



U.S. Department
of Transportation
Federal Highway
Administration

MAY 31 2011

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

In Reply Refer To: HCR-40
DOT #2009-0135

(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), based on your race (African American). The Federal Highway Administration (FHWA) has completed its investigation. The issues raised in your complaint are addressed below:

Issue #1: Whether the NCDOT failed to follow proper procedures when it declared you in default on your I-40, McDowell County contract and suspended your bidding privileges for Division 13 contracts until July 1, 2009.

- and -

Issue #2: Whether the NCDOT failed to correct the improper suspension of your bidding privileges after it determined that proper procedures were not followed.

- Records show that you had a contract with the NCDOT to perform vegetation removal within the above-referenced project limits. The original availability date of the contract was January 29, 2008.
- You stated that from the first day your crew arrived at the job site, they were treated in a racially hostile and abusive manner by the NCDOT's Construction Maintenance Engineer. Your crew was asked to cut vegetation outside the project limits and repair pre-existing damage to the shoulder of the road.
- You left the job site and refused to return until the racially hostile and abusive treatment was addressed by the NCDOT.
- In letters dated April 21 and 24, 2008, the NCDOT's District Engineer informed you of the Department's intention to find you in default of the contract because you left the job site and had not completed any work since April 1, 2008. In addition, you were informed that possible



sanctions included: assessment of liquidated damages, suspension of bidding privileges on Division 13 contracts for a period of 24 months, and non-renewal of existing purchase order contracts. You were given 7 days to respond in writing before the NCDOT made a final decision.

- In an e-mail dated May 6, 2008, you outlined six reasons why you had not returned to the job site. Due to the problems, you stated that the best result was for you to leave the site until the NCDOT fixed the problems.
- In a letter dated June 16, 2008, the NCDOT's District Engineer responded to your e-mail dated May 6, 2008, and informed you that the Department found you to be in default of your contract. The NCDOT also suspended your bidding privileges for Division 13 contracts until July 1, 2009.
- The NCDOT's Chief Engineer asked the NCDOT's Construction Unit to conduct a review of your contract. The review was based on a complaint that you filed with the NCDOT which outlined your issues of concern. The review also included the quality of your work and management of the project.
- In a memorandum dated August 28, 2008, the NCDOT's Construction Unit provided its findings which indicated that proper procedures were not followed in the suspension actions taken against your firm.
- Records show that you were verbally informed on July 23, 2008, September 29, 2008, and January 16, 2009, that your bidding privileges were not suspended. Therefore, you were free to bid on any projects.
- Records show that you were provided written confirmation on October 13, 2008 and February 18, 2009, that your bidding privileges were not suspended; no liquidated damages were assessed; you were paid for work performed; and the contract was closed.
- Investigation disclosed that you currently have a contract on a NCDOT project.

Conclusion:

- The record shows that the NCDOT did not follow proper procedures when it suspended your firm's bidding privileges. However, the record shows that the NCDOT took appropriate action to correct its mistake and informed you of the correction verbally and in writing.
- The record further shows that there was no economic loss to your firm as a result of the actions taken by the NCDOT.

Issue #3: Whether the NCDOT rejected your bid for Project Number 13.201111 in Buncombe County.

- Records show that bid openings were held in June, October, and November 2008.

- Your firm was the only bidder in June 2008. You were informed that all bids were rejected and that the project might be re-advertised at a later date.
- The NCDOT stated that it did not accept your bid in June 2008 because during the pre-bid meeting, you stated that there was not enough time to complete the project. After receiving only one bid on the proposal, the NCDOT modified the time available to complete the work and re-advertised the proposal in October and November 2008.
- There were no bidders in October 2008.
- There were eight bidders in November 2008. Your firm did not submit a bid.
- Records show that on July 23, 2008, September 29, 2008, and January 16, 2009, you were verbally informed that your suspension was rescinded. You were also informed in writing on October 13, 2008 and February 18, 2009. Therefore, you could have submitted bids in October and November 2008.
- Records show that the NCDOT cancelled the contract due to budget constraints; therefore, no firm was awarded the contract.

Issue #4: Whether the NCDOT failed to renew your existing Rutherford County contract, WBS Element 13.208111, 13.208121 and awarded the contract to another contractor at a higher price than you agreed to perform the work.

- Records show that the NCDOT had an option to extend the contract for 2 additional periods of 1 year each (maximum 3 years total).
- Records show that the NCDOT chose not to renew your contract because it added long arm mowing to the routine mowing contract for Rutherford County.
- Records show that the contract was advertised on January 7, 2008, and opened on February 20, 2008. You did not bid on the contract. The contract was awarded to the lowest responsible bidder.

CONCLUSION:

Issues #1 and #2 –

- The record shows that the NCDOT did not follow proper procedures when it suspended your firm's bidding privileges. However, the record shows that the NCDOT took appropriate action to correct its mistake and informed you of the correction verbally and in writing.
- The record further shows that there was no economic loss to your firm as a result of the actions taken by the NCDOT.

Issue #3 -

- The NCDOT cancelled the contract in Buncombe County due to budget constraints; therefore, no firm was awarded the contract.

Issue #4 -

- The NCDOT had the option to renew your contract and chose not to.
- The NCDOT advertised the contract.
- You did not submit a bid on the contract.
- The contract was awarded to the lowest responsible bidder.

DECISION:

Based on the foregoing evidence, the FHWA does not find that there were violations of Title VI as alleged in the complaint.

This concludes processing of this matter and no further action will be taken by the FHWA. However, this does not preclude you from pursuing a private right of action by filing in the appropriate U.S. District Court.

Sincerely yours,



Brenda F. Armstead
Director, Investigations and Adjudications



U.S. Department
of Transportation
**Federal Highway
Administration**

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

MAY 31 2011

In Reply Refer To: HCR-40
DOT #2009-0135

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), based on his race (African American). The Federal Highway Administration (FHWA) has completed its investigation. The evidence reviewed during the investigation shows the following:

Issue #1: Whether the NCDOT failed to follow proper procedures when it declared the complainant in default on his I-40, McDowell County contract and suspended his bidding privileges for Division 13 contracts until July 1, 2009.

- and -

Issue #2: Whether the NCDOT failed to correct the improper suspension of the complainant's bidding privileges after it determined that proper procedures were not followed.

- Records show that the complainant had a contract with the NCDOT to perform vegetation removal within the above-referenced project limits. The original availability date of the contract was January 29, 2008.
- The complainant stated that from the first day his crew arrived at the job site, they were treated in a racially hostile and abusive manner by the NCDOT's Construction Maintenance Engineer. The complainant's crew was asked to cut vegetation outside the project limits and repair pre-existing damage to the shoulder of the road.
- The complainant left the job site and refused to return until the racially hostile and abusive treatment was addressed by the NCDOT.



- In letters dated April 21 and 24, 2008, the NCDOT's District Engineer informed the complainant of the Department's intention to find him in default of the contract because he left the job site and had not completed any work since April 1, 2008. In addition, the complainant was informed that possible sanctions included: assessment of liquidated damages, suspension of bidding privileges on Division 13 contracts for a period of 24 months, and non-renewal of existing purchase order contracts. The complainant was given 7 days to respond in writing before the NCDOT made a final decision.
- In an e-mail dated May 6, 2008, the complainant outlined six reasons why he had not returned to the job site. Due to the problems, he stated that the best result was for him to leave the site until the NCDOT fixed the problems.
- In a letter dated June 16, 2008, the NCDOT's District Engineer responded to the complainant's e-mail dated May 6, 2008, and informed him that the Department found him to be in default of his contract. The NCDOT also suspended his bidding privileges for Division 13 contracts until July 1, 2009.
- The NCDOT's Chief Engineer asked the NCDOT's Construction Unit to conduct a review of the complainant's contract. The review was based on a complaint that the complainant filed with the NCDOT which outlined his issues of concern. The review also included the quality of his work and management of the project.
- In a memorandum dated August 28, 2008, the NCDOT's Construction Unit provided its findings which indicated that proper procedures were not followed in the suspension actions taken against the complainant's firm.
- Records show that the complainant was verbally informed on July 23, 2008, September 29, 2008, and January 16, 2009, that his bidding privileges were not suspended. Therefore, he was free to bid on any projects.
- Records show that the complainant was provided written confirmation on October 13, 2008 and February 18, 2009, that his bidding privileges were not suspended; no liquidated damages were assessed; he was paid for work performed; and the contract was closed.
- Investigation disclosed that the complainant currently has a contract on a NCDOT project.

Conclusion:

- The record shows that the NCDOT did not follow proper procedures when it suspended the bidding privileges of the complainant's firm. However, the record shows that the NCDOT took appropriate action to correct its mistake and informed the complainant of the correction verbally and in writing.
- The record further shows that there was no economic loss to the complainant's firm as a result of the actions taken by the NCDOT.

Issue #3: Whether the NCDOT rejected the complainant's bid for Project Number 13.201111 in Buncombe County.

- Records show that bid openings were held in June, October, and November 2008.
- The complainant's firm was the only bidder in June 2008. The complainant was informed that all bids were rejected and that the project might be re-advertised at a later date.
- The NCDOT stated that it did not accept the complainant's bid in June 2008 because during the pre-bid meeting, he stated that there was not enough time to complete the project. After receiving only one bid on the proposal, the NCDOT modified the time available to complete the work and re-advertised the proposal in October and November 2008.
- There were no bidders in October 2008.
- There were eight bidders in November 2008. The complainant's firm did not submit a bid.
- Records show that on July 23, 2008, September 29, 2008, and January 16, 2009, the complainant was verbally informed that his suspension was rescinded. He was also informed in writing on October 13, 2008 and February 18, 2009. Therefore, he could have submitted bids in October and November 2008.
- Records show that the NCDOT cancelled the contract due to budget constraints; therefore, no firm was awarded the contract.

Issue #4: Whether the NCDOT failed to renew the complainant's existing Rutherford County contract, WBS Element 13.208111, 13.208121 and awarded the contract to another contractor at a higher price than he agreed to perform the work.

- Records show that the NCDOT had an option to extend the contract for 2 additional periods of 1 year each (maximum 3 years total).
- Records show that the NCDOT chose not to renew the complainant's contract because it added long arm mowing to the routine mowing contract for Rutherford County.
- Records show that the contract was advertised on January 7, 2008, and opened on February 20, 2008. The complainant did not bid on the contract. The contract was awarded to the lowest responsible bidder.

CONCLUSION:

Issues #1 and #2 –

- The record shows that the NCDOT did not follow proper procedures when it suspended the bidding privileges of the complainant's firm. However, the record shows that the NCDOT took appropriate action to correct its mistake and informed the complainant of the correction verbally and in writing.

- The record further shows that there was no economic loss to the complainant's firm as a result of the actions taken by the NCDOT.

Issue #3 -

- The NCDOT cancelled the contract in Buncombe County due to budget constraints; therefore, no firm was awarded the contract.

Issue #4 -

- The NCDOT had the option to renew the complainant's contract and chose not to.
- The NCDOT advertised the contract.
- The complainant did not submit a bid on the contract.
- The contract was awarded to the lowest responsible bidder.

DECISION:

Based on the foregoing evidence, the FHWA does not find that there were violations of Title VI 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