



U.S. Department of Justice

Criminal Division

Fraud Section

*Bond Building
1400 New York Avenue, N.W.
Washington, D.C. 20005*

December 20, 2012

Stephen R. Spivack, Esq.
Bradley Arant Boult Cummings LLP
1615 L Street, N.W.
Suite 1350
Washington, D.C. 20036

Re: Caddell Construction Co., Inc.

Dear Counsel:

On the understandings specified below, the United States Department of Justice, Criminal Division, Fraud Section (the "Department") will not criminally prosecute Caddell Construction Co., Inc. (the "Company"), a corporation organized under the laws of Alabama and headquartered in Montgomery, Alabama, for any crimes (except for criminal tax violations, as to which the Department does not make any agreement) arising from and related to the Company's requests for payments from the Department of Defense pursuant to the Company's contractual relationship with Mountain Chief Management Services in the Mentor-Protégé and Indian Incentive Programs, as described in Appendix A attached hereto, which is incorporated herein by reference, or any conduct the Company specifically disclosed to the Department in meetings during its voluntary disclosures from December 7, 2011, to May 24, 2012.

The Department enters into this Non-Prosecution Agreement based, in part, on the Company's substantial cooperation with the Department and the Company's remedial efforts already undertaken and to be undertaken, including improving reporting systems, corporate governance, and compliance training and oversight.

It is understood that the Company admits, accepts, and acknowledges responsibility for the conduct set forth in Appendix A and agrees not to make any public statement contradicting Appendix A.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to the Company and not to any other entities or to any individuals. The Company expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. The Company agrees that in the event

the Company sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, the Company shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement.

This Agreement shall have a term of two (2) years from the date that this Agreement is executed, except as specifically provided in the following paragraph. It is understood that for the two-year term of this Agreement, the Company shall: (a) commit no U.S. crime; (b) truthfully and completely disclose non-privileged information with respect to the activities of the Company, its officers, directors, employees, and others concerning all matters about which the Department inquires of it, which information can be used for any purpose, except as otherwise limited in this Agreement; and (c) bring to the Department's attention all conduct by, or criminal investigations of, the Company, any of its employees, relating to U.S. crimes that come to the attention of the Company's senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges fraud or corruption by or against the Company.

Until the date upon which all investigations and any prosecution arising out of the conduct described in this Agreement are concluded, whether or not they are concluded within the two-year term of this Agreement, the Company shall, with respect to these matters and subject to applicable laws or regulations: (a) cooperate fully with the Department and any law enforcement agency designated by the Department; (b) assist the Department in any investigation or prosecution by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, director, agent, or employee of the Company at any meeting or interview or before the grand jury or at any trial or other court proceeding; and (d) provide the Department, upon request, all non-privileged information, documents, records, or other tangible evidence about which the Department or any designated law enforcement agency inquires.

It is understood that, if the Department in its sole discretion determines that the Company has committed any U.S. crime after signing this Agreement, that the Company has deliberately given false, incomplete, or misleading testimony or information at any time, or the Company otherwise has violated any provision of this Agreement, the Company shall thereafter be subject to prosecution for any violation of federal law of which the Department has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date that this Agreement is executed may be commenced against the Company, notwithstanding the expiration of the statute of limitations during the term of this Agreement plus one year. Thus, by signing this agreement, the Company agrees that the statute of limitations with respect to any prosecution that is not time-barred as of the date this Agreement is executed shall be tolled for the term of this Agreement plus one year.

It is understood that, if the Department in its sole discretion determines that the Company has committed any U.S. crime after signing this Agreement, that the Company has given false, incomplete, or misleading testimony or information, or that the Company otherwise has violated

any provision of this Agreement: (a) all statements made by the Company to the Department or other designated law enforcement agents, including Appendix A hereto, and any testimony given by the Company before a grand jury or other tribunal, whether before or after the execution of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against the Company; and (b) the Company shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom are inadmissible or should be suppressed. By signing this Agreement, the Company waives all rights in the foregoing respects.

In the event that the Department determines that the Company has breached this Agreement, the Department agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. The Company shall, within thirty (30) days of receipt of such notice, have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Department shall consider in determining whether to institute a prosecution.

It is understood that the Company has agreed to pay a monetary penalty of \$2 million. The Company agrees to pay this sum to the United States Treasury within ten days of executing this Agreement. The Company acknowledges that no tax deduction may be sought in connection with this payment.

It is further understood that this Agreement does not bind any federal, state, local, or foreign prosecuting authority other than the Department. The Department will, however, bring the cooperation of the Company to the attention of other prosecuting and investigative offices, if requested by the Company.

It is further understood that the Company and the Department may disclose this Agreement to the public.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between the Department and the Company. No additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

Sincerely,

DENIS J. McINERNEY
Chief, Fraud Section

Date: 12/27/12

BY:


Albert B. Stieglitz, Jr.
Assistant Chief



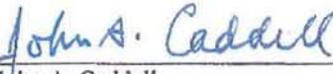
Thomas B.W. Hall
Trial Attorney

AGREED AND CONSENTED TO:

CADDELL CONSTRUCTION CO., INC.

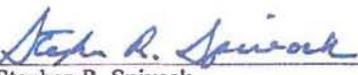
Date: 12-20-12

BY:


John A. Caddell
Chairman of the Board
Caddell Construction Co., Inc.

Date: 12/21/12

BY:


Stephen R. Spivack
Bradley Arant Boult Cummings LLP
Counsel to Caddell Construction Co., Inc.

APPENDIX A

STATEMENT OF FACTS

This Statement of Facts is incorporated by reference as part of the non-prosecution agreement, dated December 20, 2012, between the United States Department of Justice, Criminal Division, Fraud Section (the "Department") and Caddell Construction Co., Inc. (the "Company"). The Department and the Company agree that the following facts are true and correct:

Background: Individuals, Entities, and Programs

I. At all times relevant to the events described herein:

a. The Company was from 2003 to 2005, and is today a major commercial and industrial federal government construction contractor with corporate headquarters in Montgomery, Alabama. The Company has served as a prime contractor for many major design and build contracts for the United States government, both domestically and internationally, including contracts with the United States Department of Defense ("Defense Department"), the United States General Services Administration, the United States Department of State, the United States Department of Energy, and the Federal Bureau of Prisons, all of which are agencies of the executive branch of the United States government.

b. The Company employed, among others, Mark L. Hill in its Montgomery headquarters. Hill used or held various titles at different times, including Mentor-Protégé Program Coordinator, Estimator, and Director of Business Development-Industrial.

c. The Company also employed, among others, Executive A, who supervised Hill and whose employment with the Company terminated on or about March 15, 2012.

d. Mountain Chief Management Services ("Mountain Chief") was a construction services company that, at various times, had business addresses in Babb, Montana, and Crofton, Maryland. Among other things, Mountain Chief was certified by the United States government as a Small Disadvantaged Business and an Indian-owned business.

e. Daniel W. Chattin, the son of the founder and president of Mountain Chief, worked on behalf of Mountain Chief in a variety of capacities, including project manager and consultant. His responsibilities included, but were not limited to, management and business development.

f. The Defense Department administered certain programs designed to provide incentives for major Defense Department contractors to engage small disadvantaged businesses and minority-owned businesses as subcontractors and suppliers under Defense Department contracts and other contracts and subcontracts in order to increase the participation of those small business concerns as subcontractors and suppliers under Defense Department contracts, other

federal government contracts, and commercial contracts. Two such programs were the Mentor-Protégé Program and the Indian Incentive Program.

g. The Mentor-Protégé Program provided incentives for major Defense Department contractors ("mentor firms") to contract with and help develop disadvantaged small business concerns ("protégé firms"). Under the Mentor-Protégé Program, the Defense Department reimbursed the mentor firm for costs the mentor firm incurred providing developmental assistance to its protégé firm. In addition to the requests sent to the Defense Department by the mentor firm for reimbursement of those costs, the mentor firm was required to report semiannually on the progress made under the mentor-protégé agreement and, among other things, describe the developmental assistance it had provided to the protégé firm, the number of employees working for the protégé firm, and the protégé firm's gross revenue.

h. The Indian Incentive Program was designed to provide incentives to prime government contractors to use Indian-owned businesses as subcontractors, to maximize the opportunity for such businesses to participate in performing contracts awarded by federal agencies. Under the Indian Incentive Program, the Defense Department paid prime contractors five percent (5%) of the amount those prime contractors paid to an Indian-owned subcontractor performing a subcontract on a Defense Department contract.

The Company's Participation in the Mentor-Protégé Program with Mountain Chief

2. In or about February 2003, the Company entered into a mentor-protégé agreement ("the agreement") with Mountain Chief. The agreement outlined specific areas of developmental assistance that the Company would provide to Mountain Chief in connection with two contracts which the Company had been awarded by the Defense Department for construction projects at Fort Bragg, North Carolina ("the Fort Bragg contracts"). Each of the Fort Bragg contracts had a value of more than \$65 million. The Company submitted the agreement to the Defense Department, and the Defense Department approved the Company's participation in the Mentor-Protégé Program.

3. Pursuant to the agreement, from in or about February 2004 through in or about March 2005, the Company submitted in excess of 20 requests to the Defense Department seeking payments under the Fort Bragg contracts. As Hill and other Company executives at the Company knew, those requests claimed, among other things, that the Company had incurred costs that were eligible for reimbursement under the Mentor-Protégé Program, that is, costs for providing developmental assistance to Mountain Chief. Specifically, the requests included individual and summary timesheets for certain employees of the Company, purporting to show the hours those employees spent providing a variety of types of developmental assistance to Mountain Chief. In fact, as Hill and Company Executive A knew, the payment requests significantly overstated the amount of developmental assistance that the Company had provided to Mountain Chief.

4. From in or about February 2004 through in or about March 2005, the Company also submitted documents reporting on Mountain Chief's development as a protégé company ("the

Semi-Annual Reports”) to the Defense Department. Hill and other Company executives knew that Mountain Chief was a small company with few employees. Nevertheless, the Semi-Annual Reports falsely claimed that Mountain Chief had over 40 employees and over \$18,000,000 in annual gross revenues, despite the fact that, as Hill and Executive A knew, Mountain Chief did not have over 40 employees and over \$18,000,000 in annual gross revenues. In addition, the Semi-Annual Reports falsely claimed that Mountain Chief had realized or was in the process of achieving certain technical capabilities and business infrastructure. In fact, as Hill and Company Executive A knew, Mountain Chief neither achieved nor was in the process of achieving the capabilities or infrastructure identified in the Semi-Annual Reports.

5. In or about January 2010, an official from the Defense Department’s Army Office of Small Business Programs (“the Official”) contacted the Company with questions about the information the Company reported to the Defense Department pursuant to the Mentor-Protégé Program. Hill returned the Official’s call and answered the Official’s questions about the relationship between the Company and Mountain Chief and certain representations that appeared in the Semi-Annual Reports. During the call, Hill told the Official that to the best of his knowledge, Mountain Chief had received the full amount of training in the technology areas listed in the Semi-Annual Reports. As Hill knew, however, Mountain Chief had not received the full amount of the training represented in the Semi-Annual Reports.

The Company’s Participation in the Indian Incentive Program with Mountain Chief

6. From in or about April 2003 through in or about October 2004, the Company submitted at least eight requests to the Defense Department for Indian Incentive Program payments in connection with the two Fort Bragg contracts, as well as with a third Defense Department contract awarded to the Company at Fort Campbell, Kentucky, which had a value of approximately \$34 million.

7. In these payment requests and in other oral representations, as Hill and at least one other Company executive knew, the Company represented to the Defense Department that Mountain Chief had performed on its subcontracts, and provided the Defense Department with evidence of that performance in the form of invoices from Mountain Chief “for services rendered” over a specified time period. As Hill and Company Executive A knew, however, Mountain Chief performed few, if any “services” for Caddell, and the invoices were created solely to support Caddell’s applications for payments under the Indian Incentive Program.

8. The Company obtained approximately \$1.2 million from the United States under the Mentor-Protégé and Indian Incentive Programs.