

PRT.DTC/DTC/038/21/MZ

Subject: Call for expressions of interest in connection with the supply of 159 new double 'pocket' wagons.

1. Preamble

Mercitalia Intermodal S.p.A., a company subject to the management and coordination of Ferrovie dello Stato Italiane S.p.A, with registered office in Via Valtellina 5/7, Tax Code and VAT No. IT 00857491005, fully paid-up share capital of € 7,000,000.00, registered in the Milan Companies' Register 00823190152, REA 0758334, (hereinafter also referred to as "MII" for the sake of brevity) and **TX Logistik AG**, a single-member company subject to the direction and coordination of Ferrovie dello Stato Italiane S. p.A. - with registered office in Troisdorf, Junkersring 33, share capital of € 286,070.00 fully paid up and tax code and VAT number DE207145816 (hereinafter referred to as "TXL"), intend to proceed with the purchase of 159 new double pocket wagons.

In particular, Mercitalia Intermodal S.p.A. will purchase 104 wagons and TX Logistik AG will purchase 55 wagons.

TX Logistik will have the right to exercise the option for the assignment, under the same conditions, of the supply of a further maximum quantity of 235 wagons of the same type. The option may also be exercised in several *tranches*, up to the above maximum quantity and within the term of the contract. Please note that this procedure is not subject to the Public Contracts Code (Legislative Decree 50/2016), except for the provisions referred to therein in self-regulation; consequently, the aforementioned procedure is of a private nature.

2. Invitation to express interest

Interested economic operators are therefore invited to express their interest in participating in any subsequent competitive tendering procedure by submitting a declaration of interest in English.

The declaration must be signed by a legal representative or person in any case capable of validly committing the Company, in a closed and sealed envelope so as not to allow accidental vision or leakage of the documents contained therein, bearing on the outside the wording, "*Expression of interest in the supply of new double pocket wagons Sdggmrs to Mercitalia Intermodal S.p.A., deadline 23/04/2021*" or "*Expression of interest in supplying new Sdggmrs double pocket wagons to TX Logistik AG, deadline 23/04/2021*", or both if the expression of interest is to supply both of the above companies.

Expressions of interest must contain:

- the express and unequivocal affirmation of interest in contracting for the purchase covered by this notice,
- express acceptance of all the terms of this notice and the documents referred to in it,

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di Ferrovie dello Stato Italiane S.p.A.

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Tel. 39 02 668951 - Fax 39 02 66800755
www.mercitaliaintermodal.it - E-mail: info@mercitaliaintermodal.it
Cap. Soc. € 7.000.000 i.v. - Codice Fiscale e Registro Imprese di Milano n. 00823190152
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- the declarations and any other documents required in paragraph 5 below.

The expression of interest shall also indicate the name and surname with fax number, e-mail address and telephone number of a contact person for any subsequent contacts with Mercitalia Intermodal and TXL.

3. Method of presentation

The envelope containing the expression of interest, with the indications and wording set out in paragraph 2 above, must be received at the following address:

Mercitalia Intermodal S.p.A.

Via Valtellina 5/7

20159 - Milan (MI)

Italy

no later than (under penalty of non-eligibility) 23/04/2021 at 18:00.

An acknowledgement of receipt will be issued by the office which will register the envelope.

4. Services to be entrusted

The general technical and performance requirements, including the terms and place of performance of the services themselves, which shall form the basis of any contracts, are specified and described in the attached documents (available on the Mercitalia Intermodal website):

- Summary of the essential technical performance conditions .

MII and TXL respectively reserve the right to put out to tender, at their discretion, one of the two wagon versions provided for in the two annexes B ("a" version and "b" version).

The presumed total amount of all the services to be awarded is €14,000,000.00 for Mercitalia Intermodal and €7,500,000.00 for TX Logistik AG.

Please note that, by submitting the expression of interest, the aforementioned technical and performance requirements and conditions are intended to be fully understood and accepted by the interested parties, so that no objections or objections can be raised subsequently.

5. Applicants' requirements

For the purpose of proving the requirements of past professional experience, the following documents and/or declarations must be attached to the expression of interest:

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- (a) list of similar supplies carried out in the last 5 years (or in the period of the economic operator's activity, whichever is shorter), indicating the clients, with the relative amount;
- (b) test certificates with positive results and/or declarations of satisfactory execution issued by the clients;
- (c) a statement that you intend to perform the entire contractual service yourself, where appropriate, or that you intend to have recourse to other undertakings specialized in the relevant field by means of subcontracting;
- d) possession of a certificate of conformity of a Quality System with UNI EN ISO 9001:2015 standards and subsequent evolutions thereof, issued by accredited bodies, with a certification perimeter that includes the activities covered by the contract;
- e) Certificate of registration with the Chamber of Commerce, Industry, Crafts and Agriculture (CCIAA) or with the equivalent professional register if a foreign company, indicating the company purpose and the persons holding the corporate offices and qualifications, with an indication of their powers;
- f) Indication of any other certifications held by the economic operator (e.g. environmental, social, etc.);
- g) Approved financial statements for the last three financial years past due, if available, complete with statements from the appointed auditors. By submitting the expression of interest, the economic operator agrees that the aforementioned accounting and financial documentation may be communicated by Mercitalia Intermodal to FS Group companies and/or third party consultants for the appropriate specialised analyses, subject to the latter's obligation to maintain confidentiality and privacy;
- h) The technical design documentation for Mercitalia Intermodal and TXL to verify that the wagon model that the economic operator may offer has characteristics that are compatible and, in any case, substantially equivalent, also from a regulatory point of view, to those underlying the possible purchase, as indicated in Appendix 2 (Summary of essential legal-administrative conditions) and its annexes.

The declarations and documents provided in the expression of interest may be subject to verification or request for clarification by Mercitalia Intermodal and/or TXL, at any stage of the procedure. Should the verifications reveal the falsity of the declarations, the economic operator shall be excluded from the present and subsequent selection procedures.

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It should also be noted that, in relation to the requirements mentioned in point "h" of the above list, MII and TX reserve the right to exclude from the subsequent tender procedure, at their discretion, products whose characteristics do not correspond to the ideal characteristics indicated.

6. Contact points

For any further enquiries you may contact, no later than 16/04/2021, the following structure:

Direzione Tecnica – Responsabile Flotta Carri: Federico Pocetti

Email: fpocetti@mercitaliaintermodal.it

Mobile phone: +39 335 7983894

7. Notices

This notice simply represents an invitation to express interest in the possible purchase of the supply in question by the undersigned company, and does not in any way constitute an expression of negotiating intent, a contractual proposal or offer to the public pursuant to article 1336 of the Italian Civil Code or an invitation to offer, nor does it involve Mercitalia Intermodal and/or TXL and its structures or managers in assuming responsibility of any kind, in particular in pre-contractual terms. The call for expressions of interest does not bind the undersigned Company in any way to proceed with the selection and does not constitute a commitment by Mercitalia Intermodal and/or TXL to consult the economic operators that have expressed interest.

Accordingly, Mercitalia Intermodal and TXL, at their sole discretion, without any obligation to provide reasons and at any time, reserve the right not to proceed with this market survey, without this entailing any obligation to provide compensation or other benefits to the candidates who may have submitted expressions of interest.

It should be noted as of now that the economic operators who, following the sending of the expression of interest, will eventually be invited to participate in the next stage of the procedure (invitation to submit a binding offer), must declare at that stage, by means of a declaration made by their legal representative pursuant to Presidential Decree 445/2000 as amended and supplemented, that they are not in any of the following conditions, as will be further specified in the letter of invitation to submit an offer:

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1.1. not to have been convicted with a final judgment or a criminal decree that has become irrevocable or a judgment of application of the penalty on request pursuant to Article 444 of the Code of Criminal Procedure for the following offences:

1.1.1. offences, committed or attempted, referred to in Articles 416, 416-bis of the Criminal Code, or offences committed by taking advantage of the conditions laid down in the aforementioned Article 416-bis or in order to facilitate the activities of the associations referred to in the same Article, as well as offences, committed or attempted, referred to in Article 74 of Presidential Decree no. 309 of 9 October 1990, Article 291 of the Criminal Code, or offences committed by taking advantage of the conditions laid down in the aforementioned Article 416-bis or in order to facilitate the activities of the associations referred to in the aforementioned Article. 309 of 9 October 1990, Article 291-quater of Presidential Decree No. 43 of 23 January 1973 and Article 260 of Legislative Decree No. 152 of 3 April 2006, insofar as they are attributable to participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;

1.1.2. the offences, committed or attempted, referred to in Articles 317, 318, 319, 319-ter, 319-quater, 320, 321, 322, 322-bis, 346-bis, 353, 353-bis, 354, 355 and 356 of the Criminal Code and Article 2635 of the Civil Code

1.1.3. fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;

1.1.4. offences, committed or attempted, committed for the purposes of terrorism, including international terrorism, and subversion of the constitutional order, terrorist offences or offences connected to terrorist activities

1.1.5. offences referred to in Articles 648-bis, 648-ter and 648-ter.1 of the Criminal Code, money laundering or terrorist financing, as defined in Article 1 of Legislative Decree No. 109 of 22 June 2007, as amended

1.1.6. exploitation of child labour and other forms of human trafficking as defined by Legislative Decree No. 24 of 4 March 2014;

1.1.7. false corporate communications as defined in Articles 2621 and 2622 of the Civil Code;

1.1.8. any other offence from which, as an accessory penalty, the inability to contract with the public administration derives.

The above-mentioned offences do not constitute grounds for refusal where they have been decriminalised or declared extinct after the conviction or where the conviction itself has been revoked or where there has been rehabilitation, or in cases of sentencing to a perpetual condemnation when this has been declared extinct pursuant to art. 179 seventh paragraph of the criminal code.

1.2. the non-existence of grounds for disqualification, suspension or prohibition provided for in Article 67 of Legislative Decree 159 of 6 September 2011 or an attempt to infiltrate the mafia as referred to in Article 84(4) of the same decree;

1.3. not to have committed serious violations, definitively ascertained, with respect to obligations relating to the payment of taxes or social security contributions, in accordance with Italian law or the law of the State in which they are established

1.4. it has not committed any duly ascertained serious violations of safety regulations and any other obligations arising from employment relationships, as well as of legal obligations relating to environmental, social and labour matters

1.5. it is not in a state of, or in the course of, proceedings for the declaration of bankruptcy, compulsory liquidation, or composition with creditors, except in the case of an arrangement with continuity of business;

1.6. not to have been guilty - according to the Contracting Authority's reasoned assessment of the permanence, or otherwise, of the necessary relationship of trust between the Customer and the Contractor - of serious professional misconduct such as to cast doubt on the Contractor's integrity or reliability, as further specified in the tender dossier;

1.7. not to be in a situation of control, as contemplated in Article 2359 of the Italian Civil Code, with respect to another participant in the same award procedure, or to be in any relationship, even de facto, if the situation of control or the relationship results in the tenders being attributable to a single decision-making centre.

The cases referred to in points from 1.1.1 to 1.1.8 and 1.2 above constitute grounds for exclusion when they concern: the owner or the technical director in the case of a sole proprietorship; the partners or the technical director in the case of a general partnership; the general partners or the technical director in the case of a limited partnership; the directors with powers of representation or

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the technical director or the sole shareholder, or the majority shareholder in the case of a company with four or fewer partners, in the case of another type of company or consortium.

The grounds for exclusion provided for in this paragraph shall not apply to companies or firms subject to seizure or confiscation pursuant to Article 12-sexies of Legislative Decree No 306 of 8 June 1992, converted, with amendments, by Law No 356 of 7 August 1992, or to Articles 20 and 24 of Legislative Decree No 159 of 6 September 2011, and entrusted to a judicial or financial custodian or administrator, limited to those relating to the period prior to such entrustment;

The provisions of the penultimate paragraph of section 5 above shall apply, with reference to any checks or requests for clarification, also in relation to the grounds for preclusion provided for by current anti-mafia legislation (Legislative Decree 159/2011 and subsequent amendments and additions and related regulations), in relation to the economic operator that is awarded the contract.

Mercitalia Intermodal and/or TXL also reserve the right not to admit to the subsequent selection any economic operator for which they do not consider there to be adequate professional reliability, adequate economic and financial solidity or a mismatch between the wagon model offered and the technical characteristics set out in Appendix B.1 and B.2 (Technical description) and in Appendix C (Production specifications), and to admit to the selection process the maximum number of operators deemed appropriate in view of the proven usefulness of limiting the number of parties to be invited due to celerity requirements or evaluations connected with the characteristics of the services to be contracted.

It should be noted from the outset that recourse to the "pooling" method, as referred to in Article 89 of Legislative Decree 50/2016, will not be permitted.

Minimum number of operators to be invited: 3.

However, Mercitalia Intermodal and TXL reserve the right to proceed with the awarding of the contract even if the number of interested and suitable economic operators is lower than the minimum number indicated above and even if there is only one expression of interest, or to discontinue the market survey related to the call for expressions of interest at any time and regardless of the stage at which it has reached.

The evaluation of the binding offers, in the phase following the submission of the expression of interest, will take place according to the modalities that will be indicated in the letter of invitation.

This notice concerning the call for expressions of interest and its annexes are available on the website www.mercitaliaintermodal.it and www.txlogistik.eu.

Publication is in English.

The submission of the expression of interest implies the full acceptance of all the prescriptions and provisions set forth in this call or referred to therein. The documentation submitted in response to this call for expressions of interest may not be withdrawn.

The invitation and the subsequent procedure are entirely governed by Italian law, and shall be subject to Italian jurisdiction.

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The entire procedure, up to its eventual conclusion, shall also be governed by the principles set out in the Code of Ethics of the Ferrovie dello Stato Italiane Group, published on www.mercitaliaintermodal.it.

Any data provided shall be processed in compliance with current national and EU legislation on the protection of the confidentiality of personal data (EU Regulation No. 679/2016). Attached hereto is a model of the FS Group standard information notice for the awarding phase, which you are kindly requested to read in full.

The data controller is Mercitalia Intermodal, address titolaretrattamento@mercitaliaintermodal.it. The data processor is protezionedati@mercitaliaintermodal.it.

8. Annexes

The annexes to this call for proposals are listed below:

- A. Appendix A - Information on the protection of personal data;
- B. Appendix B.1 and B.2 - Technical description;
- C. Appendix C - Production specifications.


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TX Logistik AG

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