



CONSTRUCTION
EXECUTIVE

Thinking About Circumventing Disadvantage Business Enterprises Requirements? Don't!

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A portion of many public projects must be performed by Disadvantaged Business Enterprises (DBE). Sometimes, DBE requirements can be difficult to fulfill and some contractors cut corners.

They use “pass through” DBEs that perform no commercially useful function, they use DBEs that are falsely certified or they overstate the extent of DBE involvement. The advice to anyone thinking about doing this is don't! Criminal and civil enforcement of DBE fraud is on the upswing and violators are punished severely.

Criminal Enforcement

Prosecutors across the country are actively pursuing DBE fraud cases. People convicted of such fraud are often sent to prison and fined, and can be debarred from participating in federally funded projects. For example, Environmental Energy Associates (EEA) recently pled guilty relating to its use as a DBE “front” company. EEA entered into several large projects in and around New York City even though it lacked the labor, equipment and money to perform the work. EEA's work was performed by various third parties. EEA's principals were sentenced to six months of home confinement and two years of probation and were ordered to pay more than \$230,000. In a related case, Skanska USA agreed to pay \$19.6 million to avoid being prosecuted for using EEA as a sham DBE on several projects.

In another recent New York case, Walter Bale, the president of a non-DBE, pled guilty to falsely certifying that work done by his company was actually performed by a certified DBE. Bale was sentenced to three years of probation and ordered to pay more than \$250,000. The president of the DBE also was sentenced to three years of probation. In Philadelphia, Michael Tulio, the owner of Tulio Landscaping, was convicted in connection with two contracts to replace storm drainpipes. Tulio certified that a percentage of the work would be subcontracted to a DBE hauling firm. However, Tulio never hired the DBE hauling firm, but instead created fraudulent documents to make it look like he did. Tulio was sentenced to 15 months in prison and 24 months of supervised release and ordered to pay a \$40,000 fine.

Civil Enforcement

The Federal False Claims Act rewards people who blow the whistle on companies that defraud the federal government. Whistleblowers—who have already been paid more than \$1 billion in cases involving Medicare, Medicaid, the Department of Defense and other federal programs—have now begun to target DBE fraud. For example, last year, the FBI announced a \$12 million settlement of DBE fraud allegations against Chicago-based McHugh Construction. A project manager of a subcontractor to McHugh blew the whistle and was paid more than \$2 million. More recently, a whistleblower filed suit alleging that his former employer, TesTech, falsely claimed that it was owned by a minority in order to obtain DBE certification, which led to numerous highway and airport projects. TesTech and its owners agreed to pay nearly \$3 million to settle the case. The whistleblower will be paid \$562,370 from the settlement.

These cases demonstrate that DBE fraud is a serious matter. To avoid trouble, companies must observe the spirit, as well as the letter, of the DBE requirements, fully vet all DBEs they intend to use and adopt appropriate DBE compliance policies.



Dave Laigaie, Eckert Seamans Cherin & Mellott, focuses his practice on internal corporate investigations, health care litigation, compliance and complex civil litigation. He handles cases involving health care fraud, securities fraud, tax fraud, export violations, pharmaceutical marketing fraud, municipal corruption, defense procurement fraud and public finance fraud.