Offices of the Inspector General

LUCY LANG
Inspector General

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May 16, 2024

Hope Knight
President, CEO, and Commissioner
Empire State Development
633 Third Avenue
New York, NY 10017

Re: NYSIG 3791-058-2018,
3792-058-2018

Dear President, CEO, and Commissioner Knight:

On November 6, 2018, the Offices of the New York State Inspector General received a complaint from the Dormitory Authority of the State of New York (DASNY) regarding a subcontractor's participation on two DASNY projects. In the first allegation, DASNY stated that Javen Construction Co. Inc. (Javen), a prime contractor on a DASNY project, subcontracted with 7Gens LLC (7Gens), which in turn subcontracted with New York State-certified Minority-Owned Business Enterprise (MBE) contractor DMYLES, Inc., to fabricate and supply materials for $220,000. In the second allegation, DASNY stated that Scott Lawn Yard (Scott), a prime contractor on another DASNY project, subcontracted with DMYLES to perform granite installation for $150,000. DASNY alleged that on both projects, DMYLES did not perform a commercially useful function (CUF), as is required by Article 15A of New York State Executive Law, and instead acted as a pass-through so that the prime contractors on the respective projects could improperly meet contractual MBE participation requirements.

The Inspector General's investigation of these allegations confirmed that on both projects, DMYLES acted as a mere pass-through and did not perform a CUF. This conduct calls into question DMYLES's continuing qualification as a New York State-certified MBE. Specifically, the Inspector General's investigation into the two projects found the following:

The Javen Project

According to DASNY records, in April 2018, DASNY contracted with Javen to work as the prime contractor on a project to rehabilitate bathrooms at the State University of New York (SUNY) at Buffalo. The value of this contract was $2,229,000. In May 2018, Javen subcontracted with 7Gens, a non-M/WBE, to furnish, deliver, and install "all Millwork & Solid Surfaces" on the

project for $463,000. This subcontract specifically required that 7Gens further subcontract with DMYLES for $220,000 of the project work in order to meet MBE goals on the project.[1]

During the project, DMYLES twice invoiced 7Gens for project work. The first invoice, for $44,625, listed the work as "Solid Surface Vanities, Shelves, Backsplashes, Drying Shelves, Brackets, Etc. Fabrication Only." The second invoice, for $42,500, listed the work as "Fabricate and Supply Solid Surface Acrylic Panels." A corresponding check was sent from 7Gens to DMYLES for each of these invoices, which together totaled $87,125. This comprised the entirety of payments to DMYLES on the project. DASNY credited DMYLES as having 100 percent self-performed on the project and accordingly, awarded Javen $87,125 worth of MBE credit on the project.[2]

Despite this seemingly appropriate paperwork, the Inspector General's investigation found that DMYLES, in fact, performed no fabrication or supply services on this project. Instead, Prestige Countertops & Services, Inc. (Prestige), a countertop manufacturer and installer located in Corry, Pennsylvania, fabricated and supplied these materials on the project. Prestige confirmed this, advising the Inspector General that it worked with 7Gens on the project and 7Gens instructed Prestige to bill its work through DMYLES, which it did. A review of DMYLES's bank records revealed it issued two checks to Prestige. The first check, dated October 15, 2018, was for $42,500, while the second check, dated January 2, 2019, was for $40,000. According to Prestige, it had no direct contact with anyone from DMYLES and had no knowledge that DMYLES assisted in the sourcing, selection, fabrication, or delivery of any materials on the project.

[redacted], the president and CEO of DMYLES, confirmed to the Inspector General that contrary to his company's invoices, DMYLES performed no fabrication work on the project. Despite his company issuing two checks to Prestige on this project, Myles also claimed that he had never heard of Prestige. [redacted] further advised that he was not a party to any negotiations and coordination of purchases between 7Gens and Prestige. Lastly, [redacted] acknowledged that it appears his firm was used as a pass-through on the project in an attempt by 7Gens to reach project MBE goals. [redacted] suggested that former employees may have taken actions without his knowledge.

According to [redacted], the former 7Gens senior project manager on the SUNY at Buffalo project, DMYLES played no part in fabricating, negotiating prices, determining quantity, taking custody, coordinating shipment, or supplying materials on the project. [redacted] testified to the Inspector General that DMYLES's sole purpose on this project was to provide an entity for 7Gens and Javen to "run the paperwork through" to appear as if MBE goals had been achieved. This was accomplished by having DMYLES receive materials invoices from Prestige, add their markup[3], and then send the invoice on DMYLES's letterhead to 7Gens.

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[1] As part of the contracting process, in March 2018, DMYLES and Javen representatives signed a DASNY Scope Verification Form indicating that DMYLES would be working as an MBE subcontractor on the project for $220,000, with the scope of work described as "Commercial Showers, Receptors and Basins," for $115,000, and "Solid Surface Countertops," for $105,000.

[2] As DMYLES did not perform the originally contemplated $220,000 worth of work on the project, the project finished under goal regarding MBE participation. According to a January 2019 letter from DMYLES to Javen, DMYLES claimed it could no longer participate on the project "[d]ue to the accelerated schedule and the high cost of materials and payroll," as well as its inability "to secure a large enough credit account with our vendors to fulfill the needs of the project."

[3] This markup, totaling $4,625, constituted a 5.6 percent markup on the $82,500 worth of billed work by Prestige.

[redacted], vice president of Javen, after reviewing project paperwork provided by the Inspector General, agreed that DMYLES does not appear to have performed a CUF on the project. [redacted] denied any knowledge of this pass-through arrangement during the relevant period.

The Scott Project

According to DASNY records, in June 2018, Scott contracted with DASNY to perform landscaping work at SUNY at Brockport for $1,197,000. In August 2018, Scott subcontracted with DMYLES to furnish and install granite on this project for $189,940. In September 2018, both [redacted] and [redacted], Scott's president, signed a DASNY Scope Verification Form indicating that DMYLES would be working as an MBE subcontractor to Scott on the project to "Furnish & install granite walls, furnish cobbles and treads" for $150,000.[4]

However, the Inspector General's investigation found that DMYLES was not involved with either the furnishing or installation of granite on this project. Instead, James J. Totaro & Associates Inc. (Totaro Inc.), a stone materials distributor, fulfilled these functions. In a review of project emails from summer 2018, the Inspector General found that James Totaro, the president of Totaro Inc., coordinated the furnishing and installation of granite on the project including directly emailing Scott employees shop drawings, a supplemental proposal, revisions, and a final plan. When it came time for delivery of granite materials to the project, DMYLES again played no role and Totaro coordinated this directly with Scott. Moreover, according to daily records and certified payroll records filed on the project, DMYLES employees were never present at the job site performing, supervising, or managing any project work.

In June 2018, Totaro invoiced Scott, not DMYLES, for a portion of his work on the project.[5] However, payment of Totaro was then funneled through DMYLES. In fact, in a version of this first invoice retained by DMYLES, Scott's name is crossed out, and DMYLES, Inc. is handwritten in as a substitute. Scott officials suggested that this may have occurred because Scott "originally deal(t) with the vendor, then we were trying to reach our goals, and reached out to Darius after the fact." This payment process soon encountered problems with DMYLES failing to pay Totaro in a timely manner. With each instance, Totaro emailed Scott directly to remedy the situation. In November 2018, when this process failed entirely, Scott emailed Totaro that considering DMYLES's failure to make timely payments, "Going forward, joint checks will be issued so that this does not happen again." From that point on, Scott issued all such payments as joint checks to both Totaro and DMYLES, with Scott employees first securing a signature on the checks from DMYLES and then sending the checks directly to Totaro, effectively cutting DMYLES out of the payment process.

Notably, in invoices from DMYLES to Scott, DMYLES stated that their markup had been included. A review of payment records from the project indicate that Totaro was paid approximately $180,000 while DMYLES received approximately $9,000—five percent of the total amount received by Totaro. As judged by other similar matters investigated by the Inspector General, a five percent profit is a common markup in pass-through situations, and something that Myles himself described to the Inspector General as seeming "kinda clean."

[4] All witnesses questioned by the Inspector General on the Scott project were unable to explain why DMYLES's $189,940 subcontract was listed on the Scope Verification Form as $150,000.

[5] Totaro also had a separate subcontract with Scott for other project work for which Totaro also billed Scott directly.

[redacted] testified to the Inspector General that early in the project, Scott told him that he would be selling materials to DMYLES instead of directly to Scott. [redacted] stated that he assumed this arrangement was put in place for Scott to reach their MBE project goals and that DMYLES's work on the project was limited to that of an "extra participant, through which paperwork and/or funds were passed through to obtain the appearance of participation." [redacted] confirmed that DMYLES did not determine quantity or quality, negotiate pricing, or assist in shipping materials to the project site, and that all Totaro's project communications were directly with Scott apart from invoicing. A former Scott project manager on the project echoed DMYLES lack of participation, testifying to the Inspector General that DMYLES was not involved in any design or review meetings and advising that DMYLES lacked the long-haul trucking capability necessary to transport the granite to the project site.

In summary, the Inspector General's investigation of the Javen and Scott projects determined that DMYLES's role on both projects was limited to receiving invoices from actual suppliers and fabricators of project materials, adding their markup, and then passing the invoices on using their letterhead. As such, it is the finding of the Inspector General that DMYLES did not perform a CUF on either project.

The findings of the Inspector General's investigation were also provided to the Office of the New York State Attorney General, which declined prosecution of this matter, and to DASNY, for its review of the actions of the contractors on these projects.

Given these findings, I am referring this matter to ESD for review and to determine whether DMYLES continues to meet the qualifications for MBE certification. The Inspector General's case file detailing the investigation of this matter is available for ESD's review.

Please advise me of any action taken by ESD in response to this referral within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General Jeffrey J. Hagen at [redacted].

Sincerely,

Lucy Lang
Inspector General

cc: Joshua Bloodworth, Esq.
General Counsel