

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

FILED  
U.S. DISTRICT COURT  
2007 JUN 27 P 4: 16

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 JAMES GOVOSTES, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. 2:07-CR-00106-DB  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK  
Filed  
Violation: 15 U.S.C. § 1

**PLEA AGREEMENT**

The United States of America and James Govostes ("the defendant") 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 his 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 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; and
  - (h) to appeal the imposition of sentence against him.

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(c)-(g) 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 or a motion under 28 U.S.C. § 2241 or 2255, 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). The defendant will plead guilty to the Indictment in this case, which charges him with participating in a conspiracy to suppress and eliminate competition by submitting rigged bids on contracts for the installation of commercial refrigeration to Safeway Inc. ("Safeway") in the Phoenix, Arizona metropolitan area beginning around January 2005 and continuing until May 16, 2005 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Indictment was returned in Phoenix, Arizona, on September 26, 2006 and subsequently transferred to Salt Lake City, Utah on February 15, 2007 pursuant to Federal Rule of Criminal Procedure 20.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge set forth in the Indictment and 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 4 below. The United States agrees that it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3143, pending the sentencing hearing in this case.

the following: 1) submit rigged bids for the installation of commercial refrigeration to Safeway in the Phoenix, Arizona metropolitan area; 2) raise margins on commercial refrigeration projects for Safeway; and 3) allocate bids for commercial refrigeration projects for Safeway among themselves based on which co-conspirator's company had a maintenance agreement in place at the particular Safeway store for which bids were let. The defendant and the president of Company B also agreed upon who would submit the low bid for the commercial refrigeration project at Safeway Store #2088.

(c) In furtherance of the conspiracy, the defendant solicited other individuals to join and facilitate the conspiracy to rig bids for commercial refrigeration projects at Safeway, and the defendant and the president of Company B submitted rigged bids for the commercial refrigeration installation project at Safeway Store #2088 to Safeway as agreed upon.

(d) During the relevant period, substantial quantities of refrigeration fixtures, materials, and equipment, necessary for Companies A and B to perform commercial refrigeration installation projects in the Phoenix, Arizona metropolitan area, were transported across state lines in a continuous and uninterrupted flow of interstate commerce and in a manner substantially affecting interstate commerce. The business activities of Companies A and B related to the installation of commercial refrigeration affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(e) During the relevant period, both the general business activities of the victim, Safeway, Inc., which is headquartered in California, and the commercial

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. 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 in or around January 2005 and continuing until May 16, 2005. During the relevant period, the defendant was the regional manager of an entity organized and existing under the laws of California and with its principal place of business in Anaheim, California (“Company A”). During the relevant period, Company A was an installer of commercial refrigeration and was engaged in the installation of commercial refrigeration in the Phoenix, Arizona metropolitan area and elsewhere. Commercial refrigeration includes the refrigerated cases in grocery stores such as deli, dairy and frozen food cases.

(b) During the relevant period, the defendant participated in a conspiracy with the president of an entity organized and existing under the laws of Arizona, with its principal place of business in Phoenix, Arizona (“Company B”). Company B was also engaged in the installation of commercial refrigeration, and the primary purpose of the conspiracy was to suppress and eliminate competition by submitting rigged bids on contracts for the installation of commercial refrigeration to Safeway in the Phoenix, Arizona metropolitan area. In furtherance of the conspiracy, the defendant engaged in conversations with the president of Company B during which they discussed the submission of bids for commercial refrigeration installation projects let by Safeway. During those conversations, the defendant and the president of Company B agreed to do

refrigeration installation activities of Company A, also headquartered in California, were conducted across state lines and had a not insubstantial effect on interstate commerce. Company A conducts refrigeration installation business throughout the western United States while Safeway does business throughout the United States.

(f) Acts in furtherance of this conspiracy were carried out within the District of Arizona. The commercial refrigeration installation projects that were affected by this conspiracy were located in the Phoenix, Arizona metropolitan area.

#### **POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

(a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);

(b) a fine in an amount equal to the greatest of (1) \$1 million, (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 (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

### **SENTENCING GUIDELINES**

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant and the United States agree that the Court should consider the Guidelines in effect at the time of the offense, May 16, 2005, rather than at the time of sentencing, in accordance with U.S.S.G. § 1B1.11(b). 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 not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

### **AGREED-UPON GUIDELINES CALCULATIONS**

8. The United States and the defendant agree that the computations below set forth the Sentencing Guidelines calculations for the defendant:

(a) The base guideline is U.S.S.G. § 2R1.1, with a base offense level of 10.

(b) Pursuant to U.S.S.G. § 2R1.1(b)(1) the base offense level is increased by 1 because the conduct involved participation in an agreement to submit non-competitive bids. There are no increases in the offense level pursuant to U.S.S.G. § 2R1.1(b)(2)

because the volume of commerce attributable to the defendant is not more than \$400,000.

(c) The adjusted offense level would therefore be 11.

(d) The defendant should receive a 2 point adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a). The resulting offense level would therefore be 9.

(e) The Guidelines range resulting from the offense level of 9 with a criminal history category I is 4-10 months.

(f) Pursuant to U.S.S.G. §§ 5E1.2(b) and 2R1.1(c)(1) the Guidelines Fine Range for an individual is one to five percent of the volume of commerce, but not less than \$20,000. The parties agree that the volume of commerce is not more than \$400,000. Therefore the maximum fine, five percent of the volume of commerce, would not be greater than \$20,000, which is the minimum fine.

### **SENTENCING AGREEMENT**

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence within the applicable Guidelines range requiring the defendant to be sentenced to a period of thirty (30) days incarceration and three (3) months home confinement; to pay a criminal fine of \$20,000 payable in installments as set forth below with interest accruing under 18 U.S.C. § 3612(f)(1)-(2); and to a period of supervised release (“the recommended sentence”). 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 U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. In the event that the Court

applies U.S.S.G. §3B1.1 to increase the offense level above the recommended sentence, then the defendant is free to argue that the recommended sentence be imposed based on a departure pursuant to U.S.S.G. §5K2.0. 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.

(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. §5E1.2(f), that the fine be paid in the following installments over a 24 month period: within 15 days of imposition of sentence — \$2000 (plus any accrued interest); at ninety (90) days after the imposition of sentence — \$2250 (plus any accrued interest); at one hundred and eighty (180) days after the imposition of sentence — \$2250 (plus any accrued interest); at two hundred and seventy (270) days after imposition of sentence — \$2250 (plus any accrued interest); at three hundred and sixty days (360) days after the imposition of sentence — \$2250 (plus any accrued interest); at four hundred and fifty (450) days after imposition of sentence — \$2250 (plus any accrued interest); at five hundred and forty (540) days after imposition of sentence — \$2250 (plus any accrued interest); at six hundred and thirty (630) days after imposition of sentence — \$2250 (plus any accrued interest); at the two-year anniversary of imposition of sentence — \$2250 (plus any accrued interest); provided, however, that the defendant shall have the option at any time before the two-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 him to pay a \$100



special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

(c) 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 Indictment.

10. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 12 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 and his commitment to prospective 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. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

11. 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 a sentence consistent with the recommended sentence contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

#### **DEFENDANT'S COOPERATION**

12. 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 installation of commercial refrigeration in

Safeway Inc. grocery stores in the Phoenix, Arizona Metropolitan area, 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 all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;
- (b) making himself 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, et seq.);
- (d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and
- (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, et seq.).

### **GOVERNMENT'S AGREEMENT**

13. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States 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 installation of commercial refrigeration in Safeway Inc. grocery stores in the Phoenix, Arizona metropolitan area ("Relevant Offense"). 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.

### **REPRESENTATION BY COUNSEL**

14. 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**

15. 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**

16. 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 12 of this Plea Agreement, or has otherwise 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 Relevant Offense, 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.

17. 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**

18. 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.

19. 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: 6/27/07

Respectfully submitted,

BY: James Govostes  
JAMES GOVOSTES,  
Defendant

BY: Kalina M. Tulley  
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