United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. H-09- 071
	)	
KELLOGG BROWN & ROOT LLC,	)	
	)	
Defendant.	)	

JOINT MOTION TO WAIVE PRESENTENCE INVESTIGATION

The United States of America, by and through its undersigned attorneys, and the defendant, Kellogg Brown & Root LLC ("KBR"), by and through its undersigned attorneys, respectfully file this Joint Motion to Waive Presentence Investigation pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) and Criminal Local Rule 32.1.

The parties submit that the information contained in the record of this case, together with the agreed information included herein, are sufficient to enable the Court to exercise its sentencing authority under 18 U.S.C. § 3553 without the necessity of the preparation of a presentence investigation report.

I. The Presentence Report Should Be Waived

Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) permits the Court to sentence the corporate defendant in this matter without the preparation of a presentence report if the Court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553 and the Court explains this finding on the record. *See also* Criminal Local Rule 32.1. The parties submit that the information contained herein and the information to be proffered by the parties at sentencing satisfy the requirements of Rule 32(c)(1)(A)(ii) and allow the Court to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553. The following information is submitted as required by Criminal Local Rule 32.1.

A. Factual Summary of Defendant's Relevant Conduct

The Information alleges that the defendant conspired with persons known and unknown to violate the Foreign Corrupt Practices Act ("FCPA") and violated the FCPA by authorizing, promising, and making payments to Nigerian government officials in order to obtain four contracts, valued at over $6 billion, to build liquefied natural gas ("LNG") production facilities on Bonny Island, Nigeria (the "Bonny Island Project"). The defendant agrees to all the facts alleged in the Information and in the Statement of Facts attached as Exhibit 3 to the Plea Agreement.

Kellogg Brown & Root LLC is a wholly owned subsidiary of KBR, Inc., a publicly traded company incorporated in 2006. Kellogg Brown & Root LLC is the successor company to Kellogg Brown & Root, Inc. and, before that, to The M.W. Kellogg Company. Throughout this factual summary, "KBR" is used to refer to Kellogg Brown & Root LLC and its predecessor companies. KBR was engaged in the business of providing engineering, procurement, and construction ("EPC") services around the world, including designing and building LNG production plants. KBR was incorporated in Delaware and headquartered in Houston, Texas.

On September 3, 2008, the Court accepted the guilty plea of Albert Jackson Stanley ("Stanley"), the defendant in United States v. Albert Jackson Stanley, Cr. No. 08-597. Stanley served in various capacities as an officer and/or director of KBR, including as President from in or about June 1995 until in or about 1997, Chief Executive Officer from in or about 1997 until in or about March 2001, and Chairman from in or about April 2001 until in or about June 2004. Stanley was one of the executives at KBR with responsibility for obtaining the EPC contracts to design and build the Bonny Island Project. One of the counts to which Stanley pleaded guilty charged a conspiracy to violate the FCPA, in violation of 18 U.S.C. § 371. The conspiracy to which Stanley pleaded guilty is the same conspiracy with which KBR is charged in Count One of the Information.

The "Joint Venture" was a four-company joint venture formed in 1991 for the purposes of bidding on and, if successful, performing a series of EPC contracts to design and build the Bonny Island Project. The Joint Venture consisted of KBR and three other companies. The Steering Committee of the Joint Venture consisted of high-level executives from each of the four joint venture companies, including Stanley on behalf of KBR. Pursuant to a joint venture agreement, the Steering Committee made major decisions on behalf of the Joint Venture, including whether to hire agents to assist the Joint Venture in winning EPC contracts, whom to hire as agents, and how much to pay the agents.

"Consultant A" was a citizen of the United Kingdom and a resident of London, England. The Joint Venture hired Consultant A to help it obtain business in Nigeria, including by offering to pay and paying bribes to high-level Nigerian government officials. "Consulting Company A" was a Gibraltar corporation that Consultant A used as a corporate vehicle to enter into agent contracts with and receive payments from the Joint Venture. The Joint Venture paid Consulting Company A over $130 million, via wire transfers to bank accounts in Switzerland and Monaco, for use in bribing Nigerian government officials.

"Consulting Company B" was a global trading company headquartered in Tokyo, Japan. The Joint Venture hired Consulting Company B to help it obtain business in Nigeria, including by offering to pay and paying bribes to Nigerian government officials. The Joint Venture paid Consulting Company B over $50 million for use in bribing Nigerian government officials.

Nigeria LNG Limited ("NLNG") was created by the Nigerian government to develop the Bonny Island Project and was the entity that awarded the related EPC contracts. The largest shareholder of NLNG was the government-owned Nigerian National Petroleum Corporation ("NNPC"), which owned 49% of NLNG. Through the NLNG board members appointed by NNPC, among other means, the Nigerian government exercised control over NLNG, including but not limited to the ability to block the award of EPC contracts.

From at least in or around August 1994, through in or around June 2004, KBR and its co-conspirators participated in a scheme to authorize, promise, and pay bribes to Nigerian government officials, including officials of the executive branch of the Government of Nigeria, officials of NNPC, officials of NLNG, and others, in order to secure the Nigerian government officials' assistance in obtaining and retaining business related to the Bonny Island Project. The benefit that KBR received in return for the unlawful payments was $235.5 million.

In 1994, 1999, 2001, and 2002, KBR authorized the hiring of Consultant A and Consulting Company A by the Joint Venture, intending that Consultant A and Consulting Company A would pay bribes to high-level Nigerian government officials to assist the Joint Venture, KBR, and others in winning the EPC contracts to build the Bonny Island Project. In 1996, 1999, and 2001, KBR also authorized the hiring of Consulting Company B by the Joint Venture, intending that Consulting Company B would pay bribes to lower level Nigerian government officials to assist the Joint Venture, KBR, and others in winning the EPC contracts to build the Bonny Island Project. Stanley, other officers and employees of KBR, and their co-conspirators caused the Joint Venture to execute consulting contracts with Consulting Company A and Consulting Company B providing for the payment of tens of millions of dollars in consulting fees in exchange for vaguely described marketing and advisory services, when in fact the primary purpose of the contracts was to facilitate the payment of bribes on behalf of the Joint Venture and its members to Nigerian government officials.

At crucial junctures in the life of the Bonny Island Project, Stanley and others met with three successive holders of a top-level office in the executive branch of the Government of Nigeria to ask the office holder to designate a representative with whom the Joint Venture should negotiate bribes to Nigerian government officials. Stanley and others subsequently negotiated with the office holders' representatives regarding the amount of the bribes that the Joint Venture would pay to the Nigerian government officials. On behalf of the Joint Venture and the four joint venture companies, Consultant A wire transferred bribe payments to or for the benefit of various Nigerian government officials, including officials of the executive branch of the Government of Nigeria, NNPC, and NLNG, and for the benefit of a political party in Nigeria.

B. Defendant's Criminal History

The defendant does not have any prior convictions.

C. Guidelines Calculation

The parties agree that a faithful application of the United States Sentencing Guidelines (USSG) to determine the applicable fine range yields the following analysis:

1. The 2003 USSG Manual sets forth the appropriate guidelines to be used in this matter.

2. Base Fine: Based upon USSG § 8C2.4(b) and USSG § 2C1.1(d)(1)(B), the base fine is $235.5 million, which corresponds to the value of the benefit that KBR received in return for the unlawful payments.

3. Culpability Score: Based upon USSG § 8C2.5, the culpability score is 8, summarized as follows:

(a)	Base Culpability Score	5
(b)(1)(A)	The organization had 5,000 or more employees and individuals within high-level personnel participated in, condoned, or were willfully ignorant of the offense and tolerance of the offense by substantial authority personnel was pervasive throughout the organization	5
(g)	The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for criminal conduct	-2
	Total	8

4. Calculation of Fine Range:

Base Fine	$235.5 million
Multipliers (§ 8C2.6)	1.6/ 3.2
Fine Range (§ 8C2.7)	$376.8 million/$753.6 million

D. Fine and Organizational Probation

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the following represents the appropriate disposition of the case:

1. Fine. The parties agree that the imposition of a fine in the amount of $402 million is appropriate in this case. The parties request that the Court exercise its authority under 18 U.S.C. § 3572(d) to order that this

fine amount be paid in installments as follows: $52 million within five (5) business days after the imposition of sentence in this matter; and seven installments of $50 million, each due on the first day of each quarter beginning April 1, 2009, and ending October 1, 2010.

2. Organizational Probation. The parties agree that a three-year term of organizational probation is appropriate in this case and shall include, as a condition of probation, the retention of an independent corporate monitor as described in Exhibit 2 of the Plea Agreement, as well as any other conditions ordered by the Court.

Respectfully submitted,

FOR THE UNITED STATES:

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