

PRESS RELEASE

Sherwin-Williams to Pay \$1 Million to Resolve Alleged False Claims Act Violations Arising from Bridge Painting Project

Thursday, March 2, 2023

For Immediate Release

U.S. Attorney's Office, Eastern District of Pennsylvania

PHILADELPHIA, PA – United States Attorney Jacqueline C. Romero announced that The Sherwin-Williams Company has agreed to pay \$1 million to resolve False Claims Act allegations that it participated in a scheme to defraud the federal Disadvantaged Business Enterprise (DBE) program in connection with a contract to paint the George C. Platt Memorial Bridge in Philadelphia.

Governed by statutes and regulations, the DBE program provides opportunities for small businesses owned by socially and economically disadvantaged individuals to work on federally funded projects by requiring that government contracts set goals for DBE participation. A government contractor may claim credit toward a DBE goal only if a DBE serves a “commercially useful function” on the project. A DBE does not serve a commercially useful function, however, if it acts as a mere pass-through, or extra participant, through which funds are passed to create the appearance that historically disadvantaged businesses did the work.

According to the government’s investigation, this was precisely the case with the Platt Bridge project. In 2011, Hercules-Vimas Joint Venture, LLC was awarded a \$42.7 million contract by the Pennsylvania Department of Transportation (PENNDOT) to paint the bridge. The contract, funded largely by the federal government, required that a percentage of work be performed by a DBE. To meet this requirement, Hercules-Vimas subcontracted with Vertech International, Inc., a DBE certified in Pennsylvania, to supply materials.

The government contends that this arrangement was a sham. While Hercules-Vimas represented to PENNDOT that Vertech was the paint supplier, the government alleges

that it worked directly with Sherwin-Williams, a non-disadvantaged business, to deliver paint and materials to the project site. Vertech merely created invoices designed to conceal the fraud in exchange for a nominal fee.

In 2016, the owner of Vertech pleaded guilty to criminal charges associated with his role in the fraudulent scheme, as did a Hercules-Vimas principal in 2017. In addition, the government reached a \$310,000 civil settlement of False Claims Act allegations against Hercules-Vimas in 2020.

According to the government, Sherwin-Williams' liability as a third-party supplier arises from its knowing complicity with the fraudulent scheme. The government contends that Sherwin-Williams maintained the ordered supplies in storage and delivered them directly to Hercules-Vimas's job site, then submitted invoices for payment of paint and supplies to Vertech, with knowledge and intent that Vertech would, in turn, create invoices on Vertech's letterhead, adding a 1.75% mark-up (representing Vertech's profit) and submit those invoices to Hercules-Vimas for payment. This scheme, the government believes, enabled Hercules-Vimas to submit a substantially lower bid than competing bidders on the Platt Bridge Project because, unlike Hercules-Vimas's bid, competing bids included the reasonable market value for commercially useful functions performed by Disadvantaged Business Enterprises.

"Because of this scheme, legitimate disadvantaged business owners were deprived of the very opportunities the DBE program was designed to create," said U.S. Attorney Romero. "Sherwin-Williams must be held accountable because, without its agreement, the scheme would not have worked."

"Preserving the integrity of DBE programs by unraveling the layers of fraudulent activities in federally funded highway projects remains an important point of focus for our Office of Investigations," said Christopher A. Scharf, Special Agent-in-Charge of the U.S. Department of Transportation Office of Inspector General Northeastern Region. "The significant financial settlement and compliance program reached today demonstrates our commitment to working with our law enforcement and prosecutorial partners on DBE schemes that adversely impact transportation programs in the Commonwealth of Pennsylvania and throughout the United States."

The settled civil claims are allegations only. There has been no determination of civil liability. The investigation was conducted by the United States Department of Transportation Office of Inspector General and the United States Department of Labor Office of Inspector General. For the United States Attorney's Office, Assistant United States Attorneys David Degnan, Eric Gill, and Bryan Hughes handled the investigation.

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