



U.S. Department of Justice

United States Attorney

District of Vermont

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December 16, 2020

Mark P. Goodman
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Michael J. Connolly
Hinckley Allen & Snyder LLP
28 State Street
Boston, Massachusetts 02109-1775

Re: Schneider Electric Buildings Americas, Inc. Criminal Investigation

Dear Messrs. Goodman and Connolly:

The United States of America, through its attorney Christina E. Nolan, United States Attorney for the District of Vermont (the "USAO"), and Schneider Electric Buildings Americas, Inc. ("SEBA"), hereby enter into this Non-Prosecution Agreement (the "Agreement"). The Agreement includes the terms and obligations described below.

1. The USAO and SEBA enter into this Agreement based on the individual facts and circumstances presented by this case, including:

(a) SEBA did not fully cooperate and thus received partial cooperation credit. SEBA did not receive full cooperation credit because it did not:

- (i) Timely accept responsibility for its conduct described in the Statement of Facts attached hereto as Attachment A ("Statement of Facts") and thus imposed significant costs on the Government to investigate the conduct and prepare the matter for prosecution;
- (ii) Voluntarily disclose any violation relating to either its civil or criminal

conduct in connection with its resolution with DOJ, including with regard to the IGA cost allocation scheme described in the Statement of Facts;

- (iii) Identify any individuals substantially involved in or responsible for the misconduct at issue that were not already known to the USAO, with the exception of the employee who falsified a document at the direction of Bhaskar Patel, as described above;
 - (iv) Calculate the loss amounts associated with the IGA cost allocation scheme;
- (b) SEBA partially cooperated and received partial cooperation credit because it:
- (i) Voluntarily disclosed findings from its internal investigation in connection with Bhaskar Patel's criminal conduct;
 - (ii) Voluntarily disclosed information about the falsification of a record by a SEBA employee, at the direction of Bhaskar Patel and in furtherance of his kickback scheme, when that information was not known to the USAO;
 - (iii) Timely produced more than 1.9 million pages of documents, before the documents were reviewed by SEBA's counsel in order to accommodate the pace of the Government investigation;
 - (iv) Cooperated with the Government's requirements for documentary evidence and the parties did not require any meet and confer conferences to resolve any production disputes or issues;
 - (v) Voluntarily provided a company employee to explain its ESPC program and related record keeping practices; and promptly provided accurate information informally requested by the Government.

(c) The USAO is willing to enter into the agreement, as opposed to litigating SEBA's criminal exposure, because:

- (i) SEBA engaged in extensive remedial measures, including enhancing its compliance program and internal controls designed to detect and deter fraudulent and corrupt conduct through, among other things:
 - Revising its policies and procedures to create redundancy in the subcontractor bid review, bid normalization, bid revision, subcontractor selection and savings and cost review processes. These revisions specifically address and correct the circumstances that allowed a single employee to control the subcontractor selection process and obtain kickbacks from certain subcontractors

by requiring that three employees from different management levels and two different organizational lines are involved in all aspects of the procurement lifecycle to include solicitation of proposed vendors and subcontractors, negotiations on price, source selection, and issuance of awards;

- Requiring its employees to undergo additional trainings and pass assessments specific to federal contracting that cover: ethical conduct in government contracting; relevant FAR provisions; the Anti-Kickback Act; the False Claims Act; Mail/Wire Fraud and Theft/Bribery statutes; solicitation and bidding; subcontracting requirements; change orders and requests for equitable adjustments; intentionally “making up” for previously rejected changes; false pricing and cost data; and improper allocation of equipment costs;
 - Creating and implementing a Subcontractor Selection and Improvement initiative pursuant to which it (i) trains its subcontractors on applicable FAR provisions, related ethics issues, and its ethics hotline for outside stakeholders to report unethical behavior by Schneider employees, and (ii) changed the language in its subcontractor bid solicitation and contracts to incorporate Schneider’s ethical principles, and its internal and external ethics hotlines; and
- (ii) SEBA terminated two employees responsible for the misconduct and admonished two additional employees involved in the misconduct described in the Statement of Facts and no longer does business with the subcontractors involved in the payment of kickbacks to a SEBA employee;
 - (iii) The nature and seriousness of the offense conduct, including the adverse impact on procurement integrity in government contracting;
 - (iv) SEBA has no prior criminal history; and
 - (v) SEBA voluntarily made employees available for interviews; and
 - (vi) SEBA has agreed to continue to cooperate with the USAO in any ongoing investigation relating to the conduct described in the Statement of Facts.

2. SEBA admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the attached Statement of Facts, and that the facts described therein are true and accurate. SEBA also admits, accepts, and acknowledges that the facts described in the attached Statement of Facts constitute a

violation of law, specifically violations of the Anti-Kickback Act, Title 41, United States Code, Section 8707, and wire fraud, in violation of Title 18, United States Code, Section 1343.

3. SEBA expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for SEBA make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by SEBA set forth above or in the facts described in the Statement of Facts.

4. SEBA's obligations under this Agreement shall have a term of three (3) years from the date on which the Agreement is executed (the "Term"). SEBA agrees, however, that, in the event the USAO determines, in its sole discretion, that SEBA has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of its obligations under this Agreement, an extension or extensions of the Term may be imposed by the USAO, in its sole discretion, for up to a total additional time period of one year, without prejudice to the USAO's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends to all terms of this Agreement, for an equivalent period. Conversely, in the event the USAO finds, in its sole discretion, that there exists a change in circumstances sufficient to determine that the provisions of this Agreement have been satisfied, the Agreement may be terminated early.

5. SEBA shall cooperate fully with the USAO in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the USAO at any time during the Term, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the conclusion of the term. SEBA's cooperation pursuant to this Paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or the attorney work product doctrine. SEBA agrees that its cooperation shall include, but not be limited to, the following:

(a) SEBA shall truthfully disclose all factual information with respect to its activities, those of its subsidiaries and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which SEBA has any knowledge or about which the USAO may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of SEBA to provide to the USAO, upon request, any document, record, or other tangible evidence about which the USAO may inquire of SEBA, subject to valid claims of attorney-client privilege or the attorney work product doctrine.

(b) Upon request of the USAO, SEBA shall designate knowledgeable employees, agents, or attorneys to provide to the USAO the information and materials described above on behalf of SEBA. It is further understood that SEBA must at all times provide complete, truthful, and accurate information.

(c) SEBA shall use its best efforts to make available for interviews or testimony, as requested by the USAO, present or former officers, directors, employees, agents, and consultants

of SEBA. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of SEBA, may have material information regarding the matters under investigation.

(d) With respect to any information, testimony, documents, records, or other tangible evidence provided to the USAO pursuant to this Agreement, SEBA consents to any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the USAO, in its sole discretion, shall deem appropriate.

(e) In addition, during the Term, should SEBA learn of any evidence or allegation of a violation of U.S. fraud, anti-corruption, procurement integrity, or anti-kickback laws, SEBA shall promptly report such evidence or allegation to the USAO. On the date that the Term expires, SEBA, by the Board of Directors of SEBA, will certify to the USAO that SEBA has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by SEBA to the executive branch of the United States for purposes of 18 U.S.C. §§ 1001 and 1519.

6. SEBA represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of U.S. fraud, anti-corruption, procurement integrity, and anti-kickback laws throughout its operations, including with respect to its subsidiaries, affiliates, agents, and joint ventures (to the extent that SEBA manages or controls such joint ventures), and those of their contractors and subcontractors including, but not limited to, the minimum elements set forth in Attachment B (Corporate Compliance Program). In addition, SEBA agrees that it will report to the USAO annually during the Term regarding remediation and implementation of the compliance measures described in Attachment B.

7. In order to address any deficiencies in its internal controls, policies, and procedures, SEBA represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding compliance with U.S. fraud, anti-corruption, procurement integrity, and anti-kickback laws. Where necessary and appropriate, SEBA agrees to modify its existing compliance program in order to ensure that it maintains a rigorous compliance program that incorporates relevant internal controls, as well as policies and procedures, designed to effectively detect and deter violations of U.S. fraud, anti-corruption, procurement integrity, and anti-kickback laws. The compliance program, will include, but not be limited to, the minimum elements set forth in Attachment B.

8. SEBA agrees to pay a criminal forfeiture in the amount of \$1,630,700.00 no later than thirty (30) business days after the Agreement is fully executed, pursuant to payment instructions to be provided by the USAO. SEBA shall not seek or accept directly or indirectly

reimbursement or indemnification from any source other than Schneider with regard to the monetary penalty it pays pursuant to this Agreement.

9. The USAO agrees, except as provided herein, that it will not bring any criminal case against SEBA, or any of their present or former subsidiaries, parent companies or affiliates relating to any of the conduct described in the attached Statement of Facts. To the extent there is conduct disclosed by SEBA that does not relate to any of the conduct described in the Statement of Facts, such conduct will not be exempt from prosecution and is not within the scope of this Agreement. The USAO, however, may use any information related to the conduct described in the Statement of Facts against SEBA: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; (d) in a prosecution or other proceeding against any current or former SEBA employee and/or third parties; or (e) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by SEBA, or any of its present or former subsidiaries, parent companies or affiliates. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with SEBA or any of its present or former parents, subsidiaries or affiliates.

10. If, during the Term of this Agreement, SEBA: (a) commits any felony under U.S. federal law; (b) provides deliberately false or misleading information in connection with this Agreement, including in connection with its disclosure of information about individual culpability; (c) fails to cooperate as set forth in this Agreement; (d) fails to remediate, upon notice from the USAO, any deficiencies in its compliance program as set forth in this Agreement and Attachment B; or (e) fails to completely perform or fulfill each of its obligations under the Agreement, SEBA and its subsidiaries and affiliates shall thereafter be subject to prosecution for any federal criminal violation of which the USAO has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts. Any such criminal conduct may be pursued by the USAO in the U.S. District Court for the District of Vermont or any other appropriate venue. SEBA consents to venue in the District of Vermont in connection with any such prosecution and to the admissibility of the Statement of Facts. Any such prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the USAO prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against SEBA or its subsidiaries or affiliates, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, SEBA agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, SEBA agrees that the statute of limitations as to any violation of U.S. fraud, anti-corruption, procurement integrity, or anti-kickback laws that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the USAO is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the

statute of limitations.

11. In the event the USAO determines that SEBA has breached this Agreement, the USAO agrees to provide SEBA with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, SEBA shall have the opportunity to respond to the USAO in writing to explain the nature and circumstances of such breach, as well as the actions SEBA has taken to address and remediate the situation, which explanation the USAO shall consider in determining whether to pursue prosecution of SEBA or its subsidiaries or affiliates.

12. Except as may otherwise be agreed by the parties in connection with a particular transaction, SEBA agrees that in the event that, during the Term, it were to sell, merge, or transfer to a third party business operations that are material to SEBA's consolidated operations, as it exists as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the USAO's ability to determine a breach under this Agreement is applicable in full force to that entity. SEBA agrees that the failure to include these provisions in the transaction will make any such transaction null and void. SEBA shall provide notice to the USAO at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If the USAO notifies SEBA prior to such transaction (or series of transactions) that it has determined that the transaction(s) has the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of the USAO, SEBA agrees that such transaction(s) shall not be consummated. In addition, if at any time during the Term SEBA engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the USAO may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict SEBA from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the USAO. Notwithstanding anything to the contrary in this Agreement, SEBA may transfer its business operations or subsidiaries to an affiliate of SEBA, as part of normal course optimization.

13. This Agreement is binding on SEBA and the USAO but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the USAO will bring the cooperation of SEBA and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by SEBA.

14. It is further understood that SEBA and the USAO may disclose this Agreement to the

public.


15. This Agreement sets forth all the terms of the agreement between SEBA and the USAO. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the USAO, the attorneys for SEBA, and duly authorized representatives of SEBA.

Sincerely,

CHRISTINA E. NOLAN
United States Attorney
District of Vermont

Date: 12-16-20

By:

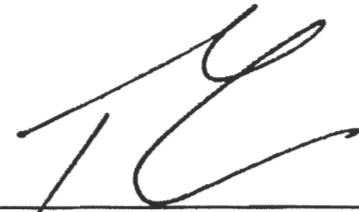

Owen C.J. Foster
Michael P. Drescher
Assistant United States Attorneys
District of Vermont

AGREED AND CONSENTED TO:

Date:

12/16/20

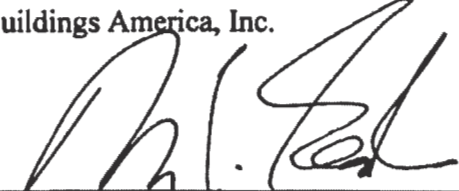
By:


Peter Wexler
Senior Vice President and Chief Legal &
Compliance Officer
Schneider Electric SE
For: Schneider Electric SE and Schneider Electric
Buildings America, Inc.

Date:

12/16/20

By:


DEBEVOISE & PLIMPTON LLP
By: Mark P. Goodman
Counsel for Schneider Electric SE and
Schneider Electric Buildings Americas, Inc.

Date: 12/16/20



By: _____
HINCKLEY ALLEN & SNYDER LLP
By: Michael J. Connolly
Counsel for Schneider Electric SE and Schneider
Electric Buildings Americas, Inc.