



Case study

DEVOLVING BUS PUBLIC TRANSPORT TO LOCAL MUNICIPALITIES

A case study on the CSP support
to enable devolution



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

dtiES SUPPORT
PROGRAMME

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INTRODUCTION

During apartheid, public transport networks were designed to perpetuate racial segregation – their purpose was to move workers in and out of cities and towns. Bus subsidies were part of facilitating the spatial organisation of urban areas, providing cheap transport for commuters who lived in black communities located far from economic opportunities, enabling them to travel long distances to their workplaces in ‘white’ areas. This system of subsidising public transport, including buses, continues to influence – and reinforce – the historical spatial organisation of cities. It is not intentionally aligned with spatial development objectives and implicitly funds inefficiencies.

According to Schedules 4 and 5 of the Constitution, public transport is a concurrent function of the three spheres of government. Subsequent policy and legislation, such as the National Land Transport Act (NLTA), support local government taking full responsibility for public transport planning and service quality, which assumes that all functions should be devolved to that level. However, in reality, the functions remain dispersed across different spheres of government. In the case of subsidised bus contracts, the national Department of Transport (DOT) managed this function until 1997, when it was devolved to provincial departments of transport. The result is a fragmented, inefficient system, where different spheres of government are responsible for different modes or different components of the same mode, e.g., municipalities are responsible for planning bus transport, but provinces are the contracting authority. As a consequence, each authority tends to prioritise the particular mode for which it has responsibility rather than the interests of passengers, and often in isolation of integrated transport and development plans. This is contrary to the constitutional mandate of providing services to communities in a sustainable manner and hampers the ability of metros to effectively promote spatial transformation.

Part of the long-term solution is for municipalities to fully exercise their executive authority as both planning and contracting authorities for public transport. However, municipalities have tended to place more attention on isolated infrastructure projects, such as bus rapid transit, instead of prioritising the implementation of transformative long-term transport plans.

This case study documents the CSP’s journey of support to build an evidence-based case for **effective and well-planned devolution and integration of bus functions into a public transport network**, which would enable cities to become full contracting authorities in terms of the NLTA.



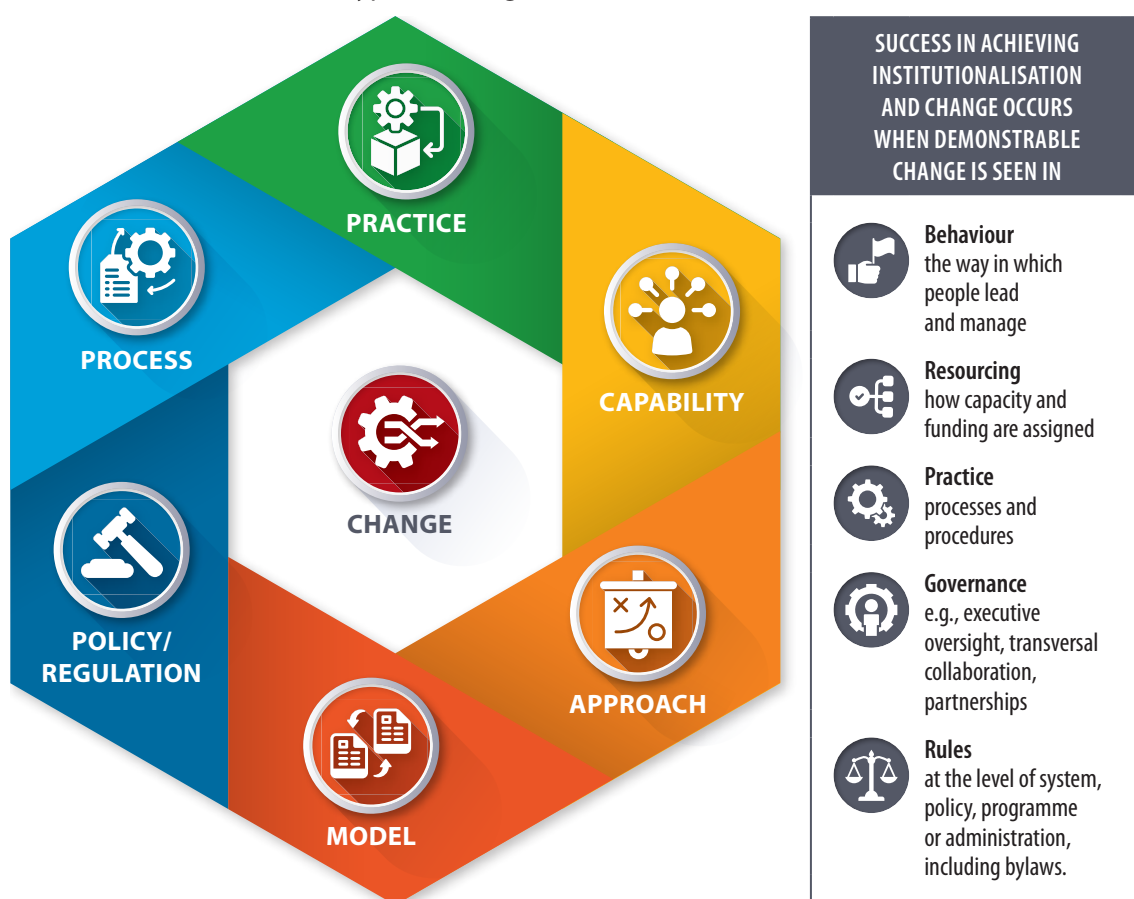


BACKGROUND

The Cities Support Programme (CSP) is located within National Treasury's Intergovernmental Relations (IGR) Division and is an acupuncture programme of the Integrated Urban Development Framework (IUDF), focussed on the metros.¹ The CSP works as a change agent and vehicle for collaboration and integration, with an intentional focus to drive and embed a set of reforms within cities and the intergovernmental support environment – reforms aimed at improving the capacity of cities and creating an enabling intergovernmental fiscal system and policy environment to support improved spatial transformation and inclusive economic growth outcomes.

This case study is part of a series of case studies documenting the CSP's work, illustrating what was achieved against the CSP Theory of Change and lessons learnt on planning and implementing similar programmes. The intention is for other institutions and programmes to use these case studies to further embed this reforms work at city level and within the intergovernmental space.

The CSP's model refers to six types of change



The CSP engages with metros holistically, through components that address governance, fiscal and financial support, climate responsiveness and sustainability, economic development, human settlements and public transport.

¹ The eight South African metropolitan municipalities (metros) are Buffalo City Metropolitan Municipality, City of Cape Town, City of Ekurhuleni, City of Johannesburg, City of Tshwane, eThekweni Metropolitan Municipality, Mangaung Metropolitan Municipality and Nelson Mandela Bay Metropolitan Municipality.

Rationale for this project

This project responds to the disconnect between public transport policy that promotes integration and practice that is uncoordinated, focusing on commuter bus services. South Africa has longstanding policy decisions and legislative provisions to assign and devolve the public transport contracting function to local government and to promote integrated public transport networks (IPTNs). However, the reality is that public transport functions and funding remain scattered across different spheres of government, which is inefficient and costly and prevents cities from driving spatial transformation. In discussions, local and provincial government officials highlighted various problems, including the lack of implementation of transport policy and legislation (e.g., Section 11(1) of the NLTA), vested interests entrenching the status quo at the expense of public interest, and poor accountability due to public transport being managed across the three spheres of government. In some instances, the deteriorating quality of bus services currently contracted by provinces has led to tensions with municipalities, while some provinces are only able to provide limited support to municipalities as per clause 11(1)(b)(vi) of the NLTA.

The main problem with devolving the public transport function appears to be a lack of understanding and clarity about the transition process, in particular:

- The process for municipalities to become fully-fledged contracting authorities in terms of the NLTA.
- The roles and responsibilities of the three spheres of government during the transition.
- Resourcing of the transition process, as public transport conditional grants do not support the devolution of functions to local government.
- The risks associated with transition and how to mitigate them.

Many municipalities justify taking no action on public transport contracting by pointing to the apparent reluctance of metros to become fully-fledged contracting authorities. This lack of action has the potential to trigger a constitutional crisis in which no sphere of government takes accountability for a critical function.

The policy and practice dichotomy

Devolution is based on the premise that the municipal sphere is the sphere most suited to manage and integrate public transport with other infrastructure and services. It finds expression in the following legislation:

- **The Constitution (1996)** provides a broad framework for the division of powers, responsibilities and functions across the three spheres of government. National or provincial government may assign (Section 156(4)) or delegate (Section 238(a)) certain functions to local government if the function would be more effectively managed locally and if the municipality has the capacity to undertake it.
- **The Municipal Systems Act (No. 32 of 2000)** describes how powers and functions should be shared, while the **Municipal Structures Act (No. 117 of 1998)** describes (in Chapter 5) how municipalities must exercise functions that are assigned or conferred to them.
- **The National Land Transport Act (NLTA) (No. 5 of 2009)** requires local government to solely conclude subsidised service contracts, commercial service contracts, and negotiated contracts (clause 11(1)(c)(xxvii)), which include the management of services contracts. However, most municipalities (including metros) still regard aspects of the contracting function as an unfunded mandate. In 2021, the President rejected amendments to the NLTA that would have diluted clause 11(1)(c)(xxvi), following a petition by SALGA. This indicates that municipalities must do everything in their power to effectively assume the contracting authority function.



The responsibility for contracting bus services is currently split between provinces and municipalities, which compromises local government's authority to control the quality of transport services in its jurisdiction. The Financial and Fiscal Commission (FFC) has published various reports in support of devolving the public transport function to municipalities and has recommended that the DOT support municipalities to have the fiscal capacity to fully undertake this function.

Commuter bus operations are supported through the Public Transport Operating Grant (PTOG), with funding transferred from national to provincial government to subsidise commuter transport services on a per-kilometer basis and in terms of a net-based contract managed by provincial government. The grant's history and continuity has enabled private transport operators to develop capacity and operations. Furthermore, in certain respects the grant is considered efficient because private operators manage the revenue risk – they are responsible for ensuring efficient and cost-effective routes and able to adjust bus schedules in response to changes in demand.

However, the approach to contracting has not been updated in many years, and contracts have not been ceded to local government, despite the legislative and regulatory requirements. As a result, concerns around efficiency, equity and transparency in the contracted bus services have not been addressed. These include the extension of short-term contracts, limited competition for the market and opaque allocation of funds. The current contracting arrangements do not create certainty in the industry, support investment or align services to the demand for public transport. Finally, the various public transport grants are not comparable, as the indicators differ per mode and do not evaluate if a grant offers value for money or a return on investment for a specific mode, such as bus services.

A coherent framework for devolving powers and functions to local governments is needed that will enhance the overall management of the urban built environment and advance developmental local government. To support this framework, local government's institutional structure must allow for the allocation and devolution of the powers and functions – and resources – necessary to effectively fulfil its developmental mandate.



THE CSP BUS DEVOLUTION SUPPORT PROJECT

In line with the National Development Plan's emphasis on building more inclusive cities, with a focus on urban spatial transformation, the CSP created this project to support cities to transition to full contracting authorities in terms of the NLTA. Devolution of public transport functions is not only beneficial but also essential. **However, to be successful, devolution must take place on a platform of preparedness and effective governance. Using the current bus contracts, this study builds a case for planning and investing in creating solid governance and institutional systems, as a basis for the effective devolution of functions.**

The technical support was aimed at enabling cities to have clear council-approved plans on how to transition to contracting authorities in terms of the NLTA, and clear risk mitigation strategies for implementing transition plans to full contracting authorities. It also sought to clarify the necessary transitional arrangements for local government, particularly metros, and to provide practical solutions to longstanding unresolved issues related to assigning and devolving the public transport contracting function to local government. The core of the project was to formulate the necessary institutional, administrative, financial, legal and technical requirements to ensure a successful handover of the function (which is already assigned in terms of the NLTA), and that metros developed systems for effective devolution and integration and understood the requirements for fulfilling their function as the contracting authority.

The project's intended outcomes were cities that have the capability to plan, design, operate, budget for and monitor sustainable, integrated public transport systems, and to deliver a public transport sector that enables city transformation through devolved transport functions at an appropriate level.

The support was initially introduced to all eight metros but then withdrawn from two cities: Buffalo City, due to lack of capacity to absorb the support, and Ekurhuleni, due to the uncertainty of the future of the Brakpan Bus Company and the internal departmental issues.

THE PROJECT DELIVERABLES PER METRO WERE



A STATUS QUO ASSESSMENT

To provide a comprehensive profile of the metro's public transport contracting function, together with associated risks



ASSESSMENT OF READINESS

To evaluate how ready the metro is to acquire functions



DEVELOPMENT OF A TOOLKIT

To assist the metro at different stages of readiness, including an initial technical note on the characterisation of the contracting authority function



DEVELOPMENT OF A ROADMAP

To outline the specific steps required for the metro to acquire the contracting function



BETWEEN MARCH 2019 AND JUNE 2021, THE CSP HELD STRATEGIC ENGAGEMENTS WITH RELEVANT UNITS IN NATIONAL TREASURY, NATIONAL DOT, PROVINCIAL DEPARTMENTS, SALGA AND COGTA, TO PRESENT THE PROJECT AND OBTAIN INPUT. FROM MAY 2019 TO DECEMBER 2021, TECHNICAL SESSIONS WERE HELD WITH THE METROS, TO GATHER INFORMATION FOR THE DELIVERABLES AND TO PRESENT THE TOOLKIT.

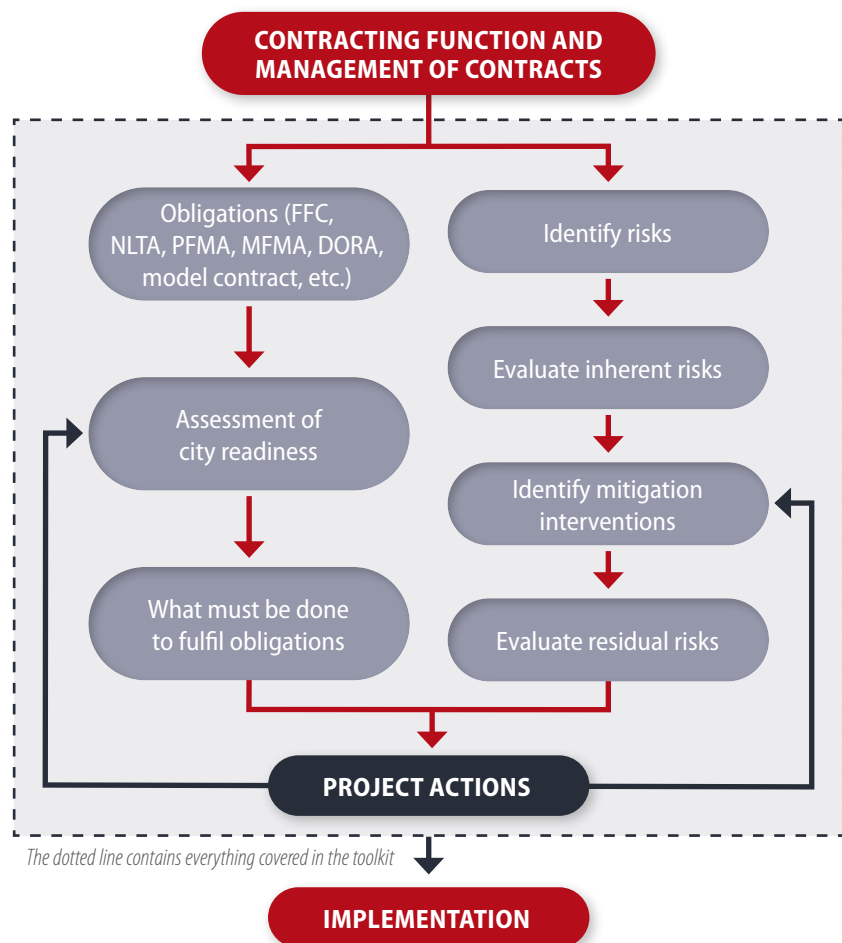
Status quo assessment

The first step was to assess the status quo in all eight metros of existing subsidised bus contracts that are administered by the respective provinces, based on the information received from the cities during the engagements.

Development of a toolkit

As cities are at different stages of readiness, a toolkit was developed to assess the “readiness” of cities to comply with policies and legislation in relation to taking over the contracting function (Figure 1). The toolkit identifies 85 obligations under five categories (administrative, institutional, financial, legal and technical) that need to be fulfilled. The toolkit allows for an interactive process where cities could assess their readiness at various stages of the project based on a list of criteria and functions, which also helped to unpack the requirements of a contracting authority. They could also identify the obligations and risks associated with successful transitioning to being the contracting authority.

FIGURE 1 Toolkit overview





A GENERIC TOOLKIT
IS AVAILABLE FOR
USE BY ANY SPHERE
OF GOVERNMENT
SEEKING TO BECOME
A CONTRACTING
AUTHORITY.

To populate the toolkit, city officials needed to understand what was required in order to take on the contracting functions. Therefore, it was crucial to unpack the duties and responsibilities, or obligations, of a contracting authority as described in the NLTA and to explain the model contract referred to in Section 42(6) of the NLTA. The duties and responsibilities were categorised under administrative, institutional, technical, financial and legal (Figure 2).

FIGURE 2 Obligations of a contracting authority



Assessment of readiness

Each city's readiness was "scored" against each obligation within the five categories (administrative, institutional, financial, legal and technical) – green = "ready for execution", yellow = "progressing well" and red = "no progress". Figure 3 illustrates the scores for Tshwane from two assessments (on 17 May 2021 and 10 December 2021), showing that progress was made especially in the administrative category, where the city went from 0 to 11 indicators being ready for execution.

FIGURE 3 State of readiness assessment for Tshwane

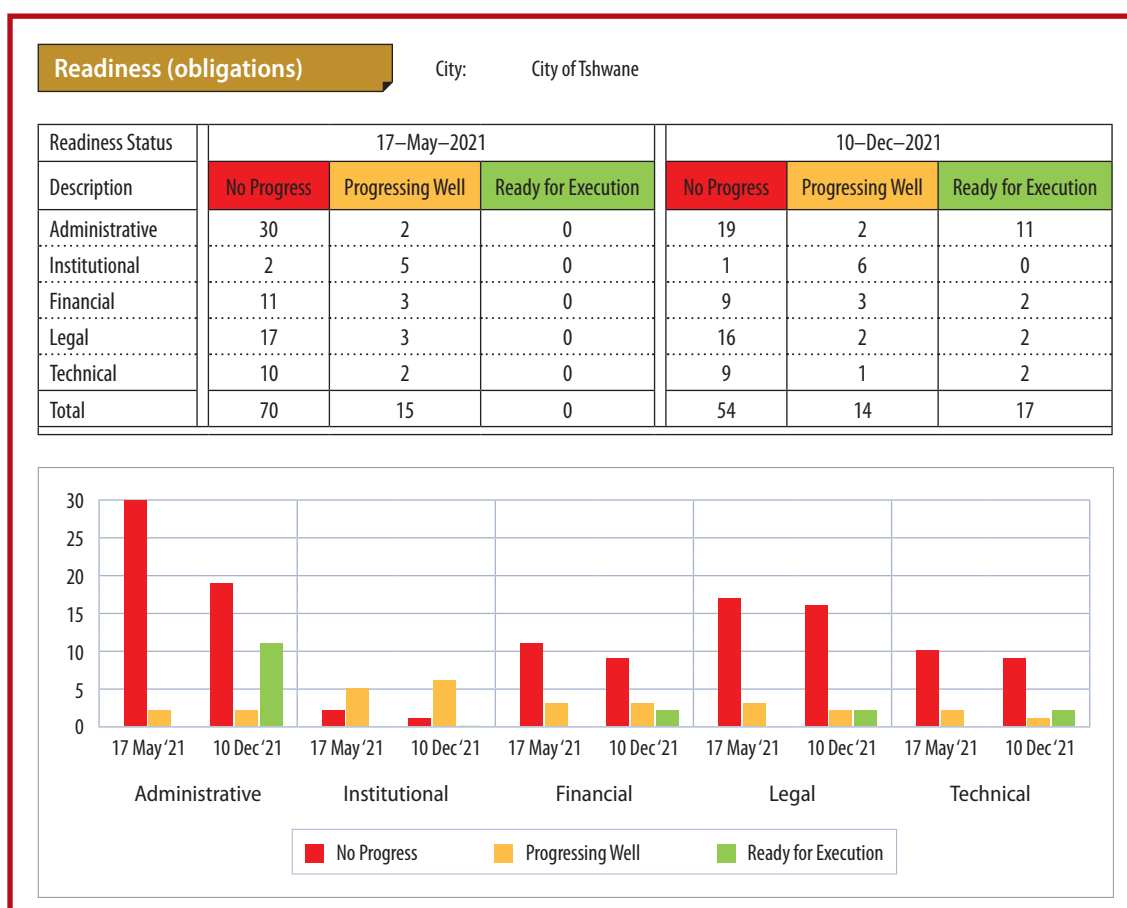
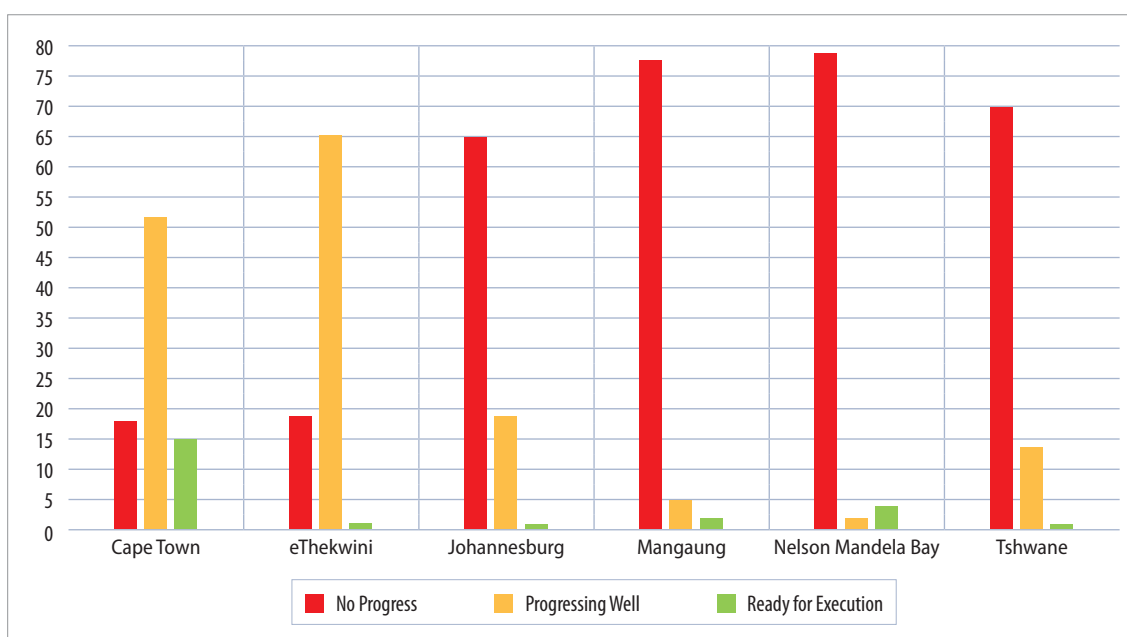


Figure 4 provides a summary of readiness for all the cities as at the end of December 2021. Since this date, some cities may have made progress and improved their state of readiness.

FIGURE 4 Readiness (obligations) summary – all cities (31 December 2021)



As **Figure 4** shows, in December 2021, none of the cities were fully ready to take over the full contracting authority function. However, some cities are ahead of others in terms of their readiness. Discussions with Tshwane, Cape Town and eThekweni indicate that the cities are actively developing their plans to take over the contracting function, and Cape Town and eThekweni have already obtained council approval to start the process.

For the current provincial bus contracting function to be devolved successfully, cities are required to commit to specific actions relative to the baseline. These include decisions on the organisational structure and resourcing the transport portfolio, both of which need to incorporate some level of agility, to enable changes once the functions have been devolved. Cities also need to understand their dependencies on other role players and stakeholders to operate the bus services (e.g., a bus operator might have a contract with a service provider for a fare-collection system).

The assessments were used to compile a summary of **actions**, which cities need to undertake in order to fully acquire the contracting authority function (**Table 1**). Detailed information of these actions, categorised under administrative, institutional, financial, legal and technical, is contained in each city's toolkit.

TABLE 1 Summary of key actions for contracting authority

ITEM	BROAD DESCRIPTION
1	Develop and adopt a contracting authority charter.
2	Prepare a network/service plan.
3	Obtain confirmation from Province if transfer of contracts warrants transfer of assets and staff, and prepare a Memorandum of Agreement (MoA) between the City and the Province on asset transfer in line with Section 42 of the PFMA.
4	Carry out a labour impact assessment in collaboration with the City's Corporate Planning.
5	Ensure Province prepares an inventory of assets and liabilities associated with the contracts, which must be annexed to MoA between the City and Province.
6	Review PTOG conditions, model contract documents, and Chapter 5 of the NLTA against the MFMA and the City's SCM policy.
7	Develop and adopt a fare policy.
8	Develop and adopt a fare-collection policy/guideline.
9	Develop a policy or guideline on vehicle technology for the contracted network.
10	Prepare a stakeholder engagement plan and undertake public participation.
11	Develop a policy or guideline for accessible transport that will be referenced in new service contracts.
12	Develop and adopt a public transport stop-location policy.
13	Prepare subsidised service contract benchmarks.
14	Estimate a bill of quantities for the whole network.
15	Estimate financial shortfall for short and long term.
16	Prepare and submit model contract document to the DOT for approval.
17	Reach agreement with the Province on the format of datasets and frequency of contract performance reporting.
18	Prepare tender rules, conditions of contract, tender forms and necessary addendums.
19	Finalise and issue contract documents with appropriate schedules.

Development of a roadmap

To acquire the contracting authority function, the cities need to take certain steps, which were compiled into a roadmap showing the key milestones (**Figure 5**).

FIGURE 5 Roadmap of key milestones



A GENERIC ROADMAP CAN BE FOUND HERE



LESSONS LEARNT

Highly technical and data-intensive projects take longer than anticipated

More sessions were held with the metros than initially intended, in order to ensure that they had a comprehensive understanding of how the toolkit works. Unforeseen events and potential delays are likely when dealing with a lot of data, and so some buffer time should be included in the project plan.

Stakeholder consultation and buy-in are crucial

Consultations need to happen at an early stage in the project process and at an appropriate level, so that there is an understanding of the project objectives and how it will benefit everyone in the value chain.

Political and executive management support is essential

Without the proper political and executive management support for devolution, the efforts invested may end up being futile and the toolkit (designed to measure the city's readiness) may go unused as an interactive tool to assist this process.

A project champion improves engagements

Identifying a senior relevant official as project champion in each metro helped to improve the success of the engagements and speed up the response times required.

Vested interests are a reality

Some provincial departments appear reluctant to transfer the contracting function to local municipalities, as this would lead to them losing grant funding and certain job functions possibly becoming redundant.

What worked

- Having virtual sessions with metros, due to the COVID-19 pandemic, which reduced operational costs (less travel) and administrative time (arranging in-person engagements).
- Having a senior official nominated to be the project champion and point of contact for the toolkit. Metros fully engaged on the toolkit and requested to workshop the toolkit internally with the relevant officials to ensure that all departments knew what was expected of them in terms of taking over the contracting function.
- Having a signed MoA between the metro and the relevant provincial department, to operate the bus contracts on behalf of the metro, made it easier to obtain bus data and information from the province – this was the case for two of the metros.

What didn't work

Certain challenges experienced during the project limited the final deliverable.

- In some metros, the project was not seen as a priority, and their focus tended to be more on meeting compliance requirements than on delivering strategic services.
- Metro officials who were committed and competent tended to become overloaded, which resulted in meetings with the project team having to be rescheduled due to their limited availability.
- The lack of support from the national DOT to facilitate the completion and final sign-off of the Policy Guideline on devolution and assignment of transport functions within the project timeframes. Although the Policy Guideline was prepared (at the request of DOT), final comments were not obtained from the department before the project end date because officials did not attend meetings, which had to be cancelled.
- The loss of momentum in some of the cities, specifically eThekweni and Tshwane. Although initially keen to take on the CSP support, the cities faced internal challenges that meant engagements could not continue and only resumed towards the end of the project timeframe, which left the city with limited time to engage the project team.



THE PATH AHEAD

To transform urban spaces and society, through creating integrated, efficient, and inclusive cities, municipalities must address various issues relating to housing, transportation and spatial planning in a comprehensive manner. This means giving municipalities, especially metros, greater control over the built environment functions, including policy-making and financial authority. Local government is the sphere most suited to manage and integrate public transport with other infrastructure and services, but the legislative and policy frameworks governing local government often hinder it from embracing innovative approaches in fulfilling its mandates. Furthermore, without adequate funding, municipalities will be unable to implement their plans and improve public transport service delivery by dealing with institutional capacity issues.

Successful devolution relies on the municipalities establishing themselves as fully-fledged contracting authorities and requires a concerted effort from all stakeholders. The lack of policy-making power, financial authority and resources needed to carry out crucial functions are obstacles to municipalities being able to fulfil their developmental responsibilities. In addition, there are vested interests who would of course choose to hold on to existing bus contracts for as long as possible, despite the findings by the Auditor-General of South Africa (AGSA) related to this.

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Developed by

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Key elements of a successful devolution of the contracted bus services include the following:

- **Clear roles and responsibilities for all spheres of government during and after the transitional phase.** The CSP's [Policy Guideline](#) for the devolution and assignment of transport functions provides a detailed guide of the roles and responsibilities of the different government spheres. It also highlights the role of other key roleplayers, such as COGTA, AGSA and SALGA in ensuring the successful devolution of the contracting authority function from provinces to municipalities.
- **A managed transition phase over three years** to enable municipalities to become fully fledged contracting authorities. This will require renewed collaboration and concerted effort between key players, a project plan, committed budget and a dedicated project manager in each sphere of government to systematically manage the process.
- **Clarity on requirements of tendering and contracting for concessions,** to ensure open, competitive and transparent procurement. Once bus service contracts currently managed by the provinces have been ceded to the local sphere in terms of the annual Division of Revenue Act, metros would require assistance to develop the procurement documents. The Office of the Chief Procurement Officer may need to provide support on outcomes-based tenders. Officials directly involved in the contracting function should also be vetted against conflicts of interest.
- **Full understanding of financial resources,** as currently the PTOG is not sufficient. This will involve policy guidance on the basis for subsidisation that would support the grant reform process, consensus on how to fund the transitional phase (a separate National Treasury grant or funded through metro own revenues?), and reform of the PTOG, so it can flow to municipalities.
- **The establishment of intergovernmental forums** to improve communication and coordination.

The devolution of powers to local government should take into account the **existing capacity** of the city given that most metros are already under pressure due to their increased mandate and geographic areas and often limited capacity. Metros would need to present a **business case** for the contracted services and to put in place a **dedicated institutional structure** for the contracting functions. At this stage, there are cities who are considered to be in an advanced state of readiness, i.e. City of Tshwane, City of Cape Town and eThekweni and these cities should be prioritised for support to become **pilot cities for bus devolution**.