



MEMORANDUM

Date: May 22, 2015

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Pima County Performance on Federal Aid Project Contract Administration**

As the Board will recall, transportation projects with Federal Aid highway funding were awarded to Select Development for three specific projects. These projects were the Homer Davis Transportation Enhancement Project, La Cañada Drive Widening Project, and Magee Road Widening Project. These three projects became the subject of scrutiny by the Arizona Department Transportation (ADOT) and the Federal Highway Administration (FHWA) after the prime contractor failed to adequately perform all of the conditions required by our highway construction contracts. The majority of nonperformance issues related to delayed or incomplete payments to subcontractors performing work on these projects.

Over the course of many months, Pima County repeatedly communicated with the prime contractor and both ADOT and FHWA in an effort to resolve the contract difficulties. As a result of the noncompliance concerns expressed by subcontractors, ADOT and FHWA conducted investigations into allegations of contract noncompliance. The attached documentation provides the following updates regarding these matters:

1. March 31, 2015 letter from Karla S. Petty, Division Administrator, FHWA to John Halikowski, Director, ADOT. This letter confirmed the finding that Select Development violated certain Disadvantaged Business Enterprise program regulations. The enclosed March 24, 2015 letter from the National Disadvantaged Business Enterprise office of FHWA further confirms that Pima County demonstrated commitment to providing prompt payment oversight and has undertaken the actions necessary to address the contractual concerns expressed by subcontractors on Pima County projects.
2. April 14, 2015 letter from local public agency section, ADOT to Priscilla Cornelio, Director, Pima County Department of Transportation (PCDOT). This letter confirms that the monitoring occurring on all three Federal Aid highway projects will be continued. However, the biweekly status reporting for the projects is unnecessary given the resolution of the outstanding issues. This letter also confirms Pima County's action to terminate the Magee Road contract to the

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Pima County Performance on Federal Aid Project Contract Administration**
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original contractor and award to a new contractor to complete the necessary roadway construction work.

3. May 6, 2015 memorandum from Priscilla Cornelio, Director, PCDOT, informing that the investigations by ADOT and FHWA have been concluded and that Pima County is not subject to the loss of federal funding nor to any change in its current certification acceptance status.

While these issues have caused some of the needed roadway construction work to be delayed, the actions taken by Pima County in managing these Federal Aid highway contracts are in accordance with all applicable requirements and have resulted in Pima County maintaining its eligibility to receive future Federal Aid highway funds.

CHH/dr

Attachments

- c: John Bernal, Deputy County Administrator for Public Works
Priscilla Cornelio, Director, Department of Transportation

March 31, 2015 Letter



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

ARIZONA DIVISION

4000 North Central Avenue
Suite 1500
Phoenix, Arizona 85012-3500
(602) 379-3646
Fax: (602) 382-8998
<http://www.fhwa.dot.gov/azdiv/index.htm>

March 31, 2015

In Reply Refer To:
CIVL 10
DOT # 2014-0254

Mr. John Halikowski, Director
Arizona Department of Transportation
207 South 17th Avenue (MD 101A)
Phoenix, Arizona 85007

Dear Director Halikowski:

The Federal Highway Administration's (FHWA) Office of Civil Rights (HCR) has issued its Letter of Finding for the referenced complaint filed by Jason Orosco, Blue Diamond, alleging Select Development and Construction, Inc., violated the prompt pay requirements of the Disadvantaged Business Enterprise Program (DBE) regulation, 49 CFR Part 26.29.

HCR concurs with the Arizona Division's determination that Select violated the prompt pay regulations as alleged by Mr. Orosco. The Letter of Finding is enclosed.

We have been asked to continue to work with the Arizona Department of Transportation (ADOT) and the Pima County Department of Transportation (PCDOT) to ensure contract specifications reflect demonstrated commitment to providing prompt pay oversight and Pima County's transition to a prequalification process.

Finally, on November 3, 2014, new modifications to the DBE program became effective. All future ADOT and sub recipient contracts must include the modified DBE assurances and provide for appropriate remedies in the event of contractor breach. To demonstrate completion of this action, ADOT will need to provide the Arizona Division with updated contract templates or similar. Once this is completed, HCR shall be provided documentation evidencing the change by the Arizona Division. ADOT and PCDOT may also consider modifying existing contracts to provide additional tools for enforcing DBE regulations.

If you have any questions regarding this matter, you may contact Lisa Neie at 505-820-2036 or lisa.neie@dot.gov.

Sincerely,

Karla S. Petty
Division Administrator

Enclosure

ecc:

Dallas Hammit, Deputy Director for Transportation

Scott Omer, Deputy Director for Operations

Steve Boschen, Director for Intermodal Transportation Division

Rod Lane, Tucson District Engineer

Vivien Lattibeaudiere, BECO Manager

Charles Huckleberry, Pima County Manager

Priscilla Cornelio, Director, Pima County Department of Transportation

JHB:cdm



U.S. Department
of Transportation
Federal Highway
Administration

1200 New Jersey Avenue, SE.
Washington, DC 20590

In Reply Refer To: HCR-30
DOT #2014-0254

Jason A. Orosco
Blue Diamond Contracting
3402 W. Wilshire Drive
Phoenix, AZ 85009

MAR 24 2015

Subject: Letter of Finding (LOF) for Complaint DOT# **#2014-0254**

Dear Mr. Orosco:

Under 49 CFR §26.103, any person who believes that a recipient has failed to comply with its DBE program obligations may file a written complaint with the concerned Operating Administration's Office of Civil Rights. On August 8, 2014, the Federal Highway Administration (FHWA) Office of Civil Rights (HCR) received your complaint as owner of Blue Diamond Contracting, LLC, a certified Disadvantaged Business Enterprise (DBE), alleging the failure of Select Development and Construction, Inc. (Select), the prime contractor on three federal-aid projects located in Tucson, to comply with the prompt payment requirements set forth in the Federal DBE program regulations, 49 CFR §26.29.

The regulations require contractors performing on federally-assisted contracts to pay their subcontractors, both DBE and non-DBE within thirty days of receipt of payment from the recipient of FHWA funds,¹ in this case Pima County Department of Transportation (PCDOT). PCDOT is a subrecipient to the primary recipient, Arizona Department of Transportation (ADOT).² The regulations in 49 CFR §26.29 (d), further require the recipient to: "provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which [the recipient sets]."

HCR forwarded your complaint to the FHWA Arizona Division Office to investigate whether Select violated the DBE program's prompt payment provisions while performing as a prime contractor on 3 identified projects in Pima County. During its investigation, the Division Office also appropriately questioned whether ADOT and PCDOT were compliant with the above regulation which requires that recipients, and in turn, subrecipients have mechanisms in place to enforce the prompt payment requirements.

HCR reviewed the Division's report of investigation (ROI). The ROI indicated that the Division performed a thorough investigation of the timing of Select's payments to DBE and non-DBEs on one of the identified projects. Two projects were not investigated as one of the projects was

¹ Arizona Revised Statutes 28-411, which is specific to the Arizona Department of Transportation, requires payment within 7 days of being paid.

² As the primary recipient of FHWA funds, ADOT is responsible for ensuring that PCDOT complies with all DBE regulatory requirements. See 49 CFR §26.37

substantially complete and the other had been terminated by PCDOT. HCR concurs with the Division's determination that Select violated the DBE prompt payment regulations as alleged in your complaint.

HCR has learned from further conversations with the Division's Civil Rights Specialist that PCDOT has taken action against Select, in part, for these payment violations and both ADOT and PCDOT have demonstrated commitment to providing prompt payment oversight. PCDOT has also transitioned to a prequalification program. These changes bring them into compliance with 49 CFR §26.29 (d). We have instructed the Division to continue to work with ADOT and PCDOT to ensure their contract specifications reflect these program revisions.

Also, from the documents provided it appears that PCDOT's contract with Select did not include the DBE assurances as required by 49 CFR §26.13(b) and forth below:

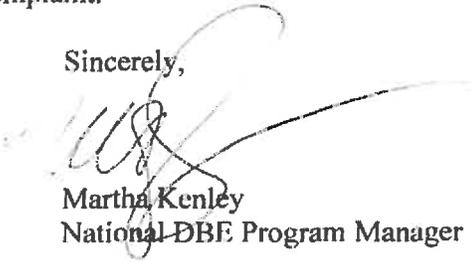
(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible

We have directed the Division to ensure that ADOT and its subrecipients revise their contracts to include the DBE assurances set forth above and provide for appropriate remedies in the event of contractor breach. Once this revision is complete, HCR directed the Division to provide a link to the contract specifications evidencing the change.

This concludes the processing of this complaint.

Sincerely,



Martha Kenley
National DBE Program Manager

cc: Karla Petty, Division Administrator, FHWA Arizona Division Office
Lisa Neie, Civil Rights Program Specialist, FHWA Arizona Division Office
James Esselman, Special Counsel, FHWA's Office of Chief Counsel (HCC-3)

April 14, 2015 Letter



April 14, 2015

Ms. Priscilla S. Cornelio, P.E.
Director
Pima County Department of Transportation
201 North Stone Avenue, Fourth Floor
Tucson, Arizona 85701-1207

Subject: Unsatisfactory Performance – Request to Discontinue Bi-weekly Reporting

Dear Ms. Cornelio:

The Arizona Department of Transportation (ADOT) Local Public Agency Section received your letter, dated March 2, 2015, wherein Pima County Department of Transportation has requested ADOT's approval to discontinue providing bi-weekly status reports on the La Canada Drive, Homer Davis, and Magee Road projects. Pima County's request has been carefully considered.

The reporting Pima County Department of Transportation has provided on the La Canada Drive project, as well as the Homer Davis and Magee Road projects, has been very beneficial towards keeping our respective agencies thoroughly informed during these past few months. Thank you for cooperating on this effort.

ADOT acknowledges that the non-compliance issues on the La Canada Drive project have been mitigated and the project is substantially complete. Therefore, ADOT agrees that further bi-weekly reporting is no longer necessary on the La Canada Drive project. ADOT requests only that Pima County Department of Transportation submits notification when the project receives Final Acceptance to complete the status reporting process.

ADOT recognizes that the Homer Davis project has received Final Acceptance, per the February 23, 2015 status report, and agrees that further reporting is no longer necessary.

Because the Magee Road project has recently been awarded to a new contractor, ADOT understands that bi-weekly reports are not necessary. To continue monitoring progress towards compliance, ADOT requests quarterly status reports on the Magee Road project to ensure Pima County Department of Transportation is conducting oversight activities of the project and the new contractor. Please submit a status report by June 5, 2015, and every three months thereafter, until the project is complete.

Thank you in advance for your cooperation. If you have questions, please do not hesitate to contact me at bdariush@azdot.gov or 602-712-8427.

Sincerely,



Bahram Dariush, P.E.
Manager
Local Public Agency Section

cc: Dallas Hammit, ADOT
Steve Boschen, ADOT
Roderick Lane, ADOT
Mick Hont, ADOT
Greg Hill, ADOT
Trent Kelso, ADOT
Paul O'Brien, ADOT
Vivien Lattibeaudiere, ADOT
Patrick Stone, ADOT
Susan Anderson, ADOT
Charlene Neish, ADOT
Natalie Clark, ADOT
Ana Oliveras, P.E., Pima County Department of Transportation
Rick Ellis, P.E., Pima County Department of Transportation

May 6, 2015 Memorandum



MEMORANDUM

DATE: May 6, 2015

TO: C.H. Huckelberry, County Administrator

FROM: Priscilla S. Cornelio, P.E., Director

SUBJECT: Pima County Federal Aid Project Contract Administration

FHWA conducted an investigation into the allegations that Select Development violated the prompt pay requirement of DBE regulations. They informed ADOT that Select did violate the regulations and asked ADOT and Pima County to modify contracts to provide additional tools for enforcing DBE regulations. We have been informed that Pima County will not be subject to any loss of federal funding nor our Certification Acceptance status.

PSC:dg

c: John M. Bernal, Deputy County Administrator
Ana Olivares, Deputy Director
Terri Spencer, Division Manager, Procurement