

July 28th, 2016

To:
Purchasers of Tender Documents ("**Participants**")
Tender No. 51403 (Supply and Maintenance of Double Deck Electric Multiple Units)

Re: **NOTICE # 10 TO PARTICIPANTS**

TENDER NO. 51403

This notice (the "**Notice**") is being furnished to you in accordance with the provisions of Sections 11.2.4 and 11.3 of the Instructions to Bidders.

Certain requests and questions received by ISR are addressed in this Notice below or in the revised marked documents attached hereto. **Participants are requested to carefully review the attached documents since not all amendments are referred to in this Notice itself.**

All Requests for Clarifications timely submitted by Participants until June 14th, 2016 have been reviewed by ISR. With respect to any question or request not specifically addressed by ISR in the previous Notices and the Tender Documents enclosed there and/or in this Notice # 10 and/or in the enclosed revised Tender Documents, the Tender Documents remain unchanged and ISR deems that no further clarification or amendment is required.

However, ISR is expected to issue a further Notice regarding ICA related inquiries.

In addition, Attachments to be completed and submitted by Bidder in its Bid will be provided by ISR in Word/Excel format in the next Notice.

Capitalized words and terms used herein and not otherwise defined shall have the same meaning ascribed to them in the Tender Documents.

For the removal of doubt, unless otherwise explicitly stated herein, the Tender Documents remain unchanged and fully binding. It is hereby further clarified that throughout the Tender Process, ISR shall only be bound by the information submitted by it in writing, and no oral or other non-written response or information will bind ISR for any and all purposes.

List of Enclosures

The following documents are provided to the Participants together with this Notice:

- (i) **Revised Attachment H1 to the Instructions to Bidders** (marked-up and clean versions)
- (ii) **Revised Volume C with attachments** (marked-up and clean versions).
- (iii) **Revised Maintenance Chapter** (marked-up and clean versions)
- (iv) **Revised Volume B** (marked-up and clean versions)
- (v) **Technical Answers**
- (vi) **Revised Depot Maintenance Contract** (marked-up and clean versions)
- (vii) **Technical Chapter (including Electrification Chapter) of Annex 2 to the Maintenance Depot Contract** (marked-up and clean versions)

The marked-up versions above are provided to the Participants for their convenience only. ISR does not guarantee that all revisions are indeed marked in the marked-up version or that all revision marks appearing therein reflect changes actually introduced to the Tender Documents.

Response to certain questions regarding Attachment H1

1. **Question/Request:** ISR was requested to clarify if alternatives (as specified in Chapter 0 of Volume B) shall be priced separately.

Answer: Bidder shall only be entitled to propose one Unit Price for Long Unit and one Unit Price for Short Unit, in Section 2 of Chapter 1 of Attachment H1.

2. **Question/Request:** ISR was requested to clarify the circumstances under which the Daily Rates are applicable.

Answer: Participants are referred *inter alia* to the following provisions:

- a) Sections 8.2.1, 18.19.2.1, 23.11.2, and 23.11.7 of the Agreement.
- b) Sections 5.9.2 and 6.3.1 of the Maintenance Chapter.

3. **Question/Request:** ISR was asked if the Mobilization Payment in Section 2 of Chapter 3 of Attachment H1 will be deducted from the Price per Kilometer.

Answer: The Mobilization Payment is a one-time separate payment which will not be deducted from the Price per Kilometer.

4. **Question/Request:** ISR was asked how many Units will be included in Supplier Maintained Fleet.

Answer: Participants are referred to Section 19.1 of the Agreement.

5. **Question/Request:** Reference is made to Section 3.1 in Chapter 3 of Attachment H1. ISR was asked on which number of kilometers should the Price per Kilometer be based.

Answer:

- (a) Participants are referred to the amended Chapter 3 in the revised Attachment H1 attached hereto.

- (b) ISR does not give any representation regarding the number of kilometers that will be travelled by any Unit from time to time.

However, commencing on the date of issuance by ISR of the last Unit in IPO1, Supplier shall be entitled to the Minimum PPK Payment as detailed in Section 3.2. For clarification, the Minimum PPK Payment shall be paid also in the event that the amount of the payment due for all kilometers effectively travelled by all Units in Supplier Maintained Fleet does not reach the Minimum PPK Payment (subject to the provisions in Section 3.5).

- (c) The Price per Kilometer shall be paid for all kilometers travelled by all Units in Supplier Maintained Fleet, except as specified in Section 3.4.

6. **Question/Request:** ISR was asked to clarify the calculation of the Minimum PPK Payment.

Answer:

- (a) The Minimum PPK Payment is a global total payment, irrespective of the number of kilometers effectively travelled by the Units in Supplier Maintained Fleet during the applicable Maintenance Year.

- (b) In the event of changes in the composition or the size of Supplier Maintained Fleet, the Minimum PPK Payment shall be adjusted accordingly as further

detailed in the amended Chapter 3 in the revised Attachment H1 attached hereto.

(c) For clarification, Bidders shall NOT quote any amount in Section 3.1.2.

7. **Question/Request:** ISR was requested to reconsider certain provisions relating to discounts in Sections 3.1.3 and 3.3 of Chapter 3 of Attachment H1.

Answer: Participants are referred to the amended Sections 3.1.3 and 3.3 in Chapter 3 of the revised Attachment H1 attached hereto.

8. **Question/Request:** Reference is made to the Price per Kilometer and to the Price for Overhauls. ISR was asked if the payment of the Price per Kilometer and of the Price for Overhauls may be split in two portions, a NIS portion and a EURO portion.

Answer: Participants are referred *inter alia* to the amended Chapter 6 in the revised Attachment H1 attached hereto.

9. **Question/Request:** ISR was asked according to which exchange rate will the Maintenance Prices and the Maintenance Depot Price (to be quoted in NIS in the Bids) be translated to EURO for the purpose of evaluation of the Commercial Proposals.

Answer: Participants are referred to the amended Section 4 in the Instructions Chapter of the revised Attachment H1 attached hereto.

10. **Question/Request:** ISR was requested to reconsider the Milestones in Section 2 of Chapter 4 of Attachment H1.

Answer: Participants are referred to the amended Milestones regarding IPO1 in Section 2 of Chapter 4 in the revised Attachment H1 attached hereto.

11. **Question/Request:** ISR was asked what will be the provisions applicable to payment of the Price for Overhauls.

Answer: Participants are referred to the amended provisions of Section F in Chapter 4 of the revised Attachment H1 attached hereto.

12. **Question/Request:** Reference is made to Sections 3 and 4 of Chapter 5 in Attachment H1. ISR was requested to apply the mechanism of indexation of Additional Purchase Orders to IPO2 and IPO3.

Answer: Participants are referred to the amended Sections 3 and 4 of Chapter 5 of the revised Attachment H1 attached hereto.

13. **Question/Request:** ISR was requested to provide again the links to the websites in Sections 3.1.1 and 3.1.2 in Chapter 5 of Attachment H1.

Answer: Both links have been checked and are functioning properly. Indices can be accessed by following the steps below:

- a) Press the respective link
- b) Press the plus "+" sign on the right of "Classification of Economic Activities – NACE Rev.2"
- c) In the Modify Table that pops up, under the "NACE_R2" ribbon, search for the appropriate series key, (i.e. C302 or C241)
- d) Check the box on the left of the appropriate series key, and press the Update button on the top right corner of the Modify Table
- e) The Modify Table should now close, and you will be returned to the main Eurostat Data Explorer

- f) Press the drop-down menu under "Classification of Economic Activities – NACE Rev.2"
 - g) Choose the Series you just added, (i.e. Manufacture of basic iron and steel and of ferroalloys or EU railway locomotives and rolling stock).
14. References to Attachment H1 in Schedule 2 to the Instructions to Bidders: The two following typos in Schedule 2 to the Instructions to Bidders shall be corrected as follows:
- PPKSU: Price per Kilometer per one (1) Short Unit, as detailed in **Table 2a** in Chapter 3 of the Payment Schedule.
 - PPKLU: Price per Kilometer per one (1) Long Unit, as detailed in **Table 2a** in Chapter 3 of the Payment Schedule.

Response to certain questions regarding the Agreement

15. **Question/Request:** ISR was requested to reconsider the provisions of Section 3.5 to the Agreement regarding order of precedence.
- Answer:** Participants are referred to the amended Sections 3.5 and 14.2.1 in the revised Agreement attached hereto.
16. **Question/Request:** ISR was requested to clarify if IPO1, IPO2 and IPO3 constitute each one a Purchase Order.
- Answer:** Yes. The Initial Purchase is comprised of three Purchases Orders: IPO1, IPO2, and IPO3.
17. **Question/Request:** ISR was requested to provide additional information regarding the type and number of Units to be ordered under IPO2 and IPO3, as well as the expected date of issuance of IPO2 and IPO3.
- Answer:** No further information is available to ISR at this stage and ISR does not give any representation or undertaking in this matter, except as expressly specified in the amended Section 7 of the revised Agreement attached hereto.
18. **Question/Request:** ISR was requested to clarify the relation between Section 7.4 of the Agreement and Section 1.1.1 of the Technical Specifications.
- Answer:** There is no relation, each Section relates to different issues.
19. **Question/Request:** ISR was requested to clarify if ISR is entitled to change the Technical Specifications at any time.
- Answer:**
- (a) Yes, subject to the issuance by ISR of a Change Order in accordance with the provisions of Section 8 of the Agreement.
 - (b) Participants are referred to the amended Section 4.6.8 in the revised Agreement attached hereto.
20. **Question/Request:** ISR was requested to reconsider certain provisions regarding Change Orders.
- Answer:** Participants are referred to the amended Section 8 in the revised Agreement attached hereto.

21. **Question/Request:** ISR was requested to reconsider certain provisions of Section 12 of the Agreement regarding Subcontractors.
Answer: Participants are referred to the amended Section 12 in the revised Agreement attached hereto.
22. **Question/Request:** ISR was requested to clarify the consequences of changes in ISR's Safety Regulations after the date of submission of the last Supplier's Proposal.
Answer: Participants are referred to the amended Section 14.5 in the revised Agreement attached hereto.
23. **Question/Request:** ISR was requested to clarify the provisions of Section 14.6.2 of the Agreement.
Answer: Participants are referred to Section 75 of the Maintenance Depot Contract.
24. **Question/Request:** ISR was requested to provide additional space for storage of Supplier's Materials in the event that the Maintenance Depot will not be sufficient.
Answer: Participants are referred to Section 14.7.4 and to Section 19.5.6 in the revised Agreement attached hereto.
25. **Question/Request:** Certain amendments have been suggested by Participants with respect to the conduction of the Tests.
Answer: Participants are referred to the amended Section 16 in the revised Agreement attached hereto.
26. **Question/Request:** ISR was requested to reconsider the provisions of the Agreement relating to Endemic Failures.
Answer: Participants are referred to the amended Section 18.4.2 in the revised Agreement attached hereto.
27. **Question/Request:** ISR was requested to reconsider the definition of Excluded Warranty Works.
Answer: Participants are referred to the amended Section 18.19.1 in the revised Agreement attached hereto.
28. **Question/Request:** ISR was requested to relate to the timetable for the performance of Excluded Warranty Works.
Answer: Participants are referred to the new Section 18.19.3 in the revised Agreement attached hereto.
29. **Question/Request:** ISR was requested to clarify the provisions of Section 18.19.3 in the version of the Agreement first published (Section 18.19.4 in the revised Agreement attached hereto).
Answer: All Faults resulting from repair of Excluded Warranty Works by ISR and/or a third party shall be considered Excluded Warranty Works.
30. **Question/Request:** Reference is made to Section 19.2.1 of the Agreement. ISR was requested to clarify the date of end of the initial Maintenance Period.
Answer: The initial Maintenance Period with respect to the entire Supplier Maintained Fleet shall end upon the lapse of fifteen (15) Maintenance Years from the date of issuance by ISR of the Final Acceptance Certificate for the first Unit ordered under the Initial Purchase (i.e. the first Unit under IPO1).

31. **Question/Request:** ISR was requested to reconsider the provisions of Section 19.5.1 of the Agreement.

Answer: Participants are referred to the amended Section 19.5.1 in the revised Agreement attached hereto.

32. **Question/Request:** Reference is made to Section 19.5.5 of the Agreement as first published and to Section 16.3 of the Technical Specifications. ISR was requested to clarify the requirements regarding the capacity of the Maintenance Depot.

Answer:

- a) The Maintenance Depot to be erected by Supplier on the Maintenance Site pursuant to the Maintenance Depot Contract shall be sufficient for Maintenance of up to forty six (46) Units (including for the removal of doubt Preventive Maintenance (including Overhauls) and Corrective Maintenance), and Bidders must calculate the Maintenance Depot Price in their Bid accordingly.

Section 16.3 of the Technical Specifications shall be amended accordingly.

- b) In the event that Supplier needs additional areas for Maintenance of Supplier Maintained Fleet (up to forty six (46) Units), Section 19.5.6 in the revised Agreement attached hereto shall apply.

- c) In the event that the number of Units in Supplier Maintained Fleet shall exceed forty six (46) Units, Section 19.1.3 of the Agreement shall apply.

33. **Question/Request:** ISR was requested to reconsider the provisions of Section 19.6.5 of the Agreement.

Answer: Participants are referred to the amended Section 19.6.5 in the revised Agreement attached hereto.

34. **Question/Request:** Reference is made to Section 20.5 of the Agreement. ISR was requested to clarify who will bear and pay the expenses relating to the operation of the Maintenance Depot.

Answer: Participants are referred to the provisions of Section 5.4 of the LUL Agreement (**Attachment U** to the Agreement).

35. **Question/Request:** ISR was requested to amend the provisions of Section 20.1 of the Agreement regarding the date of submission of the illustrated Spare Parts catalogue by Supplier.

Answer: Participants are referred to the amended Section 20.1 in the revised Agreement attached hereto.

36. **Question/Request:** ISR was requested to clarify the provisions of Section 20.2 of the Agreement.

Answer:

- (a) All Spare Parts, equipment and tools referred to in Section 20.2 of the Agreement will not be subject to order or to additional payment by ISR since they are deemed to be part of IPO2 (which is the first Purchase Order which Units will be maintained by ISR).

- (b) Therefore, there is no relation between Section 20.2 and the illustrated Spare

Parts catalogue referred to in Section 20.1 of the Agreement.

37. **Question/Request:** Reference is made to Section 20.3 of the Agreement. ISR was requested to clarify the terms and conditions under which Supplier may be requested by ISR to manage ISR's stock of Spare Parts.

Answer: Participants are referred to the provisions of Section 20.3 of the Agreement, according to which such terms and conditions shall be reasonably agreed between the parties, taking into account *inter alia* the prices for Spare Parts in the Payment Schedule.

38. **Question/Request:** ISR was requested to reconsider certain provisions of Section 22 of the Agreement regarding Intellectual Property.

Answer: Participants are referred to the amended Section 22 in the revised Agreement attached hereto.

39. **Question/Request:** ISR was requested to reconsider the provisions of Section 23.8 of the Agreement such that prices may only increase (and not decrease) as a result of indexation.

Answer: Section 23.8 of the Agreement remains unchanged.

40. **Question/Request:** ISR was requested to clarify the provisions of the Agreement relating to the Cost-Plus Mechanism.

Answer: ISR deems such provisions to be self-explanatory.

41. **Question/Request:** ISR was requested to reconsider the overall amount of Guarantees to be furnished by Supplier, as well as the period and the form of such Guarantees.

Answer: Participants are referred to the amended Section 25 in the revised Agreement attached hereto, as well as to the amended Section 16.4.9 in such Agreement, and to Section 14.5.2 in the revised Maintenance Chapter attached hereto.

42. **Question/Request:** ISR was requested to reconsider the provisions regarding the Late Delivery Cap, the Liquidated Damages for Poor Performance and the liquidated damages under Section 18.17 of the Agreement.

Answer:

(a) Participants are referred to the amended Sections 26, 28.4.2 and 31.1.10 in the revised Agreement attached hereto.

(b) Participants should note the second paragraph in Section 28.4.2.

(c) For clarification, Section 26.5 is subject to Section 28.4.2 (if applicable).

43. **Question/Request:** ISR was requested to reconsider certain provisions of Section 28 of the Agreement regarding liability and indemnification.

Answer: Participants are referred to the amended Section 28 in the revised Agreement attached hereto.

44. **Question/Request:** ISR was requested to reconsider certain insurance provisions in Section 29 of the Agreement.

Answer: Participants are referred to the amended Section 29 in the attached revised Agreement.

45. **Question/Request:** ISR was requested to add to Section 29 (insurance) a provision

stating that if Supplier is already covered by a corporate program, no specific additional insurance policy will be required under the Agreement. .

Answer: There is no need to add such a provision, the Agreement does not include any obligation for Supplier to maintain "stand alone" policies.

46. **Question/Request:** ISR was asked if Liquidated Damages will be imposed on Supplier under Force Majeure circumstances preventing Supplier to perform its obligations.

Answer: Participants are referred to the third line in Section 30.2 of the Agreement.

47. **Question/Request:** ISR was requested to clarify Supplier's rights to terminate the Agreement.

Answer: Participants are referred to the new Section 31.3A in the revised Agreement attached hereto.

48. **Question/Request:** ISR was requested to reconsider the provisions of Section 31.1.8 of the Agreement.

Answer: Section 31.1.8 is hereby deleted and Participants are referred to the new Section 16.4.12 in the revised Agreement attached hereto.

49. **Question/Request:** ISR was requested to reconsider the provisions of Section 32 of the Agreement regarding settlements of disputes and governing law.

Answer: Section 32 of the Agreement remains unchanged.

50. **Question/Request:** ISR was requested to reconsider the provisions of Section 33 of the Agreement regarding changes in legislation.

Answer: Section 33 of the Agreement remains unchanged.

51. **Question/Request:** ISR was asked what is the meaning of the word "adjusted" in Section 4 of Attachment M to the Agreement.

Answer: "Adjusted" means "indexed" in Section 4 of Attachment M to the Agreement.

Response to certain questions regarding the Maintenance Chapter (Attachment F2 to the Agreement)

52. **Question/Request:** ISR was asked if the Maintenance Representative and the Maintenance Site Manager might be the same person.

Answer:

(a) Yes, provided that this person complies with all the requirements applying to both positions (including date of appointment).

(b) Participants are referred to the amended Section 2 in the revised Maintenance Chapter attached hereto.

53. **Question/Request:** ISR was requested to clarify the requirements applicable to Section 2.2.3.2 of the Maintenance Chapter.

Answer: Supplier shall comply with the applicable provisions of the Technical Specifications.

54. **Question/Request:** ISR was requested to reconsider the definition of Excluded Maintenance Works.
Answer: Participants are referred to the amended Section 6.1 in the revised Maintenance Chapter attached hereto.
55. **Question/Request:** ISR was requested to relate to the timetable for the performance of Excluded Maintenance Works.
Answer: Participants are referred to the new Section 6.2.2 in the revised Maintenance Chapter attached hereto.
56. **Question/Request:** ISR was requested to clarify the term "upholstery" in Section 5.5.1 of the Maintenance Chapter.
Answer: "upholstery" means seat covers.
57. **Question/Request:** ISR was requested to reconsider the provisions of Section 6.5 of the Maintenance Chapter.
Answer: Participants are referred to the amended Section 6.5 in the revised Maintenance Chapter attached hereto.
58. **Question/Request:** Reference is made to Section 8.2 of the Maintenance Chapter. ISR was requested to provide Participants with ISR's operational plan.
Answer: ISR's operational plan shall be provided by ISR to Supplier when available.
59. **Question/Request:** ISR was requested to reconsider the provisions of Section 13.3.4 of the Maintenance Chapter.
Answer: Participants are referred to the amended Section 13.3.4 in the revised Maintenance Chapter attached hereto.
60. **Question/Request:** ISR was requested to reconsider certain provisions in Annex 10 (Maintenance Regime) to the Maintenance Chapter.
Answer: Participants are referred to the revised Annex 10 to the attached Maintenance Chapter.

Response to certain questions regarding the Maintenance Depot Contract (Attachment F1 to the Agreement)

61. **Question/Request:** ISR was requested to reconsider the provisions of the Maintenance Depot Contract regarding soil contamination.
Answer: Participants are referred to the amended Section 1.5 in Annex 1 to the revised Maintenance Depot Contract attached hereto.
62. **Question/Request:** ISR was requested to clarify the provisions of Section 21.1.1 of the Maintenance Depot Contract.
Answer: Participants are referred to the amended Sections 21 and 32.3 and to the new Section 32.5 in the revised Maintenance Depot Contract attached hereto.
63. **Question/Request:** ISR was requested to reconsider the amount of the Depot Advance Payment.
Answer:
(a) the amount of the Depot Advance Payment shall be raised to 10% of the

Maintenance Depot Contract, as amended in Section 54.1 of the revised Maintenance Depot Contract attached hereto and in Section 17.1 in Chapter 4 of the revised Attachment H1 attached hereto.

(b) Participants are referred to the new Section 25.7 in the revised Agreement attached hereto regarding provisions applying to the reduction of the Depot Advance Payment Guarantee.

64. **Question/Request:** ISR was requested to reconsider the provisions of Section 25 of the Maintenance Depot Contract with respect to liquidated damages that may be imposed on Supplier for delays in completion of milestones.

Answer: Participants are referred to the amended Section 25 and to the amended Annex 4 in the revised Maintenance Depot Contract attached hereto.

65. **Question/Request:** ISR was requested to limit Supplier's liability under the Maintenance Depot Contract.

Answer: Participants are referred to the amended Section 28 in the revised Agreement attached hereto.

66. **Question/Request:** ISR was requested to assist Supplier to obtain permits for the Maintenance Depot.

Answer: Participants are referred to Sections 4.3 and 4.4 in Annex 1 to the revised Maintenance Depot Contract attached hereto.

67. **Question/Request:** ISR was requested to clarify if the distance between tracks which lead to the Maintenance Depot can be changed

Answer: Bidder may propose to change the distance between the tracks in the Maintenance Depot, subject to ISR's written approval during the design phase stage.

68. **Question/Request:** ISR was requested to clarify if extension of the tracks on the southside of the Maintenance Depot is possible.

Answer: Bidder may propose the extension of the tracks within Maintenance Depot boundaries, subject to ISR's written approval during the design phase stage.

69. **Question/Request:** ISR was requested to clarify if all the tracks within the Maintenance Depot shall be electrified.

Answer: Participants are referred to the Electrification Technical Requirements in the Engineering Chapter of the Maintenance Depot Contract.

70. **Question/Request:** ISR was requested to specify the areas available to Supplier during the construction of the Maintenance Depot (for storage, prefabrications, office, etc).

Answer: The necessary areas shall be organized by Supplier within the Maintenance Depot boundaries, in accordance with the provisions of the Maintenance Depot Contract and the Attachments thereto.

Yours Faithfully,

Sophia Katsely

Mrs. Sophia Katsely
International Procurement Coordinator