Finance and Policy Committee

Date: **17 July 2014**

Item 5: **Crossrail Train Operating Concession**

This paper will be considered in public

1 Summary

1.1 The purpose of this paper is to update the Committee on the procurement process being undertaken by Rail for London ("RfL") for the new concession agreement to operate the Crossrail passenger train services from May 2015 ("Concession Agreement").

1.2 Under Standing Orders, the authority sought in this paper is reserved to the Board. On 26 March 2014, the Board delegated to the Finance and Policy Committee authority to approve any matter reserved to the Board from 4 July to 23 September 2014. Authority is requested ahead of the meeting of the Board on 24 September 2014 to enable the successful bidder to commence the mobilisation phase to ensure its organisation is in place prior to Concession Commencement in May 2015.

1.3 A paper is included on Part 2 of the agenda, which contains exempt supplementary information. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

2 Recommendations

2.1 The Committee is asked to note this paper, the supplementary information on Part 2 of the agenda and, in accordance with authority delegated from the Board, to:

(a) approve entering into the Concession Agreement and ancillary agreements ("Concession Agreements") with the bidder identified at the meeting;

(b) authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to finalise the terms of the Concession Agreements;

(c) authorise the agreement and execution (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) of any documentation to be entered into in connection with the completion and implementation of the Concession Agreements and any of the matters referred to therein (including, without limitation, all agreements, deeds, guarantees, indemnities, property or other

licences, announcements, notices, contracts, certificates, letters or other documents); and

(d) authorise TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and implementation of the Concession Agreements and the matters referred to therein.

2.2 The following Officers and Subsidiaries shall have authority:

(a) TfL Officers: the Commissioner, Managing Director Finance, Managing Director Rail and Underground and General Counsel; and

(b) Subsidiaries: Subsidiaries of TfL including Transport Trading Limited and any other subsidiary (whether existing presently or to be formed) of Transport Trading Limited and any of the directors of the relevant company shall be authorised to act for and on behalf of that company.

3 Background

3.1 In 2008, as part of a suite of agreements relating to the wider Crossrail Project, TfL and the Secretary of State for Transport entered into a Sponsors Agreement ("Sponsors Agreement") which, amongst other things, requires TfL (or its subsidiary) to procure the operation of the Crossrail train and station services compromising:

(a) new train and station services operating on the new Crossrail infrastructure ("Central Operating Section"); and

(b) transferring train and station services currently forming part of the Greater Anglia and Great Western franchise agreements let by the Department for Transport (DfT),

(together the "Crossrail Services") by the granting of a Concession Agreement.

3.2 In March 2013 RfL issued a notice in the Official Journal of the European Union to commence a procurement process to appoint an operator ("Operator") to provide the Crossrail services via a Concession Agreement for a period of eight years (with a pre-priced option exercisable by RfL to extend to ten years).

4 The Scope of the Concession Agreement

4.1 The Concession Agreement will cover the operation of the Crossrail Services on the Central Operating Section and over existing networks where services will transfer to TfL from the Secretary of State for Transport.

4.2 RfL has reviewed lessons learned and best practice for similar arrangements in TfL (such as the London Overground Concession and the Docklands Light Railway franchise) and from the wider franchising market. This informed the scope and structure of the Concession Agreement, a summary of which is set out below.

Operations

4.3 The Concession Agreement will cover all aspects of train and passenger service operations over the Crossrail network including the operation of approximately 27 stations, an estimated 672 timetabled services per weekday to deliver a peak timetable of up to 24 trains per hour and an estimated 11.4m train km/year. The Crossrail train services will connect the City, Canary Wharf, the West End and Heathrow Airport to commuter areas east and west of London.

4.4 Crossrail train services will be progressively opened in five distinct stages known collectively as the "Staged Opening Programme":

(a) Stage 0 – May 2015 marks the commencement of operation of Liverpool Street (Main Line) to Shenfield services operated by the existing Class 315 fleet;

(b) Stage 1 – May 2017 marks the introduction of the first Class 345 Unit into passenger service;

(c) Stage 2 – May 2018 marks the start of the operation of a four trains-per-hour service between Paddington (Main Line) and Heathrow Terminal 4, replacing the existing Heathrow Connect service and part of the Great Western inner suburban service;

(d) Stage 3 – December 2018 marks the formal introduction of the first Crossrail Services through the Central Operating Section between Paddington (Crossrail) and Abbey Wood;

(e) Stage 4 – May 2019 marks the introduction of services from Shenfield to Paddington (Crossrail) through the Central Operating Section; and

(f) Stage 5 – December 2019 marks the completion of the Crossrail project and sees the introduction of full Crossrail Services, including through services from Reading and Heathrow Terminal 4.

4.5 While RfL will retain responsibility for specifying service levels for each Crossrail opening stage, the Operator will be required to train, manage, recruit and deploy drivers. In addition, the Operator will support testing and commissioning activities related to the wider Crossrail project and play a significant role in interface management between key stakeholders (such as TfL, the DfT, other train operating companies, Network Rail, other TfL modes and the rolling stock provider).

Interfaces

4.6 The Crossrail Services will operate over infrastructure owned by TfL and other third parties. The newly built Central Operating Section is owned by TfL, the existing main line infrastructure between Paddington and Reading stations and Liverpool Street and Shenfield stations is owned by Network Rail and the Heathrow spur is owned by Heathrow Airport Holdings Limited ("HAL"). The Operator will be required to enter into a regulated track access agreement ("TAA") for each section of the railway.

4.7 There is a Track Access Option ("TAO") providing the rights for the Crossrail Services to be operated across the Network Rail infrastructure. The TAO will be novated from the DfT to TfL and will provide rights for the Operator to enter into TAAs for specified train paths for a thirty year period. Further information in relation to the Crossrail Track Access Option and its novation to TfL is provided in a paper elsewhere on the Agenda.

4.8 The Operator will be required to negotiate and enter these TAA with Network Rail and pay access charges for these sections of the railway, set by the Office of Rail Regulation ("ORR"). TfL retains a right in the Concession Agreement to direct the Operator in these negotiations if required.

4.9 The TAA will not only govern the level of access and associated charges payable but also, inter alia, set benchmarks and financial incentives in relation to Network Rail's performance. In accordance with the Railways Act 1993 and the ORR's statutory duties set out therein, the process for agreeing the TAA will be controlled and ultimately approved by the ORR. In order to comply with its statutory duties ORR has published criteria[1] which specify the basis upon which it will approve any TAA. In relation to performance of Network Rail, this includes being satisfied that Network Rail is adequately and continuously incentivised to improve performance, whilst not discriminating between train operating companies. In addition, the ORR will also ensure reasonable provision is made for compensation for the expected revenue loss to passenger operators from Network Rail's poor performance.

4.10 The Operator will pay the access charges but these will be treated as a straight pass through to RfL to avoid unnecessary risk pricing. Any other payments under the TAA (such as payments from Network Rail related to performance) will be paid to the Operator who will pass these straight to RfL.

4.11 The Concession Agreement will strongly encourage the Operator to form a close relationship with Network Rail with aligned incentives to ensure both parties' optimum contribution to the overall performance of Crossrail passenger train services.

4.12 The new Central Operating Section between Abbey Wood and Paddington (Crossrail) station will be owned by TfL, or a TfL subsidiary, who will become Infrastructure Manager with the responsibility for the operation and maintenance of the routeway infrastructure.

4.13 The Operator will not be responsible for maintenance and asset management strategy on any of the Crossrail infrastructure in the Central Operating Section, except in relation to certain station improvements referred to further below.

4.14 The Operator will be responsible for the management and staffing of 24 existing stations under a lease with Network Rail and will also be required to enter into "Station Access Agreements" with other train operating companies at Shenfield, Slough, Maidenhead and with HAL at Heathrow. Four new stations along the Central Operating Section (Paddington (Crossrail), Canary Wharf, Custom House

[1] "Criteria and Procedures for the Approval of Track Access Contracts" published by the Office of Rail Regulation, December 2011.

and Woolwich) will be owned by a subsidiary of TfL and be leased to the Operator.

4.15 In addition, the Operator will be required to provide staff for Crossrail platforms at Bond Street, Tottenham Court Road, Farringdon, Liverpool Street and Whitechapel stations, working under London Underground operational protocols.

4.16 At Operator managed stations, the Operator will be required to conduct initial deep cleans and aesthetic improvements, low level repairs and ongoing cleaning, fault identification and reporting. The Operator will support Crossrail and RfL station enhancement projects but will not be responsible for delivering the works unless otherwise specified by RfL.

4.17 Initially the Operator will lease a fleet of 44 class 315 rolling stock units from Eversholt Rail. The Operator will be required to procure maintenance of these units from the Greater Anglia Franchisee at the Ilford depot. The Operator will be responsible for procuring initial refurbishments to the units and ongoing cleaning.

4.18 These units will progressively be replaced by new class 345 units owned by RfL and built and maintained under the Rolling Stock Services Provision Agreement ("RSPA") with Bombardier, the Rolling Stock Provider ("RSP"). The RSPA requires the RSP to construct and operate a new train maintenance depot and the Operator will be required to work very closely with the RSP to train the drivers and develop the operational protocols necessary to ensure the effective day to day operation of the fleet.

Safety

4.19 The Operator will be required to comply with a number of safety management requirements which include, inter alia, the Health and Safety at Work etc Act (1974) and the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS"). In addition, RfL will require the Operator to comply with a number of specific requirements, such as establishing and maintaining safety management systems that are suitable and sufficient to support safe (and reliable) operations, participate in wider safety governance arrangements with key stakeholders and monitor and manage certain safety related metrics across the railway.

4.20 Under ROGS, RfL and Network Rail will hold a Safety Authorisation as Infrastructure Manager for the Central Operating Section and on Network route respectively. The Operator will be required to hold appropriate a safety certification and safety authorisation from the ORR for the operation of vehicles and management of infrastructure (stations). The ORR requires that this is in place before commencement of the concession.

4.21 The Operator must have in place by the Start Date a Safety Management System ("SMS"). The Operator will demonstrate that its SMS will be progressively updated during the Staged Opening Programme (including but not limited to Dynamic Testing, Trial Running and Trial Operations and to cover the operation of sub-surface stations at Paddington (Crossrail), Canary Wharf, Woolwich and all stations where the Operator is the Station Facility Operator.

Payment Mechanism and Revenue Risk

4.22 Revenue generated from the sale of fares and rail products will be retained by TfL. TfL will also retain patronage risk. Experience on other similar arrangements in TfL suggests that to transfer such risks is likely to be poor value for money where not transferring also the responsibility for the matters that influence revenue outcomes (such as fare policy decisions, investment decisions, advertising, marketing, letting of retail concession and so on).

4.23 The Operator will be remunerated through a fixed concession payment that is adjusted according to performance against a suite of metrics. The concession payment will also index in line with the Retail Price Index as TfL is likely to be better placed than the Operator to manage inflation risk on a holistic basis, in a wider portfolio of revenues and costs.

4.24 The Operator will be responsible for the operation of ticket offices and ticket vending machines, and for undertaking revenue protection activities.

Performance Regime

4.25 The performance regime in the Concession Agreement will see the Operator subject to assessment against predetermined performance measures. The Operator will be paid bonuses and/or charged deductions to concession payments should actual performance be better and/or worse than target. This differs from the standard rail franchise, in particular to reflect the fact the Operator will take no revenue risk but also to align to TfL’s wider objectives in relation to service delivery.

4.26 The structure of the regime is largely based on the London Overground Concession, but includes alignment to the RSPA and is adjusted to reflect specific elements of the Crossrail services.

4.27 The monetary values ascribed to bonuses and deductions across various performance targets have been carefully calibrated to provide sufficient financial incentives and to reflect the cost to the Operator (plus a reasonable margin) of achieving increased levels of performance or mitigating underperformance through correct behaviours (for example, staffing and training), whilst remaining value for money (for example, not rewarding overstaffing). In particular, the financial incentives are designed to encourage the Operator to correct any failures as rapidly as possible and to avoid repeated failures through the use of rectification periods, escalating deductions and ultimately, contractual default (which may be triggered for both the quantity of deductions charged in addition to persistent and/or recurrent poor performance levels).

4.28 In addition, the values for operational performance targets (detailed in paragraph 4.29) are calibrated to recognise higher and lower volumes on parts of the network, whilst still providing incentives to achieve high levels of performance outside the Central Operating Section and encouraging flexible management of services between certain locations in order to mitigate impacts on service.

4.29 The primary performance measures in the Concession Agreement relate to operational performance, as follows:

(a) headway (where timetabled headway is exceeded by 40 per cent or more) (the “Headway Measure”);

(b) capacity (including cancellations, part cancellations and missed station stops) (the “Capacity Measure”); and

(c) delay (based on lateness at destination of three minutes or more) (the “Delay Measure”).

4.30 These operational performance measures are aligned to the RSP’s regime, utilising the same measures and identical financial incentives where possible. The regime has been designed so that on the Central Operating Section, Crossrail will provide a high frequency, high capacity metro service and on the wider Crossrail network will support commuter and leisure travel.

4.31 The operational performance measures are subject to a deduction only regime; that is, the target in the Concession Agreement is set at 100 per cent achievement and the Operator will be charged deductions to the concession payments RfL make to the Operator for non achievement. The Operator will be heavily incentivised to perform at a lower level of deductions than anticipated in its bid.

4.32 The Headway Measure is designed to incentivise the Operator to manage services flexibly in order to mitigate impacts on headway in the Central Operating Section; for example, retiming services by early or late running. Headway is an important measure of the service provided to high volumes of passengers who will use Crossrail in the Central Operating Section – reflecting the need for regular service frequencies to avoid crowding on stations and trains and that many passengers travelling in the Central Operating Section will be focused on time to next train (as with other TfL services) rather than a timetable.

4.33 Every train that runs through the Central Operating Section between Paddington and Whitechapel will be subject to the Headway Measure, whether or not the Delay Measure also applies. Headway is measured once per journey (for eastbound services on arrival at Whitechapel station and for westbound services on arrival at Paddington Station). The Operator will be charged £150 per minute (indexed at RPI) where timetabled headway is exceeded by 40 per cent or more to the nearest second. Timetabled headway will vary during the day; for example, during peak periods the timetabled headway will be around 2.5 minutes and so deductions will apply if actual headway is measured at 3.5 minutes or more. The Operator will bear 110 per cent of deductions for any delay attributed to them (if the Operator is responsible the deductions are increased by 10 per cent) and 10 per cent of deductions for any delay attributed to other parties (including the RSP, Network Rail and HAL). Examples of how the Headway Measure will work in practice are set out below.

(a) Example 1: a peak service operating 3.4 minutes headway at a recording point due to a fault with train doors where timetabled headway is 2.5 minutes – in this example, delay is attributed to the RSP but the Operator incurs no headway deduction as the headway is below the threshold headway of 3.5 minutes.

(b) Example 2: a peak service operating 6 minutes headway at a recording point due to a passenger action where timetabled headway is 2.5 minutes – in this example, the delay is attributed to the Operator who incurs a headway deduction of £577.5; that is, 3.5 minutes over the timetabled headway of 2.5 minutes multiplied by £150 per minute plus ten per cent.

(c) Example 3: three peak services operating 3.5 minutes headway at a recording point due to a fault with the train doors where timetabled headway is 2.5 minutes – in this example, delay is attributed to the RSP but the Operator incurs a headway deduction of £45; that is 3 lots of 1 minute over the timetabled headway of 2.5 minutes multiplied by £150 per minute multiplied by 10 per cent.

4.34 The Capacity Measure is designed to incentivise the Operator to provide sufficient quantity of service to passengers as opposed to delivery of services on time. The Capacity measure is therefore based on station stops, with stations ascribed different financial values (indexed at RPI) based on their importance (primarily passenger volumes but also frequency of stops) and weighted by time of day and day of the week. This measure is then used to set deductions for unavailability of units, cancellations and part cancellations (for example, skipping single stations). The capacity deduction the Operator incurs will be the aggregate of the station values for each missed station stop versus scheduled station stops on each single timetabled journey, therefore ensuring that the Operator is always incentivised to maximise the number of scheduled station stops. The value of the capacity deduction that the Operator may be charged for a full cancellation ranges between £10,000 and £36,000 depending on the scheduled station stops to be made on any timetabled journey.

4.35 The capacity deduction will be the product of three factors – the station value (referred to above), the station stop factor and the successive station stop factor. The station stop factor increases the station value for the first two stations skipped on any service to avoid a situation where the Operator would otherwise be incentivised to skip a station to reduce deductions under the Delay Measure, thus ensuring an appropriate balance of incentives between the cost of a capacity deduction and the delay deduction potentially avoided. The successive station stop factor incentivises the Operator to prevent large gaps in service occurring at any station due to successive services missing their station stops. This factor substantially increases the cost of the capacity deduction (by a multiple of 5 times the station value) for missing the same stop more than once in succession. Examples of how the Capacity Measure will work in practice are set out below.

(a) Example 1: a westbound service scheduled to arrive at Tottenham Court Road at 08.00 but misses Forest Gate before 7.45 – the Operator would incur a capacity deduction of £1,260; that is a station value of £36 or Forest Gate multiplied by a station stop factor relating to first station missed on the service of 35.

(b) Example 2: two westbound services scheduled to arrive at Tottenham Court Road at 09.30 and 09.35 both miss Stratford – the Operator would incur a capacity deduction of £2,450 for the first service; that is, £70 station value for Stratford multiplied by a station stop factor relating to first station missed on the service of 35. The Operator would also incur a £12,250 deduction for the second service; that is £70 station value for Stratford multiplied by a station stop factor relating to first station missed on the service of 35, multiplied by the successive station stop factor of 5.

4.36 The Delay Measure is designed to incentivise the achievement of high levels of punctuality for stations outside the Central Operating Section. The Operator will be charged £125 per minute (indexed at RPI) based on lateness at destination of 3 minutes or more, measured to the nearest second at the terminating point for each service (i.e. any single point to point journey). All delays (however caused) are subject to this measure, with the Operator bearing 110 per cent of deductions for any delay attributed to them and 10 per cent of deductions for any delay attributed to other parties (including the RSP, Network Rail and HAL). This is driven by experience in similar arrangements in TfL which suggest that while the Operator is not directly in control of certain events which impact performance, it does have the ability to significantly influence the impact of them on the railway. Examples of how the Delay Measure will work in practice are set out below.

(a) Example 1: an incident caused by the Operator results in a service arriving 2.95 minutes late at destination – the Operator would incur no delay deduction in this example as 2.95 minutes lateness is not sufficient to qualify for the delay deduction.

(b) Example 2: an incident caused by the Operator results in a service arriving 3 minutes late at destination – the Operator would incur a delay deduction of £412.5 in this example; that is, £125 per minute multiplied by 3 minutes lateness plus ten per cent.

(c) Example 3: an incident caused by the RSP results in 3 services arriving 3 minutes late at destination – the Operator would incur a delay deduction of £112.50 in this example; that is, £125 per minute multiplied by 9 minutes lateness multiplied by 10 per cent. The RSP would incur deductions under its own performance regime.

4.37 In addition, the Concession Agreement will include certain customer service targets measured against results of customer surveys (relating to information provision and security, for example) and also targets related to service quality (relating to the maintenance of high standards for frontline staff). These targets have been set on the basis of historic data from transferring services and to reflect RfL’s expectations of a “world class” railway with financial bonuses or deductions of up to £1 million per annum per point deviation from target.

4.38 The Concession Agreement also includes a “Customer Facing Regime” (similar to London Overground), whereby the Operator will be financially incentivised to ensure customer facing resources (for example, staff, matters such as station cleanliness and ticket vending machine availability) are maintained at appropriate levels. The Operator will self certify compliance with the targets in this regime and fixed deductions will apply if targets are not met. RfL retain rights of audit which can apply at any time and the Operator’s deductions will be multiplied by a factor of 10 should any such audit uncover material discrepancies when compared to the Operator’s self certification.

4.39 The Operator will be incentivised to effectively protect TfL's revenue by preventing fraudulent travel. The Operator will be charged a deduction and/or achieve a bonus based on a 50 per cent share of additional and/or foregone revenue compared against a ticketless travel target of 2 per cent (that is, 2 percent of passengers travelling without a valid ticket for their journey). This excludes journeys wholly within the Central Operating Section where revenue protection is already largely within TfL's control (through gating and staffing arrangements).

4.40 The Operator will also be measured against some targets which do not have financial incentives attached to them, due to overlap with those regimes where the bonuses and/or abatements are payable. These targets relate to measures against matters such as ticket queuing time, and mystery shopper surveys.

Enforcement Regime

4.41 The enforcement regime escalates through remedial plan notices, corrective action notices, step in rights and ultimately contractual default; designed to provide RfL with appropriate recourse to remedy poor performance quickly without resulting in hair triggers to contractual default.

4.42 For example, RfL can begin the process of enforcement (and may serve a remedial plan notice) if RfL is satisfied that the Operator is contravening or is likely to contravene any term of the Concession Agreement. The Operator will be required to submit a remedial plan which must be agreed by RfL and adhered to within a specified time period, or otherwise the regime allows RfL to escalate to a corrective action notice. Should poor performance continue to persist, an event of default may occur. At this point, RfL may step in or issue a termination notice.

4.43 Certain specified matters will result in an event of default without being subject to earlier stages of the enforcement process. The performance regime will include thresholds for all key measures which will be subject to remedial plans and event of default if reached.

4.44 The concession agreement contains a wide range matters that constitute an event of default. These include, inter alia, the Operator failing to achieve key project milestones within a specified time period, the Operator reaching certain operating performance deduction caps in any thirteen periods (to be set at values ranging from £3 million and £6 million below the Operator's bid performance assumptions depending on the stage of the project), the Operator reaching default benchmarks in customer service regimes, insolvency related events, change of control without RfL's consent, safety related matters, breach of law and failure by the Operator to provide the guarantee and bank bond referred to in paragraph 4.48.

4.45 The Concession Agreement also includes a right for RfL to voluntarily terminate at any time.

Project Delivery

4.46 The Operator will pay a critical role in integrating the delivery of the Crossrail project overall and so the Concession Agreement will include certain specified obligations relating to project delivery. For example, staff recruitment plans, change management processes, facilitating third party works and managing relationships with key stakeholders.

4.47 These project delivery obligations are incentivised through 10 to 15 key milestones (specified by RfL) during the staged opening programme relating to key activities such as staff recruitment, training, support for infrastructure build and class 345 units delivery. Against these milestones there will be a downwards adjustment to the concession payment for late delivery. The Operator will be charged liquidated damages of up to £1m per month if any late delivery of an Operator key milestone results in a delay to the wider Crossrail project.

Pensions

4.48 The Operator will be required to comply with its legal obligations in relation to employees' pension rights. In particular this means that transferring employees with protected status will be offered continuing membership of the Railways Pension Scheme through transfer to a CTOC Railways Pension Scheme Section (to be established).

Other Commercial Matters

4.49 The Concession Agreement specifies that the Operator will secure its obligations with an on demand bank bond (of £15m, escalating to £25m at the beginning of Stage 3) and a parent company guarantee (which reflects the Operator's limits on liability of £80m, excluding certain general indemnities where liability remains uncapped). This reflects a review of any credit risk in the Concession Agreement and takes into consideration the structure of the bidding entities.

4.50 The Concession Agreement includes a mechanism whereby profits made by the Operator will be shared with RfL. This mechanism pays RfL a 50 per cent share of the Operator's profit over a predetermined threshold of 30 per cent above the level of profit bid by the Operator, calculated on a cumulative basis throughout the concession. This is designed to allow sufficient flexibility for the Operator to earn additional return should they perform well given the risk they are bearing but also provides a means by which the public sector can claw back excess returns.

5 Concession Pre-Qualification and Invitation to Tender

5.1 In June 2013, the following four bidders pre-qualified to receive an Invitation to Tender ("ITT")

(a) Arriva Crossrail Limited;

(b) MTR Corporation (Crossrail) Limited;

(c) National Express Group PLC; and

(d) Keolis/Go Ahead.

5.2 All four bidders submitted a response to the ITT on 14 February 2014.

5.3 The key principle of the evaluation methodology was to ensure that the Concession Agreement would be awarded to the most economically advantageous bid allowing for a balance between technical, commercial and price factors. The ITT responses were evaluated for technical, commercial and price components according to the following weightings:

Component	Weighting
Price	45%
Technical	45%
Commercial	10%

5.4 The evaluation methodology takes account of the commercial structure of the Concession Agreement with Bidders required to submit bids against the performance regime and a draft Concession Agreement specified by RfL.

5.5 RfL has followed a detailed procurement process, set out in appropriate procurement documentation. The primary areas of evaluation are set out in further detail below.

5.6 Where appropriate, RfL has sought assurance from expert advisors, including Quasar Associates (commercial advisors), Steer Davies Gleave (technical advisors), Grant Thornton (financial advisors) and external legal advisors. In addition, TfL Internal Audit conducted a review of the procurement and found that RfL had followed a robust process with clear governance arrangements.

Technical

5.7 Bidders were required to provide written responses to the following seven "Delivery Plans" relating to:

(a) Corporate Structure, the leadership team and operational preparedness;

(b) Staff, rolling stock, project delivery and handover;

(c) Operational performance;

(d) Customer Satisfaction, quality metrics, retailing and revenue protection;

(e) Working with TfL and community engagement;

(f) Environment, strategic labour needs and ethical sourcing; and

(g) Change management.

5.8 Each Delivery Plan was evaluated for the Bidder's understanding of the requirements and RfL's confidence that these plans would deliver the relevant sections of the Concession Agreement.

5.9 Bidders were scored using an 11 point scale ranging from 0 to 100 on a linear basis. This scoring framework represented characteristics of the bid ranging from "Major Concerns" to "Excellent". Bidders were required to score a minimum of 40

("Minor Concerns") in each Delivery Plan, otherwise RfL retained a discretionary right to exclude the bidder from further participation in the competition.

Price

5.10 Bidders were required to provide a financial model, record of assumptions, financial management and funding plan and other supporting documentation to support the submission of a price. The price submitted was the net present value ("NPV") of the expected concession payments (in real terms), comprising the NPV of:

(a) the base concession payments;

(b) reduced and/or increased costs in relation to a scenario for a reduction and /or an increase in vehicle kilometres (the Kilometrage Adjustment Tariff);

(c) the total concession payments, inclusive of a one year delay to Stages 3, 4 and 5 (Priced Option 1);

(d) the total concession payments inclusive of Stage 5 being advanced by 7.5 periods to align with Stage 4 (Priced Option 2);

(e) the incremental / decremental concession payments to the base case for extending services to Reading (Priced Option 3); and

(f) the incremental / decremental concession payments to the base case for retaining proportion of the class 315 rolling stock units for peak residual services (Priced Option 4).

5.11 Each of these items is weighted separately for the initial period of the concession and the extension period.

5.12 The bidder with the lowest weighted NPV of expected concession payments was awarded full marks for this component and other bidders were assigned a score in inverse proportion.

5.13 Financial submissions were also reviewed to consider if any bid appeared to be abnormally low.

Commercial

5.14 Bidders were required to provide a "mark up" of the draft Concession Agreement and certain associated documents. This was evaluated for the extent to which the proposed mark up transferred risk, obligations or had any other adverse impact on RfL.

5.15 Bidders were restricted from amending various key components of the Concession Agreement; in particular the service level commitments and staffing requirements, performance regime, the requirement to lease the class 345 rolling stock, the structure of liabilities and indemnities, RfL's right to set off and the structure of the payment mechanism.

5.16 Bidders were scored using a six point scale ranging from 0 to 100 on a linear basis. This scoring framework represented characteristics of the bid ranging from “Major Concerns” to “Excellent”. Bidders were required to score a minimum of 40 (“Minor Concerns”) in each component of the Concession Agreement, otherwise RfL retained a discretionary right to exclude the bidder from further participation in the competition.

5.17 In addition, bidders’ financial documentation and validity of the underlying pricing assumptions were evaluated for their completeness, clarity, ease of use and the robustness (and ultimately the risk of financial default), on a pass or fail basis.

Priced Options

5.18 The ITT included four priced options (as outlined in paragraph 5.10) that bidders were required to develop and price as part of their bid. RfL will include these prices in the Concession Agreement, thus providing price certainty in relation to these matters should RfL need choose to vary the Concession Agreement following contract award.

6 Next Steps

6.1 The related paper on Part 2 of the agenda will contain the results of the evaluation process and recommend the award of the Concession Agreement.

List of appendices to this report:

Exempt supplemental information is included in a paper on Part 2 of the agenda.

List of background papers:

None

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