# Invitation to Tender (ITT) and Statement of Requirement

# Access price setting

29 November 2023

* + - * + **CPV Code: 79400000**
				+ **Tender Reference: ORR/CT/23-53**

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Purpose of the document

The purpose of this document is to invite proposals for **Access price setting** for the Office of Rail and Road (ORR).

This document contains the following sections:

* + - 1. Introduction to the Office of Rail and Road
			2. Statement of Requirement
			3. Tender Proposal & Evaluation Criteria
			4. Procurement Procedures

## Introduction to the Office of Rail and Road

The Office of Rail and Road is the independent safety and economic regulator of Britain’s railways who also hold National Highways to account for its day-to-day efficiency and performance, running the strategic road network, and for delivering the five year road investment strategy set by the Department for Transport (DfT).

ORR currently employs approximately 360 personnel and operates from 6 locations nationwide. The majority of personnel are located at ORR’s headquarters, 25 Cabot Square, London.

### Our strategic objectives

#### 1. A safer railway:

Enforce the law and ensure that the industry delivers continuous improvement in the health and safety of passengers, the workforce and public, by achieving excellence in health and safety culture, management and risk control.

#### 2. Better rail customer service:

Improve the rail passenger experience in the consumer areas for which we have regulatory responsibility and take prompt and effective action to improve the service that passengers receive where it is required.

#### 3. Value for money from the railway:

Support the delivery of an efficient, high-performing rail service that provides value for money for passengers, freight customers, governments, and taxpayers.

#### 4. Better Highways:

National Highways operates the strategic road network, managing motorways and major roads in England. Our role is to monitor and hold it to account for its performance and delivery, so that its customers enjoy predictable journeys on England’s roads.

### Supplying ORR

The ORR procurement unit is responsible for purchasing the goods and services necessary for ORR to achieve its role as the economic and health & safety regulator of the rail industry.

The ORR Procurement unit subscribes to the following values:

* + - * + to provide a modern, efficient, transparent and responsible procurement service;
				+ to achieve value for money by balancing quality and cost;
				+ to ensure contracts are managed effectively and outputs are delivered;
				+ to ensure that processes have regard for equality and diversity; and
				+ to ensure that procurement is undertaken with regard to Law and best practice.

For further information on ORR please visit our website: [www.orr.gov.uk](https://www.orr.gov.uk/).

Small and Medium Enterprises

1. ORR considers that this contract may be suitable for economic operators that are small or medium enterprises (SMEs) and voluntary organisations. However, any selection of tenderers will be based on the criteria set out for the procurement, and the contract will be awarded on the basis of the most economically advantageous tender.

Small and Medium Enterprises and Voluntary Organisations:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Enterprise Category | Headcount | Turnover  | Or | Balance Sheet Total |
| Micro | <10 | ≤ € 2 million |  | ≤ € 2 million |
| Small | <50 | ≤ € 10 million |  | ≤ € 10 million |
| Medium | <250 | ≤ € 50 million |  | ≤ € 43 million |
| Large | >251 | > € 50 million |  | > € 43 million |

Please ensure that you indicate how your organisation is categorised on the Form of Tender document which should be submitted along with your proposal.

## Statement of Requirement

### 2.1 Background of the project

The Directorate of Economics, Finance and Markets (EFM) within ORR leads on all aspects of financial and economic analysis at ORR, the periodic review of Network Rail’s outputs and funding and ORR’s competition work, including market studies and casework. The directorate is comprised of three teams: Regulatory Economics & Finance, Periodic Reviews & Monitoring and Competition.

On 31 October we published our periodic review (PR23) that looks at Network Rail’s expenditure and business plans across the next five years (2024-2029), known as Control Period 7 (CP7), and sets out our expectations for the company’s performance. Setting charges is central to the periodic review and has been highly contentious during PR23.

ORR sets charges in accordance with our legislative requirements and in particular those set out in Schedule 3 of the 2016 Railways (Access, Management and Licensing of Railway Undertakings) Regulations and Section 4 of the 1993 Railway Act and the Implementing Regulation (EU 2015/909). Within these legislative requirements there are a wide range of interpretations of how charges can be set. ORR applies economic and regulatory principles to interpret the legislation in accordance with our duties and the objectives of an access charges review.

Some stakeholders, especially Freight Operating Companies (FOCs), have questioned our approach to charges, particularly due to the size of the increases in charges in CP7 and likely increases in CP8 (2029-2034). Network Rail has also questioned why we have not set CP7 freight charges based on fully cost-reflective rates.

This is a strategic review to facilitate determining, given legislative requirements and our duties, how best to set charges for CP8, in a way that provides the most appropriate incentives on operators and Network Rail, whilst recognising that parts of the industry are facing financial pressures. This should take account of the views of funders, operators, Network Rail and other stakeholders and the context of a fiscally constrained environment, the recovery from the Covid-19 pandemic and economic uncertainty.

### 2.2 Project Objectives and Scope

The project will clarify the legislative bounds of regulatory access price setting for Network Rail and the methodologies that conform to this. This research will identify and outline the range of economically efficient methodologies for setting rail access charges that also fulfil our statutory obligations. Key outputs will include a report with:

* + - * + A detailed analysis specifying duties and constraints on access pricing for Network Rail, including those under Schedule 3 of the 2016 Railways (Access, Management and Licensing of Railway Undertakings) Regulations and Section 4 of the 1993 Railway Act and the Implementing Regulation (EU 2015/909).
				+ An extensive review of the regulatory and economic pricing principles, which could potentially operate within these bounds. In doing this, the research will outline the spectrum of robust access charging approaches and review how charges are currently calculated. It will also consider the practical realities of these approaches, including how charges are calculated, data availability, and the issues with the models used to implement the principles (their construction, data, ease of use and audit). However, it should be stressed that this is not a detailed review of these models.
				+ An outline of the guiding principles for segmenting the rail market so as to enable the implementation of optimal legally compliant pricing frameworks and propose likely segmentations. In doing this, the report is to consider the cost-return trade-offs associated with overly refined structures.
				+ A recommendation for which economic principles and models could be most appropriate for which market segments along with their relative strengths and weaknesses.

### 2.3 Project Outputs, Deliverables and Contract Management

#### Outputs and Deliverables

* + - * + Regular updates to keep the ORR project team informed on progress and developments.
				+ The supplier should prepare a project plan and present it with the proposal. If a contract is awarded to the supplier, the plan should be kept up-to-date.
				+ Carry out a literature review of methodologies for setting regulatory access charges.
				+ Draw up a longlist of possible options for changing the methodologies along with their key strengths and weaknesses for rail.
				+ Convene a workshop with key stakeholders such as the operators and Network Rail to get from a longlist to a shortlist. Appraise the strengths and weaknesses of the options.
				+ Produce an interim report to discuss findings with ORR.
				+ Produce a final report and present it to ORR.

As this report may be published externally it should adhere to the [Guidelines for writing accessible reports for ORR - Guidance for external suppliers | Office of Rail and Road](https://www.orr.gov.uk/media/23638).

#### It is anticipated that the project will consist of a mix of desk and qualitative research. The consultant will produce draft and final reports containing:

* + - * + A detailed analysis specifying duties and constraints on access pricing for Network Rail, including those under Schedule 3 of the 2016 Railways (Access, Management and Licensing of Railway Undertakings) Regulations and Section 4 of the 1993 Railway Act and the Implementing Regulation (EU 2015/909).
				+ An extensive review of economic pricing principles and models which could potentially operate within these legal bounds. In doing this the research will outline the spectrum of economically optimal access charging approaches.
				+ An outline of the guiding principles for segmenting the rail market so as to enable the implementation of optimal legally compliant pricing frameworks. In doing this, the report is to consider the cost-return trade-offs associated with overly refined structures.
				+ A recommendation for which structures could be appropriate for which market segments along with their relative strengths and weaknesses.

#### Contract Management Requirements

We expect to be provided on weekly progress updates against the outputs being produced.

### 2.4 Project Timescales

The provisional project timetable is as follows:

* + - * + Start-up meeting and commencement week commencing Monday 01 January 2024.
				+ Weekly updates on progress and any issues.
				+ Presentation of interim findings on Friday 01 March 2024 (or as agreed).
				+ Draft report by Friday 15 March 2024.
				+ Final report by Thursday 28 March 2024.

### 2.5 Budget and Payment Schedule

The maximum budget for this piece of work is £60,000 (inc. of expenses, exc. of VAT).

#### Payment Options

Payment of the total fee will be on the delivery and acceptance by ORR of all required outputs and/or deliverables.

### 2.6 Further project related information for bidders

#### Intellectual Property Rights

ORR will own the Intellectual Property Rights for all project related documentation and artefacts.

#### Transparency requirements

Please note ORR is required to ensure that any new procurement opportunity above £10,000 (excluding VAT) is published on Contracts Finder, unless the ORR is satisfied it is lawful not to. Once a contract has been awarded as a result of a procurement process, ORR is required to publish details of who won the contract, the contract value and indicate whether the winning supplier is a SME or voluntary sector organisation.

#### Confidentiality

All consultants working on the project may be required to sign a confidentiality agreement and abide by the Cabinet Office’s protective marking guidelines, which ORR uses to protectively mark a proportion of its information. In addition, the consultant may be required to sign additional confidentiality agreements as required by external stakeholders.

#### Sub-Contractors

Contractors may use sub-contractors subject to the following:

* + - * + That the Contractor assumes unconditional responsibility for the overall work and its quality;
				+ That individual sub-contractors are clearly identified, with fee rates and grades made explicit to the same level of detail as for the members of the lead consulting team.

Internal relationships between the Contractor and its sub-contractors shall be the entire responsibility of the Contractor. Failure to meet deadlines or to deliver work packages by a subcontractor will be attributed by ORR entirely to the Contractor.

#### Conflict of Interest

At the date of submitting the tender and prior to entering into any contract, the tenderer warrants that no conflict of interest exists or is likely to arise in the performance of its obligations under this contract; or

Where any potential, actual or perceived conflicts of interest in respect of this contract exist, tenderers need to outline what mitigation/safeguards would be put in place to mitigate the risk of actual or perceived conflicts arising during the delivery of these services.

The ORR will review the mitigation/safeguards in line with the perceived conflict of interest, to determine what level of risk this poses to them. Therefore, if tenderers cannot or are unwilling to suitably demonstrate that they have suitable safeguards to mitigate any risk then their tender will be deemed non-compliant and may be rejected.

## Tender Response and Evaluation Criteria

### 3.1 The Tender Response

The proposals for this project should include an outline of how bidders will meet the requirement outlined in section (ii) “Statement of Requirement”. The following information should be included:

* 1. **Understanding of customer's requirements**

Demonstrate an understanding of the requirement and overall aims of the project.

* 1. **Approach to customer's requirements**

Provide an explanation of the proposed approach and any methodologies bidders will work to

Details of your assumptions and/or constraints/dependencies made in relation to the project

A project plan to show how outputs and deliverables will be produced within the required timescales, detailing the resources that will be allocated

An understanding of the risks, and explain how they would be mitigated to ensure delivery

What support bidders will require from ORR.

* 1. **Proposed delivery team**

Key personnel including details of how their key skills, experience and qualifications align to the delivery of the project; and

Project roles and responsibilities

Confirmation that you have carried out the necessary employment checks (e.g. right to work in the UK)

Some relevant examples of previous work that bidders have carried out (e.g. case studies) AND/OR Details of at least two relevant reference projects along with contact details of clients.

* 1. **Pricing**

A fixed fee for the project inclusive of all expense. This should include a breakdown of the personnel who will be involved with the project, along with associated charge rates and anticipated time inputs that can be reconciled to the fixed fee.

* 1. **Conflicts of Interest**

Confirm whether you have any potential, actual or perceived conflicts of interest that may by relevant to this requirement and outline what safeguards would be put in place to mitigate the risk of actual or perceived conflicts arising during the delivery of these services.

### 3.2 Evaluation Criteria

Tenders will be assessed for compliance with procurement and contractual requirements which will include:

* + - * + Completeness of the tender information
				+ Completed Declaration Form of Tender and Disclaimer
				+ Tender submitted in accordance with the conditions and instructions for tendering
				+ Tender submitted by the closing date and time
				+ Compliance with contractual arrangements.

Tenders that are not compliant may be disqualified from the process. We reserve the right to clarify any issues regarding a Bidder’s compliance. It will be at ORR's sole discretion whether to include the relevant Bidder’s response in the next stage of the process.

The contract will be awarded to the Bidder(s) submitting the **‘most economically advantageous tender’**. Tenders will be evaluated according to weighted criteria as follows:

#### Methodology 30%

The proposal should set out the methodology by which the project requirement will be initiated, delivered and concluded. In particular, it must:

* 1. Explain the methodology and delivery mechanisms to ensure that the requirements of this specification are met in terms of quality;
	2. Explain how your organisation will work in partnership with ORR’s project manager to ensure that the requirement is met
	3. Explain how your organisation will engage with external stakeholders;
	4. Outline how the proposed approach utilises innovative consultation methodologies to develop a diverse and comprehensive evidence-base

#### Delivery 20%

The proposal should set out how and when the project requirement will be delivered. In particular, it must:

* 1. Explain how this work will be delivered to timescale and how milestones will be met, detailing the resources that will be allocated to each stage;
	2. Demonstrate an understanding of the risks, and project dependencies and explain how they would be mitigated to ensure project delivery;
	3. Explain the resources that will be allocated to delivering the required outcomes/output, and what other resources can be called upon if required.

#### Experience 30%

The proposal should set out any experience relevant to the project requirement. In particular, it must:

* 1. Provide CVs of the consultants who will be delivering the project;
	2. Highlight the organisation’s relevant experience for this project, submitting examples of similar projects.

#### Cost / Value for money 20%

A **fixed fee** for delivery of the project requirement (inclusive of all expenses), including a **full price breakdown for each stage of the project** and details of the **day rates** that will apply for the lifetime of this project.

| Name of consultant | Grade | Role  | Day rate | Number of days | Total cost (ex VAT) |
| --- | --- | --- | --- | --- | --- |
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Please note that consultancy grades should align with the following definitions:

| Grade | Requirement |
| --- | --- |
| Junior consultant | Demonstrable experience in a wide range of projects in their specialist field. Evidence of client facing experience and support services to wider consultancy projects. |
| Consultant | Notable experience and in-depth knowledge of their specialist field. Evidence of a wide range of consultancy projects and client facing experience. Support work in process and organisational design and leading workshops and events. |
| Senior Consultant | Substantial experience in their specialist field and in a consultancy/training role. Previous experience in project management and working in a wide range of high quality and relevant projects. Familiarity of the issues/problems facing public sector organisations. |
| Principal Consultant | Substantial experience in their specialist field and in a consultancy/training role. Sound knowledge of the public sector and current policy and political issues affecting it. Previous experience in project management on at least three major projects, preferably in the public sector and using the PRINCE2 or equivalent method. |
| Managing Consultant | Substantial experience in their specialist field and in a consultancy role. In depth knowledge of the public sector and of current policy and political issues affecting it. Previous experience in project management on at least 5 major projects, preferably in the public sector and using PRINCE2 or equivalent methods. |
| Director / Partner | Extensive experience in their specialist field, in which they are nationally or internationally renowned as an expert. Extensive experience of leading or directing major, complex and business critical projects; bringing genuine strategic insight. In depth knowledge of the public sector and of current policy and political issues affecting it. |

#### Marking scheme

For the Methodology, Delivery and Experience shall be scored using the following:

|  |
| --- |
| **Table of Evaluation Methodology and Marking Scheme for Quality Criteria** |
| **Score** | **Category** | **Definition (Explanation)**  |
| 0 | Unacceptable | Unanswered or totally inadequate response to the requirement. Complete failure to understand/reflect the core issues. Fails to demonstrate an ability to meet the requirement. |
| 1 | Poor | Minimal or poor response to meeting the requirement, with little or no relevance. Limited understanding misses some aspects.The response addresses few elements of the requirement and contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled. |
| 2 | Fair | Response is mostly relevant, but elements of the response are poor. The response addresses most elements of the requirement but contains limited detail or explanation to demonstrate how some of the requirement will be fulfilled. |
| 3 | Acceptable | Response is relevant and acceptable. The response addresses a broad understanding of the requirement but lacks details on how the requirement will be fulfilled in certain areas. |
| 4 | Good | Response is relevant and good. The response is sufficiently comprehensive to assure and demonstrate a good understanding, also providing much detail on how the requirements will be fulfilled. |
| 5 | Excellent | Excellent response fully addressing the requirement and providing significant additional evidence of how the criterion has been met and how value would be addedThe response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full. |

For the Price evaluation the following shall apply:

* + - * + Fixed fee
				+ The lowest fixed fee will be awarded the maximum price score of 100.
				+ All other bidders will get a price score relative to the lowest fee tendered.
				+ The calculation we will use to calculate your score is as follows:

Price Score = Lowest Total Fee x 100

 Bidder’s Total Fee

Your score will then be multiplied by the weighting we have applied to this aspect of the price evaluation to provide a weighted score for the fee.

## Procurement Procedures

### Tendering Timetable

The timescales for the procurement process are as follows:

| Element | Timescale |
| --- | --- |
| Invitation to tender issued | 30 November 2023 |
| Deadline for the submission of clarification questions | 08 December 2023 10:00 am |
| Deadline for submission of proposals | 14 December 2023 10:00 am |
| Award contract | 21 December 2023 |
| Project Inception Meeting |  w/c 01 January 2024 |

Please ensure that the Project Manager and other key consultants who will be delivering this work are available to give presentations on the interview date

### Tendering Instructions and Guidance

#### Amendments to ITT document

Any advice of a modification to the Invitation to Tender will be issued as soon as possible before the Tender submission date and shall be issued as an addendum to, and shall be deemed to constitute part of, the Invitation to Tender. If necessary, ORR shall revise the Tender Date in order to comply with this requirement.

#### Clarifications & Queries

Please note that, for audit purposes, any query in connection with the tender should be submitted via the ORR eTendering portal. The response, as well as the nature of the query, will be notified to all suppliers without disclosing the name of the Supplier who initiated the query.

#### Submission Process

Tenders must be uploaded to the ORR eTendering portal no later than the submission date and time shown above. Tenders uploaded after the closing date and time may not be accepted. Bidders have the facility to upload later versions of tenders until the closing date/time.

Please submit the Form of Tender and Disclaimer certificate along with your proposal. If you are already registered on our eTendering portal but have forgotten your login details, please contact the portal administrator.

An evaluation team will evaluate all tenders correctly submitted against the stated evaluation criteria.

By issuing this Invitation to Tender ORR does not undertake to accept the lowest tender, or part or all of any tender. No part of the tender submitted will be returned to the supplier

#### Cost & Pricing Information

Tender costs remain the responsibility of those tendering. This includes any costs or expenses incurred by the supplier in connection with the preparation or delivery or in the evaluation of the tender. All details of the tender, including prices and rates, are to remain valid for acceptance for a period of 90 days from the tender closing date.

Tender prices must be in Sterling.

Once the contract has been awarded, any additional costs incurred which are not reflected in the tender submission will not be accepted for payment.

#### References

References provided as part of the tender may be approached during the tender stage

#### Accessibility Guidelines

As a public body we are legally required to comply with accessibility guidelines. Please ensure any commissioned report is in a format that meets web accessibility regulations: [Guidelines for writing accessible reports for ORR - Guidance for external suppliers | Office of Rail and Road.](https://www.orr.gov.uk/media/23638)

#### Contractual Information

Following the evaluation of submitted tenders, in accordance with the evaluation criteria stated in this document, a contractor may be selected to perform the services and subsequently issued with an order.

Any contract awarded, as a result of this procurement will be placed with a prime contractor who will take full contractual responsibility for the performance of all obligations under the contract. Any sub-contractors you intend to use to fulfil any aspect of the services must be identified in the tender along with details of their relationship, responsibilities and proposed management arrangements.

The proposal should be submitted in the form of an unconditional offer that is capable of being accepted by the ORR without the need for further negotiation. Any contract arising from this procurement will be based upon ORR’s standard Terms & Conditions (see Form of Agreement attached). You should state in your proposal that you are willing to accept these Terms & Conditions.

ORR does not expect to negotiate individual terms and expects to contract on the basis of those terms alone. If you do not agree to the Conditions of Contract then your tender may be deselected on that basis alone and not considered further.

**ORR may be prepared to consider non-fundamental changes to the standard terms and conditions in exceptional circumstances. If there are any areas where you feel you are not able to comply with the standard ORR terms and conditions, then details should be submitted as a separate annex to the proposal using the following format:**

| Clause Number | Existing Wording | Proposed Wording | Rational for amendment |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |

Any services arising from this ITT will be carried out pursuant to the contract which comprises of:

* + - * + ORR Terms & Conditions;
				+ Service Schedules;
				+ this Invite to Tender & Statement of Requirement document; and
				+ the chosen supplier’s successful tender.

ORR’s Transparency Obligations and the Freedom of Information Act 2000 (the Act)

The ORR is a central Government department and as such complies with the Government’s transparency agenda. As a result, there is a presumption that contract documentation will be made available to the public via electronic means. The ORR will work with the chosen supplier to establish if any information within the contract should be withheld and the reasons for withholding it from publication.

Typically the following information will be published:

* + - * + contract price and any incentivisation mechanisms
				+ performance metrics and management of them
				+ plans for management of underperformance and its financial impact
				+ governance arrangements including through supply chains where significant contract value rests with subcontractors
				+ resource plans
				+ service improvement plans

Where appropriate to do so information will be updated as required during the life of the contract so it remains current;

In addition, as a public authority, ORR is subject to the provisions of the Freedom of Information Act 2000. All information submitted to a public authority may need to be disclosed by the public authority in response to a request under the Act. ORR may also decide to include certain information in the publication scheme which it maintains under the Act. If a bidder considers that any of the information included in its proposal is commercially sensitive, it should identify it and explain (in broad terms) what harm may result from disclosure if a request is received and the time period applicable to that sensitivity. Bidders should be aware that even where they have indicated that information is commercially sensitive ORR may be required to disclose it under the Act if a request is received. Bidders should also note that the receipt of any material marked “confidential” or equivalent by the public authority should not be taken to mean that the public authority accepts any duty of confidence by virtue of that marking. If a request is received ORR may also be required to disclose details of unsuccessful bids

Please use the following matrix: to list such information:

| Para. No. | Description | Applicable exemption under FOIA 2000 |
| --- | --- | --- |
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