

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**Signature Flight Support Corp.
Complainants**

FAA Docket 16-17-02

v.

**County of Orange
Respondents**

ORDER OF THE DIRECTOR

I. INTRODUCTION

Signature Flight Support (Signature/Complainant) filed a complaint under 14 CFR Part 16 against the County of Orange (County/Respondent), the sponsor of John Wayne Airport (Airport/SNA).

Signature alleges that the County violated Grant Assurance 22, *Economic Nondiscrimination*, by discriminating against Signature in a Request for Qualification (RFQ) process that awarded a lease to ACI Jet. Signature also alleges that the County violated Grant Assurance 22 by failing to make unoccupied facilities and property at John Wayne available on reasonable terms and by failing to negotiate in good faith for a lease renewal. [FAA Exhibit 1, Item 7, pages 2-3]

The County filed a Motion to Dismiss and for Summary Judgment. The Motion to Dismiss raises three arguments. First, the County argues that the complaint does not state a claim that warrants an investigation or further action by the FAA under § 16.1(ii). Second, the County argues that Signature lacks standing under §§ 16.3 and 16.23. Finally, the County asserts that Signature did not state the specific provisions of each Act that Signature believes were violated as required under § 16.26. [FAA Exhibit 1, Item 6, page 13]

The Motion for Summary Judgment raises three arguments. First, the County argues that Signature's claims lack a genuine issue of material fact or showing of grant assurance noncompliance. Second, that Signature fails to provide evidence and has not met its burden under § 16.23(b) (3). And finally, that Orange County is compliant with Grant Assurance 22, because it followed a public process that allowed all applicants an equal chance to present credentials in the RFQ process.

Signature filed an Opposition to the motion on May 8, 2017, as provided for in 14 CFR § 16.26(b) (3) and (c) (3). Signature argues the County's motion contains no grounds for dismissal or summary judgment and that there are three violations under Grant Assurance 22. [FAA Exhibit 1, Item 7, pages 1-3]

As set forth below, the Director DENIES the motion to dismiss, but GRANTS the Motion for Summary Judgment. Because the Motion for Summary Judgment is granted, the complaint is dismissed.¹

II. The Parties

A. The Respondent

The John Wayne Airport is a public airport with significant general aviation presence, which accounted for 67% of the Airport's operation in 2016. There are approximately 489-based aircraft and approximately 775 operations per day.

The development of the airport was financed, in part, with FAA Airport Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended. 49 U.S.C. §47101, *et seq.* The AIP provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS). As a condition of receiving Federal funding, the County must comply with the FAA Sponsor Grant Assurances and related Federal law. The grant assurances are mandated by statute and are also part of the terms of the Grant Agreement. Since 1983, the County has accepted more than \$54,320,500.00. The most recent grant in 2015 was \$2,640,010.00 to rehabilitate taxiway and access roads and install fencing.

The Complainant

Signature Flight Support Corporation is a national fixed base operator with more than 200 locations worldwide. Signature has been a tenant at John Wayne Airport for more than 20 years. 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 month-to-month lease.

III. Background and Procedural History

A. Signature's Position

On March 7, 2017, Signature Flight Support Corporation filed a Complaint alleging that the County violated Grant Assurance 22, *Economic Nondiscrimination*, by choosing ACI Jet in a request for qualifications (RFQ) for an interim 2 year lease at the Airport and by refusing to immediately lease land to Signature so that it could develop another fixed base operation.

Signature's long-term lease at SNA expired on October 31, 2014. Following expiration, Signature continued to provide services as a holdover tenant until March 31, 2017. In the

¹ The County, in its characterization of Signature's complaint, asserted that Signature raised a number of improper claims, including airport safety, the Federal Acquisition Regulations, and violations of California law. In its Opposition, Signature clarified that it was not seeking relief on these claims. Therefore, we do not address these issues.

summer of 2016, Orange County negotiated a new 2.5-year lease with Signature. On August 5, 2016, via a Deletion Request, the County withdrew this extension from consideration in order to issue a request for qualifications to allow Signature and other entities to compete for the space.

Signature and others submitted their applications under the RFQ and the County convened a selection panel to rank the applicants. Signature alleges that despite being ranked the highest by the panel, the leases were awarded to ACI Jet and Atlantic Aviation. Signature also argues that there is sufficient space at SNA to accommodate a third fixed base operator. Signature alleges that Orange County is 'banking land' and making it unavailable for an FBO lease despite the demand. [FAA Exhibit 1 Item 1, pages 1-16]

On April 19, 2017, the County filed a Motion to Dismiss and for Summary Judgment. In its Opposition to that Motion, Signature argues that the County violated Grant Assurance 22 by "failing to make unoccupied facilities and property at John Wayne available to Signature on reasonable terms. Signature has demonstrated that there are available airport facilities as well as a demand for Signature's services." [FAA Exhibit 1, Item 7, page 2]

The County's Position

The County states that it replaced Signature as a fixed base operator following a deliberative, lawful and transparent process. The County issued an RFQ to consider all responding firms and encourage competition. [FAA Exhibit 1, Item 6, page 4] The County states that it intended to consider fuel-pricing policies as part of its review.

The County states that Signature and Newport FBO Two (dba Atlantic Aviation) have enjoyed a "virtual duopoly at the Airport." According to the County, "[a]fter 20 years of this duopoly and the expiration of leases to Signature and Atlantic, the County sought to open the full-service FBO opportunities to new entrants that can provide airport users relief from the incumbents' oppressive aviation fuel prices." [FAA Exhibit 1, Item 6, page 6]

The County states that in terms of leasing land immediately to Signature for another FBO, "Signature fails to demonstrate that these locations are feasible on an interim basis...based on current conditions at the Airport. None of the sites available for Signature's imminent use – none can immediately support a full service FBO." [FAA Exhibit 1, Item 6, page 21]

STANDARD OF REVIEW OF MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

Under 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The burden of proof is on Signature to show noncompliance with a statute, regulation, order, agreement, or document of conveyance. § 16.23(k) (1). The proponent of a motion (including a motion to dismiss, or for summary judgment), request, or order has the burden of proof. *See* §16.23(k) (2). Under 14 CFR § 16.26 (a), a respondent may file, in lieu of an answer to a complaint, a motion to dismiss the complaint or a motion for summary judgment on the complaint.

A motion to dismiss a complaint must state the reasons for seeking dismissal of either the entire complaint or of specified claims in the complaint. To prevail, the County must show

either (1) the complaint, on its face, is outside the FAA's jurisdiction; (2) the complaint, on its face, does not state a claim that warrants an investigation or further the FAA action; or (3) the complainant lacks standing, under §§ 16.3 and 16.23, to file a complaint. The respondent is expected to file a supporting memorandum of points and authorities.

A motion for summary judgment may seek dismissal of the entire complaint or of specified claims and issues. To prevail, the respondent must show there is no genuine issue of material fact for Part 16 adjudication and that the complaint, when viewed in the light most favorable to the complainant, should be summarily adjudicated in the respondent's favor as a matter of law. The respondent is expected to file a statement of the material facts as to which respondent contends there is no genuine issue of material fact, and may include affidavits and documentary evidence. § 16.26(c) (1) (2).

V. ANALYSIS AND DISCUSSION

Signature's contention that the County violated Grant Assurance 22, *Economic Nondiscrimination*, is tied to an allegation that (1) it was not selected by the County in its request for qualifications for an interim lease as a fixed base operator and (2) that the County unfairly is denying a lease to Signature on other land on the Airport.

The owner of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 implements the provisions of 49 U.S.C. §§ 47107(a) (1) through (3), and provides:

[The airport owner or sponsor] will make the airport available as an airport 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.

The part 16 process is intended only to determine current compliance with Federal obligations and not to provide restitution or financial damages. The Director, therefore, analyzes the Complaint, Motion to Dismiss and for Summary Judgment and Signature's Opposition to the Motion from the perspective of grant assurance compliance. Disputes regarding contracts or local government procurement and bidding processes are generally a matter of state law and not covered under the part 16 process.

Respondent's Motion for Summary Judgment

Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by not selecting Signature Flight Support Corp. as an interim fixed base operator?

As evidence of its unfair treatment, Signature argues that Orange County displaced Signature in a bid process and awarded a lease to another fixed base operator, ACI Jet, despite that firm's failure to meet the County's minimum standards or provide audited financial statements as required in the RFQ. [Item 1, pages 6-7]

Signature states that in the summer of 2016, the County had nearly completed lease negotiations to extend its lease by 2 ½ years to December 21, 2018. However, this process was interrupted when a newly formed company expressed interest in an interim lease. According to Signature, to avoid the appearance of impropriety, the County issued a request for qualification (RFQ) to select two firms. [Item 1, pages 2-6]

Signature states that six firms, including Signature, were considered by a 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 based on its statement of qualifications." [Item 1, page 9]

Signature argues that in spite of this score, it was not awarded the FBO lease. Leases were awarded to Atlantic Aviation and ACI Jet.

In its Motion to Dismiss and for Summary Judgment, Orange County states that it followed a deliberative, lawful and transparent process representing airport best practices. The County argues that Signature seeks to reverse the leasing process so that it can continue its "anti-competitive position and excessive fuel pricing at the Airport." The County states that the interim lease was awarded to a qualified FBO competitor that the County Board of Supervisors objectively and fairly selected over Signature, based on reasonable and non-discriminatory criteria. [Item 6, pages 4-5]

On September 22, 2016, the Airport issued the RFQ, which set forth general requirements that the applicants had to agree to and 'minimum qualifications' which consisted of qualifications requirements to be met for the County's consideration. The County states that, "[s]eparately, the RFQ contained instructions which provided that respondent firms fuel pricing policies for the Airport would be presented for consideration by the Board of Supervisors at the time of selection, but would not be an element that is considered in the preliminary scoring and ranking of FBOs. [Item 6, pages 10-11]

The RFQ contained the following Note:

PLEASE NOTE: While not an element that will be considered in the scoring and ranking of the FBO's, Respondent Firm's fuel pricing policy for JWA² will be presented for consideration by the Board of Supervisors at the time of selection. [FAA Exhibit 1, Item 5, Attachment B, page 4]

² JWA means John Wayne Airport

The County states that, “[b]y conducting a Request for Qualifications, considering all responding FBO firms and bringing in new FBO competition, the County’s actions already have helped lower fuel prices at the Airport by over 30 percent, to the benefit of the flying public.” [Item 6, page 4]

The County maintains that regardless of the panel rankings, the ultimate selection decision was reserved to the Board. According to the County, the Board’s assessment of fuel prices was the “most important” of the Request for Qualification provisions. [Item 6, page 6.] According to the County, the ultimate decision is made in the Board’s “sole discretion.” [Item 6, page 6] Signature notes that prior to the Board’s decision it presented its fuel pricing model to the Board. [Item 7, p. 6]. Signature’s presentation asserted that its “average price” was lower than ACI’s.

Upon review of the motion and the opposition, we find there is no issue of material fact and that the complaint, when viewed in a light most favorable to Signature, should be summarily adjudicated in the County’s favor as a matter of law. The reason for our decision is as follows:

First, we have reviewed the language of the request for qualifications and we find nothing unjustly discriminatory in the criteria.

Second, in this case, the panel had ranked Signature first and ACI Jet fifth. Nevertheless, the Board ultimately selected ACI Jet. The County indicated that pricing was the most important factor. Signature acknowledges that it had the opportunity to address the board and provide its own analysis of pricing. According to Signature, this occurred two weeks before the leases were awarded. [Item 7, pages 6-7] While others may have made a different decision than the Board, or granted more weight to the initial findings of the panel, we find nothing in the procedures followed by the Board or in its ultimate decision that violates Grant Assurance 22. Airport sponsors when selecting FBO operator have a right and responsibility to consider pricing in FBO selection, such a decision does not violate Grant Assurance 22. Nor is FAA in a position to second-guess the Board’s analysis of pricing or the weight it accorded the pricing information provided by the bidders.

Grant Assurance 22 does not require that an airport adhere to any particular methodology for letting or assigning leases. Discretion is left to the airport sponsor using practices that best suit its individual needs. The FAA does not normally intervene in the business decisions of the airport sponsors where grant assurance violations are not at issue. [See *Jet 1 Center Inc. v. Naples Airport Authority*, FAA Docket No. 16-4-03 (January 4, 2005) (Director’s Determination) p. 25. See also *Self Serve Pumps, Inc. v. Chicago Executive*; FAA Docket 16-07-02, page 25] We note that the process followed written procedures, involved a selection panel and public hearings and gave all parties a chance to be heard. The ultimate decision was reserved for the elected Board of Supervisors. The Board made its decision through a public vote that occurred at a publicly noticed meeting. [Item 6, pages 26-30]

The FAA does not arbitrate or mediate lease negotiations through Part 16. Nor does the FAA enforce lease terms between parties to an agreement. Rather, the FAA enforces contracts between an airport sponsor and the federal government. [See *AmAv v. Maryland Aviation Administration*, FAA Docket No. 16-05-12, (March 20, 2006) (Director’s Determination).]

Signature has not provided evidence that Orange County is in violation of Grant Assurance 22 by not awarding it the interim lease. It was well within the County's discretion to choose a new applicant that would provide specific services or pricing that the County deems desirable. In this case, the Director finds that the County acted in a manner compliant with its obligations under Grant Assurance 22. [See *BMI Salvage Corporation & Blueside Services, Inc. v. Miami-Dade County, Florida*, FAA Docket No. 16-05-16 (July 25, 2006) (Director's Determination).]

Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by not immediately making land available to Signature Flight Support Corp. for use as a fixed base operation?

Signature states that the County violated Grant Assurance 22 "by failing to make the unoccupied facilities and property at John Wayne Airport available to Signature on reasonable terms." Signature argues that it has identified three parcels that could be used as potential sites for an FBO location. [Item 7, page 9]. Signature states that, "[t]he County does not argue that these sites are currently unavailable at John Wayne Airport. Instead, it states only that Signature's request is untimely and that Signature's request has the potential to implicate Part 77 airspace restrictions."³ [Item 7, page 10] According to Signature, the County should be working "now" to designate vacant space as a third FBO site. [Opposition, page 15 (emphasis in original)]

The County states that Signature has failed to demonstrate that the locations it identified for a third FBO are available. The County states, "[n]one of the sites available [are] available for Signature's imminent use – none can immediately support a full-service FBO. Signature fails to recognize the complexity of airport planning, including Part 77 obstructions, fuel accessibility, environmental impacts, and demolition of existing structures, ALP modifications, and airfield accessibility." [Item 6, page 21] The County also argues that the FAA should dismiss Signature's claims related to a third FBO because current conditions at the Airport have legal and practical roadblocks to a third FBO, including Signature's admission that aeronautical users are already using the parcels it has identified. [Item 6, page 22]

Finally, the County states that it is in the process of a comprehensive, multi-year review of the airport to better accommodate the general aviation community, which represents the majority of airport users. The County states:

[W]hether a third full-service FBO will be included in the GAIP (General Aviation Improvement Program), has not yet been determined, but will depend on many factors. However, until the GAIP is completed and the Airport is in the process of determining the appropriate course of action, Signature's claims are not ripe. [Item 6, page 19]

The GAIP has been identified as a multi-year project. It was begun in 2014 and the County has moved forward by letting interim leases as it proceeds with the planning. According to the County, the GAIP "will reshape and revive the Airport's general aviation capabilities, including

³ Part 77, Federal Regulation Title 14 Part 77 establishes standards and notification requirements for objects affecting navigable airspace.

FBO services and leases, and will involve an upcoming RFP⁴ process to award long-term full-service FBO leases. [Item 6, page 8]

We find that the County is within its proprietary powers to conduct planning for future use and can reasonably delay decisions on land uses that are under consideration in a bona fide process. Whether there is current space that is appropriate for immediate use by an FBO is disputed. But, even if the complaint is viewed in the light most favorable to Signature, and we assume that there is currently unoccupied land; a Sponsor may, as a matter of law, refrain from making immediate leasing decisions.

Such a position does not, without more, violate the grant assurances. A sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the Airport's land in a manner consistent with the public's interest. [SMAA FAD⁵, 16-99-21, page 19]

In reaching this decision, we find it significant that in this case, Signature filed its Complaint on March 7 and sent a letter to the County to open negotiations on March 27th, twenty days after the date of the complaint. Under these facts, the Director is not persuaded that there is any undue delay as the County completes its review and process. The record reflects no evidence that the County is using the GAIP as a pretense to bar new entrants. The County is within its proprietary rights to plan and develop the airport to meet the unique needs of its users. The County is encouraged, however, to proceed as expeditiously as possible in completing its GAIP review.

As an additional ground for dismissal of this claim, because the complaint precedes Signature's March 27 letter, we find that Signature has failed to meet its requirement for pre-complaint resolution. *See* 14 C.F.R. § 16.21.

Findings and Conclusion

After consideration of the pleadings and record, and viewing the complaint in the light most favorable to the Complainant, we find no indication that the County has violated Grant Assurance 22. We find that there are no claims that warrant further action by this office, and that the Complaint can be dismissed in its entirety as a matter of law.

ORDER

ACCORDINGLY, it is ordered that:

1. Respondent's Motion to Dismiss is DENIED and the Motion for Summary Judgment is GRANTED; and
2. The Complaint is DISMISSED.

⁴ RFP means request for proposals

⁵ SMAA FAD means Santa Monica Airport Association, Final Agency Decision

RIGHT OF APPEAL

This Order of the Director is an initial agency determination and does not constitute a final agency action and order subject to judicial review. 14 CFR § 16.247(b) (2). A party to this proceeding adversely affected by the Director's Order may appeal the initial determination to the FAA Associate Administrator for Airports under 14 CFR §16.33(c) within 30 days after service of the Director's Order.



Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

7-21-17

Date