



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

Issued by the Department of Transportation
on the 30th day of June, 2020

Essential Air Service at

DIOMEDE, ALASKA
(FAIN 69A3452060431)¹

under 49 U.S.C. § 41731 *et seq.*

DOCKET DOT-OST-2020-0020

ORDER SELECTING AIR CARRIER

Summary

By this Order, the U.S. Department of Transportation (the Department) selects Pathfinder Aviation, Inc. (Pathfinder) to provide Essential Air Service (EAS) at Diomedes, Alaska from July 1, 2020, through June 30, 2023. Pathfinder will provide Diomedes with 52 round trips per year to Nome, Alaska, using nine-seat Bell 212 rotary wing helicopter aircraft, at the annual subsidy rates indicated below:²

Period	Subsidy
Year One	\$ 634,400
Year Two	\$ 643,916
Year Three	\$ 653,575

Background

49 U.S.C. § 41736(a) allows a State or local government to propose the Department assist it in providing compensation to an air carrier to provide air transportation to a community that is not eligible for EAS.³ Under that statute, the Department is authorized to designate a community eligible for subsidized air transportation under the Air Transportation to Noneligible Places (ATNEP) program if a party is willing and able to pay 50 percent of the compensation for providing the air transportation and the Department determines the proposal is reasonable.

¹ FAIN = Federal Award Identification Number.

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

³ Section 41736(a) sunsets two years after the enactment of section 41736(h). Section 41736(h) was enacted as part of Public Law 115-254 on October 5, 2018.

By letter dated June 20, 2012, the Alaska Department of Commerce, Community, and Economic Development, on behalf of Kawerak, Inc. (Kawerak),⁴ proposed to the Secretary of Transportation that subsidy be provided for air service at Diomedes under the ATNEP program. Upon consideration of that proposal, on September 28, 2012, the Department issued Order 2012-9-25, designating Diomedes as eligible to receive compensation under 49 U.S.C. § 47136 through June 30, 2013. That Order established that the community met all of the requirements of the program, including traffic-generating potential and isolation from the closest hub airport.

Additionally, by Order 2012-9-25, the Department selected Evergreen Helicopters, Inc. (Evergreen), which was subsequently acquired and re-branded as Erickson Helicopters (Erickson),⁵ to provide ATNEP at Diomedes. In partnership with Kawerak, the Department had issued orders that continue subsidized air service at Diomedes after Order 2012-9-25 expired.⁶

Most recently, by Order 2017-6-22 (June 28, 2017), the Department selected Pathfinder to provide ATNEP at Diomedes from July 1, 2017, through June 30, 2020, with two round trips per month and 12 additional round trips scheduled at the request of the community (36 total round trips per year). Under the terms of that Order, Pathfinder has been operating this service using nine-passenger helicopter aircraft at an annual subsidy of \$380,952.

Legislative Changes

Section 453 of the FAA Reauthorization Act of 2018 (Public Law No. 115-254) amended 49 U.S.C. 41731 to add subsection (a)(1)(A)(ii), which makes eligible for basic EAS a community that “was determined, on or after October 1, 1988, and before the enactment of the FAA Extension, Safety, and Security Act of 2016 (Public Law 114-190), under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service under section 41736(a).” This amendment made Diomedes eligible for EAS and also scheduled the sunset of the ATNEP program in October 2020.

Subsequently, the Department issued Order 2020-2-19 (February 26, 2020), soliciting proposals to provide EAS at Diomedes, with or without subsidy, for service consistent with what the community currently receives: 36 annual round trips, using small rotary wing aircraft, to a suitable hub-airport. In response to the Department’s solicitation, Pathfinder submitted the only proposal for consideration.

Pathfinder’s proposal, as well as the complete public file for EAS at Diomedes, may be accessed online through the Federal Docket Management System at www.regulations.gov, by entering “DOT-OST-2020-0020” in the search field.⁷

4 Kawerak, Inc. is a non-profit tribal consortium authorized to make compacts and provide services on behalf of Diomedes and several other tribes in the Bering Strait Region of Alaska.

5 On January 28, 2014, Erickson Air-Crane, Inc. informed the Department that it had acquired Evergreen Helicopters, Inc. and was re-branding the company as “Erickson Helicopters,” effective February 6, 2014.

6 See Orders 2013-6-11 (June 11, 2013), 2014-7-4 (July 8, 2014), 2015-6-21 (June 19, 2015), and 2016-6-19 (June 28, 2016).

7 The full docket for Diomedes’s air service history under 49 U.S.C. § 41736, Air Transportation to Noneligible Places (ATNEP), is in Docket DOT-OST-2009-0260.

Pathfinder's Proposal

Pathfinder proposed to provide 52 round trips per year to Nome, using nine-seat rotary wing aircraft, at a first-year annual subsidy rate of \$634,400, with an annual rate increase of 1.5 percent for each additional year thereafter, as indicated in the chart below.

Period	Subsidy
Year One	\$ 634,400
Year Two	\$ 643,916
Year Three	\$ 653,575

Community Comments

By letter dated March 12, 2020, Mr. John Bioff, General Counsel on behalf of the Native Village of Diomedes and Kawerak, Inc., stated:

Transportation to and from Diomedes is an *existential* requirement for them that truly is a matter of life, health and safety. While Diomedes and Kawerak greatly appreciate the State of Alaska and U.S. DOT's provision of ATENP funding that allowed for 36 trips annually, with the inclusion of Diomedes into the basic EAS fully subsidized program, it is time to increase the trips to this community to at least one trip a week throughout the year. This is a bare minimum that will greatly help this community with their health care, law enforcement, education, and other basic life, health, and safety needs.

The tribal leadership (as well as Kawerak) also supports Pathfinder Aviation as an air carrier that has truly been a partner with the community of Diomedes since they have taken over the provision of services the last several years. Pathfinder is the only air carrier with rotary wing service that has the personnel, equipment, and infrastructure to provide this service to Diomedes currently.

As an attachment to that letter, Mr. Bioff included the Native Village of Diomedes Resolution No. 2020-02, which stated that the "Native Village of Diomedes has determined that an increase from 36 to 52 trips a year, so that there is at least one trip per week on and off the island, is the minimum threshold, realistic amount of trips necessary to meet basic life, health, and safety needs of the community." Resolution 2020-02 further stated that the "Native Village of Diomedes supports Pathfinder Aviation's proposal as it seeks to continue to contract with the U.S. Department of Transportation as they are a proven reliable partner with the community."

On May 4, 2020, Mr. Bioff further explained that the Tribal Council for the Native Village of Diomedes met to discuss the length of the contract and the Tribe feels that "three years is a good contractual period. The current contract was for three years and worked well."

By letter dated March 12, 2020, Ms. Angie Gorn, President/CEO of Norton Sound Health Corporation (NSHC), a non-profit tribal health organization, explained that "[t]imely access into and out of Diomedes is critical in order for NSHC to be able to adequately provide medical, dental, and behavioral health services to the residents of Diomedes. Ms. Gorn further stated, "[a]s it currently stands, there are limited flights to Diomedes and this greatly impacts NSHC's ability to provide adequate coverage when an unexpected circumstance arises. As the regional health

care provider, we feel it is a matter of basic life, health and safety that Diomedes receive at least a minimum of 52 rotary wing passenger service flights to the island annually.”

By letter dated March 12, 2020, Mr. Robert Bolen, Superintendent of the Bering Strait School District (BSSD), stated that “[r]egular and timely access into and out of Diomedes is critical for BSSD to be able to adequately meet its responsibilities in staffing and administering educational programs for the school and residents of Little Diomedes. From our perspective, the current level of passenger service is inadequate.”

By letter dated March 17, 2020, Mr. John R. Binder III, Deputy Commissioner of the State of Alaska Department of Transportation and Public Facilities (DOT&PF), explained that “Diomedes is one of the most remote communities in the nation, located in the Bering Strait approximately 135 miles northwest of Nome, Alaska.” Mr. Binder stated that “DOT&PF urges EAS to seriously consider proposals that would provide scheduled service with 52 round-trip flights per year, or an average of at least one flight per week to accommodate the community’s needs and the Bering Strait’s notoriously poor weather. DOT&PF considers the Native Village of Diomedes’s request of 52 round trips per year to be reasonable and a request that we support.”

Decision

49 U.S.C. § 41733(c)(1) directs the Department to consider six factors when making an air carrier selection for a community in Alaska, where basic EAS will not be provided without compensation:⁸ (A) service reliability; (B) contractual and marketing arrangements with a larger air carrier at the hub; (C) interline arrangements with a larger air carrier at the hub; (D) community views, giving substantial weight to the views of the elected officials representing the users of the EAS; (E) the experience of the applicant in providing, in Alaska, scheduled air service or significant patterns of non-scheduled air service; and (F) whether the air carrier has included a plan in its proposal to market the EAS. In addition, basic EAS must include a level of service at least equal to that provided in 1976 or two round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.⁹ Finally, the Further Continuing Appropriations Act, 2020, Pub. L. No. 116-94 (December 19, 2019), authorizes the Department to consider the relative subsidy requirements of the applicant air carriers.

Pathfinder’s proposal meets most of the air carrier selection criteria the Department is required to consider, and the Department finds its service and subsidy levels reasonable. Therefore, the Department is selecting Pathfinder for a new, three-year term.

The Department is selecting Pathfinder for a three-year term to provide Diomedes with 52 annual round trips to/from Nome—more than the 36 round trip minimum set forth in the Department’s request for proposals. Pathfinder was the only air carrier to submit a proposal in response to the Department’s solicitation. Pathfinder has been providing rotary wing air service in Alaska since 2001 and has been providing reliable scheduled air service to Diomedes since 2017 under the

⁸ The Department did not receive any proposals to serve Diomedes without subsidy, and there is no other scheduled air service at the community.

⁹ 49 U.S.C. § 41732(b)(1)(B).

ATNEP program. Additionally, Pathfinder's proposal received strong support from the community. As indicated above, many of the community's stakeholders, including the State of Alaska, support 52 round trips per year, and the Tribal Council of Diomedes stated a preference for a three-year term contract.

Air Carrier Fitness

49 U.S.C. §§ 41737(b) and 41738 require that the Department find an air carrier reliable, fit, willing, and able to provide reliable service before the Department may subsidize it to provide EAS. Pathfinder 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 Department has contacted the Federal Aviation Administration, and it has raised no concerns that would negatively affect the Department's fitness findings. The Department therefore concludes that Pathfinder is reliable and fit to conduct the operations proposed at Diomedes.

This Order is issued under authority delegated by the Secretary in 49 CFR § 1.25a(b)(6)(ii)(D).

ACCORDINGLY,

1. The Department selects Pathfinder Aviation, Inc. to provide Essential Air Service at Diomedes, Alaska, at the service levels and subsidy rates described in Appendix B, for the period from July 1, 2020, through June 30, 2023;
2. The Department directs Pathfinder Aviation, Inc. 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;
3. This selection is contingent upon receiving properly-executed certifications from the air carrier that it is in compliance with the Department's regulations regarding drug-free workplaces and nondiscrimination, as well as the regulations concerning lobbying activities;¹⁰
4. The Department finds that Pathfinder Aviation, Inc. is a registered air taxi operating under 14 CFR Part 298 of the Department's regulations, holds a Part 135 operating certificate from the Federal Aviation Administration, and is capable of providing reliable Essential Air Service at Diomedes, Alaska;
5. This docket will remain open pending further Department action; and

¹⁰ The certifications are internet accessible at: <http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports>.

6. The Department will serve this Order on the civic officials of Diomedes, Alaska, Kawerak, Inc., the Alaska Department of Transportation and Public Facilities, and Pathfinder Aviation, Inc.

By:

David E. Short
Deputy Assistant Secretary
Aviation and International Affairs

(SEAL)

An electronic version of this document is available at
<http://www.regulations.gov>

Pathfinder Aviation, Inc.

Annual Compensation Requirements for Essential Air Service at
Diomedede, Alaska



Bell 212 Medium Twin-Engine (Over water equipped)

Total Subsidy Requested:	\$634,400
July 1, 2020 - June 30, 2021*	
Roundtrip Flight Price:	\$12,200
Hourly Rate with Fuel:	\$4,880
Nome Fuel Price (gallon):	\$7.00
Trips per year - 1 each week:	52
Total Flight Time for Routing:	2.5 Flight Hours
Total Fuel Required per Routing:	300 Gallons (with Reserve)
Approximate payload per trip:	1574 lb.

*Pathfinder is interested in a multi-year agreement at an increase of 1.5% annually.

Proposed weekly schedule

Dedicated flight day: Monday – Leg 1: Fly Passengers/Cargo from Nome to Diomedede.

Leg 2: Fly Passengers/Cargo from Diomedede to Nome.

Note: Days delayed due to weather or maintenance will be scheduled for the next day.

Pathfinder Aviation, Inc.
Essential Air Service to be provided at Diomed, AK
DOT-OST-2020-0020

Effective Period: July 1, 2020, through June 30, 2023

Scheduled Service: 52 round trips per year to Nome, Alaska

Aircraft: Nine-seat Bell 212 helicopter

First Year (July 1, 2020, through June 30, 2021) Rate per Eligible Flight: \$6,100¹

First Year Weekly Ceiling: \$12,600²

Second Year (July 1, 2021, through June 30, 2022) Rate per Eligible Flight: \$6,192³

Second Year Weekly Ceiling: \$12,384⁴

Third Year (July 1, 2022, through June 30, 2023) Rate per Eligible Flight: \$6,284⁵

Third Year Weekly Ceiling: \$12,568⁶

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 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

1 Annual compensation of \$634,400 divided by 104 annual arrivals and departures (52 annual round trips x 100 percent completion).

2 Two flights per week multiplied by \$6,100 per flight.

3 Annual compensation of \$643,916 divided by 104 annual arrivals and departures (104 annual round trips x 100 percent completion).

4 Two flights per week multiplied by \$6,192 per flight.

5 Annual compensation of \$653,575 divided by 104 annual arrivals and departures (104 annual round trips x 100 percent completion).

6 Two flights per week multiplied by \$6,284 per flight.

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 September 30, 2020. The Government's obligation for performance under this Order beyond September 30, 2020 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 September 30, 2020 until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond September 30, 2020, 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.