



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

Issued by the Department of Transportation  
on the 6<sup>th</sup> of October, 2022

Essential Air Service at

**BURLINGTON, IOWA**

Under 49 U.S.C. § 41731 *et seq.*

**DOT-OST-2001-8731**

**ORDER REJECTING PROPOSAL SUBMITTED FOR REPLACEMENT  
ESSENTIAL AIR SERVICE AND REQUESTING NEW PROPOSALS**

**Summary**

By this Order, the U.S. Department of Transportation (the Department) is (1) rejecting the proposal submitted in response to the order requesting proposals (Order 2022-5-19) to provide replacement Essential Air Service (EAS) at Burlington, Iowa; and (2) requesting new proposals from air carriers interested in providing EAS at Burlington, for a new contract term, with or without subsidy. The term of the new contract should begin as soon as possible, given the termination notice that the community received in May 2022. See below for full discussion. Air carriers should file proposals no later than October 24, 2022.

**Background and Decision**

By Order 2021-11-9, issued on November 12, 2021, the Department selected Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air), to provide EAS at Burlington for a four-year term from February 1, 2022, through January 31, 2026. Under that Order, Burlington receives 12 nonstop round trips per week to Chicago O'Hare International Airport (ORD) and 12 nonstop round trips per week to St. Louis-Lambert International Airport (STL) for a combined total of 24 round trips per week. Cape Air is compensated at the following annual subsidy rates:

<u>Year</u>	<u>Annual Subsidy</u>
1	\$2,582,098
2	\$2,659,561
3	\$2,739,347
4	\$2,821,528

On May 3, 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 Burlington, effective August 1, 2022. In the notice, the air carrier stated: "Cape Air gives this notice with reluctance and regret – principally due to a shortage of pilots."

In response to Cape Air's notice, the Department issued Order 2022-5-19 on May 25, 2022, requesting proposals from air carriers interested in providing replacement EAS for new contract terms and prohibiting Cape Air from terminating its service at Burlington until a new replacement carrier commenced EAS. Proposals were due July 1, 2022. At the time the Department issued Order 2022-5-19, numerous other requests for proposals were pending, as the Department sought to find replacement air carriers for an unprecedented number of communities following notices of termination by another incumbent carrier, SkyWest Airlines.

In response to Order 2022-5-19, Boutique Air, Inc. (Boutique Air) proposed to provide 24 weekly nonstop round trips from Burlington to ORD and STL using 8- or 9-seat Pilatus PC-12 aircraft, for a two-year term, at a first-year annual subsidy of \$3,787,203 and second-year annual subsidy of \$3,938,691. On July 6, 2022, the Department requested comments from the community of Burlington regarding Boutique Air's proposal. In a community response letter dated July 15, 2022, Mr. Charles E. Walsh, Board Chairman of Southeast Iowa Regional Airport Authority, stated: "After careful consideration of Boutique Air[s] proposal, we would respectfully request the USDOT, Office of the Secretary, request another order for proposals from air carriers interested in service to and from Burlington, Iowa."<sup>1</sup>

As noted above, the Department is responding to an unprecedented situation in which it must select replacement air carriers at numerous EAS-eligible communities after multiple incumbent carriers filed notices to terminate EAS. In this process, the limited number of air carriers providing EAS have had to consider which and how many requests they could respond to in light of their own network plans and capabilities, as they waited for final selections by the Department. Now that the Department has issued new selection orders for many communities, we believe it is reasonable to reissue requests for proposals for communities like Burlington that did not receive more than one bidder or for which the bids did not meet basic EAS requirements. This will allow air carriers providing EAS to take a fresh look at whether to bid for these communities and potentially give the communities more choices to consider. Accordingly, the Department will reject Boutique's bid and solicit a new round of proposals on an expedited basis.

The complete public file for EAS at Burlington may be accessed online through the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov) by entering the community's docket number in the "Search" field.

### **Request for Proposals: General Requirements**

The Department is requesting proposals from air carriers interested in providing EAS at Burlington, with subsidy if necessary, for a new contract period beginning when the air carrier begins full EAS at the community. Air carriers should file their proposals no later than October 24, 2022.

The Department expects clear, well-documented proposals that will facilitate their evaluation by the community and the EAS team.<sup>2</sup> 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

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<sup>1</sup> DOT-OST-2001-8731-0144 (July 15, 2022). Southwest Iowa Regional Airport Authority Board, Community Comment.

<sup>2</sup> 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. Interested air carriers should also be aware that the general provisions governing EAS will be included in the selection order as part of our authorization of subsidy for the selected service. Appendix C of this Order contains those general provisions.

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 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.<sup>3</sup> When crafting a proposal, the air carrier should ensure that 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.<sup>4</sup> The Department encourages air carriers to work with the community as they prepare their proposals in order to craft a service proposal that meets the community's needs with subsidy requirements that remain competitive. The Department will fully consider the views of the community and State 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.<sup>5</sup>

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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 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/](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/).

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

5 See 18 U.S.C. § 1001.

### **Request for Proposals: Specific Requirements**

The Department expects proposals that meet basic EAS requirements and are consistent with what Burlington currently receives. Therefore, the Department expects proposals for 24 round trips per week with aircraft seating 8/9 passengers,<sup>6</sup> 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 week<sup>7</sup> if it is a highly seasonal market and doing so would 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.<sup>8</sup> 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 Burlington community and the State of Iowa are welcome to submit comments at any time. The Department encourages interested air carriers to contact the community *before* they submit their proposals so that they can tailor them to the (specific) community’s needs, as they will not be able to amend them after the due date. After the due date, the proposals will be uploaded to [www.regulations.gov](http://www.regulations.gov), thereby making them public. Shortly afterwards, the Department will notify the community 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.<sup>9</sup> 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

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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).

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).

certifications. Interested air carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-5903.<sup>10</sup>

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 rejects the proposal from Boutique Air, Inc., submitted in response to Order 2022-5-19, and requests that air carriers interested in providing Essential Air Service at Burlington, Iowa submit their proposals, with or without subsidy, no later than October 24, 2022. The proposals should be e-mailed to: [michael.f.martin@dot.gov](mailto:michael.f.martin@dot.gov) and [EAS@dot.gov](mailto:EAS@dot.gov), with the subject line “Proposal to Provide EAS at Burlington, Iowa”;<sup>11</sup>
2. This docket will remain open until further Order of the Department; and
3. The Department will serve this Order on the Mayor of Burlington, Iowa, the Airport Manager of Southeast Iowa Regional Airport, Boutique Air, Inc., Hyannis Air Service, Inc. d/b/a Cape Air, and the courtesy distribution list for requests for proposals for EAS communities.

By:

**TODD M. HOMAN**  
Director  
Office of Aviation Analysis

(SEAL)

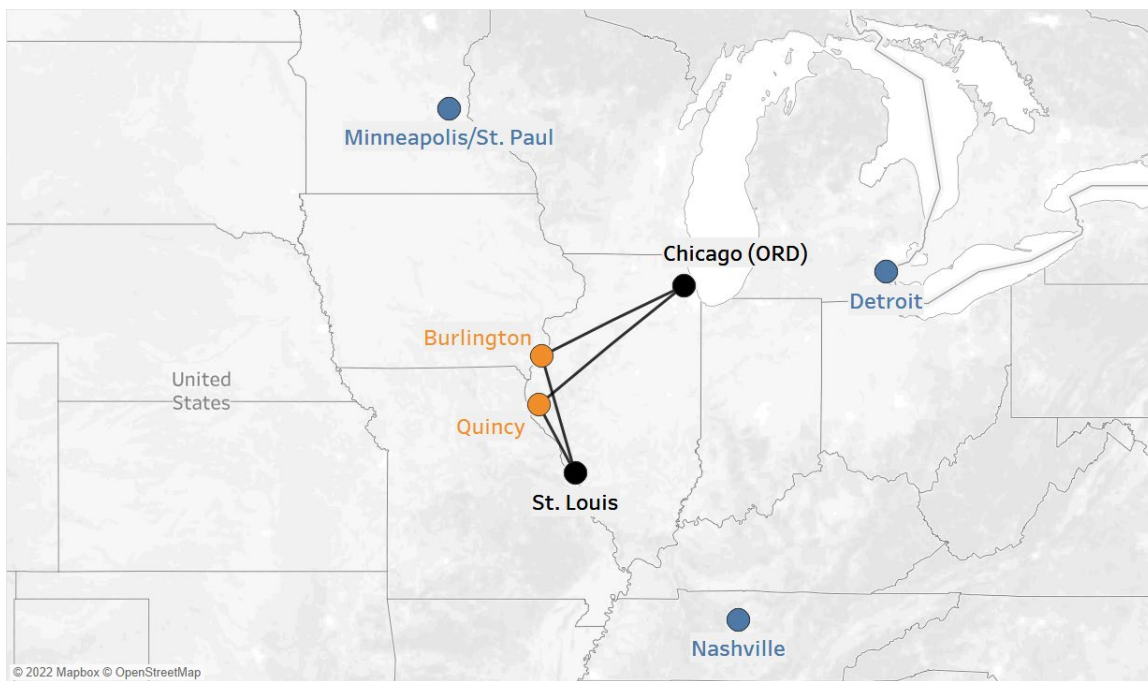
*An electronic version of this document is available online at [www.regulations.gov](http://www.regulations.gov).*

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

<sup>11</sup> 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](mailto:michael.f.martin@dot.gov).

## AREA MAP



**Passenger Traffic at Burlington - April 1, 2019 through March 30, 2022**

<b><u>Year</u></b>	<b><u>Quarter</u></b>	<b><u>Deplanements</u></b>	<b><u>Enplanements</u></b>	<b><u>Enplanements per</u></b>	
					<b><u>Day</u></b>
2019	2	2,047	2,156	4,203	26.9
2019	3	2,035	2,235	4,270	27.0
2019	4	1,852	1,977	3,829	24.2
2020	1	<u>1,415</u>	<u>1,301</u>	<u>2,716</u>	<u>17.6</u>
	<b>Annual Totals</b>	<b>7,349</b>	<b>7,669</b>	<b>15,018</b>	<b>24.0</b>
2020	2	221	237	458	2.9
2020	3	485	526	1,011	6.4
2020	4	507	612	1,119	7.1
2021	1	<u>562</u>	<u>579</u>	<u>1,141</u>	<u>7.4</u>
	<b>Annual Totals</b>	<b>1,775</b>	<b>1,954</b>	<b>3,729</b>	<b>6.0</b>
2021	2	996	883	1,879	12.0
2021	3	1,013	1,062	2,075	13.1
2021	4	931	1,023	1,954	12.4
2022	1	<u>843</u>	<u>839</u>	<u>1,682</u>	<u>10.9</u>
	<b>Annual Totals</b>	<b>3,783</b>	<b>3,807</b>	<b>7,590</b>	<b>12.1</b>

\*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 BRL from March 2020, through June 2021.

### **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 31<sup>st</sup>; August claims must be submitted by November 30<sup>th</sup>, and so on.