Order: 2023-4-9
Served: April 14, 2023

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

Issued by the Department of Transportation
On the 14th day of April, 2023

Essential Air Service at **PIERRE, SOUTH DAKOTA** (FAIN 69A3452360501)[1] **WATERTOWN, SOUTH DAKOTA** (FAIN 69A3452360502) Under 49 U.S.C. § 41731 *et seq*.	**DOT-OST-2011-0138** **DOT-OST-2001-10644**

ORDER SELECTING AIR CARRIER

Summary
By this Order, the U.S. Department of Transportation (the Department) selects Key Lime Air Corp. d/b/a Denver Air Connection (DAC) to provide Essential Air Service (EAS) at Pierre and Watertown South Dakota, using 50-seat Embraer ERJ-145 regional jet aircraft for the two-year term from June 1, 2023, through May 31, 2025.

At Pierre, DAC will provide a total of 12 weekly nonstop round trip to Denver International Airport (DEN) and Minneapolis−Saint Paul International Airport (MSP) at a first-year annual subsidy of $5,745,454 and a second-year annual subsidy of $6,147,636.

At Watertown, DAC will provide a total of 12 weekly nonstop round trips to DEN and Chicago O’Hare International Airport (ORD) at a first-year annual subsidy of $6,329,521 and a second-year annual subsidy of $6,772,587.[2]

Background
By Order 2021-4-7 (April 13, 2021), the Department selected DAC to provide EAS at Pierre and Watertown, South Dakota, using 50-seat Embraer ERJ-145 regional jet aircraft for the two-year term from June 1, 2021, through May 31, 2023.[3]

At Pierre, DAC provides 12 weekly round trips to DEN. At Watertown, DAC provides six weekly round trips to ORD and six weekly round trips to DEN. At both communities, the

1 FAIN = Federal Award Identification Number.
2 Such subsidy is calculated on a fiscal year basis, subject to the availability of funds.
3 DAC actually inaugurated service at Pierre and Watertown on July 1, 2021.

combined first-year annual subsidy was $4,729,710, and the combined second-year annual subsidy is $4,824,304.

As the expiration of the current contract approached, the Department issued Order 2022-11-23 (November 17, 2022), requesting proposals from air carriers interested in providing EAS for Pierre and/or Watertown, South Dakota, for a new contract term beginning June 1, 2023, with or without subsidy. Denver Air Connection was the only air carrier to submit proposals.[4]

Summary of Air Carrier Proposals

Key Lime Air d/b/a Denver Air Connection (DAC)								
Service Option	**Annual Subsidy (Year 1)**	**Annual Subsidy (Year 2)**	**Community Support?**	**Hub(s)**	**Round Trips per Week**	**Aircraft**	**Seats**	**Interline/ Codeshare**
Pierre-Option 1	$5,745,454	$6,147,636	Yes	DEN or DEN/MSP	12	ERJ-145	50	Yes
Pierre-Option 2	$6,692,253	$7,160,710	No	DEN/ORD	12	ERJ-145	50	Yes
Watertown-Option 1	$5,798,332	$6,204,215	No	DEN	12	ERJ-145	50	Yes
Watertown-Option 2	$5,472,299	$5,855,360	No	DEN/MSP	12	ERJ-145	50	Yes
Watertown-Option 3	$6,329,521	$6,772,587	Yes	DEN/ORD	12	ERJ-145	50	Yes

The complete public file, including air carrier proposals, for EAS at these communities 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.

Community and State Comments

On December 20, 2022, the Department requested community comments regarding the air carrier selections at Pierre and Watertown. Both communities supported DAC.

By letter dated January 18, 2023, Pierre's Mayor, the Honorable Steve Harding, stated:

> Public feedback received by City staff and the City Commission overwhelmingly supports two-hub service. We recognize that Option 2, PIR-DEN/ORD, is mostly likely cost-prohibitive. Furthermore, the feedback we received gives strong preference to Option 1, PIR-DEN/MSP.
>
> Although we have concerns, given the public interest in access to Minneapolis, we request the USDOT consider awarding the contract to DAC with 12 roundtrip flights to Denver weekly, with the option of up to four of the 12 weekly roundtrips going to Minneapolis and the remainder going to Denver.

By letter dated January 17, 2023, Ms. Amanda Mack, Watertown City Manager, stated:

4 The proposal may be found at https://www.regulations.gov/document/DOT-OST-2011-0138-0121

> We are unanimous in our recommendation to award the Essential Air Service bid to Denver Air Connection, and additionally recommend that the Denver and Chicago routes option be selected.
>
> The Watertown City Manager also noted that "The Minneapolis route proposed drew considerable discussion, however, because DAC does not have a current interline agreement with Delta [Air Lines], we are gravely concerned that if selected, this option, would dramatically decrease our enplanements."

Decision
Title 49 U.S.C. § 41733(c)(1) directs the Department to consider five factors when making an air carrier selection for a community not in Alaska where basic EAS will not be provided without compensation:[5] (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 those users; and (E) whether the air carrier has included a plan in its proposal to market its EAS to the community. In addition, Section 41732(b)(1)(A) requires basic EAS to include at least two daily round trips six days a week for an eligible place not in Alaska. Finally, the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (December 29, 2022), authorizes the Department to consider the relative subsidy requirements of the applicant air carriers.

DAC's proposals meet 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 Key Lime Air Corp. d/b/a Denver Air Connection (DAC), for a two-year term, from June 1, 2023, through May 31, 2025, at Pierre and Watertown, South Dakota. DAC has served both communities reliably, has community support, and its service will continue to provide passengers connectivity to the national air transportation system. DAC also included $20,000 to market its service at both communities.

At Pierre, DAC will provide 12 total weekly nonstop round trips to DEN/MSP, for the two-year term from June 1, 2023, through May 31, 2025, at a first-year annual subsidy of $5,745,454 and a second-year annual subsidy of $6,147,636.[6]

At Watertown, DAC will provide 12 total weekly nonstop round trips to DEN/ORD, for the two-year term from June 1, 2023, through May 31, 2025, at a first-year annual subsidy of $6,329,521 and a second-year annual subsidy of $6,772,587

Reminder About EAS Eligibility
To remain eligible for EAS, communities must comply with all applicable EAS eligibility requirements. We note that many of the traditional eligibility requirements, including those below, do not apply for Fiscal Year 2023, by the Consolidated Appropriations Act, 2023, Pub L.

5 The Department did not receive any proposals to provide EAS at Pierre or Watertown without subsidy.
6 Per Pierre community input, DAC may operate eight weekly round trips to DEN and four to MSP. Although this is a slight difference in the air carrier's proposal, there is no change in annual subsidy, and it does not adversely affect any other applicants since no other air carrier submitted a proposal for consideration.

No. 117-328 (December 29, 2022).[7] However, unless waived by Congress for future fiscal years, compliance with these eligibility requirements will resume at the beginning of Fiscal Year 2024 (October 1, 2023).

Title 49 U.S.C. § 41731(a)(1)(B) provides that a community must maintain an average of 10 enplanements per service day, as determined by the Secretary of Transportation, during the most recent fiscal year, to remain eligible for EAS. Locations in Alaska and Hawaii, and communities that are more than 175 driving miles from the nearest large- or medium-hub airport, are exempt from this requirement. Pierre and Watertown are not subject to this requirement, because each of the communities are more than 175 miles from the nearest large- or medium-hub airport.

Further, the Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-69 (October 9, 1999), prohibits the Department from subsidizing EAS to communities located within the 48 contiguous States that require a subsidy per passenger amount exceeding $200 ("Subsidy Cap"), unless the community is located more than 210 miles from the nearest large- or medium-hub airport. Watertown is subject to this requirement, because it is not more than 210 miles from the nearest large- or medium-hub airport. Pierre is not subject to this requirement, because it is more than 210 miles from the nearest large- or medium-hub airport.

EAS communities, except for those in Alaska and Hawaii, must have had an average subsidy per passenger of less than $1,000 during the most recent fiscal year, regardless of the distance to the nearest large- or medium-hub airport.[8]

The Department expects DAC and Pierre and Watertown to work together to ensure that the communities will comply with the applicable requirements. Communities that fail to comply with the applicable above 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.

Air Carrier Fitness

Title 49 U.S.C. §§ 41737(b) and 41738 require that the Department find an air carrier fit, willing, and able to provide reliable service before the Department may subsidize it to provide EAS. Southern 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 Federal Aviation Administration has not raised concerns that would negatively affect the Department's fitness findings. The Department therefore concludes that DAC remains fit to conduct the operations proposed at Pierre and Watertown.

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

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[7] The same requirements to maintain eligibility for EAS also did not apply Fiscal Years 2020 and 2021 by the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (December 27, 2020), and for Fiscal Year 2022 by the Consolidated Appropriations Act, Pub L. No. 117-103 (March 15, 2022).

8 *See* 49 U.S.C. § 41731(a)(1)(C).

Accordingly,

1. The Department selects Key Lime Air Corp. d/b/a Denver Air Connection to provide Essential Air Service at Pierre and Watertown, South Dakota, for the two-year term from June 1, 2023, through May 31, 2025, in accordance with the proposal set forth in Appendix A, and establishes the annual subsidy rates as described in Appendix B;

2. The Department makes this selection contingent upon receiving properly-executed certifications from Key Lime Air Corp. d/b/a Denver Air Connection that it is in compliance with the Department's regulations regarding drug-free workplaces and nondiscrimination, as well as the regulations concerning lobbying activities;[9]

3. The Department directs Key Lime Air Corp. d/b/a Denver Air Connection 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;

4. The Department finds that Key Lime Air Corp. d/b/a Denver Air Connection is fit, willing, and able to perform Essential Air Service at Pierre and Watertown, South Dakota;

5. These dockets will remain open pending further Department action; and

6. The Department will serve this Order on the Mayors of Pierre and Watertown, South Dakota, the airport managers of Pierre Regional Airport and Watertown Regional Airport, and Key Lime Air Corp. d/b/a Denver Air Connection.

By:

Carol A. (Annie) Petsonk
Assistant Secretary
for Aviation and International Affairs

(SEAL)

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

9 The certifications are available online under "Reports and Publications" at http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports.

DAC Proposal at Pierre, SD

Denver Air Connection
EAS Bid for Pierre Option 1
December 19, 2022

	PIR-DEN or PIR-DEN/MSP
Number of round trips per week	12
Community may select 12 RT to DEN or 6 RT to DEN/ 6 RT to MSP	
Aircraft Data	ERJ 145/ 50 Seat Jet
Block Hours	1,633
Available Seats	62,400
Load Factor	50%
Passenger Revenue	
Passengers	30,903
Average Fare	99.00
Revenue	3,059,397
Expenses	
Aircraft Lease	702,000
Crew Cost	1,481,584
Maintenance	1,377,937
Insurance	495,600
PIR Operating Expense	424,243
DEN Operating Expense	604,668
Deice, Catering and Misc.	66,903
Marketing	20,000
Fuel Cost	3,212,352
Total Expense	8,385,287
Annual Subsidy Requirement	
Operating Income	(5,325,890)
Profit	419,564
Total Subsidy Year 1	5,745,454
Total Subsidy Year 2 (7% increase)	6,147,636
Effective Subsidy Rates	
Subsidy per Trip (98% completion)	4,698
Subsidy per Passenger	186

DAC Proposal at Watertown, SD

Denver Air Connection
EAS Bid for Watertown Option 3
October 20, 2020

	ATY-DEN/ORD
Number of round trips per week	12
6 RT to DEN and 6 RT to ORD	
Aircraft Data	ERJ 145/ 50 Seat Jet
Block Hours	2,250
Available Seats	62,400
Load Factor	52%
Passenger Revenue	
Passengers	32,519
Average Fare	105.00
Revenue	3,414,527
Expenses	
Aircraft Lease	702,000
Crew Cost	1,256,944
Maintenance	1,455,750
Insurance	339,600
ATY Operating Expense	331,267
DEN/ORD Operating Expense	657,807
Deice, Catering and Misc.	68,519
Marketing	20,000
Fuel Cost	4,447,872
Total Expense	9,279,759
Annual Subsidy Requirement	
Operating Income	(5,865,233)
Profit	464,288
Total Subsidy Year 1	6,329,521
Total Subsidy Year 2 (7% increase)	6,772,587
Effective Subsidy Rates	
Subsidy per Trip (98% completion)	5,175
Subsidy per Passenger	195

Key Lime Air Corp. d/b/a Denver Air Connection
Essential Air Service to be provided at Pierre, SD
Docket DOT-OST-2011-0138

Annual Subsidy: Year 1, $5,745,454; Year 2, $6,147,636
Effective Period: June 1, 2023, through May 31, 2025
Scheduled Service: 12 weekly round trips
Hub: Denver International Airport (DEN)/Minneapolis-St. Paul International Airport (MSP)
Aircraft: 50-seat ERJ-145
Rate per Eligible Flight[1]: Year 1, $4,698; Year 2, $5,027
Weekly Ceiling[2]: Year 1, $112,752; Year 2, $120,648

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 this rate, 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 service amounts, 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 September 30, 2023. The Government's obligation for performance under this Order beyond September 30, 2023 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 ,2023 until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond September 30, 2023, 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; August claims must be submitted by November 30, and so on.

[1] Annual compensation Year 1 of $5,745,454 divided by the 1,223 annual departures (24 weekly departures x 52 weeks x 98 percent completion). Annual compensation Year 2 of $6,147,636 divided by 1,223 annual departures.
[2] Year 1: 24 arrivals and departures per week multiplied by $4,698 per flight. Year 2: 24 arrivals and departures per week multiplied by $5,027 per flight.

Key Lime Air Corp. d/b/a Denver Air Connection
Essential Air Service to be provided at Watertown, SD
Docket DOT-OST-2001-10644

Annual Subsidy: Year 1, $6,329,521; Year 2, $6,772,587
Effective Period: June 1, 2023, through May 31, 2025
Scheduled Service: 12 weekly round trips
Hub: Chicago O'Hare International Airport (ORD)/Denver International Airport (DEN)
Aircraft: 50-seat ERJ-145
Rate per Eligible Flight[1]: Year 1, $5,175; Year 2, $5,538
Weekly Ceiling[2]: Year 1, $124,200; Year 2, $132,912

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 this rate, 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.

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[1] Annual compensation Year 1 of $6,329,521 divided by the 1,223 annual departures (24 weekly departures x 52 weeks x 98 percent completion). Annual compensation Year 2 of $6,772,587 divided by 1,223 annual departures.
[2] Year 1: 24 arrivals and departures per week multiplied by $5,175 per flight. Year 2: 24 arrivals and departures per week multiplied by $5,538 per flight.