

BUYING OR SELLING BUS SERVICE CONTRACTS – BAV February 2023

This document is meant only to provide general information relating to such matters. No representation or warranty is given as to the accuracy, reliability or completeness of the information, and any person who is intending to buy a business should not rely on such information but instead engage the expertise of an appropriately trained and qualified person to advise them.

A: THINGS TO CONSIDER WHEN SELLING A BUS SERVICE CONTRACT

You can look at it from 3 perspectives:

1. Legal: you'll need a lawyer that can sell your business. How you do so is up to you and your lawyer. If you have one already, he or she will be appropriate.
2. Commercial: you'll need to properly value your business. Your accountant should be able to help with this.
3. Contract novation: You will need to contact Debbie.Sierakowski@transport.vic.gov.au regarding obtaining the necessary contract transfer documentation from her. Her phone number is 9027 4984.

B: THINGS TO CONSIDER WHEN PURCHASING A BUS SERVICE CONTRACT

When considering purchasing a bus operation it is important to obtain independent assistance from either your business, accountant or legal adviser to advise you on issues like obtaining an accurate valuation of the business, appropriate and adequate financing of the purchase, and issues relating to the service contract itself. This is often referred to as doing your 'due diligence'.

The focus of the information in this note is related specifically to contract specific issues you should consider.

Commercial considerations:

1. From whom are you actually buying the contract? What is the entity?
2. Has the seller provided you with all the information you need to understand the contract value? If not, you should take steps to find such information.
3. Where does the revenue come from, and what are the major risks associated with obtaining such revenue?
4. Are there any documents incorporated into the contract which may have an impact on the costs of the bus service, for example, school bus operators have the Procedural Guidelines School Bus Services, there are also Practice Notes etc.
5. What is the cost model underpinning the contract – what costs are identified and recovered in the contract, and which are not?. What is the margin?
6. *Know your costs!*
7. Finance: for bus contract purchasers, if you need to obtain finance, understand who is in the market: BAV Finance – you will know Brett Collins and/or Stephen Guille.

Legal aspects:

1. Understand your obligations under the contract. For example:
 - Expiry date. When does the contract end?
 - Have realistic expectations about and know what happens at end of contract – is there a possibility of extension or does the Government intend to procure the services using other methods, for example, by tender;

- Commencement date – when does the contract and its rights and obligations commence?
 - Scope of agreement – which route(s) does it apply to? Are there exclusivity provisions and do they apply to a geographic area or line of route? If so, how sustainable are the services within the exclusivity provisions?
 - Conveyance of passengers – what passengers are you required to take? For example, school children only, general public, or both? How is this identified, how does it change?
 - Emergency management plans – does it require you have one? What are its key elements?
 - Standards for drivers – how are drivers meant to dress and conduct themselves?
 - Subcontracting – can you subcontract, who can you subcontract to and under what circumstances? Who do you have to notify?
 - Changes to Directors of company or changes to partnerships listed on the contract – who do you notify of such changes?
 - Variations to services – how is this done, whose approval must be sought?
 - State requirements – what are the specific requirements of the State?
 - Assignment – who do you need to notify of an assignment / transfer of a contract?; Are there any restrictions on who the contract can be assigned to?
 - Confidential – what confidentiality obligations does the contract impose? Can I release information about the contract in order to seek the advice of my commercial and legal advisors?
 - Warranties – do I have the authority to execute the contract? Is there anything that needs to be done prior to signing the contract, e.g., a vote by directors to enter into the contract?
 - Termination clauses – what are the grounds for termination? Are they only for default, or does the State reserve its right to terminate for any reason? What happens to the assets upon termination?
 - Default/cure clauses - Do I get the opportunity to rectify defaults?
 - Dispute resolution clauses – what do these include? Can I have someone assist me with any such process?
 - Schedules – deal with name, kilometres, customer contacts etc. Are these correct?
2. Make sure you understand whether there is any precondition to buying the contract, for example, bus contracts with the State require the purchaser to be accredited and for the seller to have consent from the State to assign the contract. (The consent form can be accessed on the BAV members website.)
 3. How is the transaction going to deal with existing employees of the seller? For example, their sick leave, annual leave or long service leave (or any other entitlements)?
 4. How is the transaction going to deal with the assets of the seller?
 5. Make sure you have an understanding of the rights and obligations under relevant legislation including:
 - Bus Safety Act 2009 – deals with, among other things, bus operator's duties to operate safe bus services;

- Bus Safety Regulations 2020 – deals with, among other things, bus operator obligations, conditions of accreditation, bus inspections and record keeping;
 - Bus Services Act 1995 – deals with, among other things, the structure of the accredited bus industry and who can be contracted to the State to provide bus services;
 - Transport Compliance and Miscellaneous) Act 1983 – deals generally with transport services in Victoria including modes other than buses, and includes requirements of accreditation of bus drivers;
 - Transport (Passenger Vehicles) Regulations 2005 – deals with, among other things, the conduct of passengers on buses and rights of bus operators in respect of passengers;
 - Child Safe Standards 2022 if you will be transporting children under 18 years old;
 - Travel Agents 1986 – deals with the licensing of travel agents;
 - Any other legislation which your adviser believes applies to the industry or sector thereof.
6. Contract specific issues relating to particular contracts:

School bus contracts (DOT school bus contracts; DET special school bus contracts)

- Is the school centre to undergo a bus centre review by the State in the foreseeable future?
- What is the historical date of the contract, where does it sit within the school centre in respect of the other contracts in the centre?
- What is the eligibility criteria for student travel and also conveyance allowances.

Metro and regional route bus contracts

- What are the exclusive regions or lines of route?
- Who commenced the service?
- Are there any reviews being undertaken by the State?
- Regional route service operators need to understand the eligibility criteria for student travel and also conveyance allowances.
- Do you know how can a school bus centre review affect a route operation?

Your advisers

Often it is sensible to have your advisers contact Bus Association Victoria Inc to understand more about the industry. Please get them to give us a call and we would be happy to try and assist members where possible.

BAV advisers

BAV uses a range of technical and legal consultants to assist in the development of the contracts.

More information

If you are thinking of where you may be able to find some appropriate training, education or advice in respect of any of these matters please go to our website www.busvic.asn.au.