

Material agreement signed with consortium of Siemens Group companies for delivery of multi-system locomotives

Current report no. 49/2015 of 23 September 2015

Legal basis (selected in ESPI):

Article 56 Section 1 Item 2 of the Act on Offering - current and periodic information

The Management Board of PKP CARGO S.A. hereby reports that on 23 September 2015 it signed, with the Consortium composed of Siemens Sp. z o.o. in Warsaw as the Consortium leader and Siemens A.G. in Munich as a Consortium member, an agreement for delivery of 15 multi-system locomotives in three batches from 31 January 2016 to 30 June 2017 (the basic order) with an option to purchase 5 additional locomotives at basic order prices, where PKP CARGO S.A. must take the decision to exercise this option no later than on 31 December 2017 (the optional order), (hereinunder the “**Agreement**”).

Under the basic order, the subject matter of the Agreement includes: (i) delivery of 15 multi-system locomotives to be operated in Poland and specified states of the European Union, (ii) delivery of computer equipment, software with licenses, documentation and diagnostic and information systems indispensable for the operation and usage of the locomotives; (iii) full maintenance of the locomotives (while keeping readiness and reliability rates at specified levels) in the period from the delivery date to the disengagement date of the locomotives for the first P4 level periodic repair after 8 years, (iv) purchase of the “failure prevention” set, i.e. the spare parts and sub-assemblies, which are needed for quick failure repairs, (iv) the first periodic repair at level P4 after 8 years of operation, while PKP CARGO S.A. may refrain from using services provided by Consortium members in this respect.

Under the optional order, the subject matter of the Agreement includes: (i) delivery of up to 5 multi-system locomotives (the decision how many additional locomotives and which countries the approval for their operation will cover will be at the discretion of PKP CARGO S.A.) (ii) full maintenance of delivered locomotives - as in the basic order, (iii) the first periodic repair at level P4 after 8 years of operation - as in the basic order.

The net value of the agreement will not exceed EUR 75 million under the basic order (15 locomotives) and PLN 26 million under the optional order (5 locomotives), however for deliveries and maintenance services under the optional order a one-time price restatement mechanism was introduced with a specified negative and positive rate, which will not exceed +/-2% of the initial prices.

The agreement will be effective in the period from its date until the end of the maintenance period of the last delivered locomotives and if the Consortium members perform the first periodic repairs at the P4 level – until the acceptance date of the last of the operated locomotives after the periodic repair.

The agreement provides for contractual penalties in favor of PKP CARGO S.A. from Consortium members. The maximum amount of the penalties may exceed the equivalent of at least 10% of the net value of the Agreement or equivalent of at least EUR 200,000. The contractual penalties have been prescribed in the event of delays in the delivery of locomotives, withdrawal from the Agreement

in the cases set forth in the Agreement, if the readiness and reliability rates are not kept in the period of providing the locomotive maintenance services, termination of the Agreement in the part relating to the locomotive maintenance services for reasons attributable to Consortium members and also in other cases of non-performance or improper performance of contractual duties by Consortium members.

The contractual penalties for delays in the delivery of locomotives and for withdrawal from the Agreement in the cases set forth in the Agreement cannot jointly exceed the amount of EUR 17.4 million and if PKP CARGO S.A. exercises the option of purchasing additional locomotives – the amount of EUR 23.7 million.

Contractual penalties for a failure to keep the readiness and reliability rates may not exceed EUR 1.35 million per year and if PKP CARGO S.A. exercises the option of purchasing additional locomotives – the amount of EUR 1.8 million.

Payment of contractual penalties by Consortium members will not limit PKP CARGO S.A.'s rights to pursue damages on general terms, however full liability of Consortium members, contractual penalties included, may not exceed 60% of the full net value of the Agreement.

Consortium members will be jointly and severally liable for their obligations arising from the Agreement.

Other terms and conditions of the Agreement are substantially similar to those generally used in agreements of this type.

The total maximum net value of the Agreement in the basic part and in the optional part is greater than 10% of the Company's equity, which forms grounds for publishing this current report.

Legal basis:

§ 5 section 1 item 3 and § 9 of Finance Minister's Regulation of 19 February 2009 on the current and periodic information transmitted by securities issuers and the conditions for recognizing the information required by the regulations of a non-member state as equivalent (Journal of Laws of 2014 Item 133),