

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 19-
	:	
v.	:	
	:	
OBEN CALBACETA	:	18 U.S.C. §§ 1343, 371 and 2
	:	18 U.S.C. § 981

INFORMATION

The defendant having waived in open Court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

Count 1
[18 U.S.C. §1343 – Wire Fraud]

The Defendant and Other Entities or Organizations

1. At all times relevant to this Information:
 - a. The United States Department of Defense (“DoD”) was a department of the Executive Branch of the United States, that provided military forces to protect the security of our country, and managed military installations and facilities on behalf of the United States.
 - b. The Defense Logistics Agency (“DLA”) was a component of the DoD. The DLA provided the DoD with worldwide logistics support by supplying the United States military with equipment, supplies and services. The DLA provided worldwide combat logistics support to DoD customers, including the Army, Navy, Air Force, and Marine Corps. United States military units requested equipment and products from the DLA for repair and maintenance of United States military aircraft, vehicles, naval vessels and

weapons systems, among other things. These requests were filled through purchase orders (contracts) awarded to DoD contractors. Some of the products procured by the DLA were critical application items, defined as items essential to the performance or operation of weapons systems, or the preservation of life or safety of personnel.

c. The Defense Finance and Accounting Service ("DFAS") was the financial and accounting organization for the DoD. One of the services provided by DFAS was payment on DoD contracts. Upon shipment or delivery of the supplies, the contractor would submit an electronic invoice which represented to the DoD that the products shipped met the requirements of the contract. Upon receipt of the electronic invoice, the contractor was paid by DFAS via Electronic Fund Transfer ("EFT").

d. Defendant OBEN CABALCETA was a resident of Atco, New Jersey and a citizen of Costa Rica who was issued a B1/2 visa in or about June 1999. A B1/2 visa allowed a citizen of a foreign country to enter the United States and stay for a short period of time for a combination of business (visa category B-1) and for tourism (visa category B-2). The visa expired in December 1999. Per government records, defendant CABALCETA traveled to the United States on June 17, 1999, and has never left the United States. Defendant CABALCETA has been illegally residing in the United States since in or around 2000.

i. Defendant CABALCETA was the manager of Owen's Fasteners, Inc. ("Owen's"), a business located in West Berlin, New Jersey.

Owen's was established in or about August 2004. At various times, Owen's supplied parts to the DoD which were represented as being manufactured by an approved source.

ii. Defendant OBEN CABALCETA was also listed as the manager of United Manufacturer, LLC ("United"), a business located in West Berlin, New Jersey, which was established in or about November 2013. At various times, United supplied parts to the DoD which were represented as being manufactured by an approved source. United was co-located with Owen's Fasteners, Inc.

The Department of Defense Contracting Procedure

2. Requests by DLA to procure spare parts for DOD customers were put out to bid via a system known as the DLA Internet Bid Board System ("DIBBS"). DIBBS was a web-based application that provided contractors with the capability to search for, view, and submit secure bids on the federal government's request for quotations ("RFQ's") from DLA.

3. For a contractor to do business with the DoD electronically, it was required to request and be assigned a Commercial and Government Entity code ("CAGE" code), which was a five-position unique identifier for entities doing business with the federal government. Using the CAGE code, prospective contractors were able to access DIBBS and submit a quote responsive to a given RFQ. The DLA evaluated these quotes and awarded a purchase order – or contract - to the contractor. Like the RFQ, the purchase order specified the exact part, quantity, delivery date, and other relevant information including,

when applicable, export-control warnings.

4. The Federal Acquisition Regulations (“FAR”), the Defense Federal Acquisition Regulation Supplement (“DFARS”), and the Defense Logistics Acquisition Directive (“DLAD”) were the guidelines and federal regulations that governed DoD acquisitions. The purpose of these regulations and clauses was to provide uniform policies and procedures for government acquisitions. When the DoD issued RFQ’s, it specified the relevant FAR, DFARS, and DLAD provisions that were applicable to that particular purchase.

5. “Exact product” meant a product identified by the name of an approved source and its corresponding part number, which was manufactured by, or under the direction of, that approved source (e.g., Sikorsky Aircraft Corporation 78286 P/N 65111-07002-101). If a bidder indicated that an “exact product” was being offered on its bid to the federal government, the parts must have been manufactured by, or under the direction and authorization of, an approved source for that part.

6. Electronic bids submitted through DIBBS were received and logged on computer servers maintained by DLA outside of New Jersey.

7. The System for Award Management (“SAM”) was a government database through which government contractors, including DoD contractors, provided the government with corporate contact information, including financial information and information about corporate leadership.

8. Requests received from DoD military customers were filled through purchase orders awarded to DoD contractors by the DLA.

9. Typically, after receiving a request from a DoD military customer (e.g., the Air Force), DLA would electronically issue an RFQ, also referred to as a solicitation, specifying various criteria to potential contractors. The RFQ or solicitation generally contained a description of the exact part being sought for purchase. Many DLA solicitations sought the purchase of parts manufactured by specified approved manufacturers of that particular part. These solicitations specified the name of the approved manufacturer or manufacturers, the CAGE code of the approved manufacturer, and the part number used by the approved manufacturer (e.g., Sikorsky Aircraft Corporation 78286 P/N 65111-07002-101). Many solicitations also contained the following language:

WHEN THE PURCHASE ORDER TEXT (POT) DESCRIBES THE REQUIRED PRODUCT(S) BY NAME AND PART NUMBER OF A SPECIFIC ENTITY, BY THE NAMES AND PART NUMBERS OF A NUMBER OF SPECIFIC ENTITIES, OR BY THE NAME(S) AND PART NUMBER(S) OF SPECIFIC ENTITY/ENTITIES AS MODIFIED BY ADDITIONAL REQUIREMENTS SET FORTH IN THE POT, ONLY THAT/THOSE PRODUCT(S) HAVE BEEN DETERMINED TO MEET THE NEEDS OF THE GOVERNMENT AND ARE ACCEPTABLE. SUCH PRODUCT(S) ARE **"EXACT PRODUCTS"** AS DEFINED IN "DLAD 52.217-9002, CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR PART NUMBERED ITEMS."

A VENDOR OFFER/QUOTATION, **"BID WITHOUT EXCEPTION,"** IS A CERTIFICATION THAT THE **'EXACT PRODUCT,'** MANUFACTURED AND/OR SUPPLIED BY ONE OF THE ENTITIES CITED IN THE POT WILL BE FURNISHED UNDER THE CONTRACT OR ORDER. ANY PRODUCT NOT MANUFACTURED AND/OR SUPPLIED BY ONE OF THE ENTITIES CITED IN THE POT IS AN "ALTERNATE PRODUCT," EVEN THOUGH IT MIGHT BE MANUFACTURED IN ACCORDANCE WITH THE DRAWING(S) AND/OR SPECIFICATIONS OF ONE OF THE ENTITIES CITED IN THE PURCHASE ORDER TEXT.

IF AN ALTERNATE PRODUCT IS FURNISHED UNDER A CONTRACT OR ORDER FOR AN EXACT PRODUCT, THE ALTERNATE PRODUCT WILL BE AN UNAUTHORIZED SUBSTITUTION, AND MAY YIELD CRIMINAL PENALTIES IN ADDITION TO ANY CIVIL REMEDIES AVAILABLE TO THE GOVERNMENT.

10. Private company contractors then submitted their quotes to the DoD electronically through the DIBBS database. DLA evaluated these quotes and awarded a purchase order to one of the contractors. Like the RFQ, the purchase order: (a) specified the exact part, quantity and delivery date; (b) referenced the relevant FAR, DFARS, and DLAD clauses; (c) described the criticality of the part; and (d) included other relevant information about the purchase order.

11. When a contractor submitted a quote of “exact product,” a notice appeared on the quote advising the bidder that it has stated to DLA that it would provide an exact product, and that exact products must be manufactured by, under the direction of, or under agreement with the approved source.

The Charge

12. From at least as early as in or about August 2012 through in or around March 2016, in Camden County, in the District of New Jersey and elsewhere, defendant

OBEN CABALCETA

did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud the DoD and to obtain money and property from the DoD by means of materially false and fraudulent pretenses, representations, and

promises, which scheme and artifice to defraud was in substance as set forth below, and for the purpose of executing such scheme and artifice, transmitted and caused to be transmitted by means of wire communications in interstate and foreign commerce, certain signs, signals, and sounds as set forth below.

The Object of the Scheme to Defraud

13. It was the object of the scheme to defraud for defendant OBEN CABALCETA to obtain money from the DoD through a product substitution fraud scheme centered on misrepresentations by defendant CABALCETA that certain defense hardware items and spare parts were to be supplied to the DoD by an approved manufacturer when, in fact, they were manufactured by an unapproved source.

Manner and Means of the Scheme to Defraud

14. It was part of the scheme to defraud that beginning in or about 2012, defendant OBEN CABALCETA submitted false bids to the DoD, through their electronic bid system, which falsely claimed that they would supply the DoD with aircraft and other parts manufactured by DoD approved sources and that the parts were “exact products.”

15. It was further part of the scheme to defraud that defendant OBEN CABALCETA set up a DIBBS account for Owen’s and United. Defendant CABALCETA submitted bids to the DoD on behalf of Owen’s and United.

16. It was further part of the scheme to defraud that defendant OBEN CABALCETA accessed the DIBBS database, reviewed the solicitations and submitted bids on behalf of Owen’s and United for “exact product” parts.

17. It was further part of the scheme to defraud that, after Owen's and United won the bids, that defendant OBEN CABALCETA either manufactured the parts or ordered the parts to be supplied to Owen's and United from other local businesses, none of which were approved manufactures for the "exact product" parts.

18. It was further part of the scheme to defraud that defendant OBEN CABALCETA packaged and shipped the non-conforming parts to the DoD. The DoD paid Owen's and United for the non-conforming parts through EFT.

19. It was further part of the scheme to defraud that from in or about January 2011 to in or about March 2016, DLA awarded Owen's approximately \$1,469,391 in contracts for various military spare parts. Owen's submitted quotes for, and was subsequently awarded, DLA purchase orders requiring the supply of "exact products." Between in or about January 2011 to in or about July 31, 2015, DFAS paid Owen's approximately \$885,047 for non-conforming parts supplied by unapproved sources.

20. It was further part of the scheme to defraud that on or about January 15, 2015, DLA issued an RFQ for a part described as a "Coupling Half, Quick Disconnect." The contract required "Exact Product." The part was used on various military aircraft including the F-4, C-130, F-14, C-5, F-15 and others.

21. It was further part of the scheme to defraud that on or about January 17, 2015, defendant OBEN CABALCETA, on behalf of Owen's, submitted an electronic quote to DLA, from New Jersey to DLA's servers

outside the state of New Jersey, stating that he would provide the “Exact Product” specified in the RFQ. The bid falsely stated that Owens’s was a “Qualified Supplier List Dealer” and they would provide parts manufactured by Rockwell Collins Electromechanical (hereinafter “Rockwell Collins”).

22. It was further part of the scheme to defraud that based on defendant OBEN CABALCETA’s bid of “Exact Product,” DLA awarded Owen’s the contract in the amount of \$63,000 on March 27, 2015. Thereafter, Owen’s shipped non-conforming parts to Hill Air Force Base, Robins Air Force Base, and Tinker Air Force Base from New Jersey between in or about October 2, 2015 and November 25, 2015. The parts were acquired from manufacturers other than Rockwell Collins. On or about October 14, 2015 and December 4, 2015, DFAS made EFT payments to Owen’s totaling approximately \$63,000.

23. It was further part of the scheme to defraud that from in or about March 2012 to in or about January 2016, DLA awarded United approximately \$4.6 million dollars in contracts for various spare parts, including numerous aircraft parts. United submitted quotes for, and was subsequently awarded, DLA purchase orders requiring the supply of “exact products.” Between in or about March 2013 to in or about November 2015, DFAS paid United approximately \$1,005,892 for non-conforming parts manufactured or supplied by unapproved sources.

24. It was further part of the scheme to defraud that on or about August 4, 2014, DLA issued an RFQ for the supply of a part described as a “Nut, Self-Locking, Hexagon.” The RFQ specified that the Government was

seeking to purchase the “exact product” and the part was manufactured by Lord Corporation. The part was used on the Lockheed P-3 Orion, a four-engine turboprop anti-submarine and maritime surveillance aircraft.

25. It was further part of the scheme to defraud that on or about August 27, 2014, defendant OBEN CABALCETA, on behalf of United, submitted an electronic quote to DLA, from New Jersey to DLA’s servers outside the state of New Jersey, stating that United would provide the "exact product" specified in the RFQ. Specifically, the bid stated that United was a "qualified supplier list dealer" and would provide the specified part manufactured by Lord Corporation.

26. It was further part of the scheme to defraud that based on defendant OBEN CABALCETA’s bid of “Exact Product,” DLA awarded United the contract in the amount of \$7,488 on or about September 2, 2014. Thereafter, United supplied parts to DLA that United represented were manufactured by Lord Corporation. On or about December 23, 2014, United shipped fraudulent parts from New Jersey to DLA distribution centers in Florida and California. The parts were acquired from manufacturers other than Lord Corporation. On or about January 5 and January 6, 2015, DFAS made EFT payments to United totaling approximately \$7,488.

In violation of Title 18, United States Code, Section 1343, and Title 18, United States Code, Section 2.

COUNT 2
[18 U.S.C. § 371 – Conspiracy to Violate Arms Export Control Act]

1. Paragraphs 1 through 11 and 13 through 26 of Count 1 of the Information are incorporated as if set forth in full herein.

2. At all times relevant to Count 2 of this Information:

a. Roger Sobrado, who was a co-conspirator but not named as a defendant herein, was a resident of Evesham, New Jersey. Sobrado owned and operated Tico Manufacturing, Inc. ("Tico") and Military and Commercial Spares, Inc. ("MCS") located in West Berlin, New Jersey. Tico was established in or about July 2005. MCS was established in or about May 2013. At various times, Tico and MCS manufactured parts and/or purchased parts from unapproved sources. Tico and MCS then supplied those parts to entities that had contracts with the DoD or sold them to companies owned by Sobrado's co-conspirators that had contracts with the DoD. Those non-conforming parts were ultimately sold to the DoD.

b. Co-Conspirator 6, who was a co-conspirator but not named as a defendant herein, was a resident of Atco, New Jersey and a citizen of Costa Rica who has resided in the United States for approximately 16 years on an F1 student visa. Under certain conditions, the holder of an F1 student visa may be permitted to work in the United States within their field of study. Co-Conspirator 6 was listed as member of Tico's board of directors. Co-Conspirator 6 was the only board member on the incorporation documents for Owen's. Co-Conspirator 6 was listed as the only member/manager on the incorporation documents of United. Neither Tico, Owen's, nor United were

businesses within Co-Conspirator 6's field of study. Co-Conspirator 6 was married to defendant CABALCETA and had a familial relationship with Roger Sobrado.

Legal Background

3. At all times relevant to Count 2 of this Information:

a. The United States Arms Export Control Act, Title 22, United States Code, Section 2778 ("AECA" or the "Act") authorized the President of the United States to control the export of defense articles and services from the United States. Unless an exception applied, the Act stated that no defense articles or defense services could be exported without a license for such export. 22 U.S.C. § 2778(b)(2).

b. The regulations promulgated pursuant to the Act, known as the International Traffic in Arms Regulations ("ITAR"), defined exporting to include, among other things: "[s]ending or taking a defense article out of the United States in any manner . . . or [d]isclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad. . . ." 22 C.F.R. § 120.17.

c. The ITAR defined a defense article and service to be any item on the United States Munitions List ("USML") contained in the regulations. The USML set forth 21 categories of defense articles that were subject to export licensing controls by the United States Department of State's Directorate of Defense Trade Controls ("DDTC"). 22 C.F.R. § 121.1.

d. Unless specifically exempted, persons engaged in the export of defense articles covered by the USML were required to be registered with the DDTC, and had to apply for and receive a valid license or other approval to export the defense article from the United States. 22 C.F.R. § 123.1(a).

e. Category II(k) of the USML included technical data directly related to specifically designed or modified components, parts, accessories, and associated equipment for, among other defense articles, guns over caliber .50 (*i.e.*, 12.7 mm), whether towed, airborne, self-propelled, or fixed. 22 C.F.R. § 121.1.

4. The ITAR prohibited, among other things, unlicensed exports, attempts to export, and conspiracies to export or cause the export of defense articles. 22 C.F.R. § 127.1(a)(1) & (4).

Defense Contractors' Access to ITAR-Controlled Technical Data

5. In meeting its procurement needs, the DoD made electronic copies of specifications, standards, plans, and technical drawings available to defense contractors who had registered with DIBBS through a system known as “cFolders.” For example, when the DoD solicited quotations through DIBBS, it allowed defense contractors, after entering their DIBBS password, to access, view, and download technical drawings and other files related to the solicitation via cFolders.

6. The cFolders system made both ITAR-controlled and non-ITAR-controlled data available to registered defense contractors. Access to ITAR-controlled data was only provided to those contractors who were certified by

the DoD to have it, which was known as “JCP certification.” To obtain JCP certification, an applicant had to complete Form 2345, titled “Militarily Critical Technical Data Agreement,” which required the applicant to certify, under penalty of a fine, imprisonment, or both:

- a. facts relating the applicant’s business activity and intended use for the data;
- b. that, in the case of a United States applicant, the applicant was a citizen of the United States or a person admitted lawfully for permanent residence into the United States;
- c. that the applicant acknowledged all responsibilities under applicable United States export control laws and regulations; and
- d. that the applicant agreed not to disseminate technical data in a manner that would violate applicable United States export control laws and regulations.

The Technical Data

7. The DDTC has certified that the document titled “Bolt Assembly, Breech,” Drawing Number: 11691422 was technical data covered by Category II(k) of the USML.

Export License History

8. At no point during any of the transactions described in this Information did defendant OBEN CABALCETA, Roger Sobrado, Co-Conspirator 6, or any other parties involved, apply for or receive a license or other

authorization from the DDTC to export directly or indirectly ITAR-controlled technical data from the United States.

The Conspiracy

9. From in or around July 2005, through on or about January 27, 2016, in Camden County, in the District of New Jersey, and elsewhere, defendant

OBEN CABALCETA

did knowingly and intentionally conspire and agree with Roger Sobrado, Co-Conspirator 6 and with others to export and cause the export of defense articles on the United States Munitions List, 22 C.F.R. § 121.1, to one or more foreign nationals, without having first obtained from the United States Department of State, Directorate of Defense Trade Controls, a license or other written approval for such export, contrary to Title 22, United States Code, Section 2778(b)(2) & 2778(c), and Title 22, Code of Federal Regulations, C.F.R. Section 120, et seq.

Object of the Conspiracy

10. It was the object of the conspiracy to willfully export ITAR-controlled technical data related to the design and manufacture of defense hardware items and spare parts without the requisite license or other written approval from the United States Department of State for financial gain.

Manner and Means of the Conspiracy

11. It was part of the conspiracy that defendant OBEN CABALCETA, an illegal alien, accessed and received ITAR-controlled technical data for

defense hardware items and spare parts which was exported without an export license or approval from the United States Department of State authorizing the exportation of that technical data, as required by law.

12. It was further part of the conspiracy that Roger Sobrado exported, attempted to export, and caused the export of ITAR-controlled technical data for defense hardware items and spare parts by providing defendant OBEN CABALCETA, an illegal alien, with credentials to download ITAR-controlled technical data to a computer that defendant CABALCETA controlled in New Jersey.

Overt Acts

In furtherance of the conspiracy and to effect the unlawful object thereof, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

13. On or about August 9, 2005, on behalf of Owen's, Roger Sobrado submitted a Militarily Critical Technical Data Agreement to the Defense Logistics Information Service, which permitted Sobrado access to certain technical data in the DLA's possession. Sobrado indicated that he was the office manager for Owen's. In submitting the Militarily Critical Technical Data Agreement, Sobrado acknowledged his responsibility to abide by United States export control laws and regulations, including under certain circumstances, the responsibility to not provide military critical technical data to non-U.S. citizens. Sobrado signed the form subject to the penalties of perjury. By signing and submitting the form, DoD upgraded Owen's access to cFolders to

include access to drawings and technical data subject to export control regulations.

14. On or about October 18, 2010, Sobrado, on behalf of Owen's, submitted a Militarily Critical Technical Data Renewal Agreement to the Defense Logistics Information Service, which permitted Owen's access to certain technical data in the DLA's possession. In that agreement, Sobrado falsely indicated that he was a manager for Owen's. Sobrado signed the form subject to the penalties of perjury. After the renewal application was approved, Owen's retained access to drawings and technical data subject to export control regulations.

15. On or about July 28, 2011, defendant OBEN CABALCETA, using Owen's CAGE code, accessed the cFolders system and downloaded the "Bolt Assembly, Breech," Drawing Number: 11691422.

16. Between in or about January 2013 and on or about November 20, 2015, defendant OBEN CABALCETA accessed or downloaded hundreds of drawings that were sensitive in nature that DoD required JCP certification to access or download.

17. On or about November 30, 2015, Co-Conspirator 6, on behalf of Owen's, submitted a Militarily Critical Technical Data Renewal Agreement to the Defense Logistics Information Service, which permitted Owen's access to certain technical data in the DLA's possession. Co-Conspirator 6 indicated that Co-Conspirator 6 was the President of Owen's. In submitting the Militarily Critical Technical Data Renewal Agreement, Co-Conspirator 6 falsely

represented that Co-Conspirator 6 was a U.S. Citizen or admitted lawfully for permanent residence in the United States. Co-Conspirator 6 acknowledged Co-Conspirator 6's responsibility to abide by United States export control laws and regulations, including the responsibility to not provide military critical technical data to non-U.S. citizens. Co-Conspirator 6 signed the form subject to the penalties of perjury. Based on Co-Conspirator 6's representations, Owen's maintained access to the cFolders system for drawings and technical data subject to export control regulations.

18. On or about January 27, 2016, defendant OBEN CABALCETA, using Owen's CAGE code, accessed the cFolders system and downloaded the "Bolt Assembly, Breech," Drawing Number: 11691422.

In violation of Title 18, United States Code, Section 371.


CRAIG CARPENITO
United States Attorney

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UNITED STATES OF AMERICA

v.

OBEN CABALCETA

INFORMATION FOR
18 U.S.C. § 1343
18 U.S.C. § 371
18 U.S.C. § 2

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