

The Radio and Television Board's tender for the fourth terrestrial FM channel

The Danish Radio- and Television Board

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The minister for culture has issued executive order no. 5 of 5. January 2011 on tender for the fourth FM channel (the executive order). According to § 1 in the executive order the Radio and Television Board hereby puts out to tender the fourth terrestrial FM radio channel. The Radio and Television Board grants the programme license following a beauty contest with a price element.

The collective tender material can be downloaded from the Danish Agency for Libraries and Media's homepage
www.bibliotekogmedier.dk/medieomraadet/radio/fm-4/udbud.

The Radio and Television Board hereby calls for applications for the contest. Applications must be in the Board's possession no later than Monday 28. February 2011 at 12.00.

The Radio and Television Board expects to announce the winner of the contest on Friday 8. April 2011, whereupon the Board will issue a license to the winner.

The Radio and Television Board makes certain reservations as to a possible cancellation of the tender. The tender can be cancelled by the Board before the deadline for submission of applications, and likewise the Board can cancel the tender after the deadline in case of no suitable applications having been received.

The Board makes further reservations as to possible alterations in the conditions stipulated in the tender material, which might be requested by the minister for culture. According to the executive order's §7, section 3 the Board can also make minor alterations to the stipulated conditions for the license, as described in the tender material, before the expiry of the deadline for submission of applications. Finally, reservations are made as to any mistakes in the tender material.

1. Summary

The present section contains a summary of the detailed descriptions of the collective tender material. In case of any discrepancy between the summary and the detailed descriptions in the following sections, the detailed descriptions prevail.

1.1. Tender material

The fourth terrestrial FM radio channel is put up for tender at a beauty contest with a price element.

Participation in the tender is based on the submission of an application, which must be prepared in accordance with what is stated in the tender material and must contain the required documentation and information etc., including a banker's guarantee.

Section 5.2 describes how the Radio and Television Board's assessment of the applications received will take place. The section contains information about evaluation criteria and the mutual weighting of these, including information about the points scales which the Board will apply when assessing the application in relation to the individual evaluation criteria.

In the present section the content of the following sections will be recapitulated in brief, i.e. concerning background/basis for the tender, application procedure (including the information which must be contained in the applications), evaluation (i.e. the Radio and Television Board's assessment of the applications) as well as license conditions.

1.2. Background

It appears from the media-political agreement for 2011-2014 that the intention behind the tender of FM4, in the same way as TV 2 has provided competition for Danish Radio (DR) on public service TV for the benefit of Danish viewers, is that also within the field of radio an alternative to DR should be found in terms of public service radio.

On the basis of suggestions from the FM4 committee, the parties behind the media-political agreement for 2011-2014 chose to put out to tender a radio with a news/talk profile as the fourth national FM radio channel, the minimum requirement for the proportion of cultural programmes being fixed at 14 per cent of the collective range of programmes.

According to additional agreement of 9. September 2010 to the media-political agreement for 2011-14 concerning choice of programme profile for the fourth nationwide FM the intention is to create a broadly appealing and innovative news/talk radio that mixes news, actuality, culture and debate with journalistic and mediatory quality, new narrative forms and programme genres in which specific demands are made in terms of forceful hosts, high degree of listener inclusion, satire and a broad representation of music genres.

Pursuant to §11, section 9 and §45, section 5 in act on radio and television activities, cf. executive order no. 477 of 6. May 2010, as amended by act

no. 1360 of 8. December 2010, the minister for culture has issued executive order no. 5 of 5. January 2011 on tender of the fourth FM channel.

License cannot be granted to DR. Neither can DR deliver programme content to the channel or be part of a company or a consortium that delivers content to the channel.

With the license follows both right and obligation to parallel-broadcast in digital form the programmes that are broadcast analogously. This must happen in DAB block 2, where the future license holder gets at his disposal 144 kbit/s.

Programme activities must be launched in full with 24 hours round the clock from 1. November 2011, with the exceptions, however, which according to the executive order apply to some programme forms and requirements, as the deadline for the fulfilment of more detailed demands is 6-18 months from the start of the programme activities.

1.3. Application procedure

Section 4 describes the application procedure as well as the requirements concerning form and content of the applications.

During the period from publication of the tender material and up until Monday 14. February 2011 at 12.00 it will be possible to ask questions about the tender material. Questions and answers will be currently available on the Danish Agency for Libraries and Media's homepage www.bibliotekogmedier.dk/medieomraadet/radio/fm-4/udbud. The questions will be published in anonymous form, so that the identity of the questioner will not be obvious.

The Radio and Television Board will endeavour to answer the questions put forward within one week. It is expected that questions submitted on 14. February 2011 will be answered no later than Monday 21. February 2011. Questions submitted after the 14. February 2011 at 12.00 will not be responded to.

It should be pointed out that all questions must be submitted in writing to the Radio and Television Board v/ Danish Agency for Libraries and Media at rtv@bibliotekogmedier.dk or by registered mail to Danish Agency for Libraries and Media, H.C. Andersens Boulevard 2, 1553 Copenhagen V, marked "Questions, tender FM4". It is not possible to submit questions directly to the Ministry of Culture and/or to the National IT and Telecom Agency.

Applications must be received by the Radio and Television Board no later than Monday 28. February 2011 at 12.00.

Together with the application, applicants must produce a banker's guarantee of DK 5 mil.

In the application, applicants must:

- give an account of their financial circumstances
- submit a plan for operation covering the license period
- suggest the approximate size of the license fee for the license period
- account for and give an undertaking as to the applicant's future programme activities etc.

The applicant can base his activity on the capabilities of other units.

The Radio and Television Board is entitled before the expiry of the deadline for applications to call off the tender. The Board is furthermore entitled to call off the tender if no suitable applications have been received. According to the executive order §7, section 3, the Board is moreover entitled, before the expiry of the deadline for applications, to make minor adjustments to the conditions for the license stipulated in the tender material. Finally, the Board can at any time before the issuing of the license make adjustments in the tender material.

If the Board makes any alterations to the tender material before the deadline for applications, the Board will make a decision as to a possible extension of the deadline. Please see tender material 4.4 for further details.

All information from the Radio and Television Board about this will be presented on the Danish Agency for Libraries and Media's homepage www.bibliotekogmedier.dk/medie-omraadet/radio/fm-4/udbud. After the expiry of the application deadline any cancellation, change of conditions as well as a possible extension of the date for the Board's decision etc. will also be communicated directly to the applicants' contacts.

The tender process, including questions and answers, applications and other documents and communication, will as a rule be done in Danish. To accommodate any foreign interested parties the present English summary of the tender material has been prepared.

1.4. The Board's assessment of the applications

Upon receiving the applications the Radio and Television Board will initially be checking whether the applications contain the information requested in the tender material. As soon as possible following this, the Board will contact the applicants with a view to clarifying any vague points in their applications. Basically, it will in this connection not be possible to supplement

the information submitted, but the Board can – within the frames of the principle of equal treatment – also ask for supplementary information with a view to clarifying conditions already described in the application. However, the Board cannot ask any questions or request supplementing of information that relate to basic elements in the application.

Pursuant to the executive order the Board can reject abnormally low bids after a preliminary hearing of the applicant in question. When assessing the applications the Board will therefore i.a. decide whether any bids must be considered unusually low. If so, the applicants will be given the chance to explain this before a decision is made as to a possible rejection. See more about this in section 5.2.

Applications, which do not contain the in the present tender material required minimum information, will be rejected by the Radio and Television Board. See section 4.1.

On the basis of an assessment of the applications it will be decided to which applicant the Board wants to issue the license. In this assessment of who will be the best suited to run the fourth terrestrial FM radio channel, quality and realism in the applicant's plan for operation will be weighted at 35%. The size of the total grant, which the applicant suggests will be sufficient to run the channel, will be weighted at 25%. Finally, the content of the programmes offered etc. will be weighted at 40%. In section 5.2 it is further explained how the Board is going to conduct the evaluation.

1.5 License conditions

License holder's activities must all through the license period be conducted in accordance with the license, unless the Radio and Television Board has beforehand approved any changes in relation to the stipulations in the executive order. The conditions are described in more detail in section 8.

License holder must be an independent legal unit, whose single purpose is to operate the fourth FM channel. Advertisements are not to be included in the programme activity, and license holder must not sell broadcasting time. It is not permitted to sectionalise the range of programmes geographically, i.e. any given programme must be broadcast simultaneously in the license holder's entire broadcasting area.

License holder is obliged to parallel broadcast in digital form the programmes that are being broadcast in analogue form, and to defray expenses in relation to analogue as well as digital distribution. If a political decision is made to close down the analogue FM signals, the obligation to broadcast programmes in accordance with the license requirements for broadcasting in digital form passes as a general rule to DAB. Should it at

any point during the license period be politically decided to introduce a technology other than DAB, it can be requested that broadcasting of programmes must take place with the help of this other technology. License holder is in this eventuality not entitled to financial or other compensation.

No later than 1. May license holder must submit an annual public service report and an independent annual accounts for the channel stipulating the result, as the Board in this connection has to approve license holder's statement of reasonable profit, possible yield due to product development and the transfer of any operating profits to the following fiscal year. On the basis of this statement a decision is made as to reimbursement of possible profit. If license holder does not fulfil his programme obligations etc., he must reimburse the relevant estimated savings plus 15 pct., cf. annexe 4 of the executive order.

In case the license is returned/revoked, accounts and statement of license basis, including statement of reasonable profit etc., cf. executive order, annexe 4, must be submitted to the Radio and Television Board no later than by the end of the fourth month after the return/revoke. Any excess-paid subsidy, including reimbursement after statement of reasonable profit and possible profit due to product development, must be returned no later than at the same time as the submission of accounts. If license holder has not fulfilled his programme obligations etc., he must reimburse the hereby associated, calculated costs plus 15%, cf. executive order annexe 4.

License holder must start programme activity and broadcast 24 hours round the clock from 1. November 2011, allowing however for elements in the range of programme which will not be offered until later, see also section 8.8.2.

1.6. The license

The license is granted and comes into force on the date of issuing for the period up till and including 31. October 2019. The IT and Telecommunication Agency issues frequency license upon license holder's request. An annual fee must be paid to the Agency for this license.

The Radio and Television Board supervises the observance of the conditions in the license and the regulations in the radio and television act, as well as regulations issued in pursuance of the act. The IT and Telecommunications Agency monitors the observance of the conditions in the frequency license and the regulations in the frequency legislation.

2. Time schedule and language

2.1. Time schedule for tender

The process in connection with the tender is expected to follow the time schedule below:

Deadline for questions to license material	Monday 14. February 2011 at 12.00
Deadline for response to questions as well as possible changes in the tender material	Monday 21. February 2011
Deadline for submission of applications	Monday 28. February 2011 at 12.00
Deadline for submission of banker's guarantee	Monday 28. February 2011 at 12.00
Announcement of applicants	No later than Monday 7. March 2011
The Radio and Television Board's estimated assessment of applications	Tuesday 5. April 2011
Expected announcement of successful applicant	Friday 8. April 2011
Expected issuing of program license	Immediately following Friday 8. April 2011

Applications received later than Monday 28. February at 12.00 will not be accepted.

2.2. Notification

As a matter of form it should be mentioned that a notification case has been brought before the EU Commission. The Commission is expected to come to a decision in the case before 5. April 2011. If the case causes any changes to be made in the tender material and/or in the conditions for the license in the tender material, information about this will be given on the Danish Agency for Libraries and Media' homepage, www.bibliotekogmedier.dk/medieomraadet/radio/fm-4/udbud. Changes due to the Commission's decision on the case, which might happen after the 28. February 2011, will also be communicated to the applicants' contact persons, just as any questions as a result of the changes will be put to the contact persons.

The Radio and Television Board makes certain reservations as the notification case can cause postponement or cancellation of the tender. Information about this will be given on the Danish Agency for Libraries and Media'

homepage, and, if decision about postponement or cancellation is made after the 28. February 2011, will also be communicated to the applicants' contact persons.

2.3. Language

All communication and correspondence will during the whole tender process be conducted in Danish. That means that for example applications, banker's guarantee, other documents as well as questions must be submitted in Danish. However, it will be possible for the applicants, apart from the obligatory information in Danish, to submit supplementary information about technical details etc. in other Scandinavian languages (Norwegian, Swedish) and/or English. Answers to questions and all communication from the Board will likewise be done in Danish. For the benefit of foreign interested parties the present unauthorised English Translation of the summary of the tender material is published in connection with the tender material.

Failure to comply with the requirement that the application must in the main be written in Danish will automatically result in the application being rejected.