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December 2011

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Second Session, Fifty-Second Parliament

Probity of the processes leading to the awarding of three
service contracts in 2011 for the provision of
regular passenger bus services for Metropolitan Adelaide

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Dear President and Speaker

Report of the Auditor-General: December 2011: Probity of the processes leading to the awarding of three service contracts in 2011 for the provision of regular passenger bus services for Metropolitan Adelaide

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: December 2011: Probity of the processes leading to the awarding of three service contracts in 2011 for the provision of regular passenger bus services for Metropolitan Adelaide'.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S O'Neill'.

S O'NEILL
AUDITOR-GENERAL

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Probity of the processes leading to the awarding of three service contracts in 2011 for the provision of regular passenger bus services for Metropolitan Adelaide

1. Executive summary

1.1 Introduction

Bus passenger transport services in Metropolitan Adelaide are provided by privately owned companies that have been contracted by the Minister for Transport (the Minister)¹ to operate those services.

The *Passenger Transport Act 1994* (PTA) requires the Minister, on awarding a service contract for the operation of regular passenger services with a value in excess of \$4 million, to provide the Auditor-General with a copy of the service contract, and a report on the process leading to its award.

By letter dated 24 August 2011, the Minister provided copies of three such contracts for the operation of bus services in Metropolitan Adelaide and a report on the procurement process leading to the award of the contracts.

The private companies to which contracts have been awarded are:

- Australian Transit Enterprises Pty Ltd ACN 066 987 086 (ATE)
- Torrens Transit Pty Ltd ACN 088 342 152 (TT)
- Transfield Services (Australia) Pty Ltd ACN 093 114 553 (TSA).

The contracts with ATE and TT commenced on 1 July 2011 and expire on 30 June 2019, with the Minister having an option to extend for a further four years to 30 June 2023.

The contract with TSA commenced on 2 October 2011 and expires on 30 June 2019, and the Minister has an option to extend for a further four years, also to 30 June 2023.

The contracts have substantial value. The Minister's report to me on the procurement process shows that the aggregate value of the three contracts for their primary (initial) terms is of the order of \$1.44 billion. This amount is inclusive of indexation but exclusive of GST.

As required by section 39(3f) of the PTA, I have examined the three contracts and aspects of the probity of the process leading to the award of the contracts. The results of that examination are detailed in this Report.

1.2 The requirements of the PTA

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

¹ Under the Administrative Arrangement (References to Ministers) Proclamation 2011, dated 21 October 2011, now referred to as Minister for Transport Services.

1.3 The probity of procurement process

In examining the probity of the procurement process leading to the award of the contracts, consideration has been given to the provisions of the Expression of Interest (EOI) and Request for Proposal (RFP) documents that established rules for the conduct of the process under examination, and, in particular, the probity plan adopted by the Department for Transport, Energy and Infrastructure (DTEI)² for the purpose of the process.

In essence, the key probity principles adopted for the procurement process (as set out in the probity plan) were:

- fairness, integrity and impartiality
- open and fair competition
- consistency and transparency of process
- security and confidentiality
- identification and resolution of conflicts of interest
- maintenance of records.

I take the reference to ‘open and fair competition’ as a principle directed at the requirement that procurement processes for Government seek to achieve best value for money outcomes. Likewise, I take the references to ‘transparency’ and ‘maintenance of records’ to include the important probity principle of ‘accountability’, which involves, amongst other things, the clear identification of those taking responsibility for the process and the keeping of records that leave an audit trail relating to it.

In my opinion, the key probity principles that were adopted for the procurement process were appropriate, and they have been used as guideposts for the purpose of my examination under the PTA.

1.4 Outcome of the audit examination

My examination has not identified any matters of concern that would suggest, or tend to suggest, that the procurement process the subject of this report was materially compromised from a probity perspective.

There were some matters of practice or procedure noted that, in my view, were not satisfactory or require review/reassessment for ongoing procurement practice. These are specifically communicated, where appropriate, in the audit commentary sections of this Report. They are matters which while not compromising the overall integrity of the procurement process, should be addressed to achieve betterment in future goods and service procurements undertaken.

The following briefly describes the matters noted and the particular section(s) of this Report in which each matter is subject to audit comment.

- There were deficiencies in reporting to appropriate authoritative bodies (Cabinet and the State Procurement Board) of the indicative (expected) costs of bus contract service provision (sections 4.1 and 4.9 of this Report).

² Under the Public Sector (Administrative Units of Public Service) Proclamation 2011, dated 21 October 2011, now referred to as Department of Planning, Transport and Infrastructure.

- The final probity report was not provided to DTEI's Accredited Purchasing Unit (APU) or the Chief Executive Officer for review at the time of endorsement of the purchasing recommendation (PR), or to the Minister prior to signing of the contracts (sections 4.34 and 4.39 of this Report).
- The Minister's report to Parliament pursuant to section 39(3b) of the PTA disclosed the aggregate annual value of the three awarded bus contracts rather than disclosing the individual annual value for each contract awarded (section 4.40 of this Report).
- The scope of the engagement of the probity adviser excluded consideration of 'ethical conduct of individuals' (section 4.4 of this Report).
- The short-term extension of existing contracts with the two incumbent service providers, pending finalisation of the new contracts, were not subject to approval (section 4.36 of this Report).

1.5 Audit opinion

In my opinion:

- the procurement process leading to the awarding of three service contracts in 2011 for the provision of regular passenger bus services for Metropolitan Adelaide was conducted consistently with appropriate probity standards
- the service contracts meet the requirements of the PTA.

2. Audit mandate, scope and methodology

2.1 Section 39 of the PTA

Amongst other things, section 39 of the PTA requires the Minister to provide the Auditor-General with service contracts and a report on the processes that applied with respect to the awarding of the contracts. It also requires the Auditor-General to examine the contracts and to prepare a report to Parliament on the probity of the processes that led to them being awarded.

The relevant provisions of section 39 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.*

2.2 Scope and methodology adopted for the audit examination

As required by section 39(3f) of the PTA I have reviewed the procurement process leading to the award of the three contracts in July and August 2011 for the provision of Adelaide Metropolitan bus services.

In my view, the PTA requires me, in essence, to undertake a ‘probity audit’ of the procurement process.

That is, it requires that I review the conduct of the procurement process with a view to expressing an opinion as to whether it was conducted in a manner that was consistent with appropriate probity standards.

As an external probity adviser was retained by DTEI at an early stage of the process, I have included in my examination, as a matter of particular focus, a review of the process for selection and retention of the probity adviser’s services, the agreed scope of those services and aspects of the interaction between the probity adviser and the team that conducted the procurement process. The probity adviser was continuously and closely involved in the process, and I have reviewed certain advices to DTEI on a range of issues that arose.

My examination proceeded by first reviewing the section 39(3e) report provided to me by the Minister.

I then sought further information from DTEI initially in order to understand the full chronology of events, and then still further information in order to more fully explore issues that arose during the examination.

DTEI responded promptly to my requests for further information, and provided it largely but not entirely in electronic form. Nearly 2 gigabytes of data were provided, including, as might be expected in respect of a procurement process that took more than two years to complete, more than two thousand electronic files, including the text of a large number of electronic mail messages.

I provided a draft of this Report on my examination to the Chief Executive of the Department of Planning, Transport and Infrastructure on 8 December 2011. The Department provided comments but did not take issue with any of my comments. Accordingly, minor amendments only were made in the production of this final report.

3. Overview of the procurement process

3.1 Background

The enactment of the PTA in 1994 provided a framework for the competitive tendering of public transport services in South Australia.

Since 1994, a number of competitive tendering processes for bus services for Metropolitan Adelaide have been undertaken with tenders invited for provision of services in discrete service or 'contract' areas.

At the time of the commencement of the procurement process contracts were held by:

- Australian Transit Enterprises Pty Ltd (trading as SouthLink), for the 'Outer North' and 'Outer South' contract areas
- Torrens Transit Pty Ltd, for the 'City Free', 'East West', 'North South' and 'Outer North East' contract areas
- Transitplus Pty Ltd (Transitplus), for the 'Hills' contract area.

They were originally due to expire in April 2010.

3.2 Nature of the service contracts

The contractual framework for the procurement of regular bus passenger transport services for the Metropolitan Adelaide public transport network has three key elements:

- a service agreement (of the type examined for the purposes of this report) that sets out terms and conditions upon which the contractors operate and provide bus services
- the vehicle lease agreement (not within the scope of this report) that sets out the terms and conditions upon which the contractor accesses the Government owned bus fleet (use of the fleet being a mandatory requirement)
- the depot lease agreement (also not within the scope of this report), which sets out the terms and conditions upon which the contractor is able to access and use government owned bus depots (use of which is also a mandatory requirement).

Thus although the Government outsources the operation of its bus fleet, its ownership and that of certain depots remains with government.

The service contracts on offer by way of the procurement process under examination related to six contract areas:

- Outer North
- North South
- Outer North East
- East West (incorporating the previously separate 'City Free')
- Outer South
- Hills.

A map of these contract areas and the successful tenderers appears in Attachment A to this Report.

Key commercial elements of the contracts in place prior to those awarded as a result of the process under examination are as follows:

- Contracts were 'gross cost' contracts with an incentive payment for operators to grow patronage through a payment for each additional passenger over a threshold level.

- Contracts provided for exclusive rights to provide services within the defined contract areas.
- The majority of critical bus service assets, in particular key depots and vehicles, were owned by the Government.
- Key economic/policy outcomes included:
 - pricing – Government sets the fares and collects the fare revenue associated with the provision of the service
 - service levels – the Government sets the standard of service and the number of kilometres of service that it purchases from each of the contractors
 - service location – the Government sets the location at which each contractor is permitted to provide services.

These elements, and these outcomes, are largely unchanged by the 2011 contracts. The points of difference reflected in the 2011 contracts (as highlighted to Cabinet) were relatively minor, namely:

- a (replacement) incentive payment directed at ensuring a higher level of passenger ticket validation
- a revised approach to performance assessment
- an explicit right to buy or lease Contractors' bus or depot infrastructure during the course of the contract term.

These contracts are important to the Government, and to the people of South Australia. DTEI has stated that bus passenger 'boardings' represent more than 70 percent of the total passenger boardings on public transport in Metropolitan Adelaide. Bus services are, for example, more significant in South Australia in that sense than in (say) Melbourne, where bus services carry about 20 percent of passenger boardings.³

3.3 Brief key procurement event chronology

The contracts under which bus services for Metropolitan Adelaide were provided were due to expire in April 2010.

In June 2009, the State Procurement Board (SPB) approved a proposal from DTEI to negotiate extensions to those contracts.

In September 2009, Cabinet approved the strategy of negotiating extensions for two years, with an option to extend for a further year subject to the approval of the SPB.

In January 2010, following completion of the extension negotiations, Cabinet approved the Minister to sign extensions of the contracts up to 30 September 2011. The Cabinet Submission indicated that extensions beyond 30 June 2011 to 30 September 2011 could apply in the event that there was a change of contractor. The extensions were agreed to by the contractors subject to price increases. At the same time, Cabinet noted DTEI's intention to

³ Victorian Auditor-General's Report of June 2009 titled 'Melbourne's New Bus Contracts'.

commence a two stage public tender process for the operation of the services in the middle of 2010.

In May 2010 the SPB approved DTEI's proposal to proceed with the two stage process, involving a publicly advertised EOI followed by selective RFP.

In June 2010, DTEI released an EOI document to the market. EOIs closed on 15 July 2010, and eight EOIs were received.

In July 2010, Cabinet approved the conduct of the RFP stage of the procurement process.

In September 2010, DTEI released the RFP to the eight companies that had responded to the EOI. The closing date was originally 2 December 2010 but was extended to 7 December 2010. Seven of the eight companies responded with substantial proposals.

In April 2011, Cabinet approved the entry by the Minister for Transport into contracts with the three preferred respondents to the RFP - ATE, TT and TSA - one of which (TSA) was not an incumbent provider.

An understatement of the value of the TT contract of the order of \$900 000 per annum (\$9.453 million over eight years) was subsequently identified and was the subject of a further submission to Cabinet in August 2011.

The contracts with ATE and TT were signed on 29 July 2011. The contract with TSA was signed on 12 August 2011.

4. Detailed examination of the procurement process

4.1 Extension of the existing contracts

Cabinet approved in September 2009 the strategy to negotiate the extension of the existing contracts on the basis of advice that DTEI wished to review services to be delivered, and procurement options, including 'insourcing'. It was also indicated that DTEI needed to develop contract documentation, including specifications, and that this process would take six months.

While the acquisition plan that was submitted to the SPB in June 2009 indicated that the value for the extensions of the contracts could exceed \$500 million, the Cabinet Submission of September 2009 did not provide an anticipated value. The Department of Treasury and Finance in a costing comment accompanying the Cabinet Submission, advised that the submission was seriously deficient in not providing certain financial information and further advised that the anticipated value of the proposed extension of contracts was \$528 million (excluding GST).

Cabinet's approval of the extension of the existing contracts in January 2010 included approval of additional expenditure authority to address the agreed cost increases impacting on financial years 2009-10 and 2010-11.

Audit comment

The Cabinet submission seeking approval of the proposed extensions should have directly disclosed the likely cost of the extensions. However Cabinet was not misled, because of the inclusion of the Treasury comment on the submission.

The 2 + 1 year extension originally proposed was at the upper end of what was likely to be needed, and the extensions ultimately agreed were substantially shorter than that. It was, as DTEI anticipated, necessary to concede price increases in order to obtain the contractors' agreement. It is not clear whether, if the process had begun earlier, a better overall outcome could have been achieved.

4.2 Appointment of a person or persons to conduct the process

Section 39(2) of PTA indicates that the Minister may invite contracts by tender or in such other manner as the Minister thinks fit. Section 39(2a)(a) provides that if the Minister determines that a service contract should be awarded by tender (process), then the Minister must appoint a person or persons to conduct the process, including the assessment of any responses.

As mentioned, in January 2010, Cabinet noted DTEI's intention to undertake a two stage procurement process for these services.

On 19 February 2010, the Minister wrote to Rod Hook, Deputy Chief Executive, DTEI and Kevin O'Callaghan, Acting Executive Director, Public Transport Division, DTEI, advising them that the Minister intended to appoint Mr Hook as the person to conduct the forthcoming process, but that his (then) imminent appointment as acting General Manager of TransAdelaide (which was party to a joint venture with Transitplus, an existing service provider and therefore a potential bidder), '... may give rise to a potential conflict of interest ...', and that accordingly the Minister's appointment of Mr Hook was expressed to take effect only 'once the perceived conflict of interest has been extinguished'. The Minister's letter advised that until such time as Mr Hook was available to undertake the role, the Minister intended to appoint Mr O'Callaghan to conduct the process.

The Minister's separate letter to Mr O'Callaghan advised that both he and Mr Hook were appointed but that Mr Hook's appointment was to only take effect once the perceived conflict had been extinguished.

The disposal by TransAdelaide of its interest in the joint venture was taken as extinguishing the conflict, and Mr Hook's appointment was treated by DTEI as having taken effect on and from 1 July 2010. However, there is some evidence in the material provided to me that the legal documentation relating to the disposal of TransAdelaide's interest in the joint venture was not signed before 29 July 2010. Evidence of the 'removal' of the conflict was provided to the probity adviser on 30 July 2010.

In the event, Mr Hook did not chair a meeting of the Project Steering Committee (PSC) established to provide direction and governance for the procurement process until 13 August 2010.

Audit comment

The appointments of Messrs Hook and O'Callaghan for the purpose of section 39(2a) of the PTA were appropriately documented, thereby addressing an issue raised in the Auditor-General's report on the 2005 process.

It was clearly appropriate from a probity perspective not to appoint Mr Hook until the issue of the perceived or actual conflict of interest arising from his responsibility for, and access to information relating to, Transitplus had been resolved. In my opinion, it would have been more appropriate to have formally appointed Mr Hook only after the perceived or actual conflict of interest had been resolved, rather than have appointed him subject to resolution of that matter.

A further minor issue that arises is the date by which the conflict was taken to have been resolved. I have not sighted documentation which supports DTEI's assertion that the issue was resolved by 1 July 2010; instead the earliest relevant date appears to have been 29 July 2010. However as Mr Hook did not on the basis of documentation examined chair the PSC meetings at an inappropriate time, no probity issue arises.

An issue for future consideration is whether the effect of section 39(2a)(a) is to require the appointment of an individual who may be perceived to be taking responsibility for the overall process rather than having its actual conduct or whether, for example, the members of the PSC, project team or the evaluation teams (or all of them) should also be appointed under the section, given, for example, the references in the section to the 'conduct' of the process and to 'assessment of any responses' to a tender.

4.3 Appointment of specialist external advisers – SAHA International and Deloitte Touche Tohmatsu (Deloitte)

In February 2010, DTEI initiated a procurement process to select an expert specialist adviser to assist the process. Tenders were called in late February 2010 and closed on 11 March 2010. Nine tenders were received. A tender from SAHA International Limited ARBN 105 670 095 (SAHA International), a consulting firm with experience in the transport sector, was accepted, and an 'instrument of agreement' was signed and dated 21 April 2010.

SAHA International provided DTEI with strategically important advice on issues such as payment options and formulae, indexation, performance management, congestion, asset ownership, contract term and the number of contract areas to be taken to the market. It also advised on the issue of the ownership of and access to depots, a recognised barrier to entry to the market.

With effect from 1 December 2010, the contract with SAHA International was novated to Deloitte, which by that time had acquired SAHA International.

Deloitte was also appointed to undertake a 'peer review' of the financial evaluation report on the proposals, under the terms of the same contract. I have not been able to identify in the material provided to me for this examination any evidence of a procurement process or documentation relating to this appointment, other than a decision by the PSC on 25 February 2011 to approve acceptance of Deloitte's proposal under the terms of the novated contract. It seems to have been an expansion for convenience of an existing relationship arising from the Deloitte acquisition of SAHA International.

Audit comment

In my opinion:

- given the value of the proposed contracts, the retention of expert advice on sourcing and procurement strategy, and independent ('peer') review of the financial aspects of the proposals being evaluated was clearly appropriate

- it would have been preferable to have sourced the financial advisory services by way of a competitive process at an early stage, even if limited to an ‘across government’ SPB panel, rather than simply referring the matter to Deloitte, presumably because it was expedient to use an existing contractor.

4.4 Appointment of specialist external advisers – Contracting and Tendering Services Pty Ltd (CTS) as probity adviser

Also in February 2010, DTEI initiated a procurement process to select a probity adviser for the forthcoming process. It sought and obtained exemption from the obligation to use the SPB ‘across-government’ contract for such services, and called for tenders in March 2010.

Tenders closed in April 2010. The tender from Contracting and Tendering Services Pty Ltd ACN 073 501 149 indicated no departures from proposed ‘general conditions of contract’, and was accepted by letter dated 16 April 2010.

CTS commenced provision of the services on 20 April 2010.

A high level statement of the scope of the required probity advisory services was included in the request for tender document, and was therefore incorporated as a term of the contract with CTS, but the issue was further addressed after CTS had been appointed. The probity plan adopted for the purpose of the process included the following scoping statement:

The role of CTS is to review and respond to probity issues as they arise and/or as they are referred to it by DTEI, and thereby impart a level of independent assurance about a procurement process, in particular its consistency with the published process and probity principles, rather than reporting if an approach is necessarily procedurally perfect.

At the conclusion of the second stage (RfP) of the proposed two stage procurement process CTS will submit a final probity report to the Person Appointed by the Minister.

[...]

The scope of the Probity Services excludes:

- *Consideration of actions and behaviours of DTEI personnel and external stakeholders who are not involved with the procurement processes and stages identified below ...*
- *Certifying the ethical conduct of individuals. Public sector integrity is assumed.*
- *Providing advice on the content of documents, activities or issues which pre-date the commencement of the provision of Probity Services ...*
- *The provision or seeking of legal advice where required as a result of the provision of probity advice.*
- *Participation in any substantive evaluation or decision making.*
- *Approval processes eg Submissions to Cabinet.*

Audit comment

In my opinion, the nature, risks and value of this procurement process clearly merited the appointment of an external probity adviser, on a full service (rather than ad hoc, or specific task) basis, as was done in this instance.

CTS was the probity adviser for the preceding (2005) procurement process for passenger bus services that was the subject of the Auditor-General's report under section 39 of the PTA.

Unlike 2005, CTS was selected via a competitive procurement process. The use of a public, competitive process to select this adviser was, in my opinion, clearly appropriate, and addressed an issue raised in the Auditor-General's 2005 report under section 39 of the PTA.

The scoping statement adopted subsequent to the award of the contract to CTS was, in my opinion, broadly appropriate, but I consider the exclusion from the scope of contracted services of 'ethical conduct of individuals' on the basis that 'public sector integrity is assumed' is not appropriate. Misbehaviour by an individual involved in the process should, in my opinion, clearly be a matter upon which the probity adviser should have been expected to advise.

Finally, I note that CTS has now been employed by DTEI as a probity adviser on successive procurements of this nature, and on other procurements. Whilst there are some obvious advantages in using an adviser with which an agency is familiar and comfortable, the nature of the role of a probity adviser is one in which conflicts can be expected, and familiarity (and the anticipation of future work) may lead to a conscious or subconscious diminution in the robustness of the advice provided. As has been observed elsewhere,⁴ 'there are some risks associated with repeatedly using the same adviser ... [it] could create a perception that the adviser's independence has been compromised ...'.

This is not to suggest that CTS was in fact compromised in the giving of advice in this matter. My examination, including documentation covering aspects of the role and performance of CTS supports the view that CTS acted competently in performing the probity adviser role. However I consider there is an issue of perception that DTEI should consider in the future.

4.5 Project structure including the appointment of PSC

The project structure adopted by DTEI included a project steering committee. The structure is depicted in Attachment B of this Report.

In the context of a passenger service contract procurement process conducted under the PTA, a project steering committee with conventional, broadly scoped, responsibilities may be seen as problematic because the person appointed by the Minister under section 39(2a) is clearly intended to have the conduct (and effectively, in my view, control) of the process. Ceding that conduct/control to an entirely separate committee would not be consistent with the appointment. In this case, of course, the person appointed chaired the PSC. Had the Minister wished the project to be conducted and controlled by the PSC, then the PSC could of course have been appointed under the section.

⁴ ICAC (NSW) 'Probity and Probity Advising', November 2005, p 25.

In this case, the project structure was revised a number of times, but the version contained in the acquisition plan of April 2010 has the PSC reporting to Messrs Hook and O’Callaghan, the persons appointed under section 39(2a), which is, in my opinion, appropriate.

The PSC comprised:

- Kevin O’Callaghan (DTEI), interim chair until replaced by Rod Hook (DTEI)
- Wayne Buckerfield, Director, Contracting and Procurement (DTEI)
- Peter Doggett, Chief Operating Officer, TransAdelaide
- Rob Richards, Director, Sustainable Transport Policy and Planning (DTEI)
- Gaby Jaksa (Commercial Crown Counsel, from the Crown Solicitor’s Office)
- Greg Fenn (representing the Department of Treasury and Finance).

Regular invited attendees included Neil Whittaker (Project Director, DTEI), John Fitzgerald (Senior Procurement Officer, DTEI), Tim Dawson (CTS – probity adviser) and Jacqueline Avery (minute taker).

The PSC first met on 12 March 2010, and then met reasonably regularly throughout the conduct of the process, with its final meeting on 15 September 2011. It inherited the outcomes of the procurement processes for the external advisers (SAHA International/Deloitte and CTS).

At its first meeting, the PSC’s role was described as ‘to oversee and give governance’ to the project.

The (later) acquisition plan described its role as follows:

The Project Steering Committee’s role includes providing direction and governance to the procurement process and includes:

- *Approving this Plan*
- *Reviewing and approving any recommendations provided to it by the Project Director;*
- *Approving any negotiation plan*
- *Recommending the preferred Respondent for each Contract Area to the State Procurement Board, the Minister and Cabinet.*

A final version of a statement of its role was adopted by the PSC at its meeting on 2 July 2010. A copy appears as Attachment C to this Report. It was reviewed by the probity adviser who raised no concerns with it.

For completeness, mention is also made of the fact that the project structure included a project team (chaired by Neil Whittaker) reporting to the PSC. A number of specialist advisory groups/evaluation teams in turn reported to the project team separately addressing:

- service delivery and design
- customer service
- infrastructure, safety and security
- implementation and management
- financial (price and corporate capability)
- legal contractual risk.

Other external advisers also provided advice to the project team, including the Crown Solicitor's Office, SAHA International and of course CTS as probity adviser.

Audit comment

In my opinion, the process by which the PSC adopted a statement of its own role was, technically, defective in that it should have been signed off by Mr O'Callaghan as the person appointed under section 39(2a) of PTA. It was not a matter for the PSC to, in effect, settle its own terms of reference. However as Mr O'Callaghan chaired the PSC at the time, this is a matter of form rather than substance.

4.6 Mr Doggett's appointment to the PSC

The decision to appoint Mr Doggett to the PSC gave rise to the same conflict of interest issue as Mr Hook's appointment under section 39(2a) of the PTA. The probity adviser made the same point to DTEI.

Mr Doggett properly raised the issue at the first meeting of the PSC. However he advised he was not involved in the joint venture with TransAdelaide and asserted that he therefore had no conflict of interest.

Clearly, that was not, of itself, sufficient to deal with the matter.

DTEI advised the probity adviser that whilst Mr Hook's position as Acting General Manager of TransAdelaide gave him access to 'business as usual' information relating to the business of Transitplus, Mr Doggett's position did not.

This explanation appears to have satisfied the probity adviser in respect to this matter.

Then in late April 2010, as a result of Mr Hook being on sick leave, Mr Doggett became Acting General Manager of TransAdelaide. As soon as he was alerted to the fact, the probity adviser recommended the procedures in place to isolate Mr Hook from the project be adopted in respect of Mr Doggett. Mr Dawson of CTS advised that Mr Doggett be asked to provide an assurance that he has destroyed all copies of the draft project documents he had previously advised.

DTEI resisted this advice on the basis of Mr Doggett's experience and expertise was vital to the project. Mr Dawson confirmed his advice by email of 3 May 2010.

Mr Dawson again raised the issue at the meeting of the PSC on 7 May 2010. The PSC's minutes suggest that Mr Doggett responded by indicating that he had been appointed to the role of General Manager for all matters except Transitplus matters, which were referred to another officer within TransAdelaide.

Subsequent emails suggest the matter was resolved in practice by Mr Doggett removing himself from Transitplus matters in favour of Mr Shaun Matters, who was to have no access to project information.

I have not identified evidence of a formal decision on this issue in the material provided to me by DTEI for the purpose of this examination.

Audit comment

In my opinion, DTEI's explanation to the probity adviser of the difference in information access as between Mr Hook and Mr Doggett's positions within DTEI did not address the potential perceived conflict issue that was addressed by way of the simultaneous but sequential appointments of Messrs Hook and O'Callaghan under section 39(2a).

From a purely probity perspective, the safer course of action would have been to have excluded Mr Doggett from proceedings until more rigorous information barriers had been established.

That said, from a process efficacy perspective, it was clearly advantageous to the process to have someone with Mr Doggett's skills and experience on the PSC, or otherwise having input to the process.

Nevertheless, the result is that the manner in which the conflict of interest issue to which Mr Hook's appointment under section 39(2a) gave rise (as Acting General Manager of TransAdelaide) was addressed on the one hand was different to the manner in which the same issue to which Mr Doggett's appointment to the PSC gave rise on the other.

In my opinion, there is a basis for applying a slightly less rigorous response to Mr Doggett's position than was applied in respect of Mr Hook since Mr Doggett was, as one of a number of members of the PSC, in a position of substantial influence rather than control.

However the matter should have been the subject of explicit decision making by the PSC, and reflected in its minutes of meeting.

4.7 Another perceived conflict of interest – Mr Matters

On 10 and 19 May 2010, the probity adviser queried the proposed role of Mr Shaun Matters (then Acting General Manager, TransAdelaide) in the approved acquisition and evaluation plans (EPs) as chairs of evaluation teams, again because of Mr Matters' responsibility for Transitplus business. Mr Matters was the TransAdelaide officer to whom Mr Doggett referred as taking responsibility for Transitplus matters in his stead to address Mr Doggett's conflict issue.

Thus, a greater level of concern then arose if Mr Matters was to be involved, as contemplated by the plans, in the evaluation processes, if Transitplus was a bidder.

This issue was resolved by deferring the issue and allowing the matter to be addressed at the point in time when evaluation team members had to complete conflict declarations, that is, after the closing date and when the list of respondents was known.

The probity adviser accepted this as resolution of the matter at the time, albeit with a reminder (subsequently repeated) to DTEI officers to continue to treat Transitplus as a potential tenderer, and ensure that evaluation planning is quarantined from people with involvement in Transitplus business.

The matter was ultimately resolved by Mr Matters' resignation in June 2010 and withdrawal from the process.

4.8 Security of project documents generally

DTEI utilised a K-Net electronic filing system technology to ensure document security. In effect, this provided for secure electronic storage and indexation of project documentation. It apparently enabled access to documentation relating to the procurement to be limited to authorised officers. DTEI assured the probity adviser that TransAdelaide staff could not access K-Net.

However this did not, of itself, address the issue of security of documentation emailed across DTEI's electronic networks from the secure K-Net storage to other parties. This required discipline on the part of officers with access to K-Net.

The probity adviser made suggestions regarding this matter at an early stage, including by email on 3 May 2010.

The operation of the system was not entirely trouble free. For example, some sensitive documents were accidentally emailed to Mr Hook prior to resolution of his conflict issue, possibly as a result of the inexperience of administrative staff. The system required careful attention to its security settings, and ongoing maintenance was required. Also the probity adviser thought it necessary that authorised officers be reminded to alert email recipients of confidential documents sourced from the K-Net system to their confidentiality.

Audit comment

The adoption of software based security measures is appropriate as part of a wider regime of security measures to protect confidential project information, but is not a complete solution. Ongoing due diligence is required, and this examination identified a number of minor lapses in this regard. However no evidence of serious probity issues relating to document security has emerged in the course of this examination, and I am satisfied that the probity adviser gave this important issue attention at an appropriately early stage in the process.

4.9 Acquisition plan

The PSC considered a draft acquisition plan and associated documentation for the process on 23 April 2010, and endorsed it on 7 May 2010 subject to a 'decision rule' being prepared. The adoption of a decision rule is discussed in section 4.23 of this Report.

The DTEI Accredited Purchasing Unit (APU) endorsed the acquisition plan on 27 April 2010 but on the basis of a primary contract term of four years, with two options to extend, each of four years (for a possible total term of 12 years).

The APU's approval was transmitted to the SPB via the Chief Executive, DTEI, who approved the acquisition plan on the basis of an initial term of eight years with an option for a four year extension. This reflected a PSC discussion on 7 May 2010 to the same effect.

The SPB approved DTEI's proposal to proceed with the two stage process, involving a publicly advertised EOI followed by selective RFP, on 21 May 2010.

The approval was subject to the RFP being consistent with Cabinet's determination of funding to be made available, and the direction on the scope and mix of the tendered services to be sought.

The approval referred to a total anticipated contract value of \$2.44 billion (GST inclusive) and a contract term of eight years with a further four year extension option. The approval of the SPB noted that no provision had been made for indexation.

The acquisition plan was a comprehensive document, and included the EP, risk management plan, probity plan, draft contract management plan, project governance structure and a timeline for the procurement process. It did not include a negotiation plan or strategy but reference was made to the project team preparing such a document if negotiations became necessary and were endorsed by the PSC.

Audit comment

I have reviewed the acquisition plan against the standards specified in the SPB's Acquisition Planning Guideline. For that purpose, the procurement is identified in the acquisition plan as quadrant 4 (high value/high risk), meaning in terms of the guideline that the highest level of detail regarding the proposed procurement is required to meet the SPB's requirements.

Overall, in my opinion, with the exception of one important matter, satisfactory attention was given by DTEI to the SPB guideline relating to acquisition planning in the development and approval of the acquisition plan for this procurement.

The exception matter related to the anticipated contract value included in the acquisition plan approved by the SPB in May 2010. The anticipated value did not include provision for indexation costs of service provision. The SPB guidance on this matter requires that anticipated contract values include provision for indexed costs. As mentioned above, the SPB approval of the acquisition plan in May 2010 did note that no provision had been made for indexation. It should also be mentioned that the Cabinet Submission of April 2011 approving the awarding of contracts detailed contract values inclusive of indexation.

4.10 Deviation from approved EP

Two minor variations to the approved EP relating to scoring and liability issues were documented and assessed by the project team as having a low and moderate impact on the process in June 2010.

No documentation has been sighted that suggested that they were approved by the PSC.

However I have reviewed the record that was created in relation to them dated 14 June 2010, which indicates that they have been assessed in accordance with SPB policy.

As the deviation level was assessed as moderate and low respectively, a record of both had to be created, and reference in the case of the former to the variation had to be made in the purchasing recommendation ultimately to be forwarded to the SPB. This does not appear to have happened.

Audit comment

In my opinion, the deviations referred to were assessed and documented in accordance with applicable SPB policy, but one of them was not reported to SPB as required by that policy.

4.11 Release of EOI

The EOI document for the ‘Provision of Bus Passenger Transport Services for the Adelaide Metro Public Transport Network’ was issued on 15 June 2010 with a closing time and date of 2 pm on 15 July 2010.

The EOI document included details of the ‘Principal’s Requirements’ (including, but not limited to, procurement strategy, project scope, contract term (8 + 4), insurance, certifications and accreditations and allocation of risk and liability issues), conditions for submission (including details of various applicable government policy requirements), information to be submitted, proposed methodology of assessment and required forms.

The EOI document also included details of proposed contract areas, patronage trends and proposed allocations of responsibility for various matters relevant to the provision of services (as between the Minister/DTEI on the one hand and the successful contractors on the other).

It advised intending respondents that CTS (specifically, Tim Dawson) had been retained as probity adviser, and included an email address for direct contact with him. And it foreshadowed a ‘mandatory’ supplier briefing on 24 June 2010.

From a process perspective, the EOI document specifically disclaimed any contract arising as between DTEI and a Respondent, but insisted that the act of lodgement of an EOI would make its terms legally binding on the Respondent. From DTEI’s perspective, the EOI document included a commitment to respect the confidentiality of genuinely confidential information designated as such by a Respondent. It also committed to particular evaluation criteria for assessment of EOIs.

4.12 Industry briefing

An industry briefing was conducted on 24 June 2010 at Memorial Drive (Next Generation).

A detailed presentation was provided, including details of future transport network changes, project process and timelines, rules and tips for the EOI stage and provision for questions.

As the briefing was designated in the EOI document as ‘mandatory’, I have reviewed the attendance log for the briefing. It indicates representatives of all groups that subsequently lodged EOIs were present at the briefing, as were a number of other individuals or representatives. In addition, Tim Dawson of CTS (ie the probity adviser), and a number of government (DTEI) representatives were present.

4.13 Receipt and opening of EOIs

As the overall procurement strategy for the services was predicated upon the proposed request for proposal being issued only to companies that responded to the EOI, and that were assessed as satisfactory according to its terms, it was important that there be a good number of competitive, quality responses to the EOI. As Deloitte (later) observed:⁵

Competitive tendering works well when there is sufficient competition between potential entrants to ensure that there is sufficient tension in the market during the procurement process. There is evidence from other countries that have

⁵ ‘Monopoly and Sustainable Competition Impacts of Adelaide Bus Contracting’, 8 March 2011, section 2.1.

implemented competitive tendering that benefits can be lost if there is only a small number of tenderers. That is, prices generally fall more when there are larger numbers of tenderers ...

The EP addressed the important issue of the receipt and opening of EOIs. These procedures, and compliance with them, are important probity issues for procurement processes.

The EP indicates that after closing time, and in accordance with the approved Probity Plan and DTEI's procedure 'PR360', two authorised officers will perform the EOI opening, checking and scheduling. It also indicated that all EOIs will be listed in the tender listing schedule, which was to be signed by the two authorised officers.

The closing time was 2 pm on 15 July 2010.

Eight EOIs were received by that time. As to that number of EOIs, Deloitte's (later) said:

In the case of the current tender process, eight tenderers, including some of the biggest bus companies providing services in Australia, submitted expressions of interest ... this number of tenderers should be sufficient to ensure a competitive outcome is achieved from the tender process and that maximum price efficiency is obtained by the State.⁶

Audit comment

Audit examination of the procurement documentation indicated that a 'Schedule of Tenders' recording EOIs lodged was completed on 15 July 2010. It indicates that the EOIs were opened in the presence of two authorised officers. It was countersigned by Tim Dawson as probity adviser. The probity adviser reported accordingly.

4.14 Report to Economic and Finance Committee

Section 39(2a) of the PTA requires that if the Minister determines that a service contract should be awarded by tender, then the Minister must, within 14 days after the 'relevant invitation' is published, forward to the Economic and Finance Committee of the Parliament a report setting out a range of matters, including (but not limited to) the specifications and the terms of the tender and the processes to apply with respect to the assessment of any responses. The Economic and Finance Committee may then inquire into and report on the matter as the Committee thinks fit.

In this case, the Minister provided the report required by section 39(2a) to the Economic and Finance Committee in June 2010.

The Economic and Finance Committee considered the EOI at its meeting of 22 July 2010 and resolved to call witnesses. Messrs O'Callaghan, Whittaker, Kavanagh and Fitzgerald, all of DTEI, appeared before the Economic and Finance Committee on 23 September 2010.

Audit comment

In my opinion, the Minister complied with section 39(2a)(b) of the PTA in connection with this (EOI) stage of the process.

⁶ Ibid, section 2.4.

4.15 Evaluation of EOIs

The EP contemplated a two level evaluation of EOIs, the first being a mandatory criteria assessment, and the second being a qualitative assessment.

The mandatory criteria assessment included an assessment of a respondent's ability to obtain public liability, products liability and professional indemnity insurances at certain levels (specified in the EOI document) that had been agreed with SAICORP (a division of the South Australian Government Financing Authority).

Qualitative criteria extended to experience in similar service provision, capability and resource, and certain aspects of corporate history and litigation.

In essence, to proceed to the RFP stage, respondents had to satisfy all mandatory criteria and be scored above a certain level against the qualitative criteria.

The EOI document also indicated to respondents that submissions would be assessed in accordance with criteria listed in Part C (which aligned with the criteria specified in the EP) of the EOI document. Other relevant information was also included in Part D.

In the event, all eight companies were assessed as meeting the minimum requirements of both levels, so all eight companies were, on the face of it, eligible to proceed to the RFP stage.

The evaluation report dated 27 July 2010 recommended accordingly.

On 28 July 2010:

- the probity adviser advised the PSC that the evaluation process had followed the approved EP
- the PSC endorsed the recommendation.

However the PSC decided to seek clarification of the impact of a possible merger between the parent companies of two respondents given that separate EOIs had been received.

DTEI wrote to the two respondents requiring them, in essence, to continue to operate separately and with suitable information barriers as between the two respondents.

A further letter dated 5 August 2010 sought additional information from one of the two respondents regarding its ownership structure post-merger.

4.16 Approval to proceed with RFP stage of procurement

On 26 July 2010, Cabinet approved the conduct of the RFP stage of the procurement process, based on the then current 'suite' of services (ie without service reductions) and noted the likelihood of a further submission in early 2011 for funding in excess of forward estimates, based on the outcome of the tender process.

In the course of DTEI preparing its submission, there is evidence that the Minister informally required the PSC or DTEI to proceed on the basis of no service reductions.

Audit comment

Section 39(2a)(c) of the PTA stipulates certain documentation and regulatory requirements for a ministerial direction relating to the procurement assessment and selection process.

In my view, no requirement for a written direction arose under section 39(2a)(c) because the subject matter of the requirement did not relate to the ‘assessment or selection process’.

4.17 Release of RFP

The ‘Request for Proposal for Provision of Bus Passenger Transport Services for the Adelaide Metro Public Transport Network’ was released on 22 September 2010 via a secure web site to the eight respondents to the EOI document with a closing date of 2 December 2010, later extended to 7 December 2010.

4.18 Further Report to the Economic and Finance Committee

As referred to in section 4.14 of the Report, Section 39(2a) of the PTA requires the Minister to meet certain reporting requirements to the Economic and Finance Committee for passenger bus contracts that the Minister determines should be awarded by tender.

As stated in section 4.14 of this Report the Minister provided the appropriate report to the Economic and Finance Committee in relation to the EOI stage of the procurement process. In October 2010 the Minister provided the appropriate report to the Economic and Finance Committee for the RFP stage of the procurement process.

Audit comment

In my opinion, the Minister complied with section 39(2a)(b) of the PTA in connection with this RFP stage of the process.

4.19 Clarification workshop and addendum no 1

The RFP contemplated that DTEI would conduct clarification workshops with each respondent separately within four weeks of the release of the RFP. It indicated that attendance at these workshops was mandatory. Following attendance at the workshop, DTEI would make access to its infrastructure (the depots, the vehicles and the data room) available to respondents.

It later transpired that there would be a single clarification workshop, held at Enterprise House at Unley, with all questions taken on notice. This was to address the probity risk of inconsistent information being provided to separate respondents.

It took place on 6 October 2010. Presentations were given by a range of DTEI speakers, providing information no more extensive than was provided in the RFP. RFP addendum no 1 was provided at the same time.

4.20 Vehicle and depot inspection tours

The RFP indicated that DTEI would provide the opportunity for intending respondents to inspect a range of vehicles and inspect each of the government supplied depots. This inspection was not mandatory.

In the event the tours were held on 19 and 20 October 2010. The probity adviser was not present, but he sought details of DTEI's proposed procedures for the management of questions and answers during the tours, and reminded DTEI officers of the need to ensure consistency of information provision to respondents.

4.21 The data room

A range of information was available in the data room, including various bus manuals, maintenance procedures, accident reports, and fault and performance analysis, safety accreditation requirements, fare evasion statistics and depot plans and capacities.

The probity adviser reviewed the arrangements for the data room, including the detailed data room procedures, registration and booking sheet and the rules for proponents, and was satisfied as to those matters.

4.22 The Booz/ComfortDelGro issue

On 25 November 2010, the project team's attention was drawn to a probity issue that arose because DTEI had retained Booz & Co to undertake risk assessments in relation to certain aspects of the passenger bus system.

Booz & Co had just advised DTEI that it was working with ComfortDelGro on its bid and wanted to use a ComfortDelGro employee on the risk assessment task.

DTEI sought the advice of the probity adviser, which sought certain background information regarding issues such as whether the risk assessment exercise would give ComfortDelGro access to information not available to other bidders that would assist it in preparing its proposal.

A range of detailed assurances were provided, and on that basis, the probity adviser was satisfied.

4.23 Adoption by the PSC of a 'decision rule'

On 28 July 2010, that is, after the date of the EP, but before the release of the RFP, the PSC adopted a decision rule to be deployed in the making of the decision on award of contracts.

It was quite detailed and required a specific approach to the evaluation process. However, it arguably amounted to a decision to evaluate proposals otherwise than as already settled in the EP.

The EP was then amended, to reflect the decision rule, and SPB policy on 'deviations' was applied to resolve the question of whether and by whom the variation to the approved evaluation approach should be approved.

The fact of the deviation (though not its details) was ultimately drawn to the SPB's attention via the purchase recommendation.

Audit comment

In my opinion, DTEI complied with the SPB policy on deviations in adopting a decision rule in this manner.

4.24 Accidental disclosure of identity of proponents to each other

On 8 October 2010, via a single email, an administrative officer of DTEI provided the eight companies invited to respond to the RFP with addendum no 2, depot maps and certain enterprise bargaining agreements.

The identity of the recipients was not hidden, so if they did not know already, the identity of the companies was thereby disclosed to each of them.

The disclosure was noted by the contact person for one of the companies, which responded as a matter of courtesy to the administrative officer.

It is not clear whether the matter was immediately drawn to the attention of the probity adviser or the PSC.

Audit comment

I have sighted no evidence in the course of examination that would suggest that this disclosure was anything other than accidental, and although a probity issue, in the sense that information that was arguably confidential was disclosed without appropriate authority, nothing turned on it in terms of a litigation risk for Government for wrongful disclosure of confidential information belonging to a respondent.

The damage (if any) that was done to the position of the Government is that the bidders would have been made aware of the companies with which they were competing. Given the stage at which the inappropriate disclosure was made, I am satisfied the damage done to the Government's position was likely to have been negligible, if any. Whilst the disclosure of the names of the entities that had been invited to respond to the RFP was inappropriate, it did not create any unfairness for any of the respondents, particularly as they were all represented at the clarification workshop on 6 October 2010.

4.25 Another conflict of interest issue

One of the members of one of the evaluation teams disclosed a conflict of interest being a (recent) former employee of one of the respondents.

The matter was referred to the probity adviser by email of 5 November 2010, who advised on the options for dealing with the matter, in my view appropriately.

4.26 Receipt and opening of proposals

The EP addressed the issue of the receipt and opening of proposals. Probably even more so than was the case with responses to the EOI, these procedures and compliance with them are important probity issues for the overall procurement process.

The EP indicated that proposals would be received at the DTEI tender box, and scheduled in accordance with DTEI's procedure 'PR360'.

It indicates that after closing time, and in accordance with the approved probity plan and DTEI's procedure 'PR360', two authorised officers would perform the RFP opening, checking and scheduling. All responses were to be listed on the tender listing schedule, which was to be signed by the two authorised officers.

As mentioned earlier, the closing date was originally 2 December 2010 but was revised to be 7 December 2010 in response to a request for extension from a respondent.

Proposals were received from seven of the eight companies that were invited to respond.

Audit examination of the procurement documentation indicated that a 'Schedule of Tenders' was completed on 7 December 2010. It indicates that the 'Schedules of Rates' were opened in the presence of two authorised officers, and includes a notation that J Dawson (of CTS) witnessed the process.

The PSC met at 4 pm on 7 December 2010. Mr Whittaker reported that in the course of the period prior to the closing date, 21 amendments had been issued, 148 questions had been received from intended respondents of which 137 had been answered. The balance were considered to be matters for attention in respondents' proposal documents.

Audit comment

The receipt and opening stage of the process was conducted in accordance with all applicable probity requirements. The probity adviser reported accordingly.

4.27 Evaluation of proposals

A key probity question is whether proposals were evaluated in accordance with the EP as approved by the PSC on 28 July 2010.

The evaluation report indicates that the evaluation was undertaken in three stages.

Stage 1 was an assessment of the conformity of responses, and of the respondent's ability to deliver services at an acceptable level of quality.

Stage 2 was an assessment of financial and commercial acceptability and level of risk to Government.

Stage 3 was an assessment and ranking of the NPC of the proposals assessed as acceptable.

Audit comment

The probity adviser reported on each stage of the evaluation and confirmed that each stage of the process was undertaken in accordance with the EP.

4.28 The due diligence process

DTEI undertook a limited due diligence process in relation to the proposals. The EP foreshadowed it and in part it involved an interstate trip by three members of the evaluation team to Melbourne, Perth and Sydney, with visits to reference sites and other government agencies.

A comprehensive report was prepared, and is dated 11 April 2011. It addressed many issues. Amongst them, it addressed concerns arising from TSA's (then) lack of experience in provision of bus passenger services.

4.29 Approval of stage 1 evaluation report and the exclusion of two proponents

A report was provided to the PSC at the completion of the first stage of the evaluation process.

All proposals were accepted as conforming.

Proposals from two respondents were assessed as unsatisfactory in certain respects and on 3 February 2011 the project team recommended the exclusion of those respondents from further consideration.

The PSC considered the recommendation at its meetings of 21 and 25 February 2011 and Mr Hook endorsed the report as having been approved on 25 February 2011.

4.30 Approval of stage 2 evaluation report

A report was provided to the PSC on the completion of the second (financial/commercial/risk) stage of the evaluation process in respect of the five companies remaining in the process.

This process involved financial and commercial assessments directed at providing assurance that the respondents had the financial viability and capacity to undertake the provision of the services.

Specifically, reports were obtained from Dun and Bradstreet and Australian Business Research.

The result was that no or minor concerns only existed in respect of the five companies.

So far as risk to Government was concerned, four companies were assessed as representing 'low' risk; and one (TSA) was assessed as having a higher but still acceptable risk arising from its status as a company new to the provision of bus services, and to a contract of the nature on offer through the process.

Accordingly, on 4 April 2011, the project team recommended that all five companies progress to stage 3.

PSC considered the recommendation on 6 April 2011 and the report was endorsed.

4.31 Approval of stage 3 (financial) evaluation report

A report was provided to the PSC on the completion of the third and most detailed stage of the evaluation process in respect of the proposals from the 5 companies remaining in the process.

The decision rule adopted by the PSC required an NPC analysis of the prices tendered. Because of the longer term nature of the contracts on offer, and the near certainty of change in services over the term, a number of scenarios were analysed:

- a base case scenario based on the amounts specified in DTEI's forward budget estimates for these contracts, and no growth in services outside the period covered by those estimates

- a scenario based on additional modest growth of 1 percent per annum
- a scenario based on higher growth (being that predicted to be necessary to achieve the Government's public transport target (as set out in South Australia's Strategic Plan)).

The scenarios under analysis required assumptions and adjustments to tendered pricing.

The outcomes were subject to peer review by Deloitte, which concluded the methodology adopted was an 'effective and transparent' way of adjusting the base payments proposed by the respondents to develop a common cost basis upon which PSC could compare proposals.

The result was a number of combinations of contract awards across contract areas needed to be considered. Nine possible combinations were short listed down to three and then two for final consideration.

The last two combinations were assessed as both offering significant benefit to Government and comprising 'an excellent outcome to both Government and users of the Adelaide Metro(politan) network'.

The ultimately preferred combination was not the least cost option for government, but was less than 1 percent more expensive under all three scenarios, and was assessed as entailing less risk, and was therefore preferred and recommended.

Having regard to the identified risk of awarding a contract to TSA, in view of its lack of directly relevant experience, on 4 April 2011, the project team recommended its preferred combination of contracts, contractors and contract areas, be subject to further clarification from TSA of aspects of its proposal.

The PSC accepted the recommendation, and Mr Hook endorsed the report accordingly on 6 April 2011.

The condition to which the project team's recommendation was subject was addressed shortly after the PSC's acceptance of the recommendation.

The probity adviser proposed that he attend the proposed clarification as an observer, and that proposal was accepted.

On 12 April 2011, a number of DTEI representatives (Messrs Hook, Crackett and Whittaker, together with Tim Dawson of CTS as probity adviser) met with TSA representatives (Messrs Machon (General Manager, SA/NT), John Wilson (Transition Director), Michael Bourke (Maintenance Manager), Bruce James (Chief Executive, Resources and Energy) and Steven MacDonald (Chief Executive, Marketing and Investment)). Messrs James and MacDonald were present by telephone.

The probity adviser created a file note of the meeting, which I have reviewed.

Audit comment

Whilst the clarification session with TSA confirmed the decision already reached, in my view there was some risk from a probity perspective. For example, had TSA provided additional information in the course of the clarification, the PSC representatives could have been placed in a difficult position.

However having regard to the notes made by the probity adviser, in my opinion, no probity issue in fact arose from the session.

4.32 The monopoly and sustainable competition issues

The stage 3 report specifically addresses each of the principles set out in sections 39(3)(a)(i) to (iv) of the PTA.

The Auditor-General expressed a view in his review of the 2005 contracts on DTEI's failure to adequately address two of those requirements (monopoly and sustainable competition) as part of its process of award.

It is apparent from my examination of this process that the Auditor-General's 2005 view was specifically considered and addressed by PSC in connection with this process.

Accordingly, I have reviewed the PSC's endeavours in this regard (ie on the monopoly and sustainable competition issues (referred to in section 39(3)(a)(i) and (ii)), and considered whether the sections were complied with in the course of the process under review.

Section 39(3) of the PTA requires the Minister in awarding relevant service contracts as part of the operation of the public transport system within Metropolitan Adelaide to take into account a number of principles, including that:

- service contracts should not be awarded so as to allow a single operator to obtain a monopoly, or a market share that is close to a monopoly, in the provision of regular passenger services within Metropolitan Adelaide (section 39(3)(a)(i))
- sustainable competition in the provision of regular passenger services should be developed and maintained (section 39(3)(a)(ii)).

The requirement is stated by section 39(3a) to be an 'expression of policy' and not something that gives rise to rights or liabilities, but it is an important expression of legislative intention and needed to be addressed at appropriate points in the process.

The requirement was the subject of extensive discussion in the Auditor-General's report on the 2005 procurement process, and gave rise to an expression of audit opinion that 'the analysis and consideration of sustainable competition and the avoidance of a monopoly ... (had been) ... inadequate'.

In the case of the procurement process under review, the PSC was provided with advice from Deloitte⁷ on the issue.

I have reviewed the advice; it is, in my opinion, substantial and compelling. Certainly it indicates that the issue was more thoroughly and appropriately considered than was the case with the 2005 process.

I also report, for completeness, that the other principles required by section 39(3)(a) to be considered in the course of the process were considered. Each of them is discussed and addressed in the procurement purchasing recommendation.

⁷ Monopoly and Sustainable Competition Impacts of Adelaide Bus Contracting, 8 March 2011, Deloitte.

Audit comment

In my opinion, the requirements of section 39(3)(a) were met in the course of the process under review, in particular, the requirements of subsections (i) and (ii) (the monopoly and sustainable competition issues).

4.33 Purchasing recommendation (PR)

The SPB's Acquisition Planning Guideline requires that purchase recommendations be approved by the authority designated in the approved acquisition plan, and documented to a level of detail commensurate with the requirement, including:

- confirmation that the approved acquisition plan has been followed, including, if appropriate, referencing the approval of any deviations
- a comparative evaluation of individual offers received and a summary of the results of the evaluation
- a recommendation to award the contracts or take other action, including details of full terms and all available extensions and values.

Furthermore, the SPB's 'Approvals Process' guideline requires purchase recommendations to identify any deviations which occurred during the process, and their subsequent treatment and approvals (if applicable).

The PR dated 14 April 2011 was a substantial document, and included key details of the acquisition (including of a deviation from the approved AP), the project structure, the outcome of the EOI process and the EP decision rule relied upon, the RFP and the related briefing session, clarification process and data room, depot and vehicle inspections and the FFP closing process, a detailed summary of the three stage evaluation/assessment process and of the analysis of the two preferred combinations of award.

A negotiation strategy was not considered necessary but 'contract clarifications' were contemplated. I am not convinced the distinction had substance in this case.

A brief summary of the probity adviser's advice (ie no material issues) was provided, as were details of agreed insurances and securities (bank guarantee).

The final recommendation was that three contracts be awarded:

- ATE for the Outer North, Outer South and Hills contract areas
- TSA for the Outer North East and North South contract areas
- TT for the East West contract area.

Audit comment

I have reviewed the PR against the standards specified for PRs in the SPB's Acquisition Planning Guideline.

Although details of at least one relatively minor deviation appear to have been omitted, in my opinion, the key deviation (the decision rule) was appropriately disclosed.

Overall, in my opinion, satisfactory attention was given by DTEI to the SPB guideline relating to acquisition planning in the development and approval of the PR for this procurement.

4.34 Approval of PR

The PR was endorsed by the DTEI APU and by the Chief Executive, DTEI on 14 April 2011, and forwarded to SPB on 19 April 2011.

The APU's endorsement was subject, amongst other things, to sighting a probity report.

That report was provided after CTS received a copy of the final recommendation on 15 April 2011, that is, after the matter had been endorsed by the Chief Executive, DTEI.

I have reviewed the report dated 15 April 2011 provided by CTS. In summary, CTS advised that it 'is not aware of any material fact or circumstance that has compromised the procurement process and is satisfied that the requirements for probity have been adhered to'.

The SPB approved the PR on 27 April 2011, the same day as Cabinet authorised the Minister to enter into the three contracts.

Respondents were advised by letters dated 29 April 2011.

Audit comment

In my opinion, the probity report should have been provided as part of the PR to the DTEI APU and the Chief Executive, DTEI.

4.35 An allegation of serious probity breaches

On 9 May 2011, DTEI received an email from a respondent alleging two probity breaches in connection with the process, namely that:

- the respondent had been informed on 16 February 2011 that TSA had won two contracts (whilst it had not heard of that outcome until officially advised on 28 April 2011)
- TSA had been asked to bid for a particular contract after the closing date, or given the opportunity to modify its proposal after the closing date.

The matter was promptly drawn to the attention of the probity adviser, who reviewed the response.

The complainant was assured that as at 16 February 2011, the process was still in the stage of detailed evaluation, and that the allegation regarding TSA was untrue – that the closing date was 7 December 2010, and no late proposals were received.

Audit comment

Nothing I have viewed in the course of my examination provides any evidence to support either allegation.

4.36 A further contract extension of a short-term nature

On 30 June 2011, in the interests of service continuity, DTEI wrote to ATE and TT, inviting them to agree to a short-term extension of their existing contracts to 31 July 2011 or to the signing of new contracts (which ever first occurred).

Both companies agreed.

No approval was in place to cover this short-term extension. The new contracts, when signed, appear to have been intended to apply retrospectively (ie from 1 July 2011), probably meaning that the new terms, once agreed, displaced the extended terms.

Audit comment

These short-term extensions were necessary in the context in which DTEI found itself but I have not identified documentation relating to their authorisation as part of my examination.

4.37 Substitution of Torrens Transit party

The purchasing recommendation identified as one of the respondents to the EOI and to the RFP a company named Transit Systems Australia Pty Ltd (trading as Torrens Transit), and that company was the subject of the recommendation that it be awarded the contract to provide services in the East West Contract area.

Searches indicate that no such company exists, but that 'Transit Systems Australia' is a business name that has been registered for some years in Queensland, South Australia, New South Wales and Western Australia.

In the end, the parties agreed that the contractor be Torrens Transit Pty Ltd ACN 088 342 152, and that Transit Systems Pty Ltd ACN 135 200 609 be its guarantor.

Audit comment

To avoid confusion as to the legal entities with which contracts should be signed, purchasing recommendations should explicitly identify, by name and by Australian Company Number, the entities being identified as preferred suppliers to which contracts are to be awarded.

4.38 Understatement of value of TT proposal

Subsequent to the approval of the PR, DTEI identified a miscalculation in the value of the TT bid. The understatement was of the order of \$910 000 per annum or \$9 453 million over eight years. It related to the treatment of some transition costs as 'once off' by DTEI that should have been treated as having a recurrent impact.

The deviation was assessed in accordance with the SPB's Approvals Process Guideline. It did not affect the procurement outcome (TT was the only remaining bidder for the East West contract after the early elimination of another bidder for that contract area), so no probity issue, as such, arose. However it did mean that the value of the contract to be awarded, and the aggregate value of the three contracts to be awarded, as advised to Cabinet, was wrong.

Consideration was given to the question of the appropriate party to approve the deviation. By reference to Treasurer's Instruction 8, the difference was effectively treated as a contract variation, calculated as representing 2.3 percent of the value of contract, and falling within the scope of the authority of the Minister to approve.

The higher (more correct) figure was incorporated within the contracts that had already been submitted to the Minister for signing.

It is not clear whether the advice of the probity adviser had been sought.

In the event, Mr Whittaker advised the DTEI APU of the deviation on 8 August 2011. On 29 August 2011, the APU advised the Chief Executive, DTEI of the variation, and recommended that it be approved and forwarded to SPB to note.

The Minister approved the additional cost, and signed the contract but asked that a Cabinet 'pink' be prepared.

Cabinet was asked to note the additional cost and did so on 22 August 2011.

Audit comment

In my view, this matter was appropriately handled once the error had been discovered. It was clearly appropriate to have informed Cabinet, given the specificity of the amounts referred to in the primary submission, and the arguable materiality of the error.

4.39 Signing of contracts and the final probity report

The Minister has advised and formally reported under PTA that he signed the contracts with ATE and TT on 29 July 2011, and the contract with TSA on 12 August 2011.

However he did so in advance of the receipt of CTS' final probity report.

That report was dated 26 August 2011. As mentioned earlier, CTS reported that it was 'not aware of any material fact or circumstance that has compromised the procurement process and is satisfied that the requirements for probity have been adhered to'. The report comprised a covering letter expressing this view, and a detailed probity checklist in tabular form.

CTS also indicated to DTEI that it had wished to defer provision of its final report until contracts had been signed and debriefing of unsuccessful bidders had been provided.

This may have been a requirement of its agreement with DTEI but it does mean that the process did not provide the Minister with independent confirmation of no probity concerns prior to signing of the contracts.

Audit comment

Whilst the form and content of the final probity report was, in my view, satisfactory, it should have been provided before decisions were made on the basis of the purchasing recommendation, and certainly before contracts were executed.

4.40 Report to Parliament under subsection 39(3b)

Section 39(3b) of the PTA requires the Minister to prepare a report on a contract awarded under section 39(3)(a) that sets out the full name of the contractor and provides information as to the contract's term, that identifies the region or routes of operation under the contract, and provides information on the amount or amounts that are payable by the Minister and on how the principles under subsection (3)(a) have been applied.

The requirement to provide information on the amount or amounts that are payable under the contract does not extend to specific amounts payable under a contract or other information of a commercial value the disclosure of which would diminish its value or unfairly advantage a person or persons in future dealings with the Minister (see section 39(3c)).

The Minister must have copies of the report laid before both Houses of Parliament within six sitting days of its completion.

Audit comment

I have reviewed the report dated August 2011 that was laid on the table of the House of Assembly on 13 September 2011. The report relates to all three contracts. In my opinion, it meets the requirements of section 39(3b), save in one respect.

In terms of the amount or amounts that will be payable by the Minister under the contract, the report includes the following passage:

5.1 Contract amount

The annual contract sum for the contracts is \$150.275 million (excluding GST). This amount is subject to indexation, service changes, fuel rebates, validation payments and potential reductions for poor performance.

These payments exclude the lease costs of the buses and depots which continue to be owned by the Minister and are leased to the contractors for use in delivering the contracted services.

In my view the amount referred to in section 5.1 (being an aggregate figure across the three contracts) should be, at least, the equivalent figure for each of the three contracts. In my opinion, the PTA is clear on the point.

4.41 Report to Auditor-General under subsection 39(3e)

Section 39(3e) of the PTA provides that if under a service contract awarded under this section the Minister is liable to make payments exceeding \$4 million in total over the term of the contract, then the Minister must within 28 days of awarding the contract, forward to the Auditor-General a copy of the contract and a report that describes the processes that applied with respect to the awarding of the contract.

On 24 August 2011, the Minister signed a letter to the Auditor-General enclosing copies of the three contracts and a report describing the relevant processes, pursuant to clause 39(3e).

The Minister's letter and its enclosures were received by my Department on 26 August 2011.

Audit comment

As previously mentioned, the Minister signed the contracts on 29 July 2011 and on 12 August 2011.

As copies of the contracts, and the Minister's report were received by my Department on 26 August 2011, in my opinion, the Minister complied with its obligations under section 39(3e) of the PTA.

4.42 Contract compliance with the PTA

Attachment D contains in tabular form the results of my check of the compliance of the contracts with the PTA.

No issues of non-compliance arise.

4.43 Contract management plan

A contract management plan was prepared by DTEI and endorsed by two senior officers of the Public Transport Services Division in September 2011. It represents one plan for all three contracts, that is, a separate management plan has not been prepared for each of the three specific contract arrangements.

To reinforce earlier comments each contract is of substantial value with relatively long primary terms of approximately eight years. They are also complex in nature. They therefore demand active and disciplined contract management regimes.

Audit comment

As it is outside the scope of the mandate for this examination, I have not reviewed the contract management framework against the requirements of SPB's Contract Management Guideline. The matter of the implementation of an effective contract management framework (including plans) will be subject to audit as part of the annual program of audit of the operations of the Department of Planning, Transport and Infrastructure.

4.44 Outcome

My examination has not identified any matters of concern that would suggest, or tend to suggest, that the procurement process the subject of this report was materially compromised from a probity perspective.

There were some matters of practice or procedure noted that, in my view, were not satisfactory or require review/reassessment for ongoing procurement practice. These are specifically communicated, where appropriate, in the audit commentary sections of this Report. They are matters which while not compromising the overall integrity of the procurement process, should be addressed to achieve betterment in future goods and service procurements undertaken.

5. Matters of additional comment

In undertaking the examination I have noted certain matters that merit specific comment.

5.1 The new entrant – TSA

A noteworthy aspect of the outcome of the procurement process was the award of a significant portion of the business on offer to TSA, a company that had not previously operated passenger bus services.

Of itself, given the legislative directive by Parliament to avoid the creation of a monopoly, the admission of a new entrant into the market for passenger bus services in Metropolitan Adelaide is consistent in terms of the PTA, and generally.

A significant issue that arises is whether the company's inexperience in providing bus passenger services was properly and sufficiently considered in the course of the procurement process, and sufficiently detailed to the decision makers in and on the process.

TSA was one of the eight respondents to the EOI, and the evaluation of its EOI included a score of 'acceptable' against 'experience', without which it could not have proceeded to the RFP stage.

Likewise, the evaluation of its response to the RFP reflected an assessment of TSA having demonstrated the ability to deliver the services at an acceptable quality. Regard at this point was had to the company's extensive experience in the provision of services other than passenger bus services.

TSA is part of a substantial corporate group that is a large national provider of services with resources to engage in new business areas. To have excluded it as a respondent on the basis that it had not provided bus passenger services before would be tantamount to precluding any entirely new entrant to the industry. My examination indicates that DTEI, however, on the basis of a fair and equitable evaluation of all respondents' tenders and a due diligence process, selected TSA as one of three successful contractors. DTEI's determination reflects an assessed risk of TSA's ability to provide the services at the service levels that are required in respect of 40 percent of the passenger bus services for Metropolitan Adelaide.

So far as the advice to Cabinet was concerned, Cabinet was advised that TSA had very limited or 'minimal' experience in the operation of public bus services. It was also advised that whilst the introduction of TSA to one contract area would be 'relatively low risk', introduction of TSA to up to three contract areas had been considered. The recommended combination of contracts and contractors involved the award of two contract areas to TSA. I am satisfied that Cabinet was appropriately advised of the risk associated with the recommended option.

5.2 Contract term

Another noteworthy aspect of the outcome of the procurement process was the award of contracts for primary terms of eight years, with options to extend for another four, that is, a potential total of 12 years assuming no further extensions are contemplated. This was a significantly longer period than was contemplated in 2005, and resulted in the contracts having a significantly higher value than those awarded in 2005.

Cabinet was never advised that a shorter primary term (four years, with two options to extend, each of a further four years) had been considered at an early stage of the process, nor were the advantages of a shorter primary term (notably the possibility of improved contract management, given the relatively shorter time periods between contract renewal decisions by Government) canvassed with Cabinet.

The reason for this was that the PSC settled on an 8 + 4 term quite early in the process, following advice from SAHA International.

I have reviewed that advice.⁸

It is quite brief on the point. It refers to DTEI having under consideration a range of options, including 4 + 4 + 4, 5 + 5 and 6 + 6 year terms and options.

The rationale noted by SAHA International was that government sought the flexibility to substantially change the service structure when planned rail upgrades were completed, and when a new rail scheduling system was in place. SAHA International's view was that it would be preferable to build flexibility into the contracts to allow for service changes rather than develop a term structure that 'reduced certainty for operators and their financiers', and 'for this reason we would not recommend a contract structure that was 4 + 4 + 4 structure, particularly as the trend is to longer contracts'. SAHA International recommended a total term of 10 to 12 years (as DTEI was contemplating) but with a longer initial term of seven to eight years (if a 10 year total term is settled upon) or eight to nine years (if a 12 year total term is settled upon).

As mentioned, in light of the advice, DTEI settled early in the process on an 8 + 4 term, and did not invite the market to respond to shorter terms, which might have allowed the advice from SAHA International to be tested. DTEI considered that an initial eight year term was necessary to encourage potential investment in depots and related infrastructure.

Given the limited nature of the capital investment required of successful respondents in view the government's strategy of maintaining ownership of its depots, and continuing to own the buses used in providing the services, in my view there was a case to approach the market with at least the option of a shorter term, so that there was at least the possibility of testing the advice.

5.3 The use of information barriers (Chinese Walls) to address probity issues

As detailed above, any early test of the probity of the process under review came about because a number of key officers allocated to the process by DTEI were exposed to operational and other information belonging to TransAdelaide and its joint venture interest in Transitplus.

The position of Messrs Hook and Doggett in particular was problematic.

In the case of Mr Hook, the issue was addressed by effectively removing him from the process until the issue was resolved. In my opinion, this was appropriate.

So far as Mr Doggett's position was concerned, the issue was more problematic, and was resolved with input from the probity adviser in the manner described in this report. It is important to recognise, however that effective information barriers may not necessarily have been sufficient to address the issue that arose.

⁸ 'Bus Contracting Strategic Directions', SAHA International Limited, Final Draft, 21 April 2010.

I am aware that there is now substantial case law on the efficacy of information barriers to address issues of conflict of interest. The trend of the cases is to require very high standards of security to at least dramatically diminish the possibility of inappropriate disclosure.

However the point remains that even if the information barrier is high enough to address the actual conflict of interest or other probity issue, the question remains whether they are sufficient to address the perception issue, which is often at least as important to the reputation of the process.

In the case of this procurement process, the issue rapidly became moot as the Government disposed of its indirect interest in the prospective bidder, and in my view, no probity issue in fact arose.

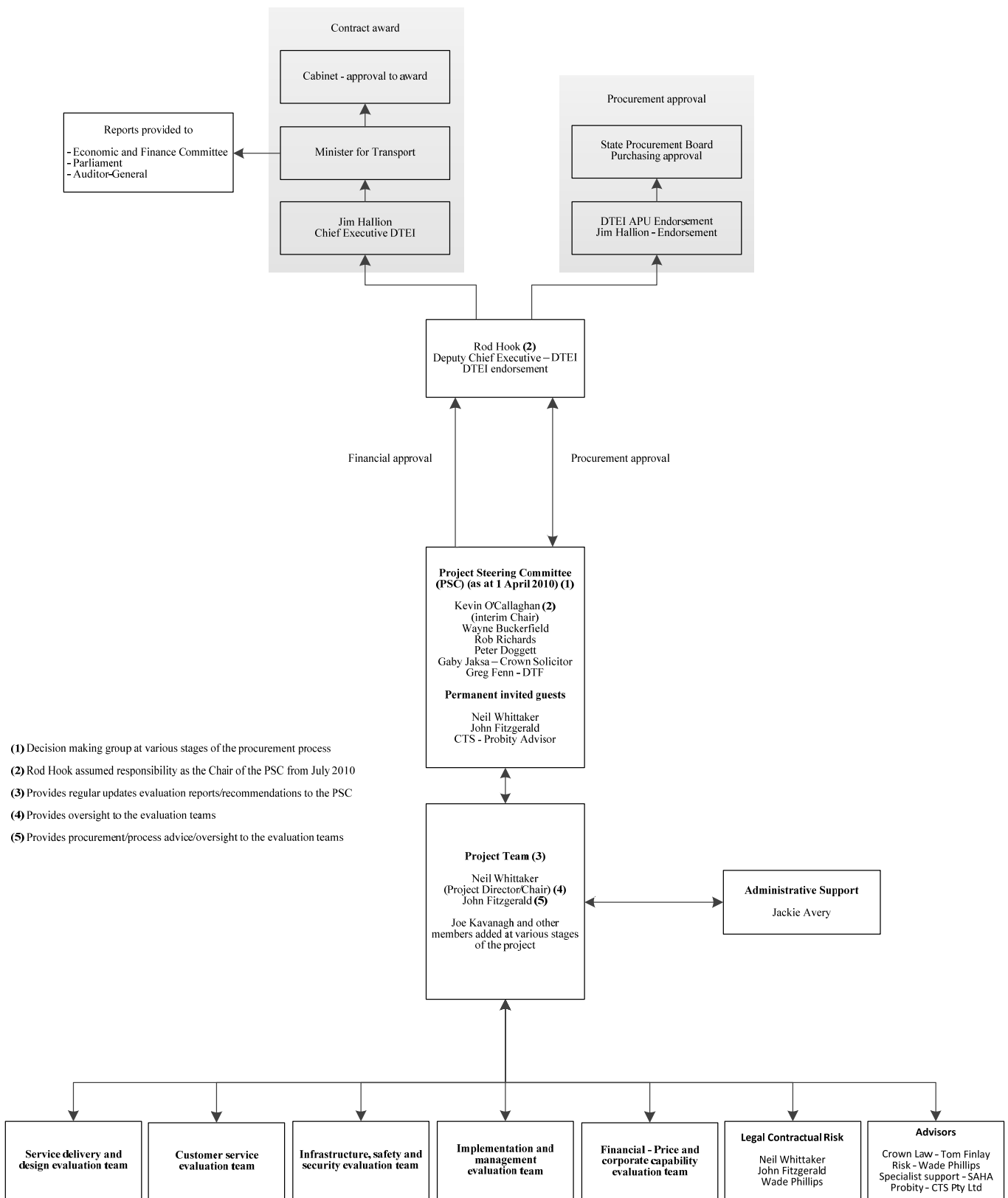
However the courts do not automatically accept the use of information barriers as appropriate or sufficient. Accordingly, the issue of perception remains, especially for public sector processes, where the retention of public confidence in government processes is of the utmost importance, and requires a higher standard of conduct and probity generally than is expected for private sector processes.

For the future, whenever reliance is placed on information barriers within the public sector to address conflict issues in connection with procurement processes, in my opinion, those barriers need to be constructed, documented and enforced to a very high standard.

Map of contract areas



Project structure



- (1) Decision making group at various stages of the procurement process
- (2) Rod Hook assumed responsibility as the Chair of the PSC from July 2010
- (3) Provides regular updates evaluation reports/recommendations to the PSC
- (4) Provides oversight to the evaluation teams
- (5) Provides procurement/process advice/oversight to the evaluation teams

Project Steering Committee's role (PSC)

The terms of reference for PSC were approved at its meeting of 2 July 2010 with the following roles and responsibilities established:

- Ensure that the Project is conducted in accordance with the requirements of the Passenger Transport Act 1994, State Procurement Act 2004 and DTEI internal policies and procedures.
- Ensure that the project remains within the stated timeframes and that appropriate resources are provided.
- Approve the bus services specification and proposed contractual arrangements (prior to tender call), including the following:
 - Contract payment structure
 - Indexation formulae
 - Contract areas
 - Performance measurement process (including key performance indicators)
 - Future network planning
- Approve/endorse procurement planning documentation prior to it being submitted for final approval (Accredited Purchasing Unit/Chief Executive/State Procurement Board).
- Approve stage one Expression Of Interest (EOI) documentation and approve release.
- Approve recommendations for EOI Respondents to proceed to the Selective Request for Proposal (SRFP) stage of the procurement process.
- Approve the stage two SRFP documentation and approve release.
- Review and approve any project progress reports (including any recommendations) from the Project Director.
- Approve/endorse the SRFP short list recommendations, and approve the commencement of negotiations in accordance with the approved Negotiation Plan.
- Approve/endorse the Project Team's recommendations for preferred Respondents.
- Approve/endorse the Purchasing Recommendation including the preferred Respondent for each Contract Area for forwarding to the Accredited Purchasing Unit, Chief Executive, State Procurement Board, Minister for Transport, and Cabinet.
- Ensure all reports required under the Passenger Transport Act 1994 are prepared within the appropriate timelines.

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

Subsection of the <i>Passenger Transport Act 1994</i>	Contract with Australian Transit Enterprises Pty Ltd	Contract with Torrens Transit Pty Ltd	Contract with Transfield Services (Australia) Pty Ltd
The period for which it operates - section 40(1)(a)	Clause 1 - Interpretation Clause 4 - Term Clause 6 - Renewal of agreement Schedule 1 - Contract details: Item 1 - Commencement date 1 July 2011 Item 2 - Termination date 30 June 2019	Clause 1 - Interpretation Clause 4 - Term Clause 6 - Renewal of agreement Schedule 1 - Contract details: Item 1 - Commencement date 1 July 2011 Item 2 - Termination date 30 June 2019	Clause 1 - Interpretation Clause 4 - Term Clause 6 - Renewal of agreement Schedule 1 - Contract details: Item 1 - Commencement date 2 October 2011 Item 2 - Termination date 30 June 2019
The manner in which it may be terminated - section 40(1)(b)	Clause 33 - Termination	Clause 33 - Termination	Clause 33 - Termination
Standards relating to the provision of services under the contract - section 40(1)(c)	Clause 9 - General service requirements Clause 10 - Reports and information Clause 13 - Performance assessment Clause 18 - Approved vehicles Schedule 3 - General specifications Schedule 8 - Reporting requirements Schedule 11 - Performance assessment Schedule 12 - Standards	Clause 9 - General service requirements Clause 10 - Reports and information Clause 13 - Performance assessment Clause 18 - Approved vehicles Schedule 3 - General specifications Schedule 8 - Reporting requirements Schedule 11 - Performance assessment Schedule 12 - Standards	Clause 9 - General service requirements Clause 10 - Reports and information Clause 13 - Performance assessment Clause 18 - Approved vehicles Schedule 3 - General specifications Schedule 8 - Reporting requirements Schedule 11 - Performance assessment Schedule 12 - Standards
A scale of service levels - section 40(1)(d)	Clause 7 - The services Clause 8 - Special events Schedule 2 - Contract area Schedule 3 - General specifications Schedule 4 - Contract area specifications Schedule 6 - Contractor Plans	Clause 7 - The services Clause 8 - Special events Schedule 2 - Contract area Schedule 3 - General specifications Schedule 4 - Contract area specifications Schedule 6 - Contractor Plans	Clause 7 - The services Clause 8 - Special events Schedule 2 - Contract area Schedule 3 - General specifications Schedule 4 - Contract area specifications Schedule 6 - Contractor Plans
The fares to be charged - section 40(1)(e)	Clause 12.4 - Fee variation for changes in law Clause 19 - The ticketing system and fare collection Schedule 3 - General specifications	Clause 12.4 - Fee variation for changes in law Clause 19 - The ticketing system and fare collection Schedule 3 - General specifications	Clause 12.4 - Fee variation for changes in law Clause 19 - The ticketing system and fare collection Schedule 3 - General specifications

Subsection of the <i>Passenger Transport Act 1994</i>	Contract with Australian Transit Enterprises Pty Ltd	Contract with Torrens Transit Pty Ltd	Contract with Transfield Services (Australia) Pty Ltd
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 12 - Financial arrangements Clause 13.3 - Adjustment of fee Schedule 5 - Financial arrangements	Clause 12 - Financial arrangements Clause 13.3 - Adjustment of fee Schedule 5 - Financial arrangements	Clause 12 - Financial arrangements Clause 13.3 - Adjustment of fee Schedule 5 - Financial arrangements
Other matters required by this Act or the regulations to be specified in a service contract - section 40(1)(g)	Not applicable	Not applicable	Not applicable
Specify a region or route of operation - section 41(1)	Clause 1 - Interpretation Schedule 2 - Contract Area Schedule 4 - Contract area specifications	Clause 1 - Interpretation Schedule 2 - Contract Area Schedule 4 - Contract area specifications	Clause 1 - Interpretation Schedule 2 - Contract Area Schedule 4 - Contract area specifications

Discretionary matters set out in subsections 40(2), 40(3) and 41(2) of the *Passenger Transport Act 1994*

Subsection of the <i>Passenger Transport Act 1994</i>	Contract with Australian Transit Enterprises Pty Ltd	Contract with Torrens Transit Pty Ltd	Contract with Transfield Services (Australian) Pty Ltd
Reviewing or altering the fares or fare system in circumstances specified in the contract - section 40(2)(a)	Clause 19.4 - Collection of fares and issue of tickets Schedule 3 - Clause 11 Ticketing system and fare collection	Clause 19.4 - Collection of fares and issue of tickets Schedule 3 - Clause 11 Ticketing system and fare collection	Clause 19.4 - Collection of fares and issue of tickets Schedule 3 - Clause 11 Ticketing system and fare collection
Monetary or other penalties for breaches of the contract and the recovery of monetary penalties - section 40(2)(b)	Clause 13.3 - Adjustment of fee Clause 14 - Minister's right of set-off Clause 33.5 - Notice of termination Schedule 11 - Performance assessment	Clause 13.3 - Adjustment of fee Clause 14 - Minister's right of set-off Clause 33.5 - Notice of termination Schedule 11 - Performance assessment	Clause 13.3 - Adjustment of fee Clause 14 - Minister's right of set-off Clause 33.5 - Notice of termination Schedule 11 - Performance assessment
Bonds for the performance of the obligations under the contract - section 40(2)(c)	Clause 3.1 - Guarantee to the Minister Clause 36 - Performance guarantee Schedule 18 - Terms and conditions of guarantee and indemnity Schedule 19 - Unconditional bank guarantee	Clause 3.1 - Guarantee to the Minister Clause 35 - Related company guarantee Clause 36 - Performance guarantee Schedule 18 - Terms and conditions of guarantee and indemnity Schedule 19 - Unconditional bank guarantee	Clause 3.1 - Guarantee to the Minister Clause 35 - Related party guarantee Clause 36 - Performance guarantee Schedule 18 - Terms and conditions of guarantee and indemnity Schedule 19 - Unconditional bank guarantee
Variation of the contract - section 40(2)(d)	Clause 11.2 - Changes for emergencies Clause 41.5 Variation	Clause 11.2 - Changes for emergencies Clause 41.5 Variation	Clause 11.2 - Changes for emergencies Clause 41.5 Variation
Renewal of the contract - section 40(2)(e)	Clause 6	Clause 6	Clause 6
Such other matters as the parties think fit to include in the circumstances of the case - section 40(2)(f)	All other clauses	All other clauses	All other clauses

Subsection of the <i>Passenger Transport Act 1994</i>	Contract with Australian Transit Enterprises Pty Ltd	Contract with Torrens Transit Pty Ltd	Contract with Transfield Services (Australian) Pty Ltd
Periodic review of any matter for the time being determined by or under the contract - section 40(3)	Various matters	Various matters	Various matters
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 7.3 - Contractor's exclusivity	Clause 7.3 - Contractor's exclusivity	Clause 7.3 - Contractor's exclusivity
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 11- Service changes	Clause 11- Service changes	Clause 11- Service changes