



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

Issued by the Department of Transportation
on the 26th Day of October, 2022

Essential Air Service at

PUEBLO, COLORADO
(FAIN 69A3452360549)¹

under 49 U.S.C. § 41731 *et seq.*

DOT-OST-1999-6589

ORDER SELECTING AIR CARRIER

Summary

By this Order, the U.S. Department of Transportation (the Department) is selecting Southern Airways Express LLC (Southern Airways) to provide Essential Air Service (EAS) at Pueblo, Colorado, for the two-year period from January 15, 2023, through January 31, 2025. Southern Airways will provide Pueblo with a total of 24 weekly nonstop round trips to Denver International Airport (DEN) using 9-seat Beechcraft King Air 200 aircraft, at an annual subsidy of \$2,992,087 for the first year and \$3,066,890 for the second year.²

Background

By Order 2019-11-21 (November 29, 2019), the Department selected SkyWest Airlines, Inc. (SkyWest) to provide EAS at Pueblo, for the three-year period from December 1, 2019, through November 30, 2022. Under the terms of that Order, SkyWest was selected to provide Pueblo with 12 nonstop round trips per week to DEN, using 50-seat CRJ-200 aircraft, at an annual subsidy rate of \$2,784,664.

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 Pueblo, effective June 8, 2022, stating: “Although [SkyWest] would prefer to continue providing scheduled air service to these cities, the pilot staffing challenges across the airline industry preclude us from doing so.”

¹ FAIN = Federal Award Identification Number.

² Such subsidy is calculated on a fiscal year basis, subject to the availability of funds.

In response to SkyWest’s notice, the Department issued Order 2022-3-8 (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 Pueblo and 28 other communities. Proposals were due May 11, 2022.³ In response to that Order, Boutique Air, Inc. and Southern Airways submitted proposals for consideration. However, both of those proposals contemplated using single-engine aircraft operations and Pueblo declined to waive its right to basic EAS consisting of aircraft with at least 2 engines and using 2 pilots.⁴

Therefore, by Order 2022-6-22 (July 5, 2022), the Department re-solicited proposals to serve Pueblo. Those proposals were due no later than August 8, 2022. In response to the Department’s re-solicitation, Southern Airways submitted two proposals to serve Pueblo that contemplate using twin-engine King Air 200 aircraft.

The complete public file for EAS at Pueblo 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.

Summary of Air Carrier Proposals

Air Carrier	Annual Term	Weekly Round Trips	Hub(s)	Seats	Aircraft	Subsidy Year 1	Subsidy Year 2	Subsidy Year 3	Subsidy Year 4	Community Support	Interline/Codeshare
Southern Air Option A	2 or 4	24	DEN	9	King Air 200	\$ 2,992,087	\$ 3,066,890	\$ 3,143,562	\$ 3,222,151	Yes	Yes
Southern Air Option B	2 or 4	30	DEN	9	King Air 200	\$ 3,413,093	\$ 3,498,420	\$ 3,585,881	\$ 3,675,528	No	Yes

Proposal of Southern Airways

As indicated in the table above, Southern Airways proposed to provide either 24 or 30 weekly nonstop round trips to DEN using 9-seat twin-engine Beechcraft King Air 200 aircraft. Southern Airways included a marketing plan in its proposal and has an interline agreement with American, Alaska Airlines, and United.

In an email dated October 10, 2022,⁵ Mr. Stan Little, Chairman and CEO, of Southern Airways stated:

While we await a DOT Order regarding Essential Air Service at Pueblo, I just want to clarify that, should Southern be selected, we have a dedicated King Air 200 aircraft for Pueblo (as well as a separate dedicated aircraft for Chadron, Nebraska). These will be the primary aircraft serving our Denver hub operations when they go into full-time operation in December.

In the event of maintenance/irregular operations, there may be occasions when we would substitute a PC-12 on certain days in order to avoid cancellations. I want to be clear that any such occasions would never reach the threshold which

3 Proposals were originally due on April 11, 2022. However, the Department received numerous requests to extend the April 11 deadline. Therefore, on April 8, 2022, the Department granted a 30-day extension from the original April 11 deadline, with proposals due on May 11, 2022.

4 49 U.S.C. § 41732(b)(5).

5 <https://www.regulations.gov/document/DOT-OST-1999-6589-0164>

could trigger a loss of Pueblo's right to twin-engine service in the future.

Community Comments

On August 9, 2022, the Department requested community comments regarding this air carrier selection case. By letter dated September 9, 2022, the Honorable Nicholas A. Gradisar, Mayor of the City of Pueblo, provided support for Southern Air's proposal and stated that "Southern Airways Express LLC's proposal suits Pueblo's air service goals. The King Air 200 (BE-200) is a capable aircraft for our community."

By letter dated August 29, 2022, Mr. Walter L. Ross Jr., Chairman of the City of Pueblo Department of Aviation, stated:

As you know, we have received only one proposal for service at Pueblo Memorial Airport. In the bid process for previous EAS contracts, this community has expressed a desire to have jet service opposed to airplanes with a single engine propeller. Southern Airways plans to support the service with a Beechcraft King Air 200, a 9-passenger twin engine turboprop...

Even though Pueblo will not have jet aircraft service, Southern's proposal seems to be a suitable substitute. In consideration that Southern Airways provided the only proposal, the committee recommends accepting it.

Decision

Title 49 U.S.C. § 41733(c)(1) directs the Department 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 (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.

Southern Airways' Option A proposal meets the air carrier selection criteria, providing excellent connectivity to the national air transportation system at reasonable annual subsidy levels. The community is supportive of its proposal. Therefore, the Department is selecting Southern Airways' Option A for a two-year term.

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

Service Transition

The Department expects Southern Airways and SkyWest to work together to make a smooth transition at Pueblo with no service hiatus. Before SkyWest suspends service, the Department expects the air carrier to notify all passengers holding reservations for travel after the suspension 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. The Department notes that many of the traditional eligibility requirements, established under 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, 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 of Transportation, 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. Pueblo 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. Pueblo 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.⁷

The Department expects Southern Airways and Pueblo 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.

⁷ See 49 U.S.C. § 41731(a)(1)(C).

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. Southern Airways is subject to the Department's continuing fitness requirements, and no information has 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 Southern Airways remains fit to conduct the operations proposed at Pueblo.

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 Southern Airways Express LLC to provide Essential Air Service at Pueblo, Colorado, from January 15, 2023, through January 31, 2025, and establishes the annual subsidy rate as described in Appendix B;
2. The Department terminates the EAS contract for SkyWest Airlines, Inc. to serve Pueblo, Colorado, as outlined in Order 2019-11-21, effective January 14, 2022, or the date on which Southern Airways Express LLC commences service, whichever is later;
3. The Department makes this selection contingent upon receiving properly-executed certifications from Southern Airways Express LLC that it is in compliance with the Department's regulations regarding drug-free workplaces and nondiscrimination, as well as the regulations concerning lobbying activities;⁸
4. The Department directs Southern Airways Express LLC 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;
5. The Department finds that Southern Airways Express LLC is fit, willing, and able to perform Essential Air Service at Pueblo, Colorado;
6. This docket will remain open pending further Department action; and

⁸ The certifications are available online under "Reports and Publications" at <http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports>.

7. The Department will serve this Order on the City Manager of Pueblo, Colorado, the City Council of Pueblo, Colorado, the Director of Aviation at Pueblo Memorial Airport, SkyWest Airlines, Inc., and Southern Airways Express LLC.

By:

Carol A. (“Annie”) Petsonk
Assistant Secretary
for Aviation and International Affairs

(SEAL)

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

Southern Airways Express LLC
 Annual Compensation Requirements for Essential Air Service at Pueblo, Colorado
 24 Nonstop Round Trips per Week to Denver International Airport

Pueblo Proposal

	Option A BE-200
Aircraft	
Weekly Round Trips	
PUB-DEN	24
Total	<u>24</u>
Operating Revenues	
PUB-DEN	\$960,000
Total Operating Revenues	<u>\$960,000</u>
Operating Expenses	
Flying Operations	\$1,301,811
Fuel and Into Plane	\$926,314
Maintenance	\$682,513
Aircraft	\$398,400
Indirect	\$454,855
Total Operating Expenses	<u>\$3,763,893</u>
Operating Loss	<u>\$2,803,893</u>
Profit Element (5%)	\$188,195
Compensation Required	\$2,992,087
Compensation per Pax	\$199
Compensation per Departure	\$1,217
Annual Seats	22,122
Annual Passengers	15,000
Load Factor	68%
Departures	2,458
Average Fare	\$64
Completion Factor	98.5%
Compensation Required Year 1	\$2,992,087
Compensation Required Year 2	\$3,066,890
Compensation Required Year 3	\$3,143,562
Compensation Required Year 4	\$3,222,151

Southern Airways Express LLC
Essential Air Service to be provided at Pueblo, CO
DOT-OST-1999-6589

<u>Contract Term:</u>	January 15, 2023, through January 31, 2025
<u>First Year Annual Subsidy¹:</u>	\$2,992,087
<u>Second Year Annual Subsidy:</u>	\$3,066,890
<u>Hub:</u>	Denver International Airport (DEN)
<u>Scheduled Service:</u>	24 Round Trips per Week
<u>Aircraft/Seats:</u>	Beechcraft King Air 200
<u>First Year Subsidy Rate per Flight:²</u>	\$1,217
<u>First Year Weekly Ceiling:³</u>	\$58,416
<u>Second Year Subsidy Rate per Flight:⁴</u>	\$1,248
<u>Second Year Weekly Ceiling:⁵</u>	\$59,904

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.

¹ First year: January 15, 2023, through January 31, 2024. Second year: February 1, 2024, through January 31, 2025.

² Annual compensation of \$2,992,087 divided by 2,458 annual flights (48 weekly departures x 52 weeks x 98.5 percent completion).

³ 48 flights per week multiplied by \$1,217.

⁴ Annual compensation of \$3,066,890 divided by 2,458 annual flights (48 weekly departures x 52 weeks x 98.5 percent completion).

⁵ 48 flights per week multiplied by \$1,248.

Funds may not be available for performance under this Order beyond December 16, 2022. The Government's obligation for performance under this Order beyond December 16, 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 December 16, 2022, until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond December 16, 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.