

I. Executive Summary:

When deciding if EEO or Title VI complaints have validity the standard of a preponderance of evidence is used. A preponderance of evidence has been described in the Black's Law Dictionary as "just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true".

In this inquiry the preponderance of evidence showed that an MDOT employee willfully removed BBF Engineering Services P.C. from the top place on a consulting construction award so that Ms. Foster's firm would not be considered.

In addition the evidence shows that based on Ms. Foster's sex (gender) (female) an MDOT employee sent forward her contract to Lansing to have funds removed from it. This resulted in her as-needed service contract being cut in half.

These facts have raised questions in the way service/consulting contracts are awarded at MDOT and the "power" that Project Engineers have in those selections and awards.

It is our belief that MDOT should set up a process improvement team aimed at strengthening MDOT's monitoring of the consulting/service contract award process.

It is our belief that MDOT should meet with Ms. Foster in regards to these issues and reaching a settlement agreement that would be acceptable to both parties.

- II. Complainant Name and Address:
Ms. Bellandra B. Foster
BBF Engineering Services, P.C.
24445 Northwestern Highway, suite 110
Southfield, Michigan 48075-2436
- III. Respondents Name and Address
Michigan Department of Transportation (MDOT)
425 West Ottawa
Lansing, Michigan 48909
- IV. Applicable Laws
a. Title VI, Federal-aid Highway Act
- V. Basis of Complaint:
a. Race (Black);
b. Sex (gender) (Female)
- VI. Allegations:
a. Contract 2006-0490 – Dollar amount of contract was cut in half, denial of request to meet regarding duties of office technician, denial of discussions for interim evaluation.
b. Contract 2008-0044 – service time and hours were cut in half.
c. Concerns with evaluation for project CS 63052-JN72404.
d. Selection of a firm for a \$3 million, 2-year as-need contract.
- VII. Theories of Discrimination:
a. Disparate Treatment
b. Intentional Discrimination
c. On-going discrimination based on race (black) and sex (gender) (female).
- VIII. Background:
Ms. Foster believes she and her company have been intentionally discriminated against during consultant contract performance by MDOT employees. Ms. Foster filed a Title VI complaint with FHWA Headquarters Office of Civil Rights they accepted part of the complaint and sent the allegations listed in VI to the FHWA's Michigan Division Office to be investigated. Interviews for this complaint were conducted by FHWA Civil Rights Program Manager Ms. Mary Finch and MDOT Title VI Program Manager, Ms. Cheryl Hudson.

IX. Results of Inquiry:

- a. Interview conducted with Ms. Marilyn Caldwell by Ms. Cheryl Hudson. Ms. Caldwell has served as Mr. Victor Judnic's secretary for the past five years. Ms. Caldwell verified that in 2006 speaking of Ms. Foster Mr. Victor Judnic said, "No woman should be making money like that." She did not recall if he said, 'no Black woman.'
- b. In June of 2006 Mr. Judnic notified BBF Engineering that they were cutting her "as needed" contract in half and "re-bidding" the M-10 portion. This is contract number 2006-0490 (BBF Original Bid \$4.2 Million before negotiations). See letter from Mr. Myron Frierson, P.E. in response to Mr. Foster's questions. Per Investigator (Ms. Mary Finch's) interview with Mr. Frierson the decision was made by a committee in the Lansing Office to "unbundle" larger contracts to build a "viable consultant industry". Per Ms. Finch's interview with Mr. Judnic he was told that, "Lansing wants to provide more opportunities for diverse small consultants" and he was asked which contracts could be cut back by his supervisor and he provided them with the M-10/as-needed contract. Ms. Finch asked him if he, "had considered the fact that BBF was a Disadvantaged Business Enterprise" (by definition a DBE is a small disadvantaged contractor). He replied, "I didn't think of that".

BBF was awarded the as-needed contract for \$2.2 million. The M-10 portion of the contract was awarded to Fishbeck for \$2.0 Million. In 2007 Fishbeck was the third largest consultant contractor doing business with MDOT.

1. HNTB \$17.6 M
2. URS \$13.1 M
3. Fishbeck \$8.1 M

Per Mr. Frierson, BBF did not bid on the M-10 portion of the contract. Ms. Finch asked him if he, "considered the fact that she had bid and won the contract already and the decision was made not to award to her." He said, "she should have bid, she may have got the second contract". Per Mr. Frierson there was a second contract that this was done with the M-85 contract.

- c. Contract Number 2008-0044 BBF was selected for contract and MDOT once again asked to have the contract services hours and services to be cut in half. After Ms. Foster complained to Mr. Frierson all efforts to cut the contract were stopped. Mr. Judnic was the Project Engineer Supervisor; Mr. Jason Voigt was the Project Engineer. Efforts to reach Mr. Voigt have not been successful. Mr. Judnic does not recall if he had anything to do with suggesting the hours be cut on Ms. Foster's contract.

- d. The selection team guidelines for selecting consulting contracts is documented in the *Selection Team Guidelines for Service Contracts*, revised July 17, 2007. Per these guidelines:
1. “The Selection Team consists of members assigned by the Division Administrator/Region Engineer. The team will include representatives from specialty areas and at least one member from a different reporting relationship. For selections greater than \$1 million, a member of the Contract Services Review Team (CSRT) will serve on the Selection Team.”

It is noted that one of the team members, per Mr. Paul Ajegba, Deputy Region Engineer for Metro Region, is the Project Engineer for the area who leads the team.

Once the selection is made it goes forward to the CSRT for approval.

- e. During the award of contract CS63052-JN72404, Ms. Foster made numerous requests for debriefing on why she was not selected before she was granted a debriefing by Mr. Mark Stuecher. At the debriefing Mr. Stuecher made remarks such as “you just did not measure up.” Ms. Foster was informed that Mr. Stuecher changed the scoring of her proposal so that she was not in the top three. This change was made after the team members finished the scoring and before the scoring was sent to the CSRT. Each team member makes an individual score and then they, as a group, consult and complete the final score sheet. On the final selection sheet Ms. Foster was in the top choice on that selection until Mr. Stuecher changed the scores to take her off the top choices. Mr. Stuecher came into the room and seeing the results that BBF was number one said, “oh no, I hate her” and proceeded to change the scores so she was no longer in the top three. This was brought to management’s attention shortly after it happened and no action was taken. The individual brought it up again and Metro Region management followed up and removed Mr. Stuecher from any further Selection Teams. Two sets of interviews were conducted, one with Mr. Cedric Dargin (by Ms. Hudson) who verified what happened at the selection team meeting. Mr. Dargin has participated in many Selection Teams, he could not estimate how many. The second interview was with Mr. Sean Kerley who cannot remember what happened. Mr. Kerley has participated in two Selection Teams. Per Mr. Paul Ajegba, Mr. Stuecher was removed from participating on future Selection Teams due to his actions on this one.

X. Conclusions:

- a. The preponderance of evidence shows that Mr. Judnic appears to have taken actions based on Ms. Foster's sex (gender) (female). By making statements about her gender and how much money she was being awarded on a contract. Then acting later on her contracts to "suggest" that they go forward as contracts that could be cut back on.
- b. The preponderance of evidence shows that the MDOT offices in Lansing were sending mixed messages about what they wanted to accomplish by re-advertising parts of contracts. The evidence shows that Mr. Judnic thought he was supposed to be obtaining more diversity in his contracting opportunities and he choose to break out a contract that was already awarded to a DBE. The result was that a large white owned firm was awarded the second half of the contract.
- c. The preponderance of evidences shows that MDOT (Mr. Mark Stuecher) willfully changed the scores on the sheet to remove BBF Engineering from the top three so the firm would not be considered. It is unclear as to the motive. The evidence shows that the Consultant Selection Team is "lead" by the Project Engineer and normally has a majority of persons who work for the Project Engineer on the team. The result is that the team could be biased by the Project Engineer in their scoring etc. The consultation selection process used although non-discriminatory on its face resulted in disparate treatment to Ms. Foster.

XII. FHWA Recommendations:

- a. It is our belief that MDOT should set up a process improvement team aimed at strengthening MDOT's monitoring of the consulting/service contract award process.
- b. It is our belief that MDOT should meet with Ms. Foster in regards to these issues and reaching a settlement agreement that would be acceptable to both parties.