

# **Invitation to Tender**

**Scheduled Air Services  
Lakselv – Tromsø v.v.,  
Andenes – Bodø v.v., Andenes – Tromsø v.v.  
1.1.2004 – 31.3.2006**



**SAMFERDSELSDEPARTEMENTET**

## **Invitation to Tender**

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1.1.2004 – 31.3.2006

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# **I INFORMATION ABOUT THE TENDER PROCESS**

**Deadline to submit tenders is Monday 12 May 2003 at 1500 hrs** (local time), cf. chapter III section 12.

All tenders must be submitted in **3 – three – copies**.

Tenders received in time will be opened **Thursday 15 May 2003 at 1300 hrs** (local time) in the Ministry of Transport and Communications, Akersgt. 59, Oslo, Norway. Representatives from the Ministry of Transport and Communications and from each tenderer can be present at the opening of the tenders.

In need of further information, please contact one of the following representatives of the Ministry of Transport and Communications:

Deputy Director General Torbjørn Lothe, tel. + 47 22 24 82 61

Adviser Bente Risvold, tel +47 22 24 83 15/e- mail: bente.risvold@sd.dep.no

Sr. Exec. Officer Thomas Tørmo, tel. +47 22 24 83 12/e- mail: thomas.tormo@sd.dep.no

Carriers must register at the Ministry of Transport and Communications by one of its representatives in order to obtain the complete tender file and be included in the mailing list for possible supplementary information from the Ministry, which will not be published on the Internet, and in order to obtain the tender budget file, cf. chapter V.

The Ministry reserves the right to apply subsequent negotiations, cf. chapter III section 4 and chapter VIII Regulation on Tender Procedures in connection with Public Service Obligations to implement Council Regulation (EEC) No 2408/92, Article 4.

The Ministry aims at awarding the tender contracts Tuesday 15 July 2003. For selection criteria, cf. chapter III section 5 and chapter IV section 1 e).

## **IMPORTANT**

**Carriers may bid on one or more route areas or tenders, as defined in this invitation to tender. Each carrier shall specify the tender(s) submitted by completing the form on the following page and insert in the front of its tender document. Section 2 of the form shows all possible tender combinations.**

If bidding on both route areas comprised, these must also be specified, in case the carrier is selected only for one of them.

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## MINISTRY OF TRANSPORT AND COMMUNICATIONS



### TENDER ON SCHEDULED AIR SERVICES

in accordance with the public service obligations published 10 April 2003, cf. chapter II

#### 1. Identification of the tenderer

<b>Name of the tenderer</b>	
<b>Address</b>	
<b>Telephone</b>	
<b>Facsimile</b>	
<b>E-mail</b>	
<b>Contact person(s)</b>	

2. Specification of the tender(s) submitted by stating the need for compensation in NOK 1000 for the entire contract period based on the price level for the first operating year (1 Januar 2004 – 31 March 2005).

<i>Subject to tender</i>	<i>Need for compensation</i>
<i>Scheduled air services Lakselv – Tromsø v.v., Andenes – Bodø v.v. and Andenes – Tromsø v.v.</i>	
<i>Scheduled air services Lakselv – Tromsø v.v.</i>	
<i>Scheduled air services Andenes – Bodø v.v., Andenes – Tromsø v.v.</i>	

#### 3. Signing

<b>Place</b>	<b>Date</b>	<b>Binding signature</b>

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## **II PUBLIC SERVICE OBLIGATIONS**

### **Communication from the EFTA Surveillance Authority under Article 4.1. (a) of the Act referred to in point 64a in Annex XIII of the EEA Agreement (Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes)**

Imposition of new public service obligations in respect of scheduled air services on the routes Lakselv – Tromsø v.v. and Andenes – Bodø v.v., Andenes – Tromsø v.v.

### ***Lakselv – Tromsø v.v.***

#### **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 (<http://europa.eu.int/eur-lex/en/>), Norway has decided to impose public service obligations as of 1 January 2004 in respect of scheduled air services on the following route:

Lakselv – Tromsø v.v.

#### **2. THE PUBLIC SERVICE OBLIGATIONS INCLUDE THE FOLLOWING:**

##### ***2.1 Minimum Frequencies, Seating Capacity, Routing and Timetables***

The requirements apply throughout the year. A daily service obligation applies in both directions.

##### **Frequencies:**

- Minimum three daily return services Monday – Friday and minimum three return services Saturday – Sunday combined.

##### **Seating Capacity:**

- In both directions at least 760 seats shall be offered Monday – Friday combined and at least 152 seats Saturday – Sunday combined.

##### **Routing:**

- In both directions at least two of the required daily services Monday – Friday and at least two of the required services Saturday – Sunday combined shall be non-stop. The remainder shall be through services with a maximum of one intermediate stop.

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### **Timetables:**

Account shall be taken of the public demand for air travel.

The required services must be scheduled to connect with air services Tromsø – Oslo v.v.

In addition, the following apply to the required flights on Monday – Friday (local times):

- First arrival in Tromsø shall be no later than 08:30 hrs and last departure from Tromsø no earlier than 19.30 hrs.
- First departure from Tromsø shall be no later than 11.30 hrs and last departure from Lakselv no earlier than 17.00 hrs.

### **2.2 Aircraft Category**

Aircraft registered for minimum 30 passengers and with pressurised cabin shall be used for the required flights.

Carriers' attention is especially drawn to technical and operative conditions applying at the airports. For further information, please contact:

Luftfartstilsynet (Civil Aviation Authority), P O Box 8050 Dep, N-0031 OSLO, telephone  
+ 47 23 31 78 00

### **2.3 Fares**

- The carriers maximum basic one-way fare (fully flexible) in the operating year beginning 1 January 2004 must not exceed NOK1150,-.
- For each subsequent operating year the maximum fare shall be adjusted on 1 April within the limit of the consumer price index for the 12-month period ending 15 February the same year, as made public by Statistics Norway  
([http://www.ssb.no/english/subjects/08/02/10/kpi\\_en/](http://www.ssb.no/english/subjects/08/02/10/kpi_en/))
- The carrier shall be party to the domestic interline agreements in force at any time, and shall offer all discounts available under such agreements.
- Social discounts conforming to the usual practice shall be offered.

### **2.4 Service Continuity**

The number of flights cancelled for reasons directly attributable to the carrier must not exceed 1.5 per cent of the intended number of flights on an annual basis.

### **2.5 Co-operation Arrangements**

Following a tender procedure, which limits access to the route Lakselv – Tromsø v.v. to one carrier, these conditions apply:

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#### **Fares:**

- All connecting fares to/from other air services shall be offered on equal terms for all carriers. Exempted from this are connecting fares to/from other services carried out by the tenderer, provided that the fare is maximum 40 per cent of the fully flexible fare.
- Bonus points from frequent flyer programmes can neither be earned nor redeemed on the flights.

#### **Transfer Conditions:**

- All conditions set out by the carrier for the transfer of passengers to and from other carriers' routes, including connecting times and through check-in of tickets and baggage, shall be objective and non-discriminatory.

### **3. OTHER**

These public service obligations replace those published as (3) in Official Journal of the European Communities No C 112, of 9 May 2002, in respect of scheduled air services on the route Lakselv – Tromsø v.v.

### **4.**

Further information can be obtained from:

Ministry of Transport and Communications  
P O Box 8010 Dep  
N-0030 OSLO

Telephone + 47 22 24 82 41, facsimile + 47 22 24 95 72

This documentation is also available on the Internet:

<http://www.odin.dep.no/sd/norsk/aktuelt/anbud>

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### ***Andenes – Bodø v.v., Andenes – Tromsø v.v.***

## **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 (<http://europa.eu.int/eur-lex/en/>), Norway has decided to impose public service obligations as of 1 January 2004 in respect of scheduled air services on the following routes:

Andenes – Bodø v.v., Andenes – Tromsø v.v.

## **2. THE PUBLIC SERVICE OBLIGATIONS INCLUDE THE FOLLOWING:**

### ***2.1 Minimum Frequencies, Seating Capacity, Routing and Timetables***

The requirements apply throughout the year. A daily service obligation applies in both directions.

#### **Frequencies:**

*Andenes – Bodø v.v., Andenes – Tromsø v.v. combined:*

- Minimum four daily return services Monday – Friday and minimum five return services Saturday – Sunday combined.
- The public demand for air travel shall be taken into account in the distribution of the number of daily return services between Andenes – Bodø v.v. and Andenes – Tromsø v.v.

*Andenes – Bodø v.v.:*

- Minimum two daily return services Monday – Friday and minimum two return services Saturday – Sunday combined.

*Andenes – Tromsø v.v.:*

- Minimum one daily return service.

#### **Seating Capacity:**

- For Andenes – Bodø v.v. and Andenes – Tromsø v.v. combined, there shall in both directions be at least 615 seats offered Monday – Friday combined and at least 160 seats Saturday – Sunday combined.

#### **Routing:**

- In both directions at least three of the four required daily services Monday – Friday and at least four of the five required services Saturday – Sunday combined shall be non-stop. The remainder shall be through services with a maximum of one intermediate stop.



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### **Timetables:**

Account shall be taken of the public demand for air travel.

*Andenes – Bodø v.v., Andenes – Tromsø v.v. combined:*

At least three services Monday – Friday and at least four services Saturday – Sunday combined must be scheduled to connect with air services to/from Oslo.

*Andenes – Bodø v.v.:*

In addition, the following apply to the required flights on Monday – Friday (local times):

- First arrival in Bodø shall be no later than 07.30 hrs and last departure from Bodø no earlier than 20.00 hrs.

*Andenes – Tromsø v.v.:*

In addition, the following apply to the required flights on Monday – Friday (local times):

- First arrival in Tromsø shall be no later than 10.00 hrs and last departure from Tromsø no earlier than 16.30 hrs.

## **2.2 Aircraft Category**

Aircraft registered for minimum 30 passengers and with pressurised cabin shall be used for the required flights.

Carriers' attention is especially drawn to technical and operative conditions applying at the airports. For further information, please contact:

Luftfartstilsynet (Civil Aviation Authority), P O Box 8050 Dep, N-0031 OSLO, telephone  
+ 47 23 31 78 00

## **2.3 Fares**

- The carriers maximum basic one-way fares (fully flexible) in the operating year beginning 1 January 2004 must not exceed these amounts in NOK:

Andenes – Bodø	1395,-
Andenes – Tromsø	680,-
- For each subsequent operating year the maximum fares shall be adjusted on 1 April within the limit of the consumer price index for the 12-month period ending 15 February the same year, as made public by Statistics Norway  
([http://www.ssb.no/english/subjects/08/02/10/kpi\\_en/](http://www.ssb.no/english/subjects/08/02/10/kpi_en/))
- The carrier shall be party to the domestic interline agreements in force at any time, and shall offer all discounts available under such agreements.
- Social discounts conforming to the usual practice shall be offered.

## **2.4 Service Continuity**

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The number of flights cancelled for reasons directly attributable to the carrier must not exceed 1.5 per cent of the intended number of flights on an annual basis.

### **2.5 Co-operation Arrangements**

Following a tender procedure, which limits access to the routes encompassed by the public service obligations to one carrier, these conditions apply:

#### **Fares:**

- All connecting fares to/from other air services shall be offered on equal terms for all carriers. Exempted from this are connecting fares to/from other services carried out by the tenderer, provided that the fare is maximum 40 per cent of the fully flexible fare.
- Bonus points from frequent flyer programmes can neither be earned nor redeemed on the flights.

#### **Transfer Conditions:**

- All conditions set out by the carrier for the transfer of passengers to and from other carriers' routes, including connecting times and through check-in of tickets and baggage, shall be objective and non-discriminatory.

### **3. OTHER**

These public service obligations replace those published as (4) in Official Journal of the European Communities No C 112, of 9 May 2002, as far as scheduled air services on the routes Andenes – Bodø v.v. and Andenes – Tromsø v.v. are concerned.

### **4.**

Further information can be obtained from:

Ministry of Transport and Communications  
P O Box 8010 Dep  
N-0030 OSLO

Telephone + 47 22 24 82 41, facsimile + 47 22 24 95 72

This documentation is also available on the Internet:

<http://www.odin.dep.no/sd/norsk/aktuelt/anbud>

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### **III INVITATION TO TENDER**

#### **REGIONAL AIR SERVICES IN NORWAY AS OF 1 JANUARY 2004**

##### **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 (<http://europa.eu.int/eur-lex/en/>), Norway has decided to impose public service obligations on scheduled regional air services as of 1 January 2004, as published 10 April 2003 in Official Journal of the European Communities No C 87 and the EEA Supplement No 18.

Insofar as by two months from the latest day of submission of tenders, cf section 12 of this publication, no air carrier has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled flights on 1 January 2004 in conformity with the public service obligations imposed on one or more of the tenders stated in section 2 of this publication, without demanding financial compensation or market protection, Norway will apply the tender procedure provided for by Article 4.1 (d) of the same regulation, thereby limiting access as of 1 January 2004 to only one air carrier for each tender stated in section 2.

##### **2. OBJECTIVE OF THE INVITATION TO TENDER**

To provide, with effect from 1 January 2004, scheduled air services in accordance with the imposed public service obligations, as published in chapter II of this document.

The Ministry of Transport and Communications reserves the right to amend the public service requirement as a result of altered conditions for airport approvals. If such changes occur, the Ministry may call for a new public tender on the specific route-area.

The invitation includes scheduled air services on the routes Lakselv – Tromsø v.v. , Andenes – Bodø v.v. and Andenes – Tromsø v.v..

The carriers are invited to bid on the route area Lakselv – Tromsø v.v. and the route area Andenes – Bodø v.v., Andenes - Tromsø v.v. combined, particularly if this would reduce the total compensation required for the route area. Tenderers are then obliged to clearly indicate the amount of compensation required for each tender, in case they are selected only for one of them.

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### 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

(<http://europa.eu.int/eur-lex/en/>).

### 4. TENDER PROCEDURE

This invitation to tender is subject to the provisions of subparagraphs (d), (e), (f), (g), (h) and (i) of Article 4.1 of Council Regulation (EEC) No 2408/92.

Overdue tenders and tenders not in conformity with the invitation to tender will be rejected<sup>1</sup>.

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<sup>1</sup> Reject = the tender is dismissed without further investigation. Reference is made to §§ 9, 11 and 12 of the Norwegian Regulation of 15 April 1994 on tender procedures in connection with public service obligations to implement Council Regulation (EEC) no 2408/92 Article 4.

#### *Section 9 Details regarding overdue tenders*

Tenders arriving after the closing date for submission of tenders, see section 6, shall be rejected as overdue and be returned.

However, this does not apply to tenders which arrive after the closing date but before the opening of the tenders provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the deadline, or the tenderer in question has proven this by a receipt from Norway Post before the opening of the tenders.

The rejection decision including the grounds for it shall be entered in the register of tenders.

#### *Section 11 Rejection*

1. A tender shall be rejected if:

the tender as it appears at the final date fails to fulfil the requirements for participation in the competition, c.f. section 3.

2. A tender may after closer assessment be rejected if:

- a) the tender does not contain all the information prescribed in the invitation to tender;
- b) the tender fails to state the compensation required as prescribed in the invitation to tender, c.f. section 8, litera h);
- c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender, c.f. section 8, litera p);
- d) the tender requires compensation that is unreasonable in relation to the service to be provided and the tenderer is unable to provide a satisfactory reason for this.

The register of tenders shall make clear which tenders are rejected and the reason for rejection, c.f. section 10, litera f).

#### *Section 12 Criteria for exclusion of tenderers*

1. Principals may when selecting a tenderer and when awarding a contract exclude any tenderer who:

- a) is bankrupt, is engaged in debt settlement proceedings or is being wound up, who has halted his business activities or who is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;
- b) is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory winding up or is the subject of any other similar proceedings pursuant to national laws or regulations;
- c) has been convicted by final judgement of an offence concerning his professional conduct;
- d) has been guilty of grave breaches of professional and ethical standards in his line of business, which have been proven by any means which the principal approves;
- e) has not fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which he is established, or of Norway;
- f) is guilty of serious misrepresentation in supplying the information required under sections 8 and 13.

2. Where the principal requires tenderer proof that none of the cases mentioned in a), b), c), e) or f) of subsection 1 applies to him, the principal may accept as sufficient evidence:

a) for a), b) or c), an extract from the National Register of Convictions or the National Register of Insolvencies.

Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home state or state where he is currently present showing that none of these cases applies to the tenderer;

b) for e) or f), a certificate issued by the competent authority in the state concerned.

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The Ministry of Transport and Communications reserves the right to apply subsequent negotiations if all tenders submitted are incorrect<sup>2</sup>, unacceptable<sup>3</sup> or is unsuitable. Such negotiations shall be in accordance with the public service obligations imposed and without making substantial changes in the original tender conditions.

If the subsequent negotiations do not lead to an acceptable solution<sup>4</sup>, the Ministry of Transport and Communications reserves the right to cancel the entire tender procedure. In that case a new invitation to tender on new terms may be published.

In case reasonable grounds appear as a result of the tender, The Ministry of Transport and Communications reserve the right to refuse<sup>5</sup> each and all tenders.

The tender is binding on the tenderer until the award is made.

## **5. AWARD**

### **5.1**

As the principal rule the award shall be made to the tender requiring the lowest amount of compensation for each route area, or for the route areas combined.

### **5.2**

In case the award cannot be made subject to the provision of 5.1 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 within each of the route areas Lakselv – Tromsø v.v. and Andenes – Bodø v.v., Andenes – Tromsø v.v. during the period 1 January 2004 – 31 March 2006.

## **6. TENDER FILE**

The full file for invitation to tender, containing the impositions of public service obligations, the specific rules to the invitation to tender (Norwegian Regulation on tender procedures in connection with public service obligations to implement Council Regulation

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<sup>2</sup> C.f. section 11 of regulation on tender procedures in connection with public service obligations to implement council regulation (EEC) No 2408/92 of 15 April 1994 no 256 (c.f. footnote no 1 above).

<sup>3</sup> C.f. chapter III section 5.

<sup>4</sup> C.f. section 11 of the Norwegian Regulation of 15 April 1994 on tender procedures in connection with public service obligations to implement Council Regulation (EEC) no 2408/92 Article 4 and the invitation to tender chapter III no 5.

<sup>5</sup> Refuse= The tender is closed after the tender (and its contents) is evaluated.

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(EEC) no 2408/92, Article 4), the standard contract and tender budget, may be obtained free of charge from the principal:

Ministry of Transport and Communications  
P O Box 8010 Dep  
N-0030 OSLO

telephone + 47 22 24 82 41  
facsimile + 47 22 24 95 72

The documentation is also available on the Internet:

<http://www.odin.dep.no/sd/norsk/aktuelt/anbud>

## **7. FINANCIAL COMPENSATION**

The tenders submitted shall be in accordance with the tender budget included in the tender file and explicitly mention the compensation in Norwegian kroner (NOK) required for operation of the service(s) in question from the scheduled starting date to the end of the contract period, cf. section 9 below. The tenders shall be based on the price level for the first operating year, here defined to be 1 January 2004 – 31 March 2005, and with an annual breakdown.

The exact amount of compensation granted for the operating year beginning 1 April 2005 shall be based on an operating revenue and operating cost adjustment of the tender budget. These adjustments shall be within the limit of the consumer price index for the 12 month period ending 15 February the same year, as made public by Statistics Norway  
[http://www.ssb.no/english/subjects/08/02/10/kpi\\_en/](http://www.ssb.no/english/subjects/08/02/10/kpi_en/).

The operator shall retain all revenue generated by the service and is fully responsible for the expenses, however, re-negotiation in accordance with the standard contract may apply in case of substantial and unforeseeable changes in the assumptions underlying it.

## **8. FARES AND TIMETABLES**

The tenders submitted shall specify the fares and the conditions thereto. The fares shall be in accordance with the public service obligations published in chapter II of this document.

The Ministry of Transport and Communications reserves the right to alter the Ministry's circular N-8/97 on procedures in connection with traffic programmes and fares for scheduled air services in Norway.

## **9. DURATION, AMENDMENT AND TERMINATION OF THE CONTRACT**

For all tenders the contract shall start on 1 January 2004 and end 31 March 2006.

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A review of the implementation of the contract shall be carried out in concert with the carrier during the six weeks following the end of the contract period.

The contract may not be modified unless the changes are in accordance with the public service obligations published in chapter II of this document. Any modification of the contract shall be recorded in an annex thereto.

The contract may be terminated by the carrier only at the end of a 12-month period of notice.

## **10. BREACH OF CONTRACT/CANCELLATION**

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

Subject to the restrictions following insolvency law, the Ministry of Transport and Communications may cancel the contract with immediate effect if the operator becomes insolvent, initiates debt settlement proceedings or goes bankrupt. Equally the Ministry of Transport and Communications may cancel the contract in the other cases dealt with in section 12 of Regulation on tender procedures in connection with public service obligation, which is included in the tender file.

<http://www.lovddata.no/for/sf/sd/sd-19940415-0256.html>

If the operator owing to force majeure or other factors outside his control has been unable to comply with the public service obligations as stated in the contract for more than four of the past six months, the contract may be cancelled at one month's written notice.

The Ministry of Transport and Communications may cancel the contract with immediate effect if the operator has his licence revoked or it is not renewed.

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.

## **11. AIRLINE CODES**

The flights cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.

## **12. SUBMISSION OF TENDERS**

Tenders must be sent by registered post with acknowledgement of receipt, in which case the postmark will be accepted as a proof of submission, or delivered by hand in return for a receipt, to:

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Ministry of Transport and Communications  
Akersgata 59 (visiting address)  
P O Box 8010 Dep  
N-0030 OSLO

*not later than 12 May 2003, at 15.00 hrs (local time).*

*All tenders must be submitted in 3 – three – copies.*

### **13. VALIDITY OF THE INVITATION TO TENDER**

This invitation to tender shall be valid only to the extent that no EEA air carrier by two months from the latest day of submission of tenders, cf. section 12 of this publication, has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled air services on 1 January 2004 in accordance with the public service obligations imposed on one or more of the tenders stated in section 2 of this publication, without demanding financial compensation.



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# IV TENDER REQUIREMENTS

## 1. General requirements

The requirements to the tender and the tender procedure appear from enclosed impositions of public service obligations, invitation to tender and regulation on tender procedures in connection with public service obligations, etc.

The Ministry of Transport and Communications would like to point out the following:

- a) Tenders shall be drawn up in either English or a Scandinavian language.
- b) Scheduled air services might be required to carry post. Such requirement will be compensated for, see the Norwegian Postal Act, section 16.  
(<http://www.lovdatab.no/all/tl-19961129-073-0.html#16>).  
Further information may be obtained from Norway Post.  
(<http://www.posten.no>)
- c) The tenderer must have fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which he is established. A certificate proving this and issued by the competent authority in the state concerned shall be annexed to the tender.

In the case of a tax certificate showing arrears, this information shall be included in the overall judgement of the suppliers' economic and financial position and ability.

Whether the tender shall be rejected or not shall thus be based on a concrete overall judgement. The main rule, however, is that the suppliers should be rejected when having tax arrears.

- d) If the tender is meant to deviate from the basis of the tender procedure, this must be clearly indicated in the tender. Any deviations must be specified in the tender, if possible with a reference to where in the tender the deviations appear. The deviations must be described as precise and clear as possible, and should be described in such a way that the Ministry of Transport and Communications do not need to contact the tenderer to evaluate the deviations. Tenderers cannot make reservations which imply that the compensation shall be adjusted according to actual revenues or costs generated by the service, as this would be in conflict with the conditions set out in chapter III, section 7.
- e) Tenderers are fully responsible for offering traffic programmes in accordance with the public service obligations at all times. Traffic programmes must be included in the tenders submitted, including a specification of the number of seats offered on each route encompassed by the public service obligations, as this might be a criterion for awarding contracts, cf. chapter III, section 5. Tenderers are also informed that there is no service obligation on Christmas day and on Good Friday.

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- f) The discounts available under the interline agreements (e.g. “Midipris” and “Minipris”) shall be offered both for the routes encompassed by the public service obligations and for connecting traffic.

### **2. Technical and operational requirements**

The regional airports in this invitation to tender, are specially demanding with respect to the technical and operational qualifications of the airlines. Tenderers must study well the conditions that concern each specific airport and adjust to restrictions on the use of airspace due to military activity.

#### **Required licence**

The tenderers must hold a valid licence and Air Operator's Certificate, c.f. Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers  
(<http://europa.eu.int/eur-lex/en/>).

#### **Required JAR-OPS 1**

Aircraft (fixed-wing) operations shall be in accordance with JAR-OPS 1, cf. Norwegian Regulation for the implementation of operational requirements in accordance with JAR-OPS 1, Commercial Air Transportation – Aeroplanes.  
(<http://www.lovdato.no/for/sf/sd/sd-20010330-0382.html>).

Contact the Norwegian Civil Aviation Authority (CAA) in order to obtain the complete JAR-OPS 1.

#### **Required documentation**

The tenders will, regarding technical and operational requirements, be evaluated by Luftfartstilsynet (CAA Norway) before the tender award is made. The tenderers must prove that they hold the required technical and operational qualifications in order to operate the air services in question. If the tenderers cannot prove this satisfactorily by the deadline to submit tenders, the tender must give an account for how the requirements can be fulfilled by 1 January 2004.

The tenderers must be able to prove that they are operational by the start up of the operations 1 January 2004.

Each tenderer is asked to prepare documentation to the CAA as per list below. This documentation may well be enclosed in the tender.

#### **Organization:**

- a) Copy of valid AOC, incl. operations specifications.
- b) Organizational chart, incl. names and functions.
- c) Number of full-time employees, (man-labour year) in respect of;
  - i) Administration personnel.
  - ii) Flight operations personnel.
  - iii) Maintenance personnel.

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- d) Financial aspects;
  - i) A brief summary of the company's economical situation.
  - ii) Documentation to show compliance with financial terms as specified in the Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers, for instance a revised financial statement for the last year, and budget for the profit and loss account, balance sheet and cash budget for the period of tender.
  - iii) Traffic analyses, break-even-estimates and other appropriate comments / budgetary terms.
- e) A progress plan, incl. a time schedule for applicable tasks that should be completed prior to the start of operation.

#### **Aircraft:**

- f) Brief description of actual type.
- g) Basic Performance Data, incl. gross weight charts for the applicable airport(s).
- h) Number of actual aircraft type available to the company, or a plan for leasing of aircraft, as appropriate.

#### **Flight Operations:**

- i) A description of how the flight activity will be prepared and managed at each airport (outstation) appropriate to the operation.
- j) A description of how a substitute aircraft will / can be put in operation on a short notice.
- k) Availability of necessary services required for weight & balance calculations, re-fuelling, loading and unloading.
- l) Availability of qualified crewmembers, plans for recruiting and qualification as appropriate.
- m) Airport qualifications, a description of how the competence requirements for category B and C airports will be established (if applicable)
- n) Documentation of aircraft equipment required for the operation of the intended route, as specified in the tender, or published in the applicable Norwegian AIP.

#### **Aircraft Maintenance:**

- o) Description of how unscheduled repairs and maintenance inspections will be performed during the operations.
- p) Over-night parking of aircraft, as regards to security, maintenance precautions and protection against weather elements.
- q) Access to necessary services required for de-icing, towing and servicing of aircraft.
- r) Copy of contract or agreement with JAR-145 maintenance facility, or copy of own (in-house) JAR-145 maintenance authorisation, as appropriate.

Please note that the Ministry of Transport and Communications after the opening of the tenders may require the tenderers on short notice to submit information from their licensing authorities in order to verify the information given in the tenders, or if such information is not submitted, may directly approach these authorities for such verification.

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The tenderers must fulfil the Norwegian regulations in force at the time in question.

Further information may be obtained from:

Luftfartstilsynet (Civil Aviation Authority)  
Postboks 8050 Dep  
0031 OSLO  
Telephone +47 23 31 78 00  
(<http://www.luftfartstilsynet.no>)

Avinor AS  
Postboks 8124 Dep.  
0032 OSLO  
Telephone +47 22 94 20 00  
(<http://www.avinor.no>)

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## **V TENDER BUDGET**

This chapter contains the tender budgets to be completed for each tender, c.f. chapter III section 7. The tender budgets shall be drawn up for the entire tender period as well as for each single operating year, the periods being indicated on the budget sheets.

**All figures shall be given in NOK 1000 and in the price level for the first operating year, defined to be 1 January 2004 – 31 March 2005.**

All figures in the tender budget shall be specified. This also applies when the figure is NOK 0, e.g. when the tender is based on marginal cost or in case the revenue or cost concerned is irrelevant for the operations offered.

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## TENDER BUDGET

**Overall period: 1 January 2004 – 31 March 2006**

All figures in NOK 1000 and based on the price level for the operating year 1 January 2004 – 31 March 2005

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
<b>6</b>	<b>Total operating revenues (1...5)</b>	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Fuel expenses	_____
11	Crew salaries	_____
12	Crew expenses	_____
13	Technical maintenance	_____
14	Mechanics' pay	_____
15	De-icing	_____
16	Short-term lease of aircraft	_____
17	Handling/station services	_____
18	Irregular passenger service	_____
19	Meals and refreshments on board	_____
20	Commission expenses	_____
21	Reservations/distribution	_____
22	Distribution of air ticket revenues	_____
23	Fixed administrative expenses	_____
24	Depreciation	_____
25	Leasing of aircraft	_____
26	Other operating costs	_____
<b>27</b>	<b>Total operating costs (7...26)</b>	_____
28	Financial revenues	_____
29	Financial expenses	_____
<b>30</b>	<b>Financial items (-28+29)</b>	_____
<b>31</b>	<b>Profit margin</b>	_____
<b>32</b>	<b>Compensation required (-6+27+30+31)</b>	_____

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## TENDER BUDGET

### ***1st operating year: 1 January 2004 – 31 March 2005***

All figures in NOK 1000 and based on the price level for the operating year 1 January 2004 – 31 March 2005

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
<b>6</b>	<b>Total operating revenues (1...5)</b>	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Fuel expenses	_____
11	Crew salaries	_____
12	Crew expenses	_____
13	Technical maintenance	_____
14	Mechanics' pay	_____
15	De-icing	_____
16	Short-term lease of aircraft	_____
17	Handling/station services	_____
18	Irregular passenger service	_____
19	Meals and refreshments on board	_____
20	Commission expenses	_____
21	Reservations/distribution	_____
22	Distribution of air ticket revenues	_____
23	Fixed administrative expenses	_____
24	Depreciation	_____
25	Leasing of aircraft	_____
26	Other operating costs	_____
<b>27</b>	<b>Total operating costs (7...26)</b>	_____
28	Financial revenues	_____
29	Financial expenses	_____
<b>30</b>	<b>Financial items (-28+29)</b>	_____
<b>31</b>	<b>Profit margin</b>	_____
<b>32</b>	<b>Compensation required (-6+27+30+31)</b>	_____

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### TENDER BUDGET

#### ***2nd operating year: 1 April 2005 – 31 March 2006***

All figures in NOK 1000 and based on the price level for the operating year 1 January 2004 – 31 March 2005

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
<b>6</b>	<b>Total operating revenues (1...5)</b>	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Fuel expenses	_____
11	Crew salaries	_____
12	Crew expenses	_____
13	Technical maintenance	_____
14	Mechanics' pay	_____
15	De-icing	_____
16	Short-term lease of aircraft	_____
17	Handling/station services	_____
18	Irregular passenger service	_____
19	Meals and refreshments on board	_____
20	Commission expenses	_____
21	Reservations/distribution	_____
22	Distribution of air ticket revenues	_____
23	Fixed administrative expenses	_____
24	Depreciation	_____
25	Leasing of aircraft	_____
26	Other operating costs	_____
<b>27</b>	<b>Total operating costs (7...26)</b>	_____
28	Financial revenues	_____
29	Financial expenses	_____
<b>30</b>	<b>Financial items (-28+29)</b>	_____
<b>31</b>	<b>Profit margin</b>	_____
<b>32</b>	<b>Compensation required (-6+27+30+31)</b>	_____

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# **VI SOCIAL DISCOUNTS**

## **A Senior citizen discount**

### **1. Application**

The discount is applied for the following travels in Norway: OW (one way) and RT (return).

### **2. Eligibility**

The senior citizen discount is applicable as follows:

- a) Persons aged from 67 years
- b) Blind persons aged from 16 years
- c) Disabled persons aged from 16 years who receive pension according to the Norwegian law of 'Folketrygd' of 17 June 1966 or similiar law in any EEA country.
- d) Students aged from 16 years attending special schools for people with hearing problems.

### **The discount is also applicable for:**

- e) Accompanying spouse irrespective of age, or a persom who has to accompany persons included in a)-d). Spouse is man/woman, even unmarried, living together with head of family in the same household. The person entitled to discount decides the need for escort.

### **Note:**

- f) This discount is not applicable when the travel is paid for by the government and/or social security office.

### **3. Fares**

50 per cent. of published normal Y-fare. Retroactive application is not permitted.

### **4. Children's/infants' fares**

Not permitted.

### **12. Routing**

According to attached routing to the normal Y-fare.

### **16. Reservations**

Reservations are to be made in M-class.

### **21. Agents' discounts**

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Not permitted.

**22. Tour conductor discounts**

Not permitted.

**23. Travel together**

The family must travel together on all flights for the entire journey (see e) and f) under point 2 Eligibility). If not, the discount is applicable to accompanying spouse only on the portions travelling together.

**Exception:** After departure individual travel is permitted in the event of illness (certificate required).

**24. Documentation**

Following documents must be present at time of ticketing:

- a) For persons aged from 67 years proof of age (passport or other official document).
- b) People under age 67 years who receive pension, must provide proof of eligibility by means of official documentation according to the Norwegian law of 'Folketrygd', chapter 8 § 8-3. Blind persons must provide proof from a social security office and/or 'Norges Blindforbund'. Persons from other EEA countries must provide similar documentation from their home country.
- c) Students aged from 16 years, attending special schools for people with hearing problems, must present a student certificate and a letter from the social security office stating that the student is receiving pension according to the Norwegian law of 'Folketrygd'. Persons from other EEA countries must provide similar documentation from their home country.

**B Children's discount**

Travellers aged under 16 years at the day of departure shall in any case be entitled to a fare not higher than 50 per cent. of the published normal Y-fare.

An adult (aged from 16 years) may carry a child aged under 2 years for free, provided that the child does not occupy its own seat and when travelling together on the entire journey.

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## VII TRAFFIC INFORMATION (GUIDANCE ONLY)

In this chapter certain traffic and revenue information for the route areas encompassed by the public service obligations is offered.

This information is based on rapports from the operating airlines to the Ministry of Transport and Communications. The information includes the number of passengers, passenger revenues, number of transfer passengers to/from the domestic main route network, share of passengers traveling at fully flexible fares and freight- and post revenues.

The figures relate to the periods specified for all tables and have to be seen in accordance with the traffic programmes and interline agreements, as well as the amounts of post and freight, actual for the said periods.

The passenger information shows the numbers of ticket coupons and corresponding revenues for each city pair. Accordingly, passenger numbers and revenues will be related to the separate parts of the journey in case of transfer en route. The passengers' actual origin or destination will in such cases not appear from the figures.

Freight and post are not encompassed by the public service obligations and that tenders themselves are responsible for the budgeting of such revenues and for concluding possible contracts with post and freight customers.

The tenderers themselves are responsible for calculating the revenues generated from the routes encompassed by the public service obligations, taking into account the revenue reductions related to transfer discounts.

**The tenderer's attention is especially drawn to the fact that this traffic information is offered for guidance purposes only, and that the tenderers themselves are fully responsible for the tender budgeting, cf. chapter III, section 7. Accordingly, tenderers may not make reservations as to the traffic information.**

**Tenderers are fully responsible for developing traffic programmes in accordance with the public service obligations at all times.**

Carriers may also find traffic information for all airports concerned on Avinor AS web pages: (<http://www.avinor.no>)

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## TRAFFIC INFORMATION ON THE ROUTES ANDENES – BODØ V.V. AND ANDENES – TROMSØ V.V.

(list of airport codes at the end of this chapter)

### Number of passengers

#### April 2002 - november 2002

From	To			
	BOO	ANX	TOS	Total
BOO		5976	401	6377
ANX	5470		5888	11358
TOS	340	5216		5556
Total	5810	11192	6289	23291

#### April 2001 – march 2002

From	To			
	BOO	ANX	TOS	Total
BOO		9306	175	9481
ANX	8189		8120	16309
TOS	638	7096		7734
Total	8827	16402	8295	33524

### Passenger revenues (1000 NOK)

#### April 2002 – november 2002

From	To			
	BOO	ANX	TOS	Total
BOO		5040	290	5330
ANX	4598		2539	7137
TOS	317	2308		2625
Total	4915	7348	2829	15092

#### April 2001 - march 2002

From	To			
	BOO	ANX	TOS	Total
BOO		7571	188	7759
ANX	6645		3415	10060
TOS	897	3131		4028
Total	7542	10702	3603	21847

### Transfer passengers

Listed are approximate numbers of passengers in transfer between the regional air services and the domestic main route network at the mentioned airports and periods.

	April 2001 – March 2002	April – November 2002
Bodø	9562	6341
Tromsø	5216	3676

### C-class passengers

Listed are the approximate number of passengers travelling at fully flexible fares (C-class) for the said groupings of route areas and periods. Due to interline agreements and transfer discounts the figures do not correspond to the level of passengers paying the full local fare.

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	April 2001 – March 2002	April – November 2002
Andenes – Bodø/Tromsø	12002	8641

### Freight and post revenues

Listed are approximate total freight and post revenues for the said groupings of route areas and periods. The figures are in million NOK.

#### *Freight*

Route areas	April 2001 – March 2002	April – November 2002
Andenes – Bodø/Tromsø	0,5	0,3

#### *Post*

Route areas	April 2001 – March 2002	April – November 2002
Andenes – Bodø/Tromsø	0,1	0,0

### TRAFFIC INFORMATION ON THE ROUTE LAKSELV – TROMSØ V.V.

	Number of passenger	C-klasse share (pst)	Transfer share (pst)
April 02-december 02	35493	28,1	63,3
April 01-march 02	49781	29,8	63,3

	Passenger- revenues (NOK 1000)	Freight and post revenues (NOK 1000)
April 02-december 02	19233	80
April 01-march 02	26260	2297

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### AIRPORTCODES AND LENGTH OF RUNWAY

<b>Airport</b>	<b>Code</b>	<b>Runway length *</b>	<b>Type</b>
Alta	ALF	2057	Main
Andenes	ANX	2468	Regional/Military
Bergen	BGO	2555	Main /Military
Berlevåg	BVG	830	Regional
Bodø	BOO	2992	Main /Military
Brønnøysund	BNN	1199	Regional
Båtsfjord	BJF	1000	Regional
Fagernes	VDB	1989	Regional
Florø	FRO	1199	Regional
Førde	FDE	893	Regional
Hammerfest	HFT	831	Regional
Hasvik	HAA	909	Regional
Honningsvåg	HVG	799	Regional
Kirkenes	KKN	1875	Main
Lakselv	LKL	2788	Main /Military
Leknes	LKN	828	Regional
Mehamn	MEH	840	Regional
Mo i Rana	MQN	799	Regional
Mosjøen	MJF	879	Regional
Narvik	NVK	864	Regional
Namsos	OSY	808	Regional
Oslo	OSL	3600 and 2950	Main
Røros	RRS	1720	Regional
Rørvik	RVK	832	Regional
Røst	RET	831	Regional
Sandane	SDN	781	Regional
Sandnessjøen	SSJ	1058	Regional
Sogndal	SOG	886	Regional
Stokmarknes	SKN	825	Regional
Svolvær	SVJ	807	Regional
Sørkjosen	SOJ	860	Regional
Tromsø	TOS	2392	Main
Trondheim	TRD	2669 and 1035	Main /Military
Vadsø	VDS	829	Regional
Vardø	VAW	1085	Regional
Ørsta-Volda	HOV	826	Regional

\* Total runwaylength in meters.



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# **VIII REGULATION ON TENDER PROCEDURES IN CONNECTION WITH PUBLIC SERVICE OBLIGATIONS TO IMPLEMENT COUNCIL REGULATION (EEC) NO 2408/92, ARTICLE 4<sup>6</sup>**

Laid down by the Ministry of Transport and Communications on 15 April 1994 pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 3.

## **Section 1      *Definitions***

For the purpose of this regulation:

1. 'principal' shall mean the Ministry of Transport and Communications or executive agency;
2. 'tenderer' shall mean an air carrier that submits a tender;
3. 'open tender procedure' shall mean a procurement procedure whereby all air carriers may submit tenders;
4. 'open tender procedure with subsequent negotiations' shall mean a procurement procedure whereby the principal, having applied an open tender procedure in accordance with subsection 3 of this section, consults one or more tenderers of its choice and negotiates the terms of the contract with one or more of them;
5. 'award of contract by negotiated procedure', shall mean a procurement procedure whereby the principal consults air carriers of its choice and negotiates the terms of the contract with one or more of them.

## **Section 2      *Scope of application***

This regulation applies to routes which are put up for tender pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 1, subsection 4.

## **Section 3      *General requirements on tenderers***

Any entity which submits a tender must have a valid licence issued by the civil aviation authority in accordance with Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 1, subsection 8.

Any entity which submits a tender must be able to prove that it fulfils special requirements, if any, as to safety, aircraft and the protection of the environment in accordance with specifications set out in the invitation to tender.

Any tenderer receiving financial compensation in connection with the operation of other routes on which its traffic rights are granted without competition shall separate such grant-aided activity from tender activity for accounting purposes.

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<sup>6</sup> 15 April 1994, no. 256

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### **Section 4      *Choice of procurement procedure***

Procurement shall be effected by means of an open tender procedure. Exceptions may be made from this provision provided the conditions of subsection 2 or 3 are satisfied.

An open tender procedure with subsequent negotiations may be applied if:  
all or certain tenders submitted in response to a call for competition are incorrect, c.f. section 11;  
after the final date for receipt of tenders there proves to be only one tenderer or competition is otherwise insufficient.

The principal's reservation of the right to apply subsequent negotiations must be clear from the invitation to tender which shall also state that substantial changes cannot be made in the original tender conditions.

The principal shall by appropriate means inform the tenderer(s) who participated in the open procedure that subsequent negotiations will apply. However, this does not apply if the principal includes at the subsequent negotiations all air carriers who have submitted tenders in response to the prior open procedure in accordance with the formal requirements of the procurement procedure.

A contract may be awarded by negotiated procedure without prior publication of an open tender notice, if, due to events unforeseeable by the principal, the time limits laid down for the open procedure cannot be met.

### **Section 5      *Publication***

The principal shall publish notice of the tender competition in the Official Journal of the European Communities and in the Norwegian Gazette and other suitable national media and/or publications.

Notice in the Official Journal of the European Communities shall be worded and published in its entirety in one of the official languages of the European Union.

### **Section 6      *Deadlines***

1. The deadline for submission of tenders shall not be earlier than one month after the day of publication.
2. The period between submission of tenders and opening of tenders should be at least 24 hours.
3. Provided they have been requested in good time, the tender documents and supporting documents shall be sent to tenderers by the principal within a reasonable period.
4. A period of two months shall elapse after the deadline for submission of tenders before any selection is made.

### **Section 7      *Urgent cases***

In urgent cases where it is impossible to adhere to the deadlines mentioned in section 6, the principal may after a concrete assessment lay down shorter deadlines.

### **Section 8      *Model for notice of a call for competition***

### **Invitation to Tender**

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Such notice shall normally set out:

- a) the principal's name, address, telephone number, telegraphic address and telefax numbers;
- b) the name and address of the agency to which requests for relevant documents may be directed as well as the final date for making such requests;
- c) special requirements, if any, as to safety, aircraft and the environment etc.;
- d) the geographical location of the route network or route
- e) the minimum transport standard desired, including type of aircraft, frequency, number of stops en route, fares, service, etc.;
- f) details as to use of a standard tender form;
- g) how the tender shall be presented, including requirements as to documentation of revenues, costs and traffic volume, as well as a statement of methods of calculation and basis for analysis and any use of a special form (e.g. tender budget);
- h) how compensation requirements, if any, shall be presented;
- i) deadline/place for submission of tenders, including the address to which the tender shall be sent;
- j) the language in which the tenders must be drawn up;
- k) a statement that the principal reserves the right to reject all tenders;
- l) the persons authorised to be present at the opening of the tenders and the date, hour and place of such opening;
- m) a statement that overdue tenders and tenders not in conformity with the invitation to tender will be rejected;
- n) a statement that the principal reserves the right to apply subsequent negotiations;
- o) the period during which the tenderer is bound to keep open his tender;
- p) the period of validity of the contract (normally 3 years), including the starting date;
- q) criteria that will be applied when awarding the contract, where possible in descending order of importance, c.f. section 14;
- r) information concerning use of a standard contract in this area;
- s) sanctions in the event of breach of contract.

### **Section 9      *Details regarding overdue tenders***

Tenders arriving after the closing date for submission of tenders, c.f. section 6, shall be rejected as overdue and be returned.

However, this does not apply to tenders which arrive after the closing date but before the opening of the tenders provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the deadline, or the tenderer in question has proven this by a receipt from Norway Post before the opening of the tenders.

The rejection decision including the grounds for it shall be entered in the register of tenders.

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### **Section 10     *Procedures in connection with the opening of tenders*<sup>7</sup>**

Tenders received in time shall be opened at the place and hour stated in the tender documents. At the opening of the tenders a representative of the principal, duly designated beforehand, shall undertake the opening of the tenders and sign the register of tenders. Each tenderer is entitled to have one representative present.

During the opening of the tenders the name of the tenderer shall be read out, but not the compensation required and the proposed transport standard. Once the principal has resolved not to start subsequent negotiations, c.f. section 4, subsection 2, the demand for compensation shall be made public. In the case of subsequent negotiations, the demand for compensation will be made public once the negotiations are closed.

The following shall be entered in the register of tenderers:

- a) date and hour of the opening;
- b) the tender's identification mark;
- c) which route network/routes the invitation to tender covers;
- d) persons present;
- e) the compensation required in the tender as well as the name of the tenderer;
- f) any rejections of the tenderers/tenders, c.f. section 11 in fine.

### **Section 11     *Rejection***

A tender shall be rejected if:

- the tender as it appears at the final date fails to fulfil the requirements for participation in the competition, c.f. section 3.

1. A tender may after closer assessment be rejected if:

- a) the tender does not contain all the information prescribed in the invitation to tender;
- b) the tender fails to state the compensation required as prescribed in the invitation to tender, c.f. section 8, litera h);
- c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender, c.f. section 8, litera p);
- d) the tender requires compensation that is unreasonable in relation to the service to be provided and the tenderer is unable to provide a satisfactory reason for this.

The register of tenders shall make clear which tenders are rejected and the reason for rejection, c.f. section 10, litera f).

### **Section 12     *Criteria for exclusion of tenderers***

1. Principals may when selecting a tenderer and when awarding a contract exclude any tenderer who:

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<sup>7</sup> Subsection 2 in this section is laid down by the Ministry of Transport and Communications 25 September 1998 pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation.

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- a) is bankrupt, is engaged in debt settlement proceedings or is being wound up, who has halted his business activities or who is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;
  - b) is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory winding up or is the subject of any other similar proceedings pursuant to national laws or regulations;
  - c) has been convicted by final judgement of an offence concerning his professional conduct;
  - d) has been guilty of grave breaches of professional and ethical standards in his line of business, which have been proven by any means which the principal approves;
  - e) has not fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which he is established, or of Norway;
  - f) is guilty of serious misrepresentation in supplying the information required under sections 8 and 13.
2. Where the principal requires tenderer proof that none of the cases mentioned in a), b), c), e) or f) of subsection 1 applies to him, the principal may accept as sufficient evidence:
- a) for a), b) or c), an extract from the National Register of Convictions or the National Register of Insolvencies. Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home state or state where he is currently present showing that none of these cases applies to the tenderer;
  - b) for e) or f), a certificate issued by the competent authority in the state concerned.

### **Section 13      *Supplementary information***

The principal may, if he finds it appropriate, request tenderer(s) to supplement the certificates and documents submitted or to clarify them.

The same applies within the contract period.

### **Section 14      *Selection of tenderer***

1. The criteria on which the principal shall with reference to sections 3 and 8 base the award of contracts shall be either the lowest required compensation only, or the economically most advantageous tender.
2. If, based on an overall assessment, the award is made to the economically most advantageous tender, but the required compensation alone is not the decisive criterion, all criteria that the principal intends to apply to the award shall have been stated in the contract notice, where possible in descending order of importance.
3. If, for a given contract, tenders appear abnormally low in relation to the service to be provided, the principal may examine the details of the tenders before deciding to whom it will award the contract. For this purpose the principal shall request the tenderer to furnish the necessary explanations and, where appropriate, it shall state which parts it finds unacceptable.

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#### **Section 15     *Notice on contracts awarded***

Notice on a contract awarded shall be published in an appropriate manner.

#### **Section 16     *Supplementary regulations***

The Ministry of Transport and Communications may lay down amendments to supplement and clarify this regulation.

#### **Section 17     *Commencement***

This regulation comes into force on 1 July 1994.

## **IX COUNCIL REGULATION (EEC) NO 2408/92**

**of 23 July 1992**  
**on access for Community air carriers to intra-Community air routes**  
(<http://europa.eu.int/eur-lex/en>)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission(1) ,

Having regard to the opinion of the European Parliament(2) ,

Having regard to the opinion of the Economic and Social Committee(3) ,

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Decision 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States(4) and Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States(5) constitute the first steps towards achieving the internal market in respect of access for Community air carriers to scheduled intra-Community air routes;

Whereas Regulation (EEC) No 2343/90 provides that the Council shall decide on the revision of that Regulation by 30 June 1992 at the latest;

Whereas in Regulation (EEC) No 2343/90 the Council decided to adopt rules governing route licensing for implementation not later than 1 July 1992;

Whereas in Regulation (EEC) No 2343/90 the Council decided to abolish capacity restrictions between Member States by 1 January 1993;

Whereas in Regulation (EEC) No 2343/90 the Council confirmed that cabotage traffic rights are an integral part of the internal market;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom

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in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas the development of the air traffic system in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

Whereas it is necessary to abolish restrictions concerning multiple designation and fifth-freedom traffic rights and phase in cabotage rights in order to stimulate the development of the Community air transport sector and improve services for users;

Whereas it is necessary to make special provision, under limited circumstances, for public service obligations necessary for the maintenance of adequate air services to national regions;

Whereas it is necessary to make special provision for new air services between regional airports;

Whereas for air transport planning purposes it is necessary to give Member States the right to establish non-discriminatory rules for the distribution of air traffic between airports within the same airport system;

Whereas the exercise of traffic rights has to be consistent with operational rules relating to safety, protection of the environment and conditions concerning airport access and has to be treated without discrimination;

Whereas, taking into account problems of congestion or environmental problems, it is necessary to include the possibility of imposing certain limitations on the exercise of traffic rights;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

Whereas it is necessary to specify the duties of Member States and air carriers for the purposes of providing necessary information;

Whereas it is appropriate to ensure identical assessment and evaluation of market access for the same types of air services;

Whereas it is appropriate to deal with all matters of market access in the same Regulation;

Whereas this Regulation partially replaces Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States(6) , -



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### **HAS ADOPTED THIS REGULATION:**

#### **Article 1**

1. This Regulation concerns access to routes within the Community for scheduled and non-scheduled air services.
2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
3. Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.
4. Airports in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores shall be exempted from the application of this Regulation until 30 June 1993. Unless otherwise decided by the Council, on a proposal from the Commission, this exemption shall apply for a further period of five years and may be continued for five years thereafter.

#### **Article 2**

For the purposes of this Regulation:

- (a) 'air carrier' means an air transport undertaking with a valid operating licence;
- (b) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 of licensing of air carriers(7) ;
- (c) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (d) 'scheduled air service' means a series of flights possessing all the following characteristics:
  - (i) it is performed by aircraft for the transport of passengers, cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents);
  - (ii) it is operated so as to serve traffic between the same two or more airports, either:
    1. according to a published timetable; or
    2. with flights so regular or frequent that they constitute a recognizably systematic series;
- (e) 'flight' means a departure from a specified airport towards a specified destination airport;
- (f) 'traffic right' means the right of an air carrier to carry passengers, cargo and/or mail on an air service between two Community airports;
- (g) 'seat-only sales' means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorized agent or a charterer;
- (h) 'Member State(s) concerned' means the Member State(s) between or within which an air service is operated;

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- (i) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
- (j) 'State of registration' means the Member State in which the licence referred to in (b) is granted;
- (k) 'airport' means any area in a Member State which is open for commercial air transport operations;
- (l) 'regional airport' means any airport other than one listed in Annex I as a category 1 airport;
- (m) 'airport system' means two or more airports grouped together as serving the same city or conurbation, as indicated in Annex II;
- (n) 'capacity' means the number of seats offered to the general public on a scheduled air service over a given period;
- (o) 'public service obligation' means any obligation imposed upon an air carrier to take, in respect of any route which it is licensed to operate by a Member State, all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the air carrier would not assume if it were solely considering its commercial interest.

### **Article 3**

1. Subject to this Regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community.
2. Notwithstanding paragraph 1, before 1 April 1997 a Member State shall not be required to authorize cabotage traffic rights within its territory by Community air carriers licensed by another Member State, unless:
  - (i) the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as a preliminary of a service to, the State or registration of the carrier;
  - (ii) the air carrier does not use, for the cabotage service, more than 50 % of its seasonal capacity on the same service of which the cabotage service constitutes the extension or the preliminary.
3. An air carrier operating cabotage services in accordance with paragraph 2 shall furnish on request to the Member State(s) involved all information necessary for the implementation of the provisions of that paragraph.
4. Notwithstanding paragraph 1, before 1 April 1997 a Member State may, without discrimination on grounds of nationality of ownership and air carrier identity, whether incumbent or applicant on the routes concerned, regulate access to routes within its territory for air carriers licensed by it in accordance with Regulation (EEC) No 2407/92 while otherwise not prejudging Community law and, in particular, competition rules.

### **Article 4**

1. (a) A Member State, following consultations with the other Member States concerned and after having informed the Commission and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport in its territory, any such route being considered vital for the economic development of the region in which the airport is located, to the extent necessary to ensure on that route the

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adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing, which standards air carriers would not assume if they were solely considering their commercial interest. The Commission shall publish the existence of this public service obligation in the Official Journal of the European Communities.

(b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:

(i) the public interest;

(ii) the possibility, in particular for island regions, of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;

(iii) the air fares and conditions which can be quoted to users;

(iv) the combined effect of all air carriers operating or intending to operate on the route.

(c) In instances where other forms of transport cannot ensure an adequate and uninterrupted service, the Member States concerned may include in the public service obligation the requirement that any air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.

(d) If no air carrier has commenced or is about to commence scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, then the Member State may limit access to that route to only one air carrier for a period of up to three years, after which the situation shall be reviewed. The right to operate such services shall be offered by public tender either singly or for a group of such routes to any Community air carrier entitled to operate such air services. The invitation to tender shall be published in the Official Journal of the European Communities and the deadline for submission of tenders not be earlier than one month after the day of publication. The submissions made by air carriers shall forthwith be communicated to the other Member States concerned and to the Commission.

(e) The invitation to tender and subsequent contract shall cover, inter alia, the following points:

(i) the standards required by the public service obligation;

(ii) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;

(iii) the period of validity of the contract;

(iv) penalties in the event of failure to comply with the contract.

(f) The selection among the submissions shall be made as soon as possible 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 from the Member State(s) concerned, if any.

(g) Notwithstanding subparagraph (f), a period of two months shall elapse after the deadline for submission of tenders before any selection is made, in order to permit other Member States to submit comments.

(h) A Member State may reimburse an air carrier, which has been selected under subparagraph (f), for satisfying standards required by a public service obligation imposed under this paragraph; such reimbursement shall take into account the costs and revenue generated by the service.

(i) Member States shall take the measures necessary to ensure that any decision taken

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under this Article can be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing that law.

(j) When a public service obligation has been imposed in accordance with subparagraphs (a) and (c) then air carriers shall be able to offer seat-only sales only if the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.

(k) Subparagraph (d) shall not apply in any case in which another Member State concerned proposes a satisfactory alternative means of fulfilling the same public service obligation.

2. Paragraph 1 (d) shall not apply to routes where other forms of transport can ensure an adequate and uninterrupted service when the capacity offered exceeds 30 000 seats per year.

3. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of paragraph 1, or on its own initiative, the Commission shall carry out an investigation and within two months of receipt of the request shall take a decision on the basis of all relevant factors on whether paragraph 1 shall continue to apply in respect of the route concerned.

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

## **Article 5**

On domestic routes for which at the time of entry into force of this Regulation an exclusive concession has been granted by law or contract, and where other forms of transport cannot ensure an adequate and uninterrupted service, such a concession may continue until its expiry date or for three years, whichever deadline comes first.

## **Article 6**

1. Notwithstanding Article 3, a Member State may, where one of the air carriers licensed by it has started to operate a scheduled passenger air service with aircraft of no more than 80 seats on a new route between regional airports where the capacity does not exceed 30 000 seats per year, refuse a scheduled air service by another air carrier for a period of two years, unless it is operated with aircraft of not more than 80 seats, or it is operated in such a way that not more than 80 seats are available for sale between the two airports in question on each flight.

2. Article 4 (3) and (4) shall apply in relation to paragraph 1 of this Article.

## **Article 7**

In operating air services, a Community air carrier shall be permitted by the Member State(s) concerned to combine air services and use the same flight number.

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### **Article 8**

1. This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.
2. The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots.
3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.
4. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.
5. When a Member State decides to constitute a new airport system or modify an existing one it shall inform the other Member States and the Commission. After having verified that the airports are grouped together as serving the same city or conurbation the Commission shall publish a revised Annex II in the Official Journal of the European Communities.

### **Article 9**

1. When serious congestion and/or environmental problems exist the Member State responsible may, subject to this Article, impose conditions on, limit or refuse the exercise of traffic rights, in particular when other modes of transport can provide satisfactory levels of service.
2. Action taken by a Member State in accordance with paragraph 1 shall:
  - be non-discriminatory on grounds of nationality or identity of air carriers,
  - have a limited period of validity, not exceeding three years, after which it shall be reviewed,
  - not unduly affect the objectives of this Regulation,
  - not unduly distort competition between air carriers,
  - not be more restrictive than necessary in order to relieve the problems.
3. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 4, takes it up for further examination.
4. At the request of a Member State or on its own initiative the Commission shall examine action referred to in paragraph 1. When the Commission, within one month of having been informed under paragraph 3, takes the action up for examination it shall at the same time indicate whether the action may be implemented, wholly or partially, during the examination taking into account in particular the possibility of irreversible effects. After consulting the Committee referred to in Article 11 the Commission shall, one month after having received all necessary information, decide whether the action is appropriate and in

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conformity with this Regulation and not in any other way contrary to Community law. The Commission shall communicate its decision to the Council and the Member States. Pending such decision the Commission may decide on interim measures including the suspension, in whole or in part, of the action, taking into account in particular the possibility of irreversible effects.

5. Notwithstanding paragraphs 3 and 4, a Member State may take the necessary action to deal with sudden problems of short duration provided that such action is consistent with paragraph 2. The Commission and the Member State(s) shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days. At the request of the Member State(s) involved or on its own initiative the Commission may suspend this action if it does not meet the requirements of paragraphs 1 and 2 or is otherwise contrary to Community law.

6. Any Member State may refer the Commission's decision under paragraph 4 or 5 to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

7. When a decision taken by a Member State in accordance with this Article limits the activity of a Community air carrier on an intra-Community route, the same conditions or limitation shall apply to all Community air carriers on the same route. When the decision involves the refusal of new or additional services, the same treatment shall be given to all requests by Community air carriers for new or additional services on that route.

8. Without prejudice to Article 8 (1) and except with the agreement of the Member State(s) involved, a Member State shall not authorize an air carrier:

(a) to establish a new service, or

(b) to increase the frequency of an existing service,

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of slot-allocation rules as provided for in Article 8 (2), to establish a new service or to increase frequencies on an existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality.

## **Article 10**

1. Capacity limitations shall not apply to air services covered by this Regulation except as set out in Articles 8 and 9 and in this Article.

2. Where the application of paragraph 1 has led to serious financial damage for the scheduled air carrier(s) licensed by a Member State, the Commission shall carry out a review at the request of that Member State and, on the basis of all relevant factors, including the market situation and in particular whether a situation exists whereby the opportunities of air carriers of that Member State to effectively compete in the market are unduly affected, the financial position of the air carrier(s) concerned and the capacity utilization achieved, shall take a decision on whether the capacity for scheduled air services to and from that State should be stabilized for a limited period.

3. The Commission shall communicate its decision to the Council and to the Member

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States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

### **Article 11**

1. The Commission shall be assisted by an Advisory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall advise the Commission on the application of Articles 9 and 10.
3. Furthermore, the Committee may be consulted by the Commission on any other question concerning the application of this Regulation.
4. The Committee shall draw up its rules of procedure.

### **Article 12**

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.
2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be applied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

### **Article 13**

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

### **Article 14**

1. Member States and the Commission shall cooperate in implementing this Regulation.
2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

### **Article 15**

Regulation (EEC) No 2343/90 and 294/91 are hereby replaced with the exceptions of Article 2 (e) (ii) and of Annex I to Regulation (EEC) No 2343/90, as interpreted by Annex II to this Regulation, and Article 2 (b) of and the Annex to Regulation (EEC) No 294/91.

### **Article 16**

This Regulation shall enter into force on 1 January 1993.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 1992  
For the Council The President J. COPE

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# **X STANDARD CONTRACT FOR SCHEDULED AIR SERVICES**

In conformity with Regulation no 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation section 1 no 4, Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes, Article 4, and with reference to Regulation No 256 of 15 April 1994 on tender procedures in connection with Public Service Obligations to implement Council Regulation (EEC) No 2408/92, Article 4, the following contract is entered into between ..... (the Operator) and the Ministry of Transport and Communications concerning operation of the routes/route networks specified in the contract.

## **1 Routes/route network**

1.1 This contract applies to the following route(s): .....

## **2 Requirements as to operation**

2.1 This contract grants the Operator the exclusive right and obligation to operate routes/route networks within the contract period in accordance with specifications stated in the Operator's tender which forms part of this contract.

2.2 Operation shall be carried out in accordance with the Aviation Act with appurtenant regulations and with other legislation in force.

2.3 In accordance with the prior invitation to tender, the following shall in annex 3 to this contract be specified for the individual route:

- 1) Traffic programme/route structure
  - a) days of the week on which the service obligations apply
  - b) number of round trips per day on specified route
  - c) number of stops en route/aircraft seating capacity in the tender area
  - d) production measured in seat-kilometres/tonne-kilometres
- 2) Fares
  - structure, level, terms, discounts
- 3) Aircraft type
  - size, comfort
- 4) Requirements as to service
- 5) Reservation, sales, handling:



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- if appropriate, use of CRS, travel agent/agent, commissions, handling partner
- 6) Special requirements as to safety/aircraft/environment in accordance with Regulation on tender procedures in connection with public service obligations, section 8 litera c).

- 2.4 The Operator is responsible at all times for fulfilment of the service programme set out in the tender and specified in the annex as mentioned in point 2.3 above.

The Operator is accordingly obliged for own account to obtain replacement aircraft and/or replacement personnel in case of disruption of operations.

In case of significant deviations from the agreed air service arrangement, the Operator shall immediately inform the Ministry of Transport and Communications giving a written account of the cause. The Operator shall also give information on the measures taken. The Ministry of Transport and Communications may impose such measures on the Operator as are deemed necessary for fulfilment of the service arrangement, in the event take such measures for the Operator's account and risk.

### 3 Compensation, risk-sharing, payment of charges etc.

- 3.1 The Operator is entitled to compensation from the Ministry of Transport and Communications for the following route(s):

.....

The compensation amounts to:

- First operating year: \_\_\_\_\_ NOK
- Second operating year: \_\_\_\_\_ NOK

The Ministry of Transport and Communications shall transfer the periodical amounts on a pro rata basis 15 times the first operation year and 12 times the second operating year.

The price adjustments of the tender budget for the second operating year shall be carried out in accordance with chapter III, section 7 of the invitation to tender.

A reservation is made to the effect that the Storting (the Norwegian Parliament) through its annual budget deliberations makes the necessary funds available to the Ministry of Transport and Communications to cover the compensation mentioned.

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- 3.2 The Operator shall retain all revenues generated by the service. Should the revenues be larger, or the expenditure smaller, than the calculated level on which the tender is based, the Operator may retain the balance. The Ministry of Transport and Communications is not obliged to reimburse any result poorer than that indicated by the calculations.
- 3.3 All public charges, including aviation charges, are payable by the Operator. In case of substantial changes in the level of aviation charges, the contracting parties may demand re-negotiation in accordance with the conditions of point 6.
- 3.4 If production according to contract comes to a stop due to alterations or cessation of operational and/or technical approval, the financial compensation will cease as of the same time.

#### **4 Right of inspection etc. for the Ministry of Transport and Communications**

- 4.1 Within ..... the Operator shall on its own initiative send the Ministry of Transport and Communications audited accounts for the operations of the preceding year, both for tender activity and for the Operator's total activity.
- 4.2 The Operator shall 6 times each year send a report to the Ministry of Transport and Communications which shall include information on:
  - 1. Accounts for the tender operations
  - 2. Disruptions of operation, causes of such
  - 3. Punctuality (within 15 min of scheduled departure time)
  - 4. Regularity (share of flights cancelled, causes of such). The Operator must clarify whether the flights are cancelled for reasons not directly attributable to the carrier.
  - 5. Traffic information (number of passengers, passenger revenues, share of C-class passengers, share of passengers in transfer to/from other air routes, freight and post revenues)
  - 6. Actual production for the route(s) in question (seat- and tonne-kilometres, number of landings, number of flying hours and passenger load factor)

The rapport must have reached the Ministry no later than .....

For the tender operations, accounts and deviations shall be reported with relation to the tender budget.

The Operator shall inform the Ministry of Transport and Communications if substantial deviations arise between the traffic volume on which the tender was based and the actual traffic volume.

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- 4.3 Traffic information obtained according to 4.2, 1 paragraph no 5., may be published, e.g. in connection with publication of documentation concerning tender for air services.

Even if this traffic information should be subject to duty of secrecy, c.f. Freedom of Information Act section 5a, c.f. Public Administration Act section 13, 1 paragraph no 2, the duty of secrecy will not prevent the publication of the traffic information if this can fulfil the purpose for which it is given or collected, c.f. section 13 b, 1 paragraph no 2.

- 4.4 The Ministry of Transport and Communications may, in accordance with the Regulation on the tender procedures in connection with public service obligations, section 13, demand supplementary or amplifying information at any point in time within the contract period.
- 4.5 If the Operator fails to comply with the requirement to report through either insufficient reporting or not meeting the deadline for reporting, c.f. point 4.1 and 4.2, the Ministry of Transport and Communications reserves the right to retain compensation.

## **5 Duration**

- 5.1 This contract applies from 1 January 2004 to 31 March 2006. The contracting parties may terminate the contract only at the end of a 12-month period of notice.

## **6 Re-negotiation**

- 6.1 If, in the contract period, substantial and unforeseeable changes occur in the assumptions underlying this contract, either party may demand negotiations on revision of the contract. Such a demand for revision must be presented one month after the change occurs at the latest. The right to demand negotiations does not entail restrictions in the right to apply sanctions in case of breach of contract pursuant to point 7 or general rules of contract law.
- 6.2 If the Ministry of Transport and Communications presumes that demands for re-negotiation would be ineffective, the Ministry may decide instead to put the route up for tender anew in accordance with section 4 of Regulation on tender procedures in connection with public service obligations.

## **7 Breach of contract/cancellation**

- 7.1 In the event of substantial breach of the contract, it may be cancelled with immediate effect by the other party.
- 7.2 Subject to the restrictions following from insolvency law, the Ministry of Transport and Communications may cancel the contract with immediate

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effect if the Operator becomes insolvent, initiates debt settlement proceedings or goes bankrupt. Equally the Ministry of Transport and Communications may cancel the contract in the other cases dealt with in section 12 of Regulation on tender procedures in connection with public service obligations.

- 7.3 If the Operator owing to force majeure or other factors outside his control has been unable to comply with the public service obligations as stated in the contract for more than 4 of the 6 last months, the contract may be cancelled at one month's written notice.
- 7.4 The Ministry of Transport and Communications may cancel the contract with immediate effect if the Operator has its licence revoked or it is not renewed.
- 7.5 The Ministry of Transport and Communications is entitled to suspend the contract if the Operator fails to comply with his reporting duty or obstructs inspection pursuant to point 4, provided he has received written notice with a time-limit of a minimum of two weeks to rectify the situation. Such suspension may remain in effect until the situation is rectified.

Equally the Ministry of Transport and Communications may suspend the contract if the Operator's aircraft is/are involved in an accident or incident involving possible loss of life. Suspension pursuant to this provision may remain in effect until the question of criminal negligence has been clarified.

Suspension does not entail restrictions of the right to apply sanctions in case of breach of contract.

## **8 Disputes**

- 8.1 In the event of disagreement concerning the understanding of the contract, a resolution shall be sought through negotiations. If negotiations are unsuccessful, either party may refer the matter to the ordinary courts of law for decision, unless the parties agree to resolve the matter by arbitration.

Oslo District Court is the venue for all disputes arising in connection with this contract unless the parties agree otherwise.

## **9 Issue of contract**

- 9.1 This contract is drawn up in 2 –two- original copies of which the Ministry of Transport and Communications retains one and the Operator the other.

## **10 Annexes**

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The following are appended to the contract:

1. The invitation to tender: 'Scheduled Air Services Lakselv – Tromsø v.v., Andenes – Bodø v.v., Andenes – Tromsø v.v. 1.1.2004 – 31.3.2006'.
2. The Operator's tender with a standard calculation sheet (tender budget)
3. Specification of service programme, c.f. 2.3.
4. The Ministry of Transport and Communications' Circular N-8/97 regarding procedures in connection with traffic programmes and fares for scheduled air services in Norway. The Ministry of Transport and Communications reserves the right to alter the procedures in connection with traffic programmes and fares for scheduled air services in Norway, annex 4, in the contract period.

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# XI PROCEDURES IN CONNECTION WITH TRAFFIC PROGRAMMES AND FARES FOR SCHEDULED AIR SERVICES IN NORWAY

Ministry of Transport and Communications  
Department of Air and Rail Transport

Circular N-8/97  
29.10.1997

**Recipients:** The Civil Aviation Administration, county municipal administrations' transport offices and departments, and air carriers.

This circular replaces circulars N-2/92 and N-2/94 which no longer apply to scheduled air services in Norway. Circular N-2/92 *Procedures in connection with approval of traffic programmes* remains effective for the Coastal Steamer (Hurtigruta). In regard to Norwegian State Railways, see Report No. 1 to the Storting (1994-95) *Changed guidelines for approval of Norwegian State Railways' traffic programmes*, page 180.

The first main section of Circular N-8/97, Tender Routes, applies to domestic traffic programmes and fares on routes subject to public service obligations (PSO), where the carrier/carriers operate the route(s) pursuant to a tender contract with the State.

The second main section of Circular N-8/97, Other Routes, applies to domestic traffic programmes and fares on the remaining route network where free competition applies.

## TENDER ROUTES

### 1 The carrier's responsibility for implementing a consultation process in connection with its traffic programme(s)

On routes subject to PSO/tender, consultative bodies may submit to the carrier their comments, in order of priority, on the following:

- 1) *The carrier's compliance with PSO set out in the invitation to tender*
- 2) *The carrier's co-ordination of routes/timetables in relation to other public means of transport*
- 3) *Services over and above PSO and/or tender which the carrier may provide on a commercial basis*

#### 1.1 Traffic programmes

- a) Proposals for traffic programmes shall be circulated to the relevant bodies contained in the list of addresses under *Tender Routes* section II *Consultative bodies for traffic programmes*, with a copy going to the Ministry of Transport and Communications.

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- b) Proposals for summer and winter traffic programmes shall be circulated to the relevant consultative bodies by 15 October and 15 May respectively at the latest. The consultative bodies shall send their comments directly to the carrier by 1 December for the summer routes and 1 July for the winter routes.
- c) The midsummer programme, where appropriate adjusted to PSO set out in the invitation to tender, shall be incorporated in the summer traffic programme.
- d) The carrier shall send the Ministry of Transport and Communications the final traffic programme with a copy of all submissions giving reasons in writing for whether and why the submissions of the consultative bodies in regard to 1), 2) and 3) on page 1 were or were not taken into account in the final traffic programme proposal.
- e) The final traffic programme proposal shall be sent to the Ministry of Transport and Communications by 1 August at the latest for winter routes and by 1 January at the latest for summer routes.
- f) If the final traffic programme proposal contains changes in relation to the original proposal which for example entail negative consequences for the passengers, are not in accordance with PSO, or affect the Civil Aviation Administration's published airport opening times, the carrier shall co-ordinate such matters with the consultative bodies in accordance with section II *Consultative bodies for traffic programmes*, before the final traffic programme proposal is transmitted to the Ministry of Transport and Communications.
- g) Approval from the Ministry of Transport and Communications must have been sent no later than 45 days before the traffic programme becomes operative.
- h) The carrier is responsible for sending identically-worded letters to the consultative bodies immediately after the traffic programme has been considered by the Ministry of Transport and Communications. The letter shall give an account of the final traffic programme, and the final traffic programme shall be enclosed.

#### **1.2 Changes to approved air traffic programmes**

- a) Minor changes to an approved traffic programme without direct consequences for the market need not be circulated for comment. Changes of some scope which may have an effect on the market, c.f. I.I f), shall be sent to affected consultative bodies for comment with a copy going to the Ministry of Transport and Communications. The consultative bodies shall have at least three weeks in which to reply as from the date on which they receive the proposed changes. Replies shall be sent directly to the carrier.
- b) The carrier shall send the Ministry of Transport and Communications the final proposal for changes with a copy of all submissions giving reasons in writing for

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whether and why the submissions of the consultative bodies were or were not taken into account in the final proposal for changes. The Ministry of Transport and Communications shall complete its consideration of the proposed changes and reply to the carrier as quickly as possible.

- c) The carrier is responsible for sending identically-worded letters to the consultative bodies immediately after the changes have been considered by the Ministry of Transport and Communications. The letter shall give an account of the changes, and the traffic programme/changes shall be enclosed.

#### **1.3 *Route changes in connections with public holidays***

- a) The carrier shall send proposed route changes to the Civil Aviation Administration's affected regional units no later than six weeks before the proposed change is due to become effective.
- b) The Civil Aviation Administration's affected regional units shall send their submissions to the carrier no later than three weeks after receiving the proposed changes.
- c) Changes accepted by the Civil Aviation Administration's affected regional units may be implemented without further formality.
- d) If acceptance as mentioned in c) is not forthcoming, the carrier shall send its route proposal, including submissions, to the Ministry of Transport and Communications for consideration.
- e) When a decision is taken with reference to c) or d), the carrier shall itself ensure that approved route changes are announced immediately.

#### **2 *Consultative bodies for traffic programmes***

- a) The Civil Aviation Administration shall always be consulted on proposals for traffic programmes or changes to traffic programmes. Proposals shall be sent directly both to the Civil Aviation Administration's main office and its affected regional units.
- b) In addition, affected county municipalities / municipalities shall have an opportunity to express their views within the time-limits set out in this circular. Relevant material shall in such case be sent directly to all affected county municipalities in the person of the chief communications officer.
- c) The carrier must itself take care of necessary co-ordination with Norway Post and the National Defence.



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### **3 Reporting of fares**

- a) Fares may be adjusted at the start of each new year of operation in accordance with the tender.
- b) Fares adjusted in accordance with a), any discounts or new, lower fares shall be sent to the Ministry of Transport and Communications for its information prior to implementation.

### **4 Formulation of new tenders**

- a) The Ministry of Transport and Communications is the designated recipient for initiatives from consultative bodies during the preparation of PSO for new tenders.

## **OTHER ROUTES**

### **1 Information on traffic programmes**

- a) For other domestic routes the carriers shall submit a traffic programme(s) for each summer/winter period 30 days prior to commencement. The same applies where a carrier intends to start up or close down a specific route in the programme period. Traffic programmes shall be submitted directly to the Civil Aviation Administration's main office and its affected regional units with a copy going to the Ministry of Transport and Communications.
- b) Traffic programmes and adjustments to the same during the programme period shall be co-ordinated with the Civil Aviation Administration's affected regional units.
- c) Carriers will receive confirmation from the Civil Aviation Administration's main office that documents in accordance with a) have been received. Unless the carriers are advised to the contrary, their traffic programmes may be put into operation without further formality.

### **2 Reporting of prices**

- a) The Competition Authority is responsible for enforcing Council Regulation (EEC) 2409/92 of 23 July 1992 on Fares and Rates for Air Services. Prices shall be reported in accordance with the Competition Authority's guidelines.

### **Invitation to Tender**

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## **XII LIFTING OF PUBLIC SERVICE OBLIGATIONS IMPOSED IN 2002 ON SCHEDULED AIR SERVICES IN NORWAY**

### **1.**

All public service obligations concerning the routes Lakselv – Tromsø v.v., Andenes – Bodø v.v. og Andenes – Tromsø v.v., published by Norway in Official Journal of the European Communities No C 112 of 9 May 2002 are with effect from 1. January 2004 replaced by the public service obligations published 10 April 2003, cf. chapter II of this document.

### **2.**

For further information, please contact

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