

## Firms fined \$825K in case

### Fines

#### School contractors accused of flouting diversity-hire rules

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Five contractors that worked on Rochester's massive school renovation project have agreed to pay \$825,000 in fines as punishment for allegedly skirting rules regarding the use of minority and women-owned businesses, New York state Attorney General Eric Schneiderman announced Thursday night.

The firms reported they had subcontracted with minority- and women-owned businesses (M/WBEs) for a portion of their materials or labor, as required by law. In fact, according to a whistleblower and Schneiderman, they actually got the materials and labor from non-eligible firms, then in some cases gave the M/WBEs a kickback in exchange for falsified documentation.

"These contractors engaged in flagrant schemes that flouted the diversity rules they were required to meet, and in the process, denied minority and women-owned businesses a fair shot at a winning valuable sub-contracts,"

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Schneiderman said in a statement.

The five firms and their settlement amounts are:

- » Concord Electric Corp., based in Rochester, was fined \$350,000
  - » Manning Squires Hennig, based in Batavia, was fined \$200,000
  - » Hewitt Young Electric LLC, based in Rochester, was fined \$160,000
  - » Michael A. Ferraiolo Plumbing and Heating Inc., based in Rochester, was fined \$90,000
  - » Mark Cerrone Inc., based in Niagara Falls, was fined \$25,000
- Of the \$825,000 total, about \$272,000 will go back to the school construction project as restitution and about \$150,000 will go to the unnamed whistleblower. The remainder goes to reimburse the state for enforcement efforts and what the Attorney General's Office called a civil rights issue and waste of taxpayer money. The alleged fraud occurred between 2012 and 2014, during the first phase of construction that involved 13 schools with a budget of \$325 million, the majority of that paid by the state. An independent compliance officer in place at that time has since been replaced, with the whistleblower and current compliance officer credited with identifying the activity.

Cerrone allegedly was stopped in process. Kickbacks averaged 2 or 3 percent of the pass-through amounts, state officials said, but ranged from 0 to as high as 10 percent. In a statement, Hewitt Young said it agreed to the settlement "to avoid protracted litigation" and admitted no liability, or wrongdoing. Similarly, one of the

minority firms named blamed a mixup in paperwork and systemic problems that the state has failed to take into account. Other firms named in the investigation declined comment or did not immediately respond to messages. The fraud investigation is ongoing, and part of a larger concern over a failure to meet M/WBE benchmarks in the \$1.3 billion, multi-year schools modernization program. In a split vote in August, the Rochester Joint School Construction Board, which oversees the project, rejected a new labor agreement for the second phase of work due to dissatisfaction with the low number of minority apprentices trained in the first phase. Schneiderman made clear his office's investigation was a separate matter but Allen Williams, chairman of the construction board and director of special projects for the city, said the business participation issues mirror what has occurred on work-force participation. He stopped short, however, of alleging those records had been falsified.

As many as four of the five firms remain engaged in school modernization projects, Williams said. And he said the board would consider working with them in the future.

"They paid, and will face increased scrutiny both from the AG's office and from the board," Williams said. "We are comfortable with the process and the procedures we have in place now to monitor any and all contractors on the project."

He continued: "It is not something that is rampant, if you will. I think it is an aberration that these firms decided to take the easy way out, and they got caught."

Three of the firms (Hewitt Young, Manning Squires Hennig and Mark Cerrone) also have agreed to fund a \$400,000 "reserve" that will help M/WBEs cover salary expenses while waiting payment for large jobs, making it easier for them to compete for subcontracts on projects such as Rochester's Schools Modernization Program.

It is a common struggle for small contractors to pay their employees when work is actually done, then wait several months until the payment comes through. The \$400,000 fund would serve as a reserve that contractors could draw on to pay their employees then be replenished when they are paid in turn.

The three firms will administer their own funds with the Attorney General's Civil Rights Bureau overseeing compliance. All five firms will also have to go through significant training and monitoring.

One of the minority contractors allegedly caught up in the scheme was BSV Metal Finishers, a Rochester company owned by Benjamin Vasquez. BSV has been in business since 1998, primarily as a manufacturer for railroad projects. But the firm also has been involved in the school construction work.

Vasquez contracted with Concord on a job three or four years ago, he said in an interview, maintaining there was nothing

amiss. "They are trying to say it was a pass-through," he said Thursday of state investigators. "I don't believe it was."

Here's the problem, he said: The manufacturers and distributors have long-established relationships or non-compete agreements that prevent others, like BSV, from becoming distributors as well (think of the relationship between car manufacturers and dealerships). But the state law aims to involve firms that historically have been left out or disadvantaged. What typically happens is that the M/WBE is hired as a subcontractor, adding some tangible value in the process. In one case here, Concord hired BSV to gather price quotes, buy the materials from a distributor and resell them to Concord.

BSV was paid about \$7,000, Vasquez said. But its stage of the work was bypassed when salesman at the distributor, Zeller Corp., signed his name on a form with BSV letterhead, supposedly in an attempt to speed the process. The materials were then “drop-shipped” directly from Zeller to Concord without BSV’s involvement.

State investigators came to Vasquez’ office, he said, and “asked me, point blank: ‘Does he work for you?’ No. And that was the end of the conversation.”

BSV employs 27 people, and annual sales upward of \$5 million — numbers Vasquez said prove that business is established and legitimate. Since the investigation began, he has taken steps to ensure the same problem doesn’t happen again, he said. “I have consistently voiced my concerns about ensuring that minority hiring requirements are met,” Mayor Lovely Warren said in a statement. “As we invest in our schools, we need to be sure that as many city residents as possible benefit from the good-paying jobs these projects will create, which is why minorities, women and disadvantaged businesses and individuals need to have the opportunity to participate in the modernization of our schools.”

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