

Public Transport Operating Model (PTOM)

Release of amendments to the Transport Agency *Procurement Manual*

Questions and answers

General Questions

What is PTOM?

The Public Transport Operating Model (PTOM) was announced by government in April 2012. PTOM is a combination of planning, funding, procurement and contracting tools, which are designed to support regional councils (including Auckland Transport, unitary authorities, and territorial authorities with delegated responsibility for public transport) and public transport operators (operators) to build stronger collaborative relationships to grow patronage with less reliance on public subsidy.

PTOM has a range of key components including longer tenures, annual business planning and financial incentive mechanisms, which will give both parties the confidence to invest in units to grow patronage.

Why was PTOM developed?

PTOM was developed in response to concerns about increases in public spending on public transport not being matched by patronage increases, very low numbers of tender responses in Auckland and Wellington, and deterioration in relationships between some bus and ferry operators and regional councils.

These trends undermined the government's confidence that it was receiving value for money from its investment in public transport. For more information see the Cabinet papers on the Ministry of Transport website – www.transport.govt.nz/ourwork/land/ptom/.

How is PTOM policy being implemented?

PTOM policy is being implemented through:

- Amendments to the Land Transport Management Act 2003 (LTMA). Part 5 (regulation of public transport service) of the LTMA provides the high level statutory framework for PTOM. Amendments were enacted on 13 June 2013 and repealed the Public Transport Management Act 2008.
- Amendments to the Transport Agency's *Procurement Manual*. The *Procurement Manual* contains procurement procedures that approved organisations are generally expected to use when purchasing goods and services that will be part funded through the National Land Transport Fund.
- New *Guidelines for Preparing Regional Public Transport Plans*
<http://www.nzta.govt.nz/consultation/guidelines-regional-public-transport-plans/>

The changes to the Transport Agency's *Procurement Manual* and *Guidelines for Preparing Regional Public Transport Plans* provide the detailed operational policies for regional councils implementing PTOM within the high level framework set out in the LTMA.

Outcome of consultation on amendments to the *Procurement Manual*

Have there been any changes to operational policy as a result of consultation on amendments to the *Procurement Manual*?

In response to submissions, the Transport Agency has amended three of its policies in the *Procurement Manual*.

- *Negotiation adviser (Transport Agency representative)* - We have revised our position on the negotiation adviser. The adviser will be a Transport Agency representative, not independent, and fully funded by the Transport Agency. The core role of the Transport Agency representative is to provide additional confidence to the Transport Agency and Crown that prices reached in direct negotiations are efficient. The Transport Agency representative will be involved in all like for like negotiations, and other direct appointment processes at the discretion of the Agency where there are considered to be significant risks (for instance, a price outside the benchmark range or large contract).
- *Deposit requirements for access to commercially sensitive fare revenue information as part of tender.* Our original proposal was that regional councils would be responsible for setting deposit requirements. We have revised our position and have set the deposit requirement at 10% of the estimated tender price up to a maximum of \$20,000, or in the case of group tenders, up to a maximum of \$40,000. Commercially sensitive fare revenue information is fare revenue information that a regional council has collected under section 127 of the LTMA and which the operator who provided the information has identified as commercially sensitive under section 129 of the LTMA. Deposits will not be required for tenders that do not involve the release of commercially sensitive fare revenue information to registered tenderers.
- *Procurement procedures to be used to procure ferry and rail public transport services.* Recognising the context in which ferry and rail services are provided, regional councils can use customised procurement procedures when procuring ferry and rail services. Legislative requirements, like being organised into units, will still be required of ferry and rail public transport services. Ferry and rail public transport service contracts will also be expected to contain principles for partnering, processes for annual business planning and a financial incentive mechanism.

Are there any outstanding policy matters that the Transport Agency has yet to resolve?

Yes. Further work is required on three policy matters. The Transport Agency intends to complete work on these outstanding issues in 2014 and will consult with affected parties on proposals before finalising them.

- *Terms of reference for the Transport Agency representative and the process to be followed if there are concerns that a price reached in negotiations for direct appointments is not efficient.* The outcomes of negotiations are critical to the success of PTOM and there could be a wider role for the Transport Agency representative beyond providing price assurance. There is also a need to provide more clarity about what happens if the Transport Agency representative is not confident that a negotiated price is efficient and what impact, if any, this might have on negotiation outcomes.
- *Appropriate benchmarking methods to be used for undertaking gross price resets for tendered partnering contracts in regions where there is not enough tender information to undertake Data Envelopment Analysis.* Many regional councils will not have sufficient tender data to use Data Envelopment Analysis and there is a need to identify appropriate alternative benchmark method(s) regional councils may use. This is necessary to enable both regional councils and operators to understand the possible implications of a gross price reset.
- *The challenge process to be used when a commercial unit contract ends and a non-incumbent operator has expressed interest in running the unit.* A challenge process was outlined in the

consultation document, but the Transport Agency recognises that further work is required to clarify exactly how this process will occur.

Implementing PTOM

What do regional councils need to do to implement PTOM?

In the transition to PTOM the Transport Agency expects that all regional councils will have (if they have not done so already):

- undertaken a review of their existing public transport services to see if they are still fit for purpose
- reviewed their regional public transport plans (RPTP) and are satisfied that their RPTPs have been prepared in accordance with any relevant guidelines issued by the Transport Agency. The Transport Agency has prepared *Interim guidelines for the development of regional public transport plans*. Regional councils can rely on the interim guidelines in preparing and adopting their RPTPs until the final guidelines are released. The interim Guidelines can be found here <http://www.nzta.govt.nz/consultation/guidelines-regional-public-transport-plans/>
- reviewed their procurement strategies to incorporate new PTOM procurement requirements as contained in the Transport Agency's *Procurement Manual*. As part of this regional councils must have a plan for transitioning to PTOM, and secure the Agency's endorsement of their procurement strategy
- developed new requests for proposals (tenders) and partnering contracts.

Can a regional council go out to tender or enter into negotiations for a public transport contract before it has completed the steps outlined above?

To avoid the risk of services being operated unlawfully, or ineligible for Transport Agency funding, it is important that the steps outlined above are followed before regional councils go out to tender.

What are the implications of PTOM for existing contracts?

Any existing contracts will continue to apply for their full term, and any agreed term extensions approved by the Transport Agency, with the same terms and conditions set out in those contracts (unless varied by mutual agreement).

If contract extensions are required to align services for new units, or to complete the RPTP and the procurement strategy, regional councils should identify this in their transition plans and seek approval from the Transport Agency.

How flexible are the new procurement approaches?

The core components of PTOM will need to be implemented in all regional councils, and across all public transport modes. It is expected that most bus public transport service contracts will be procured using the partnering delivery model and partnering contracts as outlined in chapters 8 and 10 of the Transport Agency's *Procurement Manual*.

There is some flexibility in the new procurement approaches and other aspects recognise that regional councils' public transport networks differ greatly in size and characteristics. Some tools, such as the ability to negotiate for a proportion of units, will only apply to large bus markets, with the approval of the Transport Agency.

Regional councils will need to develop customised procurement procedures, in consultation with operators for approval by the Transport Agency, for ferry and rail services.

If regional councils wish to take a different approach to that set out in the *Procurement Manual*, they are able to make a value for money case to the Transport Agency for approval as part of the procurement strategy. If a region is considering a different approach it should discuss this early on

with their Transport Agency regional representative to ensure that it meets the Agency's requirements

How much involvement can operators expect to have in the implementation of PTOM?

Partnering between regional councils and operators is at the core of PTOM. Section 115 of the LTMA sets out the expectation that, where relevant, 'regional councils and operators should work in partnership and collaborate with territorial authorities to deliver regional public transport services and infrastructure necessary to meet the needs of passengers.'

The Transport Agency expects that regional councils will involve operators throughout the implementation of PTOM, from the development of new RPTPs to development of new partnering contracts.

The involvement of operators should be an open and transparent process and not restricted to incumbent operators only.

The Transport Agency expects that regional councils will take a proactive approach to involving non-incumbent public transport operators in implementing PTOM to increase the potential for competition for public transport service contracts.

What support is available for regional councils and operators to implement PTOM?

The Transport Agency will continue to work closely with both regional councils and operators to implement PTOM. The Transport Agency's regional offices will be the main point of contact for regional councils, and its national office will be the main point of contact for operators.

Will all public transport service contracts have to be partnering contracts?

It is anticipated that the majority of scheduled public transport contracts will be partnering contracts. Short-term, low-value contracts (such as infrequent access based services, trial services, special event services and emergency services) will not need to be partnering contracts but will still need to be contracted under an approved procurement procedure. However, they should include at least some tools of partnering tools, such as annual business planning where the region considers that these would help improve the commerciality of the services.

What information will be shared with registered tenderers?

Operators of all units will be required to provide patronage and revenue information (among other information) to the region to assist with the ongoing monitoring of the performance of the unit. Recent revenue and patronage information for units going out to tender will be shared with tenderers. Where this information is commercially sensitive under the LTMA, tenderers will be required to lodge a refundable deposit and sign a confidentiality agreement in order to access this information.

What happens if an operator has held commercial registration under the Public Transport Management Act 2008?

The first step is to determine, through the preparation of a RPTP, whether the commercial registrations will be part of a region's public transport network.

If a commercial service is not considered to be part of a region's public transport network the service is to be identified as an 'exempt service' as required under the LTMA. Exempt services will still need to be registered with the region, but will not be provided under contract and subject to only a few controls as identified in the LTMA.

Commercially registered services that were registered with the region prior to 30 June 2011, and that the region has identified as part of its public transport network in its RPTP, will need to be transitioned over to PTOM through the 'like-for-like' process.

Under the like-for-like process the operator is to be offered a directly negotiated unit(s) that contains an equivalent number of in-service kilometres to the commercially registered services. The contract term for a like-for-like partnering contract is a one off term of 12 years.

The ability to directly negotiate a like-for-like partnering contract lasting 12 years is to compensate the operator for the value of their commercial registrations.

Operators who registered commercial public transport services after 30 June 2011 are ineligible to go through the like-for-like process.

Other miscellaneous questions on amendments to procurement manual

What is the partnering delivery model?

The partnering delivery model is part of the new Transport Agency procurement procedure for public transport services and recognises the different skills and ability of the region and operator to manage risk. This will become the main delivery model for the procurement of scheduled urban public transport services identified in the regional public transport plan, including partnering for commercial units that do not receive any subsidy.

Regional councils and operators will be incentivised to work collaboratively to grow patronage with less reliance on subsidy, and to achieve high performance standards. Partnering is much broader than just the contractual relationship it is an implied covenant of good faith where the parties will need to use their strengths, constructive tension and collaboration to grow the market for public transport services. Partnering within PTOM does not constitute a formal legal partnership, and is not an alliance as used for other transport activities because the parties remain separate entities.

What is a partnering contract?

Partnering contracts are a contract for a unit. These will not be net or gross cost based, and financial outcomes and risk will be shared. These contracts are designed to encourage greater collaboration between regional councils and operators through partnering principals, annual business planning and sharing of revenue through financial incentive mechanisms.

Under partnering contracts operators will bid on the basis of the gross price of providing a unit of public transport services, and fare revenue is shared between the approved organisation and supplier through an agreed financial incentive mechanism.

What is a financial incentive mechanism (FIM) and how do I use one?

The financial incentive mechanism is the formula that specifies the parties' share of the change in fare revenue. It ensures that they have a mutual financial interest in the positive performance of a unit, to incentivise them to collaborate to improve performance.

FIMs must comply with the following requirements:

- apply to all subsidised partnering contracts; may apply to commercial unit contracts by agreement
- be separate from cost indexation and KPI processes and payments.

FIMs must also be consistent with the following principles

- incentivise both parties to collaborate to grow patronage and revenue
- take account of unit and regional market characteristics
- be simple to apply and administer
- contribute to value for money.

The Transport Agency has developed some simple example FIM models. Please contact your regional Transport Agency office if you would like further information on the application of FIM or these example models.

Will the introduction of PTOM affect the funding for public transport services?

Implementation of PTOM does not affect the funding available from the Transport Agency for public transport services. Regional councils should not assume that if a public transport service has been identified in a RPTP that it will be part funded by the Transport Agency.

Government funding for public transport services will continue to be allocated through the National Land Transport Programme to give effect to the government's priorities as set out in the Government Policy Statement on Land Transport Funding (www.transport.govt.nz/ourwork/KeyStrategiesandPlans/GPSONLandTransportFunding/), and interpreted in the Investment and Assessment Framework (formally the Investment and Revenue Strategy) (www.nzta.govt.nz/planning/programming/docs/nltp-2012-15-irs.pdf).

What opportunities does PTOM provide for operators to start new services?

Operators will still be able to start new exempt services through a registration process, if these are not part of the network identified in the RPTP. The LTMA sets out the registration process.

Operators will also be able to have input into the public transport network and unit design through the RPTP process, including identifying potential new commercial units. Operators will be able to suggest route changes or trial services to regional councils, generally as part of the annual business planning process. There may be limitations on the ability of the region to agree to negotiate such changes because of RPTP requirements, funding availability or the exclusivity of existing contracts.

How will the change in Transport Agency policy in respect of payments for concessionary fare 'top ups' affect PTOM and what should affected parties do?

The concessionary fare scheme (CFS) was introduced in the early 1990s, to protect operators from any financial loss if regional councils introduced a new concessionary fare after a net contract was awarded (or came into effect). This provided for a 'top up' to be made to make up the difference between the fare charged at the commencement of the contract and the new concession. This was provided for in the National Land Transport Programme under category, 'W/C 513, Bus and ferry concessionary fares'.

In 2011 the Transport Agency reviewed work categories for the 2012/15 NLTP and removed W/C 513. Any provision needed to cover legacy cases is to be included as a component of the cost of services (W/C 511, Bus services or W/C 512, Passenger ferry services). Concessionary fare 'top ups' to operators will not apply to any new contracts. A concessionary fare is just a discounted fare set by the regional council taking into account the Transport Agency's farebox policy.

Will my bus fares increase?

The objective of PTOM is to grow patronage with reduced reliance on subsidy, and it is expected that the commerciality of services will improve over time. Bus fares are always subject to changes, but this is a separate process managed by regional councils. Any fare changes should be publically consulted on.

Will my bus route change?

The implementation of PTOM, and the need to segment public transport network into units and develop new regional public transport plans, is as an opportunity for regional councils to review their public transport networks to determine if networks are still fit for purpose. Any proposed changes to a public transport network resulting from a review will be subject to public consultation through the RPTP process.

Performance measurement and monitoring

How were performance measures developed?

The existing measures in the *Procurement Manual* were reviewed to determine what was needed from data quality and granularity perspectives in the future. Proposals were then developed and consultation on the proposed improved performance measures with all regional councils and key stakeholders was undertaken.

What will the Transport Agency do with the information?

Currently, the Transport Agency receives annual public transport service delivery information at a high level of aggregation. This makes it very difficult to understand what our co-investment with regional councils is actually purchasing in terms of the extent, quality and optimisation of public transport services. We will use this information to gain a much better idea of what public transport investment purchases in each region, and allow us to assess the degree to which PTOM is successful.

How are we supposed to collect the information if we do not have integrated ticketing yet?

If you are concerned that you cannot provide the information in the manner required by the Transport Agency please contact your regional Transport Agency office and discuss what data you can access and report on now, and how you might be able to collect the remaining data requirements, and by when.

Will regional councils have access to the performance information?

Yes. One of the benefits of collecting and analysing this data, will be the ability to then report back to regional councils reports that could be very useful from a planning and optimisation perspective

What assistance will the Transport Agency provide to help us collect the information required?

The Transport Agency is currently working with a number of regional councils to improve their ticketing and reporting systems.