

# Corrections, supplements or changes to the conditions of tender

## 1.0 Questions and answers

### **Question 1:**

Can you please state/confirm that the income stated in the material, e.g. income for April 2017 to March 2018 RRS-OSL-RRS stated as kr. 6,814,965 + 6,674,003 are inclusive of all taxes, VAT and fees?

### **Answer:**

All passenger income figures listed in Annex 5 are net figures, i.e. excluding taxes and fees.

### **Question 2:**

How should the tenderers calculate the number of seats if a tender route is combined with an intermediate stop on a commercial route and vice versa?

### **Answer:**

In Annex 2 to the rules for the tender procedure, the following is stated in point 2.10.4:

*Where two route areas encompassed by public service obligations share capacity, the Operator may distribute ticket sales freely between the route areas as long as the total seating capacity is fulfilled. The Operator may sell tickets on a first-served basis.*

*It is permitted to combine route areas encompassed by public service obligations with other route areas. The Operator shall ensure that the capacity on the public service obligations route areas are offered the required minimum seating capacity.*

As described in the second paragraph, when combining a route subject to public service obligations (PSO) and a route without such obligations (commercial), the Operator must ensure that the capacity on the PSO route corresponds to the minimum capacity required.

### **Question 3:**

Question for Annex 5 – Traffic information (guidance only): Experience from previous tenders in Norway is that traffic can fall by up to 50% when a new Operator takes over. This as a result of a new player prioritizing differently in terms of investment in man hours, systems and expertise related to dynamic pricing, product development, global distribution and sales/marketing. Will the Ministry ask for documentation and make an independent assessment of the realism of the tenderers traffic revenue?

### **Answer:**

The Ministry of Transport and Communications emphasizes in Annex 5 that the traffic information is only intended as guidance and that the tenderers themselves are responsible for the tender budgets. This includes assumptions about passenger revenues and the

number of passengers. The Ministry, with the assistance of the Civil Aviation Authority (CAA), which acts as an advisor for this procurement, goes through all parts of the incoming tenders to assess whether the principal has the right and or /the obligation to reject tenders in accordance with the regulation of 12 August 2011 no. 833 on air transport services in the EEA (Air Transport Regulations). The features of the tenders that are considered with a view to rejection are stated in § 18, 20, 21 and 22 in the Air Transport Regulations, cf. Annex 6.

**Question 4:**

The Ministry states in 4.2 in the invitation that: "During the contract period, a regulatory change on braking effects may occur. We specifically encourage the tenderers to evaluate whether this may have consequences for the operators aircraft performance on short-runway operations." Our assessment is that this can have a major impact on the regularity of winter operations Will this result in reductions in the compensation?

**Answer:**

In section 7.5 of the contract, see Annex 2, it is stated that if the number of cancellations, for reasons that the Operator could have avoided by taking all reasonable measures, exceeds 1.5 per cent of the scheduled number of flights in the traffic program, the Operator will receive no compensation for the cancelled flights exceeding 1.5 percent. The required regularity is 98,5 percent, cf. section 5.2 of the contract.

In connection with eventual regulatory changes referred to in the rules for the tender procedure section 4.2, the principal will assess whether the Operator has implemented all reasonable measures to reduce possible negative consequences for regularity, for example. technical improvements on the aircraft if relevant. The tenderer must himself assess the risk of costs associated with meeting the expected new regulatory requirements and to take this into account in the calculation of the required compensation.

If the principal considers that the operator has taken all reasonable measures to maintain required regularity, cancellations due to for example altered braking effect requirements that the operator cannot take further measures to reduce the consequences of, will not provide a basis for reduction in the compensation.

**Question 5**

We intend to use the fiscal and Avinor fees that apply from 1 April 2019 and 1 January 2019 respectively. There is a hearing from Ministry of Transport and Communications on relief in the fees. We want to make sure that tenderers us the same level of public taxes and fees when costs are calculated .This so that the level on taxes and fees does not becomes decisive for the level of compensation. Can the Ministry of Transport and Communications confirm that the level on taxes and fees to be used are in line with our interpretation?

**Answer**

This is correct. The tenderers shall base their assessment on the level of tax and fees that apply at the deadline of 8 April 2019, provided that no decisions are made regarding taxes and fees that are known at the same date, but which enter into force before the start of a new

contract period on 1 April 2020. In that case, the Ministry of Transport and Communications will inform the registered tenderers of this before the deadline.

Changes in taxes and fees between the award of contract and the start of a new contract period will instead provide a basis for renegotiation, cf. section 9.2 of the contract in Annex 2.

### **Question 6**

There are smaller aircraft types with pressurized cabin down to 9 seats that have one engine.

- a) Will the Ministry of Transport and Communications accept smaller aircraft types with 1 engine and 1 pilot?
- b) Will the Ministry of Transport accept small aircraft types with 1 engine and 2 pilots?

In Regulation (EC) No 1107/2006 - concerning the rights of disabled persons and persons with reduced mobility when travelling by air:

#### *Article 4:*

*1) Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:*

*(a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned (an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person).*

*(b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.*

- c) Will the Ministry of Transport and Communications assess the ability of disabled persons and persons with reduced mobility to use the route with regard to the size of the aircraft when choosing a tenderer?

### **Answer**

#### **a) and b)**

It is true that the EASA (European Aviation Safety Agency) has opened for commercial flights with single engine aircraft during night and IMC (Instrument Meteorological Conditions - clouds and instrument conditions). Such a flight will be subject to regulatory approval from The Norwegian Civil Aviation Authority (CAA).

One of the elements to be evaluated is the company's procedures for conducting a safe emergency landing in case of engine failure, at any time in the flight for any part of the route.

For countries such as The Netherlands and Denmark this requirement is easier to satisfy, as these countries are dominated by flat terrain and have several areas suitable for emergency

landing. In Norway, on the other hand, which is dominated by mountainous areas and terrain which makes it very challenging to find a suitable landing site, this will be considerably more difficult. The CAA will therefore set national requirements for minimum cloud cover height and visibility (3000 feet and 5 km visibility) which to a larger degree will allow the pilot to scout and glide to a suitable landing site in case of engine failure. The CAA has notified the Ministry that the requirement will be published in an AIC (Aeronautical Information Circular) as soon as possible. The CAA has further notified that such a requirement will come into regulatory form towards the end of the year.

With these weather limitations established, it will be possible to allow commercial passenger flights with single engine aircraft (provided the operator otherwise has adequate procedures and training programs in place). However according to the CAA this operating form is not very suitable for scheduled flights. In the case of scheduled flights, the flights are carried out according to a timetable rather than the weather conditions. An aircraft operation with single engine aircraft would quickly run into major problems with regularity (perhaps especially in the winter months) with such weather restrictions.

Single engine aircraft will therefore, according to the CAA, in practice be unsuitable for operating on the routes covered by this tender which have clear requirements for regularity and seat production.

When it comes to the issue of the number of single pilots operation of single engine aircraft, the CAA plans to introduce restrictions on using only one pilot on scheduled flights to short-field airports, due to their complexity (hence the new national short-field regulation). The CAA plans to address this through an AIC (Aeronautical Information Circular) early in spring 2019, and later in regulatory form later this year (at the earliest in late autumn 2019).

**c)**

The Ministry of Transport and Communications has not set specific requirements for rights of persons with disabilities and persons with reduced mobility beyond the general rules that apply in the area, cf. the Regulations on Airports and the rights of persons with disabilities and persons with reduced mobility in air transport.

<https://lovdata.no/dokument/SF/forskrift/2013-07-16-919> (only in Norwegian)

This is therefore not a separate assessment criterion related to the award of a contract.

**Question 7:**

Will the Ministry of Transport and Communications accept that operators operate tender routes in Norway from a base outside Norway?

**Answer:**

The Ministry of Transport and Communications does not impose any special requirements on how the operators should organize the service infrastructure (base), but in the tender procedure section 5.5.3 *Statement on start-up and ability to implement the contract* it is specified which documentation should be attached to the tender. Factors related to service

infrastructure are described under operational and technical aspects, cf. h-r. The tenderer must thus describe and substantiate how his organization of the route operations in the tender can deliver the required minimum production and regularity. This documentation will be reviewed by the Ministry of Transport and Communications and the CAA, which acts as an advisor for this procurement, to consider issues regarding the award of contract and possible rejection of the incoming tenders.

**Question 8:**

Will the Ministry of Transport and Communications demand that a possible foreign registered airline comply with Norwegian legislation with regard to employment conditions, including Norwegian employers' tax and other special Norwegian labour law regulations?

- a. When using a base outside Norway
- b. When using a base in Norway.

**Answer:**

**a) and b)**

The Ministry of Transport and Communications has not set requirements for wage and working conditions in the tender procedure, as there is no generalized collective agreement or sector specific minimum wage that comprises this tender. In practice, this means that the answer to the questions depends on how the services are produced and whether this means that Norwegian rules on working environment, tax, fees and so on apply. It is not possible to give a general answer to this.

Regardless, the same conditions apply as in commercial aviation. If the services are produced by personnel who stay in Norway for a longer periods and in fact start and end their workday from somewhere in Norway, the main rule is that Norwegian law applies to the employment relationship. Here we need more information about the production method to give a complete answer.

## **2.0 Supplementary information**

### **2.1 Information from Norwegian Civil Aviation Authority**

See information regarding one engine aircraft from the Norwegian Civil Aviation Authority in the web links below:

<https://luftfartstilsynet.no/aktorer/regelverk/aic/aic-i/2019/0319-weather-minima-requirements-when-approving-set-imc-operations-in-norway/>

<https://luftfartstilsynet.no/aktorer/regelverk/aic/aic-i/2019/0219-information-on-upcoming-proposal-for-requirements-for-multi-crew-concept-for-scheduled-flights-at-short-haul-airports/>

### **2.2 Updated traffic information**

The operator has informed the Ministry of Transport and Communications that there have been deviations for both passenger numbers and revenues on the route Sandane-Bergen. The correct numbers are marked in **red** in the tables below.

### 01APR2016-31MAR017\_Passengers

VESTNO	Ankomst				
	BGO	HOV	OSL	SDN	SOG
	Pax	Pax	Pax	Pax	Pax
Avreise					
BGO	0	9356	0	2027	6374
HOV	11143	0	0	0	0
OSL	0	0	0	15700	21136
SDN	1789	0	15044	0	0
SOG	5691	0	24347	0	0

### 01APR2016-31MAR017\_Revenues

VESTNO	Ankomst				
	BGO	HOV	OSL	SDN	SOG
	Inntekt	Inntekt	Inntekt	Inntekt	Inntekt
Avreise					
BGO	0	9196300	0	2320028	5120195
HOV	11517804	0	0	0	0
OSL	0	0	0	19058022	22982769
SDN	2596135	0	18269319	0	0
SOG	4667950	0	26630726	0	0

### 01APR2017-31MAR018\_Passengers

VESTNO	Ankomst				
	BGO	HOV	OSL	SDN	SOG
	Pax	Pax	Pax	Pax	Pax
Avreise					
BGO	0	10780	0	1722	6671
HOV	10925	0	0	0	0
OSL	0	0	0	15318	19587
SDN	1627	0	14157	0	0
SOG	5468	0	23337	0	0

### 01APR2017-31MAR018\_Revenues

VESTNO	Ankomst				
	BGO	HOV	OSL	SDN	SOG
	Inntekt	Inntekt	Inntekt	Inntekt	Inntekt
Avreise					
BGO	0	10067950	0	1931020	5079032
HOV	11013752	0	0	0	0
OSL	0	0	0	18988809	21483199
SDN	2219553	0	17579207	0	0
SOG	4336119	0	26019732	0	0

### **2.3 Updated passenger revenues 1 April 2016 – 31 March 2017 and 1 April 2017 – 31 March 2018, cf. Annex 5**

The operator of the routes included in this tender has earlier informed the Ministry that all the revenue that is published in the tender documents is excluding all taxes, and therefore net revenue. The operator has now informed us that some tax elements (G2 and ZN) are part of the passenger revenue, and therefore not net. Part of the revenue published in the tender is therefore too high if one uses a net revenue model. The following tables shows how much tax is included in the passenger revenue for the periods 1 April 2016 – 31 March 2017 and 1 April 2017 – 31 March 2018. In addition, updated matrices for passenger revenue have been added.

#### Revised revenue numbers 1 April 2016 – 31 March 2017:

Table

(1000 NOK)

Tall i 1000 kr	Sum
RRSOSL	1 041
FDEOSL	4 301
SOGOSL	2 779
SDNOSL	1 878
HOVBGO	1 253
SOGBGO	737
SDNBGO	233
<b>Sum</b>	<b>12 223</b>

Matrix

FDEFDE	BOO	
	FDE	OSL
	Inntekt	Inntekt
Avreise		
FDE	0	42233296
OSL	40855198	0

OSLRRS	Ankomst	
	OSL	RRS
	Inntekt	Inntekt
Avreise		
OSL	0	6476744
RRS	6680094	0

VESTNO	Ankomst				
	BGO	HOV	OSL	SDN	SOG
	Inntekt	Inntekt	Inntekt	Inntekt	Inntekt
Avreise					
BGO	0	8570043	0	2203447	4751602
HOV	10891547	0	0	0	0
OSL	0	0	0	18118774	21593236
SDN	2479554	0	17330071	0	0
SOG	4299357	0	25241193	0	0

Revised revenue numbers 1 April 2017 – 31 March 2018:

Table  
(1000 NOK)

Tall i 1000 kr	Sum
RRSOSL	1 410
FDEOSL	4 518
SOGOSL	2 864
SDNOSL	1 966
HOVBGO	1 448
SOGBGO	810
SDNBGO	234
Sum	13 250

Matrix

FDEFDE Departure	Arrival	
	FDE	OSL
	Revenue	Revenue
FDE	0	40538026
OSL	39698479	0

OSLRRS Departure	Arrival	
	OSL	RRS
	Revenue	Revenue
OSL	0	6109906
RRS	5969467	0

VESTNO	Arrival				
	BGO	HOV	OSL	SDN	SOG
	Revenue	Revenue	Revenue	Revenue	Revenue
Departure					
BGO	0	9343888	0	1813796	4674084
HOV	10289690	0	0	0	0

<b>OSL</b>	0	0	0	18005579	20051321
<b>SDN</b>	2102329	0	16595977	0	0
<b>SOG</b>	3931171	0	24587854	0	0