

FILED

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

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,)	CRIMINAL NO. 1:12-CR-262
)	
)	<u>Count 1</u> : 18 U.S.C. § 371
v.)	(Conspiracy)
)	
)	<u>Count 2</u> : 15 U.S.C. § 78dd-2
DATA SYSTEMS & SOLUTIONS LLC,)	(Violation of the Anti-Bribery Provisions of
)	the Foreign Corrupt Practices Act)
Defendant.)	

INFORMATION

THE UNITED STATES CHARGES THAT:

At all relevant times, unless otherwise specified:

I. INTRODUCTION

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* (“FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for or with, or directing business to, any person.

2. **Data Systems & Solutions LLC (“DS&S”)** was headquartered in Reston, Virginia, in the Eastern District of Virginia, incorporated in Delaware, and thus a “domestic concern,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B). DS&S’s business included the design, installation, and

maintenance of instrumentation and controls systems at nuclear power plants, fossil fuel power plants, and other critical infrastructure facilities. DS&S's instrumentation and controls business customers included state-owned nuclear power plants in Eastern Europe.

3. **Executive A** was a vice president of marketing and business development at DS&S during the relevant time period. Executive A was responsible for marketing and business development efforts in connection with DS&S's nuclear services, including power plant customers in Eastern Europe.

4. The **Ignalina Nuclear Power Plant** ("Ignalina" or "INPP") was a state-owned nuclear power plant in Lithuania and an "agency" and "instrumentality" of a foreign government, as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2). INPP was a customer of DS&S. From 1999 through 2004, INPP awarded DS&S a number of contracts, including the Unit 2 TITAN System Replacement project on or about September 6, 1999, valued at or around \$11,500,000; the Radiation Monitoring Systems project on or about March 8, 2000, valued at or around \$2,200,000; the SPDS project on or about October 2, 2000, valued at or around \$1,300,000; the Diverse System Shutdown project on or about July 1, 2002, valued at or around €13,000,000; and the Gorbach project on or about June 5, 2003, valued at or around \$4,400,000.

5. **Official 1** was the Deputy Head of the Instrumentation & Controls Department at INPP and had influence over the award of contracts. Official 1 was a

“foreign official,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

6. **Official 2** was the Head of the Instrumentation & Controls Department at INPP and had influence over the award of contracts. Official 2 was a “foreign official,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

7. **Official 3** was the Director General at INPP and had influence over the award of contracts. Official 3 was a “foreign official,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

8. **Official 4** was the Head of International Projects Department at INPP and had influence over the award of contracts. Official 4 was a “foreign official,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

9. **Official 5** was the lead software engineer at INPP and had influence over the award of contracts. Official 5 was a “foreign official,” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2).

10. **Subcontractor A** provided simulation technology products and services to companies in the power generation sector. During the relevant time period, Subcontractor A acted as a subcontractor on a number of DS&S projects, including projects at INPP.

11. **Subcontractor B** was a power generation subcontractor located in Eastern Europe. Subcontractor B was beneficially owned and operated by Official 1. During the relevant time period, Subcontractor B acted as a subcontractor for DS&S and for Subcontractor A on a number of projects, including projects at INPP. Subcontractor B

used INPP employees to perform labor on DS&S projects at INPP, paying them significantly above-market rates in ways that helped them to avoid taxation.

12. **Subcontractor C** was a shell company incorporated in the United States. During the relevant time period, Subcontractor C funneled money from Subcontractor A to INPP officials and employees in connection with the Gorbach project at INPP.

COUNT ONE
Conspiracy
[18 U.S.C. § 371]

13. Paragraphs 1 through 12 are realleged and incorporated by reference as though fully set forth herein.

14. From in or around 1999, and continuing through in or around June 2004, in the Eastern District of Virginia and elsewhere, the defendant, DATA SYSTEMS & SOLUTIONS LLC, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly conspire, confederate, and agree with Executive A, Subcontractor A, Subcontractor B, and others, known and unknown, to commit an offense against the United States, that is, to willfully make use of the mails and any means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value, to any person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly or indirectly, to any foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the

lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist DS&S, Executive A, Subcontractor A, Subcontractor B, and others in obtaining and retaining business for and with, and directing business to, DS&S and others, in violation of Title 15, United States Code, Section 78dd-2.

PURPOSE OF THE CONSPIRACY

15. The purpose of the conspiracy was to obtain and retain contracts for DS&S from INPP to design, install, and maintain INPP's instrumentation and controls systems through the promise and payment of bribes to foreign officials employed by INPP.

MANNER AND MEANS OF THE CONSPIRACY

16. The manner and means by which DS&S and its co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

a. DS&S, together with others, would and did attempt to conceal the payments to foreign officials by using Subcontractor A to funnel bribes from DS&S to INPP officials.

b. Subcontractor A would and did pay bribes to INPP officials on behalf of DS&S by issuing tens of thousands of dollars in checks to INPP officials for deposit into the officials' bank accounts in the United States.

c. Subcontractor A would and did pay bribes to INPP officials on behalf of DS&S by transferring hundreds of thousands of dollars from Subcontractor A's bank account to Subcontractor C's bank account.

d. DS&S, together with others, would and did create fictitious scopes of work purportedly to be performed by Subcontractor A in order to justify payments to Subcontractor A that would be funneled as bribes to INPP officials.

e. DS&S, together with others, would and did attempt to conceal the payments to foreign officials by using Subcontractor B to funnel bribes from DS&S to INPP officials.

f. DS&S, together with others, would and did pay INPP employees who were also employed by Subcontractor B significantly above-market rates for services performed by Subcontractor B in connection with DS&S contracts with INPP in exchange for the INPP employees' support for the award of contracts to DS&S.

g. DS&S, together with others, would and did pay INPP employees who were also employed by Subcontractor B in a manner designed to allow those employees to avoid taxes on the payments from DS&S.

h. DS&S, together with others, would and did provide gifts, travel, and entertainment to employees of INPP in exchange for those foreign officials' agreements to help DS&S secure contracts with INPP.

i. DS&S, together with others, would and did discuss in person, via telephone and via electronic mail ("e-mail") making bribe payments to employees of INPP in order to obtain and retain contracts for DS&S to perform services for INPP.

OVERT ACTS

17. In furtherance of the conspiracy and to achieve its purpose and object, DS&S and its conspirators committed, and caused to be committed, within the Eastern District of Virginia and elsewhere, the following overt acts, among others:

a. In or around 1999, Executive A and Official 1 reached an understanding that if DS&S was awarded contracts by INPP, DS&S would make payments to Official 1 and other INPP employees through the use of Subcontractors, among other means.

b. On or about May 18, 1999, DS&S drafted a Preliminary Proposal Estimate for the Unit 2 TITAN System Replacement project at INPP, which included \$650,000 reserved for Subcontractor A to make payments to Subcontractor B and others.

c. On or about February 1, 2000, an employee of Subcontractor A sent an e-mail to DS&S employees, including Executive A, stating that the budget for Subcontractor A should not be reduced because Subcontractor A's activities in Lithuania led to a profitable contract for DS&S at INPP.

d. In or around March 2000, Executive A drafted hand-written notes on documents related to the SPDS Project at INPP, including notations suggesting \$20,000 for Official 1 and \$20,000 for Official 2.

e. On or about March 3, 2000, Subcontractor A issued a check to Official 1 in the amount of \$5,000 in return for Official 1's assistance in securing work for DS&S with INPP.

f. On or about March 3, 2000, Subcontractor A issued a check to Official 2 in the amount of \$10,000 in return for Official 2's assistance in securing work for DS&S with INPP.

g. On or about March 7, 2000, Subcontractor A issued a check to Official 1 in the amount of \$5,000 in return for Official 1's assistance in securing work for DS&S with INPP.

h. On or about March 20, 2000, Subcontractor A issued a check to Official 2 in the amount of \$5,000 in return for Official 2's assistance in securing work for DS&S with INPP.

i. On or about May 16, 2000, Subcontractor A issued a check to Official 1 in the amount of \$5,000 in return for Official 1's assistance in securing work for DS&S with INPP.

j. On or about May 16, 2000, Subcontractor A issued a check to Official 2 in the amount of \$10,000 in return for Official 2's assistance in securing work for DS&S with INPP.

k. On or about November 17, 2000, Subcontractor A wire transferred \$7,000 to Official 5 in return for Official 5's assistance in securing work for DS&S with INPP.

l. On or about November 28, 2000, Subcontractor A wire transferred \$2,000 to Official 5 in return for Official 5's assistance in securing work for DS&S with INPP.

m. From on or about December 2, 2000, through on or about December 8, 2000, Executive A paid to take Official 2 on a vacation to Florida.

n. On or about December 14, 2000, Executive A sent an e-mail to several DS&S employees, including two senior vice presidents, regarding the trip to Florida with Official 2 and stated, "P.S. I forgot about my other gift to you all. I took [Official 2] away from the Huntsville business for 1 week. Although it cost me tons of nerves and money, it was worth it. How do I put my nerves on an expense report?"

o. On or about December 18, 2000, Subcontractor A issued a check to Official 4 in the amount of \$7,000 in return for Official 4's assistance in securing work for DS&S with INPP.

p. On or about December 22, 2000, Executive A submitted to DS&S an expense report from his trip to Florida with Official 2 in the amount of \$3,410.63 to be reimbursed by DS&S.

q. On or about April 23, 2001, Subcontractor A issued a check to Official 4 in the amount of \$7,000 in return for Official 4's assistance in securing work for DS&S with INPP.

r. In or around October 2001, Executive A and Official 1 opened a bank account in the United States for Subcontractor B.

s. On or about November 12, 2001, a DS&S employee wrote a memorandum to other DS&S employees, including Executive A, reporting on discussions with Official 1 regarding the upcoming Diverse Shutdown System project at INPP and stating that "[c]ollaboration with local company in Lithuania is a must, and [Subcontractor B], has been recommended."

t. On or about December 17, 2001, Subcontractor A issued a check to Official 1 in the amount of \$7,000 in return for Official 1's assistance in securing work for DS&S with INPP.

u. On or about December 17, 2001, Subcontractor A issued a check to Official 2 in the amount of \$7,000 in return for Official 2's assistance in securing work for DS&S with INPP.

v. On or about December 18, 2001, Subcontractor A issued a check to Official 1 in the amount of \$3,000 in return for Official 1's assistance in securing work for DS&S with INPP.

w. On or about December 18, 2001, Subcontractor A issued a check to Official 2 in the amount of \$3,000 in return for Official 2's assistance in securing work for DS&S with INPP.

x. On or about December 29, 2001, Subcontractor A issued two checks to Official 4, each in the amount of \$8,000, in return for Official 4's assistance in securing work for DS&S with INPP.

y. On or about March 1, 2002, Subcontractor A issued a check to Official 4 in the amount of \$6,000 in return for Official 4's assistance in securing work for DS&S with INPP.

z. On or about May 2, 2002, Subcontractor A issued a check to Official 1 in the amount of \$5,000 in return for Official 1's assistance in securing work for DS&S with INPP.

aa. On or about May 2, 2002, Subcontractor A issued a check to Official 2 in the amount of \$5,000 in return for Official 2's assistance in securing work for DS&S with INPP.

bb. On or about May 8, 2002, Subcontractor A issued a check to Official 2 in the amount of \$3,000 in return for Official 2's assistance in securing work for DS&S with INPP.

cc. On or about May 14, 2002, Subcontractor A issued a check to Official 2 in the amount of \$7,000 in return for Official 2's assistance in securing work for DS&S with INPP.

dd. On or about July 5, 2002, Subcontractor A wire transferred \$7,000 to Official 5 in return for Official 5's assistance in securing work for DS&S with INPP.

ee. On or about September 24, 2002, Executive A sent an e-mail to the DS&S project manager for INPP stating that Executive A and two DS&S senior vice presidents would be having dinner with Official 3 and others to discuss the upcoming Gorbach project at INPP.

ff. From on or about October 6, 2002, until on or about October 11, 2002, Executive A took Official 2 and Official 3 on a vacation to Hawaii for which DS&S paid.

gg. On or about January 22, 2003, the DS&S project manager for INPP sent an e-mail to Executive A and a DS&S senior vice president of marketing in which he stated that, as had been done in previous projects, most of the work for the Gorbach project would be completed by subcontractors.

hh. On or about February 11, 2003, the DS&S project manager for INPP sent an e-mail to other DS&S employees, including a senior vice president of marketing, regarding the Gorbach project, stating, “we should include in the proposal specific names like [an employee at Subcontractor A] and myself in order to give confidence that we have a team knowledgeable on how to complete work successfully at INPP. Just a reminder that we need to be very careful not to mention any locals that work for INPP as part of our (subcontractor) team, e.g., [Official 1] when we discuss [Subcontractor B] for supplying local labor.”

ii. On or about March 13, 2003, in response to an e-mail question from a DS&S employee about why DS&S was using Subcontractor B for services that DS&S could itself provide, the DS&S project manager for INPP stated that one of the reasons was “the opportunity for further projects.”

jj. On or about April 7, 2003, Subcontractor A issued a check to Official 4 in the amount of \$4,000 in return for Official 4’s assistance in securing work for DS&S with INPP.

kk. On or about April 9, 2003, Executive A sent an e-mail to other employees at DS&S, including a senior vice president of marketing, stating, “My next trip to Russia will be the last one if, during my trip, we don’t complete our prior commitments: . . . Lithuania 20% from \$500...”

ll. On or about April 22, 2003, Official 1 sent an e-mail to the DS&S project manager for INPP stating that INPP had approved DS&S as the Gorbach project supplier.

mm. On or about September 2, 2003, Subcontractor A caused \$63,500 to be wired from the bank account of Subcontractor A to the bank account of Subcontractor C in order to make payments to officials at INPP.

nn. On or about October 2, 2002, Subcontractor A issued a check to Official 4 in the amount of \$4,000 in return for Official 4's assistance in securing work for DS&S with INPP.

oo. In or about October 2003, after a dinner with officials from INPP and employees from Subcontractor A, Executive A asked the DS&S project manager for INPP to make an additional \$100,000 available to Subcontractor A in connection with the Gorbach project.

pp. On or about October 15, 2003, the DS&S project manager for INPP sent an e-mail to Executive A, copying a DS&S senior vice president of marketing, and stated, "I've done a little research . . . So, sales fee funds will have to come from our profit and/or [Subcontractor A's] profit. I'm in Frederick today and will have some discussions with [the DS&S senior vice president of marketing] on the issue."

qq. On or about October 15, 2003, Executive A responded to the DS&S project manager for INPP and the DS&S senior vice president of marketing by e-mail and stated, "[Subcontractor A is] responsible for their part of obligations. And they already do something to help us save face. Let's think how we will to do our job."

rr. On or about October 19, 2003, Executive A sent an e-mail to the DS&S project manager for INPP and the DS&S senior vice president of marketing, stating, "Do what you want, but set up A.S.A.P. new task order for [Subcontractor A] (with [the

DS&S senior vice president of marketing's] help)-100K for local support and make 1-st payment. And better stop discussion about it with [Subcontractor A] and INPP managers to avoid rumors which can kill our business in Lithuania.”

ss. On or about October 19, 2003, the DS&S project manager for INPP responded to Executive A's e-mail and stated, “I think the 3 of us need to speak by phone so we are clear on all things. I don't see how [Subcontractor A] can not be involved as they will have to make the payment to locals... Whether or not [Executive A] you can get [Subcontractor A] to use these funds to pay locals in the timeframe you want I can't say. The most I can do is to help [Subcontractor A] obtain more profit than they originally planned. Convincing [Subcontractor A] to play ball, and at what \$ level, is up to you.”

tt. On or about November 25, 2003, Executive A sent an e-mail to other employees at DS&S, including two senior vice presidents, stating, “Thank you all for your support and especially for the last two payments which helped us manifold: 1. Successfully pass [the factory acceptance test].... 3. Start negotiations for three new projects at Ignalina.”

uu. On or about December 5, 2003, Subcontractor A caused \$127,000 to be wired from the bank account of Subcontractor A to the bank account of Subcontractor C in order to make payments to officials at INPP.

vv. On or about January 23, 2004, DS&S purchased a Cartier watch for Official 3 valued at \$2,664.74.

ww. On March 15, 2004, Executive A sent an e-mail to a DS&S senior vice president of marketing expressing Executive A's frustration because DS&S still owed

money in connection with projects at Ignalina and stated that these payments were “still important because without NPP people support the contract would have been terminated already. We owe 128K for INPP support ... I am tired of explaining to [the DS&S employee] what 5-10% for local support means. I remember exactly our requirements in INPP...”

xx. On or about April 1, 2004, an employee of Subcontractor A sent an e-mail to the owner of Subcontractor A, stating that Subcontractor A needed to make a payment in the amount of \$56,300 to INPP.

yy. On or about April 6, 2004, Subcontractor A caused \$56,300 to be wired from the bank account of Subcontractor A to the bank account of Subcontractor C in order to make payments to officials at INPP.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
Foreign Corrupt Practices Act
[15 U.S.C. § 78dd-2]

18. Paragraphs 1 through 12 and 15 through 17 are realleged and incorporated by reference as though fully set forth herein.

19. On or about March 15, 2004, within the Eastern District of Virginia and elsewhere, the defendant, DATA SYSTEMS & SOLUTIONS LLC, being a domestic concern, willfully did use the mails and any means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value to any person, while knowing that all or a

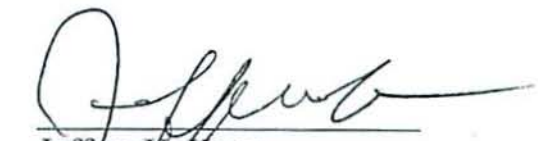
portion of such money and thing of value would be and had been offered, given, and promised, directly or indirectly, to any foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist DS&S in obtaining and retaining business for and with, and directing business to, DS&S, to wit, DS&S corruptly sent an e-mail regarding bribes to foreign officials employed by INPP, which bribes had been authorized, promised, and offered to such foreign officials in return for their assistance in obtaining and retaining business for DS&S with INPP.

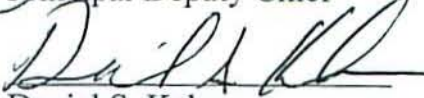
All in violation of Title 15, United States Code, Section 78dd-2(a), and Title 18, United States Code, Section 2.

NEIL H. MacBRIDE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF VIRGINIA

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