

Memo

Meeting Date:	21 September 2022
To:	NTS Steering Group
From:	Graham Alston
Subject:	TSP Parent Financial Viability Refresh
Paper No:	2022-09-21-02
For Your:	Noting

Background

During the procurement assessment process the parent company of the preferred supplier was acquired by a **section 9(2)(ba)(i)**. Financial due diligence was undertaken during this assessment period however the latest financial statements of the new parent company were not available. These have subsequently been received and the financial viability assessment has now been refreshed for the period through to 30 September 2021.

Assessment

This updated financial viability assessment has been undertaken by Mafic Partners as the previous entity that undertook the financial assessments – Martin Jenkins, did not have any appropriate skillset available at this time to provide this service.

Attached is the financial viability refresh report.

section 9(2)(b)(ii)

Financial Risk and Protections Available

When assessing the financial risk to the Buyer, the TMSA outlines strong and adequate provisions available to us within the financial distress provisions and the parent guarantee.

The current position detailing the logic flows and the protections are detailed:

In the design of Project NEXT, it has always been anticipated that:

1. Waka Kotahi would look to an internationally recognised organisation to provide the Ticketing Solution, in this case Cubic;
2. Waka Kotahi would require the TSP to establish a New Zealand presence, recognising that the TSP would inevitably be supported by offshore capability from the broader group, in Cubic's case that offshore support will include Cubic group resources in Australia, the US and India;
3. the TSP contracting entity would almost certainly be a special purpose vehicle established in New Zealand for Project NEXT, in this case Cubic has incorporated Cubic Transportation Systems New Zealand Limited to be the TSP;
4. **section 9(2)(b)(ii)**

Therefore, for Waka Kotahi to have confidence to appoint the Cubic SPV as the TSP, Waka Kotahi would also rely on, and would have legal recourse against, the financial strength and operational capability of the broader Cubic group.

As a matter of contract, this reliance is established by way of the Parent Company Guarantee (the PCG).

Under the PCG, the guarantor, **section 9(2)(ba)(i)**

1. guarantees to Waka Kotahi:
 - a. all of the TSP's payment obligations under the TSMSA; and
 - b. all of the TSP's performance obligations under the TSMSA; and
2. indemnifies Waka Kotahi;
3. **section 9(2)(b)(ii)**

Note: In the draft TSMSA, the TSP liability to Waka Kotahi is capped **section 9(2)(b)(ii)**

section 9(2)(b)(ii)

section 9(2)(b)(ii)

Recommendations

It is recommended that the Steering Group:

1. **Notes** the financial refresh assessment of the parent company – section 9(2)(ba)(i) ;
2. **Notes** the design aspects and negotiated position of the financial protections detailed in the draft TSMSA to address these financial risks.

Attachment

Refreshed Financial Viability Report - pdf

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