

Who wants to compete with Renfe and provide passenger rail transport services in Spain?

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Shortly a call for bids will be announced for a licence to provide passenger rail transport services in Spain under the terms of Order FOM/1977/2015 of 29 September, on the tendering procedure to license the transportation of passengers by rail, in accordance with the Cabinet Resolution of 13 June 2014 setting out the number and validity of licences for the competitive provision of passenger rail transport services on certain public-interest lines and sections of the railway network.

The Cabinet, in its meeting of 13 June 2014, resolved to grant an additional licence allowing a new railway operator to provide passenger transport services in competition with Renfe Viajeros, S.A.

Order FOM/1977/2015 of 29 September, published in the Official Journal of Spain on 30 September, regulates the tendering procedure to license the transportation of passengers by rail provided for in the aforementioned resolution. This licence does not cover the whole of Spain but, rather, is confined to the Levante Corridor (east of Spain); this corridor covers several different lines (high speed, conventional, goods) and runs from the French border to Algeciras, parallel to the Mediterranean coast, linking cities of great touristic and commercial importance such as Barcelona, Valencia, Alicante, Malaga and Cadiz.

The invitation to tender is bound to be issued – by resolution of the Secretariat for Infrastructure, Transport and Housing – any time soon, with its publication in the Official Journal of Spain, in the Official Journal of the European Union and on the website of the Ministry of Public Works (contractor profile).

1. Requirements for tenderers

At the time of submitting the tender, tenderers (bidders) are required to be a licensed railway company and to provide evidence of technical expertise, professional competence and financial solvency.

Tenderers are not required, at the time of submission, either sufficient personal and material resources or the safety certificate. Their commitment to procure the foregoing prior to the award of the licence, if and when successful, suffices.

Possible consortia

Several companies may jointly submit a tender, undertaking to incorporate a railway company which fulfils all the requirements of the aforementioned order if the tender happens to be successful. At least one of the companies submitting the joint tender must be a licensed railway company – in accordance with the provisions of the Railway Industry Act – and must have a minimum shareholding of 20% in the new company.

The new company must have a separate legal personality and be incorporated within three months, extendable another three, as of request from the Secretariat for Infrastructure, Transport and Housing.

2. Award criteria and licence conditions

It is essential that the new operator demonstrates its intention to stay in the business for the long haul; hence, the award criteria give the business plan and financial plan a weight of 55% and 35%, respectively, in the tender assessment.

The licence conditions are governed by the specifications of the tender to be adopted by resolution of the Secretariat for Infrastructure, Transport and Housing. However, Order FOM/1977/2015 lays down some minimum conditions: the successful tenderer will be required to provide the services included in its tender as "Basic Offer of Railway Services" for a minimum period of three years, which may be longer if that is what it undertook in accordance with the criteria set out in the specifications; depending on demand, the basic offer may be reduced up to 15% in respect of annual services offered, with no limit to expanding this offer.

The new operator can use the rail infrastructure capacity on the terms regulated by the Railway Industry Act and its implementing regulations. For this purpose, managers of the infrastructures affected by the licence award must grant use of said infrastructures to the new operator, providing either the necessary services at the stations or the necessary spaces for the operator to provide such services itself. In addition, rail infrastructure managers must include the new services in the user information systems and make available to railway companies, in a non-discriminatory manner, real-time information on delays of trains operated by other railway companies affecting the main connections.

3. Renfe, a certain competitor

In accordance with paragraph 5 of the third transitory provision of the Railway Industry Act, Renfe Viajeros, S.A. – replacing Renfe-Operadora in the provision of these services – shall be granted a licence without having to go through the tender process, albeit subject to the same conditions stated in the above-mentioned order.

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