



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

Issued by the Department of Transportation
on the 4th of September, 2020

Essential Air Service at

CRESCENT CITY, CALIFORNIA
(FAIN 69A3452160455)¹

DOT-OST-1997-2649

under 49 U.S.C. § 41731 *et seq.*

**ORDER SETTING ANNUAL SERVICE LEVELS AND TOTAL COSTS UNDER THE
ALTERNATE ESSENTIAL AIR SERVICE PROGRAM**

Summary

By this Order, the U.S. Department of Transportation (the Department) approves the application submitted by the Border Coast Regional Airport Authority (BCRAA) on behalf of the community of Crescent City, California (Crescent City) under the Alternate Essential Air Service (AEAS) program. The Department will enter into a grant agreement with Crescent City to provide up to \$3,564,794 in year one, with a two percent cost escalation allowance in years two through four, for a total of \$14,692,683 during the 48-month term from October 1, 2020 through September 30, 2024.² Crescent City will use the grant for public charter service from Del Norte County Regional Airport (CEC) to Oakland International Airport (OAK) or an alternate large- or medium-hub airport designated by the community, using 30-seat Embraer ERJ-135 (EMB-135) aircraft.

The complete public file for EAS and AEAS at Crescent City 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.

Background

By Order 2018-2-17 (February 20, 2018), the Department approved the application submitted by BCRAA on behalf of the community of Crescent City for inclusion in the AEAS program. The Department entered into a grant agreement with Crescent City to provide up to \$3,310,503 per year in financial assistance to be used by Crescent City for public charter service to OAK, or an alternate large- or medium-hub airport designated by the community, using 30-passenger Embraer ERJ-135 (EMB-135) aircraft for a 30-month term from April 1, 2018 through

¹ FAIN = Federal Award Identification Number.

² EAS subsidies are calculated and distributed on a fiscal year basis, subject to the availability of funds.

September 30, 2020. Subsequently, Crescent City contracted with Corporate Flight Management, Inc. d/b/a Contour Airlines (Contour Airlines) to provide the public charter service from CEC to OAK.

On February 6, 2020, the Department issued Order 2020-2-4, requesting proposals from air carriers interested in providing traditional EAS at Crescent City, for a new contract term beginning October 1, 2020, with or without subsidy. Subsequently, the Department received only one proposal, from Boutique Air, Inc. (Boutique Air).

Proposal of Boutique Air

Boutique Air submitted a proposal with two options to serve Crescent City using single-engine 8/9-passenger Pilatus PC-12 or twin-engine King Air 350 aircraft for a two- or four-year contract term. The options are summarized below:

<u>Option</u>	<u>Aircraft:</u> <i>Pilatus PC-12</i>	<u>Aircraft:</u> <i>King Air 350</i>	<u>Hubs</u> ³	<u>Round Trips</u> <u>per Week</u>
1	Year 1: \$3,230,766 Year 2: \$3,295,381 Year 3: \$3,361,288 Year 4: \$3,428,513	Year 1: \$3,595,355 Year 2: \$3,667,263 Year 3: \$3,740,608 Year 4: \$3,815,420	Portland International Airport (PDX)	24
2	Year 1: \$3,993,352 Year 2: \$4,073,219 Year 3: \$4,154,683 Year 4: \$4,237,776	Year 1: \$4,503,836 Year 2: \$4,593,912 Year 3: \$4,685,790 Year 4: \$4,779,506	PDX	30

Boutique’s proposal mentions possible interline agreements with United Airlines and American Airlines, and commits to spend at least \$20,000 per year for advertising and marketing purposes, utilizing a combination of radio, print, billboard, TV, and internet media.

Community Comments

On March 13, 2020, the Department requested community comments regarding this air carrier selection case. In a letter dated May 7, 2020, BCRAA stated that “the community respectfully recommends that the proposal from Boutique be declined,” and attached letters from other local government bodies to that effect. Moreover, BCRAA stated that Crescent City wished to continue in the AEAS program, with public charter flights from Contour Airlines. More specifically, BCRAA argues in its letter that:

1. Pilatus PC-12 are single-engine aircraft and thus are ineligible to provide EAS, as 49 U.S.C. § 41732(b)(5) requires twin-engine aircraft for EAS.
2. King Air 350 aircraft are configured with only eight seats plus a lavatory, and having eight rather than nine seats for sale would result in an 11% reduction in annual seating capacity.
3. Boutique Air does not have reliable service using King Air 350 aircraft; between August 2018 and December 2019, the Department’s T100 data shows that 32% of EAS flights at Clovis, New Mexico were flown with substitute Pilatus PC-12 aircraft

³ In its proposal, Boutique Air stated: “Up to two Portland round trips can go to Oakland or Sacramento at no subsidy change.”

- rather than King Air 350 aircraft. And between November 2018 and December 2019, the T100 data shows that 40% of EAS flights at Victoria, Texas were flown with substitute Pilatus PC-12 aircraft rather than King Air 350 aircraft.
4. Several forecast elements in Boutique Air's proposal are "unrealistic and inconsistent" with Boutique's "system performance," e.g., the projected 83-95% load factor and 98% flight completion rate used in the proposal.
 5. Boutique Air's King Air 350 options do not provide sufficient capacity to service historic levels of traffic, nor do they satisfy the seat guarantee requirement in 14 CFR § 398.6 regarding seat guarantees.
 6. Boutique Air's non-sterile security operations at PDX diminishes the value of the codeshare agreement with United Airlines and of its ticketing and baggage agreement with American Airlines.
 7. Boutique Air's proposed EAS to PDX would not generate as much passenger demand as EAS to San Francisco International Airport (SFO) or OAK, the two other airports historically served from CEC through the basic EAS and AEAS programs.

In contrast, BCRAA states that it is very pleased with the AEAS provided by Contour, generating nearly 17,800 passengers on 874 flights, achieving a 68% load factor, "and near perfect (controllable) completion rates and on-time performance." Additionally, a community poll taken in February and March of 2020, answered by 1,055 respondents, concluded that OAK was the most preferred hub option, and PDX was the least preferred option.

The May 7, 2020 letter from BCRAA attached additional support letters from the County of Del Norte Board of Supervisors; the City of Crescent City; the Curry County (Oregon) Board of Supervisors; the City of Brookings, Oregon; the Tribal Council of Tolowa Dee-ni' Nation; and Chairman of Elk Valley Rancheria.

Crescent City's Alternate Essential Air Service Application

In concert with its comments opposing the proposal of Boutique Air to provide basic EAS at Crescent City, on May 13, 2020, BCRAA, on behalf of Crescent City, submitted an application for financial assistance under the AEAS program.

Crescent City requests a new four-year AEAS grant, amounting to \$3,564,794 in the first year, with an annual two percent escalation factor for years two through four (\$3,636,090 in year two, \$3,708,811 in year three, and \$3,782,988 in year four). The application states that the community will "contract with a Part 135 Air Carrier to provide flights to" OAK or another medium- or large-hub airport. More specifically, Crescent City intends to again contract with Contour Airlines to provide seven to ten flights per week (808 flights total in a one year period), depending on the season and/or demand, using ERJ-135 aircraft, at a 99 percent completion factor. In a typical week, Contour Airlines will provide one round trip per day between Crescent City and OAK.

On July 30, 2020, Crescent City emailed the Department "to clarify that in our application for Alternate EAS (AEAS) at Crescent City it is our intention to utilize the AEAS grant to contract with a Public Charter Part 380 carrier (Contour Airlines) for service to Oakland International Airport (OAK)." (Emphasis added).

Background on Alternate Essential Air Service

Congress established AEAS as a pilot program to provide communities with an alternative to the traditional EAS-type service.⁴ Typically, the EAS program pays subsidy to regional air carriers to provide a minimum level of air service to a major hub airport with twin-engine aircraft. The AEAS program provides that the Department, instead of paying compensation to an air carrier to provide EAS, may provide financial assistance directly to the eligible community to use for one of the purposes specified in 49 U.S.C. § 41745(a)(3).⁵ Thus, the Department typically determines the amount of financial assistance available to a community by reference to the community's current EAS subsidy, or for communities not currently receiving EAS, by reference to proposals obtained through a carrier selection proceeding.⁶

Eligible communities may use the assistance for the purposes spelled out in statute, 49 U.S.C. § 41745(a), such as more frequent service with smaller aircraft, on-demand air taxi service, scheduled or on-demand surface transportation, purchasing an aircraft, or regionalized air service. Each community accepted into the AEAS program must execute a grant agreement with the Department before it begins spending funds under the program. By notice dated July 27, 2004, the Department invited communities to submit proposals under the program.

Decision

The Department has decided, pending execution of a grant agreement, to approve Crescent City's application for acceptance in the AEAS program, and to not proceed with the EAS carrier selection case.

In the current carrier selection proceeding for EAS at Crescent City, the Department only received one proposal, from Boutique Air. One of Boutique Air's aircraft options, the Pilatus PC-12, does not satisfy the twin-engine requirement under 49 U.S.C. § 41732(b)(5). Boutique Air's other aircraft option, the King Air 350, does comply. However, the Department received feedback from other EAS communities stating that Boutique Air's King Air service has operated well below the completion rate promised, and often Boutique Air has substituted single-engine aircraft to complete flights that would otherwise be cancelled. This is pertinent to the selection criteria in 49 U.S.C. § 41733(c)(1).

More specifically, community feedback and monthly claims filed with the Department for Boutique Air's EAS at Clovis, New Mexico show that Boutique Air did not utilize the King Air 350 aircraft for a significant number of flights, despite its EAS contract specifying King Air 350 aircraft. See Order 2019-8-18 (August 26, 2019) (summarizing Boutique Air's past performance at Clovis and provided data showing that Boutique Air operated 449 flights on single-engine Pilatus PC-12 aircraft between August 2018 and June 2019).

For Boutique Air's contracted EAS at Victoria, Texas, on July 31, 2019, Boutique Air requested the Department's permission to allow the carrier to operate single-engine, 8/9-seat Pilatus PC-12 aircraft, in addition to the twin-engine King Air 350 that it currently flies per Order 2018-9-18.

⁴ See Notice: Establishment of Alternate Essential Air Service Pilot Program Pursuant to Vision 100 – 49 U.S.C. § 41745 (“AEAS Notice”), available at <https://www.regulations.gov/document?D=DOT-OST-2004-18715-0001>.

⁵ A community may not participate in both the traditional EAS Program and the AEAS Program at the same time. 49 U.S.C. § 41745(e). Communities choosing to withdraw from the AEAS Program may request to be reinstated in the traditional EAS program, which could potentially result in a hiatus in air service.

⁶ See, e.g., DOT Order 2012-3-9.

On August 21, 2019, the Department granted Boutique Air's request, but stated that Boutique Air may not be compensated for use of the PC12 for more than 59 consecutive days, because the community had not requested a waiver from its right to two-pilot, two-engine aircraft. 49 U.S.C. § 41732(b)(5). Therefore, although Boutique Air operated PC-12 aircraft at Victoria with the permission of the Department, Boutique Air was compelled to make this request because "our King Air aircraft have proven less reliable than anticipated"⁷

In contrast, Contour has a record of providing reliable AEAS at Crescent City. The Department believes that OAK, a medium-hub airport, will enable Crescent City passengers to sufficiently connect to the national air transportation system. Therefore, the Department finds that, although Contour will be offering on-demand public charter service rather than traditional scheduled air transportation, its proposal seeking subsidy of \$3,564,794 in year one with a two percent escalation factor in years two through four is an acceptable reflection of the subsidy needed to provide EAS at Crescent City under 49 U.S.C. §§ 41733(c) and 41737. The maximum grant to the community will be \$14,692,683 to cover the 48-month grant period. The Department will not prescribe a service frequency or schedule but rather leaves it to the community and their contracted air carrier to develop a mutually acceptable service schedule.

Therefore, pending the execution of a grant agreement, the Department approves Crescent City's application for AEAS at Crescent City as proposed. The Department finds that the services proposed in the application are eligible for funding under AEAS.⁸ In addition, Crescent City's application satisfies the bulleted criteria set forth in AEAS Notice; more specifically, Crescent City provided a description of its existing air service, a synopsis of its service history, a strategic plan for meeting its needs through the AEAS program, an analysis of the funding necessary for the AEAS project, an explanation of how it will ensure that grant funds are spent in the manner proposed, descriptions of how it will monitor the success of the grant, an explanation of how it will continue to meet the EAS program's statutory eligibility criteria, and a description of the amount and duration of the grant sought.⁹

Although Crescent City is being awarded a grant under the Alternate EAS program, it must adhere to all the eligibility requirements of the EAS program.¹⁰

Reminder about EAS Eligibility

To remain eligible for EAS, communities must comply with all applicable EAS eligibility requirements. All EAS communities within the 48 contiguous States, including Crescent City, are subject to a \$1,000 subsidy per passenger cap, regardless of the distance to a hub airport.¹¹

The Department expects Crescent City and Contour to work together to ensure that the community will comply with this requirement. Communities that fail to comply with applicable eligibility requirements may risk having their eligibility in the EAS program terminated. In the event the Department terminates a community's eligibility for EAS due to lack of compliance, that action will supersede this Order.

⁷ See <https://www.regulations.gov/document?D=DOT-OST-2005-20454-0113>.

⁸ 49 U.S.C. § 41745(a)(3)(f) ("other transportation or related services as the Secretary may permit").

⁹ See AEAS Notice, p.3.

¹⁰ See *id.*

¹¹ 49 U.S.C. § 41731(a)(1)(C).

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

ACCORDINGLY,

1. The Department approves the application into the Alternate Essential Air Service Program (AEAS) of Crescent City, California, as submitted by the Border Coast Regional Airport Authority, upon execution of a Grant Agreement with the Department and beginning October 1, 2020, through September 30, 2024, subject to compliance with all eligibility criteria. The Department will enter a grant agreement worth up to \$14,692,683 with Crescent City to reimburse it for public charter flights contracted by it for service from Del Norte County Regional Airport (CEC) to Oakland International Airport (OAK) or an alternate large or medium hub airport designated by the community, using 30-seat Embraer ERJ-135 (EMB-135) aircraft.
2. The Department directs Crescent City 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 AEAS 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 Crescent City. 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. Crescent City may forfeit its reimbursement for any claim that is not supported under the terms of this Order;
3. The Department terminates the carrier selection case initiated by Order 2020-2-4;
4. This docket will remain open pending further Departmental action; and
5. The Department will serve copies of this Order on the civic officials of Crescent City, California, the Airport Director at Del Norte County Regional Airport, Corporate Flight Management, Inc. d/b/a Contour Airlines, and Boutique Air Inc.

By:

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(SEAL)

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