

No. 23-909

---

---

In The  
**Supreme Court of the United States**

---

STAMATIOS KOUSISIS AND ALPHA PAINTING &  
CONSTRUCTION CO., INC.,

*Petitioners,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

---

**On Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit**

---

**JOINT APPENDIX**

---

Elizabeth B. Prelogar  
SOLICITOR GENERAL  
U.S. DEPARTMENT OF  
JUSTICE  
950 Pennsylvania Ave., NW  
Washington, DC 20530  
(202) 514-2217  
SupremeCtBriefs@usdoj.gov

*Counsel of Record for  
Respondent*

Lisa A. Mathewson  
MATHEWSON LAW LLC  
1617 John F. Kennedy  
Blvd., Suite 2027  
Philadelphia, PA 19103  
(215) 399-9592  
lam@mathewson-law.com

*Counsel of Record for  
Petitioners*

---

---

*Petition for Writ of Certiorari Filed February 20, 2024  
Certiorari Granted June 17, 2024*

**TABLE OF CONTENTS**

Transcripts

Excerpts of Trial Transcript from August 6,  
2018 (E.D. Pa.) ..... 1

Excerpts of Trial Transcript from August 7,  
2018 (E.D. Pa.) ..... 14

Excerpts of Trial Transcript from August 8,  
2018 (E.D. Pa.) ..... 17

Excerpts of Trial Transcript from August 9,  
2018 (E.D. Pa.) ..... 50

Excerpts of Trial Transcript from August  
10, 2018 (E.D. Pa.) ..... 53

Excerpts of Trial Transcript from August  
13, 2018 (E.D. Pa.) ..... 55

Excerpts of Trial Transcript from August  
14, 2018 (E.D. Pa.) ..... 61

Excerpts of Trial Transcript from August  
15, 2018 (E.D. Pa.) ..... 69

Excerpts of Trial Transcript from August  
16, 2018 (E.D. Pa.) ..... 76

Excerpts of Trial Transcript from August  
20, 2018 (E.D. Pa.) ..... 81

Excerpts of Trial Transcript from August  
21, 2018 (E.D. Pa.) ..... 85

Excerpts of Trial Transcript from August  
22, 2018 (E.D. Pa.) ..... 89

Excerpts of Trial Transcript from August  
23, 2018 (E.D. Pa.) ..... 91

## TABLE OF CONTENTS

Excerpts of Trial Transcript from August 24, 2018 (E.D. Pa.) .....	95
Excerpts of Sentencing Proceedings Transcript from November 1, 2019 (E.D. Pa.) .....	100
Excerpts of Sentencing Proceedings Transcript from November 6, 2019 (E.D. Pa.) .....	102
Exhibits	
Defendants Exhibit No. 200, Excerpts of Contract.....	106
Defendants Exhibit No. 203, Excerpts of Contract.....	167
Government Exhibit No. 1, E-Mail .....	178
Government Exhibit No. 2, E-Mail .....	180
Government Exhibit No. 3, E-Mail .....	181
Government Exhibit No. 6, E-Mail .....	183
Government Exhibit No. 8, E-Mail .....	184
Government Exhibit No. 11, E-Mail .....	186
Government Exhibit No. 107, E-Mail .....	189
Government Exhibit No. 108, E-Mail .....	191
Government Exhibit No. 504, Excerpts of Letter.....	193
Government Exhibit No. 505, E-Mail .....	195
Government Exhibit No. 609, Excerpts of Minutes .....	196

## TABLE OF CONTENTS

Government Exhibit No. 613, Excerpts of Letter.....	199
Government Exhibit No. 618, Excerpts of Letter.....	202
Government Exhibit No. 633, Minority Participation Commitment Detail .....	205
Government Exhibit No. 673, Excerpts of Minority Participation Commitment Detail...	210
Government Exhibit No. 841, E-Mail .....	212
Government Exhibit No. 842, E-mail .....	214
Government Exhibit No. 1002, Summary of Invoices.....	216

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the petition for certiorari:

Opinion, United States Court of Appeals for the Third Circuit (Sept. 22, 2023) .....	Pet. App. 1
Opinion, United States Court of Appeals for the Third Circuit (Sept. 27, 2023) .....	Pet. App. 42
Judgment, United States District Court for the Eastern District of Pennsylvania (Nov. 15, 2019) .....	Pet. App. 54

**TABLE OF CONTENTS**

Judgment, United States District  
Court for the Eastern District of  
Pennsylvania (Nov. 8, 2019)..... Pet. App. 63

Memorandum Opinion, United  
States District Court for the  
Eastern District of Pennsylvania  
(June 17, 2019)..... Pet. App. 76

Order, United States District  
Court for the Eastern District of  
Pennsylvania (June 17, 2019)..... Pet. App. 130

Transcript Excerpts, United States  
District Court for the Eastern  
District of Pennsylvania (Nov. 6,  
2019) ..... Pet. App. 132

Transcript Excerpts, United States  
District Court for the Eastern  
District of Pennsylvania (Aug. 24,  
2019) ..... Pet. App. 153

JA1

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 6, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**AM Session [70] Troyer - Opening**

And why would do you that? Why hire a company to do nothing and pay them? Why? So they can outbid their competition. Because all of the other companies bidding for these contracts, ladies and gentlemen, have to abide by the rules, and they have to actually hire real DBE's. And to hire a real DBE supplier or a real DBE working company, it's going to cost more money than just 2.25 percent. So this way, the evidence will show, they could outbid their competitors and get an unfair advantage by cheating on the rules. So they needed a do-nothing company, and that's where we meet Joyce Abrams. You are going to meet Joyce Abrams. She's actually a very nice, lovely lady, I believe you will find. And she is the president and sole employee of Markias, Inc. She named the company after two of her children's names and combined them together. She ran this business

JA2

out of her house in Willingboro, New Jersey. She held herself out as a DBE, as a supplier. In fact, she supplied no goods. She did not negotiate the prices as a broker. She did very few, if any, purchase orders. She had no warehouse. Then she got a warehouse, but she did not store any goods that were used in any of these projects in the warehouse. She performed, you will see, no commercially useful function in this case.

[71] Well, what did Joyce Abrams do? Well, mostly she sat at a table in her living room, and she wrote up invoices. The defendants would contact Joyce Abrams, and they would say, Joyce, give us an invoice for such and such. Gladly. No problem. Sometimes the defendants even had the invoices already, and she would just write up the dummy invoices on the Markias, Inc., paper. And that was so that they could then take those papers, those dummy invoices, show them to the contractor, Buckley, send them to PennDOT, and say, look at us. We have got a DBE supplier supplying all of these goods, all this steel, all this paint, all these structural platforms on these bridges, none of which she had. Markias, you are going to hear -- I suspect you will hear it a number of times in this courtroom -- was certified in the commonwealth of Pennsylvania as a DBE. And you are going to hear that a lot. But you are going to hear what it means, and you are going to hear what it does not mean. All it means to be certified is that the company is eligible to participate in bidding for contracts and in doing contracts. Companies as suppliers -- companies are only certified in Pennsylvania generally as a supplier, not on the subcategories of manufacturer, regular dealer, or

JA3

broker. So you are going to hear that to get certified [72] as a DBE supplier in Pennsylvania, you can indeed be a single woman working out of her living room table, writing up invoices, because that person could be -- could be a broker, somebody who is putting other companies together and brokering transactions. That's not what happened in this case, but it could be.

So Markias, you will hear, was in fact certified in the commonwealth of Pennsylvania. You are going to hear that -- how did she get certified? She got certified through -- actually through Septa. She got a contract involving Septa. She got certified through them. And you are going to hear there's a unified certification program -- there's a reciprocal agreement under which if a DBE gets certified by one member of the UCP in Pennsylvania, then they are considered good for the entire commonwealth of Pennsylvania. So that's how she got on the list. She certified as a supplier, but, again, that could mean many things. Well, what certification doesn't it mean, you will hear? Certification does not mean that in any particular contract she was actually doing the work. And you are going to hear that she was not.

Now, the defendants hired -- agreed to hire Markias as its supplier. They listed her as a supplier. However, they all agree with each that all [73] she would do is write up these invoices for 2.25 percent. In other words, they agreed she would be a fake DBE, essentially, to fool Buckley, to fool PennDOT and to fool the United States government. Why hire her to do nothing? Again, to get the advantage -- the unfair advantage over their competitors.



JA4

And then you are going to hear that once they reached their goals, the goals that are set by PennDOT, as to how much DBE participation they need in a particular contract, once they reached those threshold amounts, they cut her off. They stopped sending the invoices to her completely.

Now, once the work began on the bridge project, the defendants raised the fraud, you are going to hear, to a whole new level. That's where the defendants were working on other out-of-state projects. And you are going to see that these projects overlapped. You will hear that the defendants had projects on the Tobin Bridge in Massachusetts. They had a project on the Huey Long Bridge over the Mississippi River down in Louisiana. They had a project in Connecticut. Another one in New Jersey. All of these projects had nothing to do with the Pennsylvania projects here at Girard Point or 30th Street.

\* \* \* \*

**PM Session [12] Pentino - Direct**

Q. And as to socially and economically disadvantaged, what groups qualify or what categories of persons qualify as socially -- let's take socially disadvantaged first.

A. Okay. Let's break that down. Socially disadvantaged groups are listed as African American, Asian-Pacific American, Native American. Women are included in the social disadvantaged group.

Q. And is it also South Asian or Subcontinent-Asian?

A. Subcontinent-Asian, Pacific island, yes.

JA5

Q. Let me ask you this, too, as well. Could a person, say a white person who doesn't fit into those categories, apply and qualify as a socially disadvantaged person?

A. They can. There is special provisions allowing for anyone -- persons with disabilities, Caucasians -- to apply for and become a Disadvantaged Business Enterprise.

Q. As far as economically disadvantaged, what qualifies somebody as being economically disadvantaged for the purpose of DBE?

A. For the purposes of being a Disadvantaged Business Enterprise, DBE, you'd have to have a personal net worth of under \$1.32 million, and that is not including your personal **[13]** residence or the value of your business. It's not included in that calculation.

Q. That figure, \$1.32 million, has that changed over the years?

A. Yes, not frequently, but it has. It was once \$750,000. It's now up to \$1.32 million.

Q. Adjusted for inflation?

A. Adjusted for inflation.

Q. Are there any restrictions on the size of the business itself that would seek to be qualified as a DBE?

A. Yes, there are. There are two standards when we talk about size. I mentioned firms must be small. And that's measured in two ways using the same measurement, by the way, and that's a measurement of the firm's gross receipts. We have a statutory and

JA6

regulatory cap. That's the first standard. That's at \$23.98 million averaged over a three-year period. In other words, if your gross receipts of your firm exceeded that amount over a three-year period, your firm would not be considered small.

The second criteria of being small is you must meet the size caps set forth by the Small Business Administration using what's called a North American industrial Classification System code, or NAICS code, and that's specific to the type of business you run. So different businesses are measured by SBA, and they have set size standard caps for that. And that could [14] be much lower than the 23.98 million. There are some firms that are at 10 million, for example. Some are at 15 million. So you cannot exceed either one of those caps and have a small business.

Q. And why are DBEs limited to small businesses?

A. Well, it goes back to the congressional intent and where we originated with this rule. This was a program first conceived in the early 1980s. I think President Reagan signed the first authorization authorizing this program, and the intent was to assist small firms owned by socially and economically disadvantaged persons to compete in the marketplace.

Q. Okay. Are there DBE requirements in government contracts?

A. There are for United States Department of Transportation funds that are given to recipients -- and by recipients I mean state and local agencies -- of different types of funds. You can have Federal Highway funds, Federal Transit funds or Federal

JA7

Aviation funds. If those flow from us, United States Department of Transportation, DBE requirements apply. It applies to your agency.

\* \* \* \*

**[30] Pentino - Direct**

A. Those are part of the requirements.

Q. And then in terms of each particular contract, who sets the DBE goals for each particular contract?

A. That would be the state agency, the recipient.

Q. And so we're clear, what are contract goals as opposed to overall goals?

A. Okay. I mentioned before that the program is goal-based, and it requires tailoring of what's called an overall goal. And that's a measurement, a mathematical measurement of the amount of contracting you'd expect in the absence of discrimination. So state agencies set an overall goal, and they monitor that throughout the course of the year. And any time when they can't feel that they can meet the overall goal, they place contract goals, which require extra steps by primes in both the solicitation, the award of those contracts. Contract goals are the extras. Those are the extra duties on the prime contractor that they must take in order to satisfy that they can receive the contract from that recipient.

Q. Mr. Pentino, earlier you mentioned the term "counting" and I asked you about that. Are you familiar with the term "DBE credits"?

A. Yes.

Q. And essentially what are DBE credits?

JA8

A. Well, we are monitoring utilization. We are [31] monitoring how a Disadvantaged Business Enterprise is used on a particular project and whether the work promised to them was actually performed by them. So when we talk about credits or counting, we're seeing whether the promised work was actually performed by them, and there's various classes or categories of counting depending on the type of work that's being performed.

Q. What are the reporting requirements as to DBE credits?

A. You would report that -- that's part of the flexibility built into our program. You would report that as the state agency, you know, the particular form that they have given you to report on.

Q. I want to make sure we're clear.

A. Okay.

Q. So when you say "you would report that," who is it that would report the DBE credits to the state agency?

A. That would be the prime contractor.

Q. So who keeps track of the DBE credits then that are reported?

A. That would be the state agency would keep track. They would keep a running tally of awards and commitments and payments and tasks completed.

Q. And then in turn do state agency recipients, such as PennDOT, do they then report to the Department of Transportation with regard to those credits?

JA9

[32] A. They do, twice a year for Transit, and Highway recipients will report in total what their commitments, awards, and payments have been given to DBEs and primes.

Q. Mr. Pentino, are there different types of DBEs?

A. Sure. There's all kinds of DBEs certified in various types of work, the whole gamut of transportation-related work.

Q. Could you give us some examples?

A. Sure. You could have a trucking firm. You could have an architectural engineering firm. You could have a landscaping firm. Those are all types of DBEs.

Q. Are there specific regulations that deal with different types or forms of suppliers?

A. There are.

Q. And what is a supplier?

A. Well, you would be certified as a DBE to perform supply. So unlike, you know, I guess boots on the ground type of work where you're actually installing something, repairing something, erecting something, there is a class of businesses that engage in supplying different materials for prime contractors and sometimes subcontractors on a particular job.

\* \* \* \*

[43] Pentino - Direct

Q. ... Can recipients use set-asides or quotas as part of this program?

JA10

A. Absolutely not. This is not a quota program in any way. You may not set aside contracts for DBEs on DOT-assisted contracts except that in limited and extreme circumstances you may use set-asides when there's no other method that can be reasonably expected to address egregious instances of discrimination.

MR. TROYER: Okay. Thank you. If we could go to the next page, please, that would be page 13, and the very first paragraph at the top. Thank you. Good. Perfect.

BY MR. TROYER:

Q. So referring to Section 26.45 and the question: How do recipients set overall goals? Again, recipients refer to whom?

A. Recipients refer to the state agencies that receive USDOT money.

Q. Like PennDOT?

A. Like PennDOT, yes.

Q. What does this specific regulation say about that?

A. You must set an overall goal for DBE participation in your DOT-assisted contracts. (a)(2) of that section says: If you are an FTA or FAA recipient who reasonably anticipates awarding, excluding transit vehicle purchases, \$250,000 or less in FTA funds or FAA funds in prime contracts in a Federal [44] fiscal year, you are not required to develop overall goals. And it goes on.

MR. TROYER: All right. Thank you. If we could go to page 15 next. Okay. If we could take, on the left

JA11

column, 26.47. It's the second to last paragraph. Thank you.

BY MR. TROYER:

Q. Okay. And there's a question there: Can recipients be penalized for failing to meet overall goals? And what is the answer to that question?

A. The answer is, no, you cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you fail to administer your program in good faith.

Q. Okay. So these goals are set by the Department of Transportation, the aspirational goals of 10 percent, and yet there's no penalty; is that correct?

A. Correct.

Q. And could you explain that for the members of the jury? How is that?

A. Well, if you fail to operate your program in good faith, if you fail to first set properly your goals, you will be found in noncompliance as a recipient. You will be subject to possible withholding of funds, revoking of funds, or other sanctions available by the Department.

\* \* \* \*

**[58] Pentino - Direct**

Q. If we could go to the next page, 28, and just get those first top paragraphs in the left-hand column.

A. Right. This is in those situations where a firm's ownership or control were transferred and the



person now who transferred it remains involved in the firm, that is raising the higher burden of proof for certification. It goes now from preponderance to clear and convincing evidence that that transfer of ownership or control to the disadvantaged individual was made for reasons other than obtaining certification and that they actually control the management, policy, and operations of the firm, notwithstanding the continued participation of the person who transferred it to you.

Q. If we could move up to page 30, I'm not going to go into this in detail, but is this subpart (e) with certification procedures, does this address the Unified Certification Program that we discussed earlier?

A. It does.

Q. Let me jump ahead a little further to page 38, and if [59] we could go to the right column Subpart F, compliance and enforcement. So this Section 26.101 asks the question: What compliance procedures apply to recipients? Again, recipients would be organizations such as PennDOT?

A. Correct. If they fail to comply with any requirement mentioned in this rule, they could be subject to formal enforcement action or program sanctions such as suspension or termination of federal funds or refusal to approve projects, grants, or contracts until those deficiencies are remedied.

Q. And then if we could go, finally, to page 40 and the left-hand column starting up at (b), which is the first full paragraph. So this portion, 26.107: What enforcement actions apply to firms participating in the DBE program?

JA13

A. Correct. If you're a firm that, in order to meet contract goals or other DBE program requirements, uses or attempts to use, on the basis of false or fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria, the Department, USDOT, may suspend or debar you under the rule.

Q. What does it mean to be debarred?

A. It means you would be no longer eligible to participate in federally assisted contracts or federally conducted contracts. You would be limited to only private contracting.

\* \* \* \*

JA14

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	)	18-CR-130
AMERICA	)	Philadelphia, PA
vs.	)	August 7, 2018
STAMATIOS	)	
KOUSISIS, ET AL	)	
	)	

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**AM Session [48] Pentino - Cross**

Q. And I know you and I never had the chance to talk about your testimony, so maybe that explains why I thought I asked a different question and you gave an answer to a question that I didn't think I asked. But my point is and the question is to you now, in answering questions with respect to joint checks and the red flags, the department has articulated a series of specific steps that recipients might take?

A. Those were safeguards. Those were suggestions and guidance.

Q. And those specific steps imply -- not imply. They flow from the recipient's ability to examine books and records, right?

A. Correct.

JA15

Q. To ask questions about DBE compliance, right?

A. Correct.

Q. To go to the DBE supplier and ask questions of them, right?

A. Yes.

Q. To go inspect the warehouse if they choose to, right?

A. Yes.

Q. And they are obligated under your requirements [49] to make sure and do their best due diligence concerning whether DBE compliance is being satisfied, right, the recipients?

A. Yes.

Q. Now, at the very end of your questioning by Mr. Troyer yesterday, you were asked two questions. And Mr. Troyer articulated the first and prefaced it and apologized for it because it was a very longwinded question. Do you remember that?

A. Yes.

Q. I am going to talk to you about the second question.

A. Okay.

Q. Okay. Do you remember the second question?

A. I do not.

Q. The second question was, can a company order and use products for one job and then claim DBE credits for a separate job? Do you remember the question?

JA16

A. Yes, I do.

Q. And the answer was no, right?

A. The answer is no.

Q. The answer is no, right? And in the course of preparing for your testimony in this case, did you -- were you aware that the government prepared a disclosure concerning what your testimony might be?

\* \* \* \*

JA17

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF	)	18-CR-130
AMERICA	)	Philadelphia, PA
vs.	)	August 8, 2018
STAMATIOS	)	
KOUSISIS, ET AL	)	
	)	

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[95] Harter - Direct**

Q. And that last part, what does that entail?

A. So when any contractors -- we advertise a project for construction. Contractors submit bids, and my unit, we have an electronic process that opens the bids. Then my unit as far as they will make sure that the contractor submits the necessary documentation, and they will process the legal agreement that has the contractor as far as with agreement and legally to bill the project for us.

Q. Okay. So let's take that one step at a time then.

A. Sure.

Q. In terms of opening the bids, how is that done?

A. That is done through our electronic system. It is called the ECMS system. That stands for the

JA18

consultant and engineering as far as the management system for the construction and also our consultant projects.

Q. So ECMS is engineering --

A. And construction management system.

Q. And so is everything then in terms of bids for contracts done through the ECMS system?

A. That is correct. And that system has been in existence since 2002.

Q. And so when there's a project that is needed to be done by the Pennsylvania Department of Transportation, what [96] procedure does PennDOT take first in order to go forward with that project?

A. So we advertise projects as far as we have what we call a package, as far as a bid package that has the plans, the specifications, the items, and the quantities for that particular construction project. We advertise that for a duration. It can be anywhere from four to eight weeks, depending on the complexity. Some may even be more if there are some questions on it.

At that time, we state in the advertisement as far as when the bids are due. That is, in our electronic system. And then when that date and time has passed, that is when my staff goes into the electronic system again. It's everything electronically and they go through opening the bids. The system does that for us, and then that shows the bid results as far as who put in for the project and who is the apparent low bidder on that particular project.

JA19

Q. Do contractors submit these bids also through this ECMS system?

A. That is correct.

Q. How do they obtain this bid package that you were talking about?

A. Okay so if a contractor -- as far as they have to go through a registration process as far as to obtain a business partner number as far as that's their first step. ...

\* \* \* \*

**[98] Harter - Direct**

A. So the electronic system as far as it is all done electronically. It takes the information that the contractor submitted as far as all of their bid data. It adds it all up and it will display as far as the contractor's name and the amount that they had bid for the entire project. It is displayed on a screen so that we can see the apparent low bidder and as far as the subsequent bidders as far as who is the next highest and so forth until we get to whoever submitted the highest bid. But it will show the lowest bidder as far as at the top.

Q. Now, does that happen instantly, or are the bids initially sealed when they are submitted?

A. The information as far as PennDOT cannot see anything. We typically open our bids at 11:00 a.m. on a Thursday afternoon as far as -- I'm sorry, on Thursdays.

We process each bid in the order as far as that they're put in the system as far as just by number sequence. We take one particular project and open



JA20

those bids, and we can't see anything until after that time, and my staff submits and selects a button in ECMS that opens each project and each bid, so then it's displayed for each project individually to be walked down through those on Thursdays.

\* \* \* \*

**[100] Harter - Direct**

Q. Okay. So if a contractor were to submit a bid with a lowest number but did not comply with the requirements of the contract in that bidding, what would the computer do and how would that be treated?

A. If they were not compliant within the time frame as far as that was required, my staff -- as far as with that evaluation after the time period and we see that that has not happened, we will then process, if we have to, as far as going to the next lowest bidder if they appear to be not compliant with all of their requirements.

Q. Is so, what happens to that bid that's say, incomplete or not compliant?

A. As far as that's still in the system but we are then moving to the next contractor, as far as if they are not compliant.

Q. So is that bid rejected then?

A. Yes. I'm sorry, yes.

Q. So once a winning bid, for lack of a better term, is identified, what's the next step then PennDOT takes?

A. Then as far as with that, with the contractor as far as if they have submitted all the necessary

JA21

documentation within the time period, we then move to award the contractor -- I'm sorry the contract to the contractor.

\* \* \* \*

**[103] Harter - Direct**

Q. Is that PennDOT inspectors?

A. I'm sorry, PennDOT inspectors. Or if we do not have enough manpower, we also hire consultants to act on our behalf as inspectors.

Q. Okay. I'm sorry. You were kind of in the middle of your answer there. So what do they do then?

A. So the inspector, as far as each day, creates a diary as far as they are documenting as far as what are they saw completed that day of work.

For example, if they installed pipe on the project, the inspector would fill out the diary. They would pick the item number that pertain to that pipe and they would say, for example, that the contractor installed 50 feet of pipe that day. So they are just verifying and putting that information in a diary in ECMS as far as for that record to be captured.

Q. And so are these diaries basically like daily logs?

A. Correct.

Q. And are there other reports that are filled out then also through ECMS?

A. As far as the inspectors would do that each day and then we would be generating as far as payment to the contractor on a specified time period

JA22

typically twice a month as far as we are paying them for the work that they had completed within, for example, the last two weeks. That information is generated [104] through what those inspectors have witnessed as far as what work has been completed.

Q. And is job progress reported then by the inspectors?

A. That is correct.

Q. What about the contractors? Do they also file reports through ECMS as well?

A. Yes, they do, as far as they submit as far as when they have made payments to DBE firms that are on their project. They are to submit the information that they had paid those DBE contractors as far as for the work performed.

Q. And you just mentioned DBEs. Are DBE requirements common in PennDOT construction and repair contracts?

A. Yes. Most PennDOT projects have what we call a DBE goal as far as the disadvantaged businesses as far as we will submit -- I'm sorry, we will set a goal as far as for our project, and the contractor then has to submit information at the time that they are the apparent low bidder that will tell us how they plan to attain that goal as far as which vendors as far as which companies, and what work they're going to perform.

Then, as the project is going through the process, they then have to submit as far as typically monthly as far as what information and what payments have gone to those DBE companies.

Q. And these are specific reports then filed through ECMS with PennDOT?

[105] A. That is correct.

Q. And the PennDOT employees, they also obviously have access to this ECMS system as well?

A. That is correct. Each individual from PennDOT.

Q. When contractors put information into ECMS, is this reviewed by PennDOT employees?

A. Yes.

Q. And how do the contractors then get paid through ECMS? Because you mentioned that just a moment ago, I think.

A. Sure. Like I said, as far as we generate estimates typically twice a month to pay the contractors as far as for the work that has been performed. The payments as far as that estimate is generated based on all the information that the inspectors have witnessed as far as within those last, for example, two weeks.

Q. Okay. Now, again, you mentioned DBEs, so let's get back to that then. Is it part of your job to supervise or police the DBE compliance for PennDOT?

A. No.

Q. But in putting together the contracts and supervising those, are DBE goals -- are they part of the solicitation that PennDOT puts together for these projects?

A. Yes.

JA24

Q. So what is it that the contractors have to do? Or let me ask you this: When is it that the contractors have to **[106]** put information in about DBEs to show that they can comply with the contract?

A. After they are the apparent low bidder, at the time, as far as -- they have seven days as far as to submit all of that required information.

Q. Okay. Has it always been seven days or has that changed?

A. It has been seven days as far as three years ago. It was changed to five days as far as that they had to submit that information.

Q. And then what about say, in that situation, what about the DBE company itself? Do they put any information then into the ECMS system?

A. Correct. So the prime contractor as far as will submit within ECMS as far as to the DBE company that they plan to work with. The prime contractor will have the information as far as what work that they have for the DBE to perform. The DBE company as far as will acknowledge that, that they agree that they will perform the work that they specify in the system, and for the dollar amount that they specify in the system.

So the DBE does go in and does what we call work flow as far as electronic signature that they are acknowledging that and they send that back to the prime consultant -- I'm sorry, the prime contractor, and the prime contractor will then submit **[107]** that information electronically to ECMS as far as they're committing to that company and for that dollar amount.

Q. And when you say the DBE acknowledges that they'll do that work for that amount, is that specific affirmative action that they have to take then putting in an acknowledgment through the ECMS system?

A. Correct. They would have to log in, and they have to take essentially a work flow action, which is them accepting it's an electronic format of accepting that work and submitting it.

Q. Okay. What happens, Ms. Harter, if after a contract is awarded and the work has begun? What happens if there's either information or even suspicion that the DBE is not actually doing the work in that project? What happens then?

A. Then as far as we would have to get individuals involved as far as to follow up with the information as far as to see if the actual company is on the project, as far as we would have our inspectors or someone from our group go out and look as far as, basically, were those folks on the job doing any work.

Q. You mentioned people or inspectors. Are there equal opportunity investigators that PennDOT employs as well?

A. Yes. Through our Bureau of Equal Opportunity, they do have individuals that will go out and look for that information.

\* \* \* \*

**[118] Harter - Direct**

Q. And are there -- to your knowledge, were there subcontractors on this project as well?

A. Correct, there were.

JA26

Q. And on this particular form, the minority payments form then, if we continue down -- we've got it captured on the screen right now. There's a summary section, and then the names of six different entities there. And those six entities, what are those?

A. Those are the DBE companies that were participating on this project.

Q. Okay. And the DBE companies, there is one listed. The second one, which one is that?

A. That is Markias.

Q. And just to the right of Markias, Inc., DBE, there's a column that says business type. What does it say there after business type?

A. It says regular dealer.

Q. And what is a regular dealer, Ms. Harter? Do you know?

A. That is a company as far as that would be supplying supplies for the project.

Q. And this information that gets put into the system here for delineating someone as either a regular dealer or, as **[119]** you can see below for the next one, subcontractor, how is that information placed into the system?

A. As far as for a company, as far as with the work, as far as their initial approval, as far as for this particular one, a regular dealer, they contact my staff, as far as that they want to be put in the system as far as that and all my staff is doing as far as if they are a registered company, as far as they will put them in as far as a dealer, or as far as that goes.

They are not certifying as far as again that they are a DBE or the work that they intend to provide as far as they are just acknowledging that they can be a regular dealer as far as and then if they are on a specific contract, for example, this one, the prime contractor as far as submitted that particular company that's highlighted as far as that they would be a regular dealer on this project.

Q. Okay. And in this case, what are the -- there are a couple -- there are a few different columns here. One is part/commitment amount, and what's that column for?

A. That is the dollar amount that they intend to give to that particular company as far as the dollar amounts that they had agreed to for the work that they were going to provide.

Q. And then so what is the next column, which is the subcontract amount? What is that?

A. As far as if they would have what the dollars that [120] they had put into the system as far as for those subcontracts.

Q. And so -- and the next column just simply says "amount," and what does that represent?

A. That is the amount paid to them.

Q. And then there's a last column of certified amount. What does that represent?

A. That is the amount as far as that's going towards their DBE credit.

Q. And in the case of Markias there, what does that last certified amount box say for Markias certified amount?



JA28

A. The dollar, as far as the \$3.2 million at the 60 percent. Because they were a dealer, they do not get 100 percent credit. They get a reduced percentage as far as that goes towards their DBE goal.

Q. And the total for the DBEs, all the DBEs on this particular contract of 70 plus million dollars, is how much?

A. As far as the certified amount is \$5 million.

Q. Okay. If we could back out to the whole screen again.

And then there's subcontractors listed below; is that correct?

A. Correct.

Q. Okay. And so what is this box for subcontractors for?

A. As far as that's listing all of the companies as far [121] as with the subcontractors, as far as it's then listing all of the payments.

Q. Okay. And for Markias, are they listed as one of these DBE subcontractors here?

A. Correct.

Q. They're also listed as a regular dealer as well?

A. Correct.

Q. What do these amounts -- what do they represent? The 2.8 million and 4.689 million.

A. So the 2.8 was the original commitment amount, and the 4.689 was the actual dollars paid.

Q. And the payment column then indicates a date; is that right?

A. Correct. That is the date as far as when the final payment was made.

Q. Okay. Thank you.

MR. TROYER: If we could go to 633, please?

THE COURT: Admitted.

BY MR. TROYER:

Q. Now, this particular form, Ms. Harter, what form is this?

A. This is the minority participation and commitment screen.

Q. Okay. And what is the purpose of this particular form, the minority participation and commitment detail?

[122] A. So, this is the screen as far as that I referred to earlier as far as with the apparent low bidder as far as who that contract is. They submit this information, this minority participation as far as in the system, and this is what the DBE companies are acknowledging as far as that they agree to this work as far as for the company name, the dollar amount, and the items that they agree to work on as far as that the DBE agrees to do the work for.

Q. Okay. Just one little matter in case anyone's curious. Up in the very right-hand corner of this screen here, there's a little printer with the name Mike Purcell there. Do you know what that refers to?

A. Sure. That just means that the user ID that was logging into the system when they printed this was Mike Purcell, as far as the individual.

Q. For this -- printing this particular document?

JA30

A. That's correct.

Q. Again, is this for the Girard Point Bridge project?

A. That is correct. That is the short description. The project number.

Q. And the business partner here listed is who?

A. The prime business partner is Buckley & Company.

Q. And the bid amount is what?

A. \$70,342,922.

\* \* \* \*

**[124] Harter - Direct**

Q. And the contact for that from the company is who?

A. Joyce Abrams.

Q. She's listed as a DBE here; is that correct?

A. That is correct.

Q. And there's a status that says approved; is that right?

A. Yes.

Q. And again, what prompts the approved status for this particular item then?

A. So that status, as far as approved, they, at the time, the information was submitted as far as that she – this particular company was a DBE. They have their certification number, and that as the work flow will show down at the bottom, that this subcontractor request was sent through the proper procedure. And

JA31

it was approved, as far as that they were approved as a subcontractor on this project.

Q. Okay. And would that be based on being qualified or that is certified as a DBE within the Commonwealth?

A. That is correct.

Q. Okay. And then there's an agreement amount of 4,689,000; is that correct?

A. Yes.

Q. And again, there's a credit at 60 percent listed there as well?

A. Correct.

[125] Q. And again, why the credit for 60 percent then?

A. Because of being a dealer, they do not get the full 100 percent.

Q. All right.

MR. TROYER: If we could go to 634, please?

THE COURT: Admitted.

MR. TROYER: Let's go back to 633. I'm sorry. Let's go to the second page of this exhibit.

BY MR. TROYER:

Q. The items that are listed here in the status, what are these -- what does this entail in terms of items?

A. Okay. So these were the items that this particular subcontractor agreed to do on the project.

So they are just stating as far as what items they will be working on.

Q. If we could back out of this and move up, please. In fact, is what you just mentioned as regular dealer, is that listed as --

A. Yes. The business type is regular dealer.

Q. That's a continuation from the last page?

A. Yes.

\* \* \* \*

**[146] Harter - Direct**

Q. Okay. If we can go to the next page, please. Does that become part of PennDOT's records then as well?

A. Correct.

Q. And so we see this document that's attached, and there's a heading at the very top. And who is this document sent from?

A. Buckley & Company, incorporated.

Q. And could you read the letter for us please, Ms. Harter?

A. Sure. Buckley & Company, Incorporated, Buckley, had a minor shortfall regarding anticipated DBE payments to one of its DBE subcontractors because of a certain scheduling issue. Initially, Buckley planned to subcontract the vacuum cleanup to Rampart Hydro Services LP, Rampart. However, due to multiple options listed in the subcontract agreement, Buckley hired American Sewer Services, Incorporated, American Sewer, also a DBE, to complete this work as needed.

JA33

This subsequently lowered Buckley's total amount paid to Rampart, resulting in a minor shortfall on the commitment amount. Overall, Buckley still surpassed the total DBE goal of 6 percent on the project.

As a matter of record, the total amount of DBE payments credited on the project information page of ECMS does not match the DBE credit amount on the minority payment page of [147] ECMS. This appears to be a system error within ECMS. Therefore, Buckley is submitting final payments for all minority subcontractors taking the position that the actual total DBE payment credit is \$5,007,369.34, which is 6.44 percent participation on the project.

Q. Okay. And that's signed by whom?

A. By David Warner, general superintendent.

Q. Now, in terms of this letter, so does this letter indicate that one of the DBE subcontractors had not been paid the amount or used to the extent that they initially anticipated?

A. Correct.

Q. And is that a problem if, as reflected in this case, the overall DBE total goal was fulfilled?

A. No. As long as the total overall DBE goal was fulfilled, that's okay.

Q. Okay. Thank you. I'd like to go now to the 30th Street Station project. Are you familiar with that?

A. Yes.

JA34

Q. Are you familiar with who all the various contractors and subcontractors were on these projects?

A. As far as what would be listed in ECMS.

Q. So what you know is basically what is reflected in the ECMS; is that correct?

A. Correct.

\* \* \* \*

**[170] Harter - Direct**

Q. Now, if we could go to 694, please.

THE COURT: Admitted.

BY MR. TROYER:

Q. And 694, I'd like you to take a look at this, and is this also a shortfall letter to PennDOT with regard to this project, 30th Street?

A. Correct.

Q. Okay. And, again, from what company is this then?

A. From Buckley & Company.

Q. And what's the date on the letter? I'm sorry.

A. February 28, 2017.

Q. And to whom is it addressed?

A. George Dunheimer. He is the Assistant District Executive for Construction for PennDOT.

Q. And the PE refers to what?

A. He's a professional engineer.

Q. That's in the King of Prussia office?

A. That is correct.

Q. And there's an attention there to Harold Windisch. Do you know Harold Windisch?

A. Yeah. He is one of the individuals that work in the construction unit in District 6.

Q. This is regarding the 30th Street bridges?

[171] A. Correct.

Q. Could you please read this letter then as well?

A. Dear Mr. Windisch, Buckley & Company, Buckley, had a shortfall regarding anticipated DBE payments to one of its DBE contractors due to certain scheduling issues on the above project.

Initially, Buckley planned to subcontract the removal of the dams to Bridg-It Fabricators, Incorporated, Bridg-It, on a T&M basis. However, due to Bridg-It's scheduling complications, they were not able to complete the work as required. This subsequently lowered Buckley's total amount paid to Bridg-It resulting in a shortfall of the committed amount. Buckley subcontracted to additional DBE firms when Bridg-It notified them that they would not be able to meet the commitment.

Overall, Buckley has achieved a total DBE participation level of 8.91 percent, which exceeds our original commitment. Attached is a letter from Bridg-It to Buckley regarding this issue.

Q. Similarly, as I asked to the last shortfall letter, does this pose any problem for PennDOT, if they don't reach their goal as to one subcontractor, so long as they do reach their overall goal?



JA36

A. Correct. It is not a problem as far as that's what we want, the overall.

[172] Q. This particular letter from Buckley is signed by whom?

A. David Warner, project manager.

Q. Can we scroll down? Is there another portion of this? So as they indicated, there was an attached letter, and this is also part of the PennDOT file officially, correct?

A. Correct.

Q. This letter is from what company?

A. Bridg-It Fabricators, Incorporated.

Q. They're listed in East Greenville, Pennsylvania?

A. Correct.

Q. What is the date of that letter?

A. June 15, 2011.

Q. That letter is addressed to whom?

A. Buckley & Company, attention Joseph Martosella.

Q. And references the 30th Street Bridge project?

A. Correct.

Q. And it's not a very long letter. Could you just read that letter for us, please, as well?

A. Sure. This letter is to confirm that we have requested you to relieve us of a part of the work we had undertaken to do on the above-referenced project.

At the time we made this commitment, we had anticipated making a major increase in our workforce. This increase would have allowed us to perform all of the work to which we had committed.

**[173]** In reviewing our business plan for the upcoming 12 months, however, we now feel it would be in our best interest not to do so at this time. We ask you to relieve us of this obligation and to reduce the work we had committed to do from approximately \$1,073,000 to approximately 456,000. The latter amount covers our performance of the dams and bridge railing installation. We appreciate your understanding in this matter. Signed by Bridg-It Fabricators, Lynn Verdes, vice president.

Q. There was some notes on these earlier documents about standard/federal oversight. What does that mean when a project is listed as standard/federal oversight?

A. That means as far as that the federal oversight, the FHWA wants to have a role in the project.

Q. And by FHWA you mean the Federal Highway Administration?

A. That is correct.

Q. They have oversight of the project and the contract?

A. Yes.

Q. Is that because there are federal funds involved?

A. Correct.

\* \* \* \*

**[180] Harter - Cross**

Q. And I'm sorry. What is that first set of documents that's put out to the world?

A. The bid package is what we call it.

Q. That's something that's available to the public generally, and if you have a project ID --

A. Business partner ID.

Q. -- business partner ID, you can get access to that?

A. Yes.

Q. In a very general sense, what is involved? What kind of information is in that bid package?

A. The plans, the specifications, and the estimated quantities as far as for what it's going to take to build that project.

Q. And the specifications, depending on the project, can be fairly complicated, right?

A. They can be quite lengthy.

Q. And, in fact, there's a set of standard specifications that apply I think in just about every PennDOT contract that's set forth in something called Publication 408, right?

**[181] A.** That is correct.

Q. And that is part of -- well, let me ask. Is it part of all projects that PennDOT puts out?

A. It is as far as not all of those sections of the 408 would be relevant to every project, but it is still referenced to every project.

JA39

Q. And the Publication 408 in and of itself is a very lengthy document, right?

A. Yes, it is.

Q. In fact, would you agree with me it's over a thousand pages long?

A. Yes, it is.

Q. Then it has appendices as well, right?

A. Yes.

Q. That's just one part of the bid package information that is sent out that people who want to get involved in a contract have to look at, right?

A. Yes.

Q. Now, are you familiar with the contents of Publication 408?

A. Yes.

Q. And included in Publication 408 are references to DBE requirements; is that correct?

A. Yes.

\* \* \* \*

**[184] Harter - Cross**

Q. But it doesn't identify the contract. Okay. Then based on that information, as I understand it, PennDOT makes a decision about who they're going to award the bid to based on something called the presumptively low bidder. Is that the term of art that I heard you use or did I make that up?

A. Low bidder, apparent low bidder.

Q. I used the word "presumptive." I'm sorry.

JA40

When you say "apparent," really they are the low bidder. You have the list of numbers, right?

A. Correct.

Q. And then after PennDOT decides who the apparent low bidder is, they inform the apparent low bidder that they are the apparent low bidder, correct?

A. Yes.

Q. And then that entity is now required to submit more detailed information, right?

A. Yes.

Q. And I believe you testified -- this is where I really got lost and I apologize -- about like a seven-day window of some sort. Is this now when the seven-day window kicks in? You're told you're the apparent low bidder. Then you have seven days to submit this more detailed information, right?

A. That is correct, within seven days, yes.

Q. This more detailed information is pretty detailed, [185] right?

A. It has as far as who you plan to have your subs as far as the work and the dollar amounts and the items that they're going to work on.

Q. Are these documents that are submitted -- I think you said everything's submitted through ECMS, right?

A. Yes.

Q. Are they like sort of ECMS forms?

A. Correct. We saw the form that they submit as far as that was one of the exhibits.

JA41

Q. It was?

A. Yes. That was the DBE commitment.

Q. Okay. That's only part of that package, though, right?

A. Yeah.

Q. The DBE commitment is only part of that post-award package that they have to submit?

A. Right. They have to also do a public works form.

Q. And public works form, DBE, any others that come to mind?

A. Those are the major ones that I'm aware of.

Q. The major ones?

A. Yes. They also have to do bonding as far as submitting that they have their bonds and that type of information.

[186] Q. That information is all submitted through ECMS and not with, like, attachments with PDFs. Like, you populate ECMS information; is that correct? Or are there attachments?

A. They can. Some screens can have attachments, yes.

Q. Now, after that information is submitted, then at some point the contract -- this is when you start to do your homework, for lack of a better word; is that correct?

A. My staff, yes.

Q. Your staff?

A. Uh-huh.

Q. And you start to make sure that all the things -- all the i's that are dotted and T's that are supposed to be crossed in connection with this are, in fact, dotted and crossed, right?

A. Yes.

Q. And one of the things, one of the i's that are dotted here might be this DBE issue; is that correct?

A. Yes.

Q. It's at this point in time that DBE providers - - and I want to talk about the difference between suppliers and contractors in a little bit -- but DBE providers are identified, right?

A. Yes.

\* \* \* \*

**[191] Harter - Cross**

Q. And they articulated an amount that would be associated with Markias or fulfilled through Markias, right?

A. Yes.

Q. We're going to talk about that a little bit later. I think you said that it was at this point that you checked things out, and if there wasn't a compliant DBE provider, you might award the work -- award the project, or PennDOT might award the project to the next lowest bidder, right? They might reject the bid if there wasn't this compliance with whatever had to be complied with at this level from a DBE perspective, right?

A. Yes.

Q. But then I think you also said -- and if I misstate what you said, please, please correct me. But I believe you also said, in response to something Mr. Troyer said, that once the project starts, at that point in time, if it becomes known or suspected that there's a problem with DBE compliance, that's something that your EEO office handles, and I think you made reference to investigators or something like that; is that correct?

A. Yes.

[192] Q. Because by that point in time you would have already awarded the contract and -- well, the situation assumes that work has already started on the job, right?

A. Yes.

Q. So at that point you wouldn't say, okay, we're going to start over, get new contractors, there's not DBE compliance. Other people would get involved and try to deal with the DBE noncompliance at that point, right?

A. Yes.

Q. So the only time, if I understand it, that PennDOT would reject the contract and award it to the next lowest bidder would be before work starts. I mean, it's intuitive. It makes sense, right?

A. Yes.

Q. Now, can you kindly put up, just for the judge and the Court and not the jury, Defense Exhibit 200 for a moment, please? Now, this is another ECMS document that you did not talk about earlier, right?

A. Correct.



JA44

Q. What is it? Can you take a look at it? Take your time.

A. Sure. It is the actual ECMS contract as far as for this particular project, which is 86046, Girard Point.

\* \* \* \*

**[198] Harter - Cross**

MR. CEDRONE: I do not believe, Your Honor, there's an objection to this.

THE COURT: Any objection?

MR. TROYER: No objection.

THE COURT: It's admitted. Publish.

BY MR. CEDRONE:

Q. And this document, fair to say this is the bid results, right?

A. Yes.

Q. And here the bidder is Buckley, and that's who was awarded this job, right?

A. Yes.

Q. And it's \$70 million?

A. Yes.

Q. And the next lowest bidder is a company called, I don't know, Atsalis Brothers Painting?

A. Yes.

Q. And that's about \$5.1 million more, right?

A. Yes.

Q. So if there was some technical noncompliance with the DBE provision that you reviewed, that possibly could have cost PennDOT \$5 million more if they would have just gone to the next lower bid, right?

A. Yes.

[199] Q. And then just to close the loop on that, can you put up D-203?

MR. CEDRONE: And again, Your Honor, I do not believe there's an objection, so I would ask it be admitted.

THE COURT: Any objection? What is it?

MR. CEDRONE: It's 203, a similar document. This is the contract for 30th Street.

THE COURT: Any objection?

MR. TROYER: No, but 203 is what was put up on the screen before.

THE COURT: The bid results were 201. 200 was the Girard Point contract.

MR. CEDRONE: Have I mixed up my numbers?

MR. TROYER: You gave me 203.

MR. CEDRONE: I'm sorry. I apologize.

MR. TROYER: No problem. It's fine. No objection.

THE COURT: It's admitted.

BY MR. CEDRONE:

Q. I guess that proves the point. These are sort of fungible documents, right? If you don't pay very

careful attention, they all look the same, right? Is that correct?

A. Different by each project.

Q. So, again, this is the contract for 30th Street, right?

A. Yes.

[200] Q. And by the way, in the bottom of this it refers to attachments or addendums, addendum one, addendum two. See that down there where I circled?

A. Yes.

Q. And can you tell from your knowledge or your experience what those documents are?

A. Right. Those are addendums, as stated above, as far as they're issued subsequent to the original bid package proposal. So there were various changes as far as when the project was advertised as far as to provide some type of clarification as far as for the bid package. So each time we have any changes to the bid package, we publish addendums for all the contractors to be aware of what those changes are.

Q. So the gaggle of paperwork that is considered in this process actually can get bigger as addendums are added, right?

A. Yes.

Q. And then if we could go to D-204, and I do not believe there's an objection to this.

MR. TROYER: No objection.

THE COURT: It's admitted.

BY MR. CEDRONE:

Q. This is the bid results for the 30th Street job, right?

A. Yes.

Q. Here Buckley again is awarded the job, right?

[201] A. Yes.

Q. And the next lowest bidder that could have presumptively got the job would have been about \$7 million more if there wasn't DBE compliance or some other technical noncompliance, right?

A. Yes.

Q. With the paperwork?

A. Yes.

Q. You can put that down. Thank you. Now, I want to go over some of the documents which you already talked about, and just so I can understand your testimony just a little bit more or a little bit better, frankly. So if we go and start with 630, this is the project information, right?

A. Yes.

Q. And is this sort of like the home page for the project? is that a better way to describe it?

A. Yes.

Q. And if we go to page 2, and I think you might have said this earlier, the areas in the middle here are like hyperlinks to different pages, right?

A. Yes.

Q. And, you know, some of these pages deal with, you know, there's columns, setup, solicitation, award, construction, closeout, right?

JA48

A. Yes.

\* \* \* \*

**[236] Harter - Cross**

Q. Sure.

A. If federal funds are involved, the contractor shall not discriminate on the basis of race, color, national origin, and -- it's cutting off -- or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 dated October 16, 2001 in the award and administration of United States Department of Transportation assisted contracts.

Q. Okay. So what does that mean?

A. That means that the contractor has to follow 49 CFR.

Q. Those are federal regulations?

A. Yes.

Q. If there's a problem -- oh, and by the way, you were shown Defense Exhibit 200, the other contract. Same provision is in that contract as well?

A. I would assume so.

Q. Well, we don't need to assume. Could I have D-200, please, and the third page?

A. Yes.

Q. Same thing, right?

A. Yes.

Q. In the event that there is a problem with the bid, that problem being that the apparent low bidder

or presumptive low bidder has not fulfilled all these requirements, are the bids sometimes asked to be rebid?

[237] A. Correct. As far as we can confer as far as we review the information, and if we think it is in the best interest of the Commonwealth, we will reject all bids and rebid it.

Q. All right. Now, I want to go to Government Exhibit 633, if I may, and if we can go to the very bottom of the first page. You were asked a question about this, I think, by Mr. Cedrone about this question that's posed here. Is this DBE a subcontractor to the prime contractor? And then it says: If no, enter name of sub. Then it spills over to the next page, page 2. If no, enter name of subcontractor who is contracting with this DBE. If yes, leave it blank.

And I'd like you to look at that. Maybe you need to even push it over a little bit, if that's possible. Is there an answer there or is it left blank?

A. It's left blank.

Q. All right. Now, these IICs, these Inspectors in Charge on these projects, where are they usually located during work on the project?

A. They're located on the project, in the field office on the project.

Q. And with regard to these commercially useful function reports, CUF reports, is this an area that you are involved in and supervise?

A. No.

\* \* \* \*

JA50

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 9, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[65] Cartagena - Direct**

Q. And then on the other side of the dividing line?

A. On the other side, those are for the other projects that we identified based on the true supplier invoice. So Column F we have 34th Street; Column G, Tobin Bridge; Column H, 9010; Column I, shipped to North York; Column J, 9010 New York; Column K, shipped to Connecticut; Column L, 9005C; Column M, 9005N; Column N, New Jersey; Column O, shipped to 411/New Jersey; Column P, I280; Column Q, 9005R; and Column R, 9005B.

Q. And now what is Column T?

A. Column T is the sum of the other projects, so from Column F going forward.

Q. So it's the total of all of the tan-colored columns?

A. Yes.

Q. So the top total is the tan-colored columns for the 9010 project, and the bottom is the total of the tan-colored projects for Girard Point?

A. Correct.

Q. Okay. That now brings us to the lower right-hand corner, and that's kind of a summary of the summary?

A. Yeah. That's just adding up column -- Line 35, Column T, \$2,277,801. That's the sum of Row 20, Column T, 1.6 million, which is from the 30th Street Project, and with the sum of Row 30, 644,000, which is for the 9005 project. So [66] when you add those two. You have 2.2 million approximate.

Q. So that's the total other project dollars for the two projects combined?

A. Yes.

Q. Then you have a little box underneath what you just described to us.

A. Yes. That comes from the Markias information, from the Markias invoice as opposed to the vendor invoices, which is what's on top.

Q. I see. Okay. So these are the total dollars going to Markias for the two projects?

A. For those two projects, yes.

MR. SHAPIRO: One moment, Your Honor.

Nothing further, Your Honor. Thank you.



JA52

THE COURT: Cross.

MR. DESTEFANO: Before cross, Your Honor,  
may we see you at sidebar on a scheduling matter?

THE COURT: Yes.

\* \* \* \*

JA53

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 10, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[109] Purcell - Direct**

Q. I think you did.

A. It's an email.

MR. SHAPIRO: Admit Government Exhibit 3.

THE COURT: Any objection?

MR. DESTEFANO: No objection.

THE COURT: Admitted.

BY MR. SHAPIRO:

Q. Again, we have an email chain?

A. Yes.

Q. And the bottom email?

JA54

A. September 20, 2012 from Tom Koussis to Sue Robst, EJFrangos, Gerard Keish, Pete Pantelis, and NFrangos.

Q. Subject?

A. Subject, Markias.

Q. Please read it.

A. We have meet our minority goal in PA with Markias. Please tell vendors not need to bill Markias. Just bill us directly. The only one that should still go to Markias is any paint for 30th Street or Girard Point. Any future Louisiana purchases should go to Liberty office and Mass. or PA purchases go to Alpha office. Signed, Tom Koussis.

Q. And then the top email?

A. From Tom Koussis to JBowley, Michele Lasko, TFrangos, subject, forward, Markias, see below.

\* \* \* \*

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 13, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**AM Session [46] Purcell - Cross**

Q. But the money is part -- first of all, it's not money; it's DBE credits.

Would you agree with me on that score?

A. I would not. It is money. The DBE credit is -  
- are money.

Q. And, secondly, it's a lump sum bid that was submitted to PennDOT for both of these project by the painters?

A. My understanding was they were lump sum bids, yes.

Q. And was it your further understanding that in both cases, those lump sum bids were substantially below the second bidder -- the second highest bidder?

A. I believe like. 5 million on one project, maybe 6 or 7 on the other.

Q. Okay. So you would agree?

A. I am going from memory from the documents that were shown earlier.

Q. So PennDOT got the benefit of the lowest bid on both of these projects. And that bid was a lump sum bid, regardless of what the contractors did with part of that money?

[47] A. Well, you know, that's your word, that PennDOT got the benefit.

Q. I am just asking --

A. If they could a benefit --

Q. I am not asking benefit.

A. Well, you said PennDOT --

Q. Part of that money --

A. -- got the benefit of the lower --

THE COURT: Let him finish his --

THE WITNESS: PennDOT got the benefit of the lower bid. And if the bid is lower artificially because they are paying some minority not to perform work, then I don't think that's a benefit. So I disagree with you.

Q. All I am asking is that if you agree with me the stuff that's in the record is a lump sum bid from the payments?

A. Was lump sum bid. I would agree with that.

JA57

Q. You would agree with me that the painter's portion of that bill was about \$43 million on the Girard Point Bridge?

A. I don't know what the paint portion was. I know the bid was 70 million for Girard Point Bridge. I don't know how much the paint was.

\* \* \* \*

**[101] Purcell - Re-Direct**

Second check, that was payable just to Markias?

A. For her fee, yes.

Q. For her fee, right?

A. Right.

Q. So in addition to the amounts that we have talked about today, there was also a fee that was actually paid to markias?

A. What do you mean by in addition to the amounts we have talked about today?

Q. Well, maybe that was incorrect. My point is that, for example, on the -- let's get to the point. On the Girard Point Bridge project, Markias was paid a fee of approximately \$124,000?

A. I don't know off the top of my head. 2.25 percent? You are putting me on the spot to do the math in my head.

Q. I don't want to put you on the spot, but I'm just pointing out to the jury that there was a fee that was actually paid to Markias on each project, roughly, 2.25 percent of the amount of the invoice. Am I correct about that?

A. Yes, she was.

Q. And on the girard point project, she received almost \$125,000 that represented her fee for whatever she did?

[102] A. If your math is correct, I would agree with you. I don't know -- I don't know personally. I could probably do it for you, but she got 2.25 percent of all the supplies. So \$5 million? Yeah, that sounds about right.

Q. Okay. And on the 30th Street project she received a little bit over \$47,000, assuming my math is, correct?

A. Yes, it sounds right.

Q. So for her work that was performed on these two projects, on Girard Point Bridge and on 30th Street, Markias, Joyce Abrams, received over \$170,000?

A. Sounds about right.

Q. Okay. So over the course of -- I don't know the exact time period, but over the course of, we'll say, two or three years, she was paid for her services in the area -- in the range of \$170,000?

A. Yes, about three years. Yes.

Q. Okay. Now, Mr. Cedrone asked you some questions about government exhibit 210, and I just have a few follow-up questions about that, if I could.

\* \* \* \*

**[115] Purcell - Re-Direct**

Q. Okay. Now, Mr. DeStefano also asked you whether you agreed with his assertion. He said, "the

JA59

purpose of putting money down, dollars down, is not to effect payments by PennDOT.”

And you told him that that was -- you disagreed with him.

Do you recall that?

A. I do.

Q. Can you explain why you disagreed with him?

A. Well, although they are asking for credit towards their DBE goal, noncompliance with paying your DBE subcontractors and not meeting your goal can effect whether or not the contractor gets paid for their work. So to me, it's part and parcel to the actual contract itself.

It's not just something that they have to report and -- that nobody looks at. It does effect whether or not they are in compliance with completing the contract, just like any other item. Doing the painting, putting in the concrete, those things are all looked at, and they try to determine whether or not it's ...

\* \* \* \*

**PM Session [119] Pope - Cross**

Q. Okay. Thank you. Mr. Pope, do you also recall telling the Government that, if a contractor doesn't meet their DBE commitment, that there are a few options PennDOT might take and that one of them might be to advise the contractor to get another DBE on the job?

A. Well, if they fall short, they have to do a shortfall letter at the end of the job. As the job's going on, if you lose a DBE, they want you to try and find



JA60

another DBE or fill in that percentage, you know, with another DBE. They would like you to do that.

Q. Right. So they want you to either find a new DBE but PennDOT would not shut down a project; is that correct? In fact, you told the Government that, didn't you?

MR. TROYER: Objection. That's improper impeachment.

THE COURT: Sidebar.

\* \* \* \*

JA61

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 14, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[197] Abrams - Direct**

Q. And how do you spell the name of that company?

A. M-A-R-K-I-A-S incorporated.

Q. How did you come up with the name?

A. My children. My son's name is Mark, and my daughter a name is Kia, so I combined the two for Markias.

Q. And did Markias have a location?

A. Yes.

Q. Where was it located?

A. It was located in my home at [REDACTED] New Jersey.

Q. And was there a particular area of the home that was utilized?

A. Yes. I utilized my -- at that time, it was a living room. I converted that into the office, and that was the only place that I conducted the business, was -- in my home was in my living room.

Q. I would like to show you government Exhibit 501 and ask you, do you recognize 501?

A. Can I bring this up because the light is going on it?

MR. SHAPIRO: If I may, Your Honor, approach?

THE COURT: You may.

[198] THE WITNESS: I can see now.

THE COURT: You can see it now?

THE WITNESS: Yes, I can see it now.

BY MR. SHAPIRO:

Q. I was going to suggest that I can make the books available. There are notebooks here with paper copies of the exhibits if you find that easier than the screen, Volume 2, Volume 1. Volume 2 starts at 600.

A. Okay.

Q. Is that easier?

A. Yeah. Hopefully, I can lift some of the books. I have a carpal tunnel problem now.

Q. Okay. If you can't, there's the screen. All right?

A. Okay. very good.

JA63

The property here in front of me is my home at 14 Twin Hill Drive.

MR. SHAPIRO: I would move 501.

THE COURT: Any objection?

MR. CEDRONE: None.

THE COURT: It's admitted.

(At this time Exhibit 501 is admitted into evidence.)

BY MR. SHAPIRO:

Q. And you mentioned that Markias had an office [199] in your home?

A. Yes.

Q. Can you -- does this picture give us an idea of where that office was located?

A. Per the front door, it's to the left of it. The three windows that is being shown at the bottom, that's where the office was.

Q. A former dining room?

A. No. Living room.

Q. Oh, former living room. Excuse me.

And I notice that there's a garage to the right?

A. Yes.

Q. Is that garage -- was that garage used as a garage?

A. No. It's converted into a bedroom.

Q. I would like to show you 502 and ask if you can identify that.

JA64

A. Yes. That's my backyard and -- yes, my backyard.

MR. SHAPIRO: I move 502.

THE COURT: Any objection?

MR. CEDRONE: None.

THE COURT: It's admitted.

(At this time Exhibit 502 is admitted [200] into evidence.)

BY MR. SHAPIRO:

Q. And, incidentally, in this picture of your backyard, there's a structure on the right side of the picture?

A. Yes.

Q. What is that?

A. A shed.

Q. And --

A. Strictly a shed.

Q. What kind of things were kept in the shed?

A. Lawnmowers, tools, things for the upkeep of the exterior property and the interior.

Q. Okay. No inventory?

A. No inventory.

Q. I would like to show you government 503. And what is 503?

A. Still the backyard.

MR. SHAPIRO: I move 503.

JA65

THE COURT: Any objection?

MR. CEDRONE: No objection.

THE COURT: It's admitted.

(At this time Exhibit 503 is admitted into evidence.)

BY MR. SHAPIRO:

[201] Q. Now, you mentioned that you had an office in your living room, correct?

A. Yes.

Q. Did you have a computer?

A. Yes.

Q. Where was the computer located?

A. In the office.

Q. Of your house at [REDACTED]?

A. Yes.

Q. When you retrieved business-related e-mails, where did you do them?

A. In my office.

Q. In your house?

A. In my house, yes.

Q. In New Jersey?

A. Everything was conducted in my house, yes.

Q. Likewise, when you received faxes?

A. Yes.

Q. Or sent faxes?

A. Yes.

JA66

Q. How about, where did you send e-mails?

A. Where was I sending the faxes?

Q. Where did you send e-mails from?

A. From my computer.

Q. In your house?

[202] A. In my house. Sorry.

Q. That's okay.

Now, Markias had an office in your home. Did it have any employees?

A. No.

Q. How about you?

A. I was the only employee.

Q. Okay. So what hats did you wear for Markias?

A. All of the hats, sir.

Q. Okay. Did Markias have any inventory?

A. No.

Q. So not in the shed that we saw?

A. No, sir.

Q. Or the garage?

A. No.

Q. Okay. Now, did there come a time when Markias obtained a warehouse?

A. Years later.

Q. And when was that?

A. In 2012.

JA67

Q. Okay.

A. November of 2012.

Q. Great. Where was it located?

A. It was in Camden, New Jersey, at 201 Erie Street.

[203] Q. Now, at the time that you -- now, is this something you purchased or that Markias purchased?

A. No. We rented.

Q. Okay. And at the time that you rented the warehouse in Camden, were you done with your work on Girard Point?

A. Oh, yes.

Q. Were you done with your work on 30th Street?

A. Yes.

Q. When you had the warehouse, was there anything in that warehouse that had anything to do with Liberty Alpha?

A. No.

Q. I would like to show you Government 516. Do you recognize what Government 516 is?

A. Yes.

Q. And just generally, what is 516?

A. It's an e-mail from Tom Kousisis to myself.

Q. And what is the date?

A. From the bottom. Okay. July -- I mean, January the 18th, 2013.

Q. January the 18th or the 8th?



JA68

A. January the 8th I see at the bottom here.

\* \* \* \*

JA69

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 15, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[6] Abrams - Direct**

Q. Ms. Abrams, yesterday you and I had talked a bit about the Girard Point Bridge?

A. Yes.

Q. And we had just moved to the 30th Street bridges project at the time that we recessed for the day. Do you recall that?

A. Yes.

Q. And I'd like to take you back to Government Exhibit 511. And I think we were talking about this and 511, I believe, is in evidence. What project does 511 relate to?

A. The 30th Street Station.

Q. Okay. And 511 is an e-mail from who to who?

JA70

A. From Tom Koussisis to Markias, Inc., my e-mail address.

Q. Okay. And what is -- basically what is the purpose of 511?

A. Is for acknowledging that I had been awarded and listed as a DBE supplier for the project.

Q. Okay. And in terms of -- and did you, in fact, proceed to participate in that project as outlined in 511?

A. Yes, I did.

Q. Did you do any sourcing of products?

A. No.

[7] Q. Did you decide quantities?

A. No, I did not.

Q. Did you decide quality?

MR. CEDRONE: Objection. Leading, Your Honor.

THE WITNESS: No.

THE COURT: Overruled.

BY MR. SHAPIRO:

Q. Did you decide quality?

A. No, I did not.

Q. Did you determine pricing?

A. No, I did not.

Q. Did you do any purchase orders?

A. No, not on this project.

JA71

Q. Okay. How did you find out for the 30th Street Project that goods had been ordered for that project in connection with Markias?

A. When I received the manufacturer's invoices via U.S. Mail.

Q. And did you do the same things with those invoices when they arrived by mail that you described yesterday for the Girard Point Project?

A. Yes. The only difference was is that I invoiced it to 30th Street Station.

\* \* \* \*

**[13] Abrams - Direct**

Q. Did you ever do any work in connection with the Who Huey Long Bridge, also known as the Mississippi River Bridge?

A. No.

Q. How about the Thames River Bridge in Connecticut?

A. No.

Q. Were you a DBE on that project?

A. No, sir.

Q. Now, did there come a time when you had a telephone conversation with Mr. Kousisis regarding out-of-state projects?

A. Yes.

Q. Do you know, roughly, when that was?

JA72

A. It was during the time I was working on the 30th Street Station bridge project, and I received a call from Tom Kousisis.

Q. Was there anybody else on that call?

A. No.

Q. Just the two of you?

A. That I know of. Yes, just the two of us.

Q. And what did Mr. Kousisis say to you?

A. He requested and explained fully that Alpha Liberty did not -- for the 30th Street Station did not [14] submit enough of the DBE participation, and requested if Markias could just funnel some of the invoices that were going -- some of their invoices that was going to the two different bridges, which is up in Massachusetts and the one in Louisiana, and for me to transpose that to state on my invoice to Alpha Liberty, that it was all going to 30th Street Station so that they can have the DBE participation on the 30th Street Project.

Q. Did you agree to do that?

A. Yes, I did.

Q. Why did you agree to do that?

A. I was prompted, and I was nicely asked if I would do that. And I thought to myself, well, what harm would this cause?

Q. And was there anything in it for you?

A. Yes.

Q. What was in it for you?

A. It was certainly more money.

JA73

Q. Why was there more money in it for you?

A. Because of the markup of 2.25 percent on the materials that I billed, which I should not have, for the 30th Street Project.

Q. Okay. Did you know that what you were doing was wrong?

A. Yes.

[15] Q. And did you do it anyway?

A. Yes.

Q. I would like to show you Government Exhibit 822, which, I believe, is in evidence. Do you recognize government 822?

A. Yes.

Q. What is it?

A. It's an invoice from Scaffold Resource.

Q. Addressed to who?

A. Billed to Markias at 14 Twin Hill Drive, Willingboro, New Jersey.

Q. Which is your home address, right?

A. Yes, it is.

Q. And it shows ship to what address?

A. Markias, Inc., [REDACTED] New Jersey, my home address.

Q. And what is the item that is indicated as sold on this invoice?

A. It is the purchase of 2,000 feet of containment wall.

JA74

Q. Do you ever get 2,000 feet of containment wall delivered to your house in Willingboro, New Jersey?

A. No, sir.

Q. Would you have noticed if you did?

A. Yes, sir.

\* \* \* \*

**[180] Abrams - Direct**

Q. All right. Fine. And then I take it -- would you on occasion -- if the need arises, on occasion would you call the vendor or call the manufacturer and ask a question about the invoice, or if you had any questions or issues about it, would you be able to contact them and call them?

A. No, I did not.

Q. You didn't do that ?

A. No.

Q. Okay. You simply took the information from the invoice and put it on your stationery?

A. Yes.

Q. And then after going through that process, I take it that you would take your invoice that you prepared on your stationery and the invoice that you received from the manufacturer or the vendor or whatever and then you would forward that on to the joint venture?

A. To Alpha Liberty, yes.

Q. The Alpha Liberty Joint Venture. Okay.

JA75

And then I think you said yesterday – in your response to a question that Mr. Shapiro asked you, you said that on occasion you would call Sue Robst or Sue Robst would call you about a question that would be on the invoices?

A. Yes. Sue Robst would normally call me because [181] of she needed invoices.

Q. Okay. And then so -- and if Sue Robst had a question or if you had a question, you would have a telephone conversation about the invoice?

A. I don't recall too many questions with Sue. Sue called me.

Q. Sue called you?

A. Yes.

Q. Fair enough. Okay. And then when this process was completed, if you will, at some point down the road, you would receive two checks from the joint venture?

A. Yes.

Q. All right. And one check would be what we have called up to this point in time a joint check, which is payable to you and also payable to the vendor in question?

A. Yes.

Q. And the other check would be just payable to you for your fee, which was 2.25 percent of the amount of the invoice, correct?

A. Correct.

\* \* \* \*



JA76

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 16, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[156] Fetters - Cross**

Q. So if your spending less on your DBE, there is more money for profit, right? That's the reason, right?

A. Yes. I would guess, yeah.

Q. So if you cut your DBE down from 3.5 to there's more for you, percent, right? If you cut their margin there is more profit?

A. Yeah, I guess that's the case. I mean, I guess that would be the case.

Q. Simple economics, right?

A. Sounds like it, yeah.

Q. Okay. So when MR. Destefano said to you if they didn't complete their DBE, could they get more money, it depends, right, on how they complied with it?

JA77

A. I guess that's the case, yes. I don't know...

Q. It would have to be the case you just told me.

A. We would only be concerned with the overall percentage on the job, for the whole job. Because that could be -- and in our department, if it wasn't made. So we would pay attention to that visa-a-vis how everybody, all of the DBE'S, performed.

[157] Q. Okay andthat --

A. and not individually. I mean it would be collectively.

Q. Okay. And you did, right -- and you just said that for Buckley, that DBE was a very, very important part of this whole process, right?

A. No question, yes. It's the real deal. You have to comply, and we tried to do that.

Q. And if you don't comply, you said you could get debarred, right?

A. You could get -- yeah, there are penalties if you don't-- at the end of the job, we had a -- once the job -- well, we have learned the hard way the job -- you cannot get the job if you don't comply with it within the seven days and show the state how you are going to make your program. And if you do get the job awarded and have an underrun, then you have to try to offset it in good faith and get back to the original percentage. So it's an ongoing item. I don't get as much involved with that part of it as the guys on the job do. But I don't think there was any problem with 30th Street overall at the end of the project. I think we did what we had to do as a contractor.

JA78

Q. Okay. But just to be very clear, it's a thing that as a contractor, you are very concerned about?

[158] A. Oh, yeah.

Q. Very important to you?

A. It's an item for sure, yeah.

Q. And throughout the whold life of the contract, it's a thing that you are paying close attention to?

A. The state – yeah, we have to issue reports to the state, and they are aware of what we are doing. And yeah, it's monitored on an ongoing basis for sure.

Q. And you said that you found out what the hard way that if you don't actually come up to the percentage goal at the outset, you can lose out, right?

A. Well, yeah we have done that. We have had a job where we tried to use the good-faith-effort approach, and it didn't – that was recently, and the job ended up -- the state deemed that we weren't in compliance or we didn't meet their criteria. That's an argument still going on. But, yeah, it ended up -- the job ended up getting tossed out. So, yeah, serious thing for us as contractors.

Q. And to be specific about that, just so that everybody understands, what you are saying is that there was a particular bid situation that your company was involved in, right?

A. Right.

Q. And that particular bid situation had a DBE [159] goal?

A. Yes.

Q. And when you submitted your bid, it turned to be the lowest dollar bid of them all, right?

A. Right.

Q. But in your bid – or I guess after the bid in that in that seven-day window, you said to the state, look, we are not going to make your goal. We are going to be something less than that.

A. Right.

Q. But we have what we think are really good reasons.

A. That's correct.

Q. And the state took a look at it and said, no, we don't think so. You are not compliant. And they tossed you out?

A. They tossed all of the bids out. So they never really ruled on us, because they would have awarded the second bidder. So they tossed them all out because I think we had an argument. Otherwise, they would have just went to the second bidder.

Q. But they threw them all out?

A. They threw them out, yeah. It hurt. So we didn't get the job, for sure. And nobody else did at that particular point in time.

**[160]** Q. And then you came back and rebid it?

A. Right.

Q. And in the next bid, you actually met the DBE goal, right?

A. Right, at a higher price.

JA80

Q. At a higher price. Now, you mentioned during Mr. Destefano's examination of the event for the Girard job, Buckley and Liberty – well, Buckley, on the one hand, and Liberty Alpha together on the other were joint venture partners.

A. That's correct.

Q. So it was like a joint venture of a single company a joint venture?

A. It was a Tri-Venture in Penndot's eyes, Yes. But it was a joint venture between us and Alpha Liberty, that's correct.

Q. Okay. And as part of that whole -- the bid process and then the seven-day window process--

A. Right.

Q. -- part of the scramble in there is getting together the DBE that goes along with that bid for the Tri-Venture, right?

A. That's correct.

\* \* \* \*

JA81

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
vs. ) Philadelphia, PA  
STAMATIOS ) August 20, 2018  
KOUSISIS, ET AL )  
)

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[131] Kousisis - Direct**

Q. So going into the pre-bid meeting, you must have -- then you have some sense that you have to start thinking about this WBE or MBE or DBE concept, right?

A. Once you read the specifications, you know that you are going to have to try to achieve that, that is correct.

Q. Before you go to the pre-bid meeting, did you, on this particular project, do anything to investigate how, if you ultimately got the project, you might satisfy or comply with the DBE or WBE requirements?

A. I think I made a couple of calls to some other contractors, the GC's. To find out if they ever had a minority subcontractor that did painting. Because

the way -- one of the ways to fulfill the goal is through a subcontractor.

Q. And what did you learn about the availability of minority subcontractors?

A. I mean, even then and even now, minority subcontractors are few and far between in our world.

[132] Q. And when we say -- earlier, the very beginning of your testimony, you talked about subcontractors and you referred to like management of traffic subcontractors. Is that the kind of subcontractor you are talking about?

A. No, I'm talking about bridge painting subcontractors and they're few and far between. You can find other tasks where you will be able to -- maintenance of traffic is predominately dominated by a WBE, MBE, some DBE or some be entity. That's a field that is more predominant with minority, women-owned, disadvantaged business enterprises.

Most of the others, especially like steel and painting, they are too capital intensive for any minority to actually get to that point unless he had money to start with.

Q. You mean any disadvantaged?

A. DBE basically, yes. Minority would be the wrong statement. Obviously minority people also have money.

Q. And then part of being -- you recall, right, part of being the disadvantaged -- or qualifying disadvantaged, is you have to have a certain low threshold of wealth right?

JA83

A. Even in WBE and MBE, I think there are limitations as to your sizes.

[133] Q. I guess the point I am trying to get to is, what did you learn about the avail -- so in terms of subcontracting on a job, you can subcontract paint, right?

A. That's correct.

Q. What did you learn about the availability of DBE, WBE, MBE subcontractors for that job?

A. There really weren't any working in the Philadelphia area that were qualified to do work.

Q. When you say "qualified," what do you mean by that?

A. Well, first of all, you are dealing in a lead environment, so you might have a certified WBE contractor who does painting, but usually when we have looked those guys up, their painting limits are painting a room, painting a bathroom, not really steel painters along the way.

So when we are looking at how to do a project, you have to consider the qualifications of somebody. Can they technically do it, are they going to do it in a safe manner. And in that world, I just know that they are few and far between to find a WBE, MBE, DBE contractor.

Q. Could you also -- and we are going to talk about it at some point a little bit more, the concept of [134] containment. Could you subcontract containment work out?

A. You could subcontract containment work out, but again, it's a matter of qualified people working



safely. There's been a few guys who have specialized in doing containment but the one who was specialized at that time that I knew was not pre-qualified in Pennsylvania. He was in New Jersey. When we asked him if he was interested in doing the job, he just was not interested in doing the job.

Q. So what I am hearing is that you could not satisfy the DBE goals with a subcontractor, right?

A. That's correct.

Q. What did that sort of limit you to, then?

A. It limits us to the other side, which is the supplier side.

Q. Now, with respect to suppliers, Markias ultimately became your DBE supplier on this project, right, the Delaware River Port Authority Project?

A. That is correct.

Q. How is it that you came to learn about Markias?

A. When I went to the pre-bid meeting for the Ben Franklin phase 5 project, Joyce Abrams, who I now know who Joyce Abrams is but I didn't know at the time, was handing out brochures. ...

\* \* \* \*

JA85

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 21, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[168] Kousisis - Cross**

Q. Okay. And the purpose -- well, every time that you run an invoice through Markias it cost you 2.25 percent, right?

A. Yes.

Q. And if you could avoid paying the 2.25 percent, the company had more money?

A. No.

Q. No?

A. No.

Q. If you could avoid paying Joyce Abrams 2.25 percent, it means --

A. Well, when you say we had more money, when we estimated the job, we put in her markup into the estimate.

Q. Okay.

A. So at 2.25, it's already there. We are going to pay her 2.25. That's an expense that is already billed into the bid.

Q. And the sooner you -- and for every additional product that you run through her that you don't have to run through her it's an additional 2.25 percent?

A. That's correct. That's why it was crazy that we continued to use her afterwards -- after we met the requirement.

Q. And the point of paying that 2.25 percent to [169] Joyce Abrams was for DBE credit, right?

A. To fulfill the DBE requirement of the contract.

Q. Up to the minimum quota?

A. Sometimes up to the minimum quota. But, obviously, 30th Street and Girard Point over the minimum quota.

Q. The point of it was to try to reach the DBE goals?

A. We, obviously, had a DBE goal that we needed to achieve.

Q. Okay. And when you -- and the place that you were going to use her to meet that DBE goal in connection with the Massachusetts and the Louisiana and the upstate New York projects was Pennsylvania?

A. I don't understand quite the question. Maybe I --

JA87

Q. Sure. We established that she was not a certified DBE for Massachusetts or Louisiana, right?

A. That's correct.

Q. She was not a listed for the DBE for the Amtrak Project or New York State Project?

A. That's correct.

\* \* \* \*

**[172] Kousisis - Cross**

Q. -- until we get to minimum quota?

A. That's what I said.

Q. So what you are saying there is, we are going to keep running things through Markias until we get to the minimum DBE quota, right?

A. For the Benjamin Franklin Bridge, that's correct.

Q. And once we get it to the minimum DBE quota, we are going to cut her out?

A. That's correct. But that's all we put into our bid.

Q. Okay.

And if we take a look at Government Exhibit 3, in September of 2012, you authored an e-mail that you distributed to two sets of people, right?

A. That's correct.

Q. And you wrote, we have meet -- you meant met, right?

A. I believe so, yes.

JA88

Q. We have met our minority goal in Pennsylvania with Markias. Please tell vendors not need to bill Markias; just bill us directly, right?

A. That's correct.

\* \* \* \*

JA89

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 22, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[263] Frangos - Direct**

FURTHER DIRECT EXAMINATION

BY MR. CEDRONE:

Q. Mr. Frangos, how are you, sir?

A. I am good. Thank you. How are you.

Q. Mr. DeStefano just asked you some questions about -- I believe it was the Connecticut Thames River job in which -- and maybe I am wrong, but is that the job where ANKA was involved?

A. No. The moveable bridges is where ANKA was involved.

Q. And ANKA was a minority, DBE-type certified subcontractor, right?

A. Yes.

JA90

Q. Do you know whether ANKA was aproved as a minority or a DBE painting subcontractor in Pennsylvania?

A. They were not.

Q. Okay. You were asked some questions about bidding early in your -- the bidding processes, right?

A. Yes.

Q. Do you remember that?

A. Yes.

\* \* \* \*

JA91

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 23, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[10] Cinquante - Cross**

THE COURT: Let me just -- so everything from “property” through “so find” is in the notes of the instruction?

MR. TROYER: Well, obviously, the reference to Counts 2 to 6, I had to insert that but --

THE COURT: I’m still not understanding what you’re saying. What exact words are in the model notes?

MR. TROYER: Everything from parenthetical number one to the bottom.

THE COURT: There is no parenthetical here.

MR. TROYER: There’s 1, 2, 3, 4, 5.

THE COURT: I see, the thing that is marked Number 1.

MR. TROYER: Yes.



THE COURT: So 1, 2, 3, 4, 5 is found in the notes?

MR. TROYER: Yes. It's in the Third Circuit Notes to Model Criminal Jury instruction.

THE COURT: "Property, for the purposes of Counts 2 through 6, means something of value. As to this case, you can find that DBE credits constitute property, if you find the following."

MR. TROYER: Yes, and there's specific reference to DBE as property comes from the United States versus Tulio Landscaping, but this also comes from the notes as well.

[11] THE COURT: And so that first sentence you created -- or first two sentences you created. Then you took it from the notes. Then the last sentence, which is, "Under these circumstances, if you find these factors, you can find that the DBE credits claimed constituted property, although you are not required to so find."

MR. TROYER: I created that because it's a hybrid. What I did was I added the portion "not required to so find" because it's the typical balancing portion that they do to balance it for the defense.

THE COURT: Okay. Let me hear from defense on that.

MR. CEDRONE: Your Honor, I appreciate what Mr. Troyer is suggesting, but just because there's a discussion of something -- I'm trying to look right now for the actual language in the model. I just was able to get online and pull it up. But I'm not entirely certain, as I'm looking at the instructions, that property itself is an element of the offense, so why are we defining it?

MR. TROYER: It is. As a matter of fact, it's the only thing that's not defined, when the other items, there are definitions given in the standard instruction for scheme to defraud. They define scheme. They define fraud. They define what scheme to defraud is. But they don't define money or property. Money, I think, is rather self-evident. Property, not so much, and so that's why we're doing it.

[12] By the way, the Tulio case, this isn't something that I just found a case and it had nice language in it. Tulio is cited in those notes, the Third Circuit Notes to this instruction. So it's the Third Circuit Notes that actually cite to it. It's the 2017 version. It's 6.18 --

MR. CEDRONE: I got it, David. I was just looking at the wrong number, and I keep clicking back to the wrong number for some weird reason. Your Honor, if the Court would indulge me, I'm just looking at the notes right now.

Your Honor, this is all a discussion, that's what I thought, of the materiality component. It is not a discussion of an element in the sense as we understand them. This whole discussion, it begins in the comment on page 9, and it's all a discussion about materiality.

Now, yes, I mean, Mr. Troyer properly and accurately quotes what the Tulio decision said about materiality. But I don't see anything and I've read Tulio. If Your Honor recalls, Tulio was actually a case that was discussed at the Rule 29 stage of the case. It may even be cited in the short memo. So I'm not completely unfamiliar with Tulio. That's why I was a

little flummoxed by this. But Tulio is a materiality issue and not a property issue.

MR. TROYER: Well, the Third Circuit notes use it to define property, and, again, property is otherwise not defined. So I simply thought we needed a definition of property. I [13] think it makes sense to define property for the jury so they're not confused as to what constitutes property because concepts such as DBE credits are not necessarily intuitive. We're not talking about a concrete thing that somebody can hold in their hand or even real estate or other forms of property or even intellectual property.

So I think it's very instructive, and, again, it comes straight from the Third Circuit. So I think it makes sense. If it didn't have somewhat of the imprimatur of the Third Circuit, I would probably be hesitant to use it, but since it does have that, I don't really see any difficulty using the instruction.

MR. DESTEFANO: The other thing I might add to the mix here is there's a great deal of tension within the Third Circuit itself, between the Nagle court and the Tulio court, and the Nagle court specifically rejected a part of the holding of the Tulio court with respect to this issue.

THE COURT: Who's citing Nagle? I don't find it anywhere.

MR. DESTEFANO: Nobody's citing Nagle. We're talking about why is this in a note and why is it in a charge, and I think the reason for that might be that there is an inconsistency between two panels in the Third Circuit as well on this issue.

\* \* \* \*

JA95

**TRIAL TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) August 24, 2018  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

TRIAL BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

**[20] Shapiro - Rebuttal**

Buckley came in here and told you. They told you that they faced a situation where they thought there wasn't going to be a DBE out there, enough DBE to do the work. They went to PennDOT and said we don't think we can do it, which, if you think about it, is the honest way. If you come across a situation where you think it's impossible, you go to the owner, you go to PennDOT and say, hey, this isn't going to work. Let's try it another way. And PennDOT said, no, we think it can work. You have to go back and try harder. And they did. They found somebody. They didn't do it fully, honestly, and legitimately. They got the contract by lying and cheating. They continued it by lying and cheating. They got paid by lying and cheating.

But, you know, there are non-financial obligations in that contract too. We just talked about them, one of them the DBE requirement. Ms. Cinquanto brought up the Buy American. Remember she said something about they're buying American? Well, there's a classic case of a non-financial obligation. Imagine that you have a Buy American obligation that requires you to buy American steel, and you go out and you get steel from, say, China. It's just as good. It's equally as good as the American steel, and you use it in the bridge.

Now, PennDOT has paid exactly what it always expected to pay. It got certified steel, as it was expecting to get. The bridge will probably last as long as it ever would. But [21] that's not all that PennDOT wanted. PennDOT wanted something special. It wanted not just any steel. It wanted the American steel for reasons that had nothing to do with dollars and cents, for reasons that had to do with its own program, its own desires. And, look, it's its bridge. It has the right to ask for what it wants, and when someone says I'm giving you what you want, they have a right to take them at their word.

And PennDOT didn't only want American steel. They wanted DBEs working on their job. And they got a promise from these guys that DBEs would be working on their job, and it was a promise that was broke. It was a promise that other contractors were prepared to meet. Those people lost out on an opportunity because these guys decided to cheat.

Finally, Mr. Winning says, well, how were they supposed to know? Well, we just talked about how they were supposed to know. The contract told them

they had to know. They submitted a training program to New Jersey in which they promised they did know.

But, of course, the out-of-state stuff doesn't require training. It doesn't require regulations. All it requires is a little bit of common sense. You can't get credit on this project for things that were used on another project. They know that, the same way you know that, the same way Mr. Bjork knew it. Remember Mr. Martincic said I never heard of such a thing. It's crazy. ...

\* \* \* \*

#### **[59] Final Instructions By the Court**

In this case, it so happens that the Government does not contend that the proof establishes that persons were defrauded and that the defendants profited.

On the other hand, the defendants contend that the purported victims of the scheme were not deprived of any property or money. Although whether or not the scheme actually succeeded is really not the question, you may consider whether it succeeded in determining whether the scheme existed.

If you find that the Government has proved beyond a reasonable doubt that the scheme to defraud charged in the indictment did exist and the defendant knowingly devised or willfully participated in the scheme charged in the indictment, you should then consider the second element.

So I'm now going to define property for you. Property for purposes of wire fraud is defined to include money, property rights, or both. Deprivation of a property right may include depriving an agency

of a fundamental basis of its bargain. An agency has a property right to purchase goods and services in the open market.

Furthermore, contract rights can be considered property rights for purposes of wire fraud. An agency may be deprived of its contract rights if a defendant misuses money given to it under a contract. If an agency intends to enable a DBE to provide services, a defendant promises that a DBE will provide those services, but no such services are rendered under [60] the contract, you may find the loss of property. Deprivation of property may also include loss of money based on services paid for that an agency did not receive.

Turning now to the second element of wire fraud. The second element that the Government must prove beyond a reasonable doubt in the wire fraud claims is that the defendant acted with a specific intent to defraud. To act with an intent to defraud means to act knowingly and with the intention or the purpose to deceive or cheat.

In considering whether the defendant acted with an intent to defraud, you may consider, among other things, whether he acted with a desire or purpose to bring about some gain or benefit to himself or someone else or with a desire or purpose to cause some loss to someone.

The third element that the Government must prove in the wire fraud counts beyond a reasonable doubt is that in advancing, furthering, or carrying out the scheme, the defendant transmitted a writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or

JA99

caused the transmission of a writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

The phrase "transmits by means of wire, radio, or television communication in interstate commerce" means to send from one state to another by means of telephone or telegraph ...

\* \* \* \*



JA100

**SENTENCING TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) November 1, 2019  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

SENTENCING PART 1 — BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

[41]

Buckley did it in another case. It's measurable in money, and indeed the costs of that difference are worth it to PennDOT, that when PennDOT lets a contract with a DBE requirement, that requirement has value to PennDOT. It is a value that is translatable into money.

The same thing is illustrated by the other, what Mr. Cedrone characterizes as an alternative measure. It's not that. We pointed out that the other bidders in this case submitted much higher bids. What that suggests is that presumably the other bidders followed the law and the requirements of the bidding. Their bids were higher. And what that suggests, the same way Mr. Fetters' testimony suggests, is that the cost of accurate and complete DBE requirements are

JA101

pecuniary. I agree those two measures don't tell us what they were in this case.

To know what they were in this case, we would have to do an experiment that didn't happen. Namely, PennDOT would have had to have led its bid in two different ways, one with phony DBE compliance and one with real DBE compliance. With those two bids, we could have measured what the cost difference is. That's an experiment that wasn't done. So all it tells us is it's measurable in money, but we don't know what its measure was.

The guidelines tell us what to do when we have a situation where we have pecuniary loss. We just don't know its ...

\* \* \* \*

JA102

**SENTENCING TRANSCRIPT**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF ) 18-CR-130  
AMERICA )  
 ) Philadelphia, PA  
vs. )  
 ) November 6, 2019  
STAMATIOS )  
 )  
KOUSISIS, ET AL )  
 )

SENTENCING PART 2 — BEFORE THE  
HONORABLE WENDY BETTLESTONE  
UNITED STATES DISTRICT JUDGE

\* \* \* \*

[70]

So now I am going to focus on the question of was there a zero loss from defendant's crimes. Defendant argues that no victim in this case sustained any actual pecuniary harm, first pointing to the PSR's conclusion that restitution is not warranted as proof. But the restitution order does not affect the Court's analysis of how to calculate the amount of loss under the guidelines, and that is United States versus Nagle, 803 F.3d, 167-181 at note 6, 3rd Circuit 2015. Even with a zero dollar restitution finding, there can still be actual loss for purposes of the guidelines application. See Nagle as well as United States versus Badaracco, 954 F. 2d, 928, pinpoint 942-4, 3rd Circuit, 1992 which calculates loss of restitution differently than loss for sentencing purposes.

Next, the defendant points out that Alpha performed both contracts in an absolute satisfactory manner and timely complied with all obligations under the contracts other than those concerning DBE compliance issues, meaning presumably that the Government got the full benefit of its bargain and suffered no loss. But what defendant presents as a parenthetical aside is, in [71] fact, precisely what the Government lost due to defendant's actions. Had there been no DBE compliance issues, there would have been no criminal action in this case.

Turning to the guidelines for analysis of defendant's position, assuming without deciding that the DBE program is a government benefit and thus note 3F2's special rule for determining loss under 2B1.1 applies. The special rule requires that when a government benefit program is defrauded, loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses as the case may be.

In a DBE program, the Government is not exclusively concerned with having a task completed. The program cares about who performs the work. It assumes that performance of a contract allows a DBE to not only earn a profit on the deal, but also to form connections with suppliers, labor and others in the industry. That's Nagle at 181.

Defendant's scheme deprived a legitimate DBE from forming those connections and resulted in a company being awarded the contract despite not complying with one of its key terms. But for Kousisis's fraud and representation, Alpha would not have been awarded the [72] contract; thus the benefit

diverted is the entire value of the contracts that were illegitimately acquired.

On another note to the guideline, putting aside the special program or the Government benefit analysis, requires the Court to credit the fair market value of the services rendered under the contracts against its value. That is sentencing guideline 2B1.1 comment note 3E1. This includes, for example, the fair market value of the materials supplied, the fair market cost of the labor necessary to assemble the materials, and the fair market value of transporting and storing the materials, that's Nagle at 183. And the 3rd circuit has specifically instructed that if possible and when relevant, the district court should keep in mind the goals of the DBE program that have been frustrated by the fraud.

Defendant argues that the fair market value of its services is represented by the contract price, and that because it performed all of the contract work, there is no loss. But such an argument at the outset overlooks the fact the Government, which awarded contracts to Alpha under the belief that Alpha would create meaningful connections with DBEs, did not get the benefit of its bargain. As a result of Alpha's deception, the DBE program provided profit opportunities **[73]** to entities not entitled to them. And testimony presented at the trial provides evidence that the value and cost associated with actually complying with DBE standards appear to be quite a bit higher than Alpha's contract price. For example, the next lowest bid for one of Alpha's projects was a full \$5 million higher. The cost of Alpha's contract thus does not reflect the true market value of a DBE-compliant contract.

But precisely how much value the Government attributes to building connections with DBEs cannot readily be translated into a precise numerical value. In such a situation where there is a loss but it reasonably cannot be determined, guideline commentary allows the Court to use gains as an alternative measure of loss. And that is comment N3B to 2B1.1.

The Court thus concludes as the 3rd Circuit did, albeit in an unpublished opinion, that looking to ill-gotten profits is the appropriate measure of loss in this case. Nagle 664, Fed App X 212 at 216, 3rd Circuit, 2016, unpublished. And once again, the Court makes clear that this decision is not based on the unpublished opinion but is based on analysis of the sentencing guidelines and the commentary to the sentencing guidelines.

\* \* \* \*

JA106

**DEFENDANTS EXHIBIT 200**

**Pennsylvania Department of Transportation  
ECMS**

**Contract**

**Project: 86046**  
**Standard / Federal Oversight**  
**Post-Construction**  
**Short Description:** Girard Point Br. Paint & Rep.  
**County:** Philadelphia  
**District:** 06  
**SR:** 95  
**Group ID:** ERP  
**Org Code:** 0650  
**Section:** VAG  
**Municipality:** PHILADELPHIA

**Contract: 86046**

**Buckley & Company, Inc. 23-0442520**  
**Philadelphia**  
**215-334-7500 (phone)**  
**215-465-9211 (fax)**  
**wfettters@buckleyco.com**  
Prime Business Partner

**Liberty Maintenance, Inc. 34-1535734**  
**Campbell**  
**Alpha Painting & Construction Co., Inc. 52-**  
**1526853**  
**Baltimore**  
Joint Venture Partner(s)  
**Philadelphia County**  
**SR 95, Section VAG**

JA107

**Girard Point Br Paint&Rep**

Location

**Z065-102-C240**

Federal Project

**P-100095Z7VAG-0650-791-1**

WBS Element

**July 23, 2009**

Bid Opening

Addendum issued subsequent to the printed proposal have been incorporated into the text of this contract and the modified portions are annotated in the contract – e.g., A1, A2 etc.

Incorporated Addenda are As follows:

**Addendum No. 1**, A1, dated 07/13/2009

**Addendum No. 2**, A2, dated 07/17/2009

**Addendum No. 3**, A3, dated 07/20/2009

THIS AGREEMENT, Made this **22** day of **September** A.D. **2009**, between the Commonwealth of Pennsylvania by the Secretary of Transportation, hereinafter called the Commonwealth and ***Buckley & Company, Inc., Liberty Maintenance, Inc. and Alpha Painting & Construction Co., Inc.*** his, hers, its or theirs executors, administrators, successors, or assigns, hereinafter called the Contractor.

WITNESSETH:

1. That the Contractor, for and in consideration of the payment or payments herein specified and agreed to by the Commonwealth, hereby covenants and agrees to furnish and deliver all the materials and to



JA108

do and perform all the work and labor in the improvement of a certain section of highway at the unit prices bid by said Contractor for the respective estimated quantities aggregating approximately the sum of **\$70,342,922.00** and such other items as are mentioned in the Contractor's original proposal, which proposal and prices named, together with **Publication 408/2007-4 - Specifications** (as specified in the proposal), are made a part of this contract and accepted as such, also the drawings of the project, prepared and/or approved by the Department of Transportation, which drawings are also agreed by each party as being a part hereof.

2. The location and description being situated as follows:

The description and location of the project is as follows: This is an Economy Recovery Project. This Project is for preservation of the Girard Point Bridge over the Schuylkill River involving painting, structural steel repairs, expansion dam repairs, latex modified concrete overlay, and other miscellaneous construction, as indicated on the approved drawings included in the bid package for INTERSTATE ROUTE 95, SECTION VAG, in the City of Philadelphia from segment 0144 offset 2086 to segment 0164 offset 0043 and from segment 0145 offset 2512 to segment 0165 offset 0240.

3. The Contractor further covenants and agrees that all work shall be performed in the best and most workmanlike manner. He also agrees that all materials furnished and labor performed shall be in strict and complete conformity, in every respect, with all parts of this contract and shall be subject to the

JA109

inspection and acceptance of authorized representatives of the Department of Transportation. In the event that any portion of work (including materials supplied pursuant thereto) performed by the Contractor is rejected by the Department's authorized representatives as defective, unsuitable, or unacceptable, the Contractor agrees to remove and replace all such rejected portions of work in conformance with this contract and to the satisfaction of and at no expense to the Department. The Contractor further covenants that prompt payment will be made in full for all labor and materials used in the performance of work on this project.

4. The Contractor covenants and agrees that all work (including, but not limited to, all labor performed and all materials supplied) on this project shall be performed and completed to the satisfaction of the Chief Highway Engineer of the Department of Transportation on or before the expiration date of **09/24/2012**. If, for any reason, except as provided in the contract, the Contractor fails to complete all work on this project to the satisfaction of the Chief Highway Engineer within the aforementioned time allowed, the Department shall deduct from any sums due or which may become due the Contractor the amount indicated in the Specifications for each calendar day used in excess of the aforementioned number of days allowed, or, in case a completion date is fixed, for each calendar day elapsing between that completion date and the actual date of completion. If no sums are due the Contractor, the Contractor agrees to remit to the Department the aforementioned sum for each day used in excess of the time allowed for completion of the contract. The

JA110

amounts deducted or remitted under this paragraph are liquidated damages and not penalties.

5. The Contractor further covenants and warrants that the Contractor has had sufficient time to examine and has examined the site of the contract work to ascertain for itself those conditions such as may be determined by inspection, investigation, and inquiry, including the location, accessibility, and general character of the site.

6. The Contractor further covenants that he has not relied upon any information provided by the Department, including information contained in the Special Provisions, concerning the time within which publicly or privately-owned facilities below, at or above the ground are expected to be installed, removed, repaired, replaced, and/or relocated; that he has not relied upon any information provided by the Department concerning the location or existence of all such facilities that might be below, at or above the ground; that he has contacted or will contact all owner of such facilities to verify the location and position of all such facilities and the time within which work on such facilities will be performed; and that he is aware delays might be incurred in the performance of work on this project as a result of work being performed or that will be performed on such facilities by their owners. It is understood further that, notwithstanding assistance of any kind and extent that might be provided by the Department, the Contractor, in every instance, bears the ultimate responsibility of resolving all disputes of every kind with the owners of such facilities. The Contractor agrees to save and hold the Department harmless from liability for all delays, interference and

JA111

interruptions that might arise during the performance of work on this project as a result of work being or that will be performed on such publicly or privately-owned facilities.

7. The Contractor further covenants and warrants that he has read, is completely familiar with and understands thoroughly the General Conditions; the Specifications of the Commonwealth of Pennsylvania, Department of Transportation, currently in effect; the Supplements, Special Provisions and/or Conditions; and any other addenda or requirements, contained in the governing the performance of work under this contract, whether attached hereto and made a part hereof, or incorporated herein by reference.

8. It is distinctly understood and agreed that the Contractor shall not do any work (including, but not limited to, the supply of labor and/or materials) not covered by the specifications and the contract, unless such work has been authorized in writing as provided in the Specifications. In no event shall the Contractor incur any liability by reason of refusing to obey any verbal directions or instructions that he might be given to perform additional or extra work. Likewise, the Department will not be liable for any work performed as additional or extra work, unless such work is required of the Contractor in writing as provided in the Specifications. All such work which might have been performed by the Contractor without such written order first being given shall be at the Contractor's risk, cost, and expense, and the Contractor hereby covenants and agrees that, without such written order, he shall make no claim for compensation for such unauthorized work.

JA112

9. It is further distinctly agreed that the Contractor shall not assign this contract, nor any part thereof, nor any right to any sums to be paid him hereunder, nor shall any part of the work to be done or material furnished under this contract be sublet, without the consent in writing of the Secretary of Transportation.

10. It is also agreed and understood that the acceptance of the final payment by the Contractor shall be considered as a release in full of all claims against the Commonwealth of Pennsylvania arising out of, or by reason of, the work done and materials furnished under this contract.

11. The Contractor shall accept, insofar as the work covered by the contract is concerned, the provisions of the **Workmens Compensation Act of 1915**, and any supplements or amendments thereto, and shall insure his liability thereunder or file with the Department of Transportation a certificate of exemption from insurance from the Bureau of Workers' Compensation of the Department of Labor and Industry.

12. In order to secure proper and complete compliance with the terms and provisions of this contract, the Contractor shall provide a bond in a sum equal to one hundred percent (100%) of the total contract price of the work to be done. The Contractor shall also secure an additional bond in the same amount for the prompt payment in full for all labor and materials supplied in performing work on this project. Both bonds are attached to and made a part of this contract.

13. Conditioned upon compliance by the Contractor with all pertinent conditions and procedures contained in the contract, claims for damages or extra costs in excess of three hundred dollars (\$300.00) arising out of disputes pertaining to this contract shall be referred to the Board of Claims pursuant to Section 1724(a) of the Commonwealth Procurement Code, 62 Pa. C.S. § 1724(a).

14. If for any reason the Commonwealth Procurement Code is inoperative or the Board of Claims cannot function, such claims shall be referred and decided by a panel consisting of the Secretary of Transportation and the General Counsel or their respective deputy or deputies.

15. The Contractor hereby further agrees to receive and the Commonwealth agrees to pay the prices set forth in the linked bid items as full compensation for furnishing all the materials and labor which may be required in the prosecution and completion of all work to be done under this contract, and in all respects to complete the contract to the satisfaction of the Secretary of Transportation.

16. The Contractor certified in his, her, its or their bid submission (covering federal aid projects only) to the disclosure of lobbying activities and, if applicable, completed the disclosure form and by said certification understands that **Public Law 101-121, Section 319**, prohibits federal funds from being expended by recipient or any lower tier sub-recipients of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal

JA114

contract, the making of any federal grant or loan, or the entering into of any cooperative agreement.

17. If federal funds are involved, the Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Contractor shall carry out applicable requirements of **49 C.F.R. Part 26 - DATED OCTOBER 16, 2001** in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Pennsylvania Department of Transportation deems appropriate. Contractor must include this assurance in each subcontract that it signs with a subcontractor.

---

**Fiscal Information**

---

**Recorded Number:** 86046

**Certified Fund Available Under Activity**

**Program:** 791

**Symbol:** 010-008-10581-09/10/22-1

**Amount:** \$70,342,922.00

<b>Additional Information</b>
-------------------------------

<b>Contract Status</b>
------------------------

<b>Current Contract Status:</b> Executed
--

<b>Contract Documents</b>
---------------------------

<b><u>Contract Report</u></b>
-------------------------------

<b><u>Contract Attachment</u></b>
-----------------------------------

## JA115

<b>Workflow</b>			
<b>Status</b>	<b>Name</b>	<b>Disposition</b>	<b>Date/Time</b>
Draft	Kireston N Jackson/ PennDOT	Award	09/02/2009 10:03:44 AM
Contractor Review	Robert R Buckley/ PennDOT BP-001227 – President	Sign	09/08/2009 09:58:42 AM
Contractor Review	Betsy A. Aikaterinidis Ms./ PennDOT BP-000624 – President	Sign	09/15/2009 11:14:49 AM
Contractor Review	Emanouel Frangos/ PennDOT BP-001807 – President	Sign	09/15/2009 11:43:39 AM
BOD CMD Review	Christina M Troutman/ PennDOT	Accept	09/21/2009 10:45:02 AM
BOD Director Review	David J Azzato/ PennDOT	Accept	09/21/2009 10:50:55 AM
Chief Counsel Preliminary Review	Jeffrey M Spotts/ PennDOT	Accept	09/21/2009 04:25:59 PM



JA116

Chief Counsel Final review	Michael H Kline/ PennDOT	Accept	09/22/2009 10:07:45 AM
Comptroller Review	Debra J McDade/ PennDOT	Accept	09/22/2009 11:38:11 AM
CMD Execute	Kireston N Jackson/ PennDOT	Submit	09/22/2009 12:49:55 PM

<b>Audit Information</b>			
<b>Created By</b>	<b>Created On</b>	<b>Modified By</b>	<b>Modified On</b>
Kireston N Jackson/ PennDOT	09/02/2009 10:03:44 AM	Kireston N Jackson/ PennDOT	09/22/2009 12:49:55 PM

\* \* \* \*

**PennDOT Publication 408/2007-4 §§ 106.09(a)–106.10(b)**

**1. Brazil.** Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.

**2. Spain.** Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars, and cold-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars; and cold-formed carbon steel bars.

**3. South Korea.** Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.

**4. Argentina.** Carbon steel wire rod and cold-rolled carbon steel sheet.

**106.10 BUY AMERICA PROVISIONS AND CONVICT PRODUCED MATERIALS**—This section only applies to projects partially or totally financed with Federal funds.

**(a) Buy America Provisions.** Furnish steel or iron materials, including coating for permanently incorporated work according to 23 CFR 635.410 and as follows:

- Pig iron and processed, pelletized, and reduced iron ore manufactured outside of the United

JA118

States is acceptable for use in domestic manufacturing process for steel and/or iron materials.

- All manufacturing processes of steel or iron materials in a product, including coating; and any subsequent process that alters the steel or iron material's physical form or shape, or changes its chemical composition; are to occur within the United States. This includes rolling, extruding, machining, bending, grinding, drilling, and coating. Coating includes all processes that protect or enhance the value of the material, such as epoxy coatings, galvanizing or painting.
- Provide certification to the Inspector-in-Charge, that all manufacturing processes for steel and iron materials in a product, including coating, have occurred in the United States; certify as specified in Section 106.01.

Products manufactured of foreign steel or iron materials may be used, provided the cost of such products as they are delivered to the project does not exceed 0.1% of the total contract amount, or \$2,500, whichever is greater.

**(b) Convict Produced Materials.** Pursuant to 23 CFR 635.417, materials produced by convict labor after July 1, 1991 may not be used for Federal-aid highway construction projects, unless produced at a prison facility which had been producing convict-made materials for Federal-Aid construction projects before July 1, 1987.

Material produced by convicts who are on parole, supervised release, or probation from a prison may be

JA119

incorporated in a Federal-Aid highway construction project.

\* \* \* \*

**SECTION 107—LEGAL RELATIONS AND  
RESPONSIBILITY TO THE PUBLIC**

**107.01 LAWS TO BE OBSERVED**—At all times, observe and comply with the following, and post as required: all Federal, State, and local laws, ordinances, and regulations that have appropriate jurisdiction over the project and affect the conduct of the work or that apply to employees on the project; and all orders or decrees that have been or may be enacted by any legal bodies or tribunals having authority or jurisdiction over the work, material, employees, or contract. Protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, including violations by Contractor employees.

**107.02 PERMITS, LICENSES, AND TAX  
RESPONSIBILITY—**

**(a) Permits and Licenses.** Purchase and submit copies of permits and licenses. At the job site, post notices necessary for the proper and lawful performance of the work according to such permits and licenses. Do not start work until signing and submitting all documentation required to become a transferee/co-permitee for all applicable permits required for the project.

**(b) Tax Responsibility.** Ascertain the possible existence, scope and coverage of any local subdivision tax, sometimes called an occupation tax, wage tax,

JA120

income tax, franchise tax, or excise tax on the construction operations within the limit of the political subdivision imposing such tax. Also indemnify and save harmless the State and its agents from liability for the collection and payment of any taxes assessed and levied by the constituted authority, including upon Contractor agents, employees, and/or representatives in connection with the performance of work on the project.

**(c) Vehicle Registration.** Attention is directed to 75 P.S. 1302(a) and 1303(a), (b), which requires vehicles to be registered in Pennsylvania when used on a project which is being built under traffic or where the vehicles are operated on a public highway opened to traffic.

**107.03 PATENTED DEVICES, MATERIAL, AND PROCESSES**—If any design, device, material, or process covered by letters of patent or copyright is used, provide for use by suitable legal agreement with the patentee or owner. Indemnify and save harmless the State or political subdivision from any claims for infringement, by reason of the use of any patented design, device, material, process, or any trademark or copyright, and indemnify the State for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the performance or after the completion of the work. These provisions also apply to the surety.

**107.04 RESTORATION OF SURFACE OPENED BY PERMIT**—Do not allow any opening to be made within the right of way unless a valid permit is presented authorizing the opening. For such an opening, made before the date upon which the work

provided for in the contract is finally accepted, repair at the time and in the manner directed in writing by the District Executive.

**107.05 FEDERAL-AID PROVISIONS**—If the Federal Government pays any portion of the project costs, observe the Federal laws pertaining to the project, as well as the rules and regulations made according to such laws. Work will be subject to the inspection of the appropriate Federal agency.

Such inspection will not make the Federal Government a party to the contract and will not interfere with the rights of either party to the contract.

**107.06 SANITARY PROVISIONS**—Provide and maintain, in a neat and clean condition, sanitary facilities for the exclusive use of personnel on the project. Dispose of all wastes, both sewage and wastewater, in a manner approved by the DEP. As required, obtain permits from local municipalities to install temporary toilet facilities.

**107.08 OCCUPATIONAL SAFETY AND HEALTH**—Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including the Federal Construction Safety Act (Public Law 91-54), Federal Register, Chapter XVII, Part 1926 of Title 29 CFR, Occupational Safety and Health Regulations for Construction, and subsequent publications updating these regulations.

Take any other needed action or proceed as directed, to protect the life, health, and general occupational welfare of personnel employed on the project.

## JA122

If, in the Representative's opinion, employees are exposed to extraordinary conditions which could or do constitute a hazard, modify such equipment, devices, and job procedures to ensure protection against the hazard or to reduce the risk to the employees engaged in project work.

Require all persons to wear high-visibility safety apparel (orange or yellow-green) that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear" while in work zones exposed either to traffic or to construction equipment.

All areas of a project will be hard hat areas. Require all persons within the project limits to wear protective headgear, including persons in cement concrete and bituminous concrete plants operated exclusively for a project, even though the plant(s) may be remotely located.

At the preconstruction conference, submit a written project safety program and procedure to document lost time due to accident for Department review. Give special emphasis to providing safeguards for any specially or unusually hazardous operations and health hazards. Include initial indoctrination and continuing instructions for all employees to enable them to perform work in a safe manner. Include in the instruction project safety practices, manner of reporting accidents, availability of medical facilities, and explanation of individual responsibility for accident-free operations.

## JA123

For multi-season projects with a contract amount  $\geq$  \$5,000,000, provide and maintain one scoreboard safety sign 1200 mm (4 feet) wide by 900 mm (3 feet) high to identify the number of days worked on the project without a lost time accident. Imprint on the sign, the name of the Contractor and an appropriate safety message. Prominently display the following on the sign in 100 mm (4-inch) letters:

- a. Contractor's name and address.
- b. "(\*\*\*) Days Worked Since Last Lost-Time Injury"

NOTE: "(\*\*\*)"—indicates space for three removable numbers. Number displayed to include subcontractors.

Place the sign in a prominent location at the project site. Update the sign at least bi-weekly.

Immediately take corrective action, upon notification by the Representative of any noncompliance with the provisions of this section. Upon receipt of this notice, failure or refusal to promptly comply will cause a written order to be issued, stopping all or part of the work until the corrective action has been taken. Claim for an extension of time, costs, or damages because of the time lost due to any such stop orders will not be considered.

**107.09 RAILWAY-HIGHWAY PROVISIONS—** Conform to regulations stipulated in the Pennsylvania Public Utility Commission's order when work is indicated to be performed within, or adjacent to, the right of way or trackage belonging to, or upon which a common carrier operates. Observe strict



adherence to all requirements pertaining to the work, safety, and movement of trains; to public and personal liability insurance; and to any other related matters. If it is necessary to use crossings other than those indicated, make arrangements for the use of the crossings.

**107.10 BRIDGES OVER NAVIGABLE WATERS**—Conduct work on navigable waters according to the requirements of permits issued by the U.S. Army Corps of Engineers or U.S. Coast Guard, whichever is applicable.

**107.12 CARE OF PUBLIC AND PRIVATE PROPERTY**—Do not damage overhead and underground facilities and structures or property within or adjacent to the project. Use special care in the performance of the work in order to avoid interference or damage to operating utilities or plants; however, where there is any possibility of interference or damage, make satisfactory arrangements with responsible corporate officers of the utilities or plant, covering the necessary precautions to be used during the performance of the work. Make these arrangements, subject to review, before work is started.

Protect all land monuments and property markers which are to be affected by the construction until they have been correctly referenced by the Department. Beyond the construction area, reset monuments and markers which are disturbed by contract operations, either during the construction of the project or otherwise, when and as directed.

\* \* \* \*

**[§§ 107.20–107.23(b)]**

- computation,
- estimate,
- certificate, or
- payment

be discovered or be known to be inconsistent with the contract terms or otherwise improperly given. The Department will not be prevented, notwithstanding any

- measurement,
- computation,
- estimate,
- certificate, or
- payment

from demanding and recovering from the Contractor or surety, such damages as it may sustain by the failure to comply with the terms of the specifications and contract or on account of any overpayment(s) made on any estimate or certificate.

Neither the payment on any estimate or certificate signed by the Department nor any extension or remission of contract time nor any possession taken by the Department or its employees, will operate as a waiver of any portion of the Contractor of any power herein reserved by the Department or any right to damages herein provided, nor will any waiver of any breach of contract held to be a waiver of other or subsequent breach.

The terms of this contract will not be waived or modified by any verbal communication between the Contractor and Department personnel.

**107.21 WORKERS' COMPENSATION INSURANCE**—Carry Workers' Compensation Insurance or file a proper Certificate of Exemption as provided for by the Workers' Compensation Act and execute a valid affidavit in accepting provisions of the Workers' Compensation Act as supplied with the contract.

**107.22 MINIMUM WAGE SPECIFICATIONS AND RATES—**

**(a) Requirements.** According to the provisions of the Pennsylvania Prevailing Wage Act 43 P.S. 165-1, and the implementing Regulations of the Pennsylvania Department of Labor and Industry, comply with the prevailing minimum wage predetermination requirements, as specified in the proposal, specifications, and contract.

**(b) Responsibility for Payment of Wages.** Accept responsibility for all wages paid or due to any employees engaged upon the project under contract, as mandated by the Pennsylvania Prevailing Wage Act, various applicable Federal acts, and the contract. Do not attempt to pass such responsibility elsewhere. Do not require employees to refund, directly or indirectly, any part of such wage(s). Where classification, reclassification, or additional classifications of workers are made according to the Pennsylvania Prevailing Wage Act and its regulations, make no claim against the Department for additional compensation for such classification, reclassification, or additional classification.

JA127

If after a contract has been awarded, it is decided, because of unforeseen construction development, to list an additional classification and wage rate, the Department, with or without application by the Contractor, will make written request for a wage determination by the Secretary of Labor and Industry.

No person may be employed on the project under contract, except according to the classification set forth in the decision of the Secretary of Labor and Industry.

**(c) Certification and Payment of Rate of Wage.** According to the provisions of the Pennsylvania Prevailing Wage Act and various applicable Federal acts, including their implementing regulations, file with the Department a weekly statement and a final statement at the conclusion of project work under contract, certifying that all employees have been paid wages in conformity with the provisions of the contract, as prescribed by the regulations of the Pennsylvania Department of Labor and Industry, implementing the Pennsylvania Prevailing Wage Act. If any wages remain unpaid, list on the statement the amount of wages due to each employee. Certify that, directly or indirectly, no refunds are received from any employee of any such minimum wage(s), other than deductions authorized by the Pennsylvania Wage Payment and Collection Law, 43 P.S. 260.1. Use forms furnished by the Department and submit the forms to the District Executive within 7 days after the regular payment date of the payroll period. Payment of the current and semifinal estimates and final settlement certificate will be withheld if such certification is not submitted,

using the proper form, within the prescribed time limit.

**(d) Posting.** Post a notice(s) in the manner and form prescribed by the current regulations of the State Department of Labor and Industry. This notice is to be clearly legible and to be placed in a prominent and easily accessible place at the project site under contract, as well as at places where employees are paid their wages.

**(e) Records and Inspection.** Keep accurate records of employment and wage payments, including all the information required by the regulations of the State Department of Labor and Industry implementing the State Prevailing Wage Act, as amended. Keep time cards of employees, as required by the cited regulations and act. In addition, keep the original signed indentures for each apprentice and the approvals of the Pennsylvania Apprenticeship and Training Council. Preserve the records for 2 years from the date of payment and keep open at all reasonable hours, for inspection by the Department and by the State Secretary of Labor and Industry. Make these records easily accessible within the State within a period of 7 days from the date on which the State Secretary of Labor and Industry requests in writing that such records be made available. For the purpose of such inspection, furnish the authorized inspectors of the Department every assistance in determining the wages paid in compliance with the regulations.

**(f) Penalties.** Failure to comply with the Pennsylvania Prevailing Wage Act and its regulations will result in withholding money due or to

become due on the project contract. It will also result in termination of the right to proceed with the project work under contract and/or other penalties prescribed by law.

**(g) Federal-Aid Projects.** All Federal-Aid Projects are subject to the implementing rules and regulations of the various Federal departments. Accordingly, the contract provisions and the penalties prescribed for their violations, both of which are required to be incorporated verbatim in all contracts for such Federal-Aid Projects, will be set forth in the proposal and the contract applicable to each project.

#### **107.23 HAULING RESTRICTIONS—**

**(a) General.** Accept responsibility for all hauling done on the project and on adjacent highways, in connection with the contract. Hauling restrictions on highways will be according to the applicable sections of the Pennsylvania Vehicle Code, Act of 1976, No. 81.

Before submission of the bid, if truck delivery of long bridge members (in excess of 21 m (70 feet)) is contemplated, obtain, in writing, a determination if a Department's hauling permit can be issued for the routing from the proposed source(s) of supply to the project.

Without written permission, do not move and/or operate heavy-duty construction grading and hauling equipment over existing or new pavements, subbase, base and surface courses, and structures which will remain in service.

No special permits will be required for the transfer of oversize or overweight equipment or vehicles from one work area to another work area within the project

JA130

limits. However, correct any damage caused by the transfer of equipment or vehicles.

If, in special cases, further restrictions are necessary, such restrictions will be indicated and/or specified in the proposal.

**(b) Mass (Weight) Limits and Weighing.**

1. Do not operate on public highways any vehicles which are in excess of the registered, gross, and/or axle mass (weight) limits established in Chapter 49 of the Vehicle Code, 75 PA C.S. Chapter 49, or as posted by the Department.

\* \* \* \*

**[§§ 107.27(c)–107.30(e)]**

**(c) Act 247.** According to Act 247, enacted by the General Assembly of the Commonwealth of Pennsylvania and approved by the Governor on October 26, 1972, the statutes, rules, and regulations concerning anti-pollution measures have been enumerated in Appendix C, Designated Special Provision 9. Include in the bid price all costs of complying with the terms of the listed statutes, rules, and regulations. No separate or additional payment will be made for such compliance. In the event that the listed statutes, rules, and regulations are amended, or if new statutes, rules, or regulations become effective, perform all additional and/or extra work deemed necessary, as ordered in writing and directed by the Representative, as specified in Section 110.03.

Determine what local ordinances, if any, will affect the project work. Check for any county, city, borough, or township rules or regulations applicable to the area

in which the project is being constructed, and, in addition, for any rules or regulations of other organizations having jurisdiction, such as chambers-of-commerce, planning commissions, industries, or utility companies who have jurisdiction over lands which the project occupies. Include any costs of compliance with local controls in the prices bid, even though documents of such local controlling agencies are not listed herein. No separate or additional payments will be made for complying with existing, amended or new local ordinances, directives, or controls.

**107.28 EROSION AND SEDIMENT POLLUTION CONTROL PLANS AND PERMITS**—Install and maintain erosion and sediment pollution control devices as indicated or submit an alternate plan for accomplishing equal or better temporary and permanent erosion and water pollution control. If an alternate plan is submitted, do not start work until the plan is approved by the County Conservation District and the Department. If a National Pollutant Discharge Elimination System Permit is involved, do not start work until the plan is approved by the DEP and/or the DCNR or their designee and the Department.

**107.29 THIRD-PARTY LIABILITY**—Contracts covered by these specifications are not to be construed for the benefit of any person or political subdivision not a party to this contract, nor will this contract be construed to authorize any person or political subdivision not a party to this contract to maintain a lawsuit on or under this contract.



**107.30 SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES**—This Section only applies to projects which are partially or totally financed with Federal funds.

**(a) General.**

1. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Executive Order 11246 and Executive Order 11375, are set forth in Required Contract Provisions (Form FHWA-1273) and these requirements; imposed pursuant to 23 U.S.C. 140, as established by Section 22 of the Federal-Aid Highway Act of 1968. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-43 and the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. The requirements set forth herein constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

2. Work with the Department and the Federal Government in carrying out equal employment opportunity obligations and in their review of contract activities.

3. Comply with and have subcontractors (not including material suppliers) comply with the following minimum specific requirement activities of equal employment opportunity. The Equal Employment Opportunity Requirements of Executive

JA133

Order 11246, as set forth in 23 CFR 633, are applicable to material suppliers as well as contractors and subcontractors. Include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

**(b) Equal Employment Opportunity Policy.**

Accept as operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through positive continuing programs:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action includes: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

**(c) Equal Employment Opportunity Officer.**

Designate and make known to the Department contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who has the responsibility for and is capable of effectively administering and promoting an active company program of equal employment opportunity and who has been assigned adequate authority and responsibility to do so.

**(d) Dissemination of Policy.**

1. Make all company staff members related to the project who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, fully cognizant of, and have them implement, the company's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement is met, take the following actions as a minimum:

**1.a** Conduct periodic meetings of supervisory and personnel office employees before the start of work and then not less often than once every 6 months, at which time the contract equal employment opportunity policy and its implementation will be reviewed and explained. Have the meetings conducted by the EEO Officer or another knowledgeable company official.

**1.b** Give all new company supervisory or personnel office employees a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the company's equal employment opportunity obligations within 30 days following their reporting for duty on the project.

**1.c** Instruct all company personnel who are engaged in direct recruitment for the project by the EEO Officer or appropriate company official in the company procedures for locating and hiring minority group employees.

2. In order to make the equal employment opportunity policy known to all company employees,

prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., take the following actions:

**2.a** Place notices and posters setting forth the equal employment opportunity policy in areas readily accessible to company employees, applicants for employment, and potential employees.

**2.b** Bring the equal employment opportunity policy and the procedures to implement such policy to the attention of company employees by means of meetings, employee handbooks, or other appropriate means.

**(e) Recruitment.**

1. When advertising for employees, include in all advertisements for employees the notation: "An Equal Opportunity Employer." Publish all such advertisements in newspapers or other publications having a large circulation among minority groups in areas from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, through the company EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to for company employment consideration.

In the event a valid bargaining agreement exists providing for exclusive hiring hall referrals, observe the provisions of that agreement to the extent that the system permits compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have

\* \* \* \*

**[§§ 108.07(b)–108.08(a)]**

Damages exceeds the amount payable to the Contractor or the surety, the excess is to be paid to the State by the Contractor or the surety.

**(c) Work Zone Liquidated Damages.** A sum of no less than \$1,000 per 24 hour period will be charged as work zone liquidated damages for failure to comply with Maintenance and Protection of Traffic requirements and drawings or other contract traffic control requirements. This deduction will not be as a penalty, but as work zone liquidated damages.

**108.08 DEFAULT AND TERMINATION OF CONTRACT**—In the following paragraphs, the word “Contractor” also means the surety, in case of default, and completion of the contract by the surety.

**(a) Delay, Neglect, or Default.** The Contractor may be declared in default for the following reasons:

- failure to begin work within the time specified in the Notice to Proceed;
- failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work according to the contract terms;

JA137

- unsatisfactory performance of the work;
- failure or refusal to remove material, or to repair or remove and replace any work, rejected as defective or unsatisfactory;
- discontinuing work without approval;
- failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- insolvency or bankruptcy;
- commission of any act of bankruptcy or insolvency;
- making assignment for the benefit of creditors;
- failure or refusal within 10 days after written notice by the Secretary, to make payment or show cause why payment should not be made, of any amounts due for material furnished, labor supplied or performed, for equipment rentals, or for utility services rendered, as covered by the Payment Bond;
- failure to protect, to repair, or to make good any damage or injury to property, as specified in Section 107.12; and
- not performing work in an acceptable manner for any cause.

The Secretary, upon written notice from the District Executive or upon other proof satisfactory to the Secretary, and after having given written notice to the Contractor and the surety of such delay, neglect, or default on the part of the Contractor, will have power and authority, without violating the contract to:

JA138

- declare the Contractor in default;
- take the completion of the work out of the hands of the Contractor;
- appropriate or use any or all material and equipment of the Contractor assembled for the project;
- enter into a contract or contracts for the completion of the work, according to the contract; or

\* \* \* \*

**APPENDIX C**  
**DESIGNATED SPECIAL PROVISION 7 (DSP7)**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**REQUIREMENTS**

NOTE: Use on Federal-aid projects only. Requires special provision for participation goal percentage. Disadvantaged Business Enterprise Participation of Federal Projects is accessed by logging on to the Department's ECMS website.

**I. DBE GOAL—**

To create a level playing field that Disadvantage Business Enterprises (DBEs) can compete fairly for U.S. Department of Transportation assisted contracts, PENNDOT has established, in connection with this contract, a goal as specified in the proposal of the original contract amount for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as DBEs at the time submission of DBE Participation of Federal Projects documents are due. This goal

remains in effect throughout the life of the contract. When the award of the contract is made with a DBE participation less than the contract goal, continue Good Faith Effort throughout the life of the contract to increase the DBE participation to meet the contract goal.

Include the following provisions in every subcontract, so that such provisions will be binding upon each subcontractor, regular dealer, manufacturer, consultant, or service agency.

**(a) Policy.** It is the policy of the U.S. Department of Transportation and PENNDOT that DBEs, as defined in 49 CFR Part 26, as amended, and this Designated Special Provision, be given the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to this contract. The term DBE as used throughout also applies to Women Business Enterprises and all requirements herein are applicable.

**(b) DBE Obligation.** Take all necessary and reasonable steps, according to 49 CFR Part 26, as amended, to ensure that DBEs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of PENNDOT and U.S. Department of Transportation assisted contracts.

**(c) Failure to Submit DBE Requirements.** Failure to comply with DBE requirements



includes, but is not limited to, failure to submit DBE Participation for Federal Projects within the time period specified, failure to exert a reasonable Good Faith Effort to meet the established goal, or failure to realize the approved DBE participation level set forth may result in the bidder being declared ineligible for the contract.

**(d) Failure to Comply with DBE Requirements.** All contractors and subcontractors are hereby advised that failure to carry out the requirements specified hereinabove constitutes a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the contract, being barred from bidding on Department contracts for up to 3 years, or any other remedy that PENNDOT deems appropriate.

## **II. DEFINITIONS—**

Consistent with the federal regulations, the following definitions apply for terms used in this specification:

**(a) Certified DBE** means a for-profit small business concern:

**1. Certified DBE.** A certified DBE means a entity certified by any of the following agencies: Allegheny County, Office of Minority, Women and Disadvantaged Business Enterprises; City of Philadelphia, Minority Business Enterprise Council; Pennsylvania Department of Transportation, Bureau of Equal Opportunity; Port Authority of Allegheny

JA141

County, Office of Equal Opportunity; or Southeastern Pennsylvania Authority, Small & Disadvantage Business Utilization Department.

2. That is a least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
  3. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (b)** Small business concern means, with respect to firms seeking to participate as DBE's in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in subsection 26.65(b).
- (c)** Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
1. Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
  - “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
  - “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh,

JA143

Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Act designation becomes effective.

**(d) Committee.** The Good Faith Effort Review Committee.

**(e) Director.** Director, Bureau of Equal Opportunity.

**(f) DBE Participation for Federal Projects.** PENNDOT Schedule of DBE Participation that is accessed by the Department's ECMS website.

**(g) Revised DBE Participation for Federal Projects.** DBE Participation for Federal Projects, Schedule of DBE Participation, which includes new DBE firm(s) as well as those not affected by the revision.

### **III. COUNTING DBE PARTICIPATION TOWARD THE DBE GOAL—**

Utilization of certified DBEs is in addition to all other equal opportunity requirements of the contract.

Count DBE participation toward meeting the DBE goal as follows:

**(a) DBE Firms.** If a firm is a certified DBE and registered as a business partner at the time submission of DBE Participation for Federal

## JA144

Projects documents are due, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal except as provided below.

When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward DBE goals.

The Department requires that all prime contractors including DBE prime contractors perform at least 50% of the work on a Department project. A DBE bidder on a prime contract will receive credit toward any DBE goal for all work performed with its own forces. The Department strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.

Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE.

Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

## JA145

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also 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.

### **(b) Materials and Supplies.**

- 1. DBE Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required

under the contract and of the general character described by the specifications.

2. **DBE Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

A regular dealer is 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.

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.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who

arrange or expedite transactions are not regular dealers.

**(c) Services.** With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

**(d) Trucking Firms.** The following factors are used in determining DBE credit:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.



4. The DBE may lease trucks from another DBE firm, including an owner-operator who is a certified DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes above, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Any services to be performed by a DBE agency are required to be readily identifiable to the project.

- (e) Specialty Items.** In cases where specialty items and DBE involvement overlap, follow the requirements specified in Section 108.01(c).

**IV. ACTIONS REQUIRED BY THE BIDDER AT THE BIDDING STAGE AND PRIOR TO AWARD—**

**Responsive.** When the goal established by the Department is met or exceeded, the apparent low bidder is required to electronically submit evidence of such solicitations and commitments, by accessing the Department's ECMS web page by selecting and submitting DBE Participation for Federal Projects by 3:00 P.M. prevailing local time within 7 calendar days after the bid opening. When the seventh calendar day after the bid opening falls on a day the PENNDOT offices are closed, submit the DBE Participation for Federal Projects by 3:00 P.M. prevailing local time on the next business day.

When the goal established by the Department is not met, demonstrate a Good Faith Effort to meet the DBE contract goal. Demonstrate that the efforts made were those that a bidder seeking to meet the goal established by the Department would make, given all relevant circumstances. Fax the Good Faith Effort documentation to (717) 705-1504 so that they are received by the time specified above. Also, indicate on the DBE Participation of Federal Projects screen that the Good Faith Efforts are being submitted.

When the above required documentation is not provided by the apparent low bidder within the time specified, the bid will be rejected and the apparent next lowest bidder will be notified by telephone to electronically submit evidence of such solicitations and commitments, by accessing the Department's ECMS web page by selecting DBE Participation for

## JA150

Federal Projects by 3:00 P.M. prevailing local time within 7 calendar days notification.

The demonstration of Good Faith Effort is accomplished by seeking out DBE participation in the project given all relevant circumstances. The following are the kinds of efforts that may be taken, but they are not deemed to be exclusive or exhaustive. The Director and/or Committee will consider other factors and types of efforts that may be relevant:

- Efforts made to solicit through all reasonable and available means (e.g., use of the DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must provide written notification, at least 15 calendar days prior to the bid opening, to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the

JA151

contract in a timely manner to assist them in responding to a solicitation.

- Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own work force does not relieve the bidder of the responsibility to make Good Faith Effort. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

JA152

- Failure to accept a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the DBE contract goal.
- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Efforts to effectively use the Department's DBE Supportive Services Contractors, services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

If the goal has not been met at the time of bid submission, the Bidder is expected to make a concerted effort between that time and the time that DBE Participation of Federal Projects documents are due.

**V. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD—**

JA153

If the apparent low bidder meets the DBE contract goal and all other contract requirements, the Department will approve the submission.

NOTE: If any DBE listed on the DBE Participation of Federal Projects is not prequalified, if required, at the time the Department desires to award the contract, the Department will issue a conditional approval of the DBE Participation of Federal Projects to the apparent low bidder.

If the apparent low bidder fails to meet the DBE contract goal, the Director and/or Committee will review the apparent low bidder's DBE data and Good Faith Effort to meet the DBE contract goal. If the Good Faith Effort is deemed satisfactory, the Director and/or Committee will recommend award.

If the Committee determines that the apparent low bidder has failed to make a Good Faith Effort, the bid will be rejected and the apparent low bidder will be notified of the rejection. The Department will then notify, by telephone, the apparent next lowest bidder on the project to electronically submit evidence of such solicitations and commitments, by accessing the Department's ECMS web page by selecting DBE Participation for Federal Projects by 3:00 P.M. prevailing local time within 7 calendar days after notification.

The bidder's proposal and all appropriate DBE data will be submitted to the Director and/or Committee for evaluation. If, during the review of the bidder's DBE data and Good Faith Effort information, the Director and/or Committee has questions, the bidder may be contacted for clarification.

**VI. ACTION TO BE TAKEN BY THE DEPARTMENT AFTER AWARD—**

To ensure that all obligations awarded to DBEs under this contract are met, the Department will review the Contractor's DBE involvement efforts during the performance of the contract.

**(a) Sanctions.** Upon completion of the work the Department will review the actual DBE participation and make a determination regarding the Contractor's compliance with the applicable requirements specified herein.

In the event the Contractor is found to be in noncompliance, the Prequalification Officer, acting under the direction of the Committee, may impose sanctions that the Committee deems appropriate.

Sanctions may be imposed for unwarranted shortfalls in the approved goal.

**VII. ACTION REQUIRED BY THE CONTRACTOR AFTER AWARD—**

**(a) DBE Participation Goal.** When DBE Participation of Federal Projects is approved with a DBE participation less than the contract goal, continue efforts toward meeting the contract goal.

**(b) Prequalification or Approval.** Firms listed on DBE Participation of Federal Projects are not to commence work until they are prequalified or approved, if required.

When submitting Form 4339R, Request for Subcontractor Approval, to the District for

JA155

approval of a DBE named on DBE Participation of Federal Projects, according to this Designated Special Provision, attach the following when electing not to attach a copy of the DBE subcontract or agreement:

- A copy of the executed signature page,
- A copy of the description of the scope of work, and
- A copy of the unit prices as they appear in the DBE's subcontract or agreement.

**(c) Substitution.** The Contractor shall immediately notify the District Executive and the Bureau of Equal Opportunity, in writing, before substituting a DBE or making any change to the DBE participation listed on the approved DBE Participation of Federal Projects. The notification from the Contractor must include documentation supporting the substitution. Requests to substitute DBEs will be scrutinized closely. Contractors should demonstrate that a DBE is unwilling or unable to successfully perform and that every effort has been made to allow the DBE to perform.

1. If the arrangement to be replaced is agreeable between the Contractor and the DBE, the following procedures are required:
  - The Contractor must make a Good Faith Effort to recontract the work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall.



JA156

- Contact available qualified DBEs and DBE referral sources in an effort to recontract the work or subcontract other work items with DBEs, if a DBE contract shortfall exists.
- Provide the District Executive with a Revised DBE Participation of Federal Projects and additional Good Faith Effort information, when the approved DBE Participation of Federal Projects amount is not met, within 7 calendar days after written notification to the District Executive. If the DBE performed on the project, the Revised DBE Participation of Federal Projects should include the total amount paid to the DBE prior to the DBE substitution.

The Contractor's Good Faith Effort information will be forwarded to the Director and/or Committee for evaluation. If, during the review of the Contractor's Good Faith Effort information, the Director and/or Committee has questions, the Contractor may be contacted for clarification.

During the 7 calendar day period specified above and the additional period required for Department processing of the Revised DBE Participation of Federal Projects, the Contractor may continue the substituted work with their own forces to maintain the scheduled progress of the work, with the written approval of the District Executive.

JA157

If the projected DBE participation on an approved DBE Participation of Federal Projects exceeds the goal amount for the contract without counting the amount committed to a substituted DBE, then no contract shortfall exists and the Contractor is not required to replace the DBE. A Revised DBE Participation of Federal Projects must be submitted to reflect the decreased dollar amount.

2. If the arrangement to be replaced is not agreeable between the Contractor and the DBE, the following procedures are required:
  - The Contractor or the affected DBE must immediately request a mediation meeting with the Department by contacting the District Office.
  - The Contractor or any other subcontractor may not perform the DBE work until the completion of the mediation meeting.
  - Upon completion of the mediation meeting, if a Revised DBE Participation of Federal Projects is required, the Contractor must submit a Revised DBE Participation of Federal Projects according to VII.(c)1. above.

Failure to make Good Faith Effort as determined by the Committee, or failure to comply with the provisions of this Section for substitution of a DBE, will constitute a breach of contract and, after notification to the U.S. Department of Transportation,

JA158

may result in termination of the contract, being barred from bidding on Department contracts for up to 3 years, or any other remedy that PENNDOT deems appropriate.

**(d) Additional Work.** When additional work is required for any classification of work which is identified on the DBE Participation of Federal Projects to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that he/she cannot perform the work due to his/her own limitations. If the DBE cannot perform this additional work, the prime may take necessary measures to complete the work.

**(e) Progress Payments.** Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DBE subcontractors, regular dealers, manufacturers, consultants, or service agencies.

**(f) Records and Reports.** Keep such project records as are necessary to determine compliance with Disadvantaged Business Enterprise Utilization obligations. Design these records to indicate:

- The number of disadvantaged and nondisadvantaged subcontractors, regular dealers, manufacturers, consultants, and service agencies, and the type of work or services performed on or materials incorporated in this project.

JA159

- The progress and efforts made in seeking out DBE contractor organizations and individual DBEs for work on this project to maintain the level of DBE participation outlined on DBE Participation of Federal Projects.
- Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs for this project. Submit reports, as required by PENNDOT, but at least on a monthly basis, on those contracts and other business executed with DBEs, with respect to the records referred to above, in such form and manner as prescribed by PENNDOT. Submit monthly reports, Form EO-402 (Monthly DBE/MBE/WBE Status Report), to the Inspector-in-Charge within 5 working days following the end of the month and have them contain:
  - The number of contracts awarded to DBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.
  - The amount paid to each DBE during the month and the amount paid to date.
  - Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's work. In the event

JA160

the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of 3 years following acceptance of final payment. Make these records available for inspection by PENNDOT and FHWA.

If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material to the Inspector-in-Charge on a monthly basis.

\* \* \* \*

**APPENDIX C  
DESIGNATED SPECIAL PROVISION 10  
(DSP10)**

**NONDISCRIMINATION/SEXUAL  
HARASSMENT CLAUSE**

During the term of the Contract, the Contractor agrees as follows:

- (a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this State who is qualified and available to perform the work to which the employment relates.

JA161

- (b)** Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- (c)** The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- (d)** The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (e)** The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services', Bureau of Contract Administration and Business Development (DGS, BCABD) for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting

JA162

forms supplied by the contracting officer or the BCABD.

- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- (g) The State may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

\* \* \* \*

**APPENDIX C  
DESIGNATED SPECIAL PROVISION 11  
(DSP11)**

**CONTRACTOR INTEGRITY PROVISIONS**

- (a) For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.
  1. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the State.

2. **Consent** means written permission signed by a duly authorized officer or employee of the State, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the State shall be deemed to have consented by virtue of execution of this agreement.
  3. **Contractor** means the individual or entity that has entered into the Contract with the State, including directors, officers, partners, managers, key employees and owners of more than a 5% interest.
  4. **Financial interest** means:
    - 4.a Ownership of more than a 5% interest in any business; or
    - 4.b Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  5. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- (b) The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of State or federal laws, regulations, or other requirements that govern contracting with the State.



JA164

- (c) The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- (d) The Contractor shall not, in connection with this or any other agreement with the State, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the State.
- (e) The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the State.
- (f) Except with the consent of the State, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- (g) Except with the consent of the State, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- (h) The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the State in writing.

JA165

- (i) The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- (j) The Contractor, upon the inquiry or request of the Inspector General of the State or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the State's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or concern the Contract. Such information shall be retained by the Contractor for a period of 3 years beyond the termination of the Contract unless otherwise provided by law.
- (k) For violation of any of the above provisions, the State may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the State. These rights and remedies are cumulative, and the use or

JA166

nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the State may have under law, statute, regulation, or otherwise.

\* \* \* \*

JA167

**DEFENDANTS EXHIBIT 203**

**Pennsylvania Department of Transportation  
ECMS**

**Contract**

**Project: 64844**  
**Standard / Federal Oversight**  
**Post-Construction**  
**Short Description:** 30<sup>th</sup> STREET STATION  
BRIDGES  
**County:** Philadelphia  
**District:** 06  
**SR:** 3010  
**Group ID:** ---  
**Org Code:** 0650  
**Section:** PRR  
**Municipality:** PHILADELPHIA

**Contract: 64844**

**Buckley & Company, Inc. 23-0442520**  
**Philadelphia**  
**215-334-7500 (phone)**  
**215-465-9211 (fax)**  
**wfettters@buckleyco.com**  
Prime Business Partner

**Cornell & Company, Inc. 21-0681013**  
Joint Venture Partner(s)

**Philadelphia County**  
**SR 3010, Section PRR**  
**30th STREET STATION BRIDGES**  
Location

JA168

**X065-306-L1CE**

Federal Project

**P-60801207PRR-0650-362-1**

**P-60801207PRR-0650-362-2**

WBS Element

**September 20, 2010**

Bid Opening

---

Addendum issued subsequent to the printed proposal have been incorporated into the text of this contract and the modified portions are annotated in the contract – e.g., A1, A2 etc.

Incorporated Addenda are As follows:

**Addendum No. 1**, A1, dated 09/10/2010

**Addendum No. 2**, A2, dated 09/15/2010

**Addendum No. 3**, A3, dated 09/16/2010

**Addendum No. 4**, A4, dated 09/23/2010

---

THIS AGREEMENT, Made this *17* day of *December* A.D. *2010*, between the Commonwealth of Pennsylvania by the Secretary of Transportation, hereinafter called the Commonwealth and *Buckley & Company, Inc. and Cornell & Company, Inc.* his, hers, its or theirs executors, administrators, successors, or assigns, hereinafter called the Contractor.

<b>WITNESSETH:</b>
--------------------

1. That the Contractor, for and in consideration of the payment or payments herein specified and agreed to by the Commonwealth, hereby covenants and agrees to furnish and deliver all the materials and to do and perform all the work and labor in the improvement of a certain section of highway at the

JA169

unit prices bid by said Contractor for the respective estimated quantities aggregating approximately the sum of ***\$50,876,814.49*** and such other items as are mentioned in the Contractor's original proposal, which proposal and prices named, together with **Publication 408/2007-5 - Specifications** (as specified in the proposal), are made a part of this contract and accepted as such, also the drawings of the project, prepared and/or approved by the Department of Transportation, which drawings are also agreed by each party as being a part hereof.

2. The location and description being situated as follows:

The description and location of the project is as follows: Rehabilitation of bridges carrying Arch, 30th, Little Market, Market and Chestnut Streets over Amtrak including roadway reconstruction, steel repairs and other miscellaneous construction, all as indicated on the approved drawings for STATE ROUTE 3010, SECTION PRR, in PHILADELPHIA COUNTY, CITY OF PHILADELPHIA on SR 3010 (Market Street) from approximately 30th Street at segments 0080/0081 offset 0838 to approximately Schuylkill Avenue West at segments 0090/0091 offset 0158 and on SR 3030 (Arch Street) from approximately Schuylkill Avenue West at segment 0013 offset 0668 to approximately 30th Street at segment 0013 offset 0000 and on SR 3026 (30th Street) from approximately Arch Street at segment 0010 offset 0000 to approximately Market Street at segment 0010 offset 0464 and on SR 0003 (Chestnut Street) from approximately 30th Street at segment 0080 offset 2115 to approximately Schuylkill Avenue West at segment 0090 offset 2347.

JA170

3. The Contractor further covenants and agrees that all work shall be performed in the best and most workmanlike manner. He also agrees that all materials furnished and labor performed shall be in strict and complete conformity, in every respect, with all parts of this contract and shall be subject to the inspection and acceptance of authorized representatives of the Department of Transportation. In the event that any portion of work (including materials supplied pursuant thereto) performed by the Contractor is rejected by the Department's authorized representatives as defective, unsuitable, or unacceptable, the Contractor agrees to remove and replace all such rejected portions of work in conformance with this contract and to the satisfaction of and at no expense to the Department. The Contractor further covenants that prompt payment will be made in full for all labor and materials used in the performance of work on this project.

4. The Contractor covenants and agrees that all work (including, but not limited to, all labor performed and all materials supplied) on this project shall be performed and completed to the satisfaction of the Chief Highway Engineer of the Department of Transportation on or before the expiration date of **12/21/2012**. If, for any reason, except as provided in the contract, the Contractor fails to complete all work on this project to the satisfaction of the Chief Highway Engineer within the aforementioned time allowed, the Department shall deduct from any sums due or which may become due the Contractor the amount indicated in the Specifications for each calendar day used in excess of the aforementioned number of days allowed, or, in case a completion date

JA171

is fixed, for each calendar day elapsing between that completion date and the actual date of completion. If no sums are due the Contractor, the Contractor agrees to remit to the Department the aforementioned sum for each day used in excess of the time allowed for completion of the contract. The amounts deducted or remitted under this paragraph are liquidated damages and not penalties.

5. The Contractor further covenants and warrants that the Contractor has had sufficient time to examine and has examined the site of the contract work to ascertain for itself those conditions such as may be determined by inspection, investigation, and inquiry, including the location, accessibility, and general character of the site.

6. The Contractor further covenants that he has not relied upon any information provided by the Department, including information contained in the Special Provisions, concerning the time within which publicly or privately-owned facilities below, at or above the ground are expected to be installed, removed, repaired, replaced, and/or relocated; that he has not relied upon any information provided by the Department concerning the location or existence of all such facilities that might be below, at or above the ground: that he has contacted or will contact all owner of such facilities to verify the location and position of all such facilities and the time within which work on such facilities will be performed; and that he is aware delays might be incurred in the performance of work on this project as a result of work being performed or that will be performed on such facilities by their owners. It is understood further that, notwithstanding assistance of any kind and extent



JA172

that might be provided by the Department, the Contractor, in every instance, bears the ultimate responsibility of resolving all disputes of every kind with the owners of such facilities. The Contractor agrees to save and hold the Department harmless from liability for all delays, interference and interruptions that might arise during the performance of work on this project as a result of work being or that will be performed on such publicly or privately-owned facilities.

7. The Contractor further covenants and warrants that he has read, is completely familiar with and understands thoroughly the General Conditions: the Specifications of the Commonwealth of Pennsylvania, Department of Transportation, currently in effect; the Supplements, Special Provisions and/or Conditions; and any other addenda or requirements, contained in the governing the performance of work under this contract, whether attached hereto and made a part hereof, or incorporated herein by reference.

8. It is distinctly understood and agreed that the Contractor shall not do any work (including, but not limited to, the supply of labor and/or materials) not covered by the specifications and the contract, unless such work has been authorized in writing as provided in the Specifications. In no event shall the Contractor incur any liability by reason of refusing to obey any verbal directions or instructions that he might be given to perform additional or extra work. Likewise, the Department will not be liable for any work performed as additional or extra work, unless such work is required of the Contractor in writing as provided in the Specifications. All such work which

JA173

might have been performed by the Contractor without such written order first being given shall be at the Contractor's risk, cost, and expense, and the Contractor hereby covenants and agrees that, without such written order, he shall make no claim for compensation for such unauthorized work.

9. It is further distinctly agreed that the Contractor shall not assign this contract, nor any part thereof, nor any right to any sums to be paid him hereunder, nor shall any part of the work to be done or material furnished under this contract be sublet, without the consent in writing of the Secretary of Transportation.

10. It is also agreed and understood that the acceptance of the final payment by the Contractor shall be considered as a release in full of all claims against the Commonwealth of Pennsylvania arising out of, or by reason of, the work done and materials furnished under this contract.

11. The Contractor shall accept, insofar as the work covered by the contract is concerned, the provisions of the **Workmens Compensation Act of 1915**, and any supplements or amendments thereto, and shall insure his liability thereunder or file with the Department of Transportation a certificate of exemption from insurance from the Bureau of Workers' Compensation of the Department of Labor and Industry.

12. In order to secure proper and complete compliance with the terms and provisions of this contract, the Contractor shall provide a bond in a sum equal to one hundred percent (100%) of the total contract price of the work to be done. The Contractor

JA174

shall also secure an additional bond in the same amount for the prompt payment in full for all labor and materials supplied in performing work on this project. Both bonds are attached to and made a part of this contract.

13. Conditioned upon compliance by the Contractor with all pertinent conditions and procedures contained in the contract, claims for damages or extra costs in excess of three hundred dollars (\$300.00) arising out of disputes pertaining to this contract shall be referred to the Board of Claims pursuant to Section 1724(a) of the Commonwealth Procurement Code, 62 Pa. C.S. § 1724(a).

14. If for any reason the Commonwealth Procurement Code is inoperative or the Board of Claims cannot function, such claims shall be referred and decided by a panel consisting of the Secretary of Transportation and the General Counsel or their respective deputy or deputies.

15. The Contractor hereby further agrees to receive and the Commonwealth agrees to pay the prices set forth in the linked bid items as full compensation for furnishing all the materials and labor which may be required in the prosecution and completion of all work to be done under this contract, and in all respects to complete the contract to the satisfaction of the Secretary of Transportation.

16. The Contractor certified in his, her, its or their bid submission (covering federal aid projects only) to the disclosure of lobbying activities and, if applicable, completed the disclosure form and by said certification understands that **Public Law 101-121, Section 319**, prohibits federal funds from being

JA175

expended by recipient or any lower tier sub-recipients of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan, or the entering into of any cooperative agreement.

17. If federal funds are involved, the Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 - DATED OCTOBER 16, 2001 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Pennsylvania Department of Transportation deems appropriate. Contractor must include this assurance in each subcontract that it signs with a subcontractor.

---

**Fiscal Information**

---

**Recorded Number:** 64844

**Certified Fund Available Under Activity**

**Program:** 362

**Symbol:** 010-008-26185-10/11/12-2

**Amount:** \$50,876,814.49

**Additional Information**

**Contract Status**

**Current Contract Status:** Executed

JA176

<b>Contract Documents</b> <b>Contract Report</b> <b>Contract Attachment</b>
---

<b>Workflow</b>			
<b>Status</b>	<b>Name</b>	<b>Disposition</b>	<b>Date/Time</b>
Draft	Christina M Troutman/ PennDOT	Award	11/17/2010 03:56:29 PM
Contractor Review	Robert R Buckley/ PennDOT BP-001227 – President	Sign	11/29/2010 09:13:00 AM
Contractor Review	Kevin Brockway/ PennDOT BP-001178 – CFO	Sign	12/02/2010 10:05:47 AM
BOD CMD Review	Christina M Troutman/ PennDOT	Accept	12/08/2010 03:06:35 PM
BOD Director Review	David J Azzato/ PennDOT	Sign	12/08/2010 03:58:12 PM
Chief Counsel Preliminary Review	Jeffrey M Spotts/ PennDOT	Accept	12/09/2010 09:15:48 AM

JA177

Chief Counsel Final review	Michael H Kline/ PennDOT	Accept	12/09/2010 05:00:51 PM
Comptroller Review	Richard C Lepley II/ PennDOT	Accept	12/17/2010 01:49:30 PM
CMD Execute	Christina M Troutman/ PennDOT	Submit	12/17/2010 02:45:07 PM

<b>Audit Information</b>			
<b>Created By</b>	<b>Created On</b>	<b>Modified By</b>	<b>Modified On</b>
Christina M Troutman/ PennDOT	11/17/2010 03:56:29 PM	Christina M Troutman/ PennDOT	12/17/2010 02:45:07 PM

JA178

**GOVERNMENT EXHIBIT 1**

---

**From:** Tom Kousisis  
<Tkousisis@alphapainting.net>  
**Sent:** Friday, July 15, 2011 9:37 AM  
**To:** Sue Robst; stamatek@comcast.net;  
JBowley  
**Cc:** Nick Frangos; Emanouel Frangos  
**Subject:** RE: invoices

Josh we still need to run invoices thru Markias. Just use Girard Point PO 9005 with either NJ for Jersey, NY for Syracuse or any other NY Project.

Tom Kousisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell  
TKousisis@alphapainting.net

---

**From:** Sue Robst  
**Sent:** Friday, July 15, 2011 9:31 AM  
**To:** Tom Kousisis;  
stamatek@comcast.net  
**Subject:** FW: invoices  
**Importance:** High

Tom,

FYI.

JA179

---

**From:** JBowley [mailto:  
jbowley@libertymaintenanceinc.co  
m]  
**Sent:** Friday, July 15, 2011 8:47 AM  
**To:** Sue Robst  
**Cc:** 'Pete Pantelis'  
**Subject:** RE: invoices  
**Importance** High  
:

Sue,

See attached the Invoices you have requested approval for.

Please note that the NJ Project is no longer purchasing from Markias you need to get revised invoices from Diamond Tool before processing their invoices.

Pete, Please let Diamond Tool know for future invoices

Thank you,  
Joshua Bowley



JA180

**GOVERNMENT EXHIBIT 2**

---

**From:** Emanouel Frangos LMI  
<ejfrangos@libertymaintenanceinc.com>  
**Sent:** Tuesday, April 24, 2012 1:30 PM  
**To:** 'Tom Koussisis'  
**Cc:** nfrangos@libertymaintenanceinc.com  
**Subject:** RE: Mass Invoices  
:

Yes.

---

**From:** Tom Koussisis  
[mailto:TKoussisis@alphapainting.net]  
**Sent:** Tuesday, April 24, 2012 12:35 PM  
**To:** ejfrangos@libertymaintenanceinc.com  
**Cc:** nfrangos@libertymaintenanceinc.com  
**Subject:** Mass Invoices

Manny can we run as much as possible thru Markias and our 30<sup>th</sup> street project PO 9010MA. We got invoice from Austintown for \$27,623. Like in the future to run that thru Markias.

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell  
TKoussisis@alphapainting.net

JA181

**GOVERNMENT EXHIBIT 3**

---

**From:** Tom Kousisis  
<Tkousisis@alphapainting.net>  
**Sent:** Thursday, September 20, 2012 9:10 AM  
**To:** JBowley  
<jbowley@libertymaintenanceinc.com>  
(jbowley@libertymaintenanceinc.com);  
Michelle Lasko;  
tfrangos@libertymaintenanceinc.com  
**Subject:** FW: Markias  
**Attachments:** \_AVG certification\_.txt

See Below

---

**From:** Tom Kousisis  
**Sent:** Thursday, September 20, 2012 8:34 AM  
**To:** Sue Robst;  
ejfrangos@libertymaintenanceinc.com;  
'Gerard Keish';  
ppantelis@libertymaintenanceinc.com;  
nfrangos@libertymaintenanceinc.com  
**Subject:** Markias

We have meet our minority goal in PA with Markias, please tell vendors not need to bill Markias just bill us directly, the only one that should still go to Markias is any paint on 30<sup>th</sup> street or Girard Point.

Any future Louisiana purchases should go to Liberty office and Mass or PA purchases go to Alpha office

JA182

Tom Koussis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell

JA183

**GOVERNMENT EXHIBIT 6**

---

**From:** Tom Koussisis  
<Tkoussisis@alphapainting.net>  
**Sent:** Friday, November 9, 2012 8:01 AM  
**To:** 'Gerard Keish'; JBowley  
<jbowley@libertymaintenanceinc.com>  
(jbowley@libertymaintenanceinc.com);  
Emanouel Frangos LMI;  
ppantelis@libertymaintenanceinc.com;  
nfrangos@libertymaintenanceinc.com  
**Subject:** Markias

Gentlemen as previously stated we have meet the mbe goal in Philadelphia and there is no need to have materials billed through Markias. Please ensure you tell your vendors to not bill Markias. We are still getting bills from Markias, i.e. Blast One for Boston. Check with Manny about having Decision Distribution billed instead of Markias.

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell

JA184

**GOVERNMENT EXHIBIT 8**

---

**From:** Jennifer Tarantino  
<jenn@centralsteelsupply.com>  
**Sent:** Wednesday, August 1, 2012 4:46 PM  
**To:** Tom Koussisis  
**Subject:** RE: Markias Credit Info

Hi Tom,

I am going to make this order tax exempt...when you have a chance can you have them email the tax certificate over to me ☺

---

**From:** Tom Koussisis  
[mailto:TKoussisis@alphapainting.net]  
**Sent:** Wednesday, August 01, 2012 2:43 PM  
**To:** Jennifer Tarantino  
**Subject:** Markias Credit Info

Jenn,

Please find attached Credit Info on Markias Inc. and our Job Information Sheet. As mentioned previously Liberty/Alpha JV will be invoiced by Markias upon receipt of your invoice to them, we will issue Joint Check to Markias Inc. /Central Steel Supply Co. they will countersign and forward to you. Call me if you have any questions.

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax

JA185

646-235-6708 Cell  
TKousisis@alphapainting.net

---

**From:** Jennifer Tarantino  
[mailto:jenn@centralsteelsupply.com]  
**Sent:** Wednesday, August 01, 2012 1:01  
PM  
**To:** Tom Kousisis  
**Subject:**

Hi Tom,

Here is the information that needs to be filled out.  
You can email or fax this back to me. Thank you! ☺

Thanks

Jenn Tarantino  
Central Steel Supply  
85 Ames Street  
Marlborough Ma 01752  
Email: jenn@centralsteelsupply.com  
Direct Line: 508 948 4605  
Tel: 800-345-3232 ext 605  
Cell: 978 259 8293

JA186

**GOVERNMENT EXHIBIT 11**

---

**From:** Tom Koussisis  
**Sent:** Thursday, June 5, 2008 1:10 AM  
**To:** Emanouel Frangos; Nick Frangos;  
Betsy Aikaterinidis  
**Subject:** RE: Markias MBE for Ben Franklin

Yes lets run paint, grit and tarps till we get to min  
quota

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell  
TKoussisis@alphapainting.net

---

**From:** Emanouel Frangos  
[mailto:ejfrangos@libertymaintenancein  
c.com]  
**Sent:** Monday, June 02, 2008 12:31 PM  
**To:** Tom Koussisis; 'Nick Frangos'; Betsy  
Aikaterinidis  
**Subject:** RE: Markias MBE for Ben Franklin  
:

Are we going to run paint thru this outfit? If so we I  
can get the info over to Richard.

JA187

---

Emanouel Frangos  
PRESIDENT



Press Control + Click on this link to visit our website:  
<http://www.libertymaintenanceinc.com>

**Corporate Office**

24 Madison Street  
P.O. Box 631  
Campbell, OH 44405  
Tel.: (330) 755-7711  
Fax: (330) 755-1847

**New York Office**

79 Alexander Avenue  
3rd Floor, Suite 34A  
Bronx, NY 10454  
Tel.: (718) 292-3552  
Fax: (718) 292-6381

Mobile: (917) 709-0742

Email: [ejfrangos@libertymaintenanceinc.com](mailto:ejfrangos@libertymaintenanceinc.com)

---

**From:** Tom Koussisis  
[mailto:TKoussisis@alphapainting.net]  
**Sent:** Sunday, June 01, 2008 9:53 PM  
**To:** Emanouel Frangos; Nick Frangos;  
Betsy Aikaterinidis  
**Subject:** Markias MBE for Ben Franklin



JA188

We need to start running purchases through Markias to meet MBE goal. I believe her markup was 3%.  
(609-410-5749)

Tom Kousisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
tkousisis@alphapainting.net

JA189

**GOVERNMENT EXHIBIT 107**

---

**From:** Tom Koussisis  
**Sent:** Tuesday, July 28, 2009 12:11 PM  
**To:** William Fetters;  
dwarner@buckleyco.com  
**Cc:** Emanouel Frangos; Nick Frangos;  
Betsy Aikaterinidis  
**Subject:** No Subject-161.EML

Gentlemen, below is the information for our DBE who will be supplying paint, grit, tarps, safety equipment, and other construction materials. We would like to list Markias for \$4,689,000 of supplies. If Buckley has exceeded their portion of the DBE then please decrease Markias by the corresponding amount based on 60% credit for suppliers. Call me with any questions.

Markias Inc.  
14 Twin Hill Drive  
Willingboro, New Jersey 08046  
609-877-0600 fax 609-871-7077  
cell-609-410-5749  
e-mail; markias@verizon.net  
Primary Contract Person: Joyce E Abrams  
PADOT Business Partner ID Number (ECMS)  
001001

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax

JA190

646-235-6708 Cell  
tkousisis@alphapainting.net

JA191

**GOVERNMENT EXHIBIT 108**

---

**From:** Tom Koussisis  
[TKoussisis@alphapainting.net]  
**Sent:** Monday, October 04, 2010 11:19 AM  
**To:** William Fetters  
**Subject:** RE: 30th St

We will commit \$1,700,000 (at 60% this gives us \$1,020,000 DBE)

Markias' company information:

Markias Inc.

14 Twin Hill Drive

Willingboro, New Jersey 08046

609-877-0600 fax 609-871-7077

cell-609-410-5749

e-mail; markias19@yahoo.com

Primary Contract Person: Joyce E Abrams

PADOT Business Partner ID Number (ECMS)

001001 or Login Admin 001001

Tom Koussisis

Alpha Painting & Construction Co. Inc.

6800 Quad Ave.

Baltimore, MD 21237

410-288-6800

410-288-6805 Fax

646-235-6708 Cell

TKoussisis@alphapainting.net

---

**From:** William Fetters  
[mailto:wfetters@buckleyco.com]  
**Sent:** Thursday, September 30, 2010  
2:16 PM

JA192

**To:** Tom Koussis  
**Subject:** 30th St

Tom

Congratulations, any possibility of providing 10% DBE participation, we'd like to identify our DBE players tomorrow.

Thanks

Bill F

JA193

**GOVERNMENT EXHIBIT 504**

\* \* \* \*

LIBERTY ALPHA JV, LLC

June 23, 2008

Markias Inc.  
14 Twin Hill Drive  
Willingboro, NJ 08046

Attention: Joyce Abrams

Reference: DRPA Contract BF-22-2007

Dear Joyce:

This letter constitutes a Purchase Order Commitment for the above referenced project. It is our intent to purchase paints, thinners, tarps, and blast grit for approximately the total dollar value of \$700,000.00. Markias will charge Liberty-Alpha cost plus 3.5% mark-up for these purchases.

The Joint Venture will negotiate prices and terms with the manufacturer and generate purchase orders that will be billed to Markias. The Joint Venture will generate a Joint Check to Markias and the Manufacturer for the base invoice and a separate check to Markias for the mark-up.

Markias will be listed as WBE Supplier for the project. We look forward to a successful project and relationship. Should you have any questions please contact me at 646-235-6708.

Sincerely,  
Liberty-Alpha JV, LLC  
/s Tom Kousisis  
Tom Kousisis

JA194

Cc: Job File  
E. Frangos -LM  
B. Aikaterinidis-LM

24 Madison St.  
Campbell, OH  
44405

Phone (330) 755-7711  
Fax (330) 755-1847

JA195

**GOVERNMENT EXHIBIT 505**

PA DOT Girard Point Bridge Project

Tuesday, July 28, 2009 1:43 PM

From: "Tom Kousisis" <TKousisis@alphapainting.net

To: Markias@verizon.net

Joyce as we discussed we are going to submit Markias as a DBE for the PADOT ECMS Project No. 86046 which bid on 7/23/09. Markias will be listed as a supplier of paints, tarps, grit, safety equipment and other miscellaneous construction materials. It looks like you will be listed for \$4,689,000. As we discussed your mark up will be 2.25%. For us to list Markias we need the following information-

Company Name

Address

Telephone No.

Fax No.

Email

Primary Contact Person

PADOT Business Partner ID Number

Please forward that information to my attention ASAP. If you have any question please give me a call.

Tom Kousisis

Alpha Painting & Construction Co., Inc.

6800 Quad Ave.

Baltimore, MD 21237

410-288-6800

410-288-6805 Fax

tkousisis@alphapainting.net



JA196

**GOVERNMENT EXHIBIT 609**

\* \* \* \*

***SR0095-VAG, 1-95 Girard Point Bridge  
Project Control Meeting #39  
June 1 2012***

***MINUTES***

**DBE Subcontractor Review**

- Original Contract Amount: 70,342,922.00
- Goal Amounts: DBE \$4,220,575.32 (6%)
- Commitment Amounts: DBE \$4,339,329.20 (6.17%)
- Status (through **May 29 2012**)

<b>Name</b>	<b>Commitment Amount</b>	<b>Payments to Date in ECMS</b>	<b>% of Commitment</b>
Markias Inc.	\$2,813,400.00	\$3,267,584.03*	116.14%
Rampart Hydro Services L.P.	\$849,750.00	\$821,576.07	96.7%
Strongstown B&K Enterprises	\$676,179.20	\$569,115.31	84.2%
American Sewer Service, Inc.	\$0.00	\$35,175.00	>100%
<b>COMMITMENT TOTALS</b>	<b>\$4,339,329.20</b>	<b>\$4,693,450.41</b>	<b>6.67%</b>

\*Material payments credited at 60% of amount paid

- **Tom Kousisis stated that some of the payments reported above for Markias, Inc. may actually be for their 30<sup>th</sup> Street Penn DOT project. This will be corrected by the JV.**
- **Dave Warner stated that he will prepare a shortfall letter for Rampart Hydro Services, L.P. The JV's overall DBE commitment will be met, but Rampart will have a shortfall. There was discussion and it was agreed that a letter would be required for the individual shortfall.**

#### **Trainees**

- December 8, 2010 Letter submitted to JV on Trainee hours shortfalls.
- IF necessary, another letter will be submitted near the end of the project.
- All submittals go through Charlotte Dunlap on their way to Harrisburg.

#### **Maintenance and Protection of Traffic/Incident Management**

- Current Long Term Traffic Setup
  - **Dave Warner stated that the traffic pattern is till set for Stage 4**
- Night Time Lane Closures
  - **Dave Warner stated that Buckley has made a request to the Penn DOT Press Secretary's office for nighttime lane restrictions for June 3, 2012 through June 5, 2012, and that day work would**

JA198

**resume on Wednesday June 6, 2012 through Friday June 8, 2012.**

- **Dave Warner also state that this would be the last request for nighttime lane restrictions until the traffic pattern is switched.**
- Incident Management Discussion
  - **Dave Warner stated that an impact attenuator was hit by a motorist but no police report was available.**

\* \* \* \*

JA199

**GOVERNMENT EXHIBIT 613**

\* \* \* \*

*August 30, 2012  
SR0095, Section VAG  
Progress Meeting #43*

included in the work authorized under Work Authorization #15; therefore it is further discussed under Old Business, Item 32-4.

**ACTION ITEM:** This item to be closed and all future discussions recorded under Old Business, Item 32-4.

**DBE Subcontractor Review**

Mr. Martincic stated that ECMS shows the following payments through August 30, 2012

Original Contract Amount	\$70,342,922.00	
DBE Goal Amount	\$4,220,575.32	6.0 %
DBE Commitment Amount	\$4,339,329.20	6.17 %
DBE Amount OBTAINED to Date	\$4,700,682.32	6.68 %

Name	Commitment Amount	Payments to Date in ECMS	% of Commitment
		\$3,261,106.20 *	
Markias Inc.	\$2,813,400.00	(\$5,435,177.00 at 60%)	115.13%
Rampart Hydro Services L.P.***	\$849,750.00	\$821,576.07	96.7%
Strongstown B&K Enterprises	\$676,179.20	\$582,825.05	86.19%

JA200

American Sewer Service, Inc.	\$0.00	\$35,175.00	>100%
<b>COMMITMENT TOTALS</b>	<b>\$4,339,329.20</b>	<b>\$4,700,682.32</b>	<b>108.33%</b>

\*Material payments credited at 60% of amount paid.

\*\*\*Shortfall letter required for Rampart

Payments made this Period:

- -\$10,796.38 from amount credited to Markias due to incorrect crediting from another project.
- \$13,709.74 to Strongstown B&K. Also, B&K has been back in to reconfigure the barrier so this amount will go up according to Mr. Warner.

**Trainees**

- December 8, 2010 Letter submitted regarding IV shortfall on trainee hours.
- If necessary, another letter will be submitted near the end of the project.
- 5 painter trainees completed the program. Carpenter, laborer and finisher did not complete the trainee program.

At this meeting Mr. Windisch stated that a letter would be needed from Harvey Bear accepting the hours credited as being adequate for the program.

**Maintenance and Protection of Traffic/Incident Management**

- SB I-95: Traffic is currently in the Stage 3 pattern. The switch to the Stage 2 pattern will occur this weekend (Sep. 1&2)
- NB I-95: Traffic is currently in the Stage 4 pattern. Traffic will stay in this pattern until near the end of the project.

JA201

- Incident Management Discussion  
Nothing reported.
- Mr. Warner stated that the debris shielding would come down as work progressed across the road and was no longer required.

\* \* \* \*

JA202

**GOVERNMENT EXHIBIT 618**

\* \* \* \*

*May 1, 2013  
SR0095, Section VAG  
Progress Meeting #48*

**Estimates**

- As of April 29, 2013, payment has been made through Estimate 068.

**Items for Work Orders/Authorizations**

- Work Orders approved to date is \$2,182,756.67
- PENDING Work Order for \$976,648.00

**DBE Subcontractor Review**

Mr. Bjork stated that ECMS shows the following payments through May 1, 2013.

Original Contract Amount	\$70,342,922.00	
DBE Goal Amount	\$4,220,575.32	6.0 %
DBE Commitment Amount	\$4,339,329.20	6.17 %
DBE Amount OBTAINED to Date	\$4,700,682.32	6.68 %

Name	Commitment Amount	Payments to Date in ECMS	% of Commitment
Markias Inc.**	\$2,813,400.00	\$3,261,106.20* (\$5,435,177.00 at 60%)	115.13%
Rampart Hydro Services L.P.***	\$849,750.00	\$821,576.07	96.7%

JA203

Strongstown B&K Enterprises	\$676,179.20	\$582,825.05	86.19%
American Sewer Service, Inc.	\$0.00	\$35,175.00	>100%
<b>COMMIT- MENT TOTALS</b>	<b>\$4,339,329.20</b>	<b>\$4,700,682.32</b>	<b>108.33%</b>

\*Material payments credited at 60% of amount paid.

\*\*Determine if all payments listed for Markias are actually for this project and some are not for 30<sup>th</sup> Street Station.

\*\*\*Shortfall letter required for Rampart

Payments made this Period: NONE

\*\*Mr. Kousisis stated that all payments made to Markias were verified to be for this project.

**Trainees**

- December 8, 2010 Letter submitted regarding JV shortfall on trainee hours.
- If necessary, another letter will be submitted near the end of the project.
- 5 painter trainees completed the program. Carpenter, laborer and finisher did not complete the trainee program.

**Maintenance and Protection of  
Traffic/Incident Management**

- SB I-95: Mr. Warner stated that they are working at night and taking lanes as needed for the strip seal replacements.
- NB I-95: Mr. Warner stated that they are working during the day and taking lanes as needed for steel repairs.



JA204

- Mr. Warner stated that next week, the steel workers will require northbound lane closures between 9:00 AM and 3:00 PM. The following week, only night time closures will be required.
- Incident Management Discussion

Mr. Pope stated that there was an injury accident yesterday near the start of the northbound pattern. An ambulance took an injured occupant away. He stated that they have the incident number for the accident report.

\* \* \* \*

JA205

**GOVERNMENT EXHIBIT 633**

**Pennsylvania Department of Transportation  
ECMS**

**MINORITY PARTICIPATION AND COMMITMENT  
DETAIL**

<b>Project:</b>	86046
<b>Standard / Federal Oversight</b>	
<b>Post-Construction</b>	
<b>Short Description:</b>	Girard Point Br Paint&Rep
<b>County:</b>	Philadelphia
<b>District:</b>	06
<b>SR:</b>	95
<b>Group ID:</b>	ERP
<b>Org Code:</b>	0650
<b>Section:</b>	VAG
<b>Municipality:</b>	PHILADELPHIA
<b>Prime</b>	
<b>Business Partner:</b>	Buckley & Company, Inc.
<b>Bid Amount:</b>	\$70,342,922.00
<b>Let:</b>	07/23/2009
<b>Anticipated NTP:</b>	09/08/2009
<b>NTP Expiration</b>	10/02/2009

<b>General</b>	
<b>DBE:</b>	6%
<b>Prime Contact:</b>	William J Fetters
<b>PennDOT Approval Status:</b>	Complete
<b>Revision:</b>	Original
<b>Prime Phone:</b>	215-334-7500

JA206

**Subcontractor**

**Business Partner:** Markias Inc.  
**Contact:** Joyce E Abrams  
**Phone:** 609-877-0600  
**Type:** DBE  
**DBE JVT%:**  
**Certification:** 5663  
**Status:** Approved

**Will any portion of this DBE Commitment Amount be sub constructed to a 2nd tier non-DBWE sub contractor?:**

**If Yes, Non-DBE 2nd Tier Sub Amount:**

**(If No, Leave it blank)**

**Agreement Amount:** 4,689,000.00

**If acting as a broker, enter only the fee amount and select 'Service' as the Business Type.**

**Credit (less 2nd tier Sub) Amount:** 4,689,000.00

**Credit @ 60%:** \$2,813,400.00

**% of Bid:** 4.00

**Is this DBE a Sub Contractor to the Prime Contractor?:**

**If No, Enter name of subcontractor who is contracting with this DBE:**

**(If Yes, Leave it blank)**

**Mobilization:** 0  
**Starting:** 10/05/2009  
**206completion:** 08/31/2021  
**Business Type:** Regular Dealer

**NAICS**

JA207

Code	Description
<i>No Records found.</i>	

Items Con- ditio nal	Par t- ial	Item	Description	Wor k Clas s Cod es	Unit of Meas ure	Quant ity
		907 1- 000 1	SPOT PAINTIN G EXISTING STEEL FOR STEEL REPAIR AREAS	V, V2	1	140.00 0
		907 0- 015 1	PAINTIN G EXISTING STRUCTU RAL STEEL USING ORGANIC ZINC COATING SYSTEMS - APPROAC H GIRDER SPANS	V, V2	LS	1.000

JA208

		907 0- 015 0	PAINTIN G EXISTING STRUCTU RAL STEEL USING ORGANIC ZINC COATING SYSTEMS – TRUSS SPANS	V, V2	LS	1.000
--	--	-----------------------	---	----------	----	-------

<b>Workflow Status</b>	<b>Name</b>	<b>Disposit- ion</b>	<b>Date/ Time</b>
Draft	William J Fetter/ PennDOT BP- 001227	Submit	07/29/200 9 08:59:21 AM
Awaiting Acknowledgeme nt	Joyce E Abrams/ PennDOT BP- 001001	Acknowled ge	07/29/200 9 12:08:43 PM
Acknowledged	William J Fetters/ PennDOT BP- 001227	Submit	07/29/200 9 04:22:52 PM
PennDOT Review	Kireston N Jackson/PennD OT	Approve	07/30/200 9 03:16:49 PM

**Audit Information**

<b>Created</b>	<b>Created</b>	<b>Modified</b>	<b>Modified</b>
<b>By</b>	<b>On</b>	<b>By</b>	<b>On</b>

JA209

Ecms	09/22/2009	Ecms	09/22/2009
System/	12:49:55	System/	12:49:55
PennDOT	PM	PennDOT	PM

JA210

**GOVERNMENT EXHIBIT 673**

**Pennsylvania Department of Transportation  
ECMS**

**MINORITY PARTICIPATION AND COMMITMENT  
DETAIL**

**Project: 64884**  
**Standard / Federal Oversight**  
**Post-Construction**  
**Short Description:** 30th STREET STATION  
BRIDGES  
**County:** Philadelphia  
**District:** 06  
**SR:** 3010  
**Group ID:** ---  
**Org Code:** 0650  
**Section:** PRR  
**Municipality:** PHILADELPHIA

**Prime**  
**Business Partner:** Buckley & Company, Inc.  
**Bid Amount:** \$50,876,814.49  
**Let:** 09/30/2010  
**Anticipated NTP:** 11/29/2010  
**NTP Expiration** 12/17/2010

**General**  
**DBE:** 7%  
**Prime Contact:** William J Fetters  
**PennDOT Approval Status:** Complete  
**Revision:** Original  
**Prime Phone:** 215-334-7500

JA211

**Subcontractor**

**Business Partner:** Markias Inc.  
**Contact:** Joyce E Abrams  
**Phone:** 609-877-0600  
**Type:** DBE  
**DBE JVT%:**  
**Certification:** 5663  
**Status:** Approved

**Will any portion of this DBE Commitment Amount be sub constructed to a 2nd tier non-DBE sub contractor?:**

**If Yes, Non-DBE 2nd Tier Sub Amount:**

**(If No, Leave it blank)**

**Agreement Amount:** 1,700,000.00

**If acting as a broker, enter only the fee amount and select 'Service' as the Business Type.**

**Credit (less 2nd tier Sub) Amount:** 1,7,000.00

**Credit @ 60%:** \$1,020,000.00

**% of Bid:** 2.01

**Is this DBE a Sub Contractor to the Prime Contractor?:**

**If No, Enter name of sub**

\* \* \* \*



JA212

**GOVERNMENT EXHIBIT 841**

---

**From:** Tom Koussisis  
**Sent:** Thursday, April 19, 2012 3:02 PM  
**To:** Kathy Fintrilis;  
stamatek@comcast.net  
**Subject:** RE: Durrett Sheppard

Invoice should not come from Durrett it should come from Markias please email to me so I can straighten out.

Tom Koussisis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell  
TKoussisis@alphapainting.net

---

**From:** Kathy Fintrilis  
**Sent:** Thursday, April 19, 2012 3:00 PM  
**To:** Tom Koussisis;  
stamatek@comcast.net  
**Subject:** Durrett Sheppard

Tom,

I received an invoice from Durrett Sheppard with your name total \$4,497.79 with P.O. 9010. Is it for 30<sup>th</sup> Street Bridges? If so what is it being used for?

Kathy Fintrilis  
Alpha Painting and Construction.Inc.  
6800 Quad Avenue  
Baltimore, MD 21237

JA213

kathyfin@alphapainting.net  
T: 410-288-6800  
F: 410-288-6805

JA214

**GOVERNMENT EXHIBIT 842**

---

**From:** 87 Donald Bailey  
<[dbailey@dssteel.com](mailto:dbailey@dssteel.com)>  
**Sent:** Thursday, April 19, 2012 3:46 PM  
**To:** Tom Kousisis; 87 Bobby Hepp  
**Cc:** Betsy Aikaterinidis; Sue Robst;  
Kathy Fintrilis; 87 Patricia Hodgson  
**Subject:** RE: Invoice

Tom,

I thought that was for the additional material you were going to place? For the initial order can we just forward them to Markias?

\* All material is subject to prior sale and availability  
Durrett Sheppard Steel  
800 East Baltimore Street  
Baltimore, MD 21224

Donnie Bailey

410-633-4838 OR 410-633-6800  
(410) 633-4325 fax

---

**From:** Tom Kousisis  
[<mailto:TKousisis@alphapainting.net>]  
**Sent:** Thursday, April 19, 2012 3:36 PM  
**To:** 87 Bobby Hepp; 87 Donald Bailey  
**Cc:** Betsy Aikaterinidis; Sue Robst;  
Kathy Fintrilis  
**Subject:** FW: Invoice

Gentlemen as previously discussed this invoice needs to be made out and sent to Markias.

JA215

Tom Koussis  
Alpha Painting & Construction Co. Inc.  
6800 Quad Ave.  
Baltimore, MD 21237  
410-288-6800  
410-288-6805 Fax  
646-235-6708 Cell  
TKoussis@alphapainting.net

---

**From:** Kathy Fintrilis  
**Sent:** Thursday, April 19, 2012 3:13 PM  
**To:** Tom Koussis;  
stamatek@comcast.net  
**Subject:** Invoice

Tom,

Attached is the invoice.

Kathy Fintrilis  
Alpha Painting and Construction, Inc.  
6800 Quad Avenue  
Baltimore, MD 21237  
kathyfin@alphapainting.com  
T: 410-288-6800  
F: 410-288-6805

**GOVERNMENT EXHIBIT 1002**

Summary of Markias and Supplier Invoices to determine amounts billed by true suppliers through Markias, as well as to identify possible billing of work for other projects.

**Project 9010-30<sup>th</sup> Street Station**

Estimated cost for charges billed under 9010-30<sup>th</sup> Street Station, for other projects, based on supplier invoice data

9010	Unknown	GPB	9010MA	Shipped to MA	Tobin Bridge 3040/3042	Shipped to NY
	317,843.09	5,257.16	625,416.25	468,026.45	333,748.99	2,407.84
<b><u>Project 9005-GPB</u></b>						
Estimated cost for charges billed under 9005-Girard Point Bridge, for other projects, based on supplier invoice data						
GPB/9005	Unknown	34 <sup>th</sup> St	Tobin Bridge 3040/3042	9010	Shipped to NY	9010NY
	\$2,579,487.42	\$19,209.86	\$364.17	\$37,969.90	\$45,071.65	\$24,942.18

9010NY	Shipped to LA	9010LA	Shipped to NJ	40 <sup>th</sup> St
(82.73)	148,962.56	44,471.09	\$243.55	\$4,982.03
<b>Shipped to CT</b>				
	<b>9005C</b>	<b>9005N</b>	<b>NJ</b>	<b>Shipped to 411/NJ</b>
\$132,068.98	\$115,476.87	\$41,124.00	\$43,796.78	\$135,420.10

<b>Total</b>
1,633,433.20

<b>I-280</b>	<b>9005R</b>	<b>9005B</b>	<b>Total</b>
	\$29,322.59	\$6,661.39	\$644,368.67
9010-30 <sup>th</sup> Street – Out-of-State/Other Projects			1,633,433.20
9005-GPB – Out-of-State/Other Projects			644,368.67
9005 and 9010 – Total Out-of-State/Other Projects			<b>\$2,277,801.87</b>

9010-30 <sup>th</sup> Street – Markias Invoice Amount	\$2,080,530.65
9005-GPB – Markias Invoice Amount	5,461,436.32
9010 & 9005 – Total Markias Invoice Amount	<b>\$7,541,966.97</b>