

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Criminal No. 6:05-cr-172-ORL-18KRS

Filed: 9/29/2005

v.

Violation: 15 U.S.C. § 1

WOODSON & ASSOCIATES, INC.,

Defendant.

PLEA AGREEMENT

The United States of America and WOODSON & ASSOCIATES, INC., ("defendant"), a corporation organized and existing under the laws of the state of Florida, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. 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;

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- (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.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(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 9 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). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Middle District of Florida. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids on construction contracts with respect to the Evolved Expendable Launch Vehicle ("EELV") program at Space Launch Complex 37 ("SLC 37") at

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Cape Canaveral Air Force Station ("CCAFS"), Florida from at least as early as March 1998 and continuing until as late as June 2002, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 5 below.

ELEMENTS OF THE OFFENSE

4. The defendant acknowledges understanding the nature and elements of the offense with which the defendant has been charged and to which the defendant is pleading guilty. The elements of the offense (Bid Rigging in violation of the Sherman Act) are:

- First That the conspiracy was knowingly formed and was existing at or about the time alleged in the Information;
- Second That the defendant knowingly became a member of the conspiracy as charged; and
- Third That the conspiracy restrained interstate trade or commerce.

FACTUAL BASIS FOR OFFENSE CHARGED

5. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

- (a) For purposes of this Plea Agreement, the "relevant period" is that period beginning at least as early as March 1998 and continuing until as late as June 2002. During the relevant period, the defendant was a corporation organized and existing under the laws of the state of Florida

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with its principal place of business in Titusville, Florida. During the relevant period, the defendant provided electrical contracting services and employed 50 or more individuals and the volume of commerce attributable to the defendant was at least \$3,772,342.00.

(b) During the relevant period, the defendant, through its officers and employees, including high-level personnel of the defendant, participated in a conspiracy to suppress and eliminate competition by rigging bids on construction contracts with respect to the EELV program at SLC 37 at CCAFS. In furtherance of the conspiracy, the defendant, through its president and vice president, engaged in discussions and attended meetings with representatives of another electrical contracting service in the Central Florida area. During these discussions and meetings, agreements were reached to suppress and eliminate competition by rigging bids for construction contracts with respect to the EELV programs and SLC 37 at CCAFS.

(c) In the mid-1990s, the United States Air Force ("USAF") began to develop a program to create a new family of evolved expendable launch vehicles to replace the aging rockets then being used to launch satellites. The goal of the project was to create a cost-efficient and reliable family of rockets to launch payloads into space by building on the existing hardware found in the current generation of rockets, including the DELTA II, ATLAS II/CENTAUR, and TITAN IV rockets.

(d) In 1998, Boeing, pursuant to its EELV contract, retained Raytheon Engineers & Constructors, Inc. ("Raytheon") to provide design

and construction services at SLC 37. Pursuant to the contract, Raytheon solicited bids from contractors to provide construction services with respect to SLC 37, including Projects 7158 and 7501. Project 7158 consisted of the construction of duct banks, which consist of trenches in which electrical wiring encased in conduit are placed and then filled with concrete. Project 7501 consisted of the installation of a fire alarm system at SLC 37.

(e) For purposes of forming and carrying out the conspiracy, the defendant and co-conspirators combined to do, including, among other things:

- (1) attending meetings and engaging in telephone conversations during which they discussed the submission of prospective bids on construction contracts with respect to the EELV program at SLC 37 at CCAFS;
- (2) agreeing during those meetings and telephone conversations not to compete on certain projects at SLC 37, specifically Raytheon Project 7158 (Underground Duct Bank), and Project 7501 (Fire Alarm and Smoke Detection Systems);
- (3) agreeing during those meetings and telephone conversations not to compete by designating the defendant to be successful bidder on Projects 7158 and 7501;

- (4) agreeing during the meetings and telephone conversations that the other corporate co-conspirator would submit intentionally high bids to Raytheon with respect to Projects 7158 and 7501;
- (5) submitting bids to Raytheon on Projects 7158 and 7501 which contained false, fictitious, and fraudulent statements and entries; and
- (6) the defendant accepting payments of \$2,526,329.00 and \$1,246,013.00 from Raytheon on Projects 7158 and 7501, respectively.

(f) During the relevant period, 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 Raytheon Projects 7158 and 7501. In addition, substantial amounts of funds to pay for the aforementioned projects were transferred from outside of the State of Florida into the State of Florida. The business activities of the defendant and its co-conspirators in connection with the electrical contracting services affected by the conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(g) Acts in furtherance of the conspiracy were carried out within the Middle District of Florida, Orlando Division. The conspiratorial meetings and discussions described above took place in and around Titusville, Florida in this District.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of § 1 of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

7. In addition, the defendant understands that:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;
- (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.,") or 18 U.S.C. § 3563(b)(2), the Court may order it to pay restitution to the victims of the offense; and
- (c) 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.

SENTENCING GUIDELINES

8. 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

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not ultimately bound to impose a sentence within the applicable advisory Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree that the appropriate disposition of this case is to jointly recommend that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of \$175,000.00, payable in installments as set forth below, with interest accruing under 18 U.S.C. § 3621(f)(1)-(2) ("the recommended sentence"):

(a) The United States and the defendant agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), that the fine be paid in the following installments: within thirty (30) days of imposition of sentence – \$25,000.00 (plus any accrued interest); at the one-year anniversary of imposition of sentence ("anniversary") – \$30,000.00 (plus any accrued interest); at the two-year anniversary – \$30,000.00 (plus any accrued interest); at the three-year anniversary – \$30,000.00 (plus any accrued interest); at the four-year anniversary – \$30,000.00 (plus any accrued interest); at the five-year anniversary – \$30,000.00 (plus any accrued interest); provided, however,

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that the defendant shall have the option at any time before the five-year anniversary of prepaying the remaining balance (plus any accrued interest) then owing on the fine;

(b) 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;

(c) The United States agrees that it will recommend to the Court that any term of probation imposed by the Court in excess of one year be terminated upon the full payment of any restitution and fine imposed by the Court on the defendant; and

(d) The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

10. The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 9 above. The United States and the defendant further agree that the recommended fine is appropriate, pursuant to U.S.S.G. § 8C3.3(b), due to the inability of the defendant to pay a fine greater than that recommended without substantially jeopardizing its continued viability.

11. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 14 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

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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.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement. 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 this Agreement, it nevertheless has no right to withdraw its plea of guilty.

13. In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

DEFENDANT'S COOPERATION

14. The defendant will 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 provision of contracting services, including electrical contracting services, at Kennedy Space Center, Patrick Air Force Base, and CCAFS, 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 documents, information, and other materials in the possession, custody, or control of the defendant, requested by the United States in connection with any Federal

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Proceeding; and

(b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 15 of this Plea Agreement, of the current directors, officers, and employees of the defendant, as may be requested by the United States, 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.

15. The ongoing, full, and truthful cooperation of each person described in Paragraph 14(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, 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);

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

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(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); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 17(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 17(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.

GOVERNMENT'S AGREEMENT

16. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 14 of this Plea Agreement, the United States agrees that 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 an antitrust conspiracy involving the rigging of bids on construction contracts with respect to the EELV program at SLC 37 at CCAFS, Florida. 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

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any crime of violence.

17. The United States 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 recommended sentence and subject to the exceptions noted in Paragraph 17(c), the United States will not bring criminal charges against any current 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 an antitrust conspiracy involving the rigging of bids on construction contracts with respect to the EELV program at SLC 37 at CCAFS, Florida ("Relevant Offense");

(b) Should the United States determine that any current 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 17(b) fails to comply with his or her obligations under Paragraph 15, 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 17(e), information provided by a person described in Paragraph 17(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);

(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 15 of this Plea Agreement, the agreement in Paragraph 17(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 14(a) and 15(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

18. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if

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requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

19. 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.

VOLUNTARY PLEA

20. 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.

VIOLATION OF PLEA AGREEMENT

21. 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 14 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

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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 16 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.

22. 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.

ENTIRETY OF AGREEMENT

23. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

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24. 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.

25. 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.

DATED this 26 day of SEPTEMBER, 2005.

Defendant:

United States of America:

/S/
Corporate Representative
Woodson & Associates, Inc.

/S/
Richard E. Reed
Georgia Bar No. 597745

/S/
Louis V. Cianfrogna, Esquire
Attorney for the Defendant

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