



U.S. Department of Justice

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PRESS RELEASE

GRANITE CONSTRUCTION TO PAY MORE THAN \$8 MILLION
IN FORFEITURE AND PENALTIES FOR ENGAGING IN A
SCHEME TO FRAUDULENTLY CLAIM CREDIT FOR WORK PERFORMED BY A
MINORITY OWNED BUSINESS

Granite Construction, Incorporated (Granite), a nationwide construction and public works company that is publicly traded on the New York Stock Exchange, has entered into a non-prosecution agreement and agreed to pay more than \$8 million to the federal government and the Metropolitan Transportation Authority Office of Inspector General (MTA-IG) to resolve a criminal investigation into a disadvantaged business enterprise (DBE) fraud scheme perpetrated by Granite's wholly-owned subsidiary, Granite Construction Northeast, Incorporated (GCN), previously known as Granite Halmar Construction Company, Incorporated. In addition, Granite will provide continuing cooperation to the government and maintain far-reaching corporate reforms.

The resolution was announced by Robert L. Capers, United States Attorney for the Eastern District of New York; Doug Shoemaker, Regional Special Agent-in-Charge, U.S. Department of Transportation, Office of Inspector General; Barry Kluger, Inspector General, Metropolitan Transportation Authority; Shantelle P. Kitchen, Special Agent-in-Charge, Internal Revenue Service-Criminal Investigation; and Cheryl Garcia, Special Agent-in-Charge, U.S. Department of Labor, Office of Inspector General, Office of Labor Racketeering and Fraud Investigations in New York. U.S. Attorney Capers also thanked the Federal Transit Administration, a division of the U.S. Department of Transportation, for its assistance.

Pursuant to the non-prosecution agreement signed today, Granite acknowledged and accepted responsibility for a DBE fraud scheme related to GCN's work on a contract for the MTA that involved the construction of a bus depot in Maspeth, Queens, NY (the Project). The Project was largely federally funded.

The investigation revealed that GCN served as the prime contractor on the Project after being awarded the prime contract for the job by the MTA, a contract for which GCN was ultimately paid approximately \$222 million. The contract required GCN to comply with the Disadvantaged Business Enterprise Program (the DBE program). Pursuant to that program, as

the prime contractor, GCN was obligated to make good faith efforts to subcontract a specified percentage of work on the prime contract to certain disadvantaged business enterprises (DBE companies).

GCN, certain other non-DBE companies (the actual companies), and a DBE company that acted solely as a front company in connection with the Project (the front company) conspired to arrange the following scheme to avoid compliance with the DBE program:

(a) the front company would be awarded a subcontract worth approximately \$22 million, to perform certain construction work (the specified work) on the Project;

(b) the actual companies would perform the specified work, but payroll would be “run through” the front company, with paperwork arranged to make it appear as if the front company was performing the specified work; and

(c) GCN would pay the front company a \$500,000 “DBE fee,” although the front company would not perform a “commercially useful function” on the specified work, as required by state and federal regulations.

As the front companies performed the specified work, GCN submitted to officials from the MTA, as required, periodic progress reports that purported to represent the percentage of work performed by DBE companies on the prime contract. From 2004 through approximately 2008, GCN falsely represented in those reports that the front company had performed a “commercially useful function” in performing the specified work, when in fact, the specified work had actually been performed by the actual companies, and the front company had not performed any such commercially useful function.¹ As a result, GCN deprived the MTA of its rights under the prime contract and deprived legitimate DBE companies of the opportunity to perform the specified work and be paid for it.

In light of a comprehensive internal investigation conducted by Granite, Granite’s complete acceptance of responsibility for GCN’s unlawful conduct, Granite’s cooperation with the government, the fact that the GCN employees most responsible for GCN’s unlawful conduct were separated from GCN and Granite years before the government’s investigation began, and Granite’s far-reaching remedial measures, including site visits by compliance program staff and mandatory training for appropriate Granite managers and employees, the government has agreed not to prosecute Granite or GCN for GCN’s criminal conduct provided that Granite complies for two years with all the terms of the agreement executed today. Significantly, this agreement also secures civil forfeiture to the federal government of \$7.25 million in connection with this fraud, as well as a payment of \$1 million to the MTA-IG.

¹ In August 2013, one of the actual companies, A.J. McNulty & Company, also entered into a non-prosecution agreement with the United States Attorney’s Office for the Eastern District of New York to resolve a criminal investigation into the same scheme. Under the terms of that agreement, A.J. McNulty agreed to forfeit \$850,000 to the federal government and pay \$100,000 to the MTA-IG.

“GCN defrauded the MTA by falsely claiming that millions of dollars worth of construction work was performed by a DBE company. Today’s resolution marks a significant step in our continued effort to eliminate DBE fraud in New York’s construction industry and also recognizes Granite’s decision to timely accept full responsibility, provide complete cooperation, and take remedial measures to enforce best industry practices,” stated U.S. Attorney Capers. Mr. Capers thanked the investigative agencies for their outstanding commitment and dedication over the course of this investigation.

“As evidenced by the non-prosecution agreement entered into by Granite Construction, Inc., we remain steadfast in our commitment to maintaining the integrity of the U.S. Department of Transportation’s (USDOT) Disadvantaged Business Enterprise program,” said Regional Special Agent-in-Charge Shoemaker, USDOT Office of Inspector General. “Working with the Secretary of Transportation and other DOT leaders, and our law enforcement and prosecutorial colleagues, we will continue to protect the taxpayers’ investment in our nation’s infrastructure from fraud, waste, abuse, and violations of law.”

“This investigation uncovered a scheme that exploited a program designed to encourage disadvantaged businesses to participate in Metropolitan Transportation Authority projects,” stated IRS-Criminal Investigation Special Agent-in-Charge Kitchen. “IRS-Criminal Investigation is proud to be part of the collective law enforcement effort on this investigation; it demonstrates the government’s resolve to protect public funds and its commitment to ensure the public’s trust. The fact that GCN has entered into an agreement with the government will further serve and protect the public’s best interest.”

“Today’s announcement clearly reflects the firm commitment by our Office and our investigative and prosecutorial partners to utilize all avenues to ensure compliance with DBE requirements and 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 all MTA projects. We will continue to direct our energies and share of settlement proceeds to support the MTA Small Business Development Program and other productive efforts to expand opportunities for disadvantaged business enterprises,” stated Inspector General Kluger.

“Reporting that work was performed by a DBE company involved manipulating American workers and processing their pay through a front company in order to conceal the fraud. We will continue to work with our law enforcement partners to protect contract opportunities for legitimate disadvantaged businesses,” stated Special Agent-in-Charge Garcia of the New York Regional Office, U.S. Department of Labor - Office of Inspector General, Office of Labor Racketeering and Fraud Investigations.

The government’s case is being prosecuted by the Office’s Public Integrity Section. Assistant United States Attorneys Paul Tuchmann and Burton Ryan are in charge of the prosecution. Assistant United States Attorney Brian Morris of the Office’s Civil Division is responsible for the forfeiture of the funds.