

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

UNITED STATES,

Plaintiff;

ν .

NORBERT VERGEZ,

Defendant.

Case No.
5:15-cr-0086-LSC-HGD

**Brief Regarding Victim Status for Defense Technology, Inc.
(DTI), Cornische Aviation (Cornische), and Flight Test
Aerospace, Inc. (FTA)**

DTI, Cornische, and FTA adopt the “Government’s Brief Regarding Victim Status” in its entirety, extending it to make the government aware of the private individuals that qualify as victims under the confines of the statute, and asking for relief as deemed appropriate by the Court.

PRELIMINARY STATEMENT

1. This brief describes how the specific offenses to which the defendant pleads guilty harmed the victims, namely: (A) Vergez committed these offenses to allow him to continue his interference in the victims' ongoing contracts; (B) Vergez, committed these offenses specifically to continue the scheme to, among other things, deny the Victims their rights to compete as provided under federal law; and, (C) Vergez committed these offenses to

conceal activities that, if known, would have proved bias towards certain companies. Vergez's criminal acts enabled him to continue to thwart the competitive process.

DESCRIPTION OF PARTIES

2. Defense Technology Inc. (DTI) – DTI is a Huntsville, Alabama-based company. DTI is engaged in the overhaul, repair and modification of Mi-17 helicopters. To date, DTI has performed on over \$80M of competitively awarded, US military contracts supporting these Russian manufactured aircraft. Efforts included supplying new Mi-17s, supplying spare parts, providing training and performing maintenance. DTI was selected by prime contractor Raytheon to perform Mi-17 overhaul services for the US Army under Counter Narco Terrorism Task Order 226.

3. Cornische Aircraft Maintenance – Cornische is a Dubai-based company. Cornische is engaged in the overhaul, repair and supply of parts for Mi-17 helicopters.

4. Flight Test Associates (FTA) – FTA is a Virginia-based company that provides the overhaul, repair and supply of parts for Mi-17 helicopters. FTA was the principal subcontractor to Northrop Grumman for overhauling Mi-17

helicopters under two government contracts - they are referred to as TORP-87 and TORP-164 (TORP is an acronym for the type of USG contract awarded). For certain aircraft, FTA made use of AVB, a Lithuanian subcontractor.

5. Defendant Norbert Vergez – “From in or about January 2010 through November of 2012, the defendant was a Colonel in the United States Army serving as the Program Manager for a component of the United States Army called the Non-Standard Rotary Wing Aircraft (NSRWA). In the course of Vergez’s duties at NSRWA, he had program management oversight over cost, schedule and performance of the programs under his purview. Also in the course of his duties, he had frequent contact with representatives of a company called AVB Aviation Ltd. (AVB). A Lithuanian firm in the business of overhauling Mi-17s and providing various other services associated with Mi-17s” (Doc. 2 at 2-3 ¶ II.A).

6. Avia Baltica (AVB) – An overhaul facility located in Lithuania. This firm is not certified by the manufacturer to perform work on Mi-17s. In 2010, SESI and AVB teamed together to provide support to NSRWA. DODIG recommended debarment for AVB in report DODIG-2012-135 (Exhibit 28).

7. Science and Engineering Services Inc. (SESI): SESI is located in Huntsville, Alabama. Its senior management includes Mr. Paul Bogosian,

(who retired in 2009) PEO Aviation and Brigadier General E.J. Sinclair, former Aviation Branch Chief (who retired in 2006). During Vergez's retirement, Vergez identified Sinclair as a mentor during his army career. SESI has the Logistic Support Facility contract, which is an award to a company within 60 geographic miles of Redstone Arsenal to provide aviation-related engineering services. SESI formed a "true team" with overhaul facility AVB to perform Mi-17 related work for NSRWA (Exhibit 25).

8. Yuri Borisov - Both Spark, located in St. Petersburg Russia, and AVB, located in Lithuania, are wholly owned by Yuri Borisov. In 2003 and 2004, Borisov was the primary figure in a public scandal involving buying access to the Lithuanian President's office. Borisov donated \$400,000 to the President's election campaign and in return received Lithuanian citizenship by Presidential decree. The resulting criminal investigation tied Borisov to Russian mafia and intelligence organizations. This scandal directly resulted in the Lithuanian president being impeached and forced to resign.

9. Pavel Borisov – The son of Yuri Borisov. He serves as Director of AVB. He also moved to Huntsville Alabama to serve as a technical advisor to NSRWA PMO in or about 2012. He has since returned to Moscow where he

represented, or still represents, SESI and Company B.

RELEVANT LAW

10. Crime Victim Restitution Act

DTI, Cornische and FTA adopt the Government's brief on the CVRA in its entirety.

11. Competition in Contracting Act 41 U. S. C. § 253

“(a) Procurement through full and open competition; competitive procedures

(1) Except as provided in subsections (b), (c), and (g) of this section and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this subchapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.”

12. Title 10, Limitation on Expenditure of Appropriations

“Money appropriated to the Department of Defense may not be spent under a contract.....unless that contract provides that ... United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.” 10 U.S.C. § 2207.

13. Federal Acquisition Regulations

“As a rule, no government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee’s agency, (b) conducts activities that are regulated

by the employee's agency or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties." 48 C.F.R. 3.102-2.

VICTIMS

14. DTI, Cornische, and FTA are victims as contemplated by the CVRA because: (A) Vergez's acts were to hide his interference in ongoing contracts; (B) Vergez, by his acts, sought to deny private individuals their rights to compete as provided under federal law; (C) Vergez's acts were to conceal activities that, if known, would have proved he was bias towards certain companies; his falsification allowed him to continue to thwart the competitive process; and, (D) Vergez, abusing the authority of his office, took active retaliation against the companies that reported his illegal acts, resulting in significant harm.

(A) Interfering in Existing Contracts:

15. FTA is a victim as contemplated by the Crime Victims' Rights Act. The Plea Agreement identifies the behavior constituting the commission of a federal offense – here Count One of the Information filed for this matter. (Doc. 2 at 1).

16. In Count One, Vergez admits to making a false statement to the DoD Inspector General (IG) about his office having no direct contact with AVB regarding the subcontracting work; and that he falsified statements and directed another employee to sign a document supporting inappropriate payment to AVB. The false statement and false documentation was made to thwart a DoD Inspector General's investigation of Vergez's handling of Mi-17 overhauls. Specifically, this investigation included a review of the US Army contract with Northrop Grumman, its subcontractor FTA, and FTA's subcontractor AVB. In the course of this investigation, the IG determined that Vergez's actions, communications with, and assistance to AVB, which he sought to conceal through felonious false statements, undermined FTA's contractual relationship with its subcontractor.

17. "As a result, Northrop Grumman and FTA had no control or leverage over AVB personnel, who continued to disregard their sub-contractual commitments to Northrop Grumman and FTA." (Exhibit 28 at 7).

18. Furthermore, at the time FTA was threatening AVB with termination for nonperformance, the DoD IG found "... the NSRWA PMO discussed future Mi-17 work with AVB although it was not meeting the terms of its subcontract." *Id.*

19. By direct result of his false statements, Vergez was able to perpetuate his interference in FTA business relationships. Thus, Vergez's actions were the direct and proximate cause of the harm to FTA. The very fact that Vergez lied to hide the level of his involvement with AVB during the course of its contract with FTA shows he clearly understood that his conduct was improper and the harm to FTA foreseeable. For the consideration of the Court, FTA has provided further details of the harm it suffered due to Vergez's activities. See Exhibit 26.

(B) Vergez, by his acts, sought to deny private individuals their rights to compete as provided under federal law.

20. Vergez introduced extensive corruption to NSRWA before the specific acts to which he here pleads. That corruption denied private individuals their opportunity to compete as provided under federal acquisition law, and prompted private individuals to dedicate significant resources to restore integrity to the acquisition process and thereby restore their opportunities to compete. When Vergez committed the specific crimes of lying to Federal investigators, failing to report gifts and felony conflict of interest, he victimized DTI, Cornische, and FTA by frustrating the apparatus they set in motion to restore the competition demanded by federal acquisition law –

namely the DODIG audit in question. But for Vergez's crimes, as charged in this matter, the efforts and spending of DTI, Cornische, and FTA would not have been frustrated, and would not have had to continue. The DODIG, and perhaps other apparatus, would have been able to perform their functions to restore opportunities for these and other prospective contractors to compete. And it is reasonably foreseeable that if contractors are denied the opportunity to compete provided by federal acquisition law, then those contractors would dedicate significant resources to restore their opportunities to compete.

21. DTI, Cornische, and FTA are victims as contemplated by the Crime Victims' Rights Act. The Plea Agreement identifies the behavior constituting the commission of a federal offense – here Counts One, Two and Three of the Information filed for this matter. (Doc. 2 at 1). Count One states that Vergez made a false statement. (Doc. 2 at 3 ¶¶ C-N). Count Two states that Vergez maintained a felony conflict of interest with Person 2, or Company A, or Company B, or some combination of those persons. (Doc. 2 at 5-6 ¶¶ O-R). Count Three states failed to report a gift from AVB. (Doc. 2 at 6 ¶¶ S-V).

22. DTI, and Cornische, who are not the United States, suffered harm due to the direct and proximate effects of Vergez's criminal conduct. Vergez's lies and felony conflict of interest are but-for causes of pecuniary harm

suffered by DTI and Cornische as a reasonably foreseeable consequence of the criminal conduct.

23. DTI and Cornische had been denied opportunities to compete in an acquisition process free of corruption by NSRWA for years before the lies specified in the Information for this case. Seeking to restore an acquisition process free of corruption so that it could enjoy an opportunity to compete, DTI and Cornische provided the information to the federal authorities that prompted the DODIG to conduct the investigation in which Vergez told his lies. DTI and Cornische spent effort and resources to provide federal authorities the information needed to guide an investigation undertaken to detect and correct the misfeasance, or malfeasance, or corruption tainting NSRWA's acquisition activities.

24. Vergez lied to the DODIG, specifically as charged in the Information for this matter, to prevent detection of the misfeasance, or malfeasance, or corruption or any combination of misfeasance, malfeasance, or corruption, surrounding NSRWA's acquisition activities.

25. Vergez capitalized on the criminal conduct specified in Count 1 and Count 3 by engaging in the criminal conduct specified in Count 2. While DTI and Cornische continued spending effort and resources to work with federal

authorities to restore corruption-free acquisition activities at NSRWA, Vergez engaged in a pattern of activities calculated to favor certain parties, like AVB, or Person 2, or Company A, or Company B, or some combination of them, or other persons, instead of implementing corruption-free acquisition activities in accordance with federal acquisition law.

26. It is reasonably foreseeable that a company will expend funds to ensure the integrity of the competition process. The effort and money DTI and Cornische spent to restore a corruption-free acquisition process is therefore a direct harm closely related to the conduct inherent in the offense, because the criminal conduct frustrated the specific objective of restoring corruption-free acquisition activities at NSRWA. And the specific objectives of the lies were (a) to conceal the corruption, and (b) to continue the misfeasance, malfeasance, or corruption, or any combination of misfeasance, malfeasance, or corruption that would enable Vergez to be of value for persons like AVB, or Person 2, or Company A, or Company B, or some combination of them, or other persons. In their efforts to restore the integrity of the process, DTI and Cornische provided extensive information to the federal government concerning the corruption at NSRWA:

- (a) DTI disclosed to federal investigators that Vergez explicitly

asked DTI to add Science and Engineering Service, Inc. (SESI) to DTI's proposal for work (generally, federal officials are not authorized to disclose "winning strategies" to prospective bidders). Exhibit 1.

(b) Vergez approached other prospective bidders, suggesting the winning strategy of adding SESI to their teams. Exhibit 2.

(c) Vergez stopped the competitive acquisition process implemented by the Navy in order to direct a sole-source cockpit modification to SESI teamed with AVB. Exhibit 3.

(d) Vergez's daughter worked at SESI. Vergez's wife was the assistant for Pavel Borisov, the director of AVB. Exhibit 4.

(e) Norbert Vergez was listed as the resident of a house in Huntsville purchased by Pavel Borisov, the director of AVB. Exhibit 5.

(f) DTI was contacted by an SESI buyer to provide Mi-17 documentation. That buyer disclosed that Vergez had already directed SESI to purchase the documents from AVB, and that the quotes were a sham to manufacture evidence of proper contract performance. Exhibit 6.

(g) Vergez issued a sole-source task order to award SESI and AVB cockpit modification on Mi-17 helicopters. While the statement of work

required installations to be certified by Mil Moscow (the manufacturer of these helicopters), neither SESI nor AVB had those certifications, and they were not qualified to get those certifications. Exhibit 7.

(h) Vergez offered a quid pro quo incentive to a Russian company to work with SESI and AVB – Vergez would agree to make extra payments available to the Russians on one contract in exchange for the Russians agreeing to work with SESI and AVB on another contract. Exhibit 8.

(i) Vergez attempted to link the purchase of additional Mi-17 aircraft from a Russian company in exchange for that Russian company agreeing to work exclusively with SESI and AVB. Exhibit 9.

(j) Vergez directed Northrup Grumman to ignore the fact that Spark (owned by the same individuals as AVB) forged the signature of U.S. Assistant Secretary of Defense Weschler on a fake end-use certificate. Exhibit 10.

(k) Vergez paid a 200% premium to AVB / Spark for the same parts at the same time they were provided by DTI on a concurrently running contract. This is the specific contract that is the subject of Count One. Exhibit 11.

(l) Vergez's office was caught in a lie between two Government Accounting Office protests. Exhibit 12.

(m) Vergez introduced SESI and Company B to Mi-17 engine manufacturer Motor Sich as "his best partners" and requested they team. Exhibit 13.

(n) Vergez directed his staff to set-up and attend a meeting in the Ukraine to establish SESI / AVB as the sole source provider to the United States for the new model Motor Sich Mi-17 engine. Exhibit 14.

(o) Vergez wrote a letter to the Russian government claiming that SESI's overhaul contract was competitively awarded, despite the announcement in FedBizOps of that contract as a sole-source award. Exhibit 15.

(p) Vergez issued fake Category 3 end-user certificates to conceal the fraud that the Mi-17 owned by the U.S. Army at Fort Rucker was only for civil use. Exhibit 16.

(q) Vergez issued fake end-user certificate to Pakistan. Exhibit 17.

(r) Vergez repeatedly pressured a Russian company to work with SESI and AVB in contravention of Russian law. Exhibit 18.

(s) Vergez continued to meet with Borisov of AVB even after the investigations were underway. Exhibit 19.

(t) Vergez joined Company B and then hired AVB director Pavel Borisov to represent Company B in Eastern Europe and Russia. Exhibit 20.

(u) Vergez took work from the contract competitively awarded to Raytheon / DTI, and moved that work to SESI / AVB without competition. Exhibit 21.

(v) Vergez, while on active duty, accepted a flight on a private aircraft owned by Person 2, who controlled Company B. Exhibit 22.

(w) Vergez, while prohibited by his US Army post employment agreement, was representing Company B to Russian Helicopters and AVB/Spark. Exhibit 23.

(x) Vergez was not requiring SESI to compete subcontract work, but instead allowing them to work exclusively with AVB. Exhibit 24.

27. Regardless of whether each and every (or even any) assertion in subparagraphs (a)-(x) above is true, it is reasonably foreseeable that a contractor would seek to correct any perceived corruption and that Vergez's criminal conduct as charged in this matter is both a direct and proximate cause of

injury suffered by DTI and Cornische. And the exhibits themselves support allegations that DTI, or Cornische, or FTA, or any combination of these entities, dedicated resources to restoring an opportunity to compete in a corruption-free acquisition environment.

(C) Vergez's acts were to conceal activities that, if known, would have proven he was biased towards certain companies.

28. DTI, by itself or in cooperation with Cornische Aircraft Maintenance, prepared three GAO protests of the sole source task order awards of Mi-17 overhauls to the SES/AVB Team. These protests were filed on the following dates:

- B-405013.1, April 15, 2011
- B-405013.2, June 17, 2011
- B-405013.4, (also B-409065) October 19, 2012
- B-408065.2, April 2013

In each protest, it was alleged that the award was improper. In B-405013.2 and B-405013.4, they alleged the award was the result of Vergez's bias in favor of the SESI/AVB Team. DTI and Cornische expended significant time and money to prepare these protests and collect information on Vergez's improper activities made on behalf of the SESI/AVB team.

29. “In conclusion, the Army has treated SESI with favoritism, actively promoting their business and interceding with other governments and suppliers to improve SESI business posture. No such actions lobbying activities have been performed on behalf of any other Mi-17 support contractors. On behalf of SESI, the NSRWA PM violated both the FAR and possibly US law to insure that an overhaul award is successful made and performed by SESI, even though he had other legal options available to meet the same requirement. The Army provided false testimony in B-405013.4 to justify the award of Mi-17 overhauls to SESI. Cornische believes these actions are prima facie evidence of Army bias. The contracting officer’s award of Delivery Order 183 had no rational basis and is therefore further evidence of bias. As the award to SESI was the result of bias, GAO should direct the cancellation of Delivery Order 183 and direct the requirement be met through full and open competition.” *Cornische Aircraft Maintenance, B-409065, Oct 2012*. Exhibit 27.

30. Despite the evidence presented, the protestor was unable to overcome the presumption of good faith that the GAO imposes.

31. “As a general matter, government officials are presumed to act in good faith, and a protester’s contention that procurement officials were motivated

by bias or bad faith must be supported by clear and convincing evidence.

Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9.” *Starry Associates, B-410968.2 et al.*, August 11, 2015.

32. In Count Three of his plea, Vergez admits he received a gift from AVB with a value above the allowed limit in the summer of 2012. At the time of GAO protest B-405013.4, fall 2012, DTI and Cornische aircraft maintenance were unaware that Vergez had already accepted, and failed to report this gift. Furthermore, at the time of the protest, the protestors were unaware Vergez had already committed felony false statements to the Inspector General regarding his offices direct involvement with AVB. Vergez knew, or should have known, that the acceptance of these gifts would undermine the integrity of future procurements involving the SES/Avia Baltica team.

33. “As a rule, no government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee’s agency, (b) conducts activities that are regulated by the employee’s agency or (c) has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties.” 48 C.F.R. 3.102-2.

34. “Money appropriated to the Department of Defense may not be spent under a contract.....unless that contract provides that – United State may , by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contactor, or his agent or representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.” 10 U.S.C. § 2207.

35. Vergez concealed his receipt of an expensive gift from AVB for two years - until it was uncovered by Federal investigators. Vergez knew or should have known, when he was accused of bias in protest B-405013.4, that accepting such a gift is prima facie evidence of bias. The impact of his decision to conceal the gift had a direct and proximate impact on the Cornische/DTI protest. His failure to report this gift caused the subject protest to fail, and denied DTI and Cornische their right to compete for the subject procurement.

36. Vergez knew that it was improper to accept such a gift, and that admitting to such a gift would block his ability to continue to award sole

source task order contracts to the SESI/AVB Team. Had DTI and Cornische been aware of the gift, there is no doubt that they would have informed federal authorities and use the gift as evidence of Vergez bias in GAO protest B-405013.4. This would have resulted in the award being overturned and the competitive process restored. Furthermore, as a more lasting solution, it would have resulted in Vergez being removed from the position of trust he was abusing.

CONCLUSION

37. As set forth above, Flight Test Associates, Defense Technology Inc. and Cornische Aircraft Maintenance are Victims of the crimes to which Vergez has pleaded. These companies respectfully request that the Sentencing Report be remanded to the Probation Officer and testimony from all Victims be incorporated in the final sentencing guidance. As a minimum, the testimony of these Victims should be introduced into the record and considered during the sentencing of Vergez.

[SIGNATURES AND CERTIFICATIONS ARE ON THE FOLLOWING
PAGES]

Respectfully submitted.

/s/ William Uemura

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I certify filing this document via CM/ECF, which sends notice to the attorneys of record for this matter.

/s/ William Uemura
