

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

UNITED STATES OF AMERICA )  
 )  
 v. ) CRIMINAL NO. 2:08cr194  
 )  
 SHU QUAN-SHENG, )  
 )  
 Defendant. )

POSITION OF THE UNITED STATES  
WITH RESPECT TO SENTENCING FACTORS

Now comes the United States, by its undersigned counsel, and for its position with respect to sentencing factors, states that it has no objection to the presentence report and that the probation officer has correctly calculated a prison range of 70-87 months under the Sentencing Guidelines. With respect to the specific guideline adjustment under U.S.S.G. § 2C1.1(b)(1) for an offense involving more than one bribe, the Government states as follows:

**Application of Enhancement for Offense Involving More than One Bribe**

The probation officer has correctly applied a two-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(1) for an offense involving more than one bribe. The relevant facts are set forth in Paragraphs 49-64 of the agreed Statement of Facts previously filed with the Court, which state:

- 49. *On December 1, 2003, AMAC, by SHU, and French Company A, entered into an agency agreement establishing AMAC as French Company A’s exclusive sales agent for “China to the exclusion of Taiwan.” The agency agreement provided that AMAC was entitled to a success fee of ten to fifteen percent on sales in [territory], or higher if necessary.*
  
- 50. *Prior to the ultimate decision to award the hydrogen liquefaction project to French Company A, SHU, acting as the representative of French Company A, offered payments to PRC officials within the 101 Institute to induce said officials*

*to award the contract to French Company A over the primary competitor, and to earn SHU and AMAC a commission. The contract for the hydrogen liquefier is believed to total approximately four million dollars.*

51. *On December 7, 2005, SHU and AMAC Beijing Employee C spoke by telephone about the importance of forming a better relationship with the Deputy Director of the 101 Institute, PRC Official C. AMAC Beijing Employee C stated that he would determine whether French Company A's German competitor had given "kickbacks" to the 101 Institute for prior purchases. After learning that both PRC Officials C and D had children, SHU also advised that he could help their children study abroad. SHU reminded PRC Official C not to discuss such things on the office telephone.*
52. *On February 19, 2006, SHU spoke by telephone with the Chief Engineer of the 101 Institute, PRC Official D, and told PRC Official D that he could be generous with certain key people if necessary to obtain the contract for French Company A. SHU advised that contact with regard to this matter should be between SHU and PRC Official D.*
53. *On April 7, 2006, SHU discussed with his wife how to best offer percentage points to the 101 Institute Deputy Director, PRC Official C, to induce him to select French Company A for the hydrogen liquefier project. SHU's wife stressed the importance of communicating to PRC Official C that the "kickbacks" would only go through AMAC and not any third party, that there would be no need for a signature or receipt from PRC Official C, and, with that, there would be no trace left behind.*
54. *On April 7, 2006, SHU called 101 Institute Deputy Director PRC Official C, and stated that AMAC's typical practice is to distribute a certain "percentage" of the contract value to leaders after the conclusion of a project for the leaders to use for either scientific research or other uses at their discretion. In response, PRC Official C stated that SHU was very thoughtful.*
55. *On April 8, 2006 SHU told his wife about his conversation with PRC Official C the previous day. SHU stated that PRC Official C did not refuse SHU's offer. SHU, referencing also the need to call PRC Official D, stated that "the three percent to be shared between the two is pretty solid. . . . More than 40,000 U.S. dollars a person."*
56. *On April 11, 2006, SHU spoke by telephone with the Chief Engineer of the 101 Institute, PRC Official D, during which SHU asked whether PRC Official D had discussed the percentage point issue with the Deputy Director of the 101 Institute, PRC Official C. PRC Official D replied that he had not discussed the issue with PRC Official C, and suggested that SHU contact PRC Official C prior*

*to the next round of negotiations.*

57. *On April 11, 2006, SHU spoke by telephone with PRC Official C and asked whether three percentage points would be sufficient for PRC Official C to expend on other activities after the completion of the bidding process. In response, PRC Official C stated that he did not want to consider the percentage point issue at that time.*
58. *On May 10, 2006, SHU spoke by telephone with Norfolk Individual A to obtain her advice regarding how to negotiate with the PRC officials at the 101 Institute to obtain the contract for French Company A. SHU told Norfolk Individual A that AMAC was going to give 3% of the project price to PRC Official C, PRC Official D and a third foreign official, if the 101 Institute would award the contract to French Company A. SHU explained, however, that French Company A's price quotation was higher than its competitor's price quotation. SHU stated that if French Company A had to reduce its final price, then the PRC officials also would receive less money through a reduction in their "percentage."*
59. *On May 10, 2006, SHU spoke by telephone with the Chief Engineer, PRC Official D, as Norfolk Individual A listened to the telephone conversation. SHU asked PRC Official D whether three percent at the completion of the deal should be paid directly in cash or be placed into an account. PRC Official D then stated that SHU should communicate AMAC's percentage point offer directly to the Chief of the 101 Institute, PRC Official E. PRC Official D then told SHU that French Company A's price quotation was substantially higher than the price quotation made by two other competitors, and further explained that French Company A's German and Russian competitors each had offered five percent. He advised SHU that AMAC should also offer five percent.*
60. *On May 13, 2006, SHU spoke by telephone with PRC Official D and explained that he discussed with representatives of French Company A the need to increase their percentage award offer to five percent from the previously offered three percent. SHU told PRC Official D to advise PRC Official C that the offer represented half for both PRC Official D and PRC Official C. SHU also asked PRC Official D to disclose to him the exact total price offered by French Company A's competitor. PRC Official D agreed to obtain the information for SHU.*
61. *On May 17, 2006, SHU spoke by telephone with PRC Official D. During this conversation, PRC Official D suggested that SHU contact the Chief of the 101 Institute, PRC Official E, and to separately offer him two percent. PRC Official D provided PRC Official E's home and cellular telephone numbers to SHU and advised SHU not to disclose to PRC Official E the percentage point payments offered to PRC Official D and PRC Official C. PRC Official D advised SHU to emphasize to PRC Official E that the only two people involved in the percentage point offer would be SHU and PRC Official E.*

62. *On May 18, 2006, SHU had a telephone conversation with PRC Official D. During this conversation, PRC Official D explained that PRC Official C was in favor of awarding the contract to French Company A's competitor, but that the Chief of the 101 Institute, PRC Official E, would make the final decision. PRC Official D again urged SHU to call PRC Official E immediately and tell PRC Official E that a two percent benefit would be provided directly to PRC Official E if the 101 Institute awarded the contract to French Company A. PRC Official D again emphasized that SHU should tell PRC Official E that the percentage transaction only involved the two of them.*
63. *On May 18, 2006, SHU spoke by telephone with the Chief of the 101 Institute, PRC Official E. After identifying himself, SHU explained that, as President of AMAC, he would like to provide two percentage points to PRC Official E t at PRC Official E's discretion. PRC Official E declined SHU's offer.*
64. *On January 17, 2007, SHU informed representatives of French Company A that together they had been selected by the 101 Institute to supply the 600 liter per hour hydrogen liquefier. A signed contract for the deal was then e-mailed from Representative C to SHU on January 25, 2007, and listed the buyer as the Beijing Leader Corporation and the seller as French Company A, Division I. As indicated in Paragraph 30 above, to date, French Company A has made four commission payments to AMAC totaling \$386,740.27 USD.*

Statement of Facts, par. 49-64. Also see Presentence Report, par. 63-78.

It is apparent from these agreed facts that the defendant, on different days, made separate bribe offers to several officials of the People's Republic of China – that is, PRC Officials “C,” “D,” and “E.” Therefore, this is *not* a case of “related payments that, in essence, constitute a single incident of bribery or extortion (e.g., a number of installment payments for a single action).” U.S.S.G. § 2C1.1, comment. (n.2). In fact, as stated in Paragraph 61 of the Statement of Facts, “PRC Official D suggested that SHU contact the Chief of the 101 Institute, PRC Official E, and to *separately* offer him two percent. PRC Official D provided PRC Official E's home and cellular telephone numbers to SHU and *advised SHU not to disclose to PRC Official E the percentage point payments offered to PRC Official D and PRC Official C. PRC Official D advised SHU to emphasize to PRC Official E that the only two people involved in the percentage point offer would be SHU and PRC Official E.*” Statement of



CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of March 2009 , I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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