

FILED

APR 18 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

Clerk, U. S. District Court
Eastern District of Tennessee
At Greeneville

UNITED STATES OF AMERICA

v.

FRANKLIN D. RABY

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No. 2:19-cr-54

JUDGE

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, the United States Attorney for the District of Hawaii, the Department of Justice, Criminal Division, Fraud Section (collectively, "the U.S. Attorney's Office"), and the Defendant, Franklin Raby, and the Defendant's attorney, Jonathan Cave, have agreed upon the following:

1. The Defendant will waive indictment and arraignment and plead guilty to an Information charging the Defendant with the following offense:

a) Count 1. Conspiracy in violation of 18 U.S.C. § 371.

The punishment for this offense is as follows. A maximum term of imprisonment of five years, a fine of the greater of \$250,000 or twice the gross gain or loss from the offense, a period of supervised release of not more than three years, a special assessment of \$100, and forfeiture and restitution.

2. The United States also agrees not to further prosecute the Defendant in the Eastern District of Tennessee or District of Hawaii for any other non-tax criminal offenses committed by the Defendant related to the charges contained in the Information.

3. The Defendant has read the Information, discussed the charges and possible defenses with defense counsel, and understands the crime charged. Specifically, the elements of the offense

are as follows: That on or about the time alleged in the Information, in the Eastern District of Tennessee and elsewhere:

- a) Two or more persons agreed to do something that federal law prohibits, that is, to commit bribery of public officials and illegal disclosure of sensitive procurement information, as charged in the Information;
- b) That the Defendant knew of the conspiracy and willfully joined the conspiracy; and
- c) That at some time during the existence of the conspiracy or agreement, one of the members of the conspiracy knowingly performed, in the Eastern District of Tennessee, an overt act in order to accomplish the object or purpose of the agreement.

4. In support of the Defendant's guilty plea, the Defendant agrees and stipulates to the facts set forth in Attachment A, which satisfy the offense elements. These are the facts submitted for purposes of the Defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the Defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case:

The Defendant and Related Individuals and Entities

- a) Defendant Franklin Raby entered the Department of Defense Civil Service in May 2006 after retiring from the U.S. Army as a Sergeant Major on or about June 30, 2004. The Defendant was employed by the U.S. Army as a "Range Operations Manager" at Mission Support Element Hawaii, Range Division, U.S. Army Pacific, Schofield Barracks, HI, 96857 ("the Range"). The Defendant also served as a Contract Officer Representative and an Agreement Officer Representative

while employed by the Range. In this role, the Defendant provided technical direction, clarification and guidance to contractors performing on certain contracts with the federal government. The Defendant retired from the Department of Defense Civil Service in May 2018.

- b) At all times, as a Range Operations Manager and Contract Officer Representative for the Department of Defense, the Defendant was a “public official” as defined in 18 U.S.C. § 201 and a “present official for the Federal Government” as defined in 18 U.S.C. § 2102.
- c) The Defendant’s supervisor at the Range was CC-2.
- d) Company A, which is known to the parties as REK Associates, LLC, is a federal contractor that has been awarded multiple Department of Defense contracts to assist in maintaining U.S. Military properties, including the Range.
- e) CC-1 is the Senior Construction Manager for Company A.

The Defendant’s Participation in the Conspiracy and Fraudulent Scheme

- f) Beginning in or around March 2015, the Defendant and his co-conspirators entered into a relationship by which Company A, through its employees, would give the Defendant things of value, including a car, travel expenses, and other things of value, in return for his providing to Company A sensitive, internal U.S. Department of Defense procurement information, and, as opportunities arose, using his position and influence within the Department of Defense to benefit Company A.

- g) In or about August 2017, CC-1 shipped a 1969 Ford Galaxie to the Defendant's son's home in Greeneville, Tennessee. The Defendant did not pay CC-1 for the value of the vehicle.
- h) In or about August 2017, CC-1 shipped a custom H&H 375 rifle to the Defendant's residence in Ewa Beach, HI. The Defendant did not pay CC-1 for the value of the rifle.
- i) CC-1 also provided the Defendant with diamond earrings meant for the Defendant's wife. The earrings were valued at \$2,300. The Defendant did not pay CC-1 for the value of the earrings.
- j) In or around November 2017, the Defendant began employment negotiations with REK employees and unofficially accepted a position with Company A. The Defendant retired from the Department of Defense Civil Service on or about May 31, 2018 and began employment as a "Program Manager" at Company A on or about June 14, 2018.
- k) The Defendant, as a federal procurement official, was required to file a Confidential Financial Disclosure Report on an annual basis with the U.S. Office of Government Ethics ("OGE"). The means of disclosure was an OGE Form 450, 5 CFR Part 2634, Subpart I ("OGE Form 450"). The OGE Form 450 requires certain government employees to disclose their financial interests in order to identify and mitigate possible conflicts of interest that may arise in the course of their official duties. The OGE Form 450 required the Defendant to disclose, among other things, any "Agreements or Arrangements" and "Gifts and Travel Reimbursements." The Defendant understood that such forms were matters within

the jurisdiction of the executive branch, and that the content of his submissions on such forms were material.

- l) The Defendant did not disclose any financial interests with Company A, to include gifts and travel reimbursements, on his filings from 2013 to 2018. The Defendant also did not disclose to the appropriate contracting authorities that he had a pending job offer from Company A, while he was working at the Department of Defense on government contracts that he knew were likely to be awarded to (and were in fact awarded to) Company A. The Defendant willfully and knowingly failed to disclose these financial interests on his government ethics forms, in order to conceal his future employment and attempt to avoid any consequences associated with its discovery by ethics officials.
- m) Also continuing throughout the duration of this conspiracy, pursuant to their corrupt relationship, RABY intentionally used his position and influence with the U.S. Department of Defense, as opportunities arose, to benefit Company A, including through the selection of contractors and contract vehicles to do work on the Range.

Army Corps Kansas Contract

- n) For example, in or around October 2017, the Defendant agreed to use his position of influence to assist Company A in receiving a contract to do work for the Range. Company A employees, including CC-1, wrote the Performance Work Statements and Requests for Proposal for this project as if they were from the U.S. government, and sent them to the Defendant. Company A employees would transmit these documents to the Defendant with "clean authorship" so that the

Defendant could falsely pass them off as his own work. The Defendant understood that contractors were prohibited from performing as prime contractors or subcontractors on competitive acquisitions for a reasonable period of time when they prepare, or assist in preparing, work statements like these.

- o) Company A employees drafted the Performance Work Statement and Request for Proposal with "very specific language regarding the requirements of the project. This was done in order to prevent other contractors from bidding on the contract, because they did not possess the stringent requirements or expertise necessary to perform the contract as specified. Only Company A could provide these requirements. By engineering the Performance Work Statement and Request for Proposal in this manner, Company A employees essentially guaranteed that the contract would be awarded to Company A. The Defendant communicated these documents to other government employees as if they were his own, and did not tell them that they were in fact drafted by Company A, knowing that the specific language that Company A provided him would almost certainly result in Company A being awarded the contract.
- p) In or about March 2018, Army Corps Kansas determined that the contract should be awarded to an "8(a) firm," which is a government classification designating a business as a tribal-owned, disadvantaged HUBzone small business. 8(a) contracts can be awarded outside of the normal competitive bidding process and directly to government contractors. CC-1 told the Defendant that he should suggest Cherokee Nation Environmental Solutions, LLC ("CNES"), an 8(a) firm to which Company A would serve as a subcontractor. In or about April 2018, after learning about

CNES from Company A, the Defendant informed Army Corps Kansas that it should use CNES for the project. The Defendant then put Army Corp Kansas employees in touch with CNES.

- q) On or about April 4, 2018, the Defendant emailed CC-1 and other Company A associates a document containing the Fiscal Year 2019 Work Plan for the U.S. Army Garrison of Hawaii, which included the projected budget for thirteen different projects, cumulatively valued at \$7,733,000. The fact that the government had budgeted \$7,733,000 for the projects was confidential bid or proposal information. In the accompanying email, the Defendant wrote, "This is what I received from [the Directorate of Public Works] yesterday. We really need to focus on the top 5 items and see if we can get them to put it on the Corps contract." The "Corps contract" is the Army Corps Kansas contract that Company A and the Defendant were working to ensure went to CNES. The Defendant admits that he thus acted to assist Company A in obtaining the contract.
- r) On or about September 27, 2018, Army Corps Kansas awarded the sole-source contract to CNES. The contract is a firm-fixed price award of \$2,183,334.96 for Vegetation Control for the Army Ranges of Hawaii. The Defendant's full salary as a Company A employee was contingent upon CNES and Company A being awarded the Army Corps Kansas contract.

The Dust Control Contract

- s) Company A was awarded a contract for "Dust Control for Range Management" on or about August 29, 2017. The Range was the beneficiary for the Dust Control

contract. The Defendant served as the Agreements Officer Representative for the contract.

- t) The Defendant improperly used the Dust Control contract to provide money to Company A to repair a rock quarry located on Schofield Barracks, HI, even though repair of the quarry was not part of the Dust Control contract. The Defendant coordinated with Company A employees, including CC-1, in order to improperly direct the funding to perform the work to Company A through the Dust Control contract.
- u) The Defendant allowed Company A to evaluate its own proposal in the competitive bidding process, something that the Defendant was supposed to do independently as a government procurement official who owed a duty to the United States Army. For example, on or about January 23, 2018, the Defendant emailed a REK employee a blank Proposal Evaluation form and asked for assistance filling it out. As the Agreements Officer Representative, Raby was required to rate each proposed price that Company A submitted; evaluate whether the Statement of Work was "acceptable, complete the "Cost Elements Rationale;" and determine whether further negotiations were required. The REK employee returned the form to the Defendant completed, and directed him to, "Verify numbers and make a change so it can be saved with your ID."
- v) In return for the Defendant providing Company A with sensitive procurement information and other internal Department of Defense information, and using his position and influence with the Department of Defense to benefit Company A in the awarding of Department of Defense contracts, CC-1 provided Raby with a car,

travel expenses, and other items of value such as a custom rifle and diamond earrings.

- w) The value of the items the Defendant received from Company A is estimated to be at least \$40,000 and not greater than \$95,000.
- x) At all times during the scheme, the Defendant acted knowingly and intentionally.
- y) The parties agree that USSG Section 2C1.1(b)(1) should not apply.

5. The Defendant is pleading guilty because the Defendant is in fact guilty. The Defendant understands that, by pleading guilty, the Defendant is giving up several rights, including:

- a) the right to be indicted by a grand jury for these crimes;
- b) the right to plead not guilty;
- c) the right to a speedy and public trial by jury;
- d) the right to assistance of counsel at trial;
- e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the Defendant guilty beyond a reasonable doubt;
- f) the right to confront and cross-examine witnesses against the Defendant;
- g) the right to testify on one's own behalf, to present evidence in opposition to the charges, and to compel the attendance of witnesses; and
- h) the right not to testify and to have that choice not used against the Defendant.

6. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a) The Court may impose any lawful term(s) of imprisonment, any lawful fine(s), and any lawful term(s) of supervised release up to the statutory maximum(s);

- b) The Court will impose special assessment fees as required by law; and
- c) The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the Defendant as to what the sentence will be in this case. Any estimates or predictions made to the Defendant, by defense counsel, or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the Defendant's guilty plea(s). The Defendant understands that the sentence in this case will be determined by the Court after it receives the presentence investigation report from the United States Probation Office and any information presented by the parties. The Defendant acknowledges that the sentencing determination will be based upon the entire scope of the Defendant's criminal conduct, the Defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

8. Given the Defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the Defendant's offense level is 16 or greater, and the Defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the Defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the Defendant's offense(s), including violations of conditions of release or the commission of any additional offense(s) prior to sentencing, the United States will be free to decline to make such motion, to withdraw that motion if already made, and to recommend to the Court that the Defendant

not receive any reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

9. The Defendant agrees to pay the special assessment in this case prior to sentencing.

10. Unless otherwise limited by an agreed preliminary order of forfeiture, the Defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, which are in the possession or control of the Defendant or the Defendant's nominees that were used and intended to be used in any manner or part to commit and to facilitate the commission of a violation of Title 18, United States Code, Section 371 and/or any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the Defendant's criminal activities which are in the possession or control of the Defendant or the Defendant's nominees. The Defendant agrees to forfeit the Defendant's interest in the following properties: a 1969 Ford Galaxie, diamond earrings, and a custom H&H 375 rifle. The Defendant further agrees to assist the United States fully in the identification, recovery, and return to the United States of any other assets or portions thereof subject to forfeiture. The Defendant further agrees to make a full and complete disclosure of all assets over which the Defendant exercises control and those which are held or controlled by a nominee. The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil or criminal forfeiture brought against these properties. The Defendant agrees to take all such steps to locate such property and to pass title to the United States before the Defendant's sentencing.

11. Financial Obligations. The Defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The Defendant also agrees that the full fine and/or restitution amount(s) shall be considered due and payable immediately. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the Defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The Defendant and counsel also agree that the Defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the Defendant's counsel and outside the presence of the Defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the Defendant agrees to disclose fully all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the Defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the Defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The Defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the Defendant in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the Defendant will promptly execute authorizations on forms provided by the U.S. Attorney's Office to permit the U.S. Attorney's Office to obtain financial and tax records of the Defendant.

d) After forfeiture, the parties agree that there will be no additional restitution.

12. The Defendant acknowledges that the principal benefits to the United States of a plea agreement include the conservation of limited government resources and bringing a certain end to the case. Accordingly, in consideration of the concessions made by the United States in this agreement and as a further demonstration of the Defendant's acceptance of responsibility for the offense committed, the Defendant voluntarily, knowingly, and intentionally agrees to the following:

a) The Defendant will not file a direct appeal of the Defendant's conviction or sentence with one exception: The Defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the Court or above any mandatory minimum sentence deemed applicable by the Court, whichever is greater. The Defendant also waives the right to appeal the Court's determination as to whether the Defendant's sentence will be consecutive or partially concurrent to any other sentence.

b) The Defendant will not file any motions or pleadings pursuant to 28 U.S.C. § 2255 or otherwise collaterally attack the Defendant's conviction(s) or sentence, with two exceptions: The Defendant retains the right to file a § 2255 motion as to (i) prosecutorial misconduct and (ii) ineffective assistance of counsel.

c) The Defendant will not, whether directly or by a representative, request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be

sought under the Freedom of Information Act, 5 U.S.C. Section 552, or the Privacy Act of 1974, 5 U.S.C. Section 552a.

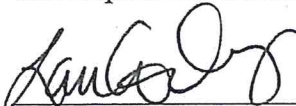
13. This plea agreement becomes effective once it is signed by the parties and is not contingent on the Defendant's entry of a guilty plea. If the United States violates the terms of this plea agreement, the Defendant will have the right to withdraw from this agreement. If the Defendant violates the terms of this plea agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the Defendant for any and all federal crimes that the Defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The Defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy defense to such a prosecution. The Defendant also understands that a violation of this plea agreement by the Defendant does not entitle the Defendant to withdraw the Defendant's guilty plea in this case.

14. The United States will file a supplement in this case, as required in every case by the Local Rules of the United States District Court for the Eastern District of Tennessee, even though there may or may not be any additional terms. If additional terms are included in the supplement, they are hereby fully incorporated herein.

15. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the Defendant's guilty plea to the above-referenced charge(s), and there are no other agreements, promises, undertakings, or understandings between

the Defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

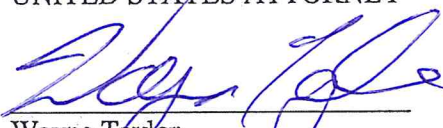
4-18-19
Date

ROBERT ZINK
Acting Chief, Fraud Section
U.S. Department of Justice, Criminal Division
By: 
Laura Connelly, Trial Attorney
Justin Weitz, Assistant Chief

4-18-19
Date

KENJI M. PRICE
UNITED STATES ATTORNEY
By:  for Marc Wallenstein
Marc Wallenstein
Assistant United States Attorney

4-18-19
Date

J. DOUGLAS OVERBEY
UNITED STATES ATTORNEY
By: 
Wayne Taylor
Assistant United States Attorney

April 17, 2019
Date


Franklin Raby
Defendant

4-17-19
Date


Jonathan Cave
Attorney for the Defendant