

SUBMISSION FROM THE CHARTERED INSTITUTE OF LOGISTICS AND TRANSPORT IN IRELAND TO THE NATIONAL TRANSPORT AUTHORITY'S PUBLIC CONSULTATION IN RESPECT OF PUBLIC BUS SERVICE CONTRACTS

Introduction

The Chartered Institute of Logistics and Transport in Ireland ("the Institute") is the independent professional body for people engaged in logistics and all modes of transport. The Institute is part of an international body with 30,000 members worldwide. As a professional body, the Institute does not lobby on behalf of any sectoral interest, but seeks to take an independent, objective and considered view on matters of public policy.

The Institute welcomes the opportunity to respond to the public consultation in respect of public bus service contracts.

Timing and Duration of Consultations

In its response to the consultation on the draft Integrated Implementation Plan for the Greater Dublin Area, the Institute expressed its disappointment about the timing and duration of that consultation. On this occasion the Authority launched two important consultations on public bus service contracts and a cycle network for the Greater Dublin Area at the same time. They both have short consultation periods and their response deadlines are within four days of each other. This makes it very difficult for interested parties to respond effectively to both consultations and this is particularly so for organisations, such as the Institute, which rely to a large extent on the voluntary efforts of members. The unfortunate result is that we will not be able to make an input to the cycle consultation.

The Institute welcomes the opportunities being afforded to it to make an input into policy development but strongly urges the Authority to take immediate action to ensure the better phasing and timing of future consultations and to provide, where feasible, a longer period for responses.

The Section 52 Test

Section 52 of the Dublin Transport Authority Act 2008 requires the Authority, before entering into any new direct award contract for public bus services, to satisfy itself that the continued adequacy of the public bus services to which the contract relates can **only** be guaranteed in the general economic interest by entering into a direct

award contract. The Authority acknowledges that this test sets a very high threshold but it is not wholly clear from the extensive consultation documentation what conclusion the Authority has reached. In the case of both the Dublin Bus and Bus Eireann services, the consultation papers state that the Authority “considers that the general economic interest would be **best** served” by retaining a substantial portion of services, but not all services, in a direct award contract. On the face of it, this conclusion does not seem to meet the “can **only** be guaranteed” requirement set down in the 2008 Act. When making its final determination, the Authority should state with greater precision what its exact conclusions are. Has it concluded that the continued adequacy of specified public bus services can only be guaranteed in the general economic interest by entering into a direct award contract or has it concluded that tendering should be introduced, albeit on a phased basis?

In our response to the 2012 public consultation, we raised a question as to whether it was possible to introduce tendering on a limited basis while at the same time retaining exclusive rights and direct award contracts. This does not appear to have been definitively addressed in the consultation documentation, but should be in the Authority’s final determination.

Selection of Services for Competitive Tendering

If the Authority decides to proceed with an element of competitive tendering, around 10% of the relevant market is in principle about right for the initial market test. It is of a sufficient scale to attract interest from bus operators and is of manageable proportions for the incumbent operator to address if it does not win the contract.

Two issues need to be considered in deciding the composition of the tender packages – the types of service to be included and the size of the tender package.

It is proposed to tender orbital and local services in the **Greater Dublin Area**. There may be a certain logic to this approach for the reasons set out in the consultation documentation. However there are questions as to its value. While it would undoubtedly provide the Authority with a valuable opportunity to test the market and obtain experience of the tender process, how much useful information would it provide to guide a decision on potential further opening of the market at a later stage? Local and orbital routes are not typical of the services provided by Dublin Bus. These are largely radial and they generally have different service patterns and frequencies and different operating conditions when compared with orbital and local routes.

The point is made in the consultation documentation that the orbital and local services have not been reconfigured as part of the Network Direct project and that they therefore offer significant potential for delivering cost efficiencies and possible service improvements within a low risk environment. However it also means that they

would not necessarily be a good guide to the cost efficiencies and service improvements that could potentially be achieved from subsequently tendering the radial network which has already been reconfigured and has delivered significant cost and efficiency benefits.

We also have a range of specific concerns. Most of the routes are very small (23 routes operated by 80 buses) and geographically dispersed, stretching from Skerries in the north to Dunboyne in the west and Newtownmountkennedy in the south. These routes are currently operated from six Dublin Bus depots and contractors would probably require at least three alternative depots and a lot of dead running between these depots and the termini. There is already spare capacity in the existing depots and this would increase further if Dublin Bus did not win the tender competition. This is an inefficient use of resources and consideration should be given to ways in which existing depot space could be used. The depot issue will have to be addressed if tendering is expanded and it might be as well to face up to it now.

The proposed selection of orbital and local routes would provide no little or opportunity for an operator to plan and deploy resources on a network rather than a route basis. Some of the local routes serve a market in tandem with a radial route and it may be less than optimal to have them operated by different service providers. Examples include route 70 to the city supplemented by route 270 (Dunboyne-Blanchardstown) and route 33 to the city coupled with route 33a (Skerries-Swords-Airport). The Authority may also be too optimistic about the scope to grow business on the orbital and local routes because the economy and residential development are likely to grow at a somewhat slower pace and public funding may continue to be constrained and consequently not be available to support service expansion of up to 50%.

If our concerns prove to be well founded, they could lead to greater cost to the public purse than necessary, less than optimal efficiency and above all a poor basis on which to assess the efficacy of competitive tendering.

It is not clear from the consultation documentation how the services would be tendered – as one package, as a series of packages or route by route? The economic analysis suggests two packages, each of about 40 buses on the north and south fringes of the city. However the consultation paper appears to give no indication of the Authority's thinking in this regard. This should be addressed in the final determination.

As mentioned earlier, the services proposed to be tendered are very dispersed and this would present significant operational challenges such as where to position the fleet to optimise efficiency and where to provide depot facilities. Two packages, north and south, would go some way to address this concern.

Another factor referred to in the consultation documentation is the trade-off between a high level of competition (small number of routes in each tender) and economies of

scale (larger number of routes in each tender). The market consultation also revealed a difference of preference between Irish and international operators. Irish operators had a preference for smaller tender packages, less than 50 buses and preferably 20. International operators would wish to have packages of not less than 50 buses and preferably over 100. It may therefore be appropriate to have both smaller and larger packages to provide an adequate market test and effective competitive tension. It would also be important to consider the longer term implications where, for example, the PSO bus market was fully tendered. The Authority should consider how it might counter the tendency in other countries towards market consolidation over time, with fewer tenderers and therefore less competitive tender prices.

This initial market testing phase of competitive tendering should be used to trial a range of contract types. While the trend elsewhere has been towards route-based contracts, it may be useful to market test an area-based contract in Irish conditions. Orbital and local services might offer a suitable opportunity for such a contract. These services are underdeveloped and also present a challenging environment for traffic development. However this may also present an ideal opportunity to test the capacity of operators to be innovative. One way of doing this might be to use an initial request for proposals to test the market for innovative ideas and to follow this with a tendering process involving a shortlist of those who responded to the initial RFP. A route-based approach may provide little opportunity for innovation and may encourage a renewed tendency towards network fossilisation. This could be increasingly true the more detailed the service specification.

An area-based approach might encourage tenderers to think outside the box and this might be particularly useful in an area which has not been the subject of a detailed network review. It might also encourage a more root and branch review of how well the current network matches present and emerging travel demand, including latent demand. The Authority should ensure that all available transportation planning and traffic data is available to potential bidders.

A range of potential services has been identified for tendering **outside the Greater Dublin Area**, including city services, commuter services and rural stage carriage services. There is merit in selecting a range of service types for inclusion in the initial tender competition so as to obtain the best possible information to guide any potential future extension of tendering. Of the three potential combinations suggested in the consultation paper, a package comprising Waterford city services and stage carriage services in the southeast would seem to have the most merit. It offers geographical coherence and a mix of service types. Inclusion of all the Waterford city services in a package would seem to be a better option than a small number of Cork city services. Consideration could also be given to tendering a package of Dublin commuter routes. However the northern and southern coastal routes proposed in the consultation paper are very dispersed, stretching from Newry to Wicklow. They would, however, extend the range of service types to be market

tested in the Greater Dublin Area but would have to be tendered on their own because of the legal restrictions on the areas of operation of Dublin Bus and Bus Eireann.

It is proposed to tender between 7 and 10% of the existing PSO market outside the GDA. This would represent between 28 and 40 buses, based on a PVR of 401. A tender package at the lower end of this range might not be terribly attractive to the market, especially if it was widely geographically dispersed. It might therefore be preferable to consider a market segment of around 10% which would permit both a reasonably sized package and one or more small contracts. It should be possible for Bus Eireann to absorb the loss of a segment of this size given the total scale of its operations.

The rationale for including the stage carriage services in the southeast as a tendering option is that a re-organisation of PSO stage carriage and rural transport services has already taken place in this region. This seems to be at odds with the rationale for the inclusion of orbital and local services in the Greater Dublin Area in that they offer significant potential for delivering cost efficiencies and possible service improvements. The Authority should explain more clearly why seemingly contradictory rationales are appropriate to the selection of these routes for tendering.

The selection of routes for tendering should also have regard to how the existing bus fleet and drivers are deployed. For example, buses may be currently used to operate a range of different service types, say both city and commuter, with the objective of maximising their utilisation. It would be important to preserve these efficiencies in designing any tender package.

Design and Specification of the Tender Competition and Subsequent Contracts

The Institute supports the broad conclusions set out in the consultation documentation relating to the design and specification of the tender competition and subsequent contracts and offers the following specific observations:

- Specific requirements in relation to integration should be included, covering ticketing, fares, information and branding. The Leap card should be available for use on all tendered services and the full range of ticket types should be available on it. Fares integration should also be developed to ensure that the fare charged reflects the journey taken rather than the number of operators or modes used to complete that journey. The introduction of daily fare caps is a start in this direction but it is of little benefit to people who do not make multiple trips.
- It would also be important to address timetable integration and the interlinking of public transport services, particularly where service frequencies are lower.

The focus has to be on enabling people to make end to end journeys as conveniently as possible without incurring substantial additional interchange penalties. There is no point taking a lower frequency local service if it does not connect, conveniently or at all, with say a higher frequency radial bus service or an intercity or commuter rail service.

- As mentioned earlier, this market testing phase of competitive tendering should be used to assess the applicability of different contractual models to Irish conditions.
- We note that detailed service specification is the trend in other jurisdictions, covering frequency, reliability and punctuality. However this should be coupled with the flexibility to adjust services to reflect changing demographic and economic circumstances. We support the inclusion of provisions which would provide the scope to grow orbital and local services, while acknowledging that this may be difficult to achieve because of slower economic growth and continuing constraints on the public finances. These services are currently the poorest and have been least responsive to changing circumstances. They also have the potential to attract additional users, particularly from the socially deprived cohort and private car users. The service specification should also be flexible enough to take account of developments during the period of the contract which could arise from a range of factors such as new employment locations or retail developments or even to address the consequences for PSO services of bus licensing decisions (for example the loss of services through smaller towns and villages following the introduction of direct long distance services using the motorways).
- The specification should also include quality of service requirements, building on those already contained in the existing direct award contracts. However the performance specifications, in both the tendered and direct award contracts, should be strengthened. The current performance specifications provided a useful starting point when contracting was being introduced for the first time. However the current requirements are not challenging enough, nor do they accord with best international practice.
- We are inclined to favour the use of gross cost contracts with incentives based on experience elsewhere in Europe. In such contracts revenue risk remains with the contracting authority and it is critical that measures are included in the contract to ensure that the operators fully recovers revenue on behalf of the contracting authority. However net cost contracts, where the operator retains the revenue risk, tend to be better at providing the operator with incentives to grow traffic. The Authority should therefore consider how it can ensure, through specification and incentives, that traffic growth is promoted and facilitated by operators.
- As well as performance standards, the Authority should set down strong requirements relating to technical standards, vehicle maintenance and staff

training. It should put in place effective measures to enforce compliance with these requirements and to supervise compliance with existing statutory obligations such as the Driving Time Directive and the Health, Safety and Welfare at Work Acts. It is not enough to write in terms in the contracts requiring that both direct award and tendered operators comply with such requirements. The Authority has an obligation to ensure that operators comply, if for no other reason than that it will be held to account for any failure particularly where it relates to public safety.

- The Authority should consider whether it wishes to include conditions in any tendering process which stipulate requirements in relation to pay and conditions. Some public transport authorities have included conditions which seek to prevent price competition based on lower remuneration, terms and conditions for employees than apply in existing direct award operators. This may be done for social policy reasons, to facilitate a smooth transition from direct award to tendered services and/or to prevent deskilling in the sector. The alternative is to allow tenderers the freedom to pay market rates, subject to compliance, where applicable, with the Transfer of Undertakings Directive.
- Consideration should be given to how to combat bid rigging and future market consolidation. Consolidation will clearly not be a factor in this initial tendering phase, but it is important to start considering now how it might be addressed if tendering were to be extended. Consolidation and dominance by one or a small number of operators is a particular concern in the small Irish market and could lead to increased costs for the provision of PSO services in the longer term. Consideration should therefore be given now to these longer term issues because they might influence the shape and scope of this first tendering process.
- When assessing tender prices the Authority should consider whether there are any issues relating to compliance with the law. For example, do the tender prices give rise to any concerns about compliance with taxation law or driving time regulations?

The documentation suggests that all tender competitions will be run concurrently. This may make it difficult for small operators, with limited resources and tendering skills, to respond as fully as they might wish and may, therefore, limit the amount of competition for tenders. One possible way of addressing this might be to have a phased rollout of tenders over a relatively short period. This would enable small operators to participate more effectively without deterring participation by larger operators.

Consideration should be given to whether Bus Eireann and Dublin Bus will be allowed to tender for contracts outside their operational areas. A view may be taken that this is precluded by the existing law which delimits the area of operation of each company or that it is incompatible with the award of exclusive rights. However, such restrictions may not be compatible with a potential gradual extension of tendering.

Very careful consideration will have to be given to the design of the tender competitions so as to ensure a level playing field. On the one hand Dublin Bus and Bus Eireann may have incumbency and other benefits that need to be taken into account and on the other hand private operators may be offered free depot facilities and buses. It would be important to undertake a thorough economic analysis as part of the competition design process to ensure that factors which might give an unfair advantage to any party or might affect the subsequent assessment of the impact of competitive tendering are fully taken into account.

Implementation Risks

The Institute strongly endorses the implementation risks identified in the economic analyses published by the Authority and would draw attention to similar conclusions in our submission to the 2012 public consultation on the public bus service contracts. There are a number of important health warnings which we strongly endorse, including the following:

- The need for careful design of the tender competition to prevent the emergence of cartels and bid rigging, as suggested by the Competition Authority.
- The importance of adequate preparation by both the contracting authority and the bidders.
- The need for the contracting authority to be adequately resourced to effectively manage the tender process.
- Ensuring the stability and reliability of bus services following the announcement of a tender competition and effective management of the transition where the incumbent operator does not win the tender.

In its response to the 2012 public consultation, the Institute placed strong emphasis on the Authority having the necessary skills, expertise and resources to manage the whole public service contracts process, whether tendered or not. The requisite skills are a scarce commodity in Ireland. A skills audit should be undertaken to establish what skills deficits exist, covering network planning, tender design and administration, contract preparation and specification and measurement and evaluation of performance. The necessary core skills should be developed in-house as this represents the best value for money for the taxpayer. A consultant-led approach would be more expensive and result in less skills transfer. Having the core skills in-house would also enable the Authority more effectively to manage the output of consultants engaged to do specific pieces of work. Where possible, staff should be seconded to public transport authorities abroad and field visits should be undertaken. Skills and expertise have to be augmented by local knowledge. Even In a country as small as Ireland it would be inadvisable to attempt to draw up a service specification at national level without an adequate input of local network expertise.

We urge the Authority to outline in its final determination its assessment of the capacity of the Authority effectively to administer a competitively tendered system of public service bus contracts. The Authority should only proceed to implement such a system when it is satisfied that it has the necessary skills, expertise, local knowledge and experience.

The Institute considers that hands-on bus operational and network planning expertise and experience is a necessary core skill. Without it, the Authority will find itself in a weak position vis-a-vis bus operators, whether tendered or direct award.