

## III

(Notices)

## COMMISSION

## I-Rome: operation of scheduled air services

**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 Pantelleria and Trapani and vice versa**

(2006/C 113/07)

1. **Introduction:** Pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, in accordance with the decisions taken at the Interdepartmental Conference chaired by the Region of Sicily, the Italian Government — Ministry of Infrastructure and Transport has decided to impose public service obligations on scheduled air services between:

Pantelleria—Trapani and vice versa.

The terms of these public service obligations were published in the *Official Journal of the European Union* C 112 of 12.5.2006.

If, within 30 days of publication of the abovementioned obligations, no air carrier has commenced or is about to commence scheduled air services on the abovementioned route in accordance with the public service obligations imposed and without requesting financial compensation, the Government has decided, in accordance with the procedure laid down in Article 4(1)(d) of the abovementioned Regulation, to limit access to that route to a single air carrier, on the basis of a specific invitation to tender for the provision of the air service in question in accordance with the provisions of Council Regulation (EEC) No 2408/92.

The right to operate the service on the route in question will be granted by means of public tender on the basis of the most economically advantageous bid taking into account the amount of financial compensation indicated in the tender dossier referred to in Section 5 of this invitation to tender.

2. **Subject of the invitation to tender:** The operation of scheduled air services on the abovementioned route in accordance with the public service obligations published in *Official Journal of the European Union* C 112 of

12.5.2006, in accordance with the provisions of Regulation (EEC) No 2408/92.

3. **Participation:** The invitation to tender is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 which have the technical requisites specified in the public service obligations published in *Official Journal of the European Union* C 112 of 12.5.2006.

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

5. **Tender dossier:** The complete tender dossier contains the specific standards applicable to the invitation to tender and indicates the maximum amount that may be granted by way of the financial compensation to be taken into consideration as the basis for the tendering procedure, as well as other relevant information. It constitutes, in all respects, an integral part of this invitation to tender, and can be requested, free of charge, from the following address:

ENAC, Direzione Trasporto Aereo, Viale del Castro Pretorio 118, I-00185 Rome.

6. **Service agreement:** The service will be governed by an agreement based on a model which forms part of the tender dossier.

7. **Financial compensation:** Tenders must explicitly indicate, with an annual breakdown, within the limit referred to in Section 5, the maximum amount of compensation requested for operating the service in question for 2 years from the scheduled starting date for the service, with the possibility of an extension for a further 12 months.

The exact amount of the 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 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 compensation for providing a service which is subject to public service obligations.

The annual payments will be made in the form of instalments and a final balance. The balance will be paid only after approval of the carrier's accounts for the route in question and verification that the service has been operated in accordance with the conditions laid down in Sections 10 and 11.

8. **Fares:** Tenders must indicate the proposed fare structure in accordance with the public service obligations published in *Official Journal of the European Union* C 112 of 12.5.2006.

9. **Duration of the agreement:** The agreement will run for 2 years, with the possibility of an extension for a further 12 months, starting on the scheduled date on which the air services on the route in question are to commence operation in accordance with the public service obligations imposed.

The proper operation of the service and the carrier's cost accounting for the route in question will be the subject of an examination at least once a year at the request of the Administration, in cooperation with the carrier.

10. **Termination of agreement and notice:** Either party may terminate the agreement before the end of its period of validity by giving 6 months' formal notice. If the carrier fails to comply with the public service obligations, it will be deemed to have terminated the agreement without notice if it does not resume the service in accordance with the public service obligations within 30 days of being served notice to comply fully with the obligations accepted.

11. **Non-fulfilment and penalties:** Failure to operate the service for the following reasons shall not constitute non-fulfilment attributable to the carrier:

- hazardous weather conditions,
- closure of 1 of the airports,
- public safety concerns,
- industrial action,
- security concerns, or
- *force majeure*.

In such cases, the amount of compensation will be reduced in proportion to the number of flights not carried out.

The carrier is responsible for ensuring that the obligations accepted under the agreement are strictly adhered to. In the event of partial or total non-fulfilment for reasons other than *force majeure* or abnormal or unforeseeable events beyond the carrier's control, which the carrier could not reasonably avoid, in spite of all due diligence, the Italian authorities may withdraw the assignment of the route subject to formal notice being given to the carrier within 10 days of knowledge of the event.

After receiving formal notice, the carrier is allowed up to 7 days to justify itself.

The number of flights cancelled for reasons directly attributable to the carrier each year must not exceed 2 % of the number of flights scheduled, in other words 98 % of the flights scheduled must be carried out. The carrier must pay the regulatory body a penalty of EUR 3 000 for every flight cancelled in excess of this limit.

The carrier must guarantee that flights are operated to within 30 minutes of the established timetable (punctuality coefficient). For any delay in excess of 30 minutes, the carrier will give each passenger a credit of EUR 15 to be used in the purchase of a subsequent ticket.

The abovementioned rules shall not apply to cancelled flights and flights delayed due to weather conditions, industrial action or events beyond the responsibility and/or control of the carrier.

If the service is interrupted in any way, the amount of financial compensation shall be revised in proportion to the number of flights not carried out, without prejudice to any subsequent claim for compensation for damages.

Failure by the carrier to observe the period of notice referred to in Section 10 shall be subject to a penalty calculated on the basis of the number of days of default and the actual deficit for the route over the year in question. In no case shall the penalty be greater than the amount of financial compensation referred to in Section 7.

To ensure the continuity and regularity of flights, the carrier which accepts these public service obligations must provide a performance security with a view to guaranteeing the correct performance and continuation of the service. The security shall amount to at least EUR 800 000 and must be guaranteed by an insurance surety payable to ENAC (the Italian National Civil Aviation Authority), which may use it to ensure the continuation of the services concerned.

The security will be released if the examination referred to in the last paragraph of Section 9, carried out upon completion of the agreement, is favourable.

12. **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* in a closed and sealed envelope 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.
13. **Validity of the invitation to tender:** Pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier agrees to operate the route in accordance with the public service obligations published in *Official Journal of the European Union* C 112 of 12.5.2006 within 30 days of its publication and without compensation.
14. **Contract award:** The contract will be awarded by ENAC, the Italian National Civil Aviation Authority, which will appoint a committee for this purpose where necessary.
15. **Disputes:** Any disputes between the parties arising from the application of the agreement or in any way relating to the performance of the service will be referred to the competent judicial authority after an attempt at conciliation to be carried out within 90 days of the dispute arising.
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