

This is a published notice on the Find a Tender service: <https://www.find-tender.service.gov.uk/Notice/036580-2022>

Awarded contract

Cambrian Rail Partnership No.1 LLP for the manufacture, supply, maintenance and leasing of 11 x 4-car class 231 diesel electric multiple units ("DeMUs")

Transport for Wales Rail Limited (Utility Buyer)
Transport for Wales
Welsh Ministers

F06: Contract award notice – utilities
Notice reference: 2022/S 000-036580
Published: 23 December 2022, 3:25pm

Section I: Contracting entity

I.1) Name and addresses

Transport for Wales Rail Limited (Utility Buyer)

3 Llys Cadwyn, Pontypridd

Rhondda Cynon Taf

CF37 4TH

Contact

Head of Procurement

Email

procurement.help@tfwrail.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

I.1) Name and addresses

Transport for Wales

3 Llys Cadwyn, Taff Street

Pontypridd

CF37 4TH

Contact

Head of Procurement

Email

Procurement@tfw.wales

Telephone

+44 2921673434

Country

United Kingdom

NUTS code

UKL - Wales

Internet address(es)

Main address

<http://tfw.wales/>

Buyer's address

https://www.sell2wales.gov.wales/search/Search_AuthProfile.aspx?ID=AA50685

I.1) Name and addresses

Welsh Ministers

Crown Buildings, King Edward VII Avenue, Cathays Park

Caerdydd / Cardiff

CF10 3NQ

Contact

James Arden

Email

james.ardern@gov.wales

Telephone

+44 2922787624

Country

United Kingdom

NUTS code

UKL - Wales

Internet address(es)

Main address

<http://gov.wales/>

Buyer's address

https://www.sell2wales.gov.wales/search/Search_AuthProfile.aspx?ID=AA0007

I.2) Information about joint procurement

The contract involves joint procurement

I.6) Main activity

Railway services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Cambrian Rail Partnership No.1 LLP for the manufacture, supply, maintenance and leasing of 11 x 4-car class 231 diesel electric multiple units ("DeMUs")

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.1.4) Short description

Cambrian Rail Partnership No.1 LLP for the manufacture, supply, maintenance and leasing of 11 x 4-car class 231 diesel electric multiple units ("DeMUs")

II.1.6) Information about lots

This contract is divided into lots: No

II.1.7) Total value of the procurement (excluding VAT)

Value excluding VAT: £361,003,000

II.2) Description

II.2.2) Additional CPV code(s)

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

II.2.3) Place of performance

NUTS codes

- UKL - Wales

Main site or place of performance

Wales and parts of England

II.2.4) Description of the procurement

Cambrian Rail Partnership No.1 LLP for the manufacture, supply, maintenance and leasing of 11 x 4-car class 231 diesel electric multiple units ("DeMUs")

II.2.5) Award criteria

Quality criterion - Name: Ability to meet changed requirements / Weighting: 50

Price - Weighting: 50

II.2.11) Information about options

Options: Yes

Description of options

TfW will either-1.purchase DeMUs in 2033 for a fixed residual value ("RV") sum, or lease them until at least 2048 (or pay a termination sum); or 2.if not purchased in 2033, purchase the DeMUs in 2048 for a fixed RV sum, or lease them until at least 2058 (or pay a termination sum); and 3.if it has not purchased DeMUs in 2048, purchase them in 2058 for their then market value

II.2.13) Information about European Union Funds

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

II.2.14) Additional information

This award is a variation of existing contracts originally between Keolis Amey Operations / Gweithrediadau Keolis Amey Limited ("KA"), the then operator of Wales and Borders Franchise and Cambrian Rail Partnership No.1 LLP, Stadler Bussnang A.G and Stadler Rail Service UK Limited for the manufacture, supply, maintenance and leasing of 11 x 4-car class 231 diesel electric multiple units ("DeMUs").

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Award of a contract without prior publication of a call for competition in the cases listed below

- The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - protection of exclusive rights, including intellectual property rights

Explanation:

Due to TfWRL "stepping in" in place of KA as operator of last resort and the consequent transfer of maintenance staff to the public sector, it has become necessary to re-negotiate the maintenance arrangements agreed by KA for the DeMUs with the Owners, as set out in more detail in the "Additional Information" section.

The Owners have certain exclusive rights (in particular intellectual property rights in the design of the DeMUs) and contractual rights under the existing maintenance arrangements. As a condition of agreeing to the revised maintenance arrangements, the Owners require protection against the additional risks that the revised arrangements present, as set out in more detail in the "Additional information" section.

Accordingly, TfWRL, TfW and/or WM are entitled to enter into the revised arrangements under Reg. 32(2)(b)(iii) PCR / Reg. 50(2)(b)(iii) UCR (protection of exclusive rights).

Further or in the alternative, it would not be practically possible from an IP ownership perspective nor a technical perspective for anyone other than Stadler to carry out the hybridisation work, or to carry out the revised maintenance service and role. Accordingly, WM, TfW and/or TfWRL are also entitled to rely on reg. 32(2)(b)(ii) PCR / reg. 50(2)(b)(ii) UCR (competition is absent for technical reasons).

The rationale is set out in more detail in the "Additional Information" section.

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: Yes

Section V. Award of contract

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract

22 December 2022

V.2.2) Information about tenders

Number of tenders received: 1

Number of tenders received from SMEs: 0

Number of tenders received from tenderers from other EU Member States: 0

Number of tenders received from tenderers from non-EU Member States: 1

Number of tenders received by electronic means: 1

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

V.2.3) Name and address of the contractor

Cambrian 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

OC424292

The contractor is an SME

No

V.2.3) Name and address of the contractor

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 is an SME

No

V.2.4) Information on value of contract/lot (excluding VAT)

Initial estimated total value of the contract/lot: £361,003,000

Total value of the contract/lot: £361,003,000

Section VI. Complementary information

VI.3) Additional information

Due to Covid-19 restrictions/related matters, TfWRL replaced KA in February 2021 under s.30 of the Railways Act 1993. TfWRL and parent TfW are contracting authorities and also utilities in relation to the rail network. Welsh Ministers (WM) are a contracting authority. Due to WMs' and TfW's decision to keep 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 DeMUs 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 DeMUs. TfWRL replaces SRS UK as maintainer, with SRS UK taking on a technical support and spares supply role. As a result, 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. In addition, as part of its de-carbonisation programme, Welsh Ministers require that the DeMUs be converted to hybrid diesel-electric vehicles ("hybridisation") and the parties will work together to agree a hybridisation programme by January 2023. As a consequence of these changes, and to protect the Owners of the DeMUs from additional risks involved in the move from a TSA to a TSSSA (in particular re: their ability to re-lease the DeMUs at the backstop date in the Protected Rolling Stock Letters (a form of assurance provided by Welsh Ministers to the Owners), being 16 October 2033) the parties have agreed that TfW must:

- purchase the DeMUs in 2033 for a fixed RV sum, or instead (at its option) lease them for a period until at least 2048 (or pay a termination sum); or
- if it has not purchased the DeMUs in 2033, purchase them in 2048 for a fixed RV sum, or instead (at its option) lease them for a period until at least 2058 (or pay a termination sum); and
- if it has not purchased the DeMUs in 2048, purchase them in 2058 for a sum representing the market value of the DeMUs at that time.

If the conditions for hybridisation are not satisfied by an agreed deadline or TfW decide not to proceed with hybridisation conversion works by an agreed deadline, the parties will either:

- continue with the TSSSA maintenance arrangements (with compensation/additional protections for the Owner to reflect the impact of a TSSSA rather than a TSA to be agreed); or
- revert to the existing TSA for both the DeMUs and the fleet of Tri-Mode Units owned by Valley 1 Rail Partnership No.1 LLP (given their practical maintenance links) (with the Owner being compensated for the impact of having the TSSSA in place in the interim).

As noted above, the extension to 2058 of the period during which TfW undertake to pay a termination sum unless the units remain on lease has been made on the basis to protect the Owner from the additional risks involved in the move from a TSA to a TSSSA, and is made on the basis of the protection of the exclusive rights of the Owner as the owner of the DeMUs.

As Stadler owns the Intellectual Property in the DeMUs, and is the original supplier of the DeMUs, the parties jointly agree that in order to protect the exclusive rights of Stadler, Stadler will undertake the hybridisation works, and 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 carry out the hybridisation work, or to carry out the strategic TSSSA service and role.

Further or in the alternative, WM, TfW and TfWRL are entitled to rely on reg. 32(2)(b)(ii) PCR / reg. 50(2)(b)(ii) UCR (competition is absent for technical reasons) for the reasons stated above.

(WA Ref:127497)

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

Precise information on deadline(s) for review procedures:

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

Note that this is a relevant contract award notice under Reg. 93(2)(a), (3) and (4) of the Public Contracts Regulations 2015 and/or Reg. 108(2)(a), (3) and (4) of the Utilities Contracts Regulations 2016. Therefore the limitation period for seeking a remedy of ineffectiveness is 30 days from the date of publication of this notice.