

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 11-  
 :  
 v. : 18 U.S.C. § 286  
 : 18 U.S.C. § 287  
 DERISH WOLFF : 18 U.S.C. § 2

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,  
sitting at Newark, charges:

COUNT ONE

(Conspiracy to Defraud the  
Government with Respect to Claims)

1. At various times relevant to this Indictment:

Berger Group Holdings, Inc., and Louis Berger Group, Inc.

a. Berger Group Holdings, Inc. ("BGH"), was a privately held Delaware corporation that controlled a group of companies that provided consulting services in global infrastructure engineering, environmental science, and economic development.

b. The Louis Berger Group, Inc. ("LBG"), was a wholly owned subsidiary of BGH, headquartered in East Orange, New Jersey, which provided engineering consulting services to private and public entities, including United States government agencies, state agencies, and foreign governments. LBG had approximately 3,000 employees and multiple offices worldwide.

The Defendant

c. Defendant DERISH WOLFF was LBG's President and Chief Executive Officer ("CEO") from in or about 1982 until in or about 2002, and BGH's Chairman of the Board from in or about 2002 until on or about August 13, 2010. As President and CEO of LBG and then Chairman of BGH, defendant DERISH WOLFF closely managed LBG's accounting and billing practices with respect to federal government contracts. Defendant DERISH WOLFF was a shareholder of BGH and owned approximately 25 percent of BGH's stock.

Co-Conspirators

d. P.P., a co-conspirator who is not charged as a defendant herein, was LBG's Controller from in or about 1972 until in or about 2000, and LBG's Treasurer and consultant from in or about 2000 until in or about April, 2011. As Controller, P.P. reported to defendant DERISH WOLFF among others, submitted LBG's contract billing proposals to the federal government, and was responsible along with others for the integrity of the cost data reported in those submissions.

e. Salvatore Pepe, a co-conspirator who is not charged as a defendant herein, was LBG's Controller from in or about July, 2000 until in or about June, 2006, and LBG's Chief Financial Officer ("CFO") from in or about July, 2006 until on or about June 18, 2009. As Controller and then CFO, Salvatore Pepe reported to defendant DERISH WOLFF among others. Salvatore Pepe submitted LBG's contract billing proposals to the federal

government and was responsible along with others for the integrity of the cost data in those submissions.

f. Precy Pellettieri, a co-conspirator who is not charged as a defendant herein, was LBG's General Accounting Manager from in or about September, 2000 until in or about December, 2002; LBG's Assistant Controller from in or about January, 2003 until in or about June, 2006; and LBG's Controller from in or about July, 2006 until on or about June 17, 2009. As General Accounting Manager, Assistant Controller, and then Controller, Precy Pellettieri reported to Salvatore Pepe and supervised LBG's general accounting division.

2. At all times relevant to this Indictment:

The Federal Agencies

a. The United States Agency for International Development ("USAID") was an independent federal government agency that received overall foreign policy guidance from the United States Secretary of State. USAID advanced U.S. foreign policy objectives by supporting economic growth, agriculture, trade, global health, democracy, and humanitarian assistance in developing countries, including countries destabilized by violent conflict, such as Iraq and Afghanistan. To advance these objectives, USAID awarded billions of dollars each year in federal contracts, cooperative agreements, and grants.

b. The Defense Contract Audit Agency ("DCAA") was part of the United States Department of Defense ("DoD"). The responsibilities of DCAA included the performance of all contract audits for DoD as well as frequent contract audits for USAID.

3. At various times relevant to this Indictment:  
LBG's Contracts with USAID

a. The Contracts

(i) In or about September, 2002, USAID awarded LBG the Afghanistan Rehabilitation of Economic Facilities and Services ("REFS") contract with a total potential value of approximately \$730 million for reconstructive work in Afghanistan.

(ii) In or about September, 2004, USAID awarded LBG the Iraq Vocational Training and Employment Services ("VTES") contracts with a total potential value of approximately \$88 million for reconstructive work in Iraq.

(iii) From in or about 2002 through in or about 2006, USAID awarded LBG additional contracts for reconstructive work in Afghanistan, Iraq, and other developing nations.

b. Cost-Reimbursable Contracting

(i) USAID's contracts with LBG, including the Afghanistan REFS and Iraq VTES contracts, were predominantly "cost-reimbursable" or "cost-plus" contracts.

(ii) LBG's cost-reimbursable contracts with USAID permitted LBG to bill USAID for direct costs associated with the federal contract, such as labor and materials.

(iii) LBG's cost-reimbursable contracts with USAID also permitted LBG to bill USAID for indirect costs. Indirect costs were overhead expenses, such as rent and depreciation, and general and administrative ("G&A") expenses, such as accounting and legal costs, which were as a general matter incurred in support of LBG's overall business rather than in support of a particular contract.

c. LBG's Indirect Cost Rate ("GG Rate") Calculation

(i) To determine how much of its indirect costs would be billed to USAID for a particular contract, LBG would calculate an indirect cost rate, also known as the "GG rate." LBG would multiply the GG rate by the amount of direct labor costs associated with that contract. For example, if the GG rate were 140 percent, LBG would bill USAID \$1.40 of LBG's indirect costs for every \$1 of LBG's direct labor incurred by the contract.

(ii) The GG rate was a ratio of (A) LBG's indirect costs incurred in support of federal government projects, also known as "GG costs," to (B) LBG's direct labor and short-term consultant costs charged to federal government (or "GG") projects. Therefore, as GG costs increased without a

commensurate increase in direct labor and short-term consultant costs, the GG rate increased.

(iii) "GG997A" was an accounting cost code established by LBG in the mid-1980s. The purported purpose of GG997A was to capture accurately and separately GG costs incurred predominantly at LBG's headquarters in East Orange, New Jersey. For example, an LBG accounting employee in East Orange who worked on a federal government contract would charge his or her time spent working on that contract to GG997A. GG997A costs would become a part of overall GG costs and thus increase the GG rate absent a commensurate increase in direct labor and short-term consultant costs.

(iv) "GG997B" was also an accounting cost code established by LBG in the mid-1980s. The purported purpose of GG997B was to capture accurately and separately GG costs incurred at LBG's office in Washington, DC. GG997B costs would become a part of overall GG costs and thus increase the GG rate absent a commensurate increase in direct labor and short-term consultant costs.

(v) "AA100" was an accounting cost code established by LBG to capture indirect costs incurred in support of LBG's overall business. LBG's executive management and accounting employees in East Orange would charge their time almost exclusively to AA100. AA100 would not become a part of

overall GG costs, except for a portion allocated to the GG cost center at the end of each fiscal year.

d. LBG's Billing of USAID

(i) Within six months of the close of its fiscal year, LBG would generally submit a contract billing proposal called an "Incurred Cost Submission" ("ICS") to USAID. An ICS was a GG rate proposal purportedly supported by actual GG cost data for the particular year.

(ii) DCAA would routinely audit LBG's ICSSs for USAID on request. USAID would resolve with LBG certain questioned costs in DCAA's audits and then negotiate a final GG rate with LBG.

(iii) Because DCAA's audits and USAID's reviews of LBG's ICSSs would typically take up to several years, LBG and USAID agreed on an interim billing method where LBG would estimate a "provisional rate" for certain fiscal years purportedly based on each prior fiscal year's cost data.

(iv) The provisional rates were negotiated and agreed upon following LBG's submission to USAID of a proposed "Negotiated Indirect Cost Rate Agreement" ("NICRA"). A NICRA was an agreement between LBG and USAID on an interim GG rate, and LBG would bill USAID using the provisional NICRA rate. Once the final GG rate was established for a particular fiscal year, USAID would pay LBG additional monies on the contract if that final

rate was higher than the NICRA rate, and LBG would reimburse monies to USAID if that final rate was lower than the NICRA rate.

The Conspiracy

4. From at least as early as in or about 1990 through in or about July, 2009, in the District of New Jersey and elsewhere, defendant

DERISH WOLFF

did knowingly and intentionally conspire and agree with P.P., Salvatore Pepe, Precy Pellettieri, and others to defraud the United States and an agency thereof, namely, USAID, by obtaining and aiding to obtain the payment and allowance of false, fictitious, and fraudulent material claims, namely, contract payments billed at knowingly inflated rates.

Object of the Conspiracy

5. The object of the conspiracy was for the conspirators to enrich BGH, LBG, and themselves by billing USAID for LBG's indirect costs at falsely inflated rates.

Manner and Means of the Conspiracy

6. It was a part of the conspiracy that defendant DERISH WOLFF, Salvatore Pepe, and others would target a GG rate of at least approximately 140 percent irrespective of the actual rate.

Achieving the GG Rate Target by Artificially Inflating GG997A

7. It was a further part of the conspiracy that defendant DERISH WOLFF and P.P. would instruct their subordinates to ensure that certain LBG employees at East Orange headquarters, such as accounting employees, charged a certain number of work hours to the GG997A cost code irrespective of whether those employees had actually devoted those work hours to GG projects, thereby raising the GG rate.

8. It was a further part of the conspiracy that, on a periodic basis by an accounting method known as a "journal entry," Precy Pellettieri, under the direction and supervision of Salvatore Pepe and defendant DERISH WOLFF, would improperly reclassify the work hours of LBG employees at East Orange headquarters, unbeknownst to those LBG employees or despite their objections, by transferring their charged work hours from AA100 to GG997A, notwithstanding that those employees had not devoted those work hours to GG projects, thereby raising the GG rate.

9. It was a further part of the conspiracy that, on a periodic basis, Precy Pellettieri, under the direction and supervision of Salvatore Pepe and defendant DERISH WOLFF, would improperly reclassify by journal entry dozens of LBG corporate indirect costs by transferring these costs from AA100 to GG997A, notwithstanding that those costs had not been directly incurred in support of GG projects, thereby raising the GG rate.

Achieving the GG Rate Target by Artificially Inflating GG997B

10. It was a further part of the conspiracy that LBG, as a matter of policy that was knowingly advanced by defendant DERISH WOLFF, P.P., Salvatore Pepe, and others, would charge the GG997B account for all rent for common areas, all telephone bills, and all commonly shared office supplies for LBG's Washington, DC office, notwithstanding that the Washington, DC office supported LBG projects unrelated to USAID and other federal government contracts, thereby raising the GG rate.

Submitting False ICSSs and Proposed NICRAs to DCAA and USAID with Artificially Inflated GG Rates

11. It was a further part of the conspiracy that P.P., Salvatore Pepe, and others, as a matter of LBG policy that was knowingly advanced by defendant DERISH WOLFF, would submit to DCAA and USAID periodic ICSSs and NICRAs with GG rates artificially inflated by the schemes described herein.

12. To effect the objects of the conspiracy, the following acts, among others, were taken:

a. From in or about 1990 until in or about 2000, defendant DERISH WOLFF and P.P. on multiple occasions ordered LBG's Assistant Controller to pad the GG997A cost code with work hours he or she had not devoted to GG projects.

b. From in or about 1990 until in or about 2000, defendant DERISH WOLFF and P.P. on multiple occasions ordered LBG's Assistant Controller to ensure that his or her subordinates

padding the GG997A cost code with work hours they had not devoted to GG projects.

c. In or about 2001, defendant DERISH WOLFF instructed LBG's Assistant Controller to include in the GG997B cost code, for purposes of the ICSs, all rent for common areas as well as other common overhead expenses for LBG's Washington, DC office, notwithstanding that the Washington, DC office supported LBG projects unrelated to USAID and other federal government contracts.

d. In or about September, 2001, after Salvatore Pepe presented at LBG's annual meeting a GG rate in or around the 120s or 130s, defendant DERISH WOLFF denounced Pepe, called him a "GG assassin," and ordered him to target a GG rate in the 140s.

e. On or about June 23, 2003, P.P. executed on behalf of LBG a NICRA with USAID (the "2002 NICRA") for an agreed-upon provisional GG rate of approximately 143.51%, which was based upon fraudulent GG cost data, including the artificially inflated GG997B cost code.

f. In or about 2006, Salvatore Pepe submitted to USAID an ICS for LBG's fiscal year 2004, which fraudulently represented the GG rate to be approximately 146.49%, pursuant to LBG policy that was knowingly advanced by defendant DERISH WOLFF.

g. On or about February 17, 2006, Salvatore Pepe submitted to USAID a proposed NICRA for LBG's fiscal year 2005,

which fraudulently represented the GG rate to be approximately 140.79%, pursuant to LBG policy that was knowingly advanced by defendant DERISH WOLFF.

h. From on or about December 3, 2005, until on or about February 18, 2006, LBG presented to USAID multiple invoices for work performed on the Iraq VTES contracts, which invoices used the GG rate of approximately 143.51% from the fraudulent 2002 NICRA, pursuant to LBG policy that was advanced by defendant DERISH WOLFF.

i. From on or about December 4, 2005, through on or about July 9, 2009, LBG presented to USAID multiple invoices for work performed on the Afghanistan REFS contract, which invoices used the GG rate of approximately 143.51% from the fraudulent 2002 NICRA, pursuant to LBG policy that was knowingly advanced by defendant DERISH WOLFF.

All in violation of Title 18, United States Code, Section 286.

**COUNTS TWO THROUGH SIX**  
**(Making and Presenting of**  
**False, Fictitious, and Fraudulent Claims)**

1. The allegations set forth in paragraphs 1 through 3 and 5 through 12 of Count One of this Indictment are re-alleged and incorporated herein.

2. On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant DERISH WOLFF did make and present to an agency of the United States, namely, the United States Agency for International Development ("USAID"), a material claim upon and against USAID, namely, an invoice for contractual work performed, knowing such claim to be false, fictitious, and fraudulent, and did knowingly and intentionally aid, abet, counsel, command, induce, and procure the commission of that offense as follows:

<u>Count</u>	<u>Date</u>	<u>Claim Upon USAID</u>	<u>False Representation</u>
2	11/9/06	LBG invoice to USAID in the amount of approximately \$1,912,322 for work performed on Afghanistan REFS contract	GG rate was approximately 143.51%
3	12/14/06	LBG invoice to USAID in the amount of approximately \$1,241,698 for work performed on Afghanistan REFS contract	GG rate was approximately 143.51%
4	3/3/07	LBG invoice to USAID in the amount of approximately \$1,663,445 for work performed on Afghanistan REFS contract	GG rate was approximately 143.51%

5	5/24/07	LBG invoice to USAID in the amount of approximately \$1,160,037 for work performed on Afghanistan REFS contract	GG rate was approximately 143.51%
6	6/4/07	LBG invoice to USAID in the amount of approximately \$1,069,559 for work performed on Afghanistan REFS contract	GG rate was approximately 143.51%

All in violation of Title 18, United States Code,  
Section 287 and Section 2.

A TRUE BILL

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FOREPERSON

  
\_\_\_\_\_  
PAUL J. FISHMAN  
UNITED STATES ATTORNEY

CASE NUMBER: \_\_\_\_\_

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**United States District Court  
District of New Jersey**

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**UNITED STATES OF AMERICA**

**v.**

**DERISH WOLFF**

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**INDICTMENT FOR**

**18 U.S.C. § 286**

**18 U.S.C. § 287**

**18 U.S.C. § 2**

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**PAUL J. FISHMAN**

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