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Committee Council  
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## Application of Probity Principles to GWRC PTOM Implementation and Procurement Activities

### 1. Purpose

This report:

- updates the Council on the Probity principles that will apply to GWRC's procurement of new public transport contracts under the Public Transport Operating Model (PTOM)
- identifies specific Council responsibilities in relation to the management of probity risk associated with all PTOM implementation and procurement activities
- advises the Council of the expected timing of GWRC's procurement activity for bus rail and ferry contracts.

### 2. Introduction

GWRC has commenced a major procurement process under PTOM that will result in new contracts for the provision of Metlink bus, ferry and rail services including the maintenance of the GWRL fleet of rolling stock. The total value of the contracts over the contract terms is in the order of \$2 billion.

Securing best value for money will require high levels of market participation and competition for GWRC's new public transport contracts.

Participation in GWRC's public transport service tenders will require potential operators to invest significant time and incur significant costs. For example the participation costs incurred by a credible international bidder for GWRC's rail operation and maintenance contract supplier are unlikely to be less than \$1m.

Potential operators will only incur such costs if they have confidence in:

- the profit potential/risk profile of GWRC's contracts
- GWRC's procurement and contract management personnel

- GWRC attention to probity throughout its procurement processes.

Having incurred significant tender participation costs any unsuccessful tenderer may seek to challenge the outcome if any aspects of GWRC's processes are perceived as not being robust and defensible. Significant legal, financial and reputational damage could result including from delays in execution of new contracts.

For the reasons above it is essential that GWRC takes a proactive approach to ensuring probity in all aspects of its public transport procurement activity.

### **3. PTOM Probity Approach**

At this stage of the PTOM process GWRC has:

- engaged an experienced Probity Adviser (Robert Buchanan, a Wellington public law and governance specialist) to provide proactive probity advice throughout the procurement preparation and implementation
- commenced a process to engage a probity auditor to provide independent assurance to Council, Tenderers and other stakeholders as required throughout the tender process
- received a draft Probity Framework and Probity Plan from Robert Buchanan that will guide all GWRC staff and others involved in the procurement processes.

The following principles underlie the probity framework for the PTOM project:

#### **Value for Money**

- probity expectations are embedded in project outcomes
- probity is managed to optimise competition and drive the achievement of best value

#### **Transparency**

- processes are well defined and documented.
- relationships are clear, with shared understandings

#### **Fairness and impartiality**

- processes are applied lawfully and consistently, without fear or favour.
- unfair advantages are identified and addressed

#### **Honesty and integrity**

- individuals and entities act appropriately and professionally
- public sector standards of integrity and conduct are observed

#### **Addressing conflicts of interest or role**

- expectations about conflicts are clearly understood and articulated
- conflicting interests and roles are identified, declared and managed

- individuals and contracted entities avoid situations that could compromise their integrity or the integrity of the project

#### **Confidentiality and security**

- confidences are respected, within clearly understood and documented limits
- information is safeguarded

#### **Accountability**

- information is available to assess performance, based on well-developed systems
- strong project governance systems are in place
- roles are clearly allocated, and parties are held responsible for their actions.

Any probity breaches that arise will be brought to the attention of Council immediately.

Communication with the operator market will be carefully managed to maintain probity, for example by ensuring where relevant that the same information is released to all parties at the same time. Any conversations between Councillors or Officers outside this process could potentially result in a real or perceived advantage to the operator, and should therefore be directed to the PTOM Project Manager for a response. This will ensure that a fair and transparent process is maintained throughout any implementation or tender process.

Staff of incumbent Operators will naturally feel anxious about any risk to job security that might arise from the outcome of GWRC's procurement processes. GWRC will work closely with incumbents to ensure that their staff are aware of the opportunities that will exist for their continued employment regardless of the outcome.

## **4. Role of GWRC Councillors**

As elected representatives of GWRC, Councillors will have a role as decision-makers in the PTOM procurement process. This can create some tensions between the decision-making role and the wider role of a councillor as an elected representative, especially with incumbent operators who will also be potential bidders for new contracts. Similar issues arise for Council officers in their role managing existing relationships and contracts while also being involved in the new procurement process.

Clarity of roles is important at all times and the flow of information to operators and stakeholders must be managed. GWRC's probity plan includes designated 'go-to' people for operators and stakeholders who need information. This will help officers control the flow of information and keep the 'playing field' level. A market soundings event is planned for 20 March 2014 to provide information about the PTOM procurement process and opportunities to the market and enable participants to ask questions and provide feedback in a controlled manner.

## **5. Probity Guidance**

GWRC has effectively commenced the PTOM procurement process with the pre-consultation processes that have commenced on the design of procurement units and policies for the new Regional Public Transport Plan. While ultimately it is for

Councillors to make their own judgements, the following guidelines, effective immediately, are recommended by Officers and supported by our Probity Advisor:

### **Contact with operators**

- Councillors should avoid meeting with prospective operators who may be bidding for contracts in the Wellington region
- Councillors should advise any prospective operators that seek meetings to contact the GWRC PTOM Project Manager for further information
- Councillors should restrict discussions with existing operators to current operations and avoid discussion of future contracting prospects.
- Councillors should keep a record of any contacts with existing or prospective operators, and inform the Project Manager for recording in the project's communications register.

### **Market Soundings Event**

- While there may be some merit in Councillors attending the market soundings event, they should do so as observers and with the purpose of gaining an understanding of the project, and should avoid speaking during the proceedings or engaging with operators during breaks. The exceptions are the Council Chair and Public Transport Spokesperson who will have a role in welcoming participants but will leave the event at the conclusion of the introductory session.

### **Personal Interests**

- Councillors should disclose any conflicts of interest, including pecuniary interests, in the usual manner.

## **6. Timing for tenders and commencement of new contracts**

Following Council approval of the tender documentation suite in late 2014 the proposed timing of GWRC's procurement of new performance based public transport contracts are:

### **Rail Unit**

Jan 2015	Tender released
Sep 2015	Contract signed
July 2016	Contract commences

### **Ferry Unit**

Feb 2016	Tender released
Mar 2017	Contract signed
Aug 2017	Contract commences

### **Bus Units**

Jan 2015	Phase 1 tender released
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Jul 2015	Phase 1 Contracts Signed
	Phase 2 Tender Released
Dec 2015	Phase 1 Contracts Commence
Dec 2015–Jul 2017	Phase 2 Contracts Signed
Dec 2017	Phase 2 Contracts Commence

## 7. Communication

Key audiences for communication activity regarding the GWRC’s preparatory phase in 2014 are:

- incumbent operators and their staff
- the operator market
- NZTA
- Council and GWRL’s Directors
- the general public.

The general public will not be affected during the preparatory phase or the subsequent tender processes. GWRC is unlikely to make public comment on the tender process until the outcome of the first tenders is known in late 2015.

## 8. The decision-making process and significance

Officers recognise that the matters referenced in this report may have a high degree of importance to affected or interested parties.

The matter requiring decision in this report has been considered by officers against the requirements of Part 6 of the Local Government Act 2002 (the Act). Part 6 sets out the obligations of local authorities in relation to the making of decisions.

### 8.1 Significance of the decision

Part 6 requires GWRC to consider the significance of the decision. The term ‘significance’ has a statutory definition set out in the Act.

Officers have considered the significance of the matter, taking the Council’s significance policy and decision-making guidelines into account. Officers recommend that the decisions sought in this report be considered to have low significance.

Officers do not consider that a formal record outlining consideration of the decision-making process is required in this instance.

## 9. Recommendations

*That the Council:*

1. *Receives the report.*
2. *Notes the content of the report.*
3. *Agrees that Councillors adopt the approach to managing probity outlined in section 5 of this report.*

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