

Auditor-General's Report 2 of 2025

Regional bus service contracts – Phase 2



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*The Audit Office of South Australia acknowledges and respects
Aboriginal people as the State's first people and nations, and
recognises Aboriginal people as traditional owners and occupants
of South Australian land and waters.*



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13 March 2025

President
Legislative Council
Parliament House
ADELAIDE SA 5000

Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

Dear President and Speaker

Auditor-General's Report 2 of 2025
Regional bus service contracts – Phase 2

I present to you this report that is required by section 39(3f) of the *Passenger Transport Act 1994*.

Content of the report

Under section 39(3f) of the *Passenger Transport Act 1994* I am required to:

- examine the contract
- report on the probity of the process leading to a service contract being awarded for providing regional passenger transport services.

I did not identify any probity matters that indicated the procurement process was compromised.

Acknowledgements

The review team for this report was Kenneth Anderson, Grace Lum, Salv Bianco and Philip Rossi.

I appreciate the cooperation and assistance given by staff of the Department for Infrastructure and Transport during our review.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Blaskett'.

Andrew Blaskett
Auditor-General

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Audit snapshot

What we reviewed and why

This report covers Phase 2 of the regional bus services procurement following our report on Phase 1 in February 2024.

Managing and maintaining probity in a procurement process is important to ensure procurement decisions are fair, transparent and defensible. Under the *Passenger Transport Act 1994* (PTA) we are required to review the probity of the procurement of regional bus services and examine the contracts awarded to the operators of those services.

What we concluded

We did not identify any probity matters that indicated the procurement process was compromised. The Department for Infrastructure and Transport (DIT):

- designed and implemented procurement processes that were consistent with sound probity principles
- maintained documentation of the process consistent with appropriate probity standards
- implemented all recommendations we made in our report on Phase 1 of the procurement in conducting Phase 2
- could improve some of its processes and practices for future procurements.

We examined the service contracts and concluded that they met PTA requirements and included a broad range of contractual provisions that should help to protect the State’s interests.

DIT will need robust processes to effectively manage the contracts and any related operational, legal and financial risks.

Key facts



1 Executive summary

1.1 Introduction

The Department for Infrastructure and Transport (DIT) plans, regulates and funds public transport services across South Australia in line with the *Passenger Transport Act 1994* (PTA).

Passenger transport services in regional South Australia are provided by contracted operators engaged by the Minister for Infrastructure and Transport (the Minister).

Following a competitive tender process run by DIT, the Minister executed five contracts with four private operators for regional bus passenger transport services on 28 October 2024. The contracts started on 1 November 2024 (except for the Eastern Riverland contract that starts on 1 January 2027) and expire on 30 September 2033, with the Minister having an option to extend them for two more years. The estimated combined value of the contracts over the full term including the two-year extension option is \$71.9 million.

As required by the PTA, we examined the contracts and:

- reviewed the probity of the procurement process leading up to awarding them
- assessed whether they comply with PTA requirements.

To assess probity, we identified key probity principles that are necessary to demonstrate that the procurement process was fair, transparent and defensible (see section 3.1).

This report provides the outcomes of our review.

1.2 Conclusion

1.2.1 Probity of the process

We did not identify any probity matters that indicated the procurement process was compromised.

DIT designed and implemented procurement processes that were consistent with sound probity principles. In carrying them out, DIT maintained documentation that was consistent with appropriate probity standards.

DIT implemented all recommendations we made in our report on Phase 1 of the regional bus services procurement to improve its probity processes in conducting Phase 2.

We did identify some areas where processes and practices could be improved. These opportunities for improvement were not systemic or pervasive but warrant consideration for future procurements.

1.2.2 Compliance with the *Passenger Transport Act 1994* and examination of the service contracts

The Minister complied with the PTA in awarding the service contracts. The service contracts met the requirements of the PTA and contained a broad range of contractual provisions that should help to protect the State's interests.

1.3 What we found

Probity of the process

We found that DIT established sound processes, commensurate with the value, risk and complexity of the procurement, to manage the procurement and award the contracts. This included:

- establishing project governance arrangements to provide structured decision-making and accountability
- establishing probity principles and a probity plan with strategies to manage probity risks
- engaging a probity advisor to provide independent advice and guidance on probity issues
- preparing comprehensive acquisition and evaluation plans before approaching the market
- establishing arrangements to manage conflicts of interest and the security and confidentiality of procurement documents
- developing procedures for communicating with proponents and keeping records of communications
- evaluating invitation to supply responses in line with the evaluation plan and keeping records of the evaluation process
- implementing a negotiation plan and keeping records of negotiations
- preparing a comprehensive purchase recommendation report on the evaluation outcomes and justification for the recommended proponents.

In conducting this procurement, DIT addressed relevant recommendations from our previous passenger transport contract reviews.¹

We did identify some improvements that DIT could make for future procurements:

- documenting its review of the probity plan to ensure it is suitable for continuing use on multiple-phase procurements (section 3.4.1)
- the evaluation team considering the probity advisor's report before they endorse the purchase recommendation (section 3.4.2)

¹ Auditor-General's Report 10 of 2020 *Passenger transport service contracts: Bus and light rail*, Report 9 of 2021 *Probity of the processes for the heavy rail service contract* and Report 1 of 2024 *Regional bus service contracts – Phase 1*.

- providing the probity advisor with records of meetings between government representatives and proponents held outside of established procurement processes, as required by DIT's Probity in Procurement Guidelines (section 3.4.3)
- clearly defining the steps for ensuring value for money in the event of a single bid as part of evaluation planning (section 6.3.1)
- fully documenting all aspects of the assessment of value for money where single bids are received (section 6.3.2)
- implementing processes to ensure any errors in bid prices submitted by proponents are identified and appropriately actioned as early as possible (section 7.3.1).

These improvement opportunities are not systemic or pervasive, but addressing them will help to strengthen the probity of future procurement processes.

Compliance with the *Passenger Transport Act 1994* and examination of the service contracts

The Minister complied with the PTA in awarding the service contracts and the service contracts addressed the mandatory PTA requirements.

The service contracts include a broad range of contractual provisions that should help to protect the State's interests. We did identify some additional provisions that could be included in future service contracts to help address risks in the event of poor performance by the operators.

It is essential that DIT has robust contract management processes to effectively manage the contracts and any related operational, legal and financial risks.

Chapters 9 and 10 provide further details.

1.4 Response to our recommendations

DIT provided the following response to our recommendations:

The Department acknowledges and appreciates the Auditor-General's positive remarks pertaining to the adoption of all relevant recommendations made in previous audits, and acknowledging that the Department established sound processes, commensurate with the value, risk and complexity of the procurement, to manage the procurement and award the contracts. The Department will implement as far as practicable all of the recommendations of this report.

DIT's responses to individual recommendations we made are included in chapters 3, 6, 7 and 10.

Appendix 2 provides the response to this report from DIT's Chief Executive.

2 Background

2.1 The *Passenger Transport Act 1994*

Under the PTA the Minister is responsible for providing passenger transport services in South Australia.

The PTA allows the Minister to award service contracts for the operation of regular passenger transport services by tender or other such manner as the Minister thinks fit.

2.2 Contracts awarded under this procurement process

2.2.1 Background

Public Transport South Australia (PTSA), a division of DIT, is responsible for managing public transport services, including those in regional South Australia.

In 2021, the South Australian Public Transport Authority (now known as PTSA) reviewed its 28 existing regional bus service contracts and decided to geographically consolidate them into 19 new service contracts. The new service contracts have been procured in two phases. The first 14 contracts (Phase 1) were awarded in August 2023 and we reported on their procurement in February 2024.²

Tenders for the remaining five contracts (Phase 2) were invited in October 2023. This report covers the procurement of Phase 2 contracts. Figure 2.1 shows the contract areas in each phase of the procurement.

Figure 2.1: Procurement phases and contract areas

Procurement phase	Contract area	
Phase 1 Contracts 1 to 14	Barossa	Port Augusta
	Eyre Flinders	Port Lincoln School
	Fleurieu	Port Lincoln on Demand
	Kangaroo Island	Riverland
	Mid North	South East
	Mount Gambier	Tatiara
	Northern Adelaide Hills	Yorke
Phase 2 Contracts 15 to 19	Eastern Riverland	Spencer
	Murray	Whyalla
	Port Pirie	

² Auditor-General's Report 1 of 2024 *Regional bus service contracts – Phase 1*.

2.2.2 Overview of service contracts awarded

On 28 October 2024 the Minister executed the five service contracts shown in figure 2.2.

Figure 2.2: Services contracts awarded

Contract	Operator	Total whole of life contract costs (GST inclusive)	Start date	End date
Murray	LinkSA Pty Ltd	\$38,679,449	1 November 2024	30 September 2033 (with an extension option of two years)
Port Pirie	Kent Group Pty Ltd	\$11,254,863		
Spencer	Kent Group Pty Ltd	\$3,120,261		
Whyalla	Des’s Transport Pty Ltd	\$13,963,427		
Eastern Riverland	Swan Hill Bus Lines Pty Ltd	\$4,869,770	1 January 2027	

The combined value of the service contracts is estimated to be \$71.9 million over the potential full contract term including the two-year extension option.

Appendix 3 provides a map of the area covered by each service operator.

2.3 Procurement governance

2.3.1 Person appointed to conduct the process

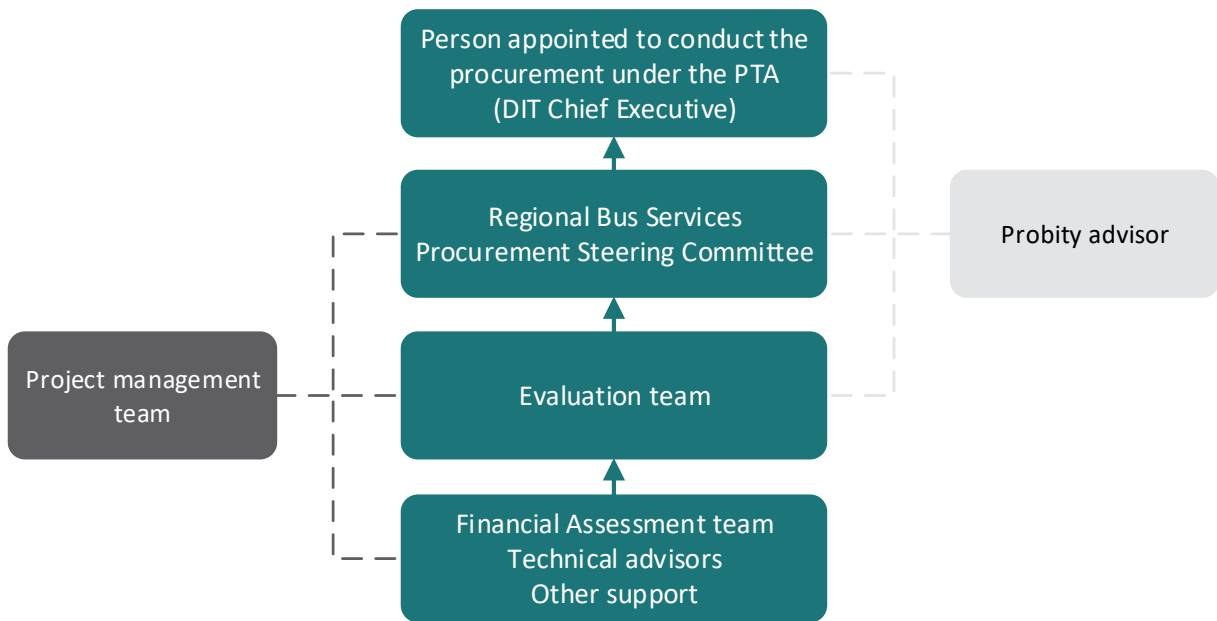
The PTA requires that if the Minister determines that a passenger transport service contract should be awarded by tender, they must appoint a person to conduct the process, including the assessment of responses to the tender.

In August 2021, the then Minister appointed the then DIT Chief Executive to conduct the procurement process for the regional bus services. In May 2022, the current Minister appointed the current DIT Chief Executive.

2.3.2 Governance structure

DIT established a sound governance structure with clear roles and responsibilities to support the probity of the procurement process.

Figure 2.3: Regional bus services procurement governance structure



The Regional Bus Services Procurement Steering Committee (the Steering Committee) was established to provide strategic leadership, oversight and advice to the project management and evaluation teams for the procurement of regional bus services.

The Steering Committee comprised four DIT executives and senior officers and operated from August 2023 to December 2024 for Phase 2 of the procurement process.

The evaluation team was responsible for evaluating responses and recommending the preferred proponents to the Steering Committee. It was assisted by:

- a financial assessment team responsible for reviewing pricing information and providing specialist financial advice
- technical advisors for advice on bus asset, network service planning and disability access and inclusion
- other support such as legal, contracting and financial viability advice and analysis.

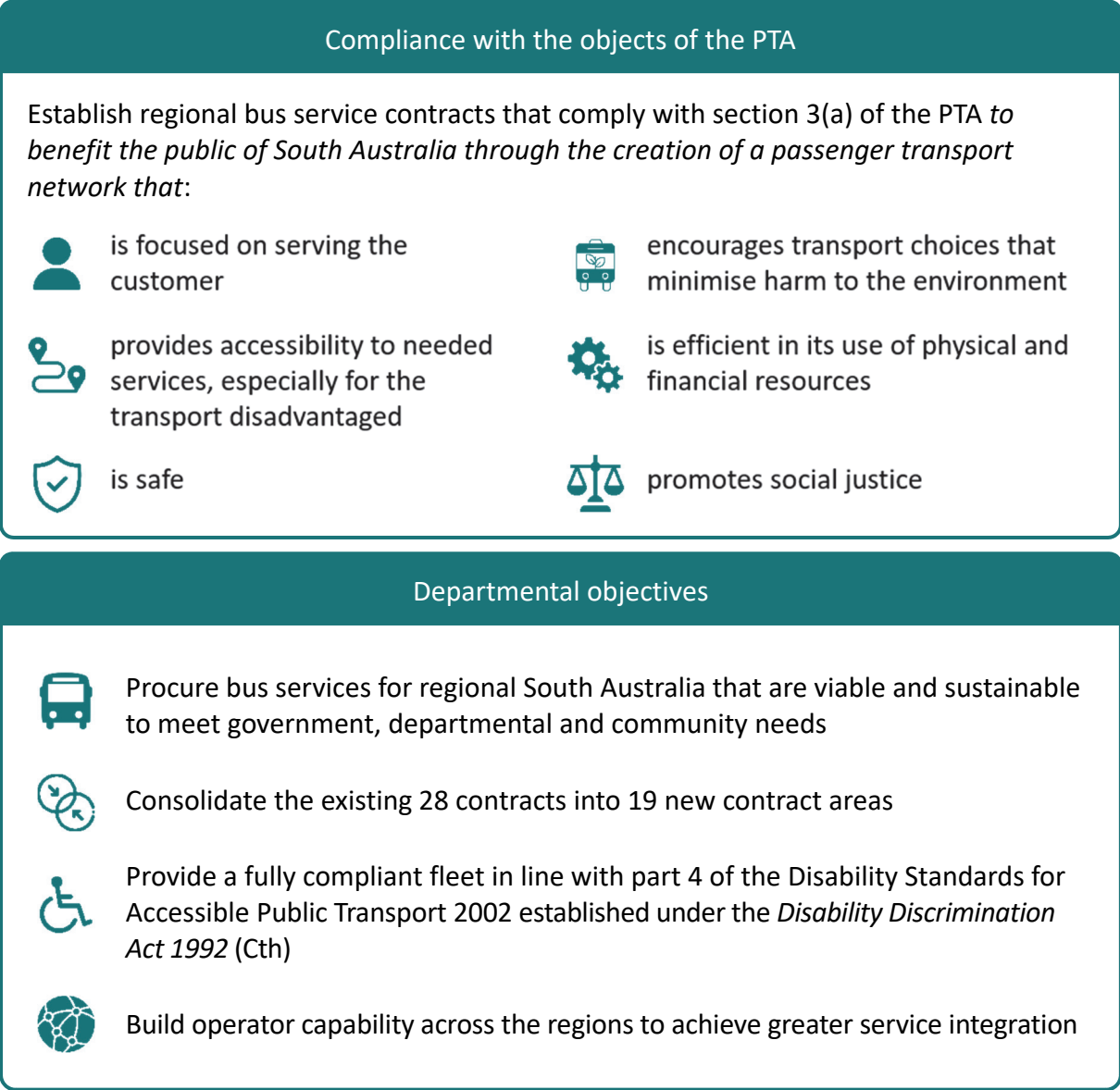
DIT appointed a probity advisor (see section 3.3.2 for their role and responsibilities) and a project management team was also in place to provide administrative and project management support.

2.4 Procurement process

2.4.1 Procurement objectives

Figure 2.4 summarises the objectives of the procurement.

Figure 2.4: Procurement objectives



Source: Regional bus services acquisition plan.

2.4.2 Market approach

DIT conducted a competitive tender process for the procurement of Phase 2 contracts using an open market, single stage approach.

Proponents were invited to submit conforming offers based on the current service levels and non-conforming offers based on potential service enhancements, efficiencies and innovation.

Chapters 5 and 6 provide more information about the invitation to supply and evaluation processes.

2.4.3 Procurement timeline

Figure 2.5 presents the key events in the procurement process.

Figure 2.5: Timeline of key events during the procurement process



June 2022	Acquisition plan approved by DIT Chief Executive
October 2023	Invitation to supply documents released to the market
January 2024	Invitation to supply closed
July 2024	Purchase recommendation approved by DIT Chief Executive
October 2024	Contract documents executed by the Minister
November 2024	Murray, Port Pirie, Spencer and Whyalla contracts commence
January 2027	Eastern Riverland contract commences

Appendix 4 provides a more detailed timeline of events.

3 Probity management arrangements

3.1 Key probity principles

Procurement SA's Probity and Ethical Procurement Guideline (the Guideline) defines probity as:

... the act of being fair and equitable. To display probity is to show evidence of ethical behaviour commonly associated with the practice of adopting and following well considered procedures and processes to ensure that procurement decisions are fair, transparent and defensible ...

We considered the Guideline, our previous reviews of the procurement of passenger transport services and the probity plan that DIT developed for this procurement to establish the following key probity principles for our audit:

- compliance with the law
- transparent and consistent decision making
- security and confidentiality of information
- fairness, impartiality, integrity and equality provided to all parties
- management of conflicts of interest
- maintenance of records, including maintaining an audit trail that enables independent review of processes
- conducting an appropriately competitive process.

Procurement SA states that implementing good probity and ethical practices in procurement will:

- improve the likelihood that value for money and good public outcomes will be obtained
- reduce financial and legal risk to the SA Government
- provide potential suppliers with confidence that they will be treated fairly.³

3.2 Audit approach

We assessed whether DIT managed the probity of the procurement process in line with its policies and procedures and the key probity principles in section 3.1. To do this we considered DIT's:

- probity plan for the procurement
- processes to manage probity risks and issues
- processes to identify and manage conflict of interests
- arrangements to ensure the security and confidentiality of information.

We also made inquiries with the probity advisor to understand their role in the procurement and to discuss their observations on probity.

³ Procurement SA 2023, *Probity and Ethical Procurement Guideline*, February, p. 4.

3.3 Overview of probity management arrangements

3.3.1 A probity plan was developed for the procurement

Our previous reports on the probity of procurement processes for passenger transport contracts have highlighted the importance of developing a probity plan with clear controls to manage potential probity issues that may arise during a procurement.

The Guideline states that a probity plan should be used for complex and strategic procurements. DIT assessed the procurement of regional bus services as a strategic procurement and developed a probity plan in line with the Guideline.

The Steering Committee approved the probity plan in October 2021. The plan applied to Phases 1 and 2 of the procurement and addressed:

- probity objectives and principles
- the need to identify and manage actual and/or potential conflict of interests and maintain confidentiality
- communication protocols
- business-as-usual protocols to ensure that incumbent service providers did not, by virtue of their existing relationship with DIT, obtain an unfair advantage over other market participants
- audit findings and recommendations from previous reviews by the Auditor-General
- the need for a probity advisor.

The probity plan was provided to key officers involved in the procurement.

3.3.2 DIT appointed a probity advisor for the procurement

A probity advisor is typically engaged to provide independent advice and assist management on probity/process issues. They work with the project and evaluation teams to ensure probity issues are considered and actioned during the procurement process.

Engaging a probity advisor does not release, remove or replace the responsibilities of those involved in the procurement process to conduct the procurement in line with reasonable probity standards.

DIT engaged a consultancy firm in August 2021 to provide independent probity advice for the Phase 1 procurement process. It then extended these arrangements to cover Phase 2. The timing of engaging the probity advisor was reasonable, as it occurred early in the procurement.

The probity advisor performed a range of probity activities, including:

- providing probity briefings to officers involved in the procurement process, the DIT Chief Executive and the Minister
- explaining probity principles and protocols at industry briefings
- reviewing key procurement documents from a probity perspective
- attending industry briefings and the opening of invitation to supply responses
- providing advice to the project and evaluation teams on probity matters
- attending evaluation team meetings, bidder presentations, negotiation meetings and debrief meetings
- providing reports to DIT on the probity of the procurement process.

3.3.3 Participants in the procurement were required to complete a conflict of interest declaration and confidentiality agreement

Identifying and managing actual, potential and perceived conflicts of interest, and maintaining confidentiality, are two important probity considerations for procurement.

The people involved in this procurement, including external advisors, all completed conflict of interest declarations and confidentiality agreements.

DIT kept a probity register detailing any probity matters related to conflict of interest and confidentiality that arose during the procurement, the actions taken and how the matters were resolved. It was provided to the Steering Committee regularly throughout the procurement to help the members to understand the probity issues and therefore the probity of the procurement process.

3.3.4 Communications were carefully managed to mitigate probity risks

To ensure fairness, transparency and equity in the procurement process, communications within project and evaluation teams and with proponents must be carefully managed to mitigate any probity risks.

DIT implemented the following processes and controls to manage the probity risks of its communications and interactions with proponents:

- Communication protocols in the probity plan addressed communications within the project and evaluation teams, with proponents and with project stakeholders.
- Interactions/Communications with proponents were managed through an electronic data room and tender rules requiring proponents to only communicate with the project and evaluation teams through defined channels.
- A communication register was used to record communications and meetings with proponents including the purpose, parties involved and a link to the records of the interaction/communication.

3.3.5 Procurement documents were kept secure and confidential

A key probity requirement is ensuring the security and confidentiality of documents and commercial information. To manage this DIT implemented the following processes and controls:

- People involved in the procurement process signed a confidentiality agreement before being given access to procurement documents.
- Documents were secured within an IT environment, with access restricted to the project and evaluation teams.
- The probity advisor reinforced the importance of maintaining the confidentiality of information, including commercially sensitive information, at probity briefings.

3.4 Improvement opportunities

3.4.1 Review of the probity plan to assess its suitability for the Phase 2 procurement was not documented

Recommendation

For future multi-phase procurements, DIT should document its review of whether the probity plan is suitable for continued use. This should include the analysis conducted, the reasons for decisions, and an assessment of whether the probity plan is still relevant and properly addresses any emerging risks.

Audit observation

The probity plan should be regularly updated throughout a procurement process to stay relevant and address emerging risks, particularly for long procurements where risks may evolve due to changing circumstances.

The probity plan from Phase 1, originally prepared in October 2021, was also used for Phase 2. DIT explained that it reviewed the Phase 1 probity plan and considered it suitable for Phase 2, however we found that DIT did not document this assessment.

DIT explained that it was appropriate to use the same probity plan because Phase 2 was an extension of the Phase 1 procurement. There was no change to the procurement approach, the same people were involved and the same contract formats were used.

While we did not identify any significant omissions or errors in the probity plan, it would have been good practice for DIT to document its assessment. This would evidence that the plan was carefully considered and explain the rationale behind any decisions made.

DIT response

The Department acknowledges this recommendation and will in future document its assessment of the suitability of the probity plan to be used over multiple phases as intended, noting that a review of the probity plan was conducted, however this was not formally documented.

3.4.2 Evaluation team endorsed the purchase recommendation before receiving the probity advisor's report

Recommendation

The evaluation team should seek written independent confirmation from the probity advisor of their overall conclusion on the probity of procurement process (the probity report) before endorsing the purchase recommendation.

Audit observation

The evaluation team endorsed the purchase recommendation on 8 May 2024, a day before the probity report was provided to them.

DIT advised us that the probity advisor attended all evaluation team meetings and therefore, in the absence of the probity report, the evaluation team was already well aware of the probity advisor's views.

The probity report provides the probity advisor's overall conclusion on the probity of the procurement process. It is good practice for the evaluation team and other decision makers to consider the probity report before endorsing/approving the purchase recommendation. This ensures they are aware of any concerns the probity advisor has about the probity of the procurement process and that may affect their decision.

DIT response

The Department acknowledges the recommendation, and will make appropriate changes to its practices to facilitate consideration of a probity report prior to any endorsements by the Evaluation Team.

Note that for this procurement, the probity advisor was in attendance at every meeting of the evaluation team including the final evaluation team meeting, where regular advice was provided and no probity concerns were raised by the probity advisor.

The probity report was provided to the purchase recommendation endorsers (Steering Committee and the Department's Procurement Committee) and the final decision-maker, the Department's Chief Executive.

3.4.3 Meeting records not provided to the probity advisor as required by DIT's Probity in Procurement Guidelines

Recommendation

DIT should provide meeting records to the probity advisor if meetings involving government representatives and proponents occur outside of established procurement processes during the procurement, in line with its Probity in Procurement Guidelines.

Audit observation

While the procurement was in progress, a meeting was held between the Minister, senior DIT employees and bus industry representatives, that was not part of the procurement process. One of the bus industry representatives was also a proponent.

We recognise that the SA Government is necessarily involved in business-as-usual interactions with local bus industry representatives who may also be proponents. However these meetings can pose probity risks that need to be carefully managed, including the perception that a proponent may be getting favourable treatment.

DIT's Probity in Procurement Guidelines set requirements for these types of meetings. While we found that DIT generally complied with them, including keeping records of the meeting, it did not provide these records to the probity advisor as required.

Where the probity advisor does not attend a meeting, giving them the meeting records helps them to assess whether anything impacting the probity of the procurement process has arisen.

The project team did implement some good practices to mitigate potential probity risks, including:

- notifying the probity advisor about the meeting before it was held
- arranging for the probity advisor to provide a probity briefing to the Minister and Ministerial staff before the meeting
- having two senior DIT officers accompany the Minister to the meeting to ensure the procurement was not discussed.

The file note that DIT prepared documenting the high-level substance of the meeting states that the procurement was not discussed at the meeting.

DIT response

While this was a 'business as usual' meeting to introduce the new BusSA Executive Officer to the Minister, and the procurement was not discussed, the Department acknowledges the suggested improvement and will ensure this is implemented in future procurements.

As noted by the Auditor-General, a probity briefing was provided to the Minister and Ministerial staff, and the two departmental executives prior to the meeting. At the meeting the Minister advised that the procurement could not be discussed, and this was recorded in the file note.

4 Procurement planning

4.1 Audit approach

We assessed whether:

- DIT prepared and approved acquisition and evaluation plans before it approached the market
- any departures from the approved plans were managed in line with Procurement SA's Sourcing Policy
- procurement planning processes met the key probity principles in section 3.1.

4.2 Overview of procurement planning

4.2.1 DIT prepared comprehensive acquisition and evaluation plans before approaching the market

DIT prepared a comprehensive acquisition plan before approaching the market that included:

- a description of the identified need and requirements
- the procurement objectives
- a supply market analysis and sourcing strategy
- an evaluation plan
- estimated procurement values
- a risk management plan and risk register
- an overview of the probity management arrangements and a probity plan
- planned contract terms and key performance measures
- governance arrangements
- lessons learned from previous Auditor-General's reports.

The evaluation plan detailed the evaluation process and criteria to address DIT's procurement objectives (see sections 6.2.1 and 6.2.2 for further details).

We found that both plans adequately addressed the requirements of Procurement SA's Procurement Planning Policy. The DIT Chief Executive approved the acquisition plan in June 2022 and the evaluation plan in October 2023, before the invitation to supply documents were released to the market.

4.2.2 Departures from the approved acquisition and evaluation plans were appropriately managed

Procurement SA's Sourcing Policy has requirements for managing departures. Agencies need to assess the departures to determine the required action based on the impact on the procurement strategy, probity and/or procurement outcome, and at what stage of the procurement process they occur.

There were some departures from the approved acquisition and evaluation plans during the procurement process. In each case DIT assessed the risk as low and the impact as insignificant. It maintained records of the departures and its assessments, as required by the Sourcing Policy.

5 Invitation to supply

5.1 Audit approach

We reviewed:

- the invitation to supply documents released to the market to assess whether they were consistent with Procurement SA requirements and the approved evaluation plan
- whether the following activities met the key probity principles in section 3.1:
 - the release of the invitation to supply documents
 - industry briefings
 - clarifications and amendments to the invitation to supply documents
 - the receipt and opening of invitation to supply responses.

5.2 Overview of the invitation to supply process

5.2.1 Release of the invitation to supply documents

The invitation to supply was issued on 31 October 2023 and closed on 23 January 2024. The procurement was advertised to the open market through the SA Tenders and Contracts website and invitation to supply documents were distributed through an electronic data room.

Proponents were invited to submit offers for one or more contract areas:

- **Conforming offers** (required): offers based on the current level of service, current fares and complying with the mandatory Disability Standards for Accessible Public Transport.
- **Non-conforming offers** (optional): offers that provide greater efficiencies identified by the proponent while still complying with the mandatory Disability Standards for Accessible Public Transport.

Proponents were also able to submit one or more combined offers based on offering a discount by combining contract areas.

Before being granted access to the invitation to supply documents in the data room, proponents were required to certify that they and their authorised representatives would observe the data room rules that DIT established. They also had to complete a confidentiality deed.

The invitation to supply documents included procurement process guidelines, specifications and draft contract documents. To help proponents prepare their responses, a range of due diligence information was made available in the electronic data room. This included fare pricing, historical patronage data, and route and timetable information.

The invitation to supply documents also included clear evaluation criteria that were consistent with the approved evaluation plan.

5.2.2 Industry briefings

To help potential proponents prepare their tender responses, three non-mandatory industry briefings were held shortly after the invitation to supply was issued. DIT used these briefings to discuss the procurement process and timeline, probity and invitation to supply response requirements. The probity advisor attended all industry briefings.

Documentation supporting the industry briefings was uploaded with the invitation to supply documents, and questions and answers from the briefings were made available to proponents through the data room. This ensured that all proponents had access to the same information.

5.2.3 Clarifications and amendments to the invitation to supply documents

Proponents submitted a number of clarification questions to DIT through nominated channels while the invitation to supply period was open. DIT also made a number of amendments to the invitation to supply documents to provide additional or amended information to proponents.

Responses to clarification questions and updates to invitation to supply documents were made available to all proponents through the data room.

5.2.4 Receipt and opening of invitation to supply responses

The evaluation plan specified requirements for receipting and opening tender responses that were in line with DIT policies.

Five proponents submitted invitation to supply responses. The responses were opened by two authorised officers in the presence of the probity advisor, and recorded on a schedule of tenders. No late tenders were submitted.

Responses were stored in a secure location restricted to authorised officers and the evaluation team.

6 Evaluation of invitation to supply responses

6.1 Audit approach

We assessed whether:

- invitation to supply responses were evaluated in line with the approved evaluation plan
- requests for further information and/or clarification of responses were carried out in line with the evaluation and probity plans
- the recommendations in the purchase recommendation were consistent with the outcome of the evaluation process
- the purchase recommendation was endorsed by all evaluation team members.

We also reviewed whether DIT evaluated invitation to supply responses in line with the key probity principles in section 3.1.

6.2 Overview of the invitation to supply evaluation

6.2.1 Evaluation process

Figure 6.1 summarises the evaluation process, which was based on the approved evaluation plan.

Figure 6.1: Invitation to supply evaluation process

Stage	Description
1	Completeness review to ensure proponents submitted the information required for the evaluation team to start evaluating responses and a mandatory evaluation criteria assessment.
2	Individual and consensus qualitative assessments by the evaluation team of the non-price weighted criteria for responses that met all mandatory criteria.
3	Presentations by proponents on their responses to enable the evaluation team to confirm or reassess consensus scores.
4	Financial evaluations by the financial assessment team to validate pricing information submitted by proponents.
5	Overall evaluation of responses including calculating and evaluating adjusted comparative prices to determine initial rankings.

6	Risk assessment to consider all risk aspects of submissions for the preferred proponents for each contract area.
7	Financial viability assessments for preferred proponents to verify their financial capacity and viability to deliver services.
8	Referee checks (if required).
9	Best and final offers and negotiations aimed at achieving better terms and conditions, maximising potential value and minimising risks.
10	Final evaluation to confirm the preferred proponent for each contract area considering the results from all the prior stages of the evaluation process.

6.2.2 Evaluation criteria

The evaluation team evaluated the invitation to supply responses against mandatory, weighted and non-weighted criteria.

Mandatory criteria

The mandatory criteria sought to confirm that responses met requirements for:

- operator and driver accreditation
- approved and compliant vehicles
- insurance arrangements
- the *Disability Discrimination Act 1992* (Cth)
- safety plans and emergency management
- an auditable ticketing system.

Weighted criteria

The non-price criteria had an overall weighting of 70% and assessed how well responses addressed:

- experience
- operational areas
- implementation
- infrastructure
- customer service and community consultation.

The tendered prices had an overall weighting of 30%.

Non-weighted criteria

The non-weighted criteria sought to confirm whether the proponents:

- had any subcontracting arrangements
- were involved in any litigation or legal matters
- complied with the service specifications
- agreed with the draft service contract.

6.2.3 Adjusted comparative price

The adjusted comparative price is a calculated price used to evaluate value for money. The adjusted comparative prices for each proponent were based on:

- the non-price weighted scores converted to a dollar value
- tendered prices and weightings
- Standard Industry Participation Plan scores.

The evaluation plan stated that the proponent with the lowest adjusted comparative price for each contract area or combination of contract areas would normally be the preferred proponent.

6.2.4 Clarification of responses

The approved evaluation plan allowed the evaluation team to clarify responses at several stages of the evaluation process. The evaluation team sought written clarifications from proponents to:

- obtain evidence to support their responses to some of the mandatory criteria
- clarify responses that were not clear
- clarify and understand aspects of their offers.

6.2.5 Purchase recommendation

The evaluation team prepared a purchase recommendation detailing the results of evaluating the invitation to supply responses. The team's recommendations on which proponents to award service contracts to were consistent with the evaluation results, as these proponents had the lowest adjusted comparative price for each contract area.

The purchase recommendation was endorsed by all members of the evaluation team.

6.3 Improvement opportunities

6.3.1 Evaluation plan did not specifically consider how value for money would be assessed if only one bid was received

Recommendation

As part of evaluation planning, DIT should clearly define the steps upfront for ensuring value for money in the event that only one bid is received. This could be informed by research on approaches adopted by other jurisdictions. It might also reflect DIT's practices and lessons from past procurements, such as comparing the bid price to:

- the set budget for the contract area
- the bids received for other similar contract regions.

Audit observation

The evaluation plan stated that value for money would be assessed using the adjusted comparative price methodology. This evaluates price and non-price information in tender responses to rank the proponents in each region and identify the preferred proponent.

Given the relatively small pool of potential service providers for regional bus services in South Australia, it was reasonable to expect that only one bid would be received for some contract regions. We note that single bids were received for some regions in both phases of this procurement.

It is not possible to rank or compare performance on the adjusted comparative price between competitors when only one bid is received.

We found that the evaluation plan did not document the process to be followed for assessing value for money if only a single bid was received. This increases the risk of inconsistent processes being adopted across different regional contract areas and value for money outcomes not being achieved.

DIT response

Noting the competitive nature of Phase 1 of the Regional Bus Services Procurement, the Department expected a similar level of competitiveness for Phase 2. Additionally the Department undertook a comprehensive validation process as part of the evaluation, particularly pertaining to pricing information provided, and is satisfied that value for money was achieved in this instance. Notwithstanding this, the Department acknowledges the recommendation and will in future consider this improvement in the planning phase of the procurement, noting that ultimately value for money in these circumstances is a matter for Cabinet.

6.3.2 The assessment of value for money for one contract area could have been documented better

Recommendation

When single bids are received DIT should ensure that all aspects of assessing value for money are clearly and comprehensively documented, including:

- the options considered (such as whether DIT should return to the market with another invitation to supply)
- the analysis performed
- the assumptions adopted
- the rationale for key conclusions and decisions.

Audit observation

For one contract area where a single bid was received, we found that some aspects of the assessment of value for money could have been more fully documented to improve the transparency of the decision-making process.

DIT was able to provide the appropriate rationale for key conclusions and decisions made in this assessment, including why the single bid presented value for money. It also performed and documented detailed analysis on bid pricing and supporting assumptions.

However, some parts of DIT's assessment were not fully documented, in particular the assumptions made about potential options, the comparison of costs per service kilometre to other similar regions and the rationale for the overall assessment made.

DIT response

As noted by the Auditor-General, the Department provided appropriate rationale for key conclusions and decisions made as part of the assessment, including why the single bid represented value for money, and that the Department also performed and documented detailed analysis on bid pricing and supporting assumptions.

The Department acknowledges the recommendation and will in future procurements improve the documentation of its assumptions and rationale to support the comprehensive validation undertaken.

7 Negotiations

7.1 Audit approach

We assessed whether DIT:

- developed and implemented a plan for negotiations with proponents
- maintained records of negotiation activity to ensure transparency and evidence accountability for the negotiation process.

We also reviewed whether negotiation processes met the key probity principles in section 3.1.

7.2 Overview of the negotiation process

7.2.1 A negotiation plan was developed and approved before negotiations commenced

Procurement SA's Sourcing Policy requires a negotiation plan to be prepared for all contract negotiations undertaken for a complex or strategic procurement.

DIT assessed the procurement of regional bus services as a strategic procurement and developed a negotiation plan in line with the Sourcing Policy. The Steering Committee endorsed the negotiation plan in March 2024. The plan addressed:

- negotiation objectives and strategy
- negotiation issues
- the State's acceptable and optimal negotiation outcomes and the suppliers' anticipated position
- the make-up of the negotiation team and the timing and location of negotiations
- negotiation conduct, including probity considerations.

Proponents were asked to provide a best and final offer by 20 March 2024 and were provided with details of the issues DIT wanted to negotiate.

7.2.2 Negotiations did not commence until after all offers had been fully evaluated

Procurement SA's Negotiation Guideline states that negotiations should not take place before offers are fully evaluated and a preferred supplier or shortlist of suppliers is identified.

The evaluation team fully evaluated the invitation to supply responses before commencing negotiations. The team completed its overall evaluation and was satisfied with the ranking of offers produced by the adjusted comparative price comparator, subject to negotiations on identified risk items and best and final offers.

7.2.3 Records of negotiation meetings were maintained and the probity advisor attended the meetings

Negotiations with proponents were conducted through negotiation meetings. Proponents were also required to provide in writing their position on each of the negotiation items identified in the negotiation plan.

DIT maintained minutes of the negotiation meetings.

The probity advisor attended the negotiation meetings in line with the negotiation plan. The minutes recorded that the probity advisor outlined the probity protocols for the negotiation meetings.

7.2.4 All shortlisted proponents were given the opportunity to provide a best and final offer

The evaluation plan provided that the evaluation team could seek best and final offers from shortlisted proponents. An important probity principle in obtaining these offers is that all shortlisted proponents are given the same opportunity.

All shortlisted proponents were given the opportunity to provide a best and final offer as part of the negotiation process.

7.3 Improvement opportunities

7.3.1 Error in a bid price submission not identified until best and final offer phase

Recommendation

DIT identified an improvement opportunity for future processes to ensure that any significant deviations from existing patronage and revenue data for bus services in financial bid information are identified, clarified and corrected (if necessary) as early as possible. This could be added as a step in the evaluation process before the best and final offer (BAFO) process. We support this improvement opportunity.

Audit observation

We found an instance where a proponent increased their bid price during the BAFO process. This did not comply with the negotiation plan for phase 2, which states that:

Suppliers may submit a BAFO with reduced pricing, or decline to submit a BAFO. The Department will not accept a BAFO with increased pricing.

DIT advised us that the increase was due to the original bid price calculation incorrectly including revenue for services from another regional contract area.

DIT followed its policies and procedures in actioning the issue once it became aware of the error. It sought independent probity advice on the approach adopted in seeking clarification on the error and the submission of a revised financial response template from the proponent involved.

The purchase recommendation DIT prepared for the procurement noted the process improvement that was needed:

... in future procurements DIT will ensure that any significant deviations from patronage and revenue data are identified early (i.e. prior to BAFO) and an adjustment step, if required, built into the evaluation process.

This improvement reflects good practice, and more detailed analysis could be performed earlier in the evaluation process to compare patronage and revenue data to the financial bid information to identify any potential errors as promptly as possible.

DIT response

When becoming aware of an obvious error in bid submissions, the Department is obligated to provide the bidder with an opportunity to revise the relevant information. The Department will implement the improvement opportunity as identified and documented by the procurement team in the purchase recommendation.

8 Purchase recommendation and contract approval

8.1 Audit approach

We reviewed the purchase recommendation to ensure it:

- contained details of the evaluation and negotiation process and outcomes
- adequately addressed the requirements in Procurement SA's Sourcing Policy
- was approved by the authorised person identified in the acquisition plan before the service contracts were awarded
- met the key probity principles in section 3.1.

We also assessed whether the approval to enter into service contracts with the preferred proponents was obtained in line with Treasurer's Instructions 8 *Financial Authorisations* (TI 8).

8.2 Approval of the purchase recommendation and contract execution

8.2.1 A purchase recommendation was approved recommending preferred proponents

The evaluation team prepared and endorsed a purchase recommendation. It documented the key elements required by Procurement SA's Sourcing Policy:

- the evaluation process undertaken
- the evaluation outcome and recommended suppliers
- identified conflicts of interest
- negotiations undertaken
- departures from the approved acquisition and evaluation plans
- final contract details including value, duration and extension options
- lessons learnt for the purpose of continuous improvement.

The evaluation team recommended by consensus that service contracts be awarded to the proponents shown in figure 8.1.

Figure 8.1: Recommended proponent for each contract

Contract	Recommended proponent
Murray	LinkSA Pty Ltd
Port Pirie Spencer	Kent Group Pty Ltd
Whyalla	Des's Transport Pty Ltd
Eastern Riverland	Swan Hill Bus Lines Pty Ltd

The purchase recommendation was endorsed by the Steering Committee on 14 May 2024 and the DIT Procurement Committee on 12 June 2024. It was approved by the DIT Chief Executive on 17 July 2024 in line with Procurement SA's Sourcing Policy, which requires the purchase recommendation to be approved by the authorised person identified in the approved acquisition plan before contracts are awarded.

8.2.2 SA Government approved entering into the service contracts in line with TI 8 requirements

TI 8 establishes the authorisation regime for entering into agreements and incurring expenditure through contractual arrangements.

On 23 September 2024 the SA Government provided approval in line with TI 8 requirements to award the service contracts to the preferred proponents. The Minister executed the contracts with the preferred proponents on 28 October 2024.

9 Compliance with the *Passenger Transport Act 1994*

9.1 Audit approach

We reviewed:

- documents and made inquiries to ensure DIT complied with the requirements of the PTA in the process leading up to and after awarding the service contracts
- the service contracts to ensure they complied with the mandatory requirements in sections 40(1) and 41(1) of the PTA.

9.2 Overview of PTA requirements

9.2.1 PTA requirements in the process leading up to and after awarding the service contracts

The PTA requires the Minister to do specific things in conducting the process leading up to and after awarding any service contract. For regional passenger transport services they include:

- appointing a person or people to conduct the tender process if the Minister determines that a service contract should be awarded by tender (section 39(2a)(a))
- providing a report to:
 - the Economic and Finance Committee on the proposed tender and assessment process (section 39(2a)(b))
 - the Auditor-General on the process leading to the awarding of the contracts along with copies of the contracts awarded (section 39(3e))
- reporting on ministerial directions in connection with the process of awarding a service contract (section 39(2a)(c)).

We found that the Minister complied with the PTA requirements leading up to and after awarding the service contracts. Figure A5.1 in Appendix 5 summarises the results of our review.

9.2.2 Service contracts must meet mandatory requirements

The PTA requires service contracts to meet certain requirements detailed in sections 40(1) and 41(1).

We found that the service contracts comply with the PTA. Figure A5.2 in Appendix 5 summarises the results of our assessment.

10 Key contract provisions to protect the State's interests

10.1 Audit approach

We examined the service contracts to:

- assess whether they reasonably protect the State's interests
- identify any risk exposures for the State
- identify matters that DIT should consider in managing the contracts.

We engaged a legal firm to help us with this.

10.2 Provisions in the contracts designed to protect the State's interests

The service contracts contain a broad range of contractual provisions that should reasonably protect the State's interests. Key contract provisions are summarised in figure 10.1.

Figure 10.1: Key contract provisions to protect the State's interests

Area	Key contract provisions to protect the State's interests
Provision of services	<p>Operators must provide the services in a proper, competent and professional manner, in line with best industry practices, and with due care, skill and diligence.</p> <p>The Minister can require the operator to make changes to services at any time.</p> <p>Changes to services are subject to prior approval by the Minister.</p> <p>Operators must assist the Minister to facilitate the continuity of services if they unable to provide them.</p>
Accreditation and vehicles	<p>Operators and their drivers must maintain appropriate accreditation to operate the services.</p> <p>Operators must only use vehicles approved by the Minister as suitable to provide the services.</p> <p>The Minister has the right to inspect vehicles.</p>
Risk and insurance	<p>Operators must indemnify the Minister and State for liability and losses due to an operator's default or breach of the contract and any acts or omissions in delivering the services.</p> <p>Operators are required to maintain appropriate insurance for the contract duration and 12 months after the service contracts expire or terminate.</p>

Service payment	The monthly service subsidy is payable to operators in arrears and may be reduced for service defects.
Performance monitoring	Operators are required to provide regular performance and financial reporting. The Minister has broad audit and inspection rights to investigate or verify the operator's performance and information provided under the contract. Operators must meet key performance indicators on service reliability, reporting, safety and customer service.
Corrective action, step-in rights and termination	The Minister can issue Corrective Action Notices to the operator for non-compliance with the service contract. Step-in rights allow the Minister to take control in certain circumstances, including in emergencies and when an operator is in breach of the contract or its statutory obligations. The Minister may terminate the contract for various reasons, including insolvency or non-performance.
Dispute resolution	The dispute resolution process requires written notice and reasonable endeavours to resolve the dispute before legal action.

Appendix 6 provides further details on these contractual provisions.

10.3 Risk exposures for the State

10.3.1 Certain matters not provided for in the service contracts

We identified the following provisions that were not included in the service contracts:

- Performance guarantee – a guarantee from a parent company or guarantor under which the guarantor undertakes to fulfil the operator's obligations under the contract in the event of default by the operator.
- Bank guarantee – an unconditional bank guarantee entitling the Minister to draw down on the amount of the bank guarantee if the operator is in breach of the contract.
- Disengagement and transition out – a requirement for the operator to prepare a disengagement plan (for the Minister's approval) for the smooth disengagement and transition of the services to a new service provider at the end of the term of the service contract.

The absence of these provisions could present some risks in the event of poor performance by the operators.

We recommend that DIT considers including these provisions in future contracts of this nature to protect the State's interests and that it proactively addresses any emerging risks from poor performance by operators in its contract management arrangements.

DIT response

Considering regional bus operators are paid in arrears and the extensive step-in provisions in the contracts, this would sufficiently mitigate failure to deliver regional bus services. The Department does however acknowledge the recommendation, and where commercially appropriate, will require the above additional risk mitigations.

10.3.2 Fare revenue overestimated by the operator, increasing the risk the operator cannot provide the services profitably

As the service contracts are 'net cost' contracts⁴ they rely on each operator having determined its anticipated fare revenue accurately and the weighting mix of the cost inputs used to index the service subsidy payments remaining reasonably stable for the term of the contract.

If the operator has overestimated its expected fare revenue or the weighting of its cost inputs changes over time, there is a risk that it may be unable to provide the services profitably. This could result in:

- service quality issues or disruptions to services due to cost cuts
- contractual breaches and/or the operator notifying the Minister that it cannot (or will not) continue to perform the services.

These events would likely result in additional costs to the Minister. As noted in section 10.3.1, the Minister does not hold a guarantee or other performance security from the operators to cover such risks and costs.

10.4 Contract management considerations

We recommend that DIT has robust contract management processes to effectively manage the service contracts, including processes for verifying the accuracy of any operational and financial information reported by operators. For example, DIT should consider:

- obtaining evidence of the operators' insurance policies and accreditation status
- confirming the number of vehicle trips affected by service defects to confirm the monthly subsidy payment
- taking steps to confirm whether any third parties hold interests (including security interests) over any assets of the operator used to perform the services.

⁴ In a 'net cost' contract the operator retains the fare revenue collected from passengers.

DIT response

The Department acknowledges the recommendation and has established sound contract management practices.

The Department has a dedicated Regional Contract Manager who is responsible for the day-to-day activities of the regional contracts and is the single point of contact on all regional contract matters. In accordance with the approved regional contract management plan, the Regional Contract Manager ensures contractor conformance with all contract requirements. A Financial Analyst administers regional payments.

To ensure appropriate assurance and governance oversight of these contracts, the Department has created a Senior Projects and Assurance role.

In addition, the Senior Regional Contract Manager has oversight of the regional contract management process and budget, and the Director Contract Management is responsible for the strategic oversight and the achievement of outcomes, and is accountable for the regional budget.

Appendix 1 – Audit mandate, objective and scope

Our mandate

This review was conducted under section 39(3f) of the *Passenger Transport Act 1994* (PTA).

The PTA requires the Minister, on awarding service contracts to operate regular passenger services with a value of \$4 million or above, to provide the Auditor-General with:

- a copy of the service contracts
- a report on the process leading up to awarding the contracts.

The PTA requires the Auditor-General to examine the contracts and prepare a report to Parliament on the probity of the processes that led to them being awarded.

Section 39 of the *Passenger Transport Act 1994*

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.

Our objective

The objective of our review was to conclude on:

- the probity of the process leading up to the awarding of service contracts for the provision of regional bus passenger transport services
- whether the service contracts meet the requirements of the PTA.

What we reviewed and how

The probity of the process leading up to awarding the service contracts

We reviewed the probity of the procurement process that led to awarding five contracts in October 2024 for regional bus passenger transport services. To do this we considered whether DIT effectively implemented a procurement process that addressed:

- concepts and requirements in the SA Government's procurement framework
- the probity principles in section 3.1.

We also considered whether:

- procurement procedures, processes and probity controls outlined in the procurement acquisition plan, evaluation plan and probity plan were effectively implemented
- invitation to supply (tender) requirements were followed.

Assessing whether the service contracts comply with the requirements of the *Passenger Transport Act 1994*

In examining the service contracts we assessed whether the Minister addressed specific requirements in the PTA in conducting the process leading up to and following the awarding of the service contracts.

We also assessed whether the contracts covered the matters required to be included by the PTA, and considered whether the contracts protect the State's interests.

We engaged a legal firm to help us examine the contracts and review legal compliance with the PTA.

What we did not review

Our review was limited to the Auditor-General's mandate in section 39 of the PTA. We did not review:

- the extension of existing service contracts
- the arrangements DIT implemented to transition to the new service contracts
- the contract management framework (including plans) developed to help manage the new service contracts.

Appendix 2 – Response from Chief Executive, Department for Infrastructure and Transport under section 37(2) of the *Public Finance and Audit Act 1987*

OFFICIAL

In reply please quote #22727725

Enquiries to dit.officeofthechiefexecutive@sa.gov.au



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**Build. Move.
Connect.**

Mr Andrew Blaskett
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Dear Mr Blaskett

Audit of Regional Bus Services Procurement – Phase 2

The Department for Infrastructure and Transport (the Department) acknowledges the Auditor-General's report of the audit of the Regional Bus Services Procurement – Phase 2 Contracts 15-19, noting that:

- You did not identify any probity matters that indicated the procurement process was compromised.
- The Department implemented all recommendations you made in your report on Phase 1 of the procurement in conducting Phase 2.
- The Department designed and implemented procurement processes that were consistent with sound probity principles.
- The Department maintained documentation of the process consistent with the appropriate probity standards, however, could improve some processes and practices for future procurements.

The Department has provided an overall response and also responded to the individual improvement opportunities in the body of the report.

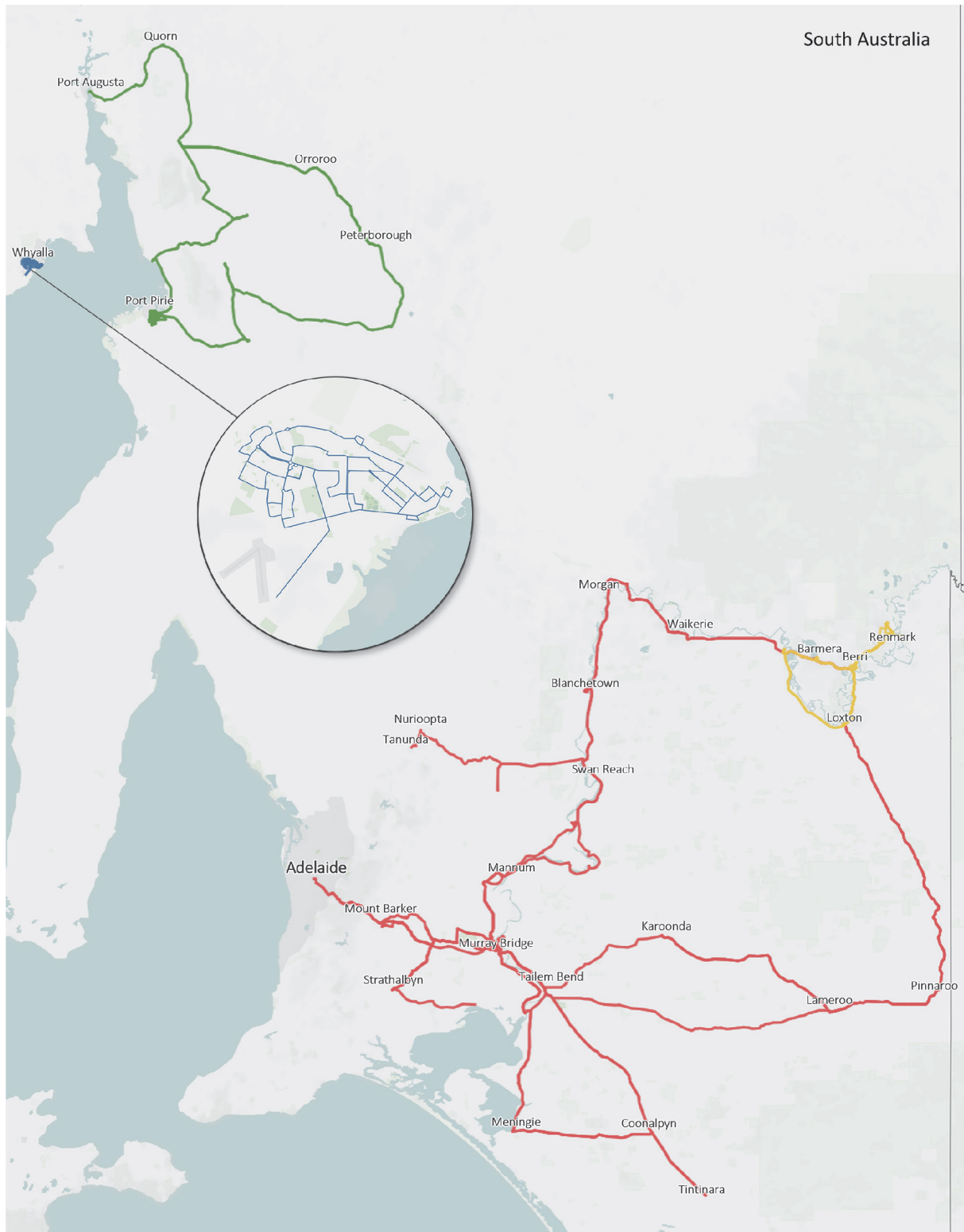
I trust this information is of assistance and would like to thank your office for collaboratively working with the Department in the completion of this audit.

Yours sincerely


Jon Whelan
Chief Executive

19 February 2025

Appendix 3 – Contract areas by service operator



- Des's Transport Pty Ltd
- Kent Group Pty Ltd
- LinkSA Pty Ltd
- Swan Hill Bus Lines Pty Ltd

Appendix 4 – Chronology of events

Date	Event
2021	
March to May	Consultation with councils, Community Passenger Networks, service providers and industry bodies.
July	Market sounding.
11 August	The then DIT Chief Executive is appointed by the then Minister to conduct the procurement process under section 39(2a)(a) of the PTA.
17 August	The then DIT Chief Executive executes contract extensions for some existing contracts to allow for the Phase 2 procurement to be undertaken. ⁵
23 August	Probity advisor engaged to provide independent probity advice for the procurement process.
2022	
17 January	The SA Government approves the procurement framework for regional bus services.
12 May	The current Minister appoints the current DIT Chief Executive to conduct the procurement process under section 39(2a)(a) of the PTA.
14 June	The SA Government approves DIT approaching the open market through an invitation to supply to procure regional bus services, split across two phases.
23 June	DIT Chief Executive approves the acquisition plan.
2023	
24 October	DIT Chief Executive approves the evaluation plan.
31 October	Invitation to supply documents released to the market.
7–10 November	Industry briefings conducted.
9 November	Minister provides a report to the Economic and Finance Committee on the invitation to supply process in line with section 39(2a)(b) of the PTA.

⁵ The Phase 2 procurement combined seven existing contracts into five new contract areas. As four of the existing contracts were set to expire before the new ones started, and to allow for the Phase 2 procurement to be undertaken, the then Chief Executive approved extending these four contracts until 31 October 2024.

2024	
23 January	Invitation to supply closes.
8 May	Evaluation team endorses the purchase recommendation.
9 May	Probity advisor issues first probity report on the invitation to supply process.
14 May	Regional Bus Services Procurement Steering Committee endorses the draft purchase recommendation.
12 June	DIT Procurement Committee endorses the purchase recommendation.
17 July	DIT Chief Executive approves the purchase recommendation.
23 September	The SA Government approves contract award and funding.
28 October	Minister executes service contracts with successful proponents.
1 November	Contracts 15–18 (Murray, Port Pirie, Spencer and Whyalla) commence.
14 November	Minister provides the Auditor-General with a copy of the service contracts awarded and a report on the process leading to their award as required by section 39(3e) of the PTA.
12 December	Probity advisor issues second and final probity report following the contract finalisation phase and debrief sessions with proponents.
2027	
1 January	Contract 19 (Eastern Riverland) commences.

Appendix 5 – Compliance with sections 39, 40 and 41 of the *Passenger Transport Act 1994*

Figure A5.1: Compliance with the PTA in the process leading up to and following the awarding of service contracts

Section of the PTA	Summary of requirement	Audit findings
39(1) – Contract for passenger transport services	The terms and conditions for passenger transport services are to be set out in a service contract between an operator and the Minister.	The Minister complied with section 39(1) of the PTA.
39(2a)(a) – Minister’s appointment of person(s) to conduct the tender process	The Minister must appoint a person(s) to conduct the tender process, including the assessment of responses.	The Minister complied with section 39(2a)(a) of the PTA.
39(2a)(b) – Report to the Economic and Finance Committee	The Minister must prepare and forward a report to the Economic and Finance Committee within 14 days after the tender invitation is published. The report is to include details of the proposed tender and assessment process.	The Minister complied with section 39(2a)(b) of the PTA.
39(2a)(c) – Minister’s directions during the assessment or selection process	The Minister must forward a statement of any directions made during the assessment process to the Economic and Finance Committee within 14 days of the direction being given. Any directions must also be published in the annual report of the Minister’s department for the relevant financial year.	The Minister did not make any directions during the assessment process.
39(3e) – Report to the Auditor-General	The Minister must forward a copy of the contract and a report that describes the processes leading up to the awarding of the contract to the Auditor-General within 28 days of awarding the contract if the total contract value exceeds \$4 million.	The Minister complied with section 39(3e) of the PTA.

Figure A5.2: Service contract compliance with mandatory requirements in the PTA

Section of the PTA	Summary of requirement	Audit findings
40(1)(a) – Period of operation	The service contract must include the period for which it operates.	All service contracts complied with section 40(1)(a) of the PTA.
40(1)(b) – Termination	The service contract must include the manner in which it may be terminated.	All service contracts complied with section 40(1)(b) of the PTA.
40(1)(c) – Standard of services	The service contract must include standards relating to the provision of services.	All service contracts complied with section 40(1)(c) of the PTA.
40(1)(d) – Scale of service levels	The service contract must include a scale of service levels. This refers to the periods of time when services are to be operated, the extent of operations and the frequency of operations during the specified periods.	All service contracts complied with section 40(1)(d) of the PTA.
40(1)(e) – Fares	The service contract must include the fares to be charged.	All service contracts complied with section 40(1)(e) of the PTA.
40(1)(f) – Remuneration	The service contract must include the manner in which the contractor will be remunerated or gain revenue from the provision of services, including any subsidy arrangements.	All service contracts complied with section 40(1)(f) of the PTA.
40(1)(g) – Other matters	The service contract must include other matters required by the PTA or the regulations specified in the service contract.	All service contracts complied with section 40(1)(g) of the PTA.
41(1) – Regions or routes	The service contract must specify a region or route of operation.	All service contracts complied with section 41(1) of the PTA.

Appendix 6 – Provisions in the contracts designed to protect the State’s interests

Provision of services

The scope of services to be provided (ie routes and timetables) is detailed in a schedule to the service contract.

The operators must provide the services in a proper, competent and professional manner, in line with best industry practices, and with due care, skill and diligence. They are required to do everything necessary and reasonable to ensure the safety of passengers and the public. They must also maintain, and ensure that their drivers maintain, appropriate accreditation to operate the services.

The Minister can change the nature, scope or level of the services or the operator’s operations at any time. The Minister can also ask the operator to add a new route to the services. If the operator refuses or fails to add it, the Minister can engage a third party to provide the new route.

The operators can also request changes to the services, and the Minister has the discretion to approve them. Operators must not act on a change until it is approved.

If an operator cannot provide the services, it must help the Minister to facilitate the continuity of services for the affected route(s).

Vehicles

The operators are responsible for ensuring:

- only approved vehicles are used to provide the services. This is a vehicle that complies with the code of practice for buses, the PTA and any other prescribed standards in place, and that has been approved by the Minister as suitable to provide the services
- sufficient approved vehicles are maintained and available for use to ensure the continuity of services
- vehicles are modern and air conditioned, and meet the requirements in the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002*.

The Eastern Riverland contract includes the operation of a disability service and contains a specific requirement for the operator to provide vehicles that are wheelchair accessible and modern, suitable for carrying people with disabilities and elderly people with mobility difficulties, have the capacity to seat all disability clients and are fully seat-belted.

The service contracts also allow the Minister to inspect vehicles.

Risk and insurance

The operators must indemnify the Minister and the State for liability and losses resulting from an operator's default or breach of the contract, and for any acts or omissions of the operator or its employees or subcontractors in delivering the services.

Operators are also required to have certain insurances in place throughout the term and for at least 12 months after the service contract expires or is terminated.

Service payment

A service subsidy is payable to the operators monthly in arrears. The subsidy payable may be reduced for each trip where a service defect occurs⁶ and each scheduled trip not provided due to reasons outside the operator's control. It is adjusted every month for changes in input costs and service changes required by the Minister.

The operators are entitled to reimbursement of concessions fares sold to eligible passengers in line with current reimbursement procedures. The Minister can change or withdraw these procedures at any time, and without any payment or compensation to the operator.

The service contracts also allow the Minister to require an operator to enter into discussion to agree a revenue sharing model if the operator reports a fare revenue increase above its 2024-25 fare revenue for 12 months or more.

The Minister has the right to set off amounts owed by the operator under the contract against the service subsidy and other payments payable to the operator by the Minister.

Performance monitoring

The service contracts require regular performance reporting by the operators, covering operational and financial matters. Operators must maintain information management systems to provide these reports.

The Minister also has broad audit, inspection, access and information gathering rights to investigate or verify any aspect of the operator's performance and information provided under the contract.

The operators are obliged to immediately report to the Minister any:

- incident or event resulting from the services that involves the loss of life or injury to any person where medical attention is required on the day of the event
- event that is likely to substantially disrupt or alter the delivery of the services.

Operators must also report to the Minister any circumstance that may compromise the safety of passengers or other members of the public.

⁶ A service defect is where a vehicle departs from a place nominated in the timetable before the time stated in the timetable or more than 10 minutes after (30 minutes after in the case of a vehicle breakdown). It also includes a trip scheduled in the timetable that does not take place or does not cover the whole route.

Performance standards and key performance indicator (KPI) management

The operators must meet specified performance benchmarks against eight KPIs. The service contracts state that the KPIs reflect the State's priorities for contract performance and cover service reliability, reporting, safety and customer service.

If an operator fails to meet a KPI it must, at its own cost:

- investigate the cause of the failure
- within five business days of the failure, prepare a report to the Minister that addresses the failure
- immediately take action as may be determined by the Minister to minimise the impact of the failure
- correct the failure and continue to meet the KPI, including establishing a remedy to ensure the KPI is met in the next reporting period.

Where there are consistent or significant KPI failures, the Minister can request the operator to implement a detailed cure plan. Failing to provide and/or implement a cure plan can result in a Corrective Action Notice being issued or termination of the service contract.

The KPIs can be renegotiated annually, if required by the Minister and agreed to by the operator.

Corrective action, step-in rights and termination

Corrective action

The Minister can issue a Corrective Action Notice to an operator that is not complying with the service contract or service specification in a material respect, or that does not adhere to the performance benchmarks. If the operator does not comply with the Corrective Action Notice, the Minister can impose conditions on its continued supply of the services or terminate the service contract.

Step-in rights and termination

The service contract allows the Minister to exercise step-in rights or terminate the service contract in certain circumstances, including when:

- the Minister considers the operator to be insolvent or unable to perform its obligations under the service contract
- the operator is in breach of the service contract, including failure to comply with performance benchmarks three or more times within six months (even if remedied)
- the operator is in breach of its statutory obligations to its employees
- the operator ceases to hold appropriate accreditation to operate the service.

The Minister can also exercise step-in rights in the event of an emergency or if the Minister believes it is necessary to secure the ongoing performance of all or any part of the services.

The step-in rights include:

- taking total (or partial) possession of work sites, vehicles and other equipment used for the services
- instructing or directing any subcontractors engaged by the operator to perform the services
- requiring the operator to assign all rights and benefits under any existing supply, subcontract, employment or other agreements relating to the services.

The operator is required to cooperate at its own cost with the Minister exercising step-in rights. The operator has no right to compensation or allowance from the exercise of step-in rights. Further:

- the operator indemnifies the Minister for any cost or liability incurred by the Minister in exercising step-in rights
- any losses incurred by the Minister in exercising step-in rights will be a debt due and payable by the operator.

The operator is not entitled to any fares collected by the Minister while performing the operator's tasks when exercising step-in rights.

The Minister can elect to terminate the agreement for convenience at any time, and without cause. This is subject to providing three months' notice in most cases. Where the Minister terminates the agreement for convenience, the operator has no claim other than the right to be paid for services provided before the termination date.

External funding agency

An external funding agency funds or contributes to the cost of some services. The Eastern Riverland contract includes the operation of a disability service funded by disability support service providers.

If the funding agency ceases or fails to fund the service, the Minister may terminate that service and the operator will not be entitled to compensation.

Dispute resolution

In the event of a dispute between the parties, the service contracts prohibit either party from commencing legal proceedings (other than immediate interlocutory relief or other interim remedy in case of emergency) without first:

- giving the other party written notice of the dispute
- meeting with the other party's representatives and using reasonable endeavours to try to resolve the dispute.

Appendix 7 – Abbreviations used in this report

Abbreviation	Description
BAFO	Best and final offer
DIT	Department for Infrastructure and Transport
KPI	Key performance indicator
Minister	Minister for Infrastructure and Transport
PTA	<i>Passenger Transport Act 1994</i>
PTSA	Public Transport South Australia
Steering Committee	Regional Bus Services Procurement Steering Committee
The Guideline	Procurement SA's Probity and Ethical Procurement Guideline
TI 8	Treasurer's Instruction 8 <i>Financial Authorisations</i>

