



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

Issued by the Department of Transportation
on the 18th of November, 2022

Essential Air Service at

**KIRKSVILLE, MISSOURI
MARION, ILLINOIS
OWENSBORO, KENTUCKY**

**DOT-OST-1997-2515
DOT-OST-2000-7881
DOT-OST-2000-7855**

Under 49 U.S.C. § 41731 *et seq.*

**ORDER REQUESTING PROPOSALS FOR ESSENTIAL AIR SERVICE
ON AN EXPEDITED BASIS**

Summary

By this Order, the U.S. Department of Transportation (the Department) is requesting proposals from air carriers interested in providing Essential Air Service (EAS) at Kirksville, Missouri; Marion, Illinois; and/or Owensboro, Kentucky to replace existing contracts served by Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air), beginning within 60 to 90 days of the Department's issuance of a carrier selection order, with or without subsidy. Air carriers should file proposals, on an expedited basis, no later than December 13, 2022.

Background

By Order 2020-9-3, issued on September 8, 2020, the Department selected Cape Air to provide EAS at Kirksville for a four-year term from October 1, 2020, through September 30, 2024. Under that Order, Kirksville receives 21 nonstop round trips per week to St. Louis-Lambert International Airport (STL) using 9-passenger Cessna 402 aircraft or 9-passenger Tecnam P2012 Traveller (Tecnam) aircraft and is compensated at the following annual subsidy rates:

<u>Year</u>	<u>Annual Subsidy</u>
1	\$2,270,960
2	\$2,339,088
3	\$2,409,261
4	\$2,481,539

By Order 2019-10-13, issued on October 22, 2019, the Department selected Cape Air to provide EAS at Marion for a four-year term from December 1, 2019, through November 30, 2023. Under that Order, Marion receives 24 nonstop round trips per week to STL and 12 nonstop round trips per week to Nashville International Airport (BNA), for a combined total of 36 round trips

per week, using either a 9-passenger Cessna 402 or 9-passenger Tecnam aircraft and is compensated at the following annual subsidy rates:

<u>Year</u>	<u>Annual Subsidy</u>
1	\$2,933,337
2	\$3,021,338
3	\$3,111,978
4	\$3,205,337

By Order 2021-11-8, issued on November 12, 2021, the Department selected Cape Air to provide EAS at Owensboro for a two-year term from January 1, 2022, through December 31, 2023. Under that Order, Owensboro receives 14 nonstop round trips per week to BNA and seven nonstop round trips per week to STL, for a total of 21 round trips per week, using a 9-passenger Tecnam aircraft and is compensated at the following annual subsidy rates:

<u>Year</u>	<u>Annual Subsidy</u>
1	\$2,128,874
2	\$2,192,740

On October 26, 2022, in accordance with the requirements of 49 U.S.C. § 41734 (a), Cape Air filed a 90-day notice of its intent to terminate service at Kirksville, Marion, and Owensboro, stating:

Cape Air is deeply honored to serve each of these communities. However, recent increases in operating expenses – particularly fuel and Cape Air’s attractive pilot compensation – have surpassed Cape Air’s ability to absorb the expenses on these fixed-rate contracts, each proposed more than a year ago. Cape Air uses the term “terminate” per the program’s lexicon, but Cape Air’s intent is to continue uninterrupted Essential Air Service at each community and to compete for reselection by US DOT for continued EAS for each community at economically sustainable rates.

The complete public files for EAS at Kirksville, Marion, and Owensboro may be accessed online through the Federal Docket Management System at www.regulations.gov by entering each community’s docket number in the “Search” field.

Since Cape Air stated in its notice that it does not intend to cease operating at any of the three communities, there is no reason for the Department to require Cape Air to maintain service. Cape Air states that it will submit new proposals for selection, so the Department will attempt to expedite the proceeding.

The Department’s agreements with Cape Air remain in full force,¹ and, other than occasional operational cancellations, the Department expects the carrier to continue to provide the contracted service at all three communities.

¹ As outlined on pp. 1-2 of this Order under the terms of the Selection Orders for these three communities.

Request for Proposals: General Requirements

The Department is requesting proposals from air carriers interested in providing EAS at Kirksville, Marion, and/or Owensboro with subsidy if necessary, for new contract period beginning within 60 to 90 days after a carrier selection order is issued. Air carriers should file their proposals no later than December 13, 2022.

The Department expects clear, well-documented proposals that will facilitate their evaluation by the community and the EAS team.² Air carrier proposals should be submitted to the Department with all materials merged into a single document. In addition, proposals should be formatted to be viewed online. In order to evaluate air carrier proposals, the Department requires that air carriers adequately describe the service being proposed and the annual amount of subsidy being requested, if any. The Department requests that proposals include information concerning proposed schedules, projected block hours, and financial data supporting subsidy requests including information on projected expenses and revenues. In cases where an air carrier proposes to provide EAS without subsidy and the Department determines that basic EAS, as required by 49 U.S.C. § 41732, can be reliably provided without such compensation, the Department typically will not proceed with the air carrier selection case. Instead, the Department will simply rely on that air carrier's subsidy-free service as proposed. Lastly, the Department expects that air carriers will have completed due diligence regarding any community-specific operational requirements. Air carriers should prepare their proposals with every expectation that, should they be selected by the Department, they will be able to commence full EAS as described in their proposal on the first day of the new contract term.

Interested air carriers should prepare their proposals with the understanding that their initial proposals will represent their *final* and *only* proposals. However, the Department retains the discretion to negotiate proposals with air carriers when it deems it desirable; in such cases, the Department will give all applicants the same opportunity. The Department also retains the discretion to re-solicit a new round of proposals, in the event that all proposals received are rejected due to being unreasonable or unrealistic.

Proposals should provide sufficient capacity to accommodate historical levels of traffic with, as a general matter, service up to two airports that provide numerous connecting opportunities to the national air transportation system.³ When crafting a proposal, the air carrier should ensure that

² In selecting an air carrier to provide subsidized EAS for an eligible place not in Alaska, 49 U.S.C. § 41733(c)(1) directs the Department to consider five factors: (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 the users; and (E) whether the air carrier has included a plan in its proposal to market its EAS to the community. The Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Pub. L. No. 117-180 (September 30, 2022), authorizes the Department to consider the relative subsidy requirements of the applicant air carriers. Interested air carriers should also be aware that the general provisions governing EAS will be included in the selection order as part of the Department's authorization of subsidy for the selected service. Appendix C of this Order contains those general provisions.

³ Ordinarily, where the proposal is for EAS from the community to one airport, that airport must be a medium- or large-hub, and where the proposal is for EAS to two airports, at least one of those airports must be a medium- or large-hub. See 49 U.S.C. § 41732(a)(1) and 14 CFR 398.2(b)(1). However, service to a small-hub or nonhub

the proposed hub best meets the air service needs of the community. In order to assist air carriers in developing traffic and revenue projections for their proposals, the Department has provided a summary of recent historical passengers in Appendix B.⁴ The Department encourages air carriers to work with the communities as they prepare their proposals in order to craft a service proposal that meets the communities' needs with subsidy requirements that remain competitive. The Department will fully consider the views of the communities and states before making an air carrier decision.

Air carriers may propose more than one service option. They can also propose service options different from what the community currently receives—lengths of contract terms or hub airports, for example. However, proposals should have at least one option that complies with the weekly capacity described below, and compliant with all legal requirements.

Air carriers should note that it is a federal crime to knowingly and willfully make materially false, fictitious, or fraudulent statements, entries, or representations in an EAS proposal submitted to the Department.⁵

Request for Proposals: Specific Requirements

The Department expects proposals that meet basic EAS requirements and are consistent with what the communities currently receive. At Kirksville, the Department expects proposals for 21 round trips per week with aircraft seating 8/9 passengers,⁶ or 12 round trips per week for aircraft seating 30-50 passengers. At Marion, the Department expects proposals for 36 round trips per week with aircraft seating 8/9 passengers, or 12 round trips per week for aircraft seating 30-50 passengers. At Owensboro, the Department expects proposal for 21 round trips per week for aircraft seating 8/9 passengers, or 12 round trips per week for aircraft seating 30-50 passengers.

Community requests for certain waivers

Title 49 U.S.C. 41732(c) states: “Notwithstanding section 41733(e), upon request by an eligible place, the Secretary may waive, in whole or in part, subsections (a) and (b) of this section or subsections (a) through (c) of section 41734. A waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.” For example, a community could request a waiver from the Department for its air carrier to provide fewer than two daily round trips six days per week⁷ if it is a highly seasonal market and doing so would

airport is acceptable for basic EAS if the nearest hub airport is more than 400 miles from the eligible place. *See* 49 U.S.C. § 41732(a)(2). In some cases, the Department may require service to two hubs, at least one of which must be a large- or medium-hub. *See* 14 CFR 398.2(b)(3). In the case of a community receiving two total round trips per day, the Department expects that at least one round trip per day will be to a medium or large hub airport, as medium and large hub airports provide better access to the national air transportation system. Hub classifications are provided by the Federal Aviation Administration at

https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/.

⁴ Source: Bureau of Transportation Statistics, Schedule T-100.

⁵ 18 U.S.C. § 1001.

⁶ For an eligible place not in Alaska, 49 U.S.C. § 41732(b)(3) establishes a 15-seat requirement for aircraft, subject to exceptions, if daily boardings at the place in any calendar year from 1976-1986 were more than 11 passengers. This requirement was waived for the current fiscal year by the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (March 15, 2022).

⁷ 49 U.S.C. § 41732(b)(1)(A).

facilitate a more reasonable subsidy rate or would better match the community's demand. A community could also request a waiver from the requirement for air carriers to provide service with at least two engines and using two pilots.⁸ Waiver requests by the community may be submitted with an air carrier's proposal or during the community comment period, after proposals are received.

Community and State Comments

The communities of Kirksville, Marion, and Owensboro, and the States of Missouri, Illinois and Kentucky, respectively, are welcome to submit comments at any time. The Department encourages interested air carriers to contact the communities *before* they submit their proposals so that they can tailor them to each community's needs, as they will not be able to amend them after the due date. Shortly afterwards, notify the communities of the proposals and ask them to submit their comments by a specific date.

Other Air Carrier Requirements

The Department is responsible for implementing various federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁹ Consequently, all air carriers receiving subsidy for EAS must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those air carriers whose subsidies exceed \$100,000 over the life of the contract must also certify that they are in compliance with the regulations governing lobbying activities. Because the Department is prohibited from paying subsidy to air carriers that do not submit these documents, all air carriers that plan to submit proposals involving subsidy should be aware that the selected air carrier will be required to complete the required certifications. Interested air carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-5903.¹⁰

This Order is issued under authority delegated by the Secretary of Transportation in 49 CFR § 1.25a(b)(6)(ii)(D), and re-delegated to the Director, Office of Aviation Analysis.

Accordingly,

1. The Department requests that air carriers interested in providing Essential Air Service at Kirksville, Missouri, Marion, Illinois, and/or Owensboro, Kentucky, submit their proposals, with or without subsidy, on an expedited basis, but no later than December 13, 2022. The proposals should be e-mailed to: michael.f.martin@dot.gov and EAS@dot.gov, with the title "Proposal to Provide EAS at Kirksville, Missouri, Marion, Illinois, and/or Owensboro, Kentucky";¹¹

⁸ 49 U.S.C. § 41732(b)(5).

⁹ The regulations applicable to these areas are: (1) 49 CFR Part 20 – New restrictions on lobbying; (2) 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 – Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance; and 14 CFR Part 382 – Nondiscrimination on the basis of disability in air travel; (3) 49 CFR Part 32 – Governmentwide requirements for drug free workplace; and (4) 2 CFR Part 1200 – Government-wide debarment and suspension (non-procurement).

¹⁰ The certifications are available online under "Reports and Publications" at <http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports>.

¹¹ Questions regarding filings in response to this Order may be directed to Mr. Michael Martin at (202) 366-6494 or michael.f.martin@dot.gov.

2. These dockets will remain open until further order of the Department; and
3. The Department will serve this Order on the Mayor of Kirksville, Missouri, the Airport Manager of Kirksville Regional Airport, the Mayor of Marion, Illinois, the Airport Director at Veterans Airport of Southern Illinois (Marion), the Mayor of Owensboro, Kentucky, the Airport Director of Owensboro-Daviess County Regional Airport, and the courtesy distribution list for requests for proposals for EAS communities.

By:

TODD M. HOMAN
Director
Office of Aviation Analysis

(SEAL)

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

AREA MAP



Map generated by the Great Circle Mapper - copyright © Karl L. Swartz.

Passenger Traffic at Kirksville - July 1, 2019 through June 30, 2022

<u>Year</u>	<u>Quarter</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Enplanements per</u>	
					<u>Day¹</u>
2019	3	1,407	1,443	2,850	18.0
2019	4	1,405	1,548	2,953	18.7
2020	1	992	983	1,975	12.8
2020	2	<u>322</u>	<u>323</u>	<u>645</u>	<u>4.1</u>
	Annual Totals	4,126	4,297	8,423	13.5
2020	3	691	758	1,449	9.2
2020	4	781	841	1,622	10.3
2021	1	704	702	1,406	9.1
2021	2	<u>1,113</u>	<u>1,150</u>	<u>2,263</u>	<u>14.5</u>
	Annual Totals	3,289	3,451	6,740	10.8
2021	3	906	951	1,857	11.8
2021	4	1,154	1,296	2,450	15.5
2022	1	983	960	1,943	12.6
2022	2	<u>1,116</u>	<u>1,238</u>	<u>2,354</u>	<u>15.1</u>
	Annual Totals	4,159	4,445	8,604	13.7

*As a result of the Covid-19 public health crisis that affected the entire U.S., there was a precipitous decline in passenger traffic at IRK from March 2020, through June 2021.

¹ Preliminary data. Not used for determining community's eligibility for EAS.

Passenger Traffic at Marion - July 1, 2019 through June 30, 2022

<u>Year</u>	<u>Quarter</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Enplanements per</u>	
					<u>Day¹</u>
2019	3	2,552	2,804	5,356	33.9
2019	4	2,617	2,866	5,483	34.7
2020	1	1,750	1,860	3,610	23.4
2020	2	<u>534</u>	<u>642</u>	<u>1,176</u>	<u>7.5</u>
	Annual Totals	7,453	8,172	15,625	25.0
2020	3	1,229	1,359	2,588	16.4
2020	4	1,367	1,497	2,864	18.1
2021	1	1,335	1,389	2,724	17.7
2021	2	<u>2,123</u>	<u>2,393</u>	<u>4,516</u>	<u>28.9</u>
	Annual Totals	6,054	6,638	12,692	20.3
2021	3	2,227	2,510	4,737	30.0
2021	4	2,207	2,557	4,764	30.2
2022	1	1,698	1,868	3,566	23.2
2022	2	<u>2,244</u>	<u>2,390</u>	<u>4,634</u>	<u>29.7</u>
	Annual Totals	8,376	9,325	17,701	28.3

*As a result of the Covid-19 public health crisis that affected the entire U.S., there was a precipitous decline in passenger traffic at MWA from March 2020, through June 2021.

¹ Preliminary data. Not used for determining community's eligibility for EAS.

Passenger Traffic at Owensboro - July 1, 2019 through June 30, 2022

<u>Year</u>	<u>Quarter</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Enplanements per</u>	
					<u>Day¹</u>
2019	3	1,513	1,645	3,158	20.0
2019	4	1,365	1,374	2,739	17.3
2020	1	787	879	1,666	10.8
2020	2	<u>265</u>	<u>315</u>	<u>580</u>	<u>3.7</u>
	Annual Totals	3,930	4,213	8,143	13.0
2020	3	505	528	1,033	6.5
2020	4	558	581	1,139	7.2
2021	1	555	553	1,108	7.2
2021	2	<u>896</u>	<u>1,013</u>	<u>1,909</u>	<u>12.2</u>
	Annual Totals	2,514	2,675	5,189	8.3
2021	3	963	1,078	2,041	12.9
2021	4	1,147	1,320	2,467	15.6
2022	1	858	934	1,792	11.6
2022	2	<u>1,202</u>	<u>1,293</u>	<u>2,495</u>	<u>16.0</u>
	Annual Totals	4,170	4,625	8,795	14.0

*As a result of the Covid-19 public health crisis that affected the entire U.S., there was a precipitous decline in passenger traffic at OWB from March 2020, through June 2021.

¹ Preliminary data. Not used for determining community's eligibility for EAS.

Example of General Terms and Conditions for Essential Air Service

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 these rates, 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 amounts or at the stipulated service levels, 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 [DATE]. The Government's obligation for performance under this Order beyond [DATE], 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 [DATE], until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond [DATE], 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 31st; August claims must be submitted by November 30th, and so on.