

PAINT SQUARE

The U.S. Attorney's Office recently 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.

The claims are in connection with a contract to paint the George C. Platt Memorial Bridge in Philadelphia.

"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 Jacqueline C. Romero. "Sherwin-Williams must be held accountable because, without its agreement, the scheme would not have worked."

The U.S. Attorney's Office notes that the settled civil claims are allegations only, as there has been no determination of civil liability.

Lawsuit Background

[Back in 2017](#), the Federal Highway Administration announced that it suspended and proposed the debarment of Hercules Painting Company Inc., along with owner Maria Savakis, based on allegations that Savakis ran a fraudulent payroll scheme during the 2011 George C. Platt Memorial Bridge Project, in Philadelphia.

The FHWA did not specify the period of time it sought to suspend and debar the company and Savakis at the time. A representative of Hercules Painting told *PaintSquare Daily News* on May 23, 2017, that the company was in the process of appealing the suspension.



Marilyn Nieves / Getty Images

The U.S. Attorney's Office recently 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.

The Platt Bridge Project was a \$42.7 million rehab job carried out by a joint venture of Hercules and the Vimas Painting Company, of Lowellville, Ohio. The contract was awarded by the Pennsylvania Department of Transportation and included federal funds.

According to the Department of Transportation's Office of the Inspector General, Savakis allegedly devised a scheme in which employees on the Platt Bridge job were paid via two separate payrolls, only one of which was reported on certified payrolls at the prevailing wage required in the contract. Employees were paid their remaining hours at a lower rate on the second, unreported payroll.

The DOT said the result of the scheme was that the joint venture kept funds that should by law have been deposited in the Welfare Fund of the International Union of Painters and Allied Trades' District Council No. 21.

Savakis, who was listed as a resident of Merritt Island, Florida, faces federal charges of theft from a healthcare program related to the alleged scheme.

The DOT's Office of the Inspector General carried out the investigation with the assistance of the FBI, Department of Labor, Environmental Protection Agency, Homeland Security Investigations, and Internal Revenue Service.

Latest Action

[According to the release](#), 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.

However, a DBE does not serve a commercially useful function if it acts as a "pass-through, or extra participant," through which funds are passed to create the appearance that historically disadvantaged businesses did the work.

A government investigation found that this was the case with the Platt Bridge painting project, which was awarded in 2011. It was largely funded by the federal government, requiring a percentage of work to be performed by a DBE.

DBE-certified Vertech International, Inc. was subcontracted to supply the materials to meet this requirement. However, the investigation alleges that while Hercules-Vimas represented to PennDOT that Vertech was the paint supplier, it worked directly with Sherwin-Williams, a non-disadvantaged business, to deliver paint and materials to the project site.

Vertech supposedly then 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. Additionally, the government reached a \$310,000 civil settlement of False Claims Act allegations against Hercules-Vimas in 2020.

The announcement alleges that 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.

Afterwards, Sherwin supposedly 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.

Because of this scheme, Hercules-Vimas was able to submit a substantially lower bid than competing bidders on the Platt Bridge Project because competing bids included the reasonable market value for commercially useful functions performed by Disadvantaged Business Enterprises.

"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 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.