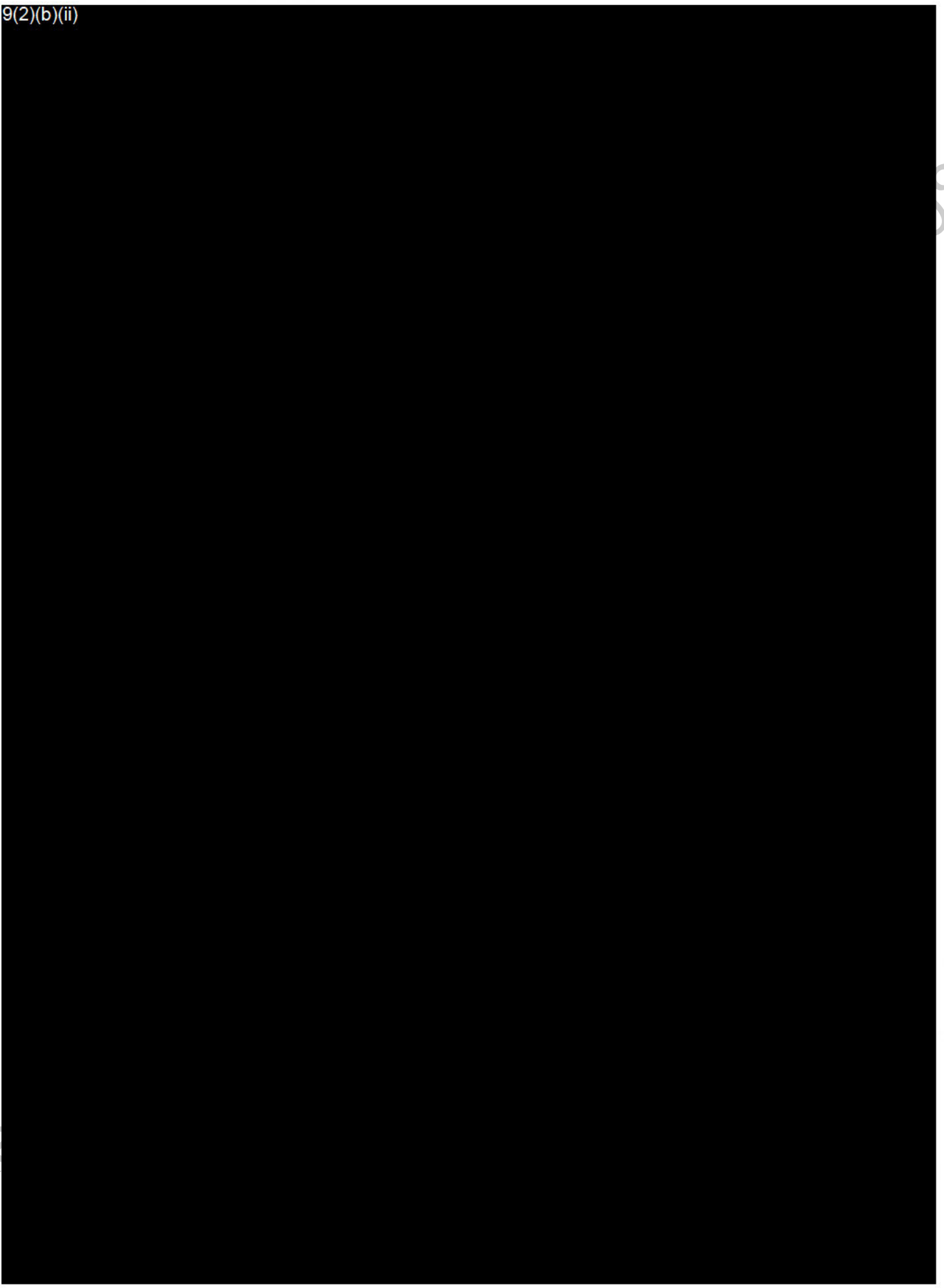
Annexes

- Annex One: 9(2)(b)(ii)
- Annex Two: Summary Table: Regional breakdown of routes for Tender One and Tender Two.


9(2)(b)(ii)




9(2)(b)(ii)



9(2)(b)(ii)

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9(2)(b)(ii)

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Annex two: Summary Table: Regional breakdown of routes for Tender One and Tender Two

Region	Tender One award cap (Daily Bus routes only)			Tender Two minimum routes		
	Daily Bus	Tech Bus	Total	Daily	Tech	Total
Northland	17	-	17	153	40	193
Auckland	10	-	10	66	73	139
Bay of Plenty	11	-	11	102	37	139
Waikato	17	-	17	150	99	249
Gisborne	10	-	10	32	4	36
Hawke's Bay	10	-	10	86	35	121
Taranaki	10	-	10	48	16	64
Whanganui/Manawatu	12	-	12	110	56	166
Wellington/Wairarapa	10	-	10	65	103	168
Nelson/Marlborough/Tasman	11	-	11	101	26	127
West Coast	10	-	10	38	12	50
Canterbury	11	-	11	101	134	235
Otago	16	-	16	145	31	176
Southland	11	-	11	102	12	114
Total	166	-	166	1,299	678	1,977

RAPID RESPONSE

Drafter: Richard O'Reilly
 METIS Number: 1222579
 Date: 04/03/2020

Questions:

1. What is the rationale underpinning the route thresholds for Tender One of the Ministry of Education's two tender approach (i.e. up to 10 percent or 10 routes (whichever is higher) of all Daily Bus routes in each of the 14 regions)?
2. What are the potential implications for incumbent bus operators that currently have more routes than these thresholds?

Response:

Background

On 7 February we provided Education Ministers with advice on options to define small regional operators for the school transport procurement process (METIS 1219714 refers) and also proposed an alternative two tender approach. The two tender approach would involve the following:

- Tender One: Any bus operator can self-define as small and regional to participate in a tender process involving the higher of 10 routes or 10 percent of Daily Bus routes in each of the 14 regions. These small regional operators can tender for any or all routes in a single region only. Successful tenderers can decide whether to accept or decline the routes offered to them. If the offered routes are accepted, that operator would not be permitted to participate in Tender Two.
- Tender Two: Putting groups of the remaining routes out for open competitive tender.

At a meeting between Education Ministers and Ministry officials on 17 February, Minister Hipkins requested a briefing that seeks agreement from him and the Minister for Economic Development for the two tender approach. You have been copied into an Education Report dated 2 March that obtains decisions from both Ministers for the Ministry to proceed with the two tender approach (METIS 1220698 refers).

Rationale for the number of routes being made available under Tender One

The segmenting of routes for Tender One through the use of thresholds (i.e. the higher of 10 routes or 10 percent of all Daily Bus routes each region) is based on our analysis of current bus operators existing routes and the proposed grouping of routes for the open competitive tender. We estimate that bus operators with 10 or fewer Daily Bus routes would likely struggle to scale up to

compete in the route groups for the open competitive tender and included this as the first threshold. We also considered that it would be appropriate to make more than 10 routes available for competition between small regional operators in regions with a large number of routes (the number of Daily Bus routes in each region ranges from 42 to 170 routes, with 8 of the 14 regions exceeding 100 routes).

Taking the higher of 10 routes or 10 percent of all Daily Bus routes in a region protects what we think is an appropriate share of routes for small regional operators to compete for between themselves. However, these particular lines could reasonably be drawn at other points so some stakeholders may be unhappy with the proposed settings of Tender One.

Implications for bus operators on the margins of the thresholds

Any bus operator can choose to self-define as small and regional to participate in Tender One, and therefore bus operators that hold more routes than these thresholds can still opt into Tender One. The thresholds do however limit the amount of work on offer in each region for Tender One and in this regard incumbent bus operators with routes that exceed these thresholds would need to carefully consider whether they are prepared to compete for fewer routes with other self-defined small regional operators.

As an example, if an incumbent operator currently has 12 Daily Bus routes in a region that will be offering 100 Daily Bus routes, the maximum number of routes that can be awarded in this region for Tender One would be 10 routes. The incumbent bus operator would need to consider whether they are prepared to compete for fewer routes than they currently have against all other self-defined small regional operators in the region. If the incumbent bus operator wants to maintain or increase their current number of routes, they would need to compete in Tender Two for routes that will be grouped.

It is difficult to estimate how many incumbent bus operators are likely to participate in Tender One as decisions will be based on their individual circumstances, levels of ambition and the extent to which they are on the margins of our thresholds. Of the 56 current bus operators that provide Daily Bus services:

- 33 bus operators have 1-10 Daily Bus routes, and
- 10 bus operators have 11-20 Daily Bus routes.

Those operators with 1-10 Daily Bus routes may decide to participate in Tender One but it is difficult to predict what other operators might do, particularly for those that have 11-20 Daily Bus routes. But as indicated earlier, we consider that operators with more than 10 routes are better positioned to compete for route groups under Tender Two, but they are not prevented from participating in Tender One.

We cannot say with any certainty how many, if any, existing operators would be successful in obtaining a similar level of Ministry business as they currently hold.

Summary

The segmenting of routes for Tender One through the use of thresholds (i.e. up to 10 percent or 10 routes (whichever is higher) of all Daily Bus routes in each region) protects what the Ministry considers to be an appropriate share of routes for small regional operators to compete for between themselves in each region. Incumbent bus operators that have routes that exceed these thresholds can still opt into Tender One, but they would be competing with other self-defined small regional operators for fewer routes than they currently have.



29 June 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Tēnā koe [REDACTED]

Thank you for your letter of 19 May 2020 to the Ministry of Education, and your clarification of 10 June 2020 requesting the following information:

- *the information generated or received by the Ministry in developing the new approach. This will include internal communications between Ministry officials and also communications between Ministry officials and external parties such as MBIE, officials in Ministers' offices and Ministers themselves.*

Your request has been considered under the Official Information Act 1982 (the Act).

I am providing you with 10 documents, as the third and final tranche of documents for release in response to your request. These are outlined, together with my decision as to their release, in the table attached as **Appendix A**.

Some information has been withheld from the documents under the following sections of the Act:

- 9(2)(a), to protect the privacy of natural persons;
- 9(2)(g)(i), maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; and
- 9(2)(j), to protect the Ministry's ability to carry out, without prejudice or disadvantage, commercial negotiations.

As required under section 9(1) of the Act, I have considered the public interest in release of this information. However, I have identified no public interest considerations sufficient to outweigh the need to withhold this information at this time.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Kim Shannon', is positioned above the printed name.

Kim Shannon
Head of Education Infrastructure Service

Appendix A

Email #	Email Date	Email Subject	Decision on release
1	4 Nov 19	Mark research	Release in part. Information has been withheld under section 9(2)(a) of the Act.
2	6 Nov 19	Re: Draft problem statement for MBIE workshop	Release in part. Information has been withheld under section 9(2)(a) of the Act.
3	17 Dec 19	Info for Rauno	Release in part. Information has been withheld under sections 9(2)(a) and 9(2)(g)(i) of the Act.
4	24 Jan 20	RE: Draft Options Paper - Defining Small Regional Operators -review incorporating MBIE feedback.docx	Release in part. Information has been withheld under sections 9(2)(a), 9(2)(g)(i) and 9(2)(j) of the Act.
5	31 Jan 20	Options for ministerial paper	Release in part. Information has been withheld under section 9(2)(a) of the Act.
6	31 Jan 20	RE: School bus procurement [UNCLASSIFIED]	Release in part. Information has been withheld under section 9(2)(a) of the Act.
7	11 Feb 20	Option pros and cons	Release in part. Information has been withheld under section 9(2)(a) of the Act.
8	2 Mar 20	Exemption and the two tender approach	Release in part. Information has been withheld under section 9(2)(a) of the Act.
9	16 Mar 20	RE: Random thought I had about the school transport tender	Release in part. Information has been withheld under section 9(2)(a) of the Act.
10	19 Mar 20	RE: School Bus Procurement Challenge session	Release in part. Information has been withheld under sections 9(2)(a) and 9(2)(j) of the Act.

Andy Smith

From: Patrick Bodzak
Sent: Monday, 4 November 2019 1:32 p.m.
To: Alison Murray; Katherine Littler; Laurence Pidcock; James Meffan; Jonathon Gear
Subject: Market research

Hi all.

For your reference some market research around competition and SME/local operator provisions:

Below is a link to the in process market research spreadsheet around strategies in other jurisdictions:

<I:\2. School Transport\S Tender 2020\Procurement\1. Procurement Strategy\0. Research>

Research paper which may be helpful titled 'Maintaining competition in recurrent procurement contracts: A case study on the London bus market'

https://www.researchgate.net/publication/315599010_Maintaining_competition_in_recurrent_procurement_contracts_A_case_study_on_the_London_bus_market

Also from UK: 'House of Commons Transport Committee: Competition in the local bus market'

<https://publications.parliament.uk/pa/cm201213/cmselect/cmtran/10/10.pdf>

Also from UK: 'Bus market not competitive, Competition Commission says'

<https://www.bbc.com/news/business-16261086>

'There are 1,245 bus companies operating in England, Scotland and Wales, but just five of them: Arriva, FirstGroup, Go-Ahead, National Express and Stagecoach, carry 70% of all passengers. The commission said the Office of Fair Trading should exercise "its discretion not to refer small mergers" of bus operators to the Competition Commission. Local Transport Authorities, meanwhile, are being asked to consider "partnerships" with new operators to increase competition in their local areas..

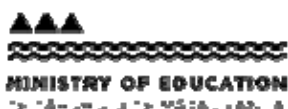
The report presents options similar to our "route group" approach which they call 'franchising':

<http://www.nera.com/content/dam/nera/publications/archive1/3892.pdf>

Patrick Bodzak | Senior Procurement Leader - Contractor
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Andy Smith

From: Alison Murray
Sent: Wednesday, 6 November 2019 7:58 a.m.
To: James Meffan; Patrick Bodzak; Jonathon Gear; Katherine Littler; Engel, Rauno
Cc: Laurence Pidcock
Subject: Re: Draft problem statement for MBIE workshop

Sure happy with that

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On Tue, Nov 5, 2019 at 8:08 AM +1300, "James Meffan" <James.Meffan@education.govt.nz> wrote

I'm happy with that approach, though I think it would be good to refer to "public value" which is the formulation in the new GPR that captures the in-built requirement to balance broader outcomes and vfm. Seen in this light, the statement is somewhat circular because public value is by definition requires finding a balance between supporting sustainable regional business (which is referred to under broader outcomes as well as being a Cabinet priority area) and vfm. Public value is necessarily a balancing act that reminds us not to let other values slip by placing undue emphasis on one specific outcome. Fairness and transparency is a given under procurement rules so it always remains in the mix. So the statement could be:

How can the Ministry best deliver public value by finding an appropriate balance between supporting thriving and sustainable regions, other broader outcomes and value for money, while ensuring a fair and transparent process?

I agree with the additional criteria taken from statement one being included in the agenda.

Regards

James

James Meffan | Project Director - School Transport - Contractor | Education Infrastructure Service
 DDI 9(2)(a) | Mobile 9(2)(a)

From: Alison Murray
Sent: Tuesday, 5 November 2019 7:47 AM
To: Patrick Bodzak <Patrick.Bodzak@education.govt.nz>; Jonathon Gear <Jonathon.Gear@education.govt.nz>; Katherine Littler <Katherine.Littler@education.govt.nz>; James Meffan <James.Meffan@education.govt.nz>; Engel, Rauno <rengel@deloitte.co.nz>
Cc: Laurence Pidcock <Laurence.Pidcock@education.govt.nz>
Subject: RE: Draft problem statement for MBIE workshop

OK just going through with Patrick and I think we go for

STATEMENT 3

How can the Ministry find the right balance between supporting thriving and sustainable regions (or small or regional operators), broader outcomes, fairness and transparency and value for money?

And then brainstorm during the workshops but assess each option against the criteria

- Supporting broader outcomes objectives

- Maintaining a competitive and diverse market
- Achieving value for money
- Not materially disadvantaging any operators
- Adhering to the GPR and other procurement guidance
- Conducting a transparent and defensible procurement process
- Preserving the reputation of the Ministry, MBIE, and NZ government
- Adhering to the requirements of international treaties and agreements

I'll send out with the meeting invite once we get names from MBIE

Alison Murray | Director | Commercial Procurement, EIS
 DDI 9(2)(a) | Mobile 9(2)(a)

From: Patrick Bodzak

Sent: Tuesday, 5 November 2019 7:38 a.m.

To: Alison Murray <Alison.Murray@education.govt.nz>; Jonathon Gear <Jonathon.Gear@education.govt.nz>; Katherine Littler <Katherine.Littler@education.govt.nz>; James Meffan <James.Meffan@education.govt.nz>; Engel, Rauno <rengel@deloitte.co.nz>

Subject: RE: Draft problem statement for MBIE workshop

It has been proposed that a workshop is held shortly with MBIE, supported by NZGPP Procurement, NZGPP Procurement Policy, and possibly others.

Below is a sample of the 'problem statements' to drive the discussion:

STATEMENT 1

How can the Ministry ensure that one of the 12 Cabinet Priority Outcomes '*support thriving and sustainable regions*' is progressed while:

- Not materially disadvantaging any operators
- Adhering to the GPR and other procurement guidance
- Conducting a transparent and defensible procurement process
- Achieving value for money
- Supporting broader outcomes objectives
- Maintaining a competitive and diverse market
- Preserving the reputation of the Ministry, MBIE, and NZ government
- Adhering to the requirements of international treaties and agreements

STATEMENT 2

How can the Ministry support thriving and sustainable regions (or small or regional operators) while ensuring a fair and transparent procurement process?

STATEMENT 3

How can the Ministry find the right balance between supporting thriving and sustainable regions (or small or regional operators), broader outcomes, fairness and transparency and value for money?

STATEMENT 4

How can the Ministry support thriving and sustainable regions through the utilisation of the GPR, best procurement practice, fairness, and transparency?

Patrick Bodzak | Senior Procurement Leader - Contractor
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Andy Smith

From: Jonathon Gear
Sent: Tuesday, 17 December 2019 10:32 a.m.
To: Patrick Bodzak
Cc: James Meffan
Subject: Info for Rauno
Attachments: 9(2)(g)(i) How to compare two options for different things 20191217.xlsx

Hi

Info for Rauno attached.

The slide summarises the two tender option which we have taken forward from the workshop a few weeks back. We are currently trying to determine whether and how this gets put to Ministers as an alternate option.

What I would like to go through with Rauno is if this option prevails then how would we weigh up the relative value for money from tender 1 where we only receive single responses for routes and the route responses are oversubscribed. The attached excel workbook sets out my starter for 10 which would require a benchmark price and quality estimate for each route. We don't need to fully work up how it needs to be done in detail but want to have confidence that we have a methodology that we can make work and any pitfalls it may have before we fully commit to this being a viable alternative.

A one hour session with Rauno no later than Thursday should be sufficient to explore this for now, with possibly a follow up or two in the new year.

Regards

Jonathon Gear | Senior Commercial Advisor - Contractor
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Comparing responses for different routes to determine whats preferred

Assumes there is only a single response received for two different routes

	Route A	Route B	Best metric
<u>METRICS FROM RESPONSE</u>			
Distance (km)	100	50	
Respondents price			
\$/route	\$ 100	\$ 100	
\$/km	\$ 2.0	\$ 2.0	
Price for evaluation			
Trip price	\$ 300	\$ 200	
Ave \$/km	\$ 3.0	\$ 4.0	Route A
Respondents quality score	60	80	Route B

	Route A	Route B	Best metric
<u>USING PQM FOR EVALUATING RESPONSES WITHOUT COMPARISON</u>			
Weightings			
Price	9(2)(j)		
Quality			
Expected in open tender			
Trip price	\$ 250	\$ 210	
Quality average	70	70	
SQP			
Respondent	\$ -	\$ 13	
Expected in open tender	\$ 17	\$ -	
Adjusted evaluation price			
Respondent	\$ 300	\$ 187	
Expected in open tender	\$ 233	\$ 210	
Delta \$	\$ 67	-\$ 23	Route B, greater saving over expected result
Preferred value for money outcome	No	Yes	

Andy Smith

From: Jonathon Gear
Sent: Friday, 24 January 2020 2:17 p.m.
To: Delaney Myers; James Meffan
Subject: RE: Draft Options Paper - Defining Small Regional Operators -review incorporating MBIE feedback.docx

Hi Delaney,

The 10%/10 route cap came from a review I did of the regions and current operators.

The slide below best summarises the findings. This shows the likelihood of existing operators tendering in tender 1 based on the number of routes they hold today, assuming a cap of 10 daily routes/10% of daily routes are available for this tender round. The premise for this analysis was that it is operators with 10 or less daily routes today that are likely to struggle in scaling up for route groups. The reason for including the 10% as well as 10 route cap was to account for the different size of regions and number of route groups. The last two columns show the subscription rates based on the likelihood analysis.

Please call me if you would like to discuss further.

9(2)(j)



Jonathon Gear | Senior Commerical Advisor - Contractor
Mobile 9(2)(a)

From: Delaney Myers
Sent: Friday, 24 January 2020 11:21 AM

To: James Meffan <James.Meffan@education.govt.nz>
Cc: Jonathon Gear <Jonathon.Gear@education.govt.nz>
Subject: RE: Draft Options Paper - Defining Small Regional Operators -review incorporating MBIE feedback.docx

Hi James, some comments, suggestions etc from me.

I like your argument.

There is one substantive matter I think warrants more discussion. 9(2)(g)(i)
I assume the 10% was arbitrary, and of course a line must be drawn somewhere, but I would like to see some justification for it being 10%.

chers

Delaney Myers | Group Manager School Transport | Education Infrastructure Service
DDI 9(2)(a) | Mobile 9(2)(a)

From: James Meffan
Sent: Thursday, 23 January 2020 4:54 PM
To: Alison Murray <Alison.Murray@education.govt.nz>; Katherine Littler <Katherine.Littler@education.govt.nz>; Delaney Myers <Delaney.Myers@education.govt.nz>; Greg Williams <Greg.Williams@mbie.govt.nz>; Michael.Hiscox@mbie.govt.nz; Hayden Berkers <Hayden.Berkers@mbie.govt.nz>
Cc: Jonathon Gear <Jonathon.Gear@education.govt.nz>; Patrick Bodzak <Patrick.Bodzak@education.govt.nz>
Subject: Draft Options Paper - Defining Small Regional Operators -review incorporating MBIE feedback.docx

Hi all,

Following some very helpful feedback from MBIE yesterday we decided to substantially revise the options paper to ministers on defining small regional operators for a procurement approach that better supports thriving and sustainable regions.

The primary goal of this revision is to shift from a somewhat negative approach to something that more positively addresses the desired outcomes and best means to achieve these.

At this stage I am particularly keen to get feedback on tone, structure and argument; the expression and grammar will doubtless receive close attention in future review cycles.

Michael, my apology that you won't see all of your feedback represented here. The document has been so substantially revised that it was not always clear to see where it should touch down in this version. I have tried to reflect the spirit of your feedback nonetheless.

I am hoping to send this up for Governance review sometime tomorrow (Friday), so please let me know your views asap.

Thanks and regards

James

Andy Smith

From: Jonathon Gear
Sent: Friday, 31 January 2020 12:06 p.m.
To: Delaney Myers; Laurence Pidcock; 'andrew@eps.net.nz'; Engel, Rauno; James Meffan; Alison Murray
Cc: Hayden.Berkers@mbie.govt.nz; Greg.Williams@mbie.govt.nz; Fleur.DSouza@mbie.govt.nz
Subject: Options for ministerial paper

Hi all,

Thanks for your time this morning to discuss our school bus procurement options.

Below you will find a summary of the options that we agreed upon at the meeting. Please respond with yes I agree with the descriptions included below or alternatively let us know which items you had a different expectation about. Once we receive your feedback we will work to include this in the draft ministerial paper.

Option 1: The two tender approach

Procurement through two tenders

Tender One: Targeting small regional operators

Tender Two: Open to any tenderer that does not accept routes awarded in Tender One

Tender One will have the following features:

- Offer up to 10% or 10 routes (whichever is higher) of all Daily routes in each region can be awarded through this tender;
- Tenderers can tender for any or all routes in a single region only, determined with reference to their head office location;
- Operators awarded routes through Tender One can:
 - Accept the routes awarded, in which case they will be excluded from participation in Tender Two.
 - OR
 - Decline the routes awarded, in which case they will be allowed to participate in Tender Two. If awarded routes are declined they will go into the Tender Two pool and no further routes will be awarded.

Option 2: Direct negotiate with small regional suppliers

Procurement through 2 different methods:

Option of direct appointment offered to small regional suppliers

Routes not directly appointed will be offered through tender as route groups

Small regional operators can choose to have their existing routes direct appointed, or can participate in the open tender; they cannot participate in both rounds.

Small regional operators will be defined (and selected for direct appointment) by the sequential application of the following tests:

- Operator holds fewer than [10] Daily routes;
- Operator meets regional criteria;
- Daily and tech routes they operate account for more than ~30% of the business owners' annual revenue

The Ministry will allow submissions from operators as to why they should be considered for direct appointment even if they aren't eligible through application of the tests above. It will be the Ministry's ultimate discretion as to whether these submissions are accepted and direct appointment is granted, regardless of the test established above.

Regards

Jonathon Gear | Senior Commercial Advisor - Contractor

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Andy Smith

From: James Meffan
Sent: Friday, 31 January 2020 12:21 p.m.
To: Michael Hiscox
Cc: Hayden Berkers; Greg Williams; Jonathon Gear
Subject: RE: School bus procurement [UNCLASSIFIED]

Thanks for this Mike. Hopefully your colleagues will have an opportunity to update you on the discussion, and I'll ask Jono to forward on his summary of the way the options were amended to respond to concerns expressed in the meeting.

Once you've had a chance to review the reframed options, do get in touch directly with Jono if you feel there would still be benefit in further exploring the possibility of a more flexible approach to route cap, noting the slight tweaks that have been made to eligibility criteria.

Cheers

James

From: Michael Hiscox [mailto:Michael.Hiscox@mbie.govt.nz]
Sent: Thursday, 30 January 2020 9:52 PM
To: James Meffan <James.Meffan@education.govt.nz>
Cc: Hayden Berkers <Hayden.Berkers@mbie.govt.nz>; Greg Williams <Greg.Williams@mbie.govt.nz>
Subject: RE: School bus procurement [UNCLASSIFIED]

Hi James,

Apologies but I won't be able to make it to this meeting.

Regarding the procurement, as mentioned when we chatted before, my main thoughts at this stage would be:

- It's worth building in flexibility of decision making / process down the line (i.e. if you say a maximum of 10, but 11 is a really viable option, then it will create difficulty etc).
- Would be good to discuss the option of whether it would be best to limit on the number of routes the small operators can bid for, vs the limit to the number that can be awarded (similar to above – flexibility will be good) – slight nuance but the first puts more emphasis on the small operator to say what they want as opposed to saying “anything” and leaving the decision to you..
- Would be good to discuss running under one process – i.e. an ROI where suppliers opt in to stage 1 or 2 – then 2 waves/phases of procurement. Save on multiple processes, people claiming they missed out etc.

Happy to discuss,
Mike

Regards,

Michael Hiscox
PROGRAMME MANAGER

Broader Outcomes Programme | New Zealand Government Procurement and Property | Building, Resources and Markets
Ministry of Business, Innovation & Employment

michael.hiscox@mbie.govt.nz | Telephone: 9(2)(a) | Mobile: 9(2)(a)
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www.procurement.govt.nz | www.gpg.govt.nz

<< OLE Object: Picture (Device Independent Bitmap) >>

-----Original Appointment-----

From: Kiana Thompson **On Behalf Of** James Meffan

Sent: Thursday, 30 January 2020 3:23 p.m.

To: Hayden Berkers; Michael Hiscox

Subject: FW: School bus procurement [UNCLASSIFIED]

When: Friday, 31 January 2020 9:00 a.m.-10:00 a.m. (UTC+12:00) Auckland, Wellington.

Where: 22 The Terrace, 7.01

Hi Hayden & Michael

Greg is unable to attend on this occasion so if you could attend and pass on any necessary information that would be appreciated.

Thanks,
Kiana

-----Original Appointment-----

From: James Meffan <James.Meffan@education.govt.nz>

Sent: Thursday, 30 January 2020 2:26 PM

To: James Meffan; Greg Williams

Subject: School bus procurement

When: Friday, 31 January 2020 9:00 AM-10:00 AM (UTC+12:00) Auckland, Wellington.

Where: 22 The Terrace, 7.01

Hi Greg,

As covered in my phone message, this meeting is aimed at ensuring MoE procurement leaders are comfortable with the two, two-phased procurement options we are intending to present to Ministers in the near future.

As you have been involved in some of the development discussions around these options I'd value your input on both the relative merits of the options with respect to procurement rules and good practice, and on the technical workability of the approaches

Please feel free to forward this invitation/ bring your colleagues if you feel that would be appropriate/helpful. Michael Hiscox and Hayden Berkers have made significant contributions to the developed approaches.

Others attending will be:

Laurence Pidcock

Alison Murray

Andrew McLean (external procurement specialist on the School Bus procurement Governance Board)

Jono Gear and myself.

The aim of the meeting is to either gain endorsement for both alternative approaches, or to redevelop them to a degree that satisfies the meeting of their suitability and feasibility.

Thanks and regards

James

Andy Smith

From: James Meffan
Sent: Tuesday, 11 February 2020 9:43 a.m.
To: Jonathon Gear; Delaney Myers
Subject: Option pros and cons

Hi both,

Can you please think about the best way to formulate pros and cons for tomorrow's Minister's briefing for the four options in that paper? I think we want to limit ourselves to approximately 4 max points in any cell.

Thanks

James

Option	Pros	Cons
1: Direct negotiate based on revenue with Ministry	<ul style="list-style-type: none"> Assures highest number of incumbents of securing existing work (50 of 61) Simple test of eligibility 	<ul style="list-style-type: none"> Revenue with Ministry not a reliable indicator of total business size Backlash expected from large operators (incl. legal action), new entrants, and small operators with growth aspirations
2: Direct negotiate using "small" and "regional" criteria (+ reliance on Ministry business)	<ul style="list-style-type: none"> Assures all incumbent small, regional businesses with high reliance on Ministry of securing existing work (30 of 61) More defensible eligibility test for direct appointment 	<ul style="list-style-type: none"> Test for reliance on Ministry business (30% of total revenue) somewhat arbitrary Backlash expected from large operators (incl. legal action), new entrants, and small operators with growth aspirations
3: Direct negotiate based on current no. of routes held (< 10)	<ul style="list-style-type: none"> Assures all incumbent operators with fewer than 10 routes of securing existing work (40 of 61) Simple test of eligibility 	<ul style="list-style-type: none"> No. of routes with Ministry not a reliable indicator of business reliance on Ministry work Backlash expected from large operators (incl. legal action), new entrants, and small operators with growth aspirations
4: Two tenders, the first configured to only attract small, regional operators	<ul style="list-style-type: none"> Allows opportunities for new entrants and incumbents with growth aspirations denied under options 1-3 Retains some degree of competition in both tenders, ensuring regional businesses are rewarded for service quality improvements and good management Provides good defence for Ministry against claims of arbitrariness and anti-competitive behaviour 	<ul style="list-style-type: none"> A different procurement approach from that socialised with Cabinet (may require a return to Cabinet for approval) Number of small regional incumbents who win back their work will be unknown until conclusion of the process

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Andy Smith

From: Patrick Bodzak
Sent: Monday, 2 March 2020 8:48 a.m.
To: James Meffan
Cc: Katherine Littler
Subject: Exemption and the two tender approach

James,

To the question asked of whether an exemption would be required now that we are proceeding with a two tender approach and not direct sourcing –

Looking at the Rules I think this procurement falls under the allowable Rules provision of 'Restructuring large contracts into smaller lots'.

This is under Rule 9 Non-Avoidance. This rule mostly stifles agencies from trying to split a 100k + procurement into two smaller lots, each of which would then be under \$100k and thus would not need to comply with the Rules.

The rule mentions **publish a tender with multiple subcategories**, but I think our two tender / two stage procurement structure falls in line with this.

Under Rule 9:

1. *An agency must not intentionally avoid applying the Rules when planning for, valuing or undertaking a procurement.*
2. *When calculating a procurement's maximum total estimated value (Rule 8), an agency must not intentionally avoid applying the Rules by either:*

a. designing, structuring or dividing a procurement into separate parts

b. using a non-standard or alternative value

*After conducting market analyses, you might decide to restructure the work into separate lots and **publish a tender with multiple subcategories**. You should then indicate in your Notice of Procurement the possibility, or your intention, that the procurement may be awarded in separate lots.*

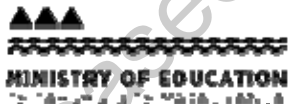
***Restructuring large contracts into smaller lots** can be helpful for small New Zealand businesses that may not be able to compete for one large contract. For instance instead of choosing one supplier who is able to deliver a national contract, you could split a contract by region and contract with multiple small regional businesses. However, you must not split a procurement with the intent to avoid applying the Rules.*

Patrick Bodzak | Senior Procurement Leader - Contractor

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Andy Smith

From: Patrick Bodzak
Sent: Monday, 16 March 2020 1:32 p.m.
To: Anna Bartup; Katherine Littler
Subject: RE: Random thought I had about the school transport tender

Yes, this is something that will be updated, together with that now we have tech routes in tender 1 as well.

Patrick Bodzak | Senior Procurement Leader - Contractor
 DDI 9(2)(a) | Mobile 9(2)(a)

From: Anna Bartup
Sent: Monday, 16 March 2020 1:27 PM
To: Patrick Bodzak <Patrick.Bodzak@education.govt.nz>; Katherine Littler <Katherine.Littler@education.govt.nz>
Subject: RE: Random thought I had about the school transport tender

All good. So we must have decided against this bit (from page 8) of the 2-stage explanation?

- If a supplier is awarded Daily Route(s) through Tender 1 but chooses not accept the award, those Daily Routes will be made available in Tender 2, and the supplier will be eligible to participate in Tender 2. **The Ministry will not attempt to select the next best outcome to award all routes available in this round.**

Anna Bartup | Technical Writer | Procurement
 DDI 9(2)(a) | Mobile 9(2)(a)

From: Patrick Bodzak
Sent: Monday, 16 March 2020 1:18 PM
To: Anna Bartup <Anna.Bartup@education.govt.nz>; Katherine Littler <Katherine.Littler@education.govt.nz>
Subject: RE: Random thought I had about the school transport tender

Hi Anna, good catch.

If a successful supplier decides not to accept the routes awarded via tender 1, our process would then allocate routes (either the same routes or different ones) to other suppliers based on highest public value.

So if two Routes were available and Supplier 1 scored 90% for both and decided not to accept, Supplier 2, who scored 85% for both, would get the option to accept.

If Supplier 2 bid for two different Routes with a score of 85%, then Supplier 2 would be given the option to accept those two different routes.

Patrick

Patrick Bodzak | Senior Procurement Leader - Contractor
 DD 9(2)(a) | Mobile 9(2)(a)

From: Anna Bartup
Sent: Monday, 16 March 2020 8:45 AM
To: Katherine Littler <Katherine.Littler@education.govt.nz>; Patrick Bodzak <Patrick.Bodzak@education.govt.nz>
Subject: Random thought I had about the school transport tender

Hi there,

I'm sure your probity advisor has thought of this, but it occurred to me this morning that unscrupulous bigger school transport providers could participate in Tender 1 just to oust the smaller players.

They could put in a tender, succeed and then choose not to enter into a contract with the Ministry. The Tender 1 Routes would then be grouped into the Tender 2 Route Groups and the supplier who did not enter into a contract with us would still be eligible to bid for them as part of a Route Group or Region. Maybe motivated by trying to get a monopoly in the Region.

Not sure what the likelihood of such a thing happening would be. And maybe if they tried it, we could exclude them on the grounds that their behaviour materially diminishes our trust and confidence in them anyway (if we could prove they did it intentionally and with that purpose in mind).

But thought I'd mention it just in case it hasn't been raised as a risk before now,

Kind regards

Anna Bartup | Technical Writer | Procurement
DDI 9(2)(a) | Mobile 9(2)(a)
The Terrace, Wellington, 22

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Andy Smith

From: Jonathon Gear
Sent: Thursday, 19 March 2020 11:23 a.m.
To: 'Arbuckle, Tim'; Patrick Bodzak; James Meffan
Subject: RE: School Bus Procurement Challenge session

Hi Patrick,

I have talked through this with Tim. Can you please make the following change to the plan in red before it is sent out?

9(2)(j)



9(2)(j)




9(2)(j)



Jonathon Gear | Senior Commercial Advisor - Contractor
Mobile 9(2)(a)

From: Arbuckle, Tim [mailto:tarbuckle@deloitte.com.au]
Sent: Thursday, 19 March 2020 10:38 AM
To: Jonathon Gear <Jonathon.Gear@education.govt.nz>; Patrick Bodzak <Patrick.Bodzak@education.govt.nz>; James Meffan <James.Meffan@education.govt.nz>
Subject: RE:School Bus Procurement Challenge session

Hi Jonathan, this looks good. One thing – 9(2)(j)



Regards, Tim

Tim Aruckle
M (New Zealand): 9(2)(a) | M (Australia): 9(2)(a)

From: Jonathon Gear <Jonathon.Gear@education.govt.nz>
Sent: Wednesday, 18 March 2020 10:30 AM
To: Arbuckle, Tim <tarbuckle@deloitte.com.au>; Patrick Bodzak <Patrick.Bodzak@education.govt.nz>; James Meffan <James.Meffan@education.govt.nz>
Subject: [EXT]RE: School Bus Procurement Challenge session

Thanks Tim, we will make changes to the plan to reflect your feedback.

One of the comments you made was with regards to the tender 1 methodology. I have revised the words as below. Does this make more sense? This is my interpretation of the discussion we had back in January about how we would compare public value/value for money in tender 1 across tenders for routes with different characteristics.

9(2)(j)

9(2)(j)

Jonathon Gear | Senior Commercial Advisor - Contractor
Mobile 9(2)(a)

From: Arbuckle, Tim [<mailto:tarbuckle@deloitte.com.au>]
Sent: Tuesday, 17 March 2020 3:07 PM
To: Patrick Bodzak <Patrick.Bodzak@education.govt.nz>; James Meffan <James.Meffan@education.govt.nz>; Jonathon Gear <Jonathon.Gear@education.govt.nz>
Subject: RE:School Bus Procurement Challenge session

Hi Patrick, James and Jonathan, please find attached the Plan with my comments added. I have reviewed the body but not the appendices. Regards, Tim

Tim Aruckle
M (New Zealand): 9(2)(a) | M (Australia): 9(2)(a)

From: Patrick Bodzak <Patrick.Bodzak@education.govt.nz>
Sent: Friday, 13 March 2020 4:21 PM

To: James Meffan <James.Meffan@education.govt.nz>; Rob Campbell <Rob.Campbell@education.govt.nz>; Alison Murray <Alison.Murray@education.govt.nz>; Mei Fern Johnson <meifern.johnson@russellmcveagh.com>; Arbuckle, Tim <tarbuckle@deloitte.com.au>; Hayden Berkers <Hayden.Berkers@mbie.govt.nz>; Martin Richardson <Martin.Richardson@auditnz.govt.nz>; Jonathon Gear <Jonathon.Gear@education.govt.nz>; Wendy Goldswain <Wendy.Goldswain@education.govt.nz>; Emily Chick <Emily.Chick@education.govt.nz>

Subject: [EXT]RE: School Bus Procurement Challenge session

Good Afternoon,

I have attached the draft School Bus Procurement **Procurement Plan** for your review before Monday's meeting. Please treat this document as commercial-in-confidence.

Patrick

Patrick Bodzak | Senior Procurement Leader - Contractor
DDI 9(2)(a) Mobile 9(2)(a)

-----Original Appointment-----

From: James Meffan

Sent: Monday, 9 March 2020 8:15 AM

To: James Meffan; Rob Campbell; Alison Murray; Mei Fern Johnson; Arbuckle, Tim; Hayden Berkers; Martin Richardson; Jonathon Gear; Patrick Bodzak; Wendy Goldswain; Emily Chick

Subject: School Bus Procurement Challenge session

When: Monday, 16 March 2020 10:30 AM-12:00 PM (UTC+12:00) Auckland, Wellington.

Where: RM Wn MH 1.07 (20)

The purpose of this meeting is to review the Ministry of Education's proposed two tender approach to School Bus procurement in order to identify design flaws, risks and opportunities for enhancement or improvement.

The primary primary output will be an updated risk register, however we are also looking for opportunities to fine tune the approach and modify it as appropriate.

Further supporting/preparatory documents will be sent out later in the week.

Thanks and regards

james

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