



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

Issued by the Department of Transportation
on the 22nd of June, 2022

Essential Air Service at

LEBANON, NEW HAMPSHIRE

DOT-OST-2003-14822

Under 49 U.S.C. § 41731 *et seq.*

ORDER REQUESTING PROPOSALS

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 Lebanon, New Hampshire, for a new contract term beginning December 1, 2022, with or without subsidy. Air carriers should file proposals no later than July 26, 2022.

Background

By Order 2018-9-14, issued on September 14, 2022, the Department selected Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air) to provide EAS at Lebanon to Boston Logan International Airport (BOS) using 9-passenger Cessna 402 aircraft or 9-passenger Tecnam P2012 Traveller (Tecnam) aircraft for the four-year contract term from December 1, 2018, through November 30, 2022. The annual subsidy rates are as follows:

<u>Year</u>	<u>LEB-BOS Annual Subsidy</u>	<u>LEB-HPN Annual Subsidy</u>	<u>Total Annual Subsidy</u>
1	\$2,126,633	\$1,476,034	\$3,602,667
2	\$2,190,432	\$1,520,316	\$3,710,748
3	\$2,256,145	\$1,565,925	\$3,822,070
4	\$2,323,829	\$1,612,903	\$3,936,732

By Order 2020-5-2, issued on May 5, 2020, the Department approved the request of Cape Air to change its EAS pattern at Lebanon, effective March 28, 2020, for the duration of the contract. With that Order, Cape Air was permitted to provide all service to BOS in lieu of Westchester County Airport. There was no change to the annual subsidy, type of aircraft, number of weekly flights, or the contract end date of Cape Air's term at Lebanon. Because the Department allowed the alternate service pattern and did not require it, Cape Air was permitted to revert to the original service pattern at any time.

The complete public file for EAS at Lebanon 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.

Request for Proposals: General Requirements

The Department is requesting proposals from air carriers interested in providing EAS at Lebanon, with subsidy if necessary, for a new contract period beginning December 1, 2022. Air carriers should file their proposals no later than July 26, 2022.

The Department expects clear, well-documented proposals that will facilitate their evaluation by the community and the EAS team.¹ 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 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

¹ 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 Consolidated Appropriations Act, 2022, Pub. L. 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.

national air transportation system.² 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.³ 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.⁴

Request for Proposals: Specific Requirements

The Department expects proposals that meet basic EAS requirements and are consistent with what the community currently receives, namely 42 weekly round trips using 8-/9-passenger aircraft. If larger aircraft (30- to 50-seat) are contemplated, the Department will subsidize 12 weekly round trips.

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 week⁵ 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.⁶ Waiver requests by the community may be

2 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/.

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

4 See 18 U.S.C. § 1001.

5 49 U.S.C. § 41732(b)(1)(A).

6 49 U.S.C. § 41732(b)(5).

submitted with an air carrier's proposal or during the community comment period, after proposals are received.

Community and State Comments

The community of Lebanon, as well as the State of New Hampshire, 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 air service needs of the community, 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, 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.⁷ 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) 366-5903.⁸

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.

⁷ 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).

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

ACCORDINGLY,

1. The Department requests that air carriers interested in providing Essential Air Service at Lebanon, New Hampshire, submit their proposals, with or without subsidy, no later than July 26, 2022. The proposals should be e-mailed to: Mr. Michael Martin at michael.f.martin@dot.gov and EAS@dot.gov, with the subject line “Proposal to Provide EAS at Lebanon, New Hampshire”;⁹
2. This docket will remain open until further Order of the Department; and
3. The Department will serve this Order on the Airport Manager of Lebanon Municipal Airport, the civic officials of Lebanon, New Hampshire, 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.

⁹ Questions regarding filings in response to this Order may be directed to Mr. Michael Martin at michael.f.martin@dot.gov.

AREA MAP



Maps generated by the [Great Circle Mapper](#) - copyright © [Karl L. Swartz](#).

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

<u>Year</u>	<u>Quarter</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Enplanements per Day</u>
2019	2	2,539	2,534	5,073
2019	3	2,675	2,773	5,448
2019	4	2,677	2,798	5,475
2020	1	<u>1,585</u>	<u>1,673</u>	<u>3,258</u>
	<u>Annual Totals</u>	<u>9,476</u>	<u>9,778</u>	<u>30.8</u>
2020	2	287	281	568
2020	3	867	897	1,764
2020	4	765	805	1,570
2021	1	<u>667</u>	<u>743</u>	<u>1,410</u>
	<u>Annual Totals</u>	<u>2,586</u>	<u>2,726</u>	<u>5,312</u>
				<u>8.5</u>
2021	2	1,968	2,035	4,003
2021	3	2,291	2,367	4,658
2021	4	2,275	2,347	4,622
2022	1	<u>1,497</u>	<u>1,633</u>	<u>3,130</u>
	<u>Annual Totals</u>	<u>8,031</u>	<u>8,382</u>	<u>26.2</u>

*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 LEB 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 31st; August claims must be submitted by November 30th, and so on.