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February 27, 2017

The Honorable Board of Supervisors
County of Orange
c/o Robin Stieler, Clerk of Board
Hall of Administration
333 W. Santa Ana Boulevard, Suite 469
Santa Ana, CA 92701

Re: Response of ACI Jet to Letters from Manatt and Morrison & Foerster Law Firms On Behalf of Signature Flight Support Re: Board of Supervisors' Decision to Award Interim FBO Lease at JWA to ACI Jet

Dear Honorable Supervisors of the County of Orange:

We are writing on behalf of our client Aviation Consultants, Inc. d/b/a ACI Jet (“ACI Jet”) to respond to the misleading and inaccurate arguments put forth by the various lawyers¹ for Signature Flight Support (“Signature”), the prior fixed-base operator (“FBO”) lessee at John Wayne Airport (“JWA”).

As you know, on January 24, 2017, the Orange County Board of Supervisors (the “Board”) voted to award ACI Jet one of two interim FBO leases at JWA. The Board’s decision occurred after a five-month process of formal submissions, participation by all interested parties, and two public hearings. In rendering its decision, the Board chose ACI Jet over several other competing companies for several public interest considerations, including better service, lower prices, more rigorous competition, and the elimination of below-market lease rates.

As an initial matter, with respect to Signature’s meritless safety and federal compliance concerns, we would direct your attention to the letter on behalf of ACI Jet dated today from Pillsbury’s Kenneth Quinn, a former FAA Chief Counsel and current General Counsel of the Flight Safety Foundation. Suffice it to note his conclusion that Signature’s safety and compliance concerns are without basis, and the County is free, consistent with its statutory and grant assurance obligations, to displace one FBO for another, particularly where, as here, the County correctly applied its selection criteria.

¹ This letter responds to correspondence dated January 31, 2017, submitted to the County by Manatt, and to correspondence dated February 10 and 19, 2017, submitted to the Federal Aviation Administration (“FAA”) by Morrison & Foerster, both on behalf of Signature.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 2

I. Summary

Contrary to Signature's protestations, the action taken by the County with respect to the Request for Qualifications for Interim Leases for Fixed Base Operator, Project PM1121-223 ("RFQ"), and its award of interim FBO leases (i) was not "arbitrary and capricious" or in violation of any state and local law related to the procurement and award of government contracts; (ii) as detailed by Mr. Quinn, does not violate any of the County's federal obligations, including Grant Assurance 22, Economic Nondiscrimination; and (iii) does not result in an FBO that is any less committed to safety and compliance.

Signature's letters, among other legal deficiencies, never mention the applicable California Government Code provision, Section 25536(a), under which the Board lawfully acted to approve awarding ACI Jet its interim FBO lease. The Board, in awarding an interim FBO lease to ACI Jet, fully complied with the Government Code and California law.

Signature's letters also disregard the compelling reasons for the Board's decision, including that the County had received numerous citizen complaints about Signature's history of charging airport users above-market fuel prices. Those complaints, among others, caused the County in the first instance to commence a process of evaluating alternative FBO service providers, which culminated in the decision to award ACI Jet one of the two available interim FBO leases.² (Attached hereto as **Exhibit A** is a copy of the Board's draft Resolution, which sets forth the background and its reasons for selecting ACI Jet for its interim FBO lease.)

Signature's letters also inaccurately seek to portray ACI Jet as unqualified to operate the FBO. Contrary to Signature's assertions, ACI Jet, a California-based aviation specialty service provider, FAA-certificated air carrier, and FBO operator, has impeccable credentials and a proven track record of service to the aviation community (including documented historical fuel prices far below those charged by the incumbent FBO operators at JWA). (Attached hereto as **Exhibit B** is a copy of ACI Jet's written submission of its qualifications to the County.)

An example of Signature's meritless attacks is its criticism that ACI Jet submitted "reviewed" as opposed to "audited" financial statements to the County. Signature does not challenge ACI Jet's underlying financial ability to perform its obligations, which is incontrovertible. Rather, Signature criticizes the type of financial statements provided (which were only one component of the evidence of financial ability to perform provided by ACI Jet in its application).³ Moreover, the audit of ACI Jet's financial statements has been completed, and

² The other interim FBO lease at JWA was awarded to the incumbent holder of that lease, Newport FBO Two, dba Atlantic Aviation ("Atlantic").

³ For example, ACI Jet, in its application, included notarized letters from its bank regarding lines of credit, as well as a notarized letter from Northern Trust, an extremely

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 3

confirms that the reviewed financial statements previously submitted to the County do not differ in any material respect from the audited financial statements. (Attached hereto as **Exhibit C** are copies of ACI Jet's audited financial statements).⁴

Signature also challenges ACI Jet's ability to operate an FBO at JWA because ACI Jet allegedly did not provide references from two full-service FBOs. ACI Jet not only operates two full-service FBOs at SBP and Paso Robles, but it also provided references from the airport directors of those airports. Moreover, the specific requirement of the RFQ was that an applicant have five years of experience operating a full-service FBO. It is indisputable that ACI Jet meets this requirement.

Signature further challenges ACI Jet's qualifications by stating that its FBO at San Luis Obispo County Regional Airport ("SBP") has less air traffic than JWA. However, Signature's reliance on the relative amounts of overall air traffic is entirely misplaced. Unlike Signature, ACI Jet services both general aviation and commercial aircraft operations at SBP and possesses the appropriate FAA certificates to do so. Signature, by contrast, only services general aviation aircraft at JWA, and is one of two FBOs that provides that service. Thus, ACI Jet's FBO lease at SBP reflects its capability to provide broader aviation services than those currently provided by Signature at JWA. Moreover, ACI Jet, at SBP, participates in military and first responder exercises, such as "hot fueling" of helicopters with engines running, which additionally reflects the more complex services provided by ACI Jet at SBP.

Signature also claims that ACI Jet lacks "the expertise to operate an FBO at JWA" because, after winning the bid in January, ACI Jet offered to interview for employment certain existing Signature personnel at JWA. Signature's reliance on such interviews for the proposition that ACI Jet lacks the requisite expertise is entirely misplaced. As reflected above, ACI Jet operates a more complex aviation facility at SBP than does Signature at JWA. That ACI Jet, in taking over JWA, has considered whether to increase its staff with Signature employees reflects its willingness to evaluate whether individual employees, in contrast to Signature itself, are capable of providing valuable service to JWA, despite having worked for a company that overcharged and underserved JWA.⁵

reputable and risk-averse trust and asset management company, confirming that a cofounder of ACI Jet has a net worth exceeding \$100,000,000. See **Exhibit B** at 61-64.).

⁴ ACI Jet hereby designates its audited financial statements, which contain private and confidential business information, as "Confidential" information protected from public disclosure, to the greatest extent permitted by law.

⁵ Instead of supporting its employees in obtaining continued employment, Signature has opted to threaten ACI Jet with litigation. (Attached hereto as **Exhibit D** is a copy of Signature's

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 4

Signature also alleges that the County violated state and federal obligations, by allegedly not following the recommendations of County staff.⁶ According to Signature, the Board's failure to follow the recommendation of JWA staff, which ranked Signature first out of the qualified applicants, reflects purported arbitrary and capricious decision-making under state law, contrary to the alleged requirements of the RFQ. JWA staff's recommendation, however, was based on criteria set forth in the RFQ, which directed the staff, in making its recommendation, *not* to consider the respective fuel pricing policies of the applicants. Signature ignores the fact that the RFQ explicitly reserved fuel pricing policy as a separate topic that would be "presented for consideration by the Board of Supervisors at the time of selection." RFQ Attachment B (a copy of which is attached hereto as **Exhibit F**) at 2. As set forth below, Signature's longstanding overcharging for fuel at JWA was presented to the Board and properly constituted a key basis for its decision. Accordingly, the County, far from acting arbitrarily or capriciously toward Signature, based its decision on all of the available information, including its fuel pricing policy.

Lastly, Signature's claim that the airport will be "demonstrably less safe" with ACI Jet's operation of its FBO is false and lacks evidentiary support. These allegations are addressed in Mr. Quinn's letter. Indeed, as an air carrier, ACI Jet must continuously adhere to stricter, higher safety standards than does Signature in its limited capacity as an FBO operator. By contrast, Signature's safety record is blemished with recent incidents. Moreover, as reported by the aviation media, Signature has a negative reputation industry-wide, including but not limited to overcharging. Indeed, Signature has been sued *five* times by the U.S. Department of Justice for antitrust violations related to its FBO business, resulting in forced divestitures of FBOs to protect competition. Overall, ACI Jet represents a significant improvement for the FBO lease at JWA.

II. Factual Background

A. The Parties

ACI Jet. ACI Jet is a locally owned and California-based specialty aviation charter, maintenance, and FBO operator with impeccable credentials and experience. ACI Jet currently serves as the full-service FBO at San Luis Obispo Regional Airport as well as airports in Paso Robles and Oceano, California. ACI Jet offers a full spectrum of general aviation services, which exceed those presently offered by Signature at JWA, including aircraft charter and aircraft repair and maintenance, in addition to being a full-service FBO.

cease and desist letter to ACI Jet dated January 31, 2017, along with a copy of ACI Jet's response dated February 9, 2017).

⁶ Signature's arguments under FAA law, specifically, Grant Assurance 22, Economic Nondiscrimination, are addressed in Mr. Quinn's letter dated February 27, 2017.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 5

As an aviation specialty company borne out of the extensive experience of its founder and management team of certified pilots, flight instructors, and airframe and engine mechanics, ACI Jet prioritizes – above all – safety, reliability, and responding to the needs of its general aviation customers. Unlike Signature, ACI Jet has a proven track record of hands-on, responsive, and extraordinary service to aviation customers under all circumstances, as well as long-standing fuel pricing policies that have resulted in prices far below those charged by the incumbent FBO operators at JWA. ACI Jet’s strong relationships already extend to many current general aviation customers that operate out of JWA.

As noted in the letter of recommendation for ACI Jet written by the Director of the San Luis Obispo Regional Airport (“SBP”), ACI Jet has not been content merely to operate the existing FBO facilities, but has invested over \$13 million in FBO infrastructure improvements and created over 100 jobs since 2003. The SBP Director further notes that, notwithstanding the fact that ACI Jet is the sole FBO at SBP, it has offered a fair and transparent pricing model, and has enhanced the reputation of the airport. Similarly, the letter of recommendation from the airport manager at Paso Robles reveals ACI Jet to be an FBO provider with a relentless commitment to its customers and the aviation community.

Signature. Unlike ACI Jet, Signature, a subsidiary of the publicly traded BBA Group based in the United Kingdom, has been the subject of repeated regulatory and media scrutiny for alleged anti-competitive practices. For example, in 2009, the business aviation press, in an article regarding monopolies at major airports, reported that Signature is “widely accused of over-charging for fuel and ramp fees.”⁷ Similarly, in 2006, the business aviation press reported that in industry surveys, Signature FBOs “receive[d] a disproportionate number of negative comments[,]” and that “negative comments about Signature abound,” including the fact that “they charge more per gallon than any other FBO I go to.”⁸

Tellingly, the U.S. Department of Justice (“DOJ”) has sued Signature *five times* for antitrust violations related to FBOs. Specifically, the DOJ filed antitrust actions against Signature in 2016, 2008, 2001, 1999, and 1997, all related to its acquisition of FBOs.⁹ On each

⁷ Thurber, Matt, “FBO Chains: big three secure monopolies at major airports,” Business Aviation, March 27, 2009, available at <http://www.ainonline.com/aviation-news/aviation-international-news/2009-03-27/fbo-chains-big-three-secure-monopolies-major-airports>.

⁸ Thurber, Matt, “Signature Flight Support: FBO Company Struggles To Improve Its Reputation,” Business Aviation, September 20, 2006, available at <http://www.ainonline.com/aviation-news/aviation-international-news/2006-09-20/signature-flight-support-fbo-company-struggles-improve-its-reputation>.

⁹ *United States v. Signature Flight Support Corp.*, Case No. 1-CV-97-00248 (D.D.C. Feb 5, 1997), Complaint (ECF No. 1), Final Judgment (ECF No. 7); *United States v. Signature Flight Support, et al.*, Case No 1-CV-99-00537 (D.D.C. Mar. 1, 1999), Complaint (ECF No. 1), Final

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 6

occasion, the court entered a judgment requiring that Signature divest from FBO facilities to prevent lessened competition, inflated prices, and inferior quality of service.

Most recently, in 2016, when Signature sought to acquire a competitor, Landmark Aviation (which operated approximately 60 FBO facilities in the United States) in a merger transaction valued at approximately \$2 billion, the DOJ publicly commented that the merger “would have subjected general aviation customers at six airports to a monopoly or duopoly for critical fueling and support services,” and that “[h]igher prices and lower quality services were the likely result.”¹⁰ Accordingly, the DOJ required that Signature divest its FBO facilities at those airports in order to “ensure that customers at these airports will continue to receive the benefits of vigorous competition.” *Id.*

Given the DOJ’s repeated antitrust enforcement actions against Signature, it is ironic that, in this case, Signature is seeking the assistance of other federal agencies, such as the FAA, to stifle competition at JWA.

B. A 20-Year “Duopoly” of Two FBO Providers at JWA Leads to Concerns About Excessive Fuel Pricing.

JWA has two full-service FBO facilities, which the County had leased to the same FBO chains, Signature and Atlantic, for two decades. The FBO leases of Signature and Atlantic expired in October 2014, whereupon they became month-to-month tenants. On July 14, 2015, the Orange County Board of Supervisors voted to extend the leases for only one year to the summer of 2016, despite JWA staff’s request for a three-year extension. The Board also directed JWA staff to begin the process of reviewing additional firms to be considered as operators of both FBO facilities, before their one-year leases were set to expire. The Board expressed a desire to increase competition, and noted that the FBO operations had not been substantially reviewed for over twenty years.

What the Board later learned during its review of the FBO leases was that, for many years, Signature and Atlantic had consistently charged significantly higher prices for fuel than other regional general aviation facilities, and that their respective fuel prices were within pennies

Judgment (ECF No. 9); *United States v. Signature Flight Support Corp.*, Case No. 01-CV-1365 (D.D.C. Jun. 20, 2001), Complaint (ECF No. 1), Final Judgment (ECF No. 7); *United States v. Signature Flight Support, et al.*, Case No. 1-CV-08-01164 (D.D.C. July. 3, 2008), Complaint (ECF No. 1), Final Judgment (ECF No. 14); *United States v. BBA Aviation PLC, et al.*, Case No. 01-CV-16-00174 (D.D.C. Feb. 3, 2016), Complaint (ECF No. 1), Final Judgment (ECF No. 14).

¹⁰ “BBA Aviation to Divest Facilities at Six Airports in Landmark Aviation Acquisition,” U.S. Department of Justice, February 3, 2016, available at <https://www.justice.gov/opa/pr/bba-aviation-divest-facilities-six-airports-landmark-aviation-acquisition>.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 7

of each other. Indeed, it was only after the County started the process of reviewing new applicants for the FBO leases in the late summer and fall of 2016 that Signature and Atlantic significantly lowered their public fuel pricing. See **Exhibit A** (Resolution at 6) (graphic illustration of Signature and Atlantic fuel prices).

i. The Board Directs JWA Staff to Review Additional FBO Service Providers.

Despite the Board's July 2015 directive to JWA staff to cause the FBO tenants to enter into one-year leases at increased rent commensurate with market, *the FBOs refused*, continuing in month-to-month tenancies at below-market rent and ultimately resulting in the County's loss of millions of dollars in revenue. This loss of market rent *continues* for every day that Signature is allowed to delay this process and remain in its month-to-month lease.

Moreover, despite the Board's 2015 directive to JWA staff to consider additional options to increase competition, JWA staff did not initially do so. Instead, JWA staff recommended, in August 2016, that the Board extend the leases for Signature and Atlantic for three more years, which request was denied. Finally, on September 22, 2016, JWA staff, acting pursuant to the Board's directive, issued an RFQ for two full-service FBOs to lease the FBO facilities at JWA.

The RFQ specified that JWA staff would provide for the Board's consideration "rankings" of the applicants based on specified criteria, which did not include fuel pricing policy. The RFQ stated that fuel pricing, though not one of the criteria to be analyzed by JWA staff, was a factor to be considered by the Board of Supervisors. Specifically, with respect to fuel pricing, the RFQ provided:

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.

RFQ Attachment B (a copy of which is attached hereto as **Exhibit F**) at 2.

Thus, the RFQ not only expressly stated that JWA staff's rankings would *not* include consideration of fuel pricing policies, but that fuel pricing policies would be an independent factor considered directly by the Board.

The RFQ specified that two different firms would be chosen for the two available FBO facilities, with interim leases through December 31, 2018. A total of eight firms, including Signature and ACI Jet, submitted Statements of Qualifications ("SOQ") to JWA staff. Upon review of the SOQs, JWA staff deemed two of the applicant firms to be unqualified for the FBO leases. JWA staff then ranked the remaining six applicants, including Signature and ACI Jet (both of which were deemed qualified), and submitted its final list to the Board.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 8

ii. The Board's Meeting of December 13, 2016.

At its regularly scheduled meeting on December 13, 2016, the Board considered JWA staff's evaluation of the FBO applicants, and conveyed that it was skeptical of the way in which JWA staff had ranked the incumbents.¹¹ Specifically, Board Chairwoman Michelle Steel expressed concern that the evaluation process was flawed or possibly biased against local applicants. Supervisor Andrew Do called the evaluation results "suspicious" and questioned whether the evaluation process should be redone. Supervisor Todd Spitzer noted his disappointment in JWA staff's handling of the FBO issues generally, including its failure to bring the issue before the Board before the current leases had expired.

Moreover, Supervisor Shawn Nelson expressed significant concern at the meeting about the current FBOs, noting that JWA had established an FBO "monopoly" that had created a "price structure that wasn't competitive and was a little bit punitive." According to Nelson, the FBO's tenants had "started to mutiny" against the incumbent FBO providers at JWA.

In addition, the Board was presented with data revealing that the incumbent FBOs' fuel prices over a six-year period were almost always priced within pennies of each other, and more than \$2.00 per gallon higher than prices at Long Beach Airport (where Signature also provides FBO services).¹² In response, Signature offered to lower its prices, causing Supervisor Nelson to point out that Signature's offer was no less than "an admission" that their pricing was too high. Nelson made it clear that the Board's primary aim was to ensure that general aviation customers, who are often potential job creators for the County, have a positive experience flying into JWA. Excessive fuel costs, he explained, would result in a reduction of such customers, leading to a decrease in airport tax revenue, negatively impacting the County.

¹¹ JWA staff had ranked the two incumbents, Signature and Atlantic, first and second out of the six remaining qualified applicants. JWA staff ranked ACI Jet fifth out of the six qualified applicants.

¹² As noted in the materials ACI Jet submitted to the Board, ACI Jet's fuel pricing is based on the Platts/OPIS jet fuel commodity price average, the aviation industry's benchmark for jet fuel commodity pricing, from the prior week, irrespective of ACI Jet's cost of fuel, with additional discounts for large fuel volume purchasers and based customers. Unlike Signature, ACI Jet is well-known in the general aviation industry for fairly pricing its fuel, and provides customers with advance notice of fuel pricing changes. The evidence shows that Signature's average price of fuel at JWA exceeded ACI Jet's average price by approximately \$2 per gallon. Even after Signature's reductions to its pricing (which Signature only implemented in August 2016, *after* the Board had stated that the incumbent FBO providers were at risk of losing their leases), Signature's fuel prices at JWA still exceeded ACI Jet's fuel prices at SBP by approximately \$0.50 per gallon.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 9

During the December 13 meeting, ACI Jet and Signature separately addressed the Board, each presenting its qualifications and practices regarding fuel pricing. Ultimately, the Board voted to continue its deliberations at the January 24, 2017 meeting, noting explicitly that it would consider the FBO applicants in addition to the two incumbents. Finally, the Board requested that applicants submit additional information on fuel pricing.

iii. The Board's Meeting of January 24, 2017.

At the January 24, 2017 meeting, Supervisor Nelson again noted that he had received complaints that Signature's pricing consistently matched that of its fellow incumbent FBO at JWA, and that "the idea of having two national chains working collectively has worked to the exclusion of people." The Board, concluding that change was needed, voted 4-1 to award one interim lease to ACI Jet, and the other to incumbent Atlantic (which would continue in its existing FBO facility). In doing so, the Board properly disrupted a duopoly that had been in place at JWA for decades. The Board noted that it chose to retain Atlantic rather than Signature because the former had reduced its pricing more quickly and more significantly than had Signature.

iv. Signature's Protest and the Board's Supplemental Agenda Item for its Meeting on February 14, 2017.

On January 31, 2017, Signature submitted the Manatt firm's protest letter to the Board. In response, the Board timely issued and gave notice of a supplemental Agenda item for its regular meeting on February 14, 2017, which reflected the Board's intention, for purposes of clarity, to rescind its vote of January 24, 2017 and thereafter immediately vote again to award the interim FBO leases to Atlantic and ACI Jet pursuant to detailed attached Resolutions setting forth the basis for the Board's decisions. The Board's Resolutions also contained information comparing the parties' fuel pricing, which confirm that the fuel prices of both Signature and Atlantic had been in lock-step for years prior to the RFQ process, and that both charged substantially higher prices than that charged by ACI Jet. *See Exhibit A.*

III. Signature's Challenges to the Board's Decision Lack Merit.

A. The County Properly Awarded the FBO Interim Lease to ACI Jet.

California Government Code, Title 3, Division 2, Part 2, Article 9 ("Article 8") governs the sale or lease of real property by a county board of supervisors. Article 8 provides that "[a]ny lease may be made upon such consideration or for such rental, as is authorized by the action of the board of supervisors" and that leases "shall be made in the manner provided by this article." Cal. Gov. Code, §§ 25524-25. Article 8 specifically provides that, with respect to county leases in connection with airports, a county board of supervisors may enter into such leases *without engaging in any specific bidding process*. Cal. Gov. Code, § 25536 (a) ("[n]othing in this article shall prevent the board of supervisors of a county from, and the board of supervisors of any

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 10

county is empowered to make contracts . . . , by a four-fifths vote of the board, entering into leases . . . or managerial contracts involving leasing . . . all or any part of county-owned . . . property devoted to . . . airport . . . without compliance with [the bidding procedures set forth in] this article.” (emphasis supplied). Referring to this statute, Miller and Starr, recognized as the leading treatise on California real estate law, explains that “[a] county may lease without competitive bidding, but with four-fifths vote of the board of supervisors . . . county-owned property devoted to or held for ultimate use for airport . . . or uses incidental” thereto. 10 Miller & Starr, Cal. Real Estate (4th ed.), § 34:23 (citing Government Code § 25536(a)).

Signature’s letters never mention the above statutory authority under which the Board acted in this case. Furthermore, rather than identifying any specific violations of the Government Code, Signature simply alleges that the Board acted “arbitrarily and capriciously,” and inconsistent with proper procedure. Contrary to Signature’s assertions, the Board’s decision does not run afoul of these principles. Signature simply does not like the Board’s decision.

In this case, the Board decided, by a 4-1 vote, to award an FBO lease to ACI Jet, pursuant to express statutory authority. Signature has no legal basis to challenge the validity of the Board’s action, especially given the facts leading up to the Board’s decision.

B. The Board’s Selection of ACI Jet Followed Proper County Processes for Awarding an FBO Lease.

Signature additionally contends that the Board did not follow the minimum standards of the RFQ process.¹³ Signature’s letter, however, does not refer to any citations to legal requirements of the RFQ process or any authority governing that process.

Signature alleges that the County deviated from the RFQ process because it allegedly failed to follow its established minimum standards—an argument lacking merit. There is no requirement in the Manual that the Board engage in any specific process in connection with the

¹³ A Request for Qualifications, as set forth in the County of Orange Contract Policy Manual (the “Manual”), is “[t]he document which describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening purposes or for award of contract.” According to the Manual, RFQs are intended to result in a list of potential contractors qualified to receive government contracts or identification of those bidders in an RFP process that are qualified to fulfill the contract conditions. See Manual §§ 3.5-109, 4.1-102, 4.2-104. We cite to the Manual only because Signature purports to rely on it. It is unclear, however, whether the Manual even applies to leases of County real estate, which, as noted, are expressly governed in this instance by Government Code section 25536(a).

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 11

award of an airport lease, and the Government Code vests the Board with the authority to make determinations upon a four-fifths vote. Additionally, the County followed its RFQ process in this case, which resulted in JWA staff providing a list of firms to the Board that met the qualifications and requirements for an FBO lessee. Applicants that JWA staff determined did not meet the qualifications were not even submitted for consideration to the Board. Given that the Board selected ACI Jet, which JWA staff specifically found *was* qualified to provide FBO services at JWA, the Board had and has sufficient evidentiary support for its determination.

C. ACI Jet Meets The Requirements for the FBO Lease As Stated in the RFQ.

Signature challenges ACI Jet's qualifications by making the following four arguments.

First, Signature complains that ACI Jet submitted "reviewed" as opposed to "audited" financial statements, in alleged contravention of the RFQ. As required by the RFQ, however, ACI Jet submitted with its SOQ financial statements that:

"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 [. . .] demonstrate its ability to provide adequate working capital to successfully continue the contemplated operations(s) once initiated through the full term of the lease, permit, or agreement."

RFQ Attachment A (a copy of which is attached hereto as **Exhibit E**).

Nevertheless, Signature alleges that ACI Jet improperly failed to follow the instructions for the SOQ by providing "reviewed" as opposed to "audited" financial statements. The SOQ instructions, however, do not state that failure to follow the specified format constitutes a grounds for disqualification. The instructions merely state that SOQs should conform to the specified format in order to "facilitate evaluation." *See* RFQ Attachment B (a copy of which is attached hereto as **Exhibit F**). Moreover, the "instructions" are contained in a different document than the "general requirements" and "minimum qualifications" of the RFQ.¹⁴ The instructions themselves also demonstrate that they are not all mandatory, stating that "responsiveness to instructions" will be *one of several criteria* used to evaluate the applicants, and that "ability to follow RFQ directions" accounts for only 10% of the total evaluation of the written submission.

¹⁴ The RFQ provides the "general requirements" and "minimum qualifications" for the available FBO leases at JWA. *See* RFQ Attachment A (a copy of which is attached hereto as **Exhibit E**). The RFQ also provides a set of instructions for responding to the RFQ. *See* RFQ Attachment B (a copy of which is attached hereto as **Exhibit F**).

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 12

In its SOQ, ACI Jet submitted financial statements that had been prepared and reviewed by a licensed Certified Public Accountant. Moreover, ACI Jet retained an outside auditor and that audit has been completed. The audited financial statements do not differ in any material respect from the reviewed financial statements that ACI Jet previously submitted. (See **Exhibit C**.) Accordingly, Signature’s criticism is without merit or substance.

Second, Signature contends that ACI Jet does not meet the requirements of the RFQ because it allegedly did not provide references from two full-service FBOs. As noted above, ACI Jet, in fact, operates two full-service FBOs at SBP and the Paso Robles airport, and provided references from the airport managers of those airports.¹⁵ In addition, Signature’s argument again confuses the instructions for SOQs with the minimum qualifications of the RFQ. The minimum qualifications for the FBO lease, according to the RFQ, is “five (5) years’ continuous experience operating as a full service FBO.” See **Exhibit E**. It is uncontroverted that ACI Jet meets this requirement.

Third, Signature argues that ACI Jet is somehow not qualified because the full-service FBO it operates at SBP is at an airport with less overall air traffic than JWA. This argument fails on multiple levels. As noted above, ACI Jet is an FAA-certificated provider of services to both general aviation and commercial aircraft, and it is the only FBO at SBP. Signature, by contrast, services only general aviation at JWA, and is one of two FBOs doing so. Moreover, ACI Jet participates in military and first responder exercises at SBP, which not only involve air traffic comparable to JWA, but which require more expertise than a typical FBO, such as “hot” fueling of military aircraft with engines running. ACI Jet, in short, brings superior experience and is in a position to provide a broader range of services at JWA compared to those provided by Signature.

Fourth, Signature tries to challenge ACI Jet’s ability to assume operations at the JWA FBO, due to the fact that ACI Jet has sought to interview certain Signature employees currently working at the FBO facility. ACI Jet’s attempt to hire existing personnel at the FBO facility reflects only its judgment to give an opportunity to individual Signature employees to assist in providing superior service at ACI Jet’s standards, as opposed to the prior standards of Signature which has a track record of deficiencies and fuel price overcharges. Signature’s argument only highlights the extraordinary lengths to which it will go in order to maintain its FBO lease, irrespective of the interests of JWA or even its own employees.

D. The County’s Decision Was Consistent with its Legal Obligations.

¹⁵ Signature claims that another applicant, Atlantic, did not provide references from two full-service operations. JWA staff did not deem Atlantic unqualified, and ranked Atlantic second out of the six qualified applicants. Signature seeks to write in “requirements” after the fact, when they did not exist in the original RFQ.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 13

Signature alleges that the County violated state and federal obligations, by allegedly not following the recommendations of County staff.¹⁶ According to Signature, the Board's failure to follow the recommendation of JWA staff, which ranked Signature first out of the qualified applicants, reflects purported arbitrary and capricious decision-making under state law, contrary to the alleged requirements of the RFQ. Signature, however, ignores the fact that the RFQ directed JWA staff, in making its recommendation, *not* to consider the respective fuel pricing policies of the applicants. Instead, the RFQ explicitly reserved fuel pricing policy as a topic that would be "presented for consideration by the Board of Supervisors at the time of selection." RFQ Attachment B (a copy of which is attached hereto as **Exhibit F**) at 2. Signature's egregious and longstanding overcharging for fuel at JWA was presented to the Board and quite properly constituted a key basis for its decision. Accordingly, the County, far from discriminating against Signature, based its decision on all of the available information, including its fuel pricing policy.

In sum, Signature's allegations of arbitrary and capricious decision-making are entirely without merit. As set forth in the Factual Background above, the County undertook the bidding process in a thoughtful, methodical manner that was fair to all parties, including Signature. That the County, after a full review of the written submissions and presentations by all parties, ironically uncovered Signature's discriminatory practices regarding inflated fuel prices does not change this fact. Accordingly, there is no evidence that the County deviated from the standards set forth above. To the contrary, the County, after duly considering all the evidence, exercised its discretion in a manner that was fair to all applicants and in the best interests of JWA.

E. ACI Jet's Operation of the JWA FBO Poses No Safety Concerns.

Signature's final argument is to assert falsely that ACI Jet poses safety concerns at JWA. As detailed in Mr. Quinn's letter, this argument has no basis in fact and is simply a scare tactic reflecting Signature's desperation to retain its lease. In stark contrast to ACI Jet, a licensed FAA carrier, Signature is not a certificated air carrier.¹⁷ As a result, Signature is not subject to the same degree of FAA oversight with which ACI Jet successfully complies on a routine basis. Thus, the Board should disregard Signature's false assertion that ACI Jet will not be a safe FBO operator at JWA. Indeed, ACI Jet is far better equipped to provide for safe aviation operations at JWA than is Signature.

IV. Conclusion

¹⁶ Signature's arguments under FAA law, specifically, Grant Assurance 22, Economic Nondiscrimination, are addressed in Mr. Quinn's letter dated February 27, 2017.

¹⁷ Indeed, because of Signature's foreign ownership, it cannot qualify as an air carrier because it is not a "citizen of the United States" as required by statute and regulation.

Robin Stieler, Clerk of the Orange County Board of Supervisors
February 27, 2017
Page 14

IV. Conclusion

The Board's decision to award the interim FBO lease to ACI Jet was lawful, made pursuant to express statutory authority, and based on long-standing, serious concerns about a "duopoly" of FBO providers at JWA, including citizen complaints about service and excessive pricing. It is not a coincidence that Signature has been the subject of similar complaints for many years. The Board's decision to award the FBO interim lease to ACI Jet was not only lawful, but served the best interests of the County. The Board should reject Signature's attempt to delay the Board's action on this issue—all while Signature enjoys below-market rent at the expense of the County—in the hope that the Board will eventually accede to its demands to remain an FBO at JWA to the detriment of the airport and the County it serves.

Very truly yours,


Wayne R. Gross

NMC:pg

cc: Leon Page, Esq. (County Counsel for the County of Orange)