

**INVITATION TO TENDER**

**&**

**STATEMENT OF REQUIREMENT**

**Review Of Possessions Regime (known as Schedule 4) For PR23**

**CPV Code: 73200000**

**Tender Reference: ORR/CT/21-09**

**Purpose of document**

The purpose of this document is to invite proposals forconsultancy supportfor the Office of Rail and Road (ORR) in respect of its review of possessions regime for PR23.

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:

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| --- | --- | --- | --- | --- |
| **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** |
| ORR is the economic regulator of 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”) through which its funding is set along with what it must achieve within each control period. As part of the periodic review, we also decide any changes to the possessions regime for planned disruption (known as Schedule 4)[[1]](#footnote-1). Schedule 4 is the portion of track access contracts that sets out the level of compensation Network Rail is required to pay train operators for delays, service changes or cancellations as the result of planned disruption on the network. This type of disruption occurs largely as the result of Network Rail taking temporary possession of the network to undertake planned engineering work, but also due to some other disruptive events such as severe weather.Under Schedule 4, Network Rail pays compensation to rail operators for the additional costs and/or revenue loss caused by service disruption due to possessions. The majority of Schedule 4 payments are formulaic covering short term possessions (known as type 1). Operators can also claim actual revenue losses and/or costs for longer possessions, (types 2 and 3) and for sustained planned disruption over a long period of time. Network Rail receives a discount on the amount of revenue loss payments it makes, the earlier it notifies operators about forthcoming possessions.The Schedule 4 passenger regime is funded by an access charge supplement (ACS) paid by all franchised operators in return for full formulaic Schedule 4 compensation. Open access operators can pay an ACS and receive full Schedule 4 compensation, but currently none choose to do so. Without paying the ACS, open access operators can only claim for lengthy possessions (type 3) and for periods of sustained disruption. Freight operators receive cost compensation based on the level of disruption and of the amount of notice given, and also for late cancelation of services. They can also claim actual losses for severe disruption. Freight Schedule 4 is funded out of Network Rail’s revenue requirement. Freight operators could receive higher payments in return for paying an ACS, but none currently do so. Schedule 4 has three main purposes: * to provide compensation to passenger and freight operators for revenue loss and additional costs incurred as the result of disruption to services;
* to act as an incentive on Network Rail to plan possessions efficiently, so as to minimise disruption to operators, and final customers; and,
* to ensure that Network Rail and other industry parties have information about the impact of possessions on users of the railway.

More widely, a key objective is to incentivise Network Rail and train operators to collaborate to manage planned disruptions effectively and minimise the impact on passengers. We completed our most recent periodic review in late 2018 (known as PR18). This review determined the possessions regimes, for the current control period (control period 6, or CP6, which runs from 1 April 2019 to 31 March 2024). The current view in the industry is that the Schedule 4 works well and as intended, although stakeholders have raised a number of issues which relate to specific features or to the value of specific parameters of the regime. We are now preparing for the next periodic review, covering the next control period (CP7, which runs from 1 April 2024 to 31 March 2029) and due in late 2023 (known as PR23), and for which we will review the possessions regime. PR23 will be embedded in a much different context than PR18. In particular, as a result of the large drop in passenger numbers and revenues from March 2020 due to Covid-19, franchising authorities have replaced most franchise agreements with ‘concession’-style contracts[[2]](#footnote-2) (we refer to these train operators as “DfT-contracted operators”). Meanwhile, wider government rail reform is on-going and will promote greater alignment of incentives and co-ordination between ‘track and train’, in particular by creating Great British Railways (GBR), a single body which integrates track and train[[3]](#footnote-3).These changes raise a number of issues and questions regarding Schedule 4 that we will need to consider when reviewing the possessions regime for PR23, notably in relation to: * **Relevance of Schedule 4 in a reformed railway.** Most train operators are now covered from revenue and cost risks under the new “concession-style contracts”. This means that there is potentially no longer a need for Schedule 4 compensation for these operators. In the longer term, one could also argue that, with the creation of GBR which integrates these train operators with the infrastructure manager, the costs and benefits of different possessions strategies would be considered jointly by the GBR without the need to specify compensation payments between infrastructure manager and operators through track access contracts. Whether a possessions regime *for these operators* remains relevant in PR23 is therefore an open question. That said, open access operators and freight operators will remain exposed to revenue and cost risks, and will continue to need financial protection against the consequences of planned disruptions.
* **Level of payments rates and funding.** Given the much lower than anticipated number of passengers on the network, and thereby expected revenue loss, current Schedule 4 payment rates are likely to be too high. It is also possible that the access charge supplement payments (paid by franchised operators and which funds passenger Schedule 4) for CP6 will have turned out to be too high given the need for Network Rail to delay some of its planned engineering work during covid lockdowns. We will therefore need to reconsider the appropriate payment rates and funding levels and channel for Schedule 4.
* **Resilience to uncertainty.** There is on-going uncertainty about the future shape of the rail industry, both regarding user demand and structural reform (e.g., transition and implementation plans for establishing Great British Railways), which will require us to build in sufficient flexibility in Schedule 4 to ensure that it remains resilient to these potential changes.

With these issues in mind, ORR’s Economics and Markets & Strategy directorate, which is the organisation’s centre of expertise for economic and financial analysis of the railway, has commenced early high-level policy thinking on how Schedule 4 could evolve for PR23. It is seeking consultancy support to review the current possessions regime (for both freight and passenger operators) and identify, design, and assess options of reform for PR23[[4]](#footnote-4). This project will inform our initial consultation in September 2021.  |
| **2.2 Project Objectives & Scope** |
| We have identified three options for the PR23 review of Schedule 4 and in the light of DfT Rail Reform.1. **Do minimum**: this option would make no changes to the Schedule 4 framework. We would instead proceed to a standard recalibration of the regime for CP7.
2. **Incremental change**: in addition to recalibration we would consider some incremental changes to the way the Schedule 4 mechanisms operates, in order to identify issues with the regime we have identified.
3. **Incremental change plus rail reform**: in addition to incremental changes, we would also consider the feasibility and relative merits of proposing an opt-out mechanism, in response to rail reform proposals.

We are minded to progress with the third option (incremental reform plus rail reform), although the other two options are not ruled out and should be analysed further. We require the consultant to conduct a) a review of Schedule 4 and a high-level impact assessment of the three options set out above and, b) detailed work to design and assess options for incremental reform and implementing an opt-out mechanism to Schedule 4, and c) contribute to or lead optional stakeholder engagement sessions. **a) Conduct a review of Schedule 4 and a high-level impact assessment of the three options set out above** The consultant will analyse and assess our three high level options set out above, building on more detailed work required below. This will include to: * Work with ORR to define the objectives of the possessions regime;
* Review the possessions regime, including by referencing recent research undertaken by ORR on train performance incentives, relevant to Schedule 4[[5]](#footnote-5);
* Identify, analyse and summarise key policy issues;
* Define and design further the 3 high level options set out above (building on more detailed work required below);
* Evaluate how each option would operate within the broader industry structure, in particular with regards to ongoing uncertainty, changing status of DfT-contracted train operators, and wider incentives in the industry; and,
* Carry out a high-level impact assessment for each option against set criteria.

**b) Conduct detailed work to design and assess options for incremental reform and for implementing an opt-out mechanism to Schedule 4** The consultant will design and assess options to implement an opt-out mechanism to Schedule 4, and to incrementally reform Schedule 4 for PR23[[6]](#footnote-6). This will entail:* Identifying and designing options for implementing an opt-out mechanism to Schedule 4;
* Identifying and designing between 3 and 5 options to incrementally reform Schedule 4 for PR23;
* Identifying and designing, options will involve consultation with a sample of stakeholders as well as 1-2 industry stakeholder workshops;
* Evaluating how each proposed option would operate in practice, in particular in light of ongoing uncertainty and current changes in industry structure;
* Carrying out an impact assessment of each proposed option;
* Identifying the implementation and transition approach for each proposed option; and,
* Scope the work required to “calibrate” the proposed changes and implement them effectively.

While we would like the consultant to conduct their own analysis and to bring their own ideas, we anticipate that the areas for consideration for incremental reform will include:* Schedule 4 needs to be able to **accommodate a potential move to 4 timetables a year.**
	+ Network Rail receives a discount on the amount of Schedule 4 revenue loss payments it pays the earlier it notifies operators about possessions, the level of discount varies by different notification thresholds.
	+ This is relevant because notification factors thresholds interact with the timetable planning process and we could be asked to consider how this should be reflected in the design of notification factors.
* **Replacing the sustained planned disruption** (**SPD) mechanism in favour of full and final payment rates** (i.e. rates that reflect actual losses by operators).
	+ SPD is triggered when operators’ revenue and/or costs losses trigger pre-defined thresholds.
	+ Operators believe these are set too high to ever trigger compensation, even in cases where operators suffer an extended period of disruption, and should be lowered.
* The need to **better monitor and supply information of when possessions are notified to operators.**
	+ Network notifies operators about possessions within certain thresholds, under the notification factor system. However, although it supplies information about by which threshold a possession is notified, Network Rail does not record the precise date a possession is notified. And the time between thresholds can be very long, e.g. up to 22 weeks. Operators believe monitoring of Network Rail’s performance in notifying them about possessions would be better improved if it supplied more granular detail about when possessions are notified.
* **Availability of Schedule 4 payments for the additional costs imposed on operators from passengers switching to operators whose services run parallel to a possession.**
	+ Currently, operators impacted by passengers switching from services disrupted by a possession onto parallel routes receive no compensation for additional costs. A number of operators have recently asked for such payments to be included in the regime.

Stakeholders and funders are also likely to have their own views and propositions on how Schedule 4 should evolve for PR23, and some of our stakeholders are acquiring consultancy support[[7]](#footnote-7) (notably on the level the access supplement charge to fund Schedule 4 and payment rates). Whilst we are looking to develop our own views on Schedule 4, we may wish to undertake impact assessment of alternatives proposals put forward by these studies as part of our overall assessment of options for reform. **c) Contribute to or lead stakeholder engagement sessions (optional)**As an option, we may ask the consultant to contribute to or organise up to 3 stakeholder engagement sessions and separate discussions with a sample of stakeholders to discuss their proposals with regards to the requirements set out above with our stakeholders and funders. We ask the consultant to price separately and individually these optional stakeholder engagement sessions. Throughout all of the above, the consultant will work as part of ORR’s project team, which will include a lead economist and other economist. This will help to ensure the activities are undertaken in a way which is consistent with our broader aims and objectives for PR23 as a whole. There will also be a strong expectation that the consultant takes account of the pursued objectives of the possessions regime, ongoing uncertainty, changing industry structure and relationships, and the necessity to align wider incentives in the industry when carrying out the analytical work and assessing options. |
| **2.3 Project Outputs, Deliverables and Contract Management**  |
| **Outputs and Deliverables*** A project plan, indicating key milestones and deadlines;
* Collation and development of options, and assessment of options against criteria (as set out above), documented in a detailed slide-pack. This should contain: relevant background; review of the current Schedule 4 and analysis of key policy issues, summary of objectives and assessment criteria; options description; evaluation of options against criteria. The slide-pack should be iterated with ORR and through engagement with stakeholders.
* Written summaries and impact assessments of each option for use in the planned consultation.
* A presentation of the conclusions and recommendations of the consultant to the ORR, and possibly to stakeholders if appropriate.

**Contract Management Requirements**We expect to work closely and flexibly with the consultant to discuss progress or any emerging issues, as necessary. The minimum required communications are as follows: * An initial kick-off meeting, during which a project plan will be agreed, setting out key milestones, deliverables and deadlines;
* Short online weekly catch-up to discuss progress on the project; and,
* Longer catch ups, to discuss issues in more depth, for example every 3 weeks or when necessary.
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| **2.4 Project Timescales** |
| We expect the consultant to set out their proposed timescales for the work, but we have set out an indicative timeline below. The consultant’s bids should highlight any expected deviations from this.* Inception meeting and project plan agreed – w/c 30/06/21
* (potential stakeholder workshops) – w/c 12/07/21
* Submission of draft analysis of key issues and high-level options for implementing an opt-out mechanism and incremental reform – w/c 02/08/21
* Submission of detailed draft options and impact assessments – w/c 06/09/21
* Final outputs submitted, as described above – w/c 27/09/21

Given the tight timescales, we expect to work very flexibly with the consultant and to iterate ideas and options on an ongoing basis. The stakeholder workshops in July will be organised by ORR and in the form of a listening exercise. The consultant will be expected to sit in the workshops to collect feedback and input to inform their work. These workshops in July are distinct from the optional workshops we might ask the consultant to contribute to or lead later on, and for which we require the consultant to set a separate price.  |
| **2.5 Budget and Payment Schedule** |
| The maximum budget for this piece of work is £50,000 (inc. of expenses, exc. of VAT).Ideally, payment of the total fee will be on the delivery and acceptance by ORR of all required outputs and/or deliverables, however, potential suppliers may propose a milestone payment schedule. Milestones must be connected to tangible deliverables with sufficient value remaining in the final milestone. |
| **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. 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 (ii) “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;
* Provide an explanation of the proposed approach to the work;
* 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; and,
* An understanding of the risks, and explain how they would be mitigated to ensure delivery.

**b)** **Proposed delivery team*** Key personnel including details of how their key skills, experience and qualifications align to the delivery of the project;
* Some relevant examples of previous work that bidders have carried out, including where bidders have worked closely with the client as part of the project team; and,
* Confirmation that you have carried out the necessary employment checks (e.g. right to work in the UK).

**d) Pricing**A fixed fee for the project inclusive of all expense. 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 separate and optional fixed fee for contribution or organisation of stakeholder engagement sessions, if required and as described above. **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. |
| **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 and delivery (20%)**The proposal should set out how the project requirement will be delivered. In particular it should: a) Explain how the 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 risks and how they will be mitigated to ensure project delivery; c) Explain how you will work with ORR to ensure the project’s requirements are met. **Experience (40%)**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 and the individuals’ relevant experience for this project, submitting examples of similar projects and making clear the extent of industry expertise.**Cost / Value for money (40%)**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. A separate and optional fixed fee for contribution or organisation of stakeholder engagement sessions, if required and as described above.

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| 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:

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

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| --- | --- |
| 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 Price evaluation the following shall apply:Fixed feeThe 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:

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| **Element** | **Timescale** |
| Invitation to tender issued | 01/06/2021 |
| Deadline for the submission of clarification questions | 09/06/2021 12:00pm |
| Deadline for submission of proposals | 16/06/2021 12:00pm |
| Shortlisted suppliers notified | 21/06/2021 |
| Interviews and presentations\* | 24/06/2021, 25/06/2021 |
| Award contract | 30/06/2021 |
| Project Inception Meeting | w/c 30/06/2021 |

\*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

**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:

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

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| --- | --- | --- |
| Para. No. | Description | Applicable exemption under FOIA 2000 |
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1. We use “Schedule 4” and “possessions regime” interchangeably. [↑](#footnote-ref-1)
2. The contracts put in place by the Department for Transport (DfT) are known as Emergency Recovery Measures Agreements (ERMAs) and National Rail Concession Contracts. Other franchising authorities have put in place similar arrangements. It is worth noting that by the time the next control period starts in 2024, we expect these arrangements to be replaced by Passenger Service Contracts. [↑](#footnote-ref-2)
3. The Government recently published a White Paper outlining its plans for the railway. The White Paper is published [here](https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail). [↑](#footnote-ref-3)
4. Our review of Schedule 4 is for PR23, i.e., the next control period starting in 2024. The analysis and policy work conducted by the consultant will need to be set within the context expected in 2024 and onwards. [↑](#footnote-ref-4)
5. ORR has undertaken several research projects which relate to the possessions regime, including a published report on train performance incentives (available [here](https://www.orr.gov.uk/monitoring-regulation/rail/networks/economic-research)), an internal mapping exercise of train performance incentives which sets Schedule 4 in context within the broader incentives framework, and another report which looks at Network Rail’s incentives in general. [↑](#footnote-ref-5)
6. Incremental reform is expected to only apply to non DfT-contracted operators, since DfT-contracted operators are expected to opt-out of Schedule 4. [↑](#footnote-ref-6)
7. Where potential suppliers are supporting Stakeholders they should note the Conflict of Interest requirements in section 2.6 of this ITT. [↑](#footnote-ref-7)