

Non-statutory public consultation on 2014 Public Bus Service Contracts

Response by the Chartered Institute of Logistics and Transport in Ireland

Q1. How can the new public service contracts best ensure a good quality of service is provided to passengers?

Overarching Policy Framework

The starting point should be the development, with wide stakeholder input, of an overarching policy framework which will provide a broad policy context for the development and specification of the next round of Public Service Contracts (PSCs). This framework needs to encompass a clearly articulated long term vision for the future development of public transport as well as more specific high level objectives addressing issues such as service coverage and minimum standards of provision. It is accepted that it may not be possible to fulfil this vision and achieve all these objectives in the short or even the medium term, but it is important that there is a clear roadmap which will guide the preparation of the post-2014 PSCs. You shouldn't start a journey if you don't know where you are going.

The development of this policy framework can be guided by existing policy instruments such as *Smarter Travel*. While there has been less emphasis on environmental concerns since the start of the current economic downturn and financial crisis, the issue has not gone away as was made clear in the EPA's latest *State of the Environment* report. This work should also take account of the findings which emerge from the National Integrated Rural Transport Committee. For example should the next round of PSCs encompass not only conventional public transport, as at present, but extend to the other areas of transport being considered by this Committee? We do not underestimate the challenge involved in developing such a comprehensive approach, but it would undoubtedly help address anomalies in the current provision which, for example, see services provided from rural areas to large towns but no services within those towns.

Realistic Financial Framework

The policy framework needs to be accompanied by a realistic financial framework which seeks to predict the likely sources and quantum of public funding for the contract period.

Independent Needs Assessment

For a range of practical reasons, the first public service contracts (PSCs) were based on the existing Bus Eireann and Dublin Bus timetables. The new contracts should be based on an independent assessment by the NTA of the needs of the travelling public, both existing and potential public transport users. The Authority should also consider how best to deliver optimum value for money for the taxpayer, recognising

the constraints on public funding.

Clear Service Specification

The NTA should clearly define the quantity and quality of service it wishes to procure under the new PSCs, reflecting actual customer needs and priorities and involving changes to existing service patterns where necessary. The service specification needs to be realistic and achievable within the financial resources likely to be available to the Authority over the contractual period, but must also challenge the service provider. The service specification should be based on a clearly defined network identified by the NTA as its desired outcome. In quantitative terms, the new PSCs should clearly and expressly define the places and routes to be served, the service frequencies to be operated and the passenger capacity to be provided, differentiated by peak/off-peak and weekday/weekend or other appropriate temporal denominators. The service specification should also be flexible enough to enable the operator to respond to changes in demand, whether short term relating to specific events or longer term as a result of changing travel patterns or the economic situation. Provisions should be built into the new contract to enable speedy authorisation of such changes. They should also set down clear qualitative parameters in respect of the range of criteria found in good contracts, covering issues such as accessibility, average fleet age, maintenance standards, cleanliness, customer service, safety management, staff training, information provision and so on.

Precise Performance Standards

The new PSCs should include a well designed, clear, precise and challenging set of performance standards based on all of the quantitative and qualitative service requirements referred to above. For example, contracts in major urban areas should specify a performance standard relating to average and excess waiting time for passengers at bus stops to encourage operators to ensure that bunching of services is avoided as much as possible, particularly off-peak. This could be modelled on the approach adopted by Transport for London and should take account of the level of traffic congestion and the quality of bus priority. Where appropriate, these performance standards should be progressive, encouraging improved performance over the period of the contract. While the performance standards need to be challenging, they also need to be realistic and take account of the cost of delivery.

Independent Performance Monitoring

There should be provision for independent monitoring and reporting on performance, using ICT applications wherever possible. Information on the service standards specified in the PSCs and on operator performance against them should be published regularly on the web and on operator premises and vehicles. Iarnród Éireann sets an example in this regard by displaying posters with relevant route performance in its stations.

Incentives and Penalties

The contracts should include provision for incentives and penalties in the range of 5-10% of contract value. Incentives should be used to encourage performance beyond the contract requirements, particularly the achievement of significant growth in patronage. However great care is needed in defining the performance baseline to minimise the risk of windfall gains for the operator arising from external factors rather

than its own actions. For example, the operator should not benefit from financial incentives where the amount of travel increases because of general growth in the economy or employment. Penalties should be applied where performance falls materially below the standards specified in the contracts, particularly but not exclusively in relation to service delivery. Escalating penalties should be considered where there is continuing underperformance on key parameters over a sustained period. It is critically important that the incentives and penalties are enforceable under the provisions of the new PSCs and that the Authority acts to fully enforce them throughout the contract period.

Q2. How can the new public bus contracts best ensure the integration of the public bus services and the integration of these services with the wider public transport network?

Clear Network Concept and Design

The starting point for integration is a clear network concept and design. As already mentioned in response to Question 1, the service specification should be based on a well-defined network identified by the NTA as its desired outcome. Physical and service integration should be at the core of that network.

Designated Interchange Points

The network should include a number of designated interchange points which facilitate transfers between bus services. The new PSCs should require operators to serve these interchange points adequately and directly, as well as mainline railway stations and specified suburban rail stations and Luas stops (designated as interchange points). This may require the provision of extra bus stop locations and facilities in city and town centres where existing stops are overcrowded or placed away from central locations. Operators should also be required to achieve the best possible timetable integration so as to minimise interchange waiting time for passengers. Targets for maximum waiting times might be considered but these would have to take into account factors such as any additional cost and the potential knock-on impact on other services. As far as possible interchange points should be "across platform" or "across street". Interchange points should be designated as multi-user facilities accessible by all operators. Where this is not possible the distance between interchange points should be minimised as much as possible. Good information should be available for passengers on the route between interchange points, through signposting and maps at interchange points and via mobile phone applications. The implementation of these recommendations will require the full co-operation of local authorities in their capacity as planning and traffic authorities.

Flexibility to accommodate Route and Service Changes

There should be flexibility in the contracts to enable amendments to services and routes to reflect changing circumstances or customer needs. This would ensure proper integration between customer needs and service provision, delivering the product to customers where they want it, when they want it and to the standard they expect. Such provisions are likely to have cost implications where they require the availability of additional buses.

Direct NTA Contribution to Integration

The NTA itself can do a lot to improve integration in advance of the negotiation of the new PSCs by continuing the development of integrated ticketing, real time passenger information and the national travel planner. The launch of the Leap card is most welcome and the inclusion on it of additional ticketing products, the extension of its geographical and service coverage and the availability of card top-up facilities at all ticket machines should be progressed as quickly as possible. The objective should be to ensure that the Leap card can be used on all PSC services before the new contracts begin at the end of 2014.

Real time passenger information should be extended and the defects in the current system (such as phantom buses) should be addressed without delay so as to improve reliability and enhance customer confidence. There should also be a multimodal dimension to the provision of real time passenger information. For example, signs at bus stops could be used to draw attention to serious delays in road traffic which impacts on bus services or to disruption to adjacent rail services. The aim should always be to provide travellers with relevant information to inform their journey or modal choice decisions.

The introduction of integrated fares should be considered, with the fare charged reflecting the journey made rather than the number of service/mode changes involved. It is accepted that there may be revenue implications for operators. These should be clearly identified and a decision made based on an assessment of the costs and benefits.

There should also be an emphasis on the continuing implementation of operations management systems, such as automatic vehicle monitoring.

Contractual Obligation to Participate in Integration Measures

The new PSCs should continue to require operators to participate in the speedy development and full implementation of these ticketing, fares, information, planner and operations management systems and should ensure that the equipment and systems used by operators are compatible.

Q3. How can the new contracts best ensure value for taxpayer money?

Clearly defined Outcomes and Outputs

The answer to this question encompasses much of what we have already stated. Value for money will not be achieved unless the NTA is absolutely clear as to the outcomes and outputs it requires. These should be expressed in terms of a clear network concept and design, well designed service specifications and performance requirements and effective independent monitoring and reporting arrangements. The contracts need to be designed so as to encourage increased efficiency and effectiveness by operators. They also need to strike an appropriate balance between efficiency (in the utilisation of resources such as buses, depots and personnel) and effectiveness (in terms of the quantity and quality of service provided to users).

The contracts should include incentives and penalties related to performance, as described in response to Question 1.

Potential Use of Competitive Mechanisms

Competitive tendering can be considered as a way of achieving better value for money and this issue is addressed further in response to Question 6. In the case of continued direct award contracting, consideration might be given to the scope for introducing an internal market within those contracts. For example, would it be possible to look at the cost of delivering comparable services as between different districts or depots and basing contract pricing on the most cost effective outcomes? Building on the benchmarking studies of Bus Eireann and Dublin Bus commissioned by the Department of Transport prior to the 2009 contracts and to guide decision making by the NTA, new benchmarking comparisons with other operators should be carried out, independently of the service providers, well in advance of the next contract period. The PSCs should include provisions requiring full co-operation and full access to information to enable benchmarking studies to be carried out and should permit the Authority to renegotiate the contract based on the findings of any subsequent studies.

Adequate NTA Resources and Skillsets

The NTA needs to have the necessary in-house resources, skills and expertise to enable it design and implement the PSC process in a way which ensures the optimum value for money for the taxpayer. The skillsets required include financial, legal, strategic network planning and contract design, negotiation and administration.

The Influence of the Operating Environment

The operating environment has a critical influence on the reliability of bus services and on the effective use of the bus fleet. The NTA can play an important part in improving value for money in the provision of PSO bus services by continuing and intensifying the implementation of bus priority measures in the major urban areas and on critical trunk bus routes.

Q4. Are there benefits in introducing separate contracts for different bus market segments within the Dublin area? If so, how should such market segments be defined?

Considerations relating to Direct Award Contracts

If it is proposed to continue with direct award contracts for the foreseeable future, there is probably little to be gained from introducing separate contracts for different segments of the bus market in the Dublin area, in respect of existing services. Consideration should be given, as referred to in the response to Question 3, to the potential for the development of an internal market within the direct award operator. If this proved to be a viable proposition, separate contracts might be of value.

If new types of service (for example demand responsive, neighbourhood or orbital

services) are being contemplated for inclusion in the public service obligation, separate contracts should be considered for these services and perhaps be tendered.

Considerations relating to Competitive Tendering

If competitive tendering is being contemplated for some or all of the bus services from 2014, separate contracts will be required. Contracts could be area, route or corridor-based. Area contracts could be based on specific geographical sectors, possibly using the Network Direct or existing depot catchments with some modifications. Route contracts could be based on a bundle of routes. Corridor contracts could be based on the QBC corridors. Any decision on this should take account of the extensive experience of contracting authorities abroad. Contracts should be of a sufficient scale to encourage a wide range of domestic and international interest, large enough to attract international operators and not so large as to preclude domestic private operators from tendering.

If competitive tendering is being contemplated for some later date, beyond the period of the 2014 contracts, the NTA should consider putting at least some limited services to tender in the 2014 round. This would give the Authority some experience of preparing for a tender process and negotiating the relevant contracts in advance of wider recourse to tendering.

Possible Amendment of PSO

The NTA should consider whether some towns previously served by intercity ("Expressway") services need to be included in the public service obligation. The completion of the motorway network is likely to lead to more direct services between the principal cities and the resulting full or partial withdrawal of these services from smaller intermediate towns.

Legal Caveat on Limited Competitive Tendering

The comments above should be read in the context of our response to Question 6 and are subject to the following caveat. The NTA would need to consider whether it is legally possible to introduce tendering on a limited basis for existing or new services while at the same time retaining exclusive rights and direct award contracts as provided for in section 52 of the Dublin Transport Authority Act 2008.

Q5. Are there benefits in introducing separate contracts for different bus market segments outside the Dublin area? If so, how should such market segments be defined?

Potential for Market Differentiation

The market outside the Dublin area is more differentiated and may therefore be better suited to a number of contracts. Contracts could be introduced by area or by type of service. At its simplest it is possible to contemplate two contracts – one for city services and one for stage carriage services. Wider differentiation is also

possible. Contracts could, for example, be geographically based using the Bus Éireann districts or similar area-based divisions. Individual contracts could be contemplated for each city or each city and its hinterland, though these would be quite small in terms of bus requirements. Differentiation may also be possible based on service type – city, town, regional, local stage carriage. In carrying out its assessment, the NTA should consider what approach best achieves network and integration benefits.

In principle a single contract should be best capable of delivering an integrated network. If a multiple contract approach is proposed, the Authority has to consider how best it can ensure, through contractual provisions or otherwise, that an integrated timetable of services will be delivered across the boundaries of the contracts and how resources will be deployed to best effect countrywide. For example, at present buses are used to provide different types of service over the course of a day and it would be important not to lose that flexibility. Or could buses operate across contractual boundaries?

Considerations relating to Direct Award Contracts

If it proposed to continue with direct award contracts for the foreseeable future, there is probably little to be gained from introducing separate contracts beyond perhaps a differentiation between city services on the one hand and stage carriage services on the other.

Considerations relating to Competitive Tendering

If competitive tendering is being contemplated for some or all services from 2014, separate contracts will be required. At a minimum, there could be two contracts – one for cities and one for stage carriage. The stage carriage services could be subdivided into a small number of area-based contracts. If competitive tendering is being contemplated for a later date, the NTA should consider putting some limited services to tender in the 2014 round as a way of gaining experience before moving to wider tendering.

Legal Caveat

The above comments are also subject to the same caveat as on Question 4.

Q6. What are the potential benefits or otherwise of competitively tendering for the award of new bus service contracts, compared to directly awarding contracts to Dublin Bus or Bus Éireann?

Preliminary Legal Considerations

Before it commences any evaluation of the potential benefits of competitive tendering, the NTA will need to address a preliminary question relating to the performance of the existing direct award operators. Is the Authority satisfied that the operators comply with the relevant provisions of Irish and EU legislation and jurisprudence so as to permit the continuation of the exclusive rights and direct award contracts beyond 2014? These considerations include the continued existence of a public service obligation as defined in section 47 and the reasonable

cost and efficient operator tests referred to in section 50(4).

Potential Benefits of Competitive Tendering

A range of potential benefits are claimed for competitive tendering of bus services, including:

- establishing the real cost of providing services through a market test;
- significant cost savings for initial contracts, possibly declining in subsequent contract periods as a result of market consolidation;
- significant improvements in operational performance, service quality and customer care;
- innovation in management practices and service provision.

Achieving Benefits dependent on Contracting Authority Skillset

These benefits are not an automatic consequence of the introduction of competitive tendering. They are critically dependent on the resources, skills and expertise of the contracting authority in planning, administering, implementing and monitoring the contractual process. The issues discussed in our responses to Questions 1 and 2 are directly relevant in this context. The contractor will deliver precisely what it is asked to and no more. If the contracting process is badly designed or managed, the taxpayer will get poor value for money and the responsibility for this will lie with the contracting authority. Therefore a key question to be considered by the NTA is whether it has, or will be able/permitted to acquire, the necessary resources, skills and expertise to proceed with contracting while avoiding the pitfalls referred to in this response.

Retaining Competitive Tension

There is a tendency towards consolidation after the initial contract period, often with fewer tenderers and higher contract costs for equivalent output. A key question for the contracting authority is how best to retain adequate competitive tension in the longer term. It is important to avoid the risk of replacing a public monopoly provider with a private one. This is an issue of particular significance for Ireland because of the relatively small size in international terms of its PSO bus market.

Retaining an Integrated Network

Among the benefits claimed for a direct award system is the level of integration and flexibility it provides. An integrated network of services is probably most easily provided by a single operator. There is greater flexibility to amend services to reflect changing customer requirements, falls or increases in demand, exceptional peaks in demand or reduced public funding. By way of contrast, a potential downside of competitive tendering is that it can lead to a static model of service provision which is slow to respond to external factors. The contractor provides the services required by the contract and has no incentive to increase that level of provision. If additional services are required it may be necessary to review the terms of the contract, involving both time and money.

Risk of Under-priced Tenders

A related risk that needs to be considered is under-pricing the tender to win the contract. This can have adverse consequences for the quality of service delivered or ultimately for the viability of the contractor itself. Under-pricing can also be used to remove competitors, potentially resulting in less competitive future tender rounds and higher prices.

Importance of Considering Risks and Rewards

The NTA needs to consider the extent to which the claimed benefits are derived from the direct award system and how best they can be preserved in a tendered system. It also needs to assess the potential downsides of a contracted system and how to address them in tender design and implementation. These are not new issues and it will therefore be essential for the NTA to look for guidance based on the extensive experience of public transport authorities elsewhere.

Staff Pay and Conditions

The NTA should consider whether it would wish to include conditions in any competitive tendering process which stipulate requirements in relation to pay and conditions. Public transport authorities in some countries have included conditions which effectively prevent price competition based on lower remuneration, terms and conditions for employees than apply in the existing direct award operator. This may be done for social policy reasons or because there is a concern about de-skilling in the sector. It may also facilitate a smoother transition from direct award to tendered service provision, reducing the concerns of existing employees. Such contract stipulations would of course diminish the scope for tenderers to reduce costs. The alternative approach is that tenderers should be free to pay what market conditions require and in any event they will be subject to the Transfer of Undertakings Directive which affords significant protections to employees transferring from one employer to another.

Potential Impact on Incumbent Operators

Tendering has potentially significant impacts on the incumbent direct award operator, particularly if it loses substantial market share, and these should be considered by the NTA. They take on an even greater significance in a shrinking public transport market and could affect the future viability of the operator, with cost implications for the public purse. Employees would usually transfer to a new employer under EU transfer of engagements legislation, but what about buses and depots which become surplus to requirements? If they cannot be put to beneficial alternative use, there will be a significant economic loss and a failure to maximise the use of existing public assets.

Implementation Costs for NTA

The design, administration, management and monitoring of a system of competitive public service contracts involves a substantial financial overhead cost for the NTA, and by extension for the public purse. A sizeable proportion of this cost should anyway be incurred in the implementation of an effective direct award contracts system, but the cost of the tendering process itself will certainly be additional and significant. The NTA should therefore weigh up the benefits against the additional

expenditure involved.

Consider Extensive Foreign Experience

There is extensive experience of tendering across Europe and worldwide and studies have been carried out of its effectiveness. These should be fully considered by the Authority as part of its deliberative process.

Overall View of Institute

While free competition is among the guiding principles of the Institute, it accepts that there are complex issues to be addressed when considering whether to continue with direct award contracts or move towards competitive tendering in respect of the provision of PSO bus services. The Institute is not adopting a definitive position at this time, but urges the NTA to carry out a comprehensive assessment of the issues involved, including those referred to earlier in this submission. Some of the key issues that the Authority should address can be summarised as follows:

- Do the incumbent operators comply with the reasonable cost and efficient operator tests under section 50(4) of the Dublin Transport Authority Act 2008?
- Has the NTA the necessary resources, skills and expertise to design and implement a competitive tendering process in a way which best delivers value for money for the taxpayer and public transport user?
- What are the benefits for public transport users and the taxpayer? Can they be quantified and will they be sustained over time?
- How can a competitive tendering process be designed in a way that delivers an integrated network and provides at least cost the necessary flexibility to respond to changes in demand, economic conditions or other relevant factors?
- What measures can be taken to minimise the risks of tender under-pricing and market consolidation in later tender rounds?
- What are the implications for the incumbent direct award operators and are they relevant considerations in the decision making process?
- What are the implications for staff of the incumbent direct award contractors? Should provisions be included in the tender process to address them and what are the cost implications of so doing?
- What are the additional costs of implementing a competitive process, over and above those of putting in place an effective direct award process, and do these additional costs outweigh the benefits?
- Are there other lessons that can be learned from the extensive experience of other public transport authorities in implementing a range of bus service procurement models?

Q7. Are there any other considerations you wish to identify or comment on, that are relevant to the new contracts for bus passenger services?

Large Exchequer Expenditure

The total cost to the State of public service contracts for bus services over a five year period could be up to €600 million. This is a very substantial sum and the design,

administration, management and monitoring of those contracts needs to be well resourced, notwithstanding the continuing difficulties with the public finances.

NTA Resources and Skillset

At the risk of labouring this point yet again, we wish to emphasise the paramount importance of the NTA having adequate resources, skills and expertise to carry out this work. This is true whether direct award or tendered contracts are involved. If it has not already done so, the NTA should carry out a skills audit to establish what skills deficits it needs to address.

Develop Skills In-House

The necessary core skills and expertise should be developed in-house and supplemented by specialist consultancy services. This approach represents best value for the taxpayer. A consultant-led approach would be more expensive and result in less skills transfer. Having the core skills in-house will also enable the Authority more effectively to manage the output of the consultancy work.

The Institute would be happy to support the NTA's business case to Government for the necessary resources generally and additional staff in particular. We recognise that there are continuing major constraints on the public finances and consequent restrictions on creating new posts. However exceptions should be made where there is a good business case and where there are demonstrable benefits to the public purse. Only a small number of specialist staff should be required which, together with the upskilling of existing staff and appropriate consultancy support, should be adequate for the task of ensuring best value for both taxpayer and public transport user in respect of Exchequer expenditure of up to €600 million. This expertise would also be available for the later renewal of the rail PSC which could involve Exchequer expenditure of up to €2 billion over a 15 year period.

Second Staff

As well as direct recruitment of staff with the requisite skills and experience, the NTA should second members of its existing staff to public transport authorities abroad. We have the advantage of being late into this process and we can therefore learn from the experience, and more particularly the mistakes, of others. The issues arising in Ireland are unlikely to be unique and solutions will have been found by others which are likely to be applicable in Irish circumstances. It would also be useful to seek staff placements in a range of public transport authorities which use different procurement methods, whether direct award, competitive tenders, concessions or hybrid forms.

Field Visits

Field visits to public transport authorities abroad are strongly recommended for relevant NTA staff, senior management and members of the Authority. These should include dialogue with the staff and management of those authorities and with public transport operators, local politicians, user groups, trade unions and business representatives. These visits tend to be very enlightening and the people consulted are usually very open and honest about their experiences. While it is understandable that the NTA might wish to curtail expenditure on foreign travel in current circumstances, it would be a false economy in this particular case. Should this become an issue at some future stage, you are free to refer to the Institute's support

for such field visits.

Continuing Professional Development

The Institute considers that there is an urgent need to improve the availability and quality of education and training specific to the transport sector and is engaged in a continuing dialogue with the third level educational sector about this issue. As discussed earlier in this submission, the effective implementation of PSCs, whether direct award or tendered, requires a range of skills and expertise which are in short supply. The NTA should consider how this deficit might best be addressed in advance of the 2014 PSC process. The Institute would be happy to work with the NTA on this issue.

Chartered Institute of Logistics and Transport in Ireland

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