



In Reply Refer to: HCR-20  
DOT# 2020-0218

October 8, 2020

(b) (6)

Yorba Linda, CA 92886

**Subject:** Dismissal of Complaint DOT# 2020-0218

Dear (b) (6),

This letter is to inform you that the Federal Highway Administration (FHWA) Office of Civil Rights has determined that it will dismiss the above complaint, which alleges violations that may be related to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation (USDOT) Title VI implementation regulations at 49 C.F.R. Part 21 and/or FHWA's Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.

To be accepted for investigation, a complaint must meet the jurisdictional requirements provided by 49 C.F.R. § 21.11. First, complaints must be filed within 180 calendar days of the alleged discriminatory act, unless the time for filing is extended by FHWA. Second, the matters must concern recipients of federal financial assistance for a program or programs authorized under a law administered by FHWA. Finally, the complaint must describe an alleged discriminatory act or acts that, if true, would fall under FHWA's jurisdiction and potentially violate FHWA's Title VI regulations.

You allege that Caltrans unfairly issued liquated damages to Dreambuilder Construction Corp. on various contracts because of your national origin. You further allege that Caltrans retaliated against Dreambuilder when Dreambuilder disputed liquated damages issued by Caltrans.

After careful consideration, FHWA has determined the allegations and facts in your complaint do not meet the minimum jurisdictional criteria under which FHWA could establish a case of disparate treatment or disparate impact under Title VI. The available information is insufficient to show contemporaneous statements from decision makers that express discriminatory intent based on race, color, or national origin. The available information is also insufficient to show how contract disputes with Caltrans constitute a disparate impact based on race, color, or national origin. For these reasons, the complaint will be dismissed by FHWA and closed with no further action.

If you have any questions, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,

*Nichole McWhorter*

Nichole McWhorter  
Title VI Team Leader  
Office of Civil Rights

cc: Vincent Mammano, Division Administrator, FHWA California Division Office  
Paul Schneider, Deputy Division Administrator, FHWA California Division Office  
Scott Carson, Civil Rights Specialist, FHWA California Division Office  
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel  
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division, Departmental  
Office of Civil Rights  
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights

**DEPARTMENT OF TRANSPORTATION**

OFFICE OF CIVIL RIGHTS  
1823 14<sup>TH</sup> STREET, MS-79  
SACRAMENTO, CA 95811  
PHONE (916) 324-1700  
FAX (916) 324-1862  
TTY 711  
www.dot.ca.gov



Making Conservation  
a California Way of Life.

September 1, 2020

Federal Highway Administration  
California Division  
Attn: Scott Carson, Civil Rights Program Manager  
650 Capitol Mall, Suite 4-100  
Sacramento, CA 95814

Dear Mr. Carson:

The Caltrans Office of Civil Rights (OCR), Title VI Branch received a complaint from (b) (6), alleging discrimination on the basis of race, color, and national origin by Caltrans while performing construction work on several Caltrans contracts that contain Federal-Aid funds.

Please see the documents provided by the complainant.

If you have any questions, please do not hesitate to contact me at the phone number listed below.

Sincerely,

A handwritten signature in blue ink that reads "Glenda M. Collins".

Glenda M. Collins  
Title VI Branch Manager  
Office of Civil Rights  
Office: 916-324-8379  
Cell (b) (6)  
Fax: 916-324-1869

**Section I - Applicability**

Name: (b) (6)	Electronic Mail Address: (b) (6)
Phone Number (Include Area Code):	Work Phone Number (Include Area Code): (b) (6)
Address: (b) (6)	City, State, Zip: Yorba Linda, CA 92886
Accessible Format Requirements: <input type="checkbox"/> Large Print <input type="checkbox"/> TDD <input type="checkbox"/> Audio Tape <input type="checkbox"/> Other	
Are you filing this complaint on your own behalf? <input checked="" type="checkbox"/> Yes (Go to Section II) <input type="checkbox"/> No	
If not, please supply the name and relationship of the person for whom you are complaining:	
Briefly and clearly explain why you have filed for a third party.	

**Section II - Title VI**

<b>Discrimination Because of:</b> <input checked="" type="checkbox"/> Race <input checked="" type="checkbox"/> Color <input checked="" type="checkbox"/> National Origin	<b>Other Areas of Discrimination:</b> <input type="checkbox"/> Sex <input type="checkbox"/> Age <input type="checkbox"/> Disability <input checked="" type="checkbox"/> Retaliation
<b>Name and Position of Person(s) That Discriminated Against You:</b> STATE OF CALIFORNIA, a Government Entity, acting by and through its DEPARTMENT OF TRANSPORTATION ("Caltrans")  Various Caltrans project managers and administrators.	<b>Location including City, State, Zip:</b>

Explain as briefly and clearly as possible what happened, and how you were discriminated against. Include date of alleged discrimination (Month, Day, Year). Indicate all persons who were involved. Be sure to describe how other persons were treated differently than you. Attach any written material pertaining to your case.  
Please see attached letter for explanation for Discrimination.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**TITLE VI AND OTHER DISCRIMINATION COMPLAINT FORM**

OCR-0002 (REV 04/2020)

The laws prohibit retaliation against anyone because he/she has taken action, or participated in an action, to secure rights protected by these laws. If you feel you have been retaliated against (separate from the discrimination alleged above), please explain briefly and clearly the circumstances below. Please explain what actions you took which you believe were the basis for the allegation of retaliation.

Please see attached letter with explanation for retaliation.

What remedy or action, do you seek for the alleged discrimination?

We would like assurances that we will not be retaliated against on any future projects with the state for filing this complaint. The agency should take whatever action needed to stop this unwarranted discrimination.

Have you previously filed a complaint with this agency?  Yes  No

Have you filed, or intend to file, a charge or complaint with the following?

U.S. Equal Employment Opportunity Commission

Federal Highway Administration/U.S. Department of Transportation

Federal or  State Court

Federal Transit Administration/U.S. Department of Transportation

Department of Fair Employment and Housing

If you have already filed a charge or complaint, please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Title:

Agency/Court:

Address:

Telephone Number (Including Area Code):

Date Filed:

Case Number:

Date of Trial/Hearing:

Provide any additional information, including witnesses, that you believe would assist in the investigation.

(b) (6)

Signature of

Date:

8/13/2020

**FOR OFFICE USE ONLY**

Location:

Division:

Case:

Date Complaint Received:

Date Referred:

Processed by:

Referred to:  USDOT  FHWA  FTA  OTHER \_\_\_\_\_

## INSTRUCTIONS

### Section I

**Applicability** – The complaint procedures apply to the beneficiaries of Caltrans programs, activities, and services, including but not limited to the public, contractors, subcontractors, consultants, and other sub-recipients of Federal funds.

All complaints must be in writing and signed by the complainant. Complaints must include the complainant's name, address, phone number, and specify all issues and circumstances of the alleged discrimination. In cases where the complainant is incapable of providing a written statement such as limited English proficient or having a disability, the complainant may be assisted in converting the verbal into a written complaint.

### Section II

**Title VI** – Any person who believes he/she has been excluded from participation in or denied benefits or services of any program or activity administered by Caltrans, or its sub-recipients, consultants, and contractors.

**Discrimination Because of** – Allegations must be based on issues involving race, color, national origin for a Title VI complaint or sex, age, disability, or retaliation.

**Filing Options and Time Limits** – The use of the complaint form is not mandatory. You may submit your complaint in any form that includes your signature. Title VI discrimination complaints may be filed with Caltrans, the Federal Highway Administration, or other agencies that provide federal financial assistance to Caltrans.

Complaints must be filed no later than 180 days after the date of the alleged act of discrimination or retaliation unless the time for filing is extended. Failure to supply all information may be grounds for rejecting your complaint.

**Submit Complaints** – The original-signed complaint form or letter is mailed to:

California Department of Transportation  
Office of Civil Rights  
Attention: Title VI Branch Manager  
1823 14th Street, MS 79  
Sacramento, CA 95811

**Information** – Email: [Title.VI@dot.ca.gov](mailto:Title.VI@dot.ca.gov)  
Phone: (916) 324-8379  
Website: <https://dot.ca.gov/programs/civil-rights/title-vi>

### PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (Section 552 et seq.) and the Information Practices Act of 1977 (IPA) (Civil Code Sections 1798 et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular.

(b) (6)

Thursday, August 13, 2020

RE: Title VI Complaint Explanation for Retaliation

Attention: To whom it may concern

We believe we are being considered an outsider to this region of the state hence the discrimination. We believe we are being discriminated based on us being a Small business Disadvantaged Enterprise from an East Indian Origin. We believe being a non-union contractor is also a reason for this discrimination.

For these reasons State has been trying to hold our company to different standards compared to the industry norm and its contract. It has become a custom for the state on our projects to reject excusable delays to be able to apply unreasonable, unwarranted and untimely Liquidated Damages(LDs). After continuing to perform work to completion on projects where unwarranted and unreasonable amounts of Liquidated damages were applied, we finally decided not to accept this on a third project. We tried to convince the state, but the manager had his mind set on Liquidated Damages to be applied for the third time the same way. If we continued like before and allowed them to assess damages while we spent money on completion of project, we would not have been able to defend ourselves on any claims because we would have been insolvent. Due to our refusal to continue to proceed in this manner we were retaliated against by terminating our control on the project and State filing a Payment and Performance Bond claim against our surety. Due to this the Surety removed our ability to bond any future public works projects.

In addition to these LDs state had also refused to consider the delay to the project and cost in association with holding our company to a higher requirement than what the contract requires.

State also refuses to pay for any utility delays arising out of site differing conditions.

State is to perform their own QA per their Construction manual but we were required to provide QC to satisfy their QA requirements.

On all issues when asked to be reconsidered, we were told to file a claim. Completing projects based on claims is not sustainable and can severely harm smaller contractors like us into closing our doors. We believe these are just tactics used to put pressure on the contractors to not return to the region for any future projects.

We are a California Company performing work for the state of California and we do not believe we are an outsider. We do not believe that being a Union Contractor is a requirement to perform work on these public works projects.

Sincerely,

**Caltrans Contract No. 03-4F2604 is the same as Federal-Aid Project  
ACHSNHG-P032(046)E**

**Caltrans Contract No. 03-2f0804 is the same as Federal-Aid Project  
CNH-X115(013)E**

**Caltrans Contract No. 03-4f6404 is the same as Federal-Aid Project  
ACHSNHG-X067 (080)E**

(b) (6)

(b) (6)

Yorba Linda, CA 92886 (b) (6)

(b) (6)

Thursday, August 13, 2020

RE: Title VI Complaint Explanation for Discrimination

Attention: To whom it may concern

(b) (6) Is a California Company operating in California since 2006. We have performed many public works construction projects since our inception. We specialize in public works contracts although we have been performing strictly Caltrans projects for the last few years. In the history of our company we have performed work in almost every region of the state for the state. We would like to continue to work without any discrimination from state staff in the North region Construction.

We have been held to a different standard and requirement by Caltrans for participation on its contracts. Below is the list of projects with the details of the circumstances. We were denied the construction material procurement delays/nonpayment of extra work as performed on multiple projects. State has chosen to withhold Liquidated Damages on various projects when not warranted. Then finally granted them back months later without any clarification on why they were held. We have seen unreasonable amounts of LDs applied when they were not warranted.

1. Caltrans Contract number **03-4f2604** state applied LDs of approx. **a million dollars** without excusing delays by signal pole and electrical equipment manufacturer(State authorized vendor). (Finally the state waived majority of the LDs. With an exception that we pay approx. \$100,000.00 in penalty or go thru with the claims process.)
2. Caltrans Contract **03-2f0804** State applied LDs in excess of **half a million dollars** without excusing the electrical material delays from State authorized vendor or considering delays to the scope of work. State refused to pay for any cost related to delays caused by utilities not shown on the plan. Dreambuilder had to file a claim worth approx. \$1,200,000 to try getting compensated for delays. (Finally, state accepted and removed the LDs after all the item work was completed. But the costs relating to the extensive delays due to site differing conditions were not paid and the claim is ongoing.)
3. Caltrans Contract **03-4f6404** same issues where the project constraints (material delay) are not being considered and LDs were being applied instead of providing time to the contract as required to complete the project. The delays from state approved vendors are outside the control of the contractor. When we asked for this to be reconsidered our control of the contract was terminated. Department delayed the project by requiring specifications which were not part of scope and refused to pay for delays worth approx. \$270,000.00. Department refused to pay for any delays that were caused due to non-highway facilities which were not part of the scope of work. Due to nonpayment on the work already performed and extensive Cost of Liquidated damages, (b) (6) could not continue to with the project under these conditions without becoming insolvent.
4. Contract Numbers **03-4f6304**, **03-2F0804**, and **03-4F6404**. We continue to return to this region of the state to perform projects even after continued abuse of power by the state staff to force us out. In addition to making it difficult to perform these projects as per the contract requirements, state is now using its labor compliance branch to perform audits on all our projects and apply requirements for paying staff which are not warranted. We have been a non union company and our Attorneys believe this will go away if we chose to become signatory to unions. These baseless penalties applied by Labor compliance on all our projects are strictly influenced by someone unhappy with our present lack of being signatory. In addition, this another method for the state to apply pressure on us to not to return to this region to perform any future work. I have also been personally told by an Engineer in charge of our project to goto another region because they are easier to work with.

(b) (6)

Yorba Linda, CA 92886 (b) (6)

(b) (6)

We have had an outside consultant who also serves on Dispute resolution Boards for Caltrans review our case and he also has come to an understanding that this is a form of discrimination and form of retaliation.

Sincerely,

**Caltrans Contract No. 03-4F2604 is the same as Federal-Aid Project ACHSNHG-P032(046)E**

**Caltrans Contract No. 03-2f0804 is the same as Federal-Aid Project CNH-X115(013)E**

**Caltrans Contract No. 03-4f6404 is the same as Federal-Aid Project ACHSNHG-X067 (080)E**

(b) (6)

(b) (6)

Yorba Linda, CA 92886 (b) (6)

(b) (6)

Yorba Linda, CA 92886

DEPT OF TRANSPORTATION  
CERTIFICATION  
RECEIVED

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FILE

CA. Dept of Transportation  
Office of Civil Rights.

[Redacted]

P.O. Box 942873, MS-49  
Sacramento, CA 94273-0001

[Redacted]