

★ FEB 26 2019 ★

BROOKLYN OFFICE

RTP:MEC
F. #2017R00453

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

UNITED STATES OF AMERICA

- against -

RAKESH KUMAR,
also known as "Rikki,"

Defendant.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr. No. **CR 19 101**

(T. 18, U.S.C., §§ 981(a)(1)(C),
1341, 1343, 1349; 2 and
3551 et seq.; T. 21, U.S.C., § 853(p);
T. 28, U.S.C., § 2461(c))

IRIZARRY, CH.J.

REYES, M.J.

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. Prevailing Wage Requirements

1. The New York City School Construction Authority (the "SCA"), based, in part, in Queens, New York, was responsible for capital construction work performed on New York City public schools. The SCA outsourced construction work to private construction contractors, which submitted construction bids to the SCA and were awarded contracts by the SCA. The SCA funded the projects.

2. New York State Labor Law Sections 220 et seq. ("Section 220") provided, in relevant part, that each contract to which the SCA was a party for the construction, alteration and/or repair of a public works project was required to contain a provision that laborers, workmen and mechanics be paid a prevailing wage. The prevailing wage for SCA-funded projects was determined by the New York City Comptroller and

consisted of a base hourly wage rate along with a supplemental benefits rate. The base hourly wage rate and supplemental benefits rate were based on job classifications, as well as the geographical area where work was performed.

3. Section 220 required general contractors to certify that they had complied with the prevailing wage requirements prior to receiving payment under a contract with the SCA for a public works project. To comply with this provision, contractors on SCA projects were required by Section 220, as well as by the terms of their contracts with the SCA, to submit "certified payroll" forms on a regular basis to the SCA that stated, among other things, and under penalty of perjury, the names of the workers who performed construction work on a particular project, the dates and numbers of hours those workers worked, how much they were paid and whether they were members of a qualified labor union.

4. In order for a general contractor on an SCA project to be paid for its work and for the work of its subcontractors, the general contractor was required to submit a "request for payment" to the SCA. After the SCA approved a request for payment, the SCA disbursed payment to the general contractor in the form of a check. The SCA's approval was based, in part, on its receipt of completed certified payroll forms for the relevant period showing that all workers on the SCA project had been paid the prevailing wage.

II. The Defendant and Relevant Entities

5. The defendant RAKESH KUMAR, also known as "Rikki," was a resident of Basking Ridge, New Jersey.

6. Orba Construction Corp. ("Orba") served as a general contractor for several SCA projects. Orba was owned and controlled by the defendant RAKESH

KUMAR, also known as "Rikki." Since 1998, Orba has received more than \$145,000,000 from the SCA for its work as a general contractor on SCA projects.

7. KSM Holding LLC ("KSM") was located at 1068 U.S. Highway 22, Bridgewater, New Jersey, and was owned and controlled by the defendant RAKESH KUMAR, also known as "Rikki." KSM was purportedly engaged in real estate rental and leasing and had ten employees.

III. The Scheme to Defraud the SCA

8. Orba did not pay all of its workers on its SCA-funded projects the prevailing wage. Instead, at the direction of the defendant RAKESH KUMAR, also known as "Rikki," Orba paid several of its workers on SCA-funded projects at a rate far below the prevailing wage.

9. In furtherance of this scheme, the defendant RAKESH KUMAR, also known as "Rikki," submitted to the SCA, and caused another Orba employee to submit to the SCA, certified payroll forms for work performed by Orba employees on SCA-funded projects. These certified payroll forms falsely stated, among other things, that Orba had paid its employees the prevailing wage, when in fact the employees had been paid far less than the prevailing wage, often in cash or by checks issued by KSM. The certified payroll forms also underreported the number of hours worked by Orba employees. At KUMAR's direction, an Orba employee electronically submitted the certified payroll forms via computers located at Orba's office in Linden, New Jersey to the SCA's office in Queens, New York.

10. In reliance, in part, on these fraudulent certified payroll forms submitted by, or at the direction of, the defendant RAKESH KUMAR, also known as

"Rikki," the SCA repeatedly mailed payment checks via the United States mail from the SCA's office in Queens, New York to Orba's office in Linden, New Jersey.

IV. KUMAR's Attempt to Prevent Detection of His Scheme

11. Beginning in 2015; aware that some Orba employees had complained to the SCA about having been paid less than the prevailing wage, and in furtherance of the scheme to defraud, the defendant RAKESH KUMAR, also known as "Rikki," attempted to convince employees not to pursue their complaints against Orba. Among other efforts, KUMAR entered into purported settlement agreements with some Orba employees that falsely indicated that the employees had been paid the prevailing wage by Orba.

COUNT ONE

(Conspiracy to Commit Mail and Wire Fraud)

12. The allegations contained in paragraphs one through 11 are realleged and incorporated as if fully set forth in this paragraph.

13. In or about and between January 2010 and December 2016, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RAKESH KUMAR, also known as "Rikki," together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud the SCA, and to obtain money and property from the SCA by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, (a) to place one or more matters and things in a post office and authorized depository for mail matter, to be sent and delivered by the United States Postal Service, and cause to be delivered by mail, mail containing checks issued by the SCA to Orba, contrary to Title 18, United States Code, Section 1341; and (b) to transmit and cause to be transmitted, by means of wire

communications in interstate commerce, one or more writings, signs, signals, pictures and sounds, to wit: electronically submitted certified payroll forms, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNTS TWO THROUGH TWELVE

(Mail Fraud)

14. The allegations contained in paragraphs one through 11 are realleged and incorporated as if fully set forth in this paragraph.

15. In or about and between January 2010 and December 2016, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RAKESH KUMAR, also known as "Rikki," together with others, did knowingly and intentionally devise a scheme and artifice to defraud the SCA, and to obtain money and property from the SCA by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally place one or more matters and things in a post office and authorized depository for mail matter, to be sent and delivered by the United States Postal Service, and cause to be delivered by mail, mail containing checks issued by the SCA in Queens, New York to Orba in New Jersey, as described below:

COUNT	APPROXIMATE MAILING DATE	DESCRIPTION
TWO	June 13, 2014	Check in the amount of \$270,085
THREE	July 10, 2014	Check in the amount of \$334,791
FOUR	August 6, 2014	Check in the amount of \$125,012

FIVE	August 12, 2014	Check in the amount of \$315,353
SIX	August 21, 2014	Check in the amount of \$146,875
SEVEN	August 25, 2014	Check in the amount of \$483,859
EIGHT	September 9, 2014	Check in the amount of \$593,684
NINE	September 17, 2014	Check in the amount of \$278,113
TEN	October 23, 2014	Check in the amount of \$239,179
ELEVEN	December 9, 2014	Check in the amount of \$742,397
TWELVE	December 23, 2014	Check in the amount of \$103,346

(Title 18, United States Code, Sections 1341, 2 and 3551 et seq.)

COUNTS THIRTEEN THROUGH TWENTY-TWO

(Wire Fraud)

16. The allegations contained in paragraphs one through 11 are realleged and incorporated as if fully set forth in this paragraph.

17. In or about and between January 2010 and December 2016, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RAKESH KUMAR, also known as "Rikki," together with others, did knowingly and intentionally devise a scheme and artifice to defraud the SCA, and to obtain money and property from the SCA by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, to wit:

electronically submitted certified payroll forms transmitted from Orba's office in New Jersey to the SCA's office in Queens, New York, as described below:

COUNT	APPROXIMATE DATE OF WIRE COMMUNICATION	DESCRIPTION
THIRTEEN	April 27, 2014	Certified payroll form
FOURTEEN	May 4, 2014	Certified payroll form
FIFTEEN	May 18, 2014	Certified payroll form
SIXTEEN	May 25, 2014	Certified payroll form
SEVENTEEN	June 1, 2014	Certified payroll form
EIGHTEEN	July 20, 2014	Certified payroll form
NINETEEN	July 27, 2014	Certified payroll form
TWENTY	August 3, 2014	Certified payroll form
TWENTY-ONE	August 24, 2014	Certified payroll form
TWENTY-TWO	September 28, 2014	Certified payroll form

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

18. The United States hereby gives notice to the defendant that, upon his conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

19. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to or deposited with a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been comingled with other property which cannot be

divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

RAKESH KUMAR, also known as "Rikki Kumar,"

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 981(a)(1)(C), 1341, 1343, 1349, 2 and
3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.



Foreperson

Filed in open court this ----- *day,*

of ----- *A.D. 20* -----

Clerk

Bail, \$ -----

Assistant U.S. Attorney Martin E. Coffey (718) 254-6157