

February 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10564

AZTECA ENTERPRIZES, INC,

Plaintiff - Appellant,

versus

DALLAS AREA RAPID TRANSIT,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(No. 3:99-CV-281-M)

Before EMILIO M. GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:^{*}

Azteca Enterprizes, Inc. ("Azteca"), appeals the district court's summary judgment in favor of Dallas Area Rapid Transit ("DART"). Because we find no error with the district court's opinion, we affirm.

^{*} Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

This appeal concerns alleged discrimination during the awarding of a 1998 DART contract for delivery of concrete cross-ties for use in DART's light rail line. Azteca argues that the district court and the administrative law judge erred in finding that Azteca did not meet the requirements specified in DART's solicitation and in the contract itself. The administrative law judge's thorough findings of fact were not clearly erroneous and we see no reason to disturb the finding that Azteca was not a "responsible bidder" as required by the contract. Azteca further argues that, under 28 U.S.C. §§ 1981 & 1983, it was subjected to disparate treatment by DART and that the solicitation process had a disparate impact on Hispanic contractors. Azteca's disparate treatment claim fails because the other bidders did meet the PCI certification requirement as specified in the solicitation and in the contract, while Azteca did not meet that requirement. Azteca's disparate impact claim fails because Azteca provided no evidence that Hispanics experienced a disparate impact as a result of DART's 1998 cross-ties contracting process.

For the foregoing reasons, the decision of the district court is AFFIRMED.