



**UNITED STATES ATTORNEY'S OFFICE**  
*Southern District of New York*

U.S. ATTORNEY GEOFFREY S. BERMAN

---

FOR IMMEDIATE RELEASE  
November 1, 2019  
<http://www.justice.gov/usao/nys>

CONTACT: U.S. ATTORNEY'S OFFICE  
Jim Margolin, Nicholas Biase  
(212) 637-2600

USDOT-OIG  
Ada Valaitis, Carlton Eric Weems  
(202) 366-8751

DOI  
Diane Struzzi, Nicole Turso  
(212)825-5931

MTA-OIG  
Danielle Blustein Hass  
(212) 878-0095

**MANHATTAN U.S. ATTORNEY SETTLES FRAUD SUIT AGAINST  
AHERN PAINTING CONTRACTORS FOR FALSE STATEMENTS  
ABOUT DISADVANTAGED BUSINESS PARTICIPATION ON FEDERAL  
CONSTRUCTION PROJECTS**

*Ahern Painting Contractors Agrees to Pay \$3 Million and Admits Conduct Alleged in the  
Complaint*

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 Carolyn Pokorny, Inspector General of the Metropolitan Transportation Authority ("MTA-OIG"), announced today that the United States has settled civil fraud claims against New York-area painting contractor AHERN PAINTING CONTRACTORS CO. ("AHERN"). The settlement resolves the United States' allegations in a False Claims Act lawsuit that AHERN fraudulently obtained payments on two federally funded construction projects by misrepresenting compliance with Disadvantaged Business Enterprise ("DBE") rules, which require participation of businesses owned by women and minorities. Specifically, the United States alleged that AHERN misrepresented that co-defendant TOWER MAINTENANCE CORP. ("TOWER"), a certified DBE, was solely performing millions of dollars of work on the two projects when in fact much of that work was performed by co-defendant SPECTRUM PAINTING CORP. ("SPECTRUM"), a non-DBE. As part of the settlement approved by U.S. District Judge Deborah A. Batts, AHERN admits and accepts responsibility for conduct alleged in the

Government's complaint and agrees to pay \$3 million to the United States. The case against defendants TOWER and SPECTRUM is ongoing.

Manhattan U.S. Attorney Geoffrey S. Berman said: "Contractors who exploit the Disadvantaged Business Enterprise program to unlawfully obtain millions of dollars in federal funding will be held to account. Today's settlement reflects this Office's commitment to root out fraud in federally funded contracts, so that legitimate minority- and women-owned businesses can participate in public construction projects."

USDOT-OIG regional Special Agent-in-Charge Douglas Shoemaker said: "Today's settlement is a positive step on the way to closing the chapter on this egregious fraud scheme involving federally funded contracts administered through the New York City Department of Transportation and the Metropolitan Transportation Authority. While the damage to the integrity of DOT's DBE program in this instance has been done, it only serves to strengthen our resolve in pursuing those whose greed prevents the legitimate participation of disadvantaged businesses in federal contracting on public transportation projects."

DOI Commissioner Margaret Garnett said: "Today's multimillion-dollar settlement demonstrates that law enforcement has its sights on exposing fraud by companies that exploit City and Federal programs aimed at increasing the participation of disadvantaged businesses in public construction projects. DOI and its partners will continue to protect the integrity and effectiveness of these programs with investigations that uncover and deter dishonest conduct."

MTA Inspector General Carolyn Pokorny said: "Disadvantaged Business Enterprise regulations enable honest competition in construction contracts by ensuring an equal and inclusive playing field for all. Today's DBE fraud settlement highlights the commitment of the Office of the MTA Inspector General, along with all of our prosecutorial and investigative partners, towards prohibiting and rooting out discrimination."

As alleged in the complaint filed in Manhattan federal court on March 2, 2019, AHERN was a contractor on two federally funded steel painting projects to renovate the Brooklyn Bridge and Queens Plaza. 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 hiring qualified DBEs to perform the allotted DBE work, AHERN allowed SPECTRUM and TOWER to use TOWER's status as a DBE to take credit for millions of dollars of work performed, managed, and supervised by non-DBE SPECTRUM. To conceal this scheme, SPECTRUM employees repeatedly identified themselves as TOWER employees in documents that AHERN passed along to supervisors on the project. AHERN and TOWER repeatedly submitted false statements and records to NYC-DOT and MTA misrepresenting that TOWER alone did all of the work allocated to DBEs and that TOWER did not hire a subcontractor to perform any of that work.

As part of the settlement, AHERN admits, acknowledges, and accepts responsibility for conduct alleged in the complaint as described below:

- Over the course of the Brooklyn Bridge and Queens Plaza projects, AHERN was aware of the following facts regarding the involvement of SPECTRUM, a non-DBE, in the projects:

- In March 2010, AHERN's superintendent met with a TOWER manager and a SPECTRUM manager to do a walk-through of the Brooklyn Bridge worksite. AHERN's superintendent understood that the SPECTRUM manager would assist TOWER in preparing the bid TOWER submitted for its work as a DBE subcontractor on the Brooklyn Bridge Project;
- In documents that AHERN received from TOWER and then submitted to Skanska in 2010, TOWER identified the individual who AHERN knew to be a SPECTRUM manager as a "TOWER VP" or as a TOWER employee working on the Brooklyn Bridge Project. In documents AHERN received from TOWER and then submitted to the MTA in 2011, TOWER identified the individual AHERN knew to be a SPECTRUM manager as TOWER's superintendent for the Queens Plaza Project;
- Throughout the Brooklyn Bridge and Queens Plaza Projects, AHERN managers communicated directly with the SPECTRUM manager regarding the management and supervision of the projects, including scheduling and inspecting TOWER's DBE work, ordering materials for TOWER's DBE work, and payment for TOWER's DBE work. An AHERN executive also communicated directly with SPECTRUM's owner regarding the Brooklyn Bridge and Queens Plaza Projects.
- AHERN recklessly disregarded facts showing that SPECTRUM managed and supervised TOWER's DBE work on the Brooklyn Bridge and Queens Plaza Projects.
  - AHERN failed to seek clarification regarding the financial and other arrangements between TOWER and SPECTRUM or request a copy of any contract or agreement between TOWER and SPECTRUM regarding SPECTRUM's role. If AHERN had done so, and TOWER had responded truthfully, AHERN would have learned that TOWER and SPECTRUM had entered into written agreements specifying that SPECTRUM would provide project management support and furnish equipment on the Brooklyn Bridge and Queens Plaza Projects, that TOWER and SPECTRUM would split any profits from the TOWER DBE work on the Brooklyn Bridge and Queens Plaza Projects, and that in addition to the SPECTRUM manager, two other individuals AHERN believed to be TOWER managers were in fact employed by SPECTRUM.
  - AHERN failed to assess whether SPECTRUM's actual involvement in the projects was substantial enough to jeopardize TOWER's standing as a DBE performing a "commercially useful function" under the applicable DBE regulations.

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 P. Folch, Li Yu, and David J. Kennedy are in charge of this case.

19-358

###