

March 7, 2017

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Office of Chief Counsel
Attention: FAA Part 16 Airport Proceeding Docket
AGC-600
Federal Aviation Administration
800 Independence Ave, S.W.
Washington D.C. 20591

Re: **PART 16 COMPLAINT**
Signature Flight Support Corp. v. County of Orange, California

Dear Sir or Madam:

Pursuant to 14 C.F.R. § 16.23, Signature Flight Support Corp. ("Signature") brings this complaint against the County of Orange, California ("County"), which is the owner, operator, and sponsor of John Wayne Airport ("SNA" or the "Airport"). Given the nature of the violations and the urgency with which corrective action is needed, Signature respectfully requests that the Director issue an order expediting the handling of this matter. 14 C.F.R. § 16.11(b).

This complaint is based on the County's failure and refusal to adhere to its federal obligations, and on the specific actions and conduct alleged hereafter. The County's objectives are crystal clear: displace Signature, a national fixed base operator ("FBO") with an exemplary safety record, with an "independent" and "local" FBO ACI Jet, despite ACI Jet's failure to meet the County's minimum standards to provide FBO services. The County's local preference and failure to comply with its own minimum standards are violations of grant assurance 22, economic non-discrimination. Worse yet, the County's procurement process violates federal standards and results in exclusion of Signature – an aeronautical service provider – despite adequate space at the Airport.

All communications with respect this complaint should be addressed to William O'Connor and Joanna Simon, Morrison & Foerster LLP, 12531 High Bluff Drive, Suite 100, San Diego, CA 92130; (858) 720-5100; WOConnor@mofocom, JoannaSimon@mofocom. Signature has complied with the requirements of 14 C.F.R. § 16.21; it has made substantial and reasonable good faith efforts to resolve the matters set forth herein informally, but there

Office of Chief Counsel
March 7, 2017
Page Two

is no reasonable prospect for practical and timely resolution of this dispute. (**Ex A** – Feb. 23 Letter from W. O’Connor to L. Page – Meet and Confer Pursuant to 14 C.F.R. § 16.21.)

SIGNATURE AND SNA

1. Signature is one of two authorized FBOs at SNA. Signature is a global flight support company with more than 200 locations throughout North America, South America, Europe, Africa, and Asia. Signature is the world’s largest network of FBOs, delivering essential support services for business and private aviation, including refueling, hangarage, maintenance, repair and overhaul, and a variety of other amenities.

2. For over twenty years, Signature has served Orange County at the Airport. Signature’s FBO lease, dated October 14, 1994, expired on October 31, 2014. Since that time, Signature has been operating at SNA on a holdover basis despite a recommendation made on June 17, 2015 by the County Airport Commission to extend a lease to Signature. (**Ex. B**, July 7, 2014 Letter from A. Murphy to J. Broderick dated July 7, 2014; **Ex. Y**, Hangar Lease.)

3. At SNA, Signature competes head-to-head with Atlantic Aviation, the only other authorized FBO at the Airport. Signature and Atlantic offer nearly identical services to aircraft owners and operators, including hangar space, fueling, overnight parking, and lounge facilities for pilots and passengers. Both Signature and Atlantic operate FBOs nationally, and compete for the same customers at SNA and elsewhere. Signature and Atlantic are also similarly situated in that the lease terms of their leases have expired and both companies have been operating their FBO businesses at SNA for the past several years as holdover tenants, on a month-to-month basis, under the terms of the underlying leases. (*See Ex. C*, Aug. 4, 2016 Letter from Tad Allen to Leon Page.)

LEASE NEGOTIATIONS

4. In the summer of 2016, the County negotiated nearly identical lease amendments with Signature and Atlantic. These lease amendments would have extended the leases of both Signature and Atlantic by 2½ years to December 31, 2018 (with very significant rent increases). The amendments were approved by both companies, by the County Counsel’s Office, and by SNA’s Airport Director, Barry Rondinella. (**Ex. E**, Agenda Staff Report, ASR Control 16-000877; “County Counsel Review – Approved Agreement to Form”) The staff report provided:

In order to support the continuation of general aviation services and activities that Signature and Atlantic provide during this planning process, JWA is recommending that the FBO Leases and the Hangar

Office of Chief Counsel
March 7, 2017
Page Three

Operation Lease be extended for two and one-half years. The monthly base rents in the proposed lease extensions are being increased to reflect the land values as improved, since the improvements reverted back to JWA following expiration of the leases. For the FBO Lease extension, Signature has agreed to pay \$175,000 per month compared to the current \$104,709 for the FBO Lease base rent, and \$70,000 per month compared to the \$30,999 currently paid as the Hangar Operation Lease rent. Atlantic has agreed to pay \$125,000 per month compared to the current \$57,538 for its FBO Lease base rent. All rents are subject to annual Consumer Price Index increases as set forth in the amendments. In addition to the monthly base rents, Signature and Atlantic will continue to pay JWA fees from fuel flowage, rental car activities, and airline-related services.

5. The lease amendments were placed on the Agenda for approval at the August 9, 2016 Board of Supervisors' Meeting. (**Ex. D**, Agenda and Attachments for August 9, 2016 BOS Meeting, Item SCS6 (Terms and Value of Future Lease).) The Agenda Staff Report explained the history of both Signature and Atlantic and the need for the 2½ year lease extensions. (**Ex. E**, Agenda Staff Report, ASR Control 16-000877.) The Agenda Staff Report also included copies of the proposed lease amendments. (*Id.*)

6. This was a planned and negotiated process on which Signature relied and which treated Signature and Atlantic the same and continued to encourage vigorous competition at SNA between two national FBOs.

7. However, this process became upset by the activities of a newly formed company that falsely held itself out as an established FBO. This company is called OC Jet Center. **Joe Daichendt** was OC Jet Center's CEO.

8. Indeed, through an August 5, 2016 Deletion Request, the Amendments to Signature's and Atlantic's leases were removed from the Board's Consideration. (**Ex. D**, at 12 of 71, Agenda and Attachments for August 9, 2016 BOS Meeting, Aug. 5 Deletion Memo.)

JOE DAICHENDT AND OC JET CENTER INTERRUPT THE LEASE NEGOTIATIONS

9. On July 14, 2016, OC Jet Center sent a "Letter of Intent" to the County Board of Supervisors, which offered to "occupy and operate a first rate" FBO at Atlantic's leasehold on SNA. (**Ex. F** – July 14, 2016 Letter from J. Daichendt to BOS.) The letter was signed by **Mr. Daichendt**, and made several unsubstantiated promises including that there would a "1 million gallon increase in fuel sales," "lower fuel costs" and a "25% increase in based

Office of Chief Counsel
March 7, 2017
Page Four

aircraft and a 25% increase in property tax revenue,” among other unexplained and unsubstantiated promises. (*Id.*)

10. **Mr. Daichendt’s** July 14 correspondence was accompanied by a letter that touted the fact that OC Jet Center would be a “local” FBO, that SNA would thus have “One Local FBO and One National FBO.” This letter was signed by **Gary Standel, Andrew Smith, Michael Church, and Gary Sequeira**. Together, these individuals or their companies and families made over **\$23,000.00** in campaign contributions to the members of the County Board of Supervisors in the past five years.

- a. **Mr. Daichendt** made **\$6,300.00** in campaign contributions to the members of the County Board of Supervisors. Other members of the Daichendt family also made significant contributions, including Gary Daichendt (**\$4,000.00**) and Nicole Daichendt (**\$500.00**).
- b. **Gary Standel** is the President at West Coast Aviation Services. West Coast Aviation services made **\$6,900.00** in campaign contributions to the members of the County Board of Supervisors.
- c. **Michael Church** is the owner of Sunrise Aviation. Sunrise Aviation made **\$2,000.00** in campaign contributions to the members of the County Board of Supervisors.
- d. **Gary Sequeira** is the President of Orange County Flight Center. Orange County Flight Center made **\$3,000** in campaign contributions to the members of the County Board of Supervisors.

11. At the Board of Supervisors’ Meeting on July 26, 2016, **Mr. Daichendt** made a presentation to discuss Atlantic’s leasehold. After the July 26, 2016 Meeting, Atlantic was informed that its lease amendment would be removed from the August 9 Agenda and would not be approved, and that the Board of Supervisors was going to displace Atlantic in favor of OC Jet Center. (*See Ex. C, Aug. 4, 2016 Letter from T. Allen to Leon Page.*)

12. On August 4, 2016, Mr. Daichendt met with Atlantic’s CEO, Lou Pepper. (**Ex. J, Aug. 4 Letter from T. Allan to J. Daichendt.**) During that meeting, Mr. Daichendt told Mr. Pepper that he had “**4 out of 5**” votes on the County Board of Supervisors. Mr. Daichendt told Mr. Pepper that he would abandon OC Jet Center’s efforts to take over Atlantic’s FBO, clearing the way for Atlantic to obtain the 2½ year extension recommended to the Board by the County staff, “in exchange for Atlantic allowing [Mr. Daichendt] to run [Atlantic’s] FBO” at SNA. (**Ex. J, Aug. 4 Letter from T. Allan to J. Daichendt.**) Mr. Daichendt told Mr. Pepper that he could “make it happen.” Mr. Pepper did not understand how Mr. Daichendt

Office of Chief Counsel
March 7, 2017
Page Five

had the amount of influence over the Board that he claimed. Nonetheless, Mr. Daichendt told Mr. Pepper that he knew what the RFQ minimum standards would be, and that they would include “**local ownership.**” (*Id.*)

13. On August 4, 2016, Atlantic’s lawyer, Tad Allen from O’Melveny and Meyers, LLP wrote to Mr. Daichendt and informed him that Atlantic was troubled by the influence that Mr. Daichendt had at the Board of Supervisors and his advance knowledge of the County’s procurement process, including details that had not been publicly disclosed. (**Ex. J**, Aug. 4 Letter from T. Allan to J. Daichendt.) Mr. Allen explained that the statements “implicate[d] the many laws and regulations that exist to ensure fair and honest contract by public entities” and that Atlantic rejected Mr. Daichendt’s scheme. (*Id.*)

14. Also on August 4, 2016, Mr. Allan wrote a letter to Orange County’s County Counsel, Leon Page, in which he informed the County that awarding the FBO lease to OC Jet Center through a Request for Qualifications (RFQ) and without a Request for Proposals (RFP) would violate state and local law. (*Id.*) The letter also explained that replacing one of the two qualified, national FBOs with a wholly unqualified replacement would be in violation of the County’s grant assurance obligations. (*Id.*) Grant Assurance 22 requires the County to make SNA “available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” (**Ex. J**, Aug. 4 Letter from T. Allan to J. Daichendt.)

**TO AVOID THE APPEARANCE OF IMPROPRIETY, THE COUNTY
ISSUES AN RFQ WITH MINIMUM STANDARDS**

15. Thereafter, a lease was not awarded to OC Jet Center, Atlantic, or Signature. Instead, on September 22, 2016, the County issued an RFQ related to provision of FBO services at SNA. The RFQ states that “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.” (**Ex. G**, RFQ Addendum A at 2; *see also Ex. H*, December 13, 2016 Staff Report.)

16. Allegedly, the Interim Leases were being offered in connection with the General Aviation Improvement Program (GAIP), which has five primary goals¹:

- Provide safe and secure operations;

¹ See General Aviation Improvement Program, <http://www.ocair.com/generalaviation/gaimprovement> (last accessed February 9, 2017).

Office of Chief Counsel
March 7, 2017
Page Six

- Utilize limited land area efficiently;
- Preserve compatibility between general and commercial aviation operations;
- Embrace flexibility to allow for technological advances and market trends;
- Maximize economical, self-sustaining, revenue producing facilities.

17. Purportedly to ensure the GAIP goals were met, an “evaluation panel was appointed to review responses to the RFQ, which included a member of the general public who is knowledgeable about commercial and general aviation operations in the Southern California region, a representative from the County Executive Office/Real Estate Division, and three senior JWA employees representing the Business Development, Finance & Administration and Operations Divisions.” The Panel was tasked with evaluating the written RFQ responses and interviewing each of the responding firms.

18. The RFQ allegedly set forth minimum standards aimed at meeting the GAIP’s goals. These minimum standards were supposed to be mandatory, e.g., required to be met in order for a firm to be deemed qualified for the FBO leasehold. (Ex. G, RFQ Addendum A at 2-3.) The minimum standards included:

- At a minimum, provide for aircraft fueling, aircraft storage (hangars and tie-downs), aircraft charters and aircraft maintenance and repair. Other allowed services may be provided as described in the Scope of Services in Attachment C.”
- Offer all existing subtenants a right of first refusal to continue as sublessees, in their existing locations, during the Interim Lease term.
- Agree to the terms of the attached Interim Lease (Attachments D or E).
- Comply with all applicable Federal, State and local laws and regulations including but not limited to the Airport’s Rules and Regulations and the County’s General Aviation Noise Ordinance (GANO).
- Provide a notarized statement from a bank or financial institution licensed to do business in the State of California, or from such other source that may be acceptable to the Airport and readily verified through normal banking or financial channels, of evidence of the Respondent Firm’s financial responsibility.
- Clearly demonstrate the financial capability to initiate operations, maintain all improvements and appurtenances that are required commensurate with the

Office of Chief Counsel
March 7, 2017
Page Seven

operation(s) and service(s) to be provided, and shall also demonstrate its ability to provide adequate working capital to successfully continue the contemplated operation(s) once initiated through the full term of the lease, permit, or agreement.

19. Additional minimum standards allegedly aimed at finding the most qualified candidate were further set forth in Addendum B, including that each responding firm “shall submit audited financial statements for the past three (3) years, including balance sheets and income statements” and “Provide a minimum of two airport references (name, title, e-mail address and telephone number) for full-service FBOs where Respondent Firm currently operates that meet the Minimum Qualifications outlined in Attachment A.” (Ex. G, RFQ Addendum B at 3.)

20. The RFQ set forth the process by which the FBO leases would be awarded: “A selection committee will review each submitted SOQ [statement of qualifications]. Information included within the SOQ packet materials will be evaluated and, at its discretion, JWA will invite the highest ranked FBOs to interview with the selection committee before final evaluations are complete.” (*Id.* at 4.)

21. The RFQ also provided the criteria for evaluation of the written SOQ submissions as set forth in Figure A.

Office of Chief Counsel
 March 7, 2017
 Page Eight

Figure A: Evaluation Criteria

Evaluation of Written SOQs

An evaluation panel comprised of five members will review all SOQs submitted. Scoring will be based on responsiveness to instructions, demonstrated competence/experience, and the professional qualifications necessary for the satisfactory performance of services.

The evaluation criteria topics and their weighted values for the written SOQs are:

<p>1) Description of Respondent Firm’s Qualifications and Experience (Minimum of five (5) years’ experience required.)</p> <ul style="list-style-type: none"> • Operation of full service FBO • Sale and provision of aviation fuel (AvGas and 100LL), engine oil and lubricants to general aviation users • Line support of general aviation aircraft fueling activities, including hazardous materials management and prevention and management of fuel spills • Provision of aircraft repair and maintenance services • Provision of aircraft charter services • Management of aircraft storage, including hangars and tie-downs • Experience providing any additional authorized services listed in Attachment C, Scope of Services 	<p>(45%)</p>
<p>2) Key Personnel and Technical Expertise</p> <ul style="list-style-type: none"> • Qualifications of management • Organization chart • References, licenses and certifications 	<p>(45%)</p>
<p>3) Organization and Completeness of Written SOQ Submittal</p> <ul style="list-style-type: none"> • Ability to follow RFQ directions and meet SOQ requirements • Overall quality of written submittal 	<p>(10%)</p>

22. The RFQ further provided that Respondent Firms should describe its “policy or pricing structure for fuel pricing and sales at John Wayne Airport (e.g. index, cost plus or some other structure): PLEASE NOTE: While not an element that will be considered in the scoring and ranking of FBOs, Respondent Firm’s fuel pricing policy for JWA will be presented for consideration by the Board of Supervisors at the time of selection.”

23. Each of the bidders provided fuel pricing policy summaries. (Ex. CC, Attachment F to the December 13, 2016 Agenda Item; full Agenda available at <http://www.ocgov.com/civicax/filebank/blobdload.aspx?blobid=60293>.) As part of its fuel pricing and policy proposal, Signature provided a commitment to set its advertised retail aviation fuel pricing at no more than 10% greater than average prices for fuel at airports

Office of Chief Counsel
 March 7, 2017
 Page Nine

within a 90 mile radius. This commitment was in addition to Signature’s practice of providing volume discounts to all customers. Only Atlantic offered a similar commitment to cap prices based upon a survey of local airports. All other applicants provided policies that did not offer to cap pricing based upon pricing charged by other airports within a geographical radius.

24. The RFQ also provided that the “two highest ranked Respondent Firms will be recommended by the evaluation panel to the Board for Supervisors for selection and award” of the available leases.

25. Eight firms submitted responses to the RFQ. Two of the firms were immediately disqualified, leaving six firms, including Signature, who were considered by the Panel through the RFQ vetting process. The final ranking of the firms was based on the combined scores of the Panel for both the written RFQ responses and the firms’ interviews.

26. Signature was the highest-ranked Firm, receiving a near-perfect score from the Panel based on its statement of qualifications. (Ex. P – Signature Statement of Qualifications.) The Chart below, Figure B, is excerpted from the December 13, 2016 Staff Report of the County concerning the RFQ rankings and its recommendation to award Signature a FBO lease.

Figure B. RFQ Rankings

The following table sets forth the scores and ranking of each firm that met the minimum qualifications as defined in the RFQ:

Respondent Firm	Overall Score	Ranking
Signature Flight Support	2469.00	1
Atlantic Aviation	2461.50	2
Jet Aviation	1915.50	3
Clay Lacy Aviation, Inc.	1709.50	4
ACI Jet	1643.00	5
Advanced Air, LLC	1348.50	6

JWA is recommending that the two highest ranked respondent firms, Signature Flight Support and Atlantic Aviation, be selected by the Board for award of the Interim Leases.

Office of Chief Counsel
March 7, 2017
Page Ten

27. The operations of the Airport are supervised by the John Wayne Airport Commission, an independent, five-member body, whose members are appointed by the Board. On December 7, 2016, the Airport Commission met to consider the recommendation of the independent selection committee and voted unanimously to approve the awards of interim leases to the two highest scoring bidders, Signature and Atlantic. (**Ex. DD**, Dec. 7, 2016 Airport Commission Meeting Minutes (“Signature and Atlantic are the two most qualified respondent firms and John Wayne Airport (JWA) staff is recommending that the Board award an interim lease to Signature and Atlantic in their existing locations.”).) The Commission conditioned its recommendation on the inclusion of Signature’s and Atlantic’s fuel pricing commitments to cap retail prices based price survey proposals by each company in their bid submissions. (**Ex. CC**, Attachment F to Dec. 13 Agenda.) Both Signature and Atlantic signed leases with substantial rent increases and the fuel pricing protections contained in their SOQs. Signature’s signed interim lease renewal provided for a rental of \$2,940,000 per year, which was an increase of \$1,297,657 above the prior annual rent. (**Ex. H**, Staff Report at page 4).

28. Despite the rankings of the independent selection committee consisting of an independent citizen expert and the airport staff, the fuel pricing protections that were not offered by the non-recommended bidders, and the unanimous recommendation by the Airport Commission that Signature be awarded the FBO lease, Signature was not awarded the lease at SNA.

**IGNORING ITS OWN RFQ PROCESS, THE COUNTY AWARDS
A LEASE TO UNQUALIFIED FBO ACI JET BY A “4 OUT OF 5” VOTE**

29. Instead, on January 24, 2017, the Board voted to award leases to Atlantic and ACI Jet. Atlantic was ranked second behind Signature. ACI was ranked fifth—receiving over 800 points less than Signature in the impartial ranking process undertaken by the Panel based on the minimum standards set by the County.

30. ACI’s SOQ failed to meet the minimum standards set by the County in the RFQ process. For example, ACI did not provide the required audited financials demonstrating “the financial capability to initiate operations, maintain all improvements and appurtenances that are required commensurate with the operation(s) and service(s) to be provided, and shall also demonstrate its ability to provide adequate working capital to successfully continue the contemplated operation(s) once initiated through the full term of the lease, permit, or agreement.” Instead, it relied on vague statements that Olivier Leclereq, an ACI principal “is a highly successful and local businessman...who brings significant financial resources to bear and unequivocally demonstrates ACI Jet’s Financial Qualifications to respond to the RFP.” (**Ex. I**, SOQ, Oct. 19 Letter to Barbara Swift.)

Office of Chief Counsel
March 7, 2017
Page Eleven

31. ACI did not provide two airport references for “full-service” FBOs. (Ex. E, ACI SOQ, References.) ACI does not even operate two full service FBOs. ACI only operates three FBOs in total (San Luis Obispo, Paso Robles, and Oceana). It only operates one “full service” FBO (SLO). However, ACI does not even control its lease at SLO. ACI failed to disclose in the SOQ that the ACI lease at SLO is held by a separate entity, ACI Air, LLC (“ACI Air”). (Ex. U, SLO Lease Assignment dated March 3, 2016.) The sole member of ACI Air is Olivier Leclercq. Thus, not only are ACI’s current operations incomparable to the operation at SNA, ACI’s largest FBO lease is under control of a company that was never disclosed and does not have five (5) years of experience as an FBO. Moreover, ACI failed to demonstrate that it is prepared to actually assume and successfully operate an FBO at SNA. This is highlighted by the fact that ACI is now attempting to backfill its lack of qualifications, experience, key personnel, and technical expertise by attempting to recruit Signature’s employees.

32. In addition, ACI’s fuel pricing proposal failed to provide any objective cap on prices that ACI could charge and in particular did not include a commitment to tie its pricing to benchmarks determined from surrounding airports.

33. Nonetheless, the award to ACI Jet was approved with a “**4 out of 5**” vote by the County Board of Supervisors. Not surprisingly, **Joe Daichendt**, who had previously represented to Atlantic that he had “4 out of 5” votes on the Board of Supervisors, (Ex. J, Aug. 4 Letter from T. Allan to J. Daichendt), supported ACI Jet’s bid and is now the General Manager of ACI Jet’s Orange County operation. Mr. Daichendt himself has tried to solicit Signature’s employees to join ACI’s Orange County operation.

34. One of the Supervisors called the decision to award ACI the FBO lease “unprecedented.” For the reasons set forth herein, the award was in violation of the RFQ’s minimum standards, which created an objective, competitive evaluation process and ensured a level playing field governed by rational rules.

FAA GRANT ASSURANCE VIOLATIONS

35. The County has received significant federal funding related to SNA, including Part A Primary Entitlements for FY2017. https://www.faa.gov/airports/aip/grantapportion_data/ (Ex. K – FY17 Part-A-Primary Entitlements.) In 2015, SNA received over \$2.6 million in federal funds under the Airport Improvement Program. (Ex. L – FY2015 AIP Grants.) One year earlier, in 2014, it received \$1.048 million in federal funds under AIP. (Ex. M – FY2014 AIP Grants.)

36. When the County received these and other federal funds, it agreed to be bound by federal Grant Assurances. The County is presently in violation of a number of its federal

Office of Chief Counsel
March 7, 2017
Page Twelve

grant assurance obligations to the severe detriment of Signature. Chief among these is Grant Assurance 22, which requires the County to “make the airport available as an airport for public use on reasonable terms and without unjust discrimination.”

37. Grant Assurance obligations are statutorily derived. *See* 49 U.S.C. § 47107(a)(1). They are also part of well-settled federal policy. Both the FAA’s Rates and Charges Policy as well as FAA Order 5190.6B require that “[r]ates, fees, rentals, landing fees, and other service charges ... imposed on aeronautical users for aeronautical use of airport facilities ... be fair and reasonable,” and that the terms “be applied without unjust discrimination.” 78 Fed. Reg. 55330, 55332 (Sept. 10, 2013); FAA Order 5190.6B § 9.1(a). Importantly, “[t]he prohibition on unjust discrimination extends to types, kinds and classes of aeronautical activities, as well as individual members of a class of operator.” FAA Order 5190.6B § 9.1(a).

38. Not only does federal law and policy require the County to enter contracts with reasonable, non-discriminatory terms, but it also requires the County to act reasonably in the negotiation process.

The sponsor’s federal obligation under Grant Assurance 22, *Economic Nondiscrimination*, to operate the airport for the public’s use and benefit is not satisfied simply by keeping the runways open to all classes of users. The assurance federally obligates the sponsor to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public . . . or support services (e.g., fuel, storage, tie-down, or flight line maintenance services) to aircraft operators. This means that unless it undertakes to provide these services itself, the sponsor has a *duty to negotiate in good faith* for the lease of premises available to conduct aeronautical activities

FAA Order 5190.6B, § 9.7 (emphasis added); *see also id.* at § 9.7(c) (“If adequate space is available on the airport and the sponsor is not already providing identical aeronautical services, Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to *negotiate in good faith* and on *reasonable terms* with prospective aeronautical service providers.”).

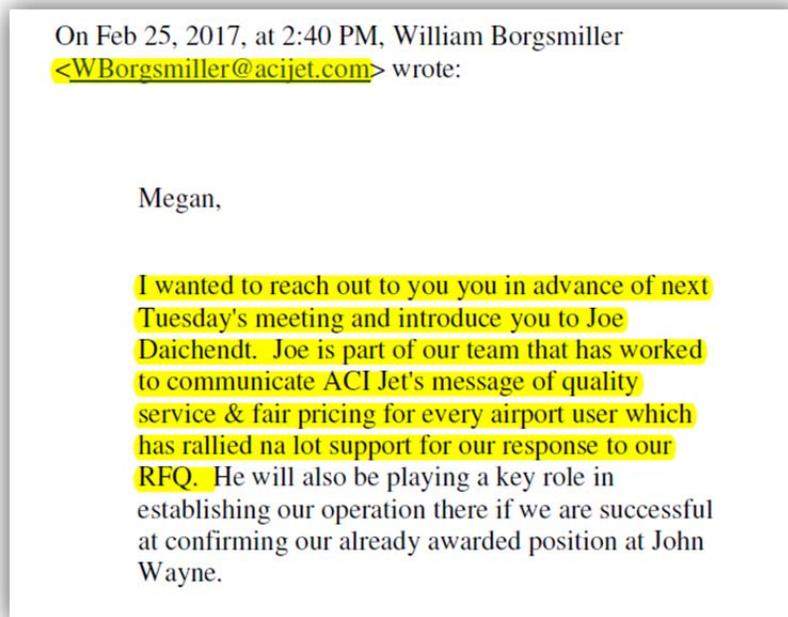
39. The County plainly has not negotiated with Signature in good faith. After engaging in a negotiated process with both Signature and Atlantic, the County rescinded that process upon interference by **Mr. Daichendt** at the Board of Supervisors. Mr. Daichendt, then the Chief Executive Officer of OC Jet Center, another aspirant to provide FBO services at SNA, said he had “**4 out of 5**” Supervisors, and that he could manipulate the FBO leasing process

Office of Chief Counsel
March 7, 2017
Page Thirteen

at the Board, which is exactly what he did when it became clear that Atlantic would not participate in his scheme. (Ex. J, Aug. 4 Letter from T. Allan to J. Daichendt.)

40. While OC Jet Center was successful in disrupting the lease extensions, it could not meet the minimum qualifications required in the RFQ for a lease award. **Mr. Daichendt** allied himself with ACI Jet. As noted above, **Mr. Daichendt** is now ACI Jet's General Manager at SNA, and attempted to recruit Signature's employees and contractors to work for ACI Jet and to contact Signature's subtenants. For example, on February 25, ACI Jet's President and CEO, William Borgsmiller, contacted STA Jets, a Signature subtenant providing charter services, to introduce Mr. Daichendt. Mr. Borgsmiller explained that Joe was part of the "team" and "*rallied [a] lot of support for our response to our RFQ.*"

Figure C. – Daichendt Introduction



(Ex. S, Feb. 25 Email from W. Borgsmiller to STA Jets.)

41. It is no coincidence that ACI Jet, with Mr. Daichendt as its General Manager, was chosen by a "4 out of 5" vote by the Board, despite ACI Jet's lack of qualifications. The impropriety at the Board of Supervisors and influence of monetary donations in the leasing process itself renders the County in violation of its duty to negotiate in good faith.

Office of Chief Counsel
March 7, 2017
Page Fourteen

42. The County cannot hide behind its flawed RFQ process in an attempt to demonstrate good faith. *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264-68 (1977) (a facially-neutral statute passed with discriminatory intent or purpose may be found to be unlawfully discriminatory). The RFQ was pursued only as a ruse to hide the impropriety that was taking place behind the scenes at the Board of Supervisors in favor of a “local” option. Indeed, only after a lawyer for Atlantic pointed out that the County’s actions in collusion with Mr. Daichendt violated procurement laws did the County even issue an RFQ. Displeased that the objective results of the RFQ process demonstrated that the favored local option was not “the most highly qualified candidate” or even within the top half of the candidates, the County then ignored the clear outcome of the RFQ process in order to achieve its pre-determined outcome. Tellingly, the Board not only passed over Signature, the top scoring bidder, it made no explanation of why the number three and four top finalists were passed over for the fifth, and next to last place candidate. The action of the Board speaks strongly to the inescapable conclusion that the Board had made up its mind before the RFQ process even began.

43. The County’s actions in ignoring its minimum standards are alone sufficient to establish a violation of Grant Assurance 22. Grant Assurance 22(h) permits the County to establish “reasonable, and not unjustly discriminatory conditions to be met for *all* users of the airport as may be necessary for the safe and efficient operation of the airport.”

The FAA encourages airport management, as a matter of prudence, to establish *minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport*. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be fair, equal and not unjustly discriminatory. *They must be relevant to the proposed activity, reasonably attainable, and uniformly applied.*

Penobscot Air Service Ltd. v. County Bd. of Comm’s, No. 16-97-04, 1997 WL 1120745 (F.A.A.).

Once the airport sponsor has established minimum standards, it should apply them *objectively and uniformly* to all similarly situated on-airport aeronautical service providers

Flightline Aviation, Inc. c. City of Shreveport, No 16-07-05, 2008 WL 5955355 (F.A.A.)

Office of Chief Counsel
March 7, 2017
Page Fifteen

44. Thus, the County's blatant discrimination against Signature (and other unsuccessful applicants) and in favor ACI Jet, which did not meet the County's own minimum standards (*see above*, ¶¶ 1-44) constitutes a violation of Grant Assurance 22. When submitting its statement of qualifications for the FBO leasehold, Signature understood that all applicants for the leasehold would be evaluated against the same minimum standards. But Signature received disparate treatment as compared to ACI because Signature was required to meet the minimum standards and ACI was not. The minimum standards were not applied "objectively and uniformly." Instead, the County manipulated the RFQ process to achieve its desired discriminatory result.

45. The RFQ advised all bidders that their submissions (the SOQ) must be received by October 20, 2016, that late submissions would not be accepted and that changes would not be allowed after the deadline. (**Ex. G**, RFQ and Addendums ("To be considered for this Interim Lease, your SOQ must be received on or before 4:00 PM PST on Thursday, October 20, 2016.") Despite this rule, ACI was permitted to backfill the deficiencies in its SOQ by presenting new information on each of the areas in which ACI scored poorly well after the close of the RFQ process. (**Ex. BB**, ACI's Late Filed Financials dated **December 31, 2015**, **Ex. AA**, Late Filed Safety Report **dated February 27, 2017**.) None of the other bidders were provided this same, highly irregular, opportunity to fix the deficiencies of their bid submissions after the results of the scoring were disclosed. No competitive process can be considered a fair process where the loser is allowed to fix its answers after the test is graded and the competitors are not.

46. In fact, the unlevel playing field affected all the bidders whose submissions were superior to ACI's but were not selected. Even those disqualified were aggrieved here. For example, Ross Aviation, which has submitted a bid protest (**Ex. X**, Ross Aviation Bid Protest) was discriminated against based upon the disparate treatment given to ACI. Ross was disqualified based upon a determination that Ross did not have 5 years as a continuous FBO. Ross's bid protest discloses that through its predecessor affiliates, it has more than 5 years of continuous FBO experience, indeed substantially more than ACI. Since the County has made an exception for ACI to allow ACI to claim credit for continuous operation at SLO despite the fact that its lease is and has been held in the name of an affiliate, ACI Air, Ross has also been the victim of the County's irregular process in flouting its rules to favor ACI.

47. The disparate treatment against Signature is especially blatant given the Board's connections to Mr. Daichendt, Mr. Daichendt's representations concerning his control over the Board ("4 out of 5"), and Mr. Daichendt's connections to ACI Jet. Especially in light of the fact that ACI Jet was the only "local" option.

Office of Chief Counsel
March 7, 2017
Page Sixteen

48. Moreover, the Board's and Mr. Daichendt's desire for a "local" FBO is restrictive of competition. It is clear that local hiring preferences or other actions that restrict competition by federal grantees – regardless of motive – are anti-competitive and, by extension, discriminatory to other competitors and contrary to the public interest. *See* "Competitive Bidding Requirements," Opinion for the Acting General Counsel, Department of Transportation (Aug. 23, 2013). *See also* 49 C.F.R. 18.36 (c)(2) ("Grantees and subgrantees will conduct procurements in a manner that *prohibits the use of statutorily or administratively imposed in-State or local geographical preferences* in the evaluation of bids or proposals...") (emphasis added).

49. Signature expressly reserves the right to supplement the factual records concerning the disparate treatment of Signature.

THERE IS SUFFICIENT SPACE AT THE AIRPORT TO ACCOMMODATE THREE FBOS

50. Signature also understands that there is additional space at the Airport that could accommodate a third FBO. (**Ex. Q** – Airport Aerial.) The County is currently banking land and making it unavailable for an FBO lease despite the demand for a third FBO at the Airport. Aeronautical demand is "demonstrated by the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use[.]" FAA Order 5190.6B at Section 22.6. This land should be immediately be put up for an interim FBO lease and incorporated into the Airport's General Aviation Master Plan study.

51. Signature has engaged an industry recognized third party, KMI International,² to review and analyze SNA's Airport Layout Plan and assist in developing a path forward for a third FBO location. Signature is also working with American Infrastructure Development, Inc. (AID, Inc.).³ KMI and AID reviewed available information and documents to determine if additional sites would be available at SNA to support FBO operators on the airfield. (**Ex. V** – Feb. 28, 2017, KMI and AID Analysis of Alternative FBO Sites (the "Analysis").)

52. To undertake the Analysis, AID and SMI reviewed: (i) SNA's RULES AND REGULATIONS (effective March 1, 2016); (ii) SNA's Airport Layout Plan (approved, Sept. 12, 2013); (iii) the Board of Supervisors' Meeting (Aug. 9, 2016) Agenda Item 7, "Amendment to Signature Combs, Inc. and Atlantic Aviation Leases"; (iv) the Board of Supervisors' Meeting (Dec. 13, 2013) Agenda Item 3, "Selection of Firm for Award of Interim Fixed Base Operation Lease"; and (v) Google Earth Aerial Imagery.

² <http://cmaanet.org/kraus-manning>

³ <http://aidinc.us/>

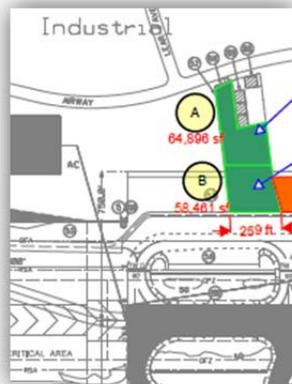
Office of Chief Counsel
 March 7, 2017
 Page Seventeen

53. The airport Layout Plan was examined to recommend parcels (if any) for further study for use as an FBO to provide a combination of small terminal building, landside vehicle parking, aircraft parking, and itinerant/line operations on the airside of the parcel. Several areas were identified and are summarized in the following paragraphs.

54. The Analysis determined that there are three areas that could be potential candidates for use as an FBO location: (i) Site A-B; (ii) Site C-D-E; and (iii) Area F. (**Ex. V**, Analysis.)

55. **Site A-B:** Site A is adjacent to the “Jays Maintenance” parcel and is approximately 1.5 acres. Area B contains an additional 1.5 acres adjacent to the parcel and could be used for access to the parcel and itinerant aircraft parking. It is currently used for tie-down parking and has no buildings located on the parcel. Landside access is provided by a driveway from Airway Ave. Sufficient area exists behind the building restriction line for a temporary or permanent structure to accommodate FBO operations. Access would need to be maintained to the adjacent “Jays Maintenance” buildings. The areas are clear of buildings and the Taxiway Bravo Object Free Area. *See Figure D, below.*

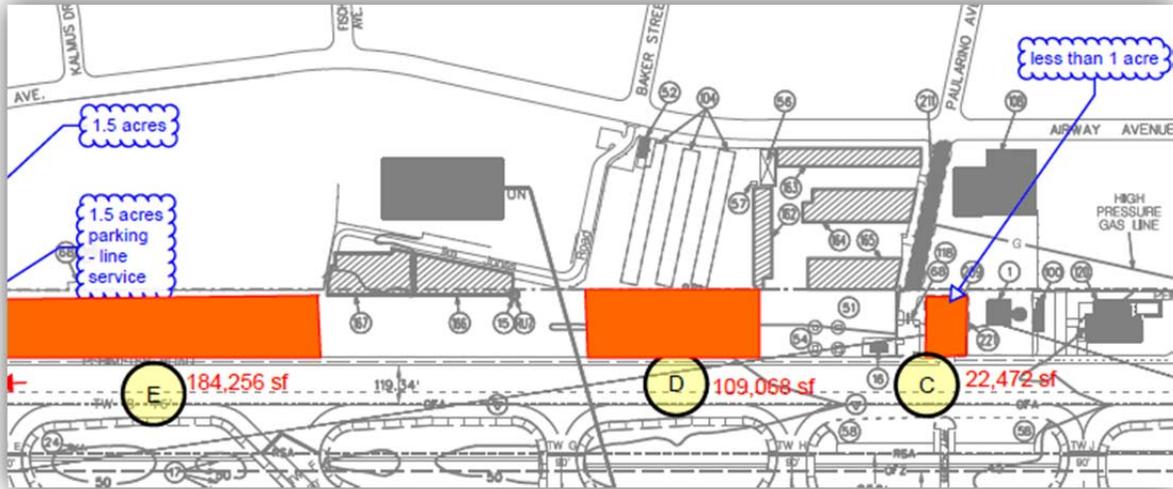
Figure D: Site A-B



56. **Site C-D-E:** Site C consists of the old ARFF facility and the parcel contains approximately 0.5 acres, has an existing building that could potentially be re-purposed, and existing parking and landside access facilities. Landside access is provided by a driveway from Paularino Ave. Area D is a 2.5-acre remote parking area and is currently used for tie-down parking. Area E is a 4.2 -acre remote parking area and is currently used for tie-down parking. Areas D and E are clear of buildings and the Taxiway Bravo Object Free Area. *See Figure E, below.*

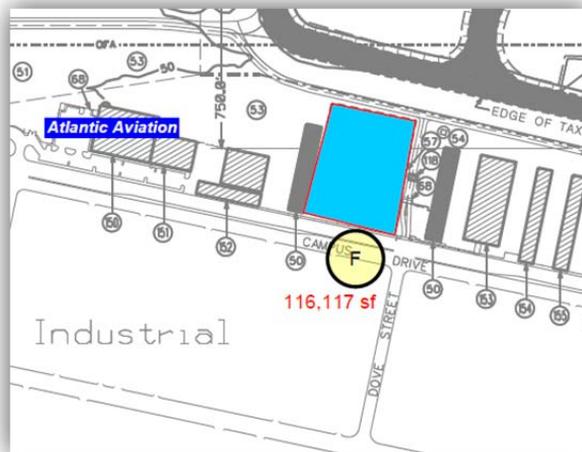
Office of Chief Counsel
 March 7, 2017
 Page Eighteen

Figure E: Site C-D-E



57. **Area F:** Site F consists of 2.7 acres of existing tie-down aircraft parking. The site has adequate airside access off of Campus Drive at Dove Street. There are no existing buildings, and adequate space exists for a building and parking area behind the BRL. The aircraft parking area is clear of buildings and the Taxiway Alpha Object Free Area. See Figure F, below.

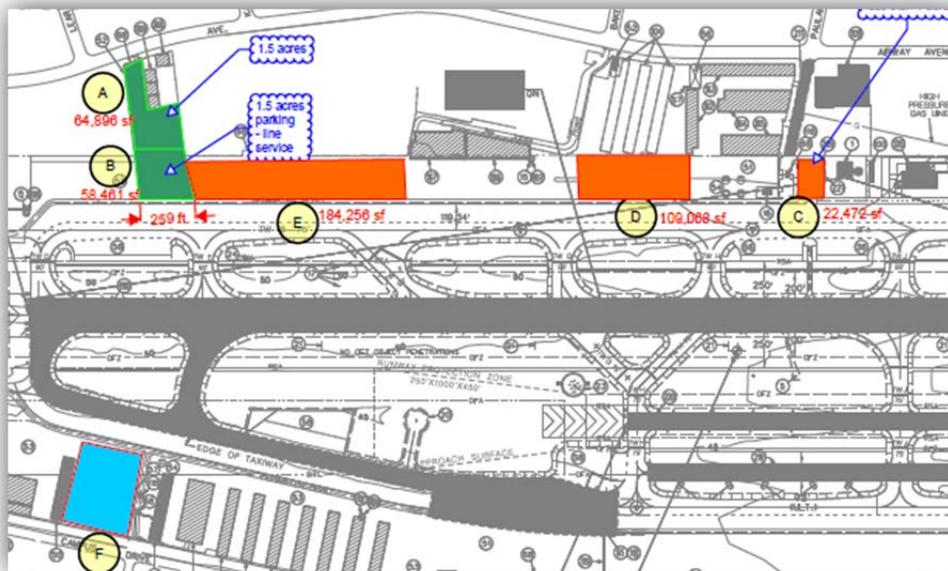
Figure F: Area F



Office of Chief Counsel
 March 7, 2017
 Page Nineteen

58. Thus, there is considerable space at SNA for a third FBO. Figure G depicts all three potential additional FBO scenarios.

Figure G: Alternative FBO Locations



59. An airport sponsor has an obligation to “make the airport and its facilities available for public use,” FAA Order 5190.6B § 9.1 (a), and to operate the airport in such a way that does not deter or foreclose aviation uses. “The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized for the duration of their useful life or due to inherent restrictions on aeronautical activities.” See *Nat’l Bus. Aviation Ass’n v. City of Santa Monica*, No. 16-14-04, at 2 (Director’s Determination, Dec. 4, 2015); See also *James Vernon Ricks Jr. v. Millington Airport Authority*, No. 16-98-19, 1999 WL 636161 (F.A.A.) (“The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities”).

60. When there is a space for additional aeronautical services, it constitutes a violation of the Grant Assurances to exclude an aeronautical service provider from occupying open space. *James Vernon Ricks Jr. v. Millington Airport Authority*, No. 16-98-19, 1999 WL 636161 (F.A.A.) (“when additional **space** becomes available at a later date, it must be made available (through bidding or some other **open** process)...”).

Office of Chief Counsel
March 7, 2017
Page Twenty

61. Moreover, aeronautical demand is “demonstrated by the existence of a qualified aeronautical service provider expressing interest in such property for aeronautical use[.]” FAA Order 5190.6B at Section 22.6. Here, Signature is a qualified aeronautical service provider that desires to provide additional aeronautical services as SNA.

62. To displace Signature, a qualified aeronautical service provider, from the Airport when (i) adequate space exists (or could easily be made to exist) at SNA, and (ii) there is a demand for additional aeronautical services at SNA violates the County’s Grant Assurance obligations. The County may, after “bidding or some other open process” accommodate ACI Jet or another FBO elsewhere on the airport. See FAA Order 5190.6b, Section 9.7. It does not need to nor is it justified in removing Signature.

63. Signature expressly reserves the right to supplement the factual records concerning SNA’s ability to accommodate a third FBO.

64. Signature requests that the FAA conduct an on-site inspection of SNA’s vacant facilities with representatives of Signature to determine if adequate space exists for a third FBO.

THE COUNTY’S PROCUREMENT PROCESS VIOLATES FEDERAL STANDARDS

65. In addition to violating its Grant Assurance obligations, the County has also violated federal procurement standards. The procurements a sponsor makes under AIP must comply with all applicable federal contract provisions. Indeed, as a recipient of federal grant funds, the County has certified that it will comply with applicable Federal laws, regulations, executive orders, policies, guidelines and requirements.

66. Under 2 C.F.R. § 200.319, “*all* procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.” 2 C.F.R. § 200.319 (emphasis added). This requires that the grantee, here the County, avoid “[a]ny arbitrary action in the procurement process.” See also 49 C.F.R. § 18.36(c)(vii) (“arbitrary action in the procurement process” is “restrictive of competition.”) A sponsor must avoid restrictive practices such as incorporating regional preferences.
<https://www.faa.gov/airports/aip/procurement/general/>.

67. Under 2 C.F.R. § 200.320, when a grantee, here, the County, uses the competitive proposals method of procurements, “[c]ontracts must be awarded to the responsible firm *whose proposal is most advantageous to the program*, with price and other factors considered.” 2 C.F.R. § 200.320 (emphasis added). This is equivalent to the best value standard used in federal procurements. See, e.g. *The MIL Corp.*, B-297508; B-297508.2, Jan.

Office of Chief Counsel
March 7, 2017
Page Twenty-One

26, 2006 (“Where a solicitation provides for award on a “best value” or “most advantageous to the government” basis”); *see also* Federal Acquisition Regulation (“FAR”) 15.303 (the contracting officer shall select the proposal that is the **best value to the Government, considering only the factors or subfactors contained in the solicitation**).

68. Under these standards, it is illegal for procurement officials to be biased in favor of one offeror. When such is the case, the Government Accountability Office (GAO) requires that a bid protest should be sustained where there is prejudice to the protestor resulting from the decision. *Lockheed Martin Corp.*, B-395402, Feb, 18, 2005 (“where, as here, the record establishes that a procurement official was biased in favor of one offeror, our Office believes that the need to preserve the integrity of the procurement process requires that the agency demonstrate that the protester was not prejudiced by the procurement official’s bias in order for our Office to deny the protest.”)

69. Here, the County undertook to use a competitive proposals method for the lease procurement. Thus, the leases “must be awarded to the responsible firm **whose proposal is most advantageous to the program**, with price and other factors considered.” 2 C.F.R. § 200.320 (emphasis added). The RFQ committed the County to select the most highly qualified applicant and defined how qualifications were to be determined. The County should not be permitted to disregard this process and the qualifications of the Respondent firms once it committed to the competitive proposal process.

70. Yet that is exactly what the County did when the County did not award the lease to the firm with the best qualifications and did not consider only the factors and subfactors in the RFQ. Indeed, through the RFQ, it was determined that Signature was the most qualified firm and awarding a lease to Signature would be most advantageous to the Airport. The Board of Supervisor disregarded this finding and instead awarded the lease to ACI Jet because of the Board’s bias towards its campaign donors, including Mr. Daichendt. The County’s leasing decision was plagued by irregularities that resulted in the award of a contract to ACI Jet, which has not demonstrated an ability to “perform successfully under the terms and conditions of a proposed procurement.” 2 C.F.R. §200.318(h).

71. Aside from the bias which infiltrated the County’s process, the Board also improperly and illegally ignored its own bidding procedures. Once the County committed to an RFQ process, it was required by law to adhere to that process. The failure to do so is a violation of the County’s ministerial duties and/or an abuse of discretion. *See Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269 (holding that published procedure adopted by a public entity which provides that the public entity will do a certain thing is enforceable as a ministerial duty or chargeable as an abuse of discretion); *Schram Const., Inc. v. Regents of the University of California* (2010) 187 Cal.App.4th 1040 (rejecting a contract award where a public entity failed to comply with published bidding requirements).

Office of Chief Counsel
March 7, 2017
Page Twenty-Two

72. The County also deviated from established processes that previously afforded disappointed bidders a fair opportunity to challenge County decisions. Here, while Ross and Caribou (the two bidders disqualified from the RFQ process) were advised of the right to protest, they were not advised that ACI would unilaterally be granted the right to supplement its submission after the deadline for the SOQ or that the rules for determining 5 years of experience as an FBO would be interpreted in ACI's case to allow ACI to count experience by affiliates of the leaseholder. (**Ex. H**, Staff Report at 3-4 (“Both firms were notified that the evaluation panel had determined that they did not meet the minimum qualifications as defined in the RFQ and were provided an opportunity to protest this finding”); *See also Ex. Z*, Jan. 24 BOS Agenda and Exhibits.)

73. Not only did the County deviate from its established processes, the RFQ failed to advise bidders of the process by which the ultimate selection would be made. Having failed to advise bidders of the intent to depart from the evaluation criteria in the ultimate selection, the County deprived Signature, as the top ranked bidder under the published criteria of a meaningful opportunity to protest the actual, undisclosed process and the ultimate award. The County provided no notice of the County's intent to deviate from the RFQ's evaluative criteria.

74. By establishing an objective ranking system and criteria against which bidders would be judged, the County was bound to adhere to the rules that it established to create a level playing field. There was no indication in the RFQ that the County would even consider a fifth ranked proposer like ACI when it was clear that there were *multiple* superior bidders based upon the objective criteria the County established to control the award. By failing to follow those criteria in the ultimate selection process, the County deprived the top-ranked finalist of a meaningful opportunity to protest the actual process or the ultimate selection of a fifth-ranked bidder. There is no meaningful protest right if the published rules are not the actual rules followed by the County. The County's failure, as required by California law to follow the competitive bidders rules it itself established rendered Signature's protest rights illusory.

75. The County was required to “award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.” 2 C.F.R. §200.318(h). ACI has extremely limited FBO experience, all of which has taken place at just two airports, both of which are much smaller than SNA and have less significant air carrier operations. ACI lacks the experience to operate at an airport like SNA and could not meet the minimum standards set forth through the RFQ.

Office of Chief Counsel
March 7, 2017
Page Twenty-Three

76. Each of the County's actions violated its federal obligations. Taken together, there is no question that the County's decision was biased, arbitrary, and restrictive of fair competition. Signature therefore requests that the County conduct a good faith Request for Proposals for the FBO leaseholds, with the award of the leases being made on a qualifications basis as determined by an impartial panel.

**THE LEASE AWARD TO ACI INSTEAD OF SIGNATURE
WILL MAKE SNA LESS SAFE**

77. In addition to violating its Grant Assurance obligations and applicable federal procurement standards, the County's decision calls into question safety at SNA as a whole. ACI has extremely limited FBO experience, all of which has taken place at airports that are much smaller than SNA with less significant air carrier operations. ACI lacks the experience to operate at an airport like SNA. Allowing ACI to commence FBO operations at SNA will make the airport demonstrably less safe.

78. Today, SNA is a vibrant and busy airport that has approximately **260,000** aircraft operations annually. The National Plan of Integrated Airport Systems for 2011–2015 categorized SNA as a *primary commercial service airport*. According to FAA records, SNA had 4,584,147 enplanements in calendar year 2014 alone.⁴ SNA is the sole commercial airport in Orange County. General aviation operations outnumber commercial operations and several facilities at the airport, including Signature, serve the general aviation and corporate aviation community. It covers 504 acres. It has multiple general aviation facilities, an airline concourse building split into three terminal areas, and two paved runways, including one that exceeds 5,700 feet and is used by commercial aircraft and general aviation serving most incoming and departing traffic to the west of the airport. This runway is ILS equipped.

79. The largest airport at which ACI provides FBO services is San Luis Obispo. SLO's total aircraft operations are approximately one-fourth the amount of SNA's, averaging only 67,000 annually. Paso Robles (PRB) conducts even less operations, only 34,000 annually. And Oceano, which is so small that hasn't been assigned a three-letter IATA airport code, is merely a 2,325 foot landing strip without a control tower. ACI does not provide FBO services at Oceano.

⁴ Enplanements for CY 2014 Passenger Boardings at Commercial Service Airports. Federal Aviation Administration. September 22, 2015, available at https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy14-commercial-service-enplanements.pdf.

Office of Chief Counsel
March 7, 2017
Page Twenty-Four

80. The airports at which ACI operates are not comparable operations to SNA. Permitting an unqualified and inexperienced FBO like ACI to replace Signature's FBO services at SNA is a mistake with significant safety implications for the airport.

IMPACT ON SIGNATURE

81. Signature has been directly and significantly affected by the County's violations. The County has notified Signature through a letter sent on March 1, 2017 that Signature has 30 days to vacate. The notice, if not rescinded, will result in irreparable harm to Signature and its customers.

PRE-COMPLAINT RESOLUTION EFFORTS

82. Signature has made substantial efforts to resolve its issues with the County before submitting this Complaint.

83. Signature filed a bid protest on January 31, 2017, setting forth the County's violations of state law. (**Ex. N** – Jan. 31, 2017 Protest Letter from P. Kaplan to B. Swift.) Signature has not received a response from the County related to that protest.

84. Signature also submitted an informal complaint with the FAA pursuant to 14 C.F.R. Part 13. (**Ex. O** – Feb. 10, 2017 Part 13 Complaint from W. O'Connor to K. Willis.) In an effort to engage with the County on the issues raised by the Part 13 Complaint, Signature provided copies of the Complaint and exhibits to the County Board of Supervisors and County Counsel. Signature did not receive any engagement from the County on the issues raised in the Part 13 Complaint.

85. At the County Board of Supervisors' Meeting on February 21, 2017, Philip Kaplan, Signature's counsel from Manatt, informed the Board of Supervisors that Signature was open to finding a resolution of the disputes between Signature and the County. The County did not engage with Mr. Kaplan after he made this representation.

86. Also on February 21, 2017, Keith Allen-Niesen, Signature's counsel from Manatt, reached out to County Counsel, Leon Page, via telephone and left a message with Mr. Page's assistant, Ms. Ruiz, to request a meeting to discuss a resolution with Signature. At the time of filing this Complaint, the County has not responded to Mr. Allen-Niesen's request.

87. On February 23, 2017, Signature informed the County that it was intending to file a complaint pursuant to Part 16, and "made a final request for a meeting with the County to discuss Signature's claims[.]" (**Ex A** – Feb. 23 Letter from W. O'Connor to L. Page – Meet

Office of Chief Counsel
March 7, 2017
Page Twenty-Five

and Confer Pursuant to 14 C.F.R. § 16.21.) At the time of filing this Complaint, the County had not responded to Signature's request.

88. Signature's efforts to resolve this dispute with the County have left Signature in the same position it was when this dispute began. The County has not taken any efforts to conduct good faith negotiations with Signature or have a good faith process by which the FBO leases are awarded.

89. Accordingly, Signature hereby certifies pursuant to 14 C.F.R. § 16.21(b) that it has made substantial and reasonable good-faith efforts to resolve the disputed matter informally prior to filing this complaint and that there is no reasonable prospect for resolution of this dispute given the County's conduct.

REQUEST FOR EXPEDITED CONSIDERATION

90. Signature respectfully requests that the Director issue an order expediting the handling of this matter. *See* 14 C.F.R. § 16.11(b). On March 1, 2017, Signature received a 30-Day Notice to Vacate from the County. (**Ex. W**, Notice to Vacate.) The Notice requested that Signature vacate the premises no later than Friday, March 31, 2017. Requiring Signature to vacate its premises at SNA will result in irreparable harm to Signature, including loss of business, customers, employees and goodwill. *Doran v. Salem Inn, Inc.* 422 U.S. 922, 932 (1975) (A "substantial loss of business" absent preliminary injunctive relief is sufficient to demonstrate "irreparable injury.")

MOTION FOR CEASE AND DESIST ORDER

91. Signature respectfully requests that the Director issue an emergency order pursuant to 49 U.S.C. §§ 47122 and 40113, and 14 C.F.R. § 16.109(a), directing the County to cease and desist from requiring Signature to vacate its leasehold during the pendency of Signature's Part 16 action against the County. A cease and desist order is necessary and appropriate because the County's Notice to Vacate to Signature is in violation of its federal obligations, as demonstrated herein. Permitting the County to evict Signature while Signature's claims are pending before the FAA would irreparably harm Signature, all aviation users of the Airport, and would undermine the FAA's exclusive authority to ensure safe and efficient use of national airspace and to enforce airport grant assurances and other federal obligations.

92. The FAA unquestionably has "the authority to issue interim cease and desist orders pursuant to the general authority of 49 U.S.C. §§ 40113 and 47122 coupled with that provided under 14 C.F.R. §§ 16.11, 16.31(d) and 16.109(a)." *In re Compliance with Federal Obligations by the City of Santa Monica, Ca.* ("Santa Monica Supplemental Order"), No. 16-02-08, at 14 (Supplemental Interim Cease and Desist Order May 12, 2008); *accord Pro-*

Office of Chief Counsel
March 7, 2017
Page Twenty-Six

Flight Aviation, Inc. v. City of Renton, No. 16-15-03, at 2 (Order Sept. 1, 2015) (noting that “[t]he FAA previously has exercised its authority to issue a cease and desist order as an interim measure to maintain the status quo”).

93. An interim cease and desist order should issue where the respondent is likely in violation of its federal obligations and the failure to issue such an order will result in irreparable harm. *See In re Compliance with Federal Obligations by the City of Santa Monica, Ca.*, (“Santa Monica Interim Order”), No. 16-02-08, at 6-9 (Interim Cease and Desist Order Apr. 23, 2008); *see also Pro-Flight, supra* No. 16-15-03, at 2.

94. As set forth herein, Signature has provided a compelling case that the County is in violation of its federal obligations.

95. Additionally, eviction will irreparably harm Signature. Signature has invested substantial resources at SNA and is a substantial employer at the Airport. Eviction threatens these employees’ livelihoods and Signature’s substantial investment. If Signature is correct and the County has violated its federal obligations, it is nonetheless unlikely that Signature can be restored to its position at SNA if the County is permitted to evict Signature. By contrast, the issuance of a cease and desist order will cause little or no harm to the County or ACI. Signature can provide the County with continuous and effective service as its FBO during the period of the order. The County is hardly in a position to dispute that such an outcome would harm its interests since it ranked Signature as the most highly qualified FBO applicant in its competitive bid process. ACI also will not be injured since it is not presently operating at the airport and any preparations it has taken have been made with knowledge of the bid protest and the facts showing the illegitimacy of its putative award.

96. Moreover, the County’s conduct undermines the FAA’s role in maintaining a safe and efficient national aviation network and its exclusive authority to enforce airport grant assurances and other Federal obligations. Signature and other FBO operators, as well as aircraft owners and operators, other airport authorities, and related businesses must be able to rely on the FAA’s authority and decisions. “Allowing one” County to flout the FAA’s authority and distort the grant assurances “will encourage other local governments to follow suit thus creating a patchwork of local laws affecting aviation which is the province of the Federal government,” and more specifically the FAA. *Id.*; *see also Santa Monica Supplemental Order, supra* No. 16-02-08, at 13 (noting that allowing municipalities to usurp the FAA’s authority over aviation matters “would also be harmful in undermining the congressional policies underlying the airport grant compliance and improvement programs”). Additionally, the County’s conduct should not subvert the FAA’s jurisdiction over these Part 16 proceedings.

Office of Chief Counsel
March 7, 2017
Page Twenty-Seven

97. Signature is likely to prevail on the merits of this Part 16 complaint, will suffer irreparable harm if evicted, and the public interest supports the issuance of a cease and desist order. Accordingly, Signature respectfully requests that the Director issue an order directing the County to cease and desist from evicting Signature.

CONCLUSION

98. For the foregoing reasons, Signature respectfully requests that the FAA take and all actions necessary and appropriate to ensure that the County is in compliance with its obligations as SNA's sponsor. Specifically, Signature requests that the County: (1) maintain the status quo at SNA until such time as Signature's complaint is resolved and (2) conduct a good faith Request for Proposals for the FBO leaseholds, with the award of the leases being made on a qualifications basis as determined by an impartial panel; and (3) conduct an on-site inspection of SNA's vacant facilities with representatives of Signature to determine if adequate space exists for a third FBO.

99. Signature reserve the right to supplement this complaint and the supporting records as additional facts and information become available.

Respectfully submitted,



William V. O'Connor

Enclosures: Exhibits A-Z, AA-DD.

Copies: Leon Page
County Counsel
333 W. Santa Ana Blvd., Suite 407
Santa Ana, CA 92701
leon.page@coco.ocgov.com

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 12531 High Bluff Drive, San Diego, California, 92130-2040. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on March 7, 2017, I served a copy of:

PART 16 COMPLAINT

Signature Flight Services Corp. v. County of Orange, California

- BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 12531 High Bluff Drive, San Diego, California, 92130-2040 in accordance with Morrison & Foerster LLP's ordinary business practices.

- BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system, to the email address(es) set forth below.

Leon Page
County Counsel
333 W. Santa Ana Blvd., Suite 407
Santa Ana, CA 92701
leon.page@coco.ocgov.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 7, 2017, at San Diego, California.

/s/ Joanna L. Simon
Joanna L. Simon