



Department of Justice

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HD SUPPLY WATERWORKS TO PAY NEARLY \$5 MILLION TO RESOLVE GRANT FRAUD ALLEGATIONS

*Waterworks Supplied Materials on Several Federally-Funded Contracts Where Invoices were
“Passed Through” a Disadvantaged Business Enterprise in Violation of Law*

ALBANY, NEW YORK: HD Supply Waterworks (Waterworks) – the Nation’s largest supplier of water, sewer, fire protection and storm drain products – has agreed to pay the United States \$4,945,000 under the False Claims Act to resolve allegations that it participated in a scheme designed to take advantage of the Disadvantaged Business Enterprise (DBE) program in order to obtain subcontracts on federally-funded projects, announced United States Attorney Richard S. Hartunian.

The United States Department of Transportation (DOT) and the United States Environmental Protection Agency (EPA) have promulgated regulations intended to provide opportunities for businesses owned by socially and economically disadvantaged individuals to perform work on projects financed, at least in part, by the federal government. Those agencies also administer DBE programs that require state and local governments receiving federal funding to establish goals for the participation of DBEs on federally-funded projects. A contractor may claim credit for a DBE’s participation on a project only if the DBE serves a commercially useful function. A DBE does not serve a commercially useful function if its role is limited to that of an extra participant to a transaction through which funds are passed to create the impression that one or more members of a historically disadvantaged group worked on a project.

In 2008, authorities began investigating prime contractors that claimed to have conducted business with the now-defunct American Indian Builders & Suppliers, Inc. (AIB), a Native American owned company certified as a DBE in New York and in other states. The investigation revealed that several prime contractors listed AIB as a subcontractor that had worked on or supplied materials for federally-funded projects when it did neither. Instead, a third party that would not itself qualify as a DBE performed the work or supplied the materials, and received much of the financial benefit. For its role, AIB would collect a small percentage of the subcontract amount as compensation for the fraudulent use of its name and DBE status.

The government alleges that Waterworks enabled several prime contractors to represent falsely that AIB had performed a commercially useful function on federally-funded contracts by negotiating price and other terms of sale when, in reality, the prime contractors had negotiated such terms with Waterworks and used AIB as a pass through. Waterworks acknowledged in the settlement agreement that AIB served as a pass-through by collecting invoices from Waterworks, transferring the information from those invoices to AIB's own invoices, adding a markup, and passing the AIB marked-up invoices on to the prime contractors. The government alleges that the conduct described above enabled prime contractors to certify falsely that AIB supplied materials when the parties – *i.e.*, Waterworks, AIB, and the prime contractors – knew that was not the case, resulting in the submission to government entities of false or fraudulent claims for payment from federal funds.

United States Attorney Hartunian said: “Waterworks enabled prime contractors to certify falsely that American Indian Builders & Suppliers served as a subcontractor on government-funded projects, thwarting the program’s objective of creating a level playing field for legitimate minority and women-owned businesses to compete fairly on such projects. As this case

demonstrates, my office will vigorously pursue unscrupulous contractors who engage in schemes to divert grant funds away from those for whom the money was intended.”

“Disadvantaged Business Enterprise fraud like that perpetrated by HD Supply Waterworks harms the integrity of the DBE program and law-abiding contractors, including many small businesses, by defeating efforts to ensure a level playing field in which all firms can compete fairly for contracts,” said Douglas Shoemaker, regional Special Agent-in-Charge of the DOT Office of Inspector General (DOT-OIG). “Our agents will continue to work with the Secretary of Transportation, the Administrator of Federal Highways, and our federal, state, and local law enforcement and prosecutorial colleagues to expose and shut down DBE fraud schemes that adversely affect public trust and DOT-assisted highway programs throughout New York and elsewhere.”

“EPA OIG will continue to work to ensure that the Disadvantaged Business Enterprise programs are used for their intended purposes,” said Thomas Muskett, Special Agent in Charge for the EPA Office of Inspector General’s Washington Field Office, which covers the mid-Atlantic and northeastern United States. “Our agents are pleased to have contributed to the successful resolution of this investigation.”

The investigation and settlement were the result of a coordinated effort among the United States Attorney’s Office for the Northern District of New York, DOT-OIG, EPA-OIG, and the Federal Bureau of Investigation, with the assistance of the United States Department of Justice’s Civil Division and the New York State Department of Transportation’s Investigations Bureau. The United States was represented by Assistant United States Attorney Adam J. Katz.

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