



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

APR 12 2011

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

In Reply Refer To: HCR-40  
DOT #2010-0208

(b) (6)

Dear (b) (6):

This is in reference to your complaint of discrimination, dated February 28, 2010, against the Oregon Department of Transportation (ODOT). In your complaint, you alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) in ODOT's Disadvantaged Business Enterprise (DBE) Program based on your race, African American.

The Federal Highway Administration (FHWA) has completed its investigation and concluded that the evidence obtained does not support the allegations raised in the complaint. The evidence reviewed during the investigation shows the following:

**Issue #1: Whether ODOT has allowed general contractors to meet DBE goals using DBEs that are not certified in a specific category of work.**

- The ODOT stated that at one time, the DBE regulation did not require that DBE firms be certified in specific types of work in order for their participation to be credited, as long as the firm performed a commercially useful function.
- The ODOT also stated that when clarification, in the form of an official FHWA Q&A, was published on July 15, 2009, the ODOT began taking steps to amend its policy and practice of allowing credit regardless of certification.
- The ODOT further stated it took action in a calculated and reasoned manner to institute the guidance provided by FHWA, which meant that the change did not take place immediately. Therefore, it is possible that between July 15, 2009 and March 1, 2010, some general contractors may have used DBEs that were not certified for the specific category of work which they were performing.



**Issue #2: Whether the above-referenced practice has worked to deny and reduce opportunities for African American DBE certified firms to work on Federal-aid projects.**

- The ODOT's DBE goals are limited to African American and Asian American certified DBE firms. Therefore, there is no evidence to support the allegation that African American DBE firms are denied or have reduced opportunities to work on Federal-aid projects.

**Issue #3: Whether ODOT failed to properly implement guidance provided by FHWA regarding the proper use of certified DBE firms.**

- The ODOT stated that after careful consideration of the FHWA guidance, the ODOT chose not to take an uncontrolled and unilateral approach, but planned to change the crediting procedure in a studied and comprehensive way.
- The ODOT also stated that in an effort to ensure full cooperation from all stakeholders, a committee was formed to develop a plan for the most efficient way to ensure that the new guidance was implemented in a way that would cause the least hardship for the construction community, but keep the State in compliance with Federal regulations.
- The record shows that ODOT developed a plan, effective March 1, 2010, to implement the FHWA requirements.

**Conclusion:**

The evidence shows that even though the ODOT did not immediately implement the new FHWA guidance, ODOT took steps to formulate a plan as to how to best proceed with the new requirements. Furthermore, the record shows that DBE goals are specifically for African American and Asian American DBE firms.

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

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

Sincerely yours,



Brenda F. Armstead  
Director, Investigations and Adjudications



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of Transportation  
**Federal Highway  
Administration**

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

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DOT #2010-0208

Mr. Greg Azure  
Title VI Program Manager  
Oregon Department of Transportation  
Office of Civil Rights  
355 Capitol Street, NE., Room 504  
Salem, Oregon 97301

Dear Mr. Azure:

This is in reference to the complaint of discrimination filed by (b) (6) against the Oregon Department of Transportation (ODOT). In the complaint, Mr. Posey alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) in ODOT's Disadvantaged Business Enterprise (DBE) Program based on his race, African American.

The Federal Highway Administration (FHWA) has completed its investigation and concluded that the evidence obtained does not support the allegations raised in the complaint. The evidence reviewed during the investigation shows the following:

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

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

Sincerely yours,



Brenda F. Armstead  
Director, Investigations and Adjudications

cc:

Mr. Phillip A. Ditzler, Division Administrator, FHWA (HDA-OR)  
Mr. Chris Bucher, Acting Civil Rights Specialist, FHWA (HDA-OR)