

THE UNITED STATES ATTORNEY'S OFFICE
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Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Tuesday, August 17, 2021

Manhattan U.S. Attorney Settles Fraud Suit Against Tower Maintenance Corp. For False Statements About Disadvantaged Business Participation On Two Federal Construction Projects

Audrey Strauss, the United States Attorney for the Southern District of New York, announced today that the United States has settled civil fraud claims against TOWER MAINTENANCE CORP. ("TOWER"), a Long Island-based steel painting company. The settlement resolves the United States' allegations that TOWER 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 TOWER, a certified DBE, caused the prime contractors on the projects to misrepresent that TOWER, as a DBE, was solely performing work on the two projects, when in fact the work was managed and supervised by codefendant Spectrum Painting Corp. ("Spectrum"), a non-DBE.

Under the settlement approved by U.S. District Judge Analisa Torres, TOWER admits and accepts responsibility for conduct alleged in the Government's amended complaint and agrees to pay \$150,000 to the United States. The settlement amount is based on the Office's assessment of TOWER's ability to pay based on the financial information it provided. The Office previously reached settlements to resolve its fraud claims against the codefendants in the lawsuit, Spectrum and Ahern Painting Contractors Co. ("Ahern"), under which Spectrum and Ahern were required to pay a total of \$3.4 million.

Manhattan U.S. Attorney Audrey Strauss said: "With this settlement, my Office paints a clear picture that we will pursue any contractor that participates in an unlawful scheme to exploit the Disadvantaged Business Enterprise program. All contractors are on notice that we are committed to rooting out public works contracting fraud."

As alleged in the amended complaint filed in Manhattan federal court in August 2019, TOWER performed steel painting work on two federally funded projects to renovate the Brooklyn Bridge and Queens Plaza. Contracts for both projects required Ahern to hire DBEs to perform a percentage of the work and to adhere to the DBE regulations. The DBE regulations require DBEs to manage and supervise their own work. Yet TOWER hired Spectrum, a non-DBE painting subcontractor, to manage and supervise the DBE work that was supposed to be performed solely by TOWER. Further, to conceal this scheme, TOWER passed off Spectrum employees as its own in project documents.

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

- In early 2010, TOWER knew that Ahern entered into an agreement with Skanska Koch Inc. (“Skanska”) for industrial painting and rehabilitation work on the Brooklyn Bridge Project. TOWER understood that as a subcontractor on the Brooklyn Bridge Project, Ahern was obligated to meet or exceed Ahern’s DBE participation goal on the project. TOWER also knew that Ahern expected to use TOWER, a certified DBE, to fulfill a substantial part of Ahern’s DBE participation goal for the Brooklyn Bridge Project. In mid-2010, TOWER in fact entered into a subcontract with Ahern to perform painting and blasting work on the Brooklyn Bridge Project, which TOWER expected would be counted toward Ahern’s DBE participation goal for the project.
- In connection with the Brooklyn Bridge Project, TOWER signed and submitted to Ahern various documents stating that the DBE work subcontracted to TOWER would be performed by TOWER alone.
- In mid-2011, TOWER knew that Ahern entered into a contract with the MTA to provide overcoat painting on the elevated structure at the Queens Plaza subway station, and that Ahern was obligated to meet or exceed its DBE participation goal for the Queens Plaza Project. TOWER also knew that Ahern was going to use TOWER as the DBE contractor on the Queens Plaza Project to meet Ahern’s DBE participation goal. In 2011, TOWER entered into a subcontract with Ahern to perform painting and blasting work on the Queens Plaza Project, which TOWER expected would be counted toward Ahern’s DBE participation goal for that project.
- In May and June 2011, TOWER and Spectrum memorialized two “consulting agreements” for painting and blasting work on the Brooklyn Bridge and Queens Plaza Projects. The key terms of the consulting agreements between TOWER and Spectrum – including TOWER’s agreement to pay Spectrum 50% of all of its profits from the two projects, Spectrum’s agreement to provide project management support, and Spectrum’s agreement to furnish equipment to TOWER for the projects – were not formally disclosed in writing to Ahern, nor were they disclosed in any way to Skanska, NYC-DOT, or MTA.
- Consistent with the consulting agreements, TOWER requested that Spectrum provide project management support for the DBE work that TOWER was retained to perform on the Brooklyn Bridge and Queens Plaza Projects.
- In addition to the Spectrum employee who assisted TOWER in preparing the bid TOWER submitted to Ahern for its anticipated work as a DBE subcontractor on the Brooklyn Bridge project (the “Spectrum Manager”), Spectrum had two other employees providing project management support to TOWER for the DBE work subcontracted to TOWER on the Brooklyn Bridge and Queens Plaza Projects: a superintendent (the “Spectrum Superintendent”) and a health and safety supervisor (the “Spectrum Safety Supervisor”).
- In documents that TOWER submitted to Ahern in 2010, TOWER identified the Spectrum Manager as a “Tower VP” or as a TOWER employee working on the Brooklyn Bridge Project. And in documents TOWER submitted to Ahern in 2011 in connection with the Queens Plaza Project, TOWER identified the Spectrum Manager as a “Director” of TOWER. In addition, the Spectrum Manager, the Spectrum Superintendent, and the Spectrum Safety Supervisor identified themselves to others working on the Brooklyn Bridge and Queens Plaza Projects as TOWER employees.
- In addition to informing Ahern that Spectrum would perform work on the Brooklyn Bridge and Queens Plaza projects, TOWER should have disclosed Spectrum’s work to the NYC-DOT and MTA DBE officers designated on the projects, and it should have sought clarification from Ahern regarding whether Ahern disclosed Spectrum’s involvement in accordance with Ahern’s obligations.

- TOWER should have proactively disclosed to the relevant DBE officer the details of its financial arrangement with Spectrum relative to the Brooklyn Bridge and Queens Plaza Projects, including that TOWER and Spectrum's agreements relative to the projects included profit sharing and provisions for Spectrum to provide TOWER financing for TOWER's performance of work on the projects.

Ms. Strauss praised the outstanding investigative work of the United States Department of Transportation Office of Inspector General, the New York City Department of Investigation, and the Inspector General of the Metropolitan Transportation Authority.

This case is being handled by the Office's Civil Frauds Unit. Assistant U.S. Attorneys Mónica P. Folch and David J. Kennedy are in charge of this case.

Attachment(s):

[Download U.S. v. Tower Maintenance Corp. Stipulation and Order of Settlement and Dismissal](#)

Topic(s):

Financial Fraud

Labor & Employment

Component(s):

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