

PRESENTATION TO SABOA CONFERENCE

**THE DEVELOPMENT OF PERFORMANCE BASED GROSS
NEGOTIATED MODEL CONTRACT DOCUMENT FOR THE
ROLL-OUT OF IPTNs**

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PURPOSE

- To update conference on:
 - ✓ Development with regard to the final draft document of the gross based negotiated contract for the roll out of the IPTN's

CURRENT LEGISLATIVE POSITION

- NLTA contracting sections, with regulations, came into force on 31 August 2009
- Section 11 on the roles of the spheres of government also came into force on 31 Aug '09
- The NLTA Regulations were published on 17 December 2009 (Notice R.1208 in Gazette 32821)
- One important consequence is that municipalities must become the main contracting authorities

CURRENT LEGISLATIVE POSITION (cont.)

- The 1996 White Paper on National Transport Policy still applies, but it has been modified by later policy documents
- The most important policy document on public transport is the Public Transport Strategy & Action Plan, 2007:
 - The three building blocks for the Strategy are:
 - Integrated Rapid Public Transport Networks (IRPTNs) in the largest 12 cities based on their ITPs
 - Authority control over the integrated networks
 - A maximum stake for existing bus/minibus operators in the IRPTN operations
 - A move from operator control based on net contracts to authority control based on gross contracts
- Other policy documents also apply, e.g. the National Railplan, 2006 and National Land Transport Strategic Framework (NLTSF)

CURRENT LEGISLATIVE POSITION (cont.)

- The National Land Transport Act 5 of 2009 (NLTA) implements the new policy: it came into force on 8 December 2009 (some sections on 31 August 2009). It repeals the NLTTA 22 of 2000 and provides for the following:
 - More uniform laws and procedures
 - Functions consolidated with the same entity (municipality) where possible to avoid fragmentation, within the limits of the Constitution
 - Interprovincial and tourist transport being regulated nationally
 - Integrated rapid PT networks (IRPTNs) to be established in larger cities, incorporating all modes, with through-ticketing etc., with authority control
 - Integrated public transport networks (IPTNs) to be established in other areas
 - Registration to be dealt with by entities responsible for operating licenses: the national Act does not control registration
 - Freight is not regulated by the Act except in relation to planning, but there should be other measures: e.g. to attract freight to the rail mode

RESPONSIBILITIES OF SPHERES OF GOVERNMENT

- **The National sphere is responsible for:**
 - National transport policy & strategy
 - Co-ordination between provinces
 - Assigning functions to other spheres
 - Interprovincial and tourist transport
 - Acting as contracting authority for subsidised service contracts (SSCs), interim contracts (ICs), current tendered contracts and negotiated contracts (NCs) concluded i.t.o the NLTTA (reason is so that the national sphere can assign the existing contracts to municipalities)

RESPONSIBILITIES OF SPHERES OF GOVERNMENT (cont.)

The provincial sphere is responsible for:

- Provincial policy and strategy within the framework of national policy and strategy
- Capacitating municipalities
- Implementing the provincial Integrated Development Strategy & Public Transport Strategy (PTS) with due attention to rural areas
- Where a province was performing a function contemplated in s.11(1)(a) on the date of commencement of the Act (e.g. SSCs and ICs), it must continue to do so unless the Minister assigns that function to a municipality (s.11(6))
- Therefore provinces must continue to manage the contracts they concluded under the NLTTA unless the Minister assigns them to a municipality

RESPONSIBILITIES OF SPHERES OF GOVERNMENT (cont.)

Municipalities are responsible for:

- Developing land transport policy & strategy for their areas
- In their capacity as planning authorities preparing, implementing and monitoring transport plans for their areas (ITPs)
- Financial planning for land transport in their areas
- Managing the movement of persons and goods within their areas
- Planning, implementing and managing of modally integrated PT networks and travel corridors within the municipal area and liaising with neighbouring municipalities
- Service level planning for passenger rail in consultation with PRASA
- Integrated ticketing systems
- In the case of gross cost contracts, determining fare structures and fare levels
- Concluding SSCs and CSCs, and NCs contemplated in s.41(1)

INTERGOVERNMENTAL RELATIONS

- A province may agree with one or more municipalities for joint exercise of functions or can establish a provincial entity (s.12(1))
- Provinces may undertake municipal functions in agreement with the municipality i.t.o the Constitution
- Adjacent municipalities may agree on joint exercise of functions or establish a municipal entity under the Municipal Systems Act (s.12(2))
- Spheres must act according to principles of co-operative government (s.12(3))
- Where there are significant movements between 2 municipalities, they may establish an inter-municipality forum under the Intergovernmental Relations Framework Act (s.19(1))
- Alternatively they may establish a multi-jurisdictional service utility under the Systems Act (s.19(2))

WHY THE DEVELOPMENT OF IPTN MODEL DOCS:

- The key objectives of the project are the following:
 - To determine an appropriate subsidy (contracting) model or combination of models for both urban and rural areas that will allow for public transport objectives such as integration to be achieved whilst at the same time allowing more flexibility on the part of contracting authorities and service providers. As such, the new contracting model should be aligned with the emerging multimodal transport proposals within the various metropolitan areas.
 - To develop and draft Model Contract Documents that will address issues such as ownership of assets, revenue collection, key performance indicators and the employment of persons from within different transport environments.

WHY THE DEVELOPMENT OF IPTN MODEL DOCS (cont.)

- In addition to the usual contract specifications of route networks, vehicle conditions and fares, the documents must also specify performance based rewards and penalties that are relevant to the operating environment.
- The model subsidy documents prescribe requirements for subsidization in various contracting systems applicable in rural and urban areas. The documents provide unique features for each contracting system (subsidy model) and enable contracting authorities to adapt and apply them in their specific operating environment.
- As far as metropolitan areas are concerned, the documents should cover the entire city wide operation and therefore also accommodate the BRT network operations.

LATEST DRAFT DOCUMENT

- Is a model contract document for negotiated contracts to implement IRPTNs being established by the 12 larger cities, and later in the areas of some district municipalities, in terms of the National Public Transport Strategy and Action Plan 2007 and the NLTA. These IPTNs may or may not involve bus rapid transit (BRT), also called an integrated rapid public transport system (IRPTN).
- The document is based on a gross-cost model as suggested by the National Public Transport Strategy.
- It is the first of four (4) proposed contracting documents:
 - Gross based contracts: (1) negotiated and (2) tendered documents
 - Nett based contracts: (3) negotiated and (4) tendered documents
- The document puts forward the position of Government (views and requirements as was developed by the Department, Provinces and municipalities through the PTICF Contract Compliance Sub-Committee) for services to be operated on its behalf.

CONTRACTING FOR PUBLIC TRANSPORT SERVICES

- At least the “12 cities” must establish IPTNs, and may do negotiated contracts with existing operators- maximum 12 years
- In terms of the National Transport Strategy, contracts for IRPTNs will be gross based, i.e. the CA does all planning and keeps the fares: the operator is paid by a rate per km.
- Other subsidised services must go out to tender – maximum 7 year contracts
- Commercial service contracts can be concluded where there is no subsidy – also 7 years maximum
- Contracting authorities are now municipalities: provinces must manage existing contracts until assigned to municipalities
- Previous model tender & contract docs were too restrictive: only allowed for net-based contracts.

CONTRACTING FOR PUBLIC TRANSPORT SERVICES (cont.)

- **Negotiated contracts:**
 - Contracting authorities may enter into negotiated contracts with operators in their areas, **once only**, with a view to:
 - Integrating services forming part of IPTNs in terms of their ITPs; or
 - Promoting economic empowerment of small business or persons previously disadvantaged; or
 - Facilitating the restructuring of parastatal or municipal operators
 - A negotiated contract will be for a maximum of 12 years
 - After the first round, services must go out on tender, and contracting authorities must take steps on a timeous basis to achieve this before the NC expires
 - Incumbent operators must be involved where appropriate

CONTRACTING FOR PUBLIC TRANSPORT SERVICES (cont.)

Subsidised service contracts:

- - On expiry of a NC under s.41, a SSC under s.42 or a contract concluded under the NLTTA, or any extension thereof, the services must be put out to tender i.t.o a SSC
- - Unreasonable extensions could lead to court challenges
- - If not done, the Minister, NT and Auditor-General must intervene
- - A SSC may not exceed 7 years
- - The Minister may prescribe requirements for model tender and contract documents or provide model documents

CONTRACTING FOR PUBLIC TRANSPORT SERVICES (cont.)

- **Commercial service contracts:**
 - A contracting authority may enter into a commercial service contract
 - These are contracts between a contracting authority and an operator where no subsidy is involved
 - Tenders must be invited by notice in the Provincial Gazette and a newspaper
 - Minister must make regulations within 2 years for the conversion of all scheduled services to contracted services

CONTRACTING FOR PUBLIC TRANSPORT SERVICES (cont.)

- **Existing contracting arrangements:**
 - Where there are existing contracts concluded under the NLTTA in an area, the contracting authority may allow the contract to run its course, negotiate with the operator for inclusion in the IPTN, or make a reasonable offer of alternative services or a monetary settlement
 - The settlement must bear relation to the value of the unexpired portion of the contract, if any
 - If this fails, the matter is referred to arbitration or mediation
 - Minister has made regulations on transfer of existing contractual arrangements
 - Where new contracts are awarded, the Act provides that rights of existing workers must be protected (Labour legislation apply)

MAIN ISSUES IN CONTRACTING

Establishment costs

Clauses 39.24 to 39.26 prepared to allow for establishment costs to be paid at the discretion of the CA (it will therefore form part of the negotiations)

MAIN ISSUES IN CONTRACTING(cont.)

Timetable variations

This is dealt with through the variations clause (16) and through applying the fixed contract rate and variable contract rate. An adjustment table will be provided for in Schedule 10 .

POSSIBLE ADJUSTMENT TABLE

- The table will most probably only be applied when serious changes are made in services during peak hours as drivers and vehicles required are determined by these services
- In the event that the CA requires the services to be adjusted, it shall notify the Operator. In such event, the Fixed Costs will be adjusted according to the corresponding ratio specified in the table below.

% Change in Scheduled kms	% Change in fixed costs
More than 20% and less than 40%	8%
40% or more	20%

- Team is in process of analysing this further to determine what the values in the table should be
- This is one of the reasons why it is important that the CA also do the scheduling and determine what the actual vehicle requirements are

MAIN ISSUES IN CONTRACTING(cont.)

Escalation

- Fixed and variable contract rates shall be used
- Diesel is part of variable cost.
- Labour is part of fixed cost.
- Contracts will be priced over 7 years with an extension of 5 years based on performance.
- Increases in toll fees will be covered by the CPI.
- AARTO costs cannot be considered.

PROPOSED NEW ESCALATION FORMULA: VARIABLE COST

- The **variable costs**, after deduction of 50% (fifty percent) of the value of the penalties applicable to the particular month, will be escalated by the variable cost adjustment factor Z determined according to the formula as set out below:

$$Z = (1 - x) \left[\left(c \times \frac{F_t}{F_o} \right) + \left(d \times \left(\frac{CPI_t}{CPI_o} \right) \right) \right]$$

- "x" is the proportion of variable costs not subject to adjustment and its value shall be 2% (0,02). The efficiency factor as in older current contracts
- "c" is the coefficient deemed to represent the proportionate value of fuel
- "d" is the coefficient deemed to represent the proportionate value of the other variable costs.
- "F" is the "Fuel Index" and shall be determined as:

$$F = \alpha \times \frac{P_t}{P_o} + \beta \times \frac{D_t}{D_o}$$

where $\alpha + \beta = 1$

- "CPI" is the Consumer Price Index

PROPOSED NEW ESCALATION FORMULA: FIXED COST

- The **fixed costs**, after deduction of 50% (fifty percent) of the value of the penalties applicable to the particular month, will be escalated by the adjustment factor Y determined according to the formula as set out below and:

$$Y = (1 - x) \left[\left(a \times \frac{L_t}{L_o} \right) + \left(b \times \left(\frac{CPI_t}{CPI_o} \right) \right) \right]$$

- “x” is the proportion of fixed costs not subject to adjustment and its value shall be 2% (0,02) . The efficiency index as in older current contracts
- "a" is the coefficient deemed to represent the proportionate value of labour costs linked to labour categories as determined by the Bargaining Council
- "b" is the coefficient deemed to represent the proportionate value of the other fixed costs
- “L” is the labour index for all hourly paid employees as published in Table C-3-Steel and Engineering Industries Federation of South Africa (SEIFSA) “Index of actual Labour Cost”, SEIFSA Price and Index Pages
- “CPI” is the Consumer Price Index

MAIN ISSUES IN CONTRACTING (cont.)

Management of services by the CA & level of control

The CA needs to be in control of the services. Refer to the *Public Transport Strategy and Action Plan, 2007* and the *National Land Transport Strategy for the drafting of the National Land Transport Bill, 2007* which provide that there must be a move from operator control over routes, timetables, etc to authority control. Scheduling will impact significantly on the fixed cost portion of the monthly subsidy to be paid by the CA – an element that needs to be properly managed and controlled.

MAIN ISSUES IN CONTRACTING (cont.)

Subcontracting

The concept of sub-contracting will be removed from the model negotiated contract document because empowerment arrangements will form part of the new contract design as well as negotiations to involve existing small bus and taxi operators in the new operating entity

MAIN ISSUES IN CONTRACTING (cont.)

Payment period

- The payment period stipulated is in line with the current gazetted model contract document. SMMEs are currently paid accordingly. Problems mostly arise where the main operator delays payment to sub-contractors (which is not relevant in this document).

MAIN ISSUES IN CONTRACTING (cont.)

Penalties for late payment by the CA

- *The PFMA section 38(1)(f) stipulates the following:
“(1) The accounting officer for a Department, trading entity or constitutional institution –*
- *(f) Must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period.”*

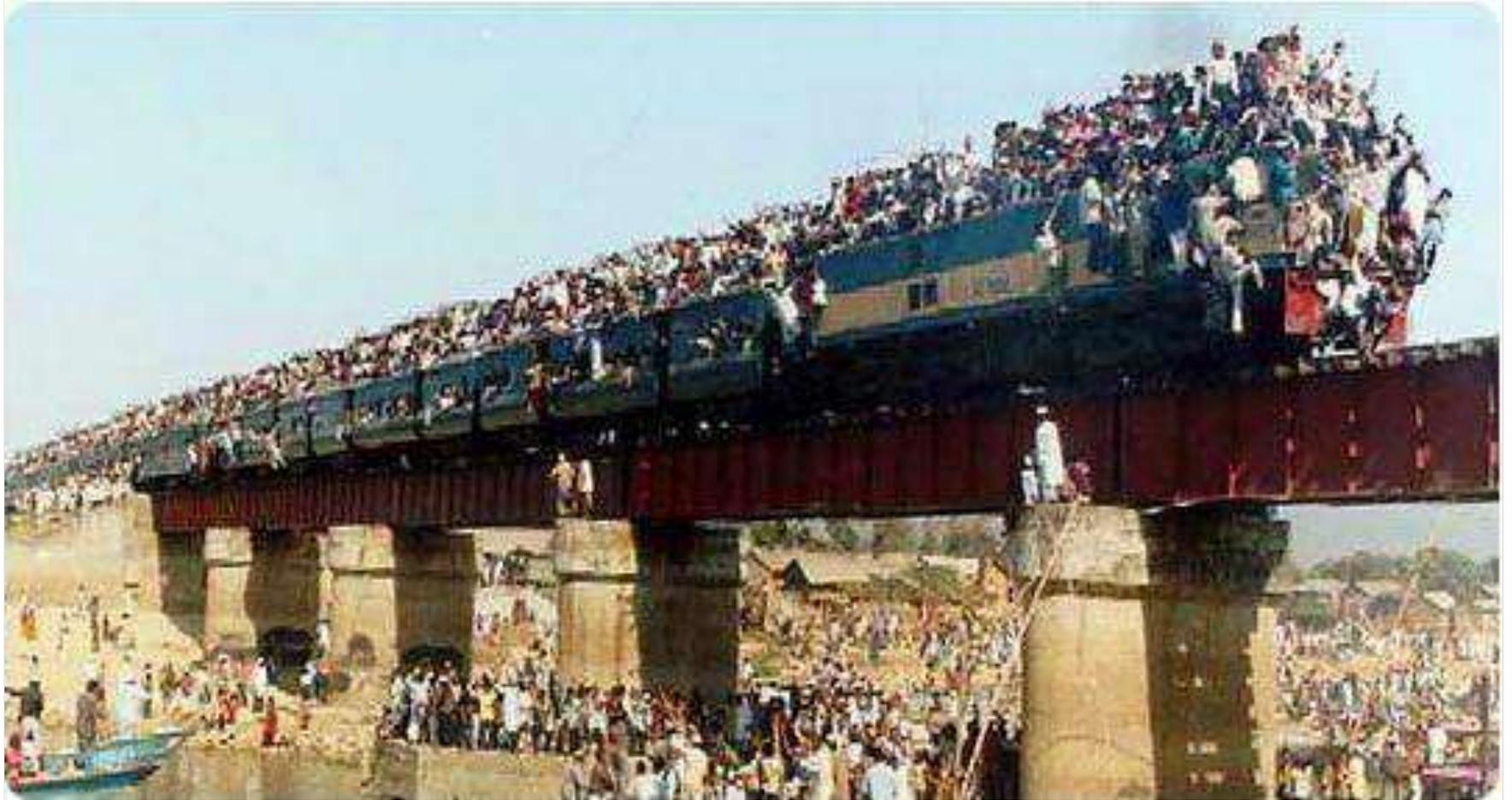
CONCLUSION

- The final draft document of gross-based negotiated contract document to be presented to COTO and MINMEC for approval
- Project team to consult on net-based negotiated and tender contract documents for IPTNs as well as gross document for tender purposes
- All documents to be gazetted before the end of March 2012

If you don't create change....



...change will create you.



Thank You
Ke a leboga