



OSTA

Ottawa Student
Transportation
Authority

M E M O R A N D U M

TO: OSTA Board of Directors

FROM: Vicky Kyriaco, General Manager/Chief Administrative Officer

DATE: May 26, 2014

RE: **Bus Procurement**

Background

1. OSTA is bound by the Broader Public Service Procurement Directive and is required to secure transportation services through a competitive procurement process. Due to market conditions existing in the Ottawa area, current litigation against another area consortium, and recent tactics used by its two largest operators to use their market domination to force a price increase, OSTA was not able to conduct competitive procurement for yellow school bus service for the 2014-15 school year.
2. OSTA is thereby exempt from the BPS Procurement Directive at this time and can single-source yellow bus services through negotiations with individual operators.

Current Situation

3. OSTA has prepared a comprehensive procurement plan to manage current and future bus procurement activities. While it is impossible to conduct competitive procurement at this time, OSTA has a unique opportunity to affect change in its market in order to ensure a more competitive environment for future procurements while limiting market control for any one operator.
4. The goals of OSTA's overall procurement strategy are to:
 - a. Secure yellow buses for September 2014
 - b. Limit legal implications or precedents for OSTA and other consortia
 - c. Increase capacity in the Ottawa market to allow more competition in the future
 - d. Reduce market dominance of any operators
 - e. Plan for competitive procurement activities for the next 5 years
 - f. Develop a rotating plan such that only part of OSTA's system is available for procurement at any one time
 - g. Align with the BPS Procurement Directive wherever possible
 - h. Align with Ministry expectations for E&E Review

Market Conditions

5. Bus procurement is an extremely contentious issue in Ontario for many reasons:
 - a. Small independent operators want exemption from the BPS Procurement Directive altogether as the Request for Proposal (RFP) process can wipe out their entire business should they not be one of the winning proponents
 - b. Large conglomerates want the RFP process to continue without volume "caps" (maximum number of routes assigned to any one operator) which can provide the ability to influence market price and/or capture increased revenues
 - c. Many bus operators seem to agree that revenues are not keeping up with rising costs
 - d. Litigation against consortia and the Ministry is taking place in one or more jurisdictions, with different legal positions
 - e. Ministry funding to school boards has not kept up with rising costs of providing transportation
 - f. RFP's in other jurisdictions may or may not have had a positive outcome for their consortia and school boards
 - g. There are very few used buses available for purchase or lease on short notice in Ontario.

6. Bus procurement in the Ottawa area is extremely contentious not only for the above reasons but also because:
 - a. Operators feel the cost of doing business in Ottawa is higher than in other jurisdictions
 - b. Driver pay, retention, training and replacement are more significant issues having financial impacts in Ottawa than in other jurisdictions

7. Bus procurement for OSTA is extremely contentious not only for the above reasons but also because:
 - a. OSTA's contract has similar rates to its co-terminous consortia, although overtime pay is at a higher threshold time. The co-terminous consortia operate most of their routes in rural settings, however
 - b. Operators claim (and some have demonstrated) that they are losing money on some of OSTA's routes
 - c. The financial benefit to any operator depends largely on the mix of routes for any operator, which creates an inequity of compensation for those with a mix focusing on shorter routes or extremely long routes
 - d. Ministry's funding formula is different for OCDSB and OCSB leaving one school board with a significant deficit and the other with a surplus. The former receives annual increases through the GSN, while the latter receives none
 - e. OSTA's Transformation Project, seeking efficiencies in the system by removing buses and reducing kilometers paid, further erodes the business base for operators
 - f. OSTA's contract revenues were off-set by mid-day kindergarten runs, which have been eliminated over the past few years, and which will be completely eliminated by 2014-15.
 - g. Two major operators dominate the Ottawa market and hold 85% of OSTA's 700 routes
 - h. All operators yellow bus operators have received 0% increases for 2 years in a row
 - i. One of OSTA's operators is currently involved in the litigation against another area consortium regarding RFP procurement

Yellow Bus Procurement Plan

Stage 1 – Yellow Bus Procurement for 2014-15

8. The primary objective was to secure yellow buses for September 2014, while mitigating any negative financial impacts on the school boards.
9. OSTA offered its last one-year contract extension to its operators on April 4 2014 with a 2% increase. All but the two largest operators signed the contract extension letter.
10. Two of OSTA's largest operators, First Student and Stock Transportation, holding 57% and 28% of OSTA's 700 routes respectively, did not sign the contract extension letter and demanded a double-digit rate increase. Both threatened to pull out of the Ottawa market altogether if an agreement could not be reached.
11. OSTA was able to secure yellow bus transportation for reasonable rates from three operators (two new entrants and one existing) to replace Stock Transportation. The new operators were unable to secure used buses to cover these routes. In order to finance new buses to cover some 193 routes, the new operators required long-term contracts. The new contract term is for 5 years with an option to renew for two additional 10 month periods.
12. These new entrants were chosen on the following basis, many of which would be considered requirements for any competitive procurement process:
 - a. Clear understanding of the scope of work and demonstrating an intense desire to take on the new routes, showing a sense of urgency in achieving an agreement
 - b. Existing plans for expansion of their businesses
 - c. Acceptance of reasonable contract terms
 - d. Ratio of new business to current business reduces risk of not being able to deliver on contracts
 - e. Passing of facility audit
 - f. Sound financial position (reviewed financial statement)
 - g. Proof from the financial institution that they will finance new buses
 - h. Proof from the bus manufacturer that they can deliver buses for mid-August
 - i. Location of existing garages and plans for expansion in other locations
 - j. Positive references from CTSO and STEO
 - k. Demonstrating they are conducting their due diligence on OSTA's business as much as OSTA is conducting its due diligence
 - l. No legal encumbrances or impacts on current and/or future legal action
 - m. Ability to collectively take on all the routes for Stock
 - n. Ability and desire to work together to facilitate transition and ensure no competitive advantage of any of the new operators over the others
 - o. Interest and ability not only in entering in the OSTA market, but also eventually expanding in the Ottawa market
 - p. Absolute confidentiality during negotiations
13. OSTA did approach a number of current operators to determine whether or not they could cover some of the routes. Due to a variety of reasons, OSTA staff opted to engage into contracts with the two new operators and one current operator to cover all the Stock routes, rather than having a piece-meal approach.

14. OSTA was not able to cover all of First Student's runs and consequently acquiesced to their demands. The contract term for First Student is for one year with an option to renew for two additional 10-month periods.
15. OSTA has offered to replace the contract extension offers signed by current operators with a two-year contract matching compensation terms with the three Operators that took over Stock's business. Parity in contracts ensures no one operator has a higher driver pay rate than the other, thereby ensuring retention of drivers and stabilizing service provision. The 2-year contract term for smaller independent operators also ensures that the outcome of ongoing litigation is known before moving forward with a competitive procurement process that could negatively impact their businesses.
16. This stage of the strategy has increased distribution of routes among a greater number of operators and eliminated the market dominance of at least one operator.

Stage 2 – Yellow Bus Procurement for 2015-16

17. OSTA will be conducting an RFP for a procurement specialist in the near future to assist in producing its competitive procurement process.
18. In early Fall 2014, OSTA will be conducting a Request for Information (RFI) to find out what, if any, changes should be made to its contract language, the types of issues operators have encountered, or are encountering, with OSTA's route distribution, pros and cons of various competitive procurement processes, and so on. This information would be used to assist OSTA and its procurement specialist in creating an appropriate procurement process for this consortium.
19. In late fall 2014, OSTA will be conducting a competitive procurement for yellow bus service on First Student's 350 routes (57% of routes), minus any bus efficiencies that are made through OSTA's Transformation Project. These routes are the only routes available for procurement for 2015-16 as they are not covered by any contracts beyond the 2014-15 school year. First Student has also expressed a desire to enter into competitive procurement of OSTA's routes.
20. First Student and Stock would both be able to bid on OSTA's routes. At this time, it is apparent that many new and current operators are hungry for new business and are likely to respond to any competitive procurement process with a very competitive approach in terms of pricing.
21. This stage of the strategy further divides the market dominance of the last remaining large operator through judicious use of "caps". It also allows current operators to increase their capacity in OSTA's market while protecting existing business pending the outcome of the litigation.

Stage 3 – Yellow Bus Procurement for 2016-17

22. The next routes to become available for competitive procurement would be those of the current small independent operators. Should litigation continue beyond 2015-16, OSTA would recommend extending the 2-year contract for one additional year in 2016 for the 2016-17 school year rather than attempting competitive procurement of those routes. It is highly likely that OSTA would be forced to terminate or delay its competitive procurement process pending the outcome of litigation. Therefore, there would be no competitive procurement during this period.

23. All other routes would be covered under existing contracts.

Stage 4 – Yellow Bus Procurement for 2017-18

24. Competitive procurement would occur in the fall of 2016-17 for the 2017-18 school year for those routes currently under contract with small independent operators (approximately 15% of routes). This is pending the outcome of the litigation.

25. All other routes are covered under existing contracts

Stage 5 – Yellow Bus Procurement for 2018-2019

26. All routes covered under existing contracts. Therefore there would be no competitive procurement.

Stage 6 – Yellow Bus Procurement for 2019-2020

27. Competitive procurement for routes contracted with the three new operators (28% of routes) for 2014-15 school year would become available as of August 31 2019. OSTA will conduct competitive procurement for those routes in the fall of 2018 for the 2019-2020 school year.

28. All other routes covered under existing contracts

29. This stage of the strategy ensures a more even distribution of routes amongst operators in terms of market share and availability of routes for competitive procurement at any given time.

Consultation

30. OSTA staff and school board CFO's have kept the Ministry informed of OSTA's procurement activities.

Legal Implications

31. There continues to be a risk that OSTA's competitive procurement activities will be halted by legal action from one or more operators. OSTA's contract language does allow for contract extensions to ensure continuity of service should this occur.

32. OSTA staff and Board have received legal opinions from Hicks Morley regarding the application of BPS Procurement Directive and exemption thereof for OSTA, as well as other legal undertakings. These have been presented to the Board *in camera*.

RECOMMENDATION

THAT the Board of Directors approve OSTA's yellow bus procurement plan.