



Department  
for Transport

Rail Executive

# Rail Franchising Northern

## Pre-Qualification Process Document



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Department for Transport

Great Minster House

33 Horseferry Road

London SW1P 4DR

Telephone 0300 330 3000

Website [www.gov.uk/dft](http://www.gov.uk/dft)

General email enquiries [railfranchising@dft.gsi.gov.uk](mailto:railfranchising@dft.gsi.gov.uk)

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# Important Notice

This Northern Pre-Qualification Process Document (**PPD**) and the Pre-Qualification Questionnaire (**PQQ**) that it supports (together the "**Document**") is issued by the Authority pursuant to its functions and duties under the Railways Act 1993 as amended (the "**Railways Act**").

The Document forms part of a competitive procurement conducted in accordance with relevant legal requirements including 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 Document is not a recommendation by the Authority, or any other person, to enter into any agreement or to make any investment decision. In considering any investment in a franchise, each Applicant should make their own independent assessment and seek their own professional financial and legal advice.

The Document does not purport to contain all of the information that a prospective franchisee or shareholder may require. Neither the Authority, nor any of his employees, agents or advisers, makes any representation or warranty (express or implied), and no such representatives have any authority to make such representations and warranties, as to the accuracy or completeness of the information contained in the Document.

The Authority expressly disclaims any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the Document or other information issued with or in connection with it (including information provided on the secure data site as set out in paragraph 3.6 of this PPD) or based on or relating to the recipient's use of it, or the use of it by any of its affiliates or the respective representatives of any of them in the course of its or their evaluation of any franchise or the shares of any franchisee or any other decision. The information in the Document or other information issued with or in connection with it (including information provided on the secure data site as set out in paragraph 3.6 of this PPD) shall not form the basis of any franchise agreement or any other agreement entered into in connection with the replacement or acquisition of a passenger rail franchise or acquisition of shares in a franchisee.

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.

The Document does not constitute an Invitation to Tender ("**ITT**"). In due course, the Authority expects to issue an ITT for the Northern Franchise. An ITT will be issued to an Applicant only if they successfully qualify on the basis of the process set out in the Document.

Any person receiving a PQQ and PPD for the Northern Franchise will have entered into a Franchise Letting Process Agreement ("**FLPA**") including confidentiality and non-collusion undertakings.

Legal, technical and financial 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 the Document or any matter referred to in it.

The Authority is not and shall not be liable for any costs incurred by those expressing an interest or negotiating or tendering for this contract, their associated entities or any other person. The Authority reserves the right not to award a contract, to make whatever changes it sees fit to the structure and timing of the procurement process (including issuing updates and amendments to this PPD), 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 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.

# Terms and Definitions used in the PQQ and PPD

“**Affiliate**” means in respect of any Applicant, its Controllers, any entity or person Controlled by the Applicant, and any entity or person other than the Applicant which is Controlled by any of the Controllers of the Applicant from time to time.

“**Applicant**” means the person or entity (or persons or entities) which has or have submitted, or will submit, a response to the PQQ.

“**Authority**” means the Secretary of State for Transport, acting as part of the Crown, who is seeking to award a contract.

“**Bidder**” means a party or parties invited to respond to the ITT.

“**CJEU**” means the Court of Justice of the European Union.

“**Control**” means the power of a person or other entity (“**C**”) to secure that the affairs of a person or other entity are conducted in accordance with C's wishes. In relation to a body corporate Control may be secured by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate. Control shall include Control held indirectly as well as directly, negative Control (exercised by veto rights), and joint Control (where there is one or more other persons or entities in addition to C which also exercise Control, or C together with any other person or entity exercises Control).

“**Controller**” means any person or entity who has Control.

“**DOTAS**” or “**Disclosure of Tax Avoidance Schemes**” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“**Effective Date**” means the date on which the Applicant submits a response to the PQQ.

“**Financial Advisers**” means the Authority's financial advisers.

“**Franchise**” means the rail franchise described in section 2 for which the Applicant would like to be considered.

**“Franchise Agreement”** means the operating franchise contract and ancillary documents to be entered into between the Authority and the Franchisee.

**“Franchise Letting Process Agreement”** or **“FLPA”** means the Deed entered into by the Applicant in order to receive the PQQ and PPD.

**“Franchisee”** means the entity appointed by the Authority to enter into the Franchise Agreement with the Authority to provide, by the operation of associated rolling stock and stations, the franchise services that will comprise the Franchise.

**“Funding Deed”** means a deed to be entered into between the Guarantor, the Franchisee and the Authority whereby the Guarantor provides, among other things, a loan facility to the Franchisee in the amount of the Guarantee. Under the terms of the funding deed, the Authority, as a party to the deed, will have legal rights to require the Franchisee to draw down under the loan facility to ensure the financial robustness of the franchisee. The Funding Deed will be contained in the ITT.

**“Funding Requirement”** means the total funding required to support the franchise as outlined in the Prospectus, including the Guarantee, season ticket bond and performance bond.

**“General Anti-Abuse Rule”** or **“GAAR”** means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

**“Guarantee”** means either (i) (when the financial tests set out in Part E of the PQQ are carried out at the pre-qualification stage) the amount of the loan facilities which the Authority estimates will be required to be provided by the Guarantor(s) under the Funding Deed, and as notified to Applicants in the OJEU Notice; or (ii) (when the financial tests set out in Part E of the PQQ are repeated both after receipt of a Bidder’s tender and prior to contract award) the loan facilities which the Authority specifies will be required to be provided by the Guarantor(s) under the Funding Deed.

**“Guarantor(s)”** means a Controller of the Applicant which will provide financial security to the bond provider(s) for the performance and season ticket bonds, and which will sign the Funding Deed.

**“Halifax abuse principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“Invitation to Tender”** or **“ITT”** means the invitation to tender to be issued by the Authority to shortlisted applicants following the pre-qualification process.

**“OJEU Notice”** means the notice published in the Official Journal of the European Union for the purpose of advertising the tender process for the award of the Northern Franchise.

**“OONC”** or **“Occasion of Tax Non-Compliance”** means:

(a) any tax return submitted to a Relevant Tax Authority on or after 1 October 2012 by the Applicant (including, where the Applicant is a joint venture or consortium, the members of that joint venture or consortium) is found on or after 1 April to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Applicant (including, where the Applicant is a joint venture or consortium, the members of that joint venture or consortium) under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;

(ii) the failure of an avoidance scheme which the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Applicant (including, where the Applicant is a joint venture or consortium, the members of that joint venture or consortium) submitted to a Relevant Tax Authority on or after 1 October 2012 give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.

**“PQQ Pack”** means the documents listed in section 3.3.

**“Pre-Qualification Process Document”** or **“PPD”** means this document that contains the supporting information for use with the PQQ.

**“Pre-Qualification Questionnaire”** or **“PQQ”** means the questionnaire for which this document provides supporting information.

**“Prospectus”** means the document providing background and details of the Franchise, issued as part of the PQQ pack.

**“Relevant Tax Authority”** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Applicant (including, where the Applicant is a joint venture or consortium, any member of that joint venture or consortium) is established.

**“Ultimate Controller”** means a Controller of the Applicant which is not itself Controlled by any other person or entity.

# 1. Introduction

The Authority is seeking applications from organisations including any national or international company, consortium or not for profit organisation that can demonstrate the necessary financial strength, managerial capability and experience, to be considered for the award of a Franchise Agreement for the effective delivery of passenger services and management of train operations for the Northern Franchise.

The Authority announced its new Rail Franchising Schedule in April 2014 which is available on the Authority's website:

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

This PPD:

- outlines the Franchise letting process
- describes the process for pre-qualification for receipt of an ITT
- confirms the evaluation criteria and selection process.

The powers and duties of the Authority in relation to franchising and the letting of franchises can be found in the Railways Act 1993 and the Transport Act 2000, which can be accessed via [www.opsi.gov.uk](http://www.opsi.gov.uk).

## **Aims of franchising and requirements of franchisees**

The Authority seeks to appoint franchisees who will work in the context of partnership to support its aim of providing world class train services that drive economic growth, exceed passenger expectations and deliver value for money for passengers and taxpayers.

The Authority wishes to use franchise competitions to ensure it procures the most cost effective operation of the rail services covered by each franchise from operators who will continuously seek to improve that franchise for passengers.

Some franchisees will need to be able to take on significant and challenging projects involving fleet and infrastructure that will drive major business change and create passenger benefits over the life of the contracts.

All franchisees must meet their legal responsibilities with respect to the management of health and safety, play a full and effective part in the drive for a health and safety leadership culture, and deliver continuous improvement in the health and safety of passengers and the workforce.



## 2. Northern Franchise

Please refer to the corresponding Prospectus for the background and details of the Northern Franchise.

## 3. Franchise Letting Process

Section 26(3) of the Railways Act stipulates that the Authority may not issue an ITT to any person unless it considers that such person has the appropriate financial position and managerial competence, and is otherwise suitable to be the Franchisee.

The franchise letting process consists of two distinct stages: pre-qualification and invitation to tender.

### 3.1 Franchise Letting Process Agreement

Any person receiving access to the PQQ Pack for the Northern Franchise via the franchising e-sourcing portal will have entered into a Franchise Letting Process Agreement (“**FLPA**”) with the Authority, including confidentiality and non-collusion undertakings.

Upon receipt of the Applicant’s response to the PQQ, the Authority will check that the relevant parties have executed the FLPA in light of the Applicant’s PQQ submission.

### 3.2 Pre-Qualification

The pre-qualification stage is used to shortlist Applicants to receive an ITT. The PQQ response submitted by each Applicant will be scored in accordance with the evaluation process set out in section 5 of this PPD.

Subject to there being sufficient Applicants that are not otherwise excluded, the Authority intends to invite a maximum of 4 Bidders to submit bids. The Authority will invite bids from the top 3 ranked Applicants. The Authority will also invite a bid from the 4th ranked Applicant if that Applicant falls within 5 percentage points of the 3rd ranked Applicant.

### 3.3 PQQ Pack

The suite of documents that forms the “PQQ Pack” is available via the franchising e-sourcing portal to Applicants that have entered into an FLPA with the Authority. The PQQ Pack comprises the following documents:

- OJEU Notice
- PQQ
- PPD
- Prospectus

The PQQ Pack will also be published on the Authority's website:  
<https://www.gov.uk/government/organisations/department-for-transport/series/rail-franchising>

Responses to the PQQ enable the Authority to assess Applicants' ability to deliver (or secure the delivery of) the contract. This includes assessing:

- grounds for mandatory and discretionary rejection,
- the Applicant's health and safety management and culture
- the economic and financial standing of the Applicant's Guarantor,
- the Applicant's capability, competence and experience, and
- the Applicant's record of past performance.

It is anticipated that Applicants will be informed in August/September 2014 whether or not they have qualified to receive an ITT.

### **3.4 PQQ Debrief**

Applicants will be notified of the outcome of the pre-qualification process in writing, outlining the reasons for acceptance or rejection of their application. Applicants will also be offered further feedback to discuss strengths and areas for improvement related to their response. In particular, the Authority will inform Applicants of their score, and provide the scores and rankings of other Applicants on an anonymised basis.

### **3.5 Invitation to Tender**

The Authority may provide Applicants with the opportunity to provide feedback on the proposed ITT before finalising the ITT. Full details of the ITT process including clarifications, bilateral meetings and feedback into the final ITT will be provided to Bidders. The ITT will be available via the franchising e-sourcing portal and it is currently the intention to give Bidders approximately 4 months to submit their bids.

### **3.6 Access to data site**

The Authority will provide a secure data site populated with relevant information both by the Authority in relation to the Northern franchise letting process, and by the current operator and any other relevant parties in relation to the current operation of the railway.

Applicants that successfully pre-qualify to receive an ITT are required to sign the data site agreement, and upload this agreement to the franchising e-sourcing portal, prior to being granted access to the data site.

### **3.7 Award of the Franchise**

The Franchise will be awarded to the Bidder which presents the most economically advantageous tender in terms of the criteria specified in the ITT.

There will be a number of conditions precedent to the commencement of services pursuant to the Franchise Agreement. The ITT and related documentation will contain further information. Applicants' attention however is drawn at this stage to the following, which will be included as conditions precedent:

- the obtaining of the appropriate licences from the Office of Rail Regulation (the "ORR"); and
- the obtaining of a Safety Certificate and Safety Authorisation from the ORR.

Further details will be given in the ITT but information can also be found by accessing the ORR website at [www.rail-reg.gov.uk](http://www.rail-reg.gov.uk).

The Authority may, at any time during the letting process, require Applicants to demonstrate that they will be in a position to obtain the necessary licences, Safety Certificate and Safety Authorisation from the ORR. The Authority may, at any time, during the letting process require Applicants 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.

### 3.8 Timescales

The proposed franchise letting timetable for the Northern Franchise is given below. This is intended as a guide and, whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any stage.

Applicants are required to notify the Authority immediately upon becoming aware that they will not be able to comply with the timescales set out below, for example as a result of the need to obtain approval from any governmental or regulatory authority. The Authority reserves the right to exclude an Applicant from further participation in the competition if so notified. Further specific guidance with respect to competition matters is provided below.

Stage	Description	Date
Pre-qualification	Issue of PQQ Pack and submit OJEU Notice for publication	5 <sup>th</sup> June 2014
	Return of PQQ	17 <sup>th</sup> July 2014
	Confirm Bidder shortlist	August/September 2014
Public consultation		Summer 2014
Bid Preparation and Negotiation of Bids	ITT pack issued to Bidders	December 2014
	Receipt of ITT submissions	April 2015

	Announcement of winning Bidder	October 2015
Mobilisation	Contract Start	February 2016

### 3.9 Competition Matters

Depending on the identity of the Bidder, the award of the Franchise may constitute a relevant merger under the Enterprise Act 2002 (“EA02”) (i.e. one over which the Competition and Markets Authority (“CMA”) would have jurisdiction), or a concentration with a Community dimension under Council Regulation (EC) No.139/2004 (“EUMR”), which would be required to be notified to the European Commission (“EC”).

If the award of the Franchise to a particular Bidder would give rise to a realistic prospect of a substantial lessening of competition (under EA02), or of a significant impediment to effective competition (under EUMR), such as would give the CMA (or EC, as appropriate) cause to subject the award of the Franchise to a substantive (second phase) investigation, this might prejudice the timing of the franchise process and/or the ability of the Bidder to operate the Franchise as bid. Generally, a competition with a European Community dimension may not be completed until clearance has been obtained under EUMR. In the context of a relevant merger under EA02 that has been completed, the CMA may require “hold separate” undertakings to be given pending conclusion of any investigation. It is therefore important for the Authority to be able to assess the impact of any potential intervention by the CMA or EC in scrutinising the bids of each Bidder under merger control rules.

In the ITT to be issued to pre-qualified bidders, the Authority expects that each Bidder will therefore be required to confirm in its bid:

- Whether award of the Franchise to it would require notification to the EC under EUMR, and if so whether the Bidder would propose to request pursuant to Article 4(4) EUMR that the transaction is referred back to the CMA for consideration, and how it views the prospects of such a request being accepted;
- What strategy it will adopt to minimise any delay caused by the need to obtain clearance from the CMA or EC in being able to operate the Franchise if an award is made to it. In particular:
  - How the Bidder proposes to approach pre-notification discussions with the CMA or, as the case may be, the EC to ensure that the notification is complete and that all necessary supporting evidence is included;
  - That it will co-operate fully with the EC and CMA during their investigations, in particular by responding promptly to any requests for information; and
  - The Bidder’s, and any of its Affiliates’, willingness to offer undertakings or commitments to the CMA or the EC in order to avoid a second phase investigation;
- The form of any derogations the Bidder would seek to the CMA’s standard form of initial enforcement (‘hold separate’) orders in the event that these are required in the context of a completed merger;

- Whether it considers that any remedies are likely to be imposed upon its operation of the Franchise by the CMA or EC and, if so, what those remedies are likely to be;
- That it will commit to the Authority to offer such undertakings or commitments to the CMA or the EC as may be required by the CMA or the EC to enable it to operate the Franchise as bid, unless and to the extent that any such undertakings or commitments given would impact on the ability of the Bidder and/or any of its Affiliates to operate any other UK rail franchise of which it is the franchisee; and
- That it is prepared to comply with the remedies which it has identified in its own analysis of the likely remedies potentially required by the CMA or EC and that it is willing to take the steps needed to comply with such remedies.

The Authority expects that Applicants will co-operate fully with the CMA in pre-notification discussions before award of the Franchise.

Following bid submission, the Authority expects the Bidder to keep the Authority informed of the progress of its notifications to the EC and/or CMA, including notifying the Authority as soon as possible if it becomes aware of the possibility that a second phase investigation or undertakings or commitments in lieu of such an investigation may be required.

Following bid submission the Authority expects Bidders to advise the Authority as soon as possible if there is any change in the circumstances from the position as outlined in their bid which may affect the competition clearance process (for example, if the Bidder acquires or divests another transport operation which is relevant to the competition assessment of the Franchise award). If Bidders fail to do so, their bid may be deemed to be noncompliant.

If a Bidder is unable to or otherwise does not provide to the Authority sufficient evidence to enable the Authority to be satisfied that:

- There will be no second phase intervention by the CMA or EC in relation to the Bidder's bid for the Franchise; or
- The Bidder has provided the commitment to the Authority to offer such undertakings or commitments to the CMA or the EC as may be required by the CMA or the EC to enable it to operate the Franchise as bid, and confirmed that any such undertakings or commitments given would not impact on the ability of the Bidder and/or any of its Affiliates to operate any other UK rail franchise of which it is the franchisee; and
- The impact of any intervention by the CMA or EU will likely not prejudice the ability of:
  - The Bidder to commence operation of the Franchise on the Authority's proposed start date;
  - The Bidder otherwise to operate the Franchise in accordance with its bid; or
  - Any Affiliate of the Bidder to continue to operate any other UK rail franchise of which it is the franchisee,

the Authority anticipates that it will reserve the right to disqualify the Bidder.

The Authority will also be entitled to liaise directly with the CMA to confirm any information provided by a Bidder.

### **3.10 Changes in Circumstances and changes to Information Provided**

Applicants are required to inform the Authority as soon as reasonably practicable if there is a change in circumstances such that the information provided by the Applicant in response to the PQQ may no longer be deemed to be true and accurate in its entirety.

A change in circumstances includes the occurrence of any of the following:

- any change to their group structure or the structure of the Applicant from that set out in their response to the PQQ. 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;
- a change in the number or identity of the Applicant's Guarantor(s);
- a change in the number or identity of persons the Applicant will rely on to operate the Franchise, or whose resources the Applicant will use to operate the Franchise, or which use the same resources which will be used to operate the Franchise;
- any changes to the information provided to the Authority as part of this pre-qualification process; or
- any other changes to their circumstances, or the basis of their response to the PQQ, which may be expected to influence the Authority's decision on the suitability of the Applicant to be the Franchisee.

Any such notification shall provide full details of the change or proposed change, including final form copies of the documentation required to put such change into effect.

Applicants should refer to the FLPA they have entered into for full details of their obligations in relation to informing the Authority if there has been a change in circumstances or a change to information provided. Failure by the Applicant to comply with these obligations may result in the Applicant's pre-qualification and/or bid being rejected and the Applicant being excluded at this or any future stage of the franchise letting process when the changes become apparent.

The Authority reserves the right to approve or reject an Applicant's bid in light of such changes or proposed changes or to impose such conditions as it considers appropriate in order for the Applicant to continue to participate in the competition. The Authority further reserves the right to exclude an Applicant from further participation in the competition where the Authority rejects any such changes.

Applicants should also take note of paragraph 5.5 of this PPD in relation to validation of PQQ responses.

### **3.11 Changes to Applicant**

Applicants which are joint ventures or consortia may wish to qualify to receive an ITT. In these circumstances, the Authority requires details of the proposed arrangements in order to assess their robustness.

It may not be possible for the Authority to accept bids from joint ventures or consortia arrangements that are materially different (including as to ownership, management or funding) from those that it qualifies to receive an ITT.

The Authority reserves the right to approve or reject any bid in light of any proposed changes.

The Authority 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.

### **3.12 Clarification Questions**

During the PQQ response period the following Clarification Question (**CQ**) process will be in place, allowing Applicants to clarify what is required at each stage:

- a) Each Applicant should select one person for co-ordination of its CQ process.
- b) CQs must only be submitted via the secure messaging feature in the Authority's franchising e-sourcing portal using the subject heading provided and where possible referencing the specific paragraph or section of the PQQ to which the CQ relates. Only one question may be submitted per CQ. The Authority reserves the right to reject a CQ containing multiple questions.
- c) In general CQs, and the responses to CQs, will be shared with all other Applicants which have received a copy of the PQQ Pack via the franchising e-sourcing portal. However, where an Applicant indicates that a CQ, or its response, should not be shared with all other Applicants (with supporting reasoning) and the Authority agrees in its absolute discretion, the Authority will treat the CQ as confidential and will respond only to the Applicant who submitted the CQ. Conversely if the Authority considers that the CQ, and the response to the CQ, can be shared with all other Applicants, it shall notify the relevant Applicant that the CQ will not be progressed and will be closed. In that case, the Applicant may (i) revise the question and its reasoning as to why the CQ and the response to the CQ should not be shared with all other Applicants – which the Authority will consider; (ii) revise the CQ and submit it as a CQ which can, along with the response, be shared with all other Applicants; or (iii) decide not to pursue a CQ on the topic.

- d) Any CQ that the Authority receives and subsequently issues to other Applicants will not identify the originator of the CQ.
- e) The Authority will use reasonable endeavours to respond to CQs on a timely basis. Applicants should note that the Authority may not be able to respond to CQs received after 17:00 British Summer Time (**BST**) on Thursday 10<sup>th</sup> July 2014.
- f) The Authority reserves the right to reject a CQ where to respond to the CQ would involve prejudging the Authority's evaluation of any Applicant's PQQ submission.
- g) A bulletin of CQs, and the Authority's responses, will be published on the Authority's e-tendering system.

### **3.13 Transparency and Freedom of Information**

All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement - including ensuring value for money and related aspects of good procurement practice. For these purposes, the Authority may disclose within Government any of the Applicant's documentation/information (including any that the Applicant considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Applicant to the Authority during this franchise letting process. The information will not be disclosed outside of Government. Government Departments may share bid and contract information for the purposes of good procurement practice and value for money. Applicants taking part in this franchise competition consent to these terms as part of the franchise letting process.

The Freedom of Information Act 2000 (the "**FOIA**") provides a general right of access to all information held by public authorities. The Authority is a public authority to which the FOIA applies. The general right of access to information is then limited by a number of exemptions. When someone requests information under FOIA, the authority must normally release that information unless one of the exemptions in the FOIA applies. This is also the case if the data is environmental information covered by the Environmental Information Regulations 2004 ("**EIR**").

In submitting a response to the PQQ, Applicants are invited to identify which parts, if any, of their response are provided to the Authority in confidence or are commercially sensitive, such that they may be exempt from disclosure under FOIA and/or EIR. Applicants should provide reasons why such information should not be disclosed in response to any request and an estimate of the period of time during which the Applicants believe that such information will remain exempt from disclosure.



Applicants should note that, even where information is identified as commercially sensitive or confidential, the Authority may be required to disclose such information in accordance with the FOIA and/or EIR. The Authority is required to form an independent judgment concerning whether the information is exempt from disclosure under the FOIA and/or EIR at the time of request. In particular Applicants should be aware of the Code of Practice issued by the Secretary of State for Constitutional Affairs under section 45 of the FOIA: which limits the circumstances under which a public authority should agree to hold information in confidence. It could be the case, therefore, notwithstanding notification by Applicants that parts of a bid have been provided in confidence or are commercially sensitive, that the Authority will be obliged to disclose those parts.

Applicants should note that the Authority will place a copy of the PQQ Pack in the public domain at the same time as it is supplied to Applicants.

Applicants' attention is drawn to the relevant provisions of the Franchise Letting Process Agreement, which permits in certain circumstances disclosure of information by the Authority, as well as the provisions of section 145(2) of the Railways Act 1993.

Applicants' attention is also drawn to the pre-existing provisions of the Franchise Agreement that state that the Authority may make certain information disclosures, and may also publish information.

The Department complies with the central government transparency agenda programme, details of which can be found at <http://www.dft.gov.uk/publications/dft-transport-sector-transparency-board> and Cabinet Office guidance on this <https://update.cabinetoffice.gov.uk/resource-library/guidance-transparency> in relation to procurement and contracts.

# 4. Completing the Pre-Qualification Questionnaire

## 4.1 Registration

Applicants are required to register their expression of interest to receive a PQQ and gain access to the franchising procurement portal by emailing [northern@dft.gsi.gov.uk](mailto:northern@dft.gsi.gov.uk).

Applicants are required to sign the FLPA and upload this agreement to the franchising e-sourcing portal prior to being granted access to the online PQQ and clarification facility.

The Authority will countersign the FLPA and return a copy, via the franchising e-sourcing portal, to the Applicant. The franchising e-sourcing portal enables access to seven editable Word templates for the seven sections of the PQQ, plus a pdf Declarations and Authorisation document. Instructions for uploading the completed documents are at paragraph 4.4 below.

## 4.2 Structure of the PQQ

The PQQ sets out the information which is required by the Authority in order to assess the suitability of Applicants to receive an ITT in accordance with the evaluation criteria contained in section 5 of this document.

The PQQ comprises the following sections:

Part A – Organisational Information
Part B – Mandatory Grounds for Rejection
Part C – Discretionary Grounds for Rejection
Part D – Health and Safety Management and Culture
Part E – Economic and Financial Standing
Part F – Technical and Professional Ability
Part G – Past Performance
Declaration

## 4.3 Response Instructions

The following conditions shall apply to the submission of responses to the PQQ:

- a) An Applicant should answer every question and ensure that they complete the PQQ as requested. Failure to do so may result in an Applicant's application being deemed non-compliant, with the result that

they are excluded from further participation in the Northern franchise letting process.

- b) Where a question cannot be answered fully, an Applicant should provide a relevant explanation with reasons. If the question does not apply to it, an Applicant should write 'Not Applicable'.
- c) Where an Applicant has submitted supporting information in response to a question in the PQQ, the relevant response must refer to the supporting information. Similarly any supporting information required for the PQQ response must indicate the part and question number of the PQQ to which it refers.
- d) Except where required under Part G of the PQQ, cross referencing to other Parts of the PQQ, including Part F, will not be permissible. . For the avoidance of doubt, cross referencing is permissible between sub section questions e.g. F1.1 information can be cross referenced when answering question F1.2, but not when cross referencing questions F2.1 or F6. Any cross referenced information that is incorrectly referenced may not be taken into account in the evaluation.
- e) All responses must be in English. This requirement does not apply to any requested information which has not been created for the pre-qualification process (e.g. company financial reports), but a translation into English must be provided for any requested information submitted in a language other than English.
- f) All financial information supplied as part of the pre-qualification process must be clearly denominated in Pounds Sterling. This requirement does not apply to any requested information which has not been created for the pre-qualification process (e.g. company financial reports), which should use the original currency. Where financial information is supplied as part of the pre-qualification process in a currency other than Pounds Sterling, and the Authority wishes to convert the relevant information into Pounds Sterling, it shall use the applicable exchange rate published in the Financial Times on the day before the OJEU Notice is published.
- g) If specific project financial information cannot be provided for reasons of confidentiality, Applicants should state this.
- h) The response to the Technical and Professional Ability section (Part F of the PQQ) must not exceed 60 sides of A4, and the responses to the Health and Safety Management and Culture section (Part D of the PQQ) must not exceed 10 sides of A4, with the exception of any policy statement requested in either of those parts, which will not be counted towards the page limit. Parts A, B, C, E and G of the PQQ and any CQs and Authority Question (**AQ**) responses shall not count towards either page limit. Any material included in the submission beyond the required page count will not be considered.

- i) The Authority expects the information supplied in responses to the PQQ to be concise and unambiguous.
- j) The font size must be 11pt minimum, font type must be Arial standard (i.e. not 'narrow') and the line spacing must be 13pt minimum. Pages must be bordered on all sides by 2cm margins. Minimum font size for any text in tables must be 10 pt. It will not be acceptable to place large sections of text into tabulated format as a means of meeting the page limit requirements.
- k) The Authority reserves the right to clarify elements of PQQ responses with the relevant Applicant by means of an AQ. The Applicants will be required to respond to any AQ within three working days, which may be extended by the Authority where the Authority considers it appropriate and reasonable to do so.
- l) Failure to comply with any of the conditions or requirements set out in the PQQ and PDD may, at the Authority's discretion, result in the Applicant being excluded from the competition.
- m) The Authority expressly reserves the right to require an Applicant to provide additional information supplementing or clarifying any of the information provided in response to the PQQ.
- n) Where the Authority considers either that:
  - certain information has, by mistake, not been provided by an Applicant; or
  - that there are potentially unintentional errors in information that has been provided,

then the Authority reserves the right to clarify these issues with the Applicant and to allow such applicant to correct such errors or amplify their response, as necessary, before evaluating the Applicant's bid.

#### **4.4 Uploading responses via the e-portal**

The Applicant must download the electronic Word version of the PQQ from the franchising e-sourcing portal for completion. Preparation for uploading and submission must be carried out as follows:

- Parts A, B, C, D, E, F and G of the PQQ must be completed as separate documents and converted to individual searchable pdfs and read-only status Word documents, each of which must then be uploaded via the portal.
- The Declarations and Authorisations section, which require authorising signatures, must be signed by hand (not electronically) and the document scanned to JPEG or pdf format, which must then be uploaded via the portal.

Applicants must upload a fully completed response together with the required supporting information using the Authority's Rail Franchising e-sourcing portal by 17:00 British Summer Time (**BST**) on Thursday 17<sup>th</sup> July 2014. No documents or information other than the PQQ response and the required supporting information should be submitted. Only in exceptional circumstances will the Authority consider accepting a response beyond this deadline.

Potential Applicants who have considered the opportunity and opted not to submit a response are requested to provide an acknowledgement, and optionally provide reasons for deciding not to respond, to [northern@dft.gsi.gov.uk](mailto:northern@dft.gsi.gov.uk).

#### **4.5 Guidance on specific parts of the PQQ**

In addition to the guidance below, please also see section 5 of this PPD for further detailed guidance in relation to the evaluation method for each part of the PQQ.

##### ***Part A – Organisation and Contact Details***

- Applicants that are unincorporated joint ventures or consortiums should provide the information requested in Part A (except Part A.2) for each member of that unincorporated joint venture consortium.
- Applicants that are not yet incorporated, or part of a corporate group structure, should provide an organisation chart depicting their current structure for the purposes of A4.1 and respond as fully as possible based on their proposed structure for the purposes of A4.3.
- If your organisation 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, please indicate your preferred lot by entering a '1' in the box of your preferred lot, and a '0' in the box of your non-preferred lot where indicated in the PQQ. **Should your organisation qualify for both shortlists, your place on the non-preferred shortlist will be offered to the next highest placed Applicant, subject to them meeting the threshold set out in Section 5.4. This selection is irrevocable and must be made as part of the submission of your PQQs. It will not be possible to change your selection once the identity of the other bidders for either lot are known.**
- If you are happy to be shortlisted for both lots then please leave this box blank on both of your PQQ Documents. Please note that should your organisation be shortlisted for both lots, the Authority would expect your organisation to take full part in both competitions.

##### ***Part B – Grounds for Mandatory Rejection***

No further guidance.

##### ***Part C – Grounds for Discretionary Rejection***

### *Conflicts of Interest*

- The Authority must be satisfied that the manner in which the Applicant proposes to address any actual or potential conflicts is appropriate and effective in the circumstances, and the Authority is entitled to exclude the Applicant from consideration if it is not so satisfied.

### *Tax Compliance*

- Both the GAAR and the “Halifax” abuse principle are, as their names indicate, aimed at abusive tax schemes. These are schemes which involve contrived or abnormal transactions which serve no purpose other than to achieve a tax saving. The tax saving is also one that is contrary to the intentions of Parliament in relation to the legislation. The Halifax abuse principle relates to a CJEU case involving Halifax. Broadly, the CJEU ruled that whilst the tax authority can’t consider the motives of taxpayers when considering whether or not a transaction is structured primarily to avoid tax, if there is no commercial substance to the relevant transaction(s) that will, prima facie, be abuse.
- The DOTAS rules apply to transactions which contain certain "hallmarks" where one of the main aims is to achieve a tax saving. The aim of the DOTAS regime is to provide HMRC with information on new schemes as they arise and on the users of those schemes. By their nature, the DOTAS rules can capture transactions which, while partly motivated by a tax saving, may still be regarded as acceptable by HMRC. An OONC only arises when a DOTAS scheme is shown to have failed and this will typically cover a wider range of scenarios than the GAAR or “Halifax” abuse principle. “Shown to have failed” will generally mean that the taxpayer has accepted the arrangement does not achieve the tax saving anticipated and this may be shown by his amending the return; accepting a tax assessment; or failing in litigation and not appealing any further.
- If the Applicant, or any of the other entities or individuals referred to in section C.3, is a Non-UK entity or individual, or has international tax obligations, the Applicant should respond in relation to the equivalent foreign tax rules.
- If any of the circumstances under C.3 of the PQQ apply to the Applicant, or any of the other entities or individuals referred to in section C.3, the Applicant should provide details including mitigating factors where there has been an OONC. This may include:
  - A brief description of the occasion, the tax to which it applied, and the type of “non-compliance” e.g. whether HMRC or the foreign tax authority has challenged pursuant to the GAAR, the “Halifax” abuse principle etc.
  - Where the OONC relates to a DOTAS, the number of the relevant scheme.

- The date of the original “non-compliance” and the date of any judgement against the Applicant, or relevant entity or individual, or date when the return was amended.
- The level of any penalty or criminal conviction applied.
- The Authority will have regard to Cabinet Office guidance when assessing whether mitigating factors are adequate and appropriate, and may take advice on such factors from the Cabinet Office and/or HMRC.

***Part D – Health and Safety Management and Culture***

- The Applicant should provide all of the information requested for each question including the information requested in the sub-text of each question.
- Marks will be allocated to the Applicant’s response to each question as a whole, rather than by reference to each element of a question’s sub-text. Please see the table relating to Part D in paragraph 5.2 of this PPD for further detailed guidance in relation to the evaluation method for this part.
- Where the Applicant is relying on the experience and expertise of a key sub-contractor to respond to the questions in Part D of the PQQ, the Applicant should use examples provided by the relevant key sub-contractor. Examples provided in response to Part D of the PQQ will be scored on the same basis whether provided by a key sub-contractor, a member of a joint venture or consortium or an Applicant.

***Part E – Economic and Financial Standing***

No further guidance.

***Part F – Technical and Professional Ability***

- The Applicant should provide all of the information requested for each question including the information requested in the sub-section of each question.
- Marks will be allocated to the Applicant’s response to each question as a whole so Applicants should aim to provide responses which deal with all the elements of a question’s sub-text. This can be achieved by providing one example per question which covers all sub-text elements or by providing a series of examples each of which cover one or more of a question’s sub-text elements.

Please see the table relating to Part F in paragraphs 5.2 and 5.3 of this PPD for further detailed guidance in relation to the evaluation method for this part.

In providing examples of capability, competence and past experience, Applicants should state whether the work was undertaken by the

Applicant or another person the Applicant will rely on to operate the Franchise. If the Applicant is a joint venture or consortium, the Applicant should indicate which member of the joint venture or consortium undertook the work, and if any of the work was undertaken jointly by the members of the joint venture or consortium. In all cases the Applicant should make clear, when providing examples of capability, competence and past experience, the role of the relevant person(s) in undertaking the work, whether they had management control over the work, and, where possible, which specific elements of the work they undertook.

- Where the Applicant is relying on the experience and expertise of a key sub-contractor to respond to the questions in Part F of the PQQ, the Applicant should use examples provided by the relevant key sub-contractor. Examples provided in response to Part F of the PQQ will be scored on the same basis whether provided by a key sub-contractor, a member of a joint venture or consortium or an Applicant

***Part G – Part Performance***

- Where the Applicant is relying on the experience and expertise of a key sub-contractor to respond to the questions in Part F of the PQQ, the Applicant should provide information in relation to the relevant key sub-contractor when responding to Part G of the PQQ. Information provided in response to Part G of the PQQ will be taken into consideration on the same basis whether provided by a key sub-contractor, a member of a joint venture or consortium or an Applicant.



# 5. PQQ Evaluation Process

## 5.1 Objectives

The objectives of the PQQ evaluation process are:

- To evaluate PQQ responses in accordance with the criteria set out in this PPD;
- To provide a robust and objective means for ranking PQQ submissions; and
- To enable selection of the required number of Bidders to proceed to the ITT stage.

## 5.2 Evaluation Scoring and Marking Scheme

The table below provides an overview of the evaluation methodology that the Authority will apply to each section of the PQQ response.

Evaluation Criteria and Weightings			
Evaluation Section		Evaluation Score and Weighting	Evaluation Method
Part A	Organisation and Contact Details	Not Scored	Information provided will be reviewed but will not be scored or assessed other than for completeness
Part B	Grounds for Mandatory Rejection	Pass / Fail	Information provided will be reviewed and assessed and a fail will automatically exclude the Applicants from further participation in the franchise letting process
Part C	Grounds for Discretionary Rejection	Discretionary Pass / Fail	Information provided will be reviewed and the Authority will use its discretion to determine whether the response is a pass or a fail. A fail will result in the Applicant being excluded from further participation in the franchise letting process
Part D	Health and Safety Management and Culture	Pass / Fail (Fail where score is less than 50%) and scores are 10% weighted	Information provided in response to each question will be reviewed and evaluated against the ratings in Table 1 below and assigned one of the corresponding scores as shown below (i.e. exact scores of 0, 25, 50, 75 or 100 assigned per question – intermediate scores

			are not permitted). Scores will be weighted using the question weightings below to give the total score for this part.
Part E	Economic and Financial Standing	Pass / Fail	Information provided will be reviewed and assessed and a fail will automatically exclude the Applicant from further participation in the franchise letting process.
Part F	Technical and Professional Ability	40% pass mark, and scores are 90% weighted	Information provided in response to each question will be reviewed and evaluated against the ratings in Table 2 below and assigned one of the corresponding scores as shown below (i.e. exact scores of 0, 20, 40, 60, 80 or 100 only can be assigned – intermediate scores are not permitted). Scores will be weighted using the question weightings below to give the total score for this part.
Part G	Past Performance	Adjustments to Part F score	Information provided will be reviewed and the Authority will use its discretion to determine whether the information provided by the Applicant requires the score in Part F to be marked down

In the event that an Applicant is marked ‘fail’ for any part of the Pass/Fail criteria the Applicant will not be considered any further in the selection process and marking of other parts of that Applicant’s response to the PQQ will cease.

**Table 1 – Health and Safety Management and Culture marking scheme**

Responses to Part D questions will be evaluated in accordance with the following marking scheme. The marking characteristic will be used to assess the response to the question in full including the sub-text of the question.

Marks	Characteristics
100	<ul style="list-style-type: none"> <li>Evidence of ensuring and improving health and safety, supported by a comprehensive programme of health and safety education which exceeds the applicable requirements</li> <li>Demonstrates the capability to operate safely, fully supported by transferable health and safety management systems and very positive health and safety performance trends</li> </ul>

	<ul style="list-style-type: none"> <li>• Demonstrates an excellent health and safety culture throughout the organisation, supported by industry recognition of achievements</li> <li>• Demonstrates a fully developed strategy for identifying, managing and mitigating health and safety risks</li> </ul>
<b>75</b>	<ul style="list-style-type: none"> <li>• Evidence of ensuring health and safety, supported by a programme of health and safety education which exceeds the applicable requirements</li> <li>• Demonstrates the capability to operate safely, appropriately supported by transferable health and safety management systems and positive health and safety performance trends</li> <li>• Demonstrates a pro-active health and safety culture throughout the organisation, supported by evidence of achievements</li> <li>• Demonstrates a strategy for identifying, managing and mitigating health and safety risks</li> </ul>
<b>50</b>	<ul style="list-style-type: none"> <li>• Evidence of ensuring health and safety, supported by health and safety education which meets the applicable requirements without material concerns.</li> <li>• Demonstrates the capability to operate safely, appropriately supported by transferable health and safety management systems and adequate health and safety performance trends</li> <li>• Demonstrates a pro-active health and safety culture throughout the organisation</li> <li>• Demonstrates processes for identifying, managing and mitigating health and safety risks</li> </ul>
<b>25</b>	<ul style="list-style-type: none"> <li>• Provides evidence of ensuring health and safety but the Authority has material concerns</li> <li>• Demonstrates some capability to operate safely, partially supported by transferable health and safety management systems, and/or the Authority has material concerns with the approach described</li> <li>• Demonstrates a culture of health and safety awareness through some of the organisation, and/or the Authority has material concerns with the approach described</li> <li>• Demonstrates processes for identifying, managing and mitigating some health and safety risks, and/or the Authority has material concerns with the approach described</li> </ul>
<b>0</b>	<ul style="list-style-type: none"> <li>• Fails to provide evidence of ensuring health and safety or provides some evidence of ensuring health and safety but the Authority has fundamental concerns</li> <li>• Fails to demonstrate the capability to operate safely, or partially demonstrates the capability to operate safely but the Authority has major concerns</li> <li>• Fails to demonstrate a culture of health and safety awareness or partially demonstrates a culture of health and safety awareness but the Authority has major concerns</li> <li>• Fails to demonstrate processes for identifying, managing and mitigating health and safety risks or partially describes processes for identifying, managing and mitigating health and</li> </ul>

	safety risks, but the Authority has major concerns with the approach described
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**Table 2 - Technical and professional ability marking scheme**

Part F questions will be scored against the assessment criteria below. The marking characteristic will be used to assess the response to the question in full including the sub-text of the question.

<b>Marks</b>	<b>Characteristics</b>
<b>100</b>	Evidence submitted shows the ability to deliver, very strongly supported by relevant and transferable past experience and achievements
<b>80</b>	Evidence submitted shows the ability to deliver, supported by relevant and transferable past experience and achievements
<b>60</b>	Evidence submitted shows the ability to deliver in most areas, but the Authority has concerns in a few areas, about the relevance and transferability of past experience and achievements and/or about the approach described
<b>40</b>	Evidence submitted shows the ability to deliver in some areas, but the Authority has concerns in some areas, about the relevance and transferability of past experience and achievements and/or about the approach described
<b>20</b>	Evidence submitted shows the ability to deliver in a few areas, but the Authority has concerns in most areas, about the relevance and transferability of past experience and achievements and/or about the approach described
<b>0</b>	Evidence submitted does not show the ability to deliver

### **5.3 Evaluation Methodology – Stages, Criteria and Weightings**

The Authority may exclude an Applicant from the franchise letting process in the event that they provide inaccurate information in responding to the PQQ, or in response to any other request for information by the Authority, or they fail to provide any such information. Where the Authority considers either that certain information has, by mistake, not been provided by an Applicant or that there are potentially unintentional errors in information that has been provided, then the Authority reserves the right to clarify these issues with the Applicant and to

allow such applicant to correct such errors or amplify their response, as necessary, before evaluating the Applicant's bid

#### General Compliance Check

The Authority checks whether the Applicant has submitted the required information for Parts A – G of the PQQ on time and the response is fully complete in accordance with the PQQ return checklist.

#### Part B – Grounds for Mandatory Rejection

This section is scored pass/fail. If an Applicant has provided an unequivocal 'no' to all of the questions contained in B1 this will be marked as a 'pass'.

If an Applicant has failed to provide an unequivocal 'no' to any of the questions contained in B1 it will be automatically marked 'fail'.

Notwithstanding this, in any case where the Applicant (including, where the Applicant is a joint venture or consortium, any of the members of that joint venture or consortium), or any other person (including any director or partner) who has powers of representation or decision in relation to the Applicant (including, where the Applicant is a joint venture or consortium, any of the members of that joint venture or consortium) has been convicted of an offence set out in Part B of the PQQ, the Authority reserves the right not to disqualify the Applicant if it is satisfied that there are overriding requirements in the general interest which justify not disqualifying the Applicant.

#### Part C Grounds for Discretionary Rejection

This section is scored discretionary pass/fail.

If an Applicant has provided an unequivocal 'no' to all of the questions in Part C of the PQQ this will be marked as a 'pass'.

If an Applicant has failed to provide an unequivocal 'no' to any of the questions in Part C of the PQQ it may still be evaluated as a 'pass' if the Applicant has provided supporting information which demonstrates to the satisfaction of the Authority that there are mitigating circumstances/actions which would mean that any such issues are unlikely to have a material effect on the Applicant's ability and/or suitability to take on the Franchise.

#### Part D Health and Safety Management and Culture

Responses to Part D of the PQQ will be used to undertake an assessment of an Applicant's health and safety record, arrangements, capability and culture. The Authority will exclude an Applicant from consideration if they fail to score a minimum of 50 % of the available marks for questions in Part D.

For Applicants which are not excluded on either of these bases, 10% of all the marks available in the PQQ are awarded according to the marks scored by an

Applicant in Part D of the PQQ. Applicants will be scored using the marking scheme in Table 1 above.

Health and Safety Management and Culture		
Question	Question Weighting	Section Weighting
D1.1	3%	10%
D1.2	4%	
D1.3	3%	

## Part E Financial and Economic Standing

### **Financial and credit rating tests**

Part E of the PQQ checks Applicants have an appropriate financial and economic standing. The Authority will evaluate the financial standing of the Guarantor(s), by undertaking a number of tests as described below. A response will be marked 'pass' providing that the following criteria are met:

- The Guarantor(s) is clearly identified;
- An appropriately authorised representative of the Guarantor(s) has signed the Declaration in the PQQ;
- The Guarantor(s) passes (if more than one, each of the Guarantors must pass) at least three out of the four tests (to pass test 2, the Guarantor(s) must pass both parts a) and b)) for the most recent year in the audited accounts; and
- The Guarantor(s)' audited accounts are not subject to any qualification which, in the sole discretion of the Authority, is material.

If the Applicant is unable to procure that the Guarantor(s) (if more than one, each of the Guarantors) meets these criteria, and is unable to arrange 100% bonding (see below), it will be marked 'fail' and excluded from the Northern franchise letting process.

Each Applicant should satisfy itself that the Guarantor(s) meets (if more than one, each of the Guarantors meet) at least three out of the four tests below. Where applicable, the Guarantor(s)' ratio tests will be based on the consolidated financial statements of the Guarantor(s)' group.

#### 1) Credit rating

This must be investment grade or higher (equal to BBB-or above for Fitch and Standard & Poor or equal to Baa3 or above for Moody's)

2 a) Earnings before tax, interest, depreciation and amortisation divided by interest cost

This ratio must exceed 3.0.

2 b) Net debt divided by Earnings before tax, interest, depreciation and amortisation

This ratio must be less than 4.0.

3) Total net assets divided by the Guarantee (estimated as a minimum of £40 million at the PQQ stage, to be replaced by the actual Guarantee required by the bid at ITT)

This ratio must exceed 2.0.

4) Earnings before tax, interest, depreciation and amortisation divided by the Guarantee (estimated as a minimum of £40 million at the PQQ stage, to be replaced by the actual Guarantee required by the bid at ITT)

This ratio must exceed 1.0.

### **Definitions to be used in the financial tests**

The ratios should be based on numbers included in the audited statutory accounts prepared following Generally Accepted Accounting Practices.

**Earnings Before Interest, Tax, Depreciation and Amortisation:** Accounting profit before taxation for the relevant 12 months adding back net interest and depreciation of tangible assets and amortisation of intangible assets charged in the 12 months and excluding the profit or loss relating to Joint Ventures and associates and gains or losses in relation to disposal of fixed assets, investments and / or businesses in the relevant 12 months.

**Interest Cost:** Gross interest expense paid or payable in the relevant 12 months as a result of borrowings of the business for whatever reason. This amount should not be offset by interest income.

**Net Debt:** Total of financial liabilities including leasing liabilities less cash or cash equivalents.

**Total Assets:** The total of non-current and current assets recognised in the balance sheet of the accounts.

**Total Net Assets:** Total assets minus total liabilities

**Total Liabilities:** All amounts which the entity is obliged to settle at some point after the balance sheet date plus any provisions and other amounts identified and set aside to meet contingencies, recognised in the balance sheet of the accounts.

## **Application of the financial tests**

The Authority will work with its financial advisers to calculate the results of the financial tests for the Guarantor(s), using the definitions above and the information provided in the Guarantor(s)' financial accounts. Where the Authority is not satisfied with the information provided by the Guarantor(s), further clarification may be sought.

When the Authority conducts the financial ratio tests it will exclude exceptional items, as defined in Financial Reporting Standard 3: Reporting Financial Performance ("**FRS3**"), recorded in the audited financial statements of the Guarantor(s). Where a Guarantor(s)' financial statements are prepared under accounting standards which do not require or permit the reporting of exceptional items, the Guarantor(s) should declare any items (revenue or cost) which would be disclosed as exceptional items, should FRS3 have been applicable. The Authority will work with its financial advisers to determine whether each such item declared falls to be treated as an exceptional item under FRS3. Each item which the Authority and its financial advisers consider should properly be treated as an exceptional item will be excluded from the financial ratio tests. Where Guarantor(s) issue updated financial information following the Applicant's response to the PQQ and prior to contract award, it should identify, consistent with the instructions above, any exceptional items included in such updated information.

The Authority reserves the right to take into account a material event (as disclosed under E1.3 of the PQQ) that occurs subsequent to the issue of the most recent audited accounts by recalculating the relevant ratios after allowing for the event.

If audited annual accounts or credit rating updates are issued during the franchise letting process then the Authority may recalculate the results of the tests using the updated information.

The Authority will explain to the Applicant the manner in which it has calculated the results of the financial tests for the Guarantor(s) (whether these result in a pass or fail), and will provide the Applicant with a reasonable opportunity to comment on the Authority's calculations before the Authority announces the Applicants which have pre-qualified for the Northern franchise letting process. As a result of comments received from Applicants, the Authority may revise its calculations of the results of the financial tests for the Guarantor(s), so that these are changed from fail to pass, or vice versa.

If fewer than 3 Applicants (which are not otherwise excluded from the Northern franchise letting process) pass Part E of the PQQ, to ensure there is adequate competition pre-qualifying for the ITT stage, the pass threshold for each of the ratio tests will be adjusted, to the extent permissible under Section 26(3) of the Railways Act, by an equal percentage for all such Applicants until at least 3 such Applicants pass Part E of the PQQ.



## **Bonding**

As an alternative to meeting the required scores for the financial and credit rating tests, the Applicant can secure 100% bonding for the whole value of the Guarantee, as set out in section E1.5 of the PQQ.

Where the Authority indicates to an Applicant that it has calculated any Guarantor(s)' scores in the financial tests as resulting in a fail, the Applicant will be given a reasonable opportunity to secure 100% bonding under section E1.5 of the PQQ, so that it may nevertheless pre-qualify for the Northern franchise letting process. Where the Applicant is seeking to proceed with a single Guarantor, the 100% bonding must accordingly cover the whole value of the Guarantee. Where an Applicant is seeking to proceed with multiple Guarantors, the 100% bonding must cover the share of the Guarantee which was to be met by the Guarantor(s) unable to meet the required scores for the financial and credit rating tests.

Where the Applicant pre-qualifies for the Northern franchise letting process by securing 100% bonding as described above, it may subsequently opt, at any time prior to contract award, to demonstrate to the Authority that the Guarantor(s) is able to meet the required scores for the financial and credit rating tests. Where the Authority agrees that the Guarantor(s) is able to meet the required scores for the financial and credit rating tests, the Applicant will no longer be required to secure 100% bonding.

Applicants should note that, where the Guarantor(s) can meet three or four out of the four financial tests (and the Applicant does not propose to secure 100% bonding in accordance with section E1.5 of the PQQ), they will in any event be required to provide a letter from a bond provider stating that the provider intends to provide bonding for 50% of the whole value of the Guarantee (i.e. minimum £20million, in accordance with section E1.6 of the PQQ). Where an Applicant is seeking to proceed with multiple Guarantors, a Guarantor which can meet three or four out of the four financial tests will be required to provide a letter of intent under section E1.6 of the PQQ in respect of bonding for 50% of the portion of the Guarantee the Guarantor is providing.

To provide an example of how these bonding requirements apply to an Applicant seeking to proceed with multiple Guarantors (based on the minimum Guarantee amount of £40 million) –

- An Applicant has 2 Guarantors, Guarantor A is providing 80% of the value of the Guarantee (£32 million) and Guarantor B is providing 20% of the value of the Guarantee (£8 million).
- Guarantor A passes the financial tests, and accordingly provides a letter of intent under section E1.6 of the PQQ in respect of bonding for 50% of its portion of the Guarantee (£16 million)
- Guarantor B fails the financial tests, and accordingly provides a letter of intent under section E1.5 of the PQQ in respect of bonding for 100% of its portion of the Guarantee (£8 million)

- The total bonding required for Guarantors A and B is therefore £24 million, with the remaining £16 million of the Guarantee being un-bonded.

An Applicant must use only one bond provider to provide the bonding required for each Guarantor arising from the estimated minimum Guarantee of £40 million (the “**Initial Bonding Requirement**”). See further below under “Re-calculation upon receipt of tenders” in relation to the Additional Bonding Requirement.

Where an Applicant secures bonding under sections E1.5 or E1.6 of the PQQ, it is permissible for the Applicant to change (or, subject to the requirements set out below under “Re-calculation upon receipt of tenders”, increase the number of) its bond provider(s) at any point prior to contract award, provided that any bond provider the Applicant proposes to provide the bonding fulfils the requirements of sections E1.5 or E1.6 of the PQQ (as applicable).

### **Guarantor(s)**

An Applicant may seek to use one or more Guarantor(s) in order to provide the Guarantee, provided that the Applicant must not use two or more Guarantors which have the same Ultimate Controller. If an Applicant wishes to proceed with multiple Guarantors, it will need to specify what proportion of the Guarantee each Guarantor is providing, so that the Authority can apply the ratio tests to each Guarantor accordingly.

Each Guarantor will be severally liable only for that proportion of the Guarantee it is providing, and will not be jointly liable for the whole value of the Guarantee with any other Guarantor(s).

### **Re-calculation upon receipt of tenders**

The Authority will re-calculate the results of the financial tests once the Applicant’s tender has been submitted, both in light of the actual Guarantee required under the Funding Deed (as determined by the requirements set out in the ITT – see below), and to take account of any audited annual accounts or credit rating updates issued during the franchise letting process, or any material event disclosed under E1.3 of the PQQ.

If the Applicant is proposing to fulfil the Part E Financial and Economic Standing requirements by passing the financial tests, the Authority will take into account any comments received from the Applicant (as referred to above) when re-calculating the Guarantor(s)’ scores in these financial tests.

Where the Authority indicates to an Applicant that it has re-calculated the Guarantor(s)’ scores in the financial tests as resulting in a fail, the Applicant will be given a reasonable opportunity to secure 100% bonding under section E1.5 of the PQQ, so that it may nevertheless continue to pre-qualify for the Northern franchise letting process.

If the Guarantor(s) proposed by the Applicant is unable to pass the financial tests according to the Authority's re-calculations in light of the actual Guarantee required under the Funding Deed once the Applicant's tender has been submitted, and the Applicant is unable to arrange 100% bonding (see above), the Applicant will be excluded from the Northern franchise letting process.

The Applicant should note that the amount of the Guarantee which the bond provider(s) will be required to bond (under either or both of sections E1.5 and E1.6 of the PQQ) will need to reflect the actual Guarantee required under the Funding Deed once the Applicant's tender has been submitted.

The actual Guarantee required under the Funding Deed will be calculated as a percentage of the excess of franchise payments bid over a defined profile of payments set out in the ITT. This means that a Bidder will be in control of the value of the Guarantee required to support its bid. Accordingly, depending upon how a Bidder bids, the actual Guarantee required under the Funding Deed could be in excess of £40million.

To the extent that there is an increase in the amount required to be bonded for each Guarantor as a result of the actual Guarantee required under the Funding Deed being in excess of £40million (an "**Additional Bonding Requirement**"), Applicants may use more than one bond provider to provide this Additional Bonding Requirement. Applicants should note that, even though more than one bond provider may be used to provide the Additional Bonding Requirement, they must nevertheless continue to use only one bond provider to provide the Initial Bonding Requirement for each Guarantor.

Applicants should note that, if the Additional Bonding Requirement is provided by more than one bond provider, the Authority must not be restricted by any arrangements as between the relevant bond providers, the Guarantor(s) or the Applicant, as to the manner in which, or the order in which, the Authority calls upon the relevant bonding commitment(s) provided by any bond provider or bond providers.

The ITT will set out for all Bidders (a) what percentage of the value of the Guarantee must be bonded where the Guarantor(s) has passed the financial tests (subject to a maximum of 50%); and (b) the point at which a Bidder must secure a formal and binding commitment from its bond provider(s) to provide the relevant bonding required. Applicants should note that, regardless of the percentage of the value of the Guarantee which must be bonded in accordance with the ITT, at this stage in the process the Department requires a letter from a bond provider for an amount not less than £20 million. Applicants should note that the percentage of the value of the Guarantee which must be bonded in accordance with the ITT is expected to be a minimum of 33% to a maximum of 50%, unless the Guarantor(s) cannot pass at least three of the four financial tests, in which case 100% will be bonded.

Timetable of Bonding Requirements

Days (weekdays)	Actions
<b>Day 1</b>	Open submission.
<b>Day 5</b>	Financial Advisers to produce initial report on each submission. Standard report (Product 1) available to Applicants - start of open dialogue.
<b>Day 6</b>	Option given to Applicants to comment on the initial Financial Advisers' report and obtain 100% bonding, if required.
<b>Day 7</b>	Comments received from Applicants (midday). If Applicants have no comments, a nil response confirmation is still required.
<b>Day 9</b>	Financial Advisers to review Applicants' comments and respond. Applicants have 6-7 days from this day to obtain 100% bonding. Timescale extension is possible if Applicant can justify.
<b>Day 16</b>	Applicants to have obtained 100% bonding if required.
<b>Day 18</b>	Final day for Financial Advisers to conclude Applicants' position and conclude internal assurance.
<b>Day 19</b>	Final report submitted for preparation to the Consolidation meeting.
<b>Day 20</b>	Option to re-run the tests with an adjusted threshold – see PPD 5.3

Part F – Technical and Professional Ability		
<p>Part F of the PQQ checks Applicants' technical ability and experience. Applicants will be scored using the marking scheme in Table 2 above. All scores allocated to Part F may be adjusted following the assessment of Part G of the PQQ as described in the evaluation process for Part G below. The Authority will exclude an Applicant from consideration if, further to any such adjustment, they fail to score a minimum of 40% of the available marks in Part F. For Applicants which score 40% or more of the available marks in Part F, 90% of all the marks available in the PQQ are awarded according to the marks scored by an Applicant in Part F.</p> <p>Applicants will be scored against the assessment criteria and weighting below using the "Scored" marking scheme:</p>		
<b>Service Delivery</b>		
<b>Question</b>	<b>Question Weighting</b>	<b>Section Weighting</b>
F1.1	10%	25%
F1.2	8%	

F1.3	4%	
F1.4	3%	
Capability, Assets and Resources		
Question	Question Weighting	Section Weighting
F2.1	15%	20%
F2.2	5%	
Business and Market Growth		
Question	Question Weighting	Section Weighting
F3.1	6%	10%
F3.2	4%	
Customer Experience		
Question	Question Weighting	Section Weighting
F4.1	5%	10%
F4.2	5%	
Collaborative Relationships		
Question	Question Weighting	Section Weighting
F5.1	5%	20%
F5.2	5%	
F5.3	5%	
F5.4	5%	
Environment		
Question	Question Weighting	Section Weighting
F6.1	5%	5%

Part G – Past Performance
<p>Checks the past performance of Applicants.</p> <p>If the Applicant does provide details of any instances of material non-compliance et cetera in response to Part G of the PQQ, the Applicant will be required to indicate any measures taken both to mitigate the adverse consequences of any such issue(s), and to prevent such issues from recurring in the performance of the Franchise.</p> <p>The Applicant's response to Part G will be used when considering the scoring of any relevant evidence submitted under Part F of the PQQ, and subsequently any relevant scoring of Part F may be marked down to take into account the information provided. The Applicant's response to Part G will not be scored in its own right.</p> <p>The Authority will consider the following questions in determining whether and how to mark down an Applicant's score for Part F:</p>

- Does any information provided in response to Part G relating to poor past performance undermine the evidence provided by the Applicant in response to Part F?
- How severe is the poor past performance indicated in the information provided in response to Part G?
- Are the measures taken both to mitigate the adverse consequences of any such issue(s), and to prevent such issues from recurring in the performance of the Franchise, appropriate and effective in the circumstances?
- In light of the first three questions, and the marking schemes according to which the Applicant's responses to Part F have been marked, what (if any) are the appropriate and proportionate adjustments to make to the Applicant's score for Part F?

#### **5.4 Ranking and Short-listing**

Applicants that are not excluded from the Northern competition will be ranked according to their scores for Parts D and F of the PQQ. The scores for Part D of the PQQ, weighted 10%, and Part F of the PQQ, weighted 90%, (Part F scores taking into account any adjustments required under Part G of the PQQ), will be combined to give an Applicant's total score.

Subject to there being sufficient Applicants that are not otherwise excluded, the Authority intends to invite a maximum of 4 Bidders to submit bids. The Authority will invite bids from the top 3 ranked Applicants. The Authority will also invite a bid from the 4th ranked Applicant if that Applicant falls within 5 percentage points of the 3rd ranked Applicant.

#### **5.5 Validating PQQ Response and subsequent exclusion from franchise letting process**

The Authority reserves the right to validate the Applicant's response to the PQQ at any time in the franchise letting process, to confirm that the response has not materially changed. In particular, the Authority will repeat the tests set out in Part E of the PQQ during the ITT stage and contract award stage. If the Authority considers that the Applicant's response has materially changed, with the effect that the Applicant no longer pre-qualifies to participate in the ITT, the Authority may exclude the Applicant from further participation in the franchise letting process.