

Project 2018

Re-contracting Process



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Department of State Growth



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Context

The Treasurer has approved a procurement process under *Treasurers Instruction 105* for implementing the Government's election commitment to provide a further 5 + 5 contract for incumbent operators, providing key performance conditions are met and there is an ongoing need for a particular service in a particular area.

The procurement process still requires operators to demonstrate value for money and is to encourage competition where it can.

As far as practicable, Project 2018 will undertake an "operator-blind" approach to identifying the need for future bus services. That is, the requirements analysis, network design and the service standards will not give weight to which operator currently operates a route, and will focus instead on developing the best network given current and predicted passenger needs and funding constraints. This is a key element of the proposed process as it will help satisfy the "value for money" procurement principle.

The outcome of this process will be a bus network that the Government wishes to procure, and it is at this point that a 'matching' process of incumbent operators to these new services (routes and timetables) will be undertaken by the Project 2018 team.

The key principle for the matching process will be that a significant number of the passengers that will use the new service would be drawn from the operator's matched service and this will consider geographical catchment (route matching), service type (school vs general access) and timetable distinction between services.

Where two or more new services are identified in the same area, and two or more existing operators currently provide services in that area that align, or substantially align, with these services, then operators can be 'best matched' to the new services and directly made offers in order to meet the Government's election commitment. This best matching will consider the routes, service type and timetable frequency of the existing and new routes.

This matching exercise will lead to three potential outcomes:


Outcome One – A direct offer to an Incumbent Operator

Where an incumbent operator can be identified as being the only operator providing a service that is similar to the new service then that operator will be made first offer of the contract.

The route and timetable does not have to be exactly the same when matching services, but it would be expected that a majority (at least 60%) of the total number of passengers that will use the new service would be drawn from the operator's matched service.

Any direct offer will be subject to a 30 day appeal process as outlined later in this document.

Context Note:



An example of best matching would be where a school bus and a general access service are identified along a catchment, and there is currently just one school bus and one general access operator in that catchment. In this situation these operators can be directly matched by service type and offers can be made to the existing operators.

Similarly if there was one existing short service running from town A to B and another longer existing service running from A to E, and two new routes were identified from A to C and from A to D and there was not a logical reason to merge the services (eg. no significant cost savings or compelling need for integration), then the shorter route would be best matched to the new (but longer) short route, and the longer route to the (now shortened) long route.

It is acknowledged that there are specific operating circumstances where, for reasons of passenger safety, small buses are used in preference to larger vehicles. These special circumstances will be taken into account in network design and may be relevant considerations in this matching process.

Outcome Two- A closed competitive process between Incumbent Operators

Where a substantial number of the passengers expected to use a new service would be drawn from more than one operator's service and the services cannot be best matched as described above, then the existing incumbent operators will be notified that the Department intends to hold a closed competitive process for the new service.

The closed competitive process will be limited to just those identified incumbent operators, but noting that the matching process is subject to a 30 day appeal process as outlined later in this document.

There will be a minimum period of 30 days between notification of the closed competitive process (after any appeals have been dealt with) and the closing of the process, and during this period operators will be allowed to discuss potential mergers or sales, but there will be no Departmental facilitation or involvement in these discussions, and any bid will still require operators to demonstrate value for money in the contracting process.

Context Note:

An example of the application of this would be where 6 operators currently service a destination from different routes although 3 of these six operators follow an overlapping route. Two of the other contracts can be matched and so those operators can be offered a contract but are excluded from any further participation in awarding contracts for this area. A third operator's contract is deemed unviable because of low patronage. This operator is also precluded from any further participation in awarding contracts for this area. The revised network seeks to consolidate the remaining 3 similar contracts into 2. Those 3 operators (and no others) will be eligible to participate in the closed competitive process outlined above.

Another example would be where three or four overlapping services are rationalised to a fewer number of services and it appears that a significant number of the passengers that will use the new service would be drawn from each of the operator's existing services. So as to allow all operators the chance to gain future work, all operators in the corridor will be given the chance to participate in a closed competitive process which is seen to best meet the Government's commitment.



Outcome Three- Open competitive process

Where a completely new service is identified and there are no existing operators that provide a service that aligns or substantially aligns with the identified service in the corridor, the identified service will go to an open competitive process.

The decision that a route is a new service will also be subject to the 30 day appeal process as outlined later in this document.

Operators should note that if an operator, or operators, successfully appeal the decision and are identified as providing this new service by the Review Panel, then the process will revert to either a direct offer or closed competitive process and there will be no second appeal period for this decision. That is any operator who feels that they are the incumbent operator must make an appeal within the advertised 30 day appeal period.

If operators participate in a competitive process, they will be required to lodge a response to a competitive process. Although the full criteria have not been set, the conditions are expected to include (at a minimum):

- **Experience and ability** – an operator’s history and demonstrated experience to be able to deliver the required service in a professional way and to a high standard.
- **Value for money** – A core principle of Project 2018 is to seek ways to drive efficiency and innovation in the bus contracting sector, and therefore value for money will be a key consideration in any competitive process.
- **Service performance** – For existing operators, the parties’ performance against their existing service performance records will be a factor.

The Matching Process and Appeals

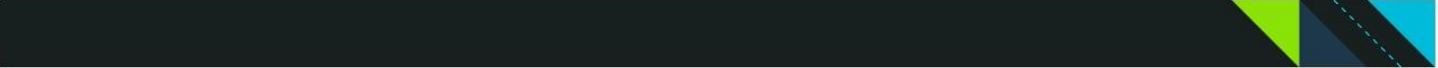
The matching of operators to new services will be undertaken by the Project 2018 Team.

Following this process, operators will be provided with formal advice specifying the new services that they have been matched against, and whether they have been directly matched to a new service or will be part of a closed competitive process for a new service. Operators will also be notified when a decision has been made that an existing service has not been matched to a new service, and will therefore not be recontracted.

Advice on service matching will be made available on the Department of State Growth’s website to allow other operators the opportunity to appeal this decision.

There will be a period of 30 days after the release of this information in which operators can seek a review of a matching decision made by the Project 2018 Team.

An operator must be a recognised incumbent operator with a current passenger transport contract to request a review of a decision and can only request a review on the following grounds:

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1. they believe they are not matched against the service that best matches their current service; or
 2. they believe there is a new service that better matches their existing service, or
 3. they are able to demonstrate a material interest in a new service under the principles outlined in this document that was not recognised by the Project 2018 Team.

An operator cannot appeal the decision that a service is no longer required, only that they are not matched against a service.

An operator cannot seek to exclude another operator through the appeals process. That is, a review cannot find that an existing identified operator does not have an interest in a service.

This review will be undertaken by a Review Panel nominated by the Chair of the Oversight Committee. The Review Panel will consider the evidence provided by the operator and the original basis of the decision made by the Project 2018 team. The individuals on this panel will not be from the Project 2018 team and will not have been involved in the original decision making process. A probity advisor will be used to assist the Review Panel

The Review Panel can only determine that the party does have a material commercial interest in a service as explained under these matching guidelines and that the process should go to a closed competitive process. That is, the appeal panel could find that:

- where the matching process resulted in Outcome One (service identified for direct offer to an incumbent), another party had a material commercial interest in that service and so a closed competitive process between incumbent operators (Outcome Two) should instead be followed; or
- where the matching process resulted in Outcome Two (a closed competitive process between incumbent operators) between two operators, a third party should be given the opportunity to participate in that closed process.
- where the matching process resulted in Outcome Three (an open competitive process) then a successful appeal would lead to the process reverting to either a direct offer (if just one party successfully appeals) or a closed competitive process (if more than one party successfully appeals).

Probity Review

An independent probity advisor, Harvey Gibson from WLF, has been engaged to advise and monitor the Project 2018 procurement process.