

March 28, 2019

**The Radio- and Television Board**  
H.C. Andersens Boulevard 2  
1553 København V

Michala Stampe  
Head of section, Master of Laws  
[mic@slks.dk](mailto:mic@slks.dk)

Søren F. Jensen  
Special Legal Advisor, Master of  
Laws  
[sfj@slks.dk](mailto:sfj@slks.dk)

[rtv@slks.dk](mailto:rtv@slks.dk)  
[www.slks.dk](http://www.slks.dk)

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

The Minister for Culture has issued executive order no. 267 of the 25<sup>th</sup> of March 2019 on tender for the fourth FM channel (the executive order). According to § 1, section 2, 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 [Culture and Palaces' website](#).

The Radio and Television Board hereby calls for applications for the contest. Applications must be in the Board's possession no later than

**Monday, May 20, 2019 at 12.00**

The Radio and Television Board expects to announce the winner of the contest no later than July 1, 2019, whereupon the Board shortly thereafter will issue a license to the winner.

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

According to the executive order's § 20, section 3, the Board can also make 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 the stated in the tender material and must contain the required documentation and information etc., including a banker's guarantee.

Section 6.2 describes how the Radio and Television Board's assessment of the applications will take place. The section contains information about evaluation criteria and the mutual weighing of these, including information about the scale of points 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 summarized 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. For a full description of the application procedure and the requirements for the application, please refer to the specific sections in the tender documents.

### **1.2. Background**

The current license to FM4 expires on October 31, 2019.

The political parties behind the Media Agreement for 2019-2023 have decided that a renewed tender of FM4 will be held.

Pursuant to § 45, stk. 5, in the Radio and Television Broadcast act the Minister for Culture has issued executive order no. 267 of the 25<sup>th</sup> of March 2019. It should be noted, that the Executive Order entered into force on Wednesday, March 27, 2019.

The Radio and Television Board offers permission to perform public service programme activities in the form of a radio channel with subsidies.

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 a right and an obligation to distribute the radio channel through the fourth terrestrial FM radio channel. Furthermore, the License holder has a right and an obligation to distribute the radio channel via the DAB transmission network. This must happen in DAB-block 2, where the future license holder gets 96 Capacity Units at their disposal.

The license is valid from November 1, 2019 until December 31, 2027.

### **1.3. Information meeting and Q&A**

An information meeting will be held on Friday, April 5, 2019 at 14.00-16.00, at The Agency for Culture and Palaces, H. C. Andersens Boulevard 2, 1563 Copenhagen V.

Registration for the meeting, including the number of participants shall be made to [rtv@slks.dk](mailto:rtv@slks.dk) no later than Wednesday, April 3, 2019 at 12.00. In the subject field, please state "Registration for information meeting FM4".

The meeting will be in Danish.

During the period from publication of the tender material and up until Wednesday, April 10, 2019 at 12.00 it will be possible to ask questions about the tender material. The questions and answers will be available on [website of the Danish Agency for Culture and Palaces](#).

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 endeavor to answer the questions no later than Monday, April 15, 2019.

Questions submitted after Wednesday, April 10, 2019 at 12.00 will not be responded.

All questions must be submitted in writing to the Radio and Television Board v/Agency for Culture and Palaces at [rtv@slks.dk](mailto:rtv@slks.dk). Please state "Questions, tender FM4" in the subject field.

It is not possible to submit questions directly to the Ministry of Culture and/or to Danish Energy Agency.

#### **1.4. Application procedure**

The application must be submitted through the electronic application form, which can be found on the Agency for Culture and Palaces' website.

Appendix 1 encloses a printout of the application form in pdf format for the applicants' information. Section 5 describes both the application procedure and the requirements for the form and content of the applications.

**Applications must be received by the Radio and Television Board no later than Monday, May 20, 2019 at 12.00.**

Section 5 describes the application procedure as well as the requirements concerning form and content of the applications.

Together with the application, applicants must produce a banker's guarantee of DKK 5 million. The guarantee must be issued by a bank or an insurance company whose long-term debt must have a rating from S & P Global of at least A or from Moody's Investors Service Limited of at least A2.

Once the programme permission is granted, the bank guarantees will be released.

Among other things the applicants must:

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

The applicant can base their 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 or otherwise of objective reason.

The Board is moreover entitled to make adjustments to the conditions for the license stipulated in the tender material or in the tender material before the expiry of the deadline for applications.

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 5.4 for further details.

All information from the Radio and Television Board about this will be presented on the [Danish Agency for Culture and Palaces' website](#). 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 be communicated directly to the applicants' contacts.

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

### **1.5. 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.

The Board can, in accordance with the principle of equal treatment and transparency, ask questions or request the applicant to supplement, clarify or complete the application by submitting relevant information or documents within an appropriate period. However, the Board cannot ask questions or make requests that relate to basic elements of the application, including matters in which the tender documents specifically state that failure to comply with the requirement in the application will lead to rejection of 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 e.g. 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 6.2.

Applications, which do not contain the in the present tender material required minimum information, which has no bank guarantee of DKK 5 million or where the applicant does not answer questions about additional information will be rejected by the Radio and Television Board. See section 5.1.

At the Board's assessment of the applications, the quality and realism in the applicant's plan for operation weighs 35 percent, the size of the total grant for the entire license period, which the applicant offers to be able to operate the radio channel for 25 percent, and the content of the programmes described in the application 40 percent.

In section 6.2 it is further explained how the Board is going to conduct the evaluation.

### **1.6. License conditions**

Through the license period, the license holder's activities must always be conducted in accordance with the license, unless the Radio and Television Board has approved any changes in relation to the stipulations in the executive order beforehand. The conditions are described in more detail in section 9.

The editorial office of the radio channel must be located in Denmark and at least 110 km from the center of Copenhagen. The main editorial office is regarded as the place where the majority of the radio channel's editorial decisions regarding programme content and composition are made.

At least 70 percent of the radio channel's editorial staff must be employed at least 110 km from the center of Copenhagen.

The radio channel's independent news and current affairs desk must be located in Denmark at least 110 km from the center of Copenhagen. The majority of the editorial staff employed with the production of news and current affairs must have their place of employment with the independent news desk. The news editors place of employment must be with the independent news desk.

License holder must be an independent legal unit, whose single purpose is to operate the fourth FM channel. Advertisement and sponsored programmes are allowed according to the rules of the Radio and Television Act chapter 11. However, advertisements may only be broadcasted in blocks that must be placed between the programmes. Advertising on the radio channel must not exceed 12 minutes per day.

The license holder is obliged to distribute the radio channel via the fourth terrestrial FM radio channels and via DAB transmission network and to pay expenses for both analogue and digital distribution.

If a political decision is made to close the analogue FM signals, the obligation to broadcast programmes in accordance with the license requirements for broadcasting in digital form passes as a 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 not entitled to financial or other compensation related thereto.

No later than May 1 annually, the license holder must submit an annual public service report and an independent annual account for the channel. The report should contain information on the fulfillment of the license terms and an independent annual report for the channel stipulating the result, as the Board 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. Based on this statement a decision is made as to reimbursement of possible profit. If license holder does not fulfil their programme obligations etc., they must reimburse the relevant estimated savings plus 15 pct., cf. annex 5 of the executive order.

In case the license is returned/revoked, accounts and statement of license basis, including statement of reasonable profit etc., must cf. executive order, annex 5, 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 the license holder has not fulfilled their programme obligations etc., they must reimburse the hereby associated, calculated costs plus 15%, cf. executive order annex 5.

The license holder must start programme activity and broadcast 24 hours round the clock from November 1, 2019. The requirements under the license enter into force from the start of the license. With regard the requirements for the extent, the deadline for fulfillment is May 1, 2020.

### **1.7. Entry into force, etc.**

The license is valid from November 1, 2019 until December 31, 2027.

The Danish Energy 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 Danish Energy 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 related to the tender is expected to follow the time schedule below:

Information meeting	Friday, April 5, 2019 at 14.00-16.00
Deadline for questions to license material	Friday, April 10, 2019 at 12.00
Deadline for response to questions	Monday, April 15, 2019
<b>Deadline for submission of applications</b>	<b>Monday, May 20, 2019 at 12.00</b>
<b>Deadline for submission of banker's guarantee</b>	<b>Monday, May 20, 2019 at 12.00</b>
Announcement of applicants	Wednesday, May 22, 2019
The Radio and Television Board's estimated assessment of applications	Thursday, June 27, 2019
<b>Expected announcement of successful applicant</b>	<b>Monday, July 1, 2019</b>
Expected issuing of programme license	Monday, July 1, 2019

Applications received later than Monday, May 20, 2019 at 12.00 will not be accepted.

### 2.3. Language

All communication and correspondence will during the 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 unauthorized English Translation of the summary of the tender material is published in relation to the tender material.

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