

NEGOTIATING THE DEAL TO ENABLE THE FIRST REA VAYA BUS OPERATING COMPANY

Agreements, Experiences and Lessons

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ABSTRACT

A City of Johannesburg team and a taxi industry team, representing taxi operators affected by the implementation of Phase 1A of the Rea Vaya bus rapid transit system, spent over a year in negotiations to sign a contract for the operation of the Rea Vaya bus services. The process was not simply about agreeing a contract, but dealt with the complexity of creating a new bus operating company owned by more than 300 minibus-taxi operators and putting together a deal that enabled the operators to give up their current businesses. This paper describes the key agreements reached during the negotiations. It shares some of the lessons learned by the City negotiations team in the process that may be useful to other cities transforming their public transport networks with the participation of affected public transport operators.

INTRODUCTION

Fourteen months after they began, negotiations to sign a contract with the first bus rapid transit (BRT) operating company in South Africa were completed, on 28 September 2010. The parties to the agreement were the City of Johannesburg and representatives of 313 minibus-taxi owners drawn from nine taxi associations, represented by “the Phase 1A taxi industry negotiations team” (TINT). This was no run-of-the-mill taxi-local government consultation process. It was a complex engagement where the stakes were high: a prestigious 12-year contract, offering a transformative shift from the informal minibus-taxi industry into a corporate world of state-of-the-art bus operations. This was notable not only as it happened in the face of the uncertainty inevitably associated with such change, but also because it took place amidst opposition from many in the industry who did not join the process, and some participants were subjected to victimisation and violence.

BACKGROUND

The contract was for the operation of the Phase 1A Rea Vaya BRT services. Phase 1A comprised a single trunk route between a BRT station called Thokoza Park in Moroka in Soweto and Ellis Park, east of the city centre of Johannesburg. It was supported by an inner city distribution route, five feeder routes inside Soweto, a route internal to Soweto that uses some of the trunk route, and a route between Meadowlands and the city centre/Ellis Park also using mixed traffic roads and the trunk route (such routes are

referred to as “complementary” routes). Some 27 BRT stations serve the trunk route. A total of 143 buses were procured by the City on behalf of the future bus operating company to provide the service, namely 41 articulated and 102 rigid, 13-metre buses. The full service was implemented gradually between 30 August 2009 (when the trunk-only service commenced) and February 2011, when the full service swung into operation. A map of the routes is given in Figure 1.

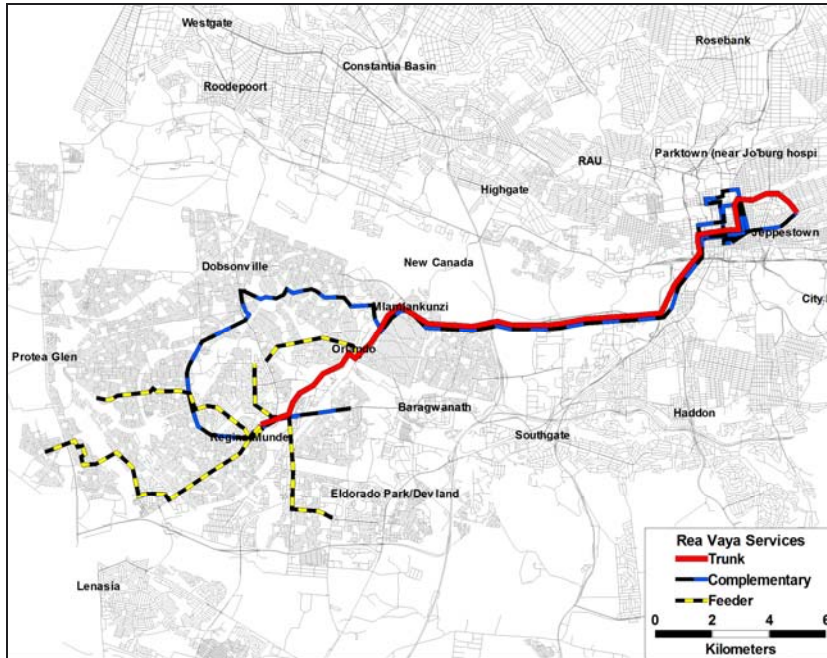


Figure 1: Rea Vaya Phase 1A Service Network

The national Department of Transport (DoT) had created a supportive environment for introducing BRT in Johannesburg and for the negotiation process. Cabinet approved its *Public Transport Strategy* in January 2007, which was strongly supportive of capable municipal transport departments implementing, managing and regulating integrated, quality networks with dedicated rights of way in their cities. It published the related *Public Transport Action Plan* the following month supporting “Catalytic Integrated Rapid Public Transport Network Projects”. It mapped a fast-track implementation plan for the 2007 to 2010 period leading up to the Soccer World Cup. This supported Johannesburg’s BRT plans from a policy point of view, and also provided the link to funding from the Public Transport Infrastructure and Systems (PTIS) fund.

The DoT also prepared a new National Land Transport Act (Act 5 of 2007), effective from 31 August 2009, which incorporated enabling sections for BRT-type systems, and a clear mandate for municipalities to regulate and manage their own public transport networks. The contracting chapter made provision in Section 41 for first phase negotiated contracts with public transport operators in the area. This section also provided for a negotiated contract to be for a period as long as 12 years.

Rea Vaya BRT buses began operating in Johannesburg much earlier than negotiations were completed – on 30 August 2009. However, these services were operated by a temporary “special purpose vehicle” (SPV) company called Clidet No 957 (Pty) Ltd. The company was initially set up by the Hong Kong and Shanghai Banking Corporation (HSBC) to facilitate the loan financing for the Rea Vaya bus fleet purchase. Clidet then signed the initial bus operating company agreement with the City so that services could

begin without needing the negotiations to be completed. The single share was held in trust by HSBC's lawyers; a temporary CEO, Ms Jacky Huntley, and temporary general manager, Mr Andre van Niekerk, were appointed by Clidet; Putco and Metrobus seconded staff to manage the temporary depot and the operations; and the affected taxi operator representatives nominated drivers from their ranks to be trained as the first Rea Vaya bus drivers.

The various agreements signed in the course of the negotiations allowed a smooth transition to handover of the company four months later.

ENGAGEMENT PRECEDING NEGOTIATIONS

When it gave approval in November 2006 to the implementation of Rea Vaya, the City of Johannesburg's Mayoral Committee said that consultation should begin with the incumbent bus and taxi operators with a view to their participating as operators of the Rea Vaya system. The City's Executive Acquisitions Committee authorised the Rea Vaya Management Team to deviate from normal procurement procedures by, instead of a public tender process, negotiating with only the public transport operators that would be affected by Phase 1A of the Rea Vaya project to provide the BRT services. In the case of Phase 1A the City determined that only minibus-taxi routes were directly impacted.

The period of negotiations with the Phase 1A taxi industry negotiations team (TINT) had been preceded by many months of engagement with bus and taxi operators potentially affected by a BRT system. This helped pave the way for willingness to participate by a critical mass of affected operators and the leadership of the Johannesburg-based umbrella bodies, Top Six Taxi Management and Regional Taxi Council (RTC). This enabled a fruitful constructive negotiation process. At the outset of the project their representatives, as well as those of two potentially affected bus companies Putco and Metrobus, visited Bogota, Colombia and Guayaquil, Ecuador as part of a City delegation led by the MMC: Transport, Cllr Rehana Moosajee. From mid-2007, there was ongoing interaction with 18 Johannesburg-based taxi associations potentially impacted by the full Phase 1 of Rea Vaya. Another South American study tour, led by the Executive Mayor, was arranged and all 18 sent a representative.

Discussions ensued at various levels, including with a BRT Taxi Steering Committee (TSC) made up of representatives of Top Six and RTC, and a Technical Committee (representatives of the 18 potentially affected taxi associations). "Roadshows" explained the proposed roll-out of BRT to individual taxi association members. The engagement included raising awareness of BRT, education about BRT, change management, engagement on infrastructure rollout and taxi routeing during construction, and communication about affected routes and vehicles in the various proposed phases.

The City's intention to replace affected routes with BRT was made clear in this period. The concept was that in exchange for participation as operators of the new system, existing operators would withdraw their vehicles from BRT routes. The Phase 1 Operational Plan bluntly detailed which routes should be "cancelled", diverted or reduced.

The TSC was given office space and meeting facilities alongside the BRT project offices. In addition, the City paid a full-time technical adviser and office support staff to assist the TSC, and paid a facilitator to manage the engagement process.

After the Phase 1A service design was revised and finalised in August 2008, the process concentrated on the operators who would be directly affected by it – namely taxi operators on routes of ten taxi associations. From early 2009 the City expanded its technical support, and paid for other technical advisers including legal, financial and business support as well as for all meetings, workshops, breakaway sessions required in the engagements.

From February 2009 discussions between the City and the TSC became focused on agreeing a negotiation process which would result in the formation of a taxi-owned bus operating company to contract with the City to operate the first BRT Rea Vaya contract, i.e. the Phase 1A services. The TSC and City representatives also agreed that the negotiations should be facilitated by independent and experienced mediators, and they jointly selected Charles Nupen of Strat Alignas the independent chairperson and his team of three facilitators to manage and run the talks.

The TSC initiated a registration process whereby affected operators could come forward and submit their details to indicate interest in participation. In addition, the City placed advertisements in the press and sent letters to affected associations in June 2009 inviting mandated representatives of affected operators to a process of negotiating a Phase 1A bus operating company contract with the City.

THE VARIOUS AGREEMENTS

The duly mandated representatives of affected operators, verified by the City, attended the first negotiation plenary meeting held on 5 August 2009. A negotiation protocol was prepared by the independent chair and agreed, as was a process design. Four chief working groups were established to formulate recommendations to plenary sessions for decisions, namely a Special Purpose Vehicle (SPV) Working Group (WG), dealing with oversight and information sharing in relation to the SPV, Clidet, and the interim services; a Participation WG, dealing with who could participate in shareholding in the new company and the process of becoming a shareholder; a Finance WG and a Legal WG. A Process Committee managed progress and process, and met every week.

Over the next 14 months, the negotiations tackled many areas, including:

- Process of affected operators becoming shareholders of the Bus Operating Company (BOC) and then shareholders taking over the BOC both from an ownership and management perspective.
- Compensating operators for loss of income due to the Rea Vaya Phase 1A rollout of services.
- The content of the Bus Operating Company Agreement (BOCA).
- The fee per kilometre for each type of bus, and adjustment formula.
- Employment of displaced taxi drivers in Rea Vaya.
- Implementation of the City's value chain policy framework in Phase 1A.
- Compensation for operators who were unable to operate due to intimidation and harassment resulting from their participation in the negotiations.

A timeline showing the key milestones that are discussed in the following sections is given in Figure 2.

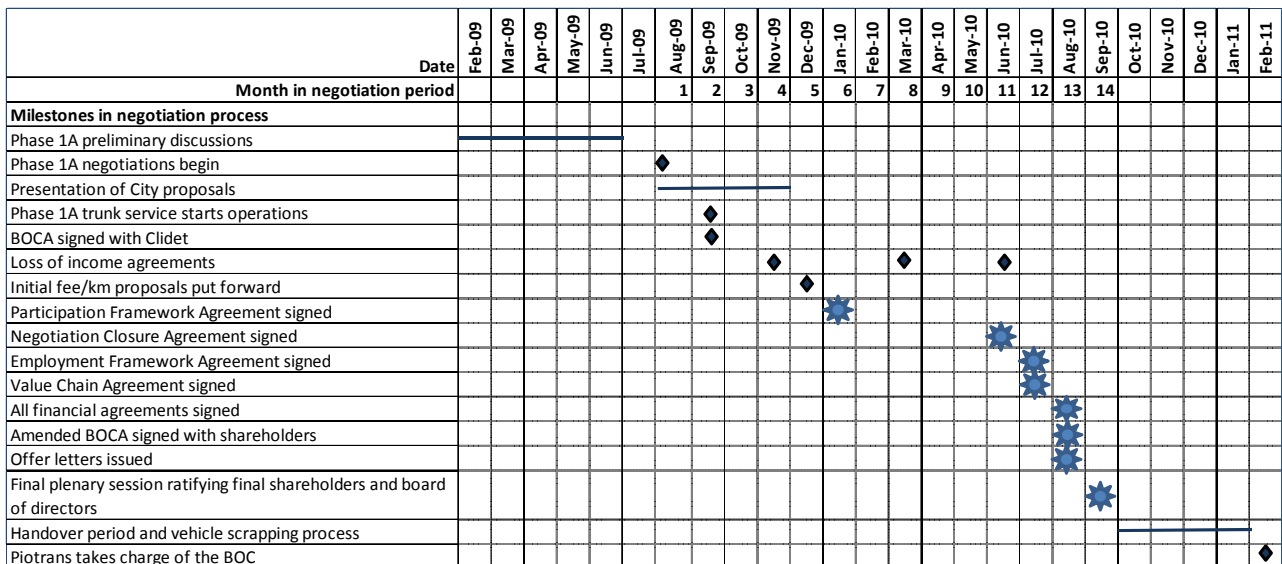


Figure 2: Timeline of key milestones in the negotiation process

AGREEMENT ON WHO WAS AFFECTED

During the pre-negotiation discussions, the understanding developed between the City and affected operator representatives that participation was being offered in BRT in return for relinquishing competing routes. Preliminary agreement was also reached between the City and the TSC about exactly which taxi routes and ranks were affected, the number of taxis that should be withdrawn from operation, and the number of vehicles per association thereby affected. Later consolidated in the negotiations, this was an agreement that while Phase 1A would affect routes served by about 1250 taxis, only 585 taxis could be replaced by the 143 BRT buses being put on the routes. An understanding was reached that 585 taxis would be withdrawn, but the remaining 650 or so serving those routes could continue operating. It was also agreed that the 585 vehicles would come from the following associations: Soweto Taxi Services (181 vehicles to be withdrawn from affected routes), Witwatersrand African Taxi Association/Johannesburg Taxi Association (130 vehicles), Meadowlands Dube Noord Street Taxi Association (MDN) (92 vehicles), Nancefield-Dube-West Street Taxi Association (Nanduwe) (79 vehicles), Diep Meadow City Taxi Owners Association (60 vehicles), Bara-City Taxi Association (13 vehicles), Dorljota (10 vehicles), Noordgesig Taxi Association (9 vehicles), Faraday Taxi Association (6 vehicles) and Johannesburg Southern Suburbs Taxi Association (JSSTA) (5).

COMPENSATION FOR LOSS OF INCOME AGREEMENTS

The first agreement to be negotiated was a compensation for loss of income agreement. The TINT said that once BRT buses began operating, the taxi operators on the competing routes lost passengers to BRT and therefore income. Because Phase 1A was implemented in stages, with only 28 trunk buses to start with, it was agreed that competing taxis would be withdrawn in stages as well. It was necessary to determine the removal of vehicles per route, and therefore per taxi association, that was required for each stage. The determination shown in Table 1 was agreed.

Table 1: Number of taxis to be removed for Rea Vaya Phase 1A

Taxi Association	Starter	15 March 2010	Balance	Total
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	Service	Additional Services		
Soweto Taxi Services (STS)	44	16	121	181
Witwatersrand African Taxi Association/Johannesburg Taxi Association	41	21	68	130
Nancefield-Dube-West Street Taxi Association (Nanduwe)	10	38	31	79
Meadowlands Dube Noord Street Taxi Association (MDN)	0	62	30	92
Diepmeadow City Taxi Owners Association	58	2	0	60
Bara City Taxi Association	13	0	0	13
Noordgesig Taxi Association	0	0	9	9
Dobsonville Roodepoort Leratong Johannesburg Taxi Association (Dorljota)	0	7	3	10
Faraday Taxi Association	0	4	2	6
Johannesburg Southern Suburbs Taxi Association (JSSTA)	0	0	5	5
Total	166	150	269	585

As it was also not known whether the owners of the withdrawn vehicles would become shareholders, the City agreed to arrange and pay to place the vehicles in safe storage, rather than dispose of them, so that the owners could keep their options open.

Furthermore, it was agreed that as the shareholders would receive the benefit of profits only once they took ownership of the BOC, the City would pay compensation for loss of income to the owners removing their vehicles in the interim. The amount of compensation had to be negotiated, and an amount was eventually agreed for the first tranche of vehicles. A loss of income agreement was signed in November 2009 providing for this, and then two further agreements were signed in March 2010 to cover further vehicles withdrawn for the March 2010 service expansion, and the further storage period of the original vehicles.

Following further negotiations in June 2010, a fourth loss of income agreement was signed. This provided that owners would be paid for each vehicle placed in storage or otherwise not operating (due to intimidation). It dealt with four groups of vehicles: the original 163 vehicles of November 2009, the 138 stored since April 2010, the balance of the 585 that would be removed from their routes and scrapped or sold as part of the process of subscribing for shares, and several taxis prevented from operating by intimidation. The period of compensation would end from the date their owners, as the shareholders of the BOC, began receiving the benefit of profits.

AGREEMENT AROUND PROCESS OF BECOMING A SHAREHOLDER

In August 2009, the City presented its proposals to the negotiations about how it envisaged the numbers and process of share allocation between the owners from different associations, verification of applicants' bona fides, and the staffing and basic governance requirements it would expect of the new bus operating company. It offered to arrange for the storage and disposal of vehicles turned in, and proposed that each shareholder should pay in about R60 000 per share towards the company's working capital.

The proposals were essentially accepted by both parties, and put in writing in terms of an agreement called the Participation Framework Agreement (PFA), which was signed between the City Negotiations Team and TINT on 27 January 2010. It set out how many vehicles should be withdrawn from affected routes per association, as described above. Operators had to prove they belonged to one of the ten affected associations. It also provided that for each vehicle withdrawn, the owner would get one share in the BOC. The vehicle would need to be shown to have a valid permit or operating licence, or the owner needed to show that he/she had a receipt for having applied for an operating licence that had been granted but was not yet issued. The agreement also provided that the owner would need to invest a certain amount of money in the BOC per share, which was subsequently set at R54 000 - the amount that could be earned from the scrapping allowance in the national taxi recapitalisation programme. To participate one also needed to be prepared to surrender to the City's appointed valuers and auctioneers both the vehicle – either for scrapping or auction, whichever yielded more – and its permit or operating licence. At this stage, the process was also attracting a growing number of interested parties, as the doors remained open to participation. (This was the case right until June 2010, when a closing advert was finally put in the press.) The PFA therefore also dealt with what would happen in the case of over-subscription of shares, and mechanisms to equitably allocate shares within each association of origin.

The PFA had a corollary agreement, the Participants Commitment Declaration. This was signed and submitted by the individuals applying to become shareholders in the BOC and contained their personal details and details of the vehicles to be removed from the Rea Vaya Phase 1A routes.

FINANCIAL AGREEMENT

The City and the TINT had to come to an agreement about how much the BOC would be paid. The City's business model was that the BOC would operate scheduled kilometres as specified by the City, on the routes and to the frequencies required by the City. It would be paid a fee for each kilometre so operated, regardless of the number of passengers carried. The City would keep all fare revenue. The concept was also agreed that there would be a certain number of minimum guaranteed kilometres per annum for the fleet of articulated buses and complementary buses respectively. The guaranteed fee and guaranteed kilometres were important foundations for the eventual agreement, in that they drastically reduced the amount of risk involved for the participating taxi owners. The business model placed all the patronage risk on the City as well as the burden of guaranteeing payment for 12 years of a minimum number of kilometres, come what may. This was one of the critical ingredients of the successful outcome. Furthermore, the concept that routes did not "belong" to the company, in that the City could alter their routes, or allow another future BRT company to operate on the same routes, had to be accepted by the TINT as part of buying into the BRT model.

Agreement on the financial aspects had various components. The first was getting agreement on a company organogram and the staff numbers, particularly drivers, that were adequate to run the contract. Then agreement was reached on the actual input costs per kilometre – diesel, wages and salaries (according to the agreed company organogram), tyres, licences, staff transport, fleet insurance, and so on. The costs of the bus purchase were determined by the conditions of the loan and so were not part of the negotiations – they were taken as a given and incorporated into the fee/km.

Finally, the amount of profit was negotiated. Because of the particular circumstances of the deal, this could not simply be a commercial mark-up. It needed to be sufficient to persuade the taxi owners that participation in BRT would leave them better off than remaining with their existing taxi businesses.

Initial “offers” of the fees/km had been made by the City and TINT in December 2009, which were far apart. Then agreement was reached in February 2010 about the staffing and the input costs. Finally the amount of profit required as a monthly dividend per share was agreed in late May 2010. In July, a fee/km was agreed which would yield these average dividends.

However, other difficulties presented themselves. The offer also needed to be persuasive to taxi owners in the sense of mimicking the cash flow they experienced in their taxi operations – namely immediate returns, if not daily at least weekly or monthly.

The difficulty was that owners expected a minimum amount per share every month from day one. While the company could pay out the agreed total dividends over the 12 years with the agreed fees/km, the returns were higher in later years than in the initial years, and were regarded as insufficient in earlier years to satisfy the potential shareholders. In fact, the company could not afford to pay dividends at all in earlier years if it was to meet legal liquidity and solvency requirements.

The whole of July and half of August was an intensive period of negotiations on the fee/km and mechanisms for the company to be able to pay out regular and early-year dividends. Agreement was finally struck on 13 August 2010 after three days of negotiations.

This was that the City would pay out an agreed minimum monthly amount per share, for the first four years of the company’s life. A reduced fee/km was also agreed which factored in these payments but which achieved the agreed dividends per share for the remaining eight years of the contract.

In that these upfront payments placed the City at some risk if the company was not run profitably or paid out dividends in the early years despite the imperative not to, the TINT agreed to sign another agreement with the City called a Compensation for Loss of Income Agreement, on 23 August 2010 –

- providing for the monthly payments by the City per share for four years;
- allowing the City to see monthly management accounts and agendas, minutes and board packs of board of directors and shareholder meetings;
- providing that no dividends be declared for four years;
- providing that no non-essential expenditure be incurred; and
- requiring each operator to sign a restraint of trade agreement – namely that they would declare the taxi services they still operated on competing routes, and would agree not to expand these services.

Shareholders would begin to receive the compensation package after submitting vehicles for sale or scrapping.

This agreement on the financial component allowed for the signing of several key agreements between the City and the TINT, also on 23 August 2010, namely:

- Fee/km agreement.

- 8th Addendum to the Bus Operating Company Agreement (BOCA) – see below.
- Escalation formula, in terms of which the fees/km would be adjusted monthly in response to changes in a basket of input costs.

This at last paved the way for formal, individual offer letters to be issued to just over 300 potential shareholders on 30 August.

BUS OPERATING COMPANY AGREEMENT (BOCA)

An interim BOCA had been signed at the end of August 2009 between the City and Clidet to facilitate the financing of the bus purchase. This was amended in negotiations with the TINT, mainly to clauses on maintenance, insurance, and monitoring and step-in rights for the City. The BOCA also needed to address the TINT's proposals in February 2010 to sell some of the shares to Fanalca, the large Colombian industrial group, in return for systems and management support and investment. The BOCA limited change in ownership allowed to a non-controlling percentage (24,9% of shares), that may be sold to a suitably experienced BRT operator approved by the City, not less than a year after the signature date. Fanalca, among other operations, has BRT operating companies running 5 000 buses in South America. It operates BRT as part of Transmilenio (Bogotá), Transantiago (Chile), Metrobus (Panamá), MIO (Cali), MetroSinú (Montería), and SITP (Bogotá). It subsequently established Fanalca South Africa as a local subsidiary.

It was agreed in July 2010 that the contract length would be 12 years dated from the transfer of Clidet to the new shareholders, and not dated from the commencement of operations in 2009. The BOCA schedules contain also the agreed fees/km and the escalation formula. The so-called 8th Addendum to the BOCA, containing all the above substantive amendments, was signed on 23 August 2010, as the fee/km had been agreed.

EMPLOYMENT FRAMEWORK AGREEMENT

The Rea Vaya Phase 1A project aimed to be employment neutral, which it defined as creating at least as many jobs of equivalent or better quality and remuneration as it directly removed. The intention was also to place in those jobs the people who had lost them, as far as possible. As 585 taxis were being withdrawn from service permanently, it was known with certainty that 585 driving jobs would be directly lost. During the negotiations with TINT, the City put forward various concepts about how these displaced employees could be offered positions within Rea Vaya. This eventually resulted in an Employment Framework Agreement (EFA) being signed between the City and TINT on 16 July 2010.

The key difficulty was that many jobs had become available in Rea Vaya before the taxi drivers lost their jobs. This was because operations started a year before offers were put to the potential shareholders. Although the 200 people who were recruited and trained to drive the buses were all taxi drivers nominated by TINT, the majority were not the employees of final shareholders, because of the mismatch in timing. Another constraint was that drivers needed to already possess an E14 driver's licence so as to drive the articulated buses. The drivers were therefore offered temporary employment so that the permanent contracts could be signed with the new owners of the BOC. However, this caused much dissatisfaction, and the drivers' contracts were made permanent from 1 July 2010 after a strike over this issue.

In the case of Rea Vaya station staff, temporary employment only was offered. The protracted nature of the negotiations posed a difficulty as these contracts had to be

renewed several times, and many of the staff felt they had a right to permanent employment. Several work stoppages were held in protest, disrupting Rea Vaya operations.

In this context, the EFA provided that each shareholder could nominate one employee per vehicle surrendered, i.e. per share held, to benefit from Rea Vaya employment opportunities, to the extent that they were qualified and suitable for the positions. A shareholder whose employee had already become a Rea Vaya driver was however not entitled to nominate a further employee. A nominated employee database was established.

The EFA bound the BOC to endeavour to recruit future drivers from the nominated employee database for a further two years as vacancies arise. It also required the BOC to employ 80% of its unskilled staff from that source and 20% from others, particular preference being given to residents in the communities in which Phase 1A operates.

The City committed in the EFA to try and fill 40% of the positions for station ambassadors, marshals and cashiers from the nominated employees database. The remaining 60% of employees would be recruited from among the incumbents filling the positions on temporary contracts and from other interested citizens, in particular, residents in the communities in which Phase 1A operates. This was in recognition of the experience and training invested in the temporary staff who had been working in the stations for almost a year, and who had been the face of Rea Vaya from day 1. Dissatisfaction over the EFA caused many of the temporary station staff not to apply for the positions in protest. Eventually station positions were filled permanently from 1 November 2010, with approximately 50% of posts filled by the nominated ex-taxi employees.

The EFA also provided that the station security and cleaning contractors would be given a target of employing 60% of the staff for them from the nominated employee database. The City will maintain the database of those who were unsuccessful for a further two years, or until everyone has been employed.

VALUE CHAIN AGREEMENT

A Rea Vaya value chain policy framework was approved by the City's Mayoral Committee in 2009. It set out the employment, business and investment opportunities for minibus-taxi operators arising out of the implementation of Rea Vaya, the so-called "value chain". It provided for affected taxi operators to be eligible to benefit from certain preferential procurement processes in respect of these opportunities.

During the negotiations, a specific Value Chain Agreement was signed to deal with how the policy would be applied in respect of the Phase 1A opportunities.

The main opportunity made available was the contracts for cleaning and securing the Rea Vaya Phase 1A stations. The original contract with service providers was short-term, and the agreement provided for a further short-term contract of a year. This was to give the BOC shareholders sufficient time to set up a suitable security and cleaning company/ies. One requirement of the contracts is that 60% of the employees must be recruited from among the nominated employee database (see above). When the short-term contract expires, the City would invite a ring-fenced tender from the BOC shareholders, which they could submit from a suitable company they have formed, or as a joint venture with a company that has the necessary skills, expertise and qualifications to render the station

cleaning and security services, provided that the company owns no more than 30 per cent of the joint venture. The contractor will also be required to take over the employees of the temporary contractor that were recruited from the nominated employee database or if some have left, then from further ex-employees of the BOC shareholders who are recorded in the nominated employee database.

The Value Chain Agreement also bound the City to run a training workshop for BOC shareholders about how they can take advantage of the opportunities provided in terms of the agreement and the value chain policy framework. In respect of other tender opportunities that may arise for the maintenance of Phase 1A stations and Phase 1A trunk route roadways, it bound the City to advise the BOC shareholders of advertised tenders to enable them to respond, and to apply the value chain policy framework in respect of preferential procurement regarding these. To the extent that the BOC procures any goods or services, it was also obliged to apply the value chain policy framework.

NEGOTIATION CLOSURE AGREEMENT (NCA)

To draw a line between the negotiations and the transition period to handover of management and ownership to the new shareholders, the City and the TINT signed a "Negotiation Closure Agreement" (NCA) in June 2010. This agreement recognised legal entities called "Taxi Operator Investment Companies", commonly referred to in the negotiations by the abbreviation "TOICs". These were nine companies that had been set up by the affected operators participating in the negotiations, with one TOIC per taxi association of origin. (The tenth affected association, Faraday, did not participate in the Phase 1A negotiations.) The concept developed by the TINT's technical advisers was that the shareholders would have shares in their TOIC. The TOIC would subscribe for shares in the BOC on their behalf, and finally ownership of the BOC would be transferred from the trust to the TOICs. (This was to overcome the limit on the number of shareholders in a (Pty) Ltd company stipulated in the Companies Act.)

It was agreed that after completion of the negotiations, the City would make a written offer to each of the participating taxi owners who had been verified eligible in terms of the Participation Framework Agreement. It also set out how over-subscription of shares would be dealt with (and under-subscription). It provided for the shareholders in each TOIC to elect their boards of directors, and for the TOICs then to each subscribe for shares in the BOC, according to their quotas of the 585 shares as outlined in the Participation Framework Agreement (PFA). It entitled the TOICs to carry out a due diligence investigation of Clidet prior to subscribing for shares. It required them also to submit a management plan outlining how the new Board of Directors of the BOC (as elected by the TOICs) would run the company.

The NCA required the City to provide training and orientation to the representatives of the future shareholders in the day-to-day operation of the BOC, and induction workshops on topics such as corporate governance to the future Board of Directors of the BOC, as well as mentoring to the new management team.

The NCA allowed for unsubscribed shares to be held in reserve for potential issue to further eligible shareholders according to PFA quotas, but after a year they will be released from reserve and remain part of the authorized but unissued share capital of the BOC.

CLOSURE OF NEGOTIATIONS AND PROCESS OF TRANSITION

With the financial negotiations at last concluded, and the key agreements signed on 23 August, written offer letters were issued by the City to the verified eligible operators a week later, on 30 August. Over the next three weeks the TOICs held meetings to present and explain the City offer to their shareholders, and to enable them to accept and sign the offer letters.

A resolution signed at a final negotiations Plenary session held on 28 September then ratified the final shareholders and the database of the vehicles to be surrendered within each TOIC (except those of two small TOICs where some outstanding work remained), and closed the negotiations. It also transferred the authority to negotiate with the City on behalf of the affected operators from the TINT to the board of directors of the bus operating company (BOC).

A Transition Process Committee was set up to implement the handover of Clidet to the new shareholders in the TOICs, as well as the employment and value chain agreements. In the following months, the transition entailed:

- The finalised 313 shareholders submitting their taxis and documents for valuation by the City's appointed auctioneers, Tirhani, and thereafter their sale (113 vehicles) or scrapping (the balance) - depending which yielded more money.
- Payment of the sale and scrapping money into an escrow account opened by the City's attorneys on behalf of each TOIC. (Yields greater than R54 000 were refunded to the shareholder.)
- Payment to the BOC by the city attorneys, on behalf of each TOIC from the escrow funds, the subscription price for that TOIC's shares (the management and ownership handover required that at least 66,7% of the shareholders had subscribed for their shares before handover took place, with the balance of the 100% allowed to happen thereafter).
- Allotment and issue of the shares.
- Establishment of the employee database - 414 applications were eventually submitted.
- Process of applications, selection and appointment of the employees to jobs within Rea Vaya
- Each TOIC electing its board of directors, and designating representative/s on the BOC's Board of Directors.
- Ten days of training for the TOICs boards of directors in October 2010.
- Presentation of the Management Plan by the TOICs to a City panel for its comment and approval. This also outlined the proposals for Fanalca's involvement in the management of the BOC.
- Appointment of management staff.
- A due diligence investigation of Clidet by the TOICs' representatives.
- The BOC purchasing the sole share held by the Trust for a nominal value.

HANDOVER

By the end of January 2011 the process had been sufficiently completed. On 1 February 2011, the nine TOICs, owned by 313 taxi operators, and in the case of Dorljota and JSSTA by the association as a whole, took charge of the Rea Vaya Bus Operating Company. They re-named it PioTrans (Pty) Ltd to reflect, in their words, "the pioneering steps of the taxi operators who have decided to transform and grow into the fully-fledged public transport operator as part of the public transport transformation process in the City and

South Africa". The new Board of Directors included 13 taxi operators as non-executive directors, representing their TOICs, and chaired by Mr Sicelo Mabaso. The CEO was announced as Mr Victor Cordoba of Fanalca South Africa, with taxi leaders Mr Dumisani Mntambo and Mr Eric Motshwane as deputy CEO and director for corporate affairs respectively. (Press release by PioTrans, 1 February 2011)

LESSONS LEARNED

The various agreements negotiated between the City and the taxi industry that enabled the forging of a new bus operating company (BOC) were not reached easily in all cases, and there are lessons that can be shared from the experience. These are presented from a City Negotiations Team point of view.

- The negotiations are about a great deal more than agreeing to a bus operating contract. They are also about several hundred individual business people in the informal sector being sufficiently persuaded that participation in the new BOC being proposed will leave them with livelihoods at least as secure as provided by their existing taxi businesses. The absence of a competitive tendering process also inevitably increases the contract cost. As a result, the fee per km was significantly higher than envisaged, resulting in a contract with an annual value of about R184m, and funds had to be sourced from the PTIS before the required fee/km could be agreed, to prevent a breakdown in the process.
- Overall the costs of the negotiation process were also significantly more than initially envisaged. Taxi industry capacitation is costly as are the costs of facilitation and the many months of meetings and workshops.
- A business model which shifts the burden of risk away from the BOC to the City is an important success factor. The new BOC is paid per scheduled km, regardless of passengers carried. The number of km that will be "ordered" by the City over the course of the 12 years is guaranteed, and the fee paid per km is calculated to be sufficient to pay back fleet loans, costs and profits.
- Arrangements to ensure immediate returns to shareholders and regular payments (monthly if not weekly) are also required to overcome the change from a hands-on daily cash operation to a formal bus company that may not pay out dividends until later years, and then traditionally only annually. Several of the agreements described in this paper make these arrangements.
- The City made several concessions to make the deal attractive, and the TINT made concessions in return. The City secured fairly good monitoring and step-in rights to ensure that the public transport services are guaranteed, even when the company is not being managed satisfactorily, and these rights are particularly strong in the first four years when shareholders enjoy direct payments from the City. The City also secured the removal of taxi competition from the BRT routes in return for the agreements reached.
- Negotiations to incorporate informal operators into modern public transport networks are multi-faceted and complex, and are time-consuming. Some streamlining could be achieved if a negotiation plan is drawn up at the outset, setting out what is up for negotiation and the time-frames for completing certain agreements, and deadlock-breaking and fall-back mechanisms. However this is probably only possible in a second round.
- The use of an independent chair and facilitation team means that the parties can negotiate with each other without necessarily having to build up trust between each other – as long as each trusts the facilitation team and their process. The formality

of the facilitated negotiation process adds a helpful element of gravitas and therefore dignity and built-in mutual respect to the process.

- The City's sponsoring of a substantial and strong technical support team for the TINT is another essential ingredient in the successful outcome. The TINT chose its own legal, financial/business/tax, bus operations and technical advisers, and they enjoyed the full trust of the TINT. The City and TINT technical teams could also work out issues that required a factual, data-driven or technical solution within the broader agreements on principle reached between the two parties' negotiation teams.
- Availability of current, trusted data and information is valuable. Parties need to be able to agree on what routes are affected, how many vehicles operate on them, and on how profitable current operations are, which may vary between routes.
- Although Clidet, the SPV, was not formed out of preference, the temporary company meant that the shareholders did not have to form a company from scratch. They took over a going concern. This is not to say this was an essential condition of success, but it did reduce the pressure and complexity. The temporary nature of the initial operations did cause problems however, as mentioned in this paper.

CONCLUSION

The Rea Vaya Phase 1A negotiated agreement was a significant and major empowerment deal in the public transport sector, particularly as it involved grassroots operators from the informal taxi sector as 100% shareholders of a modern BRT company. It consciously replaced informal operations by linking the deal to the withdrawal of 585 minibus-taxis and their operating licences. It was transformative both of public transport operations, and of informal sector businesses. It was a win for operators in that they signed a 12-year contract which they regard as making them better off, and for the city in that there is a determination by the new shareholders to run a high-quality operation. To this end they entered into an operational partnership with an experienced international company in BRT operations, Fanalca.

It was a deal which benefited more than 300 individuals generally owning one or two taxis each, and did not rely on special privileges or larger shareholding for taxi association "bosses". It also drew together members of nine Soweto taxi associations, some with a history of conflict between them, into one company, running a joint operation on all their previous routes.

Financial gain was de-linked from the number of passengers carried and the incentive to speed and overload has been removed. Control of passenger relations was put in the hands of the City. Further, the contract departs from traditional taxi operations in that the City determines on which routes their buses can operate, and can alter these in its discretion. The City thus takes back ownership of the routes in the interests of the passengers. All these differences with taxi-style transport mark the deal as a transformative break with the past.

ACKNOWLEDGEMENT

The City administration's contribution to the negotiation process described in this paper was the work of a team of several people. The Phase 1A Negotiations Team was led throughout the process by the Executive Director: Transportation, Lisa Seftel, and comprised Transportation Department director, Simphiwe Ntuli, and deputy directors Nelson Rikhotso and Norman Qobolo; Rea Vaya director, Willie Nel; consultants appointed by GTZ on behalf of the City, namely Axios Consulting, Colleen McCaul Associates and

Logit Consultoria; and consultants appointed by the City, namely Brink Cohen Le Roux, Grant Thornton, and Mbuti Diale.