



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Notification of Contract
Administration Issues (DOT #2011-0314)

Date: SEP 27 2011

From: Warren S. Whitlock *WWhitlock*
Associate Administrator for Civil Rights

In Reply Refer To: HCR-40

To: Laura S. (Laurie) Leffler
Division Administrator (HDA-OH)
Columbus, Ohio

This memorandum is in reference to a complaint of discrimination filed by (b) (6) (b) (6) (complainant) alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI) against the Ohio Department of Transportation (ODOT) and (b) (6) based on his national origin, Puerto Rican.

After reviewing the complaint, we have determined that the issues are related to contract administration rather than Title VI. Therefore, we are forwarding the complaint to your office for appropriate handling. The complainant has been advised of this referral (copy attached).

If you have any questions, please contact Ms. Thalia Williams of my staff at 202-366-1595.

2 Attachments

cc:

Ms. Cheryl Cattledge, Civil Rights Program Manager, FHWA, HDA-OH
Mr. Patrick J. Piccininni, Deputy Director, Division of Chief Legal Counsel and Equal Opportunity, ODOT, 1980 West Broad Street, Columbus, OH 43223
Ms. Kimberly A. Watson, Internal Civil Rights Manager, Title VI, and ADA/504 Coordinator, Division of Chief Legal Counsel and Equal Opportunity, ODOT, 1980 West Broad Street, Columbus, OH 43223



U.S. Department
of Transportation
**Federal Highway
Administration**

SEP 27 2011

1200 New Jersey Avenue, SE
Washington, D.C. 20590

In Reply Refer To: HCR-40
DOT #2011-0314

(b) (6)

Dear (b) (6) :

The Federal Highway Administration (FHWA) Office of Civil Rights is in receipt of your complaint of discrimination, submitted via e-mail on August 28, 2011, against the Ohio Department of Transportation (ODOT) and (b) (6). The FHWA Office of Civil Rights received your complaint on August 29, 2011. In your complaint, you allege various violations of Title VI of the Civil Rights Act of 1964 (Title VI) based on your national origin (Puerto Rican).

Please be advised that our office has responsibility to investigate individual complaints of discrimination involving violations of Title VI. Title VI provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

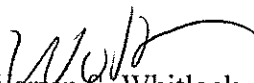
After a thorough review of your complaint, we have determined that your complaint will not be investigated under Title VI. The issues raised are related to contract administration rather than Title VI. Specifically, you state that:

1. The ODOT and (b) (6) breached various terms of your subcontract (No. 10-1-131-C3) while you performed work on Project ODOT 10-2000;
2. (b) (6) failed to provide your company an equal amount of hours and work for trucks used on the above-referenced project site;
3. The ODOT and (b) (6) coerced and steered your company to be subcontracted through (b) (6); and
4. (b) (6) failed to pay you for damages lost under your sub-contract.

Your complaint will be referred to the FHWA Ohio Division Office for processing (copy enclosed).

This concludes the processing of your complaint by the FHWA Office of Civil Rights.

Sincerely yours,


Warren S. Whitlock
Associate Administrator for Civil Rights

Enclosure

Williams, Thalia (FHWA)

From: Williams, Thalia (FHWA)
Sent: Monday, August 29, 2011 7:27 AM
To: (b) (6)
Subject: RE: Filing Charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3.

Good morning (b) (6)

This acknowledges the Federal Highway Administration, Office of Civil Rights, Investigations and Adjudications', receipt of your complaint that you sent via e-mail to Ms. Janine Ashe. Your complaint has been forwarded to me for appropriate handling.

Your complaint will be reviewed to determine whether your complaint can be accepted for investigation. After the review, you will receive a decision letter via mail.

Thank you,

Thalia Williams
Equal Opportunity Specialist
Office of Civil Rights (HCR-40)
DOT/Federal Highway Administration
1200 New Jersey Avenue, SE., Room E81-322
Washington, DC 20590
202-366-1595 (office)
202-366-1599 (fax)
thalia.williams@dot.gov

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From: (b) (6)
Sent: Sun 8/28/2011 9:51 PM
To: Ashe, Janine (FHWA)
Subject: Filing Charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3.

Hello,

My name is (b) (6)

Attached is a charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3 I wish to file with your department.

Thank You,

(b) (6)

US Department of Transportation Federal Highway Administration EEOC Complaint

I am writing this letter in order to file a charge of discrimination against (b) (6) and all listed parties involved. My company and I have been subject to discrimination, unfair/disparaging treatment, hostile/unsafe work environment, threats, untruths, overweight loads, lack of oversight/intervention by the (b) (6) and the Ohio Department of Transportation personnel, Breach of Contract and fraudulent reporting by using my company name as a DBE to reflect an allocation of \$25,000 on the Ohio Department of Transportation Project: ODOT 10-3000, Subcontract No. 10-1-131-C3. My company and I never received the work nor the opportunity to earn this allocated amount. I was discriminated against due to my national origin (Puerto Rican) and as such received disparate treatment as (b) (6) consistently received much more work and was provided an improved environment in which to perform their duties. Being the only Hispanic performing for (b) (6) my company was not provided the same amount of hours/work per truck as (b) (6) on site. (b) (6) reasoned that (b) (6) productivity was only 7 loads a day vs the averaged 9 a day loads transported by (b) (6) and (b) (6) (b) (6). (b) (6) were not encountering the same concerns I was encountering (multiple flat tires, unsafe working scenarios) nor scaling their trucks, hence making them look more efficient and to my observations participating actively in being overloading as a normal business practice. Both entities operate on contract budgets of multi-millions of dollars per year and have fleets of trucks, stock piles of readily exchangeable tires and are located in close proximity to the assigned work site locations vs (b) (6) who has less then eighty thousand past operating budget , one truck and ,one driver struggling to compete with a big business that is clearly working to defeat the practice of using a small disadvantaged business. The cards were clearly stacked against (b) (6) and I from the very inception. This practice of blatant discrimination and lack of assistant in order to rectify ongoing problems defeats the entire purpose of the DBE program. I and (b) (6) were utilized in order to create the guise that Independence had actually created a contract with a DBE in order to make a political statement with no true intention to follow through with the contractual terms of the signed agreement.

From the very beginning of Negotiations I was subject to unequal treatment. (b) (6) can attest to the many disparaging meetings and conversations that transpired. The parties involved with (b) (6) are as follows: (b) (6) (b) (6)). I was coerced and steered to be subcontracted through the preferred minority trucking company (b) (6) a Black Owned Trucking company that has deep ties with (b) (6) on almost all projects. As a result of knowing my companies rights under the Disadvantaged Business certification program I and my association pushed for diversity and inclusion of Hispanics by being able to bid directly to (b) (6) regardless of size. All the Parties

mentioned: ODOT, (b) (6) made it very clear that I should subcontract through (b) (6) or be faced with difficulty conducting normal business. Subcontracting meant that I would be Brokered through (b) (6), hence paying (b) (6) a broker fee to conduct the same business I and my business could be contracted to perform without (b) (6) brokering on my behalf. (b) (6) Representative. (b) (6) sentiments on brokering business was as follows: 'there's nothing wrong with making a profit'. This statement was made in a meeting with ODOT, (b) (6)

(b) (6). As a direct result of exercising my rights and acting within the parameters of the program guidelines by refusing to broker through (b) (6) as desired by (b) (6) I and my company received unequal treatment throughout my short time frame working with (b) (6). Prior to the start of working on the project itself, I was met with strict scrutiny and probing by ODOT's (b) (6) and (b) (6) representative (b) (6) as both parties were actively looking at avenues for failure to comply with the terms of the contract from my end. The questioning bordering on harassment only ceased when (b) (6) placed a call in order to ascertain the purpose for the at times inappropriate probing by ODOT's (b) (6). The discrimination continued to escalate further once I began to perform work on the project. (b) (6) was allowed to violate multiple terms of its own contract between myself ((b) (6)) and (b) (6) and the Ohio Department of Transportation.

Violation of the Contract terms are as follows:

1. Section 5. Duties of (b) (6) Driver; (b) (6)'s driver shall transport loads in compliance with applicable weight regulations. (b) (6) consistently overweighted my loads and as such were out of compliance with their own contract. As told to (b) (6) (b) (6) stated that it would pay for tickets caused by overweights contradicting this section and also letter F under 4. Representations and Warranties F, That is shall abide by all state regulations in which (b) (6) chooses to operate for (b) (6) Overloads are unacceptable in the State of Ohio and were not negotiated as part of the contract terms.
2. Section 2. Work To Be Performed, B. By stating within the contract that the (b) (6) does not guarantee to offer any particular number of loads to (b) (6) contradicts the allocated dollars as reported on the Ohio Department of Transportation website to my company due to the implication that there will be work to be performed.
3. Section 3. - Compensation, C, The (b) (6) Dispatcher will dispatch (b) (6) starting times the night before. (b) (6) has never dispatched work to me through its assigned dispatcher. I spoke with the Dispatcher ((b) (6)) only once on 7/18/11 four and a half months after the contract signing and it was to address the lack of work assigned.
4. Section G, - Compensation -- (b) (6) must immediately contact the (b) (6) site manager if there is a breakdown or other interruption of work. Section 5- Duties of (b) (6) Drivers G- Any damage that was potentially caused by (b) (6) must be reported immediately to the (b) (6) site manager for verification- prior to leaving the site. I repeatedly Notified (b) (6) site supervisor and (b) (6) Project Manager, ODOT (b) (6) and (b) (6) due to the consistent overloads

and multiple flat tires as result of not cleaning loading site as performed for (b) (6) and the (b) (6) trucks working the same site however nothing was ever done to rectify the situation.

5. (7.) Insurance, B (b) (6) and ODOT wants a DBE to maintain 3 years of continued insurance when (b) (6) was only going to allocate 30 to 40 days of work in the sum of \$25,000 for a 3 year contract, that (b) (6) has never received. (b) (6) will receive 2,000,000.00.

I contacted (b) (6) with formal notification of lack of work, the Breach of Contract and my attempt to collect lost damages with request public information from (b) (6) in relation to this project was denied. (b) (6) communicated that I should have never notified ODOT of my concerns and issues with (b) (6) via mail and per a phone conversation with (b) (6) and I were not given an equal chance in relation to hours and days worked as (b) (6) because of my national origin. I expected the same equal opportunity to be provided in relation to working conditions and number of hours/days of work per truck as provided to (b) (6). By (b) (6) not providing a safe and equal work environment, (b) (6) and I were not able to perform equally. To recap, (b) (6) trucks were not encountering multiple flat tires nor scaled there trucks which also changed the dynamic of productivity. I seek to recover all damages and revenues lost as a direct result of the Discrimination and Breach of Contract. I will calculate these figures by the average number of hours and days given per truck to (b) (6). If the average number of hours worked per day are 12 hours with an average work day week of 6 days multiplied by the agreed hourly rate, I seek damages calculated on such parameters.

All of the parties mentioned above were continuously communicated with via email of the increasingly hostile environment I and (b) (6) was subjected to. Email was the long established line of communication since negotiations began, but email communication was ignored once ODOT, (b) (6) where notified of the unsafe working conditions and increasing volatile environment I and (b) (6) was subject to.

Thank You,

(b) (6)
[Redacted signature block]

Williams, Thalia (FHWA)

From: Williams, Thalia (FHWA)
Sent: Monday, August 29, 2011 3:12 PM
To: (b) (6)
Subject: RE: Filing Charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3.

Thank you Chris.

From: (b) (6)
Sent: Monday, August 29, 2011 3:05 PM
To: Williams, Thalia (FHWA)
Subject: Re: Filing Charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3.

Hello Thalia,

Attached is the response from (b) (6).

(b) (6) is the (b) (6). (b) (6) was present at many of the meetings, and also conversed with the parties via phone. His number is 1((b) (6)).

From: "Thalia.Williams@dot.gov" <Thalia.Williams@dot.gov>
To: (b) (6)
Sent: Monday, August 29, 2011 7:27 AM
Subject: RE: Filing Charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3.

Good morning (b) (6).

This acknowledges the Federal Highway Administration, Office of Civil Rights, Investigations and Adjudications', receipt of your complaint that you sent via e-mail to Ms. Janine Ashe. Your complaint has been forwarded to me for appropriate handling.

Your complaint will be reviewed to determine whether your complaint can be accepted for investigation. After the review, you will receive a decision letter via mail.

Thank you,

Thalia Williams
Equal Opportunity Specialist
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My name is (b) (6).

Attached is a charge of Discrimination on ODOT 10-3000, Subcontract No. 10-1-131-C3 I wish to file with your department.

Thank You,
(b) (6)

D. Timothy Hughes

VIA FACSIMILE AND REGULAR U.S. MAIL

August 1, 2011

Legal Department

(b) (6)

RE: (b) (6)

*Subcontract Agreement No.: 10-1-131-C3
Notice of Breach of Contract
Our File No.: 712756*

Dear Sir or Madam.

This office has been contacted by (b) (6) of Cleveland, Ohio who has asked for assistance in the matter referenced above.

(b) (6) executed a contract dated March 21, 2011. (b) (6) has complied with all terms and conditions of the agreement at substantial costs to comply with the insurance requirements and other obligations to perform under this contract. However, there has been virtually no work provided to (b) (6) since May 12, 2011. On that date, (b) (6) told (b) (6) that the project was shut down, but that was not true. Please take this letter as formal notice of your bad faith breach of contract and demand for compensation and resumption of performance by (b) (6).

Once (b) (6) lodged valid complaints to conform to its contract obligations, there has been retaliation by virtue of no loads being assigned to (b) (6). This is a direct violation of state and federal law and a breach of contract. Specifically, (b) (6) complained of illegal, excessive loads which created a public hazard to health and safety and a hazard to the equipment utilized by (b) (6). Since that complaint was lodged, there has been no work provided by (b) (6) to (b) (6), despite the project moving forward with other carriers.

(b) (6) is a small, disadvantaged contractor and that status is rendered ineffective with the lack of loads provided.

Columbus

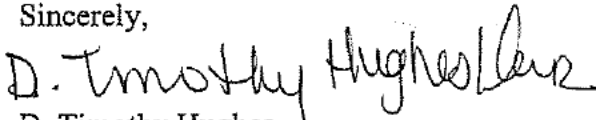
(b) (6)
August 1, 2011
Page 2 of 2

Please provide compensation for the lost revenues and profits to (b) (6) from May 2011 to the date that you begin providing loads to (b) (6). Those damages can be calculated by reference to the ODOT records of the project. Please provide those records (b) (6) and please begin to schedule proper legal loads for (b) (6), who stands ready, willing and able to continue to perform under its contract.

Please contact (b) (6) directly to arrange for resumption of performance under above-referenced contract and to negotiate compensation for the lack of work since May 2011

Thank you for your prompt and serious attention in this matter

Sincerely,



D Timothy Hughes
Attorney at Law

DTH/lar

cc: (b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

Industrial & Commercial

(b) (6)

VIA EMAIL AND REGULAR U.S. MAIL

August 3, 2011

D. Timothy Hughes
Maguire & Schneider, LLP
250 Civic Center Drive

RE: (b) (6)

Mr Hughes:

In response to your letter of August 1, 2011, (b) (6) responds as follows: First, (b) (6) entered into a Subcontract agreement on April 9, 2011, attached hereto for your reference. Per the agreement (b) (6) was to provide hourly trucking services for hauling on the ODOT Innerbelt Bridge project. Per Section 2B of the agreement, (b) (6) did not guarantee a certain number of loads to (b) (6). Furthermore, (b) (6) provided trucking services during the Cold Storage demolition in late April to the middle of May. No hauling has occurred at the site since early June. However, when (b) (6) was hauling for (b) (6) production was less than that of other haulers. For example, other haulers would get 9 loads per day and (b) (6) would only haul 7 loads. In regards to (b) (6) equipment, its trailer was longer than the other haulers' trailers and when filled with heavy debris, it was extremely difficult to visually determine the point at which the load reached the 80,000 pound gross weight limit. (b) (6) equipment is better suited for wood and roofing C&D, much lighter debris and (b) (6) was informed of this by our superintendent. With respect to (b) (6) contractual obligations per section M2, (b) (6) has yet to be provided with a copy of its Public Utilities Commission of Ohio Certificate of Public Convenience and Necessity. Finally, (b) (6) has been disrespectful to (b) (6) accounts payable personnel when asked to complete the proper waivers in order to get payment. Additionally, rather than contacting (b) (6) personnel directly when he had questions or concerns, (b) (6) contacted ODOT directly after being asked several times to discontinue sending emails to ODOT when they concerned matters between (b) (6).

In conclusion the foregoing information sets forth the valid reasoning behind (b) (6) decision not to utilize (b) (6). Your allegation that (b) (6) retaliated against (b) (6) is unwarranted. (b) (6) does not feel that it is necessary to provide records relating to loads and/or revenues. Also, as stated previously (b) (6) will not compensate (b) (6) for lost revenues as the contract specifically states that (b) (6) does not guarantee a certain number of loads. If you or your client desire to pursue this frivolous claim further, then you may contact our outside counsel, Andy Natale of Frantz Ward.

Respectfully Yours,

Mary DiGeronimo
Corporate Counsel

(b) (6)

Cc: Andrew J. Natale, Esq.

(b) (6)