



Public Accounts Committee



Management of Bus Contracts: Following up the investigations of the Comptroller and Auditor General.

Presented to the States on 2nd August 2012.

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1. Terms of Reference

1.1. The terms of reference for this review were;

1. To establish what action has been taken to ensure value for money in relation to the recommendations of the Comptroller and Auditor General in his report “Management of the Bus Contracts”.
2. To report findings from this review to the States.

2. The Report by the Comptroller and Auditor General

- 2.1. In July 2011, the Comptroller and Auditor General completed a report on the Management of Bus Contracts. A number of recommendations were made to allow informed decisions to take place regarding the design of the new contracts.
- 2.2. PAC recognises its responsibility in following up the Comptroller and Auditor General recommendations. However, we also recognise the sensitive timing of these comments due to the new contract being under development.
- 2.3. The report of Management of Bus Contracts has therefore been followed up by way of correspondence with the Transport and Technical Services and the Central Procurement Team.
- 2.4. It was fundamental that lessons were not only learnt from the last contract, but in order to move forward and ensure the success of the new Bus Contract and indeed any future contracts entered into by the States of Jersey, the lessons were acted upon. This has become all the more relevant in the light of the aims of the Comprehensive Spending Review, which is attempting to save £65 million from the Islands spending.
- 2.5. The Committee is impressed with the way in which Transport and Technical Services have taken on board the Comptroller and Auditor General’s recommendations whole heartedly and notes that the Transport and Technical Services web site states:

“Transport and Technical Services (TTS) believes an audit into the current bus contract by the Comptroller and Auditor General (CAG) will be a useful reference document for the new bus contract which is currently starting its tendering process.”

- 2.6. The Committee recognises that this can only positively assist with the tendering of the new contract.

3. Transport and Technical Services

- 3.1. TTS identified that the Sustainable Transport Policy (STP) has now been agreed by the States and they have made it quite clear that this policy forms the basis within the new contract. This will assist in the aligning of the terms of the contract with the more stable corporate aims of the States. It will also provide an established and agreed platform for any movement in those aims to be launched from. This should prevent any surprises in changes of corporate direction on the part of the contractor or the States and provide a robust position for measurements to be taken from.

- 3.2. A concern that does arise from this is whether the objectives of the STP will in fact be measured and therefore able to be relied upon for performance. The STP aims to meet objectives within the Strategic Plan 2009-2014 by striving to meet the vision:

“To provide travel choices for Jersey that reduce reliance on the car, provide access for all and protect our quality of life.”

- 3.3. Measurement systems for this, relating to bus usage, include increases in both peak hour bus usage and school bus usage by 100% by 2015.
- 3.4. Will TTS find themselves searching for sufficient manpower to provide the measurements required for monitoring success in these areas?
- 3.5. The Department have accepted that performance management is crucial to the successful private-public partnership of the bus contract. It has also accepted the

recommendation of the Comptroller and Auditor General, that performance standards need to be measured on outputs rather than inputs. In fact, it has gone further, in the department's research into current best practice, it has chosen to use a system of performance management that relates to both performance input and performance output.

- 3.6. One of the failures of the previous contract was performance management. Real-time Passenger Information System (RTPI) was used but found to be unsuitable. Not only was the basis of the measuring systems questionable because it was unsuited to such a small operation as Jersey but the manpower to undertake the process was not available, the system was too labour intensive and the cost of enforcement outweighed the potential gains. The Committee accepts that all may have seemed appropriate when the last bus contract was signed and that technology and understanding of best practice have both moved on since the inception of that contract.
- 3.7. The Committee is advised that the RTPI is now significantly advanced and the problems of earlier systems have been resolved. It now has the capability, in a small jurisdiction like Jersey, to allow information sharing in the tracking and recording of service delivery as an independent system that both parties have access to and can rely on. This may be an opportunity for the Department to be completely transparent by making the RTPI figures public, perhaps on a quarterly basis.
- 3.8. Other data can be obtained to support this system by customer satisfaction surveys and 'mystery shopper' visits. In 2012, this represents a modern industry standard and will supply a functional and robust measuring system for performance management. If the systems meet the stated expectations, the concerns of the Committee over the measurements may be shown to be without substance.
- 3.9. The Committee also held concerns relating to implementation. Although there was a penalty scheme built into the last contract, because the management of performance and measuring systems failed, nothing was done by way of implementation of the penalties due to the States. Estimates of the value of the penalties vary from an estimate by TTS of £89,200 per annum to a calculation by Pricewaterhouse Coopers of £748,951. The Comptroller and Auditor General

makes it clear that neither of these figures can be considered robust measurements, however the States could have made some return and even the lower figure has been reasonably considered 'substantial' by some. TTS have given an assurance that an appropriate penalty system, which can be monitored, agreed by both parties and implemented, will form part of the new contract.

3.10. So the difficulty appears to be managing the contract once operational. A senior staff member should be allocated the responsibility for such contracts once active. Failures, such as occurred previously, cannot be allowed to re-occur.

3.11. The Comptroller and Auditor General also discussed revenue sharing within his report. It can only be by the above areas which failed in the previous arrangement, being clearly defined, understood and agreed by both parties, that the provision of a bus service for Jersey will meet the expectations of the contractor, States of Jersey and the customers it serves. It is reasonable to expect a private contractor to return a profit. The contract should allow for that and revenue sharing is an intrinsic area of the covenant between the parties. Incentives to improve performance relating to revenue sharing must be implemented, whether to deal with positive or negative provision of service.

3.12. We have attached, in Appendix 1, the response received from the department so that the Public and other States Members are able to identify how TTS are currently carrying out the recommendations.

4. Corporate Aims

4.1. The Comptroller and Auditor General also discussed areas of concern throughout the whole of the States in relation to contracts;

"incentive and penalty schemes are a necessary part of any out-sourcing arrangement. It is not sufficient merely to specify such schemes in contracts, they must also be implemented.

The States should not become involved in such major outsourcing contracts unless incentive and penalty schemes are implemented. This in turn will

require the States to ensure that Departments create teams with the skills necessary to manage relationships with outsourcing contractors.”

4.2. Questions relating to these areas were put to the Central Procurement team for advice to the Committee. The response shows that Central Procurement are aware of the issues raised and have an action plan working towards best practice in some areas. See Appendix 2 for the response.

4.3. The Comptroller and Auditor General raised concerns over the skill sets required to deal with complex contracts throughout the States:

“...This in turn will require the States to ensure that Departments create teams with the skills necessary to manage relationships with outsourcing contractors.”¹

4.4. It is clear to the Committee that work is being undertaken to meet the demands of professional contracting within the States of Jersey. Recent amendments to Financial Direction 5.1 ensures contract monitoring meets standards with further reviews being undertaken into appropriate monitoring controls, particularly where contracts have complicated income-sharing clauses.

4.5. The Committee notes that Central Procurement have taken two years to arrive at where they are today. Progress appears to be very slow and in view of the statements made at inception that this unit would save £6 million, there may be a case for the Committee to examine the actual value for money of the unit at some time in the future.

¹ C&AG Report Management of the Bus Contracts, paragraph 101

5. Conclusions

- 5.1. The Committee will not involve itself in the work being done on the new contract. The PAC Chairman has liaised with the Chairman of the Environment Scrutiny Panel. Consideration of what needs to be done in that area is for that Panel.

- 5.2. The Committee has expressed some minor reservations but applauds the commitment shown by TTS to meet the recommendations of the Comptroller and Auditor General contained within his report "Management of the Bus Contracts".

6. Committee Membership

The membership of the Public Accounts Committee during the review comprised:

States Members

Deputy Tracey Vallois (Chairman)

Senator Sarah Ferguson

Deputy Shona Pitman

Deputy Richard Rondel

Independent Members

Mr A. Fearn

Mr S. Haigh

Mr C. Evans

Officer Support: Mick Robbins

7. Role of the Public Accounts Committee

The primary function of the Public Accounts Committee is defined in Standing Orders² to review reports by the Comptroller and Auditor General and to report to the States upon any significant issues arising from those reports regarding :-

- The audit of the Annual Accounts of the States of Jersey
- Investigations into the economy, efficiency and effectiveness achieved in the use of resources by the States, States funded bodies, independently audited States bodies (apart from those that are companies owned and controlled by the States), and States aided independent bodies
- The adequacy of corporate governance arrangements within the States, States funded bodies, independently audited States bodies, and States aided independent bodies,
- and to assess whether public funds have been applied for the purpose intended and whether extravagance and waste are being eradicated and sound financial practices applied throughout the administration of the States.

The Public Accounts Committee may also examine issues, other than those arising from the reports of the Comptroller and Auditor General.

The Public Accounts Committee represents a specialised area of scrutiny. Scrutiny examines policy whereas the Public Accounts Committee examines the use of States' resources in the furtherance of those policies. Consequently initial enquiries are made of Chief Officers rather than Ministers.

² Standing Orders of the States of Jersey 1st January 2006, No. 132.

Appendix 1

Recommendation	What is being done? (How, why, when and by whom.)	If not, why not?
<p><i>(Para)16 In future, on the basis of the experience gained from managing the bus contracts:</i></p> <ol style="list-style-type: none"> 1. <i>Contracts should be based on a clear understanding of the benefits to be obtained which should in turn be related to the States' current policy objectives.</i> 2. <i>As far as possible, any performance standards should be expressed in terms of outputs.</i> 	<p>TTS have incorporated into 2013 bus tender documentation requirements which link directly to objectives of the States Sustainable Transport Policy (STP). An example is the STP's targets for bus passenger growth which are specified as critical Key Performance Indicators (KPIs), these will provide measurable outputs which form a central part of the contract.</p> <p>TTS has undertaken extensive industry research, including direct discussions with leading Transport Authorities (such as Transport for London) and Operators, to understand industry best practice relating to performance measurement. Advice has also been provided to TTS by its Public Transport Consultant. The Key Performance Indicators to be used for monitoring the bus service will relate to service outputs and inputs, particularly those that most are valued by customers including quantitative information such as the percentage of journeys departing on time and the availability of services against advertised timetable and qualitative measures such as customer satisfaction surveys. The</p>	

	<p>most significant output incentives the operator will be the commercial arrangements, which allow them to keep the revenue resulting from their efforts to increase patronage and win extensions of time by meeting the STP's passenger targets.</p>	
<p>3. <i>Contract terms should reflect this understanding.</i></p>	<p>Within the new contract's terms and specification the objectives and their associated KPIs have been explicitly stated, with an account as to how they will be objectively measured (see Item 6).</p>	
<p>4. <i>Sufficient time should be allowed to achieve this.</i></p>	<p>The procurement of the 2013 bus contract commenced in April 2010 to allow sufficient time to appraise and understand what was "best practice" within the industry and ensure that suitable resources could be engaged and to deliver the required improvements to contract. The process is anticipated to be completed by Summer 2012. This also allows a realistic pre-start timescale before the commencement of the services on the 1st January 2013.</p>	
<p>5. <i>Contracts should provide for a process by which terms may be altered in the event that the States' objectives</i></p>	<p>The initial performance targets to be achieved are those of the STP and have a deadline of 2015 stated within the Contract Conditions. In addition annual targets are also specified as well as the specific 2015</p>	

<p>change.</p> <p>6. <i>The initial agreement of a contract should include agreement of the means by which a contractor's compliance with performance standards is to be monitored so that the performance and penalty provisions can be applied in practice.</i></p>	<p>ones. The contract also provides for a rolling two year review for the agreement of new or additional service targets for 2017 and 2019 as part of an on going flexible approach.</p> <p>The 2013 tender and new contract documents make it clear that the States' existing Real-time Passenger Information (RTPI) system, supplied by Vix Technology, will be the tool used as the basis of the contract monitoring regime. The system tracks and records the actual service delivery against that anticipated in real time. It provides a robust, auditable and independent mechanism that both parties have access to. In addition to this periodic and annual customer satisfaction surveys and mystery shopper visits will capture the more qualitative data. The all data will be open and shared jointly between the parties. All tenderers have indicated that they are satisfied with this as a basis for measuring performance of the service against that timetabled.</p>	
<p>17. <i>Whilst it is clear that the penalty regime provided in the bus contract was not implemented, in view of the uncertainty of the data available it is difficult to be precise about the consequences of this failure. However it</i></p>		

<p><i>seems reasonably clear that:</i></p> <ol style="list-style-type: none"> 1. <i>by implementation of the penalties regime the States would have been able to increase their influence over the way in which the contract was managed by the operator and thus the way in which services were provided.</i> 2. <i>the original contract terms were not originally established with sufficient clarity for penalties to be enforced and/or leverage gained from this.</i> 	<p>As a result of the lessons learnt from the existing contract the system and mechanism noted in Item 6 above has been included into the new contract's documentation.</p>	<p>The existing contract penalty system was designed in conjunction with professional consultants and was similar to that used by many UK local authorities at the time in 2002. However, to fully implement it would have been labour intensive to the degree that the cost of enforcement would outweigh the potential gains. The system's scale did not match Jersey's requirements.</p> <p>Over the last decade the industry has matured as has the technology and systems used within it. The term of the new contract has been constructed to provide clarity to operator as to the service objectives to be fulfilled and penalties to be incurred in event of a failure.</p> <p>Under the new contract a service failure would allow the TTS to recover between 110% to 150% of the actual cost for providing the service which has breached</p>
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<p>3. <i>the difficulty of implementing the penalty regime was maximised by the fact that it was targeted at a series of service failures (i.e. it was based on a series of input measures).</i></p>	<p>required standards. This will provide TTS sufficient leverage to ensure a reliable high quality service is maintained.</p> <p>The technology and mystery shopper, satisfaction surveys referred to in Item 6 will provide TTS the mechanism to administer and enforce the penalties in a practical cost effective fashion</p> <p>A balance of incentive and penalty is necessary to provide TTS the leverage to obtain the required behaviour and performance from future bus operators.</p> <p>The 2013 contract achieves this through aligning risk with the required outputs. The move from a Minimum Cost model to Minimum Subsidy means if the bus operator increases patronage he will enjoy the benefits of increased revenues. To achieve this positive 'outputs' such as a clean, friendly and reliable service which meets the needs of passengers are required.</p> <p>If the objectives of States policy are met as set out in the KPIs, an output of increasing commuter patronage by 100%, then operator will benefit from the extensions of time set out in the contract.</p> <p>Conversely, where performance standards are not met penalties are provided to</p>	
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<p>4. <i>without the influence that implementation of the penalty regime would have created, the States were in a weak position to manage the nature and direction of the service being provided by the operator.</i></p>	<p>incentivise timely remedial action or in the worse case, ultimately terminate the contract.</p> <p>Within the existing contract's risk model, incremental service enhancements proved to be expensive and protracted to implement as a result the bus network became stagnant.</p> <p>The terms of the 2103 contract provides for an alignment of risk with gain, an open book accounting regime which provides transparency for all improvements, modifications and reductions to the services. This will provide a more flexible and equitable framework to deliver the future services within.</p>	
<p>18. <i>The new bus contract should be drafted with a view to supporting a practical penalty regime and in the expectation that the regime would be implemented in practice.</i></p>	<p>The Department has recognised that any penalty regime must be such that it is practical to enforce and that suitable resources are available to enforce them. As stated previously the Department intend to use the RTPi system and surveys to provide the reports on performance against which adjustments to the contract price can be implemented.</p> <p>Both parties will use the RTPi system to allow them to review and demonstrate the actual service performance provided eg Service adherence/failures. The 2013</p>	

	<p>Contract sets out a simplified and manageable list of Service Failure's which are at the core of delivering the standards and performance required to achieve the short and long terms contract objectives.</p>	
<p>19. Once the new contract is in operation the penalty regime should be implemented.</p>	<p>The Department has set out in the tender documents and Conditions of Contract the implementation process and regime for Service Failures.</p>	
<p>20. As far as concerns procurement within the States generally:</p> <ol style="list-style-type: none"> 1. incentive and penalty schemes are a necessary part of any out-sourcing arrangement. 2. it is not sufficient merely to specify such schemes in contracts, they must also be implemented. 	<p>The Department agrees and has incorporated into the 2013 contract incentives and penalties that are designed to align the behaviours to States objectives, as well as promote a simple and transparent approach by the contracted parties to the risk profile of the contract.</p> <p>The Department agrees. As previously stated the use of the available and proven Real Time passenger Information System (RTPI) is at the heart of this for the 2013 contract.</p>	
<p>21. The States should not become involved in such major outsourcing contracts unless incentive and penalty schemes are implemented. This in turn will require the States to ensure that Departments create teams with the skills necessary to manage relationships with</p>	<p>Agreed, to achieved this and minimise cost TTS will contract in specialist services which can not be reasonable sustained in house.</p> <p>TTS consider that the success of this approach has been demonstrated in</p>	

<p><i>outsourcing contractors.</i></p> <p><i>22. TTS should be aware of the significance of incentives in contracts and the possibility of leveraging value. The use of outcome based measures in penalty regimes and break clauses are examples of techniques which can be used to achieve this. Importantly, they can both serve to provide an equitable risk sharing arrangement which engages both parties in the contract. This sharing of risk is often a crucial element underpinning wider contractual relationships.</i></p>	<p>formation of the specialist Project Team to procure the 2013 contract.</p> <p>The Department is aware of the significance of incentives (both positive and negative ones) within contractual arrangements. The department consider that the terms of the 2013 Contract carries a different risk profile to that of the current contract in that the fare revenue risk is the contractor's rather than the Departments. The 2013 Contract redresses the balance of the risk to a more equitable level between the parties.</p> <p>In addition the contract incentivises the contractor to achieve the annual and specific KPI's to obtain extensions to the existing term of the contract (up to a max of a further three single years).</p>
<p><i>23. There needs to be a clear understanding of how such terms will be used. For the next bus contract this might include ensuring that both parties understand:</i></p> <ol style="list-style-type: none"> <i>1. The arrangements for monitoring performance.</i> 	<p>As part of the Departments 2nd stage tender process, it has provided "guest" access to the RTP1 system to the preferred bidder to ensure they are familiar and fully understand the outputs available from it. This allows any concerns on its use or what is to be implemented to be resolved before the contract is signed. Generally, bus operators are already familiar with such systems as they are widely used within the industry.</p>

<p>2. <i>What will be measured and why, in line with the objectives of the contract.</i></p>	<p>The 2013 contracts annual KPI's set out the quality and performance to be measured. This includes growth in passengers to meet the STP targets as well as vehicle standards and compliance to the scheduled timetables etc</p>	
<p>3. <i>How data will be collected.</i></p>	<p>Data on timetable related compliance will be via the RTPi system. Quality related targets will be undertaken by periodic and annual customer survey, mystery traveller inspections and DVS licensing/checks. The activities may be undertaken in house or by independent resources.</p>	
<p>4. <i>How this data will be used to reinforce penalties and/or incentivise the contractor.</i></p>	<p>The data obtain will be used as defined in the 2013 Conditions of Contract and Specification. As stated before in some cases penalties are expressed as more than 100% of the relevant cost to the contractor.</p>	
<p>24. <i>The review of the bus contracts identified a number of minor issues:</i></p> <p>1. <i>The official contract for the schools and leisure service was not signed until January 2010 although the service</i></p>	<p>There is no specified Leisure service in the 2013 Contract just a Public (which visitors will use to get to the islands attractions) and a Schools service. Both have been specified in the contract specification. The</p>	

<p><i>commenced in January 2007 owing to legal delays.</i></p> <p>2. <i>The Schools leisure service is inconsistent in its description in the amount payable to the contractor in respect of the leisure service. All fare revenue is payable although some terms stated that profit is paid over.</i></p> <p>3. <i>The main service contract includes terms of revenue sharing designed to incentivise contracts. However, no terms were agreed.</i></p> <p>25. <i>None of these issues is significant in the context of the wider management of these contracts. However, the States should ensure that the risks associated with incomplete or inconsistent terms and contracts which are not signed when the service starts are mitigated by ensuring that clear agreements are in force.</i></p>	<p>premise of the 2013 Contract is to move from a Tourist based network, as exists to a focused public network to meet the needs of all users.</p> <p>The 2013 contract removes this inconsistency by combining the two existing contracts into one contract under one set of conditions and specification.</p> <p>The incentive sharing aspect of the 2013 contract is to be included within the Contract Conditions as set out in the 1st Stage Tender Documents.</p> <p>The Department agrees and has allowed sufficient time within the procurement process and its programme to deal with this potential risk.</p>	
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Appendix 2

Issue and department affected	Category / Risk	Recommendations	Priority	Update on prior years findings	Action Plan	Progress to Date	Status
<p>General contract management</p> <p>The Connex contract review identified a number of contract terms which were not being fully monitored. It cannot necessarily be inferred from this that there are more general issues with contract management and our scope did not specifically consider this.</p> <p>The States may wish to consider whether there are other contracts with complex terms (for example, terms which vary the cost base, or where there are income-sharing clauses) where additional monitoring would be beneficial.</p> <p>Departments affected</p> <p>States wide</p>	<p>Control issue</p> <p>The States may be failing to maximise the value for money obtained from the various contractual relationships in place.</p>	<p>We recommend that the States consider carrying out a review of its significant contracts. This review should look to identify those contracts which have more complex terms and which, if not closely monitored, may lead to a risk of full value for money not being obtained.</p> <p>As a result of this review, we also recommend that appropriate monitoring controls are put in place on those contracts identified. Consideration should also be given to whether any over-arching policies for the management of large-scale ongoing contracts should be</p>	<p>Medium</p>	<p>Management is currently negotiating contracts to ensure savings in key areas (e.g. facilities management, interim/agency staff, education supplies and printing). Further, management is currently performing a review of significant contracts to ensure value for money is obtained from the contracts.</p> <p>Officer Responsible</p> <p>Director of Strategic Procurement</p>	<p>Individual projects plans for specific procurement projects in place. 2nd Quarter 2011</p> <p>Publish guidance via Procurement toolkit to all departments on principles and best practice in relation to what should be included within contracts to ensure that performance can be monitored</p> <p>3rd Quarter 2011</p> <p>Disseminate best practice via toolkit and collate information from Departments on high value contracts using the guidance as a benchmark and set up monitoring</p>	<p>Procurements on target to be let by end of September 2011.</p> <p>Toolkit to be published as part of the wider Intranet upgrade – target date September 30th.</p> <p>Survey of larger contracts planned for October 2011.</p> <p>December 2011 update:</p> <p>Print contract in mobilisation phase – contract monitoring and management an integral part of terms and conditions – Officer allocated to ensure that the contract is</p>	<p>On Track</p>

Issue and department affected	Category / Risk	Recommendations	Priority	Update on prior years findings	Action Plan	Progress to Date	Status
		<p>reviewed.</p> <p>Current year update</p> <p><i>Partially Resolved</i></p> <p>We understand that management is currently in the process of negotiating contracts.</p>			<p>process thereafter.</p> <p>3rd and 4th Quarter 2011</p>	<p>delivered in accordance with the terms and specification</p> <p>Various other corporate contracts are due for completion end of December/ early January – slight slippage – All key contracts have contract management contained within the terms and conditions – officers will be allocated to manage delivery, savings and performance.</p> <p>Toolkit published October 2011</p> <p>Financial Directions 5.1 has a new section on contract monitoring (section 2.1.18) that makes</p>	<p>Delayed</p>

Issue and department affected	Category / Risk	Recommendations	Priority	Update on prior years findings	Action Plan	Progress to Date	Status
						<p>this mandatory – Published in November 2011</p> <p>General advice and guidance is included in the toolkit.</p> <p>Information required to ensure a targeted approach to wider SOJ departments has been collected. Survey due to commence in the New year.</p>	