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Southern District of New York

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**MANHATTAN U.S. ATTORNEY FILES FRAUD SUIT AGAINST THREE
PAINTING CONTRACTORS FOR LYING ABOUT DISADVANTAGED
BUSINESS PARTICIPATION ON FEDERAL PROJECTS**

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, Douglas Shoemaker, regional Special Agent-in-Charge of the United States Department of Transportation Office of Inspector General ("USDOT-OIG"), Margaret Garnett, the Commissioner of the New York City Department of Investigation ("DOI"), and Barry L. Kluger, Inspector General of the Metropolitan Transportation Authority ("MTA-OIG"), announced that the United States filed a civil fraud lawsuit against three New York-area painting contractors, AHERN PAINTING CONTRACTORS CO. ("AHERN"), SPECTRUM PAINTING CORP. ("SPECTRUM"), and TOWER MAINTENANCE CORP. ("TOWER"). The lawsuit alleges that these companies fraudulently obtained payments on two federally funded projects in New York City by lying about compliance with Disadvantaged Business Enterprise ("DBE") rules, which require participation of businesses owned by women or minorities. Specifically, as alleged in the complaint, the defendants made it appear that TOWER, a certified disadvantaged business enterprise, was executing millions of dollars of steel painting work at the Brooklyn Bridge and the Queens Plaza transit line when in fact much of the work was performed by SPECTRUM, a non-DBE. In return for being included in the projects, SPECTRUM paid kickbacks to AHERN in the form of a \$10,000 "commission payment" and a free trip to Atlantic City. By repeatedly submitting false statements to the New York City Department of Transportation ("NYC-DOT") mischaracterizing Tower's work at these projects, the defendants received millions of dollars in federal funds to which they were not entitled.

Manhattan U.S. Attorney Geoffrey Berman said: "Disadvantaged Business Enterprise regulations serve the important purpose of increasing legitimate participation by businesses owned by women and minorities that have been historically disadvantaged in federal contracting. We will not tolerate fraudulent schemes that exploit the DBE program and undermine its purpose. Contractors who lie about who is actually doing the work will be held to account."

USDOT-OIG regional Special Agent-in-Charge Douglas Shoemaker said: "Disadvantaged Business Enterprise (DBE) fraud harms law-abiding contractors by disrupting the level playing field in which legitimate disadvantaged businesses seek to fairly compete for contracts. We remain steadfast in our commitment to preserve the integrity of the Department's

DBE program. Working with our law enforcement and prosecutorial partners, we will continue to protect the taxpayers' investment in our nation's infrastructure from DBE fraud schemes that undermine DOT-funded programs and projects and the public trust."

DOI Commissioner Margaret Garnett said: "These defendants used trickery, false documents, and a kickback scheme to game the Disadvantaged Business Enterprise program – stealing millions of dollars in federal funds. DOI was proud to assist in this investigation with our federal and state partners to ensure guidelines that empower legitimate Disadvantaged Business Enterprises are obeyed and businesses who attempt to take advantage of these programs are made to pay for their actions. DOI remains committed to the shared City and federal mission of protecting programs that safeguard inclusive hiring practices on public construction projects."

MTA Inspector General Barry L. Kluger said: "Today's filing of a civil complaint alleging Disadvantaged Business Enterprise fraud clearly reflects the firm commitment of our prosecutorial and investigative partners to utilize all avenues to ensure compliance with DBE requirements. I wish to thank the U.S. Attorney for devoting substantial resources and efforts to create and maintain a level playing field on which all qualified DBEs have a fair and equal opportunity to bid for and participate in construction projects."

In 1980, the United States Department of Transportation ("USDOT") issued regulations in connection with a program to increase the participation of minority and disadvantaged business enterprises in federally funded public construction contracts. To become certified as a DBE, a company must, among other things, be owned and controlled by socially and economically disadvantaged individuals, be an independent business whose viability does not depend on its relationship with other firms, employ its own work force and own equipment necessary to perform its work, and be able to meet its financial obligations.

Recipients of USDOT construction grants, such as the New York City Department of Transportation ("NYC-DOT") and the MTA, are required to establish a DBE program that sets goals for the percentage of a project's work that should be awarded to DBEs ("DBE goals"). NYC-DOT and MTA both have established DBE programs aimed at increasing the participation of minority- and women-owned businesses. Pursuant to the DBE programs, general contractors on federally funded public construction projects must make good faith efforts to encourage participation of DBEs in public works contracts.

General contractors can count funds paid to DBEs toward the attainment of the DBE goals only if the DBEs performed a "commercially useful function." A DBE subcontractor performs a commercially useful function only when it is responsible for the execution of the work of the contract; actually performs, manages, and supervises the work involved; and furnishes the supervision, equipment, and labor necessary to perform its work.

As set forth in the complaint, AHERN, a steel painting company, was a contractor on the Brooklyn Bridge and Queens Plaza projects. Contracts for both projects required AHERN to hire DBEs to do a percentage of the work involved and adhere to the DBE regulations. Instead of making good faith efforts to hire qualified DBEs to do this work, AHERN agreed with SPECTRUM and TOWER to use TOWER's status as a DBE to take credit for millions of dollars of DBE work. But TOWER did not perform a "commercially useful function" on the projects, as

required under the DBE regulations. Rather, it was SPECTRUM, a non-DBE, that did much of the work, including directing, managing, and supervising the DBE work on the projects.

Defendants concealed their violations of the DBE regulations by, among other things, repeatedly having SPECTRUM employees pretend to be TOWER employees, wearing Tower vests, carrying Tower identification, and telling others on the worksites that they were Tower employees. In addition, AHERN and TOWER repeatedly submitted false statements and records to NYC-DOT and MTA misrepresenting that TOWER alone did all of the DBE work allocated to it and that TOWER did not hire a subcontractor to perform any of that work. SPECTRUM also paid kickbacks to AHERN in the form of a \$10,000 “commission payment” and a free trip to Atlantic City. As a result of the false statements and records, the defendants obtained millions of dollars of federal money to which they were not entitled.

Mr. Berman praised the outstanding investigative work of the USDOT-OIG, DOI, and MTA-OIG.

This case is being handled by the Office’s Civil Frauds Unit. Assistant U.S. Attorneys Mónica Folch and Li Yu are in charge of this case.

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