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Submitted via website

Dear Dr Butlin

Bus SA is the lead voluntary professional association for bus operators in SA. We represent school bus operators, route services providers and tour and charter operators in this state. We are an evidence-based policy advocacy group that has a focus on supporting communities through strong and effective mobility options. We collaborate with and are supported nationally through the Bus Australia Network. Our aim is to work closely with Government to deliver quality, safe and reliable services for communities. Our members range from small 1 or 2 bus operators, through to large multinational organisations.

Procurement and its associated processes have long been a difficult space for the bus industry. We recognise the importance of due process, however we believe that existing systems could be clearer, easier and have lower transactions costs for both Government and industry. As a consequence of higher transaction costs, smaller growing organisations may not be able to participate in some tenders.

In general our organisation agrees with the concerns raised in the Issues Papers as supplied in November 2018, however it is our view there will be challenges with whatever system and process is in place and the aims should be to deliver a system that makes complex procurement as simple as possible.

Our concerns are often about the degree of subtlety required in a process – for example we acknowledge that with a large urban bus network (such as Adelaide Metro) there is a need for some sort of tender to determine the operator, but in the regional context, a tender can put a local operator out of business if they lose, too often resulting in a loss of local employment and economic activity.

However it is also important to understand that the academic research shows little to no benefit from tendering public transport services for more than 3 or 4 rounds – all efficiencies have been garnered and the tender results in a race to the bottom from large players, potentially risking service quality and outcomes.

It is in this context that we argue that procurement needs to be more nuanced and function within a strategic framework that acknowledges and takes into account the potential knock on effects of any particular decision. This requires a greater focus on the qualitative components of a tender, and less on outright cost. We feel that current processes have often been skewed towards fitting a Treasury/Budget outcome, rather than actually meeting a market, and mostly within a context that is weak on policy and

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strategic position. In other words, we feel that procurement is policy weak and often does not answer the question “what are we procuring and why?” at the highest, strategic level.

This often translates to commodity based tenders that do not necessarily deliver value for money for the taxpayer, with the 2011 success of Transfield as an Adelaide Metro contractor a prime example of this issue.

We have included a more detailed submission that proposes ways to procure bus services, based on the work of our national policy body, the Bus Industry Confederation in *Policy Paper 7 National Guidelines: Bus Services Procurement and Bus Service Contracts* which we have also attached. This paper includes suggested KPIs for both Government and the Operator, acknowledging that the consumer (ie the taxpayer) should be at the core of bus service delivery.

We trust you find our material useful, and we would be more than happy to discuss issues around the bus industry in more detail. I can be contacted at [lhuefner@bussa.asn.au](mailto:lhuefner@bussa.asn.au) or 0410 422 040.

Yours sincerely



Luran Huefner  
Executive Director

Bus Australia Network



***South Australian Productivity Commission***

***Government Procurement Inquiry***

***Submission by Bus SA***

***December 2018***



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Contents

- 1. Executive Summary.....3
- 2. Inquiry Terms of Reference.....4
- 3. Some Background on Procurement in the Bus Industry.....4
  - 3.1 School Bus Tendering.....4
  - 3.2 Adelaide Metro Tender .....6
  - 3.3 Heavy Vehicle Inspection Tender.....6
- 4. Better understanding 'Value for Money'.....7
- 5. Private, not Public.....8
- 6. Industry/State Education.....9
- 7 Procurement Responsibility.....9
- 8. Conclusion ..... 10
- References ..... 11

## **1. Executive Summary**

Bus SA is the lead voluntary professional association for bus operators in SA. We represent school bus operators, route services providers and tour and charter operators in this state. We are an evidence-based policy advocacy group that has a focus on supporting communities through strong and effective mobility options. We collaborate with and are supported nationally through the Bus Australia Network. Our aim is to work closely with Government to deliver quality, safe and reliable services for communities.

In our submission we will provide a short background on recent bus service and heavy vehicle inspection procurement processes in South Australia. We have also attached BIC Policy Paper 7, National Guidelines: Bus Services Procurement and Bus Services Contracts. This was produced through the Bus Australia Network to provide industry and government with evidence-based material to inform procurement processes around the bus industry. We highly recommend this document, developed over some years, to Government as a means to improving procurement for services over the medium to long term.

Key issues that the policy paper explores (some of which we touch on in this submission directly) include:

- Contracting for societal objectives
- The inadequacy of the definition of 'value for money'
- Weaknesses of tendering regimes
- Proliferation of negotiated performance based contracts ('direct negotiation')
- Increasing the emphasis on and importance of sustainable procurement
- Education of bureaucratic and political office bearers on sustainable procurement

We fully recognize and understand that Government is empowered to procure services and goods in any way it sees fit, but we suggest there are better ways to procure that more successfully meet the broad policy outcomes of Government. It is our view that Government (and most governments in Australia for that matter) are focused on the procedural (including probity) aspects of procurement, and it appears little focus is given to contextual procurement within a strategic framework that meets the broader policy intent of Government.

This is particularly noticeable in an area such as public transport which crosses over a number of Government portfolios in supporting communities, and provides not only a social safety net, but medical and health support, education support and feeds economic activity. These benefits may be difficult to cost, but we argue a more sophisticated strategic approach to bus service and public transport procurement needs to be implemented to fully gain these benefits over the long run. Many Governments around the world have acknowledged the broader economic benefit derived

from public transport and harnessed it for economic benefit – these are strategic benefits that need to be considered in the development of a tender.

Additionally the bus industry works to a simple mantra in relation to service provision – we aim to provide a safe, quality service at a fair price to the traveler and with a fair return to the operator. It would be fair to say that this mantra struggles in the context of procurement, especially around what is a fair return to the operator, in a procurement environment that seems to be driven primarily by price.

Furthermore, we believe that successful procuring outcomes are underpinned by methods that generate trust between Government and the supplier, with a common goal of delivering a professional service. Where this trust has broken down there is often ongoing dissatisfaction by both, and often service breakdown. We believe that a good procurement outcome is not simply a good procurement process and must achieve broad benefits for the State.

## **2. Inquiry Terms of Reference**

The Procurement Inquiry has been “asked to evaluate the effectiveness and efficiency of State Government policies and practices for the procurement of goods and services.” This includes making recommendations about how to improve procurement practices of State Government.

In this document we hope to provide this Inquiry with a broader perspective on how differing procurement approaches can maximise benefits for all taxpayers. Seeing procurement through a single tendering lens has significant problems as we highlighted in the brief case studies above, and we will present evidence below in support of different approaches that may be useful when procuring certain types of products and services under certain circumstances.

This approach has been developed over many years by the Bus Australian Network, with much work done by the Bus Industry Confederation and other industry bodies to highlight alternatives as articulated in the BIC’s Policy Paper 7, mentioned above.

## **3. Some Background on Procurement in the Bus Industry**

The bus industry has experienced a mixed bag over the past 8 or so years in relation to procurement in this State. We submit that there are 2 main case studies that highlight weaknesses of the procurement approach used at the time.

### **3.1 School Bus Tendering**

This majority of this activity was conducted around 2010 -2011 through the Department for Education and Child Development (DECD). The processes associated with this tendering cycle

were widely criticized and resulted in the closure of a significant number of smaller family operated bus businesses in regional areas. This was primarily caused by the aggregation of contracts in regional areas, resulting in the loss of local community based businesses contributing directly to their region.

Of significant consternation to smaller operators were a number of factors:

- Relatively small recognition of incumbency within local communities (a 5% contract weighting) and the value of sustaining local operators to their community over the long term.
- Competing against an undeclared benchmark prepared by a consulting firm with no reference to industry. This benchmark could not be challenged and its inputs have never been declared.

It has been reported to us that some operators were informed that had submitted a successful tender, but then were asked to revise their price based on this undeclared benchmark. This approach seems to undermine the notion of what a tender is about, and seems to be more about fitting the contract outcome inside a pre-determined budget restriction placed upon the process by Treasury. This is clearly a policy failure and is at odds with the concept of the market determining the fair price.

This tender process was also investigated by a Select Committee of the Parliament which provided its report in September 2013. The Recommendations of the findings of the Select Committee that are relevant to this discussion are:

- The Department for Education and Child Development incorporate regional impact statements in future tender processes for school bus contracts.
- The Department for Education and Child Development review its tender and associated communications processes with the aim of making them more transparent, better defined and more user friendly.
- The Department for Education and Child Development, in cooperation with the industry, review its benchmarks to ensure they provide a practical basis for negotiating viable and sustainable bus contracts.
- The Department for Education and Child Development puts in place an independent appeals process for unsuccessful tenderers.

Much as the Select Committee probably made reasonable recommendations as result of their investigation, we are not aware of any of the complete recommendations being implemented. Compared with other jurisdictions this tender process generated significant bad will between industry and Government, significantly weakened the industry in the State and probably barely

achieved any community focused objectives.

### **3.2 Adelaide Metro Tender**

This tender, conducted through the Department of Planning Transport and Infrastructure (DPTI) concluded in 2011 with 3 main contractors awarded with at least 2 contract regions each. However one of the successful contractors was not a public transport provider, and was significantly cheaper than the others (reportedly to the tune of \$50M over the contract period). Anecdotally many existing bus operators predicted that this operator would fail, and this was borne out when they sold the last of their runs to one of the other operators in early 2018.

This particular debacle has become a tendering and contracting failure case study and is often referred to in academic papers as an example of how not to tender for bus services.

The Department defended its position by suggesting that they sought and received assurances from the successful (and now defunct) operator, however it appears that this was much more likely a scenario in which the Department thought they could get away with it, and could potentially save a significant sum over the life of the contract. Again this is not suitable policy for the procurement of a significant service and should have been more robustly questioned through the process of tender analysis.

These contracts also had differing performance outcomes from the previous round, with a focus on on-time running. This caused a number of service challenges as operators sought to minimize penalties associated with late running, and exacerbated they argued by considerable infrastructure development that was going on in Adelaide at that time. Ultimately this problem was likely caused by the change to an on-timing running KPI and sacrificing a patronage growth metric. Again, and possibly like the school bus tendering issue, this may have been more of a measure to fit the cost of service provision within a treasury applied constraint, rather than a consumer focused framework.

### **3.3 Heavy Vehicle Inspection Tender**

As industry is covered by the Heavy Vehicle National Law (HVNL), industry takes considerable interest in the mechanisms that can deliver higher standards of safety and transparency about operation matters. For some years we have called for the privatization of bus inspections, and we were consequently pleased when the State Government called for tenders to provide inspections of heavy vehicles.

We called on Road Safety Inspections (RSI) from Victoria, an independently governed organization owned by the Bus Association of Victoria, that has provided bus, taxi and heavy vehicle inspections in Victoria for over 25 years, to partner with us and provide the

underpinning expertise in bidding for this work.

However, RSI withdrew from the tender process because it found that the constraints placed upon the proposed inspections regime made it impossible to generate a reasonable rate of return. This was because DPTI had capped the price chargeable (ie it had constrained revenue generation capability of a successful tenderer) and it had required the winning tenderer to utilise inefficient Government software – rather than the software already efficiently used by RSI. It is my understanding that this tender has not been awarded at the time of writing – over 12 months from the original call.

This is a similar example to the DECD issue raised above with the school bus tender and the hidden benchmark. It is our view that if you are going to market to purchase a service, it is not reasonable then to dictate how it is delivered – that should be the benefit gained from engaging with the private sector. The private sector is the best way to find innovations and efficiencies, but only when it is allowed to take advantage this natural characteristic of commercial operations.

Too often it feels as though Government in SA has “market calls” to get ideas that it can implement and not to really procure external services. Too often Government procurement ties everyone in the procurement process to an extensive confidentiality agreement (a prime example is the new bus procurement tender) but then uses material gained to its own advantage. Government should lead the way and be transparent in processes, but too often it wants complete secrecy about its aims and targets. This is a waste of time and cost to the private sector and does not generate trust.

#### **4. Better understanding 'Value for Money'**

Value for money is, unfortunately, still largely observed through an economic lens and as such is regularly interpreted as meaning cheapest price. Even more unfortunate is that Industry and the State don't appear to have a common understanding of what value for money is. It is suggested that buyers and sellers need to adopt a universal and shared understanding of value for money, otherwise, it is possible utility will be foregone and decision-making processes will be compromised. Consideration and quantification of the externalities should see this risk mitigated as far as practicable. This is clearly one of the causes of the problems with the AdelaideMetro tender discussed above.

By way of another example, quantification of what the Government might forego in the event it contracted with a non-local operator could adversely impact the objectives of other Government Departments or Agencies. If the Government Agency responsible for business and innovation for instance had a policy of fostering the sustainability of local, small businesses

throughout the State, because of their propensity to reinvest those funds locally, sustain employment etc, then appointing a large, multinational enterprise operator to a bundle of service contracts will have a material economic and social impact on many of the localities where previous, smaller local contractors were based.

This move by one Government Department to realise savings in one 'bucket', could be offset by costs incurred by another Government 'bucket'. Consideration and quantification of this scenario should be mandatory in any sustainable procurement regime.

The aforementioned two points lead us to suggest the Government adopt the STO Framework which is discussed at length in BIC Policy Paper 7. It has long been the position of the bus industry that the lack of clarity around the strategic intent and tactical approach of Government to public transport provision is a key reason why there are difficulties in the procurement process.

## **5. Private, not Public**

Route and school services have many differences and each jurisdiction has many unique situations. For example, political philosophies relating to the roles of the public and private sectors in planning and delivering public transport services and attitudes towards asset ownership (e.g. depots, vehicles) can differ between jurisdictions. Such considerations often require local solutions suited to a particular context and category of service. However, there is much that is common between service types and across jurisdictions, where a common industry language and understanding of contracts and contracting options is likely to be beneficial to operators and the industry. Importantly, this is also expected to be of benefit to the governments with whom the industry negotiates service contracts and, by extension, to the communities for whose benefit services are provided.

The bus industry strongly believes that available evidence supports the view that the private sector provides the best 'value for money' bus services. It understands very clearly that its ultimate reason for being is to deliver public value for the communities for whom it provides services.

This public value has two major elements:

- the benefits delivered to bus users;
- the benefits created for the wider community, in terms of reducing the external costs of road use (e.g. congestion, greenhouse gas emissions, air pollution, energy security, social exclusion, safety/health).

Private sector provision of bus services is typically lower cost than public sector provision, by up to about 10%, with incentive alignment being the major reason for this outcome. Competitive tendering results are one source for this conclusion. However, these results are subject to the risk of selection

bias, i.e. the least efficient public services may be those most likely to be tendered out and will show the biggest cost savings. Other benchmarking comparisons, which do not involve a tendering basis, however, are supportive of the conclusion about efficiency. While there will be public sector examples that benchmark very well, the key finding is that private provision is usually more cost efficient.

Service quality is an important influence on public transport patronage and is of growing importance in a contractual setting. However, this is an emerging area, where norms of measurement are still being established. We believe the private sector's propensity to innovate exceeds that of the government sector. Therefore, we submit the government should review its position of owning and operating some bus services and contract the entire operation to the private sector.

## **6. Industry/State Education**

As world's best procurement practice is a moving feast, it is critical that representatives from buyers and sellers remain educated and at the cutting edge of improvements in the global procurement space. Industry has been a staunch supporter of the Thredbo Series International Conference for decades now. Established in 1989, the objective of this biennial conference series is to provide an international forum to examine passenger transport competition and ownership issues, reporting on recent research and experience and developing conclusions on key issues.

The focus is on determining the effects of different forms of competition, ownership and organisation for land-based passenger transport on operators, users, governments / funders and society as a whole. The conference series is directed towards a broad audience of policy makers, planners, decision makers on infrastructure and service operators, consultants, researchers, academics and students, and is recognised as one of the most important international forums for analysis and debate of competition and ownership issues in land passenger transport.

Government's absence from this important educational forum sends a negative message to various stakeholders and we therefore suggest that Government commit to sending a resource to this biennial conference. This would be in the spirit of partnership. It is also important to note that government representatives from international jurisdictions are always in attendance to learn how to best apply new approaches in their country – it would be worthwhile for our Government to see similar value.

## **7 Procurement Responsibility**

The procurement of and ongoing contract management of land passenger services is a transport task. The educating of students is an educational task. Therefore we find it extremely difficult to see why the Government denies itself the opportunity to consolidate its mainstream transport delivery task and realise some scale economies by keeping school bus transport administered by DECD and route

bus transport administered by DPTI.

In Victoria, PTV (previously Department of Transport) procures services and regulates all service contracts for mainstream school and route services, the former pursuant to intergovernmental guidelines established by the Department of Education. It does this, we suggest, because of the competencies at the Department of Transport in procurement and transport contract management are very different to the competencies required for educating students. We suggest DECO novate its school bus service procurement responsibility to DPTI.

## **8. Conclusion**

It is time for the South Australian Government and the industry representatives to focus on the future and continually seek to raise the level of professional and ethical behaviour of the sector. The interdependence of industry and government is now more important than ever before and we firmly believe that working with government in a trusting partnership setting is a much more sustainable approach to achieving strategic outcomes.

We look forward to ongoing discussions about how industry and Government can implement the recommendations contained herein.

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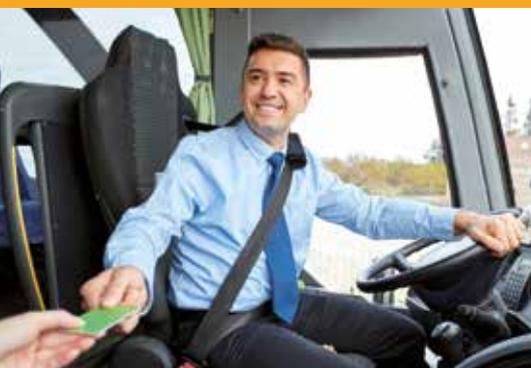
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# MOVING PEOPLE

➤ *Solutions for Policy Thinkers*

## National Guidelines: Bus Services Procurement and Bus Service Contracts



Bus and Coach Industry  
*Policy Paper 7*



# MOVING PEOPLE

➤ *Solutions for Policy Thinkers*



## ***Policy Paper 7***

National Guidelines: Bus Services  
Procurement and Bus Service Contracts

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## Foreword

These Guidelines form part of a policy series of publications aimed at decision and policy makers, academics and students. This Policy Series focuses on land transport, land use, integrated planning and urban development challenges in Australia. The Policy Series has been developed by the Bus Industry Confederation (BIC) of Australia and the Institute of Transport and Logistics Studies, Business School, University of Sydney, and addresses specific subject matters and issues raised in the BIC's previous reports: "Moving People - Solutions for a Growing Australia" and "Moving People - Solutions for a Liveable Australia." Both publications are available at [www.ozebus.com.au](http://www.ozebus.com.au).

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Serving Committee Members during the development of these Guidelines include:

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# Contents

Foreword	1
Acknowledgements	1
1 Purpose	3
1.1 Context	3
1.2 Report structure	3
2 Getting the Framework Right	5
2.1 Strategic, Tactical, Operational	5
2.2 Building a Trusting Partnership between Government and Industry/Operators	7
2.3 Contract Negotiation Objectives	10
2.4 Process Elements in a non-tendered Contractual Setting	10
2.5 Key Elements in Contract Design	11
3. Bus industry position statement on procurement: Competitive tendering versus “negotiation”	13
4. Asset Ownership	15
5. Risk Recognition and Allocation	16
5.1 Context, aims and general position	16
5.2 Patronage and yield risk	16
5.3 Production/cost risk	18
5.4 Investment risk and funding	18
5.5 Other Matters	18
6. Some legal aspects of contracts	19
6.1 Scope	19
6.2 Wider legal context	19
6.4 Contract Area	20
6.5 Prescription versus performance based contracts	20
7. Key Performance Indicators (KPIs)	21
7.1 Scope	21
7.2 ‘Quality’ KPIs	22
7.3 Proposed KPIs	22
8. Costs and Transparency	27
9. Funding Model 1.01	28
10. Fares, Ticketing and Marketing	30
References	31

## Figures

Figure 1: The Strategic, Tactical and Operational Stages of Transport	5
Figure 2: Framework for Contractual Design (from Stanley & Longva, 2010)	5

## Tables

Table 1: Governmental and industry goals for route and school bus services	7
Table 2: Bus Service Contract design and consultation Objectives	10
Table 3: Process Elements for renewing Bus Service Contracts without tender	10
Table 4: Demand side risks	17
Table 5: Production risks	17
Table 6: Proposed Route Bus Service KPIs	23
Table 7: Proposed School Bus Service KPIs	23
Table 8: OPIs for Route Bus Operators	26
Table 9: OPIs for School Bus Operators	26
Table 10: OPIs for Government	26

# 1 Purpose

## 1.1 Context

Contracts governing delivery of bus services for which government is responsible, and the environment within which these are settled, are a key influence on the quality of services that are delivered for the community and on the scale of transactions associated with providing such services. The Bus Industry Confederation (BIC) believes that reaching national agreement about broad principles concerning contract scope and design will significantly improve the efficiency of contract administration and the effectiveness of services that are provided under those contracts. To that end, a Contracts Working Group was established by the BIC to develop a national bus industry position on bus contracts, to assist state operators and their representatives in contract consultation with governments. It was agreed that this national position should identify core principles that Industry should pursue in such representations, while recognising government expectations, on behalf of the community, from the process. These Guidelines have been developed by the Contracts Working Group to fulfil this brief, for both route and school services contracted by governments. Government feedback on these Guidelines is encouraged, with the objective of contributing towards more effective procurement and contracting arrangements for bus service provision.

In framing these Guidelines, the BIC recognises that there is no magic bullet when it comes to procuring bus services and bus service contracts. Route and school services have many differences and each jurisdiction has many unique situations and objectives. For example, political philosophies relating to the roles of the public and private sectors in planning and delivering public transport services and attitudes towards asset ownership (e.g. depots, vehicles) can differ between jurisdictions. Also the method of procuring bus services will differ from State to State. Such considerations often require local solutions suited to a particular context and category of service. However, there is much that is common between service types across jurisdictions, where a common industry language and understanding of contracts and contracting options is likely to be beneficial to operators and the industry. Importantly, this is also expected to be of benefit to the governments with whom the industry consults/negotiates service contracts and, by extension, to the communities for whose benefit services are provided.

The Australian bus industry strongly believes that available evidence supports the view that the private sector provides the best 'value for money' bus services. It understands very clearly that its ultimate reason for being is to deliver public value for the communities for whom it provides services. This public value has two major elements:

- > the benefits delivered to bus users, and
- > the benefits created for the wider community, in terms of reducing the external costs of road use (e.g. congestion, greenhouse gas emissions, air pollution, energy security, social exclusion, safety/health) and contributing to productive economies (e.g., supporting agglomeration economies) and to strong communities (recognizing, in particular, the 'uncontracted' contributions bus operators make to their local communities, particularly regional and rural bus operators).

Both categories of benefit need to be delivered efficiently by bus operators. Stopher and Stanley (2014) includes many relevant examples of quantification of external benefits and Lowe (2015) discusses quantification of bus operator contributions to stronger communities.

The Australian bus industry has a high level of expertise in bus contracting, developed in Australia but also utilizing international experience over a long period of time, including active involvement in leading international forums such as the Thredbo Conference series on Competition and Ownership in Public Transport and various UITP conferences. The industry has fostered relationships with academic and industry experts and with government, to grow public transport services and patronage and to help develop contractual frameworks that support such growth. These connections and experience have been utilised in preparing these Guidelines. These Guidelines help to explain Industry's position on key contractual matters relating to route and school services, framed with public value uppermost in mind, while recognising the importance of a financially viable bus industry if quality bus services are to be provided on a sustainable basis for our communities.

## 1.2 Report structure

A contract for route and school bus services sets out the rights, obligations and procedures that the parties to the contract agree. It provides a fallback mechanism for when things go wrong but should not attempt to cover day-to-day activities. The September 2011 Thredbo 12 Workshop, Designing Contracts/Concessions: What Has Worked and What Has Not and Why, identified a number of key risks to the success of a contract. The most significant risks were identified as:

- unclear description of government objectives and outcomes
- poor quality in tender specifications and assessment (for competitively tendered contracts)
- allocation of risks and responsibilities
- ensuring financial viability
- poor service planning guidelines
- dispute management and resolution arrangements
- specifying the services to be provided
- understanding the best technical content
- changes over time in government/government policy
- specifying performance indicators and having a governance regime to monitor and adjust
- distortions introduced during contract negotiations
- collecting and acting on performance indicators
- complexity in the scope of services
- building and maintaining a positive partnership (between government and the operator)
- tendering process.

This range of factors shows why contracting is a multi-faceted process and why these Guidelines are important. These Guidelines set out the Bus Industry Confederation's views on these, and other, vital issues related to contracts.

Section 2 discusses the framework within which bus service contracting takes place. Too often this framework is given inadequate attention, which inevitably means service effectiveness is at some risk. Section 3 discusses the important distinction between competitive tendering and negotiation as methods for allocating the rights to provide bus services and puts a bus industry view on these approaches. Section 4 deals with the sometimes thorny issue of asset ownership in relation to service provision. Section 5 considers major categories of risk and how these might be handled in contracting. Section 6 examines the legal aspects of contracts. Section 7 is about performance measurement and monitoring and Section 8 discusses costs and transparency. Funding models and fares, marketing and ticketing form the subject of Sections 9 and 10 respectively.



## 2 Getting the Framework Right

### 2.1 Strategic, Tactical, Operational

Effective bus service delivery is most likely to be achieved when there is mutual commitment by, and agreement to, government and service providers (bus operators and their industry representatives) to:

1. the goals towards which bus services are directed
2. the service structures that are most likely to achieve these goals, and
3. the contractual arrangements that are intended to deliver 1 and 2.

This is about aligning the expectations and objectives of the negotiating parties. In framing its approach to these Guidelines, the BIC draws on research findings from the Thredbo International Conference series, which distinguishes between the Strategic [S] (or policy), Tactical [T] (or system design) and Operational [O] (or service delivery) stages in the transport sector, as shown in Figure 1, drawing on van de Velde (1999).

The three levels in this framework can be summarised as follows:

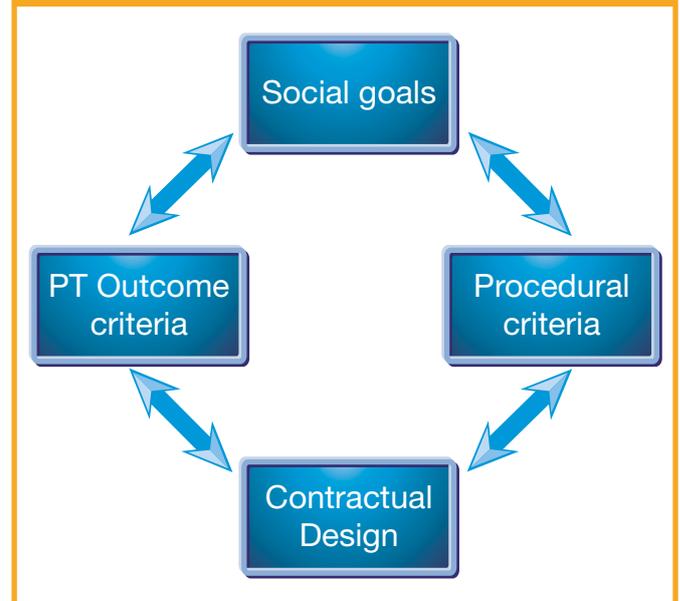
1. Strategic – broad transport and related policy goals and objectives (for example, the priority that is to be attached to reducing road congestion, as compared to ensuring that all citizens have access to a decent base level of public transport, to support social inclusion).
2. Tactical – transport system design and planning to achieve the intended strategic or policy level outcomes (for example, balancing radial and circumferential trunk bus services, to reduce road congestion, with minimum local service levels that support social inclusion).
3. Operational – delivery of services within the boundaries set by the strategic and tactical levels.

Contracts are Tactical level mechanisms that should be formulated to manage service delivery at the Operational level [O], such that these services maximise the prospects of achieving the Strategic [S] or policy objectives of government, delivered as part of an integrated and coherent transport system [T]. The best service delivery and, by implication, contractual outcomes need all three stages to be playing their part and need the flexibility to respond to the dynamic context of public transport. Contractual failures frequently reflect failures in the [S]/[T] stages. These Guidelines suggest ways to enhance integration through the stages of [S]-[T]-[O]. They do so within a framework that sees contractual design flowing from social goals, public transport outcome criteria and procedural criteria relating to the contracting process, drawing on thinking from the international Thredbo Conference Series.

Figure 1: The Strategic, Tactical and Operational Stages of Transport



Figure 2: Framework for Contractual Design (from Stanley & Longva, 2010)



## 2.1.1 Social Goals and Public Transport Outcome Criteria

At the 2009 Thredbo 11 Conference, participants thought public transport systems and services should be judged against what they contribute to six social goals. (Stanley and Longva 2010).

1. Economic competitiveness (with congestion mitigation one key part of this goal area; maximising the efficiency of resource use in service provision is also very important, as is promotion of agglomeration economies).
2. Environmental sustainability (minimising the environmental footprint of service provision, including cost-effectively growing mode share against modes with a larger footprint).
3. Social inclusion (ensuring that all people have the accessibility needed to participate in society, irrespective of personal circumstances, such as household income level or personal physical capacities).
4. Livability, health and safety.
5. Regional development (an important goal for some jurisdictions).
6. Fiscal sustainability (achieving an acceptable cost-recovery rate in relation to outcomes achieved).

New research by Lowe (Lowe 2015) demonstrates that bus operators often contribute significantly, and in a range of ways, to their local communities, particularly regional and rural bus operators. These contributions are not contractual obligations but reflect a commitment by operators to their local communities. Major changes in the way services are provided, or in the remuneration for such services, would affect the scale of this 'external benefit', such that they should be discussed with government and taken into account as part of bus service value for money considerations. Other government objectives, in areas such as education policy, tourism and special events, may also be relevant to specifying bus service requirements, with subsequent implications for contractual specifications.

Translating these strategic level goals down to the Tactical/Operational interface at which contract development and management takes place suggests that the public transport system/service purchaser and provider should pursue an approach with the following main objectives:

- > maximising patronage - a shorthand indicator of economic and environmental performance
- > maximising patronage by particular target groups - where these groups are seen as experiencing particular forms of transport disadvantage that is likely to adversely affect their well-being and/or probability of social inclusion, unless that transport disadvantage is addressed. Minimum public transport service levels are an effective way to meet this goal, with the relevant levels being ultimately a matter for governmental value judgement. Service planning guidelines including minimum service levels and integrating networks strategies with needs analysis are important for these objectives
- > meeting cost-recovery targets (to be specified by government)

- > meeting environmental performance targets (to be specified by government)
- > meeting health and safety standards/targets (to be specified by government)
- > meeting other agreed objectives relating to transport to meet community development, education policy and support special events.

All of these objectives need to be pursued relative to the unit costs of service provision (which need to be efficient). In relation to bus services, the matters that have been suggested as "to be specified by government" should not be imposed by government but should be the outcome of a consultation program that includes the bus industry and wider community.

Sub-objectives, related to the economic goal, can also be identified.

- > Customer satisfaction: recognising that the user experience of a public transport system/service may improve even if patronage does not grow and that this improvement in customer satisfaction is of value (i.e. it is a benefit for which the user is willing to pay).
- > Labour shed enhancement: where work on the agglomeration benefits of transport system upgrades has identified that there may be occasions where agglomeration benefits flow from expanding labour catchments (Department for Transport 2006). This is most likely to be relevant for high capacity radial trunk public transport services to a CBD but may have relevance in supporting development of a polycentric city.
- > Facilitate education policy that provides school student transport (possibly best seen as a socio-economic goal).

These goals and, more particularly, the objectives and sub-objectives, provide foundational material for successful contractual specification, since they identify just what the system/service is expected to deliver. These intended outcomes should form the basis of key contractual performance incentive mechanisms (Key Performance Indicators, as discussed in Section 7).

## 2.1.2 Procedural Criteria

Procedural criteria have three important roles to play in a successful contractual setting.

1. They are important for probity.
2. They can be important for task effectiveness (this includes reducing the risk posed by necessarily incomplete contracts, where procedural criteria can provide a pathway to support sustainable outcomes in the presence of such incompleteness, which might include matters such as dealing with special projects like electronic ticketing).
3. Consistency when contracts are administered from separate regional officers and or contract administrators change.

With respect to probity, the key requirements are transparency, accountability and procedural fairness. The task effectiveness focus recognises that some public transport contracting results have been very poor because of inadequate management of the contracting task.

Five aspects of an effective task are:

1. allowing a suitable time frame to complete the task (which is partly dependent on such matters as the scale of the contract and the nature of the contracting environment – e.g. tendering versus negotiation)
2. ensuring that suitable transitional arrangements are in place when a change in operator is a possibility
3. building trust and buy-in from all stakeholders
4. providing adequate co-ordination with wider governmental policy areas that are affected by the outcome of the process (a whole-of-government approach, to capture synergies and avoid subsequent delays, revisions, etc)
5. suitable documentation of key principles that may not be in the contract but are important for service delivery. For example bus procurement policies, business rules for managing student behaviour.

The following Sections elaborate on these five points.

## 2.2 Building a Trusting Partnership between Government and Industry/ Operators

### 2.2.1 Building a Trusting Partnership

Achieving alignment across the Strategic, Tactical and Operational levels is no easy task. It is most likely to be achieved for bus services when there is a relationship of trust between the responsible government and the bus industry. Australian bus industry participants, working with respective State Governments, have pioneered the idea of trusting partnerships, where the focus moves successively from S (policy), through T (system design) to O (contracts). The Thredbo Conference Series Papers demonstrate that the idea has been taken up by others, such as some Dutch and Scandinavian jurisdictions, under the guise of ‘relational contracting’.

While state governments have ultimate accountability for contracted bus services, service effectiveness is most likely to be maximised in an environment of a trusting partnership. Participants in the Thredbo 11 Workshop on Public Transport Contracting argued that a trusting partnership between the authority and provider should be grounded in five “Cs”.

1. Common core objectives tied to public policy purposes (which goes back to the Strategic level discussed in Section 2.1).
2. Consistency of behaviour and direction (underpinned by broad agreement about Strategic and Tactical directions).

3. Confidence in a partner’s capacity to deliver.
4. Respect for each other’s competencies.
5. Demonstrated commitment to good faith in making and keeping arrangements and in principled behaviour.

Agreed and shared governance arrangements, including contracts that reflect these principles, provide the glue that ties these principles together. These Guidelines provide advice about how to implement such arrangements.

High level agreement about core service objectives is a critical part of the pre-contractual phase of government/ bus industry service negotiation and is fundamental to the delivery of successful bus services. This encompasses alignment about the goals/objectives previously outlined and, flowing from those high level goals and objectives, alignment about goals related more specifically to contracting outcomes from bus services. Governmental and operator goals for bus services might generally be expressed as in Table 1, with particular local circumstances sometimes providing nuances that need to be reflected in what these goals might mean for particular local contracts.

These goals, in the form of shared or common core objectives for services and their related contracts, which both government and bus operators/industry might accept, may be expressed in a Vision Statement.

### VISION STATEMENT

Governments and bus operators agree that route and school bus contracts should seek to deliver:

- a quality service for the travelling public (the general public or school students as the case may be)
- assured continuity for users and clear operating guidelines for operators and government
- demonstrable and continuing value for money for government
- a fair return for the operator’s investment, intellectual property and effort.

**Table 1: Governmental and industry goals for route and school bus services**

Government goals	Operator goals
<ul style="list-style-type: none"> <li>• Value for money</li> <li>• Flexibility and continuity in service provision (including ensuring quality services)</li> <li>• Accountability and transparency</li> </ul>	<ul style="list-style-type: none"> <li>• Business continuity</li> <li>• Fair reward for investment &amp; effort</li> <li>• Clear operating guidelines</li> <li>• Providing quality services</li> </ul>

## 2.2.2 Meeting governmental goals

### Value for money

'Value for money' requires that bus services contribute to a transport system [T] which effectively meets government policy goals [S] and which does so efficiently, along the lines outlined in the Vision Statement. This is sometimes described as 'doing the right things and doing things right'. The emphasis or priority given to particular goals may differ from jurisdiction to jurisdiction and from time to time in a particular jurisdiction but should be clear, to maximise the chances of goal achievement. Specific high level policy goals that might be included are safety, universal access rights, cutting greenhouse gas emissions, congestion reduction and contributing to more productive economies and to stronger communities, as outlined in Section 1.1. These elements reflect the wide value for money contribution of public transport in reducing external costs of motorised transport and contributing to positive external benefits in relation to issues such as economic productivity and strong communities.<sup>1</sup> These external bus service benefits need to be recognised when making decisions on the level and nature of public transport services to be provided.

It is therefore vital to recognise that 'value for money' is not the same as 'lowest cost'. Instead, it includes cost, service quality and the external benefit dimensions before-mentioned. Service quality is a difficult concept and is discussed in some detail in Section 7. It should be at least as important as cost in awarding the rights to provide public transport services.

Following goal specification, high level (Tactical) government-industry agreement on the type of services that maximize the chances of government policy goals [S] being achieved then provides the ideal basis for preparing and implementing 'value for money' service delivery contracts. At the same time, contracts need to be sustainable from the operator's perspective, ensuring that service quality is delivered commensurate with the level of resources provided.

Benchmarking of service performance and prices is an important way of assuring efficient operation, particularly in an environment of negotiated contracts. Section 7 discusses key performance indicators that are suggested for benchmarking purposes. Competition or contestability, including the threat of tendering in a negotiated contracting environment, can contribute to assuring value for money, a matter to which these Guidelines return to in Section 3.1. Value for money matters are discussed in greater detail in Section 9.

### Flexibility

Flexibility has three important connotations.

1. The flexibility to change service structures during the course of a contract, for reasons such as changing demand patterns.

2. The flexibility to ensure service continuity in the event of a particular service provider becoming non-viable for some reason (a continuous bus service is self-evidently critical for effective customer service). Sustainable performance-based contracts significantly reduce the risk of operators becoming unviable.
3. Having mechanisms to review and adjust KPIs, governance and reporting regimes where needed.

Dealing with the first of these requirements suggests that the contract needs a service rationalisation process, which must protect the operator's desire for business continuity as far as possible. This can be done through suitable contractual provisions at the start of a new contract, with an accompanying Practice Note or Explanatory Notes setting out how the parties intend to apply the relevant provisions. Dealing with the second, as a minimum, requires a clear process for managing such possibilities, including a government option on the assets of the business in the event of termination. Service continuity provisions should work within a graduated regime, with clear rights and obligations. The third point recognises that over time KPI targets may need to change.

### Accountability and Transparency

Accountability and transparency support probity and demonstrable value for public money. In a competitive tendering environment, accountability and transparency are about holding to the terms of the tender during the course of the contract and being open about reasons for change if such change is needed (recognising that change may disadvantage losing tenderers, if a contract had been won at tender). In a negotiated performance-based contractual setting, the key issue is ensuring that accountability and transparency protect against regulatory capture, which is also an issue in negotiating changes in contracts that have been subject to competitive tendering. Section 2.5.7 discusses transparency in greater detail.

## 2.2.3 Meeting bus operator goals

### Business Continuity

Given the long term investment in bus depots, the economic life of a route bus and the time it takes to reap benefits from innovation, seven to ten year contractual terms provide a good foundation for bus operator business continuity, with renewal provisions if operator performance meets agreed (between government and industry/operators) contractual performance benchmarks. The longer economic life of most school buses suggests a longer contractual term, with ten years plus renewal based on performance being more appropriate. If the term of the contract is fixed at considerably shorter than key working asset lives, service costs will be unnecessarily high (assuming operator ownership of key assets, a matter discussed in Section 4) and investment and innovation can be curtailed because of the uncertainty of tenure.

Meeting an operator goal for business continuity requires a contractual process for handling service optimisation, such

<sup>1</sup> Lowe (2015) has found that bus operators contribute an average of over \$2000 per staff member back to their local community each year.

as in the event that a particular service becomes surplus to requirements. It is also supported by contractual provisions that encourage an operator to innovate and, particularly in the case of route bus services, to grow their business. A patronage incentive can assist in this regard, which will be most effective when the applicable contract provides the operator some flexibility with respect to allocation of service kilometres.

In an environment of competitive tendering for bus service contracts, business continuity will be less certain, which will be affected in the tender bids. However, renewal provisions, in the event of good operator performance, can support continuity and act as an incentive to effective performance and business investment.

In an environment of negotiated contracts, if bus operators assert grandfather rights, then business continuity may ultimately require preparedness on their part to defend those rights through the courts. Protecting a relationship of trust between government and the bus industry, however, argues very strongly against either side seeking to precipitate such a situation. Continuation of high quality bus service delivery at efficient costs, supported by renewal provisions for good performance, should help to avoid such a circumstance.

## Fair remuneration

In a competitively tendered environment, the operator sets their bid price and should do so in recognition of business goals, including required return. 'Fair remuneration' in this circumstance means avoiding predatory pricing to buy market share. Competition legislation is intended to protect against such behavior and can be effectively supported by a governmental unwillingness to accept bids that are regarded as unreasonably low and hence not sustainable nor commensurate with the level of service required. This will reduce the risks of an operator being unable to complete contractual obligations, with high associated transactions costs that this entails to ensure service continuity. Shadow pricing of bids by government, to test reasonableness of a bid, is used in some jurisdictions for this purpose (e.g. the Dutch province of Overijssel).

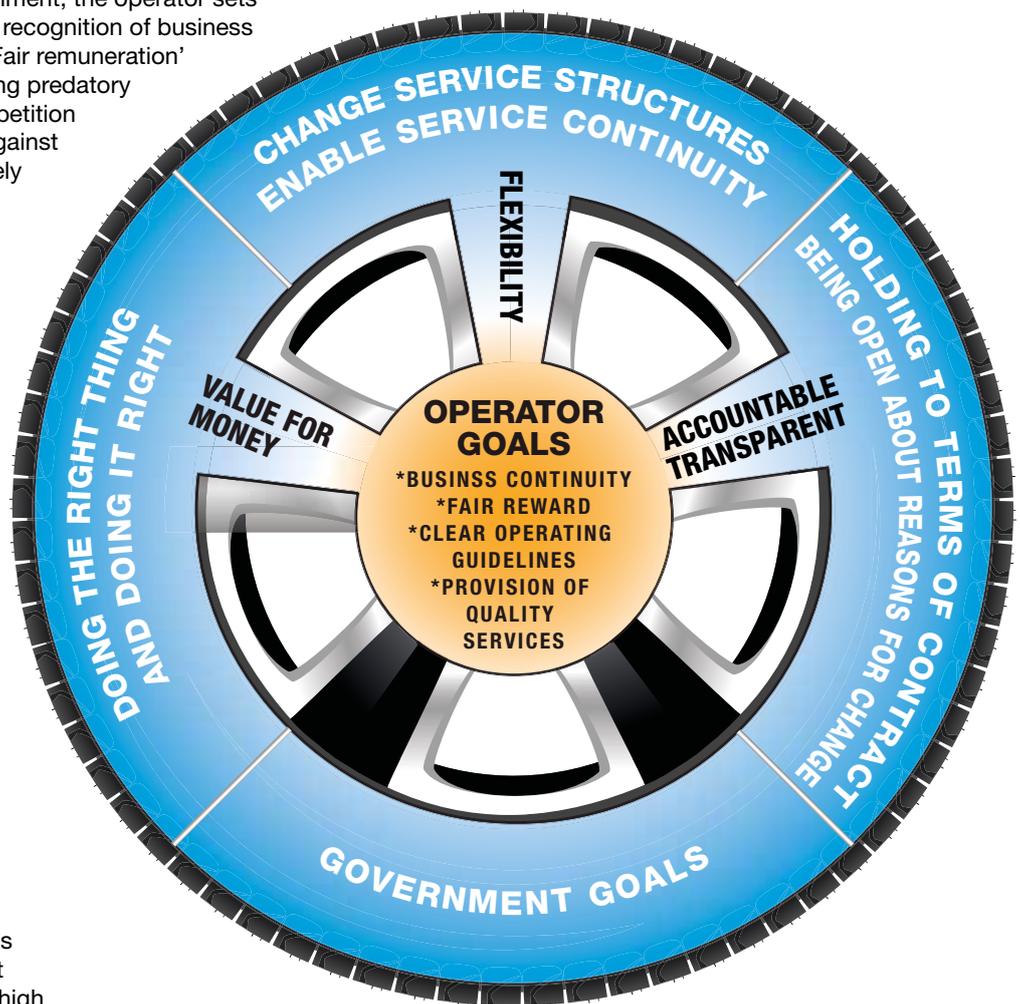
Where a contract is negotiated, not tendered, fair remuneration requires agreement about an acceptable level of costs and rate of return on the contract. Benchmarking of operator performance on costs and return can provide a basis for negotiations about whether some change might be needed. Prima facie high cost/high return operators should have remuneration brought back to an agreed band, unless

they can demonstrate reasons why costs/returns should continue. Conversely, operators whose costs/returns are relatively low should have the opportunity to argue for an increase. Where there are large numbers of contracts needed for similar services across different geographical areas, Industry involvement in setting/benchmarking the terms and conditions/rates is essential.

Cost indexation from contract start can help to ensure that remuneration remains fair during the course of a contract. A small 'at-risk' element in total remuneration, probably in the range of plus/minus two per cent of total remuneration, should be included as a spur to efficiency in contracts that give operators sufficient flexibility to achieve improvements.

## Clear Operating Guidelines

Clear operating guidelines are essential in supporting trust, providing both government and operators certainty about what will happen in particular circumstances. Such circumstances should include, for example, a service optimisation process (for example, when student numbers decline in a school/school region), emergency management procedures, vehicle and depot acquisition/disposal requirements, cure regimes, termination processes, dispute resolution procedures, etc.



## 2.3 Contract Negotiation Objectives

The preceding discussion suggests that a bus service contractual consultation process between government and the bus industry/operators should pursue the objectives set out in Table 2, with scope for some local nuances. The BIC strongly believes that the consultation process should include system design aspects at the Tactical stage, as well as the detailed consideration of contract terms that logically follow.

Bus operators often choose to use an intermediary, usually their industry association, to establish the contractual template collectively on their behalf. This is wide spread practice throughout Australasia. In doing so, this does not breach the Competition and Consumer Act 2010. The industry representative (appointed representative) simply liaises with the Government to delineate a contract template which is commended to the collective operators, who in turn can proceed with signing or seeking amendments to their individual contracts. The operators would still have the option of seeking clarification on any industry wide contract offered to them. Using an intermediary also keeps transaction costs low, including by reducing the number of stakeholders and/or operators commercial and legal representatives a government (as the client) needs to deal with, which in turn simplifies and expedites the negotiation process.

## 2.4 Process Elements in a non-tendered Contractual Setting

The process elements referenced in the last row of Table 2 will depend on whether the rights to service provision are determined by a competitive tendering process or by consultation/negotiation. We elaborate a little on process elements in a non-tendered contractual setting, since these are common in Australia and a consistent framework should improve the efficiency of contracting. Table 3 summarises the major process elements.

Some further explanation of the elements of the 'Documentation' column in Table 3 is needed.

- > Commitment Deed – this is a document that records the formal commitment of government and the operator to bona fide participation in the renewal process, confidential treatment of information and acknowledgement of how the process can be concluded. For system/sector wide contracts, a document recording the commitment and process to achieve consistent and sustainable industry standards should be developed with the relevant operator peak body(s).
- > Invitation to renew – this document sets out the objectives, process and evaluation criteria to be used. It essentially explains how the process will work.

**Table 2: Bus Service Contract design and consultation Objectives**

Relationship	Promote partnership, openness and trust between the bus industry/operators and government
Planning and delivery	Provide for efficiency, flexibility and innovation in both planning and delivering bus services that are reliable, safe, punctual and clean
Policy objectives	Achieve patronage growth while supporting social inclusion and strong communities, with a low environmental footprint, within the context of an integrated land use/transport system
Commercial and financial	Provide an environment for financial sustainability of operators and value for money for government, with transparency as to service costs and asset acquisition
Public interest	Provide for continuity of service with quality service levels
Process	Achieve the above through a process that is inclusive, transparent and accountable
Terms and Conditions	Generic terms and conditions should be agreed with Industry, to ensure consistency and sustainability

**Table 3: Process Elements for renewing Bus Service Contracts without tender**

Commitment	Transparency concerning	Documentation
<ul style="list-style-type: none"> <li>• Operators and government must be committed to the process and its outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Government objectives</li> <li>• Process and timelines</li> <li>• Service cost evaluation criteria</li> <li>• Probity and confidentiality</li> <li>• Decision making framework</li> <li>• Financial baseline</li> <li>• Financial offer</li> </ul>	<ul style="list-style-type: none"> <li>• Process commitment deed</li> <li>• Invitation to negotiate</li> <li>• Contract design guide</li> <li>• Draft contract</li> <li>• Offer template and instructions</li> </ul>

- > Contract Design Guide – a plain language guide to commercial arrangements, with explanatory notes relating to underlying government policy. This document is a helpful way of setting out objectives and engaging all parties in the process.
- > Draft Contract – this is an evolving document during contract negotiations, generally agreed between the government agency and the industry association, on behalf of bus operators. Substantive network design issues and commercial issues need to be resolved before commencing detailed contractual negotiations with individual operators, including negotiations on issues of price and detailed obligations.
- > Financial template and Instructions – set out the information (and the way it is to be prepared) that will be the basis of the eventual financial agreement.

Further details on particular elements are included later in these Guidelines.

## 2.5 Key Elements in Contract Design

The contract renewal process usually focuses on a small number of key elements including:

- term
- services and performance requirements
- network integration
- funding model
- assets
- continuity of service
- transparency
- marketing of PT including information services.

An overview of these elements is presented in this Section and subsequent Sections deal with some matters in greater detail. Risk allocation is also a vital element in contract design and is the subject of Section 5.

### 2.5.1 Term

**Aim:** To establish a contract term which (1) provides value for money for government, (2) encourages operator innovation and investment and (3) provides an environment of financial stability for operators. To meet the government and operator objectives, terms should be at least 7 years, with a clear understanding of what happens at contract expiry.

**Influences:** Period needs to be long enough to encourage an operator to innovate and invest (pay for assets that are operator-owned), while giving the State the flexibility to respond to changing circumstances, such as changes in government policy priorities and service needs. The term should be such as to permit the existence of some competitive tension, which can be through competitive tendering or ‘virtual competition’ if a negotiated contract is used (e.g., benchmarking).

**Outcome:** At least seven years for route service contracts, with renewal for at least 3 additional years. Ten years for school-only contracts. Both with rights to negotiate renewal at the end of the additional years, subject to meeting agreed performance criteria.

### 2.5.2 Services

**Aims:** (1) Clear and practical criteria for service design to aid network/service planning, budgeting, marketing and delivery. (2) Clear network/service planning responsibilities and decision making criteria. (3) Recognition of parties’ need to introduce service variations by having clear and fair mechanisms for implementing and approving service variations. (4) Clear provisions giving the operator some flexibility in allocating services, if there is a patronage incentive in the contract or there is a net cost contract.

**Influences:** Not all bus services are the same and required services will change over time. Service requirements should generally be determined in Tactical level deliberations. For delivery of required services, service areas/routes need to be clearly identified and protected during the term of the contract, for efficient service provision and to protect operator business values. Performance and reporting requirements need to differ depending on the type of service being delivered. Clear procedures for service changes will assist pricing and support the process of change. If there is a net cost contract or gross cost contract with patronage incentive, the contract should not fully tie the operator’s hands in terms of services that must be run and how they should be run.

**Outcome:** Service specifications need to be developed with associated delivery and reporting requirements. Defined service planning and approval processes must be provided and provision be made for managing variations, including the remuneration consequences of change. The contract should allow the operator some scope to change service offerings if the contract is net cost or gross cost with patronage incentive.

### 2.5.3 Network Integration

The requirements here will depend on the nature of the network with which integration is sought. There are substantial differences between route and school contracts/services in this regard. Network integration for route services, for example, might relate to public transport marketing or fare evasion functions across modes and/or to timing of connections. For school services, it might relate to feeding interchange locations where students change vehicles.

**Aim:** To ensure that the contract is clear about an operator’s responsibilities with respect to interfacing with the wider transport network (such as in service co-ordination and network marketing).

**Influences:** Smooth and efficient co-ordination/integration supports a customer-friendly service, that will maximise patronage potential and customer satisfaction.

Outcome: Increased service patronage, from ore integrated services and more integrated service information. Include contractual provisions that identify operator obligations with respect to the wider transport network, which may include matters such as timetable co-ordination (route and school), marketing integration (route), integration with fare and ticketing systems (could be both route and school). Provisions should be included to indicate how such obligations will be met and funded.

## 2.5.4 Funding Model

The discussion in this Section refers to non-tendered performance based contracts. Tendered contracts can propose different funding provisions and operators are free to choose whether or not to bid. However, most of the matters considered are also relevant to governments preparing an invitation to tender. Section 9 discusses some funding model issues in greater detail.

Aims: To establish a funding model that (1) provides for risks to be managed by the party with most control over those risks, (2) reflects service delivery targets and supports contract objectives and (3) is flexible, transparent and easy to administer.

Influences: Contract payments should provide fair reward for effort and outcomes, reflecting value for public money. Performance which exceeds/falls short of agreed benchmarks should be rewarded/penalised, within agreed bounds. Negotiated contracts need a transparent funding model for public accountability.

Outcome: For most contracts this is most likely to be a gross cost contract with a small (+/- 2%) incentive regime. Costs should separate vehicle kilometres, vehicle hours and peak vehicle components, for payment purposes. Provision for indexation allows for cost changes over time. For integrated route and school services in regional areas, an incentive model may also deliver best value for money and meet government objectives.

## 2.5.5 Assets

Aim: (1) To ensure that assets are managed efficiently, (2) accessible if required to ensure service continuity and (3) are acquired efficiently.

Influences: Asset provision and condition (maintenance, replacement) is vital to sustaining service quality and to protecting a key resource that is needed for services. Contract conditions should promote asset protection. Ownership of assets should lie with the party most likely to maximise the value of those assets over time but such ownership should not create a practical barrier to service continuity.

Outcome: Operators should own and manage assets within a framework that provides: (1) existing fleet and depots – operator to have option to transfer assets to the state or a successor operator at market value. If an operator ceases to hold a service contract (e.g. because of termination), the state should have first right of refusal on acquiring/leasing those assets at market prices at least for a short period of time to arrange alternative arrangements; (2) new fleet and

depots – procurement after entering a new contract should be subject to state approval; if operator ceases to hold a service contract, the state should have first right of refusal. Section 4 discusses asset ownership in greater detail.

## 2.5.6 Continuity of Service

Aim: To ensure that the bus services can be provided on a continuous basis.

Influences: Continuity of service is a keystone of successful public transport service. There must be adequate means of ensuring service continuity.

Outcome: Quality performance based contracts provide the highest safeguard for service continuity. Contractual provisions need to include a graduated regime for helping to ensure service continuity, which includes step-in provisions, default, cure and termination provisions, a dispute resolution procedure, end-of-term and transitional requirements and security arrangements (e.g. performance bond).

## 2.5.7 Transparency

Aim: For non-tendered contracts, to establish arrangements that facilitate ongoing transparency in relation to performance of the services, costs of service delivery, costs of asset procurement and operator sustainability.

Influences: Transparency, with associated regular monitoring and reporting during the contract term, will: (1) allow the parties to develop a trusting partnership; (2) enable the state to support a negotiated process and to make informed decisions about network management and development; (3) improve business information systems for some operators, helping business survival, support operator business continuity goals, mitigate risks of regulatory capture and, provide reliable information for the public.

Outcome: The contracting process and subsequent contractual period should be transparent in relation to service and financial outcomes but protect operator confidentiality. Contract renewal needs to detail service and financial requirements for the renewal process. Contractual provisions then need to specify monitoring and reporting requirements, set out compliance audit requirements and rights and detail operator performance review processes, while ensuring confidentiality obligations are protected. Section 8 discusses transparency in greater detail.

### 3. Bus industry position statement on procurement: Competitive tendering versus “negotiation”

Many route bus services were able to operate on a commercial basis for many years and some services could still operate from the fare box if required. However, this is now not true of most route bus services or of school bus services in Australia. There are strong economic, social and environmental arguments supporting government financial support for bus services.

Most route bus services are now financially supported (subsidised) by governments because the majority of the benefits that flow from those services are not able to be captured in revenue flows by service providers but accrue as external benefits to the wider community, such as social inclusion, congestion cost savings and lower greenhouse gas emissions. Also, if services were required to operate commercially, higher fare levels would exacerbate issues of social exclusion for many people. Governments support route bus services primarily in recognition of the importance and scale of these ‘external’ benefits.

In a regulated route bus service market, the rights to provide service require a service contract with government for the area/routes in question. Similarly, free/subsidised school bus services are provided to complement the provision of (usually compulsory) educational services in regional areas, where the bus service can be seen as meeting a Community Service Obligation linked to the educational product.

Where route/school services have previously been provided by a public operator, subsequent rights to private sector provision have usually been decided by government through a process of competitive tendering. Adelaide and Perth route bus services are examples of this approach. Where service origination has been by the private sector, Australian state governments have typically negotiated with the operator who started the service and has built up the assets and expertise (or their successor in time), as in much of Sydney, Brisbane and Melbourne.

International experience suggests that first round competitive tendering of previously government-provided route bus services typically reduces service costs by 10-50% (Wallis and Hensher 2007). In subsequent re-tendering, however, Wallis and Hensher note the tendency for cost increases, sometimes due to unsustainably low initial tender prices and/or to a shortage of bidders. The BIC is not aware of comparable comprehensive data with respect to school services.

Additional to cutting costs, a key expectation in the use of competitive tendering has been that it would drive operator innovation and improve customer service. The Dutch, in particular, have been strong advocates of the competitive tendering approach for this reason but are reporting that results have frequently fallen short of expectations (van de Velde (2007). Eerdmans et al. (2009) attribute this disappointment to three reasons:

1. contractual reasons: the contract provided too little freedom to the operator to innovate and/or insufficient incentives for innovation (e.g. the authority typically wants to retain too much control, which discourages operator innovation and may encourage operators to simply focus on cost cutting, to maximise profits)
2. market reasons: the development potential of the concession/contract was too small for development
3. organisational reasons: cultural differences between authorities and operators, and/or operator incompetence.

Van de Velde (2007) points out that Dutch transport authorities are now frequently seeking more of a relationship-based approach with operators, which is arguably more difficult under competitive tendering than with negotiated contracts. Section 2 discussed ways in which relationship-based contracting can be pursued, using the trusting partnership approach.

In regimes where competitive tendering is used, a challenge for government is whether to negotiate a contract roll-over with an existing operator whose performance has been good. Wallis et al. (2010) reviewed the Adelaide experience with three rounds of tendering bus services and concluded that there was little to gain in terms of cost efficiency and quality enhancement by going to a fourth round of tendering. They argued that a move to Negotiated Performance-Based Contracts (NPBCs) can not only reduce transactions costs (associated with re-tendering) but also offers the opportunity to work closely with efficient incumbents to grow trust and build patronage.

Some Australian bus contractual negotiations have pioneered the relationship-based Negotiated Performance Based Contract (NPBC) approach, founded on a ‘trusting partnership’ between purchaser (government) and provider (operator). The origins of this approach lie in the belief that, given scarce skills on both sides, such a relationship is most likely to deliver the best outcomes for government and the community. Competitive tendering remains a fallback mechanism in the event that service providers operating under NPBCs do not measure up adequately against key performance indicators.

Indeed, the results achieved by Hensher comparing NPBCs and competitive tendering across Australia suggest that:

*NPBC’s, even before benchmarked targets are implemented through the negotiation process, offer a three percentage points gain in cost efficiency (Hensher 2015a, p. 144).*

Provisions to guard against overly expensive contracts and ‘regulatory capture’ are critical in a negotiated performance-based contractual process. Australian experience suggests that, under NPBCs, transparency and accountability in this regard can be achieved if the following four conditions are in place:

1. performance benchmarking to ensure that operator performance is efficient and effective. This benchmarking needs to be subjected to independent verification. Key performance indicators (KPIs) and the threat of competition (through tendering), in the event of inadequate performance, assists in the maintenance of competitive pressure and efficient performance. The relevant association is well placed to represent the bus industry in setting up a benchmarking process
2. an open book approach to costs, with a 3rd party auditor to verify the data
3. the appointment of a probity auditor to oversee the negotiation process
4. public disclosure of the contract.

These matters are part of the requisite governance arrangements discussed in Section 2.

### BIC Position

The choice between competitive tendering and “negotiated” performance-based contracts is a matter for jurisdictions. The BIC believes that negotiated performance-based contracts, supported by the accountability and transparency arrangements as listed, will deliver better community outcomes over the long term. Whichever approach is used (CT or NPBC), the BIC supports a trusting partnership between the authority and service providers (including industry associations), especially in relation to system planning [T]. Under both regimes, the BIC supports contract roll-over based on performance as a strong efficiency incentive.



## 4. Asset Ownership

The key strategic assets for bus services are depots and buses. The service contract needs to deal with:

- the ownership of existing assets at contract commencement
- the treatment of assets that are introduced during the term of the contract
- assets with remaining economic life at the end of the term of the contract
- the quality of the assets are commensurate with the funding.

Drawing on the work of Shleifer (1998), the BIC believes that, when assets are publicly owned, the public manager has only a relatively weak incentive to undertake investment to reduce costs and to improve quality/innovate, because the manager gets only a fraction of the return. A private manager has stronger incentives because they get more of the returns. Hensher and Stanley (2008) have applied the idea to urban route bus services, arguing for operator ownership of assets to maximise incentives for asset productivity. In general, then, the BIC favours bus operator ownership of depots and buses but with government having sufficient access to these assets to assure service continuity.

### Aims

Building on Section 2.5.5, the main aims in contracting for key bus service assets should be to:

- recognise the cost of capital invested in those assets and provide a fair return on that investment
- have a predictable and fair contractual process for dealing with new and replacement buses and new depots, while still giving Government overall budget control and comfort on new depot locations
- have the asset available to provide continuity of service in all circumstances
- minimise the Peak Vehicle Requirement (PVR) for any given service criteria, by maximising efficiency of deployment
- allow sufficient spare capacity to ensure continuity of service, covering both planned and unplanned vehicle servicing and repair requirements,<sup>2</sup>
- minimise asset risk premia
- ensure that assets are maintained and developed to a high standard, thus delivering quality, reliable services and facilitating continuity of service.

The expansion of aims in this Section, compared to Section 2.5.5, is to be more specific about some of the particular contracting issues that need to be covered to ensure efficient acquisition and use of assets.

### Influences on cost/treatment of assets

- > Interest rates.
- > Market returns on invested capital.
- > Tax policy.
- > Foreign exchange rates, as the majority of buses used in Australia are built on imported chassis.
- > Non contract use and policy with respect to allocation of cost or sharing of revenue.
- > Ownership.
- > Specifications for the asset (bus).

### BIC Position

- > Operators should own and manage assets.
- > Existing fleet and depot assets at the commencement of a contract should be subject to a return on assets based on market value and market returns.
- > For depots, a mechanism of a proxy market rent for owned depots is appropriate, based on an independent valuation. For fleet, an estimated weighted average of cost of capital applied to the current value of the assets is an appropriate rate of return.
- > Where the contract is a continuation of a previous contract that has been subject to a capital return on the existing fleet, a transitional arrangement taking account of the previous capital recoupment and/or return should be recognised.
- > As mentioned in Section 2.5.5, in the case of a termination of contract, the state should have access to the key assets (at least for a time for them to make alternate arrangements), to ensure continuity of service. The operator should be recompensed at market value. Further, procurement of new fleet and depots should be subject to predetermined rules, a predetermined bus replacement program<sup>3</sup> and state approval for growth buses and new depots. In the case of new depots, state approval should require preparation of a business case by the operator.

<sup>2</sup> The opportunity for operators to share space capacity may be available on some occasions.

<sup>3</sup> With contracts of 7-10 years. This pre-determined replacement program may change during the course of the contract.

## 5. Risk Recognition and Allocation

### 5.1 Context, aims and general position

The 2011 Thredbo 12 Workshop on Designing Contracts and Concessions identified a number of key risks to the success, or otherwise, of a contract. In diminishing order of significance, these key risks included:

- > unclear description of government objectives and outcomes: a matter that has been discussed in Section 2.2.1
- > poor quality in tendering/negotiation assessment: where, for example, bids need to be robustly tested for viability and the trade-off between costs and service quality needs to be recognised
- > poor allocation of risks and responsibilities: the main subject of the current Section
- > ensuring financial viability: an issue that has been reiterated at several places in these Guidelines
- > dispute management and resolution arrangements: even though a trusting partnership should minimise the need to use such procedures, they are a fundamental requirement of any contract
- > specifying (clearly) the services to be provided: which should be self-evidently obvious but is sometimes poorly handled. Section 2.5.2 noted some issues in this regard
- > changes over time in government/government policy: always a possibility over a 7-10 year (or longer) contract period and requiring agreed contractual procedures to introduce flexibility into resulting service offerings. This is one example why 'incomplete contracts' are inevitable and why procedures to introduce flexibility more generally are important
- > specifying Key Performance Indicators: discussed in Section 7
- > tendering/negotiation process: discussed in Section 2.4.

To minimise both transaction costs and overall risk premiums, the aim is to clearly identify key risks and then allocate each risk to the party best able to manage that risk. There are cases, however, in which neither the operator nor the government has direct control of a particular risk. In general terms, the BIC supports the position that non-manageable risk is a commercial risk that should sit with the operator and is one of the contributing factors to the assessment of a fair return. A subsidiary aim of risk allocation could be to motivate desired behaviour in accordance with government policy. An example is a patronage related payment component, which the BIC supports.

As part of the contracting process, a risk analysis should be conducted jointly by government and the industry association, to agree on the main drivers and controllers of risk and how these are reflected in the contract, including indexation arrangements.

In short hand terms, risks are either demand or supply side based, and can have both quantity and price dimensions. The following discussion uses this classification.<sup>4</sup>

### 5.2 Patronage and yield risk

On the demand side, the degree to which patronage (quantity) and yield (or price) risk can be managed by the operator depends partly upon the degree of service planning and fare pricing freedom available to the operator. This is frequently low. As indicated in Table 4, the major influences on patronage and yield generally sit with Government. Some medium impact factors cannot be much influenced by either the state or the operator and there are other factors, particularly marketing, reliability and quality of service, which can be managed by, or at least significantly influenced by, the operator. Table 4 sets out a suggested summary of the key drivers of movements in patronage and yield and whether the state or the operator has power to control them.<sup>5</sup>

#### BIC Position

- > In a gross cost contracting environment where operators do not have a large degree of service planning freedom, patronage and yield risk should ultimately sit with Government but operators should be motivated by incentives and/or penalties to maintain high service quality and effective revenue collection.
- > Operators should be motivated to use whatever discretion they have on service planning and frequency to encourage patronage growth. A small patronage incentive is suitable for this purpose.

<sup>4</sup> The following Section draws heavily on work carried out by a joint industry operator committee facilitated by LEK Consulting Pty Ltd in negotiations for renewal of Sydney metropolitan bus contracts.

<sup>5</sup> This will depend on who is responsible for service planning.

**Table 4: Demand side risks**

RISK DRIVER	State Control	Operator Control
<b>High Impact</b>		
Land planning / land use	High	Nil
Bus service coverage	High	Nil or low
Bus service frequency	High	Nil or low
Modal integration	Medium to high	Nil or low
Bus priority	High	Nil or low
Fares	High	Nil or low
<b>Medium Impact</b>		
Economic cycle	Low	Nil
Population growth	Low	Nil
Car & fuel prices	Low	Nil
Parking costs	High	Nil
Service quality	Medium	Medium
Security – on bus	Low	High
Student travel system	High	Nil to low
Security – system, environment	High	Medium
Reliability	Medium	Medium
Marketing, information availability	High	High
<b>Low Impact</b>		
Accessibility	High	High

**Table 5: Production risks**

RISK DRIVER	State Control	Operator Control
<b>High Impact</b>		
Labour use	Medium (for example in New South Wales where there is a state owned operator)	High
<b>Medium Impact</b>		
Fuel use/cost	Nil ability to manage	Low
Spare parts and repairs usage	Nil	Low
Labour on-costs, payroll tax	High	Low
<b>Low Impact</b>		
Other resource use	Nil	High
Depot costs	Nil	High
Compliance costs	Medium	High

## 5.3 Production/cost risk

As a general principle, production and cost (supply side) efficiency are influenced both by external factors, such as movements in the economy broadly, and internal factors, such as an operator's efficiency and cost control. The former should be dealt with by a fair, agreed and independent system of indexation within the contracts, encompassing movements in general cost levels (of labour, fuel, parts, etc), to minimise any premium in the price to cover the risk. The latter should be a risk borne by the operator, meaning that the operator faces some unit cost risk, over which they have a high degree of control (e.g. whether to pay wage increases higher or lower than the general rate of wage increase). Table 5 shows the risk disposition for production side risks, assuming a general cost indexation provision is in the contract.

### BIC Position

- > Other than service volumes and extraneous impacts, production risk should sit with operators, who are responsible for industrial relations that affect the highest impact unit cost, labour. Labour unit rates should be consistent with the rates supported by industry.
- > The operator should bear the initial unit cost risk but should be compensated for general price movements through an indexation mechanism, which explicitly reimburses for general movements in the prices of (for example) labour, fuel and parts.
- > Payment for buses used in the contract should cover the depreciation and ROI of the bus, recognising market rates, refer to Section 5.4.

## 5.4 Investment risk and funding

We have argued in Section 4 that asset ownership should rest with the operator. Industry recognises that government is entitled to transparency to ensure value for money in investment in assets. Further, industry recognises that the purchase of new assets, which will impact on state budgets through the funding mechanism, should be subject to government approval. It is industry's view that asset efficiency will be maximised by leaving the choice of specific assets to the operator, within bounds, such as a general specification for fleet and a ceiling price mechanism.

The purchase cost of a new approved vehicle must represent value for money, based on the vehicle specification. The operator must be able to demonstrate that it has conducted a competitive process for vehicle procurement and that its asset selection is based on a whole of life cost assessment. The cost of any additional features above the specification required by government for the contract purchase should be borne by the operator, such as luggage bins fitted to school contract vehicles where they are not needed for the school service, to facilitate other uses of that vehicle.

### BIC Position

- > Asset efficiency will be maximised by allowing the operator to make the asset selection, within bounds set by the State.
- > The asset price should be subject to a ceiling price determined through a fair and transparent mechanism.

### BIC Position continued

- > Asset compensation should be by way of a proxy rent for depots and an annuity over the economic life of a vehicle, with a weighted average cost of capital interest rate applied.

## 5.5 Other Matters

### Industrial Risk

With the recent reforms to the Australian industrial system, it is important that industrial risk is monitored and reviewed throughout the term of the contract. The new system reduces the operator's ability to control labour costs and the workforce has increased powers to take protected strike action which can adversely affect a contract's viability. The proposed partnership relationship between government and industry should help to keep this matter on the table for review, as needed. For example, when contracts are renewed the unit rates for wages may need to be adjusted to reflect the industrial environment prevailing.

### Government Agency Performance Risk

The risk of poor performance by one or more government agencies adversely impacting on bus service quality has largely not been addressed in government bus contracts. For example, lack of bus priority treatments can adversely impact on-time running and may impact on contract penalty regimes. The BIC believes that government and industry should identify KPIs for government agency performance, which can be taken into account (inter alia) when reviewing operator performance. The administration of contracts after they are entered should be subject to regular industry consultation.

### Change events

The risks and treatment of change events needs to be agreed, to help ensure smooth treatment during contract duration. For example, policy changes at any level of government that impact on bus service performance should be identified and managed in an agreed way. If such policy changes increase service costs, it is usual practice for the contract payment to be adjusted to offset this impact. Conversely if a policy change reduces costs.

### Indexation

An indexation reset or review process should be provided in the contract, to allow any major discontinuities in costs, or other significant service influences, to be considered. For example, rapid increases in fuel prices a few years ago led to agreement for more frequent indexation of fuel costs in many contracts. Again, the BIC believes that mature trusting partnerships can handle such discontinuities with ease.

### Force Majeure

Bus contracts need to include a force majeure clause to free operators from liability in the event of extraordinary risks beyond their control (e.g., a major industry wide strike caused by national industrial issues or a flood event), which prevents them from fulfilling their obligations under the contract, or leads them to not meet certain contract KPIs, which may otherwise invoke penalty provisions. Operators need to take steps to limit the effects of a possible force majeure but should not be called to account for performance of their responsibilities under the contract if such care is taken.

## 6. Some legal aspects of contracts<sup>6</sup>

### 6.1 Scope

A bus service contract issued by government is a legal document that allocates an operator (or operators) the rights to provide a bus service, which is usually (but not necessarily) an exclusive right and is usually for a particular route or service area. It indicates what is to be delivered and the payment arrangements for the service, together with various provisions that manage the arrangement between buyer and seller, to support performance. More generally, a bus service contract now typically sets out (for example):

- the details of the service to be provided
- conditions that must be met in the provision of that service (which may include operator obligations with respect to public transport system marketing, involvement in fare/ticketing systems, etc)
- service variation/flexibility provisions, including how changes in services will be handled
- service continuity provisions
- the term of the contract
- the funding model
- various financial, compliance and reporting requirements (e.g., insurance obligations; security provisions, such as a performance bond; use of brands; charter rights; advertising requirements)
- asset ownership, acquisition and replacement
- access to assets and dealing with assets
- arrangements for protection of intellectual property
- treatment of force majeure events
- what happens at the end of the contract term
- allocation of responsibilities
- how operator under-performance or non-performance will be handled, including conditions under which termination may occur
- key performance indicators and incentive/penalty provisions.

In a non-tendered contract, the scope of such contractual provisions should reflect the results of government-industry consultation. In a competitive tendering situation, the contractual provisions will be a reflection of the government tender document, although negotiation with industry over that tender document (and, by implication, the associated contract) should help to improve service outcomes.

### 6.2 Wider legal context

The bus service contract exists within a broader government legal/regulatory and policy framework, which sets out very important matters, such as road rules, driver licensing requirements, work place WHS obligations, working with children requirements, vehicle mass and dimension limits, other vehicle new and in-service standards, working hours regulations and how a government is to go about procuring goods and services, such as bus services. The latter might specify, for example, that services are to be procured through competitive tendering, unless there are strong arguments to the contrary. Such 'strong arguments' might include, for example:

- grandfather rights asserted by some operators, which might precipitate a costly legal battle if competitive tendering is attempted, and
- efficient and effective performance by an incumbent operator, which might warrant a contract roll-over.

The BIC favours contractual simplicity. To this end, it favours the contract referring to relevant legal and regulatory obligations but not re-stating those obligations. Specific policy requirements should be the subject of government-industry consultation, to facilitate a smooth negotiation process.

Within the last 10 years, bus service contract documents in Australia and many international jurisdictions have become more complex and prescriptive. Many contract provisions are either directed to micro management by a regulator that is normally ill equipped to manage the detail they have contracted to regulate, a worldwide issue, or directed to protection against risk of what can go wrong. There has been a tendency to over-prescription of process and too little focus on outcomes. The result is a document that limits the ability of operators to be flexible and to deliver innovation. A further result is an administrative burden on the regulator that it is not often equipped to handle. As a general principle, the BIC strongly supports clarity in purpose and simplicity in specification of the contract, without loss of integrity. This requires a few common elements in preparing and settling the contract.

- > The contract should be preceded by a government/industry consultation process that seeks agreement on service delivery goals, commercial principles that are to be embedded in the document, the roles of the various parties in system planning and the process for award of the rights to provide service. The nature of the conversation will depend in part on how the contract is allocated (by competitive tender or negotiation) but detailed consultation, to clarify the strategic and tactical environment of the contract, will improve outcomes in either environment.
- > The contract should be outcome oriented (for example, delivering a quality, safe and reliable service for the patrons within the context of the policy of the State at the strategic level) and easy to understand. The continuing emphasis in these Guidelines on both government and operators being clear about their goals is intended, inter alia, to help meet this aim.

<sup>6</sup> This Section draws on a presentation made by Mark Burton of Pitcher Partners to the Thredbo 10 conference *Towards the Ideal Contract*.

- > The contract should provide the legal protections that are reasonably required by the State and by the operator but without over prescription of process steps to achieve the desired outcomes.
- > The contract should include worked examples and be supported by explanatory notes (which set out, for example, how the parties intend to deal with particular matters that might be subject to significant change or dispute, such as changing service levels) and templates (which set out, for example, various reporting requirements under the contract).

## 6.4 Contract Area

There is wide variation across Australia in terms of the scale of route bus service contracts, whether these are route or area-based (this is not the case with school contracts). The service unit, whether it is a franchise area or a route or a selection of routes, should be a decision stemming from travel patterns and service planning. Through routing, major corridors or orbital services may be suited to route base contracts, whereas local services are suited to franchise area contracts.

The default preference for planning and contracting urban route bus services should be franchise areas that reflect travel catchments (which will, in turn, partly reflect physical and socio-economic geography), as this gives the greatest flexibility to adapt to market changes and helps to focus attention on building a custodial relationship with the community. Subsidiary contractual provisions may then be required to ensure that there is cross border cooperation among franchise area holders to ensure the best transport planning outcome for patrons. A limited number of strategic regional trunk bus routes could form a separate overlying network, reflecting some of the land use transport planning priorities set out in the BIC Policy Paper 5, “Urban land use transport integration and the vital role for Australia’s forgotten inner/middle suburbs” (Stanley and Brain 2015).

There are limited scale economies and potential scale diseconomies in route bus operation. In the Australian model there are often large operators that operate from multiple depots which essentially give the characteristics of an agglomeration of small operators. Therefore, service parameters and depot locations related to those service parameters, are key determinants of optimal contract/area size.

The size of the operating unit to be contracted can be modestly influenced by the desire of government to reduce administration and transaction costs. However, forcing artificial combinations of operators into area based contracts for example is likely to increase transaction costs for operators, which will be passed back in increased service costs. It has been demonstrated in the French context (Yvrande-Billon 2007) that, in a market of fewer and large operators, there is in reality less competitive pressure.

## 6.5 Prescription versus performance based contracts

It has been usual for Australian bus service contracts to provide detailed specification of both service output requirements and detailed prescription of requirements for many of the specific inputs that are needed to produce the service outputs. Thus, for example, it is common to see contracts specify particular forms and/or levels of training required for various staff members.

A simpler approach is to specify the required performance outcome and place the obligation on the operator to achieve that outcome, such as ensuring that drivers are suitably trained to provide safe, customer friendly service. This then gives the operator scope to decide how to best meet that requirement, without removing legal obligations set in wider law. This approach has been used in states such as Western Australia, for example, in much road transport law/regulation, where detailed input prescriptions have been replaced by high level performance requirements.

The BIC supports a move towards more simplified bus contracts, replacing prescriptive input specifications with output performance expectations when possible.

## 7. Key Performance Indicators (KPIs)

### 7.1 Scope

It has been argued in many parts of these Guidelines that efficient and effective bus services are important, for:

- showing value for public money invested in services and
- long term operator business viability (sustainable contracts).

This Section proposes a number of Key Performance Indicators (KPIs), most (but not necessarily all) of which can be embedded within service contracts and be used to influence operator performance and remuneration.

These Guidelines propose benchmarks for both operator performance and authority performance, for two reasons. First, KPIs on both operators and the authority (government) emphasise the partnership relationship that the BIC sees as critical for the most effective delivery of bus services. Second, bus operator performance on some indicators can be strongly influenced by governmental actions, particularly for route bus services. For both reasons, KPIs for both operators and government are appropriate and are included herein.

Section 2.1.1 outlined the high level goals/objectives towards which public transport services are directed which can be summarised as:

1. maximising patronage (which might include measures related to both cost efficiency and network effectiveness), with two possible sub-objectives:
  - a. Customer satisfaction
  - b. labour market enhancement (mainly relevant for rail services and BRT)
2. maximising patronage by particular target groups - where these groups are seen as experiencing particular forms of transport disadvantage and where provision of a defined minimum service level is seen as an effective way to meet this objective
3. meeting cost-recovery targets (to be specified by government)
4. meeting environmental performance targets (to be specified by government)
5. meeting health and safety standards/targets (to be specified by government)
6. meeting other agreed objectives relating to transport to meet community development, education policy and support special events.

These were all to be pursued subject to the unit costs of service provision, to help ensure effective and efficient provision.

Three main categories of KPIs are generally used for operator public transport service performance assessment, and related incentive/penalty payment regimes. These various matters can be included under those three categories:

1. Patronage Incentive – which picks up the first goal/objective.
2. Operational Performance Incentive (OPI) – mainly focusing on points 4 and 5 and can contribute to point 1(a).
3. Qualitative Performance Incentive (QPI) – focuses on the customer satisfaction aspects of the point 1 (a).

Point 2 concerning distributional aspects of service provision relates mainly to desired service levels and should form the basis of one KPI for government, as the primary service funder. Similarly, point 3 (on meeting cost-recovery targets is largely a matter for government. Point 6 is specific to particular contexts and is not considered further here. Point 1(b), concerning the role of PT (especially rail and BRT) in extending labour catchments, is a fairly specialised KPI and should also be dealt with on a case by case basis if such initiatives are proposed, which will mainly be in relation to Bus Rapid Transit where bus contracts are concerned. Labour catchment extension is not discussed further in these Guidelines.

It is widely agreed that Key Performance Indicators against which performance is assessed should be characterised by “the SMARTS”: Specific, Measureable, Achievable, the Responsibility of the party being assessed, Timely and Small in number (recognising costs/difficulty of implementation). These criteria have been recognised in developing the proposed KPIs.

## 7.2 'Quality' KPIs

Quality is a vital but elusive concept in public transport, the importance of which is high and on the rise, especially for route services. High quality route bus services are expected to attract higher patronage numbers than lesser quality services. A patronage incentive will pick up on part of such variation. However, focusing on particular important dimensions of quality is an important diagnostic supplement, which can help to improve services. Some dimensions of quality are usually included under an Operational Performance Incentive (OPI) and others under a Qualitative Performance Incentive (QPI).

There are a number of difficulties in including 'quality' issues within a performance KPI regime for bus services.

- > Whether to focus on production quality or on quality as it relates to customer satisfaction (e.g. how to clean a bus versus what the customer thinks about bus cleanliness). There is a distinct swing in Europe towards quality as it relates to customer satisfaction, and this is also measured for many Australian route bus services, since customer satisfaction is thought likely to help drive patronage gains, but both production and customer side measures remain important.
- > No matter whether a production or customer satisfaction perspective is taken, which variables should comprise the relevant quality indicators and how should they be defined, measured and weighted? Consistent approaches to definition and measurement, in particular, are vital for effective benchmarking of one service/provider compared to another.

Authorities and operators are grappling with these issues and have a long way to go in terms of any consistent approach to quality. The range of quality variables included in service quality assessment is broadly consistent across many jurisdictions but measurement approaches differ and results are seldom openly published. For such reasons, these Guidelines propose a bare minimum number of quality indicators, which can be amended over time.

Both production (OPI) and customer satisfaction (QPI) indicators of quality should be included in an integrated approach to demand analysis, service costs and KPIs. For bus services, the most critical quality variables seem to be (not in any particular order):

- Reliability/punctuality
- Travel time
- Complaint resolution\*
- Accessible services
- Personal safety at the bus stop
- Bus stop facilities (shelter; seats)
- Information at the bus stop
- Service frequency
- Safety\*
- Cleanliness of seats/vehicle\*
- Driver behaviour\*.

(\*) The asterisked items are those most under operator influence for route and school bus services and are, therefore, suitable candidates for inclusion in a set of operator service quality KPIs. Some can be categorised under an OPI regime and others under a QPI regime, where the latter is confined to attitudinal indicators (of customer satisfaction). Hensher's Service Quality Index (SQI) is a best practice way of measuring service quality (Hensher 2015b).

## 7.3 Proposed KPIs

Tables 6 and 7 summarise a core set of proposed KPIs, for both operators and government, for route bus and school bus services respectively. Subsequent discussion suggests particular measures that should be used. Sections 7.3.1 to 7.3.3 discuss specific proposed indicators. How these KPIs are used to apply incentive/penalty regimes is a matter for negotiation between government and industry/operators but, in total, the BIC believes that no more than about 2% of contract revenue should be at risk to either party. Achievement against the set of KPIs included in the contract can be used as one basis for assessing whether a contract might be rolled over with the existing operator at its completion, whether that contract was negotiated or won by competitive tender. Service efficiency, in terms of indicators such as cost/vkm or cost/vhr, are not included among the suggested KPIs, since they are largely determined when the contract is issued and should be influential in the initial awarding of the contract. Within a contract, the particular KPIs that are included would be listed in the body of the contract, while details of how the KPIs apply to a specific contract (e.g., specific performance thresholds) would be included in a schedule to that contract, since these details are specific to particular contracts. Recent research by Lowe (2015) on a bus operator's community contribution suggests that this should be a candidate for future inclusion within the set of operator KPIs.

**Table 6: Proposed Route Bus Service KPIs**

Indicator	Operator KPI	Government/Authority KPI
Patronage Incentive	Yes - growth only (minimum hurdle rate to be surpassed)	Yes – extent to which Minimum Service Level is provided.
Operational Performance Regime	<ul style="list-style-type: none"> <li>Cancellations</li> <li>On-time running</li> <li>Accident rate</li> <li>Safety</li> <li>Network efficiency</li> </ul>	<ul style="list-style-type: none"> <li>Fleet age</li> <li>Kms of bus priority lane</li> <li>Travel times</li> <li>Contract administration (e.g., paying on time)</li> <li>Safety at bus stops</li> </ul>
Qualitative Performance Regime	<ul style="list-style-type: none"> <li>Bus driver behaviour</li> <li>Vehicle cleanliness</li> <li>Suitable response times to passenger complaints/inquiries</li> </ul>	

**Table 7: Proposed School Bus Service KPIs**

Indicator	Operator KPI	Government/Authority KPI
Patronage Incentive	No	No
Operational Performance Regime	<ul style="list-style-type: none"> <li>Cancellations</li> <li>On-time running</li> <li>Accident rate</li> <li>Safety</li> </ul>	Fleet age
Qualitative Performance Regime	<ul style="list-style-type: none"> <li>Bus driver behaviour</li> <li>Cleanliness of vehicles/seats</li> <li>Complaints/compliments</li> </ul>	Safety at bus stops

### 7.3.1 Patronage Incentive for Route Bus Services

#### Operator Incentive KPI

Patronage incentives should be sufficiently large to potentially make a difference to operator remuneration but not so large that they create budgetary mayhem for government. The key issue for patronage growth is distinguishing the operator's contribution to growth. Growth may come (for example) from local population increase, rising fuel prices, new service roll-out that is funded by government, operator performance qualities, or some other factors. Recognising the desire to keep KPIs manageable, and to reward operator effort, the BIC proposes that:

- a patronage incentive is paid at a modest rate and has only upside (no loss of revenue for loss of patronage, although services may possibly be revised downwards if patronage is declining)
- no payment is made if an operator's patronage growth is less than 2 per cent, on a moving base (if a 2% increase is achieved in year 1, that becomes the new base for year 2 and a further 2% increase must be achieved to be eligible for an incentive)
- no payment is made for growth that is attributable to additional service kilometres funded by government. A service elasticity of 0.3 is proposed for estimating patronage attributable to service growth.

The following formula applies these points.

*Patronage incentive = max [0, (passengers this year – passengers last year \* 1.02 – passengers due to service growth)] \* \$X/passenger,*

where:

*passengers due to service growth = passengers last year \* % additional kms \* 0.3 \* % of year over which new service applied,*

*\$X/passenger is the agreed amount paid per additional passenger (agreed between government and industry).*

An important corollary of a patronage incentive is operator freedom to allocate at least some service kilometres to places where they are likely to maximise patronage. The BIC proposes that every route bus contract should designate some service kilometres as 'flexible kilometres', the use of which is a matter for the operator to select to maximise patronage.

#### Government KPI

The BIC proposes that the most suitable patronage incentive indicator for government relates to the extent to which social safety net services are available across the built-up urban area, as an indicator of the extent to which government is seeking to reduce mobility-related risks of social exclusion. Social safety net services in metropolitan areas are proposed as services:

- within 400 metres of continuous metropolitan urban settlements
- with a frequency of at least twice an hour from 6.00am to 9.00pm, start of last run, seven days a week.

This measure could be varied to allow for a lesser frequency on Sundays or in school holidays but that is an unnecessary complication when the purpose is to benchmark provision on a consistent basis, across parts of cities and between cities. Further work is needed to define suitable minimum service levels for non-metropolitan urban areas.

The proposed government patronage KPI is thus:

*% of metropolitan population within 400m of a route bus service (or tram/train service) with a frequency of at least twice an hour from 6.00am to 9.00pm, start of last run, 7 days a week.*

It is not suggested that government would somehow be fined for not meeting a target like this but setting relevant KPIs does increase government accountability for performance and can help build understanding of some reasons why an operator may, or may not, perform well on particular KPIs, given interdependence between some government performance indicators and operator performance outcomes.



### 7.3.2 Operational Performance Incentive Regime

#### Operator KPIs

The same set of indicators has been proposed for both route and school bus services. However, the specific benchmarks that will be set for any particular KPI is likely to differ between these different categories of service. Tables 8 and 9 propose specific measures for route and school bus services, the use of which depends in part on suitable performance monitoring systems. Where benchmark allowances on running times are not achievable at the starting point of a contract, timetables may need to be revised or the benchmark allowances increased, to reflect reality. Also, increasing traffic congestion over time may precipitate a need to revise benchmark allowances. Force majeure provisions should apply to KPIs.

#### Government KPIs

It has been argued that government performance can influence operator performance. The adjustment factor for service growth in the operator patronage incentive regime reflects such influence. For route bus services, the provision of bus priority measures also impacts operator performance, on matters like on-time running and patronage growth potential. A KPI is therefore proposed for government, relating to the kilometre length of bus priority lanes that are provided on route service routes. There would be no penalty on government for poor performance but the information should be transparent and government is then accountable to the electorate for its performance. Travel times (speeds) on bus routes are a related but broader measure of road network performance that is a government responsibility that affects bus service quality. A KPI on government is also proposed for travel times. Fleet age is proposed as a KPI on government for both route and school services, since this is a partial indicator of vehicle quality and environmental performance and is directly related to government policy on vehicle replacement. Proposed Operational Performance KPIs on Government are set out in Table 10.

Benchmarks have not been included for the indicators listed in Table 10 but should be developed between industry and government, once a reliable data set is available on actual performance.

### 7.3.3 Qualitative Performance Incentive Regime

As noted, QPI indicators have been restricted to some component customer satisfaction measures, with bus driver behaviour and cleanliness of vehicles and seats proposed as the most important indicators for bus operators. Safety at bus stops is proposed as a KPI on government. Driver behaviour, cleanliness of vehicles/seats and (perceived) safety at bus stops can all be measured by customer satisfaction ratings. Complaints (net of compliments) is a further potential QPI inclusion, as is a more generic measure of customer satisfaction, although the latter is less under operator control than the specific satisfaction components that have been proposed for inclusion (bus driver behaviour and vehicle/seat cleanliness).

No specific measures are proposed for the application of incentives/penalties with respect to these matters, because there are currently no norms in this area. Incentives/penalties can, of course, be based on better/worse than last year or some other period.



**Table 8: OPIs for Route Bus Operators**

Indicator	Route Bus	Benchmark Allowances
Cancellations	No cancellations	Allowance of 1% per calendar month (pcm) or one service, whichever is greater
On-time running		
early departures	No service to depart earlier than 59 seconds before scheduled time	Allowance of 1% pcm or one service, whichever is greater
late arrivals	No service to arrive more than 5 minutes after the scheduled arrival time	Allowance of 5% pcm or one service, whichever is greater
Accident rate	To be defined (less than last year?)	To be defined
Safety	Vehicle inspection default recordings/ vehicle	To be defined
Network efficiency	Boardings/vkm	To be defined

**Table 9: OPIs for School Bus Operators**

Indicator	Route Bus	Benchmark Allowances
Cancellations	No cancellations	Allowance of 1% per calendar month (pcm) or one service, whichever is greater
On-time running		
early departures	No service to depart earlier than 59 seconds before scheduled time	Allowance of 1% pcm or one service, whichever is greater
late arrivals	No service to arrive more than 5 minutes after the scheduled arrival time	Allowance of 5% pcm or one service, whichever is greater
Accident rate	To be defined (less than last year?)	To be defined
Safety	Vehicle inspection default recordings/ vehicle	To be defined

**Table 10: OPIs for Government**

Indicator	Route Bus Services	School Services
Fleet age (a proxy for vehicle quality and environmental performance)	Average vehicle age	Average vehicle age
Kms of bus priority lane	% of total service kms with bus priority lanes	N/A
Travel times	Average running speed on bus routes	% of total travel on unsealed roads
Contract administration	On-time payment	On-time payment
Safety at bus stops	Reported incidents	Reported incidents

## 8. Costs and Transparency

A corollary of BIC's position in favour of negotiated renewable contracts is that the industry and individual operators must be able to satisfy the State, through a transparent process, that they are delivering value for money at fair cost and fair margin.

This has been achieved in some jurisdictions by direct provision of financial statements to their procuring party. This is problematic in leaving with the regulator substantial accounting challenges with respect to allocation of costs among often diverse elements of businesses and normalisation of costs.

A more creative and more effective approach was taken in the last round of contract negotiations in Victoria, where both parties agreed a set of procedures to be followed in a compilation of costs during the negotiation process. The operators then contracted an independent accountant to extract the agreed costs by following the Agreed Upon Procedures and submitting those costs in a standard agreed financial template. The independent accountant provided a letter of assurance both as to the following of the Agreed Upon Procedures and a negative assurance that nothing had come to notice that would render the cost information misleading.

The procedures that were followed allowed for the smoothing of trends, where appropriate, and the proper basis of allocation of costs among diverse activities, not all of which might be subject to the contract. It also had the advantage of providing to government only relevant information that they required with respect to the contract, in the form of a financial template.

A Government appointed independent auditor reviewed the working files and submitted a report to attest that the Agreed Upon Procedures had been followed. Operators whose costs appeared to be high through this analysis were required to justify their numbers or face a cut in remuneration. Those whose costs appeared low had the opportunity to argue for an increase.

### BIC Position

The BIC supports the approach of cost compilation by an independent accountant, subject to audit of agreed upon procedures via Government appointed auditor. The justification of costs outside the benchmark range is also supported.

## 9. Funding Model 1.01

This Section is concerned with the way bus operators are remunerated for providing government-contracted services, drawing largely on Burton (2006). It elaborates on some matters from Section 2.5.4, primarily from the viewpoint of a negotiated contract, although much of the material is equally applicable to competitively tendered service contracts.

Section 2.5.4 proposed that the aims of the funding model should be to:

1. provide for risks to be managed by the party with most control over those risks (e.g. to minimise overall risk premia). Risk was discussed in more detail in Section 5
2. reflect service delivery targets and support contract objectives (i.e. it should motivate desired behaviour, which includes the contribution of KPIs and related incentive/penalty regimes but also goes to higher order questions such as contestability, to encourage efficient and effective performance)
3. do these things in a way that is flexible, transparent and easy to administer (this will help facilitate change over the course of the contract, reduce transactions costs and allow both parties to focus on what they do best, rather than haggling with each other).

Other parts of these Guidelines have pointed out that the funding model needs to be as simple as possible (linked to point 3 above) and should include a simple mechanism for variation of the costs and margin when services vary. This requires that the payment components within the contract should be sufficiently disaggregated to facilitate indexation (Section 5 included discussion on indexation, in a risk management context). The margin at the commencement of contract should be transparent and rewards to the operator should be linked both to an appropriate return on investment and to a margin on effort. For negotiated contracts, that margin should reflect normal rates of return for products with a similar risk profile.

Reflecting the wide range of influences on bus service costs and performance, contract remuneration formulae have become increasingly complex. This increases transactions costs and creates a growing likelihood of misunderstandings. Burton (2006) demonstrates this complexity very graphically. This argues for renewed efforts to simplify payment models.

## BIC Position

- > In negotiated contracts, starting costs should be based on efficient cost levels, which will require some form of comparative cost benchmarking. In a competitively tendered context, starting cost levels will reflect tender outcomes but governments should ensure that the bids are at financially sustainable levels, to support quality services that are safe and assure continuity.
- > For negotiated metropolitan route service contracts, a gross cost funding model, with an incentive/penalty regime is supported, although net cost contracts may be appropriate where the operator has considerable freedom over the service offering.
- > For negotiated (and, potentially, competitively tendered) contracts, transparent costs at commencement of contract should be separated into the following major groups and subgroups, to facilitate indexation:
  - Bus hours or driver wages costs:
    - Bus drivers' wages
    - Payroll tax
    - Workers compensation insurance / workcover
  - Bus kilometer or maintenance costs:
    - Fuel
    - Maintenance
  - Overheads:
    - Rent for depots
    - Bus related overheads (e.g., registration and comprehensive insurance)
    - All other administration costs and depot overheads
    - Capital return on investment.
- > The funding model should allow for operators to have the benefit or burden of efficiency gains or losses compared to the transparent cost basis established at commencement contract.
- > Margin should be linked to operating costs or size of activity.

Indexation should be provided on a comparison with widely accepted and independent indices appropriate to each of the major cost groups above. The regularity of indexation items should relate to their volatility. This would imply that fuel should be indexed monthly and wages and other costs probably six monthly.

Because of the different relationship between size of investment and size of activity among different forms of contract, the BIC considers that there should be both a return on asset investment and a return on effort represented by the operating costs. In the simplest example, the difference can be seen by comparing a school contract, where there is a large investment in the bus relative to the size of the task, with a high frequency metropolitan operation, where there is a higher proportion of task compared to investment. The BIC considers that the appropriate return on assets is a weighted average cost of capital. It is the return which should compensate them for the use of capital, neither over rewarding them nor depriving them of a return that could be obtained by investing the capital elsewhere.

A tendency has arisen for regulators to apply a debt rate of interest to an annuity over the economic life of a bus. This is clearly inappropriate as it fails to recognise the equity that operators must apply to bridge the gap between the economic life of the vehicle and the life over which finance is available.

The margin should be defined as a percentage of operating costs. This will reward the operator for efficiency gains and penalise the operator for efficiency losses. It will also facilitate service change mechanisms and maintain the level of margin in real dollars.

There should be a small penalty and incentive regime (~ +/- 2% of contract value), which must be linked to the degree to which the operator can control the elements making up the penalties or incentives. Section 7 discussed possible components of such an incentive/penalty regime.

## 10. Fares, Ticketing and Marketing

Route bus contracts generally include provisions that set out how fares are to be set and changed, the operator's obligations with respect to ticketing and marketing obligations. These important (primarily Tactical level) considerations all recognise that bus services are usually only one part of an integrated transport system, where fares, ticketing and marketing have network implications and are often organised at network or system level. Operators may, of course, undertake their own marketing, to assist customers and build patronage, subject to any contractual provisions that relate thereto.

The particular arrangements that apply in any jurisdiction will reflect the range of modes in operation in that jurisdiction and the history of network/system development. Public transport fares are primarily a policy matter for government, reflecting considerations such as the expected external benefits from public transport use (e.g. congestion cost savings; accident savings, emission savings) and concerns about transport disadvantaged groups/people who rely on public transport, both considerations which justify fares lower than service costs. Where net cost contracts are in place, operators should have a greater degree of influence over fare setting.

Most capital cities either have, or are progressing at various rates towards, smart card ticketing systems but system marketing arrangements are more variable across jurisdictions. However, over the course of current or near-future 7-10 year contracts, network level arrangements for ticketing and marketing should be expected as common contractual obligations of operators, whether in negotiated or competitively tendered environments.

Some jurisdictions see network marketing as a government responsibility. The significance of external benefits from well patronised public transport services supports this view. However, operator closeness to the customer and role in revenue protection supports operator involvement as a partner with government in network level marketing. Similar arguments apply to network planning considerations. The inclusion of a patronage incentive within bus contracts also argues in favour of an operator voice in network marketing. As KPIs become increasingly common in contracts, bus operator involvement in system level marketing, most likely organised through the state bus operator member association, should become the norm.

The bus service contract for route services should clearly set out the operator's obligations with respect to fares, ticketing and marketing, with a presumption that there is a role for operators as a group in network marketing as well as in the marketing of their own services. The contract should spell out what is required to meet operator network level marketing obligations, in particular, since this is likely to require governance arrangements to be implemented across the public transport network and involvement of both government and industry.

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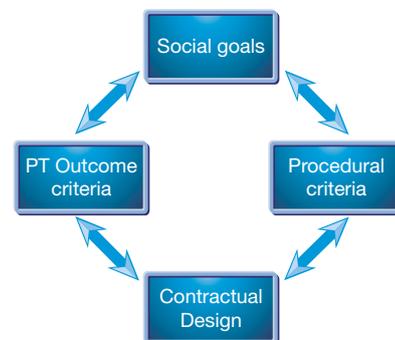
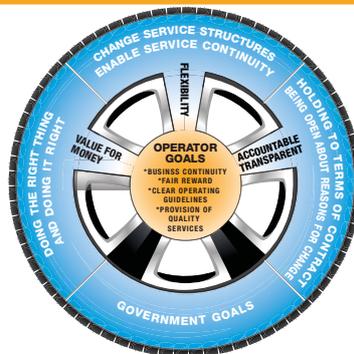
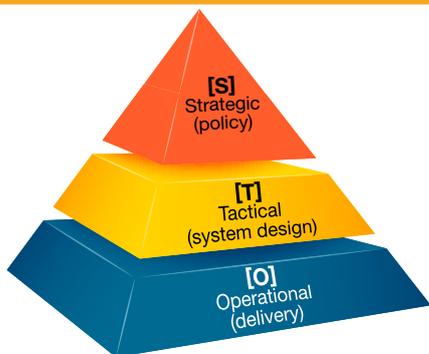
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