



SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY  
**EXECUTIVE COMMITTEE**

Item No.  
**6**

Meeting Date: **SEPTEMBER 27, 2010**

**Subject:**

**Discussion Regarding Authorizing the President/CEO to Execute an Agreement with HSS, Inc. for Contract Security Services for five (5) years, including two (2) one-year options for a not-to-exceed amount of Fifteen Million Dollars (\$15,000,000).**

**Recommendation:**

The Executive Committee recommends that the Board authorize the President/CEO to execute an agreement with HSS, Inc., for contract security services for five (5) years including two (2) one-year options in a not-to-exceed amount of fifteen million dollars (\$15,000,000).

**Background/Justification:**

Request for Proposal Background and Process

On May 24, 2010, the Authority issued a Request for Proposal (RFP) for Security Officer Services. Notice of the RFP was advertised in the *San Diego Daily Transcript* and on the Authority's website. Fifty-two (52) firms downloaded the RFP.

The services requested in the RFP include: perimeter security and access control functions, alarm monitoring of the Airport's Security Operations Center (SOC), securing access portals in the terminal Sterile Areas, and providing personnel and vehicle inspections as directed by the Transportation Security Administration (TSA). More specifically, these functions include: monitoring over three-hundred (300) access control alarm points, managing and monitoring advanced surveillance equipment, coordinating dispatch of San Diego Harbor Police officers, physical protection of three (3) tenant-accessible perimeter gates, physical protection of access points within the terminal Sterile Areas, physical patrol of all terminal spaces, and providing notifications to Authority personnel regarding other emergency conditions (e.g., fire alarms). Additional duties are assigned as TSA threat conditions and directives may mandate. These duties include physical inspection of vehicles, persons, and their accessible property when accessing terminals and sensitive areas of the Airport.

The RFP Evaluation Panel consisted of staff from the Authority's Aviation Security & Public Safety, Airside Operations and Landside Operations departments, and the San Diego Harbor Police. These panel members were all "resident industry experts" on airport and airline security, airport operations, customer service, and law enforcement. Each Panel Member signed an "Acknowledgement of the Authority Conflict of Interest Statement" which states in part "that anyone directly involved with the selection or letting of Authority contracts shall avoid any activity or situation which involves, or creates the appearance of an impropriety or a conflict of interest." The RFP Evaluation Criteria were developed prior to the release of the solicitation and the evaluation criteria point allocation system was determined and agreed to by the Panel prior to the solicitation due date.

### Proposal Evaluation

On June 22, 2010, the Authority received twenty-five (25) proposals. A preliminary review of the basic responsiveness of the proposals was conducted by the Procurement department to ensure all requirements of the RFP had been met.

On June 25, 2010, the proposals were distributed to the Evaluation Panel. The Panel evaluated and scored the 25 proposals based on the following evaluation criteria contained within the Security Officer Services - RFP (excluding Compensation/Fees), which as noted below, were assigned by the Procurement Department:

**(40 Points) Organization Experience and Skill:** Includes professional history, skills, and relevant experience that demonstrates a capable, working knowledge of performing the services requested in this RFP or of similar projects.

**(20 Points) Primary Staff:** Identify the particular services to be performed by respondent (including their resume) and identify those services, if any, that will be performed by subcontractors or others ("subcontractors"). Identify responsibilities and qualifications, as well as the major clients served and projects worked on relative to the services requested of this RFP.

**(15 Points) Work Plan:** Provide, in detail, the steps necessary and the deliverables needed to complete the services in the best interest of the Authority.

**(20 Points) Compensation/Fees:** The Procurement Department evaluated and scored the fees, and the scores were provided to the Panel members during the short list meeting. (See ***Fee Score Calculation***, Page 3.)

**(5 Points) Small Business Preference:** The RFP was subject to the Authority's Small Business Preference Policy (5.12) as amended on November 5, 2009, by Board Resolution No. 2009-0141.

On July 7, 2010, the Procurement Department held a meeting of the Evaluation Panel. The intent of this meeting was to evaluate and identify the panelists' highest scoring respondents to invite for interviews. The panelists' scores were combined with the fee scores provided by the Procurement Department.

Fee Score Calculation

The Fee scores were calculated as follows:

The total cost to perform services under the contract was calculated by multiplying a specific number of hours for each RFP-required staff position by the Respondent's proposed hourly rates.

U.S. Security Associates, Inc., had the lowest calculated proposed cost of \$9,589,346 and was awarded the maximum allowed score of 20 points.

The lowest calculated proposed cost of \$9,589,346 was used to calculate the unit point value assigned to the remaining Respondents. Example:

$\$9,589,346 \div 20 \text{ Points} = \$479,467$  (rounded to the nearest whole number)

$\$479,467 = 1 \text{ Unit Point Value}$

HSS, Inc., Calculated proposed total cost = \$12,196,082

\$12,196,082		\$2,606,736
- \$9,589,346 (Lowest Cost)	then	÷ \$479,467 (Unit Point Value)
= \$2,606,736		= 5.43 or 5 points (rounded)

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20 (Maximum Points) – 5 Points = 15 Points      HSS, Inc. was awarded 15 Points.

The six highest scoring respondent fee calculation scores are as follows:

<u>Proposed Fees</u>	<u>Assigned Points</u>	<u>Company Name</u>
\$10,226,853	19	National Security Industries and Services
\$11,363,136	16	G4S Secure Services
\$11,396,153	16	Universal Protection Services
\$11,879,376	15	Allied Barton Security Services
\$11,901,755	15	Heritage Security Services
\$12,196,082	15	HSS, Inc.

Interviews and Final Rankings

On July 23, 2010, the Evaluation Panel conducted interviews with the six (6) highest scoring respondents. All respondents were allowed up to 10 minutes to present information about their company, followed by a 20-minute question-and-answer session. All respondents were asked to provide answers to a specific list of questions prepared in advance by the Panel. These questions evaluated the companies' experience, the experience and skills of the primary staff assigned to perform the services, and how the work would be performed in the best interest of the Authority. (Note: Respondents were not provided with the questions prior to the interview.)

Upon completion of the interviews, the Panel discussed and reviewed the strengths and weaknesses of: each respondent's proposals; respondent's staff attending the interview;

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responses to panelist questions; and the score of the respondents' proposed fees. The Panel then assigned points to each of the interviewed respondents as follows:

Final – Evaluation Criteria	Company Experience & Skill	Primary Staff	Work Plan	Fees	Interview	Small Business Preference	Total	Ranking
Maximum Points	35	15	15	20	10	5	100	
Allied Barton	30	10	12	15	8	0	75	4
National Security	23	8	10	19	6	5	71	6
Universal Protection	29	13	12	16	8	0	78	3
HSS	33	14	14	15	9	0	85	1
G4S Secure Services	29	10	11	16	6	0	72	5
Heritage Security	32	13	13	15	8	0	81	2

The Evaluation Panel unanimously scored HSS, Inc., with the highest points, and by consensus ranked HSS, Inc. as the best qualified respondent because of the depth of company's experience and knowledge of the implementation of security officer services at an airport.

On August 5, 2010, each of the interviewed respondents was notified in writing of the Evaluation Panel's decision.

On August 17, 2010, the Authority and HSS, Inc., completed negotiations and both parties agreed to a revised fee structure for an Agreement which is pending Board approval. Negotiations with HSS, Inc., have resulted in an approximate three and one-half (3.5) percent decrease in billable rates.

#### Background on HSS, Inc.

HSS, Inc., has over 16 years of Transportation Security Regulation (TSR) Part 1542 aviation security services experience at large-hub Security Category X\* (e.g., Denver International Airport) and Category I (e.g., Portland International Airport). HSS was awarded Designation and Certification status by the Department of Homeland Security as an "Approved Product for Homeland Security" under the Support Anti-terrorism by Fostering Effective Technologies (SAFETY) Act of 2002. As such, they have a wide range of experience interacting with TSA; and with the implementation of Security Directives and increased security measures at commercial airports. HSS, Inc., has over 2,500 security personnel (with over 600 employees in California) serving airports,

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\***Security Category** is a designation given to an airport to mark the amount of traffic flow, security strategic importance and the associated security requirements. If an airport has high traffic, a large amount of commerce or hotels, or major infrastructure such as dams, military bases or historical landmarks, they would likely be designated with the highest level Category X with Category IV being the lowest designation. SAN is a Category I Airport.

municipals, and private clients in 12 states with offices supporting their operations in each state and satellite/corporate regional offices in Brea, California; Dublin, California; and Orlando, Florida. Currently, they are the primary security contractor for Denver International Airport, Orlando International Airport, Portland International Airport, and General Mitchell International Airport in Milwaukee; and recently recommended for award at Hartsfield-Jackson Atlanta International Airport.

### Recommendation

Therefore, Staff recommends:

- 1) the Board authorize the President-CEO to execute an agreement with HSS, Inc., for contract security services for five (5) years including two (2) one-year options in a not-to-exceed amount of fifteen million dollars (\$15,000,000); and
- 2) should the process with HSS, Inc., fail, the Board authorizes the President-CEO to execute an agreement, under the same terms (including a 3.5% or more fee reduction in billable rates over those initially proposed), with the second qualified respondent.

Additionally, the proposed not-to-exceed amount of the Agreement allows for contingencies to be addressed as directed by TSA and coverage of additional interior and exterior posts required under the Green Build and Northside Development programs. The difference between the calculated base-level of services and the proposed contract amount allows for an approximate twenty-five (25) percent contingency to address unplanned TSA mandates over the term of the Agreement.

### **Fiscal Impact:**

The budget for this Agreement has sufficient remaining funds to cover these actions. The Agreement budget is in the Aviation Security & Public Safety Department budget.

### **Environmental Review:**

- A. CEQA: This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

**Equal Opportunity Program:**

The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has a Disadvantaged Business Enterprise ("DBE") Plan as required by the Department of Transportation, 49 CFR Part 26. The DBE Plan calls for the Authority to submit an annual overall goal for DBE participation on all federally funded projects.

This project does not utilize federal funds; therefore, it will not be applied toward the Authority's over-all DBE goal.

**Prepared by:**

GEORGE CONDON  
DIRECTOR, AVIATION OPERATIONS AND PUBLIC SAFETY

September 23, 2010

The Honorable Board Members of the  
San Diego County Regional Airport Authority  
3225 North Harbor Drive  
Third Floor, Commuter Terminal  
San Diego, CA 92101

Re: **The Security Officer Services Contract**

Honorable Board Members:

My name is Robert Olislagers, and I am Chief Executive Officer of the Arapahoe County Public Airport Authority, and Executive Director of Centennial Airport in Denver, Colorado. I am a board member of HSS Inc., the staff recommended awardee of the San Diego County Regional Airport Authority Contract for Security Officer Services. **I respectfully request that the Honorable Board take a moment to consider my reasons for supporting the award of this contract to HSS Inc. as follows:**

- **I have been involved with airports and national and international security since well before the events of September 11, 2001.** I am an accredited airport executive with nearly 30-years experience, including general aviation and air carrier airports. I have studied national and international security at the Air War College and Harvard University. At present, I serve at the pleasure of the Department of Homeland Security, Transportation Security Administration as an advisor on general aviation security matters, and I serve as chair of the General Aviation Security Committee for the American Association of Airport Executives. Therefore, I believe I am reasonably qualified to state that the security of our nation's airports remains central in the fight against terrorism and, as such, there is no substitute for experience or room for on-the-job training.
- **HSS Inc. was determined by Authority Staff to be the best and most experienced contractor, and scored highest overall in the most important RFP category, experience and skill.** This was an extensive, full, fair, and open process. Please allow the objective facts to be the guiding and determining factors.
- Heritage Security Services, which finished second in the competition for this contract, does not have any experience with airports the size of the San Diego International Airport. **Although Heritage does have some limited airport experience in San Diego County, the order of magnitude in passenger throughput, including international travelers, simply does not translate into the kind of experience needed at Lindbergh Field.**
- As an ASC, certified to manage security at air carrier airports, and as director of one of the busiest general aviation airports, I know the difference between security at small airports and large air carrier airports. In this regard, there really is no comparison between the experience of HSS Inc. and Heritage, the latter of which provided guard services at Palomar Airport, a facility I once managed.

Honorable Board Members  
September 23, 2010  
Page 2

- HSS Inc. is one of the few security contractors that have been SAFETY Act Certified by the Department of Homeland Security. The benefits of SAFETY Act Certification are well-known to the Authority, which identified SAFETY Act Certification as a desirable factor in the RFP. HSS Inc.'s status as SAFETY Act Certified, which Heritage does not have, should be specifically considered in the Board's decision.

In closing, please know that I am only interested in the security of our nation's airports, and although I serve on the board of HSS Inc., I receive no compensation for my services.

**I would like to thank you very much for your time and consideration of my letter, which should be made part of the public record, and I am pleased to answer any questions or comments that you may have.**

Respectfully Yours,

A handwritten signature in black ink, appearing to read 'RO' followed by a stylized flourish.

Robert Olislagers  
7800 S. Peoria Street,  
Englewood, CO 80112  
303.790.0598 | 303.218.2907

cc: Thella F. Bowens, President/CEO SDRCAA  
Breton K. Lobner, SDCRAA General Counsel  
Jana Vargas, SDCRAA Director of Procurement  
Michael Lanam, Vice President, HSS Inc., Aviation & Government Services



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September 21, 2010

**VIA COURIER AND US MAIL**

Tony Russell, Authority Clerk  
San Diego County Regional Airport Authority  
3225 North Harbor Drive  
Third Floor, Commuter Terminal  
San Diego, CA 92101

Re: **Pending Award of Contract for Security Officer Services under Request for  
Proposal issued May 24, 2010 (the "RFP")**

Dear Mr. Russell:

On September 15, 2010, we sent a letter to Ms. Thella F. Bowens and the Honorable Board on behalf of our client HSS, Inc., regarding the pending award of the Contract for Security Officer Services. There was a typo on page six of that letter. Please find enclosed a corrected version of page six for inclusion in the official record. Thank you.

Very truly yours,

McKenna Long & Aldridge LLP

  
G. William (Bill) VanDeWeghe, Jr.

Penny Pittman Cobey

Enclosure

SD:22180853.1

contract to another firm.”<sup>6</sup> On August 5, 2010, Alan Parker, Senior Procurement Analyst for the Authority, notified HSS that staff had recommended HSS for award of the Security Officer Services Contract. Neither Heritage nor any other proposer submitted a protest within the protest period specified in the RFP. Consequently, under the rules of the RFP, Heritage waived any right to protest after the deadline passed.<sup>7</sup>

Shortly after its August 5, 2010 notification to HSS, the Authority opened contract negotiations with HSS and achieved a material discount in HSS’s initially proposed hourly rates.<sup>8</sup> Although the Authority’s June 11, 2010 Question & Answer document stated that “this contract will not require Board approval,”<sup>9</sup> Mr. Parker informed HSS that the final agreement was conditioned on Board approval.<sup>10</sup>

b. Heritage Did Not Pursue A Timely Protest And Encouraged A Reevaluation of the Selection of HSS Based on an Improper Criteria Under the RFP

On September 2, 2010, Authority staff recommended that the Board confirm the results of the merit-based selection process and adopt Resolution No. 2010-0097, which would have authorized the Authority to execute the Contract with HSS. The Board declined to do so after hearing from Heritage’s lobbyist, John Dadian of Dadian & Associates, Inc., that Heritage should have been awarded the Security Officer Services Contract because it is a local San Diego business. However, Heritage’s actions prior to and on September 2, 2010, violated Section 9.G. of the RFP, which identifies the “mandatory” procedures for bid protests and limits Heritage’s rights to raise any objections at this point:

The procedure and time limits set forth in this paragraph are mandatory and are the Respondent’s sole and exclusive remedy in the event of protest. Failure by a party originating a protest to comply with these procedures shall constitute a waiver of any right to further pursue the protest . . . .

Heritage also has no basis in law to raise a locality preference at this point given the published criteria in the RFP. First, the RFP did not advise the respondents that local businesses would be given preference, as it could have done under the Authority’s Local Business Opportunities Policy (i.e., Policy 5.13). Second, the Authority explicitly stated in its June 16, 2010, Question & Answer Document that no preference would be given to local businesses. Third, there is no rational basis for a locality preference in this Contract, since under the Contract

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<sup>6</sup> Section 9.G. of the RFP.

<sup>7</sup> Section 9.G.7. of the RFP.

<sup>8</sup> HSS had already indicated in the cover letter submitted with its proposal that it had no objection to any terms included in the Authority’s draft Contract.

<sup>9</sup> See Security Officer Services—RFP, Questions & Answers Document # Two, June 11, 2010, Question 3.

<sup>10</sup> Authority Policy Statement 5.01(1)(c) confirms that the Board was only required to be “informed” of the award. HSS is presently investigating this issue and reserves the right to challenge the Board’s assertion that it has any right of approval over the Contract, as such would violate its own policy statement.

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September 15, 2010

**VIA COURIER AND US MAIL**

**REQUEST TO SPEAK AT PUBLIC MEETING/  
MAKE LETTER PART OF OFFICIAL RECORD**

Thella F. Bowens, President/CEO &  
The Honorable Board Members of the  
San Diego County Regional Airport Authority  
3225 North Harbor Drive  
Third Floor, Commuter Terminal  
San Diego, CA 92101

**Re: Pending Award of Contract for Security Officer Services under Request for  
Proposal issued May 24, 2010 (the "RFP")**

Dear Ms. Bowens and Honorable Board Members:

We represent HSS Inc., the recommended awardee of the San Diego County Regional Airport Authority Contract for Security Officer Services (the "Contract"). Heritage Security, an unsuccessful bidder, is now trying to upset the pending Contract award, claiming that the Contract should instead go to itself, a local business. We respectfully request that HSS be granted the opportunity to publicly address the Board at the next available opportunity to discuss HSS's position on this topic. In the meantime, please take a moment to consider the points set forth in this letter, and please make this document a part of the public record.

**Safety and Commitment to the Community:**

- HSS was determined by Authority staff and aviation security experts, following an exhaustive and highly transparent evaluation process, to be the best choice to provide security for Lindbergh Field—the most important aspect of this competition.
- HSS offers proven security services that are focused on aviation security, unlike some of HSS's competitors, which adapt generalized commercial security approaches to airport facilities, and lack the critical experience HSS has with large international airports. (This was made clear in HSS's response to the RFP.)

- HSS also offers, at no additional cost to the Authority, SAFETY Act liability protection that not only protects HSS from devastating liability in the event of an act of terrorism, but also protects the Authority from liability arising from HSS services. (This was made clear in HSS's response to the RFP.) Heritage does not offer SAFETY Act protection.
- HSS has committed to the Authority that it will share at least 20 percent, or a minimum of \$600,000 each year, of the revenue derived from the Contract with a San Diego-based Small Business Enterprise. (This was made clear in HSS's response to the RFP.)
- HSS is the right choice for San Diego employees: HSS has a proven track record of providing its employees with excellent training, career development opportunities, performance-based incentives, and industry-leading wages and benefits. (This was made clear in HSS's response to the RFP.)

The Integrity of the Authority's RFP Process is at Jeopardy:

- The Authority assured bidders during the RFP process that there would be no preference for local businesses. Indeed, the Authority's official Questions and Answers for Proposers issued on June 16, 2010 stated as follows:

Q. What is the preference given to a Local Business? A. None.

- This is important because California law requires that public agencies make these types of decisions based on the evaluation criteria identified in the RFP—not on an undisclosed desire to grant special consideration to local companies.
- In violation of the RFP's plain rules, and long after the deadline for bid protests had expired, Heritage raised its complaints directly to the Board at the last minute. Granting an award to Heritage would set a bad precedent by encouraging bidders to disregard RFP rules and deadlines, and discouraging the best and most capable out-of-town businesses from bidding on future Authority contracts. In order to maintain the integrity of the Authority's bidding process now and into the future, the Authority must not allow Heritage to benefit from its actions.
- At this point, the only way to ensure that the Authority receives the benefits of a fair and complete RFP process is to uphold the recommended award of the Authority's selection panel, which correctly applied the evaluation criteria set forth in the RFP and found HSS to be the best choice. This is because, after recommending that HSS be awarded the Contract, HSS's competitors, including Heritage, have submitted Public Records Act requests allowing them to discover the contents of HSS's winning bid proposal, and likely the proposals of all of the top candidates. Any re-opening of the bid process would thus be patently unfair.
- In summary, the selection of Heritage or any other firm for the Security Officer Services Contract, or a decision to reissue the RFP for the Contract under these circumstances, would be unwise, unfair, unlawful, and inequitable.

## **DISCUSSION**

### **1. HSS Is The Best Choice For Lindbergh Field And The San Diego Community**

#### **a. The Safety of Lindbergh Field is at Stake**

As determined by the evaluation panel, which consisted of staff from Aviation Security and Public Safety, Airside Operations, Landside Operations, and the San Diego Harbor Police Department, HSS is simply the best choice to provide security services to the San Diego International Airport. HSS has been providing TSR 1542 security services at large-hub, Category X and I airports for over 16 years. Included among these airports are the Denver International Airport (the nation's largest land mass airport and its fourth busiest), Orlando International Airport (one of the nation's top destination airports), Portland International Airport, and Mitchell International Airport (Milwaukee). Moreover, HSS was recently recommended for the award of an airport security services contract at Hartsfield-Jackson Atlanta International Airport—the nation's busiest airport. On an annual basis, HSS controls, logs, and verifies over 5,600,000 entry and exit transactions at the security gate checkpoints at Denver and Orlando International Airports combined.

HSS's employees and consultants identified in its proposal and presentation hold advanced certifications and have extensive experience in aviation security. Indeed, Jeff Price, who is identified as one of HSS's key assets on page six of its proposal, wrote the only textbook on aviation security and provides aviation security training to HSS's employees.<sup>1</sup> Lori Beckman, also identified as one of HSS's key assets in its proposal, has served as Denver International Airport's Director of Security for 22 years.<sup>2</sup> In short, HSS's security program is not a generalized commercial security service that is adapted where necessary to fit airport facilities, like the programs offered by HSS's competitors; it is a proven specialized program that is focused on aviation security.

Equally important for the Board to consider is the fact that of the highest three ranked competitors for this Contract, only HSS successfully completed the Department of Homeland Security's rigorous SAFETY Act application process in 2007, and is now SAFETY Act Certified for all aviation security-related services. SAFETY Act Certification protects HSS and its customers from third-party claims arising out of an act of terrorism involving HSS security services. Hiring a contractor with SAFETY Act coverage not only protects HSS from devastating liability in the event of an act of terrorism, but it also will protect the Authority from liability arising from HSS services. Although not a requirement of the Authority's RFP, SAFETY Act Certification, which offers the highest level of coverage, was clearly identified as "desirable" in Section 1.D. of the RFP.

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<sup>1</sup> Jeffrey Price et al., *Practical Aviation Security: Predicting and Preventing Future Threats* (Elsevier Science, November 2008).

<sup>2</sup> Lori Beckman also served as a deputy operations manager for the San Diego International Airport early in her career.

In contrast, Heritage has less than one year of experience providing airport security to three small general aviation, small-craft airports in San Diego. Heritage has certainly not specialized in airport security, and instead offers security services better tailored to securing concerts, dances, weddings, picnics, and sporting events, as the company's own website indicates. Given its limited aviation experience, it comes as no surprise that Heritage is not SAFETY Act Certified and obviously cannot offer the liability protections afforded by the SAFETY Act for critical airport environments. It is also not surprising that the evaluation panel scored HSS highest on its ability to provide security services to major international airports—certainly the most important consideration in awarding the Contract.

b. HSS is Committed to the San Diego Community

HSS is a privately owned corporation that has been in business since 1967. Although it is based in Denver, Colorado, HSS already has a strong presence in California, operating two corporate offices in this state. If awarded the Security Officer Services Contract, HSS will establish a new corporate office in San Diego. In fact, HSS has already leased office space in San Diego and procured a business license to service the San Diego International Airport based on the Authority's selection of HSS as the Contract's recommended awardee.

HSS has also committed to the Authority that at least 20 percent or a minimum of \$600,000 each year from the total annual revenue derived from the Contract, will be allocated to certified small and disadvantaged businesses in San Diego. In order to ensure that this commitment is met each year, HSS has volunteered to submit to audits by the Authority. Furthermore, HSS received the Small Business Advocate of the Year Award from the Orlando International Airport just last year based on its similar efforts at that location.

HSS's employees are provided with excellent training, career development opportunities, performance-based incentives, and industry-leading wages and benefits. As a result, HSS has an impressive 92.9 percent employee retention rate, and over 90 percent of the current security officers located at the San Diego International Airport have indicated a desire to join HSS.

**2. The Integrity Of The Authority's Contracting Process Will Be Compromised If The Recommended Awardee Is Changed**

a. HSS Was The Recommended Awardee Of The Security Officer Services Contract Based On The Evaluation And Selection Criteria Published In The RFP

The Authority issued the Security Officer Services RFP on May 24, 2010.<sup>3</sup> The Contract is for an amount not to exceed \$15,000,000 for a three-year term with two one-year extensions at

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<sup>3</sup> The services requested in the RFP include: perimeter security and access control functions, alarm monitoring of the Airport's Security Operations Center (SOC), securing access portals in the terminal Sterile Areas, and providing personnel and vehicle inspections as directed by the Transportation Security Administration (TSA). More specifically, these functions include: monitoring of over three hundred (300) access control alarm points, managing and monitoring advanced surveillance equipment, coordinating dispatch of San Diego Harbor Police officers,

*(footnote continued on next page)*

the option of the Authority. The RFP identified five, and only five, evaluation and selection criteria: (1) “Experience and Skill”; (2) “Primary Staff”; (3) “Work Plan”; (4) “Fees”; and (5) “Interview.” The RFP also identified a preference for small businesses pursuant to the Authority’s Small Business Preference Policy 5.12. There was, however, no preference to be given for local businesses in the RFP, even though the Authority has a Local Business Opportunities Policy (i.e., Policy 5.13) and could have specified the same in the RFP as a selection factor. On the contrary, the Authority’s Questions and Answers for proposers issued June 16, 2010, expressly stated that there would be no preference given to local businesses.<sup>4</sup>

Fifty-two firms downloaded the RFP. The competitive process prior to submission of proposals was highly transparent and included a pre-bid conference and three different sets of written questions and answers responding to 65 questions regarding the RFP. A total of 25 firms, including HSS, submitted timely proposals. The evaluation panel consisted of staff from Aviation Security & Public Safety, Airside Operations, Landside Operations, and the San Diego Harbor Police Department. Based on the scoring of the written proposals, the six highest scoring firms, including HSS, were invited to interview on July 23, 2010. The Authority’s August 5, 2010 Evaluation Memorandum indicated that HSS was the highest scoring firm after the interview process—scoring 85 out of 100 total points.

HSS was the highest scoring firm in four of the five evaluation and selection criteria, and beat or tied Heritage in every evaluation category. Specifically, HSS scored higher than Heritage with a 33 out of 35 in the “Experience and Skill” category—the most heavily weighted and, thus, most important of the five scoring criteria. HSS scored higher than Heritage with a 14 out of 15 in the “Primary Staff” category. HSS scored higher than Heritage with a 14 out of 15 in the “Work Plan” category. HSS scored equal to Heritage with a 15 out of 20 in the “Fees” category—but it should be noted that following contract negotiations, HSS cut its billable rates by 3.5 percent under those initially proposed.<sup>5</sup> And HSS scored higher than Heritage with a 9 out of 10 in the “Interview” category. Neither HSS nor Heritage received any points pursuant to the Authority’s Small Business Preference and, of course, neither firm received any points based on status as a local business. As the Authority explicitly confirmed, no preference would be given to a local business in this process.

Under the terms of the RFP, any protests were to be submitted no later “5:00 p.m. on the 5th business day following notification to the respondent of a recommendation to award the

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*(footnote continued from previous page)*

physical protection of three (3) tenant-accessible perimeter gates, physical protection of access points within the terminal Sterile Areas, physical patrol of all terminal spaces, and providing notifications to Authority personnel regarding other emergency conditions (e.g., fire alarms). Additional duties are assigned as TSA threat conditions and directives may mandate. These duties include physical inspection of vehicles, persons, and their accessible property accessing terminals and sensitive areas of the Airport.

<sup>4</sup> See Security Officer Services—RFP, Questions & Answers Document # Three, June 16, 2010, Question 10.

<sup>5</sup> See Page 2 of the September 2, 2010 SDCRAA Staff Report re: Authorize the President/CEO to Execute an Agreement with HSS, Inc., for Contract Security Services.

contract to another firm.”<sup>6</sup> On August 5, 2010, Alan Parker, Senior Procurement Analyst for the Authority, notified HSS that staff had recommended HSS for award of the Security Officer Services Contract. Neither Heritage nor any other proposer submitted a protest within the protest period specified in the RFP. Consequently, under the rules of the RFP, Heritage waived any right to protest after the deadline passed.<sup>7</sup>

Shortly after its August 5, 2010 notification to HSS, the Authority opened contract negotiations with HSS and achieved a material discount in HSS’s initially proposed hourly rates.<sup>8</sup> Although the Authority’s June 11, 2010 Question & Answer document stated that “this contract will not require Board approval,”<sup>9</sup> Mr. Parker informed HSS that the final agreement was conditioned on Board approval.<sup>10</sup>

b. Heritage Did Not Pursue A Timely Protest And Encouraged A Reevaluation of the Selection of HSS Based on an Improper Criteria Under the RFP

On September 2, 2010, Authority staff recommended that the Board confirm the results of the merit-based selection process and adopt Resolution No. 2010-0097, which would have authorized the Authority to execute the Contract with HSS. The Board declined to do so after hearing from Heritage’s lobbyist, John Dadian of Dadian & Associates, Inc., that Heritage should have been awarded the Security Officer Services Contract because it is a local San Diego business. However, Heritage’s actions prior to and on September 2, 2010, violated Section 9.G. of the RFP, which identifies the “mandatory” procedures for bid protests and limits Heritage’s rights to raise any objections at this point:

The procedure and time limits set forth in this paragraph are mandatory and are the Respondent’s sole and exclusive remedy in the event of protest. Failure by a party originating a protest to comply with these procedures shall constitute a waiver of any right to further pursue the protest . . . .

HSS also has no basis in law to raise a locality preference at this point given the published criteria in the RFP. First, the RFP did not advise the respondents that local businesses would be given preference, as it could have done under the Authority’s Local Business Opportunities Policy (i.e., Policy 5.13). Second, the Authority explicitly stated in its June 16, 2010, Question & Answer Document that no preference would be given to local businesses. Third, there is no rational basis for a locality preference in this Contract, since under the Contract

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<sup>6</sup> Section 9.G. of the RFP.

<sup>7</sup> Section 9.G.7. of the RFP.

<sup>8</sup> HSS had already indicated in the cover letter submitted with its proposal that it had no objection to any terms included in the Authority’s draft Contract.

<sup>9</sup> See Security Officer Services—RFP, Questions & Answers Document # Two, June 11, 2010, Question 3.

<sup>10</sup> Authority Policy Statement 5.01(1)(c) confirms that the Board was only required to be “informed” of the award. HSS is presently investigating this issue and reserves the right to challenge the Board’s assertion that it has any right of approval over the Contract, as such would violate its own policy statement.



HSS will be providing security officers who will live, work, and pay taxes in San Diego. In short, there is no rational or legal basis to consider locality in this instance.

Furthermore, HSS will be a local presence and great for the community. Not only does it intend to open a corporate office in San Diego, it has already leased office space in order to do so. HSS's employees are among the best trained and compensated in the industry. This is why HSS has a 92.9 percent retention rate, and over 90 percent of the security officers currently working at the San Diego International Airport have indicated a desire to join HSS. HSS's commitment to work with small and local businesses has earned the company the Small Business Advocate of the Year award from the Orlando Airport Authority. That track record gives considerable weight to HSS's commitment that at least 20 percent or a minimum of \$600,000 each year from the total annual revenue derived from the Contract will be allocated to certified small and disadvantaged businesses in San Diego.

The Authority's local business preference policy provides that opportunities for local businesses may be maximized to the extent possible while complying with applicable law and "prudent purchasing practices." However, the Security Services Contract for San Diego's international airport is not a run-of-the-mill concessions contract. It addresses one of the most fundamental needs of the traveling public today—the need to be protected against crime and terrorism in our nation's air space. It is in San Diego's best interest, and the interest of travelers across the country and the world, that the absolute best and most capable company secure its airport—not a company with less than a year of regional airport security experience that happens to be based in San Diego. To make a decision on any other grounds would be more than imprudent purchasing, it would be grossly negligent. The RFP process sought to identify the absolute best and most capable competitor, not the best and most capable local competitor, and that is what the process yielded when HSS came out on top.

C. The Only Way to Ensure that the Authority Receives the Benefits of a Fair and Complete RFP Process is to Uphold the Award of the Authority's Selection Panel

Pursuant to Section 9.H. of the Security Officer Services RFP, all proposals were to remain confidential until an award of the Contract. Confidentiality is critical to the RFP process as it protects both the respondents from unfair competition and the issuer from unfair collusion. *See Michaelis, Montanari & Johnson v. Super. Ct.*, 38 Cal. 4th 1065, 1069 (2006) (an RFP confidentiality provision "allows the governmental entity, on behalf of its residents and taxpayers, to complete the negotiations without the proposers knowing each other's price and terms. To make proposals available for public review prior to this time would seriously impact the government's ability to negotiate a fair and cost effective proposed contract.").

The confidentiality of every proposal submitted to the Authority has been compromised since all competitors are now privy to these proposals under the California Public Records Act. As a result, the only way to ensure that the Authority is able to "negotiate a fair and cost effective" contract is to uphold the original award of the Authority's selection panel, which correctly applied the evaluation criteria set forth in the RFP and found HSS not only to be the best choice, but approximately equal to Heritage on pricing (both scored 15 out of 20 points

according to the Authority's August 5, 2010, Evaluation Memorandum). Indeed, as the Authority's own staff stated to the Board during the September 2, 2010 Board meeting, the price difference between HSS and Heritage was so close that, using standardized scoring methods, both had essentially the same price when compared to the other proposers.

Unless the Authority upholds the original award to HSS, it will likely face an onslaught of claims from HSS's competitors that they can meet or beat HSS's pricing. Indeed, the Board has already seen such a claim from Heritage, when Mr. Dadian claimed before the Board on September 2, 2010, that Heritage could beat HSS pricing. But that fact that Heritage received a copy of HSS's confidential proposal under the Public Records Act renders this claim disingenuous. Mr. Dadian certainly could not have made such a bold claim absent HSS's confidential pricing information, and the Board should not permit Heritage or any other company to reap the benefit of this type of unfair competition.

### **3. The Selection Of Heritage Or Any Other Firm For The Security Officer Services Contract Would Be Unwise, Unfair, Unlawful, And Inequitable**

It would be unwise, unfair, unlawful, and inequitable if Heritage or any other company is awarded the Security Officer Services Contract, or if the RFP is reissued based on political pressure from a disgruntled local competitor. *See* Cal. Pub. Con. Code § 12126(d)(2) (noting that protests "shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the solicitation document."); *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 619 F. Supp. 334, 344 (C. D. Cal. 1985) ("a locality cannot, consistent with equal protection guaranties, treat foreign businesses differently than domestic businesses for the sole purpose of discriminating against foreign (or favoring domestic) businesses."); *see also Monterey Mechanical Co. v. Sacramento Regional County Sanitation Dist.*, 44 Cal. App. 4th 1391 (1996) (writ of mandate to enjoin contract award is the proper remedy for award in violation of law); *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority*, 23 Cal. 4th 305, 313 (2000) (finding cause of action for monetary damages against public entity once injunctive relief is no longer available). It would also clearly violate the Equal Opportunity Contracting Statement that binds the Authority as set forth in the RFP.<sup>11</sup> Even the Authority's own General Counsel has publicly warned the Board that it is the Board's "duty" to make its decision based on the selection criteria identified in the RFP—not an undisclosed desire to play favorites to local companies.<sup>12</sup>

The Board would also be making good policy, and setting good precedent, in affirming the merit-based award for this important Contract to HSS. Disregarding Authority staff's carefully managed, highly transparent evaluation process would encourage future Authority contractors to: (1) withhold their best pricing from the Authority until after a contract has been awarded in order to later claim they are cheaper; (2) ignore mandatory bid protest rules; and (3) make last-minute political pitches. Instead of bowing to political pressure after the stated

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<sup>11</sup> Section 10. A. of the RFP.

<sup>12</sup> *See* web cast of September 2, 2010 Meeting on [http://www.san.org/sdcraa/leadership/board\\_meetings.aspx](http://www.san.org/sdcraa/leadership/board_meetings.aspx).

deadline has passed, the Board as a matter of policy should do the complete opposite: it should signal clearly to bidders that political pressure will not be permitted to derail an objective, merit-based selection process, and that deadlines must be respected. Any other action will only encourage future contractors to disregard the rules and engage in untimely lobbying of the Board prior to every contract award. Further, it will discourage out-of-state contractors from bidding in the future and narrow the field of sophisticated, first-class contractors willing to work for the Authority. After all, what qualified contractor—from San Diego or elsewhere—is going to want to expend thousands, if not hundreds of thousands, of dollars on a proposal to the Authority if local interests are allowed to derail the staff's selection process at the last minute?

In summary, "The competitive bidding process is intended to assure a healthy degree of competition, to guard against discrimination, favoritism, or extravagance, and to assure the best social, environmental, and economic result for the public." *Michaelis, Montanari & Johnson v. Super. Ct.*, 38 Cal. 4th 1065, 1073 (2006). None of these goals will be served if the Board denies HSS, the recognized winner of the RFP, the Contract as a result of the action Heritage has taken.

#### **4. The Board Should Do The Right Thing And Award The Contract To HSS**

HSS entered this competition expecting only good faith and fair dealing from the Authority. HSS followed the RFP process to the letter and came out the clear winner after an exhaustive competition. In an improper attempt to avoid the Authority's own rules, Heritage disregarded the RFP's protest deadlines and waiver provision, misused HSS's confidential proposal to claim that it was cheaper than HSS, and raised an improper issue that was not a selection factor in the RFP. Safety should be the first and foremost concern of the Authority.

HSS is hopeful that it will receive good faith and fair dealing from the Authority in return. Awarding the contract to HSS is the right thing to do, and in the best interest of the Authority, the community, and all that travel through our airport.

Very truly yours,

McKenna Long & Aldridge LLP

  
G. William (Bill) VanDeWeghe, Jr.

Penny Pittman Cobey

cc: Breton K. Lobner, SDCRAA General Counsel  
Jana Vargas, SDCRAA Director of Procurement  
Michael Lanam, Vice President, HSS Aviation & Government Services