

## Questions and answers: Invitation to Tender Procedure – scheduled regional air services (helicopter) Værøy-Bodø

1. EASA REGULATION / Reference «Part OPS - ORO.FC. 200 & 202» state that passenger transport by aircraft (helicopter) with a capacity of up to 9 passengers can be performed as a single pilot operation:

**Question:** Can the principal approve such a concept for the current route area?

**Answer:** It is correct that the regulations today, subject to certain conditions, allow for helicopter operations with up to nine passengers to be carried out with one pilot. The Civil Aviation Authority however has initiated a process for a future regulation that will establish new safety requirements for helicopter operations such as the route Værøy - Bodø. The new rules, which are likely to come into force by 1 August 2019, will require two pilots for scheduled flights with passengers regardless of the number of passengers. The principal therefore requests that the tenderers assume that all flights with passengers shall be conducted with two pilots in the coming contract period from 1 August 2019.

2. The tender documents '5.5.1.2 / Equipment' require among other things: that the helicopter should be equipped with ACAS II. Due to conditions like that this route area is well covered by Bodø Radar and that the current air space has relatively low traffic, the following question are asked:

**Question:** Will a helicopter equipped with ACAS 1 be approved for this operation?

**Answer:** Part 5.5.1.2 states that the helicopter must be equipped, in addition to the crew being trained and the company organized, to use among other things use ACAS II. This means that ACAS I will not satisfy the requirement for equipment in section 5.5.1.2.

3. See Annex 6, Regulation No. 833, including §4 - Definitions:
  - No. 3 "Competitive procedure with negotiations " vs.
  - No 8 : Competitive procedure without negotiations: "A procedure where negotiations are not allowed "

**Question:** Should we understand the request / tender documents that this tender will be decided in accordance with section 2.2 " Competitive procedure with negotiations "?

**Answer:** The procurement shall be effected as "Competitive procedure with negotiations" as defined in section 4 no. 3 of the Air Transport Regulations and not as a "Competitive procedure without negotiations" defined in Section 4 no. 8, cf. Annex 6. This has, as mentioned in Section 2.2, implications for the procurement procedure mentioned in several sections in the Air Transport Regulations, for instance §§ 20, 23 and 24. The forwarding of information, documentation and negotiation is also discussed in section 6.3 in the rules for the tender procedure. The choice of the procurement procedure "Competitive procedure with negotiations" gives the principal the right to negotiate with the tenderers after the deadline for the submission of tenders, but it is up to the principal to assess the need for subsequent negotiations before awarding the contract.

4. **Question:** When will allotment take place?

**Answer:** The deadline for submission of tenders is 25 April 2018 at 12:00. The decision process about which operator will be awarded the contract depends on several factors, and the time frame is

unknown at this point. We will nevertheless make a decision as soon as possible after the deadline for submission.

**5. Question:** Will the act of transfer of undertakings be applied in this tender?

**Answer:** The Ministry has no authority to decide with binding effect if the transfer of a tender route from one operator to another is to be regarded as transfer of undertakings pursuant to the rules of the Working Environment Act, Chapter 16. These rules are of civil law, and disputes about the scope are settled by litigation for the ordinary court of law.

However, with this reservation, we believe that based on the judicial precedent of the European Court of Justice, the transfer of responsibility for operating a transport service is not considered as transfer of undertakings if the undertaking is strongly linked to, and dominated by, non-transferable assets - as the case would be with the aircraft/helicopter an operator uses.

We have not specified in the tender procedure that the rules for business transfer should apply. There are no special provisions regarding transfer of undertakings for aviation.

**6. Question:** Is an operator allowed to submit two tenders with different solutions?

**Answer:** A tenderer can submit two tenders with different solutions. However, we would like to emphasise that as a rule, the contract shall be awarded to the tender that has the lowest claim compensation for the whole contract period, cf. point 7.2 of the tender procedure (when all other requirements are satisfied). If two tenders have identical claims for compensation, the award shall be made to the tender offering the highest number of seats for the whole contract period.

**7.** The tender procedures states, "*The tenderer must have or obtain an approval to use the Airborne Radar Approach procedures (ARA) to the lowest minima before the contract period begins.*"

**Question:** Does this requirement include airborne weather radar only or is it required to use Airborne Radar Approach as described in EASA OPS SPA.HOFO.125?

**Answer:** Equipment, procedures and training must meet the relevant requirements of Regulation (EU) 965/2012 SPA.HOFO.125 Airborne Radar Approach.

**8. Question:** Is it required to follow the timetable in the PSO on Saturdays and Sundays?

**Answer:** The timetable in the PSO are only required for scheduled air services Monday to Friday. This information is missing in the Norwegian tender procedure under the section of timetables in the public service obligations. The English tender procedure is correct, as stated below:

### **Timetables**

*Monday-Friday:*

*From Værøy:*

- *The first arrival in Bodø shall be no later than 10:00*

*To Værøy:*

- *The last departure from Bodø shall be no earlier 16:00*

**9. Question:** Are only two services required for Saturday and Sunday combined? Are two services allowed in each direction where both services are either on Sunday or Saturday?

**Answer:** A minimum of two services shall be offered in each direction Saturday and Sunday *combined*. Two services are allowed in each direction where both services are either on Sunday or Saturday. The operator has no obligation to offer services *both* Saturday and Sunday, and the operator has the flexibility to choose the routing and timetables these days. For example, one can imagine the following flights:

1. two round trips Sunday
2. two round trips Saturday
3. one round trip Saturday and one round trip Sunday

These are examples, but the same rules apply regardless of how the operator chooses to fly.

**10. Question:** Can the Ministry of Transport and Communications explain what is meant by section 2.4.1 of the Tender procedure: *The Operator shall take into account public demand for air travel?*

- Will the public's requirements and expectations be able to control seat capacity on the helicopter type offered?
- Will the public's requirements and expectations be able to control the luggage capacity offered?
- Will the public's requirements and expectations be able to control the route's opening hours, i.e. time of departure and density between departures?
- Will the public's requirements and expectations impose the operator to provide extra discounts in addition to requirements on social discounts in the Tender procedure?
- Who will bear the costs of the imposed changes?

**Answer:** The requirements in section 2.1 annex 1 of the tender procedure are the main applicable criteria. At the same time point 2.4.1, to which you refer, requires that the operator shall take into account the passenger demand for travel. This means that the operator shall to the largest possible extent, take into account the passenger demand for travel within the requirements of annex 1, and adjust the service offered to the demand as much as possible. For example, if the passengers prefer to travel on Sunday compared to Saturday, the operator shall if possible, offer service on Sunday. If the operator finds it to be profitable, he can offer more service than the requirements in annex 1, but the operator is *not required* to offer additional seat capacity, luggage capacity, frequencies, departures, etc. If the operator would like to offer more service than the minimum requirements in the tender procedure, it will be at one's own expense, but the operator will also keep the earnings for himself. Requirements such as maximum fare and social discounts will also apply to the additional service offered. If the operator considers offering additional service and wants compensation from the Ministry of Transport and Communications for the cost of this production, he should include it in the tender budget.

**11. Question:** Reference is made to section 5.5.1.3 part ii. in the tender document regarding conditions of ticket prices. Is it sufficient documentation to submit a tender with references to any applicable airline rules in addition to the rules of the competition Værøy-Bodø, or is it required to prepare our own company-specific conditions.

**Answer:** With regard to fares the requirements are stated in section 6 of the contract, cf. Annex 2. The requirements for fares are also stated in section 2.2, 2.3 and 3.1 in Annex 1. The tenderer shall describe how the requirements will be met and commit to following them. Information about how fares are sold etc. is useful information for the principal. In addition to this, the general requirements for civil aviation in this area apply for this route as well, and The Ministry of Transport and Communications assumes that these will be followed. To the extent that the tenderer wishes to create additional conditions, which do not violate the aforementioned requirements, the tenderer is free to do so and can describe these in the tender.