

## V

(Announcements)

## ADMINISTRATIVE PROCEDURES

## COMMISSION

## Operation of scheduled air services

**Invitation to tender issued by Ireland under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services within Ireland**

(Text with EEA relevance)

(2008/C 25/04)

**1. Introduction**

Ireland has amended the public service obligations published in OJ C 39 of 16 February 2005 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 respect of scheduled air services operated on the following routes, with effect from 22 July 2008:

- Galway-Dublin
- Kerry-Dublin
- Knock-Dublin
- Derry-Dublin
- Donegal-Dublin
- Sligo-Dublin.

The standards required by the public service obligations are those published in OJ C 39 of 16 February 2005 as amended by the notice published in OJ C 24 of 29 January 2008.

Insofar as by one month of publication, no air carrier will have commenced or be about to commence such air services in accordance with the public service obligations and without requesting financial compensation, Ireland has decided, in accordance with the procedure laid down by Article 4(1)(d) of that Regulation, to continue to limit access to each route to a single air carrier from 22 July 2008 and to offer the right to operate such services by public tender.

**2. Object of invitation to tender**

Operation from 22 July 2008 of direct scheduled air services on one or more of the routes listed above in accordance with the public service obligation imposed on the route(s) in question and published in OJ C 39 of 16 February 2005, as amended by the notice published in OJ C 24 of 29 January 2008.

In addition to standalone bids for each route, airlines may also submit combined bids for any of the combinations listed below. Such combined bids would be welcomed where the compensation level proposed is lower than the sum of the two relevant standalone bids (due to economies of scale, etc.).

- Derry-Dublin with Knock-Dublin
- Derry-Dublin with Donegal-Dublin
- Knock-Dublin with Sligo-Dublin
- Donegal-Dublin with Sligo-Dublin.

The terms of the public service obligation imposed on the chosen routes as published in OJ C 39 of 16 February 2005 and amended by the notice published in OJ C 24 of 29 January 2008 will apply in each case.

**3. Participation**

Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Regulation (EEC) No 2407/92. The services will operate to aerodromes under the jurisdiction of the Irish Aviation Authority.

#### 4. Tender procedure

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

#### 5. Information for Tenderers

The complete tendering dossier, including the Tender Proposal form, financial information requirements, a note on demographic and socio-economic features of each airport's catchment area, a note on each airport (past passenger numbers, landing fees, technical facilities, etc.) and the full conditions of the contract, may be obtained free of charge from: Department of Transport, 44 Kildare Street, Dublin 2, Ireland. Contact: Mr Denis Murphy; tel. (353-1) 604 15 94; fax (353-1) 604 16 81; e-mail: airports@transport.ie.

#### 6. Information required from Tenderers

In addition to a fully completed Tender Proposal form, tenderers are required to satisfy the awarding authority, having regard to the requirement for the services to commence on 22 July 2008 and to the requirements for reliability and continuity of services, that they have:

- (a) the financial standing and capacity to undertake and operate the specified services;
- (b) the necessary valid operating licences and certificates (Air Operating Licence and Air Operator's Certificate, issued under the common agreement of JAR-OPS); and
- (c) demonstrated previous experience of operating scheduled passenger services.

Subject to being satisfied in relation to each of (a), (b) and (c) above, tenders will be evaluated according to which tender is the most economically advantageous, while also taking account of the carrier's capacity to secure the operation of the PSO air services for the duration of the contract term. However, the awarding authority is not obliged to accept any tender. In certain circumstances, the Minister reserves the right to negotiate with bidders on a price related to their bids, but taking account of projected losses based on operating costs, projected yields, etc.

The awarding authority reserves the right to solicit further information about any applicant's financial and/or technical resources and abilities, and without prejudice to the foregoing, to solicit or seek further information, whether from a third party or from the applicant, regarding the ability of the applicant to undertake and operate the relevant scheduled air services.

Tenders should be priced in Euro and all supporting documents must be in the English language. The contract shall be considered as a contract made under Irish law and subject to the exclusive jurisdiction of the Irish courts.

#### 7. Financial compensation

Tenders must explicitly state the amount of financial compensation required for the operation of the public service obligation on the route(s) for each of the 3 years from the scheduled starting date. The compensation should be calculated in accordance with the required minimum standards.

The actual amount of the compensation payable by the Department of Transport will be determined annually, on an *ex-post* basis, and will be limited to the actual losses incurred, having regard to actual costs, revenues and if applicable, profit margin, by the successful tenderer in operating the services, subject, as a maximum, to the limit of the amount stated in respect of each year in the tender.

Payments may be claimed by the carrier on a regular instalment basis, in accordance with the procedures set out in the dossier referred to at 5 above. A balancing payment will be payable at the end of each contract year, subject to receipt by the awarding authority of appropriately documented claims accompanied by certification from the carrier's auditors, in accordance with the terms of the contract.

The contract will include provision for the maximum limit of compensation in any year(s) to be increased in certain circumstances, at the sole discretion of the awarding authority, in the event of extraordinary changes in operating conditions, and without prejudice to the provisions governing the termination of the contract. Requests for an increase in the maximum limit of subvention in any year(s) will be considered by the awarding authority only in circumstances where the developments in question were not or could not have been anticipated by the tenderer or are due to factors entirely outside the control of the tenderer. Compensation for fuel cost increases shall be restricted to instances of exceptional cost escalation (of more than 30 % on average) over a period of a year of the contract and shall be determined according to a formula whereby:

A represents the verifiable fuel cost element of the financial compensation in the relevant contract period of twelve months;

B represents any average percentage increase in the price of jet kerosene over the same 12 months of the contract as reported by the Jet Fuel Price Monitor published by IATA, less 30 percentage points; and

C represents the additional compensation allowable and would be calculated as follows:  $C = A \times B$ .

All payments under the contract will be in euro.

#### 8. Period of validity, amendment and termination of the contract

The contract will be awarded by the Minister for Transport. The contract will be valid for a period of 3 years from 22 July 2008. A new invitation to tender will be made, if applicable, before the end of a period of 3 years maximum from 22 July 2008. Any amendment or termination of the contract will be in accordance with the terms of the contract. Variations in the standards required by the public service obligation will be permitted only with the prior agreement of the awarding authority.

Should a situation arise in which a successful tenderer is no longer in a position to provide the contracted service(s), the awarding authority reserves the right to award the contract(s) in question, for the remainder of the contractual period and subject to the same conditions and compensation levels, to the next highest ranking tenderer identified in the original assessment process.

#### 9. Penalties in the event of the carrier failing to comply with the contract

Where a flight is cancelled for reasons directly attributable to the carrier, the compensation payable will only be in respect of costs, if any, actually incurred by the carriers in handling passengers disrupted by the non-operation of such flights. The awarding authority reserves the right to serve notice of termination of the contract, if having regard to the adequacy of the service provided by the carrier and in particular to the number of flights cancelled and/or delayed for reasons directly attributable to the carrier, it is of the opinion that the standards required by the public service obligation have not been or are not being met satisfactorily.

#### 10. Deadline for submission of bids

Thirty one (31) calendar days from publication of this communication in the *Official Journal of the European Union*.

#### 11. Application procedure

Tenders must be submitted by registered letter, date as post-marked, or delivered to:

**Department of Transport, 44 Kildare Street, Dublin 2, Ireland, by 12.00 noon (Irish time) on the date in point 10, in envelopes marked 'EASP Tender'.**

#### 12. Validity of invitation to tender

In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no community air carrier presents, prior to deadline for submission of bids, a programme for operating the route(s) in question in accordance with the public service obligation without receiving any financial compensation.

#### 13. Freedom of Information Act 1997

The Department of Transport undertakes to use its best endeavours to hold confidential any information provided by tenderers, subject to the Department's obligations under law, including the Freedom of Information (FOI) Act 1997 as amended by Freedom of Information Act 2003. If tenderers wish that any of the information supplied by them in their tenders should not be disclosed because of its commercial sensitivity, they should, when providing the information, identify same and specify the reasons for its sensitivity. The Department will consult with tenderers about this sensitive information before making a decision regarding release of the information under the provisions of the Freedom of Information Act. If tenderers consider that none of the information supplied by them is commercially sensitive, they should make a statement to that effect and such information may be released in response to an FOI request.