

Approved: Ben C  
BENJAMIN ALLEE  
Assistant United States Attorney

Before: HONORABLE PAUL E. DAVISON  
United States Magistrate Judge  
Southern District of New York

14 MAG 2137

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA      : SEALED
                               : COMPLAINT
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                               : Violation of
                               : 18 U.S.C. §§ 1343, 2
AARON TUBBS,                 :
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                               : COUNTIES OF OFFENSE:
                               : WESTCHESTER, BRONX
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SOUTHERN DISTRICT OF NEW YORK, ss:

CRAIG FUREY, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Transportation, Office of Inspector General ("USDOT-OIG"), and charges as follows:

COUNT ONE

From in or about 2008 through at least in or about 2010, in the Southern District of New York and elsewhere, AARON TUBBS, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice, knowingly transmitted and caused to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures, and sounds, to wit, TUBBS, as Regional Manager of a general contractor that was awarded a contract to repair the Bronx-Whitestone Bridge, participated in a scheme to obtain money from an affiliate of the Metropolitan Transportation Authority by falsely representing that a certified minority-owned business enterprise ("MBE-1") was

supplying structural steel to the general contractor, when in fact other companies and not MBE-1 were providing the structural steel, and for the purpose of such scheme caused wires to be sent interstate, including emails to representatives of steel companies.

(Title 18; United States Code, Sections 1343 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

1. I am a Special Agent with USDOT-OIG. I have participated in the investigation of this matter. This affidavit is based upon my investigation, my conversations with other law enforcement agents and others, and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions and statements of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### The MBE/WBE Program

2. In 1988 and thereafter, New York enacted laws (Executive Law, Article 15A (NY CLS Exec. §§ 310-316)) and regulations (5 NYCRR §§ 140-144) to increase opportunity for meaningful participation by minority and women-owned business enterprises in state-funded construction projects ("MBEs," "WBEs," and the "MBE/WBE Provisions"). An MBE is an entity that is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by at least one of the socially and economically disadvantaged individuals who owns it. To be certified, MBEs and WBEs must be capable of performing the construction work they purport to perform, and once certified, MBEs and WBEs must actually perform the work subcontracted to them.

3. To increase opportunities for meaningful participation by certified MBEs and WBEs, state agencies that are parties to state-funded construction projects must establish participation goals on projects (the "MBE/WBE Goal"). To determine the MBE/WBE Goal on a construction project, the state agency must consider several factors, including, among other things, the number and type of certified MBEs and WBEs available

to perform work on the construction project, and their availability in the region where the construction project is located. State agencies must include in state contracts for construction projects a provision setting forth the amount of the MBE/WBE Goal, and a provision stating that the MBE/WBE Goal is subject to Article 15A of the Executive Law and related regulations.

4. Once the state agency establishes the MBE/WBE Goal on a construction project, it must require general contractors to submit plans for achieving the MBE/WBE goal, known as "utilization plans," and reports showing that the general contractor awarded the contract is complying with the plan to meet the MBE/WBE Goal, known as "compliance reports." In the utilization plan, the general contractor must include, among other things, the names of the MBEs and WBEs the general contractor intends to use to perform the construction project and a description of the work the MBEs and WBEs will perform, along with the actual dollar amounts to be paid them. In the compliance reports, the general contractor must set forth the actual scope of work to be performed by the MBEs and WBEs on the construction project, and the actual amounts of payments made by the general contractor to each MBE and WBE as of the date of the report.

5. If a general contractor fails to meet the MBE/WBE Goal, a state agency may grant a waiver, but only if the general contractor submits documentation demonstrating good faith efforts to meet the MBE/WBE Goal. The documentation must include, among other things, proof of the general contractor's efforts to solicit participation by certified MBEs and WBEs. To determine whether a general contractor made good faith efforts sufficient for a waiver, a state agency must consider several factors, including, among other things, the size of the construction project, and the financial ability of MBEs and WBEs located outside the region to perform the construction project.

6. A general contractor's failure to meet the MBE/WBE Goal or to demonstrate a good faith attempt to do so may result in a general contractor's being disqualified from a construction project.

MBE-1

7. Together with agents, investigators, and officers with USDOT-OIG, the MTA Inspector General, the Port Authority of New York and New Jersey Office of Inspector General, and the New

York State Department of Transportation, I have conducted an investigation of a company, hereinafter referred to as "MBE-1," used by general contractors repeatedly on large construction projects in Westchester County, the Bronx, Manhattan, Staten Island, and elsewhere, to obtain credit toward MBE/WBE goals and/or their federal equivalent, Disadvantaged Business Entity ("DBE") goals. During the investigation, based on numerous interviews and review of documents, I learned that MBE-1 was repeatedly used in a scheme, described below, known as "DBE fraud," "MBE fraud," and "pass through fraud," to give the appearance that a minority- or woman-owned entity was performing work on a government-funded construction project when in fact other companies, which were not minority- or woman-owned, did the work. As set forth below, among the construction projects in which MBE-1 was used in a fraudulent scheme was the Bronx-Whitestone Bridge Construction Project.

8. In connection with the investigation, the sole owner and principal of MBE-1 was convicted upon a guilty plea in March 2013, in United States District Court in White Plains, New York, of mail fraud, in violation of Title 18, United States Code, Section 1344.

The Bronx-Whitestone Bridge  
Construction Project

9. In or about 2008, the Metropolitan Transportation Authority ("MTA")<sup>1</sup> initiated a major construction project on the Bronx-Whitestone Bridge (the "Bridge Project"), a suspension bridge over the East River that connects the Bronx and Queens. The project was to replace the Bronx approach and perform repairs to the Queens approach of the Bridge. The MTA estimated that the project would cost approximately \$170 million and take approximately four years to complete.

10. As part of its solicitation for bids on the Bridge Project, the MTA - a "state agency" for purposes of the MBE/WBE Provisions - specified that the Bridge Project was funded by New York State, and therefore that New York State Executive Law Article 15-A governing participation on construction projects by MBEs and WBEs applied. The MTA set an MBE/WBE Goal on the Bridge

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<sup>1</sup> The entity requisitioning the work on the Bridge Project was MTA Bridges & Tunnels, also known as the Triborough Bridge and Tunnel Authority, an affiliate of the MTA. The agency overseeing the Bridge Project is referred to herein as the MTA.

Project of 7% participation by MBEs and 3% by WBEs, for a total of 10%. In connection with setting the MBE/WBE Goal, the MTA noted that there were subcontracting opportunities on the Bridge Project, and provided a list of certified MBEs and WBEs with the capability of providing services on the job.

11. On or about October 23, 2008, a general contractor ("General Contractor-1") was awarded the contract on the Bridge Project, at a price of approximately \$192 million.

12. In or about 2008 and 2009, AARON TUBBS, the defendant, was a Regional Manager at General Contractor-1. TUBBS participated in, among other things, the award and performance of subcontracts to provide structural steel on the Bridge Project.

#### The Fraudulent Scheme

13. Based on my training and experience, I am familiar with a type of fraudulent scheme, sometimes referred to as "DBE fraud," "MBE fraud," or "pass through fraud," often employed on government-funded construction projects. In the scheme, a general contractor purports to include a certified minority-owned enterprise as a subcontractor on a construction project, but the enterprise actually does no work. Rather, the enterprise is used as a pass through, to give the appearance of minority participation, when in reality other companies, which are not certified minority-owned enterprises, are performing the work and receiving the government funds. Often the certified minority-owned enterprise is paid a fraction of the amount the general contractor claims it is being paid, approximately 1% or 2% of the value of the subcontract. The scheme enables general contractors to win and maintain government contracts without meeting the requirements for minority participation, thereby preventing minority-owned companies from performing their fair share of work on government construction projects.

14. I have conducted an investigation of MBE fraud on the Bridge Project, during which I have conducted dozens of interviews and reviewed thousands of documents, including interviews and documents referred to below. Based on my investigation, I have learned that General Contractor-1 that won the Bridge Project claimed, in utilization forms and compliance reports, that structural steel would be supplied by a certified MBE, but that actually the structural steel was provided by other companies, and the certified MBE was used as a pass through. In fact, the certified MBE did not meaningfully participate in the Bridge Project, and it received a only small fraction of the

state funds that General Contractor-1 represented it had received. I have further learned that AARON TUBBS, the defendant, in his capacity as a Regional Manager at General Contractor-1, participated in setting up the fraudulent scheme, creating the pass through arrangement between General Contractor-1, the MBE, and the actual steel suppliers.

15. I have reviewed documents submitted in connection with General Contractor-1's bid on the Bridge Project, and learned, among other things, the following:

a. In an MBE/WBE Utilization Plan Form that General Contractor-1 submitted to the MTA, dated September 12, 2008, General Contractor-1 represented that a certified MBE, MBE-1, would supply structural steel on the Bridge Project. The amount of the subcontract for the structural steel MBE-1 would purportedly provide was \$4.8 million, which comprised approximately 2.5% of the overall contract price, and therefore approximately 25% of the MBE/WBE Goal. General Contractor-1 further represented that it had other subcontracts with other MBEs and a WBE, the sum of which totaled approximately 10% of the overall contract price, and therefore satisfied the MBE/WBE Goal set by the MTA.

b. In a letter dated September 29, 2008, MBE-1 represented to the MTA that "[MBE-1] is providing Structural Steel in the estimated amount of \$4,800,00.00 [sic]."

c. Based in part on General Contractor-1's representation that MBE-1 would supply \$4.8 million of structural steel on the Bridge Project, the MTA determined that General Contractor-1 met the MBE/WBE requirements for the Bridge Project, and thereafter awarded the contract to General Contractor-1.

16. I have observed the office of MBE-1 and its surroundings on multiple occasions. I have also spoken to multiple individuals familiar with MBE-1 and the area surrounding MBE-1's office in or about 2008. Based on my observations and my discussions, I have learned that in or about 2008 and thereafter, MBE-1 consisted of a rented office space. Its employees were its sole principal and a staff of approximately one to two administrative, clerical workers. MBE-1 did not have a warehouse, did not have stored steel, did not have the capacity to store steel, and did not have equipment to transport steel.

17. I have reviewed communications, including emails and letters, to and from representatives of General Contractor-1

regarding the supplying of structural steel on the Bridge Project. Based on the communications, I have learned that, in fact, other companies, which were not certified MBEs or WBEs, and not MBE-1, supplied the structural steel on the Bridge Project. MBE-1 did not meaningfully participate on the Bridge Project. In or about late 2008 and early 2009, AARON TUBBS, the defendant, communicated with representatives of a steel fabricator ("Supplier 1"), which was not a certified MBE or WBE, to arrange for Supplier 1 to fabricate structural steel on the Bridge Project. In a letter from TUBBS to a representative of Supplier 1, TUBBS referred to Supplier 1 as the "supplier" of structural steel.

18. I have interviewed a representative of Supplier 1 ("Individual-1"). According to Individual-1, in or about 2008, Supplier 1 and General Contractor-1 agreed that Supplier 1 would fabricate the steel for the Bridge Project. Thereafter, Supplier 1 participated in obtaining steel from steel manufacturers and in providing the steel to General Contractor-1 for use in the Bridge Project.

19. According to Individual-1, after Supplier 1 agreed to a contract with General Contractor-1, AARON TUBBS, the defendant, informed Supplier 1 that General Contractor-1 would run purchases of structural steel from Supplier 1 through MBE-1 for purposes of meeting minority requirements. Thereafter, in order to purchase the structural steel from steel manufacturers, General Contractor-1 received from Supplier 1 purchase order information, arranged for the information to be placed on letterhead of MBE-1, and arranged for the purchase order to be submitted to the steel manufacturer.

20. I have reviewed emails sent from AARON TUBBS, the defendant, in or about early 2009, in which TUBBS described the arrangement between General Contractor-1, MBE-1, and Steel Supplier-1, which was created to give the false appearance that MBE-1 was providing steel on the Bridge Project when in fact it was not meaningfully participating on the job. For example:

a. On January 23, 2009, in an email to other employees of General Contractor-1, TUBBS described the arrangement whereby General Contractor-1 would create purchase orders of steel to be placed on MBE-1's letterhead, summarizing:

"[A General Contractor-1 employee] is going to contact [MBE-1] and have [MBE-1] send us a blank P.O. that we will send to [Supplier 1] to fill out

with the proper plates, terms, conditions, etc. . . . After [Supplier 1] fills out the [MBE-1] P.O., we will review and then send a [General Contractor-1] P.O. to [MBE-1] for signature. A little confusing, but if we set it up right the first, time, it will not be a problem."

b. On January 31, 2009, in an email to representatives of Supplier 1, TUBBS wrote:

"For minority reasons, the raw material will be purchased (ran through) a vendor by the name of [MBE-1]. [General Contractor-1] will guarantee payment, but the paperwork has to flow from [General Contractor-1] to [MBE-1] to the selected supplier and vice-a-versa."

c. On March 3, 2009, in another email, TUBBS wrote:

"[MBE-1] is the DBE firm we are using to supply the structural steel raw material. We did this for DBE reasons. It actually costs us 2% more money, but is a contract requirement to meet the specified DBE criteria."

d. On March 6, 2009, in an email to a representative of a steel manufacturer, TUBBS wrote:

"For contractual reasons, we need to purchase the material from [MBE-1] which is a certified DBE supplier for the TBTA [(Triborough Bridge and Tunnel Authority)]. . . . The money will need to flow from the TBTA to [General Contractor-1] to [MBE-1] to the [steel manufacturer]."

21. I have reviewed emails of employees of a steel manufacturer that provided steel on the Bridge Project. On April 16, 2009, an employee of the steel manufacturer wrote the following to other employees of the steel manufacturer:

"To update you. . . I spoke with Aaron Tubbs . . . and he will have the AM Guaranty and AM Guaranty Resolutions forms signed ASAP. Once signed, I can offer our standard 30 day terms for [MBE-1]? Correct? As information, [General Contractor-1] advised . . . [MBE-1] is a 'DBE' requirement. . .



minority steel supplier. Per [General Contractor-1], [MBE-1] is basically a 'pass through' mechanism to meet federal requirements."

22. I have reviewed additional email and other communications between AARON TUBBS, the defendant, and other representatives of General Contractor-1, and representatives of Steel Supplier-1, MBE-1, and steel manufacturers. Based on the email and other communications, I have learned that in or about 2009, employees of General Contractor-1 took additional steps to facilitate its contractual relationships with Steel Supplier-1 and the steel manufacturers, while maintaining the false appearance that MBE-1 was supplying the steel, when in fact MBE-1 was not meaningfully participating in the job. For example, General Contractor-1 agreed to guarantee payment for steel to a steel manufacturer in the event that MBE-1 defaulted, and General Contractor-1 arranged for Joint Check Agreements with steel companies, in which MBE-1 was referred to as "Supplier" and the steel companies as "Sub-Supplier[s]," whereby General Contractor-1 agreed to pay the steel companies via two-party checks payable to both the steel companies and MBE-1. Separately, General Contractor-1 agreed to pay MBE-1 a 2% markup in checks to MBE-1.

23. I have reviewed monthly MBE/WBE participation reports submitted by General Contractor-1 on the Bridge Project in accordance with MTA requirements. Based on the reports, I have learned that in or about 2009 and 2010, General Contractor-1 continued to represent to the MTA that MBE-1 was supplying structural steel on the Bridge Project. For example, in a report dated January 20, 2010, General Contractor-1 represented that MBE-1's subcontract amount was \$5 million, that MBE-1's work status was active, that MBE-1 had completed 36.1% of the work, and that total payments to date made on the subcontract were \$1,805,371.92.

24. I have interviewed the principal of MBE-1 ("Individual-2"). Individual-2 said, in part and in substance, that MBE-1 did not supply steel on the Bridge Project, but was involved in the Bridge Project because of its MBE certification. AARON TUBBS, the defendant, participated in creating the arrangement whereby General Contractor-1 falsely represented that MBE-1 was supplying steel. Individual-2 and staff at MBE-1 took instruction from TUBBS and other representatives of General Contractor-1 regarding, for example, what information to include in purchase orders on MBE-1 letterhead. Individual-2 once attempted to go to the job site of the Bridge Project, and was denied entry.

St. George Ferry Terminal Project


25. I have reviewed documents related to another construction project, on the St. George Ferry Terminal in Staten Island, New York, on which General Contractor-1 was the general contractor. The construction project on the St. George Ferry Terminal was federally funded, under the American Recovery and Reinvestment Act of 2009, by the USDOT. The DBE Goal was approximately nine percent of the contract amount. In conducting the construction project on the St. George Ferry Terminal, General Contractor-1 sought to employ a pass through scheme modeled on the scheme, described above, on the Bridge Project, orchestrated by AARON TUBBS, the defendant. For example, on or about November 9, 2009, General Contractor-1's field engineer sent an email to another representative of General Contractor-1, stating, in part, "We will be handling rebar at St. George similar to how [General Contractor-1] set up the Whitestone structural steel purchase with [MBE-1]. Aaron Tubbs mentioned that I get in contact with you to describe that process, as we will have our rebar installer, [a purported DBE], manage the material with [another non-DBE company]."

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of AARON TUBBS, the defendant, and that he be imprisoned, or bailed, as the case may be.



CRAIG FUREY  
Special Agent  
United States Department of  
Transportation, Office of Inspector  
General

Sworn to before me this  
24 day of September, 2014



UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK