



UNITED STATES ATTORNEY'S OFFICE
Southern District of New York

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FOR IMMEDIATE RELEASE
Tuesday, July 13, 2021
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**MANHATTAN U.S. ATTORNEY SETTLES FRAUD SUIT AGAINST
SPECTRUM PAINTING FOR FALSE STATEMENTS ABOUT
DISADVANTAGED BUSINESS PARTICIPATION ON FEDERAL
CONSTRUCTION PROJECTS**

Spectrum Painting Agrees to Pay \$400,000 and Admits Conduct Alleged in the Complaint

Audrey Strauss, the United States Attorney for the Southern District of New York, Brian Gallagher, Acting Special Agent-in-Charge, Northeastern Region, 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 SPECTRUM PAINTING CORP. ("SPECTRUM"). The settlement resolves the United States' allegations that SPECTRUM fraudulently obtained payments on two federally funded construction projects by causing misrepresentations of compliance with Disadvantaged Business Enterprise ("DBE") rules, which require participation of businesses owned by women and minorities. Specifically, the United States alleged that SPECTRUM caused the prime contractors on the projects to misrepresent that codefendant Tower Maintenance Corp. ("Tower"), a certified DBE, was solely performing work on the two projects, when in fact much of that work was performed by SPECTRUM, a non-DBE. As part of the settlement approved yesterday by U.S. District Judge Analisa Torres, SPECTRUM admits and accepts responsibility for conduct alleged in the Government's amended complaint and agrees to pay \$400,000 to the United States.

Manhattan U.S. Attorney Audrey Strauss said: "The Disadvantaged Business Enterprise program is intended to increase participation of minority- and women-owned businesses that historically have been disadvantaged in federal contracting. This settlement reflects this Office's commitment to root out DBE fraud in federally funded contracts so that legitimate DBEs can compete fairly for public construction projects."

USDOT-OIG Acting Special Agent-in-Charge Brian Gallagher said: "The Disadvantaged Business Enterprise (DBE) Program of the U.S. Department of Transportation is designed to create a level playing field for small, disadvantaged businesses to participate in federally-funded

construction projects. We will hold accountable those who conspire to misrepresent their compliance with program requirements to obtain taxpayer supported contracts, thereby undermining the DBE program's goal of expanding opportunities for small businesses."

DOI Commissioner Margaret Garnett said: "This settlement rightly holds accountable a subcontractor that intentionally deceived the government and blatantly disregarded the regulations in place to ensure equal access by disadvantaged-owned businesses. Developing a fair and equal environment is how we do business in New York City and that is why contractors must follow the laws advancing participation by minority- and women-owned businesses. DOI thanks the U.S. Attorney's Office for the Southern District of New York and the rest of our law enforcement partners on this matter for this successful result."

MTA Inspector General Carolyn Pokorny said: "It is outrageous and against the law to use a minority- or women-owned business as a front to swindle precious taxpayer dollars from the Disadvantaged Business Enterprise program, which is meant to ensure an equal playing field for DBEs. This scheme was an affront to taxpayers, MTA riders, and the many honest DBEs that legitimately qualify for the federal program that these companies defrauded. I am proud to stand with our law enforcement partners to protect the integrity of this vital program."

As alleged in the amended complaint filed in Manhattan federal court in August 2019, SPECTRUM performed steel painting work on two federally funded projects to renovate the Brooklyn Bridge and Queens Plaza. Contracts for both projects required codefendant Ahern Painting Contractors Co. ("Ahern") to hire DBEs to perform a percentage of the work and to adhere to the DBE regulations. SPECTRUM was not a certified DBE, so SPECTRUM and Tower used Tower's status as a DBE to take credit for work that was performed, managed, and supervised by SPECTRUM. Further, to conceal this scheme, SPECTRUM employees represented themselves as Tower employees in project documents. The case against Ahern was resolved in a settlement approved by Judge Torres in October 2019, and the case against Tower is ongoing.

As part of the settlement, SPECTRUM admits, acknowledges, and accepts responsibility for the following conduct alleged in the amended complaint:

- In or about March 2010, a manager at Spectrum (the "Spectrum Manager") and a principal at Tower agreed that the two firms would work together on the Brooklyn Bridge Project. Pursuant to that agreement, the Spectrum Manager conducted a walk-through of the Brooklyn Bridge worksite with the Tower principal and an Ahern superintendent for the Brooklyn Bridge Project. The Spectrum Manager understood that he participated in the walk-through to assist Tower in preparing the bid Tower later submitted to Ahern for its anticipated work as a DBE subcontractor for the Brooklyn Bridge project.
- In May and June 2011, SPECTRUM and Tower memorialized two "consulting agreements" for work on the Brooklyn Bridge and the Queens Plaza Projects. Pursuant to those agreements, SPECTRUM and Tower agreed that SPECTRUM would "perform certain consulting services," including "providing project management support," and would furnish equipment to Tower for the two projects. The agreements further provided

that SPECTRUM would receive 50% of all profits from the Tower DBE work on the projects.

- The key terms of the consulting agreements between Tower and SPECTRUM – including Tower’s agreement to pay SPECTRUM 50 percent of all of its profits from the two projects, or SPECTRUM’s agreement to furnish equipment to Tower for the projects – were not disclosed to Ahern, NYC-DOT, or MTA.
- Throughout the Brooklyn Bridge and Queens Plaza Projects, the SPECTRUM Manager managed and supervised the DBE work that Tower was retained to perform on each project, such as setting the work schedule, ordering materials for the work, hiring the foreman, inspecting the work performed, and coordinating payment for the work.
- The SPECTRUM Manager also hired other supervisors on the Brooklyn Bridge and Queens Plaza Projects. For example, the SPECTRUM Manager hired the superintendent for the DBE work assigned to Tower for the Brooklyn Bridge Project and the Queens Plaza Project (the “SPECTRUM Superintendent”). The SPECTRUM Manager also hired an individual to oversee health and safety issues related to the DBE work on the two projects (the “SPECTRUM Safety Supervisor”). Both the SPECTRUM Superintendent and the SPECTRUM Safety Supervisor were paid by SPECTRUM and not by Tower.
- The SPECTRUM Manager, SPECTRUM Superintendent, and SPECTRUM Safety Supervisor were all SPECTRUM employees. On the Brooklyn Bridge and Queens Plaza Projects, they identified themselves to others working on the projects as Tower employees, including by wearing Tower vests and security identification. In documents submitted to Ahern to obtain security clearances, the SPECTRUM Manager identified himself as a “Tower VP” or as a Tower employee.

Ms. Strauss 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.

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