



U.S. Department
of Transportation
Federal Highway
Administration

JUN 01 2011

1200 New Jersey Avenue, SE
Washington, D.C. 20590

In Reply Refer To: HCR-40
DOT #2009-0229

(b) (6)

Dear (b) (6):

This is in reference to your complaint of discrimination against the North Carolina Department of Transportation (NCDOT) alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes (Title 23, United States Code, Section 324 and the Age Discrimination Act of 1975). The Federal Highway Administration (FHWA) has completed its investigation. The issues raised in your complaint are addressed below:

Issue #1: Whether the NCDOT rejected your bid to perform custodial services at the Warren County Rest Area and Welcome Center on I-85 (NCDOT bid #54-DO-1050922) because of your race (African American), color, sex (male), and age.

- The record shows that you were the contractor for the Warren County facility in 2007.
- The record shows that you informed the NCDOT of your intention to cancel the contract by letter to the NCDOT dated May 27, 2007. The cancellation letter requested that the NCDOT accept your letter as the required 60-day notice effective June 1, 2007.
- The NCDOT sent a request for proposals dated May 31, 2007, to complete the custodial operations at the Warren County facility because your firm cancelled its contract for the operations at the facility.
- The record shows that even though you cancelled your contract for the Warren County facility, you submitted a bid. However, the NCDOT did not consider your firm as the best choice since you cancelled your contract.
- The new contract for the Warren County facility was awarded to a firm owned by a Caucasian female.



- Although the firm selected was owned by a Caucasian female, there is no evidence to support your claim that your race, color, sex, or age was the reason for your non-selection for the contract.

Issue #2: Whether the NCDOT retaliated against you because you filed a complaint of discrimination by placing your firm in default and failing to renew your existing contracts while you were working on the Robeson County contract.

- The record shows that on August 20, 2008, you were found to be in default on the Robeson County contract because of unsatisfactory performance regarding high incidences of non-compliance, late payroll payments to employees, and non-payment to vendors.
- The NCDOT's policy indicates that contractors found in default on an existing custodial, maintenance, and/or lawn and grounds maintenance rest area contract will not be considered for award of future contracts or extensions of current contracts, until the contractor can demonstrate the requirements outlined in the new Complete Custodial Operations and Maintenance Proposal and/or the Complete Professional Lawn and Grounds Maintenance Rest Area Proposal.
- The NCDOT's policy further indicates that after 1 year from the date of a default notification, the contractor is eligible to present documentation to the Department to show he/she is capable of meeting the requirements outlined in the new Complete Professional Lawn and Grounds Maintenance Rest Area Proposal.
- The record does not show that you requested reinstatement of your bidding rights after the 1 year timeframe expired.
- The record shows that there were four firms, including your firm, with custodial contracts that were placed in default for unsatisfactory performance. There was no evidence to show that these firms had filed a complaint against the NCDOT.
- The record shows that there were also four firms, including your firm, with custodial contracts that were not renewed because of the G.S. 136-28.10 clause which prohibits the NCDOT from exceeding the \$500,000 contract limit for Small Business Enterprise projects. There was no evidence to show that these firms had filed a complaint against the NCDOT.

Conclusion:

- The record shows that even though the Warren County contract was awarded to a firm owned by a Caucasian female, there is no evidence to support your claim that your non-selection was based on discriminatory factors.
- The record also shows that your non-selection was based on the fact that you cancelled your contract with the NCDOT and then submitted a bid on the new contract which was designed to complete the work remaining at the Warren County facility as a result of your cancellation of the contract.

- The record further shows that you were awarded at least two contracts by the NCDOT in 2008 after your unsuccessful bid on the Warren County contract cited in the complaint.
- There is no evidence to support your claim that the NCDOT's decision to find your firm in default and not renew your existing contracts was the result of retaliation.

Based on the foregoing evidence, the FHWA does not find that there was a violation of Title VI and related statutes (Title 23, United States Code, Section 324 and the Age Discrimination Act of 1975) as alleged in the complaint.

This concludes processing of this matter and no further action will be taken by the FHWA.

Sincerely yours,

A handwritten signature in cursive script that reads "Brenda F. Armstead". The signature is written in black ink and is positioned above the printed name and title.

Brenda F. Armstead
Director, Investigations and Adjudications



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of Transportation
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1200 New Jersey Avenue, SE
Washington, D.C. 20590

In Reply Refer To: HCR-40
DOT #2009-0229

Mr. Philip Bickham
Director
Office of Civil Rights
North Carolina Department of Transportation
1511 Mail Service Center
Raleigh, North Carolina 27699-1511

Dear Mr. Bickham:

This is in reference to the complaint of discrimination filed by (b) (6) (complainant) against the North Carolina Department of Transportation (NCDOT) alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI), and related statutes (Title 23, United States Code, Section 324 and the Age Discrimination Act of 1975). The Federal Highway Administration (FHWA) has completed its investigation. The issues raised in the complaint are addressed below:

Issue #1: Whether the NCDOT rejected the complainant's bid to perform custodial services at the Warren County Rest Area and Welcome Center on I-85 (NCDOT bid #54-DO-10509922) because of his race (African American), color, sex (male), and age.

- The record shows that the complainant was the contractor for the Warren County facility in 2007.
- The record shows that the complainant informed the NCDOT of his intention to cancel the contract by letter to the NCDOT dated May 27, 2007. The cancellation letter requested that the NCDOT accept the complainant's letter as the required 60-day notice effective June 1, 2007.
- The NCDOT sent a request for proposals dated May 31, 2007, to complete the custodial operations at the Warren County facility because the complainant's firm cancelled its contract for the operations at the facility.
- The record shows that even though the complainant cancelled his contract for the Warren County facility, he submitted a bid. However, the NCDOT did not consider his firm as the best choice since he cancelled his contract.



- The new contract for the Warren County facility was awarded to a firm owned by a Caucasian female.
- Although the firm selected was owned by a Caucasian female, there is no evidence to support the claim that the complainant's race, color, sex, or age was the reason for his non-selection for the contract.

Issue #2: Whether the NCDOT retaliated against the complainant because he filed a complaint of discrimination by placing his firm in default and failing to renew his existing contracts while he was working on the Robeson County contract.

- The record shows that on August 20, 2008, the complainant was found to be in default on the Robeson County contract because of unsatisfactory performance regarding high incidences of non-compliance, late payroll payments to employees, and non-payment to vendors.
- The NCDOT's policy indicates that contractors found in default on an existing custodial, maintenance, and/or lawn and grounds maintenance rest area contract will not be considered for award of future contracts or extensions of current contracts, until the contractor can demonstrate the requirements outlined in the new Complete Custodial Operations and Maintenance Proposal and/or the Complete Professional Lawn and Grounds Maintenance Rest Area Proposal.
- The NCDOT's policy further indicates that after 1 year from the date of a default notification, the contractor is eligible to present documentation to the Department to show he/she is capable of meeting the requirements outlined in the new Complete Professional Lawn and Grounds Maintenance Rest Area Proposal.
- The record does not show that the complainant requested reinstatement of his bidding rights after the 1 year timeframe expired.
- The record shows that there were four firms, including the complainant's firm, with custodial contracts that were placed in default for unsatisfactory performance. There was no evidence to show that these firms had filed a complaint against the NCDOT.
- The record shows that there were also four firms, including the complainant's firm, with custodial contracts that were not renewed because of the G.S. 136-28.10 clause which prohibits the NCDOT from exceeding the \$500,000 contract limit for Small Business Enterprise projects. There was no evidence to show that these firms had filed a complaint against the NCDOT.

Conclusion:

- The record shows that even though the Warren County contract was awarded to a firm owned by a Caucasian female, there is no evidence to support the claim that the complainant's non-selection was based on discriminatory factors.

- The record also shows that the complainant's non-selection was based on the fact that he cancelled his contract with the NCDOT and then submitted a bid on the new contract which was designed to complete the work remaining at the Warren County facility as a result of his cancellation of the contract.
- The record further shows that the complainant was awarded at least two contracts by the NCDOT in 2008 after his unsuccessful bid on the Warren County contract cited in the complaint.
- There is no evidence to support the claim that the NCDOT's decision to find the complainant's firm in default and not renew his existing contracts was the result of retaliation.

Based on the foregoing evidence, the FHWA does not find that there was a violation of Title VI and related statutes (Title 23, United States Code, Section 324 and the Age Discrimination Act of 1975) as alleged in the complaint.

This concludes processing of this matter and no further action will be taken by the FHWA.

Sincerely yours,



Brenda F. Armstead
Director, Investigations and Adjudications

cc:

Ms. Sharon Lipscomb, Title VI Manager, NCDOT

Mr. John Sullivan, Division Administrator, FHWA, HDA-NC

Ms. Lynise DeVance, Civil Rights Program Manager, FHWA, HDA-NC