



Department  
for Transport

Rail Executive

## Rail Franchising

## TransPennine Express and Northern Franchises

## OJEU Notice

## Rail Franchising Programme

TransPennine Express and Northern

Official Journal of the European Union (OJEU) Notice  
June 2014

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The following OJEU was sent on 5 June 2014 for publication in the Official Journal of the European Union.

UK-London: Railway transport services.

## Section I: Contracting Authority

### I.1) Name, Addresses and Contact Point(s):

Department for Transport (DfT), Great Minster House, 33 Horseferry Road, London, SW1P 4DR, United Kingdom

Tel. +44 2079443693, Email: [railfranchising@dft.gsi.gov.uk](mailto:railfranchising@dft.gsi.gov.uk),

URL: <https://www.gov.uk/government/organisations/department-for-transport>

Contact: Dale Ward

Attn: Dale Ward

Electronic Access URL: <https://www.gov.uk/government/organisations/department-for-transport>

Further information can be obtained at: As Above

Specifications and additional documents: As Above

Tenders or requests to participate must be sent to: As Above

### I.2) Type of the contracting authority:

Ministry or any other national or federal authority, including their regional or local sub-divisions

### I.3) Main activity:

Other: Transport

### I.4) Contract award on behalf of other contracting authorities:

No

## Section II: Object Of The Contract: SERVICES

### II.1) Description

#### II.1.1) Title attributed to the contract by the contracting authority:

TransPennine Express and Northern Rail Franchises

#### II.1.2) Type of contract and location of works, place of delivery or of performance:

SERVICES

Service Category: 18

Region Codes: UK - UNITED KINGDOM

#### II.1.3) Information about a public contract, a framework or a dynamic purchasing system:

The notice involves a public contract

#### II.1.5) Short description of the contract or purchase:

Railway transport services. Public transport services by railways. The DfT is seeking to

appoint an appropriately experienced and qualified person to operate each of the TransPennine Express and Northern rail passenger franchises. Expressions of interest are now being sought from the market for either or both of these franchises. Parties which are successful at being shortlisted for a franchise will receive the Invitation to Tender (ITT) for the relevant franchise. It is expected that this will be issued in December 2014 and that the deadline for the submission of tenders will be in April 2015. It is anticipated that each contract will commence in February 2016. The successful bidder for each franchise will be required to enter into a standard form franchise agreement amended as necessary to deal with the specific circumstances of each franchise.

Further details of the TransPennine Express and Northern franchises are included in the Annex B, and in the Prospectus and pre-qualification questionnaire (PQQ) documentation for each franchise.

Successful PQQ applicants may be expected, as part of the ITT process, to have specific discussions with the DfT about interface issues identified by either the DfT and/ or the bidders during the procurement process. Bidders will also be expected to submit, as part of their ITT bid, how they intend to address these interface issues.

All applicants should also note that the DfT anticipates that changes to the franchise agreement(s) may be required to deal with any interface issues that arise.

The DfT is willing to accept applications from owning groups or consortia to pre-qualify for either or both franchises.

Details of the legal form to be taken by the group of economic operators to whom the contract is to be awarded are set out in section III.1.3 of this notice.

II.1.6) Common Procurement Vocabulary:

60200000 - Railway transport services.

60210000 - Public transport services by railways.

II.1.7) Information about Government Procurement Agreement (GPA):

The contract is covered by the Government Procurement Agreement (GPA): Yes

II.1.8) Lots: This contract is divided into lots: Yes (2)

Applicants may apply to pre-qualify for either or both lots.

II.1.9) Information about variants: Variants will be accepted: No

## II.2) Quantity Or Scope Of The Contract

II.2.1) Total quantity or scope:

The franchise agreements which the successful bidder(s) will enter into for each lot will be based on the standard form franchise agreement currently being revised in line with Government policy. The agreement may include a mechanism for recognising the residual value of investments made during the franchise which have a commercial value beyond the

term of the franchise and which may not provide a commercial return during the life of the franchise. Full revenue risk is expected to pass to the franchisees.

The franchise agreements will include a profit share and profit cap mechanism.

Further details of the requirements for the franchise agreements will be set out in the ITTs.

#### II.2.2) Options:

Yes - DfT may wish to specify options, details of which will be set out in the ITT

#### II.2.3) Information about renewals:

This contract is subject to renewal: No

### II.3) Duration Of The Contract Or Time-Limit For Completion

## Section III: Legal, Economic, Financial and Technical Information

### III.1) Conditions relating to the contract

#### III.1.1) Deposits and guarantees required:

DfT will require a funding deed to be provided to each franchisee by its guarantor(s). This funding deed is an agreement between the guarantor(s), the franchisee and the DfT whereby the guarantor provides, among other things, a loan facility to the franchisee in the amount specified by the Department. Under the terms of the funding deed, the Secretary of State as a party to this deed will therefore have legal rights to require the Franchisee to draw down under the loan facility to ensure the financial robustness of the Franchisee.

A minimum of 33%, up to a maximum of 50% of the value of this funding deed will need to be bonded by a suitable third party financial institution or institutions, providing that the guarantor passes at least three out the four financial tests set out in the PQQ . If the guarantor fails this test, then 100% of the value of the funding deed must be bonded. Each funding deed required is expected to be for a minimum amount in the region of GBP 40 million, plus a further amount which will depend on the level of Franchise Payments bid. The method for calculating the size of the funding deed and the form of the funding deed will be set out in the relevant ITT.

Each franchisee must provide a Performance Bond and a Season Ticket Bond (calculated in accordance with a formula set out in the standard form franchise agreement) from a suitable third party financial institution. The Performance Bond is anticipated to be in the region of GBP 15 million for each franchise. The Season Ticket Bonds are expected to be around GBP 7 million for the Northern franchise and around GBP 2 million for the TransPennine Express franchise.

#### III.1.2) Main financing conditions and payment arrangements and/or reference to the relevant provisions governing them:

Further details of financing are contained in the PQQs and pre-qualification process

documents (PPD).

### **III.1.3) Legal form to be taken by the group of economic operators to whom the contract is to be awarded:**

Regardless of whether an applicant is applying for one or both franchises, and regardless of whether an applicant applies as a single entity, a consortium or a joint venture, applicants are asked to note that the company that will become party to the franchise agreement must be a company incorporated for that special purpose. Such a company may be a subsidiary of a single entity, a consortium or a joint venture according to the nature of the applicant. Details of the applicant's proposed contractual structure should be set out in its PQQ response.

Bidders must provide full details of their proposed contracting structures, including key sub-contractors. Changes to consortia and contracting structures must be notified to the DfT immediately, which may impose conditions on or reject the change if that is reasonably necessary to ensure that the DfT meets its legal or procurement obligations. Full details of, and/or further restrictions on changes to consortia and contracting structures are set out in the tender documents. Further details are set out in the PQQ and PPD.

### **III.1.4) Other particular conditions:**

The franchisee will be required to have all appropriate permissions, licences, etc. to undertake the services under the franchise agreement in the UK and under UK legislation (and/or under all equivalent legislation in the place of their establishment) and will be required to evidence these according to the requirements set out in the tender documents and contract documents.

In all franchise competitions there is a risk of intervention by the Competition and Markets Authority and therefore bidders who successfully meet the PQQ criteria will be expected to give comfort, in their ITT response, that they will be able to deal with any merger control rules imposed by the Competition and Markets Authority.

## **III.2) Conditions for Participation**

### **III.2.1) Personal situation of economic operators, including requirements relating to enrolment on professional or trade registers:**

The information and formalities necessary to assess whether a person qualifies to receive an Invitation to Tender are contained in the relevant PQQ and PPD. Interested parties will be required to sign a Franchise Letting Process Agreement (FLPA) to participate in the pre-qualification process. The FLPA can be found at:

<https://www.gov.uk/government/organisations/department-fortransport/series/rail-franchising>

### **III.2.2) Economic and financial capacity - means of proof required:**

Information and formalities necessary for evaluating if requirements are met:

The information and formalities necessary to assess whether a person qualifies to receive

an Invitation to Tender are contained in the PQQ and PPD.

### III.2.3) Technical capacity - means of proof required:

#### **Information and formalities necessary for evaluating if requirements are met:**

The information and formalities necessary to assess whether a person qualifies to receive an ITT are contained in the PQQ and PPD.

### III.2.4) Information about reserved contracts:

Not Provided

## III.3) Conditions Specific to Service Contracts

### III.3.1) Information about a particular profession:

Execution of the service is reserved to a particular profession:

No

### III.3.2) Staff responsible for the execution of the service:

Legal persons should indicate the names and professional qualifications of the staff responsible for the execution of the service: No

## Section IV: Procedure

### IV.1) Type Of Procedure

#### IV.1.1) Type of procedure:

Negotiated

Some candidates have already been selected: No

#### IV.1.2) Limitations on the number of operators who will be invited to tender or to participate:

Envisaged minimum number: 6 and maximum number 8

Objective Criteria for choosing the limited number of candidates:

Optimal number for franchise competition.

There are separate PQQs for each lot and the number of candidates for each lot will be as follows: In respect of lot No. 1, this will be the three highest ranked persons who respond to the PQQ and the highest ranked person whose score is within 10% of the third ranked person up to a maximum of 4 (four) shortlisted persons in total. In respect of lot No. 2, this will be the three highest ranked persons who respond to the PQQ and the highest ranked person whose score is within 5% of the third ranked person up to a maximum of 4 (four) shortlisted persons in total. If a person is bidding on both Northern and TPE PQQs and is successful at the PQQ stage on both lots, but only wishes to be shortlisted for one ITT, they must indicate their preferred lot when responding to the PQQs. Should that person qualify for both shortlists, their place on the non-preferred shortlist will be offered to the next highest placed person, subject to them meeting the threshold set out in Section 5.4 of the PPD. This selection is irrevocable and must be made as part of the submission of PQQs. It will not be possible for a person to change their selection once the identity of the other

bidders for either lot are known. If a person is happy to be shortlisted for both lots then they should indicate this in both of their PQQ documents. Please note that should a person be shortlisted for both lots, the DfT would expect that person to take full part in both competitions. Details of the criteria which will be applied in order to limit the number of persons selected are set out in each PPD.

IV.1.3) Reduction of the number of operators during the negotiation or dialogue:

No

IV.2) Award Criteria

IV.2.1) Award criteria:

The most economically advantageous tender in terms of the criteria stated in the invitation to tender

IV.2.2) Information about electronic auction:

An electronic auction will be used: No

IV.3) Administrative Information

IV.3.1) File reference number attributed by the contracting authority:

Not provided

IV.3.2) Previous publication(s) concerning the same contract:

Yes Prior information notice

Notice number in OJEU: 2014/S 072-124141 of: 14/04/2014

Other previous publications: No

IV.3.3) Conditions for obtaining specifications and additional documents or descriptive document:

Payable documents: No

IV.3.4) Time-limit for receipt of tenders or requests to participate

Date: 17/7/14

Time: 17:00

IV.3.5) Date of dispatch of invitations to tender or to participate to selected candidates:

Not Provided

IV.3.6) Language(s) in which tenders or requests to participate may be drawn up:

English

## Section VI: Complementary Information

VI.1) This Is A Recurrent Procurement:

No



VI.2) Information about European Union funds: The contract is related to a project and/or programme financed by European Union funds:

No

VI.3) Additional Information: The contracts to be let are service concession contracts and, without prejudice to the application of Article 3 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the "Directive"), these tender processes are not subject to the Directive. The tender processes are subject to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (the "Regulation") and constitutes a 'public service contract' within the meaning of the Regulation. Accordingly the publication of this notice in the Official Journal of the EU is entirely voluntary. References to the negotiated procedure in this notice do not constitute reference to the negotiated procedure with prior publication of a contract notice as described in the Directive and should not be construed in any way as constituting an undertaking by the Authority to carry out a tender process in line with the requirements that apply to the carrying out of a tender process by means of the negotiated procedure with prior publication of a contract notice under the Directive. Information as to how applicants express an interest and participate in the procurement are set out in the PPDs. The tender processes which the Authority intends to follow will be described in more detail in the Prospectuses, the PPDs and the ITTs. The information contained in this notice, including the list of CPV codes, is neither exhaustive nor binding, and may be amended at the time of issue of any further notice or notices or at any other time at the discretion of Authority. Tenders and all supporting documentation must be priced in pounds sterling. Any resulting contract will be considered a contract made in England according to English law. The Authority is not and shall not be liable for any expenses, costs or liabilities incurred by those expressing an interest or negotiating or tendering for a franchise agreement or any other agreement entered into in connection with such agreement, or their associated entities or any other person. The Authority reserves the right not to award a contract for either or both lots, to make whatever changes it sees fit to the structure and timing of the procurement processes, to cancel the process in its entirety at any stage and, where it considers it appropriate to do so, make a direct contract award pursuant to Article 5(6) of the Regulation. The Authority is a public authority under the Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations 2004 ("EIR"). As part of its duty under the Act and the EIR, the Authority may disclose information to a person making a request unless the information is covered by an exemption under the Act or the EIR. The Authority is required to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing this information. Bidders should state in their Tender responses whether or not they consider the information supplied should be exempted from disclosure to third parties under the Act or the EIR and should provide reasons for such views. These views will be taken into consideration by the Authority when deciding whether to disclose information.

The franchises are not being let on behalf of other contracting authorities but applicants should note that the DfT has committed to work in partnership with Rail North – a currently informal grouping of transport authorities covering the whole of the North of England. This work in partnership currently relates to (a) collaborative development of the franchises and

(b) development of an integrated partnership structure including DfT and a more formally constituted Rail North which would be capable of managing the franchises after they have been let. Further details of this proposal are set out in the Prospectuses.

(Please see the tender documents for further information). To view this notice, please click here: <https://www.delta-esourcing.com/delta/viewNotice.html?noticeId=77348428>

#### VI.4) Procedures For Appeal

##### VI.4.1) Body responsible for appeal procedures:

Not Provided

##### VI.4.2) Lodging of appeals:

Not Provided

##### VI.4.3) Service from which information about the lodging of appeals may be obtained:

Not Provided

##### VI.5) Date Of Dispatch Of This Notice:

5/6/2014

## Annex A

[Addresses of and contact points for DfT]

## Annex B

### Information about lots

Lot No: 1 Lot Title: TPE

#### 1) Short Description

CONTACT POINT: [tpe@dft.gsi.gov.uk](mailto:tpe@dft.gsi.gov.uk)

The proposed TransPennine Express franchise will cover the rail services currently run by First TransPennine Express which comprise services in North of England and Scotland. Some parts of the existing route structure may be amended before Bidders are invited to submit their bids. The changes to the route structure will be specified in the ITT.

The current services are divided into three groups. North TransPennine services operate over a core central section from Manchester to Leeds, extending to Liverpool and Manchester Airport to the west and south of Manchester, and to Newcastle, Middlesbrough, Scarborough and Hull to the north and east of Leeds.

South TransPennine services operate between Manchester Airport and Cleethorpes, via Manchester Piccadilly, Sheffield and Doncaster.

The North West group of services has Manchester Airport as its southern terminus, and runs to Blackpool, Windermere, Barrow-in-Furness, Edinburgh and Glasgow.

In 2012/13, TransPennine Express carried 25 million passengers, which generated passenger revenues of £179m.

DfT will publish a Prospectus in June 2014. This provides further information about the tender process and describe the scope of the requirements for this contract more fully. The Prospectus will be available at <https://www.gov.uk/government/organisations/department-fortransport/series/rail-franchising>

## 2) Common Procurement Vocabulary (CPV):

60200000 - Railway transport services.

60210000 - Public transport services by railways.

## 3) Quantity or scope

The length of the franchise term is anticipated to be between 7 and 9 years with a possible extension of up to 1 year callable at the discretion of the Secretary of State for Transport.

## 4) Indication about different date for duration of contract or starting / completion (if applicable)

## 5) Additional information about lots:

In respect of lot No. 1, the three highest ranked persons who respond to the PQQ and the highest ranked person whose score is within 10% of the third ranked person up to a maximum of 4 (four) shortlisted persons in total shall be shortlisted.

## Annex B

### Information about lots

Lot No: 2 Lot Title: Northern

#### 1) Short Description

CONTACT POINT: [northern@dft.gsi.gov.uk](mailto:northern@dft.gsi.gov.uk)

The proposed Northern franchise will cover the services currently run by Northern Rail Ltd, which provides inter-urban, commuter and local services across the whole of northern England, encompassing destinations across the North West, the North East, Yorkshire and the Humber, including the major conurbations of Manchester, Liverpool, Sheffield, Leeds, Bradford, Hull and Newcastle, and the National Parks in the Peak District, Yorkshire Dales and North Yorkshire Moors, plus routes into the Lake District.

The Northern service network is one of the most extensive of the UK's franchises, serving 526 stations and operating over 15,000 local and regional services per week. These services carry around 90 million passengers per year. The majority of Northern Rail Ltd's revenue, excluding franchise support from government, is generated from the sales of rail tickets and associated purchases and during 2012/13 these accounted for 80% of total revenue, (£274m).

Some parts of the existing route structure may be amended before Bidders are invited to submit their bids. Any such changes to the route structure will be specified in the ITT.

DfT will publish a Prospectus in June 2014. This provides further information about the tender process and describe the scope of the requirements for this contract more fully. The Prospectus will be available at <https://www.gov.uk/government/organisations/department-fortransport/series/rail-franchising>

**2) Common Procurement Vocabulary (CPV):**

60200000 - Railway transport services.

60210000 - Public transport services by railways.

**3) Quantity or scope**

The length of the franchise term is anticipated to be between 8 and 10 years with a possible extension of up to 1 year callable at the discretion of the Secretary of State for Transport.

**4) Indication about different date for duration of contract or starting / completion (if applicable)**

**5) Additional information about lots:**

In respect of lot No. 2, the three highest ranked persons who respond to the PQQ and the highest ranked person whose score is within 5% of the third ranked person up to a maximum of 4 (four) shortlisted persons in total shall be shortlisted.