

VICTORIA

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Victorian  
Auditor-General

# New Ticketing System Tender

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Victorian Auditor-General's Office  
*Auditing in the Public Interest*

The Hon. Robert Smith MLC  
President  
Legislative Council  
Parliament House  
Melbourne

The Hon. Jenny Lindell MP  
Speaker  
Legislative Assembly  
Parliament House  
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on *New Ticketing System Tender* together with a good practice guide titled *Public Sector Procurement: Turning Principles into Practice*.

Yours faithfully



DDR PEARSON  
*Auditor-General*

31 October 2007

# Foreword

International experience has confirmed that developing reliable and effective public transport ticketing systems is both difficult and expensive. Victoria's 'smartcard' public transport ticketing system (NTS) is a case in point. It involves a government investment of more than \$500 million, and it promises to transform the operations of the public transport network.

In examining the conduct, governance and probity arrangements of the NTS tender, this audit has reported a number of commendable features:

- the Transport Ticketing Authority (TTA) adopted an innovative, highly 'interactive' approach to the tender
- the tender was largely successful in terms of timeliness and value for money
- there were also areas of good practice in the conduct of the tender.

With respect to the probity of the NTS tender, and prior to the conduct of this audit, the then Minister for Transport requested this Office to investigate an alleged leak of confidential information from the NTS tender. The investigation found no evidence that TTA staff members provided the tender documents to anyone outside the Authority.

Nevertheless, this audit has pointed up other areas of probity management capable of improvement. It is in the nature of interactive tenders such as the NTS that the number of individuals involved in the tender process tends to increase, as does the potential for conflicts of interest. These circumstances warranted a particularly robust probity framework. However, audit found instances where the probity protocols were not applied, and in one important respect the probity framework was weakened during the tender.

In respect to managing potential and actual conflicts of interest, the TTA did identify conflicts in a timely fashion and the audit found no evidence of unfair or biased treatment of either individual tenderers or groups of tenderers.

Unfortunately, TTA's handling of perceived conflicts was not effective. The NTS tender has been the subject of much public conjecture and community interest, yet the TTA made few if any formal attempts during the procurement to assure the people of Victoria that the tender was being conducted appropriately. In this regard, the expectations of government are clear. The *Public Administration Act 2004*, the Code of Conduct for Victorian Public Sector Employees and the Victorian Public Entity Directors' Code of Conduct require officials to be as vigilant in the matter of apparent or perceived conflicts as they must be for actual conflicts.

Communicating to the community clearly and regularly about the process integrity of major tenders and how they are being managed to achieve value for money is key to maintaining community trust and confidence. Addressing perceptions of conflicting interests is an important probity consideration often overlooked, and as future major tenders are planned and implemented in Victoria, the NTS experience should be salutary.

A handwritten signature in black ink, appearing to read 'DDR Pearson', is centered on the page. The signature is fluid and cursive, with the first three letters 'DDR' being particularly prominent.

DDR PEARSON  
*Auditor-General*

31 October 2007

# Contents

Foreword .....	v
1. Executive summary .....	1
1.1 Introduction.....	1
1.2 Findings.....	1
1.3 Recommendations .....	6
1.4 Consider points .....	8
2. Introduction.....	15
2.1 Introduction.....	15
2.2 Audit objectives .....	16
2.3 Audit scope.....	16
2.4 Audit method .....	17
3. Governance and planning arrangements for the NTS tender.....	19
3.1 Introduction.....	21
3.2 Background to tender governance arrangements.....	21
3.3 NTS tender governance structures and roles.....	21
3.4 Findings relating to governance .....	26
3.5 Conclusion.....	31
3.6 Background to tender planning .....	33
3.7 Findings relating to planning .....	35
4. Management of the NTS tender .....	37
4.1 Introduction to tender management .....	38
4.2 The NTS tender process: Rationale and objectives .....	43
4.3 Description of the NTS tender process .....	44
4.4 Audit's assessment of the NTS process against the key tender elements and NTS objectives .....	49
4.5 Conclusions.....	53

5. Probity of the NTS tender .....	57
5.1 Introduction to probity in tendering .....	59
5.2 Background to tender probity arrangements .....	60
5.3 Managing conflicts of interest.....	61
5.4 Conflicts of interest in the NTS tender.....	62
5.5 Communicating with tenderers and managing information flows .....	63
5.6 Findings relating to probity .....	64
5.7 Conclusions.....	69
Appendix A: Background to re-tendering public transport ticketing .....	71
Appendix B: Investigation of alleged leak.....	73
Appendix C: Audit method .....	75
Appendix D: Overview of the NTS tender process.....	77
Appendix E: Background to interactive tender processes.....	79
Appendix F: Selected probity frameworks and instruments .....	81
Appendix G: Timeline of the Authority’s management of the Chief Executive Officer’s shareholding in Headstrong .....	83
Appendix H: Glossary .....	87

# 1 Executive summary

## 1.1 Introduction

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Victoria uses an automated public transport ticketing system, known as 'MetCard', for Melbourne's metropolitan trains, trams and buses. MetCard is a paper ticket which users purchase from vending machines, retail outlets and train stations.

In June 2003, the Transport Ticketing Authority (the Authority) was established to manage the existing MetCard ticketing system and to procure and manage a New Ticketing System (NTS) to replace MetCard.

In July 2004, the Authority issued a Request for Tender (RFT) for the provision and management of a 'smartcard' fare collection system. A smartcard is a plastic card that is used to record and charge for journeys on the public transport system. The estimated cost of the NTS is \$494 million (excluding operating costs and contingencies).

In July 2005, the NTS contract was awarded to Keane Australia Micropayment Consortium Pty Ltd ('Kamco'). Kamco is a subsidiary of Keane Inc. and partnered with Ascom, ERG Group and Geisecke and Devrient Australasia for the NTS project.

The audit examined:

- the governance and planning arrangements for the NTS tender
- the conduct of the tender, including the Authority's compliance with its tender process, procedures and associated probity controls
- whether the tender process, procedures and associated controls were consistent with sound procurement principles
- the extent to which the Authority achieved its procurement objectives
- the alleged leak of tender information.

## 1.2 Findings

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### Governance and planning arrangements

The Authority was established as a public entity in June 2003 under the *State Owned Enterprises Act 1992*. In June 2003, an interim chair was appointed. In February 2004, the Government established a Board of Directors to oversee the operations of the Authority.



Between the release of the RFT (30 July 2004) and the Board's recommendation of the successful tenderer (10 June 2005), the Board met nine times. The conduct of the Board meetings and out-of-session briefings and approvals were consistent with contemporary approaches to corporate governance.

While the Board was expanded late in the tender process to comprise three members (the statutory limit is five members), for most of the tender period the Board consisted of two members. **Given the size and complexity of the tender, a larger Board was warranted.**

The Authority established an Audit Committee with two members to assist the Board. At the time of the NTS tender, these two individuals were also members of the Board. **A larger Audit Committee, with at least one external member, would have provided a higher degree of assurance about the Authority's governance, compliance and performance.**

The Authority established an evaluation committee comprising five senior executives from the Authority, the Authority's senior legal advisor, and representatives from the Departments of Treasury and Finance and Infrastructure. The evaluation committee was supported by five advisory teams comprising Authority staff, external experts and advisors. Four senior Authority managers were members of both the evaluation committee and one or more advisory committees. **The accountability arrangements would have been strengthened had the senior managers participated in either the evaluation committee or the advisory teams but not both.**

In a major tender, the role of a Probity Advisor is to establish and manage the probity approach, while the role of a Probity Auditor is to independently review the nature and conduct of the probity approach. In the case of the NTS tender, the Probity Auditor and Probity Advisor roles were combined. **While combining the roles may benefit a tendering authority through cost savings and efficiencies, having a separate Probity Auditor role provides a higher level of assurance about the standard of tender probity. Combining the roles serves to confuse accountabilities and may weaken public confidence in the probity of a tender.**

As a non-departmental public entity, the Authority was not required to comply with the tendering guidelines issued by the Minister for Finance, the Department of Treasury and Finance and the Victorian Government Purchasing Board (VGPB). **The Authority had adequate policies and procedures in place to ensure compliance with the VGPB guidelines.**

The Authority began planning the NTS tender in late 2003, building on a significant body of research undertaken by the Authority's precursor, the Public Transport Ticketing Taskforce. The Authority's planning for the NTS tender was completed before the initial date for the close of tenders. **The essential plans, processes and administrative arrangements were all in place when the NTS tender commenced.**

## Management of the NTS tender

There are only a small number of suppliers of automated ticketing systems worldwide. Two major equipment suppliers dominate the Australian market. Most of the ticketing systems acquired around the world have involved a long-term contract for the supply of a proprietary system. Such arrangements have created technical barriers to purchasing authorities, with respect to:

- obtaining the best ticketing system
- changing equipment or suppliers during the contract period if the systems and equipment fail to operate as required.

The NTS procurement approach was designed to overcome these problems by:

- breaking the system into a number of separate components
- establishing a system where component parts were interchangeable (through the use of open architecture).

Rather than providing detailed specification requirements, the Authority set out desired outputs and outcomes and gave the tenderers considerable flexibility in how to meet the desired outputs and outcomes.

Audit assessed the NTS tender against the high-level objectives that were being sought from the tender, namely:

- high levels of performance
- timeliness and smooth transition
- systems flexibility
- value for money.

### **Audit found that the tender process was largely successful in meeting the Authority's objectives:**

- the Authority established a procurement process which emphasised customers' requirements and the selection of a solution that would provide for the future needs of the Victorian community
- the procurement phase of the NTS project was timely when compared with other ticketing tenders in Australia and overseas
- transition to the new system should be assisted by the transitional agreement established between the Authority and the current operator. Also, transition is likely to be facilitated by the fact that the current ticketing operator is involved in the successful tenderer's consortium
- the tender process adopted by the Authority enabled it to attract more tenders than other comparable ticketing projects had received
- the contract price submitted by the successful tenderer was within the budget set by the State Government and satisfied the Authority's internal benchmark. The procurement process was successful in reducing the tender prices initially submitted by around 35 to 40 per cent. **It is likely that, if the selected tender is delivered as agreed, value for money will be achieved.**

Audit also assessed the key elements of the Authority's management of the NTS tender, namely:

- the resourcing of the tender management team
- steps taken to inform potential tenderers about what was being sought, the procurement approach and the tender process
- management of changes to the tender process and requirements
- the evaluation of tenders
- the conduct of negotiation with one or more shortlisted tenderers, and clarification of the shortlisted tenders
- documentation of the tender process.

**Audit identified a number of areas of good practice, as well as areas for improvement and lessons for wider application to future major tenders.**

The Authority engaged sufficient staff with ticketing and tendering experience, and the tender team had sufficient access to specialist services and skills.

The Authority conducted market soundings in January and May 2004. The soundings were an effective way of informing potential tenderers about the goods and services being sought, other aspects of the tender requirements, and the proposed procurement approach. Up to the receipt of initial offers, the Authority successfully communicated with tenderers and potential tenderers about the solution being sought and the nature of the tender process.

After the receipt of low-quality initial offers, the Authority implemented an interactive approach (which was permitted by the RFT). The process was unfamiliar to several tenderers. While the Authority and the Probity Auditor took extensive steps to keep all tenderers well informed, some tenderers told audit that they needed more information about the process as it evolved. Also, despite the steps taken to inform the market, some tenderers did not fully appreciate the implications of the 'outcomes' approach to the tender. Additional steps could have been taken to:

- apprise tenderers of the procurement approach, and its implications for the tender requirements and compliance requirements
- revisit the control framework and risk framework in light of the evolving approach.

During the negotiation stage, approximately 54 Authority staff, consultants, departmental staff and transport operator staff had direct access to tenderers (the majority of the access was through clarification sessions rather than negotiation meetings). **While the subject matter of the tender and the clarification sessions necessitated a high degree of involvement of technical specialists, the number of people with direct access to tenderers was high. This increased the risk of uncontrolled information flows.**

**A three-part tender rating system was used in the NTS tender. The rating system did not indicate the difference between tenders within each category, and did not provide a precise assessment of how close each tender was to meeting the tender requirements. A more fine-grained system would have:**

- **shown more meaningfully the relative position of tenders**
- **allowed the Authority to more clearly match the assigned rating to the evaluation narrative**
- **given a clearer representation of the progress of tenders over time.**

While the NTS tender evaluation reports identified the areas where tenders did not meet the RFT requirements, the reports did not articulate which requirements were critical or threshold issues and which were not. For those requirements that were negotiable to some extent, this extent was not specified. **The clear articulation of a maximum acceptable level of risk acceptance by government would have enabled the decision-makers to determine with more precision and confidence whether the departures from the RFT requirements were minor, or whether they were such that the desired solution could not be acquired within the budget without an unacceptable allocation of risk.**

### Probity of the NTS tender

While flexible and innovative approaches to tendering can enhance value for money for public procurers, the importance of probity is just as great in new types of tendering as it is in traditional procurement processes.

Due to the specialised nature of ticketing systems, it was highly likely that a number of Authority staff would have potential conflicts of interest from prior experience with organisations tendering for the NTS project. The Probity Auditor identified more than 30 staff and other individuals involved in the tender evaluation process who had potential conflicts of interest. Seven staff members and one consultant were rated as high risk. Most of the conflicts of interest resulted from previous work histories and/or shares in two companies included in consortia tendering for the NTS.

All shareholdings were disclosed to the Authority in conflict of interest statements signed by staff and consultants and were identified in the work undertaken by the NTS Probity Auditor. All of the declared shareholdings were modest and most were immaterial.

The most significant shareholding of relevance to the tender was the CEO's shareholding in Headstrong / James Martin & Co. The shareholding's potential to damage community confidence in the tender was high. The Authority could have taken additional steps to address perceived conflicts in relation to the shareholding.

Some senior Authority managers had shared work histories with a number of members of the tendering consortia. These shared work histories and other relevant relationships were disclosed to the Authority. The Authority informed tenderers about those people in the Authority who had prior experience with tenderers.

The Authority identified the conflicts of interest in a timely way. Audit found no evidence of corruption in the NTS tender, and no evidence that the conflicts of interest led to the unfair or biased treatment of particular tenderers or groups of tenderers. Nevertheless, the Authority could have taken additional steps to communicate to tenderers, the

government and the community, how it was managing the real and perceived conflicts that arose in the tender.

In interactive tenders, the risks of inappropriate information flows are particularly high. In the case of the NTS tender, most communications were controlled according to the tender procedures. However, audit identified a number of instances where communications did not comply with the controls and protocols.

During the initial offer stage of the tender, the Authority removed the requirement in its probity plan for the Probity Auditor to attend all meetings with tenderers, including overseas site visits and workshops. **The requirement was replaced with attendance 'as required'. No guidance was put before the senior management or the Board as to how this discretionary attendance was to be implemented. Such guidance would have strengthened probity oversight of the tender.**

Audit identified only two instances of email miscommunication during the NTS tender, which is insignificant in view of the high level of email communication during the tender. In addition, there was an incident in which a significant number of Authority documents, and one NTS tenderer document not seen by the Authority, came into the possession of a journalist. **Audit investigated the alleged leak and found that the Authority's internal controls had limited access to the leaked documents to seven staff. Audit found no evidence that these staff members provided the documents to anyone outside the Authority.**

## 1.3 Recommendations

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### Part 3: Governance and planning arrangements for the NTS tender

- 3.1 To achieve clarity and consistency in the application of procurement guidelines for major tenders, the coverage of the DTF and VGPB procurement guidelines should be expanded to cover non-departmental public entities' major tenders in the same way that Departments are covered. 'Major tenders' should be defined as those with a value greater than \$100 million or where a risk assessment indicates the tender is of a unique nature or is not 'business as usual.'
- 3.2 To provide greater assurance about the integrity of major tender processes, the guidelines should specify that, where major project procurement is to be undertaken by a special-purpose public entity, the size of the entity's Board should reflect the scale and complexity of the project, and that to have at least three to four members on the Board, and at least one external member on the Board's audit committee, is good practice. The guidelines should encourage agencies to make greater use of audit committees in the governance of major tenders.
- 3.3 To keep up with new developments in tendering, DTF should review biennially the applicable guidance materials for major tenders, including those materials relating to the governance and planning of major tenders.

- 3.4 DTF and the VGPB should amend their 2006 Policy for the Conduct of Commercial Engagements in relation to Probity Auditors to provide that, for major and complex tenders:
- Probity Auditor and Probity Advisor functions should be provided by different parties
  - where the procurement is being undertaken by a non-departmental public entity, the Probity Auditor should be engaged by the portfolio Department, with the tendering authority reimbursing the Department for the cost of the Probity Auditor role at the end of the tender process.
- 3.5 Non-departmental public entities undertaking major tenders should be required to use the probity services panel established by DTF. To facilitate this, DTF should review the membership of the panel and give suitable firms an opportunity to join the panel.

#### Part 4: Management of the NTS tender

- 4.1 To capture lessons learnt in respect to the management of major tenders, DTF should review the VGPB guidelines and other relevant guidelines to ensure there is adequate guidance for:
- communication between tendering agencies and tenderers about the type of tender and the tender requirements
  - managing changes to the tender process, including necessary adaptations to the control arrangements
  - the evaluation of tenders, including rating systems
  - negotiation and clarification meetings, including the number of people involved.

#### Part 5: Probity of the NTS tender

- 5.1 The VGPB guidelines and other relevant guidelines should be reviewed to provide stronger and more precise guidance for maintaining the probity and integrity of major innovative tenders. The guidance should take account of the lessons learnt from the NTS tender and other recent major tender processes, particularly with respect to:
- the planning of the probity approach
  - the identification and management of conflicts of interest and other probity issues, including management of perceived conflicts of interest
  - controlling communications with tenderers and the management of sensitive information.
- 5.2 For major and complex tenders, the tender project team should be physically separated from the location of tenderer meetings.

## 1.4 Consider points

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### Part 4: Management of the NTS tender

- 4.2(a) For major and complex tenders with a significant risk component (ie. where the procurement contract would assign significant risk to the government, in the form of guarantees, indemnities, residual obligations and other risks), DTF should consider developing a framework for determining and articulating, in a common language and on a project-by-project basis, the maximum acceptable risk level to be borne by government.
- 4.2(b) In concert with the development of such a framework, DTF should consider whether there is a need for training in risk allocation principles for practitioners involved in major tenders conducted outside the Partnerships Victoria framework.
- 4.3 For each major and complex tender, the tendering authority should consider publishing, at the commencement of the procurement process, a value for money statement, about how the procurement process has been designed and how it will be managed in order to achieve value for money for the community.

### Part 5: Probity of the NTS tender

- 5.3 When a value for money statement is published for a major tender, it should include the key elements of how the tender management team will manage real and perceived conflicts of interest.

***RESPONSE provided by the Chairman, Transport Ticketing Authority***

*The Transport Ticketing Authority (the Authority) welcomes the conclusion of the audit of the New Ticketing Solution (NTS) tender process and the opportunity to comment on the findings, recommendations and consider points of the proposed report.*

*Given the public interest in this significant public transport initiative, the Authority is pleased that there has been a detailed and independent external review of the NTS tender process.*

*Audit's objectivity and expertise in conducting this review and formulating its findings provides independent assurance to Government and the community that the NTS tender process was properly conducted.*

*Audit's finding that the tender was properly conducted and also that there was no evidence that TTA staff were implicated in the alleged leak of tender documents, confirms the validity of the actions taken by the Authority two years ago to investigate this matter and the findings of the two previous enquiries in relation to the alleged leak.*

*The Authority's full cooperation with audit demonstrates the Board's commitment to ensuring that the process would be thoroughly reviewed. The Authority particularly welcomes audit's finding that "the Authority identified the conflicts of interest in a timely way. Audit found no evidence of corruption in the NTS tender, and no evidence that the conflicts of interest led to the unfair or biased treatment of particular tenderers or groups of tenderers."*

*The Authority accepts audit's findings that the NTS tender process:*

- was innovative and displayed areas of good practice*
- governance arrangements were consistent with the relevant legislative requirements and the relevant procurement guidelines*
- was well planned and that the essential plans, processes and administrative arrangements were in place when the NTS tender commenced*
- had adequate policies and procedures in place to ensure compliance with VGPB guidelines*
- largely met the Authority's objectives for the NTS procurement process.*

*It is noted that a significant proportion of audit's recommendations relate to matters that are the responsibility of the Government's central agencies. These include the size and composition of the Authority's Board, enhancement of whole of Government procurement policies, management of the Government's Probity Services Panel and accountability arrangements for statutory agencies.*

*The Authority has no formal role in the determination of such matters, although it supports any initiative that will contribute to effective public sector management, and on that basis, emphasises that it will continue to comply with all relevant Government guidelines and statutory requirements.*



***RESPONSE provided by the Chairman, Transport Ticketing Authority – continued***

*Audit also makes certain recommendations relating to the guidelines for procurement processes generally. These include requirements for agencies to articulate their maximum risk appetite and also to formally prepare value for money statements.*

*Although TTA sees merit in these recommendations it is conscious that homogenising public sector processes by imposing standard guidelines that restrict flexibility and discretion may not deliver optimum outcomes. Inevitably the management of complex projects requires boards and their management to exercise a sophisticated level of judgement, based on the available information and their specific knowledge and expertise.*

*The Authority's senior managers were recruited for their extensive experience and reputation in major ticketing projects and in major government projects generally. The Authority sought and obtained the best available people. This was done to ensure high quality specification of requirements and evaluation of the tenders as well as the subsequent management of the project. The Authority developed a model for the NTS tender process that would provide the necessary board control and accountability mechanisms, but still allow its management flexibility and room to exercise judgement as well as seek the best available advice.*

*For example, the Authority's strategy for managing conflict of interest in the evaluation process ensured that there were mechanisms to identify and prevent any issues that might have arisen in relation to perceived conflicts of interest of two of its five senior managers (including the CEO). These measures included supervision of the NTS tender by the Board, the appointment of three additional external members of the Evaluation Committee (representatives of DTF and DOI and a senior partner of a major accounting firm) and the attendance at all evaluation committee meetings by the Probity Auditor and the Authority's senior commercial, strategic and legal advisors.*

*These arrangements allowed the Authority to effectively manage conflict of interest and derive full benefit from the knowledge and experience of its senior managers, which audit acknowledges was an area of good practice in the NTS tender.*

*Audit's presentation of its alternative views demonstrates that there are many approaches that can be adopted in the management of tender processes; however there are no findings that the Authority's approach has not delivered the required outcomes. We note that audit supports this view in its findings that the NTS tender process "was largely successful in meeting the Authority's objectives... [for the NTS procurement process and that] if the selected tender is delivered as agreed, value for money will be achieved."*

***RESPONSE provided by the Chairman, Transport Ticketing Authority - continued***

*Audit examined the Authority's management of probity matters and suggests that central agencies should provide guidance on the separation of probity audit from probity advisory roles and also review the management of the Government's Probity Services Panel and the rules governing payment of probity auditors.*

*The Authority's adoption of a combined probity audit and advisory model, based on the clear advice of the Department of Treasury and Finance, delivered an integrated value for money probity service that provided the project team with the necessary probity knowledge and tools to exercise good judgement while achieving commercial outcomes.*

*The Authority notes audit's concerns about the range of potential consequences of combining these roles. However it accepts that audit "made no adverse findings in relation to the capability and conduct of the NTS Probity Auditor."*

*Audit outlines the benefits of procuring probity services from the Government's Probity Services Panel and suggests that this should also be a requirement of non-departmental agencies. This is a matter for Government and while audit's concerns in relation to potential issues are noted, it must be noted that audit found that the Authority was permitted to conduct its own tender process to engage the Probity Auditor and "the Probity Auditor was selected based on factors including demonstrated expertise and capability, availability and value for money."*

*The establishment of specific purpose non-departmental public entities with a commercial focus requires a level of flexibility, to be exercised within a robust accountability and governance structure, anchored by the appointment of a Board. Therefore, any accountability mechanisms and operational guidelines need to be cognisant that bodies such as the Authority are separately constituted and are operating in a different governance context to mainstream portfolio departments.*

*Although it is a matter for central agencies, the Authority questions audit's recommendation that probity auditors should be engaged by its portfolio department. To do so appears to run the risk of blurring the accountability between the agency and the department for the carriage of the procurement project.*

***RESPONSE provided by the Chairman, Transport Ticketing Authority - continued***

*Audit found that the NTS probity plans and related protocols were examples of good practice. Audit raises the issue of changes to the NTS Probity Plan. It was appropriate that changes were made to the Probity Plans (there was more than one Probity Plan, i.e. a pre-procurement and procurement phase Plan). It was always expected that changes to the Probity Plans would be required when the number of tenderers and the number of offers from each tenderer was confirmed. In the event the Board only made relatively minor changes to the plans after being satisfied that it was appropriate and desirable to do so.*

*The Board assessed the extent of probity risk in relation to perception issues against the cost of a continuum of preventative measures. It was agreed that irrespective of the measures in place, the Authority would not be able to completely eliminate perception issues.*

*In conjunction with the Probity Auditor, the Authority developed an alternative framework that complied with Government requirements and provided a realistic platform for monitoring meetings, which included provision for recording meetings and in nearly all cases, ensuring that meetings occurred at the TTA in group situations. Further, the Probity Auditor had full access to all meetings and the prerogative to attend meetings as considered necessary.*

*The Authority implemented a range of mechanisms to identify and manage real and perceived conflicts of interest, requiring all individuals associated with the project to review their conflict of interest position on at least five occasions during the NTS tender process. Conflict of interest was addressed in the Probity Auditor's detailed monthly reports to the TTA Board and in discussions as required.*

*The rigorous and extensive arrangements for the identification and management of conflict of interest in the NTS tender process successfully accommodated the question of the perceived conflict of interest of the Authority's Chief Executive Officer, with swift and transparent management of this matter by the Board. The Authority welcomes audit's finding that "the Authority identified the conflicts of interest in a timely way ... [and] found no evidence of corruption in the NTS tender and no evidence that the conflicts of interest led to the unfair or biased treatment of particular tenderers or groups of tenderers."*

*The Authority considers that this finding is a robust response to the questions raised in one newspaper regarding the probity of the NTS tender process and the ethics of those who worked on the project.*

*On that basis, the Authority acknowledges the commitment and efforts of all TTA staff, representatives of Government departments, public transport operators and external advisors, to ensuring that the NTS tender process was properly managed.*

***RESPONSE provided by the Secretary, Department of Infrastructure***

*The Department acknowledges the Victorian Auditor-General's Office's audit of the New Ticketing System (NTS) tender and notes the following positive findings:*

- The tender process was successful in meeting the Transport Ticketing Authority's (TTA) objectives*
- The Authority had adequate policies and procedures in place to ensure compliance with the Victorian Government Purchasing Board guidelines*
- TTA planning for the NTS tender was completed before the initial date for the close of tenders with the essential plans, processes and administrative arrangements in place when the NTS tender commenced, sufficient to carry out the necessary steps leading to the awarding of the tender.*

*The Department agrees that areas of good practice and for improvement, identified during the audit, are appropriately considered by DTF and VGPB in the preparation of procurement guidelines for future major tenders.*

***RESPONSE provided by the Secretary, Department of Treasury and Finance***

***Recommendation 3.1***

*DTF accepts this recommendation.*

***Recommendation 3.3***

*DTF regularly reviews its published guidelines on the governance and planning of major tenders. DTF notes that any future reviews will be on no less than a biennial basis.*

***Recommendation 3.4***

*DTF concludes that the current policy on the Conduct of Commercial Engagements in relation to Probity Auditors is considered industry standard practice and is therefore appropriate.*

*DTF will ensure that its guidelines relating to Probity Auditors remain abreast of industry standards and contain appropriate and detailed guidance relating to the conduct of major tenders. Further, guidance material will contain comprehensive probity plan templates, which will result in uniform application of probity arrangements and obviate the need for separate probity advisers in the majority of tenders.*

*In relation to the reimbursement of probity costs, in order to maintain statutory accountability and separation, DTF believes that independent non-departmental public entities must continue to be responsible and accountable for all probity matters related to any tenders, including costs.*

***RESPONSE provided by the Secretary, Department of Treasury and Finance  
- continued***

***Recommendation 3.5***

*DTF supports non-departmental entities considering the use of whole-of-government panel arrangements when seeking probity services for major projects.*

***Recommendation 4.1***

*DTF regularly reviews the appropriateness of these guidelines on a continuous improvement basis. Future reviews will inter alia cover the suggested matters.*

***Recommendation 5.1***

*DTF concludes that the current processes for the conduct of tenders, and of conflict of interest declarations, are satisfactory. Future reviews of these policies will take into account the lessons learnt from the NTS tender.*

***Recommendation 5.2***

*DTF agrees that, in future, tender meetings should occur in physical isolation of an operational workplace.*

***Consider point 4.2(a)***

*In regard to developing a framework to determine and articulate “maximum acceptable risk” that may be borne by government, DTF notes the inherent difficulty in distilling, in a common language, an appropriate risk allocation that would apply to all projects. DTF will investigate the development of further guidance on risk allocation for a range of projects.*

***Consider point 4.2(b)***

*DTF will consider the need for additional targeted training in risk allocation as part of its broader training framework.*

***Consider point 5.3***

*DTF notes that tender documents ordinarily include information on tender objectives and the desired outcomes that would represent value for money principles. In reviewing future guidance material, instruction will be provided to capture the suggested concepts, including broader public interest outcomes.*

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# 2 Introduction

## 2.1 Introduction

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### 2.1.1 The Metcard system

Victoria uses an automated public transport ticketing system, known as 'MetCard', for Melbourne's metropolitan trains, trams and buses. MetCard is a paper ticket with a magnetic strip which users purchase from vending machines, retail outlets and train stations. The tickets must be validated by users at train stations and on trams and buses prior to each journey. MetCard is owned and operated by OneLink Transit Systems Pty Ltd (OneLink). In addition to substantial 'back office' computer systems, cash collection networks and capital maintenance and renewal programs, Metcard has approximately:

- 958 ticket vending machines
- 4 245 ticket validators
- 1 524 driver consoles (buses)
- 946 tram driver keypads
- 234 barriers or gates (trains)
- 81 booking office machines (train stations).

Since the State Government's contract with OneLink expired on 1 March 2007, the system has operated under a transitional agreement with Onelink.

### 2.1.2 A new ticketing system

In June 2003, the Transport Ticketing Authority (the Authority) was established. The Authority has two roles:

- to manage the existing MetCard ticketing system
- to procure and manage a new ticketing system to replace MetCard.

The decision to replace the MetCard ticketing system was primarily due to the imminent expiry of the contract with OneLink and the system nearing the end of its useful life. The Authority also considered that a more advanced system would provide benefits such as better information on transport journeys and reduced vandalism, and would provide opportunities for passengers to use the transit cards for other purchases such as car parking at railway stations. (Background information about the replacement of MetCard is at Appendix A.)

In July 2004, the Authority issued a Request for Tender (RFT) for the provision and management of a 'smartcard' fare collection system. A smartcard is a plastic card that is used to record and charge for journeys on the public transport system. The passenger transfers money to the card periodically and the balance is automatically drawn down for the transport fare as the passenger passes through card readers on the system. The estimated cost of the New Ticketing Solution (NTS), over the 10 year contract, is \$494 million (excluding operating costs and contingencies).

The contract for the NTS was awarded in July 2005. The successful tenderer was Keane Australia Micropayment Consortium Pty Ltd ('Kamco'). Kamco is a wholly owned subsidiary of Keane Inc.<sup>1</sup> (a United States company) and has partnered with Ascom, ERG Group and Geisecke and Devrient Australasia for the NTS project.

In August 2005, the Auditor-General received a request from the Minister for Public Transport to investigate an alleged leak of confidential information during the NTS tender process.

Following receipt of the request from the Minister, the Office commenced an investigation of the alleged leak. The alleged leak is discussed at Appendix B. In summary:

- audit found that the Authority's internal controls limited access to the leaked Authority information to seven staff
- audit found no evidence of these staff members providing the documents to anyone outside the Authority.

The Office subsequently commenced a performance audit of the NTS tender. This report contains the results of the performance audit.

## 2.2 Audit objectives

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To determine whether the tender process for the new ticketing system was properly conducted and to identify lessons and relevant areas of good practice for the future management of major tenders.

## 2.3 Audit scope

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The audit examined:

- the planning and governance arrangements for the tender
- the conduct of the tender, including the Authority's compliance with its tender process, procedures and associated probity controls
- whether the tender process, procedures and associated controls were consistent with sound procurement principles
- the extent to which the Authority achieved its procurement objectives
- the alleged leak of tender information.

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<sup>1</sup> Keane Inc. was purchased by Caritor Inc. on 7 February 2007 for US\$854 million.

Audit reported on the results of its examination of the leak of tender information in a letter to the Minister for Public Transport in early 2007 (see Appendix B for more details).

## 2.4 Audit method

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The audit involved a detailed examination of the NTS tender arrangements, including the governance and planning arrangements for the tender, and the various elements of the tender process itself. Audit evidence was gathered through discussions with Authority staff, specialist advisors engaged by the Authority, the Probity Auditor and tenderers, and by reviewing:

- the Authority's tender documentation, which included its business plan, market analysis and feedback, RFT documentation, probity plans, advisory team plans and evaluations
- tenders submitted
- the Authority's tender evaluation process
- communications between the Authority and tenderers (comprising meetings, email and telephone communications)
- the Authority's management of probity issues
- the role of the Probity Auditor in the tender process.

More detailed information about the audit method is at Appendix C.

The total cost of this report was \$298 600.



# 3 Governance and planning arrangements for the NTS tender

## At a glance

### Background

Sound governance and planning arrangements for large, complex government tenders are necessary for tendering success, and to give Parliament and the community confidence that tenders are properly conducted.

The Transport Ticketing Authority was established in June 2003 under the *State Owned Enterprises Act 1992* and in February 2004, a Board of Directors was appointed to oversee the Authority's operations. The Board reports to the Minister for Transport on transport policy matters and to the Treasurer on matters related to the *State Owned Enterprises Act*.

The Authority began planning the NTS tender in late 2003. The planning included the establishment of several committees and advisory teams, engagement of a Probity Auditor and Advisor and other specialist resources, the development of a tender strategy and probity plan, establishing a procurement process, conducting market soundings and assessing tender risks. The planning for the NTS tender was completed in September 2004.

### Key findings

- The governance arrangements established for the tender were consistent with relevant legislative requirements and procurement guidelines.
- The following areas were identified by audit to have the potential to strengthen accountability arrangements and provide greater assurance with respect to the Authority's governance, compliance and performance:
  - a larger Board of Directors
  - a larger Audit Committee with at least one external member
  - segregation of the roles of senior managers in the evaluation of tenders
  - separation of the Probity Auditor and Advisor roles.
- The tender was well planned. The essential plans, processes and administrative arrangements were in place when the NTS tender commenced. Some of these were assessed by audit as representing good practice.

## At a glance - *continued*

### Key recommendations

- 3.1 To achieve clarity and consistency in the application of procurement guidelines for major tenders, the coverage of the DTF and VGPB procurement guidelines should be expanded to cover non-departmental public entities in the same way that Departments are covered. 'Major tenders' should be defined as those with a value greater than \$100 million or where a risk assessment indicates the tender is of a unique nature or is not 'business as usual.'
- 3.2 To provide greater assurance about the integrity of major tender processes, the guidelines should specify that, where major project procurement is to be undertaken by a special-purpose public entity, the size of the entity's Board should reflect the scale and complexity of the project, and that to have at least three to four members on the Board, and at least one external member on the Board's audit committee, is good practice. The guidelines should encourage agencies to make greater use of audit committees in the governance of major tenders.
- 3.3 To keep up with new developments in tendering, DTF should review biennially the applicable guidance materials for major tenders, including those materials relating to the governance and planning of major tenders.
- 3.4 DTF and the VGPB should amend their 2006 Policy for the Conduct of Commercial Engagements in relation to Probity Auditors to provide that, for major and complex tenders:
  - Probity Auditor and Probity Advisor functions should be provided by different parties
  - where the procurement is being undertaken by a non-departmental public entity, the Probity Auditor should be engaged by the portfolio Department, with the tendering authority reimbursing the Department for the cost of the Probity Auditor role at the end of the tender process.
- 3.5 Non-departmental public entities undertaking major tenders should be required to use the probity services panel established by DTF. To facilitate this, DTF should review the membership of the panel and give suitable firms an opportunity to join the panel.

## 3.1 Introduction

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The governance and planning arrangements for large, complex government tenders have a direct bearing on tendering success. Sound governance and planning are necessary to give Parliament and the community confidence that tenders are properly conducted. Poor governance arrangements and inadequate planning can cause a tender to fail, whether it be with respect to the timeliness of the procurement, the integrity of the tender process or the achievement of value for money. Any failure can have further consequences for an agency including failure to deliver goods or services to an agreed standard, and additional costs if the selected provider fails to perform.

## 3.2 Background to tender governance arrangements

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The key elements of tender governance are:

- the framework of legislation, rules and guidelines in which the tender is conducted
- the institutional form, structure and role of the tendering authority (or its equivalent)
- the size and composition of the tendering authority's Board (or its equivalent)
- the accountability relationships between the portfolio minister, the Board and the tendering authority's management and staff
- the Board's policies and procedures
- the committees that share the tasks of the Board and support its work
- the allocation of roles and accountabilities within the tendering authority
- supporting processes and systems.

All these elements require attention to ensure that the necessary governance elements are in place and that they are clear. Clarity in role allocation is particularly important for effective tender governance. Role clarity underpins operational efficiency and accountability for performance. Once the respective roles in a tender process are allocated, they need to be clearly documented and communicated to the people managing the tender, and to other stakeholders as appropriate.

## 3.3 NTS tender governance structures and roles

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The Transport Ticketing Authority was established as a public entity in June 2003 under the *State Owned Enterprises Act 1992*. In June 2003, an interim chair was appointed. In February 2004, the Government established a Board of Directors to oversee the operations of the Authority.

Throughout the NTS tender, the Board reported to the Minister for Transport (because of the Minister's responsibility for transport policy matters) and to the Treasurer (because of the Treasurer's responsibility for the *State Owned Enterprises Act*). The

Department of Infrastructure and the Department of Treasury and Finance supported their respective Ministers in the performance of their responsibilities, and continue to be responsible for monitoring the performance of the NTS project.

The Authority's Board currently comprises three directors and has a statutory limit of five directors. During the majority of the NTS tender period, the Board consisted of two directors (the third director was appointed in March 2005). A senior officer from the Department of Treasury and Finance also attended most meetings of the Board, in the capacity of an observer.

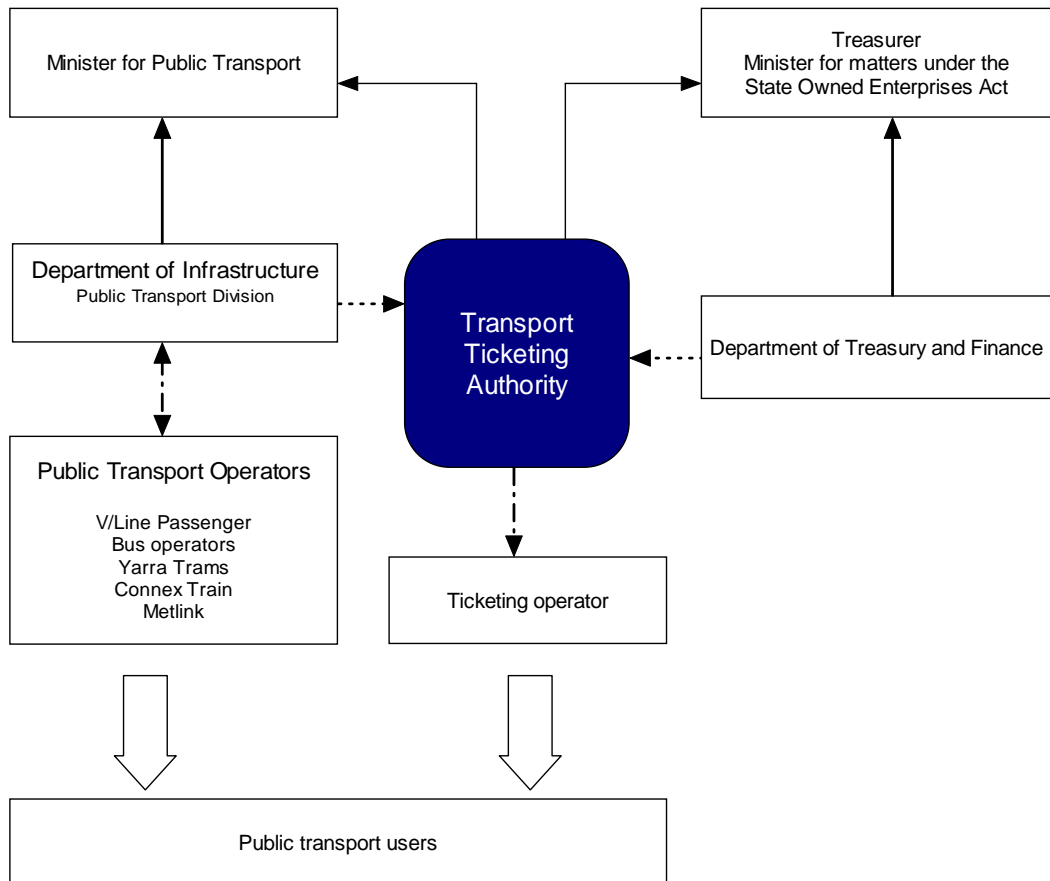
The Authority established an Audit Committee with two members to assist the work of the Board. At the time of the NTS tender, both individuals were also members of the Authority's Board.

Further, as part of the Authority's governance structure, the Authority established:

- a stakeholder forum, known as the 'ticketing reference committee', which comprised senior government and transport operator representatives. The chairman of the committee during the tender was the Director of Public Transport (an executive officer from the Department of Infrastructure). The Authority kept the reference committee informed of the progress of the NTS tender and the evaluation process
- a government advisory committee, which comprised senior executives from the Department of Infrastructure, the Department of Treasury and Finance and the Department of Premier and Cabinet. The government advisory group was consulted throughout the tender process
- an evaluation committee for the tender, which comprised five senior executives from the Authority (including the Authority's CEO as Chair of the committee), the Authority's senior legal advisor, and representatives from the Department of Treasury and Finance and the Department of Infrastructure. Senior, external advisors with legal, financial and commercial expertise in large government procurement attended the evaluation committee meetings and contributed to the discussion. The evaluation committee was supported by five advisory teams comprising Authority staff, external experts and advisors.

The institutional relationships and TTA's NTS tender governance structure are summarised in Figures 3A and 3B.

**Figure 3A**  
**Institutional relationships**

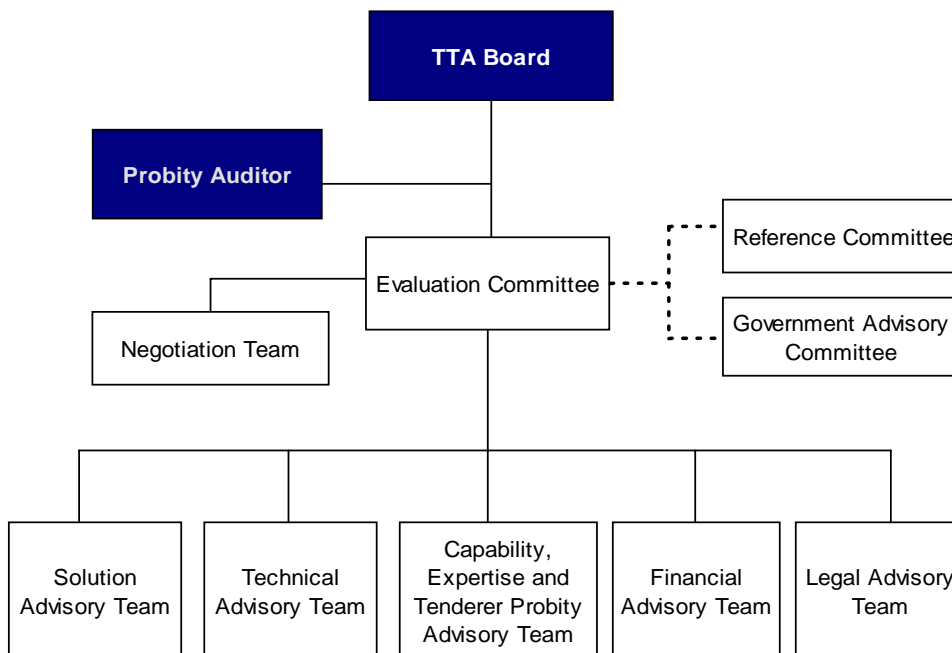


Legend

- Statutory reporting
- Contract or partnership agreement
- Policy and guidance

Source: Victorian Auditor-General's Office.

**Figure 3B**  
**TTA NTS tender governance structure**



Source: Transport Ticketing Authority.

The role of the five advisory teams in the evaluation process was to assess elements of the tenders against specific evaluation criteria and to provide the results of these assessments to the evaluation committee. The advisory teams and their broad responsibilities are identified in Figure 3C below. The evaluation committee reviewed the results of each team’s assessments and made recommendations to the Board for approval.

**Figure 3C**  
**Roles of the five advisory teams**

Team	Role
Solution advisory team	Stakeholder acceptance and commercial rights
Technical advisory team	Compliance with system requirements
Capability, expertise and tenderer probity advisory team	Capability and expertise of provider and probity issues
Financial advisory team	Financial sustainability and cost
Legal advisory team	Conditions associated with the offer and acceptance of transaction documents

Source: Transport Ticketing Authority.

The Authority engaged a Probity Auditor to perform the roles outlined in Figure 3D below. The Probity Auditor also performed the Probity Advisor role for the project. The elements of the Probity Advisor role are also outlined in Figure 3D.

The Authority established a negotiation team to manage negotiations with the shortlisted tenderers. The role and structure of the negotiation team is discussed in Part 4.

**Figure 3D**  
**Roles and responsibilities of Probity Auditors and Probity Advisors**

Probity Auditors	Probity Advisor
<ul style="list-style-type: none"> <li>• monitoring compliance with processes established to identify conflicts of interest</li> <li>• investigating and reporting to the governing body on conflicts of interest identified and any other probity issues</li> <li>• monitoring the tendering authority's adherence to the probity plan</li> <li>• monitoring adequacy of staff training in tender probity requirements</li> <li>• checking completeness of registers and records of meetings and communications with tenderers</li> <li>• providing assurance to the governing body on the integrity of the tender process</li> <li>• furnishing a final probity clearance report</li> </ul>	<ul style="list-style-type: none"> <li>• establishing a process to monitor and identify any conflicts of interest</li> <li>• reviewing and advising on important project documentation, such as:                             <ul style="list-style-type: none"> <li>• the terms of reference of various project groups</li> <li>• the probity policy and plan</li> <li>• security arrangements</li> <li>• confidentiality documentation</li> <li>• administrative processes and plans for the procurement</li> <li>• other procurement documentation</li> </ul> </li> <li>• providing probity training for staff</li> <li>• implementing and completing conflict of interest documentation</li> <li>• attending meetings, and ensuring that the attendees have been appropriately briefed on their terms of reference and that proceedings are conducted to agreed ethical standards</li> <li>• providing briefings, advice and reports on probity issues such as conflicts of interest and communication issues</li> </ul>

Source: Victorian Auditor-General's Office.

## 3.4 Findings relating to governance

### 3.4.1 Board oversight of the NTS tender

The size of the NTS tender and its importance to the Authority’s legislated mandate demanded a high degree of Board oversight of the tender. Between the release of the Request for Tender (30 July 2004) and the Board’s recommendation of the successful tenderer (10 June 2005), the Board met nine times. Both inaugural Board members participated in all nine of these Board meetings (the third Board member joined in March 2005). In addition, between the formal Board meetings, Authority management organised briefings for Board members and provided documents for out-of-session consideration and approval. The conduct of the Board meetings, and the out-of-session briefings and approvals, were consistent with contemporary approaches to corporate governance.

While the Board’s membership increased late in the tender process to three members (the statutory limit continues to be five members), for most of the tender period the Authority’s Board consisted of two members. Given the size and complexity of the tender, a larger Board closer to the statutory limit of five was warranted. Figure 3E shows that other Victorian public entities undertaking large tenders and major project development activities typically had much larger Boards with a wider range of perspectives and skills.

**Figure 3E**  
**Number of public entity Board members**  
**during major procurement or project development activity**

Authority/Trust	Legislated range	Actual number
CityLink Authority, 1994-95 to 2000-01	3-5	5 (a)
Docklands Authority, 1998-99 to 2002-03	5-9	8
Melbourne Convention and Exhibition Trust, 2004-05 to 2005-06	3-7	6
Southern and Eastern Integrated Transport Authority, 2003-04 to 2004-05	3-5	5
Southern Cross Station Authority, 2000-01 to 2004-05	3-5	4
Transport Ticketing Authority, 2003-04 to 2004-05	2-5	2 (increased to 3 in March 2005)

(a) Following a review of the requirements of the CityLink Authority in 2000-01, the Minister determined to reduce the number of Board members to three.

*Note:* TransLink Advisory Board (within the Queensland Transport Ministry) is responsible for implementing the TransLink Smartcard in Queensland; the Board has nine members.

*Source:* Victorian Auditor-General's Office.



### 3.4.2 Audit committee

The Authority's audit committee comprised the two inaugural Board members. A larger Audit Committee, with at least one external member, would have provided a higher degree of assurance about the Authority's governance, compliance and performance.

### 3.4.3 Role of senior Authority management in the evaluation of tenders

Four senior TTA managers were members of the evaluation committee and one or more advisory teams. For example:

- the Authority's CEO chaired the evaluation committee and was a member of one of the advisory teams (the 'Capability, expertise and probity advisory team')
- the NTS Senior Project Manager was a member of the evaluation committee and four of the five advisory teams evaluating the tenders.

During the negotiation stage of the tender, the CEO and the Senior Project Manager also attended technical clarification meetings with tenderers.

While the CEO sought to avoid dominating or directing the capability and probity advisory team (and the CEO did not chair the team), the accountability arrangements would have been strengthened had the CEO not participated in the advisory team. This would have achieved a clearer role split between the teams providing advice to the Authority's senior management on the one hand, and the senior managers receiving and assessing that advice on the other. Similarly, the accountabilities would have been clearer if the Senior Project Manager was involved in the advisory teams or the evaluation committee but not both.

The TTA expressed to the audit team the view that, as a small agency with specific expertise in smartcard ticketing residing in its CEO and certain senior managers, it was appropriate for the senior managers to be more 'hands on' in the technical dimensions of the evaluation process, provided that the process occurred within an environment of strong probity and independent review by senior external parties. Audit acknowledges this view but considers that, while there may be practical benefits from the TTA approach, a clearer role split would have achieved stronger accountabilities.

### 3.4.4 Probity Auditor and Probity Advisor roles

In a major tender, the role of a Probity Advisor is to establish and manage the probity approach. The role of a Probity Auditor is to independently review the nature and conduct of the probity approach. In the case of the NTS tender, the Probity Auditor and Probity Advisor roles were combined.

Representatives of VAGO attended a TTA Board Meeting on 1 September 2004 and stated a view that, for a project the size of the NTS project, the Probity Auditor and Probity Advisor roles should be separate engagements, and that the advisor should establish the relevant processes while the auditor should audit compliance with the processes.

Subsequently (on 8 October 2004), the Authority sought advice from the Department of Treasury and Finance (DTF) about the establishment of probity roles in the tender.

The VGPB probity guidelines (*Best Practice Advice – Probity*, June 2002):

- distinguished between probity auditing and probity advising
- outlined specific services which should not be provided by a Probity Advisor, such as sign off that the project had met probity requirements, attend meetings as an observer, undertake activities that are the responsibility of a Probity Auditor, and communicate or liaise with the Probity Auditor unless directed to do so by the head of the project team.

DTF advised (in a letter, dated 15 November 2004 to the Authority) that the VGPB probity guidelines were under review at that time, and that:

*Under the VGPB policy, it is the decision of a Departmental Secretary (and where appropriate by the Authority Head) to determine the appropriate probity approach to be implemented in any one transaction.*

*The Secretary is able to determine the probity services to be engaged on a transaction, whether these are sourced externally to the department or internally; and whether a probity auditor and/or probity advisor are used.*

*The VGPB policy does not preclude the use of a Probity Auditor undertaking the preparation of a probity plan and subsequently reporting on whether there has been compliance with the probity plan.*

*It is a matter for the Departmental Secretary to determine, with a view to the nature of the particular transaction, whether separation of probity auditor from probity advisor is warranted and indeed whether these individuals should be engaged externally or internally to Government.*

The current DTF guidance for Conduct of Commercial Engagements in Government (2006) includes probity-related guidance for particularly complex or risky projects:

*Where the procurement process is very large and/or involves highly complex risks, the responsible departmental officer may consider it necessary to engage more than one probity practitioner to either ensure an adequate breadth of probity experience or to undertake different roles...A department may decide that the scope or particular risks of a process may require two probity advisers; or one probity adviser with another to take the role of a probity auditor and undertake a full probity audit of the procurement process.*

The 2006 DTF guidance is consistent with the 2005 NSW Independent Commission Against Corruption guidelines on probity and probity advising, which distinguish between audit and advisory roles in the probity arena, and state that:

*On very large or complex projects, it may be sensible to separate the audit and advice functions by engaging two people or entities (from different organisations), one of whom would perform the probity auditing function strictly at arm's length from the project, while the other would perform the advisory role. This would be helpful on controversial projects where the independence of the audit function is particularly important.*

While combining the roles may benefit a tendering authority through cost savings and efficiencies, having a separate Probity Auditor role provides a higher level of assurance about the standard of tender probity. In principle, combining the roles serves to confuse accountabilities. The Probity Advisor is typically subject to direction by the tendering authority, whereas the Probity Auditor should be able to provide independent scrutiny. Requiring the one individual to wear different 'hats' confuses the allocation of roles and accountabilities, and weakens the perception of independence.

Had the Probity Auditor played a separate and independent role to the Probity Advisor, the Probity Auditor would have been in a stronger position to independently investigate the alleged leak of tender information (see Appendix B for details of the alleged leak and the subsequent investigation).

The Probity Auditor was directly paid by the Authority on a monthly basis during the tender period. The independence of the Probity Auditor would have been strengthened if the Probity Auditor had been engaged by the Department of Infrastructure as the lead portfolio agency, and the Probity Auditor had reported to the Secretary of the Department as well as to the Board of the Authority.

Over time, the role of Probity Advisors may become less important in tenders as probity issues become better understood and a more deeply embedded part of tender management, and as probity tools and templates become more widely available. Audit considers, however, that the role of Probity Auditors in major tenders will not diminish, as the independent assurance that Probity Auditors provide is a core element of tender governance.

### 3.4.5 Government probity services panel

In March 2002, DTF established a panel of contractors ('Whole of Government Contract for Probity Auditors') to provide probity audit services to assist with government tendering activities such as major capital projects. The panel comprises 11 probity auditors from seven firms.

While use of the panel is not mandatory for non-departmental public entities, entities are encouraged (by DTF) to use the panel.

The panel firms have been pre-qualified as being appropriately skilled and qualified and as having a history of providing reliable and timely probity services. Other potential benefits from using the panel include:

- value for money (such as from economies of scale in engagement and contracting, and the use of standard panel rates)
- consistency in approaches to probity across the public sector
- simplicity in the engagement of probity services
- simplified reporting on the use of probity services.

These benefits apply equally well to non-departmental public entities procuring major projects as they do to departments.

In this instance, the Authority conducted its own public tender process to engage the Probity Auditor. The Authority was permitted to do this. The Probity Auditor was selected based on factors including demonstrated expertise and capability, availability and value for money. (The NTS tender probity arrangements are the subject of Part 5. Audit made no adverse findings in relation to the capability and conduct of the NTS Probity Auditor.)

Given the benefits of the panel and the fact that public entities like the Authority are undertaking major tenders, use of the panel should be extended to all major tenders undertaken by public entities. Should the coverage of the panel be extended in this way, it would be prudent to review the membership of the panel and to give suitable firms an opportunity to join the panel.

### 3.4.6 Procurement guidelines' coverage of public entities

As a non-departmental public entity established under the *State Owned Enterprises Act 1992*, the Authority was not required to comply with the tendering guidelines issued by the Minister for Finance, the Department of Treasury and Finance (DTF) and the Victorian Government Purchasing Board (VGPB). However, a 2001 government policy required all public sector agencies to articulate their purchasing policies and to benchmark them against the VGPB policies. Accordingly, the Authority was required to articulate and benchmark its policies and procedures.

Audit found that while the Authority did not formally benchmark its tender policies and procedures against the VGPB guidelines, it did have adequate policies and procedures in place to ensure compliance with the guidelines, and the Authority made a deliberate decision to act as though it was covered by the guidelines. The Authority's decision to act as though it were covered by the guidelines indicates that there is scope for:

- extending the coverage of the guidelines to some classes of public entity (which would comply with the guidelines rather than benchmark their policies and procedures against the guidelines)
- clarifying the applicability of the tendering guidelines to public entities like the TTA.

The coverage of the guidelines, and how well the coverage is understood, are important issues given the growing use of special-purpose public entities (like the TTA and the Southern and Eastern Integrated Transport Authority) to deliver major capital works and IT projects.

## 3.5 Conclusion

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The governance arrangements established for the NTS tender were consistent with the relevant legislative requirements and the relevant procurement guidelines.

Five areas for potential improvement were identified. These improvement areas are of wider application to future major tenders and relate to:

- the size of the Authority's Board
- the size and composition of the Authority's audit committee
- the segregation of roles of senior managers in the evaluation of tenders
- the combination of the Probity Auditor and Probity Adviser roles
- the use of the whole-of-government probity services panel.

Also, audit identified scope to clarify and extend the application of procurement and tendering guidelines to non-departmental public entities.

## Recommendations

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- 3.1 To achieve clarity and consistency in the application of procurement guidelines for major tenders, the coverage of the DTF and VGPB procurement guidelines should be expanded to cover non-departmental public entities' major tenders in the same way that Departments are covered. 'Major tenders' should be defined as those with a value greater than \$100 million or where a risk assessment indicates the tender is of a unique nature or is not 'business as usual.'
- 3.2 To provide greater assurance about the integrity of major tender processes, the guidelines should specify that, where major project procurement is to be undertaken by a special-purpose public entity, the size of the entity's Board should reflect the scale and complexity of the project, and that to have at least three to four members on the Board, and at least one external member on the Board's audit committee, is good practice. The guidelines should encourage agencies to make greater use of audit committees in the governance of major tenders.
- 3.3 To keep up with new developments in tendering, DTF should review biennially the applicable guidance materials for major tenders, including those materials relating to the governance and planning of major tenders.
- 3.4 DTF and the VGPB should amend their 2006 Policy for the Conduct of Commercial Engagements in relation to Probity Auditors to provide that, for major and complex tenders:
  - Probity Auditor and Probity Advisor functions should be provided by different parties
  - where the procurement is being undertaken by a non-departmental public entity, the Probity Auditor should be engaged by the portfolio Department, with the tendering authority reimbursing the Department for the cost of the Probity Auditor role at the end of the tender process.
- 3.5 Non-departmental public entities undertaking major tenders should be required to use the probity services panel established by DTF. To facilitate this, DTF should review the membership of the panel and give suitable firms an opportunity to join the panel.

## 3.6 Background to tender planning

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The extent of planning undertaken for a major tender should be commensurate with the level of risk to the government arising from the proposed engagement. The planning phase involves the following steps:

- *Developing a business plan:* The business plan determines what goods and services need to be acquired, the likely cost of those goods and services, options available to acquire the goods and services, and the potential risks, costs and benefits associated with each option. The tendering authority should gain an understanding of the requirements of the consumers of the goods and services and other relevant stakeholders.
- *Market soundings and market analysis:* A market sounding process is valuable in obtaining information on the supply market for the goods and services required. The tendering authority uses this intelligence to inform itself of the best way to acquire the required goods and services, to identify the depth of the supply market and to determine the factors driving the market.
- *Developing a tender strategy:* The tender strategy assesses the purchasing options available to the tendering authority and informs its preferred method of market engagement (eg. a one-stage tender, a multi-stage tender, a tender for a whole system, or a tender for separable component parts).
- *Establishing the procurement process:* The procurement process includes the tender process and associated logistics, evaluation and selection processes, the tender governance framework and the tender requirements. The Request for Tender is used to articulate the tender requirements (the products and services that the tendering authority must procure to satisfy the needs of its customers in the context of government policy) and communicate these requirements to potential tenderers.
- *Risk assessment:* The tender risk assessment has two components: the risks related to the desired deliverables; and the risks associated with the procurement process itself. Risks are generally rated by the severity of their consequences and the likelihood of their occurrence. Once risks are identified and assessed, strategies are identified to mitigate the risks, and responsibilities for these strategies are assigned.

### 3.6.1 Planning the NTS tender

The Authority began planning the NTS tender in late 2003, building on a significant body of research undertaken by the Authority's precursor, the Public Transport Ticketing Taskforce. The Authority's planning for the NTS tender was completed before the initial date for the close of tenders (24 September 2004). (The closing date was extended to 22 October 2004 at the request of two tenderers.)

In planning the NTS tender, the Authority took the following steps with respect to preliminary work, establishing the project, and detailed planning documents.

## Preliminary work

- The Authority researched alternative ticketing technologies and systems to identify the requirements for the NTS tender (late 2003)
- In conjunction with its consultants, the Authority developed a business case for the acquisition of a new ticketing system (*A New Ticketing Solution: The Business Case*, 27 April 2004). The business case was approved by the Minister for Transport in May 2004
- The Authority obtained funding approval for the NTS (22 April 2004).

## Establishing the project

The Authority:

- Identified and assessed tender risks
- Conducted two market sounding forums (January and May 2004). The presentations from these forums and the consequent discussions were documented in reports prepared by one of the Authority's consultants
- Advertised for potential tenderers to register their interest in order to receive the RFT document (July 2004)
- Developed a project plan
- Developed probity arrangements
- Appointed a consultant to undertake the role of Probity Auditor and provide probity advice (May 2004)
- Identified and engaged specialist legal, accounting and ticketing specialist advisors (engaged early 2004)
- Identified project deliverables
- Determined the procurement process
- Developed the planning documents that are listed below.

## Detailed planning documents

The Authority prepared or procured the following documents:

- Risk management plan (TTA Risk Management Plan: NTS Project, March 2004)
- Risk register (May 2004)
- Tender strategy
- Tender specifications and selection criteria
- Probity plan (Pre-procurement Phase Probity Plan, May 2004; NTS Procurement Phase Probity Plan, July 2004. The Authority also developed a set of 19 probity protocols for the NTS tender that addressed conflicts of interest, written communications with tenderers, security of bid documents, confidentiality, document management and evaluations)
- Probity and confidentiality agreements
- Evaluation plan (Plan for Evaluation of Offers, October 2004; Evaluation Plan Stage 2 Part A, December 2004; Evaluation Plan Stage 2 Part B, January 2005; Evaluation Plan Stage 2 Part B Supplementary, January 2005).
- Transition management plan
- Marketing/communication/consultation plan



- Request for tender (*Request for Tender: New Ticketing Solution*, which was released to registered tenderers on 30 July 2004. The tender outlined the procurement process, the tender objectives and the project requirements and deliverables).

### 3.7 Findings relating to planning

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The essential plans, processes and administrative arrangements were all in place when the NTS tender commenced. Particular areas of good practice included the degree of expert advice sought, the probity plan and its related protocols, and the process of conducting market soundings.

Audit identified two important questions with respect to the adequacy of planning for the NTS tender. The first was whether the planned approach was robust to all reasonably foreseeable contingencies, including the receipt of initial offers that were of poor quality. This question is discussed in Part 4. The second was whether the planned probity arrangements were appropriately applied. This question is the subject of Part 5.

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# 4 Management of the NTS tender

## At a glance

### Background

The NTS procurement approach was designed to overcome issues experienced by governments worldwide in the purchase of ticketing systems.

Rather than providing the market with detailed specifications for the NTS, the tender set out the desired outputs and outcomes to be achieved. It allowed tenderers considerable flexibility in how they would achieve the desired NTS requirements. The approach allowed tenderers to assemble a consortium of partners and equipment suppliers that would best meet the NTS requirements.

### Key findings

- The tender process was innovative and largely successful in meeting the objectives sought from the tender of timeliness and smooth transition, systems flexibility and value for money. Whether or not the system achieves 'high levels of performance' cannot be assessed until the system is fully operational.
- Good practices in the Authority's management of the tender included the way in which the procurement approach was developed, and the expertise of the tender management team.
- Areas where tender management could have been improved included:
  - the number of the Authority's staff and experts with direct access to tenderers
  - the tender rating system
  - the articulation of a maximum risk appetite and critical RFT requirements.

### Key recommendation

4.1 To capture lessons learnt in respect to the management of major tenders, DTF should review the VGPB guidelines and other relevant guidelines to ensure there is adequate guidance for:

- communication between tendering agencies and tenderers about the type of tender and the tender requirements
- managing changes to the tender process, including necessary adaptations to the control arrangements
- the evaluation of tenders, including rating systems
- negotiation and clarification meetings, including the number of people involved.

## 4.1 Introduction to tender management

Tender management is concerned with ensuring:

- the goods and services being acquired will meet the requirements established by the tendering authority
- the successful tenderer is capable of providing the goods and services
- the successful tender will deliver the best value-for-money solution
- tender processes and decisions are adequately supported and documented
- the tender process is fair. (Probity in tendering is the subject of Part 5).

The key elements of tender management are:

- resourcing of the tender management team
- informing potential tenderers about the goods and services that are being sought, the procurement approach and the tender process
- managing changes to the tender process and requirements
- tender evaluation
- negotiation with one or more shortlisted tenderers, and clarification of the shortlisted tenders
- documentation of the tender process.

These six key elements are described and discussed in Figure 4A.

**Figure 4A**  
**Key elements of tender management**

Topic	Discussion
Resourcing and administration of the tender process	<p>The tender management team should possess the range of skills required to effectively address all aspects of the tender. Staff engaged to undertake a major tender process in the public sector are required to:</p> <ul style="list-style-type: none"> <li>• make decisions on whether the goods and services offered will meet the tendering authority's requirements</li> <li>• assess the capability of tenderers</li> <li>• conduct risk assessments</li> <li>• undertake value-for-money assessments</li> <li>• manage probity issues.</li> </ul> <p>To do this, they need:</p> <ul style="list-style-type: none"> <li>• experience in tendering in the public sector and knowledge of the relevant policy, legislative and other requirements for public sector tenders</li> <li>• sufficient technical knowledge of the goods and services being purchased</li> <li>• an understanding of the supply market and how it operates.</li> </ul> <p>Tender teams will often source specialist expertise (such as legal expertise, technical expertise about the goods and services being procured, and tender management expertise) through the engagement of consultants and contractors.</p>

**Figure 4A**  
**Key elements of tender management - *continued***

Topic	Discussion
Informing tenderers about the requirements and the process	<p>A key aspect of tender management is ensuring that potential tenderers clearly understand the type of tender they are being invited to join. Tenderers expend significant time and money tendering for large projects. The tendering authority needs to clearly communicate to prospective tenderers the details of:</p> <ul style="list-style-type: none"> <li>• the tender processes</li> <li>• the tender requirements</li> <li>• the basis for evaluation of tenders</li> </ul> <p>so that they have a good understanding of the tender.</p> <p>This communication should be via the market soundings, the RFT documentation, meetings with tenderers and other communications with tenderers.</p>
Managing changes to the tender process and requirements	<p>For contracts requiring complex and technical solutions, it may be difficult to establish the ideal tender from the start; circumstances change, factors important to the outcome of the tender may be overlooked, or tender documentation may prove to be unclear. These factors may result in a need to change the tender process, timelines, requirements or documentation.</p> <p>Retaining a degree of flexibility in the management of tenders is legitimate. In managing changes to the tender process, the key goal is to ensure that the changes do not affect the integrity of the tender process. To achieve this, the tendering authority should:</p> <ul style="list-style-type: none"> <li>• assess the impact of changes on tenderers and the integrity of the tender process</li> <li>• seek Board consideration and approval of significant changes</li> <li>• communicate the changes to the participants in the process</li> <li>• update the relevant parts of the tendering plan and administrative arrangements</li> <li>• allow tenderers sufficient time to respond to the changes</li> <li>• document changes and the reasons for them</li> <li>• obtain sign-off from the Probity Auditor.</li> </ul>

**Figure 4A**  
**Key elements of tender management - continued**

Topic	Discussion
Tender evaluation – <i>General</i>	<p>The ultimate goal of public sector tenders is to ensure that the purchase of goods and services represents value for money for the community. This involves a comparative analysis of all the expected costs and benefits of each tender over the whole procurement cycle. Benefits are determined from an assessment of how well each tender meets the tender requirements.</p> <p>In addition to the expected costs and benefits, the value for money assessment may include consideration of other matters such as:</p> <ul style="list-style-type: none"> <li>• the capability of tenderers</li> <li>• risk</li> <li>• the flexibility of the proposal</li> <li>• the ability of tenderers to meet project timelines.</li> </ul> <p>Sound tender evaluation is critical to tendering success, as it is through this process that the tendering authority determines the best value tender. The evaluation process should ensure tenders are evaluated in a consistent manner and that tenderers are treated fairly. The process used, the ratings and assessments assigned and decisions made, should all be documented.</p> <p>A sound tender evaluation process would include:</p> <ul style="list-style-type: none"> <li>• an administrative structure with clearly defined roles and responsibilities for tender assessment and approval. In larger tenders, this is likely to require the establishment of a number of specialist and appropriately skilled advisory or assessment teams, an evaluation committee, and the engagement of other legal and specialist advisors</li> <li>• plans for evaluation teams and the evaluation committee</li> <li>• evaluation criteria and weightings for the criteria</li> <li>• processes to consistently assess tenders against the selection criteria and to grade and rank tenders</li> <li>• documentation of the tender evaluation and decision-making process, so that ratings and decisions are adequately supported and the processes are sufficiently transparent to allow the evaluation committee to determine how close each tender is to meeting the tender requirements</li> <li>• independent probity oversight of the evaluation process</li> <li>• procedures for site visits and testing of equipment.</li> </ul>

**Figure 4A**  
**Key elements of tender management - continued**

Topic	Discussion
<p>Tender evaluation –  <i>Tenderers' capability assessment</i></p>	<p>Capability assessment is a particularly important element of tender evaluation. It is designed to assure the tendering authority that a particular tenderer's solution is deliverable and that the tenderer is capable of delivering the solution on time and on the terms set out in the tenderer's proposal. This is important where the tenderer is to be both the provider and the operator of the system or asset being acquired.</p> <p>In some circumstances, the tendering authority may choose to select a tender based on potential capability rather than proven capability. Where it does so, it is important for the tendering authority to:</p> <ul style="list-style-type: none"> <li>• identify the associated risks and include these in the tender rating</li> <li>• adequately support the decision to select the tender based on its potential capability, such as through more detailed capability testing and more detailed examination of the tenderer's track record in undertaking similar projects</li> <li>• outline clearly how the increased risk to delivery will be managed.</li> </ul>
<p>Tender evaluation –  <i>Price assessment</i></p>	<p>Assessing a tender's price is an important aspect of gaining assurance that a proposal will (or will not) deliver value for money.</p> <p>Establishing a tender process that allows tenderers to submit multiple tender prices is likely to delay the tender process (as tenderers may start with high bids knowing that they will have an opportunity to submit lower bids later in the tender process) and increase the cost of the evaluation process (as each tender revision has a cost implication). However, in some circumstances this approach may produce a more competitive outcome for the tendering authority.</p>

**Figure 4A**  
**Key elements of tender management - continued**

Topic	Discussion
Negotiation and clarification	<p>Negotiating toward an agreed solution and a contract involves the tendering authority negotiating the following elements, to refine the shortlisted tenders:</p> <ul style="list-style-type: none"> <li>• the details of the proposed goods and services</li> <li>• the delivery schedule</li> <li>• the price</li> <li>• the allocation of risks between the procurer and the tenderer or tenderers involved in the negotiations</li> <li>• other contractual details and legal requirements (such as insurance, intellectual property rights, parent guarantees and security bonds).</li> </ul> <p>To reduce the time taken for the selection and contract negotiation processes, it is possible to negotiate legal and other requirements with more than one tenderer during the evaluation process. Adoption of this approach can result in the tendering authority bringing the negotiations to a point where contracts can be signed with one or more tenderers prior to awarding the contract.</p> <p>A key aspect of managing negotiations is ensuring communications are well controlled and that there is no unmanaged transfer of information between tenderers.</p> <p>Negotiations in traditional tenders are normally held in abeyance while the tendering authority determines a preferred tender. Under the emerging tender practices, negotiations are sometimes used during the evaluation period to elicit improved proposals.</p>
Documentation of the tender process	<p>The tendering authority should document adequately the tender process, including all significant decisions made and actions taken. This allows the tendering authority to defend all of its decisions, and enables independent scrutiny of the tender process. It also serves to capture lessons and 'corporate knowledge' for the management of future tenders.</p> <p>The tendering authority should clearly document:</p> <ul style="list-style-type: none"> <li>• the products and services or the outputs that are being sought</li> <li>• the tender process, and the policies, procedures and controls established to ensure the integrity of the tender process</li> <li>• evaluation criteria and weightings</li> <li>• the results of the tender evaluations, with supporting evidence for ratings assigned to tenders and the decisions made</li> <li>• communications with tenderers.</li> </ul>

Source: Victorian Auditor-General's Office.

## 4.2 The NTS tender process: Rationale and objectives

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There are only a small number of suppliers of automated ticketing systems worldwide. Two major equipment suppliers dominate the Australian market. Most of the ticketing systems acquired around the world have involved a long-term contract for the supply of a proprietary system. Such arrangements have created technical barriers to purchasing authorities, with respect to:

- obtaining the best ticketing system
- changing equipment or suppliers during the contract period if the systems and equipment fail to operate as required.

The NTS procurement approach was designed to overcome these problems by:

- breaking the system into a number of separate components
- establishing a system where component parts were interchangeable (through the use of open architecture).

This approach was intended to allow tenderers to assemble a consortium of partners and equipment suppliers that would best meet the NTS requirements, and to enable the Authority to change equipment or suppliers during the contract period, if needed.

In the Authority's setting of the tender requirements, the NTS system was broken down into six component parts (work packages), consisting of five equipment work packages (rail, tram and bus equipment, hand-held devices and third-party retail) and a core work package (provision of business services, systems and supporting infrastructure for the central body and integration of the equipment with the central body).

The approach adopted in the NTS tender process was not to provide the market with detailed project specifications, but to describe the requirements in terms of outputs. The decision not to specify the inputs required to build the NTS, such as the type of systems and components that it expected would achieve the outcomes, was intended to give tenderers a greater level of flexibility in how they proposed to achieve the Authority's stated objectives. It also sought to leverage the expertise, creativity and experience of tenderers, and encourage innovation and enhanced value for money.

The following documents outlined the required outputs:

- solution overview
- business requirements document
- open architecture document
- performance requirements document
- project requirements document.

The RFT described four high-level objectives that were being sought from the tender:

- high levels of performance
- timeliness and smooth transition
- systems flexibility
- value for money.



## 4.3 Description of the NTS tender process

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Appendix D summarises the timeline and key milestones of the NTS procurement process. The key stages in the tender were:

- market soundings
- registration of interest and provision of initial offers
- a revised offer stage
- a negotiation stage.

### 4.3.1 Market soundings

In January and May 2004, the Authority conducted market soundings.

The January market soundings were conducted as part of the Authority's pre-procurement planning process, and focused on procurement strategy options.

Particular areas of focus were:

- whether to seek a single primary contract or multiple contracts
- whether to seek early involvement of a systems integrator
- how much risk could be transferred to the systems integrator, and how this could be done
- how the various procurement approaches affected the depth of competition in the supply market.

The market soundings were also used to seek 'indirect soundings' on other aspects such as alternative innovative solutions and implications for system commercial rights; and to assist in generating market interest in the project. Attendees at the market sounding sessions were advised that the soundings did not constitute commencement of the procurement process.

The May 2004 market forum sought to test the views of a sample of potential suppliers on the Authority's proposed procurement and financing approach. Participants were asked a series of questions relating to:

- their willingness to participate in the tender on the basis of the proposed approach to procurement and financing
- which packages they would be interested in bidding for, and whether they would bid for all or parts of the project
- appropriate performance and payment regimes
- forms of financing that could be permitted in order to enhance value and support the procurement objectives.

The Authority recorded that participants in the May soundings were supportive of the Authority's proposed financing and procurement approach, with the main consideration being the proposed tender response time.

### 4.3.2 Registration of interest and provision of initial offers

In July 2004, the Authority advertised for potential tenderers to register their interest in order to receive the Request for Tender (RFT) document. (There was a \$25 000 fee to register an interest.) On 31 July 2004, the RFT was provided to organisations that registered their interest. The RFT specified a closing date of 24 September 2004 for initial offers (this was later extended to 22 October 2004).

Prior to the receipt of the initial offers, all communication with tenderers was controlled using a secure custom-built website.

Tenderers were permitted to submit offers covering all six work packages ('whole-of-solution' offers) and offers covering fewer than six of the work packages. By the NTS tender closing date, six tenderers had submitted a total of 10 separate offers. These offers comprised:

- five whole-of-solution offers
- two core work package offers
- three equipment work package tenders (train, bus and tram) provided by one tenderer.

The evaluation committee assessed the initial offers against the RFT requirements and evaluation criteria developed by the Authority. The committee regarded the offers to be of particularly low quality. Also, all offers were assessed as non-conforming:

- no offer fully complied with the payment and financial security requirements of the Request for Tender
- one offer did not comply with the open architecture requirements
- one offer had insufficient information for the Authority to form a view as to whether it complied with the OA requirements.

The RFT gave the Authority a number of options with respect to how it proceeded from the initial offers stage. These included options to:

- select a preferred tenderer and proceed to negotiations (a 'fast track' option)
- select one or more preferred tenders and negotiate with them to include one or more alternative equipment packages into their offers.

As a consequence of the low quality of the initial offers, the Authority elected not to exercise either of these two options.

Following the Authority's evaluation of the initial offers, tenderers were provided with feedback on their tenders. The feedback was provided in clarification meetings with Authority staff.

Due to the poor quality of the initial offers, the Authority, as permitted by the RFT, decided to move to a revised offer phase, in order to elicit offers that met the NTS requirements. On 22 December 2004, three tenderers who provided whole-of-solution offers, and one tenderer who submitted a core work package, were invited to submit revised whole-of-solution offers. The Authority asked each of the tenderers to sign a commitment deed. The deeds outlined where the initial offers had failed to meet the NTS requirements, and committed tenderers to resolving these deficiencies in their revised tender.

### 4.3.3 Benchmark testing

Prior to tenderers submitting their revised offers, they were asked to demonstrate their proposed equipment and systems. Around 60 benchmark tests were designed to demonstrate the equipment's compliance with the Authority's open architecture specification.

All tenderers were assessed by the Authority as successfully completing the benchmark testing.

### 4.3.4 Revised offers

On 24 January 2005, the four tenderers that were asked to submit revised whole-of-solution offers did so.

During the revised offer stage, tenderers were again provided with feedback on their tenders in a series of clarification meetings. These meetings covered all elements of the tenders, including price, technical and contractual matters.

Following the assessment of revised offers, the Authority concluded that none of them met the minimum requirements of the RFT. Two of the four tenders were progressively eliminated between January and March 2005.

### 4.3.5 Negotiation stage

The Authority's Plan of Evaluation of Offers stated that '*Commercial negotiations will take place with the preferred tenderer(s). These negotiations will be conducted by the negotiation team on behalf of the Evaluation Committee.*' A negotiation team of five people was established by the Authority (the team did not include the Authority's CEO).

The negotiation stage of the tender process (11 March 2005 to 12 July 2005) involved a highly interactive process, where the Authority directly negotiated with the two remaining shortlisted tenderers. (For a discussion of the rationale for interactive tender processes, and a discussion of relevant principles, see Appendix E.) Clarification and feedback sessions (including communication meetings and equipment demonstrations) were held to improve the standard of tenders as the tender process progressed. Over the four-month period there were 126 meetings with tenderers (this includes negotiation meetings as well as clarification sessions with tenderers). During this process, the two tenderers were permitted to revise their tenders and tender price. As a result of the negotiations, one tenderer submitted seven revisions to its tender, and the other submitted six revisions.

#### 4.3.6 Selection of preferred provider

In June 2005, the evaluation committee recommended that the Board accept the Keane offer. The committee considered that either shortlisted offer could be accepted as:

- both tenderers were offering world-class solutions
- both were capable of delivering the NTS
- both offers fell within the budget
- there was no material difference in the financial cost of the offers.

The committee considered that the Keane offer represented better value for money because it offered:

- materially better equipment, with advantages for customer and operator acceptance
- lower risk of late delivery
- a more flexible technical solution
- a greater likelihood of smooth transition to the new ticketing system.

The Board accepted the evaluation committee's recommendation and awarded the NTS contract to Keane at the Board meeting on 10 June 2005.

The Minister for Transport authorised the Authority's Chairman and Chief Executive Officer to execute the contract documents in July 2005.

### 4.3.7 Gateway Reviews

The NTS project was subject to two Gateway Reviews. The first reviewed the NTS procurement strategy (June 2004) and included assessing whether:

- the strategy was robust and appropriate
- the project plan was appropriately detailed and realistic
- project and financial controls were in place and resources and funding available
- the development and delivery approach are appropriate and manageable
- the supplier market capability and track record is fully understood
- the procurement (or acquisition approach) will facilitate good client/supplier relationships
- appropriate project performance measures, tools and quality procedures are being used.

The second Gateway Review related to the tender decision (May 2005) and covered:

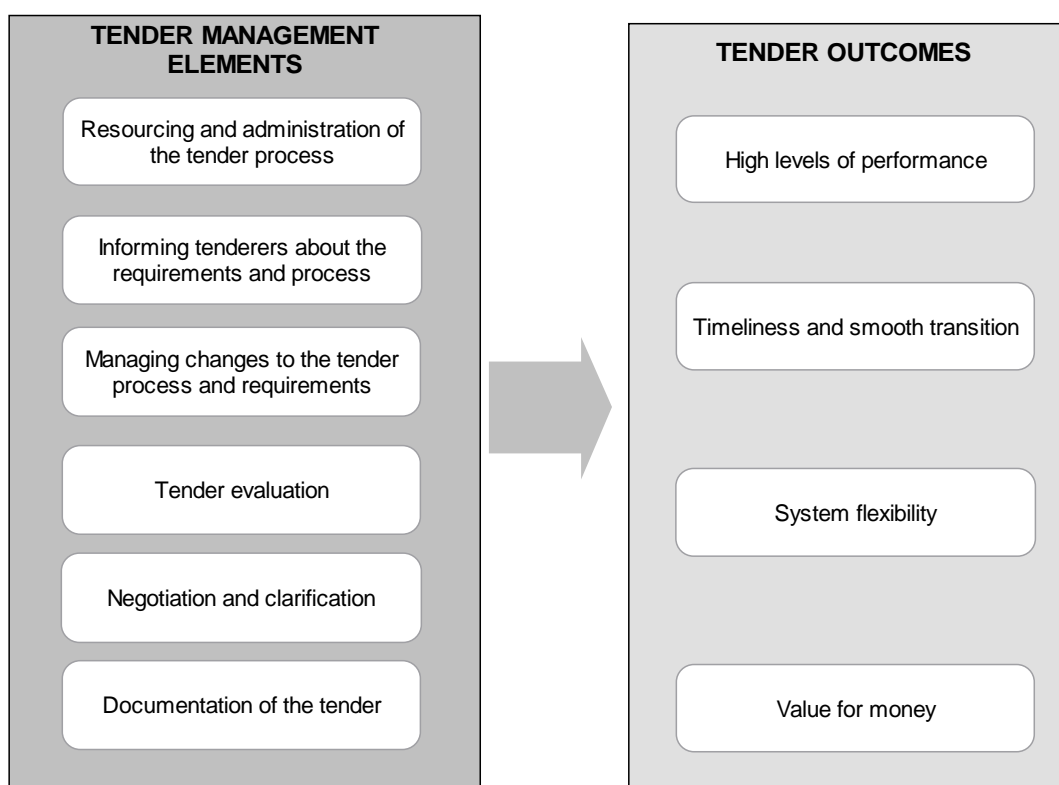
- confirming the procurement process has led to offers in line with the procurement strategy and the business case
- checking all necessary statutory and procedural requirements were followed
- confirming the recommended contract decision is likely to deliver the specified outputs/outcomes on time, within budget and will provide value for money
- ensuring management resources and controls are in place to manage the project to completion
- confirming the development and implementation plans of both the TTA and the shortlisted tenderers are sound and achievable
- confirming that there are plans in place for risk management, issue management and change management.

In both reviews, examples of good practice were identified (nine in the first review, six in the second review). Approximately 50 recommendations were put forward by the Gateway Review team for TTA action prior to proceeding to subsequent stages of the tender (i.e. release of the RFT after the first review, and receipt of tenders after the second review).

## 4.4 Audit’s assessment of the NTS process against the key tender elements and NTS objectives

Audit assessed the conduct of the tender against each of the six key tender elements that are listed in Figure 4A. Audit then assessed the extent to which the procurement process assisted the Authority in achieving the four high-level tender objectives. The elements of audit’s NTS tender process assessment framework are summarised in Figure 4B. The results of the assessment are in Figures 4C and 4D.

**Figure 4B**  
Elements of audit’s NTS tender assessment framework



Source: Victorian Auditor-General's Office.

**Figure 4C**  
**Tender management elements – results of audit assessment**

Element	Findings
Resourcing and administration of the tender process	<p>The Authority engaged an adequate number of staff with ticketing and tendering experience.</p> <p>The tender management team had sufficient access to specialist services and skills.</p>
Informing tenderers about the requirements and process	<p>The market soundings were an effective way of informing potential tenderers and the goods and services being sought, other aspects of the tender requirements, and the proposed procurement approach. (The soundings were also an important part of developing the procurement approach.)</p> <p>Up to the receipt of initial offers, the Authority successfully communicated with tenderers and potential tenderers about the nature of the solution being sought and the nature of the tender process.</p>
Managing changes to the tender process and requirements	<p>The RFT allowed the Authority to amend the tender process and procedures during the tender in response to the market.</p> <p>After the receipt of low-quality initial offers, the Authority implemented an interactive approach (which was one of a number of possible approaches that were permitted by and consistent with the RFT).</p> <p>The process was dynamic and complex, and unfamiliar to several tenderers. The Authority and the Probity Auditor took extensive steps to keep the tenderers well informed. At various stages of the tender, the Authority required tenderers to enter into a commitment deed outlining the specific requirements of the NTS tender. Notwithstanding this, some tenderers told audit that they needed more information about the process as it evolved. Also, despite the steps taken to inform the market, some tenderers did not fully appreciate the implications of the 'outcomes' approach to specifying the solution being sought.</p> <p>While the evolution of the process was appropriate, audit considers that additional steps could have been taken to:</p> <ul style="list-style-type: none"> <li>• apprise tenderers of the procurement approach, and its implications for the tender requirements and compliance requirements</li> <li>• revisit the control framework and risk framework in light of the evolving approach.</li> </ul>

**Figure 4C**  
**Tender management elements – results of audit assessment - continued**

Element	Findings
Tender evaluation	<p>An appropriate administrative structure was established for the NTS tender evaluation process, and the evaluation process was well planned.</p> <p>The tender governance arrangements included an advisory committee whose primary objective was to assess the capability of the suppliers in each consortium. One of the shortlisted tenderers lacked corporate experience in delivering and operating ticketing systems but was able to demonstrate to the advisory committee and the evaluation committee that its staff and consortium partners possessed the required skills and track record.</p> <p>During the NTS tender, tenderers were permitted to revise their tenders and tender price. The Authority undertook detailed assessments of each component of the tender prices submitted by each tenderer, and provided feedback on this assessment to tenderers. During the negotiation stage, tenderers were advised whether their offers were 'unaffordable' and whether they were 'uncompetitive'. In this way, the Authority successfully created competitive tension in the tender.</p>
Negotiation and clarification	<p>The Authority took two shortlisted tenderers into detailed parallel negotiations. The Authority established a five-person negotiation team (which was supported by nine other people) to conduct the negotiations.</p> <p>During this process, approximately 54 Authority staff, consultants, departmental staff and transport operator staff met with the tenderers. Of the 54 people, the majority were not involved in negotiation but in clarification sessions held concurrently with the negotiations.</p> <p>While the subject matter of the tender and the clarification sessions was complex, and therefore necessitated a high degree of involvement of technical specialists, the number of people with direct access to tenderers during the negotiation stage was high. This increased the risk that information flows could not be controlled.</p>
Documentation of the tender	<p>In general, the Authority's documentation provided an adequate record of the NTS tender process, including the evaluation plans and probity framework.</p> <p>(The Authority's documentation of phone calls and other communications with tenderers is discussed in Part 5).</p>

Source: Victorian Auditor-General's Office.



**Figure 4D**  
**Tender outcomes – results of audit assessment**

Objective	Findings
High levels of performance	<p>The Authority established a procurement process which emphasised customers' requirements and the selection of a solution that would provide for the future needs of the Victorian community.</p> <p>The actual performance of the NTS cannot be assessed until the system is fully operational.</p>
Timeliness and smooth transition	<p>The procurement phase of the NTS project was timely when compared with other ticketing tenders in Australia and overseas.</p> <p>Transition to the new system should be assisted by the transitional agreement established between the Authority and the current operator. Also, transition is likely to be facilitated by the fact that the current ticketing operator is involved in the successful tenderer's consortium.</p>
System flexibility	<p>The severable nature of the tender and the open architecture requirements (which allowed work packages to be interchangeable) was designed to:</p> <ul style="list-style-type: none"> <li>• help the Authority to create a larger market of prospective tenderers</li> <li>• enable tenderers to re-configure their partners, equipment and systems during the tender process to improve their tenders</li> <li>• allow the system acquired to be developed and extended over time, to avoid locking the Authority into proprietary systems.</li> </ul> <p>The tender process adopted by the Authority enabled it to attract more tenders than other comparable ticketing projects had received. In particular, systems integration firms were able to compete with ticketing system suppliers.</p>
Value for money	<p>The contract price submitted by the successful tenderer was within the budget set by the State Government and satisfied the Authority's own internal benchmark.</p> <p>The procurement process was successful in reducing the tender prices initially submitted by around 35 to 40 per cent. It is likely that, if the selected tender is delivered as agreed, value for money will be achieved.</p>

Source: Victorian Auditor-General's Office.

## 4.5 Conclusions

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The Authority established an innovative tender process and largely achieved its objectives for the procurement phase of the NTS project:

- *Timeliness and smooth transition* – The tender was timely compared with other ticketing tenders
- *System flexibility* – The Authority was successful in attracting more tenderers than other ticketing tenders have received
- *Value for money* – The tender prices were reduced by around 35 to 40 per cent during the tender process.

The outcomes-focused tender process used in the NTS enabled tenderers to apply their own methodologies and design to the NTS and use proven components. This was an effective way to encourage innovation and to improve value-for-money. The design of the tender is likely to have assisted the goal of achieving value for money from the tender.

The goal of 'high levels of performance' cannot be assessed until the system is fully operational. Audit notes that ensuring the sustainability of the selected solution within the agreed price will be a priority for the NTS contract managers.

In assessing the Authority's performance against the key elements of tender management outlined in Part 4.1, Audit identified four principal areas for improvement that are of wider application to major tenders in the public sector:

- the tender rating system
- specifying minimum requirements
- managing change to the tender process
- the number of people involved in negotiations with tenderers.

### 4.5.1 The tender rating system

A three-part tender rating system was used. The ratings were: A ('exceeds requirements'), B ('meets requirements') and C ('does not meet requirements').

This rating system did not indicate the difference between tenders within each category, and did not provide a precise assessment of how close each tender was to meeting the tender requirements. A more fine-grained rating system (eg. a system of five or more discrete rating levels with categories indicating the extent to which requirements were exceeded or were not met) would have:

- shown more meaningfully the relative position of tenders
- allowed the Authority to more clearly match the assigned rating to the evaluation narrative
- given a clearer representation of the progress of tenders over time.

## 4.5.2 Specifying minimum requirements

Despite the extended process in which the Authority succeeded in improving tenderers' offers, both of the shortlisted tenderers failed to meet the minimum requirements as set out in the RFT. The RFT requirements that were not met by the shortlisted tenderers were significant and largely related to the risk allocation between the State and the contractor. The principal risk-related RFT requirements that were unmet by one or both tenderers related to:

- limits on the total liability of the contractor to the Authority
- indexation of security bonds
- liability for liquidated damages
- responsibility for costs in relation to variations proposed by the Authority.

In addition, one tenderer did not meet the requirement to furnish management plans and strategies to the Authority.

While the NTS tender evaluation reports identified the areas where tenders did not meet the RFT requirements, the reports did not articulate which tender requirements were critical or threshold issues and which were not. Furthermore, for those requirements that were negotiable to some extent, this extent was not specified. A 'walk away' position, beyond which the tenders would not be acceptable, was not articulated.

After receiving the recommendation from the evaluation team, the TTA's Board determined that the deviations from the RFT requirements were acceptable. Similarly, the government accepted that the recommended tender represented value for money and adequately satisfied the RFT requirements. The Board's decision and the government's endorsement of the selected tenderer would have been assisted by the clear articulation of a maximum acceptable level of risk for government. This would have enabled the decision-makers to determine with more precision and confidence whether the departures from the RFT requirements were minor, or whether they were such that the desired solution could not be acquired within the budget without an unacceptable allocation of risk.

Risk allocation is a complex area, and one that is not as well understood as price comparators and service requirements. While specifying the acceptable level of risk is the most difficult aspect of setting the tender requirements, it is sufficiently important to warrant a large up-front investment. This investment would include:

- developing tools and frameworks to clearly present risk levels and parameters
- instructing decision-makers and stakeholders about the impact and parameters of risk transfer
- training practitioners in risk identification, measurement and allocation principles.

### 4.5.3 Managing changes to the tender process

The NTS tender was dynamic and complex, and involved a procurement approach that was unfamiliar to several tenderers. The Authority and the Probity Auditor took extensive steps to keep the tenderers well informed. At various stages of the tender, the Authority required tenderers to enter into a commitment deed outlining specific requirements of the tender. Notwithstanding this, some tenderers told audit that they needed more information about the process as it evolved. Also, despite the steps taken to inform the market, some tenderers did not fully appreciate the implications of the 'outcomes' approach to specifying the solution being sought. Additional steps could have been taken to:

- apprise tenderers of the procurement approach, and its implications for the tender requirements and compliance requirements
- revisit the control framework and risk framework in light of the evolving approach.

### 4.5.4 The number of people involved in the negotiation and clarification processes

Approximately 54 people had contact with tenderers during the negotiation stage. (The Authority advised audit that the great majority of these (49) were involved in clarification sessions rather than negotiation meetings.) The subject matter of the tender and the clarification sessions was complex, and required a high degree of involvement of technical specialists. Nevertheless, audit considers that the high number of people with direct access to tenderers during the negotiation stage significantly increased the risk of uncontrolled information flows.

### 4.5.5 Value-for-money statement

The goal of tender management is to achieve value for money in the public interest. A 'value for money statement' is a vehicle for conveying to the community, tenderers and other stakeholders the approach to be taken in a major tender, and particularly the elements of the approach that have a particular bearing on the achievement of value for money in the tender. Examples of these elements include how the project is structured, efforts to increase the number of potential bidders (eg. marketing, and tender participation rules), efforts to create competitive tension in the tender (eg. the structure and rules of the negotiations), and aspects of the probity framework.

The concept of a value-for-money statement had not been developed at the time of the NTS tender. For future major tenders, the concept may be a useful tool for tendering authorities to communicate the procurement approach, and to build confidence in the approach.

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## Recommendation

- 4.1 To capture lessons learnt in respect to the management of major tenders, DTF should review the VGPB guidelines and other relevant guidelines to ensure there is adequate guidance for:
- communication between tendering agencies and tenderers about the type of tender and the tender requirements
  - managing changes to the tender process, including necessary adaptations to the control arrangements
  - the evaluation of tenders, including rating systems
  - negotiation and clarification meetings, including the number of people involved.

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## Consider points

- 4.2(a) For major and complex tenders with a significant risk component (ie. where the procurement contract would assign significant risk to the government, in the form of guarantees, indemnities, residual obligations and other risks), DTF should consider developing a framework for determining and articulating, in a common language and on a project-by-project basis, the maximum acceptable risk level to be borne by government.
- 4.2(b) In concert with the development of such a framework, DTF should consider whether there is a need for training in risk allocation principles for practitioners involved in major tenders conducted outside the Partnerships Victoria framework.
- 4.3 For each major and complex tender, the tendering authority should consider publishing, at the commencement of the procurement process, a value for money statement, about how the procurement process has been designed and how it will be managed in order to achieve value for money for the community.
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# 5 Probity of the NTS tender

## At a glance

### Background

Whenever innovative tendering processes are adopted, these must always be matched by a commensurate emphasis on, and scrupulous implementation of, appropriate probity frameworks.

Probity frameworks for major tenders seek to ensure:

- fairness and impartiality in the conduct of the tender, including appropriate management of conflicts of interest
- consistency and transparency in communications and in the application of processes, and security and confidentiality in the treatment of information.

### Key findings

- The NTS Probity Auditor identified more than 30 staff and other individuals involved in the tender evaluation process who had potential conflicts of interest with organisations tendering for the NTS. While the potential conflicts were identified in a timely way, the Authority could have taken additional steps to communicate to tenderers, the government and the community, how it was managing conflicts of interest that arose in the tender.
- While most communications were controlled according to pre-determined procedures and protocols, there were a small number of instances of non-compliance.
- A significant number of Authority documents and one NTS tenderer document came into the possession of a journalist. Audit's investigation of the alleged leak found that the Authority's controls had limited access to the leaked documents to seven staff. We found no evidence that these staff members provided the documents to anyone outside the Authority.

## At a glance - *continued*

### Key recommendations

- 5.1 The VGPB guidelines and other relevant guidelines should be reviewed to provide stronger and more precise guidance for maintaining the probity and integrity of major innovative tenders. The guidance should take account of the lessons learnt from the NTS tender and other recent major tender processes particularly with respect to:
- the planning of the probity approach
  - the identification and management of conflicts of interest and other probity issues, including management of perceived conflicts of interest
  - controlling communications with tenderers and the management of sensitive information.
- 5.2 For major and complex tenders, the tender project team should be physically separated from the location of tenderer meetings.

## 5.1 Introduction to probity in tendering

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In both the public and private sectors, a great deal of emphasis is placed on the processes adopted for the procurement of goods and services. The key goal for all procurers is to achieve value for money while maintaining appropriate standards of fairness and process integrity. Whenever innovative tendering processes are adopted, these must always be matched by a commensurate emphasis on, and the scrupulous implementation of, appropriate probity frameworks.

Areas of potential probity risk in tenders are many and include:

- unfair treatment of tenderers
- conflicts of interest and bias in the evaluation of tenders
- corruption of the tender process
- a lack of transparency
- a loss of public confidence in the tender process.

Issues of probity have assumed greater prominence as public sector agencies have embraced new approaches to procurement. Governments in several jurisdictions have moved away from the traditional forms of 'tender box' or 'sealed bid' tendering to more interactive and flexible approaches. Emerging features of the latter types of tendering include:

- the purchaser retaining flexibility with respect to the number of tendering stages
- flexibility with respect to the timing for closing of bids and contractual close, including retaining the option to accept further 'best and final offers' after initial 'best and final offers' have been received, and after a previously announced closing date
- requiring multiple tenderers to enter detailed contractual and legal discussions with the tendering authority, in parallel with each other
- flexibility about whether the reserve price is disclosed, and whether a series of 'reserve prices' are disclosed in the tender
- strategic disclosure of weightings of evaluation criteria
- seeking menus of bids (price and quality combinations) from each tenderer
- partial acceptance of proposals (eg. acceptance of separable components of a bid)
- reserving the right to buy intellectual property from a proponent (eg. the design of a proposed solution) without engaging that proponent to deliver the solution.

The intention of these types of tendering innovation is to open up new ways for the procurer to obtain greater value for money. They involve a more 'commercial' approach to public sector procurement.



Balancing 'commerciality' and probity in tender processes is always a challenge. While flexible and innovative approaches to tendering can enhance value for money for public procurers, the importance of probity is just as great in new types of tendering as it is in traditional procurement processes. Indeed, greater attention to probity is likely to be needed to ensure that innovation in tendering never weakens process integrity. Protocols for managing intensive communication with tenderers are one example of the carefully tailored probity arrangements that are likely to be needed for innovative tendering practices.

Managing tenders with due regard for procedural integrity is not only fair for tenderers, it also makes economic sense. If potential suppliers of goods and services to the government perceive that tender processes are fair and equitable, they will be more likely to spend the significant resources required to win a major government contract or a role in a major public-private partnership. Greater participation by tenderers leads to greater competition and higher value for money for government.

## 5.2 Background to tender probity arrangements

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Probity frameworks for major tenders seek to ensure:

- fairness and impartiality in the conduct of the tender, including appropriate management of conflicts of interest
- consistency and transparency in communications and in the application of processes, and security and confidentiality in the treatment of information.

Tenders should be conducted in a fair and impartial way. Tender materials and information should be made available to tenderers within the same timeframe and, for the tender to be fair, each tenderer needs to have access to the same materials and information. Each tender needs to be considered in a fair and impartial manner, with no bias toward or against particular tenderers or groups of tenderers.

Processes to manage conflicts of interest and other probity issues need to be robust, transparent and consistently applied.

The communication and implementation of procurement processes needs to be consistent and transparent. Tender processes and decisions need to be carefully considered, and adequately documented:

- for governing Boards to be able to make considered decisions
- to enable independent review of the tender and the capturing of lessons learnt.

Rules and processes need to be developed to manage the security and confidentiality of information, including commercial-in-confidence information. Physical security of documents is important to ensure there are no leaks.

To achieve these probity goals, tender probity arrangements would typically include:

- development of a probity plan to manage probity issues
- engagement of appropriate probity and legal advisors to advise the tendering authority on the management of probity issues
- engagement of a Probity Auditor to monitor the tendering authority's compliance and to provide assurance to the tendering authority on the integrity of the tender process
- probity training for tendering authority staff.

The key elements of probity relating to the NTS tender are considered in greater detail below, in relation to the management of conflicts of interest, and the management of communications and sensitive information.

## 5.3 Managing conflicts of interest

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In the administration of tenders, managing conflicts of interest involves:

- educating staff so they understand the obligations relevant to their position and are able to recognise conflicts of interest
- continually identifying, disclosing and documenting all relevant conflicts of interest in a timely way, and using this information in the assignment of roles in the tender process
- ensuring roles and responsibilities are clear and separable
- action taken to manage conflicts of interest. For example, the tendering authority should seek disclosure at each of the key stages of the tender process
- establishing procedures to identify and assess potential conflicts of interest which arise during the tender process. Again, the tendering authority should seek disclosure at the key stages during the tender process
- assessing each potential conflict of interest based on its nature and risk
- taking appropriate action to address conflicts of interest. Depending on the circumstances of the tender and the nature of the conflict, this may include the divestment of pecuniary interests, establishing confidentiality agreements and exclusion of the person with the conflict from the receipt of tender information or from the evaluation and approval of tenders
- documenting the results of assessments and action taken by the tendering authority to address the conflicts of interest
- establishing a mechanism to investigate complaints regarding conflicts of interest and potential breaches of the conflict of interest arrangements
- reporting or providing assurance on how well the conflicts of interest have been managed.

In addition to managing actual conflicts of interest, tendering authorities and their staff are obliged to avoid situations in which there is likely to be a perception of conflict. While this obligation has recently been clarified (in the *Public Administration Act 2004*, and the codes of conduct for public sector employees and public entity directors) it is a longstanding element of Victorian and Commonwealth frameworks for the conduct of public officials and staff, dating back at least to the 1979 Bowen Report (for details, see Appendix F, which summarises relevant probity requirements at the State and Commonwealth Government levels).

## 5.4 Conflicts of interest in the NTS tender

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Due to the specialised nature of ticketing systems, and the deliberate strategy of the TTA to hire people with ticketing experience, it was highly likely that a number of Authority staff would have had potential conflicts of interest from prior experience with organisations tendering for the NTS project.

In November 2004, following the establishment of the advisory teams and the evaluation committee, the Probity Auditor identified more than 30 staff and other individuals involved in the tender evaluation process who had potential conflicts of interest.

For each of these individuals, the Probity Auditor:

- identified the nature of the potential conflict of interest
- assigned a conflict of interest risk rating
- identified the staff member's role in the evaluation process
- outlined any risk mitigation strategies established by the Authority (prior to the assessment) to manage the risk
- identified a number of strategies the Authority could implement to mitigate the impact of the conflicts of interest on the tender process.

The risk ratings, which are shown below in Figure 5A, ranged from *high real or perceived risk* to *low real or perceived risk*. Seven staff members and one consultant were rated as high risk. (The Probity Auditor advised audit that these ratings were based primarily on perception-related risk.) Most of the conflicts of interest resulted from previous work histories and/or shares in two companies included in consortia tendering for the NTS.

All shareholdings were disclosed to the Authority in conflict of interest statements signed by staff and consultants and were identified in the work undertaken by the Probity Auditor. All of the declared shareholdings were modest and most were immaterial. The most significant shareholding of relevance to the tender was the CEO's shareholding in Headstrong / James Martin & Co. The Authority's management of the CEO's shareholding is detailed in Appendix G.

The Authority’s CEO and the Senior Project Manager had shared work histories with a number of members of the tendering consortia. These shared work histories and other relevant relationships were disclosed to the Authority and the Probity Auditor. The Authority determined that the conflict of interest ratings for the CEO and SPM were ‘high’. A senior member of one of the bid teams had been employed as a consultant by the Authority to help develop the NTS open architecture specifications. This was also disclosed.

The Authority took steps to inform tenderers about the conflicts of interest, and, in particular, informed tenderers about those people in the Authority who had prior relationships with tenderers. Tenderers were required to sign legal declarations to the effect that that they would not make claims as a result of these prior relationships.

**Figure 5A**  
**Structure of conflict of interest risk ratings for the NTS tender**

Risk rating	‘Perceived conflict of interest’	‘Real conflict of interest’
High	Friendships with tenderers Past working relationships	Major shareholdings in tenderers
Medium	Past working relationships	Minor shareholdings in parties related to the tenderers, eg. Banks, Telcos
Low	Past working relationships	No shareholdings

Source: Transport Ticketing Authority.

## 5.5 Communicating with tenderers and managing information flows

Where direct communication with tenderers is permitted, tendering authorities need to introduce protocols and processes to safeguard against information leaks, inconsistent treatment, and undue influence over the outcomes of tender assessments. The number of people allowed to interact with tenderers should also be kept to a minimum (ideally around five to 10 for negotiations, supplemented by other specialists for clarifying technical aspects of tenders).

In interactive tenders, the risks of inappropriate communications and information flows are particularly high. Tendering authorities undertaking an interactive tender should establish and adhere to a communications plan to control information flows between the authority and tenderers, and between the tenderers. This is particularly important during the negotiation with tenderers stages.

All communications with tenderers should be made through the appropriate channels established for the tender process, such as email addresses, web sites, designated contact officers and the Probity Auditor.

The nature and scope of feedback given by the tendering authority should be consistent across tenderers.

Where meetings are held with tenderers during an interactive stage of the tender process, it is important that:

- contact is limited to a small number of designated authority staff (such as a negotiation team)
- the rules governing the conduct of these meetings are clearly outlined in a communications protocol
- a record is kept of all meetings and discussions with tenderers
- procedures are in place to prevent improper discussions from occurring before, during and after meetings
- procedures are in place to control documents used in meetings.

The Probity Auditor should establish procedures to adequately monitor and control meetings with tenderers and other communications.

In a flexible and extended tender process, there is greater risk of information leaking between tenderers. Extra steps therefore need to be taken to address this risk. These steps can include tight controls on communication, and the establishment of participation sureties or 'bid bonds' to ensure the procurer is able to sanction breaches of the tender rules.

While a degree of flexible and informal communication between the tendering authority and bidders may be appropriate at some stages of the tender process, it is important that the tendering authority maintains clear and robust controls over the type and extent of communication that may take place between the team and tenderers. The rules and controls over communication with tenderers must be made clear to all members of the tender management team. In all cases, sensitive information must be carefully handled and controlled.

## 5.6 Findings relating to probity

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### 5.6.1 Conflicts of interest

Because of the nature of the ticketing systems field, the NTS tender faced a number of foreseeable conflicts of interest. The Authority identified the conflicts of interest in a timely way. Audit found no evidence of corruption in the NTS tender, and no evidence that the conflicts of interest led to the unfair or biased treatment of particular tenderers or groups of tenderers.

Managing perceptions is an important aspect of probity (see Appendix F for information about management of perceived conflicts of interest). In order to maintain community confidence in a tender, perceived conflicts of interest must be adequately addressed.

The Authority's CEO held shares in a company that was a member of both shortlisted consortia. Given the small size of the company's involvement in the successful consortia, and the size of the CEO's shareholding, the shareholding's effect on the CEO's incentives was not material. Nevertheless, the shareholding's potential to damage community confidence in the tender was high. The Authority could have taken additional steps to address perceived conflicts in relation to the shareholding. Examples of possible steps include requiring disposal of the shares to a third party, publicly disclosing the efforts to dispose of the shares, or removing the CEO from aspects of the evaluation process.

More generally, while the Authority went to considerable lengths to disclose conflict of interest information to tenderers, it could have taken additional steps to communicate to tenderers, the government and the community, how it was managing the real and perceived conflicts that arose in the tender.

## 5.6.2 Management of communications and information flows in the NTS tender

The NTS probity plan required meetings, conversations and decisions materially affecting the project's management to be minuted and filed. In most cases, communications between the Authority and tenderers were controlled according to the procedures set out in the Authority's probity plan and protocols, evaluation plans and procedures. However, audit identified a number of activities, and individual instances, where communications with tenderers did not comply with the pre-determined controls and protocols. Specifically, audit found that:

- 28 meetings between the TTA and tenderers, from a total of around 180 meetings with tenderers<sup>2</sup>, were not sound-recorded and the matters discussed were not documented
- a small number of meetings with tenderers had only one Authority staff member present
- during the tender there were more than 170 telephone conversations between tenderers and nine key Authority staff involved in the process. Almost 50 per cent of the calls were made to shortlisted tenderers during the negotiation phase (the majority of these were short, but a significant number were of significant duration [5 to 27 minutes]). Most of these telephone conversations were not documented in the Authority's records: audit identified only six file notes prepared by the Authority evidencing telephone communications with tenderers
- in January 2005, one foreign site visit, at which a tenderer was present, was attended by only one Authority staff member (the probity plan required at least two Authority staff members to be present at all meetings with tenderers).

These examples of non-compliance with the tender plans and protocols increased the risk that control breakdowns would occur.

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<sup>2</sup> Excludes meetings conducted at international sites.

While the great majority of the undocumented telephone conversations were not material, documentation of phone calls would have provided a higher degree of probity assurance.

The NTS probity plan required a communication strategy to be prepared to guide the interactions of Authority staff and consultants with tenderers. While management of communications was covered in a number of documents, including the probity plan and the protocols for overseas travel, a dedicated communications strategy was not prepared. Preparation of, adherence to and reporting against a dedicated communication strategy would have strengthened the probity framework, and the Board's oversight of the tender. In particular, it would have provided greater clarity for Authority staff with respect to how to manage communications.

While there is no evidence that the physical organisation of meetings contaminated the flow of information, the task of managing information flows would have been aided by physical separation of the project team from the negotiation and clarification meeting rooms.

### 5.6.3 Changes to the probity plan

During the initial offer stage of the tender, the Authority removed the requirement in its probity plan for the Probity Auditor to attend all meetings with tenderers, including overseas site visits and workshops. The requirement was replaced with attendance ‘as required’ (see Figure 5B).

**Figure 5B**  
**Changes to the NTS Probity Plan**

<i>Probity Plan Requirement (a)</i>	<b>‘Before’ Probity Plan, May 2004</b>	<b>‘After’ Amended Probity Plan (b)</b>
RFT clarification briefings (6.2.4)	The probity auditor will attend all clarification meetings.	The probity auditor will attend all clarification meetings as required.
Visits to reference sites nominated by tenderers (6.3.14)	The probity auditor will attend site visits.	The probity auditor will attend site visits as required.
Scrutiny of evaluation outcomes (6.3.15)	The probity auditor will attend Evaluation Committee and TTA Board meetings at which recommendations will be considered.	The probity auditor will attend Evaluation Committee and TTA Board meetings at which recommendations will be considered as required.
Ensure that appropriate approvals are obtained (6.3.16)	The probity auditor will attend Evaluation Committee and TTA Board meetings at which recommendations will be considered.	The probity auditor will attend Evaluation Committee and TTA Board meetings at which recommendations will be considered as required.
The negotiation process must be transparent. Confidentiality between competing bidder teams must be preserved at all times (6.4.1)	The probity auditor will attend all negotiation meetings with shortlisted bidders.	The probity auditor will attend all negotiation meetings with shortlisted bidders as required.

(a) References are to the probity plan.

(b) This plan included the final August 2005 comments / report of the Probity Auditor.

Source: Victorian Auditor-General’s Office, from Transport Ticketing Authority probity plans.

The documented rationale for these changes was to save time and money. No guidance was put before the senior management or the Board as to how this discretionary attendance was to be implemented – for example, there were no explicit principles in place that the Probity Auditor should attend ‘key’ meetings or those where probity risks were particularly high. Such guidance would have strengthened probity oversight of the tender in general, and of communications with tenderers in particular.

Further, the Probity Auditor’s rationale for attending some meetings but not others was not documented.



The Authority should have been more precise in its determination about the Probity Auditor’s attendance at meetings and visits (eg. by requiring that the Probity Auditor should be present at certain types of meeting, or when the travelling party was particularly small or of a particular composition).

### 5.6.4 Security of communications

Audit identified two email miscommunications. Details of these, and how they were handled by the Authority, are provided in Figure 5C.

The Authority advised audit that it had sent approximately 1500 emails to tenderers during the NTS tender. In view of the level of email communication, the number of email miscommunications was small. This is evidence that the email controls were largely effective.

**Figure 5C**  
**Email miscommunications**

Incident	Response
Confidential information, relating to tender master schedules provided by the two shortlisted tenderers, was emailed by an Authority employee to one of the shortlisted tenderers. The email was copied to NTS Admin.	<p>A TTA manager immediately replied to the sender identifying the email as a miscommunication.</p> <p>The manager immediately informed the Probity Auditor.</p> <p>The recipient tenderer was then called; the tenderer provided an undertaking, in the form of a statutory declaration, that it had deleted the email.</p> <p>The TTA then spoke to the tenderer who was the subject of the misdirected email; that tenderer agreed that the miscommunication was not material and that the Authority’s response was appropriate.</p>
An email that was sent to one of the two shortlisted tenderers via ‘NTS admin’ contained a reference to the other tenderer.	The Probity Auditor was advised of the miscommunication and, following a review of the circumstances, requested that the Authority ‘ensure that procedures established to avoid such incidents are carefully followed and reinforced to all staff and advisors’.

Source: Information provided by the Transport Ticketing Authority.

In addition to the two email miscommunications, there was an incident in which a significant number of Authority documents, and one NTS tenderer document which the Authority had neither seen nor taken possession of, were allegedly leaked and came into the possession of a journalist. The alleged leak is discussed at Appendix B.

## 5.7 Conclusions

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The Authority developed an appropriate probity framework for the NTS tender, however the framework was weakened during the course of the tender by instances of non-compliance with the controls, and the revisions to the probity plan. The revisions introduced an element of discretion that was not guided by explicit policies or principles.

Audit identified a small number of instances where sensitive tender information was not adequately controlled. In the course of the NTS tender, the Authority adopted an innovative, highly interactive approach. While the instances of miscommunication were not directly traced to particular control weaknesses, the evolution of the tender approach warranted further steps to strengthen the Authority's control framework for managing communication with tenderers. These steps were not taken.

Communications and information flows would have been easier to manage had the project team been physically separated (eg. in a different building or on a different floor) from the location of meetings with tenderers.

### Recommendations

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- 5.1 The VGPB guidelines and other relevant guidelines should be reviewed to provide stronger and more precise guidance for maintaining the probity and integrity of major innovative tenders. The guidance should take account of the lessons learnt from the NTS tender and other recent major tender processes particularly with respect to:
- the planning of the probity approach
  - the identification and management of conflicts of interest and other probity issues, including management of perceived conflicts of interest
  - controlling communications with tenderers and the management of sensitive information.
- 5.2 For major and complex tenders, the tender project team should be physically separated from the location of tenderer meetings.

### Consider point

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- 5.3 When a value for money statement is published for a major tender, it should include the key elements of how the tender management team will manage real and perceived conflicts of interest.
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# Appendix A

## Background to re-tendering public transport ticketing

In November 2002, the Government announced in its *Linking Victoria Transport Policy* that it would investigate options to replace Victoria's public transport ticketing system including the use of smartcard technology. The Government's announcement followed over a decade in which the MetTicket system<sup>3</sup> faced problems due to:

- variations to its project scope which adversely affected its implementation date
- industrial relations
- envisaged benefits to public transport users and government that did not materialise, notwithstanding substantial effort and costs being incurred
- loss of patronage
- fare evasion
- vandalism of trams
- government objectives of enhancing the convenience of ticketing transactions, improving efficiency and protecting the existing revenue base were not achieved.

In January 1993, the government commenced a wide ranging public transport reform program. The program was directed towards both ensuring the long term viability of Victoria's public transport and transforming the public transport system into a service that is responsive to the needs of its customers<sup>4</sup>. These aims were to be achieved through a range of initiatives including major changes to the traditional fare collection methods.

As part of the reform program, the Government outlined its view that existing public transport ticketing arrangements were slow, labour intensive and provided insufficient information to facilitate effective management of the transport system. The extent of fare evasion was also recognised as a major impediment to the system's financial performance. To address these circumstances, the government determined to implement an automated fare collection system as a matter of priority.

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<sup>3</sup> Auditor-General of Victoria, Special Report No.15 – MetTicket, November 1990.

<sup>4</sup> Refer to Auditor-General's Special Reports No. 57 (May 1998) and No. 59 (November 1998).

In May 1994, following a public tender process, the Public Transport Corporation (PTC) entered into a contract with OneLink Transit Systems Pty Ltd (OneLink or OLT) for the installation and operation of an automated fare collection system, now known as MetCard, at a total cost of around \$332 million. The MetCard system commenced 1997 and the contract with OLT expired on 1 March 2007.

During the application of MetCard, the public transport system was privatised and operated by franchisees. OneLink continues to monitor and manages the MetCard ticketing system under transitional arrangements, whereas revenue collection and classification is undertaken by another private company, Revenue Clearing House Pty Ltd (RCH). An important function of the RCH is to ensure the correct apportionment of public transport revenue to each operator.

Problems were experienced in the introduction of the new system including delays in implementation and in the functionality of the equipment across the various modes of transport. Overall, the MetCard system had not been accepted by the community and patronage fell.

The MetCard system had some inherent characteristics that made it less attractive for government and commuters, including:

- it tied the Government to one supplier for the life of the contract
- it required repeated validation of tickets by passengers
- it was difficult for many passengers to determine the correct ticket to purchase
- coin-operated ticket dispensing machines did not provide coins to change notes
- equipment malfunctioned frequently.

After 15 months from the date of commissioning of the OLT system, OLT lodged a \$271 million claim on the government, claiming that the then PTC had increased the scope of the project post contract, and also lodged a \$20 million claim for costs of vandalism and unresolved variations. After lengthy negotiations it was agreed that OLT would receive a staged settlement of \$65 million if it met certain stringent performance requirements.

The primary determinant for examining a new ticketing system was the approaching end of the existing contract (which expired in March 2007) and the need to provide a new ticketing system for Victoria's public transport system.

## Appendix B

# Investigation of alleged leak

On 13 July 2005, the day after the Premier announced that the Kamco (Keane) consortium had been awarded the NTS contract, a Herald-Sun journalist telephoned both the Chairman of the Authority and its Probity Auditor. The caller alleged he had in his possession confidential tender information.

The Probity Auditor met with the journalist. While the Probity Auditor sighted the leaked documents, the Probity Auditor was not able to obtain a copy or establish how they came to be in the possession of the journalist. The documents comprised a significant number of Authority documents and one NTS tenderer document which the Authority had never seen nor taken possession of.

On 14 July 2005, the Herald-Sun published an article alleging that details of competing tenders, including information about the capital costs of offers from IBM/ERG, Keane and Manta, had been leaked. Extracts from the leaked documents were published in the article. The article alleged that both the shortlisted consortia (Kamco and Manta) had gained access to the leaked tender documents before their final tenders were submitted.

On 13 July 2005, the Board of the TTA commissioned the Probity Auditor to undertake a full investigation. After an analysis in particular of the revisions to tenderers' offers subsequent to the dates of the alleged leaked documents, the Probity Auditor reported that no evidence was found that either shortlisted tenderer had access to each other's confidential offers during the tender process.

On the advice of the Probity Auditor, the TTA Board then commissioned an accounting firm with forensic investigation skills to identify how the information may have come into the public domain. The firm reported to the TTA that the firm had not established 'when the information was acquired by the [media]' and in their view, 'the financial information was of little or no commercial value in July 2005 and that it appears the motivation for its release at that time would primarily have been to embarrass the TTA or the government after the contract had been awarded' (Report on the investigation into the unauthorised disclosure of information, 6 September 2005).

## Request from Minister

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In July 2005, the Minister for Transport wrote to the Auditor-General requesting that he investigate the alleged leak of tender information.

To assess whether the leak of the tender information significantly compromised the integrity of the tender process, audit endeavoured to determine whether the information was:

- received by one or both of the two shortlisted tenderers
- of value (ie. whether it would provide a recipient with an advantage over another tenderer or other tenderers)
- used by the successful tenderer to assist in winning the tender.

## Investigation method

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The work undertaken by audit included:

- examination of the leaked documents
- reviewing the tender bids provided by the shortlisted tenderers between 3 March 2005 and 7 June 2005
- reviewing the Authority's tender evaluations and the work undertaken by the Probity Auditor
- listening to tape recordings of tenderer meetings held in the weeks prior to the date that the information was allegedly provided to the tenderers
- identifying Authority employees who had access to the Authority information included in the leaked documents
- reviewing the Probity Auditor's and expert accountant's reports commissioned by the TTA Board regarding the alleged leak
- reviewing the Authority's electronic databases to identify who had accessed the documents
- speaking to the two shortlisted tenderers.

To assist audit in accessing the Authority's electronic records, audit engaged a consultant to examine the Authority's electronic records. Audit accessed over 105 000 emails and 95 000 documents related to the NTS tender process.

## Investigation findings

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On 9 February 2007, the Auditor-General wrote to the Minister for Public Transport and advised that:

- audit found that the Authority's internal controls limited access to the leaked Authority information to seven staff
- audit found no evidence of these staff members providing the documents to anyone outside the Authority.

# Appendix C

## Audit method

Audit evidence was obtained through discussions with and requests for information from Authority staff, specialist advisors engaged by the Authority, the NTS Probity Auditor, tenderers and other participants and stakeholders.

Audit reviewed documents held by the Authority, including:

- NTS tender documents
- the tenders themselves
- evaluation reports
- Board minutes and the minutes of executive meetings, the Evaluation Committee and assessment teams
- reports and analyses by the Probity Auditor and consultants to the Authority
- overseas site visit reports
- Gateway reports on the NTS tender process
- legal advice and assurances obtained by the Authority pertaining to the NTS tender and contract.

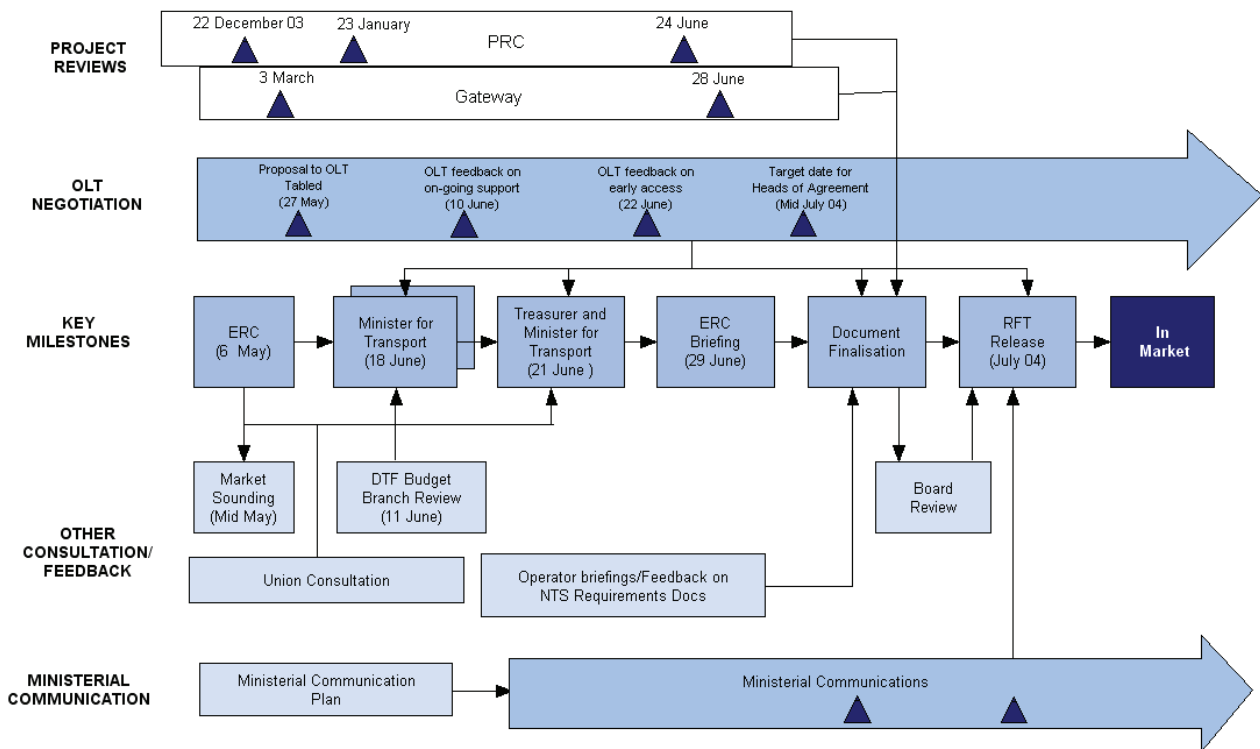
Audit reviewed communications between tenderers and the Authority, including:

- sound recordings of the Authority's meetings with tenderers
- the Authority's visitors' book
- minutes of meetings and telephone conversations with tenderers
- 'NTS Admin' email messages
- the Aladdin database for tenderers' questions and answers
- the Authority's telephone records.

# Appendix D

## Overview of the NTS tender process

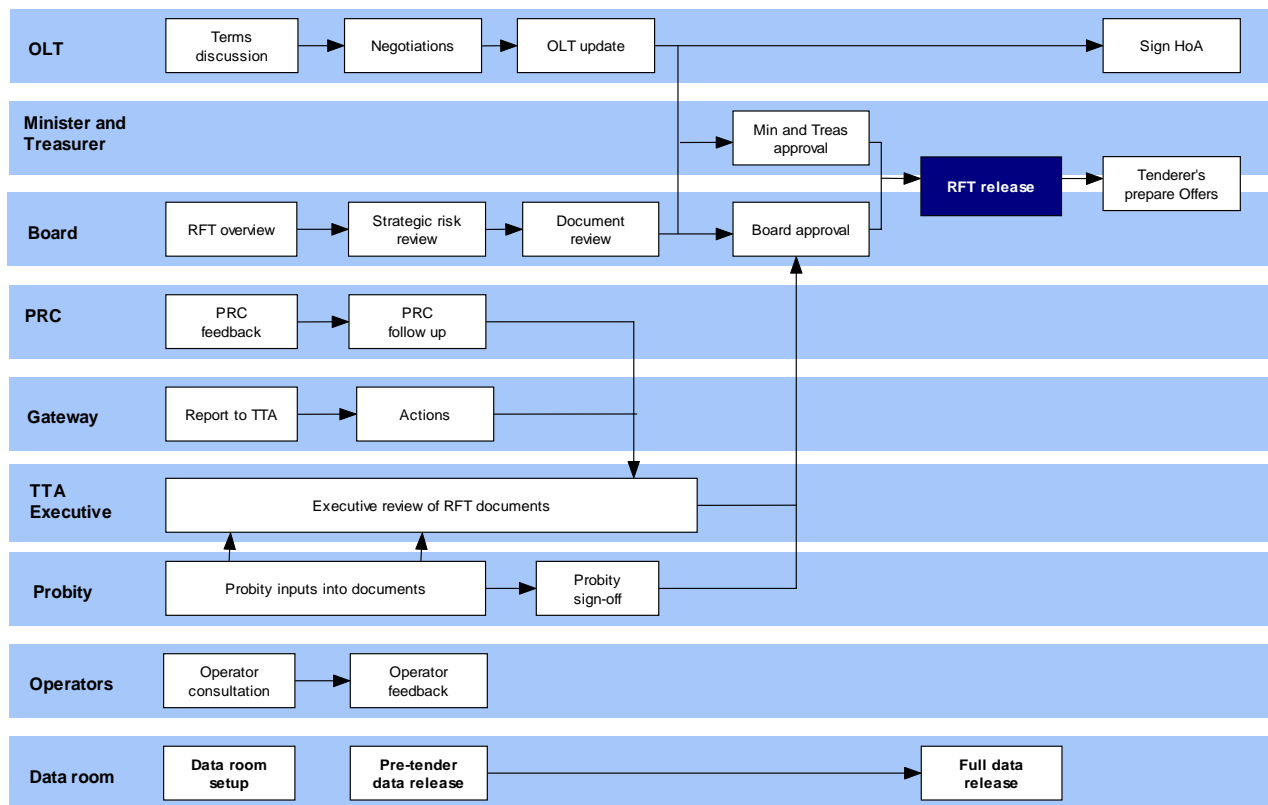
**Figure D1**  
TTA process leading up to the RFT release



Victorian Auditor-General's Office and the Transport Ticketing Authority.



**Figure D2**  
**Activities up to RFT release**



Source: Victorian Auditor-General's Office and the Transport Ticketing Authority.

# Appendix E

## Background to interactive tender processes

In order to improve tenders submitted so that they better met the NTS requirements, the Transport Ticketing Authority initiated an interactive tender process.

In some cases, the traditional practice of having limited contact with tenderers may lead to disputes, products which do not meet requirements and cost escalations during the term of the contract. In order to address this situation, some tendering authorities have introduced an interactive process with tenderers. Such a process provides an opportunity for active dialogue between tendering authorities and tenderers and gives tenderers an opportunity to obtain clarification and better understanding of the tender requirements. Such a process typically involves a series of meetings between representatives from the tendering authority and tenderers to clarify tender requirements and provide feedback to tenderers on their proposals.

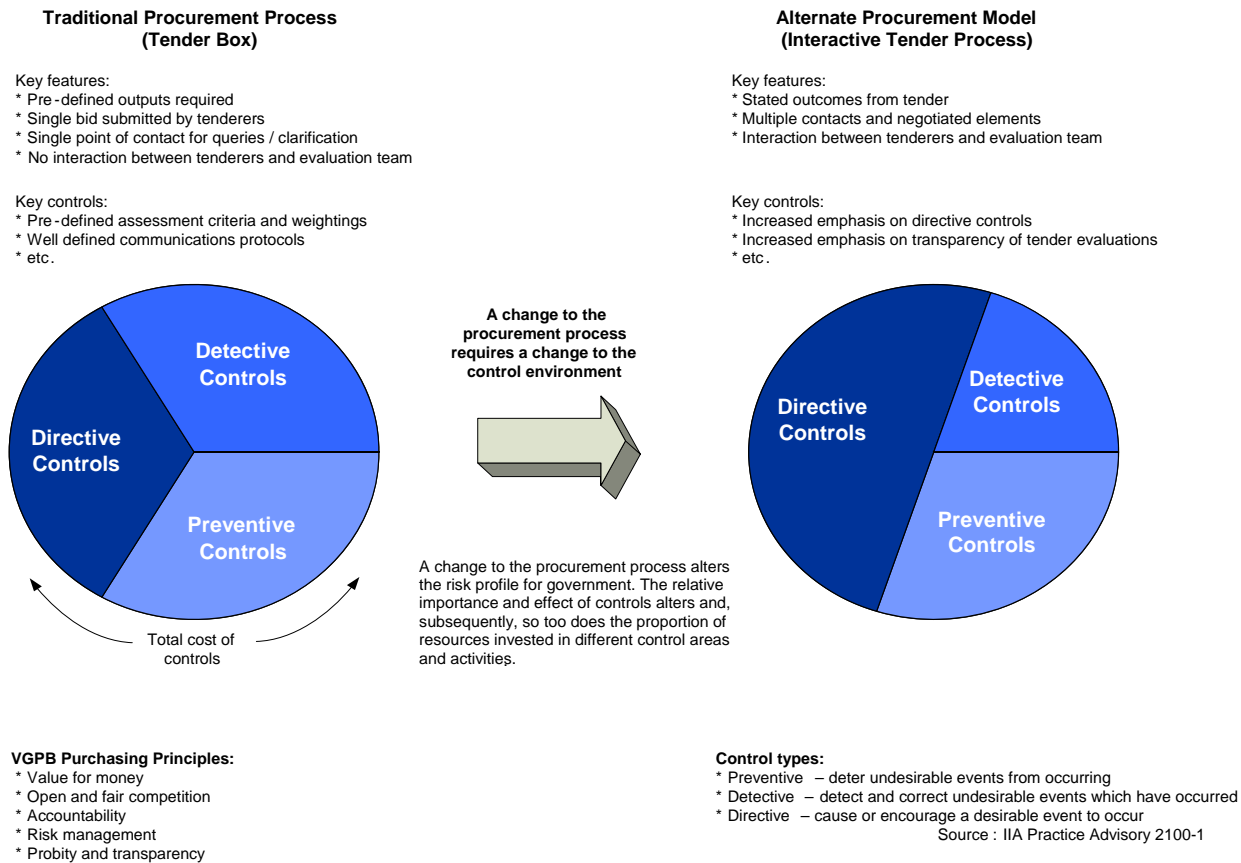
The primary aim of the interactive process is to improve the quality of tender submissions and, therefore, the project outcome, by:

- increasing and clarifying tenderers' understanding of the tender requirements
- ensuring that the tendering authority understands the offer
- avoiding costs assumed by tenderers as a result of misunderstanding or uncertainty in relation to the tender requirements
- minimising the need for any re-bid process, where the tenders submitted do not meet tender requirements.

Clarification with more than one tenderer and allowing tenderers to submit revised tenders during the negotiation process can be effective in maintaining competition between the tenderers, which may reduce tender prices and improve tender quality.

Figure E1 shows how the use of an interactive approach can necessitate changes to the tender controls, compared with traditional tendering.

**Figure E1**  
**Control environments for traditional and interactive tender processes**



Source: Pitt Group.

# Appendix F

## Selected probity frameworks and instruments

Framework or instrument	Relevant provisions
Public Administration Act 2004 (Victoria)	<p>S7 of the Act requires that public officials should demonstrate integrity by:</p> <ul style="list-style-type: none"> <li>(i) being honest, open and transparent in their dealings; and</li> <li>(iv) avoiding any real or apparent conflicts of interest; and</li> <li>(v) striving to earn and sustain public trust of a high level.</li> </ul>
Code of Conduct for Victorian Public Sector employees	<p>3.7 Conflict of Interest</p> <p>Public sector employees declare and avoid conflicts of interest to help maintain community trust and confidence. A conflict of interest can be actual, potential or perceived. This relates to circumstances where the employee is or could be directly influenced or where it is perceived the employee might be influenced.</p> <p>Public sector employees ensure their personal or financial interests do not influence or interfere with the performance of their role. They seek to ensure the interests of family members, friends, or associates do not influence or could be perceived to influence their performance in the job.</p>
Victorian Public Entity Directors' Code of Conduct 2006 and guidance notes	<p>As a director and member of a Board of a Victorian public entity you must:</p> <ul style="list-style-type: none"> <li>Act with honesty and integrity. Be open and transparent in your dealings; use power responsibly; do not place yourself in a position of conflict of interest; strive to earn and sustain public trust of a high level.</li> <li>Integrity is concerned with motive, and being consistent with espoused values</li> <li>Avoid actual and perceived conflicts of interest</li> <li>Declare any outside interests: <ul style="list-style-type: none"> <li>• annually (Declaration of Private Interests)</li> <li>• when they arise (e.g., new appointments; new commercial interests)</li> <li>• prior to consideration of particular matters</li> </ul> </li> <li>Withdraw from Board deliberations where an actual or apparent (perceived) conflict of interest arises</li> <li>Withdraw, or record a minority view, where a matter of conscience arises</li> <li>Do not be rushed into making decisions without time for proper consideration</li> <li>Ensure that the minutes of the meeting record actions to declare conflicts.</li> </ul>

Framework or instrument	Relevant provisions
<p>ANAO, Conflicts of Personal Interest and Conflicts of Role: Guidance Paper No. 6, July 2003</p>	<p>A conflict of personal interest is a situation in which the impartiality of an officer in discharging their duties could be called into question because of the potential, perceived or actual influence of personal considerations, financial or other. The conflict in question is between official duties and obligations, on the one hand, and private interests on the other.</p> <p><u>Conflict of personal interest</u></p> <p>Protocols on conflict of interest usually contain definitions of different types and/or grades of conflict of personal interest. They will usually promote transparency, requiring officers to declare relevant interests and to follow certain procedures once conflicts of interest have been identified. These procedures are designed to assure both the reality and appearance of probity in decision-making. A grading system for conflicts of personal interest should consider the point at which conflicts should be avoided and differing methods to manage them, depending on their nature and severity. For example, methods of avoiding or managing a personal conflict of interest for an existing or prospective officer include divestment, resignation, confidentiality agreements, exclusion from receiving related material, and withdrawal from discussions and/or decision making.</p>
<p>APS Values and Code of Conduct</p> <p>Section 4: Personal behaviour, Chapter 9: Conflict of interest - Relevant Values and Elements of the Code of Conduct</p>	<p><u>Bowen Report principles - The Report of the Committee of Inquiry: Public Duty and Private Interest (1979)</u></p> <p>3. An office-holder should avoid situations in which his private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty.</p> <p>6. When an office-holder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be thought to conflict with the duties of his office and such interest is not prescribed as a qualification for that office, he should forthwith divest himself of that interest, secure his removal from the duties in question, or obtain the authorisation of his superior or colleagues to continue to discharge the duties.</p>

Source: Victorian Auditor-General's Office.

# Appendix G

## Timeline of the Authority's management of the Chief Executive Officer's shareholding in Headstrong

Tender initiation	<p>The TTA was aware of the issue of conflict of interest as being a potential concern to tenderers and adopted a set of procedures, including the following, to manage the issue:</p> <ul style="list-style-type: none"><li>• included in the RFT a right for tenderers to seek access to conflict of interest statements</li><li>• assessed conflicts of each person after tenders were lodged</li><li>• all tenderers, at various times in the tender process, provided commitment deeds or letters which included waivers and/or acknowledged there were no concerns on conflict of interest</li><li>• all tenderers were regularly contacted by the Probity Auditor to offer the opportunity to raise any conflict of interest concerns.</li></ul>
June - July 2003	<p>During the CEO's 2003 selection process for his position at the Authority (and on his curriculum vitae), he disclosed that between 1986 and 2000 he had served in several senior management positions with Headstrong / James Martin &amp; Co. ('Headstrong') and had been a member of the company's international management board. His management positions included Executive Vice President Asia-Pacific, and two Senior Vice President roles in North America.</p> <p>Headstrong is a private company which offers management and IT consultancy services. At Headstrong, the Authority's CEO's roles focused on delivering high volume financial transaction processing solutions, including integrated, multi-application smartcard transit solutions in Hong Kong and Taipei.</p> <p>As a consequence of his prior employment with Headstrong, the Authority's CEO held shares in the company.</p>
27 July 2004	<p>The Authority's CEO signed a conflict of interest statement disclosing his Headstrong roles (but not his shareholding as Headstrong was not considered to be a likely supplier at that time).</p>
22 October 2004	<p>Tenderers lodged initial offers. Two consortia referred in their initial offers to the use of Headstrong. The Authority's CEO approached the Probity Auditor to discuss the implications of Headstrong being a member of both consortia.</p>

*Appendix G: Timeline of the Authority's management of the Chief Executive Officer's shareholding in Headstrong*

3 November 2004	The NTS Probity Auditor met formally with the CEO. His Headstrong shareholding and potential conflict of interest were discussed. The CEO signed a revised conflict of interest declaration that disclosed both his previous roles with Headstrong and his shareholding, which he indicated was valued at 'approximately \$150 000'.
23 November 2004	Information in relation to Headstrong and the CEO's shareholding was declared to the TTA Board. The conflict of interest was discussed with the Board.
1 December 2004	The CEO met the Probity Auditor to discuss the conflict of interest. They discussed the CEO's previous employment with Headstrong, and noted that since leaving Headstrong, the CEO knew only one senior person who remained at Headstrong (Headstrong's Asia-Pacific Chief Financial Officer).
2 December 2004	The CEO attempted to dispose of his Headstrong shares. He sent an email to Headstrong seeking to effect the disposal.
3 December 2004	Headstrong's General Counsel responded that there was no market for the CEO's shares and that Headstrong did not wish to purchase the shares. The CEO's shareholding amounted to less than half of one per cent of the total number of Headstrong shares.
16 December 2004	TTA Board minutes record that the CEO 'formally declared (again) his interest with Headstrong...and which declaration has been fully documented'.
December 2004	Commitment Deed Polls received from all remaining tenderers which released and discharged the TTA from all actions, suits and claims, against the TTA in any way related to the RFT.
3 January 2005	On 3 January 2005 the Probity Auditor advised the Authority's General Manager Operations that, 'Those individuals with shareholdings in relevant tenderer organisations, have either disposed of their shareholdings or are able to provide evidence that they have commenced the process of disposal'.
9 March 2005	Letters of offer received by the TTA from all remaining tenderers that waived any claims up to the date of the letters in relation to the selection of a contractor for the NTS, and including issues on probity and other claims.
March/April 2005	Two consortia were shortlisted. Headstrong was a member of both consortia as a subcontractor (less than 5 per cent of contract value).
29 April 2005	Letters of offer received from all remaining tenderers that waived any claims to the date of the letters in relation to the selection of a contractor for the NTS, including probity claims and any other claims.
10 May 2005	The CEO emailed Headstrong requesting that its executive management and Board reconsider purchasing the shares 'to avoid all probity nuances'.
13 May 2005	Headstrong responded that the company was not in a position to purchase the shares at that time and that the CEO's shareholding was small in relation to the outstanding shares.

6 June 2005	<p>Headstrong's General Counsel emailed the Authority with specific details of the CEO's shareholding. The details were as follows:</p> <ul style="list-style-type: none"> <li>• The CEO owned 158 000 shares in Headstrong.</li> <li>• The par value of the shares was one cent per share.</li> <li>• The shares represented 0.3 per cent of the total number of outstanding shares.</li> <li>• The shares were Class B shares.</li> <li>• 134 000 of the shares could not be transferred without the consent of the company while the company remained private.</li> <li>• There was no active market for the shares.</li> <li>• No dividends had been paid on the shares.</li> <li>• The value of the shares was approximately \$1580 if they could be disposed of, and nil if they could not be disposed of.</li> </ul>
10 June 2005	<p>The CEO's shareholding was discussed by the Authority's Board. (The CEO withdrew from the meeting while the issue was discussed.) The Board received a report on the issue. The Probity Auditor advised that the tender evaluation process had 'sufficient checks and balances for the CEO's shareholding not to be an issue per se but rather, it was an item for the Board to note and to be managed as part of the process'. The minutes record that the Board accepted the report and was satisfied that the matter had been handled appropriately.</p>
June 2005	<p>Irrevocable Offer Deeds received from all remaining tenderers which included releases and indemnities contained in the earlier commitment deeds and letters of offer.</p>
June 2005	<p>The successful tenderer was selected.</p>
31 August 2005	<p>A Managing Partner from a senior law firm provided a view, on the advice of a former Queensland Attorney-General working for the firm, that the CEO had taken all appropriate steps in the context of the tender at all relevant points in time, to disclose his shareholding.</p>
Annual reports for 2004-05 and 2005-06	<p>The CEO's shareholding was disclosed in the Authority's annual reports for 2004-05 and 2005-06.</p>

Source: Transport Ticketing Authority and Victorian Auditor-General's Office.



# Appendix H

## Glossary

### Business Requirements

Those business requirements for the NTS described in the Business Requirements Document (BRD).

### Evaluation Criteria

Evaluation criteria set out in section 5 of the Executive Summary of the Request for Tender.

### OLT

Acronym for OneLink Transit Pty Ltd

### OneLink

Short title of OneLink Transit Pty Ltd.

### Open System Architecture

A system architecture in which the components, both hardware and software, are specified free of proprietary restrictions and made publicly available allowing freedom from the TTA being locked into a proprietary solution and limiting options for future supply of contestable elements of the NTS. More specifically: a representation in which there is (a) a mapping of functionality onto hardware and software components, (b) a mapping of the software architecture onto the hardware architecture, (c) the human interaction with these components, and (d) an interface specification of the components that is (i) fully defined and available to the public, (ii) maintained according to a group consensus process, and (iii) maintained by a consensus group that is appropriate to the user needs.

### Partnership Agreement

The agreement between the Government and Transport Operators for the provision of public transport services on behalf of the Government.

### Performance requirements

The levels of performance and services the Solution and Initial Services or Core Services must meet, as described in the Requirements Document, the Initial Services Performance Requirements, the Core Services Performance Requirements and the Customer Performance Requirements.

### Project Agreement

Agreement to be entered into by the Contractor and the TTA in relation to the NTS Project.

### Project documents

The Project Agreement including the Requirements Document; the Variation Orders; the Escrow Agreement; the Expert Deed; the Parent Company Guarantee.

### Security Bonds

The unconditional, on-demand and irrevocable undertakings from a Financial Institution in favour of the TTA in the form set out in Schedule 20 of the Project Agreement, and which specifies a location in Melbourne where demand is given and payment made, without further confirmation from the Financial Institution.

### System Operator

The operator of the Smartcard system/s providing various ongoing services. These functions may include Smartcard Issuance, Cardholder support, Transaction Processing, Transaction Acquiring and Reporting, Core Processing and Settlement, Field Device and Network Management.

### Tenderer

An organisation or consortium who responded to the RFT.

### Terms and Conditions

All those terms and conditions defined in the Project Agreement or in other documents forming the RFT or subsequent documentation.

### Transition

All those facilities required to move from the existing OLT ticketing systems operations to the NTS.

### TTA

Transport Ticketing Authority, the registered trading name of the Public Transport Ticketing Body.

# Auditor-General's reports

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## Reports tabled during 2007-08

<b>Report title</b>	<b>Date tabled</b>
Program for Students with Disabilities: Program Accountability (2007-08:1)	September 2007
Improving our Schools: Monitoring and Support (2007-08:2)	October 2007
Management of Specific Purpose Funds by Public Health Services (2007-08:3)	October 2007
New Ticketing System Tender (2007-08:4)	October 2007

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