WHAT HAPPENS WHEN THE 12-YEAR BUS RAPID TRANSIT CONTRACTS COME TO AN END? MANAGING THE TRANSITION FROM NEGOTIATED VEHICLE OPERATOR CONTRACTS TO COMPETITIVE BIDDING PROCESSES

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ABSTRACT

South African cities implementing Integrated Public Transport Networks (IPTNs) have entered into negotiated bus operating contracts with a term of 12 years, designed to facilitate the formalisation and inclusion of existing public transport operators, and establish experienced and capacitated companies to compete for future contracts. International best practice indicates that competitive bidding for bus operating contracts typically lowers costs. This is supported by the National Land Transport Act 5 of 2009, which stipulates that the first contracts can be negotiated, but from the second round must be competitively tendered. Negotiated rates have had to build in risk premiums to incentivise existing operators to relinquish their current operations, which has led to high operating costs and contributed to the financial sustainability challenges faced by IPTNs across the country. This suggests that a competitive bidding process may help to improve financial sustainability, together with other complementary adjustments. However, there is likely to be resistance to these processes if incumbent operators are unsuccessful in winning the competitive tenders, which could result in significant challenges and delays. As such, the design of the competitive bidding process requires careful consideration. This paper reflects on the possible outcomes after the 12-year contracts end and identifies key factors to consider when designing an approach to manage the transition.

1. INTRODUCTION

In the South African context, Bus Rapid Transit (BRT) projects have been used as an instrument for securing the transformation and formalisation of the informal minibus taxi ("MBT") industry. Leading cities are approaching the end of their negotiated 12-year contracts concluded with the various Vehicle Operating Companies ("VOCs") (also called Bus Operating Companies or 'BOC's). These projects have experienced mixed results of challenges and successes. If managed effectively, the expiry of these initial 12-year contracts presents an opportunity for cities and government to put in place new Vehicle Operating (VO) regimes to address issues that have arisen in the implementation of BRT systems in South African cities.

1.1 International Best Practice

International best practice shows that in mature public transport systems/environments, competitive bidding is the most efficient way for government to secure VO contracts (Wallis & Hensher, 2007). However, this will only be the case in mature systems and where these VO contracts are effectively designed and managed by the relevant authority. Under the right circumstances, competitive bidding can yield numerous potential benefits for government and cities. Firstly, government is likely to pay less, when compared to current operator rates that cities are paying VOCs (City of Cape Town, 2017). Competitive bidding could, secondly, be used by government as a mechanism to require bidders (i.e. VOCs) to create companies that are sufficiently capitalised, and have a clear governance structure and qualified staff as a requirement for bidding successfully (National Treasury CSP, 2018). It is important to keep in mind what is needed to leverage the benefits shown by more mature public transport systems arising from competitive bidding processes. An important feature of mature systems is the multitude of public transport contracts which are bid for at a frequent reoccurrence. However, this requires a scale where 3 or more operators can co-exist on multiple contracts, with new contracts coming up for renewal more frequently. Splitting contracts up into packages (with sufficient economies of scale to justify doing so) will also help to avoid anti-competitive monopolies.

1.2 BRT Systems in South African Cities

The context in which BRT systems were implemented in South African cities was – and still is – different from that of the international context where these best practices were set.

The National Land Transport Act 5 of 2009 ("the NLTA") section 41 stipulates that contracting authorities may enter into negotiated contracts only once with incumbent operators for a maximum period of 12 years. In South Africa's context, procuring VO contracts through a process of competitive tendering instead of negotiating with informal taxi operators and associations would not have facilitated the inclusion and positive transformation of the public transport industry.

While section 41 of the NLTA provides contracting authorities (cities) with the requisite mandate to conclude negotiated contracts, it does not provide much guidance on the form of these contracts (National Land Transport Act 5, 2009). All of the negotiated contracts concluded by cities adopted the gross cost contracting model, whereby the VOC does not collect farebox revenue. This was an important feature of the negotiations with the informal MBT industry because it ensures that VOCs do not take on any of the risk in terms of ridership levels. The nature of this contracting model does away with the unwanted behaviour that is commonplace in the MBT industry, such as reckless driving to chase fares, overcrowding and long dwell times to maximise vehicle occupancy, and a shortage of services in off-peak periods or less popular routes due to insufficient demand. In a gross cost contract model, the cities are responsible for planning the route network and service frequiency, as well as managing the overall operation. This allows the cities to protect and maintain the integrity of the BRT networks. It also allows cities to customise the BRT system to ensure that the specific needs of their region are met. Gross contracts are, therefore, in line with the vision of integrated public transport systems.

The consolidation and transformation of the informal MBT industry into formal, capacitated VOCs served the additional purpose of increasing the likelihood of increased competition for VO contracts in the future. With increased competition for these contracts, the prospects for improved services and a more cost-effective price largely increase.

1.3 Challenges Facing BRT Systems in South Africa

Implementation of BRT systems in South African cities has been an arduous process. In most cities, IPTN roll-out was delayed by lengthy negotiations with the MBT industry, hampered by the historically troubled relationship between government and the MBT industry (Beukes & Fan, 2021). Government was often pressured to accept favourable contractual terms for newly formed VOCs to minimise their risk, and to achieve transformation and empowerment outcomes. From the MBT industry perspective, they were being asked to relinquish their livelihood by giving up their operating licences – which many had had for decades or even generations – in return for shares in an unknown company that was only guaranteed business for 12 years (Schalekamp, 2015). In this context, it is unsurprising that a significant risk premium would be payable as part of the transformation from informal MBT to formal bus operations run by VOCs.

The result has been that many cities have committed to operating costs considerably higher than they may have been incurred through competitive bidding in a mature system (Beukes & Fan, 2021). In addition to high operating subsidies, affected MBT operators had to be compensated for the relinquishment of their operating licences. Expectations of financial compensation will likely be carried forward when looking to expand BRT services into new areas which will impact available funding and may delay the rollout of future phases.

A further challenge to the successful implementation of BRT systems is the lack of institutional capacity in cities to plan, implement and manage BRT systems. Under the gross contracting approach, cities are responsible for all planning, operational and financial risks of BRT systems, while VOCs must deliver services specified by the City according to service quality standards. However, the ability to enforce contractual provisions, specifically penalty regimes, has been hampered by inadequate institutional capacity, tools and inspection resources. Where VOCs are able to run their businesses and BRT services ineffectively with no consequence to their profits, this may result in a poor service that does not attract or retain ridership.

Despite hurdles and setbacks, IPTN VO contracts have been concluded with newly formed VOCs in Johannesburg (Rea Vaya), the City of Cape Town (MyCiTi), George (GO GEORGE), and Tshwane (A Re Yeng). Limited service operations have also been launched in Nelson Mandela Bay Metro, Polokwane and Ekurhuleni, although these are not the full 12 year contracts envisaged by the NLTA.

Newly established VOCs have experienced governance and management challenges, including compliance with corporate governance best practice (Beukes & Fan, 2021). This is concerning because bus services are inherently more profitable at the outset when equipment and infrastructure require less maintenance or replacement. Finances, therefore, need to be managed to ensure that the initial high profits can be used at a later stage to ensure continued provision of services at the specified quality through regular maintenance and replacement of assets as needed (Beukes & Fan, 2021).

A key question is when these 12-year contracts expire, will the former informal MBT industry have been transformed into competitive VOCs that are able to win VO contracts and operate efficient and sustainable BRT systems? For some of the newly established VOCs it may be challenging to transition to competitively bidding for BRT VO contracts

where they will need to compete with efficient bus companies and comply with onerous tendering requirements to submit responsive bids[1].

1.4 Planning for the Transition to Competitively Tendered Contracts

The change in contract regime envisaged by the NLTA could provide the opportunity to address some of the issues with the current BRT implementation. Cities are now better positioned than they were when they first concluded VO contracts. Upon the expiry of the 12-year negotiated contracts, cities will be enriched with 12 years' worth of operational experience, local experience and data. They will, accordingly, have a better understanding of the risk and cost drivers associated with managing and running a BRT system. This will enable cities to address some of the challenges in the design of competitive contracts. However, the opportunity to address the current imbalances and other issues will be lost if the transition to competitive bidding is not carefully considered and managed.

It is therefore essential that cities' objectives are clearly understood at the outset of the procurement process so that the process and future VO contracts are designed to achieve them. The new objectives should be developed through critical review of the initial IPTN vision, compared to what the actual experience has been so far. Objectives should aim to address the challenges experienced with BRT implementation and operation, including:

- Securing lower operating costs for cities.
- Maintaining a high level of service for passengers.
- Better distribution and sharing of risk between contracting authorities and VOCs.
- Designing system, operational and contracting plans that leverage the strengths of different modes, including BRT, bus and MBT services.
- Where economies of scale allow, care should be taken to avoid monopolies from emerging.

Further, the approach towards procurement and contracting should be informed by factors which may include:

- The institutional capacity of cities to plan, manage and operate the continued BRT systems and manage the VO contracts.
- The current state of the incumbent VOCs in each city.
- The political will that exists within each city to manage transitional processes.

2. POSSIBLE OUTCOMES AT THE END OF THE NEGOTIATED CONTRACTS

The success of incumbent VOCs in a competitive bidding environment remains uncertain. Considering the contractual, operational and political environment of BRT systems, there are a number of potential outcomes that could transpire at the expiry of the initial negotiated contracts:

- Negotiated contracts are successfully replaced with contracts that are secured through competitive tendering as envisaged by the NLTA.

[1]This situation may already be materialising in the City of Johannesburg, which recently put out a competitive tender for the next contract for their Rea Vaya Phase 1 BRT system. At the time of writing in January 2022 the bids had closed and pricing of bids had been made publicly available. While both of the incumbent VOCs submitted bids, one of VOC's appears to have priced their bid significantly lower than other tenderers, which may result in their bid being declared unresponsive.

- VO contracts are extended on the same contract terms.
- VO contracts are extended for a defined period subject to a renegotiation of the terms of the VO contracts to correct imbalances and better manage risk-sharing to optimise efficiencies.
- The service is discontinued for various reasons, including the City not being able to reach agreement with the incumbent, affordability issues, or violence.

The impact of these scenarios are described further below.

2.1 Negotiated Contracts are Successfully Replaced with Contracts That are Secured Through Competitive Tendering as Envisaged by the NLTA

This scenario sees the incumbent VOCs participating in the competitive tender process. New contracts would enable the cities to secure lower contract rates and adjust the current imbalances and better manage the risk-sharing relationship between the two parties.

For the incumbent VOCs to be successful in the competitive bidding process there may need to be a consolidation of existing shareholding. This could for example be affected by well-capacitated shareholders to maximise their returns, or alternatively, we might see a splitting of the incumbent VOCs into smaller shareholding groups. What is important, in terms of continued competition, is that cross-shareholding between the different VOCs is not permitted.

There is a fairly high probability that the incumbent VOCs will not all be successful in a competitive tender process. While the 12 years are nearing an end, some of the VOCs are still in their infancy stages as corporate entities compared to established bus operating companies. Further, incumbent VOCs may not have experience in tendering for government contracts which increases the risk of non-responsive tenders being submitted. In a competitive bidding process, the incumbent VOCs will face competition from experienced operators with deep pockets who can afford to bid at a lower rate to secure VO contracts.

Should the incumbent VOCs be unsuccessful in the competitive bidding process they will undoubtedly appeal the appointment of the successful operator. During the appeal process, cities may be forced to extend the existing VO contracts to ensure a continuation of services. This transition could be accompanied by violence and service disruptions, and the cities will require a consolidated political will and strong enforcement capacity to stabilise new contracts. There are further risks that incumbent operators may refuse to hand over access and use of the strategic assets to the new service provider (i.e. the incumbent operators could hold these strategic assets to ransom) or that the incumbent operator abandons their contract before it expires and before the new service provider is ready. The decision to transition to competitive tendering could be met with dismissal, protest and even violence from the incumbent operators and the greater MBT industry.

2.2 Extension of Current Contracts with No Change in Contractual Terms

In cities where the incumbent VOCs are unsuccessful in the competitive bidding process, there may be significant pressure to extend the existing 12-year contracts. Where there is a lack of political will coupled with a lack of institutional capacity, there is a risk that negotiated contracts are extended on the current terms.

The risk of this scenario transpiring is especially relevant where a competitive bidding process has resulted in a new service provider being appointed as it is likely that the incumbents will institute legal challenges against the outcome of such a tender process in order to extent their contracts and challenge the tender award. In these instances, cities may have no option but to extend the current contracts until the conclusion of legal action instituted by the incumbents.

This would represent a lost opportunity for the contracting authority to address the current financial sustainability concerns and the unequal risk-sharing relationships in the negotiated contracts.

There is precedent for this scenario demonstrated by the extension of the City of Cape Town's Dial-A-Ride (DAR) transport services. The incumbent operator's contract was set to expire on 30 June 2018. In anticipation of the expiration of the contract, the city issued a tender for the DAR services in 2017 to ensure the continuation of the services. Following the tender process, a 6-year contract was awarded to a new Service Provider, the new contract was intended to commence on 1 July 2018 (City of Cape Town, 2019). This commencement was delayed when the incumbent operator appealed this award, which was reviewed and set aside by the High Court (City of Cape Town, 2019). As a consequence of such, the bids for the DAR services had to be re-evaluated. However, due to the two-year delay, none of the bidders were prepared to render the services at the tender prices originally given. This meant that the original 2018 tender had to be cancelled. The incumbent operators secured an interdict preventing the City from awarding the operator contract to a new service provider until the legal proceedings had been finalised in court. In order to ensure the continuity of the services, the City extended the contract with the incumbent service providers on a month-to-month basis (City of Cape Town, 2019).

The institution of legal proceedings against the award of a tender to a new service provider can cause significant delays to the transition from incumbent operators to a new successful bidder.

2.3 VO Contracts Extended Subject to Renegotiation

In cities where there is both strong political will and institutional capacity, the above scenario could differ in that the existing VO contracts could potentially be extended subject to a renegotiation of the contractual terms. This could help to address imbalances in the negotiated contracts and better manage the risk-sharing relationship between the parties.

However, in terms of the NLTA, the City does not have the authority to re-negotiate (or extend) the terms of the 12-year contracts upon their expiry. This option would, therefore, require an amendment of the NLTA.

While this option is not in line with international best practice and is not what is envisaged by national policy and legislation, it should not be dismissed as an interim solution. Theoretically, competitive tenders are to be preferred, but in practice, the competitive tendering process might not always be the most attractive procurement mechanism.

In terms of the options set out in this paper, it might be better to negotiate lower rates with an existing Operator, than for an existing Operator to lose the bid, appeal the decision and have the contract extended under the same terms. There is also the risk of reversing the empowerment/transformation gains if incumbent Operators are unsuccessful in a

competitive bidding environment. The resources invested by government to transform the MBT industry into vehicle operating companies may be lost through competitive bidding processes.

The extension of negotiated contracts, subject to renegotiation, should therefore be considered as an option for contracting authorities in addition to transitioning to competitive bidding, provided that cities are given the requisite authority to do so through an amendment of the NLTA or other legislative mechanisms.

2.4 The Service Is Discontinued for Various Reasons, Including the City Not Being Able to Reach Agreement with the Incumbent, Affordability, or Violence

It is possible that BRT services in some operational cities may be discontinued. This could be as a result of:

- Insufficient funds – the systems are heavily subsidised by both the national Public Transport Network Grant (PTNG) as well as the cities' own contributions (as well as provincial government in the case of George). The systems may not be able to continue if these sources of funds are not committed to the next contracting term.
- Where the cities award, through a competitive bid process, the contract to a new Service Provider, the incumbent VOC, and possibly even broader MBT industry, could prevent the new Service Provider from taking over the BRT services by refusing access to key assets and infrastructure, protests and even violence.
- In the case where a City chooses to extend the existing contracts, this may be blocked by:
  - The NLTA not being amended to grant cities the authority to extend negotiated contracts past their initial 12-year term.
  - Cities and VOCs being unable to reach agreement on the terms on which current contracts are to be extended.

This would be a worst-case outcome not only for government and the incumbents but also for the communities which BRT systems serve. Considering the high probability that at least some of the incumbent VOCs will not be successful in a competitive tendering environment, it is critical that steps are taken to avoid this outcome.

A possible step to mitigate against this scenario would be to ensure that cities, as contracting authorities, are given the authority to validly extend existing VOC contracts on re-negotiated terms in terms of the NLTA. This authority could be made subject to certain requirements to ensure that the current challenges created by the existing contractual arrangements are addressed.

3. MECHANISMS TO FACILITATE A SMOOTH TRANSITION TO COMPETITIVE BIDDING PROCESSES

The transition from negotiated contracts to competitive bidding may cause tension, service disruption, and possibly violence in some cities, although we have yet to see the extent of this. However, it is apparent that government and operational cities will have to start implementing measures to facilitate as smooth a transition as possible. This section will discuss a few possible measures that could be taken.

The first measure would be to initiate the tender processes early enough to resolve legal challenges that may be brought by an unsuccessful incumbent. Experience has shown

that where the incumbent operator does not secure the new (tendered) VO contract, they often appeal their unsuccessful bid, thus delaying or stopping the services from commencing under a new service provider, as outlined in the DAR example above. If tender processes are initiated early enough, contracting authorities could have sufficient time to resolve legal challenges without delaying the start date of the new service provider.

A second proposed measure is to draft the tender specifications to include certain requirements that a successful bidder will have to meet which promote the inclusion, to some extent, of participants in the incumbent VOC. This will need to be done in accordance with supply chain management principles of fair competition, and could include:

- A requirement to give fair consideration to employing all or some drivers and operational managers that were employed by the incumbent VOCs.
- A requirement that a successful bidder must form partnerships with existing operators. South Africa's PPPFA (Prefential Procurement Policy Framework Act) legislation, built into the procurement policies of the Metros, makes extensive provision for local content. What is more challenging is to make provision for specific operators, such as the incumbents, or a specific grouping, such as the MBT industry. To the extent that a city is able to incorporate these restrictions in accordance with supply chain principles, they would serve three purposes:
  a) Ensuring the continued relevance of the incumbent VOC.
  b) Furthering the empowerment of the incumbent VOC.
  c) Ensuring the retention of local knowledge in the provision of BRT services.

A third measure would be for governments and contracting authorities to initiate engagements with the incumbent VOCs and any other prospective bidders to ensure that there is a clear understanding of the competitive bidding process and the requirements for a responsive bid. This should be done in a manner that capacitates incumbent VOCs and prepares them to be able to participate in the bidding process. This mitigating step would be in line with the empowerment objectives of the IPTN.

A fourth category of mitigation measures would be steps taken by government and cities to try and 'level the playing field' between the incumbent VOCs and other formal more established VOCs with deeper pockets. This would increase the incumbent VOCs' chances of being able to successfully participate in the competitive bidding process. These steps could include the city (i.e. the contracting authority) securing ownership of strategic assets such as depots and the bus fleet. In that way, bidders would not have to account for the price of acquiring these assets into their bidding prices. Acquiring a city-owned depot would level the playing field as it would mean that a single VOC would not be able to save on time and money due to the simple fact that their depot is better positioned. An alternative to securing ownership of depots (which might have to be achieved through expropriation), could be the commitment to reimburse VOCs for 'dead mileage'. Conversely, under certain conditions, negotiated contracts may provide for ownership of vehicles to be transferred to incumbent VOCs at the end of the contract period so that the ownership of these assets can be used to their advantage in the competitive bidding process.

The final category of mitigating steps are more general, and include the development of strong institutional capacity and political will within the city to manage the transition and to ensure compliance from all parties. Cities should also take steps to ensure that they have the required enforcement capacity.

4. ISSUES THAT COULD BE ADDRESSED THROUGH ADJUSTMENTS TO THE DESIGN OF VEHICLE OPERATING CONTRACTS

Drawing from experiences gained in operational cities, issues have been identified which could be addressed through adjustments to the design of VOC contracts. These issues can be addressed in the shift from the negotiated contract regime to the competitive bidding regime, as well as in the initial negotiated contracts concluded in cities that have not yet implemented BRT systems but are looking to do so.

Cities now have the advantage of years of operational insights, experience, data and lessons learned to draw from when designing VOC contracts.

4.1 Key Issues to Address

- *Financial sustainability of BRT systems*: This applies to both the subsidy requirement and the compensation precedent that cities have established for affected MBT operators. The extent to which services are fully replaced or designed to be complementary is a further factor requiring consideration.
- *Risk-sharing between the VOC and the contracting authority*: Risks should be assigned to the party best positioned to manage such risks (Stanley & van der Velde, 2008). This will have a positive knock-on effect on the financial sustainability of the system as well as operational efficiencies and service quality impacting on passenger take-up, ridership levels and revenue generation.
- *Institutional capacity building*: Cities, as contracting authorities, need to actively develop and build their institutional capacity to plan, design, manage and integrate public transport services and contracts. The objective to integrate public transport systems should inform cities' decisions relating to BRT systems and their contractual arrangements.
- *Good governance practices within VOCs*: the longer-term financial sustainability of newly formed VOCs and their competitiveness will depend on good governance practices. Cities can help to foster good governance through capacity building programs.

4.2 Gross vs. Net Contracts and the Spectrum in Between

The most pressing issue relating to contractual redress in new VO contracts is the determination of the extent to which the gross contract model is appropriate in the South African context. There are many variations between gross and net cost contract models and the pros and cons of each need to be evaluated within the different contexts and circumstances of each BRT system (Stanley & van der Velde, 2008).

A brief outline of the spectrum of alternative approaches is provided below, noting that this discussion warrants a stand-alone paper and would need to be contextually specific.

- Management contract:
  - VOC is paid a management fee for running the BRT system.
  - All production costs and passenger revenues are the responsibility of the contracting authority (the city).

- Gross-cost contract with shared production cost risk:
  - Some of the risks of input price increases are placed on the contracting authority, while the VOC remains responsible for the productive efficiency; or
  - The VOC bears the production cost risk up to an agreed 'level' after which the risk should either be taken on by the contracting authority or should be shared between the contracting authority and the VOC (just the excess after the agreed level to be shared).

- Gross-cost contract with ridership incentive:
  - The operator is incentivised to attract more passengers by a viable incentive payment related to ridership increases.
  - Gross-cost contracts:
    - The operator/VOC is responsible for all costs of running the system.
    - The contracting authority remains responsible for all revenues.

- Net-cost contract with shared revenue risk:
  - The operator carries the revenue risk up to a specific level of divergence with the forecasted ridership. After this threshold, the revenue risk is shared between the contracting authority and the VOC.

- Super-incentive contract:
  - The operator receives no lump-sum payment but only payment fully dependent upon specific performances (e.g. ridership).

A possible answer to the question regarding a gross contract vs a net contract could be a combination of both, or a redesign of the contract model entirely (Wallis & Hensher, 2007).

5. CONCLUSIONS

Despite the challenges faced during the negotiation and introduction of BRT systems in South Africa, a number of cities were able to implement BRT operations. The successful conclusion and implementation of VO contracts with VOCs that were formed from the informal MBT industry is a noteworthy transformation and empowerment milestone that should not be overlooked. However, BRT systems in South Africa face many challenges, and the viability of expanding these systems in their current form is questionable.

The financial sustainability of BRT systems in South Africa is hampered by the high contract rates that were settled on during contract negotiations with the MBT industry, as well as the compensation expectation for affected MBT operators for relinquishing their operating licences when expanding BRT systems.

A second challenge affecting BRT systems in South Africa is the lack of institutional capacity in cities to plan, design, implement and operate BRT systems efficiently. The lack of institutional capacity, coupled with inadequate inspection resources has resulted in a lack of enforcement of contractual provisions.

The current VO contracts in operational cities were all concluded through negotiations with the VOCs in terms of s41 of the NTLA. The NLTA states that these contracts can only be negotiated once and are limited to a 12 year term. This is because these 12-year contracts were seen as a transitional tool to be used in the shift to competitive bidding for public transport services. The potential outcomes relating to future contractual arrangements at the expiry of the initial negotiated contracts include:

- The negotiated contracts are replaced with contracts that are secured through competitive tendering as envisaged by the NLTA.
- VO contracts are extended on the same contractual terms. This option is likely in the event that incumbent VOCs challenge the award of VO contracts to a new service provider.
- VO contracts are extended, for a defined period and subject to a renegotiation of the terms of the VO contracts so as to improve cost effectiveness and better manage risk-sharing.
- BRT services are discontinued for various reasons, including the city not being able to reach agreement with the incumbents, affordability or violence.

In the event that incumbent Operators are unsuccessful in securing VO contracts, cities should expect significant pressure to extend the 12-year negotiated contracts. This pressure could take the form of legal challenges, refusal to hand over access and/or possession to key strategic assets; protests and even violence. In order to ensure as smooth a transition from negotiated contracts to competitive bidding as possible, operational cities need to start planning for this transition. It will be critical for cities to implement measures aimed at mitigating disruption to the services, prolonged legal action and possible violence. These measures include:

- Initiating tender processes early enough to resolve challenges from unsuccessful incumbent VOCs.
- Tenders for VO contracts should be drafted with specifications and requirements that are aimed at promoting the inclusion, to some extent, of participants in incumbent VOCs.
- Engagements to empower incumbent VOCs and prospective bidders to ensure that there is a clear understanding of the competitive bidding process and what will be required from all bidders in order to submit responsive bids.
- Taking steps to ‘level the playing field’ between incumbent VOCs and more established VOCs.
- Developing strong institutional capacity and political will to manage the transition.

While the expiry of the initial 12-year contracts may present many challenges for operational cities to navigate, it will also present an opportunity to address many of the challenges that South African BRT systems face. If properly planned for, cities can conceivably use the transition to secure lower costs for government and higher service quality for passengers.

Before navigating this shift from negotiated contracts to competitive tendering, government will need to consider the extent to which continued industry transformation is still a priority, and whether enough has been achieved in this regard already. Should the consensus be that government has not achieved the stated empowerment and transformation goals they set out at the start of the initial 12-year period, a determination will need to be made in terms of what more needs to be done (and what can still be done) to achieve these empowerment goals.

Considerations which will inform this determination should centre around whether the solution could be to give the incumbent VOCs more time, whether the playing field can be considered level in terms of competition for tenders or whether the VOCs are not sufficiently capacitated to effectively and efficiently run their companies. The topic of empowerment and transformation within the industry is a significant one and ideally, should form a topic of its own discussion.

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