



Department
for Transport

Rail Executive

Rail Franchising

East Anglia

OJEU Notice

Rail Franchising Programme

East Anglia

Official Journal of the European Union (OJEU) Notice
February 2015

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The following OJEU was sent on 19 February 2015 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,

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:

East Anglia Rail Franchise

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

SERVICES

Service Category: []

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 applicant to operate the East Anglia rail passenger franchise. Expressions of interest are now being sought from the market for this franchise. Parties which are successful at being shortlisted for this franchise will receive the Invitation to Tender (ITT) for the franchise. It is expected that this will be issued in August 2015 and that the deadline for the submission of tenders will be in December 2015. It is anticipated that the contract will commence in October 2016. The successful applicant for the franchise will be required to enter into a standard form franchise agreement amended as necessary to deal with the specific circumstances of this franchise.

The Anglia route covers a large area with densely populated areas at its southern end, regional hubs at its centre and sparsely populated rural communities in the north.

The main markets are commuter travel to London, in particular to the City and the Docklands, and leisure travel to Stansted Airport, the Westfield shopping centre in Stratford, and the coastal resorts of Sheringham, Cromer, Great Yarmouth, Lowestoft, Felixstowe, Walton-on-the-Naze, Clacton-on-Sea and Southend-on-Sea.

The railway tends to be the first choice for commuters especially on the suburban network, which experiences strong patronage in the peak. The regional hubs of Cambridge, Ipswich and Norwich serve large and growing business markets as well as feeding commuters into London.

The route also caters for the growing international markets with stations at Stansted and Southend airports and at Harwich International to connect into ferries from Harwich International Port.

The passenger services can generally be broken down into five distinct groups:

- Great Eastern Main Line services –these are the long distance intercity services between London and Norwich.
- Great Eastern and West Anglia services –routes include Braintree, Cambridge, Colchester, Ipswich and Harwich as well as the coastal resorts of Southend-on-Sea, Clacton-on-Sea and Walton-on-the-Naze.
- Stansted Express – direct airport services.
- Interurban services – Stansted Airport, Cambridge, Ipswich and Norwich with connections to the Midlands and North of England at Peterborough.
- Rural services –Suffolk and Norfolk branch lines connecting local communities to the regional conurbations and linking into long distance and commuter services into London.

The franchise is operated by Abellio Greater Anglia who were awarded a two-year contract in 2012 which was extended until October 2016 as part of the Department's direct award schedule for franchising.

Further details of the East Anglia franchise are included in the Prospectus for the franchise.

The DfT is willing to accept applications from a single entity, a consortium or a joint venture.

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: No.

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 agreement which the successful bidder will enter into will be for a term of between 8 and 11 years (with the option for a one year extension) and will be based on the standard form franchise agreement currently being revised in line with Government policy. The franchise 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. It is likely that investment may be required in respect of this franchise. The franchise agreement may also include a mechanism for sharing revenue risk. This is under review by the DfT and the final position on these issues will be confirmed in the ITT.

Further details of the requirements for the franchise agreement will be set out in the ITT.

II.2.2) Options:

Yes DfT may wish to specify priced 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

See II.2.1

Section III: Legal, Economic, Financial and Technical Information

III.1) Conditions relating to the contract

III.1.1) Deposits and guarantees required:

A guarantee of at least GBP £40 million ("Fixed Guarantee") will be required to be provided

by each applicant's guarantor. DfT will require a funding deed to be provided to the franchisee by its guarantor. This funding deed is an agreement between the guarantor, the franchisee and the Secretary of State for Transport whereby the guarantor provides a guarantee to the franchisee in the amount specified by the DfT. 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.

As part of the evaluation of financial and economic standing of applicants during the pre-qualification process, each applicant's guarantor will be required to pass three out of four financial ratio tests. If an applicant's guarantor fails to pass three out of four of the tests or wishes to provide bonding as an alternative to passing the required tests, then an applicant can provide a letter of intent from a suitable third party financial institution to provide bonding for 100% of the value of the guarantee which for the purposes of the evaluation of PQQ responses shall be £40 million. If an applicant's guarantor passes three or more of the tests, then an applicant is required to provide a letter of intent from a suitable third party financial institution to provide bonding for 50% of the value of the guarantee which for the purposes of the evaluation of PQQ responses shall be £20 million. If an applicant proposes to use more than one guarantor, then the levels of required bonding will be adjusted per guarantor. Further information in respect of this and the detailed requirements for parent company support and how this will be evaluated as part of the pre-qualification process, is set out in the Pre-Qualification Process Document (PPD).

Following receipt of tenders submitted in response to the ITT, the DfT will re-calculate the results of the financial ratio tests carried out as part of the pre-qualification process, both in light of the actual guarantee required under the funding deed and to take account of any material events which have been disclosed and any audited annual accounts or credit rating updates issued during the franchise letting process. It is currently anticipated that the ITT will require a minimum of 33% up to a maximum of 50% of the value of the guarantee to be bonded by a suitable third party financial institution or institutions, provided 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 guarantee must be bonded.

At the ITT stage, DfT reserves the right to increase the Fixed Guarantee to an amount higher than £40 million. In addition to the Fixed Guarantee (as increased, if applicable by the terms of the ITT), the DfT will also require an additional amount to be guaranteed by an applicant's guarantor ("Variable Guarantee"). The size of this Variable Guarantee will depend on the level of Franchise Payments bid, and the method for calculating the size of this Variable Guarantee will be set out in the ITT. The total guarantee required from any successful bidder for the East Anglia franchise will therefore be the sum of the Fixed Guarantee (as increased, if applicable, by the terms of the ITT) and this Variable Guarantee calculated on the basis of the successful bidder's Franchise Payments. The form of the funding deed will be attached to the ITT.

The 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 £15 million for the franchise. The Season Ticket Bond is expected to be around £80 million for the East Anglia franchise.

The DfT may require the franchisee to provide a parent company guarantee in support of its obligation to maintain the stations. Further details will be set out in the ITT.

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 PQQ and Pre-qualification Process Document (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 applies as a single entity, a consortium or a joint venture, applicants are asked to note that the 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.

Applicants must provide full details of their proposed contracting structures. Changes to consortia and contracting structures must be notified to the DfT immediately. Full details relating to, 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.

Applicants who successfully meet the PQQ criteria will be expected to explain in their ITT response how they will obtain merger control clearance to operate the franchise.

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 an applicant will be shortlisted to receive an Invitation to Tender are contained in the PQQ and PPD. Interested parties will be required to sign a Franchise Letting Process Agreement (FLPA) to participate in the pre-qualification process. Applicants are required to register their expression of interest to receive a PQQ and gain access to the franchising procurement e-sourcing portal and FLPA by emailing EastAnglia@dft.gsi.gov.uk. Further details are set out in the PPD.

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 an applicant will be shortlisted to receive an ITT 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 an applicant will be shortlisted 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: maximum number:

Objective Criteria for choosing the limited number of candidates:

Details of the criteria which will be applied in order to limit the number of applicants selected are set out in the PPD.

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

Yes

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 published on 10 October 2014

2014/S 197-348172

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: 15 April 2015

Time: 17:00

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

31 August 2015

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:

In terms of paragraph 3 of Article 10 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, Directive 2014/23/EU does not apply to concessions for public passenger transport services within the meaning of Regulation (EC) No 1370/2007. In terms of paragraph (i) of Article 10 of

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and paragraph (g) of Article 21 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, Directives 2014/24/EU and 2014/25/EU do not apply to public service contracts for public passenger transport services by rail.

This tender process is 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 competitive procedure with negotiation as described in Directive 2014/24/EU or the negotiated procedure with prior call for competition described in Directive 2014/25/EU 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 competitive procedure with negotiation or negotiated procedure with a prior call for competition under Directives 2014/24/EU and 2014/25/EU respectively. Information as to how applicants express an interest and participate in the procurement are set out in the PPD. The tender process which the Authority intends to follow will be described in more detail in the Prospectus, the PPD and the ITT. The information contained in this notice 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. All financial information supplied as part of the tender must be clearly denominated in pounds sterling. This requirement does not apply to any requested information which has not been created for the tender (e.g. company financial reports), which should use the original currency. 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 franchise agreement, or 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, 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. Applicants should state in their 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.

(Please see the tender documents for further information). To view this notice, please click here:

<https://www.gov.uk/government/collections/rail-franchising#east-anglia-rail-franchise>

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:

19 February 2015