



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 6th of September, 2022

Essential Air Service at

CAPE GIRARDEAU, MISSOURI
(FAIN 69A3452360547)¹

under 49 U.S.C. § 41731 *et seq.*

DOT-OST-1996-1559

ORDER SELECTING AIR CARRIER

Summary

By this Order, the U.S. Department of Transportation (Department) (1) grants the community of Cape Girardeau, Missouri, a waiver from the requirement in 49 U.S.C. § 41732(a) that basic Essential Air Service (EAS) is scheduled air transportation, and (2) selects Corporate Flight Management, Inc. d/b/a Contour Airlines (Contour) to provide EAS, as public charter flights in accordance with 14 CFR Part 380, at Cape Girardeau, Missouri, for the three-year contract term from October 1, 2022, through September 30, 2025.² Contour is a U.S. commuter air carrier operating under 14 CFR Part 135.³ Contour will provide Cape Girardeau with 12 round trips per week from Cape Girardeau Regional Airport to Nashville International Airport (BNA) using 30-passenger Embraer ERJ-135 (EMB-135) aircraft. Contour will be compensated at the following annual subsidy rates:⁴

¹ FAIN = Federal Award Identification Number.

² More information concerning the requirements to operate as a public charter may be found through the Department's Office of Aviation Consumer Protection at https://www.transportation.gov/individuals/aviation-consumer-protection/charter-flights#Public_Charters and through the Office of the Assistant Secretary for Aviation and International Affairs at <https://www.transportation.gov/policy/aviation-policy/licensing/public-charters>.

³ See Order 2014-1-14.

⁴ Such subsidy is calculated on a fiscal year basis, subject to the availability of funds.

<u>Year</u>	<u>Annual Subsidy</u>
1	\$5,485,832
2	\$5,869,841
3	\$6,280,730

Background

By Order 2021-8-7 (August 12, 2021), the Department selected SkyWest Airlines, Inc., branded as United Express (SkyWest), to provide EAS at Cape Girardeau with 12 nonstop round trips per week to Chicago O’Hare International Airport (ORD) using 50-passenger Canadair or Bombardier CRJ-200 (CRJ-200) regional jet aircraft for the three-year contract term from December 1, 2021, through November 30, 2024, for an annual subsidy of \$3,465,213.

On March 10, 2022, SkyWest, in accordance with the requirements of 49 U.S.C. § 41734(a), filed a 90-day notice of its intent to terminate service at 29 communities, including Cape Girardeau, effective June 8, 2022, stating: “Although SkyWest Airlines, Inc. would prefer to continue providing scheduled air service to these cities, the pilot staffing challenges across the airline industry preclude us from doing so.”

In response to SkyWest’s notice, the Department issued Order 2022-3-8 on March 11, 2022, requesting proposals from air carriers interested in providing replacement EAS for new contract terms and prohibiting SkyWest from terminating its service at the 29 communities. Proposals were due May 11, 2022.⁵ Cape Girardeau received air carrier proposals from Boutique Air, Inc., Contour, and Southern Airways Express, LLC (Southern).

Summary of Air Carrier Proposals

Cape Girardeau Proposals										
<u>Carrier/Service Option</u>	<u>Annual Subsidy (Year 1)</u>	<u>Annual Subsidy (Year 2)</u>	<u>Annual Subsidy (Year 3)</u>	<u>Annual Subsidy (Year 4)</u>	<u>Community Support?</u>	<u>Hub(s)</u>	<u>Round Trips per Week</u>	<u>Aircraft</u>	<u>Seats</u>	<u>Interline/Codeshare</u>
Boutique Air	\$5,136,776	\$5,239,511	N/A	N/A	No	BNA	28	PC-12	8/9	American (interline)/ United (interline and codeshare)
Contour	\$5,485,832	\$5,869,841	\$6,280,730	\$6,720,381	Yes	BNA	12	EMB-135	30	American (interline)
Southern, Option A	\$2,954,416	\$3,028,276	\$3,103,983	\$3,181,582	No	BNA/STL	24	Cessna 208	8/9	American and United (interline)
Southern, Option B	\$4,163,208	\$4,267,283	\$4,373,965	\$4,483,314	No	BNA/ STL/ORD	23 to STL/ BNA, 7 to ORD	Cessna 208	8/9	American and United (interline)

⁵ Proposals were originally due on April 11, 2022. In response to requests from several communities to extend the April 11 deadline, the Department extended the deadline to May 11, 2022.

The complete public file, including the air carrier proposals for EAS at Cape Girardeau, may be accessed online through the Federal Docket Management System at www.regulations.gov by entering the community's docket number in the "Search" field.

Community and State Comments

On May 13, 2022, the Department requested comments from the community of Cape Girardeau regarding this EAS carrier-selection case.

By letter dated June 22, 2022, the City Manager of Cape Girardeau, Dr. Kenneth Haskin, submitted official community comments supporting the proposal put forth by Contour.

While the community appreciated the interest of Boutique Air and Southern in serving the Cape Girardeau market, it endorsed Contour because its proposal included the use of twin-engine aircraft and the community declined to waive its right to twin-engine service.

Waiver Request

Title 49 U.S.C. § 41732(a) describes basic EAS as scheduled air transportation of passengers and cargo. 49 U.S.C. § 41732(c) provides that, upon request by an eligible place, the Secretary of Transportation (Secretary) may waive, in whole or in part, certain subsections of Section 41732, including the requirement that basic EAS is scheduled air transportation. Under 49 U.S.C. § 41732(c), a waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.

Included in the letter described above, dated June 22, 2022, the community requested that the Secretary waive 49 U.S.C. § 41732(a) requiring that basic EAS be operated as scheduled air transportation for the duration of this EAS contract. The proposal submitted by Contour Airlines is for public charter service, not scheduled air transportation as defined by the Department's regulations. The community requested that the waiver be granted for a limited period of time, the duration of this EAS contract.

Decision

Title 49 U.S.C. § 41733(c)(1) directs the Secretary to consider five factors when making an air carrier selection for a community not in Alaska where basic EAS will not be provided without compensation.⁶ The five factors are: (A) service reliability of the applicant air carrier; (B) the existence of contractual and marketing arrangements with a larger air carrier at the hub; (C) the existence of interline arrangements with a larger air carrier at the hub; (D) the preferences of the actual and potential users of the EAS, giving substantial weight to the views of the elected officials representing those users; and (E) whether the air carrier has included a plan in its proposal to market its EAS to the community. In addition, Section 41732(b)(1)(A) requires basic EAS to include at least two daily round trips six days a week for an eligible place not in Alaska. Finally, the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (March 15, 2022), authorizes the Department to consider the relative subsidy requirements of the applicant air carriers.

⁶ The Department did not receive any proposals to provide EAS at Cape Girardeau without subsidy.

The Department has thoroughly reviewed the proposals submitted in this EAS carrier-selection case. Section 41732(b) sets out minimum requirements for basic EAS, including that service be provided in aircraft with at least 2 engines and using 2 pilots. Cape Girardeau has not requested a waiver from the 2-engine, 2-pilot requirement, and therefore these proposals are not eligible and cannot be selected by the Department.

Section 41732(c) provides communities the ability to request a waiver from certain requirements, including that basic EAS is scheduled air transportation. As Cape Girardeau supports the selection of Contour to provide EAS at the community, it has requested, pursuant to 41732(c), that the Secretary waive the requirement that basic EAS be scheduled air transportation to enable the Department to select Contour under traditional EAS.

Based on the Department's review of the record, Contour's ability and reliability to provide the proposed service, and the totality of the circumstances, including the significant decrease in service at Cape Girardeau by SkyWest since filing its notice to terminate service, and the Department's statutory responsibility to provide eligible EAS communities with access to the national air transportation system, the Department finds that a waiver is warranted in this instance for a limited duration.

Contour holds the appropriate economic authority to operate as a U.S. commuter air carrier, meets all five factors for carrier selection, and meets the Section 41732(b) minimum requirements for basic EAS, including 2 daily round trips 6 days a week using 2 pilots on 2-engine aircraft. In addition, Contour has the experience to serve the Cape Girardeau market, having been selected at other communities to provide Alternate EAS, funded through grant agreements from the Department.⁷ The air carrier also has an interline agreement with American Airlines and service to/from Cape Girardeau will be for sale on American Airlines' website, providing Cape Girardeau passengers access to American Airlines' extensive domestic and international network. Moreover, Contour's hub, BNA, is a large-hub airport and will provide access to the national air transportation system. Lastly, Contour proposes \$25,000 to market its air service at Cape Girardeau.

In light of the above, the Department is selecting Contour to replace SkyWest for a three-year term⁸ starting October 1, 2022. The Department's grant of a waiver to the community from 49 U.S.C. § 41732(a) will remain in effect for a limited period time, for the three-year term ending September 30, 2025.

Service Transition

The Department expects the air carriers to work together to make a smooth transition at Cape Girardeau, with no hiatus in service. SkyWest is required to continue serving Cape Girardeau until Contour commences service at the community.⁹ Before SkyWest terminates its EAS at

⁷ See 49 U.S.C. § 41745.

⁸ While the official letter from the community did not specifically state their desired contract term, Ms. Katrina Amos, Airport Manager at CGI confirmed in a phone call that the community preferred a three-year contract term. Contour proposed providing service for four years; however, in consideration of the community's preference, the Department is only selecting Contour for a three-year term.

⁹ In accordance with 49 U.S.C. § 41734(c), the Department will extend SkyWest's service obligation for successive 30-day periods as necessary.

Cape Girardeau, the Department expects the air carrier to notify all passengers holding reservations for travel after the termination date, to assist those passengers in making alternate air transportation arrangements, or to provide a full refund of the ticket price, without penalty, if requested.

Reminder About EAS Eligibility

To remain eligible for EAS, communities must comply with all applicable EAS eligibility requirements. We note that many of the traditional eligibility requirements, established under Title 49 U.S.C. § 41731(a)(1)(B) and (C) and the subsidy cap established by the Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-69 (October 9, 1999), were waived for Fiscal Years 2020 and 2021 by the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (December 27, 2020), and for Fiscal Year 2022 by the Consolidated Appropriations Act, 2022, Pub L. No. 117-103 (March 15, 2022). However, unless waived by Congress for future fiscal years, compliance with these eligibility requirements (described below) will resume at the beginning of Fiscal Year 2023.

Title 49 U.S.C. § 41731(a)(1)(B) provides that a community must maintain an average of 10 enplanements per service day, as determined by the Secretary, during the most recent fiscal year, to remain eligible for EAS. Locations in Alaska and Hawaii, and communities that are more than 175 driving miles from the nearest large- or medium-hub airport, are exempt from this requirement. Cape Girardeau is subject to this requirement because it is not more than 175 miles from the nearest large- or medium-hub airport.

Further, the Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-69 (October 9, 1999), prohibits the Department from subsidizing EAS to communities located within the 48 contiguous States that require a subsidy per passenger amount exceeding \$200 (“Subsidy Cap”), unless the community is located more than 210 miles from the nearest large- or medium-hub airport. Cape Girardeau is subject to this requirement, because it is not more than 210 miles from the nearest large- or medium-hub airport.

EAS communities, except for those in Alaska and Hawaii, must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, regardless of the distance to the nearest large- or medium-hub airport.¹⁰

The Department expects Contour and Cape Girardeau to work together to ensure that the community will comply with the applicable requirements. Communities that fail to comply with the applicable above requirements may risk having their eligibility in the EAS program terminated. In the event the Department terminates a community’s eligibility for EAS due to lack of compliance, that action will supersede this Order.

Air Carrier Fitness

Title 49 U.S.C. §§ 41737(b) and 41738 require that the Department find an air carrier fit, willing, and able to provide reliable service before the Department may subsidize it to provide EAS. Contour is subject to the Department’s continuing fitness requirements, and no information has

¹⁰ See 49 U.S.C. § 41731(a)(1)(C).

come to the Department's attention that would cause the Department to question the air carrier's fitness at this time. The Federal Aviation Administration has not raised concerns that would negatively affect the Department's fitness findings. The Department therefore concludes that Contour remains fit to conduct the operations proposed at Cape Girardeau.

This Order is issued under authority delegated by the Secretary of Transportation in 49 CFR § 1.25a(b)(6)(ii)(D).

ACCORDINGLY,

1. The Department selects Corporate Flight Management, Inc. d/b/a Contour Airlines to provide Essential Air Service at Cape Girardeau, Missouri, from October 1, 2022, through September 30, 2025, and establishes the annual subsidy rates as described in Appendix B;
2. The Department terminates the EAS contract for SkyWest Airlines, Inc. to serve Cape Girardeau, Missouri, as outlined in Order 2021-8-7, effective October 1, 2022, or the date on which Corporate Flight Management, Inc. d/b/a Contour Airlines commences service, whichever is later;
3. The Department makes this selection contingent upon receiving properly-executed certifications from Corporate Flight Management, Inc. d/b/a Contour Airlines that it is in compliance with the Department's regulations regarding drug-free workplaces and nondiscrimination, as well as the regulations concerning lobbying activities;¹¹
4. Under the authority provided by 49 U.S.C. § 41732(c), the Department waives 49 U.S.C. § 41732(a) for the period from October 1, 2022, through September 30, 2025;
5. The Department directs Corporate Flight Management, Inc. d/b/a Contour Airlines to retain all books, records, and other source and summary documentation to support claims for payment, including copies of flight logs for aircraft used to provide EAS under this Order and sold or disposed of, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. This documentation shall be retained for three years from the last day of service under this Order, or such longer period as the Department may notify the air carrier. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The air carrier may forfeit its compensation for any claim that is not supported under the terms of this Order;
6. The Department finds that Corporate Flight Management, Inc. d/b/a Contour Airlines is fit, willing, and able to perform Essential Air Service at Cape Girardeau, Missouri;
7. This docket will remain open pending further Department action; and

¹¹ The certifications are available online under "Reports and Publications" at <http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports>.

8. The Department will serve this Order on the City Manager of Cape Girardeau, Missouri, the Airport Manager of Cape Girardeau Regional Airport, Corporate Flight Management, Inc. d/b/a Contour Airlines, Boutique Air, Inc., Southern Airways Express, LLC, and SkyWest Airlines, Inc.

By:

Joel Szabat
Deputy Assistant Secretary
for Aviation and International Affairs

(SEAL)

An electronic version of this document is available at
www.regulations.gov

Proposal of Contour Airlines

Cape Girardeau, MO
 Route: 12x weekly CGI-BNA round trips
 Service in Regional Jet Aircraft configured with 30 passenger seats
 All flights conducted as 14 CFR Part 380 public charters
 Year 1 Projection
 Annual Escalation: 7% Year Over Year

Operations

Scheduled Flight Segments		1,248
Completion Factor/Completed Flight Segments	99%	1,236
Scheduled Seats	30	37,440

Revenue

Estimated Average Load Factor/Total Annual Passengers	75%	28,080
Average Fare		\$50.00
Total Revenue		\$ 1,404,000.00

Expenses

Fuel		\$ 2,966,745.60
Maintenance and Reserves		\$ 1,245,000.00
Pilot Costs		\$ 1,375,000.00
Aircraft Fixed Costs		\$ 350,000.00
Marketing		\$ 25,000.00
Other Indirect Costs		\$ 600,000.00
Total Expenses		\$ 6,561,745.60

Profit Component (Percentage of Total Expenses)	5%	\$ 328,087.28
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Proposed Subsidy - Year 1	\$ 5,485,832.88
Proposed Subsidy - Year 2	\$ 5,869,841.18
Proposed Subsidy - Year 3	\$ 6,280,730.06
Proposed Subsidy - Year 4	\$ 6,720,381.17

*Service contingent on the community waiving their right to scheduled service

Corporate Flight Management, Inc. d/b/a Contour Airlines
Essential Air Service to be provided at Cape Girardeau, Missouri
DOT-OST-1996-1559

<u>Annual Subsidy:</u>	\$5,485,833
<u>Contract Term:</u>	October 1, 2022, through September 30, 2023
<u>Hub</u>	Nashville International Airport (BNA)
<u>Scheduled Service:</u>	12 round trips per week
<u>Aircraft/Seats:</u>	30-passenger ERJ-135
<u>Subsidy Rate per Flight:</u> ¹	\$4,438
<u>Weekly Ceiling:</u> ²	\$106,512

Note: The air carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate Order, including the service plans outlined in the Order and any other significant elements of the required service, without prior approval. The air carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the air carrier does not schedule or operate its flights in full conformance with the Order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the air carrier contemplates any such changes beyond the scope of the Order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement air carrier to provide service on these routes. The air carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this Order, then, at the end of the period for which the Department does make payments in the stipulated service amounts, the air carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and air carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

Funds may not be available for performance under this Order beyond September 30, 2022. The Government's obligation for performance under this Order beyond September 30, 2022, is subject to the availability of funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this order beyond September 30, 2022, until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond September 30, 2022, the Department will provide notice in writing to the air carrier.

All claims for payment, including any amended claims, must be submitted within 90 days of the last day of the month for which compensation is being claimed. For example, claims for service provided in July must be filed by October 31; August claims must be submitted by November 30, and so on.

1 Annual compensation of \$5,485,833 divided by 1,236 annual flights (1,248 multiplied by 99 percent completion).
2 24 flights per week multiplied by \$4,438.

**Corporate Flight Management, Inc. d/b/a Contour Airlines
Essential Air Service to be provided at Cape Girardeau, Missouri
DOT-OST-1996-1559**

<u>Annual Subsidy:</u>	\$5,869,841
<u>Contract Term:</u>	October 1, 2023, through September 30, 2024
<u>Hub</u>	Nashville International Airport (BNA)
<u>Scheduled Service:</u>	12 round trips per week
<u>Aircraft/Seats:</u>	30-passenger ERJ-135
<u>Subsidy Rate per Flight:</u> ¹	\$4,749
<u>Weekly Ceiling:</u> ²	\$113,976

Note: The air carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate Order, including the service plans outlined in the Order and any other significant elements of the required service, without prior approval. The air carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the air carrier does not schedule or operate its flights in full conformance with the Order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the air carrier contemplates any such changes beyond the scope of the Order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement air carrier to provide service on these routes. The air carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

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Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

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Corporate Flight Management, Inc. d/b/a Contour Airlines
Essential Air Service to be provided at Cape Girardeau, Missouri
DOT-OST-1996-1559

<u>Annual Subsidy:</u>	\$6,280,730
<u>Contract Term:</u>	October 1, 2024, through September 30, 2025
<u>Hub</u>	Nashville International Airport (BNA)
<u>Scheduled Service:</u>	12 round trips per week
<u>Aircraft/Seats:</u>	30-passenger ERJ-135
<u>Subsidy Rate per Flight:</u> ¹	\$5,081
<u>Weekly Ceiling:</u> ²	\$121,944

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