



Government
of South Australia

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of the
Auditor-General

April 2015

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Report on the probity of the processes leading to
the awarding of a service contract: Provision of
passenger transport services in the City of Whyalla

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Dear President and Speaker

Report of the Auditor-General: April 2015: Report on the probity of the processes leading to the awarding of a service contract: Provision of passenger transport services in the City of Whyalla

Pursuant to section 39 of the *Passenger Transport Act 1994*, I herewith provide to each of you a copy of my 'Report of the Auditor-General: April 2015: Report on the probity of the processes leading to the awarding of a service contract: Provision of passenger transport services in the City of Whyalla'.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Richardson'.

Andrew Richardson
Acting Auditor-General

Table of contents

Page

Report on the probity of the processes leading to the awarding of a service contract: Provision of passenger transport services in the City of Whyalla.....	1
1 Executive summary	1
1.1 Introduction	1
1.2 Requirements of the <i>Passenger Transport Act 1994</i>	1
1.3 Probity of procurement processes.....	1
1.4 Outcome of the audit examination.....	1
1.5 Audit opinion.....	2
2 Audit mandate and scope	2
2.1 Section 39 of the <i>Passenger Transport Act 1994</i>	2
2.2 Scope of audit examination	3
3 Overview of the service provision and procurement process.....	3
3.1 Nature of service contract.....	3
3.2 Brief key procurement event chronology	4
4 Audit examination findings and recommendations.....	4
4.1 Introduction	4
4.2 Tender procurement initiation – <i>Passenger Transport Act 1994</i> compliance.....	4
4.3 Contract arrangements – <i>Passenger Transport Act 1994</i> compliance	5
4.4 Procurement approvals/Financial authorisations.....	6
4.5 Probity framework.....	6
4.6 Procurement strategy	7
4.7 Risk management plan.....	8
4.8 Evaluation plan	9
4.9 Probity plan and probity advisor	9
4.10 Contract management plan	10
4.11 Significant elements of a procurement and contract process.....	11
4.11.1 Acquisition plan development and approval	11
4.11.2 Request for tender	11
4.11.3 Tender receipt and opening	12
4.11.4 Tender evaluation	12
4.11.5 South Australian Industry Participation Plan Assessment	16
4.11.6 Communication with respondents	17
4.11.7 Purchase recommendation.....	17
4.11.8 Service contract and contract management	18
4.11.9 Ministerial direction	19
Appendix – Compliance with relevant sections of the <i>Passenger Transport Act 1994</i>	20

Report on the probity of the processes leading to the awarding of a service contract: Provision of passenger transport services in the City of Whyalla

1 Executive summary

1.1 Introduction

Whyalla is one of six provincial cities with passenger transport services operated under contract to the Minister for Transport and Infrastructure.

The *Passenger Transport Act 1994* (PTA) requires the Minister, upon concluding a new contract for operation of passenger transport services entered into as a result of a tender process, to provide the Auditor-General with a report on the contract and tender process. As required by section 39(3f) of the PTA, I have examined the contract executed on 3 November 2014 and the probity of the processes leading up to the awarding of the contract for the provision of passenger transport services in the City of Whyalla. The results of this audit examination are detailed in this Report.

The contract is for the provision of bus services within the City of Whyalla.

The successful tenderer was Des's Transport Pty Ltd. The service contract is for five years ending 31 October 2019, with the option to extend for a further five years, for an estimated total value of approximately \$8.7 million (inclusive of GST and indexation).

1.2 Requirements of the PTA

The PTA incorporates provisions that require the Minister to do specific things in the conduct of processes for awarding a contract for the provision of passenger transport services, and mandates specific matters to be reflected in the contract. This examination has considered whether the processes leading to the awarding of the contract with the successful tenderer and the contract entered into by the Minister have complied with all requirements of the PTA.

1.3 Probity of procurement processes

In examining the probity of the procurement process leading to the awarding of the contract, consideration was given to a probity framework that reflects common law principles and concepts and the requirements of authoritative guidance provided by the State Procurement Board and the Department of Planning, Transport and Infrastructure (DPTI). Consideration was also given to provisions of the request for tender document which established procedures that were to be followed in the tender process.

1.4 Outcome of the audit examination

The audit examination disclosed some matters of procurement procedure and practice that were not satisfactory. These matters and related recommendations, which were formally communicated to DPTI, are detailed in the following sections of this Report:

- 4.2 'Tender procurement initiation – PTA compliance'
- 4.6 'Project strategy'

- 4.8 'Evaluation plan'
- 4.9 'Probity plan and probity advisor'
- 4.9.2 'Request for tender'
- 4.9.4 'Tender evaluation'.

In response DPTI acknowledged the findings and advised that it will implement the audit recommendations.

The matters raised by Audit, considered individually and together, in my opinion did not compromise the overall integrity of the procurement process.

1.5 Audit opinion

In my opinion:

- the procurement process leading up to the awarding of the contract for the provision of passenger transport services in the City of Whyalla was, on the whole, consistent with appropriate probity standards
- the service contract meets the requirements of the PTA.

2 Audit mandate and scope

2.1 Section 39 of the PTA

Section 39(3) of the PTA requires the Minister to provide the Auditor-General with certain contracts and a report on the processes for awarding the contracts. It further requires the Auditor-General to examine the contracts and to prepare a report to Parliament on the probity of processes for awarding the contracts. The specific provisions of the PTA are:

(3e) If under a service contract awarded under this section the Minister is, or is reasonably expected to be, liable to make payments equal to or exceeding \$4 000 000 (in total) over the term of the contract, the Minister must, within 28 days after awarding the contract, forward to the Auditor-General—

- (a) a copy of the contract; and*
- (b) a report which describes the processes that applied with respect to the awarding of the contract.*

(3f) The Auditor-General must, within the period of 4 months after the receipt of a service contract and report under subsection (3e)—

- (a) examine the contract; and*
- (b) prepare a report on the probity of the processes leading up to the awarding of the contract.*

(3g) Section 34 of the Public Finance and Audit Act 1987 applies with respect to the examination of a service contract, and the preparation of a report, under subsection (3f).

(3h) The Auditor-General must deliver copies of a report prepared under subsection (3f) to the President of the Legislative Council and the Speaker of the House of Assembly.

The requirement in section 39(3f) of the PTA that I examine a service contract and prepare a report on the probity of the processes leading up to the awarding of the contract was inserted into the PTA in 2003.¹

2.2 Scope of audit examination

In response to section 39(3f) of the PTA I have examined the important matters relating to the procurement and contract process for the provision of passenger transport services in the City of Whyalla. The matters covered were:

- tender procurement initiation compliance with the PTA
- service contract compliance with the PTA
- procurement approvals/financial authorisations
- procurement strategy
- project management and risk management plans
- probity plan and probity advisor
- acquisition plan development and approval
- request for tender
- tender receipt and opening
- tender evaluation
- purchase recommendation
- service contract management
- Ministerial direction.

The audit examination included the detailed review of procurement and contract documentation for the procurement process and inquiry of certain persons involved in the process.

3 Overview of the service provision and procurement process

3.1 Nature of service contract

Under the PTA, DPTI is responsible for the provision of passenger transport services throughout South Australia.

Whyalla is one of six provincial cities with passenger transport services operated under contract to the Minister for Transport.

A new contract for passenger transport services in the City of Whyalla was implemented as part of the process of re-tendering an existing contract that was approaching expiry.

The Whyalla bus service operates every week day and Saturday mornings. It does not operate on declared public holidays.

Specific route descriptions and timetables for the services were provided to tenderers as part of the request for tender documentation.

¹ By section 26(11) of the *Passenger Transport (Dissolution of the Passenger Transport Board) Amendment Act 2003*, Act Number 54 of 2003, which commenced on 1 January 2004 (see *The South Australian Government Gazette*, 18 December 2003, page 4525).

3.2 Brief key procurement event chronology

On 17 February 2014 the Chief Executive of DPTI approved the acquisition plan for the procurement of passenger transport services in the City of Whyalla for the budgeted contract amount of approximately \$11.5 million (inclusive of GST and indexation).

DPTI issued a request for tender on 8 April 2014. The tender closed on 20 May 2014. Tender submissions were received from two respondents. The successful tenderer was Des's Transport Pty Ltd. The service contract was executed on 3 November 2014 and is for five years, with the option to extend for a further five years, for an estimated total value of approximately \$8.7 million (inclusive of GST and indexation).

4 Audit examination findings and recommendations

4.1 Introduction

Section 2.2 of this Report lists the important matters that were the subject of audit examination for the procurement process for the provision of passenger transport services in the City of Whyalla.

The following commentary provides specific discussion for each important matter examined. The commentary includes audit findings and, where shortcomings were noted, audit recommendations.

As mentioned in section 1.4 of this Report, audit findings and recommendations were formally communicated to DPTI. In response DPTI acknowledged the findings and advised it will implement the audit recommendations.

The matters raised by Audit, considered individually and together, in my opinion did not compromise the overall integrity of the procurement process.

4.2 Tender procurement initiation – PTA compliance

Preface

As the contract for the procurement of passenger transport services in the City of Whyalla was awarded by tender there was a need for compliance with certain requirements under the PTA.

The requirements to which Audit refers are detailed in the following sections of the PTA:

- section 39(2a)(a) – Minister appointment of a person(s) to conduct the tender process
- section 39(2a)(b) – submission of a report by the responsible Minister to the Economic and Finance Committee advising particulars of the proposed tender procurement and assessment process
- section 39(3e) – submission of a copy of the awarded contract and a report on the tender process to the Auditor-General.

Audit findings and comments

The audit examination identified the following matters.

Non-compliance with section 39(2a)(a)

Audit could not be provided with primary documentary evidence that the Minister appointed a person to conduct the tender process in accordance with section 39(2a)(a) of the PTA.

The report to the Economic and Finance Committee, which was signed off by the Chief Executive, mentions that the Deputy Chief Executive, Public Transport Services was the person appointed under section 39(2a)(a) to conduct the tender process.

Non-compliance with section 39(2a)(b)

Section 39(2a)(b) of the PTA states that the Minister must, within 14 days after the tender invitation is published, forward the required report to the Economic and Finance Committee.

Audit examination found that the report was not submitted by the Minister but rather by the DPTI Chief Executive. The report was also submitted on 31 March 2014, before the tender invitation was published on 8 April 2014.

Audit has been advised that the report was submitted by the Chief Executive due to the Government being in caretaker mode during that time. Audit has confirmed that the Government was in caretaker mode from 15 February 2014 to 26 March 2014.

Non-compliance with section 39(3e)

There was non-compliance with the requirements of section 39(3e) of the PTA for the awarded contract and the required report to be forwarded to the Auditor-General within 28 days after awarding the contract.

The contract was awarded on 3 November 2014. The report and contract should have been forwarded to the Auditor-General by 1 December 2014 to meet the 28 day requirement under section 39(3e).

The report which was dated 8 December 2014, together with the contract was received by the Auditor-General on 16 December 2014.

Audit recommendation

DPTI should ensure for future service provision tender procurements that there is strict compliance with the requirements of the PTA.

4.3 Contract arrangements – PTA compliance

Preface

Under the PTA the service contract must make provision for certain requirements. These requirements are described in sections 40(1) and 41(1) of the PTA. Other sections of the PTA, for example sections 40(2) and 41(2), provide for other requirements that may be included in the service contract.

Audit findings and comments

The examination undertaken by Audit confirms that the executed service contract has made provision for the mandatory requirements and, where appropriate, for the other requirements described in the relevant sections of the PTA (refer to the appendix to this Report).

4.4 Procurement approvals/Financial authorisations

Preface

The Whyalla transport services procurement and contract arrangement had to meet certain approvals/authorisations in order to comply with requirements of the *State Procurement Act 2004* and Treasurer's Instruction 8 'Financial Authorisations' issued pursuant to the *Public Finance and Audit Act 1987*.

Audit findings and comments

Audit's examination confirmed relevant and appropriate approvals/authorisations were obtained for the procurement and contract arrangement, in particular the following approvals/authorisations:

- The acquisition plan identifying the procurement strategy (including the request for tender approach) and a budgeted contract amount of approximately \$11.5 million (inclusive of GST and indexation) was endorsed by the DPTI Accredited Purchasing Unit (APU) on 13 February 2014 and approved by the State Procurement Board on 12 March 2014.
- The purchase recommendation to award the contract for approximately \$8.7 million (inclusive of GST and indexation) to the successful respondent was endorsed by the APU on 27 August 2014.
- The financial approval (consistent with Treasurer's Instruction 8) to enter into the contract for the provision of passenger transport services in the City of Whyalla to the successful respondent for approximately \$8.7 million (inclusive of GST and indexation) was approved by the Minister for Transport and Infrastructure on 26 September 2014.

The tender procurement resulted in an awarded contract of approximately \$8.7 million which was under the budgeted contract amount of approximately \$11.5 million. The variation is mainly attributable to the competitive market testing of the procurement and the provision of a conservative budget which took into account the potential cost increases associated with the replacement of the bus fleet.

4.5 Probity framework

By virtue of section 39(3f)(b) of the PTA, Audit has examined the probity framework that was applied to the procurement and contract arrangement for the provision of passenger transport services in the City of Whyalla.

The specific matters examined in the probity framework were:

- the procurement strategy adopted for the procurement and contract process, based importantly on the consideration of value and risk (including complexity) of the service to be procured

- the risk management and probity arrangements for the procurement and contract process
- significant elements of the procurement and contract process.

In examining the probity framework, Audit gave specific attention to the policy and guidance frameworks of the State Procurement Board and DPTI.

4.6 Procurement strategy

Preface

The State Procurement Board policy and guidance framework requires public authorities (DPTI) to undertake a procurement strategy (including aspects of probity), in consideration of the value and risk (complexity) of goods or services being procured.

It is a requirement for a public authority to determine, on the basis of consideration of the nature of the procurement (value and characteristics), the value/risk relationship that applies to the particular procurement. The value/risk relationship can be high value/high risk, or high value/low risk, or low value/high risk, or low value/low risk. High value procurements are valued at or above \$4.4 million. Risk considerations include capability of the supply market and standard or routine nature of procedures.

The value/risk relationship to apply to a procurement will dictate the procurement strategy to be adopted and the main elements to be applied in the procurement and contract process for the particular procurement.

The procurement strategy and procurement process (including elements of the process) are to be documented in an appropriately approved acquisition plan (refer section 4.4. of this Report).

Audit findings and comments

The examination by Audit confirmed that there was generally satisfactory attention given by DPTI to the development and approval of the acquisition plan for the procurement.

The approved acquisition plan dealt satisfactorily with the majority of the guidance requirements of the State Procurement Board's 'Acquisition Planning Guideline'. In particular, the acquisition plan addressed the following main matters:

- classified the service procurement as 'high value/low risk', however Audit could not be provided with documentation to support the determination for the classification of this procurement as a 'high value/low complexity' procurement.

The State Procurement Board's 'Acquisition Planning Guideline' provides a number of matters to consider for determining the procurement category. DPTI advised that the procurement classification was conducted in accordance with the Board's guidelines. The outcome of the process, however, was not documented to evidence the assessment undertaken in determining the risk category of this procurement.

Audit was, however, satisfied with the classification of this service provision as a 'high value/low complexity' procurement

- documented the procurement need, description of services and estimated cost/funding
- demonstrated consideration and documented the determination to adopt a procurement strategy and process using a request for tender market approach
- included as integral requirements of the acquisition plan the following documented plans:
 - risk management plan
 - evaluation plan
 - probity plan
 - draft contract management plan
- outlined certain matters relating to the contract and performance management of the successful service provider.

The acquisition and evaluation plans outlined a four stage procurement evaluation process, notably:

- mandatory criteria
- qualitative evaluation criteria/scoring
- value for money
- negotiation (if required).

In addition, the acquisition and evaluation plans indicated the intention to conduct an assessment of the financial capability of the respondents to the request for tender.

Audit recommendation

The decision process to determine the procurement category of the service provision should be adequately documented and retained to evidence the assessment undertaken.

4.7 Risk management plan

Preface

The risk management plan and its contents were formulated in line with the ‘high value/low risk’ classification for this procurement (as discussed in the acquisition plan) and the procurement policy and guidance framework of DPTI. The plan detailed various procurement process, service delivery and contract management risks and control mitigation strategies.

Audit findings and comments

Audit examination considered the rationale documented in the acquisition plan and risk management plan concerning the ‘high value/low risk’ classification accorded to the procurement. As mentioned earlier the classification will dictate the procurement strategy to be adopted and the main elements to be applied in the procurement and contract process for the particular procurement.

Audit was satisfied that the procurement classification and strategy was appropriate.

4.8 Evaluation plan

Preface

The evaluation plan identified a timeframe for the procurement from February 2014 to July/August 2014, involving the significant milestones of the procurement process (procurement initiation through to evaluation and contract implementation).

Audit findings and comments

Audit examination noted that the planned procurement timeframe was not met. In particular:

- the targeted completion time of June 2014 to advise the successful and unsuccessful tenderers was not achieved. The successful and unsuccessful respondents were advised of the procurement outcome in late October 2014
- the targeted completion time of July/August 2014 for the implementation of the contract was not achieved. The contract was executed on 3 November 2014 with an effective date of 1 November 2014.

Audit inquiry of the Chair, Evaluation Team about the procurement timeframe revealed that the delay in advising the tenderers and awarding the contract was due mainly to:

- the time taken by the financial evaluation team to finalise and submit the financial evaluation report. The financial evaluation team sought certain clarifications from the tenderers before it could finalise the financial evaluation report. The financial evaluation report was provided to the Chair, Evaluation Team on 5 August 2014
- the elapsed time taken to obtain all the relevant approvals. The purchase recommendation was signed off by the evaluation team on 7 August 2014 and approved by the APU at the next available meeting on 27 August 2014. The financial approval to enter into the contract was approved by the Minister on 26 September 2014. The contract was executed on 3 November 2014.

Audit recommendation

Significant changes in planned procurement process stages and associated timeframes, and the circumstances giving rise to those changes, should be appropriately and adequately documented in the procurement process.

4.9 Probity plan and probity advisor

Preface

Consistent with the 'high value/low risk' classification accorded to this procurement and the procurement strategy adopted, a probity plan was developed and formed an integral component of the approved acquisition plan.

The probity plan aligned with the requirements of DPTI's policy and guidance framework. It included important requirements covering assessment and evaluation, communication with potential tenderers, conflict of interest, confidentiality and security of records and information, and important events such as receiving and recording of tender submissions.

The probity plan provided for the role of a probity advisor for this procurement ‘as and when required’. An appendix to the evaluation plan detailed the probity requirements and indicated that a probity advisor had not been deemed necessary for this tender procurement process. However, the requirements provided that in the event of an irregularity occurring or advice being required, an auditor from Internal Audit or the DPTI Probity Advisory Panel may be engaged to review and report or advise on the issue.

Audit findings and comments

Audit examination indicated that the procurement process was generally conducted in a manner consistent with the principles and matters outlined in the probity plan. However, as discussed in section 4.11.4 of this Report, there were identified shortcomings in the standards of documentation to properly evidence the transparency and responsibility and accountability of certain decisions/actions taken at the evaluation stage of the procurement process.

As mentioned, it was deemed that a probity advisor was not necessary for this review, however there was potential (if required) for involvement of a probity advisor. Audit was advised that the Manager, Governance and Audit of DPTI was not informed of Internal Audit’s potential involvement or formally requested to provide probity advice for the procurement.

Audit recommendation

Actual or potential participants in a procurement process should be formally notified and provided with a clear understanding of their responsibility should they be required to be involved in the procurement process.

4.10 Contract management plan

Preface

The State Procurement Board’s ‘Contract Management Guideline’ requires a contract management plan to be developed, implemented and monitored for contracts valued at or above \$4.4 million. The contract management plan is used to review the performance of the contract and monitor the achievement of the contract outcomes.

Audit findings and comments

The acquisition plan submitted to the APU for review and approval in February 2014 included a draft contract management plan as an appendix. Audit examination found that the contract management plan addressed the requirements of the State Procurement Board’s ‘Contract Management Guideline’.

Audit has been advised that the contract management plan was marked as ‘draft’ as DPTI was, at that time the plan was released, in the process of reviewing the plan and the performance benchmarks. The plan did indicate that the performance benchmarks would be set prior to the release of the tender. Audit found that the performance benchmarks were set prior to finalising the contract.

4.11 Significant elements of a procurement and contract process

4.11.1 Acquisition plan development and approval

Preface

The policy and guidance frameworks of the State Procurement Board and DPTI require an approved acquisition plan for most procurements, including this procurement. The State Procurement Board's 'Acquisition Planning Guideline' indicates that adequate attention to this matter '... will result in the selection of the most appropriate procurement strategy, improved management and procurement, improved risk identification and risk management, better value for money outcomes and improved relationships with suppliers'.

The acquisition plan for a budgeted service contract amount of approximately \$11.5 million (GST and indexation inclusive) was approved on 12 March 2014 by the State Procurement Board.

Audit findings and comments

As indicated in sections 4.4 and 4.6 of this Report, Audit examination confirmed that satisfactory attention was given by DPTI to the development and approval of the acquisition plan for this procurement.

4.11.2 Request for tender

Preface

The request for tender for the provision of passenger transport services in the City of Whyalla was issued on 8 April 2014. The closing date was 20 May 2014.

The request for tender documentation is required to conform with the State Procurement Board policy and guidance framework, particularly the 'Standard Tender and Contract Document Guideline'.

As mentioned in section 4.2 of this Report, pursuant to section 39(2a)(b) of the PTA, the responsible Minister must submit a report to the Economic and Finance Committee following the issue of a tender for the provision of regular passenger services. On 31 March 2014 the DPTI Chief Executive submitted a report to the Economic and Finance Committee. That report included the provision of the request for tender documentation.

Audit findings and comments

Audit examination of the request for tender documentation found that the document structure was not consistent with the requirements of the State Procurement Board's 'Standard Tender and Contract Document Guideline'. Audit was advised by the Manager Contracting Services that DPTI used a request for tender template that related to another category of procurement. This error was not identified and corrected by DPTI prior to the tender being released on the SA Tenders website.

Audit did confirm that the content of the request for tender documentation included all the mandatory elements and the majority of the required elements specified in the State

Procurement Board's 'Standard Tender and Contract Document Guideline'. Some of the required elements, other than the document structure referred above, that were not included in the request for tender were:

- last queries date
- timeframes
- contract management.

In relation to the evaluation process, Audit examination revealed that the approach and methodology outlined in the request for tender documentation for the procurement evaluation was consistent with the evaluation plan for the procurement.

Audit recommendation

DPTI should ensure that request for tender documentation is consistent with the State Procurement Board's 'Standard Tender and Contract Document Guideline'.

4.11.3 Tender receipt and opening

Preface

The evaluation plan for this procurement described the important matter of procedure to be applied to the receipt and opening of tenders. Such a procedure, and compliance with it, is an important probity event for procurement processes.

The evaluation plan indicated the requirement to conform with DPTI's procurement procedure 'Receipt & Opening of Tenders & Expressions of Interest'.

As mentioned above the tender closing date was 20 May 2014. Two responses were received to the request for tender.

Audit findings and comments

Audit examination of procurement documentation indicated that the tender receipt and opening event was in compliance with DPTI's procurement procedure 'Receipt & Opening of Tenders & Expressions of Interest'. Audit examination found that the 'Schedule of Tenders' document had been completed and signed by two officers and both tender forms were date/time stamped to evidence that the tenders were opened after 2:00 pm on 20 May 2014.

In addition, DPTI (through the Manager, Contracting Services) forwarded letters dated 20 May 2014 to the two tenderers, advising that their respective tenders had been received and were in the assessment process and that they would be informed when a final decision had been reached.

4.11.4 Tender evaluation

Preface

The approved acquisition plan included, as an appendix to that plan, an evaluation plan document. The evaluation plan sets out in detail the key principles to be followed for the evaluation (including signing of conflict of interest declarations by tender evaluation team

(TET) members), TET composition, detailed evaluation criteria and weightings and scoring system, and communication protocols with tenderers (including clarifications for tenders). The evaluation plan also made provision towards the end of the document for sign off by TET members.

The request for tender document issued to the public also provided information concerning the evaluation process, including the evaluation criteria (with weightings) and the nature of the tender assessment and clarification and negotiation process that could be adopted.

In addition, the request for tender document advised that tenders would remain valid for a period of 180 days from date of submission of tender. It also advised the formal process to be undertaken to extend the tender validity period. An extension to the validity period required a request in writing to be forwarded to the tenderer. The failure of the tenderer to respond to this request may result in its tender being excluded from further negotiation.

The evaluation plan provided for a four stage evaluation process to be undertaken by a four person TET. The four stages were:

- mandatory criteria, including:
 - operator, driver and vehicle accreditation
 - insurance coverage
 - availability of wheelchair accessible vehicle
 - compliance with *Disability Discrimination Act 1992*
- qualitative evaluation criteria/scoring, including:
 - experience and past performance in passenger service provision (including people with disabilities)
 - operational (methodology, contingency planning and ticketing system)
 - communications (radio/telephone)
 - implementation (management structure and staffing arrangements and transition planning)
 - infrastructure (depots and vehicles)
 - safety (safety plans, occupational health safety and welfare, emergency procedures)
 - customer service (code of conduct, complaints and commendations)
 - community consultation and services development
 - industry participation plan
- value for money
- negotiation (if required).

In addition, the evaluation plan indicated the intention to carry out a financial assessment of the respondents to the request for tender. This would be undertaken independent of the TET.

Audit findings and comments

The following provides specific observations and comments for certain aspects of the tender evaluation process.

Alignment of request for tender with evaluation plan

As mentioned in section 4.11.2 of this Report, Audit examination revealed that the approach and methodology outlined in the request for tender documentation for the procurement evaluation was consistent with the evaluation plan for the procurement. This is sound practice.

TET composition and sign offs

Audit examination of procurement documentation revealed that the qualitative evaluation team and financial evaluation team member composition was as outlined in the evaluation plan. The evaluation plan also made provision for a Community Passenger Network Officer or Community Stakeholder where appropriate to be involved in the qualitative evaluation team. The Chair, Evaluation Team advised that the involvement of a Community Officer was deemed not necessary for this procurement.

Audit examination revealed that:

- the evaluation plan was not signed off by the evaluation team members prior to the commencement of the evaluation process
- the evaluation plan was not signed off by the financial evaluation team members
- not all evaluation team members signed off the 'Conflict of Interest Declarations' prior to commencing the evaluation process.

No conflicts of interest were reported from any of the evaluation team members.

Date of TET evaluation and acquittal of evaluation

Audit was unable from the review of procurement documentation to ascertain the specific date and timing of the TET evaluation process. There was no formal recorded minute(s) of the proceedings of the TET evaluation process.

The review also identified that individual evaluation team member mandatory and qualitative scoring sheets were signed but not dated by the TET members.

In addition, the 'Qualitative Evaluation Summary Report' was signed by three of the four members but not dated by the members. The one TET member that did not sign the summary report had resigned from DPTI prior to the report being finalised. The report was finalised in early June 2014 and the TET member resigned in late May 2014. The Chair, Evaluation Team advised Audit that the TET member had provided a completed and signed scoring sheet to the TET prior to resigning and the scores were consider by the TET as part of the tender evaluation process.

Notwithstanding these shortcomings, Audit examination of the score sheets and summaries, including TET members' comments on the score sheets, demonstrated satisfactory consideration and evaluation of the tenderers' bids. Audit inquiry of the Chair, Evaluation Team indicated that the TET evaluation meeting to undertake the group scoring and prepare the summary report was held on 4 June 2014.

Value for money assessment

Audit was advised that the value for money assessment was undertaken by two members of the TET. The value for money assessment was not signed or dated by the TET.

Audit examination found that the value for money assessment was undertaken in accordance with the evaluation process outlined in the evaluation plan.

Tender evaluation clarification with respondents

Audit examination noted that certain clarifications were sought from the tender respondents. Consistent with requirements contained in the evaluation plan they were referred to the tenderers in writing from the Chair, Evaluation Team and written responses were received from the respondents.

Financial assessment of capability of respondents

A financial evaluation of both tenders was undertaken by the financial evaluation team.

An external organisation specialising in financial viability assessment was engaged to undertake a detailed financial and performance assessment of the preferred tenderer only.

The intention was that financial assessments were to be based on audited financial statements. The respondents were requested to provide audited financial statements for the last three financial years. One respondent submitted audited financial statements for three financial years (30 June 2011 to 30 June 2013), the other respondent submitted unaudited financial statements for the 30 June 2013 financial year only.

The external organisation that undertook the detailed financial and performance assessment of the preferred tenderer did, as part of its assessment, review the financial statements/management accounts over a three year period (30 June 2012 to 30 June 2014). The financial statements were special purpose accounts prepared by an external accountant but were not audited.

The external organisation concluded that, on the information obtained, the preferred tenderer had a satisfactory financial capacity to undertake the contract.

TET summary

The evaluation process was summarised in the 'Qualitative Evaluation Summary Report'. This report was signed by the evaluation team members (except for the member that had resigned at the time of signing this report). The report was not dated.

The evaluation process and outcome was also summarised in a satisfactory manner in the purchase recommendation report. This report was signed and dated on 7 August 2014 by the evaluation team members, except for the team member that resigned in May 2014.

Audit recommendations

Some shortcomings were noted in the transparency and evidencing of evaluation responsibility and accountability of task performance.

DPTI needs to ensure for future procurements that the following matters are addressed:

- the evaluation plan is signed off by the evaluation team members prior to the commencement of the evaluation process
- the conflict of interest declarations are signed off by the evaluation team members at the commencement of the evaluation process
- the proceedings and outcome of the TET meeting(s) held to evaluate tender respondent submissions should be properly minuted and dated to evidence the transparency and responsibility and accountability of the evaluation process and its outcome
- TET documentation (such as member evaluation score sheets, summary score sheets and value for money assessment) completed for the evaluation process should be signed and dated by the respective team members to also evidence the transparency and responsibility and accountability of the evaluation process and its outcome
- audited financial statements are submitted by all tender respondents.

4.11.5 South Australian Industry Participation Plan (IPP) Assessment

Preface

An IPP is required for a contract in regional South Australia of \$1 million and over. Effective from 1 July 2014, the IPP should be allocated a minimum 5% weighting in the evaluation criteria in the tender evaluation process.

The request for tender includes as a condition of tendering the requirement for each tenderer to submit an IPP. The request for tender indicates that aspects of the tender relating to the IPP will be evaluated with the assistance of the Office of the Industry Advocate.

The DPTI 'Receipt & Opening of Tenders & Expressions of Interest' procedure requires, where the Industry Participation Policy applies, all IPPs and the tender schedule (which will identify if any tenderer has failed to submit an IPP) to be forwarded to the Office of the Industry Advocate for assessment.

Audit findings and comments

The evaluation process allocated a 5% weighting in the evaluation criteria for the IPP.

The schedule of tenders and the IPP for one tenderer was emailed to the Office of the Industry Advocate after the tenders were opened on 20 May 2014. The IPP for the other tenderer was not included in the email as incomplete details were included on the IPP and the IPP was not signed. On 21 May 2014 DPTI requested a completed and signed IPP from the tenderer. This was received and forwarded to the Office of the Industry Advocate on 27 May 2014.

The Office of the Industry Advocate provided a report on the assessment of the IPPs on 30 May 2014. The Office of the Industry Advocate assessed both IPPs as compliant and provided a score for each IPP.

The IPP assessment report requested that the contract include:

- the need for the successful tenderer to report on IPP outcomes annually
- that the Office of the Industry Advocate would review how IPP commitments are being implemented.

Audit is satisfied that the above requirements have been included in the contract with Des's Transport Pty Ltd.

As part of signing off the IPP assessment, both the officer preparing and the officer approving the assessment report declared that they had no actual or perceived conflict of interest with any of the tenderers or companies bidding for the tendered service procurement.

4.11.6 Communication with respondents

Preface

DPTI's tender evaluation procedure specifies that written or verbal indication to a tenderer that they will be awarded the contract must not be given until the recommendation to award the contract has been approved.

The recommendation to award the contract was approved by the Minister on 26 September 2014.

Audit findings and comments

The successful and unsuccessful respondents were advised of the procurement outcome in late September 2014.

Audit was advised that the successful respondent was verbally advised on 29 September 2014. The unsuccessful respondent was advised via email on 30 September 2014.

4.11.7 Purchase recommendation

Preface

The policy and guidance framework of the State Procurement Board and DPTI requires the approval of a procurement purchase recommendation (in this case the approval to award a service contract for the provision of passenger transport services in the City of Whyalla) prior to awarding the purchase contract.

As the State Procurement Board's 'Approvals Process Guideline' indicates, the primary purpose of obtaining a purchase recommendation approval is to:

- *certify that the process approved in the acquisition plan has been adhered to;*

- *identify any deviations which occurred during the process and subsequent treatment;*
- *endorse the purchase recommendation resulting from the approved process.*

The State Procurement Board guideline expects the purchase recommendation to be presented as a report. The report is to provide an appropriate level of detail about the acquisition, indicating adherence or otherwise to the approved acquisition plan, and providing a summary of evaluation results, and presenting a recommendation to award a contract(s) or other action as appropriate.

Audit findings and comments

Audit examination confirmed the preparation of an appropriate purchase recommendation report for this procurement. The purchase recommendation was consistent with the evaluation process results. The purchase recommendation was signed by the TET on 7 August 2014 (with the exception of the one member who had resigned in May 2014) and approved by the APU on 27 August 2014.

The purchase recommendation awarding the service contract to Des's Transport Pty Ltd, for a total contract value of approximately \$8.7 million (inclusive of GST and indexation) for a term of five years with an option to extend for a further five years, was approved on 26 September 2014 by the Minister for Transport and Infrastructure.

4.11.8 Service contract and contract management

Preface

As mentioned the procurement service contract was awarded to Des's Transport Pty Ltd. The contract was executed on 3 November 2014. Under the PTA the service contract must make provision for certain requirements. These requirements are described in sections 40(1) and 41(1) of the PTA. Other sections of the PTA, for example sections 40(2) and 41(2), provide for other requirements that may be included in the service contract.

The approved acquisition plan which included a draft contract management plan, indicated that a contract management plan would be developed with the successful tenderer. Audit has been advised that a standard 'Regional Services Contract' that was previously developed by Crown Law and was consistent with other contracts used for providing passenger transport services in regional areas was used.

The purchase recommendation referred to the intended regular monitoring of the contractor's future performance to ensure compliance with the contract specifications and ensure that quality, time and cost objectives are achieved.

Audit findings and comments

As mentioned under section 4.3 of this Report, Audit examination of the executed contract confirms that the contract has made provision for the mandatory requirements and, where appropriate, for the other requirements described in the relevant sections of the PTA (refer to the appendix to this Report).

In addition, Audit examination showed the contract management plan attached as an appendix to the approved acquisition plan was consistent with the requirements of the State Procurement Board's 'Contract Management Guideline'.

4.11.9 Ministerial direction

Preface

Section 39(2a)(c) of the PTA provides for the responsible Minister to give a direction to any person during the tender assessment or selection process. Should a direction be given by the Minister then the Minister is required to meet certain reporting conditions regarding the direction.

Audit findings and comments

Audit examination of procurement documentation and verbal inquiry indicates that no direction was given by the Minister.

Compliance with sections 40(1) and 41(1) of the *Passenger Transport Act 1994*

Paragraph	Contract
The period for which it operates – section 40(1)(a)	Clause 3.1 Clause 1.1.9 – Commencement 1 November 2014 Clause 1.1.19 – Expiry 31 October 2019
The manner in which it may be terminated – section 40(1)(b)	Clause 24
Standards relating to the provision of services under the contract – section 40(1)(c)	Clause 6.1 – General obligations Clause 8 – Approved vehicles Clause 9 – Accreditation Schedule 7 – Performance benchmarks
A scale of service levels – section 40(1)(d)	Clause 11 – The services Clause 7 – Additional regular passenger services Clause 16.1 – Variation to service specification, route or timetable Schedule 1 – Service specifications Schedule 3 – Service details and time tables
The fares to be charged – section 40(1)(e)	Clause 15.1 – Maximum fares Clause 15.2 – Application to vary fare schedule Schedule 2 – Fares
The manner in which the holder of the service contract will be remunerated or gain revenue from the provision of services under the contract – section 40(1)(f)	Clause 13 – Financial arrangements Clause 14 – Service defects Schedule 5 – Concession reimbursement policy Schedule 6 – Financial arrangements
Other matters required by this Act or the regulations to be specified in a service contract – section 40(1)(g)	Not applicable

Compliance with sections 40(2) and 41(2) of the *Passenger Transport Act 1994*

Paragraph	Contract
Reviewing or altering the fares or fare system in circumstances specified in the contract – section 40(2)(a)	Clause 15.2 – Application to vary fare schedule
Monetary or other penalties for breaches of the contract and the recovery of monetary penalties – section 40(2)(b)	Clause 14.2 – Service defects Schedule 6 – Financial arrangements
Bonds for the performance of the obligations under the contract – section 40(2)(c)	Not dealt with
Variation of the contract – section 40(2)(d)	Clause 30.4 – Variation
Renewal of the contract – section 40(2)(e)	Clause 3.2
Such other matters as the parties think fit to include in the circumstances of the case – section 40(2)(f)	All other clauses
Periodic review of any matter for the time being determined by or under the contract – section 40(3)	Various matters
Specify a region or route of operation – section 41(1)	Clause 11.1 – The services Schedule 3 – Service details and time tables
Confer on the holder of the contract an exclusive right to operate a regular passenger service of the relevant kind within the specified region, or on, or in proximity to, the specified route (or part of that region or route) – section 41(2)(a)	Clause 7 – Additional regular passenger services Schedule 3 – Service details and timetables
Provide for other matters relevant to the operation of passenger transport services (including new services) within the specified region, or on, or in proximity to, the specified route – section 41(2)(b)	Clause 16 – Variation to service specification, route or timetable