

Non-binding call for expression of interest (“EOI”) for the supply of new electric locomotives, homologated to operate freight transport both for Italy and for international traffic, to be purchased by Mercitalia Rail S.r.l. and TX Logistik AG, both controlled by *Ferrovie dello Stato Italiane S.p.A.*

1. Preamble

Mercitalia Rail S.r.l. (hereinafter “MIR”), with registered office at Piazza della Croce Rossa n. 1, Rome, Italy, with fully paid up share capital of €. 236.702.000,00, registered with the Company’s Register of Rome, tax code and VAT no. IT06473711007, and **TX Logistik AG**, (hereinafter “TX”) with registered office at Junkersring 33, D-53844 Troisdorf, Germany, with fully paid up share capital of €. 286.700,00, filed with the commercial register of the local court of Siegburg under registration number HRB 6989, both subsidiaries of *Ferrovie dello Stato Italiane S.p.A.*, under the direction and coordination of the parent company, have the intention to proceed to the purchase of electric locomotives, comprehensive of full service maintenance.

In respect to this, for avoidance of any doubt, it has to be understood that the expression of interest (“EOI”) can be forwarded alternatively for the supply of and the service of:

- (1) DC Locomotive
- (2) Multisystem (MS) locomotive
- (3) both;
(see following paragraph 4)
in any case, there will be separate contracts, establishing different technical specifications.

2. Call for expression of interest (“EOI”)

The interested companies are invited to submit their EOI in English, undersigned by a legal representative of the company or by a person having the authority to validly bind the company.

The declaration of interest shall be delivered in a closed envelope, mentioning on the external side the reference: "*Expression of interest (“EOI”) for the supply of new electric locomotives, including the full service maintenance - Mercitalia Rail S.r.l. and TX Logistik AG – Expiration date 17th day of March 2017*"

The declarations of interest must include:

- the clear and unequivocal affirmation of the interest to supply the electric locomotives which the present notice is about, including the full-service maintenance;
- the declaration of acceptance of all the conditions set forth in the present notice and in the documents referred therein;
- the declaration of interest for the whole number of locomotives to be purchased or for only one of the two batches of locomotives as indicated in the following paragraph 4;
- the declarations and other documents required in the following paragraph 5;
- the declaration of interest must indicate the name and last name with the associated number of fax, e-mail and telephone, of a reference person of the company, for the following possible contacts with MIR and TX.

3. Application procedure and closing date

The sealed envelope, containing the declaration of interest, with the indications and the wordings set forth in paragraph.2, must be delivered at the following address:

Mercitalia Rail S.r.l., Piazza della Croce Rossa n. 1, 00161 Rome (Italy),

by no later than 17th day of March 2017 (**under the sanction of exclusion from the procedure**) at 12:00 a.m. CET.

A receipt will be issued when the envelope is accepted for registration.

4. Supplies and services to be purchased

The essential technical and performance requirements of the purchase (both for the supply of the locomotives and the comprehensive full-service maintenance), as well as the essential juridical and administrative conditions of the purchase, including the terms and the place of execution of the performances are specified and described in the following tables:

- Summary of loco requirements for MIR

| | |
|--------------------|---|
| Type of Locomotive | DC E-Loco |
| Total number | 30 + 30 Option |
| Power | Minimum 5,2 MW |
| Voltage system | DC 3kV |
| Homologations | Fully homologated at the date of first delivery |
| Delivery plan | Start of delivery latest at the beginning of 3 rd Quarter 2018 with minimum two (2) locomotives per calendar month |
| Service | Full Service for approximately 15 years including full ECM responsibility |
| Workshops | MIR workshops access available |
| References | Applicants will only be considered, if they can demonstrate that they have a technical solution available and have delivered similar vehicles to the European market during the last five (5) years |

- Summary of loco requirements for TX

| | |
|--------------------|---|
| Type of Locomotive | Multisystem E-Loco |
| Total number | 40 + 25 Option |
| Power | Minimum 5,6 MW |
| Voltage system | AC 25kV; AC 15kV; DC 3kV; DC 1,5kV |
| Homologations | Fully homologated at the date of first delivery |
| Delivery plan | Start of delivery latest at the beginning of 3 rd quarter 2018 with minimum two (2) locomotives per calendar month |
| Service | Full Service for approximately 15 years including full ECM responsibility |
| Workshops | Access to a wide central European workshop network |
| References | Applicants will only be considered, if they can prove that they have a technical solution available and have delivered similar vehicles to the European market during the last five (5) years |

5. Requisites to be demonstrated by the applicants

In order to prove an adequate level professional experience, applicants must enclose to their declaration of interest the following documents and declarations:

- a list of the supplies of similar locomotives delivered to the European market in the last five (5) years to buyers which are railway undertakings providing, like MIR and TX, rail freight transport services or leasing companies, with the related amount;
- certificates of testing with positive results of the similar model of locomotives and/or declarations of good execution released by the buyers;
- declaration of availability to perform the full-service maintenance;
- declaration to own a certification of conformity of the company's Quality System, according to the relevant UNI EN ISO 9001:2015 provisions, released by accredited entities, and including in the scope of the quality certification of the activities that will form the object of the contract;
- any other certifications of the company in the field of environmental and social issues will be considered as a reference;
- Certificate of registration with the relevant professional register (for Italy: CCIAA - Chamber of Commerce; for Germany: Commercial Registry Excerpt (*Handelsregisterauszug*) or corresponding document), providing information, *inter alia*, on the Company's scope of activity and the indication of the names and last names of the relevant key persons within the company, having the authority to represent and legally bind the company;
- Applicant's balance sheet and annual report or, if applicable, consolidated financial statements, of the group of companies and/or applicant's holding company for the last three (3) years.

The declarations and the documents enclosed can be verified or be subjected to requests of clarifications by MIR and TX in any phase of the procedure.

6. Point of contact

For further information, applicants may submit enquiries, by no later than six (6) days prior to expiration of the deadline set forth in previous paragraph 3, by email at

locotender2017@mercitaliarail.it

The answers to such enquiries shall be published -in anonymous form- on both MIR and TX Logistik websites, and shall be deemed as an integration to the conditions set forth in this notice.

7. Instructions

The present notice represents a non-binding invitation to express interest for the supply of the locomotives. Neither does it constitute, in any way, an expression of a definitive contractual commitment nor shall it be construed, interpreted or understood as assumption of any kind of responsibility, undertaking or obligation by or on behalf of MIR and/or TX or any of its officers, employees or agents, including, but not limited to, any pre-contractual responsibilities and all claims with respect thereto or resulting therefrom shall be fully excluded.

Therefore, MIR and/or TX, in their respective discretion, and without obligation of motivation and at any time, are free to refrain, for whatever reason, from finalizing this market survey, without any obligation whatsoever to indemnify or hold harmless, in any way, any of the applicants that had eventually submitted their declaration of interest. Moreover, MIR and TX shall be free to award only the supply of the locomotives, without the maintenance service. MIR and/or TX shall be under no obligation of admitting to the subsequent steps of the purchasing procedure any applicant which will result not in possession of the requisites as provided for herein.

It is forewarned that, following a verification, contracts shall not be awarded to economic operators:

- i) which will result having incurred in a conviction, by final judgment - or in an excluding situation provided for by the relevant legislation - for one of the following reasons:
 - a) participation in a criminal organization, as defined in Article 2 of Council Framework Decision 2008/841/JHA; for Italian legislation, reference is made, in particular, to articles 416 (Criminal association), 416-bis (Mafia associations included foreign associations) of the Italian Criminal Code, to article 74 of the D.P.R. 309/1990 (Criminal associations aimed at the illicit traffic of narcotic drugs and psychotropic substances), article 291-quater of the D.P.R. 43/1973 (Criminal association aimed at illegal contraband of tobaccos produced abroad) and to article 260 of the D. Lgs. 152/2006 (Organized activities aimed at unlawful trading of waste);
 - b) participation in criminal offences against the Public Administration referred to in articles 319-quarter, 317, 318, 319, 320, 321, 322, 322-bis, 319-ter, 346-bis, 353, 353-bis, 354, 355 e 356 of the Criminal Code, and to art. 2635 of the Civil Code; in particular, corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA (34) as well as corruption as defined in the national law of the contracting authority or the economic operator;
 - c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;
 - d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA (36) respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

- e) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council; with respect to Italian legislation, reference is made in particular to articles 648-bis, 648-ter e 648-ter.1 of the Criminal code, and to the criminal offences concerning money laundering and terrorism financing referred to in D. Lgs. 109/ 2007 and following amendments
- f) child labor and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council; for Italian legislation, reference is made in particular to D. Lgs. n. 24/2014
- (g) any other conviction for a criminal offence implying the legal inability to have contractual relationship with public entities

(ii) In addition, contracts shall not be awarded to economic operators to which has been applied a decision by the competent authority, referred to in articles 67 and 84, comma 4, of D. Lgs. n. 159/2011 and following amendments (it: *informazioni e comunicazioni prefettizie*).

The exclusion from the awarding of the contracts of the concerned economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

(iii) Furthermore, the economic operator shall not be awarded the contracts which this call for expression of interest is about where MIR is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting company.

The previous paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines, or if only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures before expiration of the deadline for the submission of the expression of interest.

(iv) Moreover, contracts shall not be awarded to the economic operator if Mercitalia Rail can demonstrate by any appropriate means:

- a violation of applicable obligations in the fields of environmental, social and labor law established by Union law, national law, collective agreements or by the international environmental, social and labor law provisions;
- that the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations
- that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable; in particular, this situation shall be deemed existent if, during the last three (3) years:
 - the economic operator has incurred in a termination for good cause (*giusta causa*) related to a contract concerning supplies, works or services awarded by other companies belonging to the Ferrovie dello Stato Italiane (FS) Group,
 - or it has incurred in a declaration of uselessness of such supplies, works or services awarded by companies of the FS Group (it: *non collaudabilità*),
 - or in a violation of the FS Group *Codice Etico* ("Code of Ethics"), proved by any mean by MIR, or

- it has resulted impossible to sign a contract with the same economic operator, due to a fault of the operator.
- (v) The contracts shall not even be awarded where Mercitalia Rail has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition.
- (vi) Lastly the contracts shall not be awarded to economic operators that control another participant in the procedure within the meaning of art. 2359 of the Italian Civil Code or in any relationship, including de facto, if the control situation or if the relationship implies that the offers are imputable to a single decision center.

Upon invitation to a binding offer and in respect to the above, additional instructions will be released. In this case, the last sentence of the foregoing paragraph 5 with respect to verification audits or requests of clarifications will apply *mutatis mutandis*.

The present notice concerning the invitation to the declaration of interest is available on MIR and TX websites. An excerpt of this notice is also published on the following daily newspapers: *Handelsblatt*, and *Il Sole 24 Ore*.

This invitation and the following tender procedure shall be entirely governed by Italian laws. The courts of Rome shall have jurisdiction over any disputes arising under or in connection herewith.

The whole procedure, up to the possible conclusion, will also be governed by the principles arising from the “Code of Ethics” of the FS Group, published in <http://www.fsitaliane.it/fsi-en/About-us/Governance/Code-of-Ethics/Code-of-Ethics>.

Applicants’ personal data submitted within the procedure will be processed in accordance with the Italian legislation concerning the protection of personal data (Personal Data Protection Code, Legislative Decree no. 196 of 30 June 2003 and following modifications).

TX Logistik AG

Mercitalia Rail S.r.l