

Department for Transport
Pre-Qualification Process Document

INTERCITY WEST COAST
FRANCHISE

January 2011

IMPORTANT NOTICE

This Document is issued by the Department for Transport (the "Department") pursuant to the functions and duties of the Secretary of State for Transport's (the "Secretary of State") functions and duties under the Railways Act 1993 as amended (the "Railways Act").

This Document is not a recommendation by the Secretary of State, or any other person, to enter into a franchise agreement or to acquire shares in a franchisee or a parent undertaking. In considering any investment in a franchise, franchisee or a parent undertaking, you should make your own independent assessment and seek your own professional financial and legal advice.

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The only information which will have any legal effect and/or upon which any person may rely will be such information (if any) as has been specifically and expressly represented and/or warranted in writing to a successful franchisee in the relevant franchise agreement or in any other relevant agreement entered into at the same time as the franchise agreement is entered into or becomes unconditional.

This Document is being distributed only to, and is directed at, (a) persons who have professional experience in matters relating to investments falling within Article 19(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (b) high net worth entities, and other persons to whom

it may otherwise lawfully be communicated, falling within Article 49(2) of the Order (all such persons together being referred to as “relevant persons”). Any investments to which this Document may relate are available only to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such investments will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this Document or any of its contents.

This Document does not constitute an Invitation to Tender (“**ITT**”). In due course, the Department expects to issue an ITT for the InterCity West Coast Franchise (see Section 3 of this Document). This Document is designed to assist you in deciding whether to lodge an expression of interest. An ITT will be issued to you only if you successfully qualify on the basis of the process set out in this Document.

Any person proposing to submit an application to receive an ITT for the InterCity West Coast Franchise will be required to enter into a Franchise Letting Process Agreement including confidentiality and non-collusion undertakings. Nothing in this Document supersedes, or in any way amends or affects, any provision of the Franchise Letting Process Agreement. If the two documents conflict, the terms of the Franchise Letting Process Agreement will prevail.

Legal and technical advisers will be acting for the Secretary of State in relation to the letting of this Franchise and will not regard any other person as their client or be responsible to anyone other than the Secretary of State for providing the protections afforded to their client or for advising any other person on the contents of this Document or any matter referred to in it.

Unless the context otherwise requires, capitalised terms used in this Document shall have the same meaning given to them in the Pre-Qualification Questionnaire.

January 2011

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1. Introduction and Purpose of this Document

1.1 Background

The Secretary of State has announced his intention to invite expressions of interest for the InterCity West Coast Franchise in order to let the Franchise following the expiry of the franchise agreement relating to the operation of the existing InterCity West Coast rail franchise on 31 March 2012.

This Document is addressed to parties which may be interested in the proposed letting of the above Franchise.

This Document:

- (a) provides background information and details of the Franchise;
- (b) outlines the letting process; and
- (c) describes the process for pre-qualification for receipt of an ITT.

The powers of the Secretary of State in relation to franchising and the letting of franchises can be found in the Railways Acts and the Transport Act 2000, which can be accessed via www.opsi.gov.uk.

2. Franchise Objectives

The Secretary of State has set out objectives for the Franchise as follows:

- To exploit the full potential of the route and maximize capacity.
- To manage effectively the integration of new rolling stock vehicles.
- To improve overall passenger satisfaction.
- To deliver the agreed Olympic services.
- To improve accessibility to services and stations.
- To improve the environmental performance of the franchise.
- To manage effectively any changes during the franchise.
- To achieve sustainable value for money.

Applicants are advised that details of the Franchise (including the Department's proposed service specification) will be published later in January in a Consultation Document that will be available on the Department's website: <http://www.dft.gov.uk/railways>

3 Overview of the Pre-Qualification Process

3.1 Qualification to receive an ITT

Applicants are invited to express an interest in qualifying to receive an ITT in respect of the InterCity West Coast Franchise by completing and submitting the Pre-Qualification Questionnaire (the “**PQQ**”) and Franchise Letting Process Agreement (the “**FLPA**”) which are available on the Department's website (<http://www.dft.gov.uk/pgr/rail/passenger/franchises>). Subject to Paragraph 3.6 of this document, submission of the PQQ and signed FLPA will constitute permission to the Department to disclose all or any of the information contained in or supplied in connection with the submission on the basis set out in the FLPA.

The FLPA must be completed by the Applicant (where incorporated), or by the Parent or separately by each Member (where the Applicant is not incorporated).

The Secretary of State is required under Section 26(2) of the Railways Act to consult with the Office of Rail Regulation (“**ORR**”) before issuing an ITT. In addition, Section 26(3) of the Railways Act stipulates that the Secretary of State may not issue an ITT to any person unless he considers that such person has the appropriate financial position and managerial competence, and is otherwise suitable to be the franchisee.

If there are a sufficient number of suitable Applicants, the Department expects to invite between three and five Applicants to submit a bid in respect of the Franchise. This will be done on the basis of ranking the Applicants on the scoring achieved for the PQQ responses submitted. In addition, the Department will assess any past failure to deliver on contractual commitments, including those of price and quality, whether arising from over-optimistic bidding or from poor management. In the case of rail franchise contracts this will apply to those let since January 2001. Where the Department considers that a severe incidence of failure to deliver contractual commitments may have occurred it will review the circumstances against the following four indicators: the significance of the contractual breach; the time elapsed since the breach occurred; the relevance of the circumstances to UK passenger rail franchising; and the materiality of any estimated financial loss to the taxpayer or counterparty. The Department reserves the right to exclude an Applicant where it considers that a severe past failure to deliver contractual commitments has occurred.

The Department reserves the right to invite bids from any number of Applicants.

Applicants completing the PQQ will be offered a de-briefing on their submission. This will include whether the Applicant passed or failed Parts A, B or C, their percentage scores for Parts D and E and their ranking vis a vis other Applicants. The Department will not disclose the breakdown of percentage scores, the scores of other Applicants or the rankings and preferences of other Applicants.

3.2 Competition Matters

Applicants are advised that, while they are free to submit a 'notification' to the Office of Fair Trading at any stage after qualifying to receive the ITT for the InterCity West Coast Franchise, they may wish to delay doing so.

The OFT expects that notification will be made to them following the announcement by the Department of the identity of the InterCity West Coast franchisee. The OFT requires the parameters of the Franchise to be reasonably clearly established in order to undertake competitive analysis, which will only be possible after this date. This should also save substantial public and private costs. Notwithstanding this, the OFT strongly encourages any Applicant who believes that a successful bid would give rise to a substantial number of overlaps with its other transport interests to contact the OFT as soon as possible, on an informal basis, to discuss the OFT's requirements in the event of a successful bid.

More detailed advice will be provided in the ITT.

3.3 Changes in Circumstances

Applicants (including, for this purpose, each Parent and Member as defined in the PQQ) are required to inform the Department promptly and in any case no later than twenty-one days after the occurrence of:

- (a) Any change to their corporate structure from that set out in their PQQ (but not where this relates specifically to changes to the bid vehicle, which is dealt with in accordance with paragraph 3.4 below). This includes the grant of any options to acquire shares, any agreement relating to the exercise of rights attaching to such shares, and any amendments to a shareholders' agreement, articles of association or similar constitutional documents;
- (b) Any changes to the information provided to the Department as part of the pre-qualification process; or
- (c) Any other changes to their circumstances, or the basis of their PQQ submissions, which may reasonably be expected to influence the Department's decision on their suitability for qualification for receipt of an ITT or to be a successful franchisee.

The Secretary of State will ordinarily grant his consent to a change in the membership of the bid vehicle where:

- (d) that consent is requested in writing 10 or more working days before the change takes effect;
- (e) the Applicant has not yet submitted its tender for the Franchise;
- (f) he is satisfied that the change would not substantially and adversely affect the capability of the Applicant or its affiliates to operate the Franchise or the basis on which the Applicant qualified to participate in the Franchise letting process; and

- (g) the change would not enable a person whose application to qualify to participate in the Franchise letting process has been rejected by the Secretary of State to have a substantive influence over the Applicant or its proposal for the Franchise.

However, the Secretary of State reserves the right to approve or reject such changes at his absolute discretion (including any changes to the basis on which the Applicant may be accredited to receive an ITT), or to impose such conditions as he considers appropriate. A rejection of the changes may result in the Applicant being excluded from further participation in the competition if the changes take place.

3.4 Changes to Bid Vehicles

Applicants which are joint ventures or consortia may wish to qualify to receive an ITT. In these circumstances, the Department would require details of the proposed arrangements set out in a shareholder agreement in order to assess their robustness.

Under UK and EU procurement law the Department must treat all Applicants equally and transparently. Prior to the issue of an ITT, the Department will establish whether Applicants are suited to receive an ITT in accordance with the requirements of Section 26(3) of the Railways Act and carry out its assessments of Applicants for this purpose at the pre-qualification stage.

This means that it may not be possible for the Department to accept bids from entities that are materially different from those that it qualifies to receive an ITT.

The Department reserves the right to approve or reject any proposed changes.

The Department therefore recommends that Applicants consider carefully whether they wish to bid as part of a joint venture or consortium and, if so, to have developed the terms upon which they intend to do so prior to submitting their response to the PQQ.

3.5 Changes to Information Provided in Parts A, B and C

Applicants (including, for this purpose, each Parent and Member as defined in the PQQ) are required to inform the Department immediately if any event occurs that materially changes the Applicant's status in respect of the information provided in response to Parts A, B and C of the PQQ.

3.6 Transparency and Freedom of Information Act 2000

The Department is committed to transparency in the procurement of its contracts. This includes the publication of all tender documents for contracts over £10,000 on a single website, and the publication of contracts in full. By responding to this PQQ and, if successful to the ITT, Applicants are agreeing to abide by these commitments.

The Freedom of Information Act 2000 (the “**FOIA**”) provides a general right of access to all information held by public authorities. The general right of access to information is then limited by a number of exemptions. The Department is a public authority. Upon a request for information, the Department must release the requested information unless one of the exemptions applies.

Applicants are invited to identify which parts, if any, of their completed PQQ are provided to the Department in confidence and provide reasons why the information should be held in confidence. Applicants should however be aware of the Secretary of State for Constitutional Affairs’ Code of Practice issued under section 45 of the FOIA (which can be accessed at <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>). This sets out limits on the circumstances under which a public authority should agree to hold information in confidence.

Applicants’ attention is also drawn to the provisions of the FLPA, which permits in certain circumstances disclosure of information by the Department, as well as the provisions in relation to the disclosure of information contained in the Environmental Information Regulations 2004 and section 145(2) of the Railways Act.

Applicants should note that at ITT stage bidders will be required to acknowledge the following:

that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the franchise agreement is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the franchise agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of the franchise agreement, the bidder hereby gives his consent for the Department to publish the franchise agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the franchise agreement, to the general public.

The Department may consult with the bidder to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion. The bidder shall assist and cooperate with the Department to enable the Department to publish the franchise agreement.

4 Overview of the Bidding Process and Award of the Franchise

4.1 Bidding Process

The indicative steps proposed for the bidding process for the Franchise are outlined below:

11 January 2011	Pre-Qualification documentation for the Franchise made available
18 February 2011	Receipt of signed FLPA and Pre-Qualification Questionnaire
29 March 2011	Announcement of Shortlisted bidders
10 May 2011	Invitation to Tender issued
17 August 2011	Receipt of bids in response to the ITT
18 August – 2 December 2011	Evaluations, clarifications, negotiations and approvals
5 December 2011	Selection of franchisee
1 April 2012	New Franchise starts

Please note that these dates are indicative only and are subject to change.

It is envisaged that those Applicants who have successfully qualified to receive an ITT will be provided with documentation that includes:

- (a) an ITT, giving details of the bidding timetable and procedures, the information required in bids and the criteria for evaluating bids;
- (b) full details of the terms and specification relating to the Franchise, including a draft franchise agreement; and
- (c) details of other documents and operational and financial information to be found in the data site.

Bidders will have one opportunity to put in a comprehensive, best value bid.

Between issuing these documents and receiving tenders, meetings may be held with bidders to provide guidance as to the Department's requirements. After receipt of bids the Department may hold clarification meetings with the bidders. The aim of this process is to gain a greater understanding of the bids, and to aid in the evaluation of the bids. Following the evaluation of bids, a shortlist of bidders

may be selected to conclude final negotiations. The Department takes the view that this process ought not to be protracted because the specification set out in the ITT documentation should be clear and precise. The Department reserves the right to require clarification submissions from shortlisted bidders throughout this process.

4.2 Award of the Franchise

The Franchise will be awarded to the bidder who presents the most economically advantageous tender in terms of the criteria specified in the ITT. The Department reserves the right not to award the Franchise to any bidder.

There will be a number of conditions precedent to the completion of the franchise agreement, for example, relating to the execution of track access agreements, other contractual agreements and the provision of financial guarantees where these are required. The ITT and related documentation will contain further information. However, potential Applicants' attention is drawn at this stage to the following, which will be included as conditions precedent:

- (a) obtaining the appropriate licences from the ORR. Further details will be given in the ITT but information can also be found in the Railways Act and the Transport Act 2000 and by accessing the ORR website at www.rail-reg.gov.uk;
- (b) possession of a Safety Certificate and Safety Authorisation issued by the ORR. Further details will be given in the ITT but information can also be found in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railway Safety (Miscellaneous Amendments) Regulations 2001 (which can be accessed via the HMSO website given above) and by accessing the HMRI pages of the Office of Rail Regulation website at <http://www.rail-reg.gov.uk>.

The Department may, at any time during the letting process, require bidders to demonstrate that they will be in a position to obtain the necessary licences, Safety Certificate and Safety Authorisation from the ORR. The Department may, at any time, during the letting process require bidders to apply for the necessary licences, Safety Certificate and Safety Authorisation from the ORR in order to ensure that each is obtained prior to the Franchise start date.

Each of the steps in the Franchise letting process described above is indicative only and the Department reserves the right to vary, suspend or terminate the process in any way including:

- terminating negotiations for the award of the Franchise after or before the selection of a preferred bidder; and
- deciding whether or not to select a single preferred bidder with whom to negotiate and conclude on the basis of its tender.

No discussions or negotiations will be legally binding on the Department unless expressly agreed otherwise in writing.

5 Instructions for lodging an application to qualify to receive an ITT

5.1 Submission of Applications

Applicants are required to submit four hard copies in ring binders plus four electronic copies on CD plus one electronic copy in HTML format of a completed response to the PQQ, answering all of the questions completely. Completed responses should be delivered at or prior to **10.00 on Friday 18 February 2011** to Dale Ward, Department for Transport, Zone 3/21 Great Minster House, 76 Marsham Street, London, SW1P 4DR. Submissions should be taken to the loading bay which is accessed from Page Street.

No other documents or information should be submitted with the completed response. The responses should be submitted in boxes marked "InterCity West Coast Passenger Rail Franchise - Pre-Qualification for receipt of ITT". The boxes should not be marked in any way that would indicate the identity of the Applicant. Responses received after the deadline set out above or which are not duly completed and signed may be disregarded. Nevertheless, the Department expressly reserves the right, at its discretion, to treat any response to the PQQ as valid and to proceed with the inclusion of any Applicant notwithstanding any procedural defect in relation to a response to the PQQ.

All responses must be in English.

An application to qualify for receipt of an ITT will be considered on the basis of information supplied in accordance with the requirements of the PQQ. The Department expects the information supplied in responses to the PQQ to be concise and unambiguous and remain within the required page count. Any submission beyond the required page count will not be considered as the limit is considered to be a reasonable size to allow the Applicant to answer in the breadth and depth required at this stage. However, the Department reserves the right to seek clarification of any information contained in responses to the PQQ from Applicants. As a precondition to accepting an Applicant's PQQ the Department must be in receipt of a duly executed FLPA in the required form.

Electronic copies of the PQQ and the required form of FLPA are available on the Department's website (www.dft.gov.uk/railways/franchises) and, in cases of difficulty, on request from Dale Ward (e-mail: dale.ward@dft.gsi.gov.uk ; telephone 020 7944 3693) or Jim Cross (e-mail: jim.cross@dft.gsi.gov.uk ; telephone 020 7944 3907).

It is anticipated that Applicants will be informed whether or not they have qualified to receive an ITT no later than the end of March 2011. The information set out in this document represents the Department's current intentions with regard to the Franchise letting process. The Department reserves the right to change the timing and any other aspect of the proposed Franchise letting process at any time and will notify Applicants of any such change.

In no circumstances will the Department be responsible for any costs incurred by Applicants in the preparation of responses to the PQQ and/or in connection with the process for the award of the InterCity West Coast Franchise.

5.2 Requests for Clarification

Applicants may request clarification of the matters covered by this document. These issues should be sent by email to PQQ@dft.gsi.gov.uk. Applicants should show the Franchise name in the 'subject' field of the email.

Clarification requests can be made at any time. However, Applicants should note that the last date for the receipt of clarification questions is 7 February 2011. Responses will be made by the Department by 11 February 2011.

The Department will issue, from time to time, a bulletin summarising the clarification requests and the Department's response. This bulletin will be posted on the Department website (<http://www.dft.gov.uk/railways/franchises>).

5.3 Completion of Pre-Qualification Questionnaire

5.3.1 Applications for both the InterCity West Coast and Greater Anglia Franchises

The pre-qualification processes for the InterCity West Coast and Greater Anglia Franchises are being run concurrently. Where an Applicant with the same Parent/Members is seeking to pre-qualify for both franchises, the same responses to the questions asked in Parts B and D should be submitted. The Department will evaluate the common responses to Parts B and D once.

In addition, if an Applicant with the same Parent/Members is seeking pre-qualification for both franchises, it is not necessary to submit two sets of the same Health & Safety policy documents and financial accounts that are requested in Parts B and C of the PQQ. In these circumstances, Applicants may submit one set in its response on one of the franchises, and clearly cross-refer to this set in its response on the other franchise.

5.3.2 Part B

Part B of the PQQ asks Applicants to provide evidence relating to three different aspects of safety: corporate health and safety; railway safety and safety-related incidents. The section is seeking to ensure Applicants have an appropriate level of understanding of, and experience in, health and safety policy and transport safety.

In its evaluation of the evidence provided the Department will be assessing the following:

- the content and appropriateness of Applicants' corporate health and safety policies;

- whether a Railway Safety Certificate/Authorisation (or overseas equivalent) is currently held, or if not, that the Applicant is able to demonstrate a sufficient level of understanding of the requirements for obtaining a Railway Safety Certificate; and
- the Applicants' history of severe transport safety-related incidents and/or enforcement action taken against them by the Office of Rail Regulation (or equivalent overseas body).

Where the Department considers that a severe health and safety related incident may have occurred it will review the circumstances against the following three indicators: the significance of the incident; the time elapsed since the incident occurred; and the subsequent mitigating actions taken. The Department reserves the right to exclude an Applicant where it considers that a severe health and safety related incident has occurred.

Applicants may find it helpful to review the information that the Health and Safety Executive publish on their website (<http://www.hse.gov.uk/business/policy.htm>) in relation to health and safety policy. The Office of Rail Regulation also provides guidance on what a health and safety policy should contain and how it should be used (<http://www.rail-reg.gov.uk/upload/pdf/management-maturity-model.pdf>).

5.3.3 Part D

In Part D of the PQQ the Department uses the Results Section of the European Foundation for Quality Management ("**EFQM**") Business Excellence Model in conjunction with the RADAR^{®1} evaluation method to benchmark and evaluate Applicants' responses. The RADAR[®] scoring methodology for Enablers will be used to assess bid plans submitted in response to the ITT. Further information on EFQM and the RADAR[®] method can be found at www.bqf.org.uk.

The Department is seeking the demonstration of a proven track record of service delivery and financial management in relevant areas of public transport activity (which need not necessarily be within the UK).

Applicants should limit their submission for Part D to a maximum of 25 printed A4 pages including any charts or diagrams used. Font size should be a minimum of 11pt, line spacing a minimum of 13pt and font type standard. All Appendices in Part D will count towards the overall page limit, with the exception of those used in response to Question 2.1.

The weighting applied to the criterion parts of each criterion in Part D is as follows:

- Customer Results
 - Question 1.1 - 75% of the marks available for Customer Results
 - Question 1.2 - 25% of the marks available for Customer Results
- Key Results
 - Question 2.1 – 50% of the marks available for Key Results

¹ The RADAR[®] scoring matrix is the evaluation method used to score applications for the European Quality Award.

- Question 2.2 – 50% of the marks available for Key Results
- People Results
 - Question 3.1 – 75% of the marks available for People Results
 - Question 3.2 – 25% of the marks available for People Results
- Society Results
 - Question 4.1 – 50% of the marks available for Society Results
 - Question 4.2 – 50% of the marks available for Society Results

When answering the questions in Part D, Applicants should support their answers, where possible, with at least two years of results of targets, trends, comparators and causes with sufficient scope to demonstrate their capabilities.

Where an Applicant (or any affiliate of an Applicant) is a passenger heavy rail franchise operator in the UK it should provide evidence for each of its relevant operations for each of the questions. A relevant operation is one that is a company in the same owning group as the Applicant or a member of the Applicant's consortium and:

- the Applicant has been operating it for at least two years; and
- the Applicant continues to operate it or where operations ceased within the last year.

Where an Applicant is a passenger rail franchise operator in any country outside of the UK, a non-franchise UK passenger rail operator, and/or manages other types of transport operations, it may provide such evidence from these operations as it considers appropriate. If an operation is used as evidence however, it must be so used for each of the questions.

Where an Applicant is an existing UK passenger rail franchise operator, the Department's assessment of its responses will take into account relevant performance data and recorded breaches of agreements held by the Department, National Passenger Survey results held by Passenger Focus and other performance data held by Network Rail, in addition to the submission. This evidence will be in relation to companies in the same owning group as that of the Applicant or members of the Applicant's consortium.

5.3.4 Part E

Applicants should limit their submission for Part E to a maximum of 25 printed A4 pages including any charts or diagrams used. Font size should be a minimum of 11pt, line spacing a minimum of 13pt and font type standard. All Appendices in Part E will count towards the overall page limit.

Applicants should note that Parts D and E will be marked by separate evaluation teams. Therefore, Applicants should not cross-refer between their Part D and Part E responses.