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1. PURPOSE

- 1.1 The purpose of this procurement is to source qualified and experienced legal advisers to assist the Department for Transport (DfT) in administering its contracts with Agility Trains Ltd.

2. BACKGROUND TO THE INTERCITY EXPRESS PROGRAMME

- 2.1 The Intercity Express Programme (IEP) comprises the rolling stock which will replace the fleet of intercity 125 and 225 trains that operate on the Great Western and East Coast Mainline routes. It forms part of the UK Government's long-term rail strategy.
- 2.2 These new trains provide higher capacity and are more environmentally sustainable than the existing fleet of high speed diesel and electric trains and will improve the passenger experience. The majority of these trains are being built in Newton Aycliffe in County Durham in a new Assembly plant which is supporting growth in jobs and economic benefits for the area and the wider supply chain.
- 2.3 Although the IEP contracts have been entered into with Agility Trains Ltd (a consortium of Hitachi and John Laing) and financed, substantial delays to electrification of the infrastructure on the Great Western Mainline have required variations to the agreements to enable the electric trains to be converted to bi-mode operation to allow diesel running to operate the original timetable.
- 2.4 The IEP contract is worth £5.7bn over 27.5 years. It includes the provision of 122 new trains of which 57 will be delivered on the Great Western route and 65 on the East Coast. The rollout for the new trains ends in 2020. In addition there has been significant investment at 9 new / upgraded depots to enable maintenance of the fleet through the term of the contract. At many of these depots Hitachi has become the Depot Facility Owner so they can prioritise services for the new fleet as the penalty for train's not entering service is very high.
- 2.5 IEP currently sits within the Major Projects Directorate in DfT's Rail Group. As the trains enter into service the management of the contract will migrate to the Train Services Strategy team within Passenger Services, also situated in Rail Group.

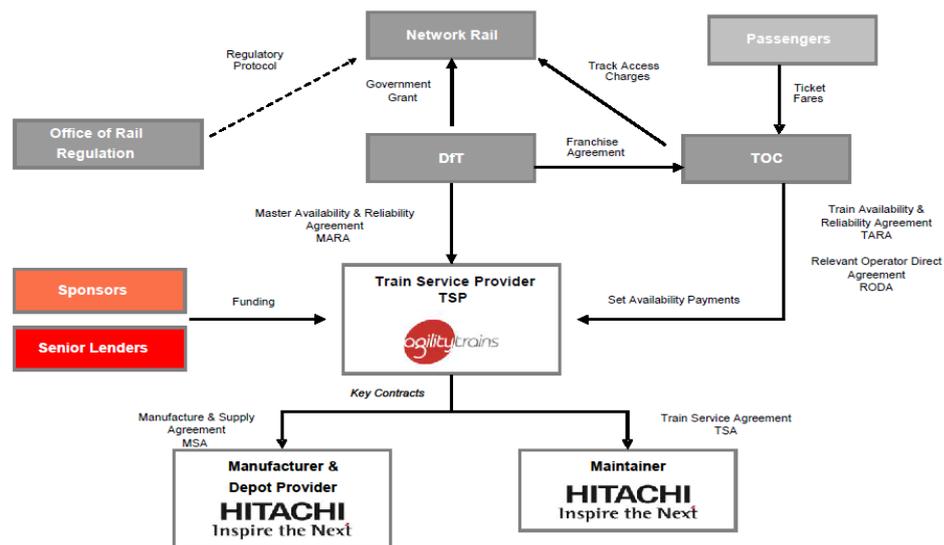
3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1 The Authority requires high quality legal advice from professionals experienced in complex, privately financed deals to ensure the DfT (and the taxpayer) gets the best possible deal in the short and longer term in any negotiations with the counterparties.
- 3.2 The Authority requires legal advice on interpreting the contracts as well as on the best means of amending the contracts to respond to contract variations whilst not weakening the Department's position. Current delays to electrification on the Great Western Mainline mean that a number of contract variations will be either added, amended or repealed, all of which will require legal advice. In addition to these, we anticipate there will be further variations to the contracts in relation to the East Coast fleet.
- 3.3 IEP commercial structure



- 3.3.1 The key feature of this structure is the ‘bundled’ procurement of rolling stock, maintenance services and facilities, and finance via a single Train Service Provider (TSP), in this instance Agility (a Special Purpose Vehicle owned by Hitachi Rail Europe and John Laing). The TSP contract is a 27.5 year PFI-style deal to design, build, finance and maintain intercity trains.
- 3.3.2 The procurement of the IEP required a number of contractual documents including a Master Availability and Reliability Agreement (MARA) between the DfT and TSP and a Train Availability and Reliability Agreement (TARA) between the TSP and the relevant Train Operating Company (TOC).
- 3.3.3 The figure below sets out how this structure works in practice.

Contracts (excluding property documents)



IEP Commercial structure, taken from the IEP Full Business Case (2012)

3.4 IEP Procurement Document Structure

- 3.4.1 The MARA is a contract between the Secretary of State and the TSP, which obliged the TSP to design, build and introduce trains and maintenance facilities to the DfT specification and then enter into agreements with TOCs to make the trains available under an agreed performance and availability regime. The MARA includes an undertaking that the IEP trains will continue to be used over the 27.5 year life of the contract. The TSP will enter into a TARA with each TOC (initially GWR and VTEC) which sets out the TSP’s obligation to make trains available on a daily basis as defined within the contract, and the payment and penalty mechanisms that will apply. If trains are not available, the TSP does not receive payment.
- 3.4.2 To put this into context Agility has separate contracts with the franchise operators: Agility receives payments from the operators for provision of



each train each day. Agility suffers payment deductions if it fails to meet tough contractual targets around timeliness, reliability, performance and cleanliness. The government pays for the trains and depots indirectly through its franchise contracts with the TOCs, currently with GWR (until 2019) and VTEC (until 2023).

4. DEFINITIONS

Expression or Acronym	Definition
DfT	means Department for Transport
IEP	means Intercity Express Programme
HST	means High Speed Train
HRE	means Hitachi Rail Europe
GWR	means Great Western Railway
VTEC	means Virgin Trains East Coast
MARA	means Master Availability and Reliability Agreement
TARA	means Train Availability and Reliability Agreement
TSP	means Train Service Provider – Agility Trains Ltd
TOC	means Train Operating Company – currently Great Western Railway and Virgin Trains East Coast
Open Book	means the transparent sharing of all accounting information including actual costs in order to aid financial governance and to enable structured cost reduction initiatives

5. SCOPE OF REQUIREMENT

- 5.1 This appointment is expected to commence as soon as possible and run for a possible 48 months unless the DfT choses to terminate the contract at its entire discretion. The appointed Supplier will be expected to work with the DfT throughout the delivery phase of the trains reporting to the Commercial and Contracts Manager, whilst also having strong links to the relevant Franchise Teams and the Rolling Stock team.
- 5.2 Scope Specific:
- 5.2.1 The overall aim is to support and assure the Department in delivering an effective, value for money commercial outcome in an efficient and robust manner.
 - 5.2.2 Managing change control process as required.
 - 5.2.3 Advising on any issues arising out of DfT’s ongoing contractual obligations under the MARA and ancillary documentation.
 - 5.2.4 Advising on any contractual dispute between the parties to the extent that affects the DfT.



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- 5.2.5 Advising on any further negotiations which take place once the trains enter into service.
 - 5.2.6 Providing such ad-hoc advice as the Department requests on the existing GWR and VTEC franchise agreements and any subsequent franchise agreements relating to the Great Western and East Coast Mainline routes.

6. THE REQUIREMENT

- 6.1 The programme team envisage that the advisers will be required to provide legal advice for the following tasks:
 - 6.1.1 *Support the delivery of contract variations that may be required.* The Supplier will be required to contribute to, comment on, and draft (only if required) the preparation of the Department's internal approval procedure documents relating to any proposed variation, as required.
 - 6.1.2 *Provide ongoing legal advice with negotiations of contractual changes to support the recovery of the train acceptance programme.* At present Agility is behind schedule in delivery/acceptance of the new IEP trains on the Great Western network. Delivery of IEP is sequential, therefore the East Coast would be affected by further delays on the Great Western rollout. Recovery of the programme may require a revision to some of the contractual terms to obtain the best outcome for all parties. This is a potentially difficult legal negotiation and would require the support of external legal advisers in approximately six months.
 - 6.1.3 *Provide ongoing advice on the interpretation of the contracts and advice on matters associated with the IEP contracts.* Since contract award there has been a constant workflow of issues requiring external legal advice including a refinancing, contractual interpretation issues, management and development of contract variation proposals and acceptance and approvals processes. This workflow is anticipated to continue until all trains are entered into service in 2020.
 - 6.1.4 *Provide ongoing legal advice to minimise the risk of a potential contract termination.* During the delivery of the new IEP rolling stock there will be required variations to reflect the extent of the electrification programme. Where these materialise there would be a need for rapid and significant volumes of legal advice for the Secretary of State. The DfT's risk management strategy to manage such a situation is to have a suitably resourced legal adviser in place to provide rapid advice and support any commercial negotiations that might need to take place.
- 6.2 Interaction between the Supplier and project team will need to be flexed as appropriate, dependent upon project deliverables, but as a minimum the following is expected of the Supplier:
 - 6.2.1 For a lead contact to be nominated, with overall responsibility for the Supplier's quality of deliverables and reporting.

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6.2.2 For appropriate representation to attend a start-up meeting and regular meetings with the wider project team, with physical attendance to be determined as appropriate by the DfT’s Internal Legal Lead. The regularity of representation at team meetings will be determined by the relevant focus on deliverables during the project lifecycle.

6.2.3 For appropriate representation to manage the transition and handover process from DfT’s current legal advisers to the new Supplier. Bidders should note that there will be an opportunity of approximately 8 to 12 weeks to ensure a full transition has occurred; this is occurring at a crucial time in the programme which has seen the first trains enter into service on the Great Western mainline in October 2017.

7. KEY MILESTONES

7.1 The Potential Provider should note the following project milestones that the Authority will measure the quality of delivery against:

Milestone	Description	Timeframe
1	Kick-off meeting	Within one week of contract award

8. AUTHORITY’S RESPONSIBILITIES

8.1 Where DfT needs to commission specific advice within the broad scope they will provide the contracted party with the specification for the services they require. In these instances DfT would agree a reasonable time frame within which they wanted a response.

8.2 DfT will provide pertinent documents relevant to the scope of work.

9. REPORTING

9.1 The Supplier is requested to prepare regular (monthly, or as otherwise agreed) updates for the Department team giving details of:

9.1.1 Emerging issues that need to be addressed;

9.1.2 Performance against Key Performance Indicators and

9.1.3 Actual time and costs incurred to date by activity and estimated time and cost to completion (to be updated on a four-weekly basis that coincides with the Department’s internal reporting cycle).

10. VOLUMES

10.1 The experience to date is that regular legal advice is required by the DfT’s Intercity Express Programme to manage the changes which have been made and it is expected that there will be a requirement for further variations to the contracts to manage service requirement changes and delivery into service. At the busiest time it is expected that



daily advice may be required. No Level of work is guaranteed as this is a call-off contract.

11. CONTINUOUS IMPROVEMENT

- 11.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 11.2 The Supplier should present new ways of working to the Authority during monthly and then quarterly Contract review meetings.
- 11.3 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.
- 11.4 Throughout the contract the Supplier is expected to share skills and knowledge. At the end of the contract the Supplier will be required to complete a knowledge transfer to the Department and, where appropriate, to other external advisers (this may include other legal advisers). This will include the compilation of a set of core commercial documents and legal advice notes, which must also be made available in electronic form.

12. SUSTAINABILITY

- 12.1 Not applicable to this requirement.

13. QUALITY

- 13.1 Suppliers' submissions will be expected to provide full confidence in the Supplier's ability to provide assurance with the quality of their legal advice and experience.

14. PRICE

- 14.1 The estimated total budget is £3,000,000 over the lifespan of this contract. The Supplier team may need to flex in size depending on the requirements of the programme.
- 14.2 The contractual variations associated with IEP are influenced by external events that are beyond the control of the Customer. Suppliers are encouraged to consider fixed pricing options for particular variations if, and when, appropriate.
- 14.3 Prices must be submitted inclusive of any expenses but should exclude VAT. Potential providers are required to provide a transparent breakdown of their pricing taking into account all other Payments terms as described in Clause 18; outlining all expenses and extras as an attachment to the bid field.
- 14.4 Prices are to be submitted via the e-Sourcing Suite (Appendix E) excluding VAT as an attachment at question level.

15. STAFF AND CUSTOMER SERVICE

- 15.1 The Authority requires the Potential Provider to provide a sufficient level of resource (to include a named Partner or Senior Associate) throughout the duration of the IEP Legal Adviser Contract in order to consistently deliver a quality service to all Parties.

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- 15.2 The Supplier shall not remove or replace any Key Staff unless:
- 15.2.1 requested to do so by the Customer;
 - 15.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 15.2.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 15.2.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed)
- 15.3 Potential Provider's staff assigned to the IEP Legal Adviser Contract shall have the relevant qualifications and experience to deliver the Contract.
- 15.4 The Potential Provider shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.
- 15.4.1 Mandatory
 - 15.4.1.1 A track record of working on very large scale and complex PFI-style transactions demonstrating the skills and capability to deliver the key Programme requirements.
 - 15.4.1.2 A proven track record in successfully negotiating with commercially minded organisations. A track record in rolling stock procurement would be desirable.
 - 15.4.1.3 Demonstrable ability to work efficiently to tight timescales in pressurised circumstances and to deliver quality outputs, and work collaboratively with the DfT lawyers as well as policy makers.
 - 15.4.1.4 Strong business and commercial management experience including the ability to build and maintain a correctly balanced team, taking into account skills, expertise and delivery (at the appropriate level), and managing out any conflicts of interest.
 - 15.4.1.5 An ability to work on a high profile project with a high degree of confidentiality.
 - 15.4.1.6 Robust team structure, matching the right individuals with the appropriate skills needed and including a process to ensure resilience of the team.
 - 15.4.1.7 The ability to communicate succinctly both verbally and in writing at all levels right up to board level, within the DfT and industry stakeholders.

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15.4.2 Desirable

15.4.2.1 Demonstration of other commissions working for Government, National Rail and Train Operating Companies.

15.4.2.2 A track record of working with rolling stock contracts and understanding industry mechanics and risks around acceptance of trains.

15.4.2.3 A thorough understanding of the Franchise Agreement.

16. SERVICE LEVELS AND PERFORMANCE

16.1 KPIs must be in accordance with Schedule 2 of the Panel Agreement for the Provision of Rail Legal Services.

16.2 Remedies and Termination – as set out in Part H and I of the Panel Agreement.

KPI/SLA	Service Area	KPI/SLA description	Target
1	Delivery timescales	The supplier will provide rapid advice as and when required. Advice is to be provided within the determined reasonable deadlines agreed and set between the supplier and the DfT team. These will vary between tasks so that a very urgent task will require a response the next day whilst a routine piece of advice would only require a response in 3-5 working days	98%
2	Monthly meeting reviews	The Supplier and the DfT will meet monthly to discuss the delivery and other matters and whether any improvements in ways of working or communications could be made to improve general delivery outcomes. The Supplier will provide a report summarising the above in a format to be agreed.	By 10:30 a.m. on the last Friday of the month.
3	Embedding Knowledge Transfer	It is expected that the supplier will attend all knowledge sharing meetings with the DfT team, DfT Legal team and or meetings with other similar project leads such as Crossrail, to share their findings and	70%

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		best practices which may be useful to the DfT. Meetings will be agreed and arranged with the programme lead approximately every two months or as and when required.	
4	Exit Strategy	It is expected that the supplier will embed an exit strategy leading up to contract close (and no later than three months before contract expiry) to ensure that any skills or information is passed onto the programme team for future use, therefore, enabling the project to be closed off with no outstanding dependencies.	70%
5	Timesheets	Monthly timesheets for approval by the Department. To be submitted on the first working day of a new month for the previous month.	First day of the next month.

17. SECURITY REQUIREMENTS

- 17.1 The potential Suppliers are to note that in line with the DfT's security procedures all staff they supply or intend to supply who will have regular access to or will be based at the employer's premises must have complied with the employer's Baseline Personnel Security Standard (BPSS) which can be found in the link at:
<https://www.gov.uk/government/publications/security-policy-framework>
- 17.2 The Supplier will be expected to take all appropriate measures to ensure that confidential or sensitive material is not disclosed, in accordance with the provisions of the Crown Commercial Service Panel, RM3756 Rail Legal Services.

18. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 18.1 Any outputs from this commission may be re-used by the Department at its own discretion.

19. PAYMENT

- 19.1 Please note that the call off budget for this requirement is not to exceed £3,000,000. Excluding VAT.
- 19.2 Hourly rates will be charged for any exceptional out of hours or weekend working which may be required. Charging for exceptional out of hours or weekend working is subject to approval of the Buyer with notice given.
- 19.3 Fixed price may be agreed by both Parties in a Statement of Work, when appropriate.

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- 19.4 The Supplier will require the capacity to adapt to changes in the volume of work over time, and in particular to respond to peaks of workflow at key times.
- 19.5 The Supplier will be required to produce timesheets for approval by DfT associated with each work package, detailing:
- 19.5.1 work completed by task;
 - 19.5.2 hours charged together with the name of the person who has carried out the work and their hourly rate;
 - 19.5.3 recoverable expenses; and
 - 19.5.4 approved disbursements.
- 19.6 Monthly management reports shall be provided that summarise the progress made on the project, broken down into appropriate tasks or subject matters. It would be expected that this report should include:
- 19.6.1 costs incurred to date;
 - 19.6.2 forecast costs to completion;
 - 19.6.3 major issues which may impact on costs or timescales;
 - 19.6.4 reasons for changes to initial/previous forecasts;
 - 19.6.5 any applicable cost reduction plans in the relevant period; and
 - 19.6.6 a comparison of actual costs to date with the estimate and the forecast.
- 19.7 This contract will be managed by the IEP Programme in DfT.
- 19.8 Approved timesheets should be submitted with draft invoices to the IEP Director and copied to the Programme Management Office and the DfT Internal Legal Lead. Once a DfT 'Goods Received Notice' (GRN) has been produced DfT will confirm that the invoice may be submitted for payment.
- 19.9 All invoices must be submitted to the DfT Shared Services Centre, Invoices must include the Purchase Order number provided by the DfT at contract start. Invoices should be submitted to:
- Shared Service Arvato
5 Sandringham Park,
Swansea Vale,
Swansea,
SA7 0EA



20. ADDITIONAL INFORMATION

20.1 Legal Services will be supplied in accordance with the standard terms of contract applicable to services called off from the Crown Commercial Service Panel RM3756 with the following exceptions:-

20.1.1 Rate fees will be charged in accordance with the rates submitted in your proposal. The rates proposed should offer excellent value for money and should not be any higher than your firm's maximum rates chargeable under Crown Commercial Service Panel RM3756 Rail Legal Services.

21. LOCATION

21.1 It is expected that the Supplier will work mainly at their own office, but attendance at meetings in London (Great Minster House, 33 Horseferry Road, London, SW1P 4DR) will be required. It may also be appropriate for lawyers to work for extended periods at DfT offices if they are required to work in a team alongside DfT lawyers, other advisers or other client staff. Additionally, client staff may require dedicated working / meeting space at the Supplier's offices for the duration of the contract and potential Suppliers should confirm their ability to provide this space at nil cost in their responses.