



NORWEGIAN MINISTRY
OF TRANSPORT AND COMMUNICATIONS

Invitation to tender

Scheduled Air Services (Helicopter) Værøy – Bodø v.v.

1 August 2011 – 31 July 2014





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I CONDITIONS OF TENDER

1. The assignment

1.1 Principal

The Ministry of Transport and Communications invites tenders to an open tender procedure for regional scheduled air services between Værøy and Bodø during the period 1 August 2011 to 31 July 2014.

1.2 Background and objective

With effect from 1 August 2011, the Norwegian Ministry of Transport and Communications has decided to change the previously announced public service obligations on regional scheduled air services between Værøy and Bodø imposed pursuant to Article 4 no. 1 a) of Council Regulation (EEC) no. 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes¹. The new obligations were announced on 26 August 2010 in the Official Journal of the European Union no. C 230 and in the EEA Supplement No. 45, and constitutes Part II of this document.

Insofar as by two months from the deadline of submission of tender, no air carrier has documented for the Ministry of Transport and Communications that it will start scheduled air services from 1 August 2011 in accordance with the changed public service obligations for the route area as specified in Part II, the Ministry of Transport and Communications will award exclusive rights to operate the route area in question. Such award must be made in accordance with the provisions of Article 4 no. 1 d) – h) in Council Regulation (EEC) no. 2408/92. Reference is made to Section 7.1 second paragraph.

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

1.3 The routes involved and the contract period

The invitation to tender applies to scheduled air services from 1 August 2011 until 31 July 2014, and involves the route area Værøy-Bodø v.v.

1.4 Contractual provisions

The final agreements which the Ministry of Transport and Communications enters into with the air carriers shall be regulated by the contractual terms and conditions reproduced as Part III of these conditions. The air carriers are expected to have familiarised themselves with the complete contract conditions before submitting a tender, and not just the part of the contract conditions that are laid out in this condition of tender.

¹ Regulation 2408/92 of 23 July 1992 has been replaced by Regulation 1008/2008 of 24 September 2008. Regulation 1008/2008 has not been included the EAA-agreement. Legal authority for this tender is therefore Council Regulation 2408/92 that is in force as Norwegian regulation.

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1.5. Publication

The invitation to tender is published in the *Official Journal of the European Union* and the *EEA supplement*.

1.6 Address of the Ministry of Transport and Communications and contactpersons

The address of the Ministry of Transport and Communications is:

The Ministry of Transport and Communications
P.O. Box 8010 Dep
NO-0030 OSLO
Norway

The office address is: Akersgt. 59, Oslo, Norway

The contact persons in the Ministry of Transport and Communications are:

Senior Adviser Thomas Tørmo, tel. +47 22 24 83 12, e-mail: thomas.tormo@sd.dep.no
Adviser Andreas Neumann, tel. +47 22 24 83 21, e-mail: andreas.neumann@sd.dep.no
Adviser Jens Veberg, tel. +47 22 24 82 64, e-mail: jens.veberg@sd.dep.no

1.7 Registration of tenderers

Those who are considering submitting a tender must register with the Ministry of Transport and Communications in order to receive possible supplementary information from the Ministry, and in order to receive the file containing the tender budget, cf. Annex 2. Supplementary information will not be published on the Internet or in any other way, unless explicitly said otherwise in the provisions below.

1.8 Supplementary information

If a carrier finds that the tender documents do not provide sufficient guidance, he ought to request supplementary information from the Ministry of Transport and Communication on the address referred in Section 1.6.

If a request for supplementary information in connection with the tender documents is submitted in sufficient time before the deadline for the submission tenders (Section 5.2), the Ministry of Transport and Communications' shall send a reply to all carriers which have registered with the Ministry of Transport and Communications, c.a. 1.7, and at the latest six days before the deadline for the submission of tenders.

Written requests for supplementary information shall be marked "Supplementary information tender".

1.9 Corrections, supplements or changes to the conditions of tender

Up until the latest date for the submission of tenders, the Ministry of Transport and Communications is entitled to make changes to the public service obligations as a result of amended conditions for approval of airports or decisions to close airports.

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In other respects, the Ministry of Transport and Communications is only entitled to correct, supplement or make changes of a non-material nature to the conditions of tender during the period in question.

Corrections, supplements or changes shall be immediately sent to all tenderers that have registered with the Ministry, c.a. Section 1.7. The information will also be made available on the Ministry's website

<http://www.regjeringen.no/en/dep/sd/>.

If corrections, supplements or changes are made at such a late stage that it is difficult for carriers to take them into account in their tenders, the deadline shall be extended proportionately. All the carriers having registered with the Ministry, c.a. Section 1.7, shall be given notice of the extension.

2. General rules for implementation of the tender procedure

2.1 Rules for the tender procedure

The tender procedure shall be in accordance with Council Regulation (EEC) no. 2408/92 on access for Community air carriers to intra-Community air routes (Annex 5), and the supplementary provisions set out in Regulation no. 256 of 15 April 1994 on tender procedures in connection with Public Service Obligations (Annex 4). The Ministry wants to emphasize that the latter regulation in some relations contains more elaborate provisions on the tender procedure than this conditions of tender, and that these also applies to the competition.

2.2 Tender procedure

2.2.1

The procurement will be effected by means of an open tender procedure. Exceptions to this can only be made if the conditions in Section 2.2.2 or 2.2.3 are present.

2.2.2

Open procedures with subsequent negotiations may be used if only one tender is received at the closing date for submission of tender, or if only one tender is not rejected. Such negotiations shall be in accordance with the public service obligations imposed (Part II). In addition, the parties are not entitled to make substantial amendments to the original terms of contract (Part III) during such negotiations.

2.2.3

Procurement by negotiated procedure without prior publication may be used if, at the final date for submission of tender, no tenders are received. In that case, no substantial amendments must be made in the original public service obligations (Part II) or in the original terms of contract (Part III).

2.3 Duty to inform

The Ministry of Transport and Communications shall send written notification, stating the grounds in brief, if:

- a tender is rejected, or

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- all tenders are refused or the tender procedure is cancelled.

The tenderer may request in writing more detailed grounds for

- why its tender was rejected, or
- why its tender was not chosen

The Ministry of Transport and Communications is obliged to reply to such requests within 15 days at the latest following receipt of the request.

2.4 Freedom of information

Act no. 16 of 19 May 2006 relating to public access to documents in the public administration (Freedom of Information Act) applies to public access to tenders and the registers of tenders. Access may be restricted pursuant to Section 23 of the Freedom of Information Act.

2.5 Duty of secrecy

The Ministry of Transport and Communications and its employees are obliged to prevent others from gaining access to, or knowledge of, technical devices and methods, or operating and commercial conditions, which it would be important to keep confidential for reasons of competition, out of consideration for the party the information involves.

For the Ministry of Transport and Communications to attend to the duty of secrecy, such information must be identified in the submitted tender.

2.6 Disqualification

The rules relating to disqualification in the Public Administration Act Section 6 to 10 apply to the tender procedure.

3. Requirements to tenderers and pertaining documentation requirements

3.1 Introduction

Tenders will be presented to the Civil Aviation Authority for review of technical and operational aspects before a tenderer is chosen. In that connection, the tenderers must be able to document that they have the required technical and operational qualifications for operating the routes in question.

Sections 3.2 to 3.9 provide an overview of the individual requirements for tenderers and the pertaining documentation requirements.

3.2 General requirements

The tenderers are obliged to carry out their operations in accordance with the Aviation Act, appurtenant regulations, other applicable rules, and possible orders from public authorities in accordance with such provisions.

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3.3 Requirement for operations in accordance with JAR-OPS 3

Helicopter operations shall be made in accordance with Norwegian Regulation of 2 March 2005 no. 546 on implementation of operational requirement in JAR-OPS 3 Commercial Air Transportation – Helicopter. The Regulation may be downloaded from: <http://www.lovdata.no/for/sf/sd/sd-20050602-0546.html>

The Norwegian Civil Aviation Authority may be contacted to obtain the complete JAR-OPS 3.

See the additional documentation requirements in Section 3.9.

3.4 Operating licence

All tenderers must have a valid licence in accordance with Council Regulation (EEC) no. 2407/92 of 23 July 1992 on the licensing of air carriers, or Regulation 1008/2008 of 24 September.

See the additional documentation requirements in Section 3.9.

3.5 Tax certificate

It is a requirement that tenderers are not in default of their tax obligations.

A tax certificate must be submitted to the Ministry of Transport and Communications by the deadline for the submission of tenders. The certificate must be no more than six months old.

3.6 Valued-added tax certificate

It is a requirement that tenderers are not in default of their value-added tax obligations.

A value-added tax certificate must be submitted to the Ministry of Transport and Communications by the deadline for the submission of tenders. The certificate must be no more than six months old.

3.7 Requirements relating to health, safety and the environment

Tenderers must satisfy all statutory and regulatory requirements with respect to health, safety and the environment.

Tenderers must submit a self-declaration confirming that tenderer meet, or, on award of the contract, will meet, statutory requirements as mentioned in the preceding paragraph.

3.8 Start-up date

All tenderers shall document that they will be operational by the start-up date of 1 August 2011. If a tenderer is not able to document this at the deadline for submission of tender, the tender must give an account of how this requirement will be met not later than 1 August 2011.

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See the additional documentation requirements in Section 3.9.

3.9 Documentation requirements

To make it possible for the Civil Aviation Authority to control that the tenderers satisfy the requirements in Section 3.2 to 3.8, the tenderers are requested to prepare additional documentation for the Civil Aviation Authority in accordance with the list below. Even though it is not a requirement in accordance with Section 5.11 that the documentation shall be enclosed with the tender, it will, nevertheless, be an advantage if it is enclosed.

Organisation:

- a) A valid Air Operator's Certificate (AOC), with pertaining specifications.
- b) Organisational chart containing functions and names.
- c) Number of man-years broken down into:
 - i) Administrative personnel
 - ii) Flight operations personnel
 - iii) Maintenance personnel
- d) Financial aspects
 - i) An account of the tenderer's financial situation. Under here the company shall present complete annual accounts for the last two years and annual reports from the board.
 - ii) Information proving that the company satisfies the Licence Regulation's financial requirements, including documentation in the form of audited financial statements for the last financial year, and the basis and assumptions of the income statement, balance sheet and budget.
 - iii) Traffic forecasts, break-even assessments and other comments and budgetary assumptions.
- e) A progress schedule, including a time schedule for all relevant tasks that must be attended to by the start-up date.

Aircraft:

- f) A brief description of the relevant type.
- g) Basic Performance Data, including performance data for those airports covered by the tender.
- h) The number of aircraft of this type at the carrier's disposal, or a description of plans for the leasing of such aircraft.

Operational aspects:

- i) A description of how it is planned to deal with operational aspects at each individual airport (base) to be served by the tender route.
- j) A description of how substitute aircraft can be put into operation at short notice.
- k) Availability of necessary services required for weight and balance calculations, re-fuelling, loading and unloading.
- l) Availability of qualified personnel (crew), or plans for appointing and qualifying such personnel.
- m) Airport qualifications; how will the required competence/qualifications be achieved at airports in categories B and C (if relevant).
- n) Documentation of aircraft requirements for the operation of the tender route, where this is specified in the tender or published in the AIP for the airport in question.

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- o) Documented safety reviews of each route tendered for in accordance with BSL JAR-OPS 3 (amended edition 3) 3.037 and applicable guidelines in ICAO 9859 (Safety Management Manual) chapter 9.8, particularly item 9.8.3 b, as referenced in item 9.6.11.
- p) A description of the training programme demonstrating how the Operator will ensure compliance with route and aerodrome competence qualification requirements in BSL JAR-OPS 3 (amended edition 3) 3.975, as specified in AMC OPS 3.975 in Section 2 in BSL JAR-OPS 3.

Technical aspects:

- q) A description of how the performance of technical maintenance is planned in connection with the route(s) to be operated in connection with the tender.
- r) Overnight-parking of aircraft at the terminal airport(s) in question with respect to security, maintenance work and protection against critical weather conditions.
- s) Access to necessary services for the de-icing, towing and servicing of aircraft.
- t) A copy of a contract or equivalent with a JAR-145 maintenance facility, or copy of own JAR-145 maintenance authorisation as appropriate.

Please note that, after the opening of tenders, the Ministry of Transport and Communications may require carriers to submit information from the licensing authorities at short notice in order to verify the information provided in the tenders or, if such information is not available, the Ministry may directly approach the licensing authority to obtain such verification.

3.10 Extended deadline for documentation requirements

If one or more tenderers have failed to submit a tax certificate, value-added tax certificate, or HSE declaration by the deadline for the submission of tenders, the Ministry of Transport and Communications may grant a short extension for submission of this documents. The same applies if a tenderer has submitted a tax certificate or value-added tax certificate older than six months reckoned from the deadline for the submission of tenders. The tenderer is not entitled to require that the Ministry of Transport and Communications exercise this right.

The extended deadline applies to all participants in the tender procedure, and the Ministry of Transport and Communications shall not commence its assessment of the received tenders until the extended deadline has expired.

4. Matters which tenderers are obliged to familiarise themselves with

4.1 Traffic information

An overview of the historical traffic figures for several of the routes covered by the tender procedure is enclosed as Annex 3. Tenderers are obliged to familiarise themselves with this information and cannot later claim that they did not know about or understand the information. Please note that the traffic figures are only intended as a guide, and that the tenderers are themselves fully responsible for the traffic figures their tenders are based on.

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4.2 Technical and operational requirements at the airports

Tenderers are obliged to familiarise themselves with technical and operational requirements applicable at the relevant airports. More detailed information in this connection can be obtained from the Civil Aviation Authority, P.O. Box 243, N-8001 Bodø, or phone +47 75 58 50 00.

4.3 Restrictions on the use of airspace

Tenderers are required to thoroughly familiarise themselves with the specific conditions prevailing at the airports involved, and tenderers must comply with the restrictions relating to military use of airspace that apply at the time of submission of their tenders, cf. Regulation no. 266 of 13 March 2007 relating to the flexible use of airspace:

<http://www.lovdata.no/cgi-wift/ldles?doc=/sf/sf/sf-20070313-0266.html>

The extent of the training areas and activation dates are published in AIP Norway. More detailed information about the agreement entered into between the Royal Norwegian Air force and Avinor AS in connection with the above-mentioned regulation is available on request from Avinor AS's head office, P.O. Box 150, N-2061 Gardermoen.

4.4 Declaration concerning access for persons with reduced mobility

Operations of scheduled air services must be carried out in accordance with the Norwegian regulation of 28 January 2008. No. 69 *concerning the rights of disabled persons and persons with reduced mobility when travelling by air*:

<http://www.lovdata.no/cgi-wift/ldles?doc=/sf/sf/sf-20080128-0069.html>

5. Requirements for tenders

5.1 Form and delivery of tenders

1. The tender must be in writing and contain a filled-in tender form that is dated, signed and marked with the airline's name. A non-filled-in version of the tender form is enclosed as Annex 1.
2. The tender must be sent in a sealed delivery.
3. The tender must be marked: "Tender PSO-routes".
4. The tender must be in a Scandinavian language or in English.
5. The tender can be delivered directly to the delivery address or be sent by post, cf. Section 1.6.
6. The tender must be sent in triplicate.
7. The tender may not be submitted by electronic means.

5.2 Deadline for the submission of tenders

The deadline for the submission of tenders is 27 September 2010 at 12:00 hrs. (local time).

The tender must be received by the Ministry of Transport and Communications at the office address stated in Section 1.6., by the deadline for the submission of tenders.

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Tenders which arrive late will be rejected. Reference is nevertheless made to Section 10 second paragraph of Regulation no. 256 of 15 April 1994 on tender procedures in connection with Public Service Obligations (Annex 4).

5.3 Services for which a tender can be submitted

Tenderers can submit tenders for the route area listed in point 1.3, see also the public service obligations (Part II) with detailed requirements for the number of flights, seating capacity, routing, timetables, fares, continuity etc. that apply to the individual tender areas.

The services which are offered shall at least be specified as follows:

- a) Traffic programme and route structure
 - i) number of departures each day, time tables and possible stops en route
 - ii) seating capacity offered on each route, c.f. the obligations (Part II)
 - iii) planned connecting flights where this is required

Cf. also Section 5.8 as far as requirements to the traffic program is concerned.

- b) Fares
 - structure, level, terms and discounts
- c) Aircraft type
 - size (seating capacity)
 - possible information about pressurised cabin if this is required
 - possible limitations to seating or cargo capacity due to operational minima
- d) Reservation, sales, handling:
 - use of CRS (Computer Reservation System)
 - travel agency/agent, commissions, handling partners
- e) The way special requirements as to safety/aircraft/environment in accordance with the total tender documentation will be met.

5.4 Tender form, tender budget, requirement for financial compensation and fares

Tenders shall be calculated in accordance with the form for tender budget presented in Annex 2 and must state the compensation in Norwegian kroner required for operation of the route in question from start-up until expiry of the contract period. All budget posts shall be specified for each operating year and for the entire tender period. Realistic budgeting is required.

The required amount of compensation for each route area is thereafter filled in to the tender form which is Annex 1 to this invitation, and shall be placed in the front of the tender.

The tender shall be based on the price level for the first year of operation (1 August 2011 – 31 July 2012). The exact compensation for the operating years that begin 1 August

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2012 and 1 August 2013 shall be based on an adjustment of the operating revenues and operating costs in the tender budget. These adjustments shall be within the limits defined by Statistics Norway's consumer price index for the 12-month period that ends on 15 June the same year.

Tenderers must base their tenders on their retaining all the revenues from the activity covered by the tender and on their being fully responsible for the costs. Clarifications and exceptions from this are stated in the contractual terms and conditions (Part III) section 8, 10, 11 and 12.

Tenders shall specify the fares and pertaining terms and conditions. Reference is made to the provisions on fares in the contractual terms and conditions (Part III) section 7 and in the public service obligations (Part II) Appendix B (Provisions on social discounts).

5.5 Requirement for instrument approach procedure

Tenderers shall have installed necessary equipment to utilize the published instrument procedure, RNAV (GNSS), at Værøy airport, ref. AIP SUP published 8 May 2009.

Tenderers shall likewise possess or obtain approval from the Civil Aviation Authority to utilize the procedure before the start of the tender period. This to ensure air services in the dark or bad visibility, also during the polar night.

https://www.ippc.no/ippc/display_pdf_or_url_servlet?origfilename=EN_Sup_2009_005_en.pdf

5.6 "Zero tender"

If an air carrier submits a tender in which the compensation requirement is stipulated as zero, this shall be understood to mean that the carrier wishes an exclusive right to operate the scheduled air service, but requires no compensation from the state.

5.7 Deviation from the tender documents

Any deliberate deviation from the tender documents must be clearly stated. Deviations shall be specified in the tender, where appropriate with reference to the place in the tender where the deviation is described. This description must be precise and unambiguous and enable the Ministry of Transport and Communications to assess the deviation without contacting the tenderer. Tenderers may not make reservations which imply that the items in the tender budget will be used to balance the accounts, since this would be in conflict with the assumptions on which the requirements in Section 5.4 and the contractual terms and conditions (Part III) Section 8 are based.

5.8 Traffic programme

Within the framework that follows from the public service obligations (Part II), the tenderer shall itself prepare the required traffic programme for the individual route areas, cf. the contractual terms and conditions section (Part III) section 6. This traffic programme shall be enclosed with the tenders submitted and shall contain a specification of the number of seats offered on each of the routes in question. As stated in Section 7.2 this may be used as an assessment criterion when awarding the contract.

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5.9 Wet-lease of aircrafts

The tender shall not be based on leasing of aircraft with crew (Wet-lease).

5.10 Airline Codes

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

5.11 Complete tender

A complete tender shall at least consist of:

1. Completed tender form, as specified in Section 5.4 second paragraph,
2. Completed tender budget for each tender area, as specified in Section 5.4 first paragraph,
3. Traffic programme, as specified in Section 5.3 third paragraph letter a) and Section 5.8,
4. Other information, as specified in Section 5.3
5. Documentation requirements for qualifications:
 - a) copy of licence, AOC etc., as specified in Section 3.4 and 3.9
 - b) tax certificate, as specified in Section 3.5
 - c) value-added tax certificate, as specified in Section 3.6
 - d) HSE declaration, as specified in Section 3.7

5.12 Submission of tenders

Tenders may either be delivered in person to the Ministry of Transport and Communications office address stated in Section 1.6 or be sent by registered post. A receipt for the handing in of a registered letter is deemed to constitute proof that a tender has been sent and of its date of dispatch.

All tenders must be handed in or sent in triplicate.

5.13 Changes to and withdrawal of tenders

A tender can be withdrawn or changed prior to the deadline for the submission of tenders. Such withdrawal must be in writing. A change to a tender is deemed to constitute a new tender, which must be prepared in accordance with the requirements in this Section 5.

5.14 Binding period

Tenderers are bound by their tenders until the Ministry of Transport and Communications has concluded the tender procedure pursuant to the rules in Section 7.1, or until such time that they receive notification of a recommendation of the award of contract to another tenderer, as mentioned in Section 7.3.

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6. The Ministry of Transport and Communications' processing of tenders

6.1 Registration of tenders

The date of receipt shall be recorded on tenders as they are received. On request, the Ministry of Transport and Communications shall confirm in writing when a tender was received.

6.2 Opening of tenders

The opening of tenders shall take place on 29 September 2010 at 12:00 hrs. (local time) at the Ministry of Transport and Communications' premises in Akersgt. 59 in Oslo. The opening will be carried out by two representatives of the Ministry of Transport and Communications. Tenderers are entitled to attend with two representatives each. A copy of the minutes will be sent to all tenderers after the opening.

6.3 Rejection of tenders received too late

The Ministry of Transport and Communications is obliged to reject tenders which are not received within the deadline for submission of tenders as specified in Section 5.2. Cf. nevertheless the provision in section 10 second paragraph of Regulation no. 256 of 15 April 1994 on tender procedures in connection with Public Service Obligations (Annex 4).

6.4 Rejection related to the tenderer

The Ministry of Transport and Communications is obliged to reject tenderers that

1. do not have a valid licence as mentioned in Section 3.4,
2. have not submitted a tax certificate as mentioned in Section 3.5,
3. have not submitted a value-added tax certificate as mentioned in Section 3.6, or
4. have not submitted a self-declaration on health, safety and the environment as mentioned in section 3.7.

The Ministry of Transport and Communications may reject tenderers which are liable to rejection under the rejection alternatives in Regulation no. 256 of 15 April 1994 section 14 no. 2 (Annex 4).

6.5 Rejection related to the tender

The Ministry of Transport and Communications is obliged to reject a tender if it

1. has not been submitted in writing, as specified in Section 5.1 no. 1,
2. is not submitted in accordance with Section 5.1 no. 2,
3. contains combinations of route areas or deviations from the tender documents that are not permitted, or
4. contains reservations or errors, ambiguities, deficiencies or similar that may result in doubt as to how the tender shall be assessed in relation to the other tenders.

The Ministry of Transport and Communications may reject a tender if it

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1. does not contain all the information and documents requested,
2. does not state the compensation required, as specified in Section 5.4,
3. is not possible for the tenderer to be operational, as specified in Section 3.8, or
4. appears to be abnormally low in relation to the services offered, cf. however section 13 of Regulation no. 256 of 15 April 1994 (Annex 4).
5. does not fulfil the requirements of the tender mentioned in Section 5.9 or 5.10.

6.6 Clarification

It is not permitted to change tenders after the deadline for submission of tender or attempt to change tenders through negotiations. The following clarifications of tenders are permitted:

1. clarification of ambiguities, insofar as the ambiguity is not such that the tender should have been rejected.
2. if it is necessary for technical or functional reasons, minor adjustments may be made to solutions proposed by the tenderer

6.7 Corrections

If the Ministry of Transport and Communications becomes aware of errors in a tender, these shall be corrected if there is no doubt concerning how the error is to be corrected.

6.8 Return of received tenders

Received tenders will not be returned.

7. Deciding the outcome of the tender procedure

7.1 Cancellation of the tender procedure and total refusal

The Ministry of Transport and Communications reserves the right to cancel the tender procedure if there are reasonable grounds for doing so, for example if the political authorities fail to grant approval.

The Ministry of Transport and Communications may cancel the tender procedure if an EEA air carrier that can be given permission to exercise traffic rights in one or more of the announced areas documents that it will start flights without having been granted an exclusive right as described in Article 4 no. 1 d) of Council Regulation (EEC) no. 2408/92 before a final contract has been signed with one of the tenderers. Reference is made to Section 1.2 second paragraph.

The deadline for announcing commercial service, is the day before the decision about to whom the contract is awarded is publicised, cf. Section 7.3. This will take place no earlier than two months after the deadline for submission of tenders stated in Section 5.2.

The Ministry of Transport and Communications may refuse all tenders if the result of the tender procedure gives reasonable grounds for doing so.

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If a tender procedure is cancelled, or if all tenders are refused, the Ministry of Transport and Communications shall notify those who have submitted tenders of the cancellation, in accordance with Section 2.3.

7.2 Award criteria

7.2.1

The contract shall as the principle rule, be awarded to the tender that has the lowest claim for compensation for the whole contract period from 1 August 2011 until 31 July 2014.

7.2.2

If tenders are submitted that do not require compensation but only exclusive rights in accordance with Section 5.6, award shall, irrespective of Section 7.2.1, be made to such tenders.

7.2.3

In case award cannot be made because there are tenders requiring identical amounts of compensation, the award shall be made to the tender offering the highest number of seats for the whole contract period.

7.3 Recommendation concerning award of the contract

Notification of the Ministry of Transport and Communications' decision regarding who is to be awarded the contracts, shall be given in writing to all participants concurrently and in good time before each contract is entered into. The contract is deemed to have been entered into when both parties have signed it. The notification shall state the grounds for the award.

The decision about to whom the contract is awarded, will be publicised on the Ministry of Transport and Communications' web site.

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II PUBLIC SERVICE OBLIGATIONS

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 routes², Norway has decided to impose public service obligations as of 1 August 2011 in respect of scheduled air services on the following route:

1. Værøy – Bodø v.v.

2. The Public Service Obligations include the following specifications for the route area Værøy – Bodø v.v.

2.1. Minimum frequencies, seating capacity, routing and timetables

General requirements

- The requirements apply throughout the year.
- The seating capacity offered shall be adjusted in accordance with the rules laid down by the Ministry of Transport and Communications in Appendix A to this publication.
- Account shall be taken of the public demand for air travel.

Frequencies:

- Minimum two daily return services Monday – Friday, one on Saturday and one on Sunday.

Seating Capacity

- In both directions at least 180 seats shall be offered weekly.

Routing:

- The required services must be non-stop.

Timetables:

The following apply to the required flights on Monday – Friday (local times):

- At least 5 hours and 30 minutes between first arrival in Bodø and last departure from Bodø.

2.2 Aircraft Category

Helicopter registered for minimum 15 passengers shall be used for the required flights.

2.3 Technical and operative conditions

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

Luftfartstilsynet (Civil Aviation Authority),

² Regulation 2408/92 of 23 July 1992 has been replaced by Regulation 1008/2008 of 24 September 2008. Regulation 1008/2008 has not been included the EAA-agreement. Legal authority for this tender is therefore Council Regulation 2408/92 that is in force as Norwegian regulation

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P. O. Box 243, N- 8001 BODØ, tel. + 47 75 58 50 00

2.4 Fares

The maximum basic fully flexible one-way fare (Maximum fare) in the operating year beginning 1 August 2011 must not exceed the following amounts in NOK.

Værøy – Bodø	827,-
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For each subsequent operating year the maximum fare shall be adjusted on 1 August within the limit of the consumer price index for the 12-month period ending 15 June the same year, as made public by Statistics Norway (<http://www.ssb.no>).

The carrier shall offer tickets through at least one sales channel belonging to the carrier. The carrier is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the carrier.

Maximum fare applies also to tickets offered by other companies controlled by the carrier. The carrier is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes and fees to the authorities, and all other extra charges (service-fees etc.) the carrier adds on when issuing the tickets.

The carrier shall be party to the domestic interline agreements in force at any time, and shall offer all discounts available under such agreements.

The carrier shall offer tickets through a Computer Reservation System (CRS).

3. Additional conditions following a tender procedure

Following a tender procedure, which limits access to the routes to one carrier, these conditions apply in addition:

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.
- Social discounts shall be granted in accordance with the guidelines published in Appendix B to this notification.

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.

4. Replacement and lifting of previous public service obligations

These public service obligations replace those previously published in *the Official Journal of the European Union* No. C 138 and *the EEA supplement* No. 31/2008 of 5 June 2008 regarding air services on the route Værøy – Bodø v.v.

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5. Information

Further information can be obtained from:

The Ministry of Transport and Communications
PO Box 8010 Dep
N-0030 OSLO

Telephone + 47 22 24 83 53, facsimile + 47 22 24 56 09

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Appendix A – The production adjustment clause

1. Purpose of the production adjustment clause

The purpose of the production adjustment clause is to ensure that supplied capacity/seats offered by the operator are adjusted to changes in market demand. Whenever the number of passengers increases significantly and exceeds the following specified limits for the percentage of seats occupied at any time (the passenger load factor), the operator *shall* increase available seats offered. The operator *may* accordingly decrease available seats offered when the number of passengers decreases significantly. See specification below in 3.

2. Periods for measuring passenger load factors

The periods during which the passenger load factor shall be monitored and assessed range from 1 January to 30 June inclusive and 1 August to 30 November inclusive.

3. Conditions for changing production/available seats offered

3.1. Conditions for increasing production

3.1.1. An increase in production/available seats offered *shall* take place when the average passenger load factor on each single route encompassed by public service obligations is higher than 70 per cent. When the average passenger load factor on these routes exceeds 70 per cent in any of the periods mentioned in 2, the operator shall increase production/available seats offered by at least 10 per cent on these routes, at latest from the start of the following IATA traffic season. Production/available seats offered shall be increased at least so that the average passenger load factor does not exceed 70 per cent.

3.1.2. When increasing production/available seats offered according to the above, the new production may take place by using aircraft with lower seating capacity than specified in the original tender, if preferred by the operator.

3.2. Conditions for decreasing production

3.2.1. A decrease in production/available seats offered *may* take place when the average passenger load factor on each single route encompassed by public service obligations is lower than 35 per cent. When the average passenger load factor on these routes is lower than 35 per cent in any of the periods mentioned in 2, the operator *may* decrease production/available seats offered by no more than 25 per cent on these routes from the first day after the end of the above mentioned periods.

3.2.2. On routes with more than two daily frequencies offered in each direction, reduction in production according to 3.2.1 shall take place by reducing frequencies offered. The only exception from this is when the operator uses aircraft with larger seating capacity than the minimum specified in the

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imposition of public service obligations. The operator may then use smaller aircraft, however, not with lower seating capacity than the minimum specified in the imposition of public service obligations.

- 3.2.3. On routes with only one or two daily frequencies offered in each direction, reduction in available seats offered can only take place by using aircraft with lower seating capacity, even if this involves reduced seating capacity than specified in the imposition of public service obligations.

4. Procedures for changes in production

- 4.1. The Norwegian Ministry of Transport and Communications has the responsibility for approving proposed time schedules submitted by the operator, including changes in production / number of provided seats. Reference is made to Circular N-3/2005 by the Norwegian Ministry of Transport and Communications, included in the tender file.
- 4.2. If production/available seats offered shall be reduced according to 3.2, a proposal for a new traffic program shall be circulated to the affected county councils, and these shall have sufficient time to make a statement before the change is put into effect. If the proposed new traffic program includes changes violating any other requirements than the number of flights and seat capacity, laid down in the public service obligations, the new traffic program must be sent to the Ministry of Transport and Communications for approval.
- 4.3. When production / number of provided seats shall be increased according to 3.1, time schedules for new production/new seats should be agreed between the operator and the county (counties) as administrative unit affected.
- 4.4. If new production / number of provided seats shall be offered according to 3.1, and the operator and the county (counties) as administrative unit affected cannot agree upon time schedules according to 4.3, the operator can seek approval according to 4.1 for a different time schedule for the new production/ provided seats from the Norwegian Ministry of Transport and Communications. This does not mean that the operator may apply for approval of a time schedule that does not include the required increase in production. There must exist substantial reasons if the Ministry shall approve proposals that diverge from those which could be agreed by the counties.

5. Unchanged financial compensation when changing production

- 5.1. The financial compensation to the operator remains unchanged when increasing production according to 3.1.
- 5.2. The financial compensation to the operator remains unchanged when decreasing production according to 3.2.

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Appendix B - Provisions on social discounts

1.

On routes where the Norwegian Ministry of Transport and Communication purchases air services in accordance with the public service obligations, the following groups of people are entitled to social discounts:

- a. Persons aged from 67 years at the day of departure,
- b. Blind persons aged from 16 years,
- c. Disabled persons aged from 16 years who receive disability pension according to the Norwegian act of 28 February 1997 No. 19 on National insurance 'Folketrygdloven' chapter 12, or similar law in any EEA country.
- d. Students aged from 16 years attending special schools for people with hearing problems.
- e. Accompany spouse/partner irrespective of age, or a person who has to accompany persons included in a) – d). The person entitled to discount decides the need for escort.
- f. Travellers aged under 16 years at the day of departure

2.

The discount for people included in section 1 shall be 50 per cent of the maximum fare.

3.

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

4.

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.

5.

Following documents may be required by the passenger:

- a. Persons mentioned in section 1 letter a) must show an official document with picture and day of birth.
- b. Persons mentioned in section 1 letter b and c) must provide proof of eligibility by means of official documentation from the Norwegian National insurance or 'Norges Blindeforbund'. Persons from other EEA countries must provide similar documentation from their home country.
- c. Persons mentioned in section 1 letter d) must present a student certificate and a letter from the social security office stating that the student is receiving pension according to the Norwegian act of National insurance. Persons from other EEA countries must provide similar documentation from their home country.

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III CONTRACT FOR SCHEDULED AIR SERVICES

Pursuant to Regulation no. 691 of 15 July 1994 relating to the implementation and enforcement of the EEA Agreement in the aviation area section 1 subsection 4, Council Regulation (EEC) 2408/92 on access for Community air carriers to intra-Community air routes Article 4, and Regulation of 15 April 1994 no. 256 on tender procedures in connection with Public Service Obligations, a contract has been entered between [] (hereafter the Operator) and the Ministry of Transport and Communications for the operation of the scheduled air services listed in Section 2 below.

1. List of the documents that comprise the contract

The contract comprises of the following documents:

1. These general contractual terms and conditions
2. The public service obligations (Part II) relating to the route(s) listed in Section 2, also including the production adjustment rules set out in Appendix A to Part II and provisions regulating social discounts in Appendix B to Part II
3. The Operator's tender
4. The approved traffic programme at any given time for the relevant route(s), in accordance with Section 6.

Possible amendments to the contract shall be made in writing.

2. The contract applies to the following route(s):

Værøy – Bodø v.v. (Helicopter route)

3. The contract period

The contract is for the period from 1 August 2011 until 31 March 2014. Cf., however, Section 8.5 second sentence and Section 9.8.

4. Exclusive right to operate

The contract gives the Operator an exclusive right to operate the route area mentioned in Section 2 during the contract period.

5. Operational requirements

5.1 As a main rule, the Operator is obliged to conduct operations in the manner and with the production volume stated in its tender throughout the contract period.

The Operator is nevertheless obliged to adjust the production volume upwards in the cases dealt with in Section 3.1 of Appendix A to the public service obligations (Part

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II), and is entitled to adjust it downwards in the cases dealt with in Section 3.2 of the same appendix.

The Ministry of Transport and Communications is also entitled to approve changes in the way operations are conducted pursuant to the rules concerning traffic programmes, cf. Sections 6.3 to 6.5. It is a precondition for such changes that the production volume does not fall below the lower limit defined by the first and second paragraphs above. It is also a precondition that the Ministry of Transport and Communications deems it to be proven that the change will result in an equally good, or better, service for travellers.

5.2 Operations shall be conducted using the aircraft type specified by the Operator in its tender. Other aircraft types may nevertheless be used insofar as this is permitted pursuant to the rules in Appendix A to the public service obligations (Part II) Sections 3.1.2, 3.2.2 or 3.2.3.

5.3 The Operator shall conduct operations in compliance with the Aviation Act, pertaining regulations, other rules governing the area and any orders issued by official authorities pursuant to such rules.

The Operator may be required to carry mailbags in return for compensation pursuant to the provisions of the Postal Services Act Section 16. The determination of compensation for such imposed services shall not affect the compensation entitlement that follows from this agreement, cf. Section 8.

5.4 The Operator is at all times responsible for performance of the traffic service that follows from the provisions in Section 5.1.

This includes an obligation on the Operator to procure, at the Operator's own expense, substitute aircraft and/or substitute personnel in the event of interruptions to operations. If transport cannot be carried out by air transport, the Operator shall organize alternate transport where this is possible and expedient for the passengers.

In the event of material non-conformance with the agreed service, the Operator shall immediately notify the Ministry of Transport and Communications, stating the reasons in writing. The Operator shall also provide information about measures that have been instigated to remedy the situation.

5.5 The Operator is obliged to operate its services in accordance with the Norwegian regulation of 28 January 2008 no. 69 *concerning the rights of disabled persons and persons with reduced mobility when travelling by air*:

<http://www.lovdato.no/cgi-wift/ldles?doc=/sf/sf/sf-20080128-0069.html>.

5.6 Flights covered by the contract cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.

5.7 There is no service obligation on Christmas Day and on Good Friday

On the following days it is allowed to operate with a reduced flight schedule such that

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the traffic on each route will be equivalent to that on Saturday or Sunday according to the approved flight schedule:

- New Year's Eve
- New Year's Day
- Maundy Thursday
- 1 May
- Ascension Day
- Whit Monday
- 17 May
- Christmas Eve
- Boxing Day

6. Traffic programme

- 6.1 The Operator is itself responsible for having a traffic programme at all times that satisfies the requirements of the public service obligations. The traffic programme shall contain the following information about each of the routes covered by the agreement:
 - a) Days with scheduled flights
 - b) The number of return journeys per day
 - c) The number of stops en route and the capacity in the tender area
- 6.2 The traffic programme that accompanied the Operator's tender shall be approved pursuant to the procedural rules in circular N-3/2005, and shall apply from the contract's entry into force on 1 August 2011.
- 6.3 The Operator is obliged to carry out one total revision of the traffic programme during the contract period. The revision shall be within the frame defined by Section 5.1 third paragraph, and follow the procedural rules in circular N-3/2005. The Operator is itself responsible for ensuring that the revised traffic programme enters into force on 1 August 2012 at the earliest and by 1 August 2013 at the latest.
- 6.4 Any changes in the traffic programme other than those mentioned in section 6.3 shall also follow the procedural rules in circular N-3/2005.
- 6.5 The Ministry of Transport and Communications is entitled to amend circular N-3/2005 in such a way that the amended provisions replaces those provisions it is referred to in the preceding provisions.

7. Fares, discounts, sales channels and terms

- 7.1 The maximum basic fully flexible one-way fare (the maximum fare) shall, during the period 1 August 2011 to 31 July 2012 not exceed the amount stipulated for the relevant route area in section 3.2 of the public service obligations (Part II).

For each subsequent year, the maximum fares shall be adjusted from 1 August in accordance with Statistics Norway's consumer price index for the 12-month period ending on 15 June of the same year.

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- 7.2 The carrier shall offer tickets through at least one sales channel belonging to the carrier. The carrier is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the carrier.

The maximum fare applies also to tickets offered by other companies controlled by the carrier. The carrier is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes, charges and fees to the authorities, and all other extra charges the carrier adds on when issuing the tickets.

- 7.3 The Operator shall be party to domestic interline agreements in force at any time, including offering all discounts embraced by such schemes.
- 7.4 The carrier shall offer tickets through a Computer Reservation system (CRS).
- 7.5 All connecting fares to and from other flights shall be offered on identical terms by all carriers. Connecting fares to or from other flights operated by the Operator are exempt from this requirement, provided that the fare is maximum 40 per cent of the fully flexible fare.
- 7.6 Bonus points from frequent flier programmes may neither be earned nor redeemed on flights covered by this agreement.
- 7.7 The Operator is obliged to grant social discounts in accordance with Appendix B to the public service obligations (Part II).
- 7.8 All terms and conditions applying to the transfer of passengers to and from other carriers' flights, including transfer times and through check-in of tickets and luggage, shall be objective and non-discriminatory.

8. Payment of compensation, risk sharing etc.

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

Værøy – Bodø v.v.

The compensation amounts to:

- | | | |
|----------------------------------|-------|-----|
| - For the first operating year: | _____ | NOK |
| - For the second operating year: | _____ | NOK |
| - For the third operating year: | _____ | NOK |

No adjustment of the compensation shall be made for the first operating year.

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For the second and third operating years, the final compensation will be recalculated on the basis of the tender budget that accompanied the tender adjusted for operating revenues and expenses. These adjustments must be within the limits defined by Statistics Norway's consumer price index for the 12-month period ending on 15 June the same year.

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

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

- 8.2 The Operator shall retain all revenues generated by the service. If the revenues are greater or the expenditure smaller than the figures on which the tender budget that accompanied the tender is based, the Operator may retain the balance. Correspondingly, the Ministry of Transport and Communications is not obliged to cover any negative balance in relation to the tender budget.
- 8.3 All public charges, including aviation charges, are payable by the Operator.
- 8.4 Notwithstanding any action for damages, the financial compensation shall be reduced in proportion to the total number of flights cancelled for reasons the Operator could have avoided if all reasonable measures had been taken, if the total number of flights cancelled for such reasons exceed 1.5 per cent of the planned number of flights according to the approved traffic programme at any given time.
- 8.5 The Ministry of Transport and Communications shall pay compensation in arrears in twelve monthly pro rata amounts per operating year. With the aim to assess eventual reductions in compensation, the final payment may be withheld pending the Operator's report pursuant to Section 9.2 and discussions according to Section 9.8, so that any reductions in the compensation can be made.

9. The Ministry of Transport and Communications' right of access to information and the Operator's duty to report

- 9.1 By 15 May 2012, 2013 and 2014, the Operator shall on its own initiative send audited accounts for the preceding financial year, for both the tender area and for the Operator's total business, to the Ministry of Transport and Communications.
- 9.2 Every second month, the Operator shall send a report to the Ministry of Transport and Communications containing information about:
1. Accounts for the route or route area
 2. Interruptions to operations during the period and an account of the cause(s)
 3. Punctuality (within 15 minutes of planned departure times)
 4. Regularity (the proportion of cancelled flights and reasons). It shall be clearly stated which flights have been cancelled for reasons mentioned in Section 8.4.
 5. Amount of traffic for each route (number of passengers and load factor)

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6. Passenger revenues, proportion of passengers in C class, the proportion of passengers in transfer to/from other air routes, freight and mail revenues
7. Actual production for the route (the number of seat and tonne kilometres, number of landings and number of flying hours)

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

The Ministry of Transport and Communications is also entitled to instruct the Operator to provide other information in the reports.

The reports must be received by the Ministry of Transport and Communications at the latest by the 15th of the second month following the last of the two months covered by the report – the first report being due by 15 November 2011.

- 9.3 The Operator shall, without unnecessary delay, 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.
- 9.4 Pursuant to Section 7.1 second paragraph the Operator shall notify the Ministry of Transport and Communications of changes to fares at the latest at the same time as they enter into force.
- 9.5 Traffic information received pursuant to Section 9.2 no. 5 can be made public, for example as background documentation in subsequent tender procedures.

Even though the traffic information which the Ministry of Transport and Communications receives from the Operator is subject to a duty of secrecy, cf. the Freedom of Information Act Section 13 and the Public Administration Act section 13 first paragraph no. 2, the duty of secrecy is not an obstacle to using the information to achieve the objective for which it was provided or obtained, cf. the Public Administration Act Section 13 b first paragraph no. 2.

- 9.6 The Ministry of Transport and Communications may at any time request the Operator to provide information relating to the contractual relationship. If it is deemed necessary, the Ministry of Transport and Communications can require the information to be confirmed by an auditor. A deadline can be stipulated for the submission of such information.
- 9.7 If the Operator's reporting is inadequate or is submitted after the deadlines stipulated according to the above provisions of Section 9, the Ministry of Transport and Communications is entitled to withhold compensation.
- 9.8 The Ministry of Transport and Communications shall, together with the Operator, be entitled to discuss the work performed under the contract during the first eight weeks following the end of the contract period. In such case, the Ministry of Transport and Communications may withhold compensation in accordance with Section 8.5 second sentence.

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10. Renegotiation

- 10.1 If, during the contract period, material or unforeseen changes occur in the assumptions on which this contract is based, each of the parties may request negotiations for revision of the contract. Such request must be made three months at the latest after the change has occurred. The right to request negotiations does not entail restrictions in the right to apply sanctions in case of breach of the contract or general rules of contract law.
- 10.2 Material changes in the public charges for which the Operator is liable pursuant to Section 8.3 always constitute grounds for renegotiation.
- 10.3 If new statutory or regulatory requirements, or orders issued by the Civil Aviation Authority result in an airfield having to be used in a different manner than originally assumed by the Operator, the parties shall endeavour to negotiate changes in the contract that allow the Operator to continue operations for the rest of the contract period. If the parties fail to reach agreement, the Operator is entitled to compensation pursuant to the rules relating to shutting down or closure in Section 12.4, insofar as they are applicable.
- 10.4 If the Ministry of Transport and Communications presumes that demands for renegotiations would be ineffective, the Ministry may decide instead to put the route up for tender anew in accordance with section 4 of Regulation of 15 April 1994 no. 256 on tender procedures in connection with public service obligations (Annex 4).

11. Suspension of contractual obligations

- 11.1 The Ministry of Transport and Communications is entitled to suspend the contract if the Operator does not fulfil its reporting duty or prevents access pursuant to Sections 9, 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.
- 11.2 Similarly, the Ministry of Transport and Communications may suspend the contract if the Operator's aircraft is/are involved in an aviation accident or serious aviation incident. Suspension pursuant to this provision may last until the investigating authority have completed its investigation of the accident or occurrence, and the Civil Aviation Authority has had an opportunity to assess whether the aircraft involved is/are in safe working order.
- 11.3 Suspension does not entail restrictions in the right to apply sanctions in case of breach of contract.

12. Termination, cancellation and other grounds for discontinuation

- 12.1 Subject to the restrictions following from insolvency law, the Ministry of Transport and Communications may terminate the contract with immediate effect if the Operator becomes insolvent, initiate debt settlement proceedings or goes bankrupt. Equally, the Ministry of Transport and Communications may cancel the contract with immediate effect in the other cases dealt with in section 14 no. 2 of Regulation

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of 15 April 1994 no. 256 on tender procedures in connection with public service obligations (Annex 4).

- 12.2 The Ministry of Transport and Communications can terminate the contract with immediate effect if the Operator loses its licence or fails to have it renewed.
- 12.3 If, due to *force majeure* or other circumstances beyond the Operator's control, the Operator has been unable to fulfil its contractual obligations for more than four of the last six months, the contract can be terminated by both parties by giving one month's written notice. Failure to fulfil contractual obligations as a result of the shutting down or closure of airfields is regulated in Section 12.4.
- 12.4 If the Storting decides to close an airfield, or if an airfield is closed as a result of an order issued by the Civil Aviation Authority, the parties' ordinary contractual obligations lapse from such time as the airfield is actually shut down or closed.

If the period of time between the Operator first being informed about the shutting down or closure and the actual shutting down or closure is greater than one year, the Operator is not entitled to compensation for any financial loss it incurs as a result of the termination of the contract. If the period mentioned is less than one year, the Operator is entitled to be restored to the financial situation it would have been in had operations been continued for one year from the date it was notified of the shutting down or closure, or alternatively until 31 July 2014 if this date is earlier.

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

13. Disputes

The parties shall endeavour to resolve any disputes concerning interpretation of the contract through negotiation. If these fail to resolve the matter, the case may be brought before the ordinary courts for a decision, unless the parties agree to resolve the matter by arbitration.

Unless the parties agree otherwise, Oslo District Court is the legal venue for all disputes concerning this contract.

14. Issue of contract

Two – 2 – originals of this contract have been drawn up, one to be retained by the Ministry of Transport and Communications and one by the Operator.

15. Contract signing

Place: _____

Place: _____

Date: _____

Date: _____

The Ministry of Transport
and Communications:

The Operator:

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ANNEX 1

Tender form

MINISTRY OF TRANSPORT AND COMMUNICATIONS



**TENDER ON SCHEDULED AIR SERVICES
VÆRØY – BODØ V.V.
1 AUGUST 2011 – 31 JULY 2014**

**in accordance with the public service obligations
published 26 August 2010, cf. Part II**

1. Identification of the tenderer

Name of the tenderer	
Address	
Telephone	
Facsimile	
E-mail	
Contact person(s)	

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 August 2011 – 31 July 2014).

Subject to tender:	<i>Compensation required, c.f. post 32 in the tender budget (in NOK 1000)</i>
<i>Værøy – Bodø v.v.</i>	

3. Signing

Place	Date	Binding signature

Invitation to tender

SCHEDULED AIR SERVICES (HELICOPTER) VÆRØY – BODØ V.V. 1 AUGUST 2011 – 31 JULY 2014

ANNEX 2

Tender budget

This chapter contains the tender budgets to be completed for each tender, c.f. Part I section 5.4. 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. The tender budget shall be completed for each route area where tender is submitted. In addition, when tender is submitted on allowed combinations of route areas, a tender budget shall be completed for each route that is part of the combination. In addition to the completion of the budget sheets, the tender budget shall also be enclosed on a CD-ROM. The Ministry of Transport and Communications may on request provide a computer file with framework for the tender budgets in Microsoft Excel format, c.f. Part I section 1.7.

All figures shall be given in NOK 1000 and in the price level for the first operating year, defined to be 1 August 2011 – 31 July 2012. The tender budgets for the second operating year, 1 August 2012 – 31 July 2013, and the third operating year, 1 August 2013 – 31 July 2014 shall form the basis for the operating revenue and operating cost adjustments, i.e. adjustments of items 1-27 inclusive, to be carried out by the Ministry of Transport and Communications, c.f. Part III section 8.1.

All figures in the tender budget shall be specified with amounts. 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.

Invitation to tender

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TENDER BUDGET

Route area: Værøy – Bodø v.v.

Overall period: 1 August 2011 – 31 July 2014

All figures in NOK 1000 and based on the price level for the operating year 1 August 2011 – 31 July 2012

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
6	Total operating revenues (1...5)	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Security charges	_____
11	Fuel expenses	_____
12	Crew salaries	_____
13	Crew expenses	_____
14	Technical maintenance	_____
15	Mechanics' pay	_____
16	De-icing	_____
17	Short-term lease of aircraft	_____
18	Handling/station services	_____
19	Irregular passenger service	_____
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	_____
27	Total operating costs (7...26)	_____
28	Financial revenues	_____
29	Financial expenses	_____
30	Financial items (-28+29)	_____
31	Profit margin	_____
32	Compensation required (-6+27+30+31)	_____

Invitation to tender

SCHEDULED AIR SERVICES (HELICOPTER) VÆRØY – BODØ V.V. 1 AUGUST 2011 – 31 JULY 2014

TENDER BUDGET

Route area: Værøy – Bodø v.v.

1st operating year: 1 August 2011 – 31 July 2012

All figures in NOK 1000 and based on the price level for the operating year 1 August 2011 – 31 July 2012

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
6	Total operating revenues (1...5)	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Security charges	_____
11	Fuel expenses	_____
12	Crew salaries	_____
13	Crew expenses	_____
14	Technical maintenance	_____
15	Mechanics' pay	_____
16	De-icing	_____
17	Short-term lease of aircraft	_____
18	Handling/station services	_____
19	Irregular passenger service	_____
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	_____
27	Total operating costs (7...26)	_____
28	Financial revenues	_____
29	Financial expenses	_____
30	Financial items (-28+29)	_____
31	Profit margin	_____
32	Compensation required (-6+27+30+31)	_____

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TENDER BUDGET

Route area: Værøy – Bodø v.v.

2nd operating year: 1 August 2012 – 31 July 2013

All figures in NOK 1000 and based on the price level for the operating year 1 August 2011 – 31 July 2012

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
6	Total operating revenues (1...5)	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Security charges	_____
11	Fuel expenses	_____
12	Crew salaries	_____
13	Crew expenses	_____
14	Technical maintenance	_____
15	Mechanics' pay	_____
16	De-icing	_____
17	Short-term lease of aircraft	_____
18	Handling/station services	_____
19	Irregular passenger service	_____
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	_____
27	Total operating costs (7...26)	_____
28	Financial revenues	_____
29	Financial expenses	_____
30	Financial items (-28+29)	_____
31	Profit margin	_____
32	Compensation required (-6+27+30+31)	_____

Invitation to tender

SCHEDULED AIR SERVICES (HELICOPTER) VÆRØY – BODØ V.V. 1 AUGUST 2011 – 31 JULY 2014

TENDER BUDGET

Route area: Værøy – Bodø v.v.

3rd operating year: 1 August 2013 – 31 July 2014

All figures in NOK 1000 and based on the price level for the operating year 1 August 2011 – 31 July 2012

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
6	Total operating revenues (1...5)	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Security charges	_____
11	Fuel expenses	_____
12	Crew salaries	_____
13	Crew expenses	_____
14	Technical maintenance	_____
15	Mechanics' pay	_____
16	De-icing	_____
17	Short-term lease of aircraft	_____
18	Handling/station services	_____
19	Irregular passenger service	_____
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	_____
27	Total operating costs (7...26)	_____
28	Financial revenues	_____
29	Financial expenses	_____
30	Financial items (-28+29)	_____
31	Profit margin	_____
32	Compensation required (-6+27+30+31)	_____

Invitation to tender

SCHEDULED AIR SERVICES (HELICOPTER) VÆRØY – BODØ V.V. 1 AUGUST 2011 – 31 JULY 2014

ANNEX 3

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 such data that was available considering the number of passengers, passenger revenues, number of transfer passengers to/from the domestic main route network, share of passengers travelling at fully flexible fares and freight- and post revenues.

The figures relate to the periods specified for all tables and must 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.

Freight and post are not encompassed by the public service obligations and the tenderers 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 tenderers 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. Part I, section 4.1 and 5.4. 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 the web pages of Avinor: (<http://www.avinor.no>)

Number of passengers

Reported number of passengers for the period August 2008 – July 2009: 9063

Number of passengers travelling to and from Værøy heliport (figures by Avinor):
2008: 8631
2009: 10 354

Reported revenues

Passenger revenue August 2008 – July 2009: 5 166 854 NOK
Freight and post revenues August 2008 – July 2009: 199 836 NOK

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ANNEX 4

Regulations on Tender Procedures in connection with Public Service Obligations

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. Cf. point 6a of Annex XIII to the EEA Agreement (Council Regulation (EEC) No 2408/92 Article 4). Amended on 15 July 1992 no. 806, 22 November 1996 no. 1082, 25 September 1998 no. 912, 31 January 2005 no. 72, 13 May 2005 no. 422.

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.

All Norwegian tenderers shall provide a tax certificate for value added tax and tax. The tax certificate must be received by the principal no later than the closing date for submission of tenders. The tax certificate shall be no more than six months old on the date on which the principal receives the certificate.

Any entity which submits a tender must be able to prove that it is able to fulfil 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.

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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.

Section 4 *Choice of procurement procedure*

1. Procurement shall be effected by means of an open tender procedure. Exceptions may be made from this provision provided that the conditions of subsections 2 to 5 are satisfied.
2. An open tender procedure with subsequent negotiations may be applied if after the closing date for submission of tenders there proves to be only one tenderer or if only one tender remains after the other tenders have been rejected in accordance with the rules in sections 10, 12, 13 or 14. Negotiations pursuant to subsection 1 shall be in accordance with public service obligations. No significant changes may be made in the original contract terms during such negotiations.
3. A tender procedure without preceding negotiations may be applied if after the closing date for submission of tenders there proves to be no tender. In this case no significant changes may be made in the original public service obligations or in other contract terms.
4. If the principal reserves the right to apply negotiations pursuant to subsection 2 or 3, this must be clear from the invitation to tender.
5. A tender procedure with negotiations without prior publication may also be applied if, due to special circumstances unforeseeable by the principal, it is impossible to meet the time limits laid down for the open procedure.

Section 5 *Publication*

The principal shall publish notice of the tender competition in the Official Journal of the European Communities.

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 closing date 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 closing date for submission of tenders before any selection is made.

Section 7 *Urgent cases*

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

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Section 8 *Model for notice of the tender competition*

Such invitation shall normally set out:

- a) the principal's name, postal address, telephone number, fax number and e-mail address,
- 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,
- 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,
- h) how compensation requirements, if any, shall be presented,
- i) closing date/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, cf. section 14,
- r) information concerning use of a standard contract in this area,
- s) sanctions in the event of breach of contract.

Section 9 *Formulation of the tender*

The tender must be in writing and submitted in a closed and marked cover, either directly or by post.

The tender may also be submitted by electronic means, provided that this is permitted in the tender documents and provided that:

- a) the tender contains all the required information,

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- b) the confidentiality of the tender is maintained until evaluation takes place,
- c) the tender is for reasons of proof confirmed in writing or by sending a confirmed copy as soon as possible if this is necessary, and
- d) the tender is not opened until after the closing date for receipt of tenders.

The tender must be signed.

Section 10 *Rejection of overdue tenders*

Tenders arriving after the closing date for submission of tenders, cf. 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 closing date, or the tenderer in question is able to substantiate this by means of a receipt from the postal carrier to which the tender was delivered, before the opening of the tenders.

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

Section 11 *Procedures in connection with the opening of tenders*

Tenders received in due 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, cf. section 4, subsection 2, the required compensation shall be made public. In the case of subsequent negotiations, the required 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 amount of compensation required in the tender as well as the name of the tenderer;
- f) any rejections of the tenderers/tenders, cf. section 12 in fine.

Section 12 *Rejection because of features of the tender*

1. A tender shall be rejected if:
 - a) it is not submitted in compliance with Section 9, first and second paragraphs,
 - b) it contains deviations which conflict with what is expressly permitted in the tender documents, or

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- c) doubt arises due to reservations, errors, lack of clarity, lack of information or similar as to whether the tender can be compared with the other tenders.
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, cf. section 8, litera h);
 - c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender, cf. section 8, litera p);
 - d) the tender states a need for compensation that is unreasonable in relation to the service to be provided, cf. section 13.

It shall be clear from the register of tenders which tenders are rejected and the reason for rejection, cf. section 11, litera f).

Section 13. *Rejection when the demand for compensation is abnormally low*

Before a tender is rejected because the need for compensation is abnormally low, the principal shall demand in writing relevant information about the individual parts of the offer/tender and review these on the basis of the explanations that are given.

The principal may take into account explanations that are justified on objective grounds, including savings in the production of the service, technical solutions or innovative ways of organising the activities.

Section 14 *Rejection because of features of the tenderer*

1. Principals may reject tenders from any tenderer which:
 - a) does not satisfy the requirements in Section 3, or
 - b) does not satisfy other requirements on tenderers set in the tender documents.
2. Principals may reject any tenderer:
 - a) which is bankrupt, is engaged in debt settlement proceedings or is being wound up, which has halted its business activities or which is in any analogous situation arising from a similar procedure pursuant to national laws or regulations,
 - b) which 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) which has been convicted by final judgement of an offence concerning its professional conduct,
 - d) which has been guilty of grave breaches of professional and ethical standards in its line of business, which has been proven by any means which the principal approves,
 - e) which has not fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which it is established, or of Norway,
 - f) is guilty of serious misrepresentation in supplying the information required under sections 8 and 13.

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3. Where the principal requires proof that none of the cases mentioned in a), b), c), e) or f) of subsection 1 applies to the tenderer, the following documents may at the discretion of the principal be accepted 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 it 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 15 *Supplementary information*

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

The same applies within the contract period.

Section 16 *Cancellation of the tender procedure and total rejection*

The principal may cancel the tender procedure with immediate effect if justifiable grounds exist.

The principal may reject all tenders if the result of the tender procedure gives justifiable grounds for so doing.

The principal shall inform all participants in the tender procedure of such decisions as mentioned in the first and second paragraphs and whether a new tender procedure will be implemented.

Section 17 *Selection of tenderer*

1. The principal shall, with reference to sections 3 and 8 base the award of a contract either on the lowest required compensation only or on 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 must have been stated in the contract notice, where possible in descending order of importance. Such criteria as *inter alia* the scope of the demand for compensation, ticket prices, capacity, service quality, ticket systems and environmental friendliness may be applied.

Section 18 *Notice on contracts awarded*

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

Section 19 *Supplementary regulations*

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

Section 20 *Entry into force*

This Regulation enters into force on 1 July 1994.

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ANNEX 5

Council regulation (EEC) NO 2408/92

COUNCIL REGULATION (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes

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

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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) , -

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

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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;
- (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 31. Subject to this Regulation, Community air carriers shall be permitted by the

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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 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

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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 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

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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.

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

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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 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 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.

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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 III 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

Footnotes:

- (1) OJ No C 258, 4. 10. 1991, p. 2.
- (2) OJ No C 125, 18. 5. 1992, p. 146.
- (3) OJ No C 169, 6. 7. 1992, p. 15.
- (4) OJ No L 374, 31. 12. 1987, p. 19.
- (5) OJ No L 217, 11. 8. 1990, p. 8.
- (6) OJ No L 36, 8. 2. 1991, p. 1.
- (7) See page 1 of this Official Journal.

The Annex' to Regulation 2408/92 is found in the official version.

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ANNEX 6

Procedures in connection with traffic programmes for scheduled air services subject to public service obligations.

MINISTRY OF TRANSPORT AND COMMUNICATIONS

CIRCULAR N-3/2005

Date 26.04.2005

Ref. 02/2542

This circular replaces the Ministry of Transport and Communications' circular N-8/97.

The circular concerns scheduled air services on routes that are subject to public service obligations (PSO), where the air carriers operate with exclusive rights under a tender contract with the State, cf. Council Regulation (EEC) 2408/92 on access for Community air carriers to intra-Community air routes.

1. Consultations regarding the traffic programme

- a) The air carriers are responsible for organising consultations on the traffic programme for scheduled services for which they have been granted exclusive rights and are obliged to operate scheduled services in accordance with their tenders.
- b) The consultations shall be carried out:
 - 1) After the exclusive right has been awarded for a scheduled air service, before commencement of scheduled flights
 - 2) During the course of the second tender year
 - 3) In the event of changes to an approved traffic programme.
- c) On routes subject to PSO, the consultative bodies may submit comments to the carrier on the following, in order of priority:
 - 1) The carrier's compliance with PSO requirements set out in the invitation to tender.
 - 2) The carrier's coordination of routes/timetables with other means of public transport.
 - 3) Services over and above PSO requirements and/or tender which the carrier can provide on a commercial basis.
- d) Consultation pursuant to b) nos. 1) and 2):

The proposed traffic programme shall be sent for consultation to affected parties (cf. section 3), with a copy to the Ministry of Transport and Communications.

The consultative bodies shall be given at least six weeks within which to reply from receipt of the proposal, and all replies shall be sent directly to the carrier.

The carrier shall send an application to the Ministry of Transport and Communications for approval of the traffic programme. A copy of all submissions shall be enclosed with the application, stating whether or not the submissions have been taken into account, and stating the grounds for their decisions.

If changes have been made to the traffic programme in relation to the proposal sent for

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consultation which, for example, have negative consequences for passengers, are not in accordance with the PSO requirements or affect the published opening hours of the airports, the carrier must coordinate such changes with the consultative bodies before the application for approval of the traffic programme is sent to the Ministry of Transport and Communications.

The Ministry of Transport and Communications can be expected to require six weeks to process applications.

- e) The approved traffic programme shall apply to both seasonal periods (both summer and winter seasons).

A mid-summer programme, cf. any adjustments to PSO in the invitation to tender, shall be incorporated into the traffic programme.

- f) Consultation pursuant to letter b no. 3):
Changes of a certain magnitude to an approved traffic programme that may affect the service offered to passengers must be sent to affected consultative bodies for comment with a copy to the Ministry of Transport and Communications.

Minor changes to an approved traffic programme that have no direct consequences for services to passengers need not be sent for consultation.

Consultative bodies shall be given at least three weeks within which to reply after receipt of the consultation proposal, and all submissions shall be sent directly to the carrier.

The carrier shall send an application to the Ministry of Transport and Communications for approval of changes in the traffic programme. A copy of all submissions shall be enclosed with the application, stating whether or not the submissions have been taken into account, and stating the grounds for their decisions.

After receiving the application for approval of changes to the traffic programme, the Ministry of Transport and Communications shall process the application as soon as possible.

- g) Thirty days before commencing each seasonal period (summer and winter seasons) at the latest, the carriers shall send an identical letter to the consultative bodies containing information about the approved traffic programme (the summer and winter traffic programme, respectively).

In the event of changes to the approved traffic programme, cf. f), the carrier is obliged to immediately send an identical letter to the consultative bodies containing information about the changes to the approved traffic programme.

2. Route changes in connection with public holidays

- a) For tender routes, certain adjustments in the traffic programme are permitted in connection with public holidays, cf. the PSO requirements. Carriers shall send proposed route changes in connection with public holidays to affected airports six weeks at the latest before the proposed change is to take effect.

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The affected airports shall submit their replies to the carrier three weeks at the latest after receiving the change proposal.

- b) If the affected airports accept the changes, they can be effected without further formal processing.
- c) If the changes are not accepted, the carrier shall send its route proposal, with the airports' replies enclosed, to the Ministry of Transport and Communications for consideration.
- d) The carriers shall take immediate steps to ensure that approved route changes in connection with public holidays are made known to the other consultative bodies.

3. Consultative bodies for traffic programmes

- a) The following bodies shall be consulted concerning traffic programmes on tender routes:
 - Civil Aviation Authority, Norway
 - Avinor AS
 - Affected airports
- b) In addition, affected county municipalities and municipalities shall be given an opportunity to comment within the deadlines set out in this circular. In such case, relevant material shall be sent directly to the Chief Communications Officers in all the affected county municipalities.

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