




U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

Subject: **ACTION:** Notification of Contract  
Administration Issues (DOT #2012-0026)

Date: **NOV 07 2011**

From: Warren S. Whitlock   
Associate Administrator for Civil Rights

In Reply Refer To: HCR-40

To: Russell L. Jorgenson  
Division Administrator (HDA-MI)  
Lansing, Michigan

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) and related statute (the Federal-aid Highway Act of 1973) against the Michigan DOT (MDOT) based on his race (Black) and sex (male).

After reviewing the complaint, we have determined that since the FHWA Michigan Division Office has been working for some time to resolve (b) (6) payment issue, the complaint will be referred to the FHWA Michigan Division Office for processing as a contract administration issue 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. Mary Finch, Civil Rights Program Manager, FHWA, HDA-MI  
Ms. Cheryl Hudson, Title VI Program Manager, MDOT, State Transportation Building,  
P.O. Box 30050, Lansing, MI 48913



U.S. Department  
of Transportation  
Federal Highway  
Administration

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

NOV 07 2011

In Reply Refer To: HCR-40  
DOT #2012-0026

(b) (6)

Dear (b) (6):

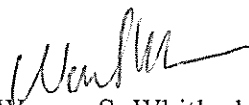
The Federal Highway Administration (FHWA) Office of Civil Rights is in receipt of your complaint of discrimination, dated September 28, 2011, against the Michigan Department of Transportation (MDOT). The MDOT forwarded your complaint to the FHWA Michigan Division Office on September 28, 2011. On October 31, 2011, the FHWA Michigan Division Office forwarded your complaint to FHWA Office of Civil Rights for appropriate handling. The FHWA Office of Civil Rights received your complaint on October 31, 2011. In your complaint, you allege violations of Title VI of the Civil Rights Act of 1964 (Title VI) and related statute (the Federal-aid Highway Act of 1973). Specifically, you allege that the MDOT failed to pay you for work you performed on the Gateway Project based on your race (Black) and sex (male).

Please be advised that our office has responsibility to investigate individual complaints of discrimination involving violations of Title VI and related statutes. 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." The Federal-aid Highway Act of 1973 provides that, "No person shall on the ground of sex 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 and related statute. The FHWA Michigan Division Office has provided information that it has been working for some time to resolve your payment issue. Therefore, your complaint will be referred to the FHWA Michigan Division Office for processing as a contract administration issue rather than Title VI (copy enclosed).

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Warren S. Whitlock". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Warren S. Whitlock  
Associate Administrator for Civil Rights

Enclosure

DOT # 2012-0026

**Williams, Thalia (FHWA)**

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**From:** Williams, Thalia (FHWA)  
**Sent:** Tuesday, November 01, 2011 7:22 AM  
**To:** Finch, Mary (FHWA)  
**Cc:** Brown, Darren (FHWA)  
**Subject:** RE: (b) (6) Title VI Complaint

Good morning Mary.

This acknowledges HCR-40's receipt of the subject complaint. The complaint will be reviewed and processed accordingly.

Thank you,

Thaliai

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**From:** Brown, Darren (FHWA)  
**Sent:** Monday, October 31, 2011 4:05 PM  
**To:** Williams, Thalia (FHWA)  
**Subject:** FW: (b) (6) Title VI Complaint

Thalia,

See attached file for your response.

Thanks

*Darren L. Brown  
Acting Director, Investigations and Adjudications  
Office of Civil Rights (HCR-10)  
1200 New Jersey Avenue, SE, Room E81-330  
Washington, DC 20590  
Office: 202-366-8031  
Fax: 202-366-7495*

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**From:** Kirschensteiner, Laura (FHWA)  
**Sent:** Monday, October 31, 2011 3:58 PM  
**To:** Brown, Darren (FHWA)  
**Cc:** Finch, Mary (FHWA)  
**Subject:** Wesley Charles Title VI Complaint

Mr. Brown,

Please reference the attached memo.

Thank you,

Laura

**Laura Kirschensteiner**

Program Operations Assistant (SCEP)  
Federal Highway Administration  
Department of Transportation - Michigan Division  
315 West Allegan, Room 201  
Lansing, MI 48933  
Phone: 517.702.1843  
Fax: 517.377.1804  
Email: [laura.kirschensteine@dot.gov](mailto:laura.kirschensteine@dot.gov)



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

Subject: ACTION: Title VI Complaint Filed by  
(b) (6)

Date: October 31, 2011

*Mary K. Finch*

From: Mary K. Finch  
Civil Rights Program Manager  
Lansing, Michigan

In Reply Refer To:  
HDA-MI

To: Mr. Darren Brown  
Director Investigations and Adjudication  
Team , E81-328  
Washington DC

The attached complaint was received in our office on September 28, 2011 from the Michigan Department of Transportation.

We are forwarding it for your action.

lmk  
DMS: (b) (6) Title VI Complaint  
File Directory: J:\GroupWiseFiles  
File Name: MKF (b) (6) Title VI Complaint\_OCT312011.docx

# TITLE VI - COMPLAINT FORM

This form may be used to file a complaint with the Michigan Department of Transportation (MDOT) for alleged violations of Title VI of the Civil Rights Act of 1964. If you need assistance completing this form due to a physical impairment or other reasons, please contact us by phone at (617) 373-0880 or via FAX (617) 335-0467 or TDD/TTY through the Michigan Relay Center at (800) 649-3777.

Only the complainant or the complainant's designated representative should complete this form.

NAME (b) (6)			
STREET ADDRESS (b) (6)			
CITY (b) (6)		STATE (b) (6)	ZIP CODE (b) (6)
HOME TELEPHONE (b) (6)	WORK TELEPHONE (b) (6)	FAX (b) (6)	

Individual(s) discriminated against, if different from above (use additional page(s) if necessary):

NAME			
STREET ADDRESS			
CITY		STATE	ZIP CODE
HOME TELEPHONE NO.	WORK TELEPHONE NO.	FAX NO.	

PLEASE EXPLAIN YOUR RELATIONSHIP TO THE INDIVIDUAL(S) INDICATED ABOVE

Name of Agency and department or program that discriminated:			
AGENCY AND DEPARTMENT NAME MDOT			
NAME OF INDIVIDUAL (if known)			
STREET ADDRESS Detroit TSC			
CITY Detroit Michigan		STATE	ZIP CODE
TELEPHONE NO.	FAX NO.		

Date(s) of alleged discrimination:	
DATE DISCRIMINATION BEGAN 2008	LAST OR MOST RECENT DATE OF DISCRIMINATION 8-16-11 ?

**Alleged discrimination:**

Complaints should be filed within 180 days of the alleged discrimination. If you could not reasonably be expected to know the act was discriminatory within the 180 days period, you have 60 days after you became aware to file your complaint.

If your complaint is in regard to discrimination in the delivery of services or discrimination that involved the treatment of you or others by the agency or department indicated above, please indicate below the bases on which you believe these discriminatory actions were taken.

*Example:* If you believe that you were discriminated against because you are African American, you would mark the box labeled race/color and write African American in the space provided.

*Example:* If you believe the discrimination occurred because you are female, you would mark the box labeled sex and write female in the space provided.

<input checked="" type="checkbox"/>	Race/Color	<u>Black</u>	<input type="checkbox"/>	Religion	_____
<input type="checkbox"/>	National origin	_____	<input type="checkbox"/>	Age	_____
<input type="checkbox"/>	Sex	<u>Male</u>	<input type="checkbox"/>	Disability	_____

**Explain:**

Please explain as clearly as possible what happened. Provide the name(s) of witnesses and others involved in the alleged discrimination. (Attach additional sheets if necessary and provide a copy of written materials pertaining to your case.)

I am send a copy of the letter sent to Gov. Rick Snyder, along with the appropriate departments within MDot; this will allow you to have a clear and detailed account of the discrimination our company is facing.

SIGNATURE

**(b) (6)**

DATE

9/28/11

Note: The laws enforced by this department prohibit retaliation or intimidation against anyone because that individual has either taken action or participated in action to secure rights protected by these laws. If you experience retaliation or intimidation separate from the discrimination alleged in this complaint or if you have questions regarding the completion of this form, please contact:

Cheryl Hudson, EEO Officer/Title VI Specialist  
 Michigan Department of Transportation  
 425 W. Ottawa Street  
 Lansing, MI 48909  
 Phone: 517-373-0980  
 Fax: 517-373-6457  
 Email: hudsonc1@michigan.gov

(b) (6)

September 22, 2011

Governor Rick Snyder  
P O Box 30013  
Lansing, MI 48909.0

RE: MDOT PROJECT 82194-37795 DETROIT GATEWAY

Dear Governor Snyder:

This letter is in regards to the above stated project in which (b) (6) (Michigan DBE) contracted as a subcontractor to Sik-S for Geotextile Separator Installation and with (b) (6) (Prime Contractor) for Seeding, Sodding, Topsoil Surface, Shredded Mulch Installation and Turf Establishment.

During the 2008-2009 season while working on the Gateway Project it was brought to MDOT's attention that (b) (6) was performing some of (b) (6) work, placing some of the Geotextile Separator and spreading topsoil without the approval of MDOT in writing. This was a violation of the DBE rules, this violation was also brought to MDOT's attention without results, both matters are still unresolved which is why I am contacting you at this time.

In 2010, (b) (6) had Geotextile Separator stock piled on the Gateway job site to finish placing separator on one or two of the ramps, the materials cost in excess of \$23,000. Someone finished placing (b) (6) material and now (b) (6) is in debt to the supplier for the \$23,000+ for the separator that someone placed on those ramps without written approval by MDOT. (b) (6) was never called to finish our contract.

During this contract (b) (6) also had a contract with (b) (6) as stated above for the seeding, sodding, topsoil surface, shredded mulch installation and turf establishment performance.

(b) (6) started this project in 2008, and over \$100,000 has yet to be paid because of the Turf Establishment Performance Specifications which state that "the contractor shall establish a permanent weed-free turf". In an area such as the Gateway location that specification is impossible. MDOT has projects throughout Michigan in Genesee, Lapeer, St. Clair, Oakland, Macomb, Washtenaw and Wayne counties with the same Turf Establishment Performance Specifications and all the projects have weeds on them now, yet those contractors have been paid for their performance. 2 1/2 years have went by since the project began and (b) (6) is still waiting to be paid. How do you expect a small business to stay alive?

In 2009 MDOT started cutting the Gateway Project area and since that time MDOT has cut the area more than (4) times, with the big mowers which damage the sloped area when used and MDOT wants to hold (b) (6) responsible for the damaged Turf Establishment which is not fair. Under Title VI MDOT is to provide equal opportunity: 23CFR 200.9 (b)(6) when referring to the DBE sheds light on the factor that this matter

brings about an area of concern or barriers to successful participation on projects for DBEs if they are not being given fair opportunity for everyone. MDOT has failed to comply with the Federal and State regulations and (b) (6) is desperately seeking to resolve this matter so that our business can continue and we can continue to employ Michigan residents. As it now stands our company has been forced to make major lay-offs until we are able to resolve this matter leaving numerous Michiganders unemployed.

We at (b) (6) feel that we have exhausted all our attempts at bringing resolution and collecting the past due funds with no avail which brings us to you in hopes that you will be able to assist us in getting immediate resolution to the situation at hand. (b) (6) cannot operate as the primes do and work without pay for several months/years or only collect from major projects and prime contractors annually. In order for a small business to stay in operation we must be able to collect when funds are due and not have to wait 6-12 months in this case years to collect what is owed.

(b) (6) has done everything possible to remain in operation and provide employment even during these trying times of a recession combined with a depression especially in the State of Michigan which has been hit hard by the economic downfall.

Michigan is supposedly promoting and recruiting small businesses, yet for this experience alone it seems they are sending the wrong message. There definitely is not a Prompt Payment as is so often stated in contracts and it appears that no one is interested in the small minority owned businesses and are only concerned about the major large companies. I have been in business for more than twenty-five years and now I am being forced to shut-down because I am not being paid. Could you please make sure that someone responds to this matter within 7-20 business days to avoid any additional actions?

I am requesting your intervention.

Sincerely,

(b) (6)

(b) (6)

Cc: President Barack H. Obama  
Kirk T. Steudle, P.E.  
Mary Finch-FHWA  
Brian Calley-- State of Michigan Lt. Governor  
Cheryl J. Hudson - MDOT EEO Officer  
Laura J. Mester, CPA - MDOT  
Jacqueline Shinn - MDOT Chief Deputy Director  
Gregory C. Johnson - MDOT Chief Operations Officer  
Debbie Stabenow - State of Michigan Representative