

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NOV 28 2017

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON BOUTTE,
JOE DIAZ,
ARTURO VARGAS and
GEORGE LOWE,
Defendants.

Case No. 17-3338 JB

Count 1: 18 U.S.C. § 286: Conspiracy to Defraud the United States with Respect to Claims;

Count 2: 18 U.S.C. § 1349: Conspiracy to Commit Wire Fraud;

Counts 3-4: 18 U.S.C. § 1031 Fraud Against the United States; 18 U.S.C. § 2 Aiding and Abetting;

Counts 5-46: 18 U.S.C. § 287: False, Fictitious or Fraudulent Claims; 18 U.S.C. § 2: Aiding and Abetting.

INDICTMENT

The Grand Jury charges:

GENERAL ALLEGATIONS

The Big Crow Program Office

1. In or around 1971, the airborne component of the United States Army's electronic warfare assessment program was consolidated at Kirtland Air Force Base, Albuquerque, New Mexico, as the "Big Crow Program Office." Pursuant to an inter-service support agreement, the United States Air Force provided aircraft used as airborne platforms for the Army's electronic warfare assessment program in the Big Crow Program Office. The United States Air Force withdrew its aircraft and aircrews in or around 2008, and the Big Crow Program Office closed in or around 2009.

2. The Big Crow Program Office was originally funded principally by the United States Army. However, the Army's requirements for, and funding of, the Big Crow Program Office

diminished over time. Although the Big Crow Program Office remained an agency of the United States Army, the Big Crow Program Office was largely sustained from 1999 to 2008 by providing services to other agencies on a reimbursable basis and by supplemental Congressional appropriations or “plus ups” specifically earmarked for the Big Crow Program Office.

3. Beginning at a time unknown, but not later than 2004, **MILTON BOUTTE**, then the Director of the Big Crow Program Office, conspired and schemed with **GEORGE LOWE** and other lobbyists, consultants, contractors and others to obtain money for the Big Crow Program Office from Congress and other government agencies. Those lobbyists, consultants and contractors charged hundreds of thousands of dollars for lobbying on behalf of the Big Crow Program Office. The Big Crow Program Office did not have funding nor authorization to expend money for lobbying activities.¹

4. **BOUTTE** and **LOWE** conspired and schemed with **JOE DIAZ** and, later, **ARTURO VARGAS** to fraudulently misappropriate and divert federal funds for lobbying services and other unauthorized expenditures. As part of that scheme and conspiracy to defraud the United States, **BOUTTE**, **DIAZ**, **LOWE** and others combined to fraudulently obtain and exploit sole-source contracts awarded without open competition under the § 8(a) Business Development Program to Miratek Corporation (one of **DIAZ**'s businesses) and Vartek, LLC (purportedly a joint venture between **DIAZ** and **VARGAS**).

¹ An appropriation of funds by Congress is a prerequisite to the obligation or expenditure of government funds by federal agencies and employees. See United States Constitution, Art. I, Section 9, Clause 7; 31 U.S.C. § 1341(a)(1)(A). Federal agencies and employees are broadly prohibited from expending money appropriated by Congress to pay for services, materials or devices intended to influence Congress or any government official regarding any legislation, policy or appropriation. See 18 U.S.C. § 1913.

Small Business Act § 8(a) Business Development Program

5. In 1953, Congress enacted the Small Business Act for purposes of aiding and promoting small business concerns. In that Act and ensuing amendments, Congress expressly intended to promote the development of small business concerns owned by socially and economically disadvantaged individuals. As part of that initiative, in § 8(a) of the Act Congress established the Business Development Program. The § 8(a) Business Development Program offers a broad spectrum of assistance and benefits to eligible small business concerns. Among other things, participants in the § 8(a) program are eligible to receive sole-source contracts from government agencies. Under that program, certain government contracts are awarded to small businesses enrolled in the § 8(a) program without open competition.

6. Responsibility for implementation and administration of the § 8(a) Business Development Program has been delegated in that Small Business Act to the Small Business Administration (SBA). Individuals or businesses seeking to participate in the § 8(a) Business Development Program must first be certified as an eligible participant by the Small Business Administration. Eligibility to participate in the § 8(a) program requires, among other things, that an applicant establish: that it is a small business within Small Business Administration's guidelines; that it is majority-owned and controlled by socially and economically disadvantaged individual(s); and that the business has potential for success. Additionally, to foster the development of small business concerns, a participating small businesses must perform a substantial portion of the work awarded to it under a § 8(a) contract with its own employees. *See* 13 C.F.R. § 124.510. More specifically, during the period material to this indictment, a small business concern awarded an § 8(a) contracts for services (other than construction) was required to perform at least 50% of the contract costs incurred for personnel with its own employees. *See* 13 C.F.R. § 125.6(a) (1996, 2005, 2008).

7. The § 8(a) Business Development Program is intended to help eligible small businesses gain a foothold in government contracting and develop knowledge and abilities to compete for future contracts. Participation in the § 8(a) program is therefore not open-ended. Eligibility to participate in the § 8(a) program is limited to nine years. A firm that completes its nine-year term of participation in the Business Development Program is deemed to “graduate” from the program. Each participant in the program is also required to annually submit financial and other information to enable the Small Business Administration to re-evaluate that participant’s continuing eligibility. A business may graduate early from the program if it grows beyond the parameters of a small business. *See* 13 C.F.R. § 124.2.

8. Businesses that have graduated from the § 8(a) Business Development Program are no longer eligible to receive sole-source contracts under that program. However, graduates are permitted to mentor participating small businesses. Graduates may also enter into joint ventures with small businesses enrolled in the Business Development Program for purposes of obtaining and fulfilling sole-source § 8(a) contracts. During the period material to this indictment, joint ventures were permitted only when the following requirements were satisfied.

- a. A joint venture between a § 8(a) participant and one or more other business was permitted so long as each business was within the Small Business Administration’s size standard for small businesses. Notwithstanding that restriction, a joint venture between a protégé small business and its approved mentor would be deemed a small business so long as the protégé did not exceed the applicable size standards. *See* 13 C.F.R. § 124.513(b) (2004).
- b. A joint venture agreement was permissible only where a § 8(a) disadvantaged small business concern lacked the necessary capacity to perform the contract on its own.

However, a joint venture was not permitted if the small business concern brought little to the joint venture in terms of resources and expertise other than its § 8(a) status. *See* 13 C.F.R. § 124.513(a)(2) (2004).

- c. The § 8(a) small business was to manage the joint venture, and an employee of that small business was to serve as the project manager responsible for performance of the contract. *See* 13 C.F.R. §§ 124.513(c)(2) and 124.1002(f)(4) (2004).
- d. The small business was to perform a substantial portion of the work under any § 8(a) contract awarded to the joint venture. *See* 13 C.F.R. §§ 124.513(d) and 124.1002(f)(5) (2004). With regard to service contracts, the § 8(a) small business was required to perform at least 40% of the work and 50% of the labor costs with its own employees.
- e. The § 8(a) small business was to receive not less than 51% of the net profits earned by the joint venture. *See* 13 C.F.R. § 124.513(c)(3) (2004).

A joint venture could not be awarded government contracts set aside for § 8(a) eligible small business concerns unless the disadvantaged small business was enrolled in the § 8(a) Business Development Program and the joint venture was approved by the Small Business Administration.

**Central Contractor Database and
Online Representations and Certifications Application**

9. Business concerns seeking to do business with the federal government are required to register and submit periodic reports to the government. During the period material to this Indictment, businesses were required to submit and certify information in two databases as a prerequisite to any government contract.

- a. A Federal Acquisition Regulation (FAR) policy published on October 1, 2003, required that all federal contractors register in the Central Contractor Registration (CCR) before

any government contract or purchase agreement could be awarded to that business. The CCR database was accessible via the internet, and the CCR computer server was located in Battle Creek, Michigan. Business concerns were required to enter detailed information regarding themselves and their business in the CCR. Business concerns were obliged to maintain accurate and current information in the CCR, and they could login and update their CCR account at any time.

- b. After registering in CCR, business concerns were required to annually review and certify their information in GSA's Online Representations and Certifications Application (ORCA) database.² Much of the information that business concerns initially entered in CCR was maintained in ORCA. Like CCR, the ORCA database was available via the internet. The ORCA computer server was situated in Sterling, Virginia.

10. Government agencies relied on the accuracy of the information that contractors entered in CCR and certified in ORCA. The Small Business Administration and other government agencies relied on that information in determining business entities' eligibility for § 8(a) contracts.

- a. Disadvantaged small business concerns participating in the § 8(a) Business Development Program were required to annually verify their status as an eligible small business in ORCA.
- b. Business concerns participating in a joint venture were also required to certify in ORCA that the joint venture was in compliance with the federal regulations codified in 13 C.F.R. 124.1002(f). Again, those regulations required, among other things: that the § 8(a) small business manage the joint venture; that an employee of the small business serve as the

² CCR and ORCA were consolidated in GSA's System for Award Management (SAM) database on July 29, 2012.

project manager responsible for performance of the § 8(a) contract; and that the small business perform a substantial portion of the work under any § 8(a) contract awarded to the joint venture. *See* 13 C.F.R. §§ 124.513(d) and 124.1002(f)(5).

- c. All government contractors were required to certify that no federal appropriated funds had been paid or would be paid to any person for influencing or attempting to influence a member of Congress or federal employee in connection with awarding or amending any federal contract, grant, loan or cooperative agreement. The prohibitions contained in Federal Acquisition Regulation, (FAR) 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, were also incorporated in those certifications.

2004-2005: Miratek & Diversion of Funds Under Contract NBCHD040016

11. At all times material to this Indictment, **JOE DIAZ** owned a controlling interest in a company known as Miratek Corporation (“Miratek”).
12. Beginning in or around April 1995, **DIAZ** and Miratek enrolled and participated in the Business Development Program. Miratek was granted multiple sole-source contracts that had been set-aside for disadvantaged small businesses under the § 8(a) program including two sole-source contracts to provide technical and managerial support for the Big Crow Program Office.³ One of those contracts—NBCHD040016—featured prominently in the conspiracy and scheme to defraud the United States.
13. On or about March 12, 2004, the United States Department of Interior, an agency of the United States, awarded contract NBCHD040016 to Miratek under the § 8(a) Business

³ In addition to Contract NBCHD040016, Miratek was awarded Contract W91260-04-C-0001 by the United States Army Space Command on April 15, 2004. That contract was also a sole-source § 8(a) contract that called upon Miratek to provide technical and managerial support to the Big Crow Program Office. However, unlike Contract NBCHD040016, Contract W91260-04-C-0001 was a Cost Plus Fixed Fee Level of Effort contract that specified the number of labor hours authorized under the contract.

Development Program. The effective date of that sole-source contract NBCHD040016 was April 1, 2004.

- a. Contract NBCHD040016 called for Miratek to provide technical services for the Big Crow Program Office on a Time & Materials basis. Miratek was authorized to provide such services over a three-year span at a total cost not to exceed \$2,450,000. That contract also contained provisions for travel expenses up to \$50,000, and Other Direct Costs not to exceed \$500,000.
- b. The services that Miratek was to provide under contract NBCHD040016 were not prescribed in that document but instead were delineated in specific orders and work statements. On or about September 28, 2004, **DIAZ** and Miratek submitted a proposal to provide technical services to the Big Crow Program Office under contract NBCHD040016. Bearing the subject line “Big Crow Program Office Technical and Analytical Support Effort,” that proposal read in part: “MIRATEK Corporation will provide technical and analytical support to complement and enhance the existing Big Crow, DoD and customer expertise. MIRATEK will provide advice, analyses, opinions, and recommendations in areas of technical and engineering direction; management structure; financial planning for future growth and sustainment; data collection, consolidation and retrieval; security engineering as outlined in the statement of work.”

The accompanying Statement of Work read in part:

1.0 SCOPE

Congress directed the DoD to establish a plan for the oversight and sustainment of the Big Crow Program Office. To meet this requirement Big Crow is establishing a team comprised of government and contractor personnel to provide direct support in the overarching long-lead planning, data collection and analyses, execution and reporting. The scope of this effort is set forth to establish an internal mechanism for

the Big Crow Program Office to acquire the high-end technical, analytical, advisory and gray-beard management expertise required to assist in the stabilization, sustainment, future growth and direction of the program. Efforts will include management analysis, advisory assistance support, data collection and analysis, budgetary analysis and support, and security engineering.

. . . .

3.0 REQUIREMENTS

The contractor shall provide technical and analytical support to compliment [sic] and enhance the existing Big Crow, DoD and customer expertise. The contractor shall provide advice, analyses, opinions, and recommendations in areas of technical and engineering direction; management structure; financial planning for future growth and sustainment; data collection, consolidation and retrieval; security engineering as outlined in this section.

The specific requirements included [3.1] Planning/Technical Support (“[t] he contractor shall provide highly experienced technical and engineering support to assist in the development of futuristic planning to meet the capability needs of Big Crow, DoD and other directed customers”); [3.2] Resource Management Support (“[t] he contractor shall provide highly experienced personnel with backgrounds in budgetary development and control of program element monitoring; DoD budgetary estimate submittals; financial data collection and management; inventory control and reporting; and DoD personnel management”); and [3.3] Data Collection and Management (“[t]he contractor shall provide experienced data collectors and data base managers to support the establishment of a central database for the Big Crow Program Office”).

- c. On or about September 29, 2004, the Department of Interior approved **DIAZ** ’s proposal and entered Order D0400160001 authorizing Miratek to provide technical services for the Big Crow Program Office under contract NBCHD040016. That contract attached and incorporated **DIAZ** ’s “BCPO Technical and Analytical Support Effort” proposal and

directed that “[t]he Contractor [Miratek] shall provide support as delineated in the attached Performance Work Statement.” Under Order D0400160001, Miratek was to provide technical services for the Big Crow Program Office during a one-year period beginning September 30, 2004, and ending September 29, 2005. Although the Order originally authorized payments to Miratek of approximately \$83,957 for technical services and reimbursement of up to \$30,000 for Other Direct Costs, subsequent modifications increased funding under that Order to approximately \$1,332,109 and extended the period of performance to April 2006.

14. Beginning not later than April 2004, **MILTON BOUTTE** and **GEORGE LOWE** conspired to lobby Congress, federal agencies and federal officials, for funds for the Big Crow Program Office. As part of that conspiracy, **LOWE** agreed to influence or attempt to influence government officials to transfer money and resources for the Big Crow Program Office. **LOWE** demanded and received monetary compensation for acting as a lobbyist for the Big Crow Program Office. Although **LOWE** initially charged \$15,000 per month for his services, he subsequently demanded and received larger sums.

15. **BOUTTE** and **LOWE** conspired with **DIAZ** to pay **LOWE**’s lobbying fees from appropriated funds⁴ that had been allocated for the technical and managerial support of the Big

⁴ Recipients of federal contracts are prohibited from using appropriated funds to pay any person for influencing or attempting to influence any member or employee of Congress or any officer or employee of a federal agency in connection with the awarding, extending or modifying any federal contract. While a contractor may conduct lobbying activities with its own monies (including profits from covered federal actions), a contractor may not use federal appropriated funds to pay for lobbying services in connection with covered federal actions. A contractor that engages in lobbying activities with its own monies must make an affirmative disclosure showing that funds other than appropriated funds were paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement. *See* 31 U.S.C. § 3152; 48 C.F.R. § 52.203-12. Additionally, the Federal Acquisition Regulation instructs that contractors seeking reimbursement for indirect costs incurred under a federal contract must separately identify lobbying costs, and that lobbying is an unallowable cost. 48 C.F.R. 31.205-22.

Crow Program Office under contract NBCHD040016. Indeed, in addition to other unauthorized lobbyists, consultants, contractors and expenditures, **BOUTTE, DIAZ, and LOWE** combined to fraudulently divert more than \$529,000 under contract NBCHD040016 to **LOWE**.

16. This diversion of funds under contract NBCHD040016 violated the conditions of the § 8(a) Business Development Program and the terms of the Time and Materials contract. Briefly, a disadvantaged small business awarded a service contract under the Business Development Program is to perform most of the work with its own employees. In this case, Miratek was to provide technical services for the Big Crow Program Office with its own employees—and not contractors or consultants. In the event that a subcontractor was required and authorized, such an expense was to be reimbursed as an Other Direct Cost (ODC) under the Time and Materials contract. However, lobbying services were not within the scope of the work authorized under contract NBCHD040016 and Order D0400160001.

17. As part of the conspiracy to defraud the United States, **BOUTTE, DIAZ, and LOWE** devised and executed a scheme to conceal and disguise the nature of the payments to **LOWE** and other lobbyists.

- a. To conceal and disguise the nature of the payments to **LOWE** and other unauthorized lobbyists, consultants and contractors, **DIAZ** falsely represented in the proposal to the Department of Interior that was incorporated in Order D0400160001 that **LOWE** and other lobbyists, consultants and contractors were employees of Miratek. More specifically, in that proposal, **DIAZ** falsely represented that **LOWE** and certain other lobbyists, consultants and contractors were each a “Project Manager/Senior Auditor/CPA.”

- b. To conceal and disguise the nature of his claims, **LOWE** submitted fraudulent invoices claiming false and fictional hours of work. **LOWE** submitted his claims under the mantle of Broadcreek Associates, Ltd., a limited liability company organized under the laws of Maryland for purposes of “[g]overnment relations and advocacy for clients.” In many of those invoices, **LOWE** certified the accuracy of his claims and expressly acknowledged “that this certification is made with the understanding that any sum paid hereunder will become the basis for a claim or reimbursement by the contractor to the US government.”
- c. As a further part of the conspiracy and scheme, **DIAZ** and Miratek subsequently submitted claims to the Department of Interior for unauthorized services provided by **LOWE** and other lobbyists and consultants under the false pretense that those contractors were Project Managers. **DIAZ** and Miratek billed the United States for those unauthorized services at the rate of \$90.66 per hour — one of the highest rates authorized under the contract. To avert suspicion, **LOWE**, **DIAZ**, and **DIAZ**’s agents and employees fraudulently structured and divided **LOWE**’s large invoices in multiple claims to the government over several months and falsely inflated the hours of work that **LOWE** and Broadcreek Associates had purportedly performed under Order D0400160001 and contract NBCHD040016.

18. In early 2005, **LOWE** reported that his lobbying efforts had succeeded in causing or inducing the Alaska Army National Guard to transfer money to the Big Crow Program Office. More specifically, **LOWE** informed **BOUTTE**, **DIAZ**, and their agents that the Alaska Army National Guard would transfer \$1,185,000 through a Military Interdepartmental Purchase Request (MIPR) to support the Big Crow Program Office. On or about April 12, 2005, officers

and agents of the Alaska Army National Guard transferred \$1,185,000 through a MIPR to the Department of Interior for benefit of the Big Crow Program Office. That MIPR was credited or added to the funding under contract NBCHD040016 “for support of BIG CROW Program Office oversight and sustainment.”

19. After the Alaska Army National Guard transferred \$1,185,000 to the Department of Interior for benefit of the Big Crow Program Office, **LOWE** (again under the mantle of Broadcreek Associates) submitted a series of invoices demanding most of that money. **DIAZ** and his agents fraudulently submitted claims to the Department of Interior under contract NBCHD040016 for payments on **LOWE**'s behalf. For example:

- a. In invoice #4741 submitted on or about May 12, 2005, **DIAZ** made a claim for payment of \$38,530.50 under the pretense that **LOWE** and his firm, Broadcreek Associates, had provided 425 hours of work on Order D0400160001 under contract NBCHD040016.
- b. In invoice #4801 submitted on or about June 8, 2005, **DIAZ** made a claim for payment of \$19,219.92 under the pretense that **LOWE** and Broadcreek Associates had provided 212 hours of work on Order D0400160001 under contract NBCHD040016.
- c. In invoice #4893 submitted on or about July 14, 2005, **DIAZ** made a claim for payment of \$182,407.92 under the pretense that **LOWE** and Broadcreek Associates had provided 2,012 hours of work on Order D0400160001 under contract NBCHD040016.
- d. In invoice #4941 submitted on or about August 9, 2005, **DIAZ** made a claim for payment of \$183,314.52 under the pretense that **LOWE** and Broadcreek Associates had provided 2,022 hours of work on Order D0400160001 under contract NBCHD040016.

20. Despite these payments, **LOWE** demanded more money. **LOWE** demanded and eventually received most of the money (or equivalent sums) that had been transferred from the

Alaska Army National Guard for support of the Big Crow Program Office. **LOWE**'s demands were the subject of a series of emails in late August 2005. On August 27, 2005, a contractor affiliated with the Big Crow Program Office sent an email to **LOWE** (and copies to **BOUTTE** and **DIAZ**) responding to **LOWE**'s demands. Referencing a prior conversation with **DIAZ**, the contractor noted: that **LOWE** had already been paid "\$530K" (i.e., \$530,000); that **DIAZ** was to make another payment to **LOWE** in September; and that the contractor believed that what **DIAZ** had provided to **LOWE** should be acceptable. **LOWE** responded by email on August 29, 2005:

Well . . . You think wrong! You seem to forget that I am the one that placed those funds on that account. I have also received verification that they processed ALL of my invoices which total in excess of \$850K and have diverted funds for other uses. That in and of itself is a major problem, it is known as diversion of funds. I don't appreciate the tone of your email. I am meeting with my attorneys at Arent Fox at 11:00 today to move forward. I will not be treated like this by you, Milt [**BOUTTE**], Ron and/or Joe [**DIAZ**]. . . .

Later that same day, **DIAZ** forwarded this email strand to one of his employees with the comment that **LOWE**'s "lawyer talk is a big bluff unless he wants to go straight to Leavenworth." Despite the express recognition that the payments to **LOWE** were unlawful, **DIAZ** and his agents continued to fraudulently claim and divert appropriated funds under contract NBCHD040016 to **LOWE**. For example, in invoice #5009 submitted on or about September 14, 2005, **DIAZ** made a claim to the Department of Interior for payment of \$106,253.52 under the pretense that **LOWE** and Broadcreek Associates had provided 1,172 hours of work under Order D0400160001 and contract NBCHD040016.

21. Order D0400160001 could not indefinitely sustain the scheme: that Order was to expire (after an extension) in April 2006, and funding under that Order for technical and analytical support of the Big Crow Program Office had been depleted. Further, small businesses' eligibility

to participate in the § 8(a) program is limited to 9 years, and **DIAZ**'s and Miratek's eligibility for the § 8(a) Business Development Program was expired in or around April 2004. Although Miratek was permitted to complete work under previously awarded contracts (e.g., NBCHD040016), Miratek was no longer eligible to receive additional sole-source contracts under the § 8(a) program.

22. In order to continue and perpetuate the conspiracy, **BOUTTE, DIAZ**, and their agents and employees sought another small business to take Miratek's place in the scheme to defraud the United States and unlawfully divert appropriated funds to lobbyists, consultants and other unauthorized contractors. Towards that end, **DIAZ** combined with **ARTURO VARGAS** and Vargas, P.C., to create a joint venture known as Vartek, LLC.

Vartek, LLC

23. At all times material to this Indictment, **VARGAS** was a Certified Public Accountant (CPA) doing business as Vargas P.C. **VARGAS** provided tax and accounting services from a small office in El Paso, Texas. **VARGAS** provided such services to **DIAZ** and Miratek during the span from 1989 to 2005.

24. On or about April 8, 2005, **DIAZ** and **VARGAS** executed a Mentor/Protégé Agreement that they subsequently submitted to the Small Business Administration for approval.⁵ In their submissions to the Small Business Administration, **DIAZ** and **VARGAS** made representations to the effect: that Vargas, P.C., was diversifying into the information technology field; that Vargas, P.C., was in the developmental stage of the § 8(a) Business Development Program as a "Public

⁵ **DIAZ** and Miratek also entered into a joint venture with an entity known as ATA. That joint venture was referred to as ATAMIR. At the conclusion of contract W91260-04-C-0001, ATAMIR was awarded contract W91260-05-C-0001 under the § 8(a) Business Development Program. Contract W91260-05-C-0001 was similar to, if not modeled upon, contract W91260-04-C-0001. Like its predecessor, contract W91260-05-C-0001 was a Cost Plus Fixed Fee Level of Effort contract for technical and managerial support to the Big Crow Program Office. Further, the invoices submitted under the contracts indicate that ATAMIR and Miratek shared many of the same employees.

Accounting and Information Technology Firm;” and that Miratek was to serve as a mentor and assist Vargas, P.C., the protégé, to build and develop technical expertise, administrative infrastructure, and capacity to compete for other contracts in the open market.

25. Relying upon the representations and promises of **DIAZ** and **VARGAS**, the Small Business Administration approved the Mentor/Protégé Agreement on or about August 5, 2005. In approving that Mentor/Protégé Agreement, the Small Business Administration expressly observing that the purpose of the Mentor-Protégé Program is to enhance the development of the protégé and encourage approved mentors to provide various form of assistance to eligible § 8(a) participants, and that the parties’ signature on the Mentor/Protégé Agreement certified their willingness to provide the appropriate assistance and adhere to the provisions set forth in that agreement and regulatory guidelines.

26. On or about December 12, 2005, **DIAZ** and **VARGAS** submitted a Joint Venture Agreement to the Small Business Administration announcing that Miratek and Vargas, P.C., had combined to create a joint venture referred to as “Vartek, LLC,” or “Vartek.” **DIAZ** and **VARGAS** requested that the Small Business Administration approve their joint venture and allow Vartek to receive § 8(a) contracts.

- a.** **DIAZ** (on behalf of Miratek) and **VARGAS** (on behalf of Vargas P.C.) declared that “[t]he Joint Venture is formed for the sole purpose to estimate, bid and perform the contract for the ‘8(a) project’ described on the attached Exhibit A.” Exhibit A to the Joint Venture Agreement elaborated: “The 8(a) Project is set up to provide highly specialized technical and analytical expertise to compliment [sic] and enhance the existing resident and customer expertise for the BIG CROW PROGRAM.”

b. **DIAZ** and **VARGAS** represented in the Joint Venture Agreement that they submitted to the Small Business Administration that Vartek, LLC, would conform with regulatory requirements and restrictions applicable to § 8(a) joint ventures. The Joint Venture Agreement provided in part:

3. Managing Venturer. Both **VARGAS** and **MIRATEK** are Co-Managers of the Joint Venture. However, **VARGAS is hereby designated the "Managing Venturer". The Managing Venturer will have responsibility for the day-to-day operation of the Joint Venture. The Managing Venturer will select one of its employees as the Project Manager, who will be responsible for the performance of the Project.** Decisions other than in the ordinary course of business will be made by the agreement of the parties in proportion to the ratios in which the parties share profits and losses.

4. Responsibilities of Parties. The contract performance, sources of labor, and negotiation of the 8(a) contract and any subcontracts to the Joint Venture will be divided according to the following percentages: **the 8(a) concern must perform the applicable percentages of work required as follows: 50% for Services Professional/Non-Professional; 50% for Manufacturing; 25% for Special Trades Constructions; and 15% for General Construction.**

....

6. Division of Profits, Losses and Liabilities. Unless the parties agree in writing to the contrary, the profits, losses and liabilities of the Joint Venture will be allocated 51.0% to **VARGAS** and 49.0% to **MIRATEK**.

....

17. SBA Certification. The Joint Venture Agreement is beneficial to the 8(a) concern because **VARGAS** is otherwise qualified and financially able to perform the Project but lacks sufficient past performance, institutional knowledge and key personnel with Big Crow Program experience, and the agreement is fair and equitable. **MIRATEK** has the past performance, system resources, client relationships and extensive Big Crow Program knowledge to benefit the 8(a) concern if the contract is awarded to the Joint Venture. The Joint Venture is eligible for SBA certification (see Exhibit "D").

Joint Venture Agreement (emphasis added).

- c. In Exhibit C to the Joint Venture Agreement, **DIAZ** and **VARGAS** provided a summary of VARTEK's capabilities. Among other things, **DIAZ** and **VARGAS** represented: "The VARTEK staff is made up of technical personnel with numerous professional certifications / affiliations (GIS/Remote Sensing experts, Applications/Database Programmers/Analysts, Systems Engineers, NT/UNIX/Network Technicians, Project Managers, Mechanical Engineers, Electrical Engineers, and Optics Engineers among the list of qualified VARTEK technical support personnel)," "VARTEK is dedicated to providing competent, timely and cost effective project management and information systems support to federal, state, commercial and international (multi-national) organizations," and "VARTEK provides outstanding information technology services" in a litany of areas involving information systems, computer programming, land use management and environmental compliance.
- d. In Exhibit D-1-4 to the Joint Venture Agreement, **DIAZ** and **VARGAS** declared that the joint venture was within the Small Business Administration's size restrictions "because the Managing Venturer [Vargas, P.C.] had average revenue of \$33,976 over the past three years and the Venture Partner [Miratek] had average revenue of \$8,568,012 over the past three years." Moreover, **DIAZ** and **VARGAS** represented that the "Managing Venturer" (i.e., Vargas, P.C.) would perform the majority of the work on the § 8(a) project, and that subcontractors would perform none of that work:

The percentages of work to be performed in the 8(a) Project are:

Managing Venturer	51 %
Venture Partner	49 %
Sub-contractors	0 %
Total Work	100.0%

Joint Venture Agreement, Exhibit D-1-4.

27. Relying on **DIAZ**'s and **VARGAS**'s promises and representations, the Small Business Administration approved the Vartek joint venture on or about December 20, 2015.

28. Following the Small Business Administration's approval of the joint venture, Vartek, LLC, was awarded two successive sole source § 8(a) contracts to provide technical and analytical support for the Big Crow Program Office. Those contracts were similar to the Time and Materials contract that had been previously awarded to Miratek.

- a. *Contract W9124Q-06-C-0514*: In advance of the submission of the Joint Venture Agreement to the Small Business Administration, **DIAZ** and **VARGAS** submitted a proposal for a § 8(a) contract to provide services for the Big Crow Program Office. On or about December 22, 2005, the United States Army Contracting Agency, an agency of the United States, awarded contract W9124Q-06-C-0514 to Vartek, LLC, to provide technical and analytical support for the Big Crow Program Office through February 21, 2007. The scope of that contract was defined in the Statement of Work:

1.0 SCOPE

The Government has a requirement for an independent source to provide highly specialized technical and analytical expertise to compliment [sic] and enhance the existing personnel. To meet this requirement a team comprised of Government and contractor personnel is being established to provide direct

support in the overarching long-lead planning, data collection and analyses, execution and report findings is being established. The contractor shall provide on-call, high-end subject matter expertise to include: management analysis; engineering and technical analysis; advisory assistance support; data collection and analysis; budgetary analysis and support and security engineering. This support is to be focused towards programmatic issues; future growth/technical direction; program alignment; financial planning and stability; database management and the overarching sustainment/benefit of the program office, their capabilities and their customer requirements. The scope of this effort is set forth to establish an internal mechanism for the program office to acquire the reach-back capability for high-end technical, analytical, advisory and gray-beard subject matter expertise required to assist in the stabilization, sustainment, future growth of the program their customer support requirements.

The Statement of Work also delineated the requirements of contractor reminiscent of the requirements of Order D0400160001. More specifically, the contractor—now Vartek, LLC, instead of Miratek—was to provide technical and analytical support for the Big Crow Program Office.

3.0 REQUIREMENTS

The contractor shall provide highly specialized subject matter experts in technical, engineering, information technology, program management, analytical research support to assist in the development of futuristic planning to meet the capability needs of Big Crow, SV, DoD and other directed customers in response to the changing requirements of tactical weapons systems, training and test and evaluation. The contractor shall review statements of need, operational test and development test data, test plans, results of simulation and modeling, other requirement documents and prepare an analytical assessment for presentation to the management staff and customers of Big Crow. The contractor shall provide recommendations, analyses, opinions, and counsel in areas of technical and engineering direction; management structure; financial planning for future growth and sustainment; data collection, consolidation and retrieval and security engineering as outlined in this section.

The specific requirements included [3.1] Planning/Technical Support (“[t] he contractor shall provide highly experienced technical and engineering support to assist in the development of futuristic planning to meet the capability needs of Big Crow, DoD and other directed customers”); [3.2] Resource Management Support (“[t] he contractor shall provide highly experienced personnel with backgrounds in budgetary development and control; program element monitoring; DoD budgetary estimate submittals; financial data collection and management; inventory control and reporting; and DoD personnel management”); and [3.3] Data Collection and Management (“[t]he contractor shall provide experienced data collectors and data base managers to support the establishment of a central database for the Program Office”). Further, like Miratek’s contract NBCHD040016, contract W9124Q-06-C-0514 was a Time & Materials contract under which Vartek was to provide services and incidental materials on the basis of: (a) direct labor hours at specified fixed hourly rates; and (b) materials at cost. The hourly labor rates (including overhead, general and administrative expenses (GA) and a scheduled fee or profit allowed the contractor) were specified by category in Vartek’s proposal of October 28, 2005:

CATEGORY	BASE RATE	36.90 % OVERHEAD	12.83 % G&A	8.00 % FEE	BASE YEAR LABOR RATE	OPTION YEAR 1 LABOR RATE	OPTION YEAR 2 LABOR RATE
Project Manager	51.75	19.10	9.09	6.40	86.34	88.93	91.60
Project Controls Engineer	51.00	18.82	8.96	6.30	85.08	87.63	90.26
IT Specialist	46.00	16.97	8.08	5.68	76.73	79.03	81.40
Programmer	46.82	17.19	8.21	5.78	78.00	80.34	82.75
Jr. Programmer	29.10	10.69	5.11	3.58	48.48	49.93	51.43
Systems Analyst	36.39	13.36	6.38	4.48	60.61	62.43	64.30
Systems Engineer	46.82	17.19	8.21	5.78	78.00	80.34	82.75
Pilot	45.00	16.61	7.90	5.56	75.07	77.32	79.64
Navigator	40.00	14.76	7.03	4.94	66.73	68.73	70.79
Program Analyst	40.00	14.76	7.03	4.94	66.73	68.73	70.79
Mechanical Engineer	49.22	18.07	8.63	6.08	82.00	84.46	86.99
Logistics Specialist	35.00	12.92	6.15	4.33	58.40	60.15	61.95
Contracts Specialist	35.00	12.92	6.15	4.33	58.40	60.15	61.95
Special Security Officer	35.00	12.92	6.15	4.33	58.40	60.15	61.95
Information Systems Security Manager	30.00	11.07	5.27	3.71	50.05	51.55	53.10
Aircraft/Vehicle Technician	30.00	11.07	5.27	3.71	50.05	51.55	53.10
Administrative Support	15.00	5.54	2.64	1.85	25.03	25.78	26.55

The value of contract W9124Q-06-C-0514 was up to approximately \$3,209,116 of which \$2,258,237 was authorized for Time and Materials (including scheduled labor, overhead, general and administrative costs and allowed fee or profit), \$700,000 was authorized for Other Direct Costs (ODC), and \$250,879 was added in modifications.

- b. *Contract W9124Q-07-C-0563*: On or about March 16, 2007, the United States Army Contracting Agency awarded contract W9124Q-07-C-0563 to Vartek under the § 8(a) Business Development Program. As before, Vartek was to provide technical and analytical support on a Time & Materials basis. The hourly labor rates were set forth in the following table.

CATEGORY	BASE RATE	OVERHEAD 36.90 %	GA 15.00%	PROFIT 7.00 %	LABOR RATE OPTION YEAR 1	LABOR RATE OPTION YEAR 2
Project Manager/Senior Auditor/CPA	53.30	19.67	10.95	5.87	89.79	92.48
Sr. Project Manager	65.61	24.21	13.47	7.23	110.52	113.84
Auditor Analyst	41.20	15.20	8.46	4.54	69.40	71.48
Project Controls Engineer	52.53	19.38	10.79	5.79	88.49	91.14
IT Specialist	47.38	17.48	9.73	5.22	79.81	82.20
Programmer	48.22	17.79	9.90	5.31	81.22	83.66
Jr. Programmer	29.97	11.06	6.15	3.30	50.48	51.99
Systems Analyst	37.48	13.83	7.70	4.13	63.14	65.03
Systems Engineer	48.22	17.79	9.90	5.31	81.22	83.66
Pilot	46.35	17.10	9.52	5.11	78.08	80.42
Navigator	41.20	15.20	8.46	4.54	69.40	71.48
Flight Engineer	36.05	13.30	7.40	3.97	60.72	62.54
Program Analyst	41.20	15.20	8.46	4.54	69.40	71.48
Cost Estimator	36.05	13.30	7.40	3.97	60.72	62.54
Document Control Specialist/Import/Export Specialist	36.05	13.30	7.40	3.97	60.72	62.54
Translation Specialist	41.20	15.20	8.46	4.54	69.40	71.48
Logistics Specialist	36.05	13.30	7.40	3.97	60.72	62.54
Training Specialist	41.20	15.20	8.46	4.54	69.40	71.48
Public Relations Specialist	41.20	15.20	8.46	4.54	69.40	71.48
Technical Writer	36.05	13.30	7.40	3.97	60.72	62.54
Contracts Specialist	36.05	13.30	7.40	3.97	60.72	62.54
Special Security Officer	36.05	13.30	7.40	3.97	60.72	62.54
Information Systems Security Manager	30.90	11.40	6.35	3.41	52.06	53.62
Aircraft/Vehicle Technician	30.90	11.40	6.35	3.41	52.06	53.62
Administrative Support	15.45	5.70	3.17	1.70	26.02	26.80

The value of contract W9124Q-07-C-0563 was up to approximately \$3,847,939 of which \$3,388,272 was authorized for Time and Materials (including scheduled labor, overhead, G&A and profits), and \$459,667 was authorized for Other Direct Costs.

29. Vartek obtained contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 under the pretenses that Miratek was mentoring Vargas, P.C., and that these businesses had undertaken a joint venture conforming with the requirements of the Small Business Development Program. However, the Mentor/Protégé Agreement and the Joint Venture Agreement were each a sham fabricated to afford **DIAZ** access to successive § 8(a) contracts and the conspirators a vehicle to perpetuate the scheme to defraud the United States.

- a. In connection with their application to the Small Business Administration for approval of their Mentor/Protégé Agreement Mentor, **DIAZ** and **VARGAS** made representations to the effect that Vargas, P.C., was diversifying into the information technology field, and that Miratek was to assist Vargas, P.C., to build and develop technical expertise,

administrative infrastructure, and capacity to compete for other contracts in the open market. These representations were untrue. Vargas, P.C., was a small accounting firm, and not a developmental information technology business. Further, Miratek did not assist Vargas, P.C., to build and develop technical expertise.

- b. Under the governing Small Business Administration regulations, a joint venture was not permitted to participate in the § 8(a) Business Development Program if the eligible small business did not contribute resources and expertise other than its § 8(a) status. *See* 13 C.F.R. § 124.513(a)(2) (2004). In their Joint Venture Agreement, **DIAZ** and **VARGAS** represented that Vargas, P.C., was “otherwise qualified and financially able to perform the Project but lack[ed] sufficient past performance,” and that Vargas, P.C., was to make substantial contributions to the § 8(a) project to “provide highly specialized technical and analytical expertise” for the Big Crow Program Office. In truth, Vargas, P.C., was a small accounting firm that did not contribute any appreciable resources to the joint venture other than its § 8(a) status.
- c. Under the governing Small Business Administration regulations, a joint venture was permitted to participate in the § 8(a) program only if an eligible small business managed the joint venture and an employee of that small business served as the project manager responsible for performance of the contract. *See* 13 C.F.R. §§ 124.513(c)(2) and 124.1002(f)(4) (2004). **DIAZ** and **VARGAS** accordingly represented in their Joint Venture Agreement that Vargas, P.C., was the “Managing Venturer” responsible for the day-to-day operation of the joint venture, and that Vargas, P.C., was to appoint one of its employees as the Project Manager responsible for the performance of the § 8(a) project at the Big Crow Program Office. In truth, **DIAZ** and Miratek managed the § 8(a) contracts

awarded to Vartek and the performance of any work performed (or purportedly performed) under those contracts.

- d. Under the governing Small Business Administration regulations, a joint venture was permitted to participate in the § 8(a) program only if the enrolled small business performed a substantial portion of the work under any § 8(a) contract awarded to the joint venture. *See* 13 C.F.R. §§ 124.513(d) and 124.1002(f)(5) (2004). With regard to service contracts, the § 8(a) small business was required to perform at least 40% of the work and 50% of the labor costs with its own employees. **DIAZ** and **VARGAS** represented in Exhibit D to their Joint Venture Agreement that Vargas, P.C., would perform 51% of the work on the § 8(a) project to provide highly specialized technical and analytical support for the Big Crow Program Office. **DIAZ** and **VARGAS** also represented that subcontractors would perform none of the work. In truth, Vargas, P.C., and its employees did not perform any substantive work under the § 8(a) contracts. **DIAZ** and Miratek performed, or contracted with lobbyists, consultants and other contractors for, almost all of the work that was purportedly performed under the § 8(a) contracts. **DIAZ** and Miratek controlled the joint venture and submitted invoices or bills to Vartek for work that Miratek purportedly performed. Rather than performing any substantive work, **VARGAS** —nominally the “Managing Venturer”—merely adjusted and inflated those claims in the invoices that he submitted to the United States Army Contracting Agency under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563.

30. The conspirators used contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 to perpetuate the scheme to defraud the United States.

- a. Under the Time and Materials contracts, Vartek was to provide labor under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 with employees of the joint venturers at hourly rates specified in tables in each of those contracts. Again, under regulations governing joint ventures participation in the § 8(a) Business Development Program, a majority of the work was to be performed by Vargas, P.C., and its employees. In their Joint Venture Agreement, **DIAZ** and **VARGAS** promised that the joint venture would comply with the requirements of the § 8(a) program, and that Vargas, P.C., would manage and perform most of the work under the contracts. Notwithstanding **DIAZ**'s and **VARGAS**'s promises and representations, Vargas, P.C., performed little, if any, substantive work under the § 8(a) contracts. **DIAZ** and Miratek performed—or contracted for—most of the work that was purportedly performed under the contracts.
- b. Neither contract W9124Q-06-C-0514 nor contract W9124Q-07-C-0563 authorized payments for lobbyists, consultants or subcontractors. Rather, both of those Time and Materials contracts incorporated by reference provisions of the Federal Acquisition Regulation codified in 48 C.F.R. § 252.219-7009 captioned “Section 8(a) Direct Award” (March 2002) under which: “The 8(a) Contractor agrees that . . . [i]t will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.” Neither of the participants in the joint venture notified the Small Business Administration or the government’s Contracting Officer of Miratek’s and Vartek’s contracts with consultants, lobbyists and other contractors. Neither of the participants in the joint venture obtain prior written approval for those contracts from the Small Business Administration and the Contracting Officer.

- c. Both of the contracts incorporated provisions captioned “Payments under Time-And-Materials and Labor Hour Contracts” (August 2005) codified in 48 C.F.R. § 52.232-7. That section of the Code of Federal Regulations authorized limited reimbursement to contractors under certain circumstances. However, that regulation authorized reimbursement only for authorized and substantiated subcontracts, and reimbursable costs were expressly limited to amounts that the contractor paid to subcontractors for supplies and services purchased directly for the contract. The services that **LOWE** and other lobbyists, consultants and contractors purportedly provided were not authorized or substantiated.
- d. Further, the services provided by **LOWE** and similar lobbyists and consultants were not within the scope of the joint venture approved by the Small Business Administration nor the Time and Materials Contracts. Again, the regulations governing the Small Business Development Program and the express terms of the Joint Venture Agreement required Vartek—and mostly Vargas, P.C.—to perform the work undertaken by the joint venture. Under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563, Vartek was to provide technical and analytical support for the Big Crow Program Office on a Time and Materials basis. The scope of the work under those contracts did not include or make allowances for lobbyists.

31. **DIAZ** and **VARGAS** misappropriated funds authorized under technical services contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 to pay **LOWE** and other unauthorized lobbyists, consultants and contractors. As part of and in furtherance of the conspiracy and scheme to defraud the United States, **DIAZ** and **VARGAS** fraudulently submitted invoices to the United States Army Contracting Agency containing claims for payment for services purportedly

provided by **LOWE** and other lobbyists, consultants and contractors. To conceal and disguise the nature of those payments, **DIAZ** and **VARGAS** fraudulently represented in those invoices that **LOWE** and other lobbyists, consultants and contractors were Vartek employees. To further disguise the diversion of large sums, **DIAZ**, **VARGAS**, and **LOWE** made fictional claims for work purportedly performed under the contracts by other persons. **DIAZ**, **VARGAS**, and **LOWE** fabricated the hours that those purported employees worked on the contracts.

Additionally, **DIAZ** and **VARGAS** falsely represented that the lobbyists and consultants were "Project Managers" and billed the government at or near the highest rate allowed under the Time and Materials contracts. In aggregate, the conspirators fraudulently claimed and obtained payments under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 totaling more than \$5,800,000 for lobbyists, consultants and unauthorized contractors of which at least \$506,000 was diverted and paid to **LOWE** and Broadcreek Associates. **DIAZ** also falsified and fabricated the nature hours that he worked under those contracts.

32. In those invoices, **DIAZ** and **VARGAS** also made misrepresentations regarding costs and expenses that were not reimbursable under the Time and Materials contracts. They typically mischaracterized those costs as labor. For example, **DIAZ** and **VARGAS** combined to fraudulently obtain payment under contract W9124Q-07-C-0563 for the lease of a storage facility. **DIAZ** and **VARGAS** mischaracterized and disguised the cost of that lease as labor, and fraudulently asserted claims for payment for fictional hours of labor and services in invoices submitted to the United States Army Contracting Agency. Additionally, although the cost of the lease was \$175,000, **DIAZ** and **VARGAS** billed the government for \$224,000 of purported labor.

Count 1

Paragraphs 1 through 32 of the General Allegations set forth above are re-alleged and incorporated by reference as though fully set forth herein.

Beginning on a date unknown but not later than October 2004, and continuing through on or about February 2009, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants **MILTON BOUTTE, JOE DIAZ, ARTURO VARGAS, and GEORGE LOWE**, and other persons known and unknown to the Grand Jury, knowingly and intentionally combined, conspired, agreed and acted interdependently with each other to defraud the United States by obtaining payment of false, fictitious and fraudulent claims.

Manner and Means

- a. **BOUTTE and LOWE** conspired with **DIAZ** and others to misappropriate and divert funds from contract NBCHD040016 to **LOWE** and other unauthorized lobbyists, consultants, contractors and expenditures.
 - (1) Contract NBCHD040016 was a sole-source contract awarded to Miratek Corporation by the United States Department of Interior under the § 8(a) Business Development Program, and Order D0400160001 authorized Miratek to provide technical services to the Big Crow Program Office under that contract. Payments to lobbyists, consultants and contractors were not authorized nor within the scope of that Time and Materials contract.
 - (2) As part of and in furtherance of the conspiracy, **LOWE** concealed and

disguised the nature of the services that he provided, and he falsified and inflated the hours of work performed under the contract in invoices that he submitted to Miratek. **DIAZ**, in turn, fraudulently concealed and disguised the nature of the payments to **LOWE** and other lobbyists, consultants and contractors in invoices submitted to the Department of Interior for payments under contract NBCHD040016. In those invoices, **DIAZ** fraudulently claimed payments for unauthorized services provided by **LOWE** and other lobbyists, consultants and contractors. **DIAZ** and his agents falsely represented that **LOWE** and other lobbyists, consultants and contractors were employees (typically Project Managers) and billed for the purported at the highest authorized rates. **DIAZ** and his agents also fraudulently inflated the hours of labor that **LOWE** and others had purportedly performed under the contract. In this manner, the conspirators misappropriated and diverted hundreds of thousands of dollars appropriated and allocated for technical support of the Big Crow Program Office to **LOWE** and other unauthorized lobbyists, consultants, contractors and expenditures.

- (3) Although the conspirators diverted more than \$500,000 to **LOWE** from contract NBCHD040016 and Order D0400160001, **LOWE** demanded more money. However, contract NBCHD040016 was to expire (after an extension) in April 2006, funding under that Order had been depleted, and Miratek was unable to directly obtain new sole-source § 8(a) contracts

because its enrollment in the Business Development Program had expired in or around April 2004.

- b. As part of and in furtherance of the continuing conspiracy to defraud the United States, **DIAZ** agreed and combined with **VARGAS** to fraudulently create a small business joint venture dubbed Vartek, LLC.
- (1) During the period from on or about April 2005 to August 2005, **DIAZ** and **VARGAS** combined to enroll Vartek, LLC, into the Small Business Administration's Mentor-Protégé Program under false pretenses, representations and promises including: that Vargas, P.C., was diversifying into the information technology field and was in the developmental stage as a "Public Accounting and Information Technology Firm;" and that Miratek was to mentor Vargas, P.C., and assist that protégé in the Vartek joint venture to build and develop technical expertise, administrative infrastructure, and capacity to compete for other contracts in the open market. In truth, Vargas, P.C., was an accounting firm and not an information technology firm, and it did not develop technical expertise or capacity in the information technology field.
- (2) On or about December 2005, **DIAZ** and **VARGAS** combined to obtain the Small Business Administration's approval of the Vartek, LLC, joint venture between Miratek and Vargas, P.C., under the pretenses: that **VARGAS** and Vargas, P.C., would manage the joint venture; that **VARGAS** and Vargas, P.C., would perform a majority of work under the § 8(a) contract to provide highly specialized technical and analytical

support for the Big Crow Program Office; and that Vargas, P.C., would comply with other requirements and restrictions governing joint ventures participation in the § 8(a) Business Development Program.

- (3) The mentor-protégé agreement and joint venture agreement were artifices constructed to afford the conspirators access to sole-source § 8(a) contracts that they fraudulently exploited to perpetuate the conspiracy and scheme to defraud the United States. Vartek, LLC, obtained two sole-source service contracts from the United States Department of Defense that had been set aside for eligible small businesses under the § 8(a) Business Development Program: on or about December 22, 2005, the United States Army Contracting Agency, an agency of the United States, awarded contract W9124Q-06-C-0514 to Vartek, LLC; and on or about March 16, 2007, the United States Army Contracting Agency awarded contract W9124Q-07-C-0563 to Vartek, LLC. Under both of those contracts, Vartek was to provide technical services and analytical support on a Time and Materials basis to the Big Crow Program Office.
- (4) **DIAZ, VARGAS**, and their agents made and presented approximately 38 invoices to the United States Army Contracting Agency during the span from January 2006 through December 2008 for payments under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 totaling more than \$7,000,000. Those claims were fraudulent in their entirety because those sole-source contracts had been obtained under the § 8(a) Business

Development Program by false and fraudulent pretenses and representations.

- (5) Further, the invoices submitted under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563 contained false claims for payments on behalf of **LOWE** and for other unauthorized lobbyists, consultants, contractors and expenditures. As part of the continuing conspiracy, **LOWE** concealed and disguised the nature of the services that he provided in the invoices submitted to Miratek, Vargas, P.C., and Vartek, knowing that his invoices would be the bases for claims against the United States. **DIAZ** and his agents fraudulently concealed and disguised the nature of the payments to **LOWE** and other lobbyists, consultants and contractors in invoices submitted to Vartek and Vargas, P.C. **VARGAS** in turn further inflated and manipulated the fraudulent claims in invoices submitted to the United States Army Contracting Agency for payments under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563. In those invoices, the conspirators submitted claims for payments on behalf of **LOWE** and other lobbyists, consultants and contractors for services and costs that were not authorized or allowed under the contracts. To conceal and disguise the nature of those claims, the conspirators falsely represented: that **LOWE** and other lobbyists, consultants and contractors were employees (typically “Project Managers”) of Miratek, Vargas, P.C., or Vartek, LLC; that **LOWE**, other lobbyists, consultants and contractors, and fictional employees, performed inflated or altogether fabricated hours of work under the contracts; and

that the work purportedly performed by **LOWE** and other lobbyists, consultants contractors and fictional employees was within the scope of contracts W9124Q-06-C-0514 and W9124Q-07-C-0563. **DIAZ** and **VARGAS** also disguised other costs that were not reimbursable under the Time and Materials contracts as labor and included claims for fictional hours of work in the invoices. The conspirators falsely claimed and fraudulently obtained more than \$5,800,000 from the United States under contracts W9124Q-06-C-0514 and W9124Q-07-C-0563.

In this manner, the defendants conspired and combined to defraud the United States by fraudulently obtaining contracts and federal funds set-aside for eligible small businesses under the under the § 8(a) Business Development Program, and by thereafter obtaining payments on false, fictitious and fraudulent claims under those contracts.

In violation of 18 U.S.C. § 286.

Count 2

Paragraphs 1 through 32 of the General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

Beginning on a date unknown but not later than October 2004, and continuing through on or about February 2009, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants, **MILTON BOUTTE, JOE DIAZ, ARTURO VARGAS, GEORGE LOWE** and other persons known and unknown to the Grand Jury, knowingly and intentionally combined, conspired, agreed and acted interdependently with each other to commit an offense under 18 U.S.C. § 1343, that is, to transmit or cause transmission by means of wire communications in interstate commerce of certain writings, signs,

signals and sounds for purposes of executing a scheme to defraud the United States and to obtain money from the United States by means of false and fraudulent pretenses and representations as described in the General Allegations.

As part of and in furtherance of the conspiracy, one or more of the conspirators transmitted, and caused to be transmitted, certain writings, signs, signals and pictures by means of wire communication in interstate commerce including: telephone voice communications; transmissions of facsimiles; email and internet communications; submissions and certifications in the CCR and ORCA database; transmissions over the Wide Area Work Flow (WASF) electronic payment system; and transfers of funds over the interstate wire.

In violation of 18 U.S.C. § 1349.

Count 3

The General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

From on or about December 2005 to February 2007, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants, **MILTON BOUTTE, JOE DIAZ, and ARTURO VARGAS** executed a scheme and artifice to defraud the United States and to obtain money or property by means of false and fraudulent pretenses, representations and promises in connection with contract W9124Q-06-C-0514 awarded by the United States Army Contracting Agency, to Vartek, LLC. That contract had been set aside for a disadvantaged small business and was awarded to Vartek, LLC, under the § 8(a) Business Development Program without open competition. The value of contract W9124Q-06-C-0514 was \$1,000,000 and more.

As part of that artifice and scheme:

- a.** During the period from on or about April 2005 to August 2005, **DIAZ** and **VARGAS** combined to enroll Vartek, LLC, into the Small Business Administration's Mentor-Protégé Program under false pretenses, representations and promises including: that Vargas, P.C., was diversifying into the information technology field and was in the developmental stage as a "Public Accounting and Information Technology Firm;" and that Miratek was to mentor Vargas, P.C., and assist that protégé in the Vartek joint venture to build and develop technical expertise, administrative infrastructure, and capacity to compete for other contracts in the open market. In truth, Vargas, P.C., was an accounting firm and not an information technology firm, and it did not build or develop technical expertise or capacity in the information technology field.
- b.** On or about December 2005, **DIAZ** and **VARGAS** combined to obtain the Small Business Administration's approval of the Vartek, LLC, joint venture between Miratek and Vargas, P.C., under the pretenses: that **VARGAS** and Vargas, P.C., would manage the joint venture; that **VARGAS** and Vargas, P.C., would perform a majority of work under the § 8(a) contract to provide highly specialized technical and analytical support for the Big Crow Program Office; and that Vargas, P.C., would comply with other requirements and restrictions governing joint ventures participation in the § 8(a) Business Development Program.
- c.** The mentor-protégé agreement and joint venture agreement were artifices constructed to afford the conspirators access to a sole-source contracts that had been set aside for eligible small businesses under the § 8(a) Business Development Program.

- d. On or about December 22, 2005, the United States Army Contracting Agency, an agency of the United States, awarded an contract to Vartek, LLC, under the § 8(a) Business Development Program without open competition. More specifically, the Army Contracting Agency awarded contract W9124Q-06-C-0514 to Vartek, LLC. Under the terms of contract W9124Q-06-C-0514, Vartek, LLC, was to provide technical and analytical support for the Big Crow Program Office through February 21, 2007. The value of contract W9124Q-06-C-0514 was up to approximately \$3,209,116 of which \$2,258,237 was authorized for Time and Materials (including scheduled labor, overhead, general and administrative costs and allowed fee or profit), \$700,000 was authorized for Other Direct Costs (ODC), and \$250,879 was added in modifications.
- e. The Vartek joint venture was a sham. **VARGAS** and Vargas, P.C., neither managed the project nor performed a majority of the work. Instead, during the span of contract W9124Q-06-C-0514, DIAZ and Miratek managed the joint venture and a majority of the work purportedly performed under the contract was provided by Miratek and contractors. The conspirators claimed and received more than \$3,200,000 under that fraudulently obtained § 8(a) contract.

All in violation of 18 U.S.C. §§ 1031 and 2.

Count 4

The General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

From on or about March 2007 to October 2008, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants, **MILTON**

BOUTTE, JOE DIAZ and **ARTURO VARGAS** executed a scheme to defraud the United States and to obtain money or property by means of false and fraudulent pretenses, representations and promises in connection with contract W9124Q-07-C-0563 awarded by the United States Army Contracting Agency, to Vartek, LLC. That contract had been set aside for a disadvantaged small business and was awarded to Vartek, LLC, under the § 8(a) Business Development Program without open competition. The value of contract W9124Q-07-C-0563 was \$1,000,000 and more.

As part of that artifice and scheme:

- a. During the period from on or about April 2005 to August 2005, **DIAZ** and **VARGAS** combined to enroll Vartek, LLC, into the Small Business Administration's Mentor-Protégé Program under false pretenses, representations and promises including: that Vargas, P.C., was diversifying into the information technology field and was in the developmental stage as a "Public Accounting and Information Technology Firm;" and that Miratek was to mentor Vargas, P.C., and assist that protégé in the Vartek joint venture to build and develop technical expertise, administrative infrastructure, and capacity to compete for other contracts in the open market. In truth, Vargas, P.C., was an accounting firm and not an information technology firm, and it did not build or develop technical expertise or capacity in the information technology field.
- b. On or about December 2005, **DIAZ** and **VARGAS** combined to obtain the Small Business Administration's approval of the Vartek, LLC, joint venture between Miratek and Vargas, P.C., under the pretenses: that **VARGAS** and Vargas, P.C., would manage the joint venture; that **VARGAS** and Vargas, P.C., would perform

a majority of work under the § 8(a) contract to provide highly specialized technical and analytical support for the Big Crow Program Office; and that Vargas, P.C., would comply with other requirements and restrictions governing joint ventures participation in the § 8(a) Business Development Program.

- c. The mentor-protégé agreement and joint venture agreement were artifices constructed to afford the conspirators access to a sole-source contracts that had been set aside for eligible small businesses under the § 8(a) Business Development Program.
- d. On or about March 16, 2007, the United States Army Contracting Agency, an agency of the United States, awarded contract W9124Q-07-C-0563 to Vartek, LLC, under the § 8(a) Business Development Program without open competition. Under the terms of contract W9124Q-07-C-0563, Vartek, LLC, was to provide technical and analytical support for the Big Crow Program Office through March 15, 2009. The value of contract W9124Q-07-C-0563 was up to approximately \$3,847,939 of which \$3,388,272 was authorized for Time and Materials (including scheduled labor, overhead, G&A and profits), and \$459,667 was authorized for Other Direct Costs
- e. The Vartek joint venture was a sham. **VARGAS** and Vargas, P.C, neither managed the project nor performed a majority of the work. Instead, during the span of contract W9124Q-07-C-0563, **DIAZ** and Miratek managed the joint venture and a majority of the work purportedly performed under the contract was provided by Miratek and contractors. The conspirators claimed and received more than \$3,800,000 under that fraudulently obtained § 8(a) contract.

All in violation of 18 U.S.C. §§ 1031 and 2.

Counts 5-9

Paragraphs 1 through 32 of the General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

On or about the dates specified below as to Counts 5 through 9 respectively, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants identified in each count made and presented to the United States Department of Interior, a claim upon and against the United States, that is, invoices for technical consulting services purportedly provided under contract NBCHD040016, knowing that each invoice contained false, fictitious and fraudulent claims in that: the invoices were submitted under the pretenses that lobbyists, consultants, contractors and others were employed by Miratek Corporation and provided technical consulting services for program management, strategic planning and analytical support services under the contract; the invoices falsely represented that lobbyists, consultants contractors and other purported employees were Project Managers and billed for their labor at the rate authorized in the contract for Project Managers; the invoices contained false and fictitious claims for hours of labor purportedly performed under the Time and Materials contract.

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
5	MILTON BOUTTE JOE DIAZ GEORGE LOWE	May 12, 2005	4741	\$38,530.50
6	MILTON BOUTTE JOE DIAZ GEORGE LOWE	June 8, 2005	4801	\$19,219.92

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
7	MILTON BOUTTE JOE DIAZ GEORGE LOWE	July 14, 2005	4893	\$182,407.92
8	MILTON BOUTTE JOE DIAZ GEORGE LOWE	August 9, 2005	4941	\$183,314.52
9	MILTON BOUTTE JOE DIAZ GEORGE LOWE	September 14, 2005	5009	\$106,253.52

In violation of 18 U.S.C. § 287 and 18 U.S.C. § 2.

Counts 10-24

Paragraphs 1 through 32 of the General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

On or about the dates specified below as to Counts 10 through 24 respectively, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants identified in each count made and presented to the United States Army Contracting Agency a claim upon and against the United States, that is, invoices for technical services purportedly provided under contract W9124Q-06-C-0514, knowing that each invoice contained false, fictitious and fraudulent claims in that: the invoices were submitted under the pretenses that lobbyists, consultants, contractors and others were employed by Vartek, LLC, as part of its technical counseling staff and provided program management, strategic planning and analytical support services under the contract; the invoices falsely represented that lobbyists, consultants contractors and other purported employees were Project Managers and billed for their labor at the rate authorized in the contract for Project Managers; the invoices contained false and fictitious claims for hours of labor purportedly performed under the Time and Materials contract.

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
10	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	January 31, 2006	1004	\$147,248.55
11	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	February 28, 2006	1005	\$91,939.15
12	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	March 31, 2006	1006	\$138,061.98
13	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	April 30, 2006	1007	\$197,925.82
14	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	May 31, 2006	1008	\$241,902.42
15	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	June 30, 2006	1009	\$207,870.33
16	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	July 31, 2006	1010	\$218,907.92
17	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	August 31, 2006	1011	\$220,093.61
18	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	September 30, 2006	1012	\$221,973.87
19	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	October 31, 2006	1013	\$217,014.48
20	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	November 30, 2006	1015	\$197,676.03

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
21	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	December 31, 2006	1018	\$175,727.55
22	MILTON BOUTTE JOE DIAZ ARTURO VARGAS GEORGE LOWE	January 31, 2007	1020	\$177,795.48
23	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	February 22, 2007	1022	\$20,635.26
24	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	February 22, 2007	1022A	\$73,217.70

In violation of 18 U.S.C. § 287 and 18 U.S.C. § 2.

Counts 25-46

Paragraphs 1 through 32 of the General Allegations are re-alleged and incorporated by reference as though fully set forth herein.

On or about the dates specified below as to Counts 25 through 46 respectively, in Bernalillo County, in the District of New Mexico, and elsewhere within the jurisdiction of this Court, the defendants identified in each count made and presented to the United States Army Contracting Agency a claim upon and against the United States, that is, invoices for technical services purportedly provided under contract W9124Q-07-C-0563, knowing that each invoice contained false, fictitious and fraudulent claims in that: the invoices were submitted under the pretenses that lobbyists, consultants, contractors and others were employed by Vartek, LLC, as part of its technical counseling staff and provided program management, strategic planning and analytical support services under the contract; the invoices falsely represented that lobbyists, consultants contractors and other purported employees were Project Managers and billed for their labor at the rate authorized in the contract for Project Managers; the invoices contained

false and fictitious claims for hours of labor purportedly performed under the Time and Materials contract.

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
25	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	March 31, 2007	1025	\$132,812.91
26	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	April 30, 2007	1027	\$156,095.88
27	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	May 31, 2007	1029	\$201,774.57
28	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	June 30, 2007	1032	\$192,405.80
29	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	July 31, 2007	1034	\$239,365.20
30	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	August 31, 2007	1035	\$282,572.56
31	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	September 30, 2007	1038	\$259,967.97
32	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	October 31, 2007	1041	\$276,511.08
33	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	November 20, 2007	1042	\$264,978.51
34	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	December 21, 2007	1045	\$237,447.26
35	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	January 31, 2008	1047	\$187,860.24
36	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	February 29, 2008	1049	\$108,768.84
37	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	March 31, 2008	1051	\$87,528.31

Count	Defendant	On or About	Invoice	False and Fictitious Claim for Labor
38	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	April 30,2008	1053	\$103,632.27
39	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	May 31, 2008	1054	\$65,417.07
40	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	June 30, 2008	1057	\$19,267.67
41	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	August 4, 2008	1059	\$115,203.20
42	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	September 4, 2008	1061	\$18,851.85
43	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	September 30, 2008	1063	\$104,686.16
44	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	October 31, 2008	1064	\$125,810.73
45	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	November 30, 2008	1066	\$129,826.42
46	MILTON BOUTTE JOE DIAZ ARTURO VARGAS	December 31, 2008	1067	\$4,644.98

In violation of 18 U.S.C. § 287 and 18 U.S.C. § 2.

FORFEITURE ALLEGATION

Paragraphs 1 through 32 of the General Allegations and Count 2 of this indictment are incorporated as part of this section of the indictment as if fully re-alleged herein for the purpose of alleging forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

Upon conviction of any offense in violation of 18 U.S.C. § 1349, the defendants, **MILTON BOUTTE, JOE DIAZ, ARTURO VARGAS, and GEORGE LOWE**, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 246(c) any property, real or personal, which constitutes or is derived from proceeds traceable to such violation, or a conspiracy to commit such offense. The property to be forfeited includes, but is not limited to, the following:

1. Money Judgment: A sum of money representing the property constituting or derived from proceeds traceable to the offense, or conspiracy to commit such offense; and
2. Substitute Assets: If any of the property described above, 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 commingled with other property which cannot be divided without difficulty,

it is the intent of the United States to seek forfeiture pursuant to 21 U.S.C. § 853(p) and 28 U.S.C. § 2461(c) of any other property of the defendant up to the value of the forfeitable property described above.

A TRUE BILL:

15/
FOREPERSON OF THE GRAND JURY


Assistant United States Attorney
11/28/2017 9:26 AM