

**INVITATION TO TENDER**

**&**

**STATEMENT OF REQUIREMENT**

**PR23 Review of Network Rail’s Access Charges: Market Can Bear Analysis**

**CPV Code: 72221000**

**Tender Reference: ORR/CT/21-32**

**Purpose of document**

The purpose of this document is to invite proposals for undertaking some market can bear analysis for the Office of Rail and Road (ORR), as part of our PR23 review of charges.

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

**1. Introduction to the Office of Rail and Road (ORR)**

The Office of Rail and Road is the independent safety and economic regulator of Britain’s railways who now also hold Highways England 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 300 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. Drive for 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. Support a better service for customers:**
Use our powers to hold the industry to account for performance and standards of service across the railway network, for passengers and freight. Promote on-going improvement in the experience of passengers by encouraging the industry to work together, including to provide greater transparency of information.

**3. Secure value for money from the railway, for users and funders:**
Strengthen incentives for the whole industry, including through competition and contestability in the supply chain, to drive greater efficiency from the use and maintenance of existing railway capacity and more cost-effective investment in the network.

**4. Secure improved performance and value for money from the strategic road network:**
Secure improved performance, including efficiency, safety and sustainability, from the strategic road network, for the benefit of road users and the public, through proportionate, risk-based monitoring, increased transparency, enforcement and robust advice on future performance requirements.

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](http://www.orr.gov.uk)

Small and Medium Enterprises

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.**2. Statement of Requirement**

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| **2.1 Background to the project** |
| The ORR is the economic regulator for Britain’s railway infrastructure. We regulate Network Rail and other railway networks, including the Channel Tunnel and High Speed 1. We regulate Network Rail by conducting five-yearly reviews (“periodic reviews”), which determine what Network Rail must achieve in each control period, along with the funding it requires for this. As part of each Periodic Review, we also decide any changes to the structure of Network Rail’s access charges. These charges are paid by all train operators for use of the rail network, and are one of Network Rail’s main sources of income. We completed our most recent Periodic Review (PR18) in late 2018. This review determined the framework for Network Rail’s access charges for the current control period (control period 6, or CP6, which runs from 1 April 2019 to 31 March 2024). We have recently commenced our next periodic review process (PR23)[[1]](#footnote-1). Through PR23, we are undertaking a review of Network Rail’s access charges. We published an initial consultation on our approach and key priorities for this review in July 2021. This consultation is available on our website [here](https://www.orr.gov.uk/sites/default/files/2021-07/pr23-access-charges-review-initial-consultation-july-2021.pdf). **CP6 structure of charges** Network Rail levies several different types of charge on train operators. There are two broad categories of track access charge paid by operators: (i) charges that recover a portion of the fixed costs of rail infrastructure (i.e. costs which do not vary with network use in the short term)[[2]](#footnote-2); and (ii) variable charges, which recover costs directly incurred by Network Rail when train services are operated over its network. We refer to the first category of charges as Infrastructure Cost Charges (ICCs).Network Rail currently recovers its fixed costs through three ICCs, based on the type of operator that is using the network:* The fixed track access charge (FTAC). This is a lump-sum annual charge paid by franchised passenger operators[[3]](#footnote-3);
* The ICC for freight services[[4]](#footnote-4). This charge is paid by freight operators carrying certain commodities, at a rate per thousand gross tonne miles (£/kgtm);
* The ICC for open access operators. This is a rate per train mile which is levied on operators providing new interurban services only i.e. services between two major urban areas. We introduced this charge for the first time in PR18. No operators currently pay this charge, though First Rail’s planned London to Edinburgh service would be liable to pay an ICC.

**The relevant legal framework**Requirements for access charging are set out in Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the 2016 Regulations”). The 2016 Regulations require that access charges (for the minimum access package) shall be set at the cost that is directly incurred as a result of operating train services. However, they also state that[[5]](#footnote-5):*In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail and Road or, in relation to a rail link facility, the Secretary of State, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.**The effect [of levying mark-ups] must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.*This article underpins Network Rail’s recovery of fixed costs through ICCs. In particular, it gives rise to the concept of a ‘market can bear’ (MCB) test to determine specifically which train operators should be subject to an ICC (or ‘mark-up’), as well as the level of any ICCs levied. In previous periodic reviews, we have taken the following approach to fulfilling the requirement for a MCB test[[6]](#footnote-6): * For franchised passenger operators, the FTAC is based on an *implicit* MCB assessment, which takes account of the fact that this charge is effectively passed through to funders or other rail authorities. As such, we have not carried out a detailed MCB test to support the imposition of FTAC on these operators. Given the way that FTAC is treated in these operators’ existing concession-style agreements, we consider that this approach remains valid for PR23. An assessment of franchised passenger operators’ ability to bear FTAC is therefore not required for this project.
* For both freight and open access operators, we have undertaken analysis to consider whether these operators are able to bear a mark-up above charges which recover directly-incurred costs, and (if so) the appropriate level of a charge. A summary of our previous analysis for freight and open access operators is set out below.

**Previous market can bear (MCB) analysis**Freight operatorsIn PR08 and PR13, we undertook a MCB test to determine which freight services are liable to pay mark-ups. We segmented rail freight services based on the *commodities carried*, and assessed evidence on the elasticity of demand for freight services for different commodities (including by way of consideration of the extent to which other forms of freight transport – such as road – compete with rail freight). We levied ICCs on freight services carrying commodities where demand was relatively inelastic, and which would therefore likely be less affected by the imposition of an ICC. We identified the following commodities as being able to bear ICCs: ESI (Electricity supply industry) coal; spent nuclear fuel; and iron ore.In PR18, we updated our MCB analysis based on further analysis that we commissioned[[7]](#footnote-7). On the basis of this analysis, we continued levying ICCs on the commodities listed above. We also decided to extend ICCs for freight services carrying ESI biomass, as we considered there was sufficient evidence that these services could bear a charge. As part of PR18, we also combined the ICCs paid by relevant freight operators into one ICC (known for billing purposes as the freight-specific charge, or FSC). Prior to PR18, we had levied two different ICCs on freight services, both of which contributed to Network Rail’s fixed cost recovery. Open access operatorsPrior to PR18, open access operators did not pay any ICCs[[8]](#footnote-8). In PR18, we decided to introduce an ICC for open access operators for the first time (subject to a MCB test to determine specifically which services could bear an ICC). This policy aimed to facilitate increased on-rail competition between passenger services over the longer-term, by allowing open access operators to benefit from potentially greater access to the network, while requiring that they contribute towards Network Rail’s recovery of fixed costs where they are able to do so.We commissioned a consultant to develop a MCB test for open access services and make recommendations on which services could bear an ICC, along with the level of this charge[[9]](#footnote-9). At a high level, this involved the following:* Developing an appropriate passenger market segmentation. The consultant considered that demand for passenger services (and therefore ability to bear) is likely to be affected by the location, type and time of passenger journeys. Due to data limitations, they did not attempt to segment services by time of day or day of the week and instead focused on segmenting services by journey type / location.
* Assessment of ability to bear: The consultant conducted an analysis of revenues for different types of passenger services, as well as estimating the costs associated with providing these services[[10]](#footnote-10), to estimate operators’ net operating surplus by service type. This analysis indicated that services on intercity and highly utilised commuter routes had the highest operating surplus, indicating a materially greater ability to bear an ICC than other open access services.
* Level of an ICC: These estimates were then used to model the maximum level of charge that could be levied on these services, without deterring an operator from introducing a new service that would otherwise be profitable. This was used to inform our view on the appropriate level of an ICC.

Based on this analysis, we decided to segment the open access market into two segments: “interurban services” (broadly covering intercity and commuter services) and other services[[11]](#footnote-11). We decided to levy an ICC only on services operating in the interurban market segment, reflecting the analysis that suggested other services would not be able to bear such a charge. We levied the ICC on new interurban services only, set at a conservative level of £4 per train mile (given that this was the first time we had levied such a charge). We also decided to phase in this ICC over the first five years of the operation of relevant services. Further details on the implementation of the open access ICC (including the definition of the interurban market segment) are available [here](https://www.orr.gov.uk/sites/default/files/om/pr18-consultation-on-open-access-infrastructure-cost-charges-implementation-conclusions.pdf).Summary of PR18 decisions on ICCsA summary of our full decisions in respect of setting ICCs for both freight and open access operators, based on the MCB analysis undertaken, was set out in our October 2018 PR18 Final Determination. This is available [here](https://www.orr.gov.uk/media/17233). **Interaction with UK government’s rail reform programme**The UK government has recently published a white paper (the Williams-Shapps Plan) which sets out a vision for the future of the railway. This envisages some major changes to the structure and operation of the rail industry, including the development of a new rules-based access system that will apply to a new body that will run the railway infrastructure: Great British Railways.These changes are likely to carry implications for the future approach to charging that may be applied by Great British Railways – including whether and how ICCs for freight and open access operators are set. However, the timing of these changes remains uncertain and the current framework – which is determined and overseen by ORR – may need to apply on an interim basis for part or all of CP7. Furthermore, over the longer-term, there will remain a clear need for Great British Railways to recover an appropriate level of costs from third party operators (including freight and open access). This work has the potential to inform the approach taken there, by providing up-to-date evidence on the latest trends and market conditions for these market segments.  |
| **2.2 Project Objectives & Scope** |
| The objective of this project is to review the MCB analysis that we conducted during PR18, for both freight and open access operators, and update the conclusions of this analysis where relevant. This will primarily involve: * Reviewing the suitability of aspects of the previous methodologies; and
* Updating the analysis to reflect any new evidence that has emerged, as well as changes to market and demand characteristics, since PR18.

At a high-level, we consider the MCB test can be split into 3 stages: 1. Stage 1: A market segmentation exercise;
2. Stage 2: Assessment of ability of each market segment to bear an ICC; and
3. Stage 3: Setting the level of the ICC.

For freight, we would like the consultant to review stages 1 and 2 as set out above (the level of freight ICCs will need to take account of any changes to other charges paid by freight operators in CP7, which are considered as part of the broader charges review). For open access operators, we would like the consultant to undertake all 3 stages. We have set out below some further detail on the scope of the required analysis, in respect of both freight and open access. We have also highlighted some of the key issues and considerations that will need to be addressed as part of this work. We expect bidders to set out a detailed methodology and approach to undertaking this work, including how they intend to address the specific points highlighted below.The overall approach should strike an appropriate balance between accuracy and practicability, taking account of issues such as data limitations and the need for a set of ICCs that can be relatively easily implemented by Network Rail. We will work with the consultant to ensure the approach and level of analysis undertaken is proportionate.In determining the approach to this work, we would also expect the consultant to consider any relevant views and suggestions by industry stakeholders that are included in responses to our initial consultation on the PR23 charges review (which are due in late September 2021). **Freight analysis**Stage 1: Market segmentationAs explained above, we have previously segmented the freight market based on commodities carried. This approach is now well-established and understood by the freight industry; remains practicable to implement; and is likely to reflect differences in underlying demand for rail freight, which is the basis for an assessment of ability to bear mark-ups. We therefore expect to retain the same approach for this review.As such, stage 1 of the freight MCB analysis should focus on the following:* Whether there are any major new freight commodity flows which should be defined as new market segments. We have previously identified the following segments: ESI coal; iron ore; metals; petroleum and chemicals; intermodal; automotive; spent nuclear fuels; general distribution; biomass; construction (mainly the transport of aggregates) and premium mail and logistics.
* Whether any existing commodity market segments should be sub-defined. We note that in PR18, we explored the feasibility of disaggregating the intermodal market segment on a geographic basis, but considered that evidence to support levying ICCs in specific geographic areas was limited at that point in time. We also identified several practical issues with levying a charge in this way (e.g. the use of portfolio pricing for freight services). We would expect this work to review whether this conclusion continues to hold.

Stage 2: Assessment of ability to bear This stage of the freight analysis should be undertaken in a proportionate way. We would expect the work to focus on the ability to bear for:* The existing commodities for which an ICC is paid. As set out above, these are: ESI coal; spent nuclear fuel; iron ore; and ESI biomass. In particular:
	+ We would expect the analysis to consider the position of ESI coal, given the significant decline in volumes of rail freight for this commodity over the last few years[[12]](#footnote-12).
	+ For ESI biomass, we would also expect the work to consider any evidence on the impact on volumes and profitability of our decision to introduce a charge for CP6 (noting that, due to the phase-in profile we set in PR18, freight operators have only started paying an ICC for biomass services in the current financial year).
* Other commodities for which there have been significant changes in demand and / or market conditions since PR18, which may have materially increased their ability to bear mark-ups.

For the market segments which we decide to prioritise, based on the considerations above, we expect the stage two assessment would involve the following activities:* Reviewing the latest quantitative evidence on commodity-specific demand elasticities. The PR18 analysis was informed by historic elasticity estimates from MDS Transmodal’s ‘GB Freight Model’ (validated by the Department for Transport);[[13]](#footnote-13)
* Where more recent information on demand elasticities is not available, a qualitative assessment of changes to market conditions (and hence ability to bear). This may for instance include the impact of Covid and Brexit on different commodity flows, and / or the likely impact of energy market changes on demand for certain freight commodities;
* Consistency with Government policy towards certain commodities, for instance to reflect the environmental impacts of using different commodities in energy production;
* Other relevant factors that may have affected the degree of substitutability between road and rail freight since PR18.

This analysis should as far as possible be forward-looking, as we are seeking to assess the ability of freight services to bear an ICC in the next control period (CP7), which will cover the period from 2024 to 2029.**Open access analysis**Stage 1: Market segmentationThe starting point for reviewing our passenger market segmentation is the requirements as set out in the 2016 Regulations. This states that ORR must ensure the infrastructure manager evaluates the relevance of a mark-up, every five years, for the segments listed below:1. passenger versus freight services;
2. trains carrying dangerous goods versus other freight trains;
3. domestic versus international services;
4. combined transport versus direct trains;
5. urban or regional versus interurban passenger services;
6. block trains versus single wagon load trains;
7. and regular versus occasional train services.

The first stage of this work should involve reviewing the relevance of these pairs for our MCB test[[14]](#footnote-14). As explained above, in PR18 we defined two market segments linked to pair (e) listed above: interurban services and all other services. We did not consider pairs (c) or (g) for the purposes of assessing ability to bear, for the reasons explained in paragraphs 3.15 - 3.16 of our PR18 decisions [document](https://www.orr.gov.uk/media/17233).Schedule 3 of the 2016 Regulations (paragraph 2(7)) also states that the infrastructure manager may consider *further* market segments, according to passengers transported. As such, this work should explore whether it would be appropriate to define further market segments for open access services, based on material differences in demand for such services. While data limitations may preclude a more granular market segmentation, we consider it is worth exploring the scope for amending our approach in this area, to improve the suitability of the services for which an ICC is levied. In particular, we consider the assessment should consider the practicality of setting an ICC for services at specific times of the week, and any implications for Network Rail’s billing requirements[[15]](#footnote-15).Furthermore, the work should also review the suitability of our existing definition of the interurban market segment (to the extent that we continue to define this as a separate market segment). This is likely to involve discussions with Network Rail and stakeholders about the appropriateness of existing thresholds, and the practicability of applying the existing definition.Stage 2: Assessment of ability to bear Having reviewed the passenger market segmentation, stage two of this work would involve updating the profitability analysis conducted in PR18, to determine which market segments are likely to be able to bear an ICC. This is particularly important in light of the Covid-19 pandemic and its impact on passenger demand, which is likely to have affected open access revenues (including for new interurban services). In turn, this may have affected their ability to bear an ICC[[16]](#footnote-16).Undertaking this analysis would require the consultant to use revenue and cost data to understand how operating profit has changed since PR18, and the likely implications for ability to bear. As explained above (and in the “Data availability” section below), while we have access to revenue data for specific train services, cost data at train service level is not readily available. We would therefore expect bidders to explain how they intend to overcome this issue, in order to produce an updated profitability analysis.As with the freight analysis, it is important that the assessment is as forward-looking as possible, taking account of the likely conditions that will prevail over the next control period (between 2024 and 2029), while recognising that there are inevitable uncertainties in this kind of analysis. As such, the analysis will likely need to draw on forecasts of passenger demand and may require some scenario analysis based on a range of demand forecasts. Stage 3: Level of ICCIn PR18, the consultants estimated a potential ICC level that could be paid by OAOs in the interurban market segment of £6 – 7 per train mile (though, as explained above, we ultimately decided to set a more conservative rate of £4 per train mile). We would expect the consultant to estimate a revised range for the ICC, for all market segments which it considers can bear a charge, to inform our decision in this area. As part of this, we would expect bidders to consider how best to interpret the updated profitability analysis in order to set an appropriate ICC level, including: how to reflect a reasonable level of profit required for open access operators to provide services; and how the analysis could take account of any competitive response to open access entry from existing operators.**Data availability**This is a data-driven piece of work, particularly for the open access analysis. ORR would facilitate access to the MOIRA and/or MOIRA2 rail demand forecasting models, to support this work (please note this would require the consultant to sign a confidentiality agreement). These models contain information on revenue from train services at a service code level (i.e. for different groups of train services within the timetable). The MOIRA models do not contain any cost information. ORR holds separate cost information at a TOC level[[17]](#footnote-17).We would expect bidders to set out any other models and data they expect to use. We will seek to facilitate access to any further data sources besides MOIRA and MOIRA2, where these are held internally, including in respect of passenger demand forecasts (e.g. from the Rail Covid Forecasting Group). We will also support the appointed consultant in securing access to any other models or data sources as required. We note that we do not have access to the model previously used by MDST, as part of our PR13 review of charges, to estimate commodity-specific demand elasticities for freight services.**Extension option**For both the freight and open access workstreams, there is a possibility of the consultants’ work being extended for a further support phase, beyond the stages set out above. Further details about this extension are set out in Section 2.4 below.**Contract Model**To enable the widest possible response and to ensure value for money, we are adopting a contracting model that could see either two individual contracts placed (one for each workstream) or a single contract placed for both workstreams. Bidders may therefore apply for one or both workstreams, as well as a combined offer. |
| **2.3 Project Outputs, Deliverables and Contract Management**  |
| **Outputs / deliverables** The main outputs of this work will be two reports (in Word / PDF format) setting out the analysis and conclusions of the work described in Section 2.2 above, separately for freight and open access. These reports should contain provisional recommendations in respect of any changes to the market segmentation (i.e. stage 1 of the analysis), as well as which market segments are able to bear ICCs (stage 2) and, in the case of open access, revised estimates for the level of any ICC (stage 3). The reports should also contain sufficient information about the work which has been undertaken, to support these recommendations.These reports will need to be produced to a publishable standard, as we would expect to publish them alongside a further consultation on our PR23 access charges review (see Section 2.4 for further details of this). This means that we require the consultant to deliver a draft report for comment, which details their provisional findings and recommendations, in advance of the end date for this project. The final report would then incorporate comments and suggested amendments from ORR.Engaging with relevant stakeholders In undertaking the required analysis, we would expect the consultant to engage with relevant stakeholders where appropriate. It is likely that engagement with Network Rail will be necessary to further understand some of the practical considerations around market segmentation and how operators are billed for ICCs. We would also expect to hold at least two workshop(s) with both existing and prospective train operators (one focused on freight; and one focused on open access) to obtain their input on aspects of the analysis. We envisage these workshops would be held over the autumn (e.g. early November). ORR would help to facilitate and organise these workshops. Furthermore, in updating the freight MCB analysis, we would expect the consultant to speak to major freight customers to understand recent changes in market conditions for specific commodity flows.**Contract Management Requirements**We expect the consultant will work closely with ORR’s project team leading the PR23 charges review. As such, we would expect to have regular interaction with the consultant, as required by the work. At a minimum, we would expect the consultant to provide a weekly progress update by email, as well as holding fortnightly update meetings to discuss any emerging issues in more detail. We would also expect to have more regular engagement than this at key stages in the project i.e. at the start of the contract, in order to agree a clear approach and methodology for the work; and in advance of the draft report being produced, to agree the scope and structure of this report.We expect that most meetings would be conducted virtually over Microsoft Teams. Where circumstances allow, we would seek to conduct the project start-up meeting face-to-face in our London offices.  |
| **2.4 Project Timescales** |
| We would anticipate the project taking around 4 months, from late September 2021 to late January 2022. The provisional project timetable is as follows:* Start-up meeting and commencement w/c 20/09/2021.
* Fortnightly updates on progress and any issues
* Stakeholder engagement (including operator workshops) during autumn 2021
* Meeting to discuss emerging findings / recommendations by mid December 2021
* Draft reports by mid-January 2021
* Final reports by end January / early February 2022

We expect the conclusions from this work to feed into a further consultation on our PR23 charges review to be published sometime during Q1 2022. As such, it is important that the substantive analysis is completed by the middle of January, to allow sufficient time for us to reflect the outputs of the work in our next consultation.**Support Phase**There may be a requirement to support this work beyond the initial phase, to support our assessment of stakeholder responses to our further consultation in Q1 2022. This will depend on the nature and extent of responses. If this additional work is required, it would likely be over the summer of 2022.To enable this, the contract shall remain in place until 31 August 2022, with an agreed set of day rates. If support work is needed, the ORR shall set out the required level of support and the supplier shall confirm their approach (e.g. methodology and resource) in writing using the agreed rates.The ORR shall then confirm its agreement in writing for the work to commence, or not as the case may be. ORR would expect to take a decision as to whether this work is required at the point that stakeholder responses are known. |
| **2.5 Budget and Payment Schedule** |
| The maximum budget for this is £100,000 (inclusive of expenses, excluding VAT).As an indication, we envisage this overall sum being broken down as follows, though there is some flexibility on this point: * £50,000 for the workstream covering freight analysis; and
* £50,000 for the workstream covering open access analysis.

We request that you break down your bid into sums for the two workstreams. We may award both workstreams to a single consultant, or to different consultants. Bidders are welcome to bid for just a single workstream.ORR would prefer to pay upon successful completion of the deliverables; however, if bidders wish to supply a milestone payment schedule, this would be considered. Any proposed milestones must be linked to a tangible deliverable. Payments should also not be frontloaded and should reflect the value of the deliverable. |
| **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. As explained in Section 2.2, a confidentiality agreement is required for access to the MOIRA and MOIRA2 rail demand forecasting models. **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 InterestAt 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. |

**3. Tender Response & Evaluation criteria**

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| **3.1 The Tender Response** |
| The proposals for this project should include an outline of how bidders will meet the requirement outlined in section two (“Statement of Requirement”). The following information should be included:**a) Understanding of customer's requirements** * Demonstrate an understanding of the requirement and overall aims of the project.

**b) Approach to customer's requirements*** Provide a clear explanation of the proposed approach to the work for both freight and open access, and the methodology for reviewing and updating the PR18 MCB analysis in each case, including how this will address the issues highlighted in Section 2.2 of this document
* Details of your assumptions and / or constraints and dependencies made in relation to the project (particularly in respect of data availability)
* 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.

**c) Proposed delivery team*** Key personnel, including details of how their key skills, experience and qualifications align to the delivery of the project;
* Relevant examples of previous work that bidders have carried out; and
* Confirmation that you have carried out the necessary employment checks (e.g. right to work in the UK).

**d) Pricing*** A fixed fee inclusive of all expense for each workstream, plus a combined offer if bidding for both workstreams and the combined offer differs from the individual workstream fees (e.g. there is a price saving). This should includea 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.
* A set of day rates by grade as detailed below, for the support phase that may be required after completion of the workstreams.

**e) 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.
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| **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. For each workstream the contract will be awarded to the Bidder(s) submitting the **‘most economically advantageous tender’** (MEAT) or a combined offer as set out below. Tenders will be evaluated according to weighted criteria as follows: **Methodology (20%)**The proposal should set out the methodology by which the project requirement will be initiated, delivered and concluded. In particular, it must:a) Explain the overall approach and methodology to ensure that the requirements of this specification are met in terms of quality;b) Outline the evidence and data that you are expecting to use, to carry out the required analysis. **Delivery (20%)**The proposal should set out how and when the project requirement will be delivered. In particular, it must:a) 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; b) Demonstrate an understanding of the risks, and project dependencies and explain how they would be mitigated to ensure project delivery; c) Explain how you will work with ORR to ensure the project requirements are met.**Experience (30%)**The proposal should set out any experience relevant to the project requirement. In particular, it must:a) Provide CVs of the consultants who will be delivering the project; b) Highlight the organisation’s relevant experience for this project, submitting examples of similar projects and making clear the extent of industry expertise.**Cost / Value for money (30%)**A **fixed fee** for delivery of the workstreams (inclusive of all expenses), including a full price breakdown for each stage and details of the day rates that will apply for the support phase. The day rates shall not be scored.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name of consultant | Grade | Role  | Day rate | Number of days | Total cost (ex VAT) |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

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. |

Combined offerAs indicated in Section 3.1, where bidders are submitting a proposal for both workstreams, they may additionally offer a combined bid indicating where the combined offer differs from the individual workstream offers (e.g. reduced resource, reduced price etc.). The combined offers will be scored as per the above and then compared to the top two scoring individual offers to determine the MEAT.**Marking Scheme**For Methodology, Delivery and Experience the following shall apply:

|  |  |
| --- | --- |
| Score 0  | Unanswered or totally inadequate response to the requirement. Complete failure to grasp/reflect the core issues |
| 1 | Minimal or poor response to meeting the requirement. Limited understanding, misses some aspects |
| 3 | Good understanding and interpretation of requirements, providing clear evidence of how the criterion has been met |
| 5 | Excellent response fully addressing the requirement and providing significant additional evidence of how the criterion has been met and how value would be added |

For the Cost/Value for Money evaluation, the following shall apply:For each workstream 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 FeeYour 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. |

**4. Procurement procedures**

Tendering Timetable

The timescales for the procurement process are as follows:

|  |  |
| --- | --- |
| **Element** | **Timescale** |
| Invitation to tender issued | 09/08/2021 |
| Deadline for the submission of clarification questions | 30/08/2021 12pm |
| Deadline for submission of proposals | 07/09/2021 12pm  |
| Award contract | 17/09/2021 |
| Project Inception Meeting | w/c 20/09/2021 |

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

**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.

The 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.

The 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 |
|  |  |  |
|  |  |  |
|  |  |  |

**Annex 1: Summary of relevant documents on PR18 MCB analysis**

|  |  |  |
| --- | --- | --- |
| **Document** | **Date**  | **Description**  |
| PR18 [final determination](https://www.orr.gov.uk/sites/default/files/om/pr18-final-determination-infrastructure-cost-charges-consultation-conclusions.pdf)Supplementary document – Charges and incentives: Infrastructure cost charges conclusions | October 2018 | Summarises our decisions on settings ICCs for freight services and open access operators for CP6, based on analysis undertaken by CEPA and Systra  |
| **Freight analysis**  |
| PR18 [structure of charges review](https://www.orr.gov.uk/sites/default/files/om/cepa-mcb-freight-report-final-redacted.pdf)Market can bear analysis: Freight services. Report for ORR | September 2017 | Final report on the MCB analysis undertaken by CEPA for freight services |
| The potential impact of increases in track access charges on the transport by rail of biomass[Report](https://www.orr.gov.uk/media/17222) by MDST  | April 2018  | Further analysis by MDST on the specific impact of extending ICCs to freight services carrying ESI biomass  |
| The impact of track access charge increases on rail freight traffic[Report](https://www.orr.gov.uk/sites/default/files/om/mds-freight-nov06.pdf) by MDST | November 2006 | Sets out MDST’s original estimates for demand elasticities for freight commodities. This work was used to inform our PR18 MCB analysis. |
| **Open access analysis** |
| PR18 [structure of charges review](https://www.orr.gov.uk/media/14210)Market can bear analysis: Passenger services. Report for ORR | November 2017  | Revised final report on the MCB analysis undertaken by CEPA (in association with Systra) for passenger services |
| PR18 open access infrastructure cost charge implementationORR [conclusions document](https://www.orr.gov.uk/sites/default/files/om/pr18-consultation-on-open-access-infrastructure-cost-charges-implementation-conclusions.pdf)  | March 2019  | Summarises our conclusions on specific implementation issues for the ICC for new interurban open access services for CP6  |

1. We formally launched PR23 in June 2021, through an open letter to industry published [here](https://www.orr.gov.uk/sites/default/files/2021-06/2021-06-17-pr23-launch-letter.pdf). [↑](#footnote-ref-1)
2. Other types of income also contribute to Network Rail’s fixed cost recovery – notably the network grant that it receives from its funders. [↑](#footnote-ref-2)
3. Following the Covid-19 pandemic, these operators’ franchise agreements have been suspended and replace with concession-style agreements. [↑](#footnote-ref-3)
4. For billing purposes, this is known as the Freight-Specific charge, or FSC. [↑](#footnote-ref-4)
5. See paragraph 2(1) and 2(3) of Schedule 3. [↑](#footnote-ref-5)
6. Paragraph 2(7) of Schedule 3 requires us at a minimum to consider the relevance of a mark-up for: freight services; passenger services within the framework of a public service contract (i.e. franchised passenger operators); and other passenger services (i.e. open access). [↑](#footnote-ref-6)
7. This analysis was undertaken by CEPA. A report summarising this analysis and conclusions is available [here](https://www.orr.gov.uk/sites/default/files/om/cepa-mcb-freight-report-final-redacted.pdf) (see Annex 1 for a full summary of relevant previous work). [↑](#footnote-ref-7)
8. Open access operators did pay the capacity charge, in addition to charges which recover short-run variable costs. We removed the capacity charge in PR18. [↑](#footnote-ref-8)
9. This was undertaken by CEPA / Systra. A report of this analysis is available [here](https://www.orr.gov.uk/media/14210). [↑](#footnote-ref-9)
10. Cost data was only available at train operator level, rather than by different type of service. It was therefore necessary to estimate costs at a service level (to capture the fact that costs may differ between different types of services). The consultants developed a simple linear cost function to do this. [↑](#footnote-ref-10)
11. We defined a service as falling within the interurban market segment if: (i) at least one of the stations served has average annual entries / exits above 15 million passengers per year, or the station served is within two miles of a station meeting that demand threshold; (ii) at least one other station served has average annual entries / exits above 10 million passengers per year or it is within two miles of a station meeting that demand threshold; and (iii) two of the stations served meeting these thresholds are at least 40 miles apart. [↑](#footnote-ref-11)
12. Coal has seen a 44.1% reduction in freight moved in 2020-21, compared with the previous year. See ORR’s Freight Rail Usage and Performance 2020-21 Quarter 4 statistical release, [Freight Rail Usage and Performance 2020-21 Quarter 4 (orr.gov.uk)](https://dataportal.orr.gov.uk/media/1945/freight-rail-usage-and-performance-2020-21-q4.pdf#:~:text=Freight%20rail%20usage%20and%20performance%20during%202020-21%20was,fell%20to%20their%20lowest%20level%20since%20the%20mid-90s.). [↑](#footnote-ref-12)
13. Source: MDST (Nov 2006): ‘Impact of track access charge increases on rail freight traffic’, linked [here](https://www.orr.gov.uk/sites/default/files/om/mds-freight-nov06.pdf). The analysis also drew on a literature review by Clark (2005) on demand elasticities for different types of freight transport in the USA and Canada. [↑](#footnote-ref-13)
14. We note that pairs (b), (d) and (f) are more relevant to stage 1 of the freight analysis. [↑](#footnote-ref-14)
15. We understand that Network Rail’s billing system cannot disaggregate below service code level (for passenger operators). Service codes contain a mix of peak and off-peak services. As such, this is likely to remain a relevant constraint for market segmentation by time of day / day of week. We note that a weighted-average approach is currently used to charge the existing ICC for services when only part of the service is in the interurban market segment, and the other part of the service lies outside the intermarket segment. [↑](#footnote-ref-15)
16. We note that we have separately issued an ITT for some work to support our open-access monitoring, which will also consider trends in open-access revenues. However, the nature of this analysis is more limited in scope. [↑](#footnote-ref-16)
17. See for instance tables 7226 and 7233 in our Rail Industry Finance [statistical release](https://dataportal.orr.gov.uk/statistics/finance/rail-industry-finance). [↑](#footnote-ref-17)