INVITATION TO TENDER FOR OPERATORS FOR SELECTING AN AIR OPERATOR TO PROVIDE PUBLIC SCHEDULED AIR SERVICES ON THE ROUTE TARTU-HELSKINI

A. INVITATION TO TENDER

1. INTRODUCTION

1.1 Pursuant to Article 16(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (hereafter the “Air Services Regulation”), the City Government of City of Tartu has decided to impose a public service obligation for scheduled air services on the Tartu-Helsinki route. The obligation is imposed on scheduled air services between Tartu Airport (IATA code: TAY) and Helsinki-Vantaa airport (IATA code: HEL) from 1 January 2024 to 31 December 2027, subject to any change in the start date of the service (and consequent extension of the term of the service) in accordance with Clause 18.1.

1.2 The public tendering procedure on the selection of the air operator that will provide public scheduled air services on the route (hereinafter the “Tendering Procedure”) shall be organised and carried out by the City Government of City of Tartu (address: City of Tartu, City Government, Raekoja plats 1a (Raekoda) 50089 Tartu, email address: tartupso@tartu.ee) (hereinafter the “Tendering Authority” or “Buyer”).

2. PURPOSE OF THE INVITATION TO TENDER

2.1 The purpose of the invitation to tender is to purchase scheduled air services between the City of Tartu and Helsinki in 2024 - 2027. The Tendering Authority acts as buyer of the services.

2.2 The schedules of flights to the destination have been specified in Clause 6. By submitting a tender in this tendering procedure, the tenderer commits to the presented schedules. The schedules may be subject to changes as set forth in the tender documents.

3. PARTICIPATING IN THE TENDERING PROCEDURE

3.1 Air operators within the EU, defined in Article 2(11) of the Air Services Regulation, may participate in the tendering process. The air operator must have a valid operating licence granted by a competent licensing authority of an EU member state according to Article 3 of the Air Services Regulation, and an air operator certificate according to Article 6.

For the sake of clarity, it is stated that tenders made by marketing companies which are not air operators as defined in Article 2(11) of the Air Services Regulation are not taken into account in the tendering process.

4. TENDERING PROCEDURE

4.1 The tendering procedure will be conducted in accordance with Article 17 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council.

4.2 The buyer may reject all bids if the price level is too high or if circumstances or the requirements for organising the service change significantly before the obligation comes into effect, in such a way as to make it unfeasible or impossible to implement the planned service in the way described in the invitation to tender.

4.3 Until a contract is signed, the buyer will retain the right to defer the start date of the planned service. Deferral of the start date shall prolong the length of the scheduling season and the term of the contract accordingly.

4.4 In the tender, the tenderer must provide an email address, which is used by the client to inform the tenderer about decisions concerning procurements and to stay in contact on other matters.
5. Tender Documents

5.1 A full set of tender documents including the invitation to tender, tender conditions, terms of contract, the public service obligation and tender forms, can be obtained:

5.1.1 on the Internet by accessing the following address: www.tartu.ee/pso;
5.1.2 or by emailing: tartupso@tartu.ee.

5.2 The tenders must be made in electronic format and submitted by e-mail to tartupso@tartu.ee.

5.3 Any potential Tenderer that is interested in considering participating in the tender is encouraged to provide its e-mail contact details to the tendering authority to ensure receipt of any additional information or notices from the tendering authority.

6. Schedules

6.1 The service schedule (all in local times) will be as follows:

6.1.1 6 flights leaving Tartu on Monday to Saturday from Tartu between 5.30am and 7am;
6.1.2 6 flights leaving Tartu on Monday to Friday and Sundays between 2pm and 3.45pm;
6.1.3 6 flights leaving Helsinki on Monday to Friday and Sundays between 12.45am and 2.30pm;
6.1.4 6 flights leaving Helsinki on Monday to Friday and Sundays between 11pm and 11.59pm.

6.2 It must be taken into account that the schedules are only preliminary when it comes to the accurate departure times. The schedules have not considered the differing flight times of varying types of aircraft on the routes. For the times of departure, it must also be taken into account that deviations from the presented schedule are possible for a justified reason related to traffic and transport. The arrivals to and departures from Helsinki are operated at a schedule which enables flexible changes with international flights.

7. Changes in Schedules

7.1 Changes to the schedules can be made based on mutual agreement between the Buyer and the operator. Changes can be made if doing so ensures a better service for passengers. By submitting a tender, the tenderer also commits to use the aircraft only on the route in accordance with the offer, unless otherwise agreed.

7.2 The Buyer shall pay the operator a compensation according to the service agreement. In addition to this, the operator shall be entitled to keep the revenue from ticket sales and any other sales revenue, including those from freight or advertising.

8. Financial Compensation

8.1 Bids must clearly specify, in euros, the amount of compensation required for the operation of the air service in question. The amount of compensation required should be based on an estimate of actual costs and revenue, taking into account the minimum requirements imposed by the public service obligation. The compensation may cover only the actual operation of air services and costs incurred at Tartu and Helsinki airports in connection with the operation of these routes alone. The amount of compensation does not include costs incurred on other routes or at other airports.

8.2 The costs which may be included in the compensation are defined in the net cost calculation model (Annex 2) which must be filled in and attached to the Tender. The compensation shall not include expenses created on other routes or other airports.

8.3 Tenderers should note that the compensation paid to the selected tenderer must comply with the EU state aid legislation. According to Article 17(8) of the Air Services Regulation, the compensation paid may not exceed the amount required to cover the net costs incurred in discharging each public service obligation, taking into account the revenue gained therefrom by the operator and a reasonable profit. Reasonable profit shall not exceed 6.84% on annual basis after allocating all direct and indirect costs including Tenderer’s overhead in proportion to the Tartu-Helsinki route.
8.4 All compensations and costs must be specified in euros.

8.5 Compensation shall be paid on quarterly basis in equal instalments (meaning that quarterly compensation shall equal 1/16 of the total Compensation) following the respective quarter. The initial payment which shall cover the first two quarters of the service, shall be paid in advance upon entering into the service contract.

8.6 Because the services agreement in question has a duration of several years, the local municipality budget must contain the appropriations intended for buying the scheduled air services and, correspondingly, the Tartu City Council must approve the annual funding for the management of the air services. If the City of Tartu does not reserve the required appropriations, the air services shall cease without separate measures at the beginning of the following year and the operating compensation will no longer be paid. The Services Agreement template, which is included as Annex 4, will contain more specific terms on cancelling or terminating the contract.

9. **SELECTION CRITERIA**

The selection will be made from among the bids that meet the requirements set out in the invitation to tender and the tender documents. In the selection, account will be taken of the criteria referred to in Article 17 (7 and 8) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council.

10. **PERIOD OF VALIDITY OF THE CONTRACT**

The contract is valid from the signing of the contract until 31 December 2027. The scheduling season runs from 1 January 2024 to 31 December 2027.

11. **AMENDMENT OR TERMINATION OF THE CONTRACT**

11.1 The contract may be amended only if the amendments will not lead to a situation in which the requirements of the public service obligation will no longer be met on this route. Any amendments regarding the contract must be made in writing.

11.2 If the winning tenderer abandons the service or does not commence it, the winning tenderer is obligated to pay the tendering authority a contractual penalty, the obligation to pay of which is laid down in more detail in Clause 28.2.

12. **CONSEQUENCES IN THE EVENT OF FAILURE TO COMPLY WITH THE CONTRACT**

12.1 The air operator is responsible for meeting the obligations set out in the contract. If the air operator fails to meet the obligations in the contract or if they have been performed inadequately, the buyer may reduce the amount of compensation.

13. **DEADLINE FOR SUBMISSION OF BIDS AND THE LANGUAGE OF THE BID**

13.1 Bids must be submitted no later than 30 November 2023,

13.2 The bid and annexes thereto must be submitted in English or in Estonian.

14. **QUESTIONS AND REQUESTS FOR ADDITIONAL INFORMATION REGARDING THE INVITATION TO TENDER**

Tenderers may ask the tendering authority questions regarding the invitation to tender within 51 days of when an information notice regarding the invitation to tender, that is in accordance with the regulations regarding common rules for the operation of air services in the community stated in Article 17(5) of (EC) No 1008/2008 of the European Parliament and of the Council, has been published in the Official Journal of the European Union (the “OJ Notice”), excluding the publishing date. The OJ Notice has been published on 29 September 2023.
15. **CONFIDENTIALITY AND BUSINESS SECRETS**

If the tenderer finds that the bid includes business or trade secrets, the tenderer must clearly mark such information in the bid. The fact of submission of a tender or the amount of compensation cannot be deemed confidential.

16. **SUBMISSION OF BIDS**

16.1 Bids must be delivered to the tendering authority by the date specified in section 13 by 17:00 p.m. (EET), at the latest.

16.2 Bids must be submitted by e-mail to tartupso@tartu.ee.

16.3 While participating in the process, the interested person shall account for the time limits and time schedule prescribed in this procedure, in order to ensure that the bid is submitted within the relevant time limit and shall assume the risk of timely delivery of the Tender, including any possibility of force majeure.

16.4 Each Tender submitted shall be valid for at least 180 days.

16.5 The tendering authority has the right to carry out negotiations with the all the Tenderers that submitted bids satisfying the criteria set forth in these tender documents. Upon initiation of the negotiations the tendering authority shall notify accordingly all Tenderers that submitted bids satisfying the criteria set forth in these tender documents and provide procedural rules for the negotiations.

17. **VALIDITY PERIOD OF THE INVITATION TO TENDER**

17.1 If an air operator has, within 60 days of the publishing of the invitation to tender in the Official Journal of the European Union, notified of its intention to begin operating scheduled long-term air services on the route between Tartu and Helsinki in compliance with the public service obligation, the tendering authority must suspend the tendering procedure (cf. Article 16(9) of (EC) No 1008/2008 of the European Parliament and of the Council).

17.2 Otherwise the tendering authority may restrict the number of air service operators on this route to a single air operator for a period no longer than that specified in the obligation. In this case, the right to operate air services on this route is granted based on the basis of an invitation to tender in accordance with the regulations described in Article 16 (9 and 10) of the above mentioned regulation.

17.3 A tender can be accepted on the condition that sufficient funds have been allocated to the project in question in the Budget and that the tendering authority as the buyer of the services has undertaken to finance the project, at least insofar as the compensation paid to the air operator.

B. **TENDER CONDITIONS**

This invitation to tender is carried out in accordance with procedure enacted in (EC) No 1008/2008 Article 17 paragraphs 2 - 10 of the European Parliament and of the Council.

18. **CONDITIONS FOR THE PROCUREMENT**

18.1 Service operation must begin on 1 January 2024 and the last day of service is 31 December 2027. Until a contract is signed, the tendering authority will retain the right to defer the start date of the planned service provided that the deferred start date shall not be later than 3 (three) months from the selection of best Tenderer. In case of deferral of the start date, the end date for the services shall extend accordingly.

18.2 This tendering procedure is only in effect if no air operator has, within 60 days of the publishing of the OJ Notice, notified of its intention to begin operating scheduled long-term air services on the route between Tartu and Helsinki, in compliance with the public service obligation, without exclusive rights and with no financial compensation.
18.3 The air service operator is responsible for the equipment required to operate the above mentioned scheduled air services.

19. VALIDITY OF AIR OPERATOR CERTIFICATE AND OPERATING LICENSE
At the time of submitting the tender and operating services, the service provider must have an operating licence granted by a competent licensing authority of a Member State in accordance with (EC) No 1008/2008 Article 3 of the European Parliament and of the Council and an air operator certificate in accordance with Article 6 of the same Act.

20. USE OF SUBCONTRACTORS
20.1 The tenderer may employ a sub-contract, however the subcontractor must hold a valid operating licence and an air operator certificate. Only an air service operator meeting the requirements imposed in the tender documents may be approved as a subcontractor.
20.2 The tenderer is liable for the actions of its subcontractor as for its own.

21. INFORMATION CONCERNING THE OPERATOR
21.1 The name and contact information of the tenderer and, in respect of legal entities, the name of the person responsible for the execution of the service shall be given in the bid.
21.2 The above information shall also be given about the subcontractor.
21.3 The following information and reports concerning the tenderer shall also be included in the tender:
21.3.1 copies of the valid operating licence and air operator certificate;
21.3.2 financial statements of the Tenderer for the last financial year;
21.3.3 Tenderer’s confirmation on absence of tax debt of the Tenderer and its subcontractor (the tendering authority has the right to ask for the relevant tax authority’s statement of the Tenderer and its subcontractor’s outstanding taxes);
21.3.4 copy of the IOSA certification.

22. AIRCRAFT AND AIRCRAFT OPERATOR
22.1 Aircraft on this service must be with at least 60 seats without upper limitation.
22.2 Aircraft must be younger than 20 years of age at the time of the service.
22.3 Aircraft operator has to be EU registered and IOSA compliant, however wet-lease is allowed.
22.4 Operator must operate at least 90% of the flights under operator’s control calculated on a quarterly basis. For reference issues which are not under operator’s control are: airport closure, atc limitations, weather, strikes of any other body except for operating airline.

23. EXCLUSION OF TENDERERS
23.1 In awarding the contract, tenderers that cannot be deemed to meet the obligations imposed in the tender documents in light of technical, financial or other considerations shall be excluded.
23.2 A tenderer may be excluded from the tendering procedure if
23.2.1 the technical capabilities or financial standing of the tenderer are judged to be so poor as to give rise to a reasonable presumption of the tenderer having difficulties in meeting its contractual obligations;
23.2.2 the tenderer has been convicted by a legally binding court sentence of a significant offence relating to the operation of services or the tenderer has committed a serious breach of contract or other procedural breach in the operation of services, or;
23.2.3 the tenderer has in the tendering procedure provided the buyer with false information concerning a factor which is of significance with regard to the contract;

23.2.4 the tenderer has not submitted its bid in English or in Estonian.

24. **Ticket prices**

24.1 Ticket prices is at the sole discretion of the Tenderer and there are no limitations imposed.

25. **Ticket sales and reservations system**

25.1 The air operator must have access to an international reservation and ticketing system valid in Estonia and have or will have at the start of operations an IATA interline agreement with through-pricing and luggage-handling arrangements. Information concerning prices and timetables must be included in the international reservations and ticketing system.

25.2 Before the client decides which tenderer wins the invitation to tender, the air operator must have a cooperation agreement (or provide the Buyer proof to the tenderer’s satisfaction, that such cooperation shall be entered into before the commencement of operations) covering through-pricing with at least one operator that flies to foreign destinations from Helsinki airport or operate themselves at least 5 destinations from the list of destinations set forth in Clause 25.4.

25.3 Flights must be marketed using at least one computerised reservations system.

25.4 Winning bid has to ensure either by existing agreement or sufficient proof set forth in Clause 25.2 through cooperation (code-sharing, interlining or own operations) ability to connect in 3 hours’ time of arrival to Helsinki connectivity to at least 5 destinations in the Top 20 destinations. Top 20 destinations are: London, Stockholm, Milan, Berlin, Vilnius, Oslo, Frankfurt, Amsterdam, Copenhagen, Paris, Brussels, Vienna, Barcelona, Düsseldorf, Warsaw, Munich, Dublin, Rome, Hamburg, and Zürich. The bid must contain respective confirmation by the Tenderer that the Tenderer has or will have at the start of operations above cooperation with relevant target destinations. At the Buyer’s request, the Tenderer must be able to present a letter of intent or other reliable report of the intended agreement without delay before the tendering procedure is completed.

26. **Selection criteria**

26.1 The Buyer’s representatives will make their selection from among the bids corresponding to the invitation to tender and meeting the terms imposed in the tender documents based on price offered by the Tenderers.

27. **Notification of awarding the contract**

27.1 The Buyer sends the procurement decision they have made to the email addresses the Tenderers have provided in their tenders. The procurement decision shall include the information about the invitation to tender and the evaluation of the bids, reasons for the decision made as well as instructions for making an appeal or a corrigendum.

27.2 The contract between the tendering authority and the chosen air operator is only valid after the signing of a written contract. Contract is not formed with the notification about decision made regarding the invitation to tender.

28. ** Cancelling the bid and contractual penalty**

28.1 A bid can be cancelled if the letter or email concerning the cancellation has arrived to the buyer before the deadline for submission of tenders. If the cancellation is delivered by email, a scanned and signed cancellation letter must be attached to the email.

28.2 If the winning tenderer abandons the service or does not commence it, the tenderer is obliged to pay the tendering authority a lump-sum compensation of 100 000 euros. Liability to
compensate arises on 1 January 2024 or later if the tendering authority has used its right referred to under section 18.1 to defer the start date of the planned service.

29. **Changes and Specifications to Objects of Tender**

29.1 The Buyer may alter or revise the object of the tender during the tendering procedure and prior to the expiry of the deadline imposed for submission of tenders if deemed necessary due to facts that have come to light. The deadline for the submission of bids may be extended if warranted by the changes and specifications referred to herein. All known parties who have ordered the tender documents will be advised of any changes and specifications.

29.2 Further information about the service subject to tender may be requested by emailing tartupso@tartu.ee. Any question with respect to the tender should be submitted to the same e-mail address whereas the questions and answers will be made available to all the Tenderers that have indicated interest in participating in the tender.

30. **Abandoning the Object of Tender**

30.1 Until a contract is signed, the tendering authority will retain the right to defer the start date of the planned service. In case of deferral of the start date, the end date for the services shall extend accordingly.

30.2 If circumstances or the requirements for organising the service have changed in such a way as to make it unfeasible or impossible to implement the planned service in the way described in the invitation to tender, the buyer may abandon the object of the tender during the tendering procedure.

31. **Supplementary Documents and Inspections**

31.1 The buyer may request the tenderer to provide supplementary documents as necessary.

31.2 The buyer is entitled to inspect the fleet and the maintenance services of the tenderer and the proposed subcontractor. Such inspections do not reduce the liability and obligations of the tenderer.

32. **Contract**

32.1 Once the winning tender has been selected, a contract will be concluded between the buyer and the winning air operator.

32.2 The bid shall be based on the terms and conditions of the contract. The air operator shall confirm in the bid form that it accepts the terms and conditions.

33. **Public Service Obligation**

33.1 The offer shall comply with the public service obligation imposed by the tendering authority and set forth in Annex 1. The air operator shall confirm in writing that it accepts the terms and conditions.

34. **Annexes**

At the time of signature, the Agreement has following Annexes.

1. Decision on the public service obligation City of Tartu
2. Net cost calculation model
3. Tender template
4. Draft of the Purchased Services Agreement
5. EU and/or UN sanctions - template declaration