

February 10, 2017

Writer's Direct Contact  
+1 (858) 720.7932  
WOConnor@mofocom

Via E-mail and Overnight Delivery

Kevin Willis, Director Airport Compliance and Management  
FAA Office of Airport Compliance and Management Analysis  
800 Independence Ave SW  
Washington, D.C. 20591  
[kevin.willis@faa.gov](mailto:kevin.willis@faa.gov)

Glen A. Martin, Regional Administrator, Western-Pacific Region  
Federal Aviation Administration  
Western-Pacific Region Airports Division  
15000 Aviation Boulevard  
Hawthorne, CA 90250  
[glen.martin@faa.gov](mailto:glen.martin@faa.gov)

Re: Complaint against the County of Orange, John Wayne Airport, Pursuant to 14 C.F.R.  
Part 13

Dear Messrs. Willis and Martin,

This firm represents Signature Flight Support Corporation ("Signature"). We are writing on behalf of Signature concerning a matter that requires immediate investigation. We request that the FAA investigate a recent discriminatory decision made by Orange County concerning FBO leaseholds at John Wayne Airport (SNA).

Specifically, the County developed minimum FBO leasehold standards and issued a Request for Qualifications for firms seeking the FBO leasehold at SNA. The selection process addressed whether to renew the FBO leases for an interim two-year period while Orange County finalized its General Aviation Improvement Plan review of the airport in anticipation of awarding long-term FBO leases based upon the new plan. Signature was one of two incumbent FBO operators. Atlantic Aviation ("Atlantic") was the second incumbent operator. Both Signature and Atlantic submitted bids, as well as six other applicants.

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Thereafter, an impartial panel conducted a fair evaluation of eight potential candidates for the FBO leases at SNA against the *minimum standards* set by the County for the FBO leasehold. Signature ranked first among the candidates through this evaluation process.

Nonetheless, Signature was not awarded an FBO lease. Instead, the County Board of Supervisors—behind closed doors—repudiated the objective, established minimum standards they had adopted and awarded Signature’s FBO lease to ACI Jet (“ACI”). ACI failed to meet the minimum standards sets by the County for the FBO leasehold. In fact, ACI ranked *fifth* in the evaluation process, receiving over 800 points less than Signature—just 2/3 of Signature’s score.

Ultimately, the County’s leasing decision was arbitrary and capricious and in violation of state and local law requiring the fair and objective procurement and award of government contracts.<sup>1</sup> Moreover, the leasing decision constitutes a violation of the County’s federal obligations, including a violation of Grant Assurance 22, Economic Nondiscrimination. It will also make SNA demonstrably less safe.

In order to permit time to rectify these violations, we ask the FAA to request that the County, as airport proprietor, voluntarily maintain the status quo at SNA until such time as the FAA completes its investigation into the County’s leasing decision. This request is necessary because Signature could, at any time, be asked to vacate the premises at SNA within 30 days. We also request that the FAA work with the parties to resolve these disputes in an informal manner.

This letter is preliminary and the facts surrounding the situation at SNA are still developing. We would welcome the opportunity to meet with the FAA to provide additional context and information concerning the County’s leasing decision. We trust that the FAA will work diligently to fully and fairly investigate the violations taking place at SNA.

## I. BACKGROUND

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.

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<sup>1</sup> Ex. A is a copy of a bid protest setting forth the various violations of California and local municipal law arising from the County’s leasing decision. These violations will not be repeated in this complaint, but provide further context and support for Signature’s claims here.

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For over twenty years, Signature has served Orange County at SNA as one of two FBOs at the airport. Signature's current FBO lease, dated October 14, 1994, expired on October 31, 2014. (Ex. B, July 7, 2014 Letter from A. Murphy to J. Broderick dated July 7, 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.

On September 22, 2016, the County issued a Request for Qualifications (RFQ) related to provision of FBO services at SNA. The RFQ specifically 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. D, RFQ Attachment A at 2; *see also* Ex. C, December 13, 2016 Staff Report.)

The Interim Leases were being offered in connection with the General Aviation Improvement Program ("GAIP"), which has five primary goals:

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

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

To ensure these 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." (*Id.* at 3.) The Panel was tasked with evaluating the written RFQ responses and interviewing each of the responding firms. (*Id.*)

The RFQ contained "General Requirements" that set forth minimum standards aimed at meeting the GAIP's goals. These minimum standards were required to be met in order for a firm to be deemed qualified for the FBO leasehold. These included:

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1. 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.”
2. Offer all existing subtenants a right of first refusal to continue as sublessees, in their existing locations, during the Interim Lease term.
3. Agree to the terms of the attached Interim Lease (Attachments D or E).
4. 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).
5. 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.
6. Clearly demonstrate 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.

(Ex. D, RFQ Attachment A at 2-3.)

Specific minimum standards were further set forth in Attachment 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. D, RFQ Attachment B at 3.)

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

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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.)

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

**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:

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

And, 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. (*Id.* at 6.)

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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.

Signature was the highest-ranked Firm, receiving a near-perfect score from the Panel. 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.

Following the recommendation of the Panel, the Orange County Airport Commission, an independent body whose members are appointed by the Board of Supervisors and whose sole function is to make recommendations regarding SNA to the Board of Supervisors, also recommended an award to Signature.

Despite these rankings, and despite the recommendations of the Panel and the Orange County Airport Commission, Signature was not awarded the lease at SNA. Instead, on January 24, 2017, the Board voted to award leases to Atlantic Aviation and ACI Jet. Although Atlantic was ranked second behind Signature, ACI was ranked fifth out of six Firms—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.

ACI's SOQ failed to meet the minimum standards set by the County in the RFQ process.

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First, 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.” In fact, the evaluation team acknowledged this omission. 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. E, ACI SOQ, Oct. 19 Letter to Barbara Swift.)

Second, 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 (SBP). These operations are not comparable to the operation at SNA.

Third, ACI failed to demonstrate that 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.

One of the members of the Orange Court Board of Supervisors called the decision to award ACI the FBO lease “unprecedented.” This award was in 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. As set forth further below, this outcome violates SNA’s federal obligations and leaves SNA demonstrably less safe.

## **II. THE LEASE AWARD TO ACI INSTEAD OF SIGNATURE VIOLATES ORANGE COUNTY’S FEDERAL OBLIGATIONS**

The failure to award a lease to Signature, which received the highest ranking by the County’s independent Panel, violates the County’s federal obligations, including its obligations under Grant Assurance 22. Grant Assurance 22 requires an airport sponsor to make an airport available for public use “on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” Federal Grant Assurance 22(a).

The FAA Compliance Manual describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. FAA Order 5190.6b, Chapter 9.

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To help ensure compliance with Grant Assurance 22, an airport sponsor “should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport.” FAA Order 5190.6b at 9-7, Section 9.6(e), Minimum Standards; *see also Id.* at 10-1, Section 10.2 (“A sponsor’s establishment of minimum standards and...rules and regulations contributes to nondiscriminatory treatment of airport tenants and users.”)

The benefits of Minimum Standards are well-understood. According to the FAA Compliance Manual, these standards typically:

- “Promote safety in all airport activities and maintain a higher quality of service for airport users.”
- “Protect airport users from unlicensed and unauthorized products and services.”
- “Enhance the availability of adequate services for all airport users.”
- “Promote the orderly development of airport land.”
- “***Provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not.***”
- “Prevent disputes between aeronautical providers and reduce potential complaints.”

When such standards are imposed, failure to follow them in denying access to an airport may result in a violation of Grant Assurance 22. *Id.* at 10-1, Section 10.2 (“When the sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations, and the sponsor then denies access or services ***based on those standards***, the FAA will not find the sponsor in violation...”)

Here, the County adopted reasonable and not unjustly discriminatory Minimum Standards for award of the FBO lease. These minimum standards were set forth in the RFQ and its Addendums and Attachments. Based on these minimum standards, the County pledged 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. D, RFQ Attachment A at 2; *see also* Ex. C, December 13, 2016 Staff Report.) The County adopted these standards so that firms seeking the FBO lease would be judged against rational criteria related to successfully running an FBO at SNA.

Yet, when the leases were awarded, the County deviated from its set minimum standards and made the discriminatory decision to award a lease to ACI even though ACI did not meet the



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minimum standards set by the County, and based on the failure to meet those standards, was ranked fifth out of six proposers. ACI did not provide sufficient financial information, references, or assurances that it could actually assume and successfully operate an FBO at SNA.

On the other hand, Signature indisputably met the County's minimum standards and has successfully operated at SNA for two decades. (Ex. F, Signature SOQ.) In fact, Signature has been operating at capacity at SNA, having to turn away customers who desire to use Signature's services.

Denying airport access to a qualified candidate like Signature in favor of an unqualified candidate like ACI is a plain violation of the County's obligations under Grant Assurance 22. Indeed, the result of the County's decision is to allow ACI to access the airport without making the capital investments necessary to meet the minimum standards, while other entities, like Signature are held to a higher standard and nonetheless denied access. This is plainly discriminatory decision making.

The County's decision does not "promote safety" or "maintain a higher quality of service for airport users." FAA Order 5190.6b at 10-1, Section 10.2. It does not "protect airport users" or "enhance the availability of adequate services." *Id.* Certainly, it does not "provide a clear and objective distinction between service providers that will provide a satisfactory level of service and those that will not." *Id.* Nor does it serve the stated goals of the GAIP. Instead, the County's decision to deviate from its minimum standards does the opposite.

### III. THE LEASE AWARD TO ACI INSTEAD OF SIGNATURE WILL MAKE SNA LESS SAFE

In addition to constituting a violation of Grant Assurance 22, 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.

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.<sup>2</sup> SNA is the sole commercial airport in Orange

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<sup>2</sup> 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](https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy14-commercial-service-enplanements.pdf).

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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.

On the other hand, the largest airport at which ACI provides FBO services is San Luis Obispo. SBP'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. Combined these three airports do not approach even half of SNA's operations.

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. Indeed, Signature has an exemplary safety and security record operating at SNA. ACI, on the other hand, has never provided FBO services at an airport like SNA, much less demonstrated the ability to do so safely and securely.

We welcome the opportunity to meet with the FAA to discuss the issues raised by this letter and to provide additional context and information concerning the County's leasing decision at SNA. That decision will have far-reaching and negative effects on the airport and surrounding communities.

We trust that the FAA will fully and fairly investigate the violations taking place at SNA.

Sincerely,



William V. O'Connor