



## PUBLIC EXCLUDED

Report PE 06.303  
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Committee Policy, Finance and Strategy  
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## Update on Electrical Multiple Units Purchase

### 1. Purpose

To update the Committee on the purchase of new Electrical Multiple Units (EMUs) 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

Council has agreed to purchase 58 new EMUs to replace ageing rolling stock used on Wellington metropolitan commuter rail services. An additional 12 new units are proposed for the western corridor.

Greater Wellington has appointed Halcrow to be project manager for the procurement of the EMU vehicles to the point of appointment of a preferred supplier. Procurement will involve a two stage process, the issuing of an Expressions of Interest document (EOI) and then a Request for Tender (RFT) document. The EOI process will be open to all suppliers, but the RFT will be restricted to three (or perhaps four) suppliers who are selected following evaluations of the EOI documents.

A procurement procedure, including the draft EOI, was prepared and submitted to Land Transport New Zealand (LTNZ) for approval. Unfortunately just prior to the LTNZ meeting, Toll NZ indicated that they wished to tender for the supply of the EMUs. Having Toll NZ as a tenderer is unacceptable to LTNZ and Greater Wellington because of their role as operator of the rail network. A number of other potential tenderers have indicated that they will not tender if Toll is a tenderer, thereby undermining the competitive tender process.

Legal advice obtained both by LTNZ and Greater Wellington confirms that Toll can be excluded from the bidding process. However, Greater Wellington needs Toll to be involved as part of its project team to ensure a successful outcome. Negotiations have therefore been taking place with Toll NZ to obtain their agreement to a role in the procurement process that does not involve them as a tenderer or joint tenderer. The process cannot proceed until this agreement is reached.

## **5. Role of Toll NZ in the procurement process**

Greater Wellington has prepared a draft Heads of Agreement setting out Toll's role in the procurement process. The key points are:

- a. Toll will not be a tenderer or joint tenderer.
- b. Toll will provide professional services, commissioning and maintenance roles.
- c. Separate agreements/contracts will be signed for professional services and maintenance. Commissioning, other than professional services, will be covered by an amendment to the operating contract.
- d. Toll will be paid for professional services on a fixed price basis for components of work that will be defined. The prices is to be based on a schedule of hourly rates.
- e. Toll will provide a schedule of commissioning charges that will be provided to all tenderers
- f. A project management fee for Toll will be negotiated. The level of fee is yet to be agreed. LTNZ have indicated that a level approaching 2% of the total transaction value is considered reasonable.
- g. Toll will be responsible for all maintenance of the new EMUs to achieve reliability and availability targets. Some form of incentive will be included in the maintenance contract.
- h. Halcrow will be the Project Manager until the supply contract is signed. Toll will then be the Project Manager and provide the Engineer to the Contract. GW will provide the Project Leader.

The basis of the Heads of Agreement has been considered by LTNZ at its meeting on 22 June. Informal advice is that the proposed arrangements are acceptable to LTNZ.

The draft Heads of Agreement was sent to Toll NZ for consideration. Toll have agreed to the proposal subject to clarification of the role of Halcrow and agreement of the commercial terms.

## 6. Next steps

Following confirmation of LTNZ's agreement to the proposed arrangements, officers will endeavour to get agreement with Toll on the commercial terms of the Heads of Agreement. Once a Heads of Agreement has been signed, Greater Wellington will be able to resubmit a procurement procedure to LTNZ. Our target date is the July meeting.

Once the Heads of Agreement is signed, Toll will effectively become part of the project team and will be able to provide input to the technical specifications necessary in the EOI document so that this can be released to the market as soon as possible following approval from LTNZ. The release of the EOI will be a significant milestone in the procurement process.

Contracts for professional services and maintenance will need to be signed with Toll NZ. A draft professional services contract has been prepared.

Work is progressing on the draft RFT to be released to the short-listed tenderers following the EOI process.

## 7. Communication

Apart from the discussions amongst the key parties, no further communication is required at this stage. However, Greater Wellington should inform the public when the EOI document is released to the market.

## 8. Recommendations

*That the Committee:*

1. *Receives the report.*
2. *Notes the content of the report.*

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