

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	:	
UNITED STATES OF AMERICA,	:	08 - 035
	:	CRIMINAL NO. _____
Plaintiff,	:	VIOLATION: 18 U.S.C. § 371
	:	
v.	:	
	:	
FLOWERVE POMPES SAS,	:	
	:	
Defendant.	:	
	:	

FILED

FEB 21 2008

**Clerk, U.S. District and
Bankruptcy Courts**

INFORMATION

1. The United States Department of Justice, Criminal Division, Fraud Section, charges that at all times material to this Information (unless otherwise specified):

GENERAL ALLEGATIONS

LEON, J. RJL

Relevant Entities and Individuals

2. Flowserve Pompes SAS ("Flowserve Pompes"), the defendant, was a French corporation, headquartered in Arnage, France. Flowserve Pompes was a wholly-owned subsidiary of Flowserve Corporation ("Flowserve").

3. Flowserve, a New York corporation, was an international manufacturer of pumps, valves, seals, and related parts for the oil, gas, and chemical industries, headquartered in Irving, Texas. Flowserve was publicly traded on the New York Stock Exchange. Flowserve issued and maintained a class of publicly-traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act, 15 U.S.C. § 78m. Accordingly, Flowserve was an "issuer" within the meaning of the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-1(a). By virtue of its status as an

Case related to case 07-253

issuer within the meaning of the FCPA, Flowserve was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets of Flowserve and its subsidiaries, including those of Flowserve Pompes, the books, records and accounts of which were incorporated into the books, records and accounts of Flowserve.

4. Employee A, a citizen of Lebanon, was the Beirut Regional Manager for Flowserve Pompes located in Beirut, Lebanon.

5. Employee B, a dual citizen of Algeria and France, was the General Manager for Flowserve Pompes located in Arnage, France.

6. Employee C, a citizen of Lebanon, was the Beirut Area Manager for Flowserve Pompes located in Beirut, Lebanon.

7. Employee D, a citizen of France, was the President of Flowserve Pompes located in Arnage, France.

8. Company X, was a Jordanian company that acted as an agent for Flowserve Pompes in connection with sales made through the United Nations Oil-for-Food Program (“OFFP”).

The United Nations Oil-For-Food Program

9. On or about August 6, 1990, days after Iraq’s invasion of Kuwait, the United Nations (“U.N.”) adopted Security Council Resolution 661, which prohibited U.N. member-states from transacting business with Iraq, except for the purchase and sale of humanitarian supplies. Resolution 661 prohibited virtually all direct financial transactions with the government of Iraq.

10. On or about April 15, 1995, the U.N. adopted Security Council Resolution 986, which served as a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its

oil. However, Resolution 986 required that the proceeds from oil sales be used by the Iraqi government to purchase humanitarian supplies, including but not limited to food, for the Iraqi people. Hence, this program became known as the Oil for Food Program. Payments made to the Iraqi government which were not approved by the U.N. and which were outside the strict contours of the OFFP were prohibited.

11. The rules of the OFFP required that the proceeds from all sales of Iraqi oil be deposited into a U.N.-controlled escrow account at the New York branch of Banque Nationale de Paris (“BNP-Paribas”). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

12. Under the rules of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the government. Once that contract was finalized, the contract was submitted to a U.N. Committee (“the 661 Committee”) which reviewed the contracts to ensure that their terms complied with all U.N., OFFP, and Iraqi sanction regulations. The 661 Committee accepted the contracts, rejected them or asked the supplier to provide additional information upon which the 661 Committee could make a decision.

13. If a contract was approved by the 661 Committee, a letter of credit was issued by the New York branch of BNP-Paribas to the supplier’s bank stating that the supplier would be paid by the OFFP for the relevant goods once certain conditions were met, including delivery of the goods to Iraq and inspection of the goods by a U.N. contractor. Once those conditions were deemed by the U.N. to have been met, the U.N. would direct BNP-Paribas to release payment to the supplier.

14. On or about December 10, 1996, the first Iraqi oil exports under the OFFP began. The OFFP continued from in or about December 1996 until the United States invasion of Iraq on

or about March 19, 2003. From in or about December 1996 through March 2003, the United States government prohibited United States companies and individuals from engaging in transactions with the government of Iraq, unless such transactions were authorized by the U.N. pursuant to the OFFP.

15. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at 10% of the contract price, to the Iraqi government in order to be awarded a contract by the government. These kickbacks violated U.N. OFFP regulations and sanctions which prohibited payments to the Iraqi government which were not expressly approved by the U.N. and which were not contemplated by the guidelines of the OFFP.

16. Often, these kickbacks were termed “after sales service fees” (“ASSFs”), but did not represent any actual service being performed by the supplier. These ASSFs were usually included in the contract price submitted by the supplier to the U.N. without the U.N. knowing that the contract contained an extra 10% which would be returned to the Iraqi government. Including the 10% in the contract price allowed the supplier to avoid paying the 10% out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

17. Some suppliers labeled the ASSFs as such, thereby leading the U.N. to believe that actual after-sales services were being provided by the supplier. Other suppliers disguised the ASSFs by inserting fictitious line items into the contracts for goods or services that were not being provided. Still other suppliers simply inflated their contract prices by 10% to account for the payments they would make, or cause to be made, to the Iraqi government.

Flowserve Pompes' Kickback Scheme

18. From approximately 1997 to 2003, Flowserve Pompes participated in the OFFP. From in or about April 2001 through September 2002, Flowserve Pompes was awarded a total of nineteen (19) OFFP contracts for the sale of large-scale water pumps and spare parts for use in oil refineries in Iraq. To obtain these contracts, from July 2002 through February 2003, Flowserve Pompes paid, directly or indirectly, or offered to pay, approximately \$778,409 in kickbacks to the government of Iraq.

19. Flowserve Pompes entered into the first of the nineteen (19) direct contracts with the Iraqi Ministry of Oil in April 2001. Employees from Flowserve Pompes' Beirut, Lebanon sales office negotiated the contracts with Iraqi government officials. Once the contracts were negotiated, employees from Flowserve Pompes' Arnage, France office approved the contracts.

20. To obtain the Iraqi contracts, Flowserve Pompes agreed to pay the Iraqi government kickbacks worth 10% of the total contract value. To memorialize the kickback agreement, for most of the contracts awarded by the Iraqi Ministry of Oil, Flowserve Pompes executed a separate side letter agreement with the Iraqi Ministry of Oil stating that Flowserve Pompes would pay 10% of the contract price to cover ASSFs such as "engineering services, installation, and commission." It was understood by the Flowserve Pompes officials and the Iraqi government officials that, despite the language of the side letter agreement, no such services would be performed and that the payments were kickbacks in exchange for the award of the contracts. The side letter agreement was not disclosed to the U.N.

21. Flowserve Pompes paid the kickbacks to the Iraqi government through its agent, Company X. On or about the date of each of Flowserve Pompes' shipments to Iraq, Company X sent an invoice to Flowserve Pompes requesting reimbursement for either "local technical services provided on your behalf" or "payments made on your behalf." Flowserve Pompes then

issued a payment to Company X within days. Company X paid the kickback to the Iraqi government by depositing cash into an Iraqi-controlled account in the Jordanian Housing Bank for Trade and Finance.

22. Flowserve Pompes falsified internal accounting records to conceal the nature of the payments to the Iraqi government. These records made it appear that Flowserve Pompes had paid its agent, Company X, a 10% fee on each contract to pay for Company X's installation and service of the equipment, even though Flowserve Pompes knew that Company X had provided no such services and that the 10% fee was a kickback to the Iraqi government.

23. In order to generate the funds to pay the kickbacks to the Iraqi government and to conceal those payments from the U.N., Flowserve Pompes inflated the unit price of each piece of equipment by 10% before submitting the contracts to the U.N. for approval.

24. After the U.N. approved the contracts, BNP-Paribas issued letters of credit, via international wire communication, to the bank used by Flowserve Pompes, in the amount of the contract price. These letters of credit authorized Flowserve Pompes to be paid the amounts specified in the contracts, which included the 10% kickbacks to be paid to the Iraqi government.

25. In total, Flowserve Pompes paid kickbacks to the Iraqi government in relation to fifteen (15) separate contracts. In addition, Flowserve Pompes offered to pay kickbacks to the Iraqi government in relation to four (4) other contracts. Delivery under the four (4) additional contracts was not completed prior to the U.S. invasion of Iraq in March 2003, after which the Coalitional Provisional Authority ordered that the Flowserve Pompes' contracts be reduced by 10%.

**COUNT ONE
(Conspiracy)**

THE CONSPIRACY AND ITS OBJECTS

26. Paragraphs 1 through 25 of this Information are re-alleged and incorporated by reference as if set out in full.

27. From in or about April 2001 through in or about February 2003, within the territory of the United States and elsewhere, Flowserve Pompes, Employee A, Employee B, Employee C, Employee D, Company X, and others known and unknown, did unlawfully and knowingly combine, conspire, confederate and agree together to commit the following offenses against the United States:

a. to knowingly devise, and intend to devise a scheme and artifice to defraud the U.N. and the Oil-for-Food Program, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, through the use of interstate and foreign wire communications, in violation of Title 18, United States Code, Section 1343; and

b. to knowingly falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Flowserve, an issuer within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff(a).

PURPOSE OF THE CONSPIRACY

28. The primary purpose of the conspiracy was to obtain and retain lucrative business with the Iraqi government through the payment of kickbacks to the Iraqi government which were concealed from the U.N. and falsely portrayed as legitimate charges.

MANNER AND MEANS OF THE CONSPIRACY

29. To achieve the objects of the conspiracy, Flowserve Pompes and others known and unknown used the following manner and means, among others:

a. It was part of the conspiracy that Flowserve Pompes agreed to pay kickbacks, and caused kickbacks to be paid, to the government of Iraq in exchange for contracts being awarded by the Iraqi government.

b. It was a further part of the conspiracy that Flowserve Pompes utilized Company X for the purpose of facilitating the payment of, and concealing, the kickbacks.

c. It was a further part of the conspiracy that Flowserve Pompes submitted contracts to the U.N. for approval which failed to disclose, and concealed, the fact that the unit prices of the equipment sold to the Iraqi government had been inflated by 10% in order to generate money to pay the kickbacks to the Iraqi government.

d. It was a further part of the conspiracy that Flowserve Pompes caused the transmission of international wire communications, to and from the United States: (i) to provide notice to the U.N. that Flowserve Pompes goods had been shipped to, and inspected in, Iraq; and (ii) to provide notice to banks used by Flowserve Pompes that the U.N. had authorized payments pursuant to the contracts.

e. It was a further part of the conspiracy that Flowserve Pompes falsely described the kickbacks paid to the Iraqi government in its corporate books, records and accounts

as payments to Company X for “Field Services” including “supervision, installation, commission, [and] startup.”

OVERT ACTS

30. In furtherance of the conspiracy and to accomplish its unlawful objects, the following acts, among others, were committed within the territory of the United States and elsewhere.

a. On or about November 28, 2000, Employee A and Employee B, discussed paying the Iraqi government kickbacks in the amount of 10% of the total contract value for all contracts awarded by the Iraqi Ministry of Oil in the future.

b. On or about January 22, 2001, Employee A sent a facsimile to Employee B requesting authorization to pay the Iraqi government a 10% kickback for contracts in the future and falsely characterized the payment as a charge for “engineering service, installation and commission.”

c. On or about January 23, 2001, Employee B sent a facsimile to Employee A authorizing the 10% kickback and confirming that the kickbacks could be paid because “the mechanism of payment of 10% marketing fees is now in place.”

d. From in or about April 2001 through September 2002, Flowserve Pompes entered into at least nineteen (19) separate contracts with the Iraqi Ministry of Oil.

Contract DR/08/34

e. On or about April 26, 2001, Employee C, on behalf of Flowserve Pompes, executed a contract, referenced by the U.N. as Contract No. DR/08/34, with the Iraqi Ministry of Oil Economic and Finance Department to supply a complete set of “centrifugal pumps with motors” for €110,000, which included an extra 10% to be paid as a kickback to the Iraqi government.

f. In or about April 2001, Employee C, on behalf of Flowserve Pompes, executed a side letter agreement with the Iraqi Ministry of Oil to pay the ministry €10,900 as a kickback for U.N. Contract No. DR/08/34.

g. From in or about June 2001 to October 2001, Employee C caused a Purchase Order form to be created and submitted to the U.N. for approval under U.N. Contract No. DR/08/34 for the sale of two (2) centrifugal electric pumps in which the unit price was increased 10% and listed as €55,000 per pump.

h. On or about July 16, 2002, Company X sent an invoice to Flowserve Pompes for €47,612.70, which included the €10,900 kickback payment to be paid to the Iraqi government under U.N. Contract No. DR/08/34, and which falsely characterized the kickback payment to the Iraqi government as a payment for “local technical services provided on your behalf” even though Company X had provided no such technical services.

i. In or about October 2002, Flowserve Pompes caused Company X to pay a kickback to the Iraqi government in the amount of €10,900.

j. In or about October 2002, Flowserve Pompes caused two (2) centrifugal electric pumps purchased pursuant to U.N. Contract No. DR/08/34 to be delivered to Iraq, prompting a company based in Geneva, Switzerland, that provided commercial inspection services on behalf of the U.N. in Iraq (“the inspection company”) to send a facsimile from Iraq to the U.N. in New York notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to Flowserve of €110,000 for U.N. Contract No. DR/08/34.

Eighteen Additional Contracts

k. In addition to U.N. Contract No. DR/08/34, between in or about April 2001

and in or about September 2002, Flowserve Pompes entered into at least eighteen (18) other contracts with the Iraqi Ministry of Oil in return for which Flowserve Pompes paid or offered to pay kickbacks to the Iraqi government. Flowserve Pompes' execution of each of these contracts was a separate overt act in furtherance of the conspiracy. The total value of the kickbacks paid to the Iraqi government, in connection with a total of fifteen (15) of these contracts, was approximately \$604,651. The total value of the additional four (4) kickback payments that were authorized, but not paid, was approximately \$173,758. Each kickback that was paid or offered was a separate overt act in furtherance of the conspiracy. These contracts were executed, and the kickback payments were made or offered, on or about the dates specified below:

U.N. Contract Number	Date of Execution	Contract Value	Items Purchased	Kickback Paid to the Iraqi Government	Kickback Authorized but not Paid to the Iraqi Government
DR/08/30	04/26/01	€ 278,894	Complete centrifugal pumps	\$28,756.59	
DR/08/31	04/26/01	€ 737,080	Complete pumps / complete centrifugal pumps	\$77,704.70	
DR/08/32	04/26/01	€ 175,934	Pumps driven by motors/complete centrifugal pumps with motors	\$19,883.72	
DR/09/02	05/12/01	€ 1,656,077	New pumps to crude distillation units	\$166,169.35	
NGI/09/20	06/25/01	€ 37,300	Diesel pump and spare parts		\$3,688.03
NGI/09/17	06/25/01	€ 301,396	Spare part for existing rotating equipment (pumps)		\$35,157.89
SOC/08/177	07/15/01	€ 250,653	Spare parts for Ingersoll – Dresser pumps	\$25,899.25	
SOC/08/179	07/15/01	€ 34,590	Spare parts for fire fighting pumps	\$3,552.52	

U.N. Contract Number	Date of Execution	Contract Value	Items Purchased	Kickback Paid to the Iraqi Government	Kickback Authorized but not Paid to the Iraqi Government
SOC/09/131	07/15/01	€ 17,351	Pump and spare parts for Ingersoll-Dresser Pumps	\$1,781.63	
SOC/09/185	07/15/01	€ 258,535	Spare parts for water pump different types & capacities	\$26,552.68	
SOC/08/178	07/16/01	€ 341,074	Spare parts for pumps of different types	\$33,842.08	
NGI/08/06	07/25/01	€ 724,049	Spare part for existing rotating equipment	\$74,364.00	
NGI/08/33	07/25/01	€ 161,362	Pumps with recommended spare parts	\$16,011.48	
SRC/08/21	08/29/01	€ 721,709	Spares for existing rotating equipment (pumps)	\$71,104.01	
SRC/09/23	08/29/01	€ 161,962	Replacement of damaged pumps with spares	\$15,119.52	
DR/08/66	08/30/01	€ 315,180	Pumps complete drive by motors / complete pump with motor	\$31,595.48	
NGI 10/36	12/10/01	€ 841,201	Spare parts for existing rotating equipment		\$89,513.77
GF 11/27	9/23/02	€ 421,034	Spare parts for L.P.G. filling plants		\$45,397.88

Books and Records

1. From in or about 2001 through in or about 2003, Employee D and others falsely characterized Flowserve Pompes' kickback payments to the Iraqi government in Flowserve Pompes' books, records and accounts as payments to Company X for "Field Services" including "supervision, installation, commission, [and] startup," even though Flowserve Pompes was aware that Company X had provided no such services and a substantial portion of the money it paid to Company X was being passed on to the Iraqi government in exchange for being awarded contracts.

m. At the end of Flowserve's fiscal year, in 2001 and 2002, the books, records and accounts of Flowserve Pompes, including those containing false characterizations of the payments to the Iraqi government, were incorporated into the books, records and accounts of Flowserve for purposes of preparing Flowserve's year-end financial statements.

(All in violation of Title 18 U.S.C. §371).

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