

F-Cherbourg: operation of scheduled air services

Operation of scheduled air services between Cherbourg (Maupertus) and Paris (Orly)

Notice of a competitive public tender issued by France pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92 for the delegation of a public service

(2007/C 206/07)

1. **Introduction:** Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, from 1 April 2008 France has imposed a public service obligation in respect of scheduled air services between Cherbourg (Maupertus) and Paris (Orly). This was published in the Official Journal of the European Union C 205 of 4.9.2007.

If on 1 March 2008 no air carrier has commenced or is about to commence operating these scheduled air services in accordance with the public service obligation imposed and without requesting financial compensation, France has decided, in accordance with the procedure laid down in Article 4(1)(d) of the aforementioned Regulation, to limit access to the route to a single carrier and to offer the right to operate such services from 1 April 2008 by invitation to tender.

2. **Contracting authority:** Chambre de commerce et d'industrie de Cherbourg-Cotentin, Hôtel Atlantique — boulevard Félix Amiot, -50100 Cherbourg. Tél. (33) 233 23 32 00. Fax (33) 233 23 32 28. E-mail: com@cherbourg-cotentin.cci.fr.

3. **Subject of the consultation:** To provide, from 1 April 2008, scheduled air services in accordance with the public service obligation specified in section 1.

4. **Main features of the contract:** This is a public service delegation contract concluded between the carrier, the Chamber of Trade and Industry of Cherbourg-Cotentin and the State, in accordance with Article 8 of Decree No 2005-473 of 16 May 2005 relating, *inter alia*, to the rules governing the allocation of financial compensation by the State.

The delegatee will receive the revenue. The Chamber of Trade and Industry of Cherbourg-Cotentin and the State will pay it a contribution corresponding to the difference between the actual expenditure, excluding taxes (VAT, and aviation taxes), on operating the service and the commercial revenue excluding taxes (VAT, and aviation taxes) received by it, within the limit of the maximum compensation to which it has committed itself, after deduction, where appropriate, of the penalties specified in section 9-4 of this notice.

5. **Duration of the contract:** The duration of the contract (public service delegation agreement) is three years from 1 April 2008.

6. **Participation in the consultation:** Participation is open to all air carriers holding a valid operating licence issued in

accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

7. **Award procedure and criteria for selecting applications:** This invitation to tender is subject to Article 4(1)(d), (e), (f), (g), (h) and (i) of Regulation (EEC) No 2408/92, Chapter IV, Section 1 of Law No 93-122 of 29 January 1993 on the prevention of corruption and on transparency in public life and government procedures, and to the texts implementing them (in particular Decree No 97-638 of 31 May 1997 implementing Law No 97-210 of 11 March 1997 on strengthening the fight against illegal employment), and Decree No 2005-473 of 16 May 2005 relating, *inter alia*, to the rules governing the allocation of financial compensation by the State and the three Orders of 16 May 2005 implementing it.

7-1. Application file: The application file must be drawn up in French. Where necessary, tenderers must have documents issued by public authorities in an official language of the European Union translated into French. Along with the French version, tenderers may enclose a version drafted in another official language of the European Union; this version will not be authentic.

The application file must contain the following:

- an application letter, signed by the manager or his or her representative, together with documents giving the power to sign;
- a memorandum presenting the undertaking and vouching for the applicant's professional capability and financial standing in the field of air transport, together with any relevant references. This memorandum must make it possible to assess the applicant's ability to ensure the continuity of the public service and guarantee equality of treatment for users; if they so wish, applicants may base their application on the model form DC5 used in connection with the award of public contracts;
- the overall turnover and the turnover relating to the supply of relevant services over the last three years or, if the applicant so wishes, the balance sheets and outturn accounts for the last three years; if it cannot provide this information, the applicant must explain the reasons;

- a methodology note explaining how the applicant proposes to respond to the consultation file if it is allowed by the Chamber of Trade and Industry of Cherbourg-Cotentin to submit a tender, setting out, in particular:
 - the technical and human resources which the applicant will assign to the operation of the route,
 - the number, qualifications and assignment of personnel and any recruitments that the applicant proposes to make,
 - the types of aircraft used and, where appropriate, their registration,
 - a copy of the tenderer's air carrier operating licence,
 - if the operating licence was issued by a European Union Member State other than France, the tenderer must also provide the following information:
 - the country in which the pilots' licences were issued,
 - the law applicable to the employment contracts,
 - details of membership of social insurance bodies,
 - the steps taken to comply with Articles L. 341-5 and Articles D. 341-5 et seq. of the Labour Code relating to the temporary secondment of wage-earners for the purpose of supplying services on the national territory;
 - certificates or statements issued on honour, as provided for in Article 8 of Decree No 97-638 of 31 May 1997 and the Order of 31 January 2003 implementing Article 8 of the aforementioned Decree, vouching that the applicant has discharged its obligations with regard to taxation and social insurance, in particular covering:
 - corporation tax,
 - value added tax,
 - contributions in respect of social insurance, work accidents, occupational illnesses and family allowances,
 - civil aviation tax,
 - airport tax,
 - tax on noise pollution from aircraft,
 - solidarity levy;
- in the case of applications from a European Union Member State other than France, equivalent certificates or statements must be drawn up by the administrations and bodies of the country of origin;
- a statement issued on honour relating to the absence of conviction recorded in bulletin No 2 for offences referred to in Articles L. 324-9, L. 324-10, L. 341-6, L. 125-1 and L. 125-3 of the Labour Code;
 - a statement issued on honour and/or proof of compliance with the obligation to employ handicapped workers provided for in Article L. 323-1 of the Labour Code;
 - extract 'K bis' of the entry in the Companies Register, or an equivalent document;
 - pursuant to Article 7 of Regulation (EEC) No 2407/92 of 23 July 1992, an insurance certificate less than three months old covering civil liability in the event of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties and conforming to Regulation (EC) No 785/2004 of 21 April 2004, and in particular Article 4 thereof;
 - in the event of a safeguard or collective procedure measure, a copy of any judgment to this effect (if the judgment is not drawn up in French, it must be accompanied by a certified translation).
- 7-2. Procedures for the examination of applications: applications will be selected with reference to the following criteria:
- the professional and financial guarantees offered by the applicants;
 - their ability to ensure the continuity of the public service and guarantee equality of treatment for users with regard to that service;
 - their compliance with the obligation to employ handicapped workers provided for in Article L. 323-1 of the Labour Code.
- 8. Criteria for the award of the contract:** The carriers whose applications are allowed and accepted will subsequently be invited to submit their tenders in accordance with the procedures laid down in the specific rules for the invitation to tender, which will then be supplied to them.
- Tenders submitted in this way will be negotiated freely by the authority responsible in the Chamber of Trade and Industry of Cherbourg-Cotentin.
- In accordance with Article 4(1)(f) of Regulation (EEC) No 2408/92, the selection among the submissions will be made taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required.

9. Essential additional information:

9-1. Financial compensation: The tenders submitted by the carriers whose applications are accepted must specify the maximum amount required by way of compensation for operating the route for three years from 1 April 2008, with an annual breakdown. The precise amount of compensation finally granted will be determined annually ex post on the basis of the costs and revenue actually generated by the service, within the limit of the amount stated in the tender. This maximum limit may be revised only in the event of unforeseen changes in the operating conditions.

The annual payments will be made in the form of advance payments and an adjustment 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 section 9-2 below.

In the event of termination of the contract before its normal expiry date, section 9-2 will be applied as soon as possible to allow payment to the carrier of the balance due, the maximum amount referred to in the first subparagraph being reduced, where appropriate, in proportion to the actual duration of the service.

9-2. Verification of the performance of the service and of the carrier's accounts: The performance of the service and the carrier's cost accounting for the route in question will be examined at least once a year in cooperation with the carrier.

9-3. Amendment and termination of the contract: Where the carrier believes that unforeseen changes in the operating conditions justify revision of the maximum amount of financial compensation, it must present a reasoned request to the other signatory parties, which must reach a decision within two months. The contract may then be amended by means of an additional agreement.

The contract may be terminated by either of the signatory parties before the normal end of the validity of the contract provided that a six-month period of notice is observed. In the event of serious breaches of its contractual obligations, the carrier will be deemed to have terminated the contract without notice if it does not resume the service in accordance with the public service obligation within one month of the serving of formal notice.

9-4. Penalties or other deductions provided for in the contract: Failure by the carrier to observe the period of notice referred to in section 9-3 will be subject either to an administrative fine pursuant to Article R.330-20 of the Civil Aviation Code, or to a

penalty calculated on the basis of the number of months of default and the actual operating loss of the service during the year in question, but not exceeding the maximum financial compensation provided for in section 9-1.

In the event of minor breaches of the public service obligation, the maximum financial compensation provided for in section 9-1 will be reduced, without prejudice to the application of Article R.330-20 of the Civil Aviation Code.

Such reductions will take account, as appropriate, of the number of flights not operated for reasons directly attributable to the carrier, the number of flights made with less than the required capacity, and the number of flights not complying with the public service obligation in terms of stopovers or time allowed at the destination.

10. **Submission of applications:** Application files must be enclosed in a sealed envelope marked: 'Délégation de service public pour l'exploitation d'une ligne aérienne — CANDIDATURE — À n'ouvrir qu'en commission' (Public service delegation for the operation of scheduled air services — APPLICATION — not to be opened until the selection committee meeting). They must be sent by registered letter with acknowledgement of receipt (the date on the latter serving as proof of the date of receipt) or delivered by hand (in which case a receipt must be obtained) to reach the following address by no later than 17.00 local time on 8 November 2007:

Chambre de commerce & d'industrie de Cherbourg-Cotentin, Hôtel Atlantique, 50100 Cherbourg

11. **Subsequent procedure:** Shortly after the closing date specified in the previous section, the Chamber of Trade and Industry of Cherbourg-Cotentin will send the selected applicants a copy of the tendering rules and a draft contract.

The selected applicants must submit their tender by no later than 17.00 local time on 20 December 2007.

The tender will be binding on the tenderer for a period of 280 days from its submission.

12. **Validity of the invitation to tender:** The validity of this invitation to tender is subject to the condition that no Community carrier presents by 1 March 2008 a programme for operating the route in question from 1 April 2008 in accordance with the public service obligation imposed and without receiving any financial compensation.

13. **Requests for additional information:** To obtain any information they may need, applicants may contact the President of the Chamber of Trade and Industry of Cherbourg-Cotentin at the address/fax number indicated in section 2 above, exclusively by letter or fax.