

From: Quinn, Kenneth P. [mailto:kenneth.quinn@pillsburylaw.com]
Sent: Sunday, February 26, 2017 7:04 PM
To: Page, Leon
Subject: John Wayne Airport - FBOs

Dear Mr. Page:

This will confirm my discussions with the FAA on Friday, February 24, 2017, including the FAA Acting Airports Division Manager for the FAA Western Pacific Region, Kristi Warden, with whom I am meeting tomorrow, February 27, 2017, along with the Safety & Safety Standards Division Manager, Brian Armstrong and Compliance Manager Tony Garcia. We may be joined by the Division Manager, Mark McClardy.

During our discussion, I asked directly as to whether the FAA in any way had directed that the County take one position or another regarding the replacement of an incumbent FBO, like Signature, at John Wayne Airport versus another FBO, like ACI Jet. I asked further if they had requested that the County maintain the status quo during the dispute and threatened Part 16 complaint.

Ms. Warden quite clearly said that while the FAA would like to have the parties arrive at a consensus solution without a Part 16 Complaint, the FAA was taking no position on the underlying issues in the Part 13 or threatened Part 16 Complaint, nor has it asked the County to take or not take any particular action. They generally defer to airport sponsors to act in the public interest and in compliance with FAA grant assurances.

Kindest regards. Kenneth Quinn

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1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

From: Anthony.Garcia@faa.gov [mailto:Anthony.Garcia@faa.gov]
Sent: Wednesday, February 22, 2017 10:00 AM
To: Page, Leon
Subject: RE: Feedback & Request for Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Thank you for the information.

From: Page, Leon [mailto:Leon.Page@coco.ocgov.com]
Sent: Tuesday, February 21, 2017 1:52 PM
To: Garcia, Anthony (FAA)
Cc: Willis, Kevin (FAA); Armstrong, Brian (FAA)
Subject: RE: Feedback & Request for Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Dear Mr. Garcia,

Thank you for the email. You ask, "Is it your informed opinion that the Board can ignore the selection criteria specified in the RFQ and choose any Respondent Firm it deems desirable regardless of its placement in the RFQ ratings?"

Provided that the selection is not made for discriminatory reasons, then **yes**. The power to contract is vested with the Board of Supervisors. (Government Code section 23005; Government Code section 23004, subdivision (c).) Government Code section 25536 specifically authorizes the Board of Supervisors, *on a four-fifths vote*, to enter into a *summary** lease of County property for airport uses.

*Government Code section 25536 is part of Article 8 (Sale or Lease of Real Property) in Chapter 5 (County Property) in Part 2 of Title 3 of the California Government Code. Article 8 sets forth an elaborate procedure for the leasing of County property that involves, among other steps, adoption by the Board of Supervisors of a resolution, by a two-thirds vote, declaring the intention to lease County property that must be approved by the Board following extended public notice (see Section Gov. Code sections 25526; 25528), a formal bid opening process (Gov. Code section 25530), and a required call for oral bids (Gov. Code section 25531). Thus, the authority granted in Government Code section 25536, on a four-fifths vote of the Board, provides a bypass to these elaborate bid procedures, but only for certain, specified kinds of uses.

As you may know, a Request for Qualification (RFQ) is generally intended to result in a list of potential contractors that are qualified to receive a government contract. The RFQ issued by the County was useful here because it successfully identified *qualified* FBO firms for the Board's consideration. Two applicants that did not meet the qualifications (according to John Wayne Airport staff) were not submitted to the Board for consideration. Though the RFQ specified that John Wayne Airport staff would provide rankings for the Board's consideration, these rankings expressly did not include a consideration of the responding firm's fuel pricing policy. With respect to fuel pricing, the RFQ stated:

"PLEASE NOTE: While not an element that will be considered in the scoring and ranking of the FBOs, Respondent Firm's fuel pricing policy for JWA will be presented for consideration by the Board of Supervisors at the time of selection."

(See *General Instructions*, p. 2 of 6, attached.)

As I have said, due to the Board's authority to lease property under Government Code section 25536, staff rankings of the Statements of Qualifications are not binding on the Board of Supervisors. Here the Board indicated through the RFQ that it would be considering the respondent firm's fuel pricing policy at the time of selection.

Thank you again for the email. I will be providing a more comprehensive response to Signature's informal complaint later in the week. Otherwise, please let me know if I can provide further assistance, or if I can answer any additional questions in my forthcoming letter.

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From: Anthony.Garcia@faa.gov [<mailto:Anthony.Garcia@faa.gov>]

Sent: Tuesday, February 21, 2017 9:19 AM

To: Page, Leon

Cc: kevin.willis@faa.gov; Brian.Armstrong@faa.gov

Subject: Feedback & Request for Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Leon Page

In reply to your questions, similar to your communication, "the Board's action cannot be identified or stated until the action to approve the Interim Leases is actually taken," we cannot predict the outcome of our inquiry until it is completed. The suggestion of the deferment of the Board's decision was made to allow the Board to eventually go forward with its decision without the cloud of an unsettled complaint.

Since we have not concluded our inquiry, we would appreciate some additional information.

California Government Code § 25536 states "*the board of supervisors of a county from, and the board of supervisors of any county is empowered to make contracts,*

acquiring, leasing, or subleasing property pursuant to Section 1261 of the Military and Veterans Code, or, by a four-fifths vote of the board, entering into leases, or concession or managerial contracts involving leasing or subleasing all or any part of county-owned, leased, or managed property...”

A simple reading of the Code indicates that the Board has the authority to approve and execute contracts, such as leases.

The Request for Qualifications (RFQ) for Interim Leases for Fixed Base Operator at John Wayne Airport has the following provisions:

PLEASE NOTE:

JWA will make its recommendation to the Board of Supervisors regarding the award of the two Interim Leases based on the combined total of Respondent Firm SOQ and Interview rankings.

EVALUATION PLAN OVERVIEW

The selection of two firms will be determined on a qualifications basis. It is the expressed intent of the County of Orange, and John Wayne Airport to select the most highly qualified FBOs for award of the two Interim Leases.

Final Ranking

The two highest ranked Respondent Firms will be recommended by the evaluation panel to the Board of Supervisors for selection and award of the Interim Leases.

Based on simple reading of the selection criteria posted in the Request for Qualifications, it would give a reasonable impression that the winners of the RFQ would be the Respondent Firms that scored the highest.

Based on our conversation on February 16, 2017, you indicated that the Board was empowered per § 25536 to select any Respondent Firm from the list of qualified candidates regardless of score.

In view of the selection criteria in the Request for Qualifications (listed above), it would appear that your application of § 25536 to the Board’s selection authority goes beyond the simple words on the page.

Question:

Is it your informed opinion that the Board can ignore the selection criteria specified in the RFQ and choose any Respondent Firm it deems desirable regardless of its placement in the RFQ ratings?

Thank you for your feedback.
Tony Garcia
Airports Compliance Program Manager
Airports Division
Los Angeles CA
310 725-3634

From: Page, Leon [<mailto:Leon.Page@coco.ocgov.com>]
Sent: Tuesday, February 21, 2017 7:56 AM
To: Garcia, Anthony (FAA)
Cc: Rondinella, Barry [JWA]; Kim, Frank (HOA)
Subject: RE: Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Good morning Mr. Garcia,

Please see the attached letter from Mr. Stephen R. Hofer of the AERLEX Law Group, on behalf of ACI Jet, that was provided yesterday to Director Kevin Willis and Regional Administrator Glen Martin. I understand that you were not in your office on Friday. Any information you can provide concerning the two questions presented in my February 16, 2017 email below would be helpful.

Thank you,

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From: Page, Leon
Sent: Thursday, February 16, 2017 5:53 PM
To: 'Anthony.Garcia@faa.gov'
Cc: Rondinella, Barry [JWA]; Kim, Frank (HOA)
Subject: RE: Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Mr. Garcia,

Thank you for taking the time to speak with me earlier today. Thank you also for your email. In the email below, you write:

Is the County going forward with the award of the interim lease to ACI Jet or has the award been postponed while the protest and informal complaint are adjudicated? We suggest that the latter option may represent a helpful alternative, at least until the County can provide information that explains the reason for its decision-making so we can understand the basis of the County's decision balanced against the allegations made by Signature. *[In response to our request for information, you provided a copy of the Supplemental Agenda Item related to the proposal for awarding of two Interim Fixed Base Operator Leases.]*

Of course, until the Orange County Board of Supervisors actually approves the resolutions for the Interim Leases, we will be unable to identify the reasons for the Board's action. (As we discussed, in light of the state's open meetings law, the Ralph M. Brown Act, the Board of Supervisors is legally prohibited from reaching a collective concurrence on an item of business outside of an open, public, duly-noticed meeting. This means that the *reasons* for the Board's action cannot be identified or stated until the action to approve the Interim Leases is actually taken. It is also conceivable that the Board may seek to modify or amend the resolutions at the meeting on February 28, 2017, as the resolutions in their current form may not accurately capture the Board's reasons for approving the proposed Interim Leases.)

Questions

- In light of the legal constraints imposed by the Ralph M. Brown Act, and in light of the information I have provided to you, including the proposed resolutions concerning the Interim Leases, is the Federal Aviation Administration still suggesting that the Orange County Board of Supervisors defer a decision on the award of an interim FBO lease, a suggestion that, if followed, would allow Signature Flight Support to remain in a month-to-month holdover status at John Wayne Airport? If so, why? What is the legal basis for this suggestion that, on its face, would appear to favor an incumbent FBO over a qualified competitor?
- So that I may properly advise my client, the County of Orange, what action will the Federal Aviation Administration take if the Board of Supervisors on February 28, 2017, approves an Interim Lease with ACI Jet?

Thank you for your attention to this email and for your answers to my questions.

Leon J. Page
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From: Anthony.Garcia@faa.gov [<mailto:Anthony.Garcia@faa.gov>]

Sent: Thursday, February 16, 2017 4:46 PM

To: Page, Leon

Subject: Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Leon Page

This is a follow-up to our earlier message related to the above subject matter. We have restated and clarified our interest indicating that we wish to obtain information from Orange County rather than appear to influence the Board's decision.

As stated earlier, we are advising Orange County officials that Signature Flight Support Corporation presented the FAA with an informal complaint that challenges the propriety of the award of an Interim Fixed Base Operator Lease to ACI Jet, Inc. Signature alleges that the County decision represents a violation of Grant Assurance 22, *Economic Nondiscrimination*, because the selection decision did not conform to the criteria established by the Request for Qualifications for Interim Leases for Fixed Base Operators, and therefore the decision was unreasonable and unjustly discriminator towards Signature.

We are aware that the County has been served with a protest from Signature. Attached is a copy of the informal complaint that Signature presented to the FAA.

While we prepare to initiate our inquiry in response to the complaint, we would appreciate some preliminary information.

- Is the County going forward with the award of the interim lease to ACI Jet or has the award been postponed while the protest and informal complaint are adjudicated? We suggest that the latter option may represent a helpful alternative, at least until the County can provide information that explains the reason for its decision-making so we can understand the basis of the County's decision balanced against the allegations made by Signature. *[In response to our request for information, you provided a copy of the Supplemental Agenda Item related to the proposal for awarding of two Interim Fixed Base Operator Leases.]*

- Have County airport officials been reconsidering its decision to award the interim lease to ACI Jet or will this decision have to be made by the Board of Supervisors? *[You clarified that the decision will be made by the Board of Supervisors.]*

If the County and Signature cannot reach an accommodation for a resolution of the dispute, we would appreciate your preparing a response to the complaint and the allegations presented by Signature that explains the reasons for the selection of ACI Jet rather than Signature. Since we have an informal complaint submitted by Signature to the FAA in accordance with 14 C.F.R Part 13.1, *Report of Violations*, we appreciate your cooperation with our inquiry. Any additional information that you can provide that further clarifies the County's decision in this matter will be appreciated.

Thank you
Tony Garcia
Airports Compliance Program Manager
FAA Airports
Los Angeles CA
310 725-3634

From: Page, Leon
Sent: Thursday, February 16, 2017 3:46 PM
To: 'Anthony.Garcia@faa.gov'
Subject: County of Orange Agenda Item

Mr. Garcia,

Here is a link to the agenda item:

<http://www.ocgov.com/civicax/filebank/blobdload.aspx?blobid=61969>

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From: Anthony.Garcia@faa.gov [<mailto:Anthony.Garcia@faa.gov>]
Sent: Thursday, February 16, 2017 10:36 AM
To: Rondinella, Barry [JWA] <BRondinella@ocair.com>
Cc: Brian.Armstrong@faa.gov; kevin.willis@faa.gov; dave.cushing@faa.gov
Subject: Information: Notice of Informal Complaint by Signature Flight Support Corporation vs. Orange County

Barry Rondinella

We are advising Orange County officials that Signature Flight Support Corporation presented the FAA with an informal complaint that challenges the propriety of the award of an Interim Fixed Base Operator Lease to ACI Jet, Inc. Signature alleges that the County decision represents a violation of Grant Assurance 22, *Economic Nondiscrimination*, because the selection decision did not conform to the criteria established by the Request for Qualifications for Interim Leases for Fixed Base Operators, and therefore the decision was unreasonable and unjustly discriminator towards Signature.

We are aware that the County has been served with a protest from Signature. Attached is a copy of the informal complaint that Signature presented to the FAA.

While we prepare to initiate our inquiry in response to the complaint, we would appreciate some preliminary information.

- Is the County going forward with the award of the interim lease to ACI Jet or has the award been postponed while the protest and informal complaint are adjudicated? We suggest that the latter option may represent a more prudent course of action.

- Have County airport officials been reconsidering its decision to award the interim lease to ACI Jet or will this decision have to be made by the Board of Supervisors?

If the County and Signature cannot reach an accommodation for a resolution of the dispute, we would appreciate your preparing a response to the complaint and the allegations presented by Signature that explains the reasons for the selection of ACI Jet rather than Signature.

Thank you
Tony Garcia
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