

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

ARVIND K. AGARWAL

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Criminal No. RWT-04-125

Filed 03/08/2004

Violation: 18 U.S.C. § 1343

PLEA AGREEMENT

The United States Department of Justice, Antitrust Division (“the United States”), and Arvind K. Agarwal (“the defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty of any criminal charge brought against him;
 - (d) to have a trial by jury, at which he 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 him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty at trial; and
 - (h) to appeal the imposition of sentence against him, including the rights provided under 18 U.S.C. § 3742.

**AGREEMENT TO PLEAD GUILTY
AND WAIVER OF CERTAIN RIGHTS**

2. The defendant waives the rights set out in subparagraphs (c) through (g) of Paragraph 1 above. The defendant also waives the right to appeal the imposition of sentence against him set out in Paragraph 1(h), so long as the sentence imposed is within the applicable range set forth in the U.S. SENTENCING GUIDELINES MANUAL (USSG). Furthermore, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive the right to be charged by indictment set out in Paragraph 1(b) and will plead guilty at arraignment to a one-count information to be filed in the United States District Court for the District of Maryland, charging him with wire fraud in violation of 18 U.S.C. § 1343.

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 before the Court in accordance with Fed. R. Crim. P. 11(b)(3), as set forth in Paragraph 4 below.

FACTUAL BASIS FOR THE OFFENSE CHARGED

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

(a) The defendant is the owner and president of NB Systems Corporation (“NB Systems”) and Strobe Business Solutions Corporation (“Strobe”), both of which are computer consultation companies located and incorporated in the State of Maryland. From in or about October 1999 through in or about November 2001, the defendant, through both NB Systems and Strobe, performed computer consultation services for the Washington Suburban Sanitary Commission

("WSSC"), a quasi-governmental utility located in Laurel, Maryland, that provides water and sewer services to residents of Montgomery and Prince George's counties, Maryland. More specifically, the defendant obtained three (3) contracts worth approximately \$320,000 from the WSSC under NB Systems and one (1) contract worth approximately \$240,000 from the WSSC under Strobe. Two (2) of these contracts were obtained through competitive bidding while the other two (2) were obtained through non-competitive sole-source purchase orders. The defendant personally performed all of the work on behalf of NB Systems and Strobe under these contracts.

(b) In or about June 1999 the defendant contacted the WSSC to inquire if they had any positions available. He spoke with Joseph R. Jackson ("Jackson"), a supervisor in the WSSC's Information Technology Section, who advised him that there was nothing available at that time. In or about October 1999 Jackson contacted the defendant and advised him that there was an open solicitation and that the defendant could have it if he so desired. Shortly thereafter the defendant was awarded the contract.

(c) In or about November of 1999 Jackson approached the defendant and asked to borrow \$1,500. The defendant gave Jackson the money after Jackson reminded the defendant that he had done the defendant a favor in arranging for him to receive his job at the WSSC. In or about February of 2000 Jackson requested to borrow an additional \$1,500 from the defendant even though he had not paid the defendant back for the original payment. The defendant gave Jackson

the money after Jackson informed him that these requests were the “cost of doing business” at the WSSC and that the arrangement was a “two-way street” and “quid pro quo.” Jackson solicited and obtained from the defendant, or from third parties for money due to the defendant, at least \$30,000 during the defendant’s employment at the WSSC.

(d) In consideration for the payments referenced in subparagraph (c) above, Jackson exercised his influence as a supervisory official in the WSSC’s Information Technology Section to keep the defendant as a WSSC contractor by directing additional contracts to the defendant through NB Systems and Strobe, to increase the defendant’s hourly salary under these contracts and to aid the defendant in submitting fraudulently inflated invoices to the WSSC for payment. This scheme caused the WSSC to sustain a loss of approximately \$75,000 during the relevant period.

(e) In or about February 2001 Jackson approached the defendant and asked him for approximately \$2,000. The defendant and Jackson agreed that the defendant would give Jackson the money and reimburse himself by fraudulently inflating his invoice to the WSSC for the month of February 2001 by adding thirty (30) additional hours which he would not in fact work, thus causing an overpayment of \$2,400 to be made to Agarwal by the WSSC.

(f) On or about February 26, 2001 the defendant gave to Jackson four (4) separate money orders, each in the amount of \$500, for a total of \$2,000.

(g) On or about March 1, 2001 the defendant submitted his February 2001 invoice to Jackson knowing the invoice was fraudulently inflated by thirty (30) hours and knowing that Jackson would sign off on the invoice and submit it to the WSSC's Disbursements Accounting Section for payment. This caused a transfer of funds via wire to be made on or about March 7, 2001 by the WSSC's Disbursements Accounting Section. This wire transfer was initiated at the WSSC in Laurel, Maryland, traveled through the WSSC's bank account in Baltimore, MD, and consummated at NB Systems' bank account in Washington, D.C.

(h) On or about March 7, 2001 the defendant, Arvind K. Agarwal, having devised a scheme to defraud the WSSC, caused to be transmitted by means of wire in interstate commerce a signal for the purpose of executing such scheme, namely the wire transfer of funds referenced in subparagraph (g) above.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty that may be imposed against him upon conviction for a violation of 18 U.S.C. § 1343, is:

(a) a term of imprisonment for not more than five (5) years (18 U.S.C. § 1343¹);

(b) a fine in the amount of the greatest of (1) \$250,000, (2) twice the gross pecuniary gain resulting from the offense, or (3) twice the gross pecuniary loss caused to the victim of the crime (18 U.S.C. § 3571(b)(3), (d)); and

¹18 U.S.C. § 1343 was amended on July 30, 2002 to increase the maximum imprisonment for wire fraud to twenty (20) years. However, because the defendant committed his offense in 2001, application of the 2002 amendment would violated the ex post facto clause of the United States Constitution. ART. I, § 10.

(c) a term of supervised release of three (3) years following any term of imprisonment. 18 U.S.C. § 3583(b)(2). If the defendant violates any condition of his supervised release he may have his term of supervision extended or be incarcerated for the duration of the term. 18 U.S.C. § 3583(e)(2)-(3).

6. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. §§ 3663A and 3664(h) and § 5E1.1 of the USSG, the Court shall order the defendant to pay restitution to the victim of the offense and may order the defendant to pay restitution in the full amount of the victim's loss; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG §5E1.3, the Court is required to impose upon the defendant a \$100 special assessment upon conviction of the charged crime.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the USSG and the United States Code in effect on the day of sentencing, unless doing so would violate the ex post facto clause of the United States Constitution by resulting in a greater punishment.

SENTENCING AGREEMENT

8. Pursuant to Fed R. Crim. P. 11(c)(1)(C), the United States and the defendant agree to a sentence requiring the defendant to pay to the United States a criminal fine of \$30,000 (USSG § 5E1.2(c)(3)) and to make restitution to the WSSC in the amount of \$75,000 (USSG § 5E1.1), for a total of \$105,000, with \$50,000 of the restitution payable at the time of

sentencing while the remaining \$25,000 of the restitution and the \$30,000 fine will be payable before the conclusion of the defendant's term of supervised release, with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) on any fine or restitution amounts not paid in full before the fifteenth day after the date of judgement, and that the defendant be sentenced to ten (10) months incarceration pursuant to the USSG calculation set forth in subparagraph (a) below, with eligibility for up to one-half of the ten (10) months to be served through some form of intermittent commitment. Furthermore, the United States acknowledges that at the time of sentencing the defendant will request that one-half of the term imposed by the Court be served through home detention, and the United States agrees to remain silent and take no position regarding this request.

(a) The United States and the defendant agree that this sentence is within the range prescribed for this offense through application of the USSG as follows: (i) the defendant has a criminal history category level of one (1); (ii) the amount of loss from the offense was approximately \$75,000; (iii) the base offense level for the subject offense is six (6) (USSG § 2B1.1), with an increase of eight (8) levels for a loss of more than \$70,000 but not more than \$120,000 (USSG § 2B1.1(b)(1)), for an adjusted offense level of fourteen (14); and (iv) the defendant's acceptance of responsibility for his offense provides for a decrease of two (2) levels for an adjusted offense level of twelve (12) (USSG § 3E1.1(a)).

(b) Restitution to the WSSC has been calculated pursuant to USSG § 5E1.1(a), which states that in the case of an identifiable victim, the Court shall enter a restitution order for the full amount of the victim's loss.

(c) The criminal fine of \$30,000 has been calculated pursuant to USSG § 5E1.2(c)(3), which provides for a fine of between \$3,000 and \$30,000 for an individual with an offense level of twelve (12).

(d) The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG §5E1.3 in addition to the \$30,000 fine and \$75,000 in restitution which it may impose.

9. Before sentencing in this case, the United States will fully advise the Court and the United States Probation Officer of the fact, manner and extent of the defendant's 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.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for subparagraph (b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed.

R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations for any offense described in Paragraph 12 below, will be tolled for a period between the date of the signing of the Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

OBSTRUCTION OR OTHER VIOLATIONS OF LAW

11. The defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this Plea Agreement and his sentencing in this case. In the event that the defendant (i) engages in conduct after the date of this Plea Agreement which would justify a finding of obstruction of justice under § 3C1.1 of the USSG, or (ii) commits any offense in violation of federal, state or local law, then the United States will be relieved of its obligations to him as reflected in this Plea Agreement. As with any alleged breach of this Plea Agreement, the United States will bear the burden of convincing the Court of the defendant's obstructive or unlawful behavior by a preponderance of the evidence. The defendant acknowledges that he may not withdraw his guilty plea because the United States is relieved of its obligations under the Plea Agreement pursuant to this paragraph.

GOVERNMENT'S AGREEMENT

12. This Plea Agreement binds only the Antitrust Division of the United States Department of Justice and the United States Attorney's Office for the District of Maryland. Subject to the Court's acceptance of the guilty plea called for by this Plea Agreement, the imposition of the recommended sentence and the defendant's compliance with Paragraph 11 above, the United States Department of Justice, Antitrust Division and the United States Attorney's Office for the District

of Maryland agree not to bring further criminal charges against the defendant for any violations committed before the date of this Plea Agreement relating to or arising out of the facts forming the basis for this Plea Agreement and/or described in the Information. The non-prosecution terms of this Plea Agreement do not apply to any civil or administrative liability of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

REPRESENTATION BY COUNSEL

13. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

14. 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

15. The defendant agrees that, should the United States determine in good

faith that the defendant has violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his 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 of the offenses described in Paragraph 12 above, 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.

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

ENTIRETY OF AGREEMENT

17. This Plea Agreement constitutes the entire agreement between the

