

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNITED STATES OF AMERICA )  
 )  
 v. ) CRIMINAL NO. 2:09cr 47  
 )  
 TODD M. MOSIMAN, )  
 )  
 Defendant. )

PLEA AGREEMENT

The United States of America, by undersigned counsel, the defendant, Todd M. MOSIMAN, and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to waive indictment and plead guilty to a single count criminal information charging the defendant with conspiracy to defraud the United States, in violation of Title 18, United States Code, Section 371. The maximum penalties for this offense are, a maximum term of five years of imprisonment, a fine in an amount equal to the greatest of (1) \$250,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(b) and (d)), full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for up to two years.

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J.P.P.  
J.P.P.



defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. Notwithstanding the foregoing, 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 Sentencing Commission in formulating the Sentencing Guidelines that should result in a sentence outside of the advisory guidelines range. Accordingly, the parties agree not to seek or support any sentence outside of the advisory guideline range for any reason not set out explicitly in this agreement.

In addition, pursuant to U.S.S.G § 6B1.4 and Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the defendant enter into the following stipulations. The United States and the defendant understand and agree that these stipulations are not binding upon either the Probation Office or the Court. The Court may make factual determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed on the defendant.



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- a. The parties agree that the sentencing guidelines applicable to the charged offense are U.S.S.G. § 2X1.1 and U.S.S.G. § 2B1.1.
- b. The parties agree that the base offense level corresponding with the charged offense as established by U.S.S.G. § 2B1.1(a) is 6.
- c. The parties agree that the specific offense characteristic enhancement as established by U.S.S.G. § 2B1.1(b)(1) is 8 because the loss, within the meaning of U.S.S.G. § 2B1.1(b)(1), that resulted from the offense was \$96,000.
- d. The parties agree that there should be no increase or decrease in the offense level for defendant's role in the offense as he had neither an aggravating nor a mitigating role for purposes of U.S.S.G. § 3B1.1 and U.S.S.G. § 3B1.2, respectively.
- e. The adjusted offense level, prior to application of U.S.S.G. § 3E1.1 (Acceptance of Responsibility), for the charged offense is 14.
- f. For purposes of U.S.S.G. § 3E1.1, a two-level reduction of the offense level for defendant's acceptance of responsibility is appropriate. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with this stipulation, then the United States shall no longer be bound by it.
- g. Based on the foregoing, defendant's adjusted offense level for the offense to which he is pleading is 12.

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HAR  
JCP  
JCP  
JCP  
JCP

**5. Waiver of Appeal**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

**6. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

**7. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

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**8. Restitution for Offense of Conviction**

The defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. The Government and the defendant agree that the following victim has suffered the following loss:

<u>VICTIM</u>	<u>AMOUNT OF LOSS</u>
United States Navy	\$96,000

**9. Immunity from Further Prosecution**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or Statement of Facts. Furthermore, the Antitrust Division of the United States Department of Justice will not further prosecute the defendant in any jurisdiction for the specific conduct in the information or Statement of Facts. The non-prosecution 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. Defendant's Cooperation**

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the Government. In that regard:

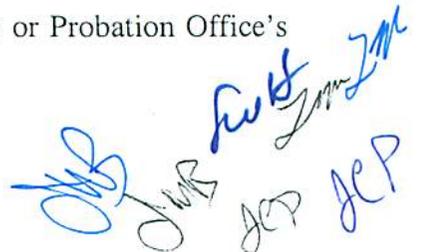
- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials

of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the Government, and that the Government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the Government to seek the defendant's cooperation or assistance.

**11. Use of Information Provided by the Defendant Under This Agreement**

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's



access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the Government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

**12. Defendant Must Provide Full, Complete and Truthful Cooperation**

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

**13. Motion for a Downward Departure**

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

**14. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney).

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If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the Statement of Facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines

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JEP

or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

**15. Nature of the Agreement and Modifications**

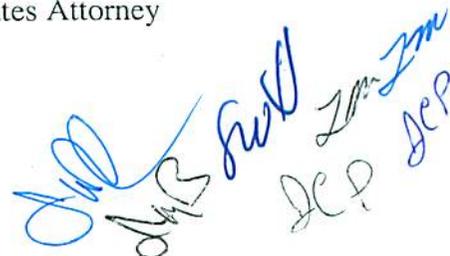
This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties. 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.

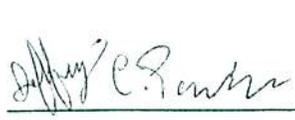
Respectfully Submitted,

Dana J. Boente  
Acting United States Attorney

By:

  
Stephen W. Haynie  
Assistant United States Attorney



Jeffrey C. Parker  
Timothy Bridgeford  
Richard S. Rosenberg  
Attorneys, Antitrust Division  
U.S. Department of Justice

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

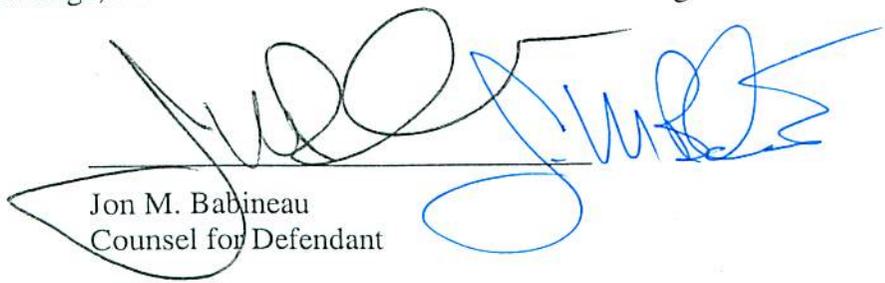
Date: 4-1-09



TODD M. MOSIMAN  
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 4-1-09

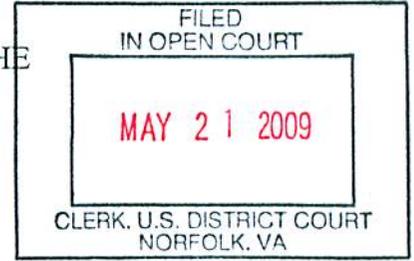


Jon M. Babineau  
Counsel for Defendant



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNITED STATES OF AMERICA )

v. )

TODD M. MOSIMAN, )

Defendant. )

CRIMINAL NO. 2:09cr 47

STATEMENT OF FACTS

The parties agree that the United States could have proven the following facts, which support the plea of guilty, in this case beyond a reasonable doubt at trial:

1. All of the conduct set forth below occurred in at least the Eastern District of Virginia.
2. Defendant Todd M. MOSIMAN resided in the Eastern District of Virginia throughout calendar years 2004 and 2005, and lived in Virginia Beach, Virginia.
3. During at least the calendar years 2004 through 2005, the United States Navy's Elevator Support Unit ("ESU") project was handled by a prime contractor, a limited liability corporation in the Eastern District of Virginia, hereinafter referred to as "PC." PC's contract with the Navy required it to provide engineering, technical and repair support to maintain elevator equipment on Navy aircraft carriers and support vessels. In particular, PC's contract required it to assist the Navy in material procurement. When materials were needed for elevator repair or maintenance, PC's personnel solicited quotes from vendors, usually obtaining three quotes for purchases over \$2,500 for the purpose of maintaining a competitive procurement process. For each procurement, PC's personnel then made a source recommendation, based on the lowest quote, which was forwarded on to the Navy along with other quotes received. The Navy then followed

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this source recommendation and made the purchase through entering into a contract with the recommended vendor; such a contract is hereinafter referred to as an "ESU-related Material Contract."

4. From at least as early as June 2004 through at least October 2005, MOSIMAN was an owner of an unincorporated company ("Vendor-1") which had its principal place of business in Chesapeake, Virginia.

5. Vendor-1 submitted quotes for ESU-related Material Contracts during at least the months of August and September 2004.

6. Vendor-1 was awarded at least six (6) ESU-related Material Contracts and was paid at least \$167,000 from the Navy for these contracts during the period of September 2004 through March 2005.

7. During the period of prior to June 2004 until at least October 2005, a person, hereinafter referred to as "CO-CONSPIRATOR A," was an employee of PC, and CO-CONSPIRATOR A had the ultimate authority for determining which vendors PC would solicit for quotes and recommend to the Navy regarding the materials needed for elevator repair and maintenance on the Navy aircraft carriers and support vessels. CO-CONSPIRATOR A also selected and supervised the employees of PC who were involved in this solicitation and recommendation process for such materials.

8. From at least as early as June 2004, continuing until at least March 2005, in at least the Eastern District of Virginia, MOSIMAN and CO-CONSPIRATOR A knowingly and willfully conspired and agreed to defraud the United States Navy by, among other things, having CO-CONSPIRATOR A circumvent the competitive procurement process for ESU-related Material

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Contracts and steer ESU-related Material Contracts to Vendor-1.

9. It was part of the conspiracy that CO-CONSPIRATOR A and MOSIMAN agreed to and did create Vendor-1, a company that previously did not exist and, as such, had no experience doing government contracting or any other type of business.

10. As part of the conspiracy, it was further agreed, among other things that:

(a) CO-CONSPIRATOR A, through CO-CONSPIRATOR A's position at PC, would ensure that Vendor-1 won ESU-related Material Contracts for fabricated metal, by among other things, the following:

(i) CO-CONSPIRATOR A would make sure that CO-CONSPIRATOR A's subordinates at PC would solicit MOSIMAN to submit quotes on behalf of Vendor-1 to sell fabricated metal (including but not limited to filler tracks and universal joints) for ESU-related Material Contracts; and

(ii) CO-CONSPIRATOR A would talk with MOSIMAN concerning the amounts of Vendor-1's quotes before MOSIMAN submitted them to PC for ESU-related Material Contracts;

(b) CO-CONSPIRATOR A and MOSIMAN would have joint access to Vendor-1's bank account;

(c) MOSIMAN would be the person purported to PC and the Navy as being the owner and president of Vendor-1; and

(d) CO-CONSPIRATOR A and MOSIMAN would conceal CO-CONSPIRATOR A's involvement with Vendor-1 from PC and the Navy.

11. On or about June 30, 2004, MOSIMAN and CO-CONSPIRATOR A opened a bank

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account for Vendor-1 at Monarch Bank, 750 Volvo Parkway, Chesapeake, VA (hereinafter referred to as "Vendor-1's Monarch Bank Account"). This was a joint account of MOSIMAN and CO-CONSPIRATOR A and certain of the account's information is as follows:

- (a) Account #: XXXX9342
- (b) Account Title: "[Vendor-1]"
- (c) Signatories: MOSIMAN and CO-CONSPIRATOR A;
- (d) Title of Signatories: MOSIMAN - Partner; CO-CONSPIRATOR A - Partner;
- (e) Description of Powers: MOSIMAN and CO-CONSPIRATOR A were given all powers relating to the account, including but not limited to endorsing checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with Monarch Bank.

12. Vendor-1 used the office location in Chesapeake, Virginia through a lease. Both CO-CONSPIRATOR A's and MOSIMAN's names are on the lease.

13. CO-CONSPIRATOR A provided favorable treatment to Vendor-1 and steered contracts to Vendor-1, through a variety of means, including but not limited to, the following:

- (a) CO-CONSPIRATOR A directed one or more of CO-CONSPIRATOR A's subordinates at PC to solicit MOSIMAN to submit quotes on behalf of Vendor-1; and
- (b) CO-CONSPIRATOR A, based on competitive information (including knowledge of quotes submitted by Vendor-1's competitors) that CO-CONSPIRATOR A had gained through CO-CONSPIRATOR A's role at PC, gave instructions to MOSIMAN regarding how much to quote for ESU-related Material Contracts.

14. The following chart is an accurate description of ESU-related Material Contracts awarded to Vendor-1:



Contract #	Award Amount	Product(s)	Date of Final Quote by Vendor-1	Date of PC's Recommendation to Navy	Invoice Date	Date that Navy's Payment of Award Amount was credited to Vendor-1's Monarch Bank
N62793-04-M-P269	\$8,384.00	16 Spring Rollers; 32 Bushings	8/3/2004	8/3/2004	8/23/2004	9/2/2004
4243-LR51, 52	\$894.00	4 Clevises; 4 Pins	8/25/2004	8/25/2004	9/1/2004	9/2/2004 <sup>1</sup>
N62793-04-M-P297	\$2,766.96	12 Guide Rollers; 12 Pins	8/31/2004	8/31/2004	9/23/2004	2/25/2005
N62793-04-M-P325	\$50,087.00 (final quote for universal joints: \$39,495) (quote for spring rollers and bushings: \$10,592)	150 Universal Joints; 16 Spring Rollers and 32 Bushings	9/16/2004	9/14/2004	10/1/2004	10/12/2004
N62793-04-M-P342	\$52,500.00	150 Filler Tracks	9/24/2004	9/24/2004	11/9/2004	12/13/2004
N62793-04-M-P346	\$52,500.00	150 Filler Tracks	9/24/2004	9/24/2004	1/26/2005	3/9/2005
TOTAL	\$167,131.96					

<sup>1</sup> The payment into Vendor-1's Monarch Bank Account was for \$9,279 for N62793-04-M-P269 and 4243-LR51, 52. Although the total award amount for these contracts was \$9,278, the amount transferred into the account is \$1 more.

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 JCP JCP  
 ZM

15. On behalf of Vendor-1, MOSIMAN billed the Navy for all of Vendor-1's ESU-related Material Contracts and collected payment even though Vendor-1 never made or fabricated any materials for which it received such payment.

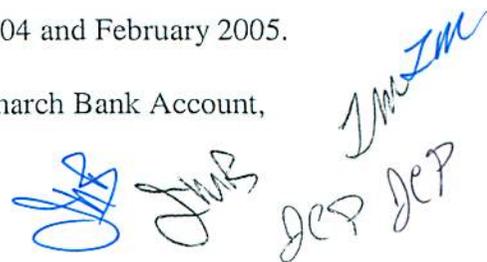
16. On a September 2004 order for 150 universal joints, Vendor-1 never made, fabricated or purchased these universal joints, yet MOSIMAN, on behalf of Vendor-1, billed and collected payment from the Navy. This universal joint order was one part of contract #

N62793-04-M-P325. The second part of this contract was for spring rollers and bushings.

Vendor-1 never made, fabricated or purchased these spring rollers and bushings, yet MOSIMAN, on behalf of Vendor-1, still billed and collected payment from the Navy. The combined amount for this contract was \$50,087 which is the total of the universal joint order (\$39,495) and the spring rollers and bushings order (\$10,592). The total amount of \$50,087 was paid by the Navy and ultimately credited to Vendor-1's Monarch Bank Account on or about October 12, 2004.

17. On a September 2004 solicitation for 150 filler tracks, Vendor-1 actually won two orders, for a total of 300 filler tracks, stemming from a single quote, and Vendor-1 was paid \$105,000 from the Navy for the orders. Vendor-1 never made, fabricated or purchased these filler tracks, yet MOSIMAN, on behalf of Vendor-1 still billed and collected payment from the Navy. These particular filler track orders were ultimately for contracts # N62793-04-M-P342 and # N62793-04-M-P346.

18. The first three orders won by Vendor-1 were for contracts (1) # N62793-04-M-P269; (2) # 4243-LR51, 52; and (3) # N62793-04-M-P297. During the period of August and September 2004, MOSIMAN submitted invoices to the Navy in the total amount of \$12,044.96 for these orders. The Navy paid this amount during the months of September 2004 and February 2005. Although the Navy paid \$12,044.96 for these orders to Vendor-1's Monarch Bank Account,



Vendor-1 never made or fabricated any materials relating to these orders. Rather, MOSIMAN purchased them from a vendor in North Carolina for \$6,813.60. MOSIMAN used this North Carolina-based vendor at the instruction of CO-CONSPIRATOR A.

19. CO-CONSPIRATOR A and MOSIMAN each had full access rights and all powers relating to Vendor-1's Monarch Bank Account throughout the period of at least June 30, 2004 until this account was closed on October 14, 2005. A total of approximately \$179,000 was deposited into this account, of which approximately \$167,000 was from the Navy for ESU-related Material Contracts set forth in paragraph 14 above.

20. CO-CONSPIRATOR A and MOSIMAN withdrew a combined amount of over \$100,000 from Vendor-1's Monarch Bank Account. Of this amount, CO-CONSPIRATOR A received at least \$63,950 and MOSIMAN received at least \$31,700.

21. Based on the foregoing, the parties agree the evidence would be established beyond a reasonable doubt that the defendant violated Title 18, United States Code, Section 371 (conspiracy to defraud).

22. This Statement of Facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's and others' involvement in the charge set forth in the plea agreement.

Respectfully Submitted,

Dana J. Boente  
Acting United States Attorney

By:

  
Stephen W. Haynie  
Assistant United States Attorney

