NO-Oslo: operation of scheduled air services

Invitation to tender published by Norway pursuant to Article 4.1(d) of the act referred to in point 64a in Annex XIII of the EEA Agreement (Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes) for operation of scheduled air services on the route Værøy (heliport) – Bodø v.v.

(2004/C 268/06)


Insofar as by two months from the latest day of submission of tenders, see section 12 of this publication, no air carrier has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled flights on 1 August 2005 in conformity with the public service obligations imposed on the route Værøy – Bodø v.v., without demanding financial compensation or market protection, Norway will apply the tender procedure provided for by Article 4.1(d) of the same regulation, thereby limiting access as of 1 August 2005 to only one air carrier for the route.

2. **Objective of the invitation to tender:** To provide, with effect from 1 August 2005, scheduled air services on the route Værøy – Bodø v.v. in accordance with the imposed public service obligations, as published 4.11.2004.

The Ministry of Transport and Communications reserves the right to amend the public service requirement as a result of altered conditions of airport approvals. If such changes occur, the Ministry may call for a new public tender on the specific route-area.

It is a prerequisite that the tendering operators carefully study the special conditions related to the relevant airports; hereunder the required adherence to restrictions and limitations valid on the date of submitting the tender, which are imposed on the airspace by military activities; rel. Regulation No 44 of 16 January 2003 on the Flexible Use of Airspace. The location and extent of the training areas and their activation periods are promulgated in AIP Norway, ENR 5.2 and ENR 6.5. Further information on the Letter of Agreement between the Royal Norwegian Air Force and Avinor related to the above mentioned regulation is available from Avinor, Wergelandsveien 1, PO Box 8124 Dep, N-0032 Oslo.


4. **Tender procedure:** This invitation to tender is subject to the provisions of subparagraphs (d), (e), (f), (g), (h) and (i) of Article 4.1 of Council Regulation (EEC) No 2408/92.

Overdue tenders and tenders not in conformity with the invitation to tender will be rejected [Reject = the tender is dismissed without further investigation. Reference is made to §§ 9, 11 and 12 of the Norwegian Regulation of 15 April 1994 on tender procedures in connection with public service obligations to implement Council Regulation (EEC) No 2408/92 Article 4.

Section 9: Details regarding overdue tenders

Tenders arriving after the closing date for submission of tenders, see section 6, shall be rejected as overdue and be returned.

However, this does not apply to tenders which arrive after the closing date but before the opening of the tenders provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the deadline, or the tenderer in question has proven this by a receipt from Norway Post before the opening of the tenders.

The rejection decision, including the grounds for it shall be entered in the register of tenders.

Section 11: Rejection

1. A tender shall be rejected if: the tender as it appears at the final date fails to fulfil the requirements for participation in the competition, cf. section 3.

2. A tender may after closer assessment be rejected if:

   a) the tender does not contain all the information prescribed in the invitation to tender;
b) the tender fails to state the compensation required as prescribed in the invitation to tender, cf. section 8, litera h);

c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender, cf. section 8, litera p);

d) the tender requires compensation that is unreasonable in relation to the service to be provided and the tenderer is unable to provide a satisfactory reason for this.

The register of tenders shall make clear which tenders are rejected and the reason for rejection, cf. section 10, litera f).

Section 12: Criteria for exclusion of tenderers

1. Principals may when selecting a tenderer and when awarding a contract exclude any tenderer who:

a) is bankrupt, is engaged in debt settlement proceedings or is being wound up, who has halted his business activities or who is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;

b) is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory winding up or is the subject of any other similar proceedings pursuant to national laws or regulations;

c) has been convicted by final judgement of an offence concerning his professional conduct;

d) has been guilty of grave breaches of professional and ethical standards in his line of business, which have been proven by any means which the principal approves;

e) has not fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the State in which he is established, or of Norway;

f) is guilty of serious misrepresentation in supplying the information required under sections 8 and 13.

2. Where the principal requires tenderer proof that none of the cases mentioned in a), b), c), e) or f) of subsection 1 applies to him, the principal may accept as sufficient evidence:

a) for a), b) or c), an extract from the National Register of Convictions or the National Register of Insolvencies. Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home State or State where he is currently present showing that none of these cases applies to the tenderer;

b) for e) or f), a certificate issued by the competent authority in the State concerned.

The Ministry of Transport and Communications reserves the right to apply subsequent negotiations if all tenders submitted are incorrect [cf. section 11 of regulation on tender procedures in connection with public service obligations to implement Council Regulation (EEC) No 2408/92 of 15 April 1994 No 256 (cf. footnote No 1 above)], unacceptable [cf. chapter III section 5] or is unsuitable. Such negotiations shall be in accordance with the public service obligations imposed and without making substantial changes in the original tender conditions [cf. section 4 No 2 of the Norwegian Regulation of 15 April 1994 on tender procedures in connection with public service obligations to implement Council Regulation (EEC) No 2408/92, Article 4].

If the subsequent negotiations do not lead to an acceptable solution [cf. section 11 of the Norwegian Regulation of 15 April 1994 on tender procedures in connection with public service obligations to implement Council Regulation (EEC) No 2408/92 Article 4 and the invitation to tender chapter III No 5], the Ministry of Transport and Communications reserves the right to cancel the entire tender procedure. In that case a new invitation to tender on new terms may be published.

In case reasonable grounds appear as a result of the tender, the Ministry of Transport and Communications reserves the right to refuse [Refuse = the tender is closed after the tender (and its contents) is evaluated] each and all tenders.

The tender is binding on the tenderer until the award is made.

5. Award

5.1 As the principal rule, see also section 5.2 of this publication, the award shall be made to the tender requiring the lowest amount of compensation for the period 1 August 2005 – 31 July 2008.

5.2 In case the award cannot be made subject to the provisions of 5.1 because there are tenders requiring identical amounts of compensation, the award shall be made to the tender offering the highest number of seats the period 1 August 2005 – 31 July 2008.
6. **Tender file:** The full file for invitation to tender, containing the impositions of public service obligations, the specific rules to the invitation to tender (Norwegian Regulation on tender procedures in connection with public service obligations to implement Council Regulation (EEC) No 2408/92, Article 4), the standard contract and tender budget, may be obtained free of charge from the principal:

Ministry of Transport and Communications, PO Box 8010 Dep. N-0030 Oslo. Tel.: + 47 22 24 8 3 53. Fax: + 47 22 24 56 09.

The documentation is also available on the Internet:

http://www.odin.dep.no/sd/engelsk/aktuelt/tenders/index-b-n-a.html.

7. **Financial compensation:** The tenders submitted shall be in accordance with the tender budget included in the tender dossier and explicitly mention the compensation in Norwegian kroner (NOK) required for operation of the service in question during the contract period 1 August 2005 – 31 July 2008. The tenders shall be based on the price level for the first operating year, i.e. 1 August 2005 – 31 July 2006.

The exact amount of compensation granted for the 2nd and 3rd operating year shall be based on an operating revenue and operating cost adjustment of the tender budget. These adjustments shall be within the limits of the consumer price index for the 12-month period ending 15 February the same year, as made public by Statistics Norway http://www.ssb.no/english/.

The operator shall retain all revenue generated by the service and is fully responsible for the expenses, however, re-negotiation in accordance with the standard contract may apply in case of substantial and unforeseeable changes in the assumptions underlying it.

8. **Fares and timetables:** The tenders submitted shall specify the fares and the conditions thereto. The fares shall be in accordance with the public service obligations published 4.11.2004.

The Ministry of Transport and Communications reserves the right to alter the Ministry’s circular N-8/97 on procedures in connection with traffic programmes and fares for scheduled air services in Norway.

9. **Duration, amendment and termination of the contract:**

The contract shall start on 1 August 2005 and end 31 July 2008.

A review of the implementation of the contract shall be carried out in concert with the carrier during the six weeks following the end of the contract period.

The contract may not be modified unless the changes are in accordance with the public service obligations. Any modification of the contract shall be recorded in an annex thereto.

10. **Breach of contract/cancellation:** In the event of substantial breach of the contract, it may be cancelled with immediate effect by the other party.

Subject to the restrictions following insolvency law, the Ministry of Transport and Communications may cancel the contract with immediate effect if the operator becomes insolvent, initiates debt settlement proceedings or goes bankrupt. Equally the Ministry of Transport and Communications may cancel the contract in the other cases dealt with in section 12 of Regulation on tender procedures in connection with public service obligation, which is included in the tender file [http://www.lovdata.no/for/sf/sd/sd-19940415-0256.html].

If the operator owing to force majeure or other factors outside his control has been unable to comply with the public service obligations as stated in the contract for more than four of the past six months, the contract may be cancelled at one month’s written notice.

The Ministry of Transport and Communications may cancel the contract with immediate effect if the operator has his licence revoked or it is not renewed.

Notwithstanding any action for damages, the financial compensation shall be reduced in proportion to the total number of flights cancelled for reasons directly attributable to the carrier, if the number of flights cancelled for such reasons during an operating year exceeds 1,5 % of the planned number of flights.

11. **Airline codes:** The flights cannot carry any other airline codes than the tenderer’s own and cannot be part of any code-sharing agreement.

12. **Submission of tenders:** Tenders must be sent by registered post with acknowledgement of receipt, in which case the postmark will be accepted as a proof of submission, or delivered by hand in return for a receipt, to:

Ministry of Transport and Communications, Akersgata 59 (visiting address), PO Box 8010 Dep. N-0030 Oslo, not later than 6.12.2004, at 15.00 local time.

All tenders must be submitted in three (3) copies.

13. **Validity of the invitation to tender:** This invitation to tender shall be valid only to the extent that no EEA air carrier by two months from the latest day of submission of tenders, see section 12 of this publication, has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled air services on 1 August 2005 in accordance with the public service obligations imposed on the route Værøy – Bodø v.v., without demanding financial compensation or market protection.