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FOR IMMEDIATE RELEASE
November 24, 2014

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DA VANCE: GRAND JURY REPORT RECOMMENDS SIGNIFICANT REFORMS TO ASSIST MINORITY- AND WOMEN-OWNED BUSINESSES

Grand Jury Empanelled by Manhattan DA's Office Finds Evidence of Fraud Spanning a Decade

Recommended Reforms Include Stronger Accountability, Increased Resources, Changes to the Penal Law, and Increased Fines

Manhattan District Attorney Cyrus R. Vance, Jr., today announced that a New York State Supreme Court Grand Jury has [issued a report](#) examining the vulnerability of programs providing opportunities for Minority- and Women-Owned Business Enterprises (MWBE) to fraud and misuse. During its investigation, the Grand Jury reviewed the activities of contractors in order to identify abuse surrounding the MWBE requirements specified in their contracts. The evidence gathered revealed criminal conduct in the construction industry spanning at least a decade and, within the relatively small sample of cases reviewed, found that the amount of money intended for MWBEs that instead went to non-MWBEs exceeded \$10 million. As a result of these findings, the Grand Jury recommended significant reforms to the MWBE procurement process, including stronger accountability for contractors and MWBEs, increased resources for certifying and contracting agencies, changes to the Scheme to Defraud statute, and increased fines. District Attorney Vance announced the report's findings at a roundtable featuring key law enforcement partners, including the Metropolitan Transportation Authority's Office of Inspector General, the Port Authority of New York & New Jersey's Office of Inspector General, and the New York City Department of Investigation.

“Every time the system is abused, it becomes that much more difficult for a legitimate minority- or women-owned business to gain entry into the field,” said District Attorney Vance. “Each instance of fraud serves to further reinforce the cultural and structural barriers to their rightful entry. Recognizing this inequity and need for diversity across many fields and industries, the State and City established programs that encouraged minority and women owned businesses to compete for contracts. The unfortunate reality, as today's report

reveals, is that fraud within these programs is persistent. These recommendations are designed to address this abuse, while also providing additional clarity for the industry as well as the agencies involved. I would like to thank our partners in law enforcement and other areas of government for their continued efforts to level the playing field for all New York businesses.”

“Unquestionably, New York State’s Minority- and Women-Owned Business Enterprises program has increased the participation of legitimately disadvantaged individuals and businesses in public contracts, and has helped ensure that certified MWBE firms have the opportunity to compete on a level playing field,” said MTA Inspector General Barry L. Kluger. “The recommendations by this Grand Jury will further the development and expansion of these opportunities and benefit all New Yorkers. Those of us who support the principles and goals of this MWBE program, whether in a certifying, contracting or oversight role, also strongly support the Grand Jury’s efforts toward eliminating the profit motive behind schemes to defraud the public. We will continue to work with our investigative and other governmental partners to find new and improved ways to more effectively detect, deter, and prosecute this fraud by those inclined to steal opportunities from the legitimate businesses and workers they employ.”

“I would like to take this opportunity to thank the Grand Jury for their careful and thoughtful review of the Minority and Women Owned Business Enterprise Program, a very important mechanism for increasing legitimate participation by minority and women owned businesses in publicly-funded construction projects,” said Port Authority of NY & NJ Inspector General Michael Nestor. “The investigations that have been conducted by the District Attorney’s Office, the Port Authority IG’s Office, and our law enforcement partners, have served to highlight certain aspects of this government program that has been exploited by unscrupulous contractors, vendors, and suppliers. The OIG has been working with the Port Authority to make enhancements to its program so as to better deter MWBE fraud, improve enforcement of the program, and to facilitate the investigation and prosecution of those that do violate its guidelines. We are dedicated to continue working with the Port Authority, other governmental agencies, and the contracting community, to make further improvements going forward so as to ensure the true beneficiaries of the program are well served.”

“The misuse of MWBE programs denies honest minority- and women-owned businesses the benefits of a program designed to help them get a shot at New York City contracts,” said Department of Investigation Commissioner Mark G. Peters. “DOI supports these Grand Jury findings and is initiating an educational campaign at City agencies that do a high volume of contracts on how to establish best practices surrounding this important issue. I thank District Attorney Vance and all our law enforcement partners for the efforts to expose and stop those who abuse the system and impede opportunity.”

To be eligible for MWBE certification, businesses must prove they are controlled, operated, and at least 51 percent owned by women or members of a designated minority group. Currently, New York State’s goal is to have MWBEs perform 30 percent of the work on all applicable contracts, and the City’s goal is to have MWBEs perform work on 37 percent of construction contracts.

New York State and New York City have developed programs to provide opportunities for MWBEs to receive government procurement contracts, particularly in the construction industry. To qualify for these programs, contracting agencies must establish that a percentage of their work is performed by MWBEs. The programs also provide opportunities for business management training, mentoring programs, and workshops on topics like surety bonds and bidding.

The Grand Jury, however, concluded that current laws, regulations, and systems are not adequate to prevent and deter individuals and organizations from fraudulently taking advantage of these programs. According to the report's findings, in many cases, contractors claimed to use MWBEs to perform work or provide the materials required under the contract, but in fact used businesses that were neither women- nor minority-owned. Contractors also misrepresented that MWBEs were providing the services or materials, when the companies that they listed did not have the capacity to do so. In some instances, invoices and other billing documents were created to make it appear as though the work and payments flowed to MWBEs, when the money was merely passed through those businesses to the non-MWBEs that actually performed the work.

To eliminate these fraudulent practices, the Grand Jury proposed a set of recommendations falling into four general categories. These recommendations are aimed at deterring fraud and improving enforcement and prosecution efforts to bring those who abuse MWBE programs to justice:

- **Require contracting agencies to hold both the prime contractor and the MWBEs on any job accountable for fulfilling the MWBE goals in the awarded contract:**
 - A representative with knowledge from the prime contractor should be required to certify under penalty of perjury to the contracting agencies that the MWBEs on the job in fact performed the services or provided the materials that they were contracted to perform or provide.
 - A representative with knowledge from the MWBE should also be required to make a certified statement under penalty of perjury that the MWBE in fact provided the work sought under the contract.

- **Increase the resources devoted by the certifying and contracting agencies to oversee the MWBE programs:**
 - Under current systems, each certifying agency has its own application and procedures. An electronic version of all applications and annual updates would ease the process for applicants and, more importantly, would create a useful, searchable database.
 - Agencies should be given the resources to acquire software with predictive analytics that could be used to expose MWBE fraud schemes.
 - A requirement of thorough vetting of each MWBE applicant at both the certification and re-certification stage with enhanced auditing of such vetting.
 - The certifying and contracting agencies should appropriately reward “whistleblowers” who reveal wrongdoing in connection with MWBE programs.

- **Update the Scheme to Defraud statute under which many MWBE fraud cases are prosecuted so that the criminal charge reflects the magnitude of the offense:**
 - Currently, a scheme to defraud a victim of \$10 million is punishable to the same extent as a scheme to defraud a victim of \$10,000.
 - The Scheme to Defraud statute should be amended to include graduated degrees, distinguished by monetary thresholds, so that a defendant's offense would accurately reflect the magnitude of its wrongdoing.
 - The crime of Scheme to Defraud, currently an E felony, should be modified to include class D, C, and B felonies at graduated monetary thresholds.

- **Enhance existing criminal fines to help take the profit incentive out of MWBE fraud:**
 - Either by increasing the absolute dollar amounts of fines, or the amount of money equivalent to or some multiple of the amount that was supposed to be paid to the MWBE for work or materials.
 - Apportion part of such enhanced fines for software development, and better audits, investigations, and prosecutions of MWBE fraud. Fines could also underwrite MWBE programs to assist minority and women owners to develop sustainable businesses.

“Individuals and companies that cheat the system aren't just hurting legitimate MWBEs; they are weakening our economy and damaging our neighborhoods,” said New York City Comptroller Scott M. Stringer. “I thank District Attorney Vance for his leadership and I look forward to working with him to root out fraud and support robust MWBE programs that facilitate a truly level playing field.”

"The de Blasio Administration unequivocally supports a lawful procurement process free of fraud. This administration is also committed to one city rising together. That means supporting M/WBE's to fairly compete for City Contracts and to ensure that they have the support they need to grow, succeed, and comply with the law," said Maya Wiley, Counsel to the Mayor and M/WBE Director. "The city has several safeguards to protect the M/WBE program from fraud, and we thank DA Vance for his work on this important issue and look forward to working together to do even better for our minority and women-owned businesses."

In the coming weeks, District Attorney Vance will announce the formation of a new task force intended to address these and other issues surrounding opportunities for MWBEs. The Grand Jury report and the forthcoming task force build upon ongoing efforts by the District Attorney's Office related to MWBEs, including a number of felony and misdemeanor convictions of individuals involved in fraudulent activity, as well as cases which have led to the forfeiture of millions of dollars from various companies which will then be redirected back to agencies to further enhance their MWBE programs.

Today's report follows other recent Grand Jury reports released by the Manhattan District Attorney's Office aimed at reforming various industries and practices that have been

historically subject to fraud and abuse, including the [workers compensation insurance system](#) and [the City's Real Property tax system](#).

District Attorney Vance thanked Assistant District Attorneys Gilda Mariani and Diana Florence, both Senior Investigative Counsel, for presenting the investigation to the Grand Jury, under the supervision of Assistant District Attorney Jodie Kane, Chief of the Rackets Bureau, and Executive Assistant District Attorney David Szuchman, Chief of the Investigation Division.

District Attorney Vance also thanked MTA Inspector General Barry Kluger; Port Authority of NY & NJ Inspector General Michael Nestor; Port Authority of NY & NJ Deputy Inspector General Steven Pasichow; NYC Department of Investigation Commissioner Mark Peters; Carra Wallace, Chief Diversity Office, NYC Comptroller's Office; NYC Department of Small Business Services; Benjamin Rosenberg, General Counsel, New York County District Attorney's Office; Amyjane Rettew, Appellate Counsel to the Investigation Division, New York County District Attorney's Office; and Devon Rettew, Paralegal, New York County District Attorney's Office Rackets Bureau.

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