



<b>Subject</b>	<b>Public transport procurement – level of delegation for Transport Agency endorsement and approval</b>
<b>Circulation</b>	Regional councils, Auckland Transport, unitary authorities and territorial authorities with responsibility for public transport NZTA Regional Managers Planning and Investment Local Government New Zealand Audit New Zealand
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**Purpose**

- To clarify the level of delegations within the Transport Agency for the endorsement and approval of the procurement of public transport services, in the context of implementing the public transport operating model (PTOM).
- To highlight that during the transition to the new PTOM operating environment, the Agency will be approving regional councils<sup>1</sup> requests for proposals for public transport services prior to these being released to the market.

**Framework for Transport Agency endorsement and approvals for public transport services procurement**

*Table One – Delegations for the endorsement of a procurement strategy or approval of a procurement procedure*

Chief Executive	Group Manager Planning and Investment	Regional Manager Planning and Investment (with input from National Manger Public Transport)
Endorses the bus procurement strategies for: <ul style="list-style-type: none"> <li>Auckland Transport (AT)</li> <li>Greater Wellington Regional Council (GW)</li> <li>Environment Canterbury (ECAN)</li> <li>Otago Regional Council (ORC)</li> </ul> Approves customised rail procurement procedures for AT and GW. Approves the customised ferry procurement procedure for AT.	Refers and supports recommendations for endorsement to Chief Executive related to AT, GW, ECAN and ORC. Endorses procurement strategies for all other regions and approves significant procurement rule variations <sup>2</sup> or other aspects. Approves the procurement approach for ferry services in GW and ECAN.	Assesses all requests for endorsement or approvals put forward by regional councils. Makes recommendations for endorsement and approvals to the Group Manager Planning and Investment as identified under the “Group Manager Planning and Investment” column. Approves other non-significant procurement decisions in accordance with delegations.

*Table Two – Delegations for the approval of Request for Proposals (RFP)*

<sup>1</sup>Regional council includes Auckland Transport, unitary authorities and those territorial authorities with delegated responsibility for public transport.

<sup>2</sup>If you require more information on what constitutes a significant procurement variation please contact your Transport Agency regional office representative for a copy of the Transport Agency *Significance Policy*.

Chief Executive	Group Manager Planning and Investment	Regional Manager Planning and Investment (with input from National Manager Public Transport)
	Approves RFPs for: <ul style="list-style-type: none"> <li>• AT</li> <li>• GW</li> <li>• ECAN</li> <li>• ORC</li> </ul>	Assesses and recommends RFPs for AT, GW, ECAN and ORC for Group Manager Planning and Investment approval. Approves RFP for all other regions and procurement rule variations that are not significant <sup>2</sup> .

3. Because the National Manager Public Transport is accountable for ensuring PTOM is implemented consistently across New Zealand, Regional Managers and their teams will work closely with the National Manager Public Transport and her team to assess and agree on recommendations for requests for endorsement or approval.

### **Endorsement of procurement strategies and approval of variations or advanced components**

4. The delegations set out in tables one and two take into account the risks associated with the implementation of PTOM, in particular:
- ensuring compliance with Part 5 (Regulation of public transport) of the Land Transport Management Act 2003;
  - interpretation of the Transport Agency procurement policy as contained in the Agency’s Procurement Manual, and Guidelines for Preparing Regional Public Transport Plans (RPTP);
  - potential criticism by regional councils that the Transport Agency is not taking a consistent approach in applying its requirements for the implementation of PTOM;
  - potential criticism by operators that regional councils have not adopted PTOM in a way that takes into account the obligations to operators (e.g. “like for like” service equivalent units, partnering and incentives mechanisms);
  - transitioning from existing contracts entered into under the previous procurement environment to new partnering contracts.
5. Because of these risks, the Chief Executive will endorse the bus procurement strategies for AT, GW, ECAN and ORC<sup>3</sup>, the customised rail procurement procedure for AT and GW, and the customised ferry procurement procedure for AT.
6. Variations to procurement rules (or requests to use advanced procurement components) can be presented, with supporting justification, as part of the procurement strategy. These must be identified clearly by a specific recommendation for approval. The delegation to approve such variations or the use of advanced components is with the Group Manager Planning and Investment or the Regional Manager Planning and Investment depending on the risk associated with the decision.

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<sup>3</sup> AT and GW are large regions with complex procurement requirements including the need for ‘like-for-like’ negotiations and large rail contracts. ECAN is also a large region and is transitioning to PTOM from ‘emergency response’ negotiated contracts following the earthquake. ORC’s procurement strategy will be endorsed by the Chief Executive because of the need to complete ‘like-for-like’ negotiations.

## Approval of requests for proposals (RFP)

7. The Transport Agency generally does not approve RFPs, but has done so on occasions when there is an unusual or complex tender or where there is significant risk involved. PTOM is a significant change to public transport procurement processes and the Transport Agency is accountable for ensuring PTOM is implemented as intended and in a consistent manner across New Zealand. To that end we need to be confident that RFPs are consistent with regional councils' procurement strategies and that the components of PTOM are correctly reflected in RFPs.
8. Approval of RFPs does not join the Transport Agency with the regional council in regard to any liabilities that may arise from the contract. The Transport Agency will ensure that it confines its approval of RFPs to the terms contained in proposed contracts, as set out in the RFP, that relate to PTOM and to any other relevant matters or requirements set out in the Agency's Procurement Manual, or relevant legislation. Transport Agency approval does not extend to standard contract clauses relating to management of the contract, notices, etc., nor the conduct of the RFP process.
9. To ensure there is no doubt about what the Transport Agency is approving, the following paragraph will be included in correspondence confirming approval of a regional council's RFP.

“Specific Transport Agency approval is required for the organisation's tender documents (Request for Proposal or other tender related documents, such as Information for Tenderers etc.), before the organisation releases those documents to the public for response. The Transport Agency's approval is limited to elements of the contract referred to in those documents, to be entered into by the approved organisation and the preferred tenderer, which relate to the components of and requirements for the public transport operating model (PTOM) as detailed in the Agency's Procurement Manual, and to any other relevant matters or requirements set out in the Procurement Manual, or relevant legislation. The approval does not include standard contractual terms (or “boiler plate” clauses) common to contracts in general such as notice clauses, interpretation, dispute resolution, amendments, entire agreement etc.”

## Applications for approval

10. Applications for endorsement of strategies, approval of variations or approval of RFPs are to be made to Regional Managers Planning and Investment, who will assess the application and approve under delegations or make recommendations to the Group Manager Planning and Investment. If Chief Executive action is required the application will be forwarded, with comments, by the Group Manager Planning and Investment.

## Relationship management to secure endorsement or approvals

11. The relationship with regional councils<sup>4</sup> is managed directly by Regional Managers Planning and Investment (and their staff) who will be supported by the National Manager Public Transport and the Public Transport Investment team. The Regional Manager Planning and Investment is available to work closely with regional councils throughout the process of preparing RPTPs, procurement strategies and RFPs. The earlier regional councils engage with the Transport Agency, on implementing PTOM to ensure

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<sup>4</sup> The relationship with operators will be through the Bus and Coach Association and will be managed directly by National Office.

PTOM is being implemented correctly, the more likely we will be able to provide the necessary endorsements and approvals when required. An iterative process with Transport Agency staff, commencing with a scoping meeting and exchange of early drafts is strongly recommended.

12. Some regional councils have indicated a desire to make use of other regional councils' documentation to assist with implementing PTOM. The Transport Agency supports collaboration amongst regional councils, for example sharing documentation and using the same or similar approaches used by another regional council. However, endorsement (or approval) of a strategy (or variation) for one regional council does not automatically mean that the Transport Agency will provide a similar endorsement (or approval) if another regional council decides to adopt the same approach.
13. Each regional council needs to demonstrate that its implementation of PTOM meets the needs of its region, and be able to provide a clear rationale and explanation for its proposed approach – including any approach adopted from another region.

### **Further information**

14. For further information or assistance in the first instance please contact your Transport Agency regional representative. Alternatively you can contact: Ian Stuart ,DDI 64 4 890 4747, email [ian.stuart@nzta.govt.nz](mailto:ian.stuart@nzta.govt.nz) for more information.