



August 29, 2012

In Reply Refer To: HCR-30
DOT# 2012-0039

Mr. Melvin Oden-Orr
General Counsel & Interim Executive Director
National Association of Minority Contractors-Oregon
10350 N. Vancouver Way, Suite 102
Portland, OR 97217

Dear Mr. Oden-Orr:

The Federal Highway Administration (FHWA) has completed its investigation of NAMC-O's complaint dated November 11, 2011, against the Oregon Department of Transportation (ODOT) and the Unified Certification Program for Oregon, the Office of Minority, Women, and Emerging Small Business (OMWESB).

Your complaint concerned the Oregon Highway 217 modernization project (the Project) on which Emery & Sons, Inc. (Emery & Sons) was the prime contractor and Salt & Pepper Construction Company, Inc. (Salt & Pepper) was a DBE hauling firm. You specifically alleged ODOT and OMWESB failed to properly monitor the hauling operations on the Project, as required under 49 CFR Part 26, to ensure that Salt & Pepper was performing a commercially useful function (CUF). You further alleged that Emery & Sons, Salt & Pepper, and Bud Construction, LLC (Bud Construction), a non-DBE trucking company, were engaging in arrangements contrived solely for the purpose of achieving the 6.11 percent DBE contract goal.

The FHWA investigated and analyzed the following three issues:

Issue (1) Whether ODOT properly monitored the trucking activities on the Project.

Issue (2) Whether Salt & Pepper performed a CUF which entitled Emery & Sons to count the value of the trucking services toward the contract goal; and whether Salt & Pepper's participation on the project was a contrived arrangement, for purposes of meeting the DBE goal.

Issue (3) Whether Salt & Pepper is an independent company controlled by a socially and economically disadvantaged individual, as required pursuant to the DBE program regulations.

With respect to Issue One, the FHWA found ODOT failed to exercise effective DBE program oversight pertaining to the trucking operations on the Project by relying on the owner of a non-DBE firm, Bud Construction, to oversee the trucking operations. Since they did not independently and effectively monitor the trucking operations on the Project, ODOT failed to comply with both the DBE program regulations and its own processes and procedures pursuant to its FHWA approved DBE Program Plan. Oregon's OMWESB is the certifying entity for ODOT and does not perform project oversight.

With respect to Issue Two, the FHWA found Salt & Pepper did not perform a CUF as it did not manage and supervise the trucking operation for which it was responsible; did not provide at least one of its own trucks on the contract; and used a non-DBE to manage the entire trucking operation.

Further, the facts support a finding that Emery & Sons, Bud Construction, and Salt & Pepper contrived a relationship for the purpose of meeting the contract goal. As a result, ODOT inappropriately counted the value of the trucking services provided by DBE Salt & Pepper toward the DBE contract goal.

With respect to Issue Three, the FHWA found Salt & Pepper was dependent upon a non-DBE with respect to its performance on the Project; Salt & Pepper's owner had a general lack of knowledge concerning the operations of his firm; and Salt & Pepper failed to cooperate in the investigation as required.

As set forth above, FHWA's investigation supports a finding of DBE Program violations as alleged in your complaint. As a result of the findings from this investigation, FHWA will initiate the following actions:

- Direct ODOT to evaluate the implementation of its DBE program and submit a plan of corrective action by October 31, 2012, that addresses the findings of this report.
- Direct ODOT to adjust DBE accounting to accurately represent Salt & Pepper's performance as a DBE on the Project and in the overall program.
- Direct ODOT to require OMWESB to initiate removal of eligibility proceedings under 49 CFR §26.87 for Salt & Pepper.
- Refer findings to the U.S. DOT Office of Inspector General for further review.

Our office will keep you apprised of the status of ODOT's implementation of the directives. If you have any questions regarding this matter, please contact Martha Kenley, National DBE Program Manager at 202-366-8110 or martha.kenley@dot.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Warren S. Whitlock". The signature is written in a cursive style with a large initial "W".

Warren S. Whitlock

Associate Administrator for Civil Rights