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of the
Auditor-General

October 2011

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Probity of the processes leading up to the awarding of a
service contract: Regular passenger transport services in
Mount Gambier

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Dear President and Speaker

**Report of the Auditor-General: October 2011: Probity of the processes
leading up to the awarding of a service contract: Regular
passenger transport services in Mount Gambier**

Pursuant to section 39 of the *Passenger Transport Act 1994*, I herewith provide to each of you a copy of my 'Report of the Auditor-General: October 2011: Probity of the processes leading up to the awarding of a service contract: Regular passenger transport services in Mount Gambier'.

I have recently commenced a further examination pursuant to section 39 of the *Passenger Transport Act 1994* for contracts awarded in recent months for the provision of 'Adelaide Metro Bus Services', as part of the public transport system within metropolitan Adelaide. A report on that examination will be submitted for presentation to Parliament as the concluding element of that examination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S O'Neill'.

S O'NEILL
AUDITOR-GENERAL

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Probity of the processes leading up to the awarding of a service contract: Regular passenger transport services in Mount Gambier

1 Executive summary

1.1 Introduction

Mount Gambier is one of six provincial cities with passenger transport services operated under contract to the Minister for Transport.

The *Passenger Transport Act 1994* (PTA) requires the Minister, upon concluding a new contract for operation of passenger transport services entered into as a result of a tender process, to provide the Auditor-General with a report on the contract and tender process. As required by section 39(3f) of the PTA, I have examined the contract executed on 8 June 2011 and the probity of the processes leading up to the awarding of the contract for the Provision of Regular Passenger Transport Services in the City of Mount Gambier. The results of this audit examination are detailed in this Report.

The contract is for the provision of services comprising a combination of town and school services within the City of Mount Gambier.

The successful tenderer was BR & LA McCormick Pty Ltd trading as McCormicks Bus Service. The service contract is for five years with the option to extend for a further five years for an estimated total value of approximately \$6.1 million.

1.2 Requirements of the *Passenger Transport Act 1994*

The PTA incorporates provisions which require the Minister to do specific things in the conduct of processes for awarding of a contract for provision of passenger transport services, and mandates specific matters to be reflected in the contract. This examination has considered whether the processes leading up to the awarding of the contract with the successful tenderer and the contract entered by the Minister have complied with all requirements of the PTA.

1.3 Probity of procurement processes

In examining the probity of the procurement process leading up to the awarding of the contract, consideration was given to a probity framework which reflects common law principles and concepts and the requirements of authoritative guidance provided by the State Procurement Board and the Department for Transport, Energy and Infrastructure (DTEI). Consideration was also given to provisions of the Request for Tender document which established procedures which were to be followed in the tender process.

1.4 Outcome of the audit examination

The Audit examination disclosed some matters of procurement procedure and practice that were not satisfactory. These matters and related recommendations which were formally communicated to DTEI are detailed in sections 4.7 'Project management plan and risk

management plan', 4.8 'Probity plan and probity advisor' and 4.9.4 'Tender evaluation' of this Report. DTEI, in response, acknowledged the findings and advised that it will implement the audit recommendations.

The matters raised by Audit, considered individually and together, in my opinion, did not compromise the overall integrity of the procurement process.

1.5 Audit opinion

In my opinion:

- the procurement process leading up to the awarding of the contract for the Provision of Regular Passenger Transport Services in the City of Mount Gambier, was on the whole, consistent with appropriate probity standards
- the service contract meets the requirements of the PTA.

2 Audit mandate and scope

2.1 Section 39 of the *Passenger Transport Act 1994*

Section 39(3) of the PTA requires the Minister to provide the Auditor-General with certain contracts and a report on the processes for awarding the contracts. It further requires the Auditor-General to examine the contracts and to prepare a report to Parliament on the probity of processes for awarding the contracts. The specific provisions of the PTA are:

- (3e) If under a service contract awarded under this section the Minister is, or is reasonably expected to be, liable to make payments equal to or exceeding \$4 000 000 (in total) over the term of the contract, the Minister must, within 28 days after awarding the contract, forward to the Auditor-General—*
- (a) a copy of the contract; and*
 - (b) a report which describes the processes that applied with respect to the awarding of the contract.*
- (3f) The Auditor-General must, within the period of 4 months after the receipt of a service contract and report under subsection (3e)—*
- (a) examine the contract; and*
 - (b) prepare a report on the probity of the processes leading up to the awarding of the contract.*
- (3g) Section 34 of the Public Finance and Audit Act 1987 applies with respect to the examination of a service contract, and the preparation of a report, under subsection (3f).*
- (3h) The Auditor-General must deliver copies of a report prepared under subsection (3f) to the President of the Legislative Council and the Speaker of the House of Assembly.*

The requirement in subsection 39(3f) of the PTA that I examine a service contract and prepare a report on the probity of the processes leading up to the awarding of the contract was inserted into the PTA in 2003.¹

2.2 Scope of audit examination

In response to subsection 39(3f) of the PTA I have examined the important matters relating to the procurement and contract process for the Provision of Regular Transport Services in the City of Mount Gambier. The matters covered were:

- tender procurement initiation compliance with the Act
- service contract compliance with the Act
- procurement approvals/financial authorisations
- procurement strategy
- project management and risk management plans
- probity plan and probity advisor
- acquisition plan development and approval
- Request for tender
- tender receipt and opening
- tender evaluation
- purchase recommendation
- service contract management
- Ministerial direction.

The audit examination included the detailed review of procurement and contract documentation for the procurement process and inquiry of certain persons involved in the process.

3 Overview of the service provision and procurement process

3.1 Nature of service contract

Under the PTA, DTEI is responsible for the provision of passenger transport services throughout South Australia.

Mount Gambier is one of six provincial cities with passenger transport services operated under contract to the Minister for Transport.

A new contract for Regular Passenger Transport Services in the City of Mount Gambier was implemented as part of the process of re-tendering an existing contract which was approaching expiry.

The Mount Gambier City Bus Service operates every week day providing a combination of town services and school services. It does not operate on declared Public Holidays. The school services operate on a daily basis during school terms.

Specific route descriptions and timetables for the services were provided to tenderers as part of the Request for Tender Specification and Requirements documentation.

¹ By subsection 26(11) of the *Passenger Transport (Dissolution of the Passenger Transport Board) Amendment Act 2003*, Act Number 54 of 2003, which commenced on 1 January 2004 (see Gazette, 18 December 2003, page 4525).

3.2 Brief key procurement event chronology

On 15 September 2010 the Chief Executive of DTEI approved the Acquisition Plan for the procurement of Regular Transport Services in the City of Mount Gambier for the budgeted contract amount of approximately \$4.4 million (GST inclusive).

DTEI issued a Request for Tender on 5 October 2010. The tender closed on 5 November 2010. Tender submissions were received from two respondents. Their bid prices were in excess of the approval Acquisition Plan budgeted contract amount. Additional funding approval was obtained and the contract for the procurement services was awarded to one of the two tender respondents.

The successful tenderer was BR & LA McCormick Pty Ltd trading as McCormicks Bus Service. The service contract was executed on 8 June 2011 and is for five years with the option to extend for a further five years for an estimated total value of approximately \$6.1 million.

4 Audit examination findings and recommendations

4.1 Introduction

Section 2.2 ‘Scope of audit examination’ of this Report listed the important matters that were the subject of audit examination for the procurement of contract process for the Provision of Regular Passenger Transport Services in the City of Mount Gambier.

The following commentary provides specific discussion for each important matter examined. The commentary includes audit findings and where shortcomings were noted, audit recommendations.

As mentioned in section 1.4 ‘Outcome of the audit examination’ of this Report, audit findings and recommendations were formally communicated to DTEI. DTEI in response acknowledged the findings and advised it will implement the audit recommendations.

The matters raised by Audit, considered individually and as a whole, in my opinion did not compromise the overall integrity of the procurement process.

4.2 Tender procurement initiation – *Passenger Transport Act 1994* compliance

Preface

As the contract for the procurement of Regular Passenger Transport Services in the City of Mount Gambier was awarded by tender there was a need for compliance with certain requirements under the PTA.

The requirements to which Audit refers are detailed in the following sections of the PTA:

- Section 39(2a)(a) – Minister appointment of a person(s) to conduct the tender process.
- Section 39(2a)(b) – Submission of a report by the Minister to the Economic and Finance Committee.
- Section 39(3e) – Submission of a copy of the awarded contract and a report on the tender process to the Auditor-General.

Audit findings and comments

The examination conducted by Audit confirms compliance by the responsible Minister and DTEI with the requirements of the aforementioned provisions of the PTA.

4.3 Contract arrangements – Passenger Transport Act 1994 compliance

Preface

As mentioned, the contract for the Provision of Regular Passenger Transport Services in the City of Mount Gambier was awarded to one of the two tender respondents in June 2011.

Under the PTA the service contract must make provision for certain requirements. These requirements are described in sections 40(1) and 41(1) of the PTA. Other sections of the PTA, for example, sections 40(2) and 41(2), provide for other requirements that may be included in the service contract.

Audit findings and comments

The examination undertaken by Audit confirms that the executed service contract has made provision for the mandatory requirements and, where appropriate, for the other requirements described in the relevant sections of the PTA. Refer to the Attachment to this Report.

4.4 Procurement approvals/Financial authorisations

Preface

The Mount Gambier regular transport services procurement and contract arrangement had to meet certain approvals/authorisations in order to comply with requirements of the *State Procurement Act 2004* and Treasurer's Instruction 8 'Financial Authorisations' issued pursuant to the *Public Finance and Audit Act 1987*.

Audit findings and comments

Audit's examination confirmed relevant and appropriate approvals/authorisations were obtained for the procurement and contract arrangement, in particular the following approvals/authorisations:

- The Acquisition Plan identifying the procurement strategy (including the request for tender approach) and budgeted contract amount of approximately \$4.4 million (GST inclusive) was endorsed by the DTEI Accredited Purchasing Unit (APU) on 2 September 2010 and approved (under delegated authority from the State Procurement Board) by the Chief Executive, DTEI on 15 September 2010.

The budgeted contract amount reflected principally the approved funding requirement for the contracted service provision operating at the time of the procurement initiation. It was specifically mentioned in the Acquisition Plan that the costs submitted by tenderers may exceed the budgeted contract amount.

- The Purchase Recommendation to award the contract for approximately \$6.1 million to the successful respondent was endorsed by the APU on 17 March 2011 and approved (under delegated authority from the State Procurement Board) by the Chief Executive, DTEI on 29 March 2011.

The awarded contract amount reflected the increased cost of service provision arising out of the new procurement service arrangement.

- The financial approval (consistent with Treasurer's Instruction 8) to enter into the contract for the Provision of Regular Transport Services in the City of Mount Gambier to the successful respondent for approximately \$6.1 million (inclusive of GST and inclusive of indexation) was approved by the Minister for Transport on 4 April 2011.

4.5 Probity framework

By virtue of section 39(3f)(b) of the PTA, Audit has examined the probity framework that was applied to the procurement and contract arrangement for the Provision of Regular Passenger Transport Services in the City of Mount Gambier.

The specific matters examined in the probity framework were:

- procurement strategy adopted for the procurement and contract process, based importantly on the consideration of value and risk (including complexity) of the service to be procured
- risk management and probity arrangements for the procurement and contract process, including significant elements of the procurement process
- significant elements of the procurement and contract process.

In examining the probity framework, Audit gave specific attention to the policy and guidance frameworks of the State Procurement Board and DTEI.

4.6 Procurement strategy

Preface

The State Procurement Board policy and guidance framework requires public authorities (DTEI) to undertake a procurement strategy (including aspects of probity), in consideration of the value and risk (complexity) of goods or services being procured.

It is a requirement for a public authority to determine on the basis of consideration of the nature of the procurement (value and characteristics), the value/risk relationship that applies to the particular procurement. The value/risk relationship can be high value/high risk, or high value/low risk, or low value/high risk, or low value/low risk.

The value/risk relationship to apply to a procurement will dictate the procurement strategy to be adopted and the main elements to be applied in the procurement and contract process for the particular procurement.

The procurement strategy and procurement process (including elements of the process) are to be documented in an Acquisition Plan appropriately approved (refer section 4.4. 'Procurement approvals/Financial authorisations' of this Report).

Audit findings and comments

The examination by Audit confirmed satisfactory attention had been given by DTEI to the development and approval of the Acquisition Plan for the procurement.

The approved Acquisition Plan dealt satisfactorily with the guidance requirements of the State Procurement Board's 'Acquisition Planning Guideline'. In particular, the Acquisition Plan addressed the following matters:

- demonstrated consideration and documented the rationale for classifying the service procurement as 'high value/low risk'
- documented the procurement need, description of services and estimated cost/funding
- demonstrated consideration and documented the determination to adopt a procurement strategy and process using a Request for Tender market approach
- included as integral requirements of the Acquisition Plan the following documented plans:
 - Risk Management Plan
 - Probity Plan
 - Contract Management Plan
 - Project Management Plan
 - Evaluation Plan
- outlined certain matters relating to the contract and performance management of the successful service provider.

The acquisition and evaluation plans outlined a four stage procurement evaluation process, notably:

- mandatory criteria
- qualitative evaluation criteria/scoring
- value for money
- negotiation (if required).

In addition, the acquisition and evaluation plans indicated the intention to conduct an assessment of the financial capability of the respondents to the Request for Tender.

4.7 Project management plan and risk management plan

Preface

The Project Management Plan identified a timeframe for the procurement from July 2010 to November 2010, involving the significant milestones of the procurement process (procurement initiation through to evaluation and contract implementation). A post implementation review was also identified to occur in December 2010/January 2011.

The Risk Management Plan and its contents were formulated consistent with the 'high value/low risk' classification for this procurement (as discussed in the Acquisition Plan) and the procurement policy and guidance framework of DTEI. The plan detailed various procurement process, service delivery and contract management risks and control mitigation strategies.

Project management plan

Audit findings and comments

Audit examination noted that the planned procurement timeframe was not met. In particular, the targeted completion time of November 2010 for the implementation of the contract was not achieved. The successful respondent and unsuccessful respondent were formally advised by letter of the procurement outcome in late March 2011 and the contract was executed on 8 June 2011. The proposed post implementation review is yet to be completed.

Audit inquiry of the procurement project manager relating to the procurement timeframe and the post implementation review revealed the following matters:

- The responses from the two tenderers detailed bid prices in excess of the approved Acquisition Plan budgeted contract value of approximately \$4.4 million (GST inclusive). The procurement process was extended, mainly in consequence of the need to revisit the procurement strategy and service delivery outcomes and the requirement to seek approval for the upward revised budget for the procurement service. This important matter was not succinctly documented at the evaluation stage of the procurement process.

Audit requested that this matter and its underlying circumstances be documented and filed in the procurement documentation.

- DTEI intends to undertake a post implementation review which will include consideration of issues arising from the examination of this procurement process by the Auditor-General.

Audit recommendations

- Any significant changes in planned procurement process stages and associated timeframes, and the circumstances giving rise to those changes, should be appropriately and adequately documented in the procurement process.
- Any action/outcome contemplated and documented in the procurement process plans (such as the conduct of a post implementation review) should be undertaken in a timely manner, or departures should be appropriately and adequately documented and approved for the procurement process.

Risk management plan

Audit findings and comments

Audit examination considered the rationale documented in the Acquisition Plan and Risk Management Plan concerning the 'high value/low risk' classification accorded to the procurement. As mentioned earlier the classification will dictate the procurement strategy to be adopted and the main elements to be applied in the procurement and contract process for the particular procurement.

Audit was satisfied on the basis of the rationale documented in the Acquisition Plan and the contents of the Risk Management Plan that the procurement classification and strategy was appropriate.

4.8 Probity plan and probity advisor

Preface

Consistent with the ‘high value/low risk’ classification accorded to this procurement and the procurement strategy adopted, a Probity Plan was developed and formed an integral component of the approved Acquisition Plan.

The Probity Plan aligned with the requirements of DTEI’s policy and guidance framework. It included important requirements covering assessment and evaluation, communication with potential tenderers, conflict of interest, confidentiality and security of records and information, and important events such as receiving and recording of tender submissions.

The Probity Plan, as well as the Evaluation Plan, provided for the role of a probity advisor for this procurement ‘as and when required’. The potential probity advisor was identified as DTEI internal audit in the Evaluation Plan.

Audit findings and comments

Audit examination indicated that the procurement process was generally conducted in a manner consistent with the principles and matters outlined in the Probity Plan. However, as discussed in section 4.9.4 ‘Tender evaluation’ of this Report, there were identified shortcomings in the standards of documentation to properly evidence the transparency and responsibility and accountability of certain decisions/actions taken at the evaluation stage of the procurement process.

As mentioned, there was potential (if required) involvement of a probity advisor (DTEI internal audit). Audit formally confirmed with the Manager, Governance and Audit of DTEI whether she was informed of internal audit’s potential involvement or formally requested to provide probity advice for the procurement. The Manager formally responded that she was not informed of internal audit’s potential involvement and was not requested to provide advice for the procurement.

Audit recommendation

Actual or potential participants in a procurement process (in this case DTEI internal audit) should be formally notified and provided with a clear understanding of their responsibility involvement in the procurement process.

4.9 Significant elements of a procurement and contract process

4.9.1 Acquisition plan development and approval

Preface

The policy and guidance frameworks of the State Procurement Board and DTEI require an approved Acquisition Plan for most procurements, including this procurement. The State Procurement Board’s ‘Acquisition Planning Guideline’ indicates that adequate attention to this matter ‘... will result in the selection of the most appropriate procurement strategy, improved management and procurement, improved risk identification and risk management, better value for money outcomes and improved relationships with suppliers’.

The Acquisition Plan for a budgeted service contract amount of approximately \$4.4 million (GST inclusive), was approved on 15 September 2010 by the Chief Executive, DTEI under delegated authority from the State Procurement Board.

Audit findings and comments

As indicated in section 4.4 'Procurement approvals/Financial authorisations' and in section 4.6 'Procurement strategy' of this Report, Audit examination confirmed that satisfactory attention was given by DTEI in the development and approval of the Acquisition Plan for this procurement.

4.9.2 Request for tender

Preface

The Request for Tender for the Provision of Regular Passenger Transport Services in the City of Mount Gambier was issued on 5 October 2010. The closing date was 4 November 2010. This was changed to 5 November 2010 in response to a clarification document failing to load successfully onto the SA Tenders and Contracts website. Clarification related to the matter of compliance with the *Disability Discrimination Act 1992*.

The Request for Tender included 'Invitation to Bid documentation', 'Requirements and specification', 'Contract Terms and Conditions' and 'Response Templates'. The Request for Tender documentation is required to conform with the State Procurement Board policy and guidance framework, particularly the 'Standard Tender and Contract Document Guideline'.

As mentioned in section 4.2 'Tender procurement initiation - *Passenger Transport Act 1994* compliance' of this Report, pursuant to section 39(2a)(b) of the PTA, the responsible Minister must submit a report to the Economic and Finance Committee following the issue of a tender for the provision of regular passenger services. On 19 October 2010 the responsible Minister submitted a report to the Economic and Finance Committee. That report included the provision of the Request for Tender documentation.

Audit findings and comments

Audit examination of the Request for Tender documentation confirmed that it was consistent with the requirements of the State Procurement Board's 'Standard Tender and Contract Document Guideline'.

In addition, Audit examination noted that the Request for Tender documentation addressed important matters, including:

- expressed disclaimer of a process contract
- format, content, submission of bids
- conflict of interest and confidentiality
- evaluation process
- acceptance (non-acceptance) of tender.

In relation to the evaluation process, Audit examination revealed that the approach and methodology outlined in the Request for Tender documentation for the procurement evaluation was consistent with the Evaluation Plan for the procurement.

4.9.3 Tender receipt and opening

Preface

The Evaluation Plan for this procurement described the important matter of procedure to be applied to the receipt and opening of tenders. Such a procedure, and compliance with it, is an important probity event for procurement processes.

The Evaluation Plan indicated the requirement to conform with the procurement procedure of the DTEI 'Receipt & Opening of Tenders & Expressions of Interest'.

As mentioned above the tender closing date was 5 November 2010. Two responses were received to the Request for Tender.

Audit findings and comments

Audit examination of procurement documentation indicated that the tender receipt and opening event was in compliance with DTEI's procurement procedure 'Receipt & Opening of Tenders & Expressions of Interest'. In particular, the Audit examination indicated appropriate and adequate completion and sign off of the 'Schedule of Tenders' document to evidence tender close and opening at 2:00 pm on 5 November 2010 as described in the Request for Tender.

In addition, DTEI (through the Manager, Operational and Maintenance Contracts, Public Transport Services), forwarded letters dated 9 November 2010 to the two tenderers, advising that their respective tenders had been received and were in the assessment process.

4.9.4 Tender evaluation

Preface

The approved Acquisition Plan included as an appendix to that plan an Evaluation Plan document. The Evaluation Plan set out in detail the key principles to be followed for the evaluation (including signing of conflict of interest declarations by tender evaluation team members), tender evaluation team (TET) composition, detailed evaluation criteria and weightings and scoring system, and communication protocols with tenderers (including clarifications for tenders). The Evaluation Plan also made provision towards the end of the document for sign off by TET members.

The Request for Tender document issued to the public also provided information concerning the evaluation process, including the evaluation criteria (without weightings and scoring) and the nature of the tender assessment and clarification and negotiation process that could be adopted.

In addition, the Request for Tender document advised that tenders would remain valid for 90 calendar days after the closing date of tender submissions (ie 5 November 2010). It also advised the formal process to be undertaken to extend the tender validity period. An extension to the validity period required written request from the procurement project manager to the tender respondent and written confirmation from the respondent agreeing to the extension.

The Evaluation Plan provided for a four stage evaluation process to be undertaken by a four person TET. The four stages were:

- mandatory criteria, including:
 - accredited operator, vehicles and driver
 - insurance coverage
- qualitative evaluation criteria/scoring, including:
 - experience in passenger service provision (including people with disabilities)
 - service operations (methodology, contingency planning and ticketing system)
 - communications (radio/telephone)
 - implementation (management structure and staffing arrangements)
 - infrastructure (depots and vehicles)
 - safety
 - customer service
 - community consultation
- value for money
- negotiation (if required).

In addition, the Evaluation Plan indicated the intention to carry out a financial assessment of the respondents to the Request for Tender. This would be undertaken independent of the TET.

The procurement was under the overall responsibility of a project manager.

The successful respondent and unsuccessful respondent were advised by letter of the procurement outcome in late March 2011.

Audit findings and comments

The following provides specific observations and comments for certain aspects of the tender evaluation process.

Alignment of request for tender with evaluation plan

As mentioned in section 4.9.2 'Request for tender' of this Report, Audit examination revealed that the approach and methodology outlined in the Request for Tender documentation for the procurement evaluation was consistent with the Evaluation Plan for the procurement. This is sound practice.

Tender evaluation team composition and sign offs

Audit examination of procurement documentation revealed that the TET member composition changed from that initially envisaged in the Evaluation Plan. It was intended to have a community representative as a member of the four person TET. As a representative could not be sourced from the South East Community Passenger Network, a DTEI Policy and Planning Division employee was substituted for the community representative. This was allowed for in the Evaluation Plan. The procurement project manager requested approval for the change in writing to the DTEI Manager, Operations and Maintenance Contracts which was approved by that manager.

Audit examination also revealed that TET members signed off 'Conflict of Interest Declarations' and the Evaluation Plan prior to or at the commencement date of evaluation.

Date of tender evaluation team evaluation and acquittal of evaluation

Audit was unable from the review of procurement documentation to ascertain the specific date and timing of the TET evaluation process. There was no formal recorded minute(s) of the proceedings of the TET evaluation process. Also, the TET member mandatory and qualitative score sheets, TET summary mandatory and qualitative score sheet and the value for money score summary, were not signed and dated by the TET members. This is a notable shortcoming in transparency and evidencing of evaluation responsibility and accountability of task performance.

Notwithstanding this shortcoming, Audit examination of the score sheets and summaries, including TET members' comments on the score sheets, demonstrated satisfactory consideration and evaluation of the tenderers' bids. Audit inquiry of the procurement project manager and a TET member indicated that the TET evaluation meeting was held on 9 November 2010.

Tender evaluation clarification with respondents

Audit examination revealed that certain clarifications were sought from tender respondents. Consistent with requirements contained in the Evaluation Plan they were referred to the tenderers in writing from the procurement project manager and written responses were received from the respondents.

As explained in section 4.7 'Project management plan and risk management plan' (subheading 'Project management plan') the project timeframe was not met. It went beyond the tender validity period of 90 calendar days.

One of the clarifications that was sought from one of the tender respondents occurred after the expiry of the validity period. The clarification sought was consistent with the formal procedure outlined in the Request for Tender document.

Financial assessment of capability of respondents

Audit examination of procurement documentation revealed that financial assessments of the tender respondents were undertaken. The stated requirements for the financial assessments, particularly relating to the nature of the financial statements to be provided by the tender respondents, varied between the Acquisition Plan, Evaluation Plan and Request for Tender. The intention was that financial assessments were to be based on audited financial statements, however, they were undertaken on unaudited financial statements submitted by the respondents.

Tender evaluation team summary

Audit examination noted that the evaluation process and outcome was summarised in a satisfactory manner in the Purchase Recommendation report, rather than in a separate evaluation report signed off by TET members and forming an attachment to the Purchase Recommendation report.

Audit recommendations

- The proceedings and outcome of the tender evaluation team meeting(s) held to evaluate tender respondent submissions should be properly minuted to evidence the transparency and responsibility and accountability of the evaluation process and its outcome.
- Tender evaluation team documentation (such as member evaluation score sheets and summary score sheets) completed for the evaluation process should be dated and signed by the respective team members to also evidence the transparency and responsibility and accountability of the evaluation process and its outcome.
- DTEI standard(s) for the assessment of tender respondent's financial capability as outlined in key procurement documents (Evaluation Plan and Request for Tender) should be consistent and applied. Should a circumstance arise where a standard cannot be applied an alternative be adopted to achieve the objective of a sound/firm financial assessment.

4.9.5 Purchase recommendation

Preface

The policy and guidance framework of the State Procurement Board and DTEI requires the approval of a procurement Purchase Recommendation (in this case the approval to award a service contract for the Provision of Regular Transport Services in the City of Mount Gambier) prior to awarding the purchase contract.

As the State Procurement Board's 'Approvals Process Guideline' indicates, the primary purpose of obtaining a Purchase Recommendation approval is to:

- ...
- *certify that the process approved in the acquisition plan has been adhered to;*
- *identify any deviations which occurred during the process and subsequent treatment;*
- *endorse the purchase recommendation resulting from the approved process.*

The State Procurement Board Guideline expects the Purchase Recommendation to be presented as a report. The report is to provide an appropriate level of detail about the acquisition, indicating adherence or otherwise to the approved Acquisition Plan, and providing a summary of evaluation results, and presenting a recommendation to award a contract(s) or other action as appropriate.

The Purchase Recommendation awarding the service contract to BR & LA McCormick Pty Ltd, for a total contract value of approximately \$6.1 million for a term of five years with an option to extend for a further five years, was approved on 29 March 2011 by the Chief Executive, DTEI under delegated authority of the State Procurement Board.

Audit findings and comments

Audit examination confirmed the preparation of an appropriate Purchase Recommendation report for this procurement was properly approved by the Chief Executive.

4.9.6 Service contract and contract management

Preface

As mentioned the procurement service contract was awarded to BR & LA McCormick Pty Ltd. The contract was executed on 8 June 2011. Under the PTA the service contract must make provision for certain requirements. These requirements are described in sections 40(1) and 41(1) of the PTA. Other sections of the PTA, for example, sections 40(2) and 41(2), provide for other requirements that may be included in the service contract.

The approved Acquisition Plan indicated that the Request for Tender documentation would include a standard 'Regional Services Contract' that was previously developed by Crown Law and was consistent with other contracts used for providing passenger transport services in regional areas.

The Acquisition Plan also included as an appendix to that plan a documented Contract Management Plan. The Purchase Recommendation referred to the intended regular monitoring of the contractors future performance using the Contract Management Plan that was endorsed as part of the approved Acquisition Plan.

Audit findings and comments

As mentioned under section 4.3 'Contract arrangements - *Passenger Transport Act 1994* compliance' of this Report, Audit examination of the executed contract confirms that the contract has made provision for the mandatory requirements and, where appropriate, for the other requirements described in the relevant sections of the PTA. Refer to the Attachment to this Report.

In addition, Audit examination of the Contract Management Plan attached as an appendix to the approved Acquisition Plan reflects consistency with the requirements of the State Procurement Board's 'Contract Management Guideline'. The implementation of the Contract Management Plan by DTEI will be subject to Audit review as part of the annual program of audit of DTEI's operations.

4.9.7 Ministerial direction

Preface

Section 39(2a)(c) of the PTA provides for the responsible Minister to give a direction to any person during the tender assessment or selection process. Should a direction be given by the Minister then the Minister is required to meet certain reporting conditions regarding the direction.

Audit findings and comments

Audit examination of procurement documentation indicates that no direction has been given by the Minister. Notwithstanding, Audit requested of DTEI confirmation that no direction as provided for pursuant to section 39(2a)(c) was given by the responsible Minister. DTEI confirmed that no direction was given by the responsible Minister in respect of the procurement and contract process.

Compliance with subsections 40(1) and 41(1) of the *Passenger Transport Act 1994*

Paragraph	Contract
The period for which it operates - section 40(1)(a)	Clause 3.1 Clause 1.1.9 - Commencement 1 June 2011 Clause 1.1.19 - Expiry 31 May 2016
The manner in which it may be terminated - section 40(1)(b)	Clause 24
Standards relating to the provision of services under the contract - section 40(1)(c)	Clause 6.1 - General obligations Clause 8 - Approved vehicles Clause 9 - Accreditation Schedule 7 - Performance benchmarks
A scale of service levels - section 40(1)(d)	Clause 11 - The services Clause 7 - Additional regular passenger services Clause 16.1 - Variation to service specification, route or timetable Schedule 1 - Service specifications Schedule 3 - Service details and time tables
The fares to be charged - section 40(1)(e)	Clause 15.1 - Maximum fares Clause 15.2 - Application to vary fare schedule Schedule 2 - Fares
The manner in which the holder of the service contract will be remunerated or gain revenue from the provision of services under the contract - section 40(1)(f)	Clause 13 - Financial arrangements Clause 14 - Service defects Schedule 5 - Concession reimbursement policy Schedule 6 - Financial arrangements
Other matters required by this Act or the regulations to be specified in a service contract - section 40(1)(g)	Not applicable
Specify a region or route of operation - section 41(1)	Clause 11.1 - The services Schedule 3 - Service details and time tables

Compliance with subsections 40(2) and 41(2) of the *Passenger Transport Act 1994*

Paragraph	Contract
Reviewing or altering the fares or fare system in circumstances specified in the contract - section 40(2)(a)	Clause 15.2 - Application to vary fare schedule
Monetary or other penalties for breaches of the contract and the recovery of monetary penalties - section 40(2)(b)	Clause 14.2 - Service defects Schedule 6 - Financial arrangements
Bonds for the performance of the obligations under the contract - section 40(2)(c)	Not dealt with
Variation of the contract - section 40(2)(d)	Clause 30.4 - Variation
Renewal of the contract - section 40(2)(e)	Clause 3.2
Such other matters as the parties think fit to include in the circumstances of the case - section 40(2)(f)	All other clauses
Periodic review of any matter for the time being determined by or under the contract - section 40(3)	Various matters
Confer on the holder of the contract an exclusive right to operate a regular passenger service of the relevant kind within the specified region, or on, or in proximity to, the specified route (or part of that region or route) - section 41(2)(a)	Clause 7 - Additional regular passenger services Schedule 3 - Service details and timetables
Provide for other matters relevant to the operation of passenger transport services (including new services) within the specified region, or on, or in proximity to, the specified route - section 41(2)(b)	Clause 16 - Variation to service specification, route or timetable