

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

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

SEP 12 2018

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cr. No. 1:17-03338-JMC
)	
ARTURO VARGAS,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, Arturo Vargas, and the Defendant’s counsel, Amy Sirignano of the Law Office of Amy Sirignano, PC, and Cori A. Harbour-Valdez of the Harbour Law Firm, PC:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant’s right to be represented by counsel and is so represented. The Defendant has thoroughly reviewed all aspects of this case and the Plea Agreement with his counsel and is fully satisfied with his attorneys’ legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant’s rights:
 - a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
 - c. at a trial:
 - i. to confront and cross-examine adverse witnesses,

- ii. to be protected from compelled self-incrimination,
- iii. to testify and present evidence on the Defendant's own behalf, and
- iv. to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEAS OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to count 1 of the indictment, charging a violation of 18 U.S.C. § 286, that being Conspiracy to Defraud the United States with Respect to Claims.

ELEMENTS OF THE OFFENSES

4. If this matter proceeded to trial, the Defendant understands that the United States would be required to prove, beyond a reasonable doubt, the following elements for violations of the charges listed below:

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

- First:* Defendant and at least one other person entered into an agreement to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment of any false, fictitious or fraudulent claim;
- Second:* Defendant knew the essential objective(s) of the conspiracy;
- Third:* Defendant knowingly and voluntarily involved himself in the conspiracy; and
- Fourth:* there was interdependence among the members of the conspiracy.

DEFENDANT'S ADMISSION OF FACTS

5. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts

sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

- a. At all times relevant to this recitation, I, ARTURO VARGAS, owned and operated Vargas P.C., an accounting company based in El Paso, Texas.
- b. In the late 1990's, I developed a business relationship with JOE DIAZ and Miratek, a company DIAZ owned and operated.
- c. I learned that Miratek held contracts as part of the § 8(a) Business Development Program, a federal program administered by the Small Business Administration (SBA). Specifically, Miratek was working on contract NBCHD040016 with the United States Department of Interior (DOI), an agency of the United States. Task order number D0400160001 under the DOI Contract required Miratek to provide technical and analytical support services to the Big Crow Program Office, a part of the United States Army, on a time and materials basis. Miratek's task order under the DOI contract was to expire in April 2006, and funding under that order had been depleted. Further, Miratek graduated from the § 8(a) Business Development Program in or around April 2004 and was not eligible to receive another sole-source contract under that program. DIAZ, Miratek and the Big Crow Program Office needed another § 8(a) company to obtain a contract to support the Big Crow Program Office, and they turned to me.
- d. Vartek, LLC was a joint venture between Miratek and Vargas, P.C. which DIAZ and I formed on or about July 29, 2005. DIAZ and I agreed to form the Vartek

joint venture under the SBA § 8(a) Mentor Protégé Program. For purposes of obtaining the Small Business Administration's approval to enter into a Mentor-Protégé Agreement, DIAZ and I represented to the Small Business Administration that Vargas P.C. was a protégé, and as part of the Mentor-Protégé Agreement would develop into an information technology firm.

- e. Once Vartek was successfully enrolled in the § 8(a) Mentor Protégé program, and that Vartek was eligible for § 8(a) sole source awards, DIAZ and I worked to have a sole source § 8(a) contract to support the Big Crow Program Office awarded to Vartek. Before Vartek could receive any § 8(a) contracts, the Small Business Administration's approval of the joint venture was required. To obtain approval, we represented to the SBA that Vargas P.C. would manage the joint venture; that subcontractors would perform none of the work without prior consent from SBA; and that Miratek and Vartek would perform a majority of the work under the § 8(a) contract. These representations were materially untrue, as described below.
- f. The Vartek joint venture was awarded two sole source contracts in support of the Big Crow Program Office. Contract W9124Q-06-C-0514, awarded on or about December 22, 2005, authorized Vartek to provide technical and analytical support to the Big Crow Program Office through February 21, 2007, at a cost of up to \$3,209,116 as modified. After expiration of that contract, a second sole source contract, number W9124Q-07-C-0563, was awarded on or about March 16, 2007, and authorized Vartek to provide such support to the Big Crow Program Office through about March 11, 2009, at a cost of up to \$3,847,940 as modified.

- g. While I processed invoices prepared by Miratek and submitted claims to the government, Vartek employees did not perform a substantive amount of technical or analytical work performed in support of the Big Crow Program Office. Instead, the majority of the work was performed by the consultants and lobbyists retained by MILTON BOUTTE, the director of the Big Crow Program Office. In effect, the Vartek joint venture served as a vehicle through which government funds were fraudulently claimed and diverted to pay lobbyists, consultants and contractors retained by BOUTTE.
- h. Shortly after being awarded contract W9124Q-06-C-0514, I learned that BOUTTE had retained lobbyists and consultants to lobby Congress, federal agencies, and federal military and civilian authorities for funds for the Big Crow Program Office. BOUTTE also retained other contractors to provide goods and services to the Big Crow Program Office. Some of the contractors BOUTTE secured did provide technical and advisory services encompassed within the statement of work while other contractors BOUTTE secured provided equipment, facilities, tuition reimbursement for relatives, and non-technical services that were not encompassed within the statement of work or appropriate.
- i. BOUTTE and the Big Crow Program Office did not directly pay the lobbyists, consultants and contractors whom BOUTTE had retained. I understand that federal agencies and employees are prohibited from spending federal funds to pay for materials or services intended to influence Congress or federal officials regarding any legislation, policy or appropriation.

- j. BOUTTE demanded that Miratek pay the lobbyists, consultants and contractors he retained and Miratek did so with funds allocated under the DOI task order and, later, the Vartek contracts. While federal contractors are permitted to conduct and pay for lobbying activities with their own monies, federal law and regulations restrict them from using appropriated funds to pay any person to influence or attempt to influence Congress or federal officers or employees in connection with any contract. Moreover, the Vartek contracts did not authorize Miratek or Vartek to pay lobbyists, consultants or contractors for such services.
- k. GEORGE LOWE was one of those lobbyists. On or about February 2006, I assumed Miratek's relationship with LOWE by entering into a Professional Services Agreement with LOWE and Broadcreek Associates on behalf of Vartek.
- l. By July 2006, I knew that BOUTTE had arranged for LOWE to lobby on behalf of the Big Crow Program Office. By March 2006, I knew that BOUTTE personally demanded that Miratek and Vartek pay LOWE's fees. Upon entering commencing work on contract W9124Q-06-C-0514, on instructions from DIAZ and others, I began to pay LOWE from appropriated funds under the Vartek contract, and began disguising the payments to LOWE within Vartek's invoices on the contract.
- m. I knew that DIAZ and other Miratek employees were disguising outside lobbyists, consultants and contractors under the "Project Managers" labor categories. In certain instances, false identities were assigned to the contracting entities. I knew that Miratek employees structured or "mapped" payments to lobbyists, consultants and contractors by falsely representing that they had performed hours

of work under the contract roughly commensurate with their fees. I incorporated and adopted these false representations into the invoices that I prepared and submitted to the government under contract number W9124Q-06-C-0514 and/or contract number W9124Q-07-C-0563.

- n. In some circumstances, when outside consultants or contractors billed at less than the maximum allowable rate for employees under the contracts, it was not necessary to inflate their hours. Instead, I falsely and fraudulently billed them on the Vartek invoices as employees working at the maximum allowable "Project Manager" rates, even though those rates were as much as double the rates the contractors billed to Vartek.
- o. In this manner, I knowingly presented false, fictitious, and fraudulent claims upon and against the United States as described in Counts 10 through 46 of the indictment, and conspired and acted interdependently with DIAZ, LOWE, BOUTTE, and others to do so.

6. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

SENTENCING

- 7. The Defendant understands that the maximum penalty provided by law for this offense is:
 - a. a term of imprisonment for a period of not more than ten years;

- b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
- c. a term of supervised release of not more than three years to follow any term of imprisonment (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

8. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

9. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw the defendant's plea of guilty.

10. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

RECOMMENDATIONS

11. The United States and the Defendant have made an AGREEMENT as follows:
 - a. The Defendant and the United States agree, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a specific sentence of between 0 and 21 months' imprisonment is the appropriate disposition in this case. This agreement takes into account the Defendant's acceptance of responsibility, with no further reduction to occur. The remaining components of the Defendant's sentence, including but not limited to any fine or restitution and the length and conditions of supervised release, shall be imposed by the Court after the presentation of evidence and/or argument by the parties.
 - b. If the Court accepts the plea agreement, it must inform the Defendant that the agreed upon disposition will be included in the judgment, and the Court is bound by the terms of the plea agreement once the Court accepts the plea agreement.

DEFENDANT'S ADDITIONAL AGREEMENT

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. Except under circumstances where the Court, acting on its own, rejects this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any

facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

14. By signing this plea agreement, the Defendant waives the right to withdraw the Defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d) unless (1) the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5) or (2) the Defendant can show a fair and just reason as those terms are used in Rule 11(d)(2)(B) for requesting the withdrawal. The United States and the Defendant agree that if any co-defendant prevails in a motion to dismiss the indictment in this case based on either the applicable statute of limitations, or an argument that the indictment is unconstitutionally untimely, or both, under facts that reasonably apply to the Defendant, that would be a fair and just reason for the Defendant to withdraw his guilty plea and bring his own motion to dismiss the indictment based on similar grounds. The Defendant understands that if the court rejects the plea agreement, whether or not the Defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and the Defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

RESTITUTION

15. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is

not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case.

16. In this case, the Defendant agrees to pay restitution in a total principal amount to be determined by the Court, which will become payable in full to the United States District Court Clerk immediately upon imposition of sentence. No later than July 1 of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, New Mexico 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office and (2) a copy of the Defendant's most recent tax returns.

17. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within fourteen days of executing this agreement, the Defendant agrees to complete and sign a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. The Defendant will submit to an examination if requested, which may be taken under oath. The Defendant will not encumber, transfer, or dispose of any monies, property, or assets under the Defendant's custody or control without written approval from the United States Attorney's Office. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs

participation or imposes a schedule of payments. If the Defendant fails to make the required financial disclosure or conceals, dissipates, or transfers assets without prior approval, the United States, in its discretion, may withdraw from this agreement.

WAIVER OF APPEAL RIGHTS

18. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issues of (1) defense counsel's ineffective assistance, or (2) the challenges to the indictment as described in Paragraph 14 of this Agreement.

GOVERNMENT'S ADDITIONAL AGREEMENT

19. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss Counts 2 through 46, inclusive, of the indictment.
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

20. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

21. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

22. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

23. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

24. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

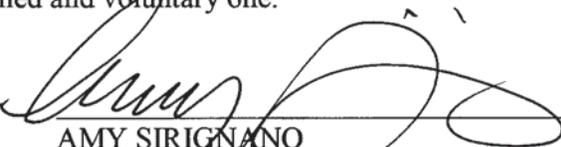
AGREED TO AND SIGNED this 12 day of September, 2018.

JOHN C. ANDERSON
United States Attorney



Timothy S. Vasquez
Jeremy Peña
Assistant United States Attorneys
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. In addition, I have explained to my client the elements to each offense to which she/he is pleading guilty. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



AMY SIRIGNANO
CORLA HARBOUR VALDEZ
Attorneys for the Defendant

I have carefully discussed every part of this agreement with my attorneys. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorneys have advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.



ARTURO VARGAS
Defendant