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Calgary Board of Education

Student Transportation – Contract Process Review Report

August 2021

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Disclaimer

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The Report has been developed based on documents and inputs provided by CBE. Deloitte has not verified, nor audited the information and data provided.

For avoidance of doubt, nothing in this report should be interpreted as legal advice, and any actions taken based on information in this report are the responsibility of CBE.

Executive summary

1.1 Background & Objectives

Deloitte has been engaged by the Calgary Board of Education (“CBE”) to conduct an independent, comprehensive review of the Master Transportation Agreement (“MTA”), its associated documents and the RFP selection process.

A key objective is to ensure that the new MTA, commencing August 1, 2022, meets the standards and risk profile of the student transportation industry.

The scope of this Report includes:

- **Summary Assessment of CBE Contract and Procurement Document:** An assessment of CBE’s Contract and Procurement documents against values and factors identified by CBE, including student safety, responsible use of public dollars, service reliability, and continual improvement.
- **Identification of Areas for Improvement and potential remedies:** Based on the assessment against identified values and factors, findings and lessons learned from other jurisdictions, and leading public sector procurement practices, the identification of areas for improvement within CBE’s Contract and Procurement Documents, along with potential remedies to help address these improvement areas.

1.2 Summary of Findings

The Report assesses the current templates for student transportation contracts and procurement documents against CBE’s 19 identified values and factors, as well as leading contracting and procurement practices and documents from other jurisdictions.

Based on our review, it is clear that CBE has dedicated time and effort in developing documents that exemplify their values and leading industry practices. In general, CBE’s documents, in particular the student transportation Master Transportation Agreement (MTA), are largely aligned with CBE’s identified values and factors, as well as leading industry standards, as a whole. This is shown in Section 4 of the Report, where our assessment has indicated the procurement and contracting documents are either fully or mostly aligned with 16 out of the 19 of CBE’s values & factors.

However, we have identified areas for improvement in both the contracting and procurement documents. The areas for improvement are summarized below. It should be noted that these are opportunities for improvement which require further consideration as to the implications and impacts upon business relationships of CBE. For a more detailed discussion of the considerations please refer to Section 5.

1. **Increase Integrity and Transparency of the BAFO Process:** In the event CBE elects to utilize a BAFO process, further detailing how the BAFO process will be implemented within the procurement documents and engaging an independent probity monitor / auditor to oversee the integrity of the procurement will improve the perceived and actual level of integrity in the procurement process.

2. **Formalize the Innovative Proposal Submission and Evaluation Process:** Including additional details surrounding the Innovative Proposal regime, including a) CBE's objectives of allowing Innovative Proposals, and b) a description of how Innovative Proposals are prepared and evaluated within in the RFP will help provide clarity to the process and ideally incentivize respondents to submit innovative options.
3. **Increase clarity of Evaluation Process in RFP:** Improving the clarity in the evaluation process as outlined in the procurement document, in particular regarding a) how pricing submissions will be evaluated, and b) how RFP evaluation results direct impact award of routes, will:
 - o Reduce the risk that Proponents will challenge the results of the procurement process;
 - o Improve the responsiveness to CBE's priorities.
4. **Improve Understandability of the Performance Regime:** CBE's effective points-based routing allocation system can still benefit from clarifying, in the procurement documentation, the specific system is administered and how results of the performance management regime influence how CBE applies additions/reductions to route allocations. Additional clarity can assist in removing artificial barriers of entry and eventually enhance the level of competition.
5. **Assess ways to improve competition:** Deloitte has identified two opportunities within CBE's procurement approach which could potentially lead to improved competition:
 - a) By increasing the length of the open period, CBE may improve competition by allowing more time for service providers with fewer resources, service providers who are not currently providing services to CBE and as a result have a greater level of due diligence to complete, and/or service providers who wish to team up via consortium to credibly compete and submit a robust proposal to CBE, who may otherwise be deterred from participating.
 - b) CBE can, like many jurisdictions, implement caps (based on % of overall routes) that any single provider can be awarded in a term, at the outset of the MTA, and still adjust the volume of routes based on performance. This will, at minimum, increase the number of service providers providing General Transportation, as well as encourage the existing Service providers to maintain a high level of performance.
6. **Include dispute resolution mechanism in the MTA:** Including a dispute resolution provision in the MTA that sets out the procedures and rights of all parties in the agreement should a dispute occur (including non-binding mediation and binding arbitration) provides a formal dispute procedure outside of a lengthy, public, and costly legal proceeding.
7. **Reference and Proponents Proposal Commitments in MTA:** The current MTA does not require the Service provider to adhere to their commitments made in their proposal documents. To further ensure it is obtaining the full value of services from its service providers that it is paying for, CBE should consider both referencing within the Service

providers Obligations in the MTA and attaching as schedules to the MTA the Service providers' proposals

8. **Develop an internal Evaluation Framework:** Though CBE has prepared an Evaluation/Selection Committee document and is currently developing evaluation worksheets, an opportunity exists to develop a more comprehensive evaluation framework to document the evaluation process and help ensure it is well structured, fair and transparent.
9. **Compensate service providers for fixed costs only during events where services are not required.** Fuel costs, and potentially other variable costs, are not incurred by service providers when service is not provided (e.g. inclement weather, or CBE labour dispute related service cancellations). As a result, CBE could consider limiting service provider payment in these scenarios to fixed costs only.
10. **Re-introduce fuel adjustment.** The inclusion of a fuel adjustment mechanism (in some form) will reduce the "risk premium" respondents include in their bid rates, as service providers have minimal ability to control the cost of fuel over the term of the agreement.

2. Approach and methodology

2.1 Engagement Background and Objectives

The Calgary Board of Education (“CBE”) has engaged Deloitte to conduct a comprehensive review of the Master Transportation Agreement (“MTA”), including related documents, contract management plan, and the RFP selection process.

The purpose of the review is to ensure the MTA exceeds contract industry standards during its contract life to support a prudent and responsible use of resources in addition to minimizing risk to the CBE. This report aims to maintain a high level of transparency to all students, families, and stakeholders.

2.2 Approach and Methodology

Deloitte’s assessment was completed by reviewing CBE’s proposed contract and procurement documents, reviewing CBE’s internal values, strategic objectives, and procurement policies and objectives, reviewing procurement contract and procurement documents, as well as procurement studies from other jurisdictions, and leveraging the industry and sector knowledge/experience of the Deloitte project team, as summarized in the following steps:

- Step 1: Information Gathering and Document Review
 - Review of the MTA, Annual Service Agreement (“ASA”), RFP and other associated procurement and contract documents.
 - Consultation with CBE Manager of Transportation Services regarding CBE procurement history, objectives, and historical feedback from Service Providers
 - Review of other CBE documentation including student transportation system data, results of previous studies and assessments, and CBE transportation policies.
- Step 2: Analysis, Mark-ups, and Reporting
 - Review of the documentation and information gathered in Step 1, against CBE’s stated values and factors (listed in Section 4.1) as well as against industry benchmarks and good practice.
 - A gap assessment, and consequent recommendations for CBE’s consideration, to improve the procurement and contracting documents.
 - Mark-ups of the source documents, which are provided under separate cover to this report.

2.3 Scope of Review

The scope of the contract and RFP documentation review includes the following:

- Templates of MTAs and schedules
- Templates of ASA and exhibits
- RFP and exhibits
- MTA selection committee composition
- Evaluation criteria

- Evaluation assessment
- Contract management plan

3. CBE student transportation background

3.1 Overview of CBE’s transportation system

CBE provides transportation services to a total of 249 schools. It is projecting to transport a total of 21,000 students for the 2021-22 school year, with 2000 of them requiring specialized transportation. Also projected for the 2021-22 school year are 268 general transportation routes and 500 related runs, and 285 specialized transportation routes, and 365 related runs. Historically, there has been the provision of kindergarten mid-day routes. The number of routes and runs for the past 3 years have been summarized in Table 3.1-1.

TABLE 3.1-1: ROUTING INFORMATION

School Year	# of Routes, General Transp.	# of Runs, General Transp.	# of Routes, Specialized Transp.	# of Runs, Specialized Transp.	Total Routes	Total Runs
2018-19 (as at June 30, 2019)	265 75 – kindergarten mid-day routes	538 156 – kindergarten mid-day routes	435	557	775	1,251
2019-20 (as at June 30, 2020)	267 66 – kindergarten mid-day routes	536 137 – kindergarten mid-day routes	409	514	742	1,187
2020-21 (as at May 14, 2021)	227 *no mid- day routes	423 *no mid-day routes	257	332	484	755
2021-22 (projected)	268	500	285	365	553	865

CBE currently has contracted student transportation to five service providers, one of which (Southland) provides both general transportation, as well as specialized transportation. Table 3.1-2 provides a summary of the routes currently allocated to each service provider.

TABLE 3.1-2: STUDENT TRANSPORTATION PROVIDER ROUTE ALLOCATION

Provider	General Transportation (big bus)	Specialist transportation (small bus)
Southland	227	125

4Seasons	-	93
Dreams	-	16
Checker Taxi	-	17
Mayfair Taxi	-	7

As shown in CBE’s mission and values, it prioritizes enabling student success. A key point of its value statement is CBE’s accountability to the public, and inclusion of public participation. CBE has conducted public consultations in the past, and aims to increase transparency into procurement, and service levels through its website, whereby it publishes its consultants’ reports.

3.2 Overview of CBE’s student transportation procurement history

CBE’s current contract spans from 2017-22 with the optionality of a five-year extension. However, CBE is aiming to proceed with a procurement process for contracts beginning in the Fall of 2022 to ameliorate public perception regarding obtaining value from its student transportation contracting process and increase transparency of its active engagement to obtain the best prices for student transportation services. CBE has a history of competitive procurement, previously implementing a procurement process in 2006.

3.3 Overview of CBE’s student transportation governance

As it relates to CBE’s student transportation governance structure, this is largely comprised of the Student Transportation Manager, and a Transportation Advisory Committee (TAC), which is also chaired by the aforementioned Manager.

The duties of the Manager responsible for Transportation Services include:

- Establishing transportation service levels and responsibilities within CBE; and
- Ensuring the development of a comprehensive communication plan to advise school principals and staff and school communities of established services levels, fees and responsibilities for transportation within CBE.

The TAC is composed of a variety of stakeholders including representatives from the community, charter bus service providers, school-based principals and other service units as appropriate. The purpose of this Committee is to provide recommendations to the Manager of Transportation Services regarding transportation service areas, and provide advice, guidance and support to the manager of Transportation Services for the implementation of this administrative regulation.

4. Summary assessment of CBE contract and procurement document

This section assesses the current templates for student transportation contracts and procurement documents against CBE’s 19 identified values and other factors, and examines the extent to which the documents¹ align with them.

Based on our review, it is clear that CBE has dedicated time and effort in developing documents that exemplify their values and leading industry practices. In general, CBE’s documents, in particular the student transportation Master Transportation Agreement (MTA), are largely aligned with CBE’s identified values and factors, as well as leading industry standards, as a whole.

4.1 Representation of Values and Factors

CBE’s 19 stated values and factors are listed in Table 4.1-1, and assessed for their level of alignment to the current and recent templates for student transportation procurement and contracting.



TABLE 4.1-1: VALUES & FACTORS ASSESSMENT

Values & Factors	Level of Alignment	Notes & References	Commentary
1. Student Safety		<p>Ex. 1: Prompt communication of delays to accommodate safe and comfortable transportation (MTA Sec 3.1 c)</p> <p>Ex. 2: stipulating driver and attendant are sufficiently qualified, trained and adept, student riders are provided safety training, and vehicles properly equipped to ensure student safety and comfort (MTA Sec 3.1 k, m, v, bb, and xx).</p>	<p>Student safety and well-being are demonstrated to be a priority objective for CBE – on the basis of the agreement’s requirements for training, equipment, periodic checks, and monetary penalties / rewards linked to safety.</p>

¹ As listed in Section 2.2 of this Report.

Values & Factors	Level of Alignment	Notes & References	Commentary
		<p>Ex. 3: integrating safety into the performance management regime, which affect future earning potential of service provider(s) (MTA Exhibit #2)</p>	
<p>2. Student Well-being</p>		<p>Please refer to 1. Student Safety.</p>	<p>Please refer to 1. Student Safety.</p>
<p>3. Responsible use of public dollars</p>		<p>Ex. 1: rewarding service providers for proposing financially sustainable measures such as eliminating routes (MTA Exhibit #2).</p> <p>Ex. 2: financial responsibility and sustainability are stated guiding principles of CBE (General Transportation Service Provider Manual).</p> <p>Ex. 3: financial sustainability (including commercial proposal) of bidders is an explicit criterion, and carries 30% weight in the evaluation of proposals.</p> <p>Ex. 4: codifying that invoicing discrepancies will not be tolerated, and trigger audits of the service provider's operations (MTA Sec 5).</p> <p>Ex. 5: encouraging efficiency, by</p>	<p>Prudent and strategic use of public dollars is evidenced by the CBE's use of a detailed performance management regime, which reduces CBE's financial burden if service provider(s) fail to perform as stipulated in the agreement.</p> <p>In addition, a 30% weighting of a commercial proposal aligns with industry norms and demonstrates a balance between Service Providers safety protocols and operational excellence with cost to deliver service in order to optimize value obtained for public dollars.</p> <p>Lastly, financial innovation is simultaneously encouraged through win-win scenarios for CBE and service provider(s). For instance, service providers are awarded additional performance points for suggesting changes that result in a Route being eliminated.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		penalizing service providers for any undue administrative / operational work added to CBE (MTA Sec. 4.4 (e)).	
<p>4. Strategic allocation of resources through efficiency and long-term sustainability</p>		<p>Ex. 1: 5-year agreement term, with defined pricing adjustments each year (MTA Sec. 6.1 and Sec. 4.2)</p> <p>Ex. 2: Compensation for CBE strike and inclement weather may be overly generous to service providers, as it does not account for variable costs that may not be used (MTA Sch C Sec 6).</p>	<p>A five-year agreement term is consistent with industry leading practices, supporting Service Providers' investment in new assets, and limiting CBE's procurement expenses.</p> <p>Annual rate adjustments using a pre-defined adjustment mechanism, provides relative long-term cost certainty.</p> <p>Best practice suggests that the length of contract terms plus extensions should be formulated to permit service providers reasonable opportunity to amortize their vehicles (i.e. align contract lengths to reflect the financing term).</p> <p>There is no industry standard for an appropriate number and length of extensions, however, a lack of contract extension options (at CBE's sole discretion) potentially prohibit CBE from extending the term of the agreement where beneficial to CBE, for example to lock in more affordable rates in the event the market bears out higher rates in the future. Another consideration is so that CBE can avoid timing procurement at the same time as Calgary Catholic School District.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
<p>5. Service provider training requirements</p>		<p>Ex. 1: incidents resulting from insufficient training, are penalized as part of the performance regime (MTA Exhibit #2).</p> <p>Ex. 2: drivers and attendants must have training in safety, CBE policies, and routes all prior to operating a route. Student training is also a part of the service provider responsibility (MTA Sec 3.1).</p> <p>Ex. 3: service provider and driver training protocols are provided in the service manual (General Transportation Service Provider Manual).</p>	<p>Training requirements are all mandatory, must be completed prior to operating a route, and specified in the proposals, and codified in the MTA as well as the provider manuals.</p>
<p>6. Service provider obligations</p>		<p>Ex. 1: service provider obligations are codified in the MTA (MTA Sec 3).</p> <p>Ex. 2: service provider obligations are clearly listed, and defined as mandatory or desired, in the RFP (RFP Sch A Sec 3).</p> <p>Ex. 3: requirements in MTA Sec 3 and RFP Sch A Sec 3 do not match exactly. This may create uncertainty in the application of the contract. For example 3.2.2.7 of the RFP cites the service</p>	<p>Service provider obligations are clearly outlined in the procurement and contracting documents, however, CBE should review and ensure consistency between documents</p> <p>MTA does not reference obligations included in RFP Sch A Sec 3 as contractual requirements, nor does it reference commitments made from service providers within their proposal as contractual obligations.</p> <p>Service provider obligations are less apparent in CBE's Contract</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		<p>provider must prioritize runs identified by CBE as a priority. This requirement is not cited in MTA Sec 3 (although it is stated elsewhere in the document).</p>	<p>Management Plan. Cross-referencing service provider responsibilities in the Contract Management Plan may help ease administrative burden.</p>
<p>7. Organizational effectiveness and service transformation</p>		<p>Ex. 1: important communications are conveyed through the service provider / other stakeholders to the CBE Transportation Manager (MTA Sch A).</p> <p>Ex. 2: service provider actions that cause undue burden on CBE are financially penalized (MTA Sec 4).</p>	<p>CBE has assigned a dedicated, experienced individual to be the key point-of-contact with the service provider, who also oversees contract management. The clear delineation of this role helps set clear expectations with service providers, and ensures CBE has a holistic view of service provider performance and operational effectiveness.</p> <p>The inclusion of performance of administrative tasks within the performance management regime, incentivize service provider performance.</p>
<p>8. On time service</p>		<p>Ex. 1: all significant delays are to be communicated in writing (MTA Sec 3).</p> <p>Ex. 2: delays exceeding 60 minutes are one of two performance failures that result in immediate adjustment to the monthly payments due to the service providers (MTA Exh #1).</p>	<p>CBE's codified expectations of on time service are clear and clearly enforced by regular reporting; immediate adjustments to service provider payments; and long-term financial ramifications on account of route allocations.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		Ex. 3: delays are also accounted for in CBE's allotment routes in future contract periods (MTA Exh #1).	
9. Reliable service		Please refer to 8. On time service.	Please refer to 8. On time service.
10. Continual improvement		Ex. 1: innovation and improvement is encouraged at the proposal stage (RFP Sec 2.3) and in the course of the contract with existing service providers (MTA Exh #2).	CBE has, through contractual means, incentivized service providers and bidders to bring forward propositions with operational and financial improvements. Additionally, CBE has commissioned and reacted to numerous reviews (including from independent consultants) regarding its staffing, use of technology, and contract management.
11. Accountability		<p>Ex. 1: a legacy performance regime system that can be opaque or hard to understand for service providers unfamiliar with CBE. This aligns with anecdotal feedback of smaller service providers finding it difficult to understand the performance regime, and the consequent changes to allocation of routes (i.e. financial consequences).</p> <p>Ex. 2: the inclusion of a process such as Best and Final Offer (BAFO) in a procurement typically is necessarily joined</p>	<p>While generally codifying and implementing sound practices in this regard, CBE may wish to examine two elements of the system, that are not common in competitively procured student transportation contracts, from a transparency and accountability lens.</p> <ul style="list-style-type: none"> • BAFO process requires a higher standard of independence to uphold and communicate that a procurement is executed with integrity. Common mechanisms found in other industries include a probity monitor / auditor, who is a third party that observes

Values & Factors	Level of Alignment	Notes & References	Commentary
		<p>by an independent party to verify the transparency and accountability of said process. In other industries, this role is referred to as a probity monitor / auditor. This is not included in the CBE's current procurement process.</p>	<p>and reports on the procurement process and results.</p> <ul style="list-style-type: none"> Bidder understanding of performance deduction regime may benefit from clarifications and/or detailed descriptions of how performance in the points system translates into future financial ramifications (i.e. in the form of route allocations).
<p>12. Transparency</p>		<p>RFP provides minimal clarity as to how proposals will be evaluated and routes awarded to proponents:</p> <p>Ex. 1: Innovative proposals are allowed in the RFP, however, the RFP does not indicate how an Innovative proposal will be reviewed and evaluated compared to a baseline proposal (RFP Sec. 2.3)</p> <p>Ex.2: An allowance for a Best and Final Offer (BAFO) process is included in the RFP. However, the timeline for the BAFO process in Section 2.22 is inconsistent with the schedule in Section 1.4, and there are minimal details provided as to how the BAFO submission will be evaluated (or how it could impact scoring) (RFP Sec. 2.22)</p>	<p>A lack of transparency regarding how certain components of a proponents submission will be evaluated, and how the evaluation process relates to the selection and award of contracts to service providers raises the following concerns:</p> <ul style="list-style-type: none"> Increase in the risk that Proponents will challenge the results of the procurement process, as it is unclear how selections are being made. This risk is increased in processes that include BAFO submissions and Innovative proposal submissions. Proponents may not focus response efforts (e.g. rate pricing) on specific areas that are critical to CBE as the lack of clarity on what's being evaluated

Values & Factors	Level of Alignment	Notes & References	Commentary
		<p>Ex. 3: Section 2.8 of the RFP notes that the commercial proposals will be weighted at 30% of the overall score, however, there is minimal detail provided on what components of the commercial proposal will be evaluated, and how submissions will be compared to each other. Further it is unclear from the commercial proposal whether the daily rate will require a fixed component and a variable component. (RFP Sec. 2.8)</p> <p>Ex. 4: Section 2.8 of the RFP does not outline how CBE intends to determine which proponents will be awarded contracts, nor how the evaluation scoring will be reflected in contract award. (RFP Sec. 2.8)</p>	<p>provide ambiguity as to what is important to CBE.</p>
<p>13. Confidentiality</p>		<p>Ex. 1: terms on viewing CBE information (including confidentiality, FOIP) are clearly codified (MTA Sec 7). Similarly CBE respects the confidentiality of its service providers (i.e. only discloses each service provider's performance in the points system to itself).</p>	
			

Values & Factors	Level of Alignment	Notes & References	Commentary
<p>14. Appropriate insurance</p>		<p>Ex. 1 commercial general liability insurance minimum of \$5 M, employer’s liability coverage minimum of \$5 M, and automobile coverage minimum of \$15M. (MTA Sch Sec 8.3).</p>	<p>Service provider insurance requirements are within standard ranges when benchmarked to other jurisdictions.</p>
<p>15. Mitigate risk for CBE</p>		<p>Ex. 1: default and force majeure provisions protect CBE from non-performance while giving some flexibility for supervening events (MTA Sec 6 & 9).</p> <p>Ex. 2: standard dispute resolution procedure and rights provisions not included in the MTA.</p>	<p>CBE has most of the industry standard contract provisions to mitigate key risks. However, the MTA does appear to be missing a defined dispute resolution procedure, which may present risk for lengthy, public and costly legal proceedings should claims or controversies arise in connection to the agreement.</p>
<p>16. Flexibility for CBE</p>		<p>Ex. 1: CBE has improved flexibility by moving from a 10-year MTA term to five-year.</p> <p>Ex. 2: the performance regime allows CBE, on a year-to-year basis within the MTA time-frame, allot more routes to high-performing service providers and less routes to low-performing service providers.</p>	<p>CBE generally has implemented a flexible contract that will allow the transportation system to benefit from high-performing service providers.</p>
<p>17. Encourage competition between service providers</p>		<p>Ex. 1: the open period duration of the procurement has improved from three weeks in 2017 to five</p>	<p>CBE’s history of regular competitive procurement encourages competition between service providers.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		<p>weeks in 2021. Other jurisdictions have been met with feedback that longer open periods are necessary, in particular to accommodate teaming arrangements, and smaller service providers (RFP Sec. 1.4).</p> <p>Ex. 2: the RFP allows for consortiums to bid, which allows multiple service providers to team up and offer the best service (and potentially best value) to CBE (RFP Sec 2.16).</p> <p>Ex. 3: as referenced earlier under “Continual Improvement”, service providers are incentivized to propose innovative ways to deliver service.</p> <p>Ex. 4: RFP does not cap a maximum number of routes (on a % basis) available to be awarded to any single service provider, depending on how commercial proposals are evaluated (refer to “Transparency” above) Smaller service providers may be persuaded not to compete, and an award of majority of routes to a single service provider may</p>	<p>However, CBE should consider additional practices if the objective is to raise the level of competition who participates and are successful in competitive procurement processes.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		limit competition in future RFPs.	
<p>18. Encourage the best price from service providers</p>		<p>Ex. 1: a Deloitte study of the industry spanning multiple jurisdictions in and outside of Canada found the range of financial score weighting (as a % of the overall score) to be between 25% - 50%.</p> <p>Ex. 2: Section 2.8 of the RFP provides very little detail on how commercial proposals will be evaluated beyond that the weighting is 30% of overall score (RFP Sec. 2.8)</p> <p>Ex. 3: CBE has removed its fuel adjustment mechanism in the latest version of its procurement documents.</p>	<p>Compared to other jurisdictions, CBE has a balance in weighting the importance of technical and financial submissions. This should translate into contracting with technically proficient service providers who also are providing adequate value.</p> <p>Anecdotal findings suggest jurisdictions that trend higher in terms of financial weighting often are met with feedback that service excellence does not matter as much as it should.</p> <p>Lack of transparency regarding how commercial proposals are evaluated may lead to confusion from proponents on how to competitively price their proposed services.</p> <p>The absence of a fuel adjustment mechanism creates an increased likelihood that service providers will include a fuel risk premium in their rates as service providers have limited control over costs of fuel. Industry best practice suggests that a fuel escalation and de-escalation mechanism allows service providers to minimize the risk premium in their rates.</p>
<p>19. Environmental sustainability</p>		<p>Ex. 1: innovation in the area of environmental sustainability is a rated (desired, not mandatory)</p>	<p>CBE has a good track record for environmental sustainability, and incentivizes further innovation from its service providers.</p>

Values & Factors	Level of Alignment	Notes & References	Commentary
		evaluation criterion (RFP Sch A Sec 3.3.1). Ex. 2: CBE is recognized as having one of the larger propane-fueled fleets in North America.	

4.2 Summary of gap assessment against values and factors

As detailed in Section 4.1, CBE generally is implementing practices that (a) align with its stated values and factors; and (b) are consistent with good industry practices. However, some potential gaps were identified:

- **Service provider obligations.** Service provider obligations are clearly stated in the procurement and contracting documents. However, the service provider contract does not specifically reference the service provider’s proposal, nor any additional commitments that a service provider may be making within the proposal. The obligations stated in the service provider contract also do not wholly match the requirements as stated in the RFP. In addition, it is less clear what the service provider responsibilities are, in CBE’s Contract Management Plan.
- **Accountability / transparency /confidentiality.** Whereas CBE has anecdotally developed good relationships with its main service providers, a couple of key elements of its procurement and contracting process may require improvement:

 - The BAFO component of the competitive procurement process allows CBE to extract the most value, provided there are multiple competitive bids. However, it also requires a greater level of independence and disclosure such that stakeholders are assured of the integrity of the results and process.
 - The route allocation system from year-to-year is governed by a points system which is not industry standard, and may not be readily understandable for smaller service providers or new entrants to the market. Anecdotally it is understood that this is a legacy system, implemented over 10 years ago. It should be noted that this system does allow CBE greater flexibility to reward higher-performing service providers and therefore provide greater value-for-money.
 - The RFP document is unclear how certain aspects of proponent submissions will be evaluated, including Innovative Proposals, BAFO Submissions, and most importantly, the Commercial Proposal. In addition, it is unclear how results of the evaluation process are translated into service provider selection and contract award. As a result, CBE may be increasing the risk that unsuccessful proponents may challenge (potentially successfully) the results of the procurement process.

- **Mitigate risk for CBE.** CBE has most of the standard contract provisions which shield it from undue risk. However there is a noted omission of dispute resolution procedures which could further shield CBE from harmful consequences.
- **Encourage competition between service providers.** CBE's documentation contains robust mechanism to encourage competition, including a BAFO process and the ability to form joint-ventures. However there are also structural gaps that may result in smaller service providers being crowded out of the market. CBE has a short open period duration, which disadvantages smaller service providers with fewer resources, as well as service providers who wish to form a team. Additionally, CBE does not have a stated limit of the volume of routes that can be awarded to any given service provider, which may limit participation of additional service providers in the procurement process, and should contracts be predominately awarded to only one service provider, limit competition in future procurement processes.
- **Encourage the best price from service providers.** The removal of fuel adjustment provisions is a departure from leading practices. General commercial principles suggest that where risks are transferred to service providers, service providers will include a risk premium in bid rates, and where the risk is largely out of the service provider's control, the risk premium can be significant and approach the worst case scenario projections. Although large service providers can purchase fuel in bulk during low cost period, and hedge fuel rates financially, these approaches come with a high cost, and/or only marginally mitigate the risk of price fluctuations. As a result, by excluding a fuel adjustment mechanism, CBE may effectively be paying rates based on worst case fuel rate increase projections, whether these occur or not (or even where fuel rates decrease).

5. Identification of areas for improvement and potential remedies

Based on the gap assessment conducted in Section 4.2, the following opportunities for improvement have been identified for consideration. It should be noted that these are opportunities for improvement which require further consideration as to the implications and impacts upon business relationships of CBE.

#1 Increasing Integrity and Transparency of the BAFO process

Opportunity: If CBE intends to utilize the BAFO process outlined in the RFP, CBE could consider further detailing how the BAFO process will be implemented and engaging an independent probity monitor / auditor – a firm or individual experienced in conducting fairness observations and assessments – to oversee the integrity of the procurement process. The use of a BAFO process can increase the perception that CBE is “price shopping” following receipt of the original proposals. Further outlining the specifics of the BAFO process, and engagement of a probity monitor / auditors, where the function of the probity monitor / auditor will be to observe (and to certify) all steps of the proposal including the opening of submission, the evaluations, and the presentations mitigates this risk materially. The probity monitor / auditor will document proceedings in a probity audit report, containing any and all identified issues – which is generally made publicly available.

Benefits: The key benefit is to improve the perceived and actual level of integrity in the procurement process. The probity monitor / auditor should have independence from the process and parties involved, and should therefore be able to provide an on-the-record objective and impartial view of the procurement process. This is a key risk mitigation measure undertaken by procurement agencies in other industries, to combat perceived or actual fairness issues raised by bidders and other stakeholders.

Costs: There is incremental cost and time required to add this to the procurement process – including the cost of engaging the probity monitor / auditor (likely less than \$30,000), and establishing a set of criteria used to evaluate whether probity requirements within the procurement process have been met.

Exemplar: A sample output – of a Fairness Monitoring Final Report – is published online by the Ottawa Student Transportation Authority (for a procurement performed in 2015). CBE may refer to this document to understand the scope and detail of the probity monitor’s work.

#2 Formalizing the Innovative Proposal Submission and Evaluation Process

Opportunity: Should CBE be interested in receiving Innovative Proposals as outlined in Section 2.3 of the RFP, there is an opportunity to improve the description of how Innovative Proposals are to be prepared, and how Innovative Proposals will be evaluated in comparison to baseline proposals. For example, the RFP could include:

- An outline of the type of Innovative Proposals CBE is willing to consider. For example, guidance from CBE in terms of the types of revisions can be categorized as follows:

- Innovative Proposals that include departures from the service requirements set out in the MTA (e.g. Service Provider proposes to provide routing optimization services to CBE):
- Innovative proposals that include departures from the outlined rate structures set out in the MTA and ASA (e.g. Service Provider proposes to be compensated based on distance travelled instead of duration of routes)

Please note that we are not aware of any Innovative Proposal processes currently used in the Student Transportation sector.

- An indication as to whether Service Providers can provide an Innovative Proposal only, or if a baseline Proposal is also required.
- An outline of the submission requirements for an Innovative Proposal, such as proposed revisions to the MTA and/or ASA; and
- A description of how the Innovative Proposals will be evaluated in comparison to baseline proposals.

Benefits: An Innovative Proposal regime can increase CBE’s exposure to challenges from unsuccessful Proponents, as evaluation criteria are difficult to define, and evaluating different service offerings, or payment structures against one another is no longer an apples-to-apples comparison, reducing the inherent objectivity of the evaluation. Improving how the Innovative Proposal submission and evaluation will be undertaken is one way to partially mitigate this risk. In addition, Innovative Proposals can increase the value CBE obtains from Service Providers, and additional clarity on the process will help encourage proponents to further consider submitting an Innovative Proposal.

Costs: None noted.

#3 Increase clarity of Evaluation Process in RFP

Opportunity: As noted in Section 4, the current draft of the RFP lacks clarity around several key aspects of the evaluation process, in particular around (a) how the commercial proposal will be evaluated (i.e. what aspect of the commercial submission will be evaluated and how will the 30% of evaluation points be awarded based on the commercial submissions), and (b) how the results of the evaluation process (i.e. scores and rankings) will result in Service Provider selection, and route allocation.

Benefits: Improved clarity in the evaluation process will:

- a) Reduce the risk that Proponents will challenge the results of the procurement process as it will be clear how a proponent’s submission would be evaluated against other submissions, and how selections are being made.
- b) Improve the responsiveness to CBE’s priorities, as proponent’s will better understand what aspects of their submission are most critical to CBE based on clearer descriptions of how they will be evaluated.

Costs: This may require additional time to incorporate revised drafting.

Exemplars: For reference only, the following excerpt from an RFP for student transportation services provides a clear and detailed outline of how the commercial proposal will be evaluated:

Evaluation of Pricing

Pricing is worth thirty (30) points of the total score for each Route Package.

A total annual cost per Route Package will be determined using the information on the Submission Pricing Form (Tables 1 – 5) and based on the details provided on current routes in Appendix D. To determine total annual cost, 187 school days will be assumed as a baseline. Monitor Rates will be included in determining the total annual cost. Wait time rates and Extra/Co-Curricular rates will not be used in determining the total annual cost for evaluation of Pricing.

Scoring of pricing will use the total annual cost per Route Package and will be based on a relative pricing formula. Proponents will receive a percentage of the total possible points allocated to price for each Route Package it has bid on, which will be calculated by dividing that Proponent's total annual cost for that Route Package into the lowest total annual cost bid for that Route Package.

For example, if a Proponent's total annual cost for a particular Route Package is \$120.00 and that is the lowest total annual cost for that Route Package, that Proponent receives 100% of the possible points for that Route Package ($120/120 = 100\%$). A Proponent whose total annual cost is \$150.00 receives 80% of the possible points for that category ($120/150 = 80\%$), and a Proponent whose total annual cost is \$240.00 receives 50% of the possible points for that category ($120/240 = 50\%$), and so on, for each Proposal, for each Route Package.

For reference only, the following excerpt from an RFP for student transportation services provides a clear outline of how the total evaluation score will result in contract awards:

At the conclusion of the evaluation, all scores awarded for Stage 2 (technical) and Stage 3 (commercial) will be added for each Bundle and subject to satisfactory reference checks, the highest scoring Proponent(s) in each Bundle, will be selected to enter into an Agreement attached as Appendix.

#4 Improving Understandability of the Performance Regime

Opportunity: While not common in the industry, CBE's points-based route allocation system has been in place for a long time likely because it has been effective in incentivizing strong service provider performance. However CBE can still benefit from clarifying, in the procurement documentation, how the system works.

- (a) Whereas stated in an earlier section of the MTA (Exhibit #1 part (f)), it is not readily apparent that the delays over 60 minutes or combining routes are the only performance indicators that impact the payments made to the service provider on a monthly basis. There is an opportunity to enhance understanding, language to that effect is added to Exhibit #2 – Performance Indicators.
- (b) Whereas stated that points added or deducted will affect volume of routes assigned in future ASA terms, it is not readily apparent that allocation will depend on performance relative to the field, as well as capacity constraints. For instance, a service provider may perform such that it has gained points during the initial ASA term – however because the other contract service provider gained *more* points during that same span, this service provider will be allocated fewer routes. On the other hand, it is plausible that a service provider may perform such that it has lost points during the initial ASA term – however because of the overall number of CBE routes increasing and/or the capacity constraints of the other contracted service providers, this service provider will be allocated more routes. There is an opportunity to enhance understanding, language to that effect is

added to Exhibit #2 – Performance Indicators. A simple formula or more visual representation may also be helpful.

Benefits: Improving the understanding for new entrants can remove artificial barriers of entry and eventually enhance the level of competition. It can also assuage anecdotal feedback from service providers that the performance regime is unclear.

Costs: This may require additional time to incorporate revised drafting.

#5 Assess ways to improve competition

It is noted that one Service provider provides 100% of General Transportation Services, and a majority proportion of Specialized Transportation Services. Should CBE wish to increase the level of competition, the following opportunities have been identified:

- (a) **Opportunity:** A Deloitte study sampling jurisdictions in Canada and elsewhere found the open period duration of student transportation procurements to range from 1 – 4 months. Whereas CBE has already made improvements (i.e. not scheduling the open period during the winter holidays, increasing the duration from 3 weeks to 5 weeks), it may be possible to make further improvement by further increasing the length of the open period.

Benefits: Increasing the open period duration will allow service providers with fewer resources, service providers who are not currently providing services to CBE and as a result have a greater level of due diligence to complete, and/or service providers who wish to team up via consortium to credibly compete and submit a robust proposal to CBE. This may raise the level of competition, and result in CBE contracting at a financially and/or technically more competitive level.

Costs: This would require an examination of CBE's overall timelines, to fit in a longer procurement open period.

- (b) **Opportunity:** Many jurisdictions have implemented caps (based on percentage of overall routes) that any single provider can be awarded in a term. To implement this in harmonization with said regime, CBE could implement an award cap at the outset of the MTA, and still adjust the volume of routes based on performance. The applicability of a route cap, and the specific maximum percentage the cap should be determined based on local student transportation environment, as what works in one jurisdiction may not be appropriate in others. In a Deloitte study of Ontario student transportation practices, caps ranged from not more than 35% - 67% of the total routes in a procurement to be awarded to a single provider (35% being the most frequently used, out of the contracts sampled). It should also be noted, that in the event CBE elects to include a maximum route cap, how routes are allocated based on the RFP evaluation should be clearly specified.

Benefits: A route cap will, at minimum, increase the number of Service providers providing General Transportation. Theoretically, this should encourage the existing Service providers to maintain a high level of performance. In addition, there is potential it will increase the likelihood of new entrants (if this is an objective of CBE) who may perceive a greater likelihood of success in the procurement process. However, the most

crucial benefit is the reduction of CBE's reliance on one Service provider. Where only one Service provider is in place, in the event of poor performance, or other factors impacting its ability to provide service, CBE has limited flexibility regarding actions it can take to remedy these issues.

Costs: The introduction of a route cap may be viewed negatively by CBE's primary service providers, negatively impacting the currently strong working relationship/partnership between CBE and the organizations. In addition, a route cap will inherently mean the highest ranked proponent (combination of technical and price) will not be awarded all of the routes, negatively impacting maximum value achieved by CBE. However, it should be noted, that this maximum value is when considering it in isolation as increased competition both in the short- and long-term will help balance against this loss in value.

Exemplars: CBE should also consider accompanying provisions to the cap that grant it flexibility in the face of operational realities. For example, if there is instances of operator non-performance, CBE should have the right to exceed the cap by re-allocating routes to a service provider that already has met the maximum quota. For reference only, the following excerpt from an RFP for student transportation services that outlines the cap, and allowance to exceed the cap thresholds is provided below.

It is the intent of the (organization) to encourage competition and diversity. The (organization) will ensure that no single Proponent shall be contracted to provide more than XX% of the total number of routes under contract. The (organization) may therefore limit contract awards accordingly. In extenuating circumstances, which may include operator non-performance, the (organization) reserves the right to exceed these thresholds.

#6 Include dispute resolution mechanism in the MTA

Opportunity: CBE should include a dispute resolution provision in the MTA that sets out the procedures and rights of all parties in the agreement. This process typically includes non-binding mediation, followed by binding arbitration. This process helps assure bidders and contracted parties that there is a resolution procedure outside of a lengthy, public, and costly legal proceeding.

Benefits: There are several benefits of formalized dispute resolution processes, including (a) dispute resolution processes that include internal escalation, followed by mediation or arbitration are generally lower cost solutions to a formal legal dispute process, (b) dispute resolution processes are generally faster to reach a resolution than a formal legal dispute.

Costs: The inclusion of a formal dispute resolution process may encourage service providers to utilize the process, when the cost and time required to file a legal contract claim acted as a deterrent. However, resolving disputes should be encouraged, as a discontent service provider is not to the advantage of CBE.

#7 Reference and Attach RFP Scope Requirements and Proposal Commitments in MTA

Opportunity: RFP Section 3 outlines the required Scope of Services to be provided by the Service Provider. Although the scope is generally aligned with the Service Provider Obligations

in Section 3 of the MTA, there are some discrepancies. In addition, within Proposals, Service providers may commit to providing services in excess of those indicated in Section 3 of the MTA in order to score better in the evaluation process. The current MTA does not require the Service provider to adhere to the additional requirements in the RFP, nor to their commitments made in their proposal documents. As a result, CBE should consider both referencing within the Service providers Obligations in the MTA and attaching as schedules to the MTA, both the Scope requirements including the RFP and the Service providers' proposal.

Benefits: By clearly indicating that the Service providers will be required to adhere to both the additional requirements of the RFP, and to their commitments contained within their proposals, CBE will be able to further ensure it is obtaining the full value of services from its service providers that it is paying for, as the cost to adhere to these additional scope items/commitments is included in their bid rates.

Costs: None Noted.

Exemplars: For reference only, the following excerpt from an RFP that references the service providers' requirements to meet proposal obligations is provided below.

The Service Providers acknowledges and agrees that the Service Provider's Proposal forms part of this Agreement. If the Proposal includes statements, terms, or concepts that can reasonably be interpreted as offering to provide higher quality items or a higher level of service more favourable to (organization) than otherwise required in this Agreement or to perform services or meet standards in addition to or better than those otherwise required in this Agreement, then the Service Provider's obligations hereunder shall include compliance with all such statements, terms, and concepts as set out in the Proposal, but always in a manner that does not adversely impact any other provision or requirement of this Agreement or result in increased costs or expenses to (organization).

#8 Develop an internal Evaluation Framework

Opportunity: CBE has prepared an Evaluation/Selection Committee document that outlines the individuals who will be involved in the evaluation process and lists the activities that will be completed by the committee. In addition, evaluation worksheets are in the process of being prepared. Although these documents are beneficial, an opportunity exists to develop a more comprehensive evaluation framework to document the evaluation process and ensuring it is well structured, fair and transparent. An evaluation framework that aligns with leading practices would likely include:

- A description of the governance structure overseeing the evaluation process;
- An outline of evaluation principles (e.g. independent/unbiased, transparent, confidential, etc.);
- Identification of all members of the governance body, evaluation committee, and any evaluation administrative roles such as an evaluation coordinator, and an outline of the roles and responsibilities of each party;
- A detailed outline of each step of the evaluation process (e.g. compliance review, mandatory criteria assessment, clarification process, technical evaluation, commercial evaluation, interviews, BAFO, Innovative proposals, etc.), including who will be responsible for each step, and how the results will be documented;

- A description of how individual evaluators are to assess each of the components, and how individual evaluations will be aggregated (e.g. consensus meetings, averages);
- Outline of administrative procedures and evaluation logistics; and
- Required diligence activities for evaluators (e.g. conflict of interest declarations, confidentiality agreements, evaluator training, etc.)

Benefits: Ensuring the evaluation process is properly documented, well structured, fair and transparent reduces the risk any unsuccessful proponents can challenge the integrity of the evaluation process. With total contract budgets in the range of \$200 million (over five years), the potential impact of a challenged procurement is material to CBE.

Costs: Marginal level of effort for CBE procurement (or third party consultant) to develop comprehensive evaluation process, as well as additional time and effort during evaluation process to complete all documentation.

#9 Compensate service providers for fixed costs only during events where services are not required

Opportunity: The current MTA notes that: (a) provided CBE continues to receive funding from Alberta Education, 100% of the rate would be paid to Service providers in the event that services are not required as a result of a CBE strike, and (b) that 100% of the rate would be paid to Service providers in event services are not required as a result of inclement weather. As a large number of Service provider costs are fixed (e.g. bus capital costs) regardless of whether or not services are provided, and Service providers are encouraged to pay drivers in these scenarios in order to retain them, a large portion of payment is warranted. However, variable costs, in particular fuel costs, are not incurred by service providers when service is not provided. As a result, there is an opportunity to limit payment in these scenarios to fixed costs only.

Benefits: CBE would not be required to pay full 100% rates in the event services are not required. Anecdotally, fuel costs range between 10%-15% of the total cost to provide services.

Costs: The current route rate structure does not allocate costs between fixed and variable costs, as a result, the rate structure would need to be altered to estimate the fixed component of the daily rates to allow for only fixed component payment when services are not required.

#10 Re-introduce fuel adjustment mechanism

Opportunity: General commercial principles suggest that where risks are transferred to service providers, service providers will include a risk premium in bid rates, and where the risk is largely out of the service providers' control, the risk premium can be significant and approach the worst case scenario projections. As service providers have minimal control over the price of fuel, a fuel adjustment mechanism can help minimize the risk premium service providers include in their rates to account for fuel fluctuations.

Benefits: The inclusion of a fuel adjustment mechanism should help minimize the risk premium service providers include in their rates, resulting in CBE only paying higher rates in the event that fuel prices actually increase.

Costs: Fuel adjustment mechanisms transfer the risk of fuel price fluctuations back to the purchasing jurisdiction. As a result, inclusion of an adjustment mechanism increases the cost certainty for the service provided, as actual costs paid to service providers will fluctuate up and

down with the price of fuel. However, it should be noted, that CBE also benefits from reductions in fuel rates with the use of an adjustment mechanism.

Exemplars: There is no standard or leading example for the use of fuel adjustment mechanisms in student transportation contracts, as each individual jurisdiction has varying perspectives on the precision of the mechanism versus the ease of administration. For reference only, the conceptual fuel adjustment approaches from two distinct student transportation agreements are provided below.

Alternative 1

1. *Fuel is determined to be XX% of the monthly contract rate. XX% is set by the jurisdiction in the procurement documents.*
2. *The fuel cost benchmark, the “pegged price (\$/L)” is a set price, set by the jurisdiction in the procurement documents, and based on a published fuel rate at the time of procurement.*
3. *A YY% fluctuation range is set, where fuel price fluctuations less than +/- YY% result in no adjustments, while fluctuations greater than +/- YY% result in rate adjustments.*
4. *Each month, the published fuel rate is reviewed, and if adjustments are required, the adjustments are applied to the contract rate for the subject month.*

Alternative 2

1. *Respondents bid a Fuel Rate (in L/km), which is a component of the overall contract rate per route for each type of vehicle.*
2. *The fuel cost benchmark, the “pegged price (\$/L)” is a set price, set by the jurisdiction in the procurement documents, and based on a published fuel rate at the time of procurement.*
3. *Service providers are compensated based on a daily rate per route, which includes a component for fuel (Fuel Rate x Pegged Price x daily total route distance)*
4. *Each month/year, the published fuel rate is reviewed, the “pegged price (\$/L)” is adjusted in the calculation of the contract rate per route.*

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