

## Rail Delivery Group

**Input paper to the European Commission**

**Tendering for PSO Contracts**

**24<sup>th</sup> February 2015**

# **Rail Delivery Group Input Paper: Tendering for PSO Contracts**

## **Introduction to RDG**

The Rail Delivery Group (RDG) was established in May 2011 to lead the industry in delivering a higher performing, more cost effective and sustainable rail network for Britain's rail users and taxpayers.

The RDG brings together the chief executives of passenger and freight operator owning groups with Network Rail (NR). RDG develops policies, strategies and plans for the coherent management of the rail industry and advances the provision of a safe, efficient, high quality rail service for users and taxpayers.

## **Background to this paper**

This input paper is a contribution to the debate on the reform of the PSO Regulation 1370/2007 currently taking place in the European Institutions. Specifically, the paper is intended to provide practical options for the European Commission as it develops compromise proposals on competitive tendering with Member States and MEPs.

## **Reform of Tendering Rules in the PSO Regulation**

### *1. Tendering should be the rule with clearly defined exceptions*

Competitive tendering should be recognised as the default process in the PSO regulations, with exceptions only allowed in a limited number of clearly defined exceptions.

Cases where Direct Awards could be justified are as follows:

- If Competent Authorities can demonstrate that through altering competition dates they can deliver improved competition, then Direct Awards could be permitted for the shortest practicable time period, but with an absolute maximum of five years, and should not be awarded consecutively. To be permitted to use this power the Competent Authority would have to set out in a published programme its schedule for future competitive award.
- In cases of genuinely exceptional technical circumstances. In such cases the intention to award directly, and the nature of the technical circumstance, must be published at least two years ahead inform the market and to allow for any potential challenge.
- In cases of emergency and for small contracts – as already defined in the PSO Regulation.

### *2. National networks*

It should not be possible to directly award PSO contracts to cover an entire national network (unless the network falls within the existing de minimus rules).

Competent Authorities must ensure that contracts are of an appropriate size in order to attract bidders; for example it might be necessary to divide national networks into separate PSO contracts to ensure that tenders do not favour incumbents.

### *3. Role of the Regulator*

In a scenario where the exceptions to competitive tendering described above have been implemented, then there could be a role for national Regulators to ensure that Competent Authorities do not use these exceptions to unreasonably block competition for PSO contracts.

For example, Competent Authorities could be required to seek Regulatory approval for Direct Awards, to ensure that the exceptions set out in the PSO regulation are being followed.

Under this scenario, if the Regulator judges that the Competent Authority is acting unreasonably to block competition then it could have the power to trigger a tender process.

Regulators should not have the power to reopen the award after a competitive bidding process has been carried out.

#### **For further information please contact**

Alex Veitch, EU Representative

Rail Delivery Group

E: [alex.veitch@raildeliverygroup.com](mailto:alex.veitch@raildeliverygroup.com)

M: +447900 607948

#### **Rail Delivery Group**

2<sup>nd</sup> Floor, 200 Aldersgate Street

London EC1A 4HD