

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 18-cr-00429-WJM

UNITED STATES OF AMERICA

Plaintiff,

v.

3. RANDOLPH STIMAC,

Defendant.

PLEA AGREEMENT

The United States of America (the government), by and through Jeremy Sibert, Assistant United States Attorney for the District of Colorado, and the defendant, Randolph Stimac, personally and by counsel, Jennifer Gedde, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1. This agreement binds only the Criminal Division of the United States Attorney's Office for the District of Colorado and the defendant.

I. AGREEMENT

A. Defendant's Plea of Guilty:

The defendant agrees to

- (1) plead guilty to Count 1 of the Superseding Indictment, a violation of 18 U.S.C. § 371, Conspiracy to Commit Procurement Fraud and Defraud the United States (41 U.S.C. § 2102; 18 U.S.C. § 1031);
- (2) waive certain appellate and collateral attack rights, as explained in detail below.

Court Exhibit

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B. Government's Obligations:

This agreement is made pursuant to Fed.R.Crim.P.11(c)(1)(A) and (B). The government agrees to recommend that a five (5) year probation sentence with an added condition of home detention for the first twenty-four months is appropriate in this case. The parties understand that this agreement is not binding on the Court. The government further agrees not to bring other charges against the defendant based on information currently known to the United States Attorney's Office, District of Colorado and to move to dismiss the remaining counts in the Superseding Indictment and the original Indictment against this defendant only. Should the plea of guilty be vacated on the motion of the defendant, the government may, in its sole discretion, move to reinstate any or all of the counts dismissed pursuant to this agreement.

Acceptance of Responsibility.

Provided the defendant does not engage in prohibited conduct or otherwise implicate USSG §§ 3C1.1 and 3E1.1, cmt. n.4 between the guilty plea and sentencing in this case, the government agrees that the defendant should receive a two-level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(a) and, when applicable, agrees to file a motion requesting that the defendant receive a one level reduction for acceptance of responsibility pursuant to USSG § 3E1.1(b).

C. Defendant's Waiver of Appeal:

The defendant is aware that 18 U.S.C. § 3742 affords the right to appeal the sentence, including the manner in which that sentence is determined. Understanding this, and in exchange for the concessions made by the government

in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence (including the restitution order), unless it meets one of the following criteria:

- (1) the sentence exceeds the maximum sentence provided in the statute of conviction, 18 U.S.C. § 371;
 - (2) the sentence exceeds the top end of the advisory guideline range from the Sentencing Guidelines that applies for the defendant's criminal history (as determined by the district court) at a total offense level of 21;
- or
- (3) the government appeals the sentence imposed.

If the first criteria applies, the defendant may appeal only the issue of how his sentence exceeds the statutory maximum sentence. But if one of the latter two criteria apply, the defendant may appeal on any ground that is properly available in an appeal that follows a guilty plea.

The defendant also knowingly and voluntarily waives the right to challenge this prosecution, conviction, or sentence (including restitution order) in any collateral attack (including, but not limited to, a motion brought under 28 U.S.C. § 2255). This waiver provision does not prevent the defendant from seeking relief otherwise available in a collateral attack on any of the following grounds:

- (1) the defendant should receive the benefit of an explicitly retroactive change in the sentencing guidelines or sentencing statute;
- (2) the defendant was deprived of the effective assistance of counsel; or
- (3) the defendant was prejudiced by prosecutorial misconduct.

The Defendant also waives the right to appeal any sentence imposed below or within the Guideline range upon a revocation of supervised release in this case

number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court. The Defendant also waives the right to appeal the denial of any motion filed under 18 U.S.C. § 3582(c)(1)(A) where such denial rests in any part upon the court's determination that a sentence reduction is not warranted under the factors set forth in 18 U.S.C. § 3553(a). This waiver does not apply to an appeal of a denied § 3582(c)(1)(A)(i) motion where the district court, in denying the motion on § 3553(a) grounds, failed to consider the facts allegedly establishing extraordinary and compelling circumstances as part of its § 3553(a) analysis.

II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of Count One of the Superseding Indictment are as follows:

Count One: 18 U.S.C. § 371

- (1) The defendant agreed with at least one other person to violate the law;
- (2) One of the conspirators engaged in at least one overt act furthering the conspiracy's objective;
- (3) The defendant knew the essential objective of the conspiracy;
- (4) The defendant knowingly and voluntarily participated; and
- (5) There was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged.

Tenth Circuit Criminal Pattern Jury Instruction 2.19.

II. STATUTORY MAXIMUM SENTENCE

The maximum sentence for a violation of Count One of the Superseding Indictment is: not more than five years' imprisonment; \$250,000 fine, or both; maximum term of supervised release of three years; and a \$100 mandatory victim's fund assessment fee.

III. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including, but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.

IV. STIPULATION OF FACTS

The factual basis for this plea is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from presenting non-contradictory additional facts which are relevant to the Court's guideline computation, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The parties stipulate that the following facts are true and correct and agree the government would be able to prove the following facts at trial.

Beginning on or about August 1, 2013 and continuing to on or about

November 24, 2015, there was an agreement between defendant Randolph Stimac and Kevin Kuciapinski to work toward obtaining a United States Federal Contract that would benefit them as well as M. K., the wife of Kevin Kuciapinski. The primary focus of the contract was to develop a streamlined process to take technology from the research and development stage to operational use amongst the intelligence community. To present this streamlined process to potential stakeholders that would provide funding, co-defendants Stimac and Kevin Kuciapinski used Signal Emitter Identification (SEI) technology, specifically SEINE-X, a specialized segment that falls under SEI technology, to demonstrate how a new area of technology, in this case SEINE-X, could be streamlined into operations.

At the time of the dates in Count One, defendant K. Kuciapinski, was an active-duty USAF Major assigned to the Aerospace Data Facility-Colorado (ADF-C), Buckley Air Force Base, CO, as the Technical Director of Experiments and Initiatives Division for National Reconnaissance Office (NRO). Defendant K. Kuciapinski was a subject matter expert regarding this technology, which was not yet in operation. For a majority of the time of the dates in Count One, defendant Stimac was a GS-15 National Security Agency (NSA) employee at ADF-C. Stimac was a technical expert for the NSA dealing with signals intelligence (SIGINT).

The defendants were able to obtain funding from the United States Army and Air Force in 2014 for the fraudulent contract. It was the intent of the defendants, through the use of the awarded contract, to display positive results regarding this streamlined process of utilizing civilian contractors to advance specific technology in order to obtain further potential contracts regarding other novel technology. These

results, and the contract itself, would be fraudulent.

Defendant Stimac fraudulently drafted the contract documents via direct communications with M.K. M.K. then passed these documents onto J.Y., the owner of a "parent company" to provide J.Y., and J.Y.'s company, an unfair advantage in the bidding process of the contract. Defendant Stimac without permission became the intelligence community's contracting representative for the Health and Human Services Agency (HHS), the agency that sponsored the contract. As the contracting representative, defendant Stimac assisted HHS in obtaining the military funds to support the contract, drafting the contract with many of the documents that he and M.K. worked on in the prior months, and recommended that the "parent company" be awarded the contract. Once awarded the contract, the plan was for the "parent company" to sub- contract the work to M.K.'s company. Under the terms of the contract, M.K.'s company would receive over \$800,000.00 for work on the contract.

The contract was numbered officially as HHSN316201200115W-HHSP233201400203W, and was also titled as VESPERLILLET, hereinafter SEI contract.¹ The contract was originally going to last a year for approximately \$1,450,000 (according to the HHS Official Memorandum), with the plan to continue the contract for additional years at the cost of \$4.3 million dollars. None of defendant Stimac's supervisors knew about his involvement in seeking funds for this contract or his efforts to help HHS to award the fraudulent contract. The purpose of defendant Stimac's efforts was to fraudulently obtain a federal contract that would benefit M.K.

¹ The SEI contract is also called ~~SEI~~ ^{RIS} NE-X by the parties, including the defendants and Army TENCAP.

financially. The United States Army lost the ability to use approximately \$453,386.00 as a result of the HHS contract being canceled. Defendant Stimac conspired with co-defendant K. Kuciapinski and others to commit procurement fraud and to defraud the United States. Defendant Stimac intended to act with defendant K. Kuciapinski and M.K. to create and fund a fraudulent contract that would reward M.K.'s company financially. The ~~financial~~ ^{RS} benefit that M.K.'s company would receive from being a ^g sub-contractor on this fraudulent contract would also benefit co-defendant K. ^g Kuciapinski and defendant Stimac. ^g

V. ADVISORY GUIDELINE CALCULATION

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. § 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their respective estimates of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

The Guideline calculation below is the good-faith estimate of the parties, but it is only an estimate. The parties understand that the government also has an independent obligation to assist the Court in making an accurate determination of the correct guideline range. To that end, the government may argue that facts identified in the presentence report, or otherwise identified during the sentencing process,

affect the estimate below.

- a) Under Section 2X1.1(a), the base offense level is the base offense level from the guidelines for the substantive offense, plus any adjustments from such guidelines for any intended offense conduct that can be established with reasonable certainty.
- b) Under Section 2B1.1 of the advisory guidelines, the base offense level is 6.
- c) The intended loss exceeded more than \$3,500,000; therefore, increase the offense level by 18 pursuant to Section 2B1.1(b).²
- d) The adjusted offense level is 24.
- e) After acceptance of responsibility, the resulting total offense level is 21.
- f) The parties understand that the defendant's criminal history computation is tentative and based on the defendant's prior convictions. The parties believe the defendant is in criminal history category I.
- g) The career offender/criminal livelihood/armed career criminal adjustments do not apply.
- h) The advisory guideline range resulting from these calculations is 37-46 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from 37 months (bottom of Category I) to 96 months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.
- i) Pursuant to guideline § 5E1.2, assuming the estimated offense level above is correct, the fine range for this offense would be \$15,000 to \$150,000, plus applicable interest and penalties.

² Pursuant to Application Note 3 of U.S.S.G. §2B1.1(b), "...loss is the greater of actual loss or intended loss."

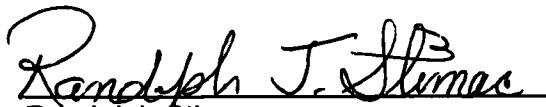
- j) Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is not more than 3 years.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.


VI. ENTIRE AGREEMENT

The agreement disclosed to the Court is the entire agreement. There are no other promises, agreements or "side agreements," terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any other terms, promises, conditions or assurances.

Date: 12/21/2022


Randolph Stimac
Defendant

Date: 12/21/22


Jennifer Gedde
Attorney for Defendant

Date: 12/21/22


Jeremy Sibert
Assistant U.S. Attorney