

**Invitation to tender published by Italy, pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92, for the operation of scheduled air services between Crotona and Roma Fiumicino and vice versa**

(Text with EEA relevance)

(2008/C 276/09)

**INTRODUCTION**

The Italian government (Ministry of Infrastructure and Transport), in accordance with Article 4 of Regulation (EEC) No 2408/92 and with the decisions taken during the inter-departmental conference chaired by the Region of Calabria, has approved this invitation to tender for a concession to operate scheduled air services between Crotona and Roma Fiumicino and *vice versa*.

The terms of this public service obligation were published in *Official Journal of the European Union* C 241 of 20.9.2008.

If within 30 days of the publication of this obligation no air carrier has applied to introduce scheduled air services on the abovementioned route in accordance with the obligation and without requesting financial compensation, the Italian government (Ministry of Infrastructure and Transport), following the procedure laid down in Article 4(1)(d) of Regulation (EEC) No 2408/92, has decided to limit access to only one air carrier selected on the basis of an invitation to tender for the provision of the air service in question in accordance with the provisions of the above Regulation.

**GENERAL PROVISIONS**

This invitation to tender sets out the subject of the tender, the rules for participation, the rules governing the duration of, changes to and expiry of the contract, the penalties to be applied for failure to comply with the provisions, the guarantees to support the tender and the performance of the contract.

The right to operate the service on the route in question will be granted by means of a public tender on the basis of the most economically advantageous tender, taking into account the amount of financial compensation indicated in Section 6 of this invitation to tender.

**1. Subject of the invitation to tender**

The operation of scheduled air services on the route between Crotona and Roma Fiumicino and *vice versa* under the public service obligation published in *Official Journal of the European Union* C 241 of 20.9.2008, in accordance with the provisions of Regulation (EEC) No 2408/92.

**2. Participation**

All Community air carriers as defined in Article 2(b) of Regulation (EEC) No 2408/92 that meet the following requirements may apply to participate.

*General requirements*

1. they are not bankrupt or being compulsorily wound up, have not entered into an arrangement with creditors and are not the subject of any such proceedings;
2. they have not been banned under Article 9(2) of Legislative Decree No 231/2001 and are not subject to any other ban on concluding a contract with a public administration;
3. they have fulfilled their employment obligations relating to the payment of social security contributions;
4. they have not made misrepresentations concerning the requirements for participation in other tender procedures for the operation of scheduled air services under a public service obligation.

For the purpose of checking that the above requirements are met, applicants must attest their compliance with point 3 with a certificate issued by INPS or INAIL indicating that they are up-to-date with their obligations and the certification required by Article 17 of Law No 68 of 12 March 1999 on disabled persons' right to work. For points 1, 2 and 4, applicants must send a statement equivalent to a certificate of compliance with Articles 46 and 47 of Decree No 445 of the President of the Republic of 28 December 2000.

For applicants from European Union Member States other than Italy, certificates or statements must be issued by the administrations or bodies of their country of origin and be accompanied by an Italian translation certified by the Italian consulate to be a true representation of the original.

*Technical requirements*

1. an air operating licence issued in accordance with Regulation (EEC) No 2407/92;
2. mandatory insurance against accidents, particularly in respect of passengers, baggage, goods transported and third parties, in compliance *inter alia* with Regulation (EC) No 785/2004;
3. an air operator's certificate (AOC) in accordance with Community legislation;
4. non-inclusion on the blacklist of airlines that fail to satisfy European safety standards, as published on the following website: <http://ec.europa.eu/transport/air-ban>;

5. an analytical accounting system that identifies the relevant costs (including fixed costs and income).

If, after having submitted an application to take part in the tender procedure, a carrier no longer meets these requirements, its tender will be automatically excluded from assessment.

If, after having concluded the agreement referred to in Section 5, a carrier no longer meets these requirements, the provisions contained in Sections 14 and 15 (penultimate paragraph) of this invitation to tender will apply.

### 3. Procedure

This invitation to tender is subject to the provisions of Article 4(1)(d), (e), (f), (h) and (i) of Regulation (EEC) No 2408/92.

### 4. Tender dossier

Together with the model of the agreement referred to in Section 5, the complete tender dossier, which sets out the specific rules applicable to the invitation to tender, the period of validity of the tenders and all other relevant information, constitutes, in every respect, an integral part of this invitation to tender and may be requested, free of charge, from the following address: ENAC, Direzione Trasporto Aereo, viale del Castro Pretorio, 118, I-00185 Roma, or by e-mail from the following address: [trasporto.aereo@enac.rupa.it](mailto:trasporto.aereo@enac.rupa.it).

### 5. Service agreement

The service will be governed by an agreement between the carrier and ENAC, drawn up according to the model which forms part of the tender dossier.

### 6. Financial compensation

The maximum amount of financial compensation available under the tender for a concession to operate air transport services on the route in question will be EUR 1 724 666,00, including VAT, per year.

Tenders must be drawn up as specified in the tender dossier and, on the Section of the form setting out the bid with an annual breakdown, must specifically indicate the maximum amount of compensation requested to operate the service in question, within the above ceiling.

The exact amount of compensation granted will be determined retrospectively each year on the basis of the costs actually incurred and the revenue actually generated by the service, on presentation of supporting documents and within the limit of the amount indicated in the tender, as specified in the tender dossier.

In no event may the air carrier request, by way of financial compensation, an amount in excess of the upper limit specified in the agreement, given the nature of the payment, which does not constitute a consideration but is compensation for providing a service which is subject to a public service obligation.

The annual payments will be made in the form of instalments and a final balance, in accordance with the provisions set out in the tender dossier, without prejudice to any checks carried out by ENAC to verify the actual destination of the compensation granted and on condition that the successful air carrier continues to comply with the set requirements. The final balance will be paid only after a detailed examination of the accounts submitted by the carrier for the route in question and verification that the actual service provision is in line with that specified in the agreement.

### 7. Fares

Tenders must specify the proposed fares, as indicated in the notice on the imposition of a public service obligation published in *Official Journal of the European Union* C 241 of 20.9.2008.

### 8. Commencement of operation of the route

Operation of the route must commence within 15 days of conclusion of the agreement and must be attested with a service commencement report signed by the successful carrier and by ENAC.

### 9. Duration of the agreement

The agreement will be valid for two years commencing on the date on which operation of the scheduled air services on the route in question commences.

The air carrier must undertake to make available to ENAC the staff, technical and accounting documents, instruments and anything else necessary to supervise and monitor the proper fulfilment, application and performance of the provisions laid down in the Commission notice, the Decree on the obligation, this invitation to tender, the agreement and the tender dossier.

Failure to comply with the obligations referred to above will give rise to penalties in accordance with Section 11 below.

### 10. Withdrawal from the agreement

Either party may withdraw from the agreement before it is due to expire, with no obligation of compensation or indemnity, by giving 6 months' notice; however, no notice may be given in the first 12 months following the commencement of the service.

If the carrier interrupts the service it will be deemed to have withdrawn without notice unless it resumes the service in accordance with the public service obligation within 30 days of being served notice by ENAC to comply fully with the said obligation.

If the carrier withdraws from the agreement, ENAC reserves the right to carry out the checks needed to propose to the Ministry of Infrastructure and Transport that a new agreement be concluded with the carrier ranked immediately below on the list of tenderers. The conditions for operating the service and the proportional level of compensation, will be the same as those set when the public service obligation was first assigned.

### 11. Non-fulfilment and penalties

Interruption of the service for the following reasons will not constitute non-fulfilment attributable to the carrier:

- hazardous weather conditions,
- closure of one of the airports indicated in the operating programme,
- safety concerns,
- industrial action,
- *force majeure*.

Interruption of the service for these reasons will give rise to a reduction in the amount of compensation proportional to the flights that are not operated.

Where the services and obligations laid down in the agreement are not performed, ENAC will be entitled to impose penalties on the carrier, the level of which will increase in proportion to the number of infringements committed, as detailed in the model agreement.

The amount of penalties may in no case exceed 50 % of the maximum amount of financial compensation laid down in Section 6 of the invitation for tender, with the understanding that, if this limit is exceeded, ENAC will be entitled to terminate the agreement for non-fulfilment, resulting in the immediate cancellation of any compensation due.

The number of flights cancelled for reasons directly attributable to the carrier must not exceed 2 % of the number of flights scheduled in any year.

Above this limit, the carrier will have to pay ENAC a penalty of EUR 3 000,00 for each cancellation over the 2 % limit, subject to formal notice being given to the carrier within ten days of knowledge of the event. The carrier will be allowed up to seven days to present any counter-arguments.

In addition, ENAC will review the amount of financial compensation in proportion to the flights operated. The proceeds will be allocated to the improvement of transport links to and from Crotone.

Failure to give the notice referred to in Section 10 will give rise to a penalty calculated on the basis of the annual compensation and the missed period of notice starting from the date on which the service is interrupted, under the terms specified in Section 10, and using the following formula:

$$P = CA/GG \times gg$$

where:

P = penalty

CA = annual compensation

GG = number of days in the year in question (365 or 366)

gg = days in the missed notice period

The penalties specified in this Article may be cumulated with the penalty arrangements laid down in Community regulations and in national legislation and regulatory provisions.

### 12. Guarantees to provide with the tender

To demonstrate that their tenders are genuine and reliable, carriers participating in this tender procedure must submit a guarantee equal to 2 % of the maximum amount of financial compensation referred to in Section 6 in the form of a deposit or bank or insurance guarantee, as chosen by the tenderer.

The methods of lodging the above guarantee will be set out in the tender dossier and may also be repeated in the agreement.

The guarantee must be valid for at least 180 days from the closing date for submitting tenders, and the carrier must undertake to renew the guarantee, at the request of ENAC during the procedure, if the tender has not been awarded by the time the guarantee lapses.

When ENAC notifies carriers that they have been unsuccessful in the award procedure, it will release them from the guarantee.

### 13. Performance guarantee and insurance cover

The carrier awarded the operation of air services subject to a public service obligation under this invitation to tender must lodge a bank or insurance guarantee of EUR 700 000,00 in favour of ENAC, which reserves the right to use it to ensure the continuation of the service concerned.

The guarantee will be automatically released, without the need for ENAC's approval, provided the examination referred to in the last paragraph of Section 6 above is favourable.

### 14. Forfeiture and revocation of the financial compensation

Failure to fulfil, at any time after the agreement is signed, the general and technical requirements set out in Section 2 of this invitation to tender and the requirements set out in the tender dossier will give rise to forfeiture of the right to operate the route, the revocation of the right to financial compensation and the recovery of any unduly paid amounts, plus statutory interest.

After the forfeiture of the right to operate the route, ENAC may be authorised by the Ministry of Infrastructure and Transport to conclude another agreement for the remaining period of scheduled air services with the next highest carrier on the ranking list resulting from the tender procedure.

In this case, the duration of the agreement will start on the date on which the service commences and will end on the expiry date set in the terminated agreement, in line with the operating plan approved when the tender submitted by the successful tenderer was assessed.

### 15. Termination of the agreement

If the carrier fails to comply with the provisions set out in the notice published in *Official Journal of the European Union* C 241 of 20.9.2008, the corresponding Decree, the agreement, this invitation to tender and the tender dossier, ENAC may, in accordance with Article 1454 of the Civil Code, send written notice giving the carrier 15 days from receipt of such notice to remedy this non-compliance.

If it fails to do so within that period, ENAC will have the right to consider the agreement automatically terminated and to definitively retain the guarantee amount indicated in Section 13 above and to claim compensation from the carrier for damages.

In addition, if the carrier fails to perform the obligations and services accepted in the agreement, this invitation to tender and the tender dossier, ENAC, in accordance with Article 1456 of the Civil Code, has the right to terminate the agreement, subject to written notice to the carrier.

If the agreement is terminated, ENAC may be authorised by the Ministry of Infrastructure and Transport to conclude another agreement for the remaining period of scheduled air services with the next highest carrier on the ranking list resulting from the tender procedure for the award of the route.

In this case, the duration of the agreement will start on the date on which the service commences and will end on the expiry date set in the terminated agreement, in line with the operating plan approved when the tender submitted by the successful tenderer was assessed.

### 16. Submission of tenders

Tenders, which in order to be valid must be drawn up in accordance with the provisions of the tender dossier, must reach the following address no later than 30 days after the date of publication of this invitation to tender in the *Official Journal of the European Union* either by registered letter with acknowledgement of receipt or by hand delivery against receipt: ENAC, Direzione Generale, viale del Castro Pretorio, 118, I-00185 Roma.

In order to be valid, tenders must be submitted in three closed and sealed envelopes.

The outer envelope, closed, sealed and initialled on both sides, must contain two inner envelopes, both sealed and initialled on

both sides, and must bear the following wording: '*Offerta per la gara in oneri di servizio pubblico sulla rotta Crotone-Roma Fiumicino e viceversa*'.

The documents to be enclosed in these three envelopes are specified in the tender dossier referred to in Section 4 of this invitation to tender.

It should be noted that the sender will have sole liability in the event that, for whatever reason, the package fails to arrive at its destination by the closing date specified above.

If only one valid tender is submitted, the award procedure may still go ahead.

### 17. Expiry of tenders

180 days from the closing date for submission of tenders.

### 18. Contract award

ENAC will complete the tender procedure through a committee set up for this purpose, composed of a director of ENAC delegated by the Director-General, an expert in the field of air transport appointed by the Region of Calabria and a chairman appointed by common agreement between ENAC and the Region of Calabria. Secretariat support will be provided by an ENAC official.

### 19. Processing of personal data

All personal data will be used and processed solely for official purposes and their protection and confidentiality will be ensured in accordance with prevailing legislation. To this end, the successful carrier will need to sign the relevant authorisation to process personal data in accordance with Legislative Decree No 196/2003 as amended and supplemented.

### 20. Processing of sensitive data

Sensitive data contained in the tenders submitted by carriers will be processed in accordance with the Regulation for processing sensitive and legal data approved by ENAC's executive board on 2 March 2006 and available on ENAC's website at: 'enac-italia.it'.