



Crown Commercial Service

Call Off Order Form for Management Consultancy Services

Provision of Consultancy to Support Industry Study for Train Operators

To

Department for Transport

From

L.E.K. Consulting LLP

Contract Reference: CCCC20B17

FRAMEWORK SCHEDULE 4

CALL OFF ORDER FORM

PART 1 – CALL OFF ORDER FORM

SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of Management Consultancy Services dated **04 September 2018**.

This Call Off Order Form relates to the Provision of Consultancy to Support Industry Study for Train Operators.

The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract.

For the avoidance of doubt this Call Off Contract consists of the terms set out in this Call Off Order Form and the Call Off Terms.

Order Number	To be advised by Customer at contract award
From	Department for Transport ("CUSTOMER")
To	L.E.K. Consulting LLP ("SUPPLIER")
Date	10th August 2020 ("DATE")

SECTION B

1. CALL OFF CONTRACT PERIOD

1.1.	Commencement Date: 10 th August 2020
1.2.	Expiry Date: End date of Period: 30 th October 2020 End date of Extension Period: 30 th November 2020 Minimum written notice to Supplier in respect of extension: Two (2) weeks

2. SERVICES

2.1	<p>Services required:</p> <p>See Annex A – Statement of Requirements</p>
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3. PROJECT PLAN

3.1.	<p>Project Plan:</p> <p>The following Contract milestones/deliverables shall apply:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Milestone/Deliverable</th> <th style="width: 55%;">Description</th> <th style="width: 30%;">Timeframe or Delivery Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Contract Commencement meeting</td> <td style="text-align: center;">17 July 2020</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Initial findings from review of Group 1a</td> <td style="text-align: center;">28 July 2020</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Findings from Review of Groups 1b and 2</td> <td style="text-align: center;">24 August 2020</td> </tr> </tbody> </table>	Milestone/Deliverable	Description	Timeframe or Delivery Date	1	Contract Commencement meeting	17 July 2020	2	Initial findings from review of Group 1a	28 July 2020	3	Findings from Review of Groups 1b and 2	24 August 2020
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3	Findings from Review of Groups 1b and 2	24 August 2020											

4. CONTRACT PERFORMANCE

4.1.	<p>Standards:</p> <p>In Clause 11 (Standards and Quality)</p> <p>Applied but definition of Standards shall exclude (a)</p>								
4.2	<p>Service Levels/Service Credits:</p> <p>The Customer will produce a high-level scorecard on the Supplier's performance for discussion monthly. The scoring rationale for the scorecard is set out in Annex 1 of the Statement of Requirements.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">KPI/SLA</th> <th style="width: 15%;">Service Area</th> <th style="width: 55%;">KPI/SLA description</th> <th style="width: 20%;">Target</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Deliverables:</td> <td> <p>Overall Project Deliverables:</p> <ul style="list-style-type: none"> How satisfied is the Client with the delivery of the services from the Consultant? Have all the deliverables been met in accordance with </td> <td style="text-align: center;">Score of 8+/10</td> </tr> </tbody> </table>	KPI/SLA	Service Area	KPI/SLA description	Target	1	Deliverables:	<p>Overall Project Deliverables:</p> <ul style="list-style-type: none"> How satisfied is the Client with the delivery of the services from the Consultant? Have all the deliverables been met in accordance with 	Score of 8+/10
KPI/SLA	Service Area	KPI/SLA description	Target						
1	Deliverables:	<p>Overall Project Deliverables:</p> <ul style="list-style-type: none"> How satisfied is the Client with the delivery of the services from the Consultant? Have all the deliverables been met in accordance with 	Score of 8+/10						

				<p>the requirements and expectations on quality?</p> <ul style="list-style-type: none"> Has the Consultant provided sufficient assurance to their deliverables? 	
		2	Staff	<p>Staff Competence:</p> <ul style="list-style-type: none"> How satisfied is the Client with the Consultant's staff appointed to the project competent and suitably qualified to perform the work required of them by the project? Do the staff communicate effectively, attend regular meetings / conference calls and follow-up accordingly, as required by the project? Are the staff's deliverables consistent with the required reporting / evaluations expected by the Client team? Where SME's are engaged, has the competency and performance of the staff from the SME met with the required expectations? 	Score 8+/10 of
		3	Mobilisation and Delivery to Programme / Project Deadlines, and exit process.	<ul style="list-style-type: none"> Has the supplier mobilised in a manner consistent with the Client team's expectations? How satisfied is the Client with the programme management by the Consultant? Has the Consultant suitably managed project deliverables in a timely manner? If not, has the Consultant provided suitable notice of any possible delays to the programme and/or identified suitable corrective action and acted accordingly? 	Score 8+/10 of

				<ul style="list-style-type: none"> Is the Client satisfied that the overall programme is under control? Has the supplier passed on to the Passenger Service team as part of the exit process all information required for future use, therefore, enabling the project to be closed off with no outstanding dependencies. 	
		4	Project Budget Management	<ul style="list-style-type: none"> The Client is responsible for the internal reporting on project costs, which is supported by regular Consultant updates on billing and forecasts? How satisfied is the Client with the Consultant's billing processes and forecast updates? Is the Client satisfied that it clears GRNs and the Customer duly pays the approved invoices? 	Score 8+/10 of
4.3	Critical Service Level Failure:				
	Not applied				
4.4	Performance Monitoring:				
	See Section 4.2				
4.5	Period for providing Rectification Plan:				
	In Clause 39.2.1(a) of the Call Off Terms				

5. PERSONNEL

5.1	Key Personnel:
	<u>Customer:</u>
	REDACTED
	<u>Supplier:</u>
	REDACTED

5.2	Relevant Convictions (Clause 28.2 of the Call Off Terms): Not Applied
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6. PAYMENT

6.1	<p>Call Off Contract Charges (including any applicable discount(s), but excluding VAT):</p> <p>The call off resource rates for the time priced aspects of this contract are as follows: REDACTED</p> <p>For the avoidance of doubt, the total contract value for the duration of the Call-Off Contract Period, will not exceed £1,550,000.00 exc. VAT</p> <p>These rates are to remain firm for the full duration of the contract term and this inclusive of the expressed extension option if executed by the Customer.</p> <p>As this is a call off contract and as such the Contracting Authority cannot guarantee volumes of work.</p>
6.2	<p>Payment terms/profile (including method of payment e.g. Government Procurement Card (GPC) or BACS):</p> <p>REDACTED</p>
6.3	<p>Reimbursable Expenses:</p> <p>Not Permitted other than in respect of the acquisitions of national and regional macro-economic forecasts and other third party input data, reports and information required for the provision of the Services is requested from the DfT in the first instance and where the DfT does not hold and therefore cannot provide the Supplier with such information.</p>
6.4	<p>Customer billing address (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>All Invoices should include the Purchase Number provided by the Customer at the Contract start. Invoices should be submitted to the Customer's Shared Services Centre at the address below: REDACTED</p> <p>Email address for invoices is: REDACTED</p>
6.5	<p>Call Off Contract Charges fixed for the duration Call-Off Contract (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>The duration of the Call Off Contract from the Call Off Commencement Date of 10th July 2020 to 31st October 2020. In addition any contract extension (time only) to 30th November 2020 if implemented.</p>
6.6	<p>Supplier periodic assessment of Call Off Contract Charges (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out on:</p> <p>Not Applicable</p>

6.7	Supplier request for increase in the Call Off Contract Charges (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Not Permitted
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7. LIABILITY AND INSURANCE

7.1	Estimated Year 1 Call Off Contract Charges to 31st October 2020: Up to the sum of £1,550,000.00 (excluding VAT)
7.2	Supplier's limitation of Liability (Clause 37.2.1 of the Call Off Terms); Applied
7.3	Insurance (Clause 38.3 of the Call Off Terms): Applied

8. TERMINATION AND EXIT

8.1	Termination on material Default (Clause 42.2 of the Call Off Terms): In Clause 42.2.1(c) of the Call Off Terms
8.2	Termination without cause notice period (Clause 42.7 of the Call Off Terms): In Clause 42.7 of the Call Off Terms
8.3	Undisputed Sums Limit: In Clause 43.1.1 of the Call Off Terms
8.4	Exit Management: Not applied

9. SUPPLIER INFORMATION

9.1	Supplier's inspection of Sites, Customer Property and Customer Assets: Not Applied
9.2	Commercially Sensitive Information: Not Applicable

10. OTHER CALL OFF REQUIREMENTS

10.1	Recitals (in preamble to the Call Off Terms): Recital A
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	Recital C - date of issue of the Statement of Requirements: 17 th July 2020 Recital D - date of receipt of Call Off Tender: 19 th July 2020
10.2	Call Off Guarantee (Clause 4 of the Call Off Terms): Not required
10.3	Security: Short form security requirements The Customer takes data security extremely seriously and applies agreed government security procedures to all Contracts involving the handling of data and 'Official Sensitive' and 'Commercial Sensitive' information. The Potential Provider is required to take adequate steps to ensure suitable protection of, and keep confidential, all information received as part of the Rail Review, including, as necessary, limits on access to IT systems and password protections.
10.4	ICT Policy: Not applied
10.6	Business Continuity & Disaster Recovery: In Call Off Schedule 8 (Business Continuity and Disaster Recovery) Disaster Period: For the purpose of the definition of "Disaster" in Call Off Schedule 1 (Definitions) the "Disaster Period" shall be for the duration of the contract.
10.7	NOT USED
10.8	Protection of Customer Data (Clause 35.2.3 of the Call Off Terms): Applied
10.9	Notices (Clause 56.6 of the Call Off Terms): <u>Customer's postal address and email address:</u> Department for Transport, REDACTED REDACTED <u>Supplier's postal address and email address:</u> L.E.K. Consulting LLP, REDACTED REDACTED
10.10	Transparency Reports Not Applicable
10.11	Alternative and/or Additional Clauses from Call Off Schedule 14 and if required, any Customer alternative pricing mechanism: Not Applicable

10.12	Call Off Tender: See Annex B – Tender Proposal from L.E.K. Consulting LLP
10.13	Publicity and Branding (Clause 36.3.2 of the Call Off Terms) Not Applicable
10.14	Staff Transfer Not Applicable
10.15	Processing Data Call Off Schedule 17

Contract Reference:	CCCC20B17
Date:	10th August 2020
Description Of Authorised Processing	Details
Identity of the Controller and Processor	Where any Personal Data is processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor unless otherwise determined by Article 4 of the GDPR
Use of Personal Data	Managing the obligations under the Call Off Contract Agreement and other associated activities,
Duration of the processing	For the duration of the Framework Contract plus 7 years.
Nature and purposes of the processing	
Type of Personal Data	Full name Workplace address Workplace Phone Number Workplace email address Names Job Title

Categories of Data Subject		
10.16	MOD DEFCONs and DEFFORM Not Applicable	

FORMATION OF CALL OFF CONTRACT

BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Services in accordance with the terms Call Off Order Form and the Call Off Terms.

The Parties hereby acknowledge and agree that they have read the Call Off Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.

For and on behalf of the Supplier:

Name and Title	REDACTED
Signature	REDACTED
Date	19 August 2020

For and on behalf of the Customer:

Name and Title	REDACTED
Signature	REDACTED
Date	19 August 2020

ANNEX A - STATEMENT OF REQUIREMENTS



Crown
Commercial
Service

Statement of Requirements

Contract Reference: CCCC20B17 Provision of Consultancy to
Support Exit Arrangements for the
Emergency Measures Agreement (EMA)
for Train Operators

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1. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 1.1. On 11 March 2020 World Health Organization (WHO) declared Covid-19 a pandemic. Prior to this date franchise operators had begun to observe a fall in passenger demand and this was exacerbated by Government advice to avoid all but essential journeys and eventual lockdown. This resulted in a fall of demand of around 70% against the equivalent period in 2019 by mid-March.
- 1.2. It became clear during the course of March 2020 that if franchises were not provided with a form of financial relief from their Franchise Agreement obligations which in most cases required the franchisee to take cost and revenue risk, many would rapidly become insolvent and ultimately could no longer be able to provide passenger services. Thus, on 31 March, the DfT put in place an EMA with all 12 private sector franchise operators as a short term solution to the current liquidity issues facing the industry and to ensure the railways remained operational for those who were still needing to travel, as well as to ensure continued resilience of the system once social distancing measures were relaxed and passengers returned.
- 1.3. Under the EMAs, the Secretary of State assumes all cost and revenue risk from franchisees, with this financial arrangement applying retrospectively from 1 March 2020. This is achieved by suspending key parts of the franchise agreement, namely the provisions around Franchise Payments and replacing them with provisions creating a “management contract”-type arrangement.
- 1.4. Under the EMAs all operators were offered a pre-determined management fee to run services and a small performance fee to incentivise behaviours, with amounts set at the same percentage of historical costs. All EMAs are set to expire on 20 September 2020 but may be shortened or extended by mutual consent (though it is acknowledged by both the DfT and franchisees that 20 September is the earliest the EMA arrangements could be released). Upon expiry of each EMA, the operator will revert to the existing terms of their underlying franchise agreement.
- 1.5. With the EMAs now in place, the Department, co-ordinated by the Coordination and Planning (CAP) Team, is engaged in planning for ensuring that arrangements with franchisees are sustainable following 20 September 2020, or whenever EMA expiry occurs should this be extended.
- 1.6. Prior to the Covid-19 pandemic, several franchises were already experiencing financial difficulties such that they were predicted to be in an Event of Default prior to their scheduled franchise expiry. The Department’s principal concern now is that the previous franchise model is not fit for purpose. Many, if not all, franchisees will immediately experience financial stress following the expiry of their EMAs and reversion to former franchise agreement terms as it is predicted that passenger levels will not recover for many months, possibly years, even following a full relaxation of the lockdown and social distancing rules relatively soon.

- 1.7. As a result, the Department is considering implementing a range of options to further intervene in franchisees' individual contracts, including transferring operators onto Emergency Recovery Measures Agreements (ERMAs) for up to 24 months. The ERMAs will continue a commercial model that keeps revenue and cost risk almost wholly with DfT, however will also incorporate a range of changes to support recovery and start to implement efficiency reforms. These may include a lower base management fee, amended performance incentives to focus on cost savings and/or revenue recovery, and a broader duty of cooperation.
- 1.8. The underlying principle of implementing ERMAs would be to terminate the existing franchise agreements, and in doing so will require some operators to pay a Termination Sum based on the financial position of the franchise prior to the March 2020 lockdown and the forecast likelihood of franchise default during the core term.

2. DEFINITIONS

Expression or Acronym	Definition
DfT	Department for Transport
EMA	Emergency Measures Agreement
ERMA	Emergency Recovery Measures Agreement
PCS	Parental Company Support
TOC	Train Operating Company
WHO	World Health Organization

3. SCOPE OF REQUIREMENT

- 3.1. DfT has carried out an assessment of the likely financial trajectories of nine franchises before COVID 19 impacted passenger demand and operations. Based on this assessment DfT has categorised the TOCs into three groups:
 - **Group 1a** is made up of three TOCs who were expected to become potentially insolvent before the expiry of their Franchise Agreements.
 - **Group 1b** is made up of two TOCs who had already entered negotiations and/or were believed by DfT to be highly likely to have become insolvent prior to the expiry of their franchise agreements.
 - **Group 2** is made up of four TOCs who were not expected by the DfT to become insolvent prior to the expiry of their franchise agreements
- 3.2. There are expected to be a number of phases of work.
- 3.3. The Initial phase will look at TOCs in group 1a
- 3.4. The follow-on phase will look at TOCs in groups 1b and 2.

- 3.5. Subsequent phases of work (To be agreed as these may fall out of the Call Off Order and Call-off Contract Charges)
- Provision of evidence and commercial support to assist DfT in reaching a commercial settlement with TOCs
 - Develop a methodology that can be used at point of termination with TOCs

4. THE REQUIREMENT

- 4.1. The Customer is seeking to procure advisors to provide advice and support in the development of exit arrangements from EMAs contingency arrangements as a result of the impact of Covid-19 on the train operators. In particular, support for the following workstreams are envisaged:
- 4.2. Building on our existing work, and using the supplier's understanding of the industry, take a view as to the potential range of PCS and other related capital payments that would be reasonable to seek from TOCs in return for ERMA's plus termination, based on the policies provided by DfT.
- 4.3. Build up a methodology we can apply to the calculation on the basis of achieving a termination sum on a fair basis, to allow us to enter detailed discussions with the "more complicated" TOCs.

5. MANAGEMENT INFORMATION/REPORTING

- 5.1. Please refer to Section 6.2 of the Contract Order Form - Payment terms/profile.

6. VOLUMES

- 6.1. As this is a call-off contract, volumes of work cannot be guaranteed throughout the contract duration.

7. CONTINUOUS IMPROVEMENT

- 7.1. The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 7.2. Changes to the way in which the Services are to be delivered must be brought to the Customer's attention and agreed prior to any changes being implemented.

8. SUSTAINABILITY

- 8.1. There are no specific sustainability requirements applied to this contract, due to its overarching nature, however the Customer expects the Supplier to comply with all current legislation regarding sustainability and legislation introduced or amended during the period of the contract pertaining to this.
- 8.2. This should include compliance with the Modern Slavery Act 2015 and Climate Change Act 2008.

- 8.3. The Supplier is to consider their carbon footprint in allocating and deploying resources to undertake requirement.

9. QUALITY

- 9.1. Effective and high standard quality assurance is a fundamental requirement for all work carried out by the Supplier. The work should draw on robust evidence from established literature and any desk analysis should be subject to an appropriate Quality Assurance process.

- 9.2. Effective and high standard quality assurance should also be carried out on the following:

All analysis done in spreadsheets;

All analysis done in other programmes.

10. STAFF AND CUSTOMER SERVICE

- 10.1. The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.

- 10.2. Excellent communication and stakeholder management skills.

- 10.3. Experience of working on commercial structures relating to Rail franchising.

- 10.4. Interaction between the team supplied by the Provider and the Customer's Team will need to be flexed as appropriate, dependent upon project deliverables, but as a minimum the following is expected of the Supplier:

- 10.4.1. For a lead contact to be nominated, with overall responsibility for Supplier's quality of deliverables and reporting.

- 10.4.2. For appropriate representation to attend a start-up meeting and regular meetings with the Project Team. The regularity of representation at team meetings will be determined by the relevant focus on deliverables during the project lifecycle.

11. CONTRACT MANAGEMENT

- 11.1. Contract management reviews will be held monthly at pre-agreed dates and locations/channels. When required

- 11.2. Attendance at Contract Review meetings shall be using Microsoft Teams.

- 11.3. Variations required to the contract or sub contracts will be undertaken by the use of the variation notice at Schedule 12 in Framework Terms & conditions.

- 11.4. The Customer will appoint a Contract Manager to manage this contract.

- 11.5. Attendance at Contract Review meetings shall be at the Supplier's own expense.

12. CONFLICTS OF INTERESTS

- 12.1. The Customer acknowledges and agrees that the Supplier may have served, may currently be serving, or may in the future serve other parties who participate in the rail and other transportation market and other operators in the sector in which the Customer has an interest, and the Customer hereby waives any objections to any such representations by the Supplier. The Supplier will at all times abide by the confidentiality and non-disclosure provisions agreed between the Customer and the Supplier.
- 12.2. The Supplier is required to set out any actual or perceived conflicts of interest, and to demonstrate how it could mitigate against these conflicts and how they will manage any future conflicts of interest and confidentiality, so as to comply with the Customer's requirements at all times. Where their conflicts status changes they should advise the Customer immediately

13. LOCATION

- 13.1. It is expected that the Supplier will work remotely as a result of the COVID19 pandemic.

ANNEX 1 – SERVICE LEVELS AND PERFORMANCE SCORING SYSTEM

A scoring system of 0 - 10 is used to assess a Client's performance in each of the areas measured

0 = Completely Dissatisfied

2 = Highly Dissatisfied

4 = Mildly Dissatisfied

6 = Mildly Satisfied

8 = Highly Satisfied

10 = Completely Satisfied

Annex B – Tender Response from L.E.K Consultants LLP

REDACTED