

statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with Disadvantaged Business owned and controlled by socially and economically disadvantaged individuals. This 10 percent goal is an aspirational goal at the national level, which USDOT uses as a tool in evaluating and monitoring Disadvantaged Business' opportunities to participate in USDOT-assisted contracts.

4. The integrity of the USDOT's Disadvantaged Business program depends to a large extent upon the establishment of systematic procedures to ensure that only *bona fide* small disadvantaged business firms are participating in the program. Primary responsibility for the administration of the Disadvantaged Business program is delegated to the state and city agencies that receive USDOT construction funds and who are required to establish Disadvantaged Business programs in conformity with federal regulations.

5. Disadvantaged individuals include socially and economically disadvantaged individuals, as determined on a case-by-case basis, or an individual member of a group which is presumed to be socially and economically disadvantaged. To be established as a Disadvantaged Business (i.e. "certified"), a company must submit an application to a governmental agency (such as SEPTA or PENNDOT) with the authority to certify that the applying company meets the requirements of the Disadvantaged Business program (i.e. that it is in fact a disadvantaged business enterprise). Once certified by one authorized agency, the company may be used as a Disadvantaged Business on contracts administered by any other agency within that same state. Companies are generally approved in advance and appear on agency lists of approved vendors (i.e. are "prequalified").

6. When a Disadvantaged Business participates in a contract, only the value of the work actually performed by the Disadvantaged Business, with its own work forces, counts toward Disadvantaged Business goals. By regulation, expenditures to a Disadvantaged Business count toward the Disadvantaged Business goals of a contractor only if the Disadvantaged Business is performing a "*commercially useful function*" on that contract. A Disadvantaged Business performs a commercially useful function when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The Disadvantaged Business must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

7. With respect to Disadvantaged Business that supply materials to contractors actually performing work on a federally financed project (i.e suppliers) the regulations state that "if the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals." A regular dealer is defined as "a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business." The regulations also state that "to be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question."

8. The regulations also provide that: "Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers...".

The regulations therefore provide that: “A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.”

The Persons and Entities Involved in the DBE Scheme

9. Markias, Inc. (Markias) was a corporation with headquarters at 14 Twin Hill Drive, Willingboro, NJ 08046. Markias had been certified as a Disadvantaged Business by Southeastern Pennsylvania Transportation Authority (SEPTA) and was prequalified as a Disadvantaged Business supplier by PENNDOT, as it was owned by JOYCE ABRAMS, an African-American female. Markias was also certified as a Disadvantaged Business or Minority Business Enterprise at various times in New Jersey, New York, and Maryland.

10. On Disadvantaged Business applications with SEPTA, Markias described its primary business activities as a “wholesale supplier of materials for the construction trade.”

11. JOYCE ABRAMS, an African-American female born in 1941, was the president and sole owner of Markias. ABRAMS had been president of Markias since the firm was founded in May 1997.

12. The joint venture identified here as the “AB JV” is composed of two companies, identified here as Company A and Company B.

13. The corporation identified here as Company A is a non-Disadvantaged Business bridge painting contractor.

14. The corporation identified here as Company B is a bridge painting general contractor. Company B is a certified Disadvantaged Business in the State of Maryland. Company B applied for certification as a Disadvantaged Business in the Commonwealth of

Pennsylvania in 2007. PENNDOT denied certification in 2008 on the ground that Company B's ownership and control was not in keeping with the requirement of the governing federal regulations. Company B voluntarily renounced its Disadvantaged Business certification in New Jersey, by letter dated August 27, 2014, on the grounds that the firm "no longer qualifies, according to U.S. DOT regulations 49 CFR Part 26."

15. The individual identified here as Employee No.1 is a management level employee of Company B, who at all relevant times functioned as a Project Manager for AB JV.

16. The individual identified here as Employee No. 2 is an owner and management level employee of Company A, who at all relevant times functioned as a principal and management level official of AB JV.

17. The company identified here as Company C is a corporation involved in general contracting for bridge and non-bridge construction projects. It is not a certified Disadvantaged Business.

The Two Federally Funded Projects

18. In September 2009, PENNDOT awarded an approximately \$70.3M contract to a tri-venture consisting of the AB JV and Company C (the "ABC Triventure") to perform structural steel painting and repairs, and concrete repairs on the Girard Point Bridge over the Schuylkill River in Philadelphia, Pennsylvania (the "Girard Point Project"). The AB JV performed the painting work for this project. Construction work on this 100% federally funded project by the USDOT, under the American Recovery and Reinvestment Act of 2009 (ARRA), was completed in August 2013 with a final contract amount of \$77.8 M.

19. In July 2009, as part of the bid process, the ABC Triventure submitted a

commitment to PENNDOT to subcontract approximately \$4.7M in Disadvantaged Business work to Markias to supply paint materials for the Girard Point Project. Per Disadvantaged Business program regulations, the ABC Triventre would receive 60% credit towards their overall Disadvantaged Business goal for this project, or approximately \$2.8M.

20. In December 2010, PENNDOT awarded a joint venture formed by Company C and Company F an approximately \$50.8M contract to perform structural steel painting and repairs, and roadway reconstruction beneath and around AMTRAK's 30th Street Train Station in Philadelphia, Pennsylvania (the "30th Street Project"). In January 2011, Company C and Company F entered into an approximately \$15M subcontract for the AB JV to perform structural steel painting beneath 30th Street Station. Construction work on this project was completed in September 2014 and was 80% federally funded by the USDOT and 20% funded by PENNDOT. The final contract amount was approximately \$53.8M.

20. In October 2010, as part of the bid process, Company C and Company F submitted a commitment to PENNDOT to subcontract approximately \$1.7M in Disadvantaged Business work to Markias to supply paint materials for the 30th Street Project. Per DBE program regulations, Company C and Company F would receive 60% credit towards their overall DBE goal for this project, or approximately \$1M.

21. In August 2011 the Massachusetts Department of Transportation (MASSDOT) awarded the AB JV an approximately \$44.8M contract to perform structural steel painting on, repairs to, and roadway reconstruction of, the Tobin Memorial Bridge in Boston, MA (the "Tobin Bridge Project").

22. Markias was not a qualified minority business subcontractor on the state-funded

Tobin Bridge Project.

23. In March 2012 the Louisiana Department of Transportation and Development (LA DOTD) awarded the AB JV an approximately \$74.8M contract to perform structural steel painting on, and repairs to, the U.S. 190 Mississippi River Bridge in East Baton Rouge, Louisiana (the “Mississippi River Bridge Project”).

24. Markias was not a qualified Disadvantaged Business subcontractor on the Mississippi River Bridge Project.

THE CONSPIRACY

25. From in or around July 2009 to in or around August 2013, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOYCE ABRAMS

conspired and agreed together with Markias, Inc., AB JV, Company B, Employee No. 1, and others known and unknown to the grand jury, to commit an offense against the United States, that is, to knowingly devise a scheme to defraud Federal Highways, USDOT, and PENNDOT, and to obtain money and property from them, by means of false and fraudulent pretenses, representations and promises, and to use wire communications in interstate commerce to further the scheme to defraud, in violation of Title 18, United States Code, Section 1343.

MANNER AND MEANS

It was part of the conspiracy that:

26. In July 2009, as part of the bid process for the Girard Point Project, the ABC Triventure submitted a commitment to PENNDOT to subcontract approximately \$4.7M in Disadvantaged Business work to Markias to supply paint materials for the Girard Point Project.

This commitment was submitted electronically by the ABC Triventure by logging in to PENNDOT's Engineering and Construction Management System via the Internet, by listing Markias as a Disadvantaged Business supplier, and by representing that Markias would perform \$4.7 million in qualifying Disadvantaged Business work.

27. At the direction of an employee of the AB JV, on or about July 29, 2009, defendant JOYCE ABRAMS also logged on to the PENNDOT ECMS system via the Internet and "acknowledged" Markias' role as a Disadvantaged Business for the Girard Point Project.

28. PENNDOT relied on these representations in awarding the contract to the ABC Triventure.

29. In December 2009, Company A, Company B, and Company C reported to PENNDOT, by logging into ECMS via the Internet, that they had entered into a Disadvantaged Business subcontract with Markias to supply paint materials for the Girard Point project.

30. AB JV and Employee No. 1 negotiated contracts for materials for the Girard Point Project directly with suppliers that were not Disadvantaged Businesses, and without the knowledge or involvement of defendant JOYCE ABRAMS.

31. AB JV and Employee No. 1 ordered materials needed for their work on the Girard Point Project directly from suppliers that were not Disadvantaged Businesses, and without the knowledge or involvement of defendant JOYCE ABRAMS.

32. Markias did not perform any commercially useful function, but acted as a mere pass-through or front, to give the appearance that disadvantaged business enterprise requirements had been met on the Girard Point Project. AB JV paid Markias 2.25% of the face value of the invoices processed by Markias to act as a pass-through.

33. Thereafter, the ABC Triventre would periodically log on to the ECMS system via the Internet, generally monthly, and report to PENNDOT the dollar volume of allegedly qualifying Disadvantaged Business work that had been performed by Markias as its Disadvantaged Business since the last report.

34. PENNDOT relied upon the false periodic reports submitted by Company A, Company B, and Company C in determining the ABC Triventre's compliance with its Disadvantaged Business obligations under the contract. Based on their reports of work allegedly performed by Markias as a Disadvantaged Business, PENNDOT awarded approximately \$3.26M in Disadvantaged Business credit to Company A, Company B, and Company C during the course of the Girard Point Project.

35. In October 2010, as part of the bid process for the 30th Street Project, Company C and Company F submitted a commitment to PENNDOT to subcontract approximately \$1.7 million in DBE work to Markias to supply paint materials for the 30th Street Project. This commitment was submitted electronically by Company C and Company F by logging in to PENNDOT's Engineering and Construction Management System (ECMS) via the Internet, by listing Markias as a Disadvantaged Business supplier, and by representing that Markias would perform \$1.7 million in qualifying DBE work.

36. In October 2010, defendant JOYCE ABRAMS also logged on to the PENNDOT ECMS system via the Internet and "acknowledged" Markias' role as a Disadvantaged Business for the 30th Street Project.

37. PENNDOT relied on the representations of defendant JOYCE ABRAMS and Company C and Company F in awarding the contract to joint venture comprised of Company C

and Company F.

38. In August 2011, Company C and Company F reported to PENNDOT, also by logging into ECMS via the Internet, that they had entered into a DBE subcontract with Markias to supply paint materials for the 30th Street Project. Thereafter, that joint venture periodically logged on to the ECMS system via the Internet, generally monthly, and reported to PENNDOT the dollar volume of allegedly qualifying DBE work that had been performed by Markias as its DBE since the last report.

39. AB JV and Employee No. 1 negotiated contracts for materials for the 30th Street Project directly with suppliers that were not Disadvantaged Businesses, and without the knowledge or involvement of defendant JOYCE ABRAMS.

40. AB JV, Employee No. 1 and Employee No. 2, ordered materials needed for their work on the 30th Street Project directly from suppliers that were not Disadvantaged Businesses, and without the knowledge or involvement of defendant JOYCE ABRAMS.

41. Markias did not perform any commercially useful function, but acted as a mere pass-through or front, to give the appearance that disadvantaged business enterprise requirements were met on the 30th Street Project. AB JV paid Markias 2.25% of the face value of the invoices processed by Markias to act as a pass-through.

42. Company C and Company F reported to PENNDOT that approximately \$2.1M had been paid to Markias for DBE work performed, and PENNDOT awarded them \$1.275M in DBE credit. These reports by Company C and Company F were based on representations made to Company C and Company F by the AB JV.

43. The AB JV, Employee No. 1, and Employee No. 2, ordered materials and supplies

to be delivered to, and to be used for, the Tobin Bridge Project in Massachusetts, while directing that invoices for those purchases be sent to Markias in New Jersey.

44. The AB JV, Employee No. 1, and Employee No. 2, ordered materials and supplies to be delivered to, and to be used for, the Mississippi River Bridge Project in Louisiana, while directing that invoices for those purchases be sent to Markias in New Jersey.

45. At the direction of the AB JV and Employee No. 1, defendant JOYCE ABRAMS issued invoices that made it appear that supplies delivered to and used on the Tobin Bridge Project and the Mississippi River Bridge Project had been delivered to and used on the 30th Street Project in Pennsylvania.

46. The AB JV caused Company C and Company F falsely to report to PENNDOT that that the supplies delivered to and used on the Tobin Bridge Project and the Mississippi River Bridge Project for which defendant JOYCE ABRAMS had issued invoices qualified for disadvantaged business credit in Pennsylvania when those purchases did not so qualify.

47. PENNDOT relied upon these false reports in determining the Company C and Company F joint venture's compliance with its DBE obligations under the contract.

OVERT ACTS

In furtherance of the conspiracy, defendant JOYCE ABRAMS and others known and unknown to the grand jury, committed the following overt acts in the Eastern District of Pennsylvania and elsewhere:

1. In or about January 2011, Company C and Company F entered into an approximately \$15 million subcontract for the AB JV to perform structural steel painting beneath the 30th Street Station.

2. In or about August 2011, Company C and Company F reported to PENNDOT, by logging into ECMS via the Internet, that they had entered into a DBE subcontract with Markias to supply paint materials for the 30th Street Project.

3. On or about October 6, 2010, JOYCE ABRAMS logged on to the PENNDOT ECMS system via the Internet and “acknowledged” its role as a DBE for the 30th Street Project.

4. On or about December 1, 2012, Company C and Company F reported to PENNDOT that approximately \$ 2.12 million had been paid to Markias for DBE work performed on the 30th Street Station Project.

5. On or about June 12, 2012, an employee of Company A sent an email to defendant JOYCE ABRAMS with copies to Employee No. 1 and Employee No. 2, directing Markias to send a purchase order to a third party vendor for certain items ordered for the Tobin Bridge Project.

6. On or about June 20, 2012, defendant JOYCE ABRAMS sent an invoice to Company B for the items ordered for the Tobin Bridge project describing them as having been ordered for the 30th Street Project.

7. On or about September 28, 2012, the AB JV issued check number 7190 to Markias for goods delivered to and used on the Tobin Bridge project.

In violation of Title 18, United States Code, Section 1349.

ZANE DAVID MEMEGER
United States Attorney