



INSPECTOR GENERAL REPORT

2009-05-0094

September 30, 2009

PRIMCO

Inspector General Staff Attorney Kristi Shute, after an investigation by Special Agent Mark Mitchell, reports as follows:

In May of 2009, the Office of the Inspector General (OIG) received a complaint alleging irregularities in the bidding and award procedures for highway project contract #IR-30160-A. It was alleged, by the low bidder Primco, that the Commissioner for the Indiana Department of Transportation (INDOT) acted improperly when he did not award Primco the contract. Specifically, the complaint alleged that Primco should have been granted a waiver for failure to meet the Minority Business Enterprise (MBE) requirement based on its good faith effort to meet that requirement. MBE requirements are imposed by Indiana state statute and regulation in an effort to promote business activity by minorities and women.

Special Agent Mark Mitchell was assigned to investigate and discovered that Primco was one of five companies that bid on the contract. Primco was the lowest bidder, but did not have MBE participation listed in its bid.

On March 27, 2009, Natalee Summers, Deputy Director of the Indiana

Department of Administration's (IDOA) Minority and Women's Business Enterprise Division, recommended that the MBE waiver should not be granted based on Primco's lack of demonstrated good faith efforts in attempting to attain the MBE goals. She noted that all the other bids submitted met the MBE goals and that the next lowest bid was 0.42% higher than Primco's bid.

Summers notified Primco that its bid was noncompliant with MBE goals and that the efforts taken to achieve these goals were inadequate. She also informed Primco that it had a right to an informal hearing before the MBE Compliance Review Committee ("Committee"). Primco exercised this right and the informal hearing was held on April 7, 2009. On April 9, 2009, Primco was advised that the Committee upheld the recommendation not to grant the MBE waiver and that the Committee would recommend that the INDOT Commissioner not award the contract to Primco.

Subsequently, Primco petitioned IDOA's Commissioner to reverse the Committee's decision. The IDOA Commissioner reversed the Committee's decision, but noted that, per IDOA policy¹, the ultimate decision rested with the INDOT Commissioner. On May 8, 2009, the INDOT Commissioner reversed the IDOA Commissioner's decision and awarded the contract to the next lowest bidder.

After Primco exhausted all of the administrative procedures afforded to it, Primco filed a Motion for Stay of Order Pending Court Decision in Allen County

¹ See 100-C-203 Indiana Department of Administration M/WBE Participation Policy for Indiana Department of Transportation Construction Projects (Revised 11/23/08), Section (V.) Post-Bidding Procedures.

Superior Court against INDOT. On May 21, 2009, the Allen County Superior Court issued an Order dismissing Primco's petition, finding that Primco lacked the requisite standing to challenge INDOT's action in awarding the contract.

Since INDOT observed proper protocol in awarding this contract and since Primco exhausted all administrative procedures available to it, the allegation cannot be substantiated and this investigation is closed.

Dated this 30th day of June, 2009.

APPROVED:

A handwritten signature in black ink, appearing to read "David O. Thomas".

David O. Thomas, Inspector General