



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

Issued by the Department of Transportation
on the 15th of April, 2020

Essential Air Service at

BAR HARBOR, MAINE

Under 49 U.S.C. § 41731 *et seq.*

DOT-OST-2011-0185

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 Bar Harbor, Maine, for a new contract term beginning October 15, 2020, with or without subsidy. Air carriers should file proposals no later than May 20, 2020.

Background

By Order 2016-4-10, issued on April 13, 2016, the Department selected Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air) and Peninsula Airways, Inc. (PenAir) to jointly provide EAS at Bar Harbor. Cape Air was selected for a four-year contract term from July 1, 2016, through June 30, 2020, providing Bar Harbor 21 nonstop round trip per week to Boston Logan International Airport (BOS) during the off-peak winter season, *i.e.*, from around Labor Day through Memorial Day. Cape Air was compensated at the following annual subsidy rates:

<u>Cape Air at Bar Harbor</u>	
Year 1	\$1,726,152
Year 2	\$1,777,937
Year 3	\$1,831,275
Year 4	\$1,886,213

PenAir was selected for a two-year contract term from July 1, 2016, through June 30, 2018, providing Bar Harbor with 14 nonstop round trips to BOS during the peak summer season from Memorial Day through Labor Day for an annual subsidy of \$466,799.

By Order 2018-5-9, issued on May 3, 2018, the Department selected Silver Airways LLC (Silver) to provide EAS at Bar Harbor with 14 nonstop round trips per week to BOS using 34-passenger Saab 340 aircraft from July 1, 2018, through September 7, 2020, during the peak summer season only from Memorial Day through Labor Day for an annual subsidy of \$1,399,714.

By Order 2020-2-9, issued on February 14, 2020, the Department extended Silver's EAS contract through October 14, 2020. As described in Order 2018-5-9, Silver continues to provide Bar Harbor with 14 nonstop round trips per week to BOS using Saab 340 aircraft with no change to the annual subsidy of \$1,399,714.

The complete public file for EAS at Bar Harbor may be accessed online through the Federal Dockets Management System at www.regulations.gov by entering docket number DOT-OST-2011-0185 in the "Search" field.

Request for Proposals: General Requirements

The Department is requesting proposals from air carriers interested in providing EAS at Bar Harbor, with subsidy support if necessary, for a new contract period beginning October 15, 2020. Air carriers should file their proposals no later than May 20, 2020. The proposals will then be uploaded to www.regulations.gov, thereby making them public. Shortly afterwards, the Department will provide a summary of the proposals to the community and ask them to submit their final comments.

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

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 carrier; (b) the existence of contractual and marketing arrangements with a larger carrier at the hub; (c) the existence of interline arrangements with a larger 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 carrier has included a plan in its proposal to market its service to the community. In addition, the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94 (Dec. 20, 2019), provides that when selecting an air carrier to provide EAS, the Department may consider the relative subsidy requirements of the carriers, thus formalizing a factor that we have considered since the inception of the program. Interested carriers should also be aware that the general provisions governing Essential Air Service 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.

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 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 to a large- or medium-hub airport that provides numerous connecting opportunities to the national air transportation system.² 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

Air carriers may propose more than one service option. They also need not limit themselves to these requirements if they envision other, potentially more attractive service possibilities—differing lengths of contract, for example—with subsidy requirements that remain competitive.

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 (18 U.S.C. § 1001).

Request for Proposals: Specific Requirements

The Department expects proposals that are consistent with what the community currently receives. The Department notes the significant increase of Bar Harbor's passenger numbers in the second and third quarters. Therefore, for proposals with 30-50 passenger aircraft, the Department expects 12 round trips per week to BOS⁴ in the off-peak winter season and 14 round trips per week to BOS in the peak summer season.⁵ For proposals using smaller aircraft (8 to 9 seats),⁶ the Department expects three round trips per day (21 per week) to BOS during the off-peak winter season, and additional round trips to BOS in the peak summer season.

² For basic EAS in Alaska, or when the nearest hub airport is more than 400 miles from the eligible place, service to a small hub or nonhub airport is acceptable. Under certain circumstances, the Department may also require service from the eligible place to two (but not more than two) hubs.

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

⁴ While the Department expects proposals to serve BOS, the Department may consider service proposals to a different large- or medium-hub airport that provides numerous connecting opportunities to the national air transportation system, with community input/support.

⁵ By Order 94-08-26, the determination of Bar Harbor's peak season is defined as 12 weeks, including all of July and August, and the end of June and the beginning of September, and off-peak as the remaining 40 weeks of the year. However, the Department will consider proposals that include additional capacity from approximately the Friday before Memorial Day, through the Wednesday after Columbus Day.

⁶ 49 U.S.C. § 41732(b)(3) establishes that a 15-seat requirement for aircraft, subject to exceptions, if daily boardings at the place in any calendar years from 1976-1986 were more than 11 passengers. This requirement was stricken for the current fiscal year by the Further Continuing Appropriations Act, 2020, Pub. L. No. 116-94 (Dec. 19, 2019).

Community Comments

The community and State 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 community's needs, as they will not be able to amend them after the due date. As noted earlier, the Department will provide a summary of the proposals to the civic parties shortly after the deadline for carrier proposals, and ask them to submit their final comments.

Other 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 airline 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.

ACCORDINGLY,

1. The Department requests that air carriers interested in providing Essential Air Service at Bar Harbor, Maine, submit their proposals, with or without subsidy, no later than May 20, 2020. The proposals should be e-mailed to: michael.f.martin@dot.gov and EAS@dot.gov, with the title "Proposal to Provide EAS at Bar Harbor, Maine";⁹
2. This docket will remain open until further Order of the Department; and

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>.

⁹ 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.

3. The Department will serve this Order on the mayor of Bar Harbor, Maine, the airport manager at Hancock County-Bar Harbor Airport, and the courtesy distribution list for requests for proposals for EAS communities.

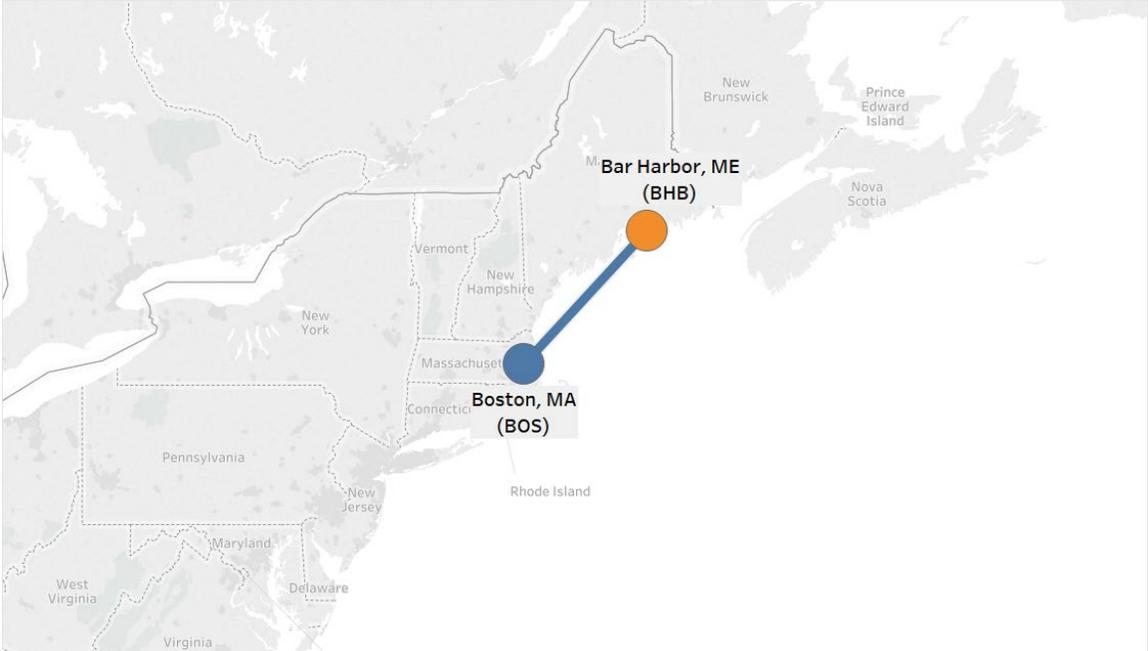
By:

TODD M. HOMAN
Director
Office of Aviation Analysis

(SEAL)

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

AREA MAP



Passenger Traffic at Bar Harbor, Maine 2016-2019

<u>Year</u>	<u>Quarter</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Total Traffic</u>	<u>Enplanements per Day</u>
2016	4	1,156	1,263	2,419	15.3
2017	1	970	1,090	2,060	13.4
2017	2	2,089	1,770	3,859	24.7
2017	3	<u>3,790</u>	<u>4,007</u>	<u>7,797</u>	<u>49.3</u>
Annual Totals		8,005	8,130	16,135	25.8
2017	4	1,284	1,386	2,670	16.9
2018	1	823	914	1,737	11.3
2018	2	1,226	1,073	2,299	14.7
2018	3	<u>4,091</u>	<u>4,107</u>	<u>8,198</u>	<u>51.9</u>
Annual Totals		7,424	7,480	14,904	23.8
2018	4	1,368	1,451	2,819	17.8
2019	1	1,020	1,087	2,107	13.7
2019	2	2,476	2,110	4,586	29.4
2019	3	<u>4,381</u>	<u>4,589</u>	<u>8,970</u>	<u>56.8</u>
Annual Totals		9,245	9,237	18,482	29.5

Example of General Terms and Conditions for Essential Air Service

The 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 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 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 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 carrier to provide service on these routes. The 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 complete, 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 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 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 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.