

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Cr. No. 06-2495 WJ
vs.	)	
	)	
DOLORES ARREOLA,	)	
	)	
Defendant.	)	

UNITED STATES' RESPONSE TO  
DEFENDANT'S OBJECTIONS TO PRESENTENCE REPORT

A. Introduction

Defendant Dolores Arreola has objected to paragraph 26 of her pre-sentence report which concludes that, in carrying out her crimes, the defendant abused a position of trust within the meaning of that term under U.S.S.G. § 3B1.3. The provision adds a 2-level upward adjustment to the defendant's advisory guidelines sentence.

The United States agrees with the Probation Office that the abuse-of-a-position-of-trust adjustment should apply to Defendant Arreola.

B. The Law

The abuse-of-a-position-of-trust provision reads as follows:

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels.

U.S.S.G. § 3B1.3.

Application Note 1 to the guideline provides some additional guidance on the

application of § 3B1.3, as follows:

Definition of “Public or Private Trust”. “Public or private trust” refers to a position of public or private trust characterized by professional or managerial discretion (*i.e.*, substantial discretionary judgment that is ordinarily given considerable deference). Persons holding such positions ordinarily are subject to significantly less supervision than employees whose responsibilities are primarily non-discretionary in nature. For this adjustment to apply, the position of public or private trust must have contributed in some significant way to facilitating the commission or concealment of the offense (*e.g.*, by making the detection of the offense or the defendant’s responsibility for the offense more difficult). This adjustment, for example, applies in the case of an embezzlement of a client’s funds by an attorney serving as a guardian, a bank executive’s fraudulent loan scheme, or the criminal sexual abuse of a patient by a physician under the guise of an examination. This adjustment does not apply in the case of an embezzlement or theft by an ordinary bank teller or hotel clerk because such positions are not characterized by the above-described factors.

U.S.S.G. § 3B1.3, Application Note 1.<sup>1</sup>

In addition, the Application Notes explain that “[s]pecial skill’ refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolition experts.” U.S.S.G. § 3B1.3, Application Note 4. *See also United States v. Aubin*, 961 F.2d 980 (1<sup>st</sup> Cir. 1992)(skills acquired as ATM service repairman qualify for § 3B1.3 adjustment, where defendant used those skills to gain

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<sup>1</sup> It should be noted that Application Note 1 was amended in 1993 to the form quoted above in order to “better distinguish cases warranting this enhancement.” U.S.S.G. Appendix C, Amendment 492. Importantly, however, the pre-1993 formulation of Application Note 1 also made clear that the guideline did not apply to ordinary bank tellers. *Id.* In any event, even following the amendment, the Tenth Circuit has continued to cite pre-1993 case law. *See e.g., United States v. Brunson*, 54 F.3d 673, 677 (10<sup>th</sup> Cir. 1995)(citing pre-1993 §3B1.3 cases).

access to ATM machine, deactivate the alarm system, and locate and obtain money stored within the machine).

Whether a defendant occupied a position of trust within the meaning of U.S.S.G. § 3B1.3 is a factual question for the sentencing court, which the Tenth Circuit will affirm absent a clearly erroneous decision. *United States v. Williams*, 966 F.2d 555, 557 (10<sup>th</sup> Cir. 1992). Applying this deferential standard of review, the Tenth Circuit has upheld the application of the abuse-of-a-position-of-trust enhancement on numerous occasions under circumstances similar to the instant case.

For example, in *Williams*, the Tenth Circuit upheld application of the adjustment for a defendant who had pled guilty to embezzling public funds while he was working as a military pay account technician on an Air Force base. The defendant committed his crime by fraudulently manipulating the Air Force's automated pay system to cause two checks to be issued to a friend. Because the checks were issued without the normal justifying paperwork, the defendant later issued a debt cancellation on his friend's account to cover his crimes. *Williams*, 966 F.2d at 556.

In analyzing the issues to be considered, the *Williams* Court made note of a non-exhaustive list of factors that had been considered in other cases, including: "the extent to which the position provides freedom to commit a difficult-to-detect wrong, and whether an abuse could be simply or readily noticed, defendant's duties as compared to those of other employees, defendant's level of specialized knowledge, defendant's level of authority in the position, and the level of public trust." *Id.* at 557.

Like Defendant Arreola, the defendant in *Williams* argued that his embezzlement was no different from embezzlement by an ordinary bank teller. *Id.* at 557-58. But the Tenth Circuit disagreed noting, among other things, that the Finance Center where the defendant worked was a restricted area that was broken up into different limited access functions to help prevent fraud. *Id.* at 558. In his position, the defendant also had greater access to the master military pay accounts than line technicians, which he used to his advantage to circumvent the Finance Center's checks and balances. *Id.*

In *United States v. Fox*, 999 F.2d 483 (10<sup>th</sup> Cir. 1993), the Tenth Circuit addressed the § 3B1.3 adjustment in the context of a defendant who began her crime while working at an entry level position at a company that provided credit card services for a retailer. Starting in that position, the defendant changed the name and address on a personal credit card account of a deceased account holder of the retailer to that of the defendant's husband, and then issued new credit cards to herself and her husband. *Id.* at 484. Later, after the defendant had been promoted to a managerial position, the defendant used another computer operator's terminal to remove a red flag on the account that would have revealed it to be in arrearage. *Id.* The Tenth Circuit noted that the method the defendant used to remove the delinquent account status was not commonly known among other employees, though the defendant maintained that this knowledge was not dependent upon her managerial position. *Id.* at 487. Again taking into account the non-exhaustive set of factors set forth in the *Williams* case, the *Fox* Court concluded that, on balance, the district court's decision to apply the adjustment was reasonable and not clearly erroneous.

*Fox*, 999 F.2d at 487.

In *United States v. Johnson*, 4 F.3d 904 (10<sup>th</sup> Cir. 1993), the defendant worked as a vault teller at a bank. The defendant solicited her co-defendants to rob the bank, informing them that the bank cameras did not work, that the ten dollar bills had dye packs, and that the employees had been instructed not to trigger any alarms until after a robbery was finished. *Johnson*, 4 F.3d at 907-908. The defendant argued that the § 3B1.3 adjustment should not have been applied to her because her position was similar to that of an ordinary bank teller. The Tenth Circuit disagreed because her duties exceeded those of ordinary tellers, and because she used her position in a manner that significantly facilitated the commission and concealment of the crime. *Id.* at 916-17.

By contrast, in *United States v. Edwards*, 325 F.3d 1184 (10<sup>th</sup> Cir. 2003), the Tenth Circuit reversed a decision in which § 3B1.3 was applied to an hourly wage employee who worked in the outdoor advertising department of the accounting department at a retail and advertising company. The defendant in *Edwards* had re-routed checks paid to the company which she was supposed to have deposited into the company's account to her boyfriend's account, usually by simply endorsing the back of the checks with the words "for deposit only" and listing her boyfriend's account number. *Id.* at 1186. The defendant then falsely concealed the diverted checks by posting credits in the accounts of customers whose checks were diverted. *Id.*

In reversing the application of the § 3B1.3 adjustment in *Edwards*, the Tenth Circuit emphasized the fact that the defendant's duties were almost entirely clerical and

ministerial. *Id.* at 1187. In addition, the Tenth Circuit concluded that there was no evidence to support the idea that the defendant either had discretionary authority to grant credits to customers, or to make any substantial discretionary judgments regarding company revenues or expenses. *Id.*

C. The Facts

“The primary concern of § 3B1.3 is to penalize defendants who take advantage of a position that provides them freedom to commit or conceal a difficult-to-detect wrong.” *United States v. Koehn*, 74 F.3d 199 (10<sup>th</sup> Cir. 1996). “[J]ob titles themselves do not control; actual duties and authorized duties do.” *Edwards*, 325 F.3d at 1187.

In this case, the defendant worked at the Los Alamos National Laboratory (“LANL” or the “Laboratory”).<sup>2</sup> As explained in the attached Affidavit of Warren Finch (“Finch Affidavit”), who presently serves as the Deputy Subcontracts Manager of the Acquisition Services Management Division at LANL, the mission of the Laboratory is to develop and apply science and technology to help ensure the Nation’s safety and security. Finch Affidavit at ¶ 4. A substantial amount of the technical work that is done at LANL is classified and relates to national security. *Id.* Although the vast majority of the procurement actions at LANL are not considered “classified” procurements, in conjunction with her duties at LANL, it is worthy of note that LANL records reflect that Ms. Arreola held a “L” level security clearance issued by the U.S. Department of Energy.

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<sup>2</sup> Because the Court is already familiar with many of the basic facts of this case from the plea agreement and presentence report, they will not be repeated here.

*Id.*

Mr. Finch has held positions at the Laboratory in which he would supervise individuals who held the same position as Ms. Arreola once held. *Id.* at ¶ 3. In Mr. Finch's estimation, while working at the Laboratory, Ms. Arreola's duties would have entailed a substantial degree of public trust, with the expectation that she would observe both security procedures and handle the public's funds with integrity and diligence. *Id.* at ¶ 4.

To meet the Laboratory's ongoing property, equipment, and support services needs, goods and services are purchased from various approved suppliers, or vendors, at LANL. *Id.* at ¶ 5. At the time of the events in question, to obtain needed goods or services from an outside vendor or supplier, LANL employees who were authorized to do so would have completed a purchase request describing the items needed and submitted it to the Supply Chain Management Division, Procurement Organization, where Defendant Arreola worked. *Id.* at ¶ 5. In her position at LANL, Defendant Arreola was responsible for processing purchase requests for materials and services needed by LANL personnel to carry out their duties. *Id.*

Although Defendant Arreola states that she "believes that her job title at the time she engaged in fraudulent activity was Procurement Contract Assistant[,] " Defendant's Objections to Presentence Report, at 2, this is not accurate. *Id.* at ¶ 6. Defendant Arreola's actual Human Resources classification at LANL was that of a "Buyer 2." *Id.*

The position of Procurement Contract Assistant at LANL is a position that is

predominately an administrative support position for other personnel, such as buyers like Defendant Arreola, or higher level contract administrators. *Id.* at ¶ 7. Had Defendant Arreola worked as a Procurement Contract Assistant, her duties would have been largely clerical and ministerial. *Id.* By contrast, the duties of the position that Defendant Arreola actually held as a Buyer 2 included greater discretionary authority and trust to handle financial transactions on behalf of the Laboratory. *Id.* In addition, a Buyer 2 is responsible for knowing the specialized rules and regulations at LANL which govern the purchases those individuals are responsible for making. *Id.*

By comparison, a Buyer 1 is an entry-level buyer within the LANL personnel hierarchy. A Buyer 2 is not an entry-level position. A Buyer 2 is entrusted with greater responsibilities than a Buyer 1, which is primarily reflected in the fact that a Buyer 2 has signature authority to make purchases on behalf of personnel at the Laboratory without any supervisory approval in greater amounts than lower level buyers. Finch Affidavit at ¶ 8. In Defendant Arreola's former position at LANL, she was entrusted with signatory authority to make purchases for necessary goods and services used by LANL personnel up to \$100,000. *Id.* This meant that, in a single transaction, Defendant Arreola could spend up to \$100,000 of the Laboratory's money without any supervisory review or approval. *Id.* If Defendant Arreola had tried to approve and process a purchase order which exceeded her \$100,000 signatory authority without the necessary supervisory approval, the computerized procurement system would not have permitted her to do so. *Id.* As discussed further below, Defendant Arreola abused the authority with which she



had been entrusted by taking advantage of this discretionary purchasing authority by creating and approving fraudulent purchase orders for payment by the Laboratory that fell well within her \$100,000 signatory authority, thereby making her crime more difficult to detect. *Id.*

Defendant Arreola was entrusted with the authority she had in part because she had worked at LANL so long, since 1979. *Id.* at ¶ 9. As a long-standing and experienced LANL employee, Defendant Arreola also should have been aware at the time of the events in question that any purchase request of less than \$100,000 that designated a “sole source” supplier or vendor --as opposed to not designating a specific vendor but leaving matters to a potential competitive bidding process among several possible suppliers-- would not have required any formal sole source justification from the person requesting the goods or services to be procured. *Id.*

Although Defendant Arreola contends that, in her former position, she “did not create . . . purchase orders[,]” Defendant’s Objections to Presentence Report at 3, her claim is not accurate. Finch Affidavit at ¶ 10. In fact, once a purchase request was received at the Procurement Organization, it would have been among Defendant Arreola’s duties to produce a purchase order, which would designate, among other things, the vendor or supplier, the goods or services to be purchased, and the price the Laboratory would be paying for those goods and services. *Id.*

As a Buyer 2, it is also worth noting that if Defendant Arreola had been assigned to handle a purchase request from one of the technical organizations within the

Laboratory that cost less than \$100,000 that did not have a suggested sole source or vendor (which would admittedly have been rare), then it also would have been the defendant's responsibility to identify a vendor to meet the need, through market research or otherwise, and preferably on a competitive basis. *Id.* at ¶ 11. In that circumstance, it would have also fallen within Ms. Arreola's discretion to choose the final vendor based upon market research that resulted in only one supplier being identified as being able to meet the LANL requirement, or based upon a competitive bidding process in which a supplier would have been chosen based on the selection criteria identified in the request for quotation sent out by the buyer. *Id.* This process again demonstrates the responsibility and discretion that was accorded to Defendant Arreola in her position at the Laboratory.

Most importantly, in order to make her crimes more difficult to detect, Defendant Arreola abused her specialized knowledge and discretionary authority to exploit weaknesses she had discovered in the procurement system at LANL – specific weaknesses which would not have been known to most LANL employees who did not know the details of how the LANL procurement system functioned. *Id.* at ¶ 12.

First, Defendant Arreola began by entering false data into the Laboratory's computerized "Vendor Desk" system to make it appear as if an outside organization, the Santo Domingo de Cundiyo Heirs' Association ("SDHA"), was a legitimate vendor for the Laboratory. *Id.* at ¶ 13. She then arranged to have that vendor activated in the system so that she could take advantage of her position to order fictitious goods and services

from that vendor. *Id.*

Defendant Arreola now contends that setting up a new vendor in the procurement system “is something that any employee would have been able to do under the existing system at LANL simply by sending an e-mail to the vendor desk and the creation of a new vendor account was practically automatic.” Defendant’s Objections to Presentence Report, at 3. That claim is not accurate because very few, if any, LANL employees outside of the procurement organization would have had the authority to access the procurement system in order to set up a new vendor, nor would they have even known of the existence of the “vendor desk.” Finch Affidavit, at ¶ 14. In addition, the staff of the vendor desk would not likely have initiated a new vendor if the request came from a person outside of the procurement organization. *Id.* Moreover, when Defendant Arreola set up the fraudulent vendor she also knew enough to falsely claim that the SDHA was an incorporated entity, which meant that she then did not have to provide the vendor desk with a tax identification number for the SDHA. *Id.*

Second, after the SDHA was falsely established as a “legitimate” vendor, Defendant Arreola began creating fictitious purchase orders based upon other legitimate purchase orders for which she was responsible. *Id.* at ¶ 15. For example, changing the vendor name to that of the SDHA, Defendant Arreola would use the same description of goods and services from a legitimate purchase order in her fraudulent purchase orders so that the goods and services being requested would appear legitimate. *Id.*

Third, all of the fraudulent purchase orders that Defendant Arreola initiated fell

within the limits of her discretionary signatory authority, so that the purchase orders could be approved on her sole authority, without any review. *Id.* at ¶ 16.

Fourth, when creating the fictitious purchase orders Defendant Arreola also had to account for the fact that no goods or services were ever going to be received at the Laboratory. Generally, in accord with standard government practice, the Laboratory will not pay a vendor for any goods and services until those goods or services are received. *Id.* at ¶ 17. Thus, goods such as those which Defendant Arreola purported to order on her fraudulent purchase orders must first be delivered to a designated receiving area at the Laboratory. *Id.* Once the goods are received, a receipt report is generated to alert the appropriate personnel so that a check can be mailed to the vendor pursuant to the purchase order. *Id.* Because the goods which Defendant Arreola had ordered were fictitious, however, she exercised her discretionary authority to approve a waiver of the normal receipt report prior to payment for her fraudulent purchase orders. *Id.* As part of her advance payment approval, Defendant Arreola also arranged for the checks not to be mailed, but she instead exercised her discretion and authority to pick the checks up herself. *Id.* Almost all LANL checks are normally mailed, but because Defendant Arreola arranged for this manner of payment as part of her authority as a Buyer 2, this arrangement appears not to have been questioned. *Id.*

D. Conclusion

Over the 25 years that Defendant Arreola worked at LANL, she developed specialized skills and knowledge about the details of how the LANL procurement system

worked. She became entrusted with significant discretionary authority with respect to the category of purchases that she ultimately chose to exploit. She was expected to manage significant financial transactions on behalf of the Laboratory, and to exercise her specialized skills, knowledge and professional judgment when doing so.

With no supervision for purchases worth up to \$100,000, Defendant Arreola was expected to spend the public's money wisely, in accord with standard practices, and to exercise her professional discretion to override those standard practices only when it made sense to do so. Thus, on her sole authority, personnel at LANL deferred to, and did not question, Defendant Arreola's decision to approve payment of the fraudulent purchase orders, to have LANL funds released without the ordered goods first being delivered to the Laboratory, and to allow Defendant Arreola to pick-up checks personally, rather than mailing them to the vendor. For that matter, the LANL personnel who activated the SDHA as an "active" vendor at the Laboratory obviously honored Defendant Arreola's request that they do so because she was part of the procurement group, as it was part of Defendant Arreola's professional duties to identify vendors to meet the Laboratory's equipment and support services needs.

In this case, Defendant Arreola structured her crimes in a manner that was so difficult to detect that the Laboratory itself actually never detected what she was doing until the bank where Defendant Arreola was depositing the LANL checks became suspicious and alerted the Laboratory. Under all of these circumstances, there is ample justification for finding that Defendant Arreola abused a position of trust in carrying out

her crimes.

Respectfully submitted,

LARRY GOMEZ  
Acting United States Attorney

*Electronically filed 6/22/07*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 22nd day of June 2007, that this document was filed with the Court's electronic CM/ECF system, which should automatically cause Assistant Federal Public Defender Michael Keefe, the attorney for Defendant Dolores Arreola, to be served.

Electronically filed 6/22/07  
FRED J. FEDERICI  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) Cr. No. 06-2495 WJ  
 )  
 vs. )  
 )  
 DOLORES ARREOLA, )  
 )  
 Defendant. )

AFFIDAVIT OF WARREN FINCH

I, Warren Finch, do hereby swear as follows:

1. I am a witness of lawful age with knowledge of the facts related herein.
2. I am employed at the Los Alamos National Laboratory ("LANL" or the "Laboratory") as the Deputy Subcontracts Manager of the Acquisition Services Management Division. I have worked at LANL since April of 1994. Prior to signing this document, I reviewed: (1) a LANL memorandum from the Audits and Assessments Division dated July 25, 2005 which summarized the results of an internal LANL investigation into the fraudulent activities of former LANL employee Dolores Arreola that took place from February 2005 through June 2005; (2) Ms. Arreola's LANL personnel file to familiarize myself with the details of her prior employment at LANL, and; (3) a document entitled "Objections to Presentence Report." At the time Ms. Arreola was discharged from LANL due to her fraudulent activities, LANL records reflect that Ms. Arreola was working as a Buyer 2 within the Supply Chain Management Division,

Procurement Organization. At the time of the events in question, the Acquisition Services Management Division, where I now work as a manager, was known as the Supply Chain Management Division, Procurement Organization.

3. In my position at LANL, I am very familiar with what the duties and responsibilities of a Buyer 2 were at the time of Ms. Arreola's discharge. In my supervisory and management positions at LANL, I have previously supervised individuals who held the Buyer 2 position, similar to the position Ms. Arreola once held at the Laboratory.

4. The mission of the Laboratory is to develop and apply science and technology to help ensure the Nation's safety and security. A substantial amount of the technical work that is done at LANL is classified and relates to national security. Although the vast majority of the procurement actions at LANL are not considered "classified" procurements, in conjunction with her duties at LANL, LANL records reflect that Ms. Arreola held an "L" level security clearance issued by the U.S. Department of Energy. In my estimation, while working at the Laboratory, Ms. Arreola's duties entailed a substantial degree of public trust, with the expectation that she would both observe security procedures and handle the public's funds with integrity and diligence.

5. To meet the Laboratory's ongoing property, equipment, and support services needs, goods and services are purchased from various approved suppliers, or vendors, at LANL. At the time of the events in question, to obtain needed goods or services from an outside vendor or supplier, LANL employees who were authorized to do



so would have completed a purchase request describing the items needed and submitted it to the Supply Chain Management Division, Procurement Organization, where Ms. Arreola worked. In her position at LANL, Ms. Arreola would have been responsible for processing purchase requests for materials and services needed by LANL personnel to carry out their duties.

6. Although it states in the Objections to Presentence Report that Ms. Arreola “believes that her job title at the time she engaged in fraudulent activity was Procurement Contract Assistant[,]” Objections to Presentence Report, at 2, this is not accurate. As stated above, according to her personnel records, Ms. Arreola’s actual Human Resources classification at LANL was that of a “Buyer 2.”

7. The position of Procurement Contract Assistant at LANL is a position that is predominately an administrative support position for other personnel, such as buyers like Ms. Arreola, or higher level contract administrators. If Ms. Arreola had actually worked as a Procurement Contract Assistant, her duties would have been largely clerical and ministerial. By contrast, the duties of the position that Ms. Arreola held as a Buyer 2, included greater discretionary authority and trust to handle financial transactions on behalf of the Laboratory. In addition, part of the duties of a Buyer 2, is the responsibility for knowing the specialized rules and regulations at LANL which govern the purchases those individuals are responsible for making. A Buyer 1 is an entry-level buyer within the LANL personnel hierarchy. A Buyer 2 is not an entry-level position. The Buyer 2 position carries significant responsibilities and discretion. As a Buyer 2, Ms. Arreola

would have been expected to acquire equipment and services in a cost effective and timely manner, to perform price analysis, and to manage the timely approval and payment of vendor invoices. She would have also been expected to use professional concepts to effectively resolve issues, to possess a substantial understanding of the technical job requirements, and to apply her knowledge and skills in executing tasks. She would have further been expected to demonstrate judgment in selecting methods and techniques to obtain solutions to problems.

8. A Buyer 2 is entrusted with greater responsibilities than a Buyer 1, which is primarily reflected in the fact that a Buyer 2 generally has signature authority to make purchases on behalf of personnel at the Laboratory, without any supervisory approval, in greater amounts than lower level buyers. In Ms. Arroela's former position at LANL, she was entrusted with signatory authority to make purchases for necessary good and services used by LANL personnel up to \$100,000. This meant that, in a single transaction, Ms. Arroela could spend up to \$100,000 of the Laboratory's money without any supervisory review or approval. However, if Ms. Arroela had tried to approve and process a purchase order which exceeded her \$100,000 signatory authority without the necessary supervisory approval, the computerized procurement system would not have permitted her to do so. From the audit report I have reviewed, Defendant Arroela abused the authority with which she had been entrusted by taking advantage of this discretionary purchasing authority in order to utilize the procurement system, by creating and approving fraudulent purchase orders for payment by the Laboratory that fell well within her signatory

authority. Her discretionary authority and knowledge of LANL procurement systems made her crimes more difficult for the Laboratory to detect.

9. It appears that Ms. Arreola was entrusted with the authority she had in part because she had worked at LANL so long, since 1979. As a long-standing and experienced LANL employee, Ms. Arreola presumably also should have been aware at the time of the events in question that any purchase order of less than \$100,000 that designated a "sole source" supplier or vendor, as opposed to not designating a specific vendor but leaving matters to a potential competitive bidding process among several possible suppliers, would not have required any formal sole source justification from the person requesting the goods or services to be procured.

10. Although it states in the Objections to Presentence Report that, in her former position, Ms. Arreola "did not create . . . purchase orders[,] " Defendant's Objections to Presentence Report at 3, that is also not accurate. In fact, once a purchase request was received at the Procurement Organization, it would have been among Ms. Arreola's duties as a Buyer 2 to produce a purchase order, which would designate, among other things, the vendor or supplier, the goods or services to be purchased, and the price the Laboratory would be paying for those goods and services.

11. As a Buyer 2, it is also worth noting that if Ms. Arreola had been assigned to handle a purchase request from one of the technical organizations within the Laboratory that cost less than \$100,000 that did not have a suggested sole source or vendor (which would admittedly have been rare), and which was within Ms. Arreola's

signatory authority, then it also would have been Ms. Arreola's responsibility to identify a vendor to meet the need, through market research or otherwise, and preferably on a competitive basis. In that circumstance, it would have also fallen within Ms. Arreola's discretion to choose the final vendor based upon market research that resulted in only one supplier being identified as being able to meet the LANL requirement, or based upon a competitive bidding process in which a supplier would have been chosen based on the selection criteria identified in the request for quotation sent out by the buyer.

12. In order to make her fraudulent activities at LANL more difficult to detect, in my estimation, it does appear that Ms. Arreola abused her specialized knowledge and discretionary authority to exploit weaknesses she had discovered in the procurement system at LANL – specific weaknesses which I believe would not have been known to most LANL employees because most employees outside the procurement organization do not have the authority to access the procurement system, and if a LANL employee outside the procurement organization had the authority to get into the system it is highly unlikely they would know the details of how the LANL procurement system functioned.

13. First, Ms. Arreola apparently began by entering false data into the Laboratory's computerized "Vendor Desk" system to make it appear as if an outside organization, the Santo Domingo de Cundiyo Heirs' Association ("SDHA"), was a legitimate vendor for the Laboratory. She then arranged to have that vendor activated in the system so that she could take advantage of her position to order fictitious goods and services from that vendor.

14. In the Objections to Presentence Report, it states that setting up a new vendor in the procurement system "is something that any employee would have been able to do under the existing system at LANL simply by sending an e-mail to the vendor desk and the creation of a new vendor account was practically automatic." Objections to Presentence Report, at 3. This is not accurate because very few, if any, LANL employees outside of the procurement organization would have had the authority to access the procurement system in order to set up a new vendor, nor would they have even known of the existence of the "vendor desk". In addition, the staff of the vendor desk would not likely have initiated a new vendor if the request came from a person outside of the procurement organization. However, it appears that when Ms. Arreola set up the fraudulent vendor she also knew enough to falsely claim that the SDHA was an incorporated entity, which meant that she then did not have to provide the vendor desk with a tax identification number for the SDHA.

15. It appears that after the SDHA was falsely established as a "legitimate" vendor, Ms. Arreola next began creating fictitious purchase orders based upon other legitimate purchase orders for which she was responsible. For example, changing the vendor name to that of the SDHA, Ms. Arreola apparently would use the same description of goods and services from a legitimate purchase order in her fraudulent purchase orders so that the goods and services being requested would appear legitimate.

16. It also appears that all fictitious purchase orders initiated by Ms. Arreola fell within the limits of her discretionary signatory authority, and the purchase orders could be approved on her sole authority, without any supervisor review.

17. When creating the fictitious purchase orders, it appears that Ms. Arreola also took into account the fact that no goods or services were ever going to be received at the Laboratory. Generally, in accord with standard government practice, the Laboratory will not pay a vendor for any goods and services until those goods or services are received. Thus, goods such as those which Ms. Arreola purported to order on her fraudulent purchase orders, must first be delivered to a designated receiving area at the Laboratory. Once the goods are received, a receipt report is then generated to alert the appropriate personnel so that a check can be mailed to the vendor pursuant to the purchase order. Because the goods which Ms. Arreola had ordered were fictitious, however, records indicate that Ms. Arreola exercised her discretionary authority to approve a waiver of the normal receipt report prior to payment for her fraudulent purchase orders. As part of her advance payment approval, Ms. Arreola also apparently arranged for the checks not to be mailed, but instead exercised her discretion and authority to arrange to pick the checks up herself from accounts payable. Almost all LANL checks are normally mailed to vendors as payment for goods and services, but because Ms. Arreola arranged for this method of payment as part of her authority as a Buyer 2, this arrangement appears not to have been questioned.

18. Finally, it should be noted that, according to the July 25, 2005 LANL memorandum I reviewed outlining LANL's internal review of Ms. Arreola's fraudulent activities, that the Laboratory itself was not the first entity to detect Ms. Arreola's fraudulent activities. Rather, the bank where Ms. Arreola was depositing the LANL checks apparently became suspicious and alerted LANL personnel to review the fraudulent checks more closely, which is when Ms. Arreola's activities were discovered.

I swear under penalty of perjury that the foregoing information is true and accurate to the best of my knowledge, information and belief.

Warren Finch  
Warren Finch

State of New Mexico §  
  §  
Bernalillo County       §

Subscribed and sworn before me, a Notary Public in and for said County and State, this 22nd day of June 2007.

Barbara C. Herrera

My commission expires:

4-16-2010



OFFICIAL SEAL  
BARBARA C. HERRERA  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My Comm. Expires 4-16-2010