

TRANSPORT FOR LONDON

BOARD

**SUBJECT: CONTRACT FOR THE PROVISION OF RAILWAY SERVICES BY LONDON UNDERGROUND**

**DATE: 21 OCTOBER 2009**

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**1 PURPOSE AND DECISION REQUIRED**

- 1.1 This report explains the requirement that arises as a result of the European Regulation on Public Passenger Transport Services by Rail and Road for a contract to be put in place between TfL and London Underground Limited for the operation of the passenger transport services provided on the Underground and seeks authority to enter into the contract required between TfL and LUL.
- 1.2 This report was considered by the Finance and Policy Committee at its meeting held on 9 October 2009.

**2 BACKGROUND**

- 2.1 The European Regulation on Public Passenger Transport Services by Rail and Road (“the Regulation”) comes into force on 3 December 2009.
- 2.2 The Regulation is designed to introduce more competition into public transport service contracts across Europe and to open up markets which are currently closed. Where there is no competition for those services in the circumstances permitted by the Regulation, transparency of the terms of those arrangements is required in the form of a contract.
- 2.3 The Regulation does not apply to maintenance or infrastructure arrangements and as such the LUL PPP and PFI arrangements are not affected. In most cases, therefore, the public passenger transport services that TfL provides or secures are not within the ambit of the Regulation or are already provided under competitively let contracts. The exception to this is the provision of the Underground services by LUL.
- 2.4 When the Regulation was in development, TfL lobbied for the Underground services to be exempt from the requirement for competitive tender. As a result of TfL’s lobbying, the following matters were included in the Regulation:
  - (a) an exemption for service providers that are an “internal operator” of the responsible authority from the requirement that the service be competitively tendered;
  - (b) an increase in the maximum duration of a contract permitted by the Regulation which is 15 years in most cases; and
  - (c) transitional provisions allowing pre-existing contracts to remain unaffected.
- 2.5 The European Commission’s approach to dealing with “internal operators” is

that, while competitive tendering is not required, it still requires a degree of transparency around such relationships and for that to be set out contractually. A contract needs, therefore, to be put in place between TfL and LUL for the provision of the Underground services by 3 December 2009.

### **3 CONTRACT CONTENT**

- 3.1 The Regulation requires that the contract sets out:
- (a) the general public service obligation;
  - (b) the quality standards that apply to the service;
  - (c) whether and to what extent sub-contracting is allowed;
  - (d) how costs and revenue are allocated between the parties; and
  - (e) how payment or compensation for the services is calculated.
- 3.2 It is proposed that, for simplicity and to avoid creating additional obligations, the contract is drafted in such a way that it incorporates existing service standards and budget arrangements. Accordingly it is proposed that the contract refer to the Underground services provided to the public in accordance with existing standards timetable, quality standards and health and safety matters. No Underground services are subcontracted at present and any change would be subject to appropriate TfL approvals. The contract will record the current approach to retention of fares by LUL and will describe payment by reference to current processes including the Budget and Business Plan.
- 3.3 Once the contract is complete, certain items of information have to be published, including the identities of the parties, the duration of the contract, the parameters for payment and any targets for service performance. TfL will also have to publish in a year's time and then annually similar details of the rail and bus services for which it is responsible. It is anticipated that this report can be based on the information contained in TfL's Annual Report.

### **4 RECOMMENDATION**

- 4.1 The Board is asked to:
- (a) NOTE the contents of the report;
  - (b) APPROVE that a contract be entered into between TfL and LUL for the provision of the Underground services as required by the European Regulation on Public Passenger Transport Services by Rail and Road and as described in this report; and
  - (c) DELEGATE to the Commissioner, Managing Director Finance, Managing Director London Underground and General Counsel the authority to agree the terms of such contract and to execute it (whether by deed or otherwise) on behalf of the parties and to do all such other things as they consider necessary or desirable to facilitate compliance with the Regulation.

## 5 CONTACT

5.1 Contact: Howard Carter, General Counsel  
Email: [HowardCarter@tfl.gov.uk](mailto:HowardCarter@tfl.gov.uk)  
Phone: 020 7126 4097