

Contract regarding full-service aircraft charter for State transportation

Question and answer note no. 1 of 10 September 2024 - questions no. 1-37

No	Question submitted	Answer	Date of receipt	Date of answering
1	<p>As we are an aircraft charter broker and not an operator, please may we double check that you will accept bids from charter companies who will sub-contract services from a nominated aircraft operator?</p>	<p>Yes, DALO accepts bids from charter companies who will sub-contract services from a nominated aircraft operator.</p> <p>In this regard, please see Annex A (Requirements Specification), Id.no. 2, where the following requirement is stated:</p> <p>“The Supplier shall either be an operator with AOC or sub-contract an operator holding an AOC.</p> <p>Air Operator Certificate in accordance with EASA/FAA regulations.</p> <p>Note: “C” = include in the offer a copy of the AOC.”</p>	23 August 2024	27 August 2024
2	<p>In regards to Id No. 23:</p> <p>23. Both dedicated aircraft shall not accommodate more than twenty (20) passengers.</p> <p>Does that mean that we are only to support with flights that can accommodate MAXIMUM 20 passengers, or is it allowed to support with flights that can accommodate more than 20 passengers - ie. have 25 seats?</p> <p>Thanks in advance</p>	<p>It means that you are only to support with an aircraft that can accommodate maximum 20 passengers. Thus, it is not allowed to support with an aircraft that can accommodate more than 20 passengers.</p>	29 August 2024	30 August 2024
3	<p>In suppliers offer ID 21 the minimum requirement must be 13 passengers.</p>	<p>The requirements specification ID 21 states a capacity of minimum 13 passengers and ID 23 states a maximum of 20 passengers. These two requirements also allow for 14 passengers.</p>	5 September 2024	10 September 2024

	<p>However in Annex A point 1.3 the "use cases" the requirement is 14 passengers, how will this be accommodated with a 13-seat aircraft?</p> <p>Is the requirement in fact 14 seats?</p>	ID 22 is an Evaluation Requirement.		
4	ID 18 - Powered by Jet Engines - Please specify if it is meant as Turbofan Engines (on a Business jet) or also TurboProp as on a King Air 350 or similar. Both are considered Jet engines.	The requirement is Turbo Fan engines. Turbo Prop powered aircraft will be considered non-compliant.	5 September 2024	10 September 2024
5	ID 20 What is meant by solid colour?	Solid colour means that the outside of the aircraft should be one (1) colour all over. Example: An aircraft which is painted blue in the front and red in the rear will not meet the requirement. Do however notice that the requirement is to be evaluated by DALO.	5 September 2024	10 September 2024
6	<p>TED announcement document</p> <p>Two dedicated aircraft. Q, when one is flying can the other operate other flights for clients or does it have to be in SITU 24/7 ?</p>	<p>The requirement under this contract is one (1) aircraft available for the Danish Government.</p> <p>The aircraft shall operate under the operators call sign.</p>	5 September 2024	10 September 2024
7	Aircraft to be able to launch within 72 hours of notification – Q, would it be flying under state call signs or the operators flight numbers?	The aircraft shall operate under the operators call sign.	5 September 2024	10 September 2024
8	72 hours for some locations might be difficult for permits if flying on the operators flight number	DALO sees this as a comment rather than a question.	5 September 2024	10 September 2024

9	Form for submission commitment – cannot email this to anyone – Q if we cannot forward how can we get our subcontractors to sign the document?	The “Form for submission of commitment” is at this point in the tender process solely provided to give the candidates/tenderers an idea of the documentation, that DALO will obtain from the candidate/tenderer expected to win the tender. As stated in the form DALO strongly encourages the candidate/tenderer to use this form when submitting their documentation according to section 151 (1) of the Public Procurement Act (Act no. 1564/2015 in Danish: “Udbudsloven”).	5 September 2024	10 September 2024
10	Q – We have previously completed an ESPD document for another tender. Are we still required to repeat this exercise?	Yes, you will have to submit a new ESPD as it is customized for the tender.	5 September 2024	10 September 2024
11	Also as we are likely to be submitting from our UK entity is this still a requirement as the UK are no longer part of the EU?	All tenderers regardless of nationality will have to comply with the requirements of the tender material. This includes the submission of the ESPD as described in the “Instructions to Tenderers”, section 5.2 (b)	5 September 2024	10 September 2024
12	One more issue was the security clearance: Danish Defence Security Level with NATO standards, Q -is it possible to explain a little bit more about it?	The supplier must possess a facility security clearance at company level issued by the Danish Defence Intelligence Service at the level TIL TJENESTEBRUG (TTJ) (“NATO RESTRICTED” / “EU RESTRICTED”) or a facility security clearance at minimum a corresponding level issued by the national security authority responsible for defence security in the country which has a security agreement with Denmark.	5 September 2024	10 September 2024
13	Ground transport on / off the aircraft – Q this would be only for whilst airside / airport, not for onward transportation?	-Ref. Annex A ID 6: Ground transport is only on Airside. -Ref. Annex A ID 8: When signing the contract you shall state which Pilots and Flight Attendants you	5 September 2024	10 September 2024

	<p>8 pilots + 6 FA's may operate – Q can it only be these 8 + 6 or can we change the names?</p> <p>Outside colour should be solid – Q does it have to only be one colour or can there be any markings? Won't be company logos</p> <p>DALO can have access to the aircraft whilst during scheduled maintenance – Q this is just to observe ?</p>	<p>plan to use. Afterwards they can be changed upon approval by DALO.</p> <p>-Ref. Annex A ID 20: Please see the answer for question no. 5.</p> <p>-Ref. Annex A ID 35: DALO will coordinate with the Maintenance Organisation a minimum of ten days prior to the inspection for observation only.</p>		
14	<p>Q – if fuel prices change can we charge this on before the yearly price adjustment ?</p>	<p>Ref. Contract 3. PRICE: Fuel is a direct Operating Cost and the supplier is entitled to reimbursement of the actual fuel price at the time of the relevant flight.</p>	5 September 2024	10 September 2024
15	<p>Penalty for delays not attributed to weather, AOG's or circumstances out of our control are charged at 1/960th of the price for each hour.</p> <p>Total penalty cannot exceed 10% of the Price – Q – is this of the contract price for 480 hours? So cannot exceed 10% of the total hour cost for 12 months?</p>	<p>'Price', as used in the paragraph in question, is defined in clause 1 (Definitions) as 'the price for 480 Flight Hours for one year, which covers the Aircraft, the Crew, maintenance, insurance and Other Services (in the following referred to as "the Flight Hour Allotment")', see Annex C'.</p>	5 September 2024	10 September 2024
16	<p>There is no clause regulating the order of superiority of all documents (e.g. is the contract is superior to the annexes and the individual charter requests). We will need to know this.</p>	<p>The precedence of the documents is regulated in clause 13.4 of the contract.</p>	5 September 2024	10 September 2024
17		<p>The tenderer, when submitting its offer, must be able to deliver in accordance with the requirements set forth in the tender documents, including all the re-</p>	5 September 2024	10 September 2024

	Can we propose any changes in the Contract - In annex A we see that there are no variations acceptable, but in the contract there is regulation that states that any changes must be accepted by both parties.	<p>quirements specified in Appendix A, which the tenderer, by submitting Appendix C, agrees to comply with. If a reservation, despite this, is made in the submitted offer, it will be handled in accordance with section 5.6 of the Instructions to Tenderers. Tenderers should be aware that an offer containing reservations may be considered 'non-compliant' in accordance with Danish public procurement rules.</p> <p>The provision in section 13.3 of the contract concern the possibility that the parties may later agree on changes/adjustments to the contract; however, this requires that both parties agree.</p>		
18	The applicability of EU legislation and EASA regulations may be different (e.g. the EASA regulations may apply differently in UK then in Denmark or the EU regulations may apply differently in Denmark) we will need confirmation which the applicable regulations are going to be in our case - the Danish one or the ones that we as a Supplier as Subcontractor are obliged to follow via our own national legislations.	As Under the assumption the national legislation and regulations are aligned with EASA/FAA ditto they will be considered compliant to the requirement.	5 September 2024	10 September 2024
19	There is a possibility the place of performance to be changed from Denmark to "... any airport around the world..." Can we confirm that there will be no high risk countries included in this?	The Supplier is not obliged to conduct chartered flights in high risk countries.	5 September 2024	10 September 2024
20	<p>1. Can the 2 aircraft be used for other purposes when not required for the Danish Gov?</p> <p>2 .Given that the aircraft are commissioned by the Danish Gov with 72 hours' notice, can the aircraft be based at an airport other than Copenhagen?</p>	<p>Ad.1: The requirement under this contract is only one (1) aircraft which shall be available for the Danish Government ready for boarding within 72 hours in CPH</p> <p>Ad. 2: The Aircraft can be based at any airport as long as it is available for the Danish Government within the 72 hour timeframe.</p>	5 September 2024	10 September 2024

	3. Is it maximum 1 simultaneous mission can be ordered by the Danish Gov?	Ad.3: The requirement under this contract is only one (1) aircraft available for the Danish Government hence only one (1) mission at a time.		
21	<p>Annex C item 8 mentions that a list with names of pilots and flight attendants must be made available within 5 working days after contract signing. Question:</p> <p>a. In case pilots and flight attendants must be hired specifically for this project, can it be accepted to provide the final list of crew members at a later stage?</p>	A list of the crews initially assigned to this contract shall be made available within 5 working days. Afterwards crews may be added or replaced upon approval by DALO.	5 September 2024	10 September 2024
22	<p>Annex C items 28-29 highlight the on-board connectivity requirements. Question:</p> <p>a. Is an SBB SatCom internet system considered satisfactory? This system offers "Voice over IP" calls and delivers a speed of up to 432kbps</p>	A Swift Broadband SATCOM system, while not optimal, will be considered compliant.	5 September 2024	10 September 2024
23	<p>Annex C item 32 mentions that a USB-C power outlet would be considered a plus.</p> <p>a. Do you consider this requirement to be fulfilled in case conventional USB sockets are equipped with an adaptor to USB-C</p>	One or more USB-A socket(s) equipped with USB-C adaptor(s) will be considered compliant to the requirement.	5 September 2024	10 September 2024
24			5 September 2024	10 September 2024

	<p>In 11.4 on page 21 they mention that they can cancel the whole contract with a notice of 14 days in case the supplier is in material breach of the contract.</p> <p>question: is there a clause in regards to spontaneously termination of contract - what are the terms?</p>	<p>DALO understands the question as asking whether there is a provision in the contract that regulates termination for convenience.</p> <p>The contract does not contain such a provision.</p>		
25	<p>The 40.000.000 EUR is this for the 6 years or for 4 years?</p>	<p>Please see the answer for question no. 26.</p>	<p>5 September 2024</p>	<p>10 September 2024</p>
26	<p>How is the value of the contract calculated 40.000.000 EUR - To understand the calculation behind the service</p>	<p>The value is an estimate of the expected contract price for the entire term of the contract, including the price of all options and extensions, i.e. 6 years. The estimated value is based on historical consumption and market research.</p>	<p>5 September 2024</p>	<p>10 September 2024</p>
27	<p>In case rates differ from the two aircrafts types, would DALO like 2 different C.1 prices, for each aircraft?</p> <p>Will DALO create a priority on our flights? Will the selection of the which of the two aircrafts to be used be based on the flight-type, on the price or just the availability the supplier can provide?</p>	<p>Ref. Annex C.1. DALO requires an average price in case the two aircraft are different types.</p> <p>The Supplier chooses the aircraft as long as it is compliant with the Requirements in this contract.</p>	<p>5 September 2024</p>	<p>10 September 2024</p>
28	<p>On the contract:</p>	<p>CO2 compensation and overnight Parking in Copenhagen Airport, directly related to a flight chartered by DALO, shall be considered a "Direct Operating Cost".</p>	<p>5 September 2024</p>	<p>10 September 2024</p>

	<p>• In the instructions to tenderer on page 10 Re1 price it states that the price for 480h a year should cover 'the handling of Direct Operating Cost'.</p> <p>The Operating Costs being all expenses directly attributable to the operation of the Aircraft for an Individual Chartering, including but not limited to fuel costs, ATC-charges (Air Traffic Control charges), landing and handling fees, de-icing costs, parking (including overnight Aircraft parking), VIP-handling (including lounge), food and accommodation for Crew not exceeding the costs covered according to the rules of the Danish State for travel costs etc. and other directly related operational expenses incurred during the charter period.</p> <p>Question:</p> <ul style="list-style-type: none"> • Does this also apply for CO2 compensations linked to the EU/UK/CH ETS programs • (overnight) parking in Copenhagen airport can also be invoiced separately? 			
29	Clause 8.1: Please define Material Defects	"Material defects" refer to significant or substantial flaws, deficiencies, or issues in a product, service, or work that affect its functionality, performance, or value. Material defect will be interpreted in accordance with the general rules of Danish law "væsentlig mangel".	5 September 2024	10 September 2024
30	Clause 9.1: Defines Force Majeure, paragraph 2 and we suggest this should read "such circumstances include, and in addition to the circumstances mentioned in clause 13.2 are not limited to – force majeure: strikes, meteorological conditions (...)"	The question is not entirely clear to DALO and no changes will currently be made to the provisions of the contract in this regard.	5 September 2024	10 September 2024
31	Clause 9.1: Also entitles the Customer to charge penalties in the event of delay exceeding 6 hours. Instead of penalties, we suggest the Supplier shall be liable in the event of delay exceeding 6 hours in accordance with the limits laid down in Article 22 of Montreal Convention.	No changes will be made to the provisions of the contract in this regard.	5 September 2024	10 September 2024

32	Clause 11.6: Please advice under which circumstances could the Danish Complaints Board declare this contract 'annulled'? However, only a 1 month notice period may not be enough. The limitation of liability to which the last paragraph of this clause is very vague ('the beneficial value of DALO's use of the Contract). We suggest that we propose an amount which can be objectively calculated.	Cases where the Danish Complaints Board decides that a contract should be annulled (in Danish, 'annulleret') are outlined in the case law of the Danish Complaints Board. Tenderers are advised to seek legal counsel for further information regarding case law.	5 September 2024	10 September 2024
33	Clause 12.1: paragraph 2 should be changed to a liability clause. Also, we require the inclusion of a clause stating that the Suppliers liability is to be determined and limited in accordance with Montreal Convention. Please consider.	No changes will be made to the provisions of the contract in this regard.	5 September 2024	10 September 2024
34	Clause 12.2: paragraph 5 refers to product liability, however, to my understanding, this is not a liability to which the supplier is subject. Please clarify.	If damages with regard to product liability occur to property, the supplier is liable in accordance with Danish law and case law-developed product liability. Liability may e.g. arise in cases where the products used by the supplier to perform the contract cause damage.	5 September 2024	10 September 2024
35	Clause 13.1 should be amended and permit the Supplier to assign its obligations or rights arising out of the Contracts to its Affiliates without the prior written approval of DALO - please advice	No changes will be made to the provisions of the contract in this regard.	5 September 2024	10 September 2024
36	Clause 13.2 paragraph 13, the notice of FM cannot be a condition to claim FM. Force Majeure is an ex-emption of liability in it of itself. Please consider correction.	DALO maintains that if a force majeure event occurs, the Supplier's and DALO's obligations towards each other shall be suspended for the time being, provided that the force majeure event is notified to the other party with supporting arguments and particulars describing the nature and extent of the force majeure.	5 September 2024	10 September 2024
37	Please consider to add clause "Indemnity": DALO shall hold harmless and keep the Supplier indemnified from and against any and all liabilities howsoever assumed, incurred or suffered by the Supplier or any member of the Supplier's group of companies or any of their employees, servants, agents, insurers or reinsurers as a result of or in connection with:	The suggested amendment regarding indemnity cannot be accepted.	5 September 2024	10 September 2024

<p>a) any breach by any of DALO's warranties, undertakings or obligations contained in this Contract; b) the Supplier acting in accordance with the DALO's instructions; c) the Supplier becoming liable to any other party, including the air carrier, by reason of carrying out DALO's instructions; and/or d) all claims, costs and demands whatsoever and by whomsoever made or proffered, in excess of the liability of the Supplier under the terms of this Contract, regardless of whether such claims, costs and demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Supplier, its servants, sub-contractors or agents.</p> <p>This Clause [...] shall survive the termination or expiry of this Agreement.</p>			
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