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UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

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Albuquerque Valet Service, et al.
Albuquerque, NM
Complainant
v.
City of Albuquerque
Albuquerque, NM
Respondent

FAA-03-16103-15

Docket No. 16-01-01

DIRECTOR'S DETERMINATION

INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the Rules of Practice for Federally-Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.

Albuquerque Valet Service, Norma Morris, and David Powdrell ("Complainants") were negotiating with the City of Albuquerque ("Respondent") to provide airport valet services when the Respondent advertised a Request for Bid (RFB) for the concession. Complainants submitted a bid in response the RFB, but were not the successful bidders. Complainants filed a formal complaint pursuant to FAA Rules of Practice against the City of Albuquerque, owner and operator of Albuquerque Sunport International Airport (ABQ) (See FAA Exhibit 1) Complainants allege discrimination on the basis of sex (female) and race (African-American) in violation of 49 CFR§ 26.7 and 49 CFR§ 23.93(a) when the City did not award a contract to their firm, Albuquerque Valet Parking, for the operation of a parking concession at the ABQ in 1999.

The City of Albuquerque, as the airport sponsor, has received grants for the planning and development of the airport financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP) 49 U.S.C. 47101 et seq. (See FAA Exhibit 12). As the recipient of federal AIP funds, the Respondent is subject to the requirements of Title 49 CFR§ Parts 23 and 26, the Disadvantaged Business Enterprise (DBE) regulations of the Department of Transportation.

Complainants allege that the Respondent's actions violate 49 CFR§ 26.7 and 49 CFR§ 23.93(a). Part 26 contains the Department of Transportations' DBE regulations for DOT assisted contracts.¹ [See 49 CFR§ 26.3(d)]. None of the agreements cited in the record by the parties are DOT assisted contracts. The complaint is based, instead, on Complainants'

¹ DOT-assisted contract means any contract between a recipient and a contractor (any tier) funded in whole or in part with DOT financial assistance. 49 CFR 26.5.

status as a concessionaire. Thus Part 23 is the applicable regulation. Part 23 contains the Department's DBE regulations for airport concessions.² Part 23, however, expressly requires that the airport comply with the non-discrimination requirements of 26.7. [See 49 CFR§ 23.93(a)(1)]. Therefore this decision will review the record to determine if the Respondent is in non-compliance with the non-discrimination requirements of 26.7 in violation of 23.93(a).

Section 26.7 outlines the non-discrimination requirements of sponsors as:

- (a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.
- (b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

Section 23.93 outlines the requirements for airport sponsors with respect to airport concessions as:

- (a) General Requirements. (1) Each sponsor shall abide by the non-discrimination requirements of 26.7 with respect to the award and performance of any concession agreement covered by this subpart. (2) Each sponsor shall take all necessary and reasonable steps to foster participation by DBE's in its airport concession activities.

For the reasons explained below we find that Complainants have not met their burden of establishing the alleged violations of sections 23.93(a) and 26.7. Specifically, the Complainants failed to show that the Respondent discriminated on the basis of sex or race, or that the Respondent used criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE concessions program with respect to individuals of a particular race, color, sex or national origin.

ISSUES

The complaint presents the following issue for determination:

Whether the City of Albuquerque, New Mexico (Respondent), allegedly discriminated against the Complainants on the basis of sex (female) and race (African-American) in violation of 49 CFR§ 26.7 and 49 CFR§ 23.93(a) when the City did not award a contract to their firm, Albuquerque Valet Parking, for the

² The Department is expected to publish a supplemental notice of proposed rulemaking seeking comments on the proposed adaptation of the airport concession regulation to Part 26. As proposed the present Part 23 would be replaced by a new subpart (G) to Part 26 for airport concessions.

operation of a parking concession at the Albuquerque International Sunport in 1999.

PROCEDURAL HISTORY

December 27, 2000, Norma Morris and David Powdrell of Albuquerque Valet Parking Service (Complainants)³ filed a formal complaint against the City of Albuquerque (Respondent). (See FAA Exhibit 1)

January 17, 2001, the FAA dismissed the complaint without prejudice as incomplete under 14 CFR § 16.27 to allow Complainant to correct the deficiencies noted. (See FAA Exhibit 2)

February 8, 2001, Complainants refiled the complaint with request to reopen Part 16 FAA Docket No. 16-01-01. (See FAA Exhibit 3)

March 26, 2001, Complainants submitted a letter clarifying their request to reopen Part 16 FAA Docket No. 16-01-01. (See FAA Exhibit 3)

April 17, 2001, FAA reopened FAA Docket No. 16-01-01 and served Respondent and Complainants with Notice. (See FAA Exhibit 4)

May 4, 2001, Respondent filed Answer and Motion to Dismiss. (See FAA Exhibit 5)

May 16, 2001, Complainants filed a Reply. (See FAA Exhibit 6)

May 22, 2001, Respondent filed a Rebuttal. (See FAA Exhibit 7)

September 13, 2001, FAA requested additional information from Respondent. (See FAA Exhibit 8)

October 3, 2001, Respondent answered FAA's request. (See FAA Exhibit 9)

October 21, 2001, FAA extended the date of the initial determination to November 19, 2001, in order to gather and review additional information from Respondent. (See FAA Exhibit 10)

November 13, 2001, Complainants filed Motion to Dismiss Respondent's October 3, 2001 response to FAA.⁴ (See FAA Exhibit 11)

³ Norma Morris is identified in the complaint as "owner" and David Powdrell as "co-owner and consultant."

⁴ The FAA had requested the information as a necessary part of the investigation and complainants were eventually served with the information. Complainants have not alleged how they were harmed by the delay in service, and it appears they were not harmed since the Complainants do not raise a substantive challenge to the Respondent's answer. The motion to dismiss the Respondent's October 3 response to the FAA request is denied.

January 9, 2002, FAA extended the date for the initial determination to February 5, 2002. (See FAA Exhibit 18)

BACKGROUND

During the month of December 1999, the Complainants met with Lawrence Rael, Chief Administrative Officer, Mayor's Office; Adele Hundley, City Councilor to propose a Valet parking service at the airport and request letters of support. (See FAA Exhibit 1, ex. 1A)

During the month of January 1999, the Complainants met with Jay Czar, Director of Aviation and Dewey Cave, Project Manager, Albuquerque International Sunport to propose a Valet parking service at the airport. Complainants also indicate they received a boilerplate copy of the Albuquerque International Sunport Operating Agreement for Commercial Ground Transportation Vehicles and Albuquerque International Sunport's Lease Master Records.. (See FAA Exhibit 1, ex. 1A)

On January 21, 1999, the Complainants sent letters to Mr. Czar and Mr. Cave requesting, "to begin negotiations of a contract with the Albuquerque International Sunport under the Operating Agreement for Commercial Ground Transportation Vehicle in reference to our business." (See FAA Exhibit 1, ex. 1A)

In early February 1999, Airport Valet Inc. (AVI) also approached Respondent to propose a valet service at the Sunport. AVI then began negotiating a license to use the facility to provide the valet service. (See FAA Exhibit 9, ex. D (v)).

On February 23, 1999, the Complainants sent another letter to Mr. Cave requesting, "to meet with you and/or Jay in order to begin negotiations and discuss the logistics of our proposal." (See FAA Exhibit 1, ex. 1A)

On March 9, 1999, the Complainant met with Mr. Cave; Anita Boulton, Contract Compliance Specialist; and James Fitzgerald, Assistant City Attorney with the intent to discuss booth locations and negotiations. (See FAA Exhibit 1, ex. 1A)

On March 16, 1999, the Complainants sent a letter to Cave that included the following overview of the meeting (See FAA Exhibit 1, ex. 1A):

1. You informed us that we will not conduct our business operations under the terms and conditions of the Operating Agreement for Commercial Ground Transportation Vehicles with the airport. Consequently, our business will not be using the designated Commercial Lane located on the Deplaning level roadway.
2. The three of you informed us that you are now in the process of preparing a special pilot Valet Parking Service Contract. You stated that a draft copy of this contract should be ready for our review within this week.
3. "...you notified us of a six percent (6%) fee payable to the airport which will be based upon our total Gross Revenues."

4. Anita stated there would be a \$2,000.00 (estimate) security deposit requirement payable to the airport. You also mentioned that you would include with the draft, the square footage cost plus utilities for the Westside portable booth rental location on the upper level.

On March 25, 1999, Complainants sent a letter to Wes Golden, City Manager, Airport Fast Park following up on the March 19, 1999 meeting. The letter stated in pertinent part, "We were inquiring to employee (sic) your parking facilities for our business. At the beginning, you informed us that you were previously approached by the airport staff regarding our business proposal." (See FAA Exhibit 1, ex. 1A).

On March 31, 1999, the Complainants state they received a draft Albuquerque Valet Parking Terminal Building Concession Agreement. The draft includes the statement: "This Agreement (the "Agreement") is made and entered into on the date last entered below by and between the City of Albuquerque, a New Mexico municipal corporation ("City") and Albuquerque Valet Parking, a corporation organized under the laws of the State of _____ ("Operator")". (See FAA Exhibit 1, ex. 1B)

On May 4, 1999, Lorie Guthrie, Senior Buyer sent a Request for Bid No. FRB99-181-LG, Valet Services on a Contract Basis to the Complainants. (See FAA Exhibit 1, ex. 2E). The RFB included in pertinent part,

--Pg. 7, Supplemental Terms and Conditions "It is the City's intention to award a contract resulting from this request to the responsive and responsible offeror whose 'all or none' price is lowest. If no responsive 'All or None' offers are received, the city may award to the lowest responsive and responsible offeror who offers at least as many items as all other offerors."

--Valet RFB-Part IV- Page 2-Item L, "The City shall not award any License Agreement for less than 6% of Gross Revenues or \$15,000 minimum annual guarantee, whichever is greater (exclusive of amounts paid for the lease of the curbside space). Award shall be based on the highest offer over 6% of Gross Revenues or \$15,000 minimum annual guarantee; whichever is greater (exclusive of amounts paid for the lease of curbside space)".

On May 13, 1999, Ms. Guthrie sent the Complainants a letter stating, "there will not be any local or state preferences applied to this bid," and "please note that the award will be given to the Highest amount to the City of Albuquerque as this is a concession bid." (See FAA Exhibit 1, ex. 2E)

On June 2, 1999, bids were opened. The Complainants and AVI submitted bids.

On June 22, 1999, Ms. Guthrie submitted the Recommendation of Award to AVI on Request no. RFB99-181-LG to C. Jeane Ele, C.P.M, Purchasing Officer, and Mr. Czar. The recommendation states, "I recommend awarding the following as the lowest and best offers meeting specifications . . . This is a recommendation of award not an actual award.

Actual award is made by the Purchasing Division by issuance of a purchase order after the protest period ends.” (See FAA Exhibit 9, ex. D(iv))

On June 22 and 23, 1999, Ms. Ele and Mr. Czar, respectively, approved the recommendation. (See FAA Exhibit 9, ex. D(iv))

On June 23, 1999, the results were mailed to the Complainants. (See FAA Exhibit 1, ex. 2E)

On June 30, 1999, the Complainants filed two letters of protest with Ms. Ele. (See FAA Exhibit 1, ex. 2E; FAA Exhibit 9, ex. D(vi))

On July 13, 1999, Ms. Guthrie sent Mr. Cave an electronic mail message asking him to confirm that,

“...you did receive an unsolicited proposal from Albuquerque International Sunport Valet Parking as well as Airport Valet Inc. Both vendors contacted Aviation and met with you to present their companies. Based on the interest shown by both vendors to provide valet service, and the limited curb space at the Airport, Aviation decided that the best way to select one Valet Service vendor was to do a competitive bid. It is also my understanding that Aviation did not agree to contract with either of these vendors, and did not generate any written documentation that would indicate otherwise.” (See FAA Exhibit 9, ex. D(vii))

On July 14, 1999, the Respondent provides, Mr. Cave sent Ms. Guthrie an electronic mail message stating:

“...the Aviation Department met with both vendors and provided them with a draft contract for informational purposes only. We were in the process of negotiating contract terms when the decision was made that the best way to select one vendor was to do a competitive bid. In addition to limited curb space, each vendor indicated their preference to the same locations at the curb and in the terminal building. Because of the limited curb space, conflicts with locations, the potential of limited business to support two valet services, and the potential of other companies also interested in operating at the airport, it was decided to do a competitive bid for one vendor only for a one year pilot after which it would be rebid and a determination would be made if there was enough business to support more than one vendor.” (See FAA Exhibit 9, ex. D(vii))

On July 14, 1999, Ms. Ele sent a letter to the Complainant stating:

1. “According to Aviation staff, you submitted an unsolicited proposal for valet parking services which prompted Aviation to consider the possibility of providing a service not currently available to airport customers. However, Airport Valet Inc. also contacted Aviation during this time and also expressed interest in providing valet parking service at the airport.
2. “The award was made to Airport Valet Inc., as their offer of revenues was the highest offer per Specification L., Part IV, page 2 of the RFB.”

3. "Recommendation of award to Airport Valet Inc., is not protestable based on the issues outlined in your statement of protest letters dated June 30, 1999."
4. "Requests for Bids do not contain a weighted scale of relative importance of evaluation factors. Offers received as responses to Requests for Bid may not be compared against each other but only to the specifications and requirements stated in the bid document, Purchasing Rules and Regulations, Section 10.4.20.2. Award is made solely on cost factors assuming the best offer is responsive and submitted by a responsible offeror." (See FAA Exhibit 1, ex. 2E; FAA Exhibit 9, ex. D(vi))

On July 19, 1999, Benjamin Roybal of Rodey, Dicuson, Sloan, Akin & Robb, P.A on behalf of AVI sent a letter to the Respondent's attorney concerning the postponement of awarding a license to AVI until approval by the City Council. The letter stated in pertinent part,

"...in early February of this year Gregory Brue approached officials at Albuquerque International Sunport ("Sunport") to discuss Mr. Brue's proposal for a valet service at the Sunport. Mr. Brue's company, Airport Valet Inc. (AVI), spent several months and considerable sums of money negotiating with Airport officials for a license to use the facility to provide the valet service...Sunport officials were approached by another potential operator of an airport valet service. To avoid questions about whether both potential operators were given equal opportunity to pursue the project, Sunport officials decided to put the project out for bid..."(See FAA Exhibit 9, ex. D (v))

On June 22, 1999, Ms. Ele in an electronic mail message to Ms. Boulton clarified:

"this requires Council approval as it is a revenue producing concession agreement in excess of \$55,000. The initial expectation when we issued a bid rather than that (sic) rfp (sic) was that the revenues would be less than \$55,000 and therefore the contract would not require council approval. You received and accepted an offer that now requires Council approval on the contract." (See FAA Exhibit 9, ex. D(iv))

On June 23, 1999, Mayor Jim Baca transmitted the Terminal Building Concession Agreement between the City of Albuquerque and Airport Valet, Inc., to the City Council for consideration and action. (See FAA Exhibit 9, ex. D(ii))

On July 28, 1999, the City of Albuquerque and AVI entered into a one-month agreement to allow AVI to begin operations prior to City Council approval of the one-year agreement. In the event that the City Council did not approve the one-year agreement, AVI agreed to cease operations at the end of the term without cost to the City. (See FAA Exhibit 9, ex. B)

On August 19, 1999, the Respondent received two checks from AVI. One in the amount of \$5,000 noting "Monthly License Fee" and another for \$1,000 noting "Security deposit." (See FAA Exhibit 9, ex. D(ii))

On August 23, 1999, the Finance and Government Operations Committee discussed the recommendation. Meeting notes indicate the disposition was "Without Recommendation 3 For and 1 Against, Armijo Excused. Immediate Action 4 For and 0 Against" (See FAA Exhibit 1, ex. 2, Tab I; and FAA Exhibit 9, ex. D(ii))

On August 25, 1999, Mr. Rael approved the license effecting the one year agreement between the City and AVI (See FAA Exhibit 9, ex. E)

On Sept. 20, 1999, the City Council meeting occurred.

City Councilor's Journal shows the approval of the agreement in the following pertinent parts, (See FAA Exhibit 1, ex. 2, Tab I, Council's Journal, 9/20/99):

Page 8, REPORTS OF COMMITTEE

"EC-414, Terminal Building Concession Agreement with Airport Valet, Inc. to Provide Valet Parking Services at the Albuquerque International Sunport, was reported by the Finance and Government Operations Committee on August 23, 1999 with a recommendation that it be sent to the full Council Without Recommendation and that it be acted on at the meeting at which it is reported."

Page 15, APPROVALS:

"Councillor Griego moved that the Terminal Building Concession agreement with Airport Valet, Inc. to provide valet parking services at the Albuquerque International Sunport, EC-414 not be approved. Seconded. The motion was defeated by a vote of 2 (Greigo and Hundley) FOR and 7 AGAINST."

"Councillor Kline moved that the Terminal Building Concession Agreement with Airport Valet, Inc. to Provide Valet Parking Services at the Albuquerque International Sunport, EC-414 (Exhibit 42) be approved. Seconded. The motion carried by a vote of 7 FOR AND 2 AGAINST. Yes: 7; No: Greigo, Hundley."

APPLICABLE LAW AND POLICY

Part 16 of Title 14 of the Code of Federal Regulations, 14 CFR Part 16, contains the rules of practice for filing complaints involving Federally assisted airports. See Rules of Practice for Federally Assisted Airport Proceedings, 61 Fed. Reg. 53998 (October 16, 1996). Complaints may be filed under Part 16 alleging violations of the federal grant assurances required under 49 U.S.C. 47107 or 47113 to be given by airports receiving federal airport improvement program funds. The standard federal grant assurances contain a civil rights assurance [No. 30] and a Disadvantaged Business Enterprise Assurance (DBE) [No. 37], as well as the express requirement of compliance with 49 CFR Parts 23 and 26.

Part 26 of Title 49 of the Code of Federal Regulations, 49 CFR Part 26, contains the Department of Transportation regulations for its Disadvantaged Business Enterprise (DBE) program with respect to DOT-assisted contracts. [See Participation by Disadvantaged Business Enterprises in the Department of Transportation Programs, 64 Fed. Reg. 5096 (February 2, 1999)]. Part 26 applies to recipients of Federal Airport funds authorized by 49 U.S.C. Section 47101 *et seq.* [See 49 CFR Section 26.3(a)(3)]. Part 26 does not apply to contracts in which DOT financial assistance does not participate. [See 49 CFR § 26.3(d)]. Part 26 replaced 49 CFR Part 23 for DBEs in DOT-assisted contracts, but left in place the existing DBE airport concessions provisions of 49 CFR Part 23, retitled "Part 23-Participation by Disadvantaged Business Enterprise in Airport Concessions." [See 64 Fed. Reg. 5096, 5124 and 5126]. Part 23 applies to recipients of a grant for airport development authorized by the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, recodified at 49 U.S.C. § 47101 *et seq.*. [See 49 CFR § 23.91]

The applicable law allegedly violated is the general discrimination prohibition in 49 CFR § 26.7 pursuant to 49 CFR § 23.93(a)(1999).

49 CFR § 26.7 contains the non-discrimination requirements of Part 26:

- (a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.
- (b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

49 USC 47123 provides authority for 49 CFR Part 26.7 and requires, "The Secretary of Transportation to take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter."

49 CFR § 26.7 "prohibits not only intentional discrimination but also actions that have the effect of discriminating against individuals on one of the forbidden grounds (e.g., that have a disparate adverse impact on members of a particular group). The language of paragraph (b) is similar to that in the Department's long-standing Title VI regulation (49 CFR Sec. 21.5(b)(2)) and is consistent with court interpretations of nondiscrimination statutes in other contexts. [See Supplemental Notice of Rulemaking 62 FR 29547, 29551 (May 30, 1997) citing *Alexander v. Choate*, 469 U.S. 287 (1985); *Elston v. Talladega Board of Education*, 997 F.2d 1394 (11th Cir., 1993)]. Therefore, to analyze the allegations in this case we will

use the two primary theories of discrimination under Title VI: intentional discrimination/disparate treatment and disparate impact/adverse effects.

ANALYSIS AND DISCUSSION

We will use the intentional discrimination/disparate treatment theory of discrimination under Title VI to analyze the allegations of discrimination under 49 CFR Part 26.7(a). Then we will use the disparate impact/adverse effects theory of discrimination under Title VI to analyze the allegations of discrimination under 49 CFR Part 26.7(b). We are using the U.S. Department of Justice Title VI Legal Manual, January 1, 2001, as a guide for our analysis. (See FAA Exhibit 15,)

Intentional Discrimination/Disparate Treatment under 49 CFR Part 26.7(a)

The analysis of intentional discrimination is equivalent to the analysis of disparate treatment under the Equal Protection Clause of the Fourteenth Amendment. [See U.S. Department of Justice Title VI Legal Manual, at 42 (January 1, 2001), citing: *Elston v. Talladega County Board of Education*, 997 F.2d 1394, 1405 n. 11 (11th Cir.), *reh'g denied*, 7 F.3d 242 (11th Cir. 1993); *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 582 (1983); *Alexander v. Choate*, 469 U.S. 287, 293 (1985); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)]. To prove intentional discrimination, one must show that “a challenged action was motivated by an intent to discriminate.” *Elston*, 997 F.2d at 1406. It does not require evidence of “bad faith, ill will or any evil motive on the part of the [recipient].” *Elston*, 997 F.2d at 1406 (quoting *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984)). Intentional discrimination claims may be analyzed using the Title VII burden shifting analytic framework established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 (1973).

In applying the framework established in *McDonnell Douglas*, the complainant must first raise an inference of discrimination by establishing a prima facie case of discrimination. The elements of a prima facie case often include, (1) the aggrieved person was a member of a protected class, (2) the person applied for, and was eligible for a federally assisted program that was accepting applications, (3) despite the person’s eligibility he or she was rejected, and (4) recipient selected applicants of the complainant’s qualifications, or the recipient continued to accept applications from applicants of complainant’s qualifications.

In this case, the Complainants have shown that (1) they are members of a protected class (female and African-American); (2) they applied for and were eligible for a valet parking service concession at a federally funded airport which is covered by the DBE concessions program of 49 CFR Part 23; (3) despite their eligibility they were not selected; and (4) the Respondent selected Airport Valet, Incorporated (AVI) who also met the qualification requirements.

After establishing a prima facie case of discrimination, the burden shifts to the recipient to articulate a legitimate, nondiscriminatory reason for the complainant's rejection. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 (1973). The Respondent articulated in their Answer, "The bidder offering the City the Bid Price offering the highest amount to the City was entitled to be awarded the concession...Airport Valet, Inc. offered the highest amount to the City and was awarded the concession" (See FAA Exhibit 5, Czar Affidavit). The Respondent also provided that at the time the complainant approached them, regarding a valet service they were also negotiating with AVI. This is substantiated by the July 13, 1999 letter, concerning another topic, from AVI's legal counsel stating, "... in early February of this year Gregory Brue approached officials at Albuquerque International Sunport . . . to discuss Mr. Brue's proposal for a valet service at the Sunport. Mr. Brue's company, Airport Valet Inc. (AVI), spent several months and considerable sums of money negotiating with Airport officials for a license to use the facility to provide the valet service." (See FAA Exhibit 9, ex. D(v)). Finally, the Respondent claims they decided to bid the concession "... Because of the limited curb space, conflicts with locations, the potential of limited business to support two valet services, and the potential of other companies also interested in operating at the airport." (See FAA Exhibit 9, ex. D(vii)).

Since the Respondent articulated a nondiscriminatory explanation for the alleged discriminatory action, and nothing in the regulation or the governing authorities compels the selection of a lower revenue bidder for a concession, we must next determine whether the record contains sufficient evidence to establish that the Respondent's stated reason was a pretext for discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 804 (1973). In other words, the evidence must support a finding that the reason articulated by the Respondent was not the true reason for challenged action, and that the real reason was discrimination based on sex or race.

Evidence may be found in various sources, including statements by decision makers, the historical background of the events in issue, the legislative or administrative history (e.g., minutes of meetings), the sequence of events leading to the decision in issue, a departure from standard procedure (e.g., failure to consider factors normally considered), a past history of discriminatory or segregated conduct, and evidence of a substantial disparate impact on a protected group. See U.S. Department of Justice Title VI Legal Manual, at 43 (January 1, 2001), citing: *See Arlington Heights v. Metropolitan Hous. Redevelopment Corp.*, 429 U.S. 252, 266-268(1977); *Elston*, 997 F.2d at 1406.

The following is a review of the evidence provided as it relates to the sources identified above. Neither the Complainants, nor the Respondent provided evidence of statements, by decisionmakers for this concession, which indicate a motive of discrimination based on sex or race. The Complainants and the Respondent all provided a historical background and sequence of events concerning the negotiation, the Request for Bids (RFB), and the selection process.

In addition, the Respondent provided electronic mail messages between decision makers, documenting some of the administrative history of the decision. Both parties provided a similar sequence of events as it relates to the Complainants' involvement. However, the Respondent provided additional information regarding the sequence of events as it related to their negotiation and consideration of AVI. This included evidence that they were negotiating with AVI and the Complainants at the same time, and the Respondent provided a draft agreement to both AVI and the Complainants.

As it relates to the Respondent's standard procedure, the Complainants provided copies of the Respondent's Public Purchases Ordinance and Purchasing Rules and Regulations (See FAA Exhibit 1, ex. 2, Tab E(vii) and E(viii)). The procedures allow the advertisement of concessions through a RFB if the anticipated revenue is not more than \$55,000. (See FAA Exhibit 1, ex. 2, Tab E(viii) Section 5-5-20(A)(13)). This was the Respondent's first experience with a valet service concession and the two bids ultimately received under the RFB were \$16,000 and \$60,000. The Respondent could not have predicted such a range of responses. If the Respondent had anticipated revenue of more than \$55,000 their procedures require advertisement of a Request for Procurement (RFP). An RFP allows the Respondent to provide a preference to local and resident businesses. The Respondent's regulations limit the amount of preference to 5 percent. (See FAA Exhibit 1, ex. 2, Tab E(viii) Section 5-5-17(H)). This would have made the Complainant's offer \$16,800 and would not have changed the outcome. The Respondent does not appear to have manipulated the purchasing procedures in order to justify or allow for the selection of AVI.

The Respondent does not have any known past history of discriminatory or segregated conduct within FAA's jurisdiction.

Finally, in determining if the respondent's stated reason for the challenged action is a pretext for discrimination, we may look for evidence of a substantial disparate impact on a protected group, in this case on females or African Americans. Statistical analyses serve an important role as one indirect indicator of racial discrimination. See *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977).

The Complainants claim in their Reply, "Statistics received from the Aviation Department and past history records will show and prove that there has been no '(BLACKS (AFRICAN-AMERICAN) AND WOMEN)' airport concession contracts approved and granted to date and dating back to at least 1982 by the City of Albuquerque and Directors of Aviation." (See FAA Exhibit 6, pg. 7). As evidence the Complainants provide a Purchasing Division Monthly Contract Listing for the City of Albuquerque. (See FAA Exhibit 6, ex. B). The list does not provide the sex or race of the bidders or that of the prevailing parties. In addition, it is not limited to airport concessions, but includes all contracts with the City. The Complainants also provided a copy of the retail and restaurant section of the

tenant phone list dated March 9, 2001. (See FAA Exhibit 6, ex. C). It provides a list of eleven companies doing business at the airport. Of these four are identified as women owned (WBE), two are identified as minority owned (MBE), and two are identified as WBE and MBE.

FAA records of the Respondent's annual DBE Concession Accomplishment Reports for fiscal years 1999 and 2000, indicate that the Respondent has ten DBE concessionaires at the airport. (See FAA Exhibit 13). Of these ten DBE concessions, Hispanic males own six; Hispanic females own three; and a non-minority female owns one. There is no evidence in the record of the sex or race of the non-DBE concession owners at the airport, or of those who bid, but were not selected for any concession at the airport.

At most, the available evidence shows that women own between four and six of the eleven DBE concessions at the airport. It also shows that no African American owns a DBE concession at the airport. However, there are crucial statistics missing from the evidence. For example, it does not provide comparison data, to establish the availability of concessionaires by sex and race in the market area (e.g., sex and race of past concession bidders; sex and race of similar concessionaires in the local area, etc).

The 1997 census data for retail businesses in the Albuquerque Metropolitan Statistical Area (MSA) might help establish comparison data. (See FAA Exhibit 16). According to this report, 52,493 businesses are in the MSA, including 14,965 female owned businesses, and 645 Black owned businesses. Therefore, according to this data, female owned businesses account for 28.5% of all businesses in the MSA and Black owned businesses account for 1.2 %. According to the documents provided by the Complainants and in FAA Reports, the Respondent has at most eleven concessionaires. This means that absent discrimination; we would expect 3.1 of the airport concessions to be owned by females, and .1 of them to be owned by an African-American. The following chart summarizes this data:

Category	# Businesses in MSA ⁵	Percentage of All Businesses in MSA	Expected # Airport Concessions based on census statistics	Actual # Airport Concessions	Percentage of Concessions at Albuquerque Int'l Airport
All Businesses	52,493	100%	11	11	100%
Women Owned	14,965	28.5%	3.6	4	36.4%
African- American Owned	645	1.2%	.1	0	0%

⁵ Based on 1997 census data. See FAA Exhibit 13

However, even this analysis lacks a certain amount of accuracy because the census data is four years old and not all businesses in the MSA are interchangeable for purposes of airport concessions.

Courts have found that considerations such as small sample size may detract from the value of the evidence and that simplistic percentage comparisons may lack real meaning in the context of the case. See *Mayor of Philadelphia v. Educational Equality League*, 415, U.S. 605, 620, 94 S. Ct. 1323, 1333, 39 L.Ed.2d 630 (1974). The statistical information available in this case is limited and its reliability is questionable. Therefore, it does not provide for a reliable source to determine substantial disparate treatment.

The courts have also recognized testimony of multiple individuals recounting specific instances of discrimination to bolster statistical evidence. See *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 338 (1977). However, in this case no such testimony was provided. In summary, although the Complainants established a prima facie case, they were unable to provide sufficient evidence to establish that the Respondent's non-discriminatory reasons for bidding the concession opportunity and for selecting AVI, were a pretext for discrimination.

Discrimination under 49 CFR Part 26.7(b)

49 CFR Part 26.7(b) instructs airports, "In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin."

As a primary airport receiving federal funding, the Respondent is required to have a DBE Concessions program under 49 CFR Part 23. The Respondent has a DBE Concessions program approved by the Federal Aviation Administration, Southwest Region.

Under the DBE Concessions program the airport is obligated to abide by the requirements of section 26.7(b) with respect to the award and performance of any concessions contract covered by Part 23. Albuquerque Valet Service, an on-airport valet parking service, meets the definition of a concession under Part 23 and is therefore, covered by the Respondent's DBE Concessions program. [See 49 CFR 23.89].⁶

⁶ As to Complainants' DBE status, our investigation found that Albuquerque International Sunport Valet Parking Service was certified as a woman and minority owned business (W/MBE) by the City of Albuquerque, Small Business Enterprise Assistance Program on May 25, 1999. (See FAA Exhibit 1, ex 2, Tab E (iii), Attachment F). However, the Albuquerque Department of Transportation certifying entity has not certified the Complainants business as a DBE firm. (See FAA Exhibit 14), and the Respondent, also a certifying entity, states that it has not certified the

The Respondent must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin. Under 49 CFR 23.93 (a)(1),(2) the objectives of the program include

(a)(1) Each sponsor shall abide by the non-discrimination requirements of §26.7 with respect to the award and performance of any concession agreement covered by this subpart.

(a)(2) Each sponsor shall take all necessary and reasonable steps to foster participation by DBE's in its airport concession activities.

Disparate Impact/Adverse Affects Analysis under 49 CFR 26.7(b)

We will now analyze the complaint under the disparate impact theory, to determine if the Respondent uses criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to individuals of a particular race or sex. Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law. [See U.S. Department of Justice Title VI Legal Manual, at 48 (January 1, 2001), citing: *New York Urban League v. New York*, 71 F.3d, 1031, 1036 (2d Cir. 1995)].

In a disparate impact case, the focus concerns the consequences of the recipient's practices, rather than the recipient's intent. *Lau v. Nichols*, 414 U.S. 563 at 568 (1974). To establish liability under the disparate impact theory, the Complainant must first demonstrate by a preponderance of the evidence that a facially neutral practice has a disproportionate adverse effect on a group protected by Title VI.⁷ [See U.S. Department of Justice Title VI Legal Manual, at 49 (January 1, 2001), citing: *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984); *Elston*, 997 F.2d at 1407 (citing *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)]. If a prima facie showing is made, the Respondent then must prove a substantial legitimate justification for the challenged practice exists in order to avoid liability. *Id.* If the Respondent does prove such justification, the Complainant may still prevail if able to show a comparably effective alternative practice which results in less disproportionate impact exists, or that the justification provided by the Respondent is pretext for discrimination. *Id.*

Complainants business as a DBE firm. However, we do not need to reach the issue of Complainant's DBE status to reach our determination in this case.

⁷ Although Title VI protects individuals from discrimination based on race, color, and national origin; 49 USC 47123 extends protection to individuals based on sex. Therefore, for purposes of this analysis, references to Title VI protection will be assumed to include protection based on sex.

In this case, the protected groups at issue are females and African-Americans. Therefore, in order to make a prima facie showing that a given action by the Respondent violated the regulations, the Complainants must show the action had a disparate impact on females or African-Americans. To do this, the Complainants must show a causal connection between the facially neutral policy and the disproportionate and adverse impact on females or African-Americans as a group.

In order to establish causation, the Complainants are required to employ facts and statistics that adequately capture the impact of the practice on similarly situated females or African-Americans, and members of non-protected groups. The Complainants must show, using an appropriate measure, that specific actions of the Respondent cause a disparate effect on similarly situated people to the detriment of females or African-Americans. *New York City Environmental Justice Alliance (NYCEJA) v. Giuliani*, 214 F.3d 65, 70 (2d Cir. 2000).

The Complainants provide that they were in negotiation with the Respondent for a valet parking concession when the Respondent advertised a Request for Bid for the concession. The Complainants submitted a bid; however, another bidder, with a higher revenue offer, was selected. The Complainants provide a list of contracts held by the Respondent. They also provide a list of the airport concessions categorized by their MBE and WBE status. (See FAA Exhibit 6, ex. B and C). However, the Complainants did not provide statistics or evidence that would allow for a comparison of similarly situated protected and non-protected groups to identify a disparate effect (e.g., sex and race of airport concession owners awarded contracts through a specific practice; sex and race of the available pool of candidates for airport concession bids; etc).

The analysis of the 1997 U.S. Census data, as described in our analysis of disparate treatment in the section above, indicates that we might expect a female to own 3.1 airport concessions, and an African-American to own less than one (exact figure is one-tenth) airport concession. The data provided by the Complainant, and available in FAA records, indicate that females own between six and nine airport concessions and African-American's do not own any airport concessions. This analysis does not show a significant disparate effect on female or African-American owned businesses in comparison to similarly situated non-protected groups in the Albuquerque Metropolitan Statistical Area.

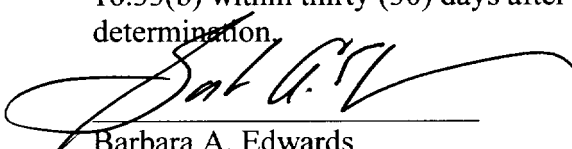
The Complainants have not established that the Respondent utilized a facially neutral practice that had a disproportionate impact on females or African-Americans. Therefore, the first element of a disparate impact claim, under 49 CFR Part 26.7, has not been met and the claim cannot be proven.

FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties, and the entire record, herein, and the applicable law and policy and for the reasons stated above, the FAA Office Civil Rights, under the delegation of authority of July 5, 2001, finds and concludes as follows: Complainant failed to prove that the City of Albuquerque discriminated against them on the basis of sex (female) and race (African-American) in violation of 49 CFR 26.7 and 49 CFR 23.93(a) when the City did not award a valet parking contract to their firm. Accordingly, the complaint is dismissed.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [See 14 CFR 16.247(b)(2)}. A party adversely affected by the Director's Determination may appeal the Director's Determination to the FAA Assistant Administrator for Civil Rights pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination determination.



Barbara A. Edwards
Deputy Assistant Administrator for
Civil Rights

Date

2/11/02

Albuquerque Valet Service, et al.
Albuquerque, NM
v.
City of Albuquerque
Albuquerque, NM
Formal Complaint Docket No. 16-01-01
Index of Administrative Record

FAA Exhibit	Date	Description
1	12/27/00	Complainant Original Complaint Before the FAA Exhibit 1: Albuquerque Valet Parking Service (Book 1) <u>Complaint Section</u> Designation of Persons to Receive Service Complaint Complaint Summary Business History Highlights Executive Summary <u>Business Information Section</u> Business Cards Application for Employer Identification Number State of New Mexico Application for Business Registration Business Registration Certificates (6/1/99 to 5/31/01) Home Occupation Registration Application Business Liability and GarageKeepers Liability Insurance Policies. <u>Tab A</u> Written Correspondence: Albuquerque International Sunport Valet Parking Service (AISVP) Proposal 12/4/98 Letter to Lawrence Real 12/14/98 Non-disclosure statement signed by Lawrence Real 12/14/98 Summary of appointment with Lawrence Real 12/16/98 letter to Adele Hundley 12/16/98 Non-disclosure statement signed by Adele Hundley 12/16/98 Summary of appointment with Adele Hundley 12/29/98 Letter to Lawrence Real 12/29/98 Letter to Adele Hundley 1/8/99 Letter to Jay Czar 1/8/99 Unsigned Non-disclosure statement for Jay Czar AISVP Proposal 1/8/99 Summary of appointment with Jay Czar AISVP Business Plan 1/21/99 Letter to Jay Czar (4 copies) 2/23/99 Letter to Dewey Cave (sending copy of 1/21/99 letter w/ fax confirmation) 3/9/99 Summary of appointment with Dewey Cave 3/9/99 Handwritten meeting notes from meeting with Dewey Cave, Anita Boulton, and James Fitzgerald 3/16/99 Letter to Dewey Cave 3/25/99 Letter to Wes Golden, Airport Fast Park 5/18/99 Letter to David Cargo, Attorney
FAA		

Exhibit 1	Date 12/27/00	Description
		<p>Tab A (i): Sunports Commercial Ground Vehicles Operating Agreement for Commercial Ground Transportation Vehicles</p> <p>Tab A (ii): Sunport Lease Records Sunport Lease Master Records received 1/8/99 Airport Fast Park Park & Shuttle Richard's Parking Thrifty Car Rental Enterprise Rent-A-Car ABC Car Rental</p> <p><u>Tab B: Albuquerque Valet Parking Terminal Building Concession Agreement, Draft 3/31/99</u></p> <p><u>Tab C Media</u></p> <p>Tab C (i): Newspaper Articles 5/11/99 Albuquerque Journal (2 articles) 5/14/99 Albuquerque Journal (Request for Bid Notice) 8/16/99 Albuquerque Journal (1 article) 8/24/99 Albuquerque Journal (1 article) 8/24/99 Albuquerque Tribune (1 article) 8/30/99 Albuquerque Journal, Op Ed page (1 article) 8/30/99 Albuquerque Tribune, Local/Regional News 8/31/99 Albuquerque Journal (1 article) 9/21/99 Albuquerque Journal (1 article) 9/21/99 Albuquerque Tribune, (1 article)</p> <p>Tab C (ii): Communication with Media Personnel 8/20/99 Business history provided to Tania Soussan, Albuquerque Journal Staff Writer. 9/20/99 Press Release by Norma Morris, Confirmation faxes to KOB, KOAT, KRQE</p> <p><u>Tab D (2 tab D's): Letters of Support Recommendation and Certification as a WBE, Certificate No. WE1A-1843</u> 1/7/99 Letter from Adele Baca Hundley City of Albuquerque, Small Business Enterprise Assistance Program MBE/Certificate. Expires 6/30/00. 5/25/99 Letter of WBE certification by Director, Small Business Enterprise Assistance Program 5/24/99 application for M/WBE certification 2/18/00 Letter from Adele Baca-Hundley, City Councilor 3/6/00 Letter from Vincent Griego, City Councilor 10/2/00 Letter from Alan Armijo, City Councilor Undated letter from Ron Garcia, Community Events Division Mgr.</p> <p>Exhibit 2: Albuquerque Valet Parking Service Section 2 (Book 2)</p> <p><u>Tab E: City of Albuquerque Purchasing Division's Bid Material</u></p> <p>Tab E (i): Request for Bid No. RFB99-181-LG, Valet Services on Contract Basis.</p>

FAA Exhibit 1	Date 12/27/00	Description
		<p>Tab E (ii): Addendum Number 1, No. RFB99-181-LG, Valet Services for the Airport 5/13/99 Letter from Lorie Guthrie, Senior Buyer, notifying bidders that the award will be given to the highest bid.</p> <p>Tab E (iii): Offer Submitted in Response to the RFB No. RFB99-181-LG 6/2/99 Albuquerque International Sunport Valet Parking Service Bid Submission</p> <p>Tab E (iv): Bid Results, RFB No. FRB99-181-LG 6/22/99 City of Albuquerque, Purchasing Division, Inter-Office Correspondence, Recommendation of Award on Request No. RFB99-181-LG. List of offers received from bid</p> <p>Tab E (v): Formal Request for a Protest Hearing Bid Results No. RFB99-181-LG 6/30/99 Formal protest letter to Jean Ele, Purchasing Officer 6/30/99 2nd Formal protest letter to Jean Ele. 7/14/99 Request for documentation justifying selection.</p> <p>Tab E (vi): Purchasing Division's Response to Formal Request for Protest Hearing, Protest of Award No. RFB99-181-LG 7/14/99, Letter from Jean Ele, denying request for protest.</p> <p>Tab E (vii): City of Albuquerque Purchasing Rules and Regulations, Effective 7/1/91</p> <p>Tab E (viii)(sic): City of Albuquerque Twelfth Council's Ordinance</p> <p><u>Tab F: City of Albuquerque Purchasing Division's Vendor Information on Registration/Re-Registration Program Dated 6/28/98, Received in 1999.</u></p> <p><u>Tab G: Correspondence with City of Albuquerque's Officials After RFB No. FRB99-181-LG Valet Services for the Airport</u> 7/12/99 Summary of appointment with Vickie Fisher, Deputy Chief Administrative Officer, Mayor's Office. 7/16/99 Follow-up letter to Vickie Fisher 7/16/99 Thank you letter to Adele Baca-Hundley for her support 7/22/99 Letter to Ronald Beserra, Albuquerque Convention Center Director. 8/9/99 Letter to Adele Baca-Hundley. Follow up to 8/6/99 meeting 8/17/99 Letter to Wes Golden, City Manager, Airport Fast Park 9/14/99 Letter to Vincent Griego, City Council President. Follow up to 9/13/99 meeting. 9/14/99 Thank you letter to Ruth Adams, City Councilor 10/13/99 Thank you letter to Adele Baca-Hundley 10/13/99 Letter to Adele Baca-Hundley requesting assistance</p>

		8/17/99 Letter to Anita Boulton, Contract Compliance Specialist, requesting specific public information.
FAA Exhibit	Date	Description
1	12/27/00	<p><u>Tab H: Request for Public Information from the Albuquerque International Sunport Aviation Department.</u></p> <p><i>Tab H (i): Request for Public Information Minority and/or Woman-Owned Correspondence to the Albuquerque International Sunport Aviation Department.</i> 8/17/99 Letter to Anita Boulton, Contract Compliance Specialist, requesting specific public information (6 copies).</p> <p><i>Tab H (ii): Albuquerque International Sunport Aviation Department's Response to Request for Public Information Minority and/or Woman-Owned Dated 8/17/99</i> 8/19/99 Letter from Anita Boulton, acknowledging receipt, stating costs, timelines and requesting Ms. Morris to make appointment to inspect records. 11/5/99 Letter from Anita Boulton, 2nd response to request for public information.</p> <p><u>Tab I: City of Albuquerque, New Mexico, City Council Meetings</u></p> <p><i>Tab I (i): Finance and Government Operations Committee Agenda, 8/23/99</i></p> <p><i>Tab I (ii): Finance and Government Operations Committee Audiotape, 8/23/99</i></p> <p><i>Tab I (iii): Documentation (Bound booklet) Presented to City of Albuquerque Councilors on 9/20/99 at the City Council Meeting</i></p> <p><i>Tab I (iv): City of Albuquerque Councilors Inter-Office Correspondence Revised 9/21/99</i></p> <p><i>Tab I (v): City of Albuquerque Councilors Schedule/Agenda 9/20/99</i></p> <p><i>Tab I (vi): City of Albuquerque Councilors Action Summary 9/20/99</i></p> <p><i>Tab I (vii): City of Albuquerque city Council's Journal 9/20/99</i></p> <p><i>Tab I (viii): City of Albuquerque City Council Meeting 9/20/99, Audiotape</i></p> <p><i>Tab I (ix): City of Albuquerque City Council Meeting 9/20/99, Videotape</i></p> <p><u>Tab J: Albuquerque International Sunport Fall 1999 Issue No. 4 "On Course" 'Valet Service Officers Travel Convenience'</u></p> <p><u>Tab K: Correspondence, US Department of Transportation, Federal Aviation Administration, Ms. Rosetta F. Robinson, Southwest Region.</u> 7/30/99 letter from Rosetta Robinson, FAA Southwest Region</p>

		External Program Manager. Instructions on filing a complaint. Copies of regulations.
FAA Exhibit	Date	Description
1	12/27/00	<p><u>Tab L: Financial Assistance</u> 8/28/98 Request for Small Business Development Center Assistance 3/31/00, Letter to Toby Montoya, Small Business Dev. Center 12/13/00 Letter from Toby Montoya 8/20/99 Letter from Michael Miller, Vice President First Security Bank.</p> <p>Exhibit 3: Albuquerque Valet Parking Service, Albuquerque Convention Center (Book 3)</p> <p><u>Tab M: Retaliation</u></p> <p><i>Tab M(i): Origination, Valet Parking Services Provided to the Albuquerque Convention Center. Written Correspondence</i> 12/17/98 Letter to Lawrence Rael, Chief Administrative Officer, Mayor's Office. 12/30/99 Letter to Lawrence Rael transmitting Convention Center Business Plan. 3/13/00 Letter to Lawrence Rael, pursuing Convention Center contract. Resubmittal of 12/17 & 12/30 letters 3/1/00 Letter from Bud Dziak, Associated insurance Professionals, confirming liability insurance. 2/3/00 Letter from Patrick Geissler, Transit Department Manager 2/9/00 Letter from Ronald Beserra, Convention Center Director 2/18/00 Letter from Adele Baca-Hundley, City Councilor 3/6/00 Letter from Vincent Griego, City Councilor 2/14/00 Letter from Senator Phillip Maloof 2/14/00 Letter from Phillip Maloof, Owner Maloof Companies 3/6/00 Unsigned Non-disclosure Statement to Lawrence Rael. 3/15/00 Letter to Connie Beimer and Ron Garcia, Cultural Services Department, offering valet service at the Mayor's Ball. 3/17/00 Letter to Lawrence Rael, requesting to finalize Convention Center contract. 4/18/00 Letter to Kathy Westby, Convention Center Business Manager requesting to finalize Convention Center contract and Mayor's Ball Contract. 4/19/00 Letter to Downtown Business Patrons regarding street closures for Celebracion 2000. 4/21/00 Letter to Lawrence Rael, requesting written verification that approval of contract is granted. Certificate of Liability Insurance 6/26/00 Letter to Ray Montano, Convention Center Special Projects Manager, requesting submittal of draft license agreement. Various Handwritten Notes Unsigned License Agreement</p>

FAA Exhibit	Date	Description
1	12/27/00	<p>Tab M(ii): Letters of Recommendation and Support, City of Albuquerque Officials</p> <p>2/3/00 Letter from Patrick Geissler, Transit Department Manager 2/9/00 Letter from Ronald Beserra, Convention Center Director 2/14/00 Letter from Senator Phillip Maloof 2/14/00 Letter from Phillip Maloof, Owner Maloof Companies 2/24/00 Letter from Wesley Golden, Airport Fast Park City Manager. 6/19/00 Letter from Augustine Rodriguez, Attorney at Lassen & Jaffe Attorneys, regarding License Agreement 8/22/00 Letter from Thaddeus Lucero, Community Services Division Director. 10/3/00 Letter from Commissioner Ken Sanchez 10/19/00 Letter from Commissioner Steve Gallegos 11/13/00 Letter from County Commissioner Les Houston</p> <p>Tab M(ii)(sic): Letters of Recommendation and Support, Services Rendered 2000</p> <p>1/3/00 Letter from Adele Frangos, regarding NM Symphony Ball 5/10/00 Letter from David Daniel, Executive VP Sunrise Bank Insurance Liability Documents (2) KiMo Grand Re-Opening Agenda (2) 10/7/00 Letter from Karen Cox, Board of Directors Opera SW 12/6/00 Letter to Betty Hinkle Insurance Liability Document 12/7/00 Letter from Geri Krammer Insurance Liability Document 6/12/00, Letter to Casey Owens, Director of Game Operations 12/13/00 Letter of Agreement with New Mexico Slam</p> <p>Tab M(iii): License Agreement (Attendant Parking Services) City of Albuquerque.</p> <p>6/8/00 Unsigned Draft License Agreement 6/26/00 Letter to Ray Montano, Convention Center Special Projects Manager, requesting submittal of draft license agreement (2 copies) 12/12/00 Letter from Jim Baca, Mayor. Offer to list company as vendor.</p>
2	1/17/01	FAA Notice: Complaint dismissed without prejudice as incomplete under 14 CFR § 16.27.
3	2/8/01 & 3/26/01	Letters from Complainant requesting the reopening of Docket No. 16-01-01
4	4/16/01	FAA Notice: FAA Docket no. 16-01-01 Reopened
5	5/4/01	Respondent's Answer and Motion to Dismiss Complainant's Original Complaint Before the FAA. Czar Affid.: Affidavit of Jay J. Czar
FAA Exhibit	Date	Description

6	5/16/01	Complainant's Reply to the City of Albuquerque's Answer and Motion to Dismiss. Exhibit A: 49 CFR Part 23, Subpart F with complainant's notes Exhibit B: Purchasing Division Monthly Contracts Listing Exhibit C: List of "Food and Beverage" and "Retail Shops Concessions" provided by Eugene Sanchez, DBE Federal Compliance Officer, City of Albuquerque
7	5/22/01	Respondent's Rebuttal Exhibit A: Copy of Complainant's bid
8	9/13/01	FAA Request for Additional Information of Respondent
9	10/5/01	Respondent's Reply to FAA Request for Additional Information: Exhibit A: 10/3/01 Interoffice Memorandum from Purchasing Officer regarding RFP's and RFB's. Exhibit B: 7/28/01 Interoffice Correspondence from Aviation Director to Purchasing Officer, filing Terminal Building Concession Agreement. Exhibit C: Airport Valet Inc. (AVI) Bid Response Exhibit D: Internal Office files including: (i) Records concerning termination of AVI's agreement. (ii) 6/23/99 transmittal of agreement for council action. (iii) 6/22/99 electronic mail messages regarding reasons for RFB and requirement for council action. (iv) 6/22/99 interoffice correspondence regarding recommendation of award to AVI . (v) 7/19/99 letter from Rodey, Dickason, Sloan, Akin & Robb, PA on behalf of AVI requesting prompt award of the license. (vi) Letters between respondent and complainant regarding bid protest (6/30 – 7/14/99) (vii) 7/13-14/99 electronic messages regarding reasons for issuing RFB. (viii) Contract file of lease payments/proof of insurance Exhibit E: AVI Terminal Building Concession Agreement and RFB.
FAA Exhibit	Date	Description
10	10/2/01	FAA Notice of Extension of Time
11	11/13/01	Complainants' Motion to Dismiss Respondent's 10/5/01 response to FAA's request for additional information.
12	10/16/01	List of Airport Improvement Program Grants Made to Albuquerque International/City of Albuquerque, New Mexico
13	10/22/01	FAA, Southwest Region records of Albuquerque's Concession Accomplishments for DBE. DBE Concession Accomplishment Report for FY 1999 DBE Concession Accomplishment Report for FY 2000

14	10/19/01	Letter from New Mexico State Highway and Transportation Department, Office of Equal Opportunity verifying complainant's lack of DBE status.
15		U.S. Department of Justice, Civil Rights Division, Title VI Legal Manual, Section VIII, Subsections C and D, dated 1/11/01.
16		1997 Census Data for Minority and Women-Owned Businesses in the Albuquerque Metropolitan Statistical Area Universe – All Firms; Women-Owned; Black-Owned
17	7/5/2001	Notice of Limited Delegation

18 1/9/02 FAA Extension of Time

CERTIFICATE OF SERVICE

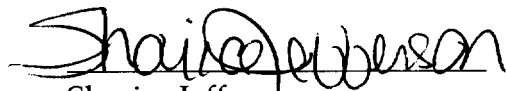
I HEREBY CERTIFY that on February 11, 2002, I caused to be placed in the United States mail (first class mail, postage paid) or personally delivered, a true copy of the foregoing document addressed to:

Norma G. Morris
David Powdrell
Albuquerque Valet Parking Service
P.O. Box 328
Bernalillo, NM 87004-0328

James Fitzgerald
Assistant City Attorney
City of Albuquerque
P.O. Box 9948
Albuquerque, NM 87119-1048

Kathleen Connon, ACR-4

Part 16 Airport Proceedings Docket



Sharice Jefferson
Airports & Environmental Law Div
Office of the Chief Counsel, FAA