



U.S. Department  
of Transportation  
Federal Highway  
Administration

1200 New Jersey Avenue, SE.  
Washington, DC 20590

May 1, 2012

In Reply Refer To: HCR-40  
DOT #2011-0286

(b) (6)

Dear (b) (6):

This is in reference to your complaint of discrimination against the Oklahoma Department of Transportation (ODOT) alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI), and related statute (Title 23, United States Code, Section 324). The Federal Highway Administration (FHWA) Oklahoma Division Office 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 your firm has not been paid for work performed because you are a female-owned erosion control firm.

- Records show that you were awarded work as a Disadvantaged Business Enterprise subcontractor to provide grass sod for erosion control on the following four projects.
  - o The ODOT states that for project NHY-011N(008), there was an overpayment by the Residency for the solid slab sod. The Resident Engineer sent a survey crew out to survey the project, which resulted in a quantity less than the original measurement, and resulted in a reduction of square meters. No further evidence was offered by you to contradict the Residency's measurements.
  - o The ODOT states that for project SECH5-OH117(011)SG, damages in the amount of \$15,000 were charged to the prime contractor due to non-compliance in accordance with Section 220.06 of the Standard Specifications, which were passed to you as the subcontractor. The ODOT evaluated the application of the assessments and determined that insufficient written notice was provided to the contractor. Subsequently, the decision was made to rescind the damages.
  - o The ODOT states that for project BRFY-136C(124), there was a reduction of payment for the permanent grassing work performed and an assessment of liquidated damages for late completion of the project. Additionally, you chose to place sod in areas where there was inadequate surface preparation as required by

Specifications. The Resident Engineer also determined that there was a lack of growth in several areas and paid 75 percent of the measured quantities, pending substantial growth and the correction of those areas where sod was placed on eroded ground.

Time charges resulted in \$34,000 in liquidated damages which were charged to the prime contractor, which was in turn, charged to you. The ODOT evaluated the time charges and decided to stop time once the project was substantially complete in accordance with Section 108.09 of the Standard Specifications, which will rescind the liquidated damages. The ODOT has agreed to work with the contractor to address and restore those rough areas, and at that time, fully payment for the solid slab sod will be made.

- The ODOT states that for project BRFY-052C(204), there was a reduction of payment for the permanent grassing work performed. The Resident Engineer determined the solid slab sod was not watered according to Section 230 of the Standard Specifications. Therefore, the ODOT was waiting on sufficient growth prior to paying for the full quantity installed. An evaluation of the project indicated that sufficient growth had been established. A completion date of August 17, 2011, was established, which enabled full payment for the work to be made.

Issue #2: Whether the ODOT does not follow a standard practice or procedure when dealing with erosion control firms.

- Records show that the ODOT's policies and procedures regarding erosion control are contained in the 2009 Standard Specifications for Highway Construction.
- Section 103.03 - Conformity with the Plans Specifications of the 2009 Standard Specifications for Highway Construction states in part that if work performed does not conform with the contract but meets the design purpose, the Resident Engineer will determine the conditions in which the work will be accepted, including potential unit price adjustment.
- Section 109.06 – Progress Payments of the 2009 Standard Specifications for Highway Construction stated in part that if the Resident Engineer discovers any defective work or overpayment, the Resident Engineer will deduct an amount equal to the value of the defective work or overpayment.
- The above referenced specifications apply to erosion control work as well as all other aspects of highway and bridge construction.

Issue #3: Whether the majority of the erosion control firms are owned and operated by female and/or minority individuals.

- The investigation disclosed that the ODOT does not keep ownership statistics of erosion control firms. However, as to DBE firms, there are 15 firms on the ODOT DBE director that offer erosion control services. Of those firms, 10 are owned by Caucasian females and 5 are owned by minorities.

Based on the foregoing evidence, the FHWA does not find that there was a violation of Title VI, and related statute (Title 23, United States Code, Section 324), 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 filing in the appropriate U.S. District Court.

Sincerely yours,

A handwritten signature in black ink that reads "Warren S. Whitlock" followed by a stylized monogram "WJ".

Warren S. Whitlock  
Associate Administrator for Civil Rights

cc:

Mr. Gary M. Ridley, Director, ODOT  
Mr. Greg Pringle, Civil Rights Division Administrator, ODOT  
Mr. Gary Corino, Division Administrator, FHWA (HDA-OK)  
Mr. Darren Kaihlanen, Civil Rights Program Manager, FHWA (HDA-OK)



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Mr. Gary M. Ridley  
Director  
Oklahoma Department of Transportation  
200 NE 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105

Dear Mr. Ridley:

This is in reference to the complaint of discrimination filed by (b) (6) (complainant), against the Oklahoma Department of Transportation (ODOT) alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI), and related statute (Title 23, United States Code, Section 324). The Federal Highway Administration (FHWA) Oklahoma Division Office 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 the complainant's firm has not been paid for work performed because she is a female-owned erosion control firm.

- Records show that the complainant was awarded work as a Disadvantaged Business Enterprise subcontractor to provide grass sod for erosion control on the following four projects.
  - o The ODOT states that for project NHY-011N(008), there was an overpayment by the Residency for the solid slab sod. The Resident Engineer sent a survey crew out to survey the project, which resulted in a quantity less than the original measurement, and resulted in a reduction of square meters. No further evidence was offered by the complainant to contradict the Residency's measurements.
  - o The ODOT states that for project SECH5-OH117(011)SG), damages in the amount of \$15,000 were charged to the prime contractor due to non-compliance in accordance with Section 220.06 of the Standard Specifications, which were passed to the complainant as the subcontractor. The ODOT evaluated the application of the assessments and determined that insufficient written notice was provided to the contractor. Subsequently, the decision was made to rescind the damages.
  - o The ODOT states that for project BRFY-136C(124), there was a reduction of payment for the permanent grassing work performed and an assessment of

liquidated damages for late completion of the project. Additionally, the complainant chose to place sod in areas where there was inadequate surface preparation as required by Section 230.04 of the Standard Specifications. The Resident Engineer also determined that there was a lack of growth in several areas and paid 75 percent of the measured quantities, pending substantial growth and the correction of those areas where sod was placed on eroded ground.

Time charges resulted in \$34,000 in liquidated damages which were charged to the prime contractor, which was in turn, charged to the complainant. The ODOT evaluated the time charges and decided to stop time once the project was substantially complete in accordance with Section 108.09 of the Standard Specifications, which will rescind the liquidated damages. The ODOT has agreed to work with the contractor to address and restore those rough areas, and at that time, fully payment for the solid slab sod will be made.

- The ODOT states that for project BRFY-052C(204), there was a reduction of payment for the permanent grassing work performed. The Resident Engineer determined the solid slab sod was not watered according to Section 230 of the Standard Specifications. Therefore, the ODOT was waiting on sufficient growth prior to paying for the full quantity installed. An evaluation of the project indicated that sufficient growth had been established. A completion date of August 17, 2011, was established, which enabled full payment for the work to be made.

Issue #2: Whether the ODOT does not follow a standard practice or procedure when dealing with erosion control firms.

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- The investigation disclosed that the ODOT does not keep ownership statistics of erosion control firms. However, as to DBE firms, there are 15 firms on the ODOT DBE director that offer erosion control services. Of those firms, 10 are owned by Caucasian females and 5 are owned by minorities.

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

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

Sincerely yours,

A handwritten signature in black ink that reads "Warren S. Whitlock" followed by a stylized flourish.

Warren S. Whitlock  
Associate Administrator for Civil Rights

cc:

Mr. Greg Pringle, Civil Rights Division Administrator, ODOT  
Mr. Gary Corino, Division Administrator, FHWA (HDA-OK)  
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