

# Speed Rail



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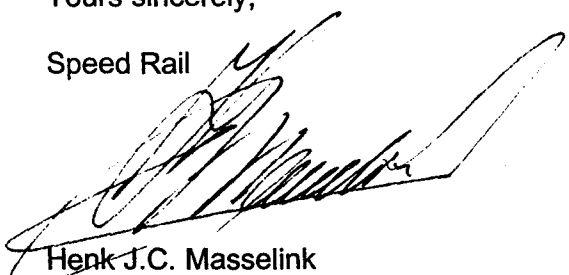
Subject Protocol Infrastructure Provider HSL

Dear Mr. Ochtman,

Please find enclosed the protocol, signed and initialled by Speed Rail.

Yours sincerely,

Speed Rail



Henk J.C. Masselink  
Commercial Manager

Enclosed: Signed Protocol.

Projectorganisatie HSL-Zuid	
Datum ontvangst	: 28/10/99
Registratiecode	: 9199903531
Beh. eenh. (+ rubriek)	:
Behandelen door	: W. J. M. de V.
Kopie:	

Byl: R.V.

# Protocol Consultation Phase Speed Rail

Date : 12 October 1999  
Our ref : HSL/U199903222  
Status : Final

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## 0 Preamble

This Protocol reflects the outcome of the Consultation Phase, which was conducted as part of the tender procedure for the HSL Infrastructure Provider.

The Protocol comprises:

- **General Overview:** A schedule of the principal matters discussed during the four Consultation Meetings
- **Alternatives:** an outline description of proposals for modifications to the requirements of the Invitation to Tender for the Base Tender (the "Requirements") submitted by the Tenderer, which the Tenderer may wish to incorporate into an Alternative Tender. The description of the proposals is taken from the deliverables submitted by the Tenderer prior to the fourth Consultation Meeting and as discussed during that meeting
- **The State's response to each proposed Alternative Tender:** Where this Protocol indicates that a proposal for inclusion in an Alternative Tender is acceptable to the State, this means a compliant Alternative Tender will not be rejected for consideration by the State on the grounds that it is based on the principal alterations to the Requirements agreed in this Protocol. The full requirements for submitting a compliant Alternative Tender will be set out in the Instructions to Tenderers contained in the Invitation to Tender.
- **A summary of the principal alterations to the Requirements that the State and the Tenderer have agreed are required to facilitate the Alternative Tender.**

Tenderers are advised that they are free to develop and submit an Alternative Tender on the basis of any alteration(s) to the Requirements within the conditions for submitting a compliant Alternative Tender. However, the State expressly reserves the right to, after examination of (kennis nemen van) an Alternative Tender, reject that Alternative Tender for consideration (niet in beschouwing nemen), unless otherwise agreed in this Protocol.

Tenderers are advised that in developing the detail of their Alternatives, consideration should be given to the State's objectives as set out in the Invitation to Tender.

For each Alternative Tender, the Tenderer will be required to identify in its Tender submission the effect on the overall Tender of each variation as compared to that Tenderer's Base Tender, including the impact on the Performance Fee, the programme and why it considers that the Alternative Tender represents better value for money for the State (including an estimate of the costs and benefits to the overall HSL South Transportation System).

Where this Protocol indicates that the State intends to or will incorporate Requirements in the Invitation to Tender which differ from the conditions set out in the ITC, these intended changes are subject to internal approval within the State.

By signing the Protocol, the State and the Tenderer agree that this Protocol is the only document representing the views of the State as to the acceptability or otherwise of Alternative Tenders proposed by the Tenderer.

Signed:

For and on behalf of:  
SPEED RAIL  
HENK J.C. MASSELINK

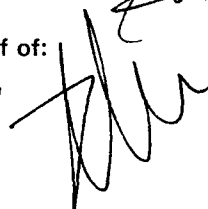


991026

The Tenderer

For and on behalf of:

OEHMAN



28-10-99

The State

# 1 General

## 1.1 1st Consultation meeting: Introduction meeting

No deliverables were submitted for the 1st Consultation meeting (held on 9 June 1999). The purpose of the meeting was to ensure the Tenderer had a good understanding of the State's priorities for the HSL Project and the tender process, and to gain an insight into the philosophy behind the system engineering process and the Performance Payments Regime.

The following items were discussed:

- Introduction and Presentation
- Initial comments of the Tenderer
- Performance Payments Regime
- Data Room
- Design Work
- Permits and Authorities
- Performance Simulation Model
- Maintenance
- Alternative Risk Allocation
- Evaluation Criteria
- Civils Works/Belgian Interface/Rolling Stock Interface
- Commercial Opportunities
- Clarifications and General points
- Joint and Several Members/Advisers
- Deliverables
- Site Visits
- Visits to Third Parties

## 1.2 2nd Consultation meeting : Impacts on the Performance Payments Regime

The deliverables for the 2nd Consultation meeting (held on 22 July 1999), were submitted on 9 July 1999 and consisted of:

*Executive Summary*  
*Performance Payments Regime*  
*Technical Proposal Embedded Rail*  
*Technical Proposal ETCS Level 3*  
*Technical Proposal Voltage Locks*  
*Technical proposal Interface with BB21*  
*Issues arising*

- Financing Strategy
- Electro Magnetic Compatibility
- Maintenance Plan Key issues
- Renewals Plan – Key issues
- Particular Interface Issues

*Risk Management Plan*  
*Interface Management Processes*  
*System Engineering Plan*  
*Safety Management Plan*

During the Consultation meeting in addition to these items signalling was discussed.

## 1.3 Mark-up of and Commentary on draft Implementation Agreement

The Tenderer submitted on 31 July 1999 a mark-up of the Implementation Agreement. On 31 August 1999 the Tenderer also sent in comments on the Implementation Agreement not addressed in the initial mark-up and provided comments on the draft Co-ordination Agreement (CA).

The mark-up and commentary included proposed drafting/amended wording in respect of those areas of the Implementation Agreement where the Tenderer considered amendments would be beneficial.

## 1.4 Dispute Resolution Procedures

The Tenderer submitted its comments on the Dispute Resolution Procedures on 26 August 1999.

## 1.5 3rd Consultation meeting : Cost Estimates, Performance and Associated Risks

The deliverables for the 3rd Consultation Meeting (held on 16 August 1999) were submitted on 10 August 1999 and consisted of:

*General description of the proposal*

*Performance Payments Regime*

*Trade off matrix*

*Programme*

*Proposals for an initial start-up period of availability*

*Financial structure*

*Cost information*

*Project Management and system engineering processes, procedures and systems*

- Risk Management plan
- Risk Register
- RAMS plan
- System Verification and Validation Plan
- Safety Management Plan
- Maintenance Plan
- Renewals Plan

*Action List of Consultation Meeting 2*

- Submissions on Systems not specifically required by ITC
- Joint development of Embedded Rail
- Cost Impact of ERTMS2 and ERTMS3
- Co-ordination with NS RIB
- EMC Testing and Provision of test trains
- Information requirements for train operation through voltage locks
- Submission on Safety Plan
- Variability of maintenance costs with traffic
- Submission on programme
- Alternative designs at a more competitive price
- Required variations to civil works
- Prioritised List of meeting the requirements with interface organisations

In the 3rd Consultation Meeting the trade-offs 'Command, Control and Communication', 'GSM-R', 'SCADA', and 'Track' were discussed as well as noise screens.

## 1.6 Key issues relating to the Implementation Agreement

On 31 August 1999 the Tenderer submitted an overview of what it considered to be the key issues to the Implementation Agreement.

## 1.7 4th Consultation Meeting : Conclusion

The deliverables for the 4th Consultation meeting (held on 14 September 1999) were submitted on 3 September 1999 and consisted of:

*General Description*

*Actions from Meeting 3*

*Embedded Rail Seminar*

*Alternative Tenders*

*Ancillary Opportunities*

*Key elements of the protocol*

- Implementation Agreement
- Performance Payments Regime
- Technical
- Other Matters

## 1.8 Minutes

Minutes were drawn up of each Consultation meeting by the State, and were approved by the Tenderer. These minutes serve as a factual record of the discussions during the Consultation meetings, and are not intended to have legal implications.

## 2 Alternatives

### 2.1 Alternative 1: Operating day –cancellation penalty

#### 2.1.1 Description

The Tenderer suggested an Alternative Tender in which the Performance Payments Regime would be modified in such a way that it encourages appropriate decisions for the operation of the railway. For example: if performance of the infrastructure is affected by an incident for which the Infrastructure Provider is responsible, the Infrastructure Provider may offer to cancel or curtail its booked possession, at the system operator's discretion, to help with the system recovery. In exchange no trains will be cancelled in the performance simulation model.

#### 2.1.2 State's Response

*The State advised the Tenderer that it intends to change the definition of a cancelled train in the ITT.*

*A compliant Alternative Tender that amends the Performance Payments Regime will be acceptable to the State, provided that:*

- ✓ *it is not based on the simple provision of an asset*
- ✓ *delay minutes penalties and asset condition penalties and thresholds in the Requirements are not changed*
- ✓ *the minimum performance level as specified in the ITT is not changed*
- ✓ *performance is calculated using a simulation model which seeks to isolate third party effects*
- ✓ *performance of the HSL Sections shall be measured in terms of availability (the primary parameter being delay) and physical condition and cleanliness of assets*
- ✓ *a fee will be charged for possessions, based on duration, location, time of day and notice period.*

*The proposed Alternative Tender is not in line with these provisos and is therefore not acceptable to the State.*

### 2.2 Alternative 2: Daily availability floor

#### 2.2.1 Description

The Tenderer suggested an Alternative Tender that would introduce the concept of a variable daily availability floor to avoid distortion of the penalty regime at high traffic levels.

#### 2.2.2 State's Response

*A compliant Alternative Tender that amends the Performance Payments Regime will be acceptable to the State, taking into account the provisos stated in section 2.1.2.*

*By suggesting a change to the 90% daily availability threshold, the proposed Alternative Tender is not in line with these provisos and is therefore not acceptable to the State.*

*A compliant Alternative Tender in which the Performance Payments Regime is partially dependent on the actual usage of the HSL Sections will be acceptable to the State. However, the State is likely to look more favourably on a regime that: a) provides significant benefits, b) is robust and unambiguous over a 25 year period and c) includes a Performance Fee that varies with traffic, upwards and downwards.*

### 2.3 Alternative 3: Recovery time in turnaround

#### 2.3.1 Description

The Tenderer suggested an Alternative Tender that would alter the delay recovery period into:

- International: 8 minutes
- Domestic: 4 minutes



The large difference between the delay recovery period for domestic and international trains may lead to inappropriate engineering decisions on the design and operational decisions in the performance simulation model.

### 2.3.2 State's Response

*Changes to the ITT that are being considered by the State will assume a different recovery time regime. The new Performance Payments Regime is likely to make the proposal of the Tenderer obsolete.*

## 2.4 Alternative 4: Late possessions

### 2.4.1 Description

The Tenderer suggested an Alternative Tender based on a performance mechanism that will promote efficient operation of the system. The mechanism has the following three components that are multiplied:

1. The minutes late that the possession was granted
2. The average service density during the operation day
3. The increased impact of the effects as the system approaches capacity

When the mechanism is applied to the late granting of a possession, a number of minutes is generated. This will be taken as a credit against the train delay minutes aggregated for that 28-day period.

### 2.4.2 State's Response

*A compliant Alternative Tender based on a concept of "credit minutes" will be acceptable to the State provided that the State is satisfied that it has adequate protection as to when credit minutes are "reclaimed". The credit system could undermine the framework of incentives to the Infrastructure Provider to behave in a manner which is consistent with the interests of the HSL South Transportation System (e.g. freedom to "reclaim" minutes in a peak period would not be acceptable).*

## 2.5 Alternative 5: Performance regime in early years

### 2.5.1 Description

The Tenderer suggested an Alternative Tender that would include a start-up regime based on:

1. A minimum level of 35000 timetabled minutes for the performance payment mechanism.
2. For the first 5 years of operation a modified performance regime operates if the timetable is higher than 5 trains per hour and the availability floor is set at 80 %.
3. A lower functionality/capacity (this was added during the meeting)

### 2.5.2 State's Response

*The State advised the Tenderer that the ITT will contain a start-up regime.*

*A compliant Alternative Tender based on a change in this start-up regime will be acceptable to the State provided it satisfies the provisos set out in section 2.1.2.*

*However, an Alternative Tender that is based on a lower capacity and/or functionality of the system during the start-up period will not be acceptable to the State. It is the opinion of the State that the capacity as indicated in the Requirements should be implemented from the outset.*

## 2.6 Alternative 6: Restricting deductions

### 2.6.1 Description

The Tenderer suggested an Alternative Tender that would restrict deductions from the Performance Fee.

### 2.6.2 State's Response

*A compliant Alternative Tender that amends the Performance Payments Regime will be acceptable to the State, provided it takes into account the provisos stated in section 2.1.2.*

*The proposed Alternative Tender is not in line with these provisos as it seeks to set a financial cap on penalties and is therefore not acceptable to the State.*

## **2.7 Alternative 7: ERTMS**

### **2.7.1 Description**

The Tenderer suggested an Alternative Tender that would not assume ERTMS to be implemented.

### **2.7.2 State's Response**

*The State will require an ERTMS Level 2 or Level 3 signalling system to be implemented. However, because a Europe-wide ERTMS standard has not been agreed yet, the State intends to amend the ITT so that Tenderers may implement an interim, non-ERTMS system. Once the standards for ERTMS have been agreed, the State will have the right to call for the Infrastructure Provider to 'migrate' the interim signalling system to the agreed ERTMS standard in accordance with an agreed timetable which will co-ordinate with the migration by [TOCs] and [Traffic Control].*

*All Tenders will be required to provide an ERTMS Level 2 or Level 3 signalling system, which must be fully operational by the "ERTMS Implementation Date". Prior to this date Tenderers may provide an interim system that satisfies all requirements of the Specifications (e.g. functionality, capacity) except the requirements for interoperability set out in EU Directive 96/48. The "ERTMS Implementation Date" must be not later than a pre-agreed number of months after the "ERTMS Notification Date". The "ERTMS Notification Date" will be set by the State following consultation with, inter alia, TOCs, Traffic Control and the Infrastructure Provider, but in any event cannot be less than a pre-agreed period after the "ERTMS Agreed Standards Date". There may be a limitation on the State setting the "ERTMS Notification Date" during the Development Phase such that the Tenderer's design/procurement programme is disrupted. The ITT will contain full definitions of the milestone Dates referred to above. It is envisaged that the "ERTMS Agreed Standards Date" will be based around the publication of the STIs by the relevant EU authority.*

*An Alternative Tender not based on the principles outlined above will not be acceptable to the State.*