

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 06-CR-00264-PSF

UNITED STATES OF AMERICA, FILED: August 7, 2006

Plaintiff,

v.

FLINT ENERGY SERVICES, INC.,

Defendant.

**PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING**

The United States of America ("United States"), by and through Diane Lotko-Baker and Carla M. Stern, Trial Attorneys, United States Department of Justice, Antitrust Division, and the defendant, Flint Energy Services, Inc. (Flint or defendant), a corporation organized and existing under the laws of the State of Delaware represented by Paul M. Boechler and by counsel, R. Ryan Stoll, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

PLEA AGREEMENT

1. The defendant agrees to plead guilty to the Information charging a violation of 15 U.S.C. § 1, The Sherman Antitrust Act. Pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure (Fed.R.Crim.P.), the defendant will waive indictment and plead guilty at arraignment to the Information, in the form attached, to be filed in the United States District Court for the District of Colorado. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by submitting non-competitive and rigged bids

from its Farmington, N.M. regional office to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado beginning in approximately June of 2005 and continuing until December 2005, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1 ("Relevant Offense").

2. The United States and the defendant hereby enter into this Plea Agreement pursuant to Fed.R.Crim.P. 11(c)(1)(B).

3. The defendant understands its rights:

- a. to be represented by an attorney;
- b. to be charged by Indictment;
- c. to plead not guilty to any criminal charge brought against it;
- d. to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
- e. to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
- f. to appeal its conviction if it is found guilty; and
- g. to appeal the imposition of sentence against it.

4. The defendant knowingly and voluntarily waives the rights set out in Paragraph 3 (b-f) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 23 of this Plea Agreement, regardless of

how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).

5. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

6. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

7. The defendant has cooperated and will continue to cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the submission of non-competitive and rigged bids from its Farmington, N.M. regional office to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- a. producing to the United States all non-privileged documents, information, and other materials, wherever located, in the possession, custody, or control of the

defendant, requested by the United States in connection with any Federal Proceeding;

b. using its best efforts to secure the ongoing, full, and truthful cooperation of the current and former directors, officers, and employees of the defendant as may be requested by the United States, but excluding Kenneth L. Rains, including making these persons available, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

8. The ongoing, full, and truthful cooperation of each person described in Paragraph 7(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

a. producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, requested by attorneys and agents of the United States;

b. making himself or herself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

c. responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503 *et seq.*);

d. otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;

e. when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503 *et seq.*); and

f. agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 10(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 10(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

9. The United States agrees that upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence, and subject to the cooperation requirements of Paragraph 7 of this Plea Agreement, it will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of the Relevant Offense. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

10. The United States further agrees to the following:

a. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence and subject to the exceptions noted in

Paragraph 10(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the defendant for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of the Relevant Offense, except that the protections granted in this paragraph shall not apply to Kenneth L. Rains;

b. Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

c. If any person requested to provide cooperation under Paragraph 10(b) fails to comply with his or her obligations under Paragraph 8, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

d. Except as provided in Paragraph 10(e), information provided by a person described in Paragraph 10(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503 *et seq.*);

e. If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 8 of this Plea Agreement, the agreement in Paragraph 10(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

f. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

g. Documents provided under Paragraphs 7(a) and 8(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

11. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 7 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 1 of this Plea Agreement, the statute of limitations period for such

offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

12. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it or current or former directors, officers, or employees of it to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

STATUTORY PENALTIES

13. The maximum statutory penalty for a corporation for a violation of 15 U.S.C. § 1 is: a fine in an amount equal to the greatest of (1) not more than \$100,000,000 or (2) pursuant to 18 U.S.C. § 3571(c) and (d) twice the gross pecuniary gain the conspirators derived from the crime or twice the gross pecuniary loss caused to the victims of the crime by the conspirators; pursuant to 18 U.S.C. § 3561(c)(1) a term of probation of at least one year, but not more than five years; in addition, pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime; plus pursuant to 18 U.S.C. § 3563(b)(2) or 3663(a)(3) and U.S.S.G. § 8B1.1 restitution may be ordered.

STIPULATION OF FACTUAL BASIS AND FACTS RELEVANT TO SENTENCING

14. The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

15. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant, pursuant to U.S.S.G. § 1B1.3, for computing the appropriate guideline range.

16. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (U.S.S.G. § 1B1.3) or to sentencing in general (U.S.S.G. § 1B1.4). In "determining the factual basis for the sentence, the court will consider the stipulation of the parties, together with the results of the presentence investigation, and any other relevant information." (U.S.S.G. § 6B1.4 Comm.)

17. The parties agree that the United States' evidence would show that the date on which conduct relevant to the offense (U.S.S.G. § 1B1.3) began is in or about June 2005 and that it continued until December 2005 ("Relevant Period").

18. The parties agree that the United States' evidence would be that during the Relevant Period:

a. The defendant was a corporation organized and existing under the laws of the State of Delaware and the defendant had its principal place of business in Tulsa, Oklahoma, and various regional offices, including one located in Farmington, New Mexico.

b. The defendant was engaged in the pipeline construction business in the State of Colorado and elsewhere.

c. The defendant, through the acts of Kenneth L. Rains ("Rains"), the Regional Manager and head of the defendant's Farmington, N.M. office, participated in a conspiracy among pipeline construction companies, the primary purpose of which was to submit non-competitive and rigged bids to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado. In furtherance of the conspiracy, the defendant, through Rains, engaged in discussions and attended meetings with co-conspirators at which they discussed among themselves the prospective submission of bids for pipeline construction projects. During these discussions and meetings, agreements were reached to submit non-competitive and rigged bids from the defendant's Farmington, N.M. regional office to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado.

d. The defendant submitted non-competitive and rigged bids from its Farmington, N.M. regional office to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado.

e. Pursuant to the conspiracy to submit non-competitive and rigged bids from its Farmington, N.M. regional office to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado the defendant was awarded at least four (4) contracts that totaled at least \$672,036. The United States and the defendant agree and stipulate that \$672,036 is the volume of affected commerce attributable to the defendant and therefore is the amount

used to determine the base fine for the defendant under U.S.S.G. § 2R1.1(d)(1).

f. Over 200 people were employed in the defendant's Farmington, New Mexico regional office.

g. Substantial quantities of essential materials and equipment were transported across state lines in a continuous and uninterrupted flow of interstate commerce and in a manner substantially affecting interstate commerce, for use in pipeline construction projects in Colorado that were rigged by the defendant and its co-conspirators. In addition, the defendant and its co-conspirators caused rigged bids to be electronically submitted from New Mexico to the BP America Production Company office in Houston, Texas where they were processed, and to the BP America Production Company office in Durango, Colorado, which was responsible for the work on the pipeline construction projects rigged by the defendant and its co-conspirators.

h. Acts in furtherance of this conspiracy were carried out within the District of Colorado within the five years preceding the charges in the Information. The pipeline construction projects that were affected by this conspiracy were located in San Juan Basin area of Colorado.

SENTENCING COMPUTATION

19. The parties stipulate that sentencing in this case will be determined by application of the Sentencing Guidelines in effect on the day of sentencing, issued pursuant to 28 U.S.C. § 994(a).

20. The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any Guideline range computed, and that the Court is not bound

by any position of the parties. (U.S.S.G. § 6B1.4(d)) The Court is free, pursuant to U.S.S.G. §§ 6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (U.S.S.G. § 6B1.4 Comm.; U.S.S.G. § 1B1.4) The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose the recommended sentence contained in Paragraph 23 of this Agreement, it nevertheless has no right to withdraw its plea of guilty.

21. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

22. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 7 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

23. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence

requiring the defendant to pay to the United States a criminal fine of \$100,000 payable in full before the fifteenth (15th) day after the date of judgment (“Recommended Sentence”). The defendant has already made restitution to the victim, BP America Production Company pursuant to an agreement dated June 6, 2006, between the defendant and BP America Production Company. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

24. The parties agree that the computations below set forth the Sentencing Guidelines procedure for calculating the Guidelines fine range for a corporation charged with an antitrust offense.

a. Organizations, such as the defendant, are sentenced pursuant to Chapter 8 of the Sentencing Guidelines. In the case of Antitrust violations, in addition to the provisions of Chapter 8, special instructions with respect to determining fines for organizations are found in the Antitrust Guideline, U.S.S.G. § 2R1.1(d).

b. Under the Sentencing Guidelines, the first step in determining the defendant's fine range is to determine the base fine. Pursuant to U.S.S.G. §§ 8C2.4(b) and 2R1.1(d) the base fine is 20 percent of the volume of affected commerce. The affected volume of commerce is \$672,036, therefore the base fine is \$134,407.

c. The next step is to determine the culpability score for the defendant. Pursuant to U.S.S.G. § 8C2.5 the culpability score is 6. The culpability score is

determined as follows:

1. Pursuant to U.S.S.G. § 8C2.5(a) start with 5 points.
 2. Because the Farmington office of the defendant had more than 200 employees and Rains, an individual within high-level personnel of the defendant's Farmington office, participated in the offense, pursuant to U.S.S.G. § 8C2.5(b)(3)(B)(i) add 3 points.
 3. The United States and the defendant agree that no additional adjustments are applicable under U.S.S.G. § 8C2.5(c-f).
 4. Because the defendant fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, pursuant to U.S.S.G. § 8C2.5(g)(2) subtract 2 points.
- d. The culpability score is then used to determine the minimum and maximum multipliers. Pursuant to U.S.S.G. § 8C2.6, a culpability score of 6 results in a minimum multiplier of 1.20 and a maximum multiplier of 2.40.
- e. To determine the Guidelines fine range for the defendant the base fine of \$134,407 is multiplied by the minimum multiplier and the maximum multiplier. Pursuant to U.S.S.G. § 8C2.7 the Guideline Fine Range is \$161,288 to \$322,577 plus applicable interest and penalties.
- f. A term of probation is not applicable pursuant to U.S.S.G. § 8D1.1.
- g. Restitution is not required, pursuant to U.S.S.G. § 8B1.1, because the defendant has already made restitution to the victim, BP America Production Company, pursuant to an agreement dated June 6, 2006, between the defendant and BP America

Production Company.

25. The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

26. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the Recommended Sentence of \$100,000 as set out in Paragraph 23 above. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 7 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the Guidelines fine range and will request that the Court impose the Recommended Sentence set out in Paragraph 23 of this Plea Agreement because of the defendant's substantial assistance in the United States' investigation and prosecutions of violations of federal criminal law in the pipeline construction industry in the United States.

WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

27. The parties believe the sentence resulting from the proposed Plea Agreement is appropriate because all relevant conduct is disclosed, the Sentencing Guidelines take into account all pertinent sentencing factors with respect to this defendant, the charge to which the defendant has agreed to plead guilty adequately reflects the seriousness of the actual offense behavior, and the defendant has cooperated fully and truthfully with respect to the investigation of this matter.

28. This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the United States nor the defendant has relied, or is

relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

29. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

30. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Date: July 11, 2006

/s/
Paul M. Boechler for
Flint Energy Services, Inc.
Defendant

Date: July 11, 2006

/s/
R. Ryan Stoll
Attorney for Defendant

Date: July 11, 1006

/s/
Diane Lotko-Baker
Carla M. Stern
Trial Attorneys
United States Department of Justice,
Antitrust Division