



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

August 17, 2009

Mr. Larry Scantlin  
Airport Director  
Smith Reynolds Airport  
Suite 204  
3801 N. Liberty St.  
Winston-Salem, NC 27105

RE: Smith Reynolds Airport  
Runway Safety Improvements Project

Dear Mr. Scantlin:

The North Carolina Department of Transportation (Department) entered into a Grant Agreement with the FAA on June 20, 2007, which included block grant funding to *"improve Runway 15/33 safety area (EMAS) at the Smith Reynolds Airport, Winston Salem, North Carolina."* Furthermore, the Department agreed *"to accomplish the project in compliance with the terms and conditions contained herein and in the document 'Terms and Conditions of Accepting Airport Improvement Grant' dated March 29, 2005"*.

On January 28, 2008, The Department and Smith Reynolds Airport Authority entered into a Block Grant Agreement in which the Airport certifies in paragraph 7 *"that it will adhere to all applicable laws, regulations, and procedures in the application for and Sponsor approval of this Grant."* Paragraph 8 of the agreement also states, *"For a material breach of this Agreement or the Sponsor's Assurances, the Sponsor shall be liable to the Department for the return of all grant monies received."* Under the conditions of our agreement, the Department respectfully requests a prompt response to the following issues.

Section II. C. 10 (Certifications) of the Terms and Conditions stipulates all contracts and subcontracts contain (will contain) clauses required from Title IV of the Civil Rights Act and 49 CFR 23 and 49 CFR 26 for Disadvantaged Business Enterprises (DBE). 49 CFR 26.29 has the following language regarding prompt payment to DBE firms:

**MAILING ADDRESS:**

NC DEPARTMENT OF  
TRANSPORTATION  
DIVISION OF AVIATION  
1560 MAIL SERVICE CENTER  
RALEIGH NC 27699-1560

TELEPHONE: 919-840-0112

FAX: 919-840-9267

WEBSITE: [WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)

**LOCATION:**

RDU AIRPORT  
1050 MERIDIAN DRIVE  
RDU NC 27623

**§26.29 What prompt payment mechanisms must recipients have?**

- a. *You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than a specific number of days from receipt of each payment you make to the prime contractor. This clause must also require the prompt return of retainage payments from the prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.*
  1. *This clause may provide for appropriate penalties for failure to comply, the terms and conditions of which you set.*
  2. *This clause may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.*
- b. *You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:*
  1. *A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.*
  2. *A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.*
  3. *Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.*

In addition to the above requirement, the following language is included in paragraph 6.1.2 of the Airport's contract with the Contractor dated October 7, 2008:

*"With each application (excluding the first pay application) for payment, Contractor shall submit a certified report stating that each Subcontractor has been paid for 90% of the bid item quantities and/or stored materials as approved for payment by Engineer in all previous applications for payment".*

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It should be noted that the above clause deemed inclusive of all Subcontractors (not just DBE Subcontractors). The Department believes the Contractor's statement on the pay estimate through March 25, 2009, "*that all amounts have been paid by the Contractor for work for which previous Certificates were issued*" is inaccurate. Furthermore, the Department has noted that all subsequent IA Forms G703 (Application for Payment) have been altered to state, "*have been or will be paid*". In the Department's opinion, this is an attempt to circumvent the requirement that prompt payment be made to Subcontractors and is a material violation of 49 CFR 26.29 as it relates to DBE Subcontractors. In addition, it is in violation of the Airport's agreement with the Contractor. If the Airport does not enforce paragraph 6.1.2 of its contract with the Contractor, the Department believes the Airport may be in material breach of the Sponsor Assurances in accordance with paragraph 8 of the January 28, 2008 Block Grant Agreement.

Depending upon the content and timing of the response from the airport to resolve these issues, the Department will take legal action against the airport as required. Currently, the Department's Office of Inspector General has this matter under investigation.

Sincerely,

A handwritten signature in blue ink that reads "Richard J. Walls". The signature is fluid and cursive, with the first name "Richard" being the most prominent part.

Richard J. Walls, P.E.  
Director of Aviation

cc: Bruce Dillard, NCDOT  
Tammy Montanez, NCDOT  
Jim Westmoreland, NCDOT  
Rick Barkes, NCDOT