

Report PE 06.450
Date 4 September 2006
File T/18/01/04

Committee Policy, Finance and Strategy
Author Wayne Hastie Divisional Manager, Public Transport
Rhona Hewitt, Manager, Transport Procurement

Heads of Agreement for Toll Involvement in the Procurement of New EMU Trains

1. Purpose

To ask the Committee to recommend that Council approve the Heads of Agreement negotiated with Toll NZ Consolidated Limited (Toll) for their involvement in the procurement of new Electrical Multiple Unit (EMU) trains for the Wellington commuter service.

2. Exclusion of the public

Grounds for exclusion of the public under section 48(1) of the Local Government Official Information and Meetings Act 1987 are:

That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which gives reason for withholding would exist, (ie because of the need to preserve commercial confidentiality and to enable Council to carry on negotiations) including commercial negotiations, without prejudice).

3. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

4. Background

Report PE 06.303 provided the Committee with an update on the purchase of new EMU trains for the Wellington commuter service (Attachment 1). The report specifically sets out the role of Toll in the procurement process. A draft Heads of Agreement had been prepared and the key points were listed in the report. A critical aspect was that Toll was not to be a tenderer or joint tenderer for the new EMU trains, but would provide key roles in professional services for procurement, commissioning and maintenance.

5. Finalisation of Heads of Agreement

After much negotiation, we have reached agreement with Toll on the Heads of Agreement and this has been signed by the Chief Executives of Toll and Greater Wellington (Attachment 2). The Agreement is subject to written approval from Land Transport New Zealand and the Council.

As well as specifying the services to be provided by Toll, the Heads of Agreement sets out the commercial terms for Toll's involvement. Essentially Toll will be paid:

- for professional services on the maximum daily/hourly rate specified in the Heads of Agreement prior to the supply contract being signed
- on a fixed fee for service once the supply contract has been signed, based on the maximum daily/hourly rate specified in the Heads of Agreement
- a project performance payment for reaching specified milestones. The performance payment is to a maximum of 1.5% of the total procurement price
- reasonable commercial rates for commissioning
- payment for maintenance services.

While the Heads of Agreement Greater Wellington sets out the general nature of the services to be provided by Toll, Toll and Greater Wellington will agree separate specific contracts for consultancy services, commissioning and maintenance.

The Heads of Agreement contains provisions for Greater Wellington to novate the agreement to a separate entity controlled by it. It is expected that Greater Wellington will novate the agreement to Greater Wellington Rail Limited to comply with legal requirements that council owned transport entities be held in a council controlled organisation.

The Committee is being asked to recommend to Council that it approves the Heads of Agreement.

6. Procurement procedure

Land Transport New Zealand must approve a Procurement Procedure for the purchase of the new EMU trains before Greater Wellington can proceed with the procurement process. The Procurement Procedure is comprised of a procurement overview, the Heads of Agreement and a draft Expressions of Interest (EOI) document which is largely complete except for some technical specifications.

Land Transport New Zealand is considering the procurement procedure at its meeting on 14 September 2006. We are not anticipating any difficulty in

gaining approval from Land Transport New Zealand as the general terms of the arrangements with Toll have been agreed and they have already seen drafts of the procurement overview and EOI document.

7. Expressions of Interest

Toll have been asked to provide input to the technical specifications contained within the EOI document. Once this has been received it will be possible to complete the document. At that point, subject to the approvals outlined above, it will be possible to go to the market to formally commence the procurement process.

8. Communication

The Dominion Post is planning a feature article on rail. Officers believe that the appropriate time for such an article is when the EOI has been released. At that point the procurement process has started with fixed dates for that first formal stage. Any early article or release will still have speculative dates.

Therefore our proposal is to publicise the process once the EOI has been released to the market.

9. Recommendations

That the Committee:

1. ***Recommends*** that Council approve the Heads of Agreement for Toll Involvement in the Procurement of New EMU Trains included as Attachment 2 to this report.

Report prepared by:

Report approved by:

Wayne Hastie
Divisional Manager
Public Transport

Rhona Hewitt
Manager
Transport Procurement

David Benham
Chief Executive

Attachment 1
Attachment 2

**Report PE 06.303 – Update on Electrical Multiple Units Purchase
Heads of Agreement for Toll Involvement in the Procurement of New
EMU Trains**