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Contract

Valley Rail Partnership No.1 LLP, for the manufacture, supply, maintenance and leasing of 7 x 3-car and 17 x 4-car FLIRT Tri-Mode units (the “Tri-Mode Units”)

Transport for Wales and Transport for Wales Rail Limited (Utility Buyer)

F20: Modification notice

Notice identifier: 2022/S 000-036543

Procurement identifier (OCID): ocids-h6vhtk-039428

Published 23 December 2022, 12:55pm

Section I: Contracting authority/entity

I.1) Name and addresses

Transport for Wales and Transport for Wales Rail Limited (Utility Buyer)

3 Llys Cadwyn, Pontypridd

Rhondda Cynon Taf

CF37 4TH

Contact

Head of Procurement

Email

Procurement@tfw.wales

Telephone

+44 3333211202

Country

United Kingdom

NUTS code

UKL - Wales

Internet address(es)

Main address

<http://www.tfwrail.wales>

Buyer's address

https://www.sell2wales.gov.wales/search/Search_AuthProfile.aspx?ID=AA80566

Section II: Object**II.1) Scope of the procurement****II.1.1) Title**

Valley Rail Partnership No.1 LLP, for the manufacture, supply, maintenance and leasing of 7 x 3-car and 17 x 4-car FLIRT Tri-Mode units (the "Tri-Mode Units")

II.1.2) Main CPV code

- 34600000 - Railway and tramway locomotives and rolling stock and associated parts

II.1.3) Type of contract

Supplies

II.2) Description**II.2.3) Place of performance**

NUTS codes

- UKL - Wales

Main site or place of performance

Cardiff and South Wales Valleys

II.2.4) Description of the procurement at the time of conclusion of the contract:

Rolling stock leasing agreement and associated maintenance arrangements between Keolis Amey Operations / Gweithrediadau Keolis Amey Limited ("KA"), the then operator of the Wales and Borders Franchise and Valley Rail Partnership No.1 LLP, Stadler Bussnang A.G and Stadler Rail Service UK Limited for the manufacture, supply, maintenance and leasing of 7 x 3-car and 17 x 4-car FLIRT Tri-Mode units (the "Tri-Mode Units")

II.2.7) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

300

II.2.13) Information about European Union Funds

The procurement is related to a project and/or programme financed by European Union funds: No

Section IV. Procedure
IV.2) Administrative information**IV.2.1) Contract award notice concerning this contract**

Notice number: [2019/S 000-000000](#)

Section V. Award of contract/concession
Contract No

01

Title

Valley Rail Partnership No.1 LLP, for the manufacture, supply, maintenance and leasing of 7 x 3-car and 17 x 4-car FLIRT Tri-Mode units (the "Tri-Mode Units")

V.2) Award of contract/concession**V.2.1) Date of conclusion of the contract/concession award decision:**

9 January 2019

V.2.2) Information about tenders

The contract/concession has been awarded to a group of economic operators: Yes

V.2.3) Name and address of the contractor/concessionaire

Valley Rail Partnership No.1 LLP

3rd Floor, South Building, 200 Aldersgate Street

London

EC1A 4HD

Country

United Kingdom

NUTS code

- UKI - London

National registration number

OC424290

The contractor/concessionaire is an SME

No

V.2.3) Name and address of the contractor/concessionaire

Stadler Bussnang AG

Ernst-Stadler-Strasse 4, 9565 Bussnang, Switzerland

Bussnang

9565 Bussnang

Country

Switzerland

NUTS code

- CH - Switzerland

The contractor/concessionaire is an SME

No

V.2.3) Name and address of the contractor/concessionaire

Stadler Rail Service UK Limited

1 Mann Island (8th Floor)

Liverpool

L3 1BP

Country

United Kingdom

NUTS code

- UKD - North West (England)

National registration number

09894948

The contractor/concessionaire is an SME

No

V.2.4) Information on value of the contract/lot/concession (at the time of conclusion of the contract;excluding VAT)

Total value of the procurement: £527,670,000

Section VI. Complementary information

VI.3) Additional information

The original procurement was carried out by a private company, Keolis Amey Operations / Gweithrediadau

Keolis Amey Limited ("KA"), the then operator of the Wales and Borders Franchise. Therefore it was not required to be advertised in accordance with Directive 2014/24/EU or Directive 2015/24/EU.

(WA Ref:127504)

VI.4) Procedures for review

VI.4.1) Review body

High Court

Royal Courts of Justice, The Strand

London

WC2A 2LL

Telephone

+44 2079477501

Country

United Kingdom

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures

As set out in the Public Contracts Regulations 2015 / Utilities Contracts Regulations 2016

Section VII: Modifications to the contract/concession

VII.1) Description of the procurement after the modifications

VII.1.1) Main CPV code

- 34600000 - Railway and tramway locomotives and rolling stock and associated parts

VII.1.2) Additional CPV code(s)

- 50220000 - Repair, maintenance and associated services related to railways and other equipment

VII.1.3) Place of performance

NUTS code

- UKL - Wales

Main site or place of performance

Cardiff and South Wales Valleys

VII.1.4) Description of the procurement:

Manufacture, supply, maintenance and leasing of 7 x 3-car and 17 x 4-car FLIRT Tri-Mode units (the "Tri-Mode Units").

VII.1.5) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

420

VII.1.6) Information on value of the contract/lot/concession (excluding VAT)

Total value of the contract/lot/concession:

£671,959,000

VII.1.7) Name and address of the contractor/concessionaire

Valley Rail Partnership No.1 LLP

3rd Floor, South Building, 200 Aldersgate Street

London

EC1A 4HD

Country

United Kingdom

NUTS code

- UKI - London

National registration number

OC424290

The contractor/concessionaire is an SME

No

VII.1.7) Name and address of the contractor/concessionaire

Stadler Rail Service UK Limited

1 Mann Island (8th Floor)

Liverpool

L3 1BP

Country

United Kingdom

NUTS code

- UKD - North West (England)

National registration number

09894948

The contractor/concessionaire is an SME

No

VII.1.7) Name and address of the contractor/concessionaire

Stadler Bussnang AG

Ernst-Stadler-Strasse 4, 9565 Bussnang, Switzerland

Bussnang

9565 Bussnang

Country

Switzerland

NUTS code

- CH - Switzerland

The contractor/concessionaire is an SME

No

VII.2) Information about modifications

VII.2.1) Description of the modifications

Nature and extent of the modifications (with indication of possible earlier changes to the contract):

Due to Covid-19 restrictions / related matters, TfWRL replaced KA in February 2021 under s.30 of the Railways Act 1993. TfWRL and its parent TfW are contracting authorities and also utilities in relation to the rail network. Due to Welsh Government's and TfW's decision to retain in the public sector maintenance workers who had transferred from KA to TfWRL under TUPE, changes were negotiated to the maintenance agreements associated with the Tri-Mode Units so that the agreements become Technical Support and Spares Supply Agreements (TSSSAs) instead of Train Services Agreements (TSAs), with TfWRL taking over the role of the maintainer of the Tri-Mode Units. TfWRL will replace SRS UK as maintainer, with SRS UK taking on a technical support and spares supply role. As a result of the change in maintainer of the Stadler Fleets, some knock-on amendments to the Manufacture and Supply Agreements (MSAs) are also required, to bring them in line with the change in maintenance arrangements. As a consequence of these changes, the leasing arrangements have been extended in order to deal with the impact on the residual value risk for the Owner of the Tri-Mode Units of moving to a TSSSA maintenance arrangement, protecting the exclusive rights of the Owner as the owner of the Stadler Fleets. A move from TSAs to TSSSAs exposes the Owner to additional risks, in particular re: its ability to re-lease the Tri-Mode Units at the end of the

period of the undertaking under s.54 of the Railways Act 1993 provided by Welsh Government, being 31 December 2048. In order to protect the Owner against these additional risks and to protect the exclusive rights of the Owner as the owner of the Stadler Fleets, the s.54 undertakings are to be extended for a further 10 years, to 2058. Further, as Stadler owns the Intellectual Property in the Tri-Mode Units, as the original supplier of the Tri-Mode Units, the parties jointly agree that in order to protect the exclusive rights of Stadler, Stadler will provide the revised TSSSA services (and assist TfW in providing the revised maintenance arrangements). It would not be practically possible from an IP ownership perspective nor a technical perspective for anyone other than Stadler to perform the strategic TSSSA service and role. TfW/TfWRL relies on R.72(1)(c) of the Public Contracts Regulations 2015 (PCR) / R.88(1)(c) of the Utilities Contracts Regulations (UCR) 2016 as set out below. Further or in the alternative, TfW/TfWRL relies on R.72(1) (b) of PCR / R.88(1)(b) of UCR on the grounds that it would not be technically possible for another supplier to provide the revised arrangements which have become necessary in respect of the Tri-Mode Units without serious inconvenience or duplication of cost. This is given Stadler's technical knowledge and experience with the Tri-Mode Units, as the original supplier of the Tri-Mode Units, and the fact that the Owner owns and controls the Tri-Mode Unit fleet.

Further or in the further alternative, TfW/TfWRL relies on R.32(2)(b)(ii) and/or (iii) PCR / R.50(1)(c)(ii) and/or (iii) UCR (competition

is absent for technical reasons and/or protection of exclusive rights) because only the Owners of the Tri-Mode Units can provide the revised lease arrangements detailed above (as the owner of the Tri-Mode Unit fleet) and Stadler's knowledge and experience of the Tri-Mode Units and ownership of IP rights in terms of being able to provide the technical support and spares supply required by these TSSSA maintenance arrangements. Given the additional risks to which the Owner is exposed, the conditions set out above play an important role in the feasibility of the move from a TSA to a TSSSA.

VII.2.2) Reasons for modification

Need for modification brought about by circumstances which a diligent contracting authority/entity could not foresee.

Description of the circumstances which rendered the modification necessary and explanation of the unforeseen nature of these circumstances:

The impact of Covid-19 restrictions made it commercially unviable for KA to continue operating train services and forced TfWRL to step in as operator of last resort. This caused the maintenance employees (who would otherwise have transferred from KA to the Tri-Mode Units maintainer, Stadler) to come into public sector employment. Welsh Government and TfW made a decision not to transfer these employees to the private sector. This necessitated the change from TSAs to TSSSAs (as above). The leasing

arrangements have been extended in order to deal with the impact on the RV risk for the Owner of moving to a TSSSA maintenance arrangement, so as to protect their exclusive rights and contractual position as the owner of the fleet. Alternatively, TfW/TfWRL rely on the equivalent provisions of R.88(1)(c) of the Utilities Contracts Regulations 2016.

VII.2.3) Increase in price

Updated total contract value before the modifications (taking into account possible earlier contract modifications, price adaptations and average inflation)

Value excluding VAT: £527,670,000

Total contract value after the modifications

Value excluding VAT: £671,959,000