

## V

(Announcements)

## ADMINISTRATIVE PROCEDURES

## EUROPEAN ECONOMIC AREA

## EFTA SURVEILLANCE AUTHORITY

**Scheduled air services Andenes-Bodø v.v. and Andenes-Tromsø v.v. (Norway)****Invitation to tender**

(2007/C 220/06)

**1. Introduction**

Norway has in the *Official Journal of the European Union* C 166 of 7 July 2005 and in the EEA Supplement No 34 of 7 July 2005 published public service obligations (PSO) on scheduled regional air services on the routes Andenes-Bodø v.v. and Andenes-Tromsø v.v. according 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.

Norway has decided to publish a new invitation to tender for scheduled regional air services on the routes Andenes-Bodø v.v. and Andenes-Tromsø v.v. starting from 1 January 2008. The same requirements apply as laid down in the 2005 Communication from the EFTA Surveillance Authority.

Insofar as by two months from the latest day of submission of tender (cf. Section 6) no air carrier has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled flights on 1 January 2008 in conformity with the amended public service obligation imposed on the tender stated in Section 2 of this publication, the Ministry will apply the tender procedure provided for by Article 4(1)(d) of Regulation (EEC) No 2408/92, thereby limiting access as of 1 January 2008 to only one air carrier for the tender stated in Section 2.

The purpose of this invitation to tender is to solicit tenders which will be used as basis for awarding such exclusive rights.

Below, the most important parts of the Conditions of Tenders are reproduced. The complete Invitation to Tender, can be downloaded from:

<http://www.regjeringen.no/nb/dep/sd/dok/andre/Anbud.html>

or be obtained free of charge on application to:

Ministry of Transport and Communications  
PO Box 8010 Dep.  
N-0030 Oslo  
Telephone (47) 22 24 83 53  
Fax (47) 22 24 56 09

**All tenderers are obliged to acquaint themselves with the complete Invitation to Tender.**

## 2. Services covered by the invitation

The invitation comprises scheduled flights from 1 January 2008 until 31 March 2009, in accordance with the public service obligations mentioned in Section 1. The following route area is covered by the competition:

### Route area 2

Andenes-Bodø v.v., Andenes-Tromsø v.v.

In case a carrier submits a tender where the claim for compensation is NOK zero, it will be understood as a wish from the carrier to operate the route on an exclusive basis, but without any compensation from the Norwegian State.

## 3. Eligibility to tender

All air carriers holding a valid operating licence pursuant to Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers are eligible to tender.

## 4. Tender procedure

The invitation to tender is subject to the provisions of subparagraphs (d)-(j) of Article 4(1) of Regulation (EEC) No 2408/92, and Section 4 of the Norwegian Regulation No 256 of 15 April 1994 on tender procedures in connection with public service obligations to implement Regulation (EEC) No 2408/92 Article 4.

The procurement will be effected by means of an open tender procedure.

The Ministry of Transport and Communications reserves the right to apply subsequent negotiations if only one tender is received at the closing date for submission of tender, or if only one tender is not rejected. Such negotiation shall be in accordance with the public service obligations imposed. In addition, the parties are not entitled to make substantial amendments to the original terms of contract during such negotiations. If the subsequent negotiations do not lead to an acceptable solution, the Ministry of Transport and Communications reserves the right to cancel the entire procedure. In that case, a new invitation to tender on new terms may be published.

The Ministry of Transport and Communications may make procurements through negotiations without publication in advance if no tenders are submitted. In that case, no substantial amendments must be made in the original public service obligations or in the remaining terms of contract.

In case reasonable grounds appear as a result of the tender, The Ministry of Transport and Communications reserves the right to refuse each and all tenders.

The tender is binding on the tenderer until the tender procedure is ended, or the award is made.

## 5. The tender

The tender shall be framed in accordance with the requirements in Section 5 of the Conditions of Tender, including the requirements listed in the public service obligations.

## 6. Deadline and submission of tender

The deadline for submission of tender is **22.10.2007** at **15.00** (local time). The tender must be received by the Ministry of Transport and Communications at the address mentioned in Section 1 not later than the deadline for submission of tender.

The tender shall be delivered either personally at the office address of the Ministry of Transport and Communications, or sent by post or courier services.

Tenders received too late will be rejected. However, tenders received after the deadline for submission of tender, but before the opening date, will not be rejected if it clearly appears that the dispatch is sent so early that it normally should have been received before the closing date. Receipt from the delivery of the dispatch is accepted as evidence for the delivery, and the time for delivery.

All tenders must be submitted in 3 — three — copies.

## **7. Award of contract**

7.1 As the principle rule, the award shall be made to the tender requiring the lowest amount of compensation. The contract will be awarded to the tender with the lowest claim for compensation for the whole contract period from 1 January 2008 until 31 March 2009.

7.2 In case award can not be made because there are tenders requiring identical amounts of compensation, the award shall be made to the tender, or, where relevant, to the combination of tenders offering the highest number of seats for the whole contract period.

## **8. Contract period**

The tender contract will be entered into for the period from 1 January 2008 until 31 March 2009. The contract is non-terminable, except for those situations described in the contract provisions reproduced in Section 11.

## **9. Financial compensation**

The operator is entitled to financial compensation from the Ministry of Transport and Communications in accordance with the tender agreement. The compensation shall be specified for the entire contract period.

No consumer price index adjustment of the compensation shall be made during the contract period.

No change shall be made in the compensation as a result of the production volume being adjusted upwards or downwards pursuant to section 5.1 second paragraph of the Terms of Contract.

This is subject to the proviso that the Storting (the Norwegian Parliament), when adopting its annual budget, makes the necessary funds available to the Ministry of Transport and Communications to cover the compensation requirements.

The operator shall retain all revenues generated by the service. If the revenues are greater or the expenditure smaller than the figures on which the tender budget is based, the operator may retain the balance. Correspondingly, the Ministry of Transport and Communications is not obliged to cover any negative balance in relation to the tender budget.

All public charges, including aviation charges, are payable by the operator.

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 per cent of the planned number of flights in accordance with the approved time schedule.

## **10. Renegotiation**

If, during the contract period, material or unforeseen changes occur in the assumptions on which this contract is based, each of the parties may request negotiations for revision of the contract. Such request must be made three months at the latest after the change has occurred.

Material changes in the public charges for which the operator is liable always constitute grounds for renegotiation.

If new statutory or regulatory requirements, or orders issued by the Civil Aviation Authority result in an airfield having to be used in a different manner than originally assumed by the operator, the parties shall endeavour to negotiate amendments in the contract that allow the operator to continue operations for the rest of the contract period. If the parties fail to reach agreement, the operator is entitled to compensation pursuant to the rules relating to shutting down or closure (Section 11) insofar as they are applicable.

## **11. Termination of contract following breach of contract or unforeseen changes in important conditions**

Subject to the restrictions following from insolvency law, the Ministry of Transport and Communications may terminate the contract with immediate effect if the operator becomes insolvent, initiate debt settlement proceedings, goes bankrupt or is subject to any other situation dealt with in Section 14 No 2 of the Norwegian Regulation No 256 of 15 April 1994 on tender procedures in connection with public service obligations.

The Ministry of Transport and Communications may terminate the contract with immediate effect if the operator loses, or is not able to renew, his licence.

If, due to *force majeure* or other circumstances beyond the operator's control, the operator has been unable to fulfil its contractual obligations for more than four of the last six months, the contract can be terminated by both parties by giving one month's written notice.

If the Storting decides to close an airfield, or if an airfield is closed as a result of an order issued by the Civil Aviation Authority, the parties' ordinary contractual obligations lapse from such time as the airfield is actually shut down or closed.

If the period of time between the operator first being informed about the shutting down or closure and the actual shutting down or closure is greater than one year, the operator is not entitled to compensation for any financial loss it incurs as a result of the termination of the contract. If the period mentioned is less than one year, the operator is entitled to be restored to the financial situation it would have been in had operations been continued for one year from the date it was notified of the shutting down or closure, or alternatively until 31 March 2009 if this date is earlier.

In the event of material breach of contract, the contract may be cancelled with immediate effect by the other party.

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