



Public Transport Operating Model Procurement - Probity Plan (Bus)

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Approvals

This document requires the following approvals.

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1. Introduction

Following the adoption of the Wellington Regional Public Transport Plan ('RPTP'), the Greater Wellington Regional Council ('GWRC') is implementing the Public Transport Operating Model ('PTOM') in the greater Wellington region under the Land Transport Management Act 2003. A key element of the PTOM implementation is the appointment and selection of operators for Bus Units. This Probity Plan will be implemented for the competitive selection process and the completion of the non-competitive appointment process for some Bus Units ('Project').

1.1 Purpose

This Plan is an operational document. Its primary purpose is to identify and document the key probity risks which arise in relation to the bus procurement; the steps which will be taken to mitigate the risks, and the intended outcomes.

In doing so, the Plan also records a number of project-specific probity controls.

The Plan sits under, and should be read in conjunction with, the Probity Framework for the overall PTOM project. The Framework is also posted on GWRC's website on the PTOM page <http://www.gw.govt.nz/bus-contracts/> and describes:

- The meaning of probity (which is a discipline designed to ensure ethical behaviour and procedural integrity in public sector procurement and related processes)
- The principles and method for managing probity in public sector procurements
- The organisational arrangements for the PTOM project, including the systems and responsibilities for managing probity risks
- The principles and processes applicable to the management of conflicts of interest and hospitality/lobbying risks across the PTOM project
- The sources of key probity documentation, including forms and templates and a description the roles of the PTOM Project's Probity Adviser and Probity Auditor
- The relationship between the Framework and this project-specific Probity Plan (Bus).

1.2 Context: the PTOM and the bus procurement

Section 1.1 of the Probity Framework describes the PTOM project in general terms. One of the major components of the PTOM model is the allocation of bus services to operational units ('Bus Units') (as defined and categorised under the Land Transport Management Act 2003).

Each Bus Unit is made up of a service route or group of service routes and each Bus Unit is delivered through a separate operating contract. There are 16 operational Bus Units in total.

There are five incumbent operators in the Greater Wellington Region: New Zealand Bus Ltd, and its associated bus companies ('NZ Bus'), Mana Coach

Services Ltd, and its associated bus companies ('Mana'), Tranzit Group Ltd, Madge Coachlines Ltd and Classic Coaches Ltd.

In accordance with the transitional 'like for like' rule of PTOM, GWRC has recognised those operators which have provided (non-exempt) registered commercial services (as they were defined under the Public Transport Management Act 2008) as at 30 June 2011. NZ Bus (with 73% market share) and Mana (with 24%) are the only two of the incumbent operators which had significant registered commercial services as at 30 June 2011. (Tranzit, with 2% market share, had registered commercial (school) services of 40,465 in-service kilometres as at 30 June 2011, but was not offered a Bus Unit as the registered in-service kilometres were too low.)

At the date of this Plan coming into effect, GWRC had made one-off offers of Bus Units to NZ Bus and Mana on a direct appointment basis (including 'like for like' units), in advance of a contested tender process for the remaining Bus Units. The appointments were offered for Bus Units further to the 'like for like' units (referred to in this Plan as directly appointed units or 'DAUs') totalling an equivalent number of in-service kilometres to the total in-service kilometres that were operated as registered commercial services. These DAUs have been offered to NZ Bus and Mana on the basis of the terms and conditions of the Partnering Contract that the Bus Unit tenders have been sought.

GWRC has entered into separate negotiations with NZ Bus regarding the provision of bus services following the cessation of the trolley bus contract in June 2017 and until the commencement of services under PTOM in July 2018. The outcomes of these negotiations may be taken into account in reaching agreement between GWRC and NZ Bus on the pricing of NZ Bus' direct appointed units.

The extent of the DAU offers (including those offered in addition to the required 'like for like' units) is subject to GWRC remaining confident that it has sufficient Bus Units of a scale and nature that will be attractive to competitors, and that it can achieve efficient prices through a mixed approach of negotiation and tendering.

1.3 Summary of probity risks

Description of issues

GWRC is a significant purchaser of metropolitan bus services and therefore has a vested interest in the competitiveness of the supply market long-term, not just in the pending tender round but also in future tender rounds.

To provide for ongoing competition and maintain sufficient supplier depth in the bus services market for Wellington, GWRC needs to create conditions where both incumbent and new entrants are willing to participate in the procurement. GWRC also needs to take into account the potential imbalances of power in the market, and consider ways to ensure that neither new entrants nor incumbents are advantaged or disadvantaged. This requires GWRC's Procurement Strategy to ensure reasonable access to market opportunities and

prioritise fair competition, and to balance short and long term impacts on budget and the market.

These market characteristics create inherent probity risks, in terms of ensuring that the tender processes which GWRC runs (both across the PTOM implementation process and in relation to each type of transport service) ensure equality of opportunity and fair treatment of all Tenderers.

The risks are heightened by the need for GWRC, under the PTOM model, to have made DAU offers to the incumbent operators at an early stage when the details of the opportunity for the remaining Bus Units, and the contractual terms (which will also apply to the DAU contracts), were relatively undeveloped. Moreover, the nature of the procurement process (possibly resulting in tenders being received from multiple providers and contracts potentially being awarded to multiple providers) requires that GWRC approaches the market with a predetermined contractual position, rather than allowing Tenderers to propose contract departures or anticipating that changes to the contract would be made through negotiation with preferred operators.

In order to finalise the terms of the Request for Tenders ('RFT'), including the contract, and the evaluation criteria (including those designed to maintain competitiveness in the supplier market), these factors have necessitated a process of extensive engagement with existing and potential operators to obtain feedback on GWRC's intended approach.

The RFT will also establish a procurement process with a significant level of interactivity between GWRC and prospective Tenderers leading up to tender submission date. This will include an opportunity for each prospective Tenderer to meet with GWRC in individual interactive meetings, on an in-confidence basis, to discuss specific points of clarification about the RFT and potential alternative tenders. Other interactions may be necessary (for example to seek clarification) during the tender evaluation process. This Plan provides for the management of such interactions consistent with good practice for the type of procurement process involved.

The high degree of complexity, especially that arising from the Bus Units being tendered at one time and other features of the procurement process, requires controls to ensure accuracy and fairness in the processes of individual tender evaluation and selection of preferred Tenderers.

Required outcomes

This Plan needs to enable two fundamental outcomes for the procurement process to be met:

- The specification for the tendered Bus Units, and the contractual terms for all of the Bus Units, must be developed and structured in a manner that acknowledges the existing and future incumbency arrangements, but does not erode equality of opportunity or the ability to run a fair tender process. Part 2 of this Plan addresses the achievement of that outcome in probity terms.

- The feedback required from the market to develop the specification and contractual terms, to a point where they are ready to be put to the market, must be obtained in a manner that avoids perceptions of unequal influence or favouritism (for example, of incumbent operators over new entrants, or vice versa) and encourages innovation (including through alternative tenders that are capable of being submitted, and evaluated, without scope for contract departures). Part 3 of this Plan addresses the achievement of that outcome.

In addition, the procurement process needs to be managed in a way that meets standard public sector probity expectations, including in respect of:

- Clarity in relation to GWRC's intended outcomes from the process, and how tenders will be evaluated, so that the same commercial incentives will apply to all Tenderers
- Communications management (especially the segregation of 'business as usual' interactions with the incumbent operators from communications relating to the directly appointed and contested appointment processes for the new Bus Units, addressed in Part 4)
- Conflict of interest management and management of risks arising from communications with potential Tenderers (addressed in Part 5, but refer also to section 3 of the Probity Framework)
- Information and document management (addressed in Part 6)
- The rules of the tender process to ensure fairness and integrity in accordance with the principles of the Probity Framework (addressed in Part 7)
- The conduct of the tender evaluation and Tenderer selection processes.

1.4 Roles and responsibilities, probity risk management

Implementation of this Plan is the responsibility of the Programme Director Bus Services Transformation ('Programme Director'), under the oversight of the PTOM Probity Sub-Committee and with support and advice from the Probity Adviser. However, team members are also responsible for monitoring and assessing probity risks in their areas, in accordance with the Framework. Project team members are all responsible for ensuring effective implementation of the Probity Plan in each work stream.

Where new probity risks arise, the Programme Director will be responsible for seeking advice from the Probity Adviser. The description of the issue/s, the outcome/s sought and the practical step/s to be taken to mitigate the risk/s, will then be added to this Probity Plan.

2. Development of the specification and contract

2.1 Description of issues

GWRC faces challenges in structuring the specification and the contract in a manner that:

- Promotes competition, given that GWRC does not yet know if there will be bundled bids or bids by consortiums and how these will affect the Procurement Strategy, the Tender Evaluation Plan and GWRC's approach to market concentration, and consequently the RFT
- Prevents the extensive incumbency advantages (including access to staff, fleet, depots, ticketing arrangements, interchanges, and on-road facilities) from resulting in significant barriers to entry for new operators, or giving undue favouritism to incumbent operators
- Avoids perceptions that the specification has been overly influenced by the wish to attract new operators to the market.

Addressing and balancing these challenges is primarily a procurement design issue (ie, ensuring that the procurement process reduces barriers to entry while also promoting competition, as described in section 1.3). However, it also has probity dimensions in the sense that the principles of good probity management (see section 2.2 of the Probity Framework) emphasise the need to:

- Manage probity to optimise competition and drive the achievement of best value
- Ensure that processes are transparent, well defined and documented
- Ensure that unfair advantages and disadvantages are identified and addressed.

The risk in probity terms is that the measures aimed at enhancing opportunity for new operators will be developed on a basis that are (or may be perceived as) subjective or unfair to incumbents.

Moreover, GWRC will not be able to easily change its approach to the tender evaluation and market concentration after the RFT is released to the market.

2.2 Outcomes

The intended outcome of managing the probity risks (outlined in 1.3) is that the design of the tender process and the evaluation approach, and the contractual terms and conditions which will apply to all Bus Units (both contested and DAUs), provide clear incentives to participants; and can be shown objectively to maximise competition, preserve long term competition, and provide the platform for a fair and objective evaluation of tenders.

2.3 Practical Steps

The practical steps to manage the issues associated with the development of the specification and contract (outlined in 2.1) will be to ensure that the market-driven provisions and contractual terms are:

- Appropriately documented, to demonstrate that GWRC's approach is driven by GWRC's stated objectives and the intended outcomes (for example, through a policy on market concentration to ensure a reasonable level of supplier depth is maintained in the Wellington market) and minimises the risk of perceptions of subjectivity or favouritism

- Developed using appropriate expert input (including independent advisers)
- Made the subject of market feedback through the processes documented in section 3 below
- Communicated in a transparent manner, with rationale provided for GWRC's decisions.

3. Market engagement and consultation

3.1 Description of issues

GWRC sought industry feedback before finalising its Procurement Strategy. Before the RFT was issued:

- An industry briefing has been held, followed by one-on-one meetings with existing and potential operators to give operators the opportunity to ask questions which they may not be comfortable asking in an open forum, and an opportunity for written submissions
- An industry feedback document has been circulated for written submissions, resulting in a revised procurement approach made available to participants together with other information including vehicle quality standards
- A first round of feedback on GWRC's intended Partnering Agreement (containing contract terms) has been obtained in writing from participating existing and potential operators, followed by opportunities for two rounds of interactive meetings with each participant (which included discussion of potential areas for alternative tenders)
- A second round of feedback on GWRC's intended contract has been obtained in writing from operators who wished to provide further feedback.

Failure by GWRC to manage the market engagement and consultation process outlined above for the Procurement Strategy effectively, has the potential to distort the subsequent procurement process, for example through operator 'capture' in the design of the Procurement Strategy, which has the potential to create an unfair or improper advantage for an incumbent operator, or disadvantage for a non-incumbent operator, or *vice versa*.

3.2 Outcomes

The intended outcome of market engagement and the consultation process is that GWRC is able to engage with the market in a manner that:

- Enables GWRC to design the specification and evaluation criteria for the contested Bus Units to ensure best value for money and meet other objectives such as those in relation to promoting competition etc
- Is transparent, gains the confidence of operators and potential operators, creates clearly understood commercial incentives, and maintains their interest to participate in the RFT process, thereby enhancing competition
- Encourages innovation, while at the same time providing certainty and consistency of contractual terms

- Avoids any party gaining an additional opportunity to influence the design process of the specification, contract, and evaluation, beyond those offered to all market participants
- Reduces the risk of legal or other forms of challenge.

3.3 Practical steps

Practical steps to manage the market engagement and consultation issues (outlined in 3.1) have included, and will continue to include:

- Early publication of the Bus Units available for tender
- Stipulating at the outset that the incumbent operators will be required to submit DAU prices according to stated pricing principles, so as to avoid incumbent operators loading overhead costs into DAU prices
- Where information disclosure to incumbents is considered appropriate prior to industry-wide publication (to proactively manage legal risks and maintain ongoing relationships):
 - Ensuring appropriate controls over such disclosures (including probity oversight of meetings)
 - Minimising the time between such disclosures and disclosure to the wider market
- Providing extensive information through the open industry briefing (including a probity briefing to participants), and ensuring that subsequent disclosures to participants include any specific information about the future provisions of the bus service (other than operator-specific information) that has previously been made available to incumbent operators in their capacity as such
- Limiting initial one-on-one discussions with incumbents and the industry to clarifying information which GWRC is releasing to the market; restricting the number of attendees; ensuring each meeting runs for a similar time and has a similar structure and topic coverage; and probity specialists present at all meetings
- Designing a structured industry feedback and contract development process, and making participation conditional on the completion of a formal deed of participation (which includes acknowledgment of probity controls and undertakings as to confidentiality)
- Engaging industry experts (staff and consultants) who have the subject matter expertise to vet the information provided by operators and make recommendations independently on the strategy for the process and on scope
- Developing a Tender Participation and Transition Deed ('TPTD') with the incumbent bus operators containing provisions which reinforce that GWRC will not advantage or disadvantage incumbent operators over any other Tenderers.

4. Ongoing communications and other engagement with incumbent operators and other stakeholders

4.1 Description of issues

As part of a robust procurement process, GWRC needs to maintain an appropriately high level of industry interest in the market, while managing the existing networks and ‘business as usual’ relationships with incumbent operators. It is important to ensure that the effective management of incumbent operators does not impact adversely on the procurement of the new Bus Units.

GWRC also needs to ensure that other stakeholders, in particular the New Zealand Transport Agency, remain involved with the project to the extent their responsibilities require and/or that sufficient information is made available to them for their purposes.

4.2 Outcomes

The intended outcomes of ongoing communications and other engagement with incumbent operators and stakeholders are that:

- Information pertaining to the Bus Units, and the procurement of the Bus Units, is managed in accordance with defined protocols and best practice so that the integrity of the processes is maintained and no person gains an improper or unfair advantage over another
- There is clear separation of ‘business as usual’ communications (including discussions on transitional arrangements) with incumbent operators from information that may be pertinent to the contracting of a Bus Unit
- GWRC is able to obtain all information it requires from incumbent operators for the purpose of designing its Procurement Strategy and successfully completing the RFT process (including the question and answer process and any interactive meetings)
- All stakeholder relationships and information needs are managed in a manner that is transparent and meets the needs of GWRC in relation to the Project.

4.3 Practical steps

Practical steps to manage the ongoing communication and engagement issues (outlined in 4.1) will include:

- Separation of the personnel involved in the RFT process from those involved in ‘business as usual’ communications with incumbent operators where possible and practical; and the use of the conflict of interest process to manage any situation where complete separation is not possible and practical and GWRC’s policy on Sensitive Expenditure Policy (including gifts and invitations) to ensure transparency and avoid perceptions of favouritism (see part 5 below);
- The TPTD will require incumbent operators to provide:
 - A Access to information that GWRC will require to develop the RFT documentation

- GWRC with information to assist in providing answers to questions that will be received from Tenderers during the preparation of their tenders and during any interactive tender processes
- Communications with the Transport Agency will be included in discussions as to the development of GWRC's approach to implementation of PTOM for bus, enabling the Agency's expectations to be taken into account and the Agency to understand the background to GWRC's approach when reviewing its Procurement Strategy and RFT documentation for endorsement
- Communications with other stakeholders, for example, territorial authorities in the Wellington region and unions, are managed appropriately.

5. Conflict of interest management, and management of risks arising from communications with potential Tenderers

5.1 Description of issues

Conflict of interest management is a key element of any public sector consultation or procurement process. The Probity Framework sets out the guiding principles and policies for the declaration of interests by Participants in the Project.

The Project has attracted widespread interest, not only from the incumbent operators but also from potential new operators. Because of the potential competitiveness of the market, and the complexity of ensuring incumbents are neither advantaged or disadvantaged as discussed elsewhere in this Plan (see in particular Parts 1 and 3), there are risks that parties may:

- Seek information about the Project in inappropriate ways
- Fail to understand that the provision of hospitality or gifts of any kind (including in but not limited to the context of existing relationships with GWRC) is not appropriate
- Seek to lobby councillors or senior staff, in advance of (or during) any formal procurement processes.

It is correspondingly important that all participants involved with the procurement process (including Tenderers and their personnel, and GWRC personnel in all levels of the organisation from councillors to operational staff, and including contractors and external advisers) are aware of these risks.

Conflict of role issues may also arise with some of GWRC's stakeholders, in particular the Transport Agency which, as well as having an involvement as funder in the procurement process (including endorsing the Procurement Strategy and RFT documentation), also maintains regulatory relationships with existing operators (both in Wellington and elsewhere). One element of controlling access to information by Tenderers outside the established

procurement processes (see section 6 below) is the need to identify, declare, and manage those conflicts of role.

Public sector expectations in these areas are very high, and any form of inappropriate conduct or a failure to disclose an interest or a communication, can give rise to significant reputational or legal risk for GWRC.

5.2 Outcomes

Conflicts of interest or role, hospitality, gifts, and associated communications are managed to accepted public sector standards, using the systems and processes documented in the Probity Framework and managed in accordance with GWRC's Sensitive Expenditure Policy (including gifts and invitations).

5.3 Practical steps

Practical steps to manage the issues arising from communications with potential Tenderers (outlined in 5.1) have included, and will continue to include:

- Using the Probity Adviser to assist with all conflict of interest management and to advise on any other related probity risks, and the Probity Auditor to provide assurance
- Probity briefings to all personnel (including councillors) about the importance of public sector standards being maintained and the need to disclose all relevant interests and communications with operators and potential operators, and in particular to ensure that senior GWRC managers and councillors are made aware of, and are in a position to control responses to, approaches from existing or potential operators (or their representatives) in relation to the Project
- Probity briefing to all participants at the industry briefing, reinforced through the Deed of Participation for the feedback process and (for incumbent operators) the TPTD
- Ensuring all staff involved in the Project (including external advisers) have completed an interests declaration form and confidentiality declaration, and that declarations are assessed and refreshed at appropriate intervals based on specific information about RFT participants and their personnel
- Taking full account of disclosed interests when selecting those to be involved in the tender evaluation and selection processes, and ensuring sufficient numbers of independent personnel when necessary in accordance with the Probity Framework
- Applying GWRC's Sensitive Expenditure Policy (including gifts and invitations) on the receipt of gifts and hospitality, on a basis that prohibits any PTOM project staff from receiving gifts or hospitality from the date of this Plan to the conclusion of the procurement process
- Active management of the register of communications, gifts, and hospitality (Appendix 5 of the Probity Framework and as required in the GWRC Sensitive Expenditure (including gifts and invitations) Policy), to ensure that communications with existing and potential operators and their personnel, outside formal procurement processes and any offers of gifts or hospitality from an existing or potential operator in the period from the

date of this Plan to the conclusion of the process, are disclosed and managed appropriately

- Documenting protocols with the Transport Agency, ensuring that conflicts of interest or role arising in relation to its personnel are identified and managed by the Agency, to the satisfaction of GWRC in order to ensure protection of its confidential information; and
- Responsibility for managing these systems rests with the Programme Director.

6. Information and document management

6.1 Description of issues

Information management is a key element of any procurement process. The probity principles set out in the Probity Framework include the following principle:

Confidentiality and security

- Confidences are respected, within clearly understood and documented limits
- Information is safeguarded.

There is a need to give effect to that principle in the bus procurement process. The principle recognises that there is a need to control information flows in relation to a procurement (in particular, by ensuring that all information relevant to the procurement is channelled through the RFT and the disclosure processes established by it, and that information of a confidential nature supplied by a participant is stored and managed appropriately). This is important for maintaining fairness in the procurement process, as well as for purposes of accountability and to meet legal requirements.

Particular information risks arise because of the need for GWRC to continue managing existing contracts with incumbent operators, and to undertake associated functions including policy development and stakeholder engagement, while a major procurement activity is going on. This requires restrictions on who should be able to access information that is relevant to the procurement process.

Other risks arise from the involvement of stakeholders such as the Transport Agency in GWRC's procurement processes (see section 5.1 above). It is important to ensure adequate controls are in place to ensure confidentiality of GWRC information that comes into the Agency's possession.

Other information needs (including Councillors, the Ministry of Transport, the media, and the general public) also need to be managed in a way that keeps people appropriately informed but preserves the integrity of the procurement process.

6.2 Outcomes

Information relating to the Bus Unit procurement process is managed and controlled in a way that protects the integrity of the procurement process and ensures fairness, transparency, and accountability.

6.3 Practical steps

Practical steps to manage these issues have included, and will continue to include:

- The Programme Director is responsible for information management in the Project, and for the implementation of the information and document management protocols set out in this section of the Plan
- The Programme Director maintains a filing system that contains all procurement documentation and other published information relevant to the Project. On completion of the Project, the Programme Director will ensure that all files for the Project are secured for the period and in the manner required by the Public Records Act 2005
- GWRC considers and keeps a record of identified information of relevance and significance to the tender process that has been released to incumbent operators since the release of the RPTP. If any information that could provide an undue advantage to incumbents were to come to light, GWRC would undertake to provide this information to all participants at an appropriate time.
- The information and document management protocols set out in Appendix 1 of this Plan apply to all 'Participants' in the Project, defined as anyone who:
 - Is a member of, or an adviser to, the PTTP Governance Group, the PTTP Steering Group, the Project team, the Project, an evaluation team, a decision making group (including the elected members) or any other group established for the purpose of or associated with the Project; or
 - Possesses information relevant to the Project and has a role of making decisions in relation to, overseeing, or otherwise assisting the Project or the Project team.

Other steps to be taken will include:

- Communication with Councillors – throughout GWRC's bus procurement Councillors will be kept apprised of progress against timelines and provided with appropriate information about the process to the extent that probity is not compromised by doing so
- Communication with the media and general public – GWRC may make a media statement advising that the PTOM procurement process has commenced and when contracts are signed with selected operators.
- Appropriate protocols about LGOIMA requests ensuring decisions are made in accordance with the Act but with due regard for GWRC's objectives from the procurement process and the need to apply principles

in relation to probity and confidentiality. All LGOIMA requests are to be referred to the Programme Director

- Information shared with the Transport Agency (see section 4.3) will be subject to the requirements of the confidentiality agreement between GWRC, the Agency, and Auckland Transport
- GWRC's terms and conditions of tender will constrain operators from providing information to the media in relation to the tenders.

7. Maintaining probity during procurement processes

7.1 Description of issue

To maintain the integrity of the procurement process and the eventual outcome, processes must be well defined, documented and applied consistently.

Probity risks must be assessed and managed in relation to the RFT process itself so that fairness and integrity can be assured in the process. In particular, interactive meetings with prospective Tenderers, and communications with Tenderers during the evaluation process, will be the subject of controls and rules.

Councillors and other stakeholders (including the public) may need assurance over the manner in which the documented systems and controls have been put into effect.

Information will need to be available to Tenderers during the tender preparation period, using robust Q&A processes and on a basis that protects confidentiality.

The evaluation methodology will be applied in a manner that ensures the accuracy and integrity of data inputs and processing. This will include checks and audits of data input throughout the process to provide the necessary level of comfort to the Tender Selection Group in relation to the outcome

7.2 Outcomes

The intended outcomes of this Part are that:

- GWRC is able to conduct the bus procurement process in accordance with public sector standards and GWRC's legal obligations
- Information is available to Tenderers on an equal basis, in a manner that ensures fairness of the procurement process
- The process can be designed and implemented in a manner that will in turn optimise competition and drive the achievement of best value
- Councillors and other stakeholders (including the public) have assurance that the procurement is conducted in a manner that meets public sector expectations and minimises legal and reputational risk
- Current bus services are unaffected.

7.3 Practical steps

Practical steps to manage these issues will include:

- Application of the protocols set out in Appendix 2 in the design of the RFT process, and inclusion in the Procurement Strategy and other procurement documentation
- Use of protocols in relation to interactive meetings to ensure that the RFT is fully understood and opportunities for alternative tenders are maximised while also treating prospective Tenderers fairly and protecting confidential information, drawing on the advice of the Probity Adviser and in consultation with the rail operator procurement team and the Probity Auditor
- This Plan to be further updated if necessary following tender submission and before the evaluation process begins, to ensure that it addresses the full range of probity risks in relation to the process
- The terms of engagement of the Probity Auditor to include providing real time assurance over the implementation of the procurement processes
- Establishment of a data room facility to ensure controlled access by Tenderers to RFT information
- Writing of the Tender Evaluation and Selection Plan before the publication of the RFT, with alterations able to be made to the Tender Evaluation and Selection Plan up until the closing date for tenders
- Use of the TPTD to ensure that all necessary information can be provided by incumbent operators in a timely manner and made available to all Tenderers
- Probity briefings throughout the process and to all members of tender evaluation and selection teams before commencing evaluation activities.

Appendix 1: Information and document management protocols

Definitions

In these protocols, 'Participant' means anyone who:

- Is a member of, or an adviser to, the PTPP Governance Group, the PTPP Steering Group, the Project team, the Project, an evaluation team, a decision making group (including any elected members) or any other group established for the purpose of or associated with the Project; or
- Possesses information relevant to the Project and has a role of making recommendations or decisions in relation to, or overseeing, or otherwise assisting, the Project or the Project team.

The following information is controlled by these protocols (and described as 'Controlled Information'):

- Any document or other information relating to the Project or GWRC that is, or would be, or could reasonably be thought to be relevant to:
 - An existing or potential operator deciding whether or not to seek a contract for a public transport Bus Unit (whether by a competitive process or otherwise)
 - An existing or potential operator preparing and submitting a response to any procurement documentation¹
- Information in a Tenderer's response to any procurement documentation, or relating to GWRC's evaluation of any such response.

(The definition excludes information about GWRC or the Project made generally available to the public.)

Access to Controlled Information

Access is subject to legal requirements under LGOIMA.

A person who is not a Participant may not have access to Controlled Information unless authorised by the Programme Director.

The Programme Director must ensure that Participants only have access to Controlled Information to the minimum extent necessary to enable the efficient conduct of the Project.

All Participants must complete an Interest Declaration Form and Confidentiality Agreement in the form of Appendix 3 within:

¹ This Appendix uses the generic term 'procurement documentation' to describe any form of invitation to the market to submit an expression of interest, proposal, tender, or other form of response. The Plan also uses the generic terms 'response' and 'tenderer' to describe those operators that have responded, or may be considering or intending to respond, to any procurement documentation.

- 10 working days or whichever is the later of the date the approval of this plan or the date they become a part of the Project team; or
- Such other period as is approved by the Probity Sub-Committee.

Participants must not have access to any responses to procurement documentation until the Interest Declaration Form and Confidentiality Agreement referred to above has been signed and returned to the Programme Director.

Management of Controlled Information

Participants must ensure that documents in their position or control containing Controlled Information are:

- Kept in locked rooms and locked filing cabinets when not in use
- Not left unattended for any period at a place that is accessible by a person who is not a Participant
- Treated with care while being transported, for example, when documents are carried between buildings
- Not displayed at times or in places where they could be read by a person who is not a Participant
- Not made available to a person who is not a Participant.

A document containing Controlled Information must not be stored on a computer or portable digital memory storage facilities unless in the case of a:

- Stand-alone computer, access to the computer and the relevant documents and folders are password protected
- Networked computer where the document stored is on local hard-drive, and access to the computer is password protected
- Computer that can be accessed by modem, access to the computer via modem is password protected and access to the relevant documents and folders is automatically audit logged; or
- Network server or other network storage device, access to the relevant document and folders is password protected and access to the document and folders is automatically audit logged.

Access to a computer, document or folders will not be taken to be 'password protected' if:

- A computer is left unattended in a state where it can be accessed without the need to enter a password; or
- The required password is recorded on or near the computer or in some other obvious place.

If a fire evacuation 'alert' tone sounds when a Participant has documents in their possession containing Controlled Information and those documents are unsecured, they must immediately take steps as are reasonable in the circumstances to secure the documents.

Any Participant who wishes to dispose of a paper record containing Controlled Information must ensure that the record is shredded or placed in a locked confidential document disposal bin.

Controlled Information held in electronic form and electronic storage media (USB or storage device, disk packs, floppy disks, CDs, magnetic tapes) which are no longer required are to be considered as classified waste and are to be disposed of in an appropriate manner.

Appendix 2: Rules for conduct of RFT process

This Appendix sets out the basic rules that apply to the conduct of a procurement process.

Communications with Tenderers

Questions from Tenderers must be dealt with in accordance with the Probity Plan and the applicable procurement documentation.

The closing date for questions will be set out in the procurement documentation.

Any information that is not general public knowledge that is communicated to a Tenderer must be communicated to all Tenderers. No Tenderer should receive or be perceived to receive additional information to that of other Tenderers. Information will be supplied uniformly to ensure no Tenderer receives an advantage over another.

Requests by Tenderers for information to be dealt with in confidence shall be determined by the Programme Director. If it is determined that it is not appropriate for a matter to be dealt with in confidence the Tenderer will be given an opportunity to withdraw the request.

For requests for information or clarification that relate solely to a Tenderer's proposal, a clarification response will be provided to the Tenderer only.

At the end of the evaluation process, all unsuccessful Tenderers will be notified in writing.

Interactive meetings with prospective Tenderers

Opportunities for interactive meetings will be provided to each prospective Tenderer in accordance with the timetable specified in the RFT. The RFT will state clearly the purpose of interactive meetings, which will be limited to clarification of the RFT documentation and process and exploring possible alternative Tenders.

Real-time probity assurance will be provided in relation to all interactive meetings, which will be run according to documented probity controls and meeting processes.

Management of Tender responses

GWRC's suite of tender documents will include terms and conditions of the tender, an outline of the tender evaluation process (including relative weightings), PTOM Partnering Contract and tender response documents (returnables).

In order for a tender response to be considered compliant the Tenderer will be required to provide certain declarations and undertakings in relation to its tender by way of a Tenderer declaration, which will include confidentiality provisions and confirmation of no conflicts of interest.

At the closing date all tender responses will be logged and placed in secure storage for the duration of the process. The receipt of all tenders responses will be acknowledged immediately after the closing date. The probity auditor will be in attendance for the receipting process.

Evaluation of responses

Tender responses will be evaluated by Tender Evaluation Groups that collectively possess the necessary subject matter expertise.

The tender evaluation methodology (including the detail of weighting applying to price and quality attributes) will be endorsed in advance of the RFT publication by the NZTA and permission has been granted by the GWRC councillors to delegate the final approval of the documents to GWRC's Chief Executive.

The tender evaluation methodology will be outlined in the RFT documentation.

Record keeping

Minutes will be taken of all interactive meetings, and all meetings of the Tender Evaluation Groups, the Tender Selection Group, and any meetings with advisers.

The Programme Director will be responsible for maintaining a filing system where a record of all material discussions and decisions will be kept.

Recommendations

The Tender Evaluation Groups will submit their recommendations to the Tender Selection Group for approval. The Tender Selection Group will then seek GWRC councillors' endorsement to its recommendations.

Negotiations (if required)

Negotiations (if required) will be conducted by a negotiation team comprising persons approved by GWRC's Chief Executive, and subject to the terms of a Negotiation Plan approved by GWRC's Chief Executive prior to commencement of any negotiations.

Addenda 1 - added 15/12/15

Principles for Managing Risk Associated with Events – Emerging Technology

Electric and hybrid powered buses are an emerging technology in the bus industry. Greater Wellington Regional Council will work towards a zero emissions future with a long term goal of running a fully electric bus fleet through the Wellington region. This goal is reflected in the Wellington Bus Services Procurement Strategy. GWRC is very interested in and is actively keeping up to date with technological developments by attending events and showcases to view samples of new technology.

While GWRC is going through the tendering process for bus service contracts, attendance at events poses some risk that there may be a perception GWRC is focusing on or favouring a particular operator or technology.

To mitigate the risk associated with events the following protocol will be adhered to:

Communications for events to be carefully managed including where appropriate forwarding invitation to events to all Participants

- Update Participants of events that GWRC has attended to ensure transparency
- Provide a briefing to any members of GWRC outside of the bus team who are attending an event to reduce the risk that GWRC is perceived as favouring any operator or technology.

Note that the communications described above could be included with other GWRC PTOM communications to Participants.

Addenda 2 - Added 31/03/2016

Requirement and process for disclosure of interests by Tenderers staff and advisers

Background

During the rail tender, GWRC required all Tenderers to submit interest declaration forms for each individual staff member or adviser involved in the preparation of their tender responses.

The rationale for requiring individual declarations was that:

- It allowed GWRC to cross reference forms with those submitted by its own staff and advisers, to reduce the likelihood that interests had not been identified or disclosed by GWRC staff and advisers
- A declaration of interest from a member of a Tenderer's bid team could also potentially identify any confidentiality risks, including in relation to sensitive information to be placed in the data room. For example, during the rail process it was important to be able to assess any risks that PTOM-sensitive information could be used by a Tenderer's adviser outside the rail bidding process. An interest declaration could be expected to identify any other engagements an adviser might have with a Tenderer or another party.

Approach for bus Tender

After careful consideration, GWRC has decided that for the bus tender, Tenderers' staff will not be required to submit individual interest declarations for the following reasons:

- It is considered that requiring Tenderers to disclose the names of those involved in their bid preparation teams will give sufficient information to identify potential conflicts involving GWRC personnel. Identifying conflicts of interest involving GWRC's own staff and advisers can therefore be achieved using this method
- Given the potentially much larger number of Tenderers for the bus process, a requirement for individual interest declarations from all Tenderers will create an unnecessary administrative burden for Tenderers and GWRC
- Requiring conflict of interest declarations from all Tenderer personnel would impose a compliance burden on Tenderers which is difficult to justify, given the range and varying sizes of the likely Tenderers.

Method to ensure conflicts are appropriately identified in the bus Tender process

As part of their tender submission, Tenderers will be required to submit a list of the names of the individual personnel involved in its tender preparation, together with the names of any entities (eg professional services firms) engaged as advisers and the names of their personnel involved in the engagement. GWRC will compile and provide a list of all names of those involved in tender preparation to GWRC's staff, advisers and evaluators and seek updated declarations, enabling identification of any individuals working on tender teams they may have a current or past relationship with.

Tenderers will also be required to include a conflict of interest declaration, at the company level, when submitting their Tenders. The primary purpose of that declaration will be to identify any conflicts in relation to the procurement processes.