

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CASE NO. 18-cr-00432-RBJ

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DWANE NEVINS,
2. ANTHONY BUENO, and
3. ROBERT REVIS,

Defendants.

**DEFENDANT DWANE NEVINS' PLEA OF GUILTY AND STATEMENT OF FACTS
RELEVANT TO SENTENCING (WITHOUT PLEA AGREEMENT)**

Defendant, DWANE NEVINS, personally and by counsel, Timothy P. O'Hara, submits
this Plea of Guilty and Statement of Facts Relevant to Sentencing (Without Plea Agreement):

I. PLEA OF GUILTY

The Defendant intends to plead guilty to the charges in the Indictment:

- 1) Conspiracy to Commit Bribery in violation of 18 U.S.C. §§ 371, 201(b)(1)(B) and (b)(2)(B)(COUNT 1),
- 2) Receipt of a Bribe in violation of 18 U.S.C. §201(b)(2)(B)(COUNTS 2-3),
- 3) Attempted Extortion Under Color of Official Right in violation of 18 U.S.C. §1951(a)(COUNT 6), and
- 4) Criminal Conflict of Interest in violation of 18 U.S.C. §§ 208 and 216 (COUNTS 7-8).

This plea is without a plea agreement with the government.

**COURT
EXHIBIT
I**

II. ELEMENTS OF THE OFFENSES

COUNT ONE: The elements of 18 U.S.C. §371 are as follows:

First: the defendant agreed with at least one other person to violate the law.

Second: one of the conspirators engaged in at least one overt act furthering the conspiracy's objective.

Third: the defendant knew the essential objective of the conspiracy.

Fourth: the defendant knowingly and voluntarily participated.

Fifth: 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.

10th Cir. Pattern J.I. § 2.19.

COUNTS TWO and THREE: The elements of 18 U.S.C. §201(b)(2)(B) are as follows:

First: the defendant, a public official, directly or indirectly demanded, sought, received, accepted, agreed to receive or accept, personally something of value.

Second: the defendant did so intentionally and with an unlawful purpose in return for being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of fraud, on the United States.

10th Cir. Pattern J.I. § 2.12 and 18 U.S.C. § 201(b)(2)(B).

COUNT SIX: The elements of 18 U.S.C. § 1951(a) are as follows:

First: the defendant wrongfully obtained or attempted¹ to obtain property from another with that person's consent.

Second: the defendant did so under color of official right.

Third: the defendant's conduct affected interstate commerce.

10th Cir. Pattern J.I. § 2.71.

¹ The statute of offense includes attempt to commit an offense under 18 U.S.C. § 1951(a).

COUNTS SEVEN and EIGHT: The elements of 18 U.S.C. §208 are as follows:

First: the defendant was an employee of the executive branch of the United States Government,

Second: the defendant willfully participated personally and substantially as a government employee by recommendation, the rendering of advice, or otherwise, in an application or contract.

Third: the defendant knew that he had a financial interest in that application or contract.

The United States advises that it agrees (XX), disagrees (), or takes no position () with the Elements of the Offense stated herein.

III. STATUTORY PENALTIES

The maximum statutory penalty for a violation of 18 U.S.C. § 371 is not more than 5 years imprisonment; not more than a \$250,000 fine,² or both; not more than three years supervised release; and a \$100 special assessment fee.

The maximum statutory penalty for a violation of 18 U.S.C. §18 U.S.C. §201(b)(2)(B) is not more than 15 years imprisonment; not more than a \$250,000 fine, or both; not more than three years supervised release; and a \$100 special assessment fee.

The maximum statutory penalty for a violation of 18 U.S.C. § 1951(a) is not more than 20 years imprisonment; not more than a \$250,000 fine, or both; not more than three years supervised release; and a \$100 special assessment fee.

² The maximum fine in the present can alternatively be not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process. See 18 U.S.C. § 3571(d).

The maximum statutory penalty for a violation of 18 U.S.C. § 208 is not more than 5 years imprisonment; not more than a \$250,000 fine, or both; not more than three years supervised release; and a \$100 special assessment fee.

A violation of the conditions of probation or supervised release may result in a separate prison sentence and additional supervision.

The United States advises that it agrees (XX), disagrees (), or takes no position ().

IV. 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, hold any office of honor, trust, or profit under the United States, and sit on a jury.

V. FACTUAL BASIS TO SUPPORT THE PLEA OF GUILTY

There is a factual basis for the guilty plea. That basis is set forth below.³ 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 factors set forth in 18 U.S.C. § 3553, additional facts may be presented at the Sentencing Hearing which are pertinent to those considerations and computations. This recitation of facts does not preclude the defendant ^{or the government} from later presenting the Court with additional facts which do not contradict facts admitted below and which are relevant to the Court's guideline computations, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

³ Mr. Nevins believes that the factual basis provided herein is sufficient to support a plea of guilty to all of the charges in the present case. This factual statement is meant to take the place of the factual basis stated in the Indictment.

Mr. Nevins admits to the following:

I. INTRODUCTORY FACTS

1. Robert Revis (“Mr. Revis”) was the owner of Auxilious, LLC, a Colorado limited liability company, which did business under the name Auxilious Management Group (“Auxilious”). Auxilious was in the business of offering consulting services to businesses seeking contracts with municipal, state and federal government agencies.

2. Anthony Bueno (“Mr. Bueno”) was an employee of Auxilious.

3. Undercover Employee (UCE) was a special agent of the Federal Bureau of Investigation (FBI) posing as the owner of a service-disabled-veteran-owned small business (“SDVOSB”).

4. Starting in approximately July of 2013, Mr. Nevins was employed by the United States Department of Veterans Affairs (“the VA”) as a Small Business Specialist. As such, Mr. Nevins was a “public official” as defined in 18 U.S.C. §201(a)(1).

5. As a VA Small Business Specialist, Mr. Nevins interacted with employees within the VA as well as individuals affiliated with small businesses seeking VA contracts. As it related to those outside of the VA, Mr. Nevins provided advice about how to identify and obtain contracting opportunities with the VA. As it related to those inside the VA, Mr. Nevins primarily provided information to VA contracting officers and other contracting personnel about the VA’s small business procedures, including providing information as to whether small businesses qualified for VA contracts.

6. As the Small Business Specialist, Mr. Nevins did not have the power to award contracts at the VA. Contracting officers were responsible for awarding contracts.

7. Starting in September of 2014, Mr. Nevins owned and operated a company called Diversified Entrepreneur Network, LLC, (“DEN”), a Colorado limited liability company in the business of offering consulting services to private businesses seeking assistance in pursuing municipal, state, and federal contracts.

8. The law requires the VA to prioritize its assignment of contracts to small businesses, including women owned small businesses, veteran owned small businesses, and SDVOSBs. As a result, contracting officers at the VA were required to “set aside” contracts so that only small businesses could submit bids when the contracting officer had a reasonable expectation that two or more qualifying small businesses could provide the services at a fair and reasonable price.

9. One of Mr. Nevins’ duties as the Small Business Specialist with the VA was to review and sign VA Form 2268 (“the 2268”) for each procurement. Once a contract is signed and set aside for small businesses, the contract is available to any small business that qualifies.

10. In solicitation number VA259-14-R-0472, the VA solicited bids for multiple companies to transport, store, and install durable medical equipment (the “DME Contract”). The DME Contract was managed by contracting officers in NCO VISN 19 and covered a wide geographical area in the western United States. The contract was expected to be awarded to multiple contractors due to the large coverage area.⁴ The initial award was to be for one year, with a renewal option for four additional years.

11. In solicitation number VA259-16-R-0045, the VA solicited bids in an effort to

⁴ The following healthcare systems were covered under the contract: 1) Eastern Colorado Healthcare System (including some areas of Kansas), 2) Cheyenne, Wyoming VA Medical Center, 3) Grand Junction, Colorado VA Medical Center, 4) Montana Health Care System, 5) Salt Lake City Utah VA Medical Center, 6) Sheridan, Wyoming Medical Center, 7) Oklahoma City VA Health Care System, and 8) Muskogee VA Medical Center (including some areas in Kansas and Missouri).

procure LC Bead Particle Embolization Products for a VA facility (the “Bead Contract”). The Bead Contract was managed by officers in NCO VISN 19.

12. On February 25, 2015, Mr. Nevins signed VA form 2268 for the DME Contract, setting the contract aside for one or more small businesses. Unrelated to Mr. Nevins, there were a number of issues with the pricing of the contract that caused considerable delays. The contract eventually was awarded in September of 2016.

13. On or about December 21, 2015, Mr. Nevins signed VA Form 2268 for the Bead Contract, concurring in the contracting officers decision not to set aside the Bead Contract for SDVOSBs.

FACTS SUPPORTING THE PLEA OF GUILTY

14. In August of 2015, a confidential human source (CHS) referred UCE to Mr. Bueno. The two met and discussed how Auxilious could assist UCE in the pursuit of federal contracts. As a way to obtain business from UCE 1, Mr. Bueno claimed that he had a connection at the VA that can control contract awards there, suggesting that Mr. Nevins “can pull [that contract] aside for us.” In fact, Mr. Nevins had no power to award contracts and the contract had already been set aside for small business.

15. Over the next two months, Mr. Bueno and Mr. Revis communicated with UCE about contracting opportunities. Mr. Bueno and Mr. Revis used Mr. Nevins’ name to suggest that they had a connection within the VA, and Mr. Bueno, in particular, used his connection with Mr. Nevins as a way to persuade UCE to hire Auxilious.⁵

⁵ UCE asked Mr. Bueno who designates the contract. Mr. Bueno answered: “Dwane.”

16. On or about October 14, 2015, Mr. Nevins, Mr. Bueno, and UCE had a conference call.⁶ Once Mr. Nevins was on the call, the three individuals made plans to meet up in Las Vegas, Nevada. At that time, Mr. Nevins agreed to conduct a training for UCE and his financial backers about how to obtain federal contracts. During the call, Mr. Nevins agreed that he and Mr. Bueno were “a team,” but Mr. Nevins specifically requested that he be paid separately from Auxilious for providing the training to UCE. Mr. Bueno agreed that the fee for Mr. Nevins’ training course would be a separate payment.

17. On October 20, 2015, UCE met Mr. Revis and Mr. Bueno in Denver, Colorado. UCE paid Mr. Revis and Mr. Bueno \$15,000, in the form of a check made out to Auxilious.

18. On or about November 5, 2015, Mr. Nevins and Mr. Bueno traveled to Las Vegas, Nevada to meet with UCE and his financial backers. On November 5th and 6th, Mr. Bueno, Mr. Nevins, UCE, and two other federal agents posing as UCE’s financial backers met and discussed the federal contracting process. Mr. Nevins brought binders of information to Las Vegas.

19. During their conversations in Las Vegas, the UCE informed Mr. Nevins that he wanted to pay for Mr. Nevins’ assistance in obtaining contracts with the VA.

20. While in Las Vegas, Mr. Nevins and Mr. Bueno discussed how to obtain VA contracts with UCE and his financial backers. Mr. Nevins gave UCE and his financial backers suggestions on how to maximize their chances of being awarded federal contracts, including VA contracts. Mr. Nevins emphasized multiple times that his role was not to steer a contract in UCE’s direction and could not guarantee any contract, yet Mr. Nevins stated to the UCE that Mr.

⁶ The call began with Mr. Bueno and UCE. Mr. Nevins joined the call in the middle.

Nevins would be involved and that UCE's success rate would be 80-90%. At one point, Mr. Nevins and Mr. Bueno discussed the Bead Contract with UCE and his financial backers. While in Las Vegas, Mr. Nevins accepted \$4,500 from UCE.

21. After the meetings in Las Vegas, in late November and December of 2015, Mr. Nevins continued to communicate with UCE. At that time, Mr. Nevins requested additional compensation from UCE and Mr. Nevins indicated that nothing could get done without him.⁷ By knowingly seeking anything of value to collude in, or allow, any fraud, on the United States, Mr. Nevins is guilty of 18 U.S.C. § 201(b)(2)(B).

22. On December 23, 2015, UCE met with Mr. Nevins and paid Mr. Nevins \$4,500 in cash. By accepting the money, Mr. Nevins wrongfully obtained property from another with that person's consent, did so under color of official right, and the conduct affected interstate commerce in violation of 18 U.S.C. § 1951(a).⁸ Mr. Nevins' receipt of money also gave him a personal, financial interest in the DME contract, a matter that he had previously participated in as a government employee, in violation of 18 U.S.C. § 208(a).

23. Also on December 23, 2019, UCE, Mr. Nevins, and a private businessman ("the Businessman") met to discuss UCE being a subcontractor/financial supporter on the Businessman's bid for the DME contract. Mr. Nevins briefly mentioned the Bead Contract

⁷ On December 16, 2015, Mr. Nevins told UCE: "the train don't go without me."

⁸ The government need only prove that there would be any effect at all on interstate commerce, even if the effect is minimal. See 10th Cir. Pattern J.I. § 2.71. Mr. Nevins' receipt of money also constituted a violation of 18 U.S.C. § 201(b)(2)(B).

during the meeting as well. The Businessman submitted multiple bids for the DME contract,⁹ but he was never awarded it, and in fact, his bids were never seriously considered.

24. Beginning on November 5, 2019, and continuing through December 23, 2019, Mr. Nevins' conduct described herein demonstrates that Mr. Nevins knowingly and voluntarily participated in a conspiracy by agreeing with at least one other person to violate the law, engaging in overt acts furthering the conspiracy's objective, with knowledge of the objective of the conspiracy, and that the parties acted for their shared mutual benefit, in violation of 18 U.S.C. § 371.

25. Mr. Nevins' conversations with UCE about the Bead Contract after receiving money from UCE, constituted a conflict of interest, in violation of 18 U.S.C. § 208(a).

The United States advises that it agrees (XX), disagrees (), or takes no position () that the facts stated herein are true and constitute a sufficient factual basis to support Mr. Nevins' plea. The United States would like the Court to consider additional facts in sentencing Mr. Nevins.

VI. GUIDELINE COMPUTATION

Mr. Nevins understands that sentencing is determined pursuant to 18 U.S.C. § 3553(a). In determining the particular sentence to be imposed, the Court is required to consider all of the 3553(a) 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

⁹ Mr. Nevins' conversations with UCE about the Bead Contract after accepting money from UCE, as referenced above, gave him a personal interest in the Bead Contract, a matter that he had previously participated in as a government employee, in violation of 18 U.S.C. § 208(a).

Court in this regard, the defense sets forth below its estimate of the advisory guideline range called for by the United States Sentencing Guidelines.

Defendant estimates the advisory guidelines apply as follows:¹⁰

A. The applicable guideline is § 2C1.1(a)(1), with a base offense level of **14** because Mr. Nevins was a public official who accepted a bribe.

B. Because all counts are connected by a common criminal objective and were part of a common scheme or plan, all counts group under § 3D1.2(b).

C. No specific offense characteristics apply.

D. The defense will argue that Mr. Nevins should receive a **two-level** Mitigating Role reduction pursuant to §3B1.2(b).

E. The adjusted offense level would be **12**.

F. Mr. Nevins should receive a **two-level** adjustment for acceptance of responsibility. The resulting total offense level would be **10**.

G. Mr. Nevins' criminal history category is Category **I**.

H. The advisory guideline range of imprisonment resulting from an offense level of **10** and a criminal history category of **I** is **6-12 months**.

I. Pursuant to guideline § 5E1.2, the fine range for this offense would be **\$5,500** to **\$55,000**, plus applicable interest and penalties.

¹⁰ The government estimates the guidelines differently. According to the government's estimate, Mr. Nevins would receive a two-level enhancement under USSG § 2C1.1(b)(1) and a 22-level enhancement under USSG § 2C1.1(b)(2). After acceptance of responsibility, the government believes that the guideline range would be 210-262 months.

J. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is less than three years.

The United States advises that it agrees (), disagrees (XX), or takes no position () with the guideline range calculated herein.

Mr. Nevins understands that although the Court will consider the above estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by any estimate calculated herein, even if agreed to by the government.

No estimate regarding the guideline range precludes defendant or the government from asking the Court, within the overall context of the guidelines, to depart from the guideline range at sentencing if defendant or the government believes a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate regarding the guideline range precludes Mr. Nevins or the government from asking the Court to vary from the advisory guidelines and to impose a non-guideline sentence based on 18 U.S.C. § 3553 factors.

Mr. Nevins understands the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose a 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.

Date: 9/19/19



DWANE NEVINS
Defendant

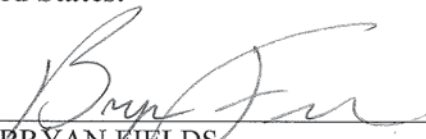
Date: 9/19/19



TIMOTHY P. O'HARA
Attorney for Defendant

As to matters agreed to by the United States:

Date: 9/19/19



BRYAN FIELDS
Assistant U.S. Attorney