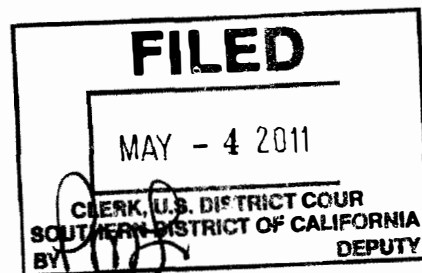


ORIGINAL



1 LAURA E. DUFFY
United States Attorney
2 ANNALOU TIROL
Assistant U.S. Attorney
3 California State Bar No. 216578
Federal Office Building
4 880 Front Street, Room 6293
San Diego, California 92101-8893
5 Telephone: (619) 557-7611
Facsimile: (619) 557-7055
6 Email: AnnaLou.Tirol@usdoj.gov

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No. 11CR1622-JAH
11 Plaintiff,)
12 v.) DEFERRED PROSECUTION AGREEMENT
13 MACKENZIE AIRCRAFT)
PARTS, INC.)
14 Defendant.)
15)

16 The United States, by and through the United States
17 Attorney's Office for the Southern District of California (the
18 "United States") and defendant Mackenzie Aircraft Parts, Inc., a
19 California corporation, ("Mackenzie"), by its undersigned
20 representatives and attorneys, enter into this deferred prosecution
21 agreement (the "Agreement"). The terms and conditions of this
22 Agreement are as follows:

Criminal Information and Acceptance of Responsibility

24 1. MacKenzie acknowledges and agrees that the United States
25 will file a one-count Criminal Information in the United States
26 District Court for the Southern District of California charging
27 Mackenzie with Fraud Involving Aircraft Parts, in violation of
28 Title 18, United States Code, Section 38. In so doing, MacKenzie

1 knowingly waives: (a) any right to indictment on these charges, as
2 well as all rights to a speedy trial pursuant to the Sixth
3 Amendment to the United States Constitution, Title 18, United
4 States Code, Section 3161, and Federal Rule of Criminal Procedure
5 48(b); and (b) any objection with respect to venue. MacKenzie
6 consents to the filing of this information, as provided under the
7 terms of this Agreement, in the United States District Court for
8 the Southern District of California.

9 2. MacKenzie admits the facts, and acknowledges that it is
10 responsible for the actions of its officers, employees, subsidiaries,
11 and agents as charged in the Information and the Statement of
12 Facts, attached hereto as Exhibit A, which is incorporated by
13 reference into this Agreement, and that the allegations described
14 in the Information and the Statement of Facts described in Attachment A are true
15 and accurate. Should the United States pursue the prosecution that
16 is deferred by this Agreement, MacKenzie agrees that it will
17 neither contest the veracity of nor contradict the facts as
18 stated in the Information and the Statement of Facts in any such
19 proceeding, including any guilty plea or sentencing proceeding.

20 Term of the Agreement

21 3. This Agreement is effective for a period beginning on the
22 date on which the Information is filed and ending one (1) year from
23 that date (the "Term").

24 Relevant Considerations

25 4. The United States enters into this Agreement based on the
26 individual facts and circumstances presented by this case and
27 MacKenzie. Among the factors considered were: (a) MacKenzie
28 cooperated with the United States' investigation of MacKenzie and

1 others; (b) MacKenzie undertook remedial measures, including the
2 implementation of training and an enhanced compliance program; (c)
3 MacKenzie agreed to continue to cooperate with the United States
4 in any ongoing investigation of the conduct of MacKenzie and its
5 employees, agents, consultants, contractors, subcontractors,
6 subsidiaries, and others; (d) MacKenzie's lack of prior history of
7 citations or convictions involving similar conduct; and (e) the
8 impact on MacKenzie, including collateral consequences to its
9 employees, of a guilty plea or criminal conviction.

10 5. MacKenzie shall continue to cooperate fully with the
11 United States in any and all matters relating to fraud involving
12 aircraft parts. At the United States' request, MacKenzie shall
13 also cooperate fully with the United States, the United States
14 Department of Defense, and other law enforcement authorities and
15 agencies in any investigation of MacKenzie, or any of its present
16 and former officers, directors, employees, agents, consultants,
17 contractors, subcontractors, and subsidiaries, or any other party,
18 in any and all matters relating fraud involving aircraft parts.
19 MacKenzie agrees that its cooperation shall include, but is not
20 limited to, the following:

21 a. MacKenzie shall truthfully disclose all factual
22 information not protected by a valid claim of attorney-client
23 privilege or work-product doctrine with respect to its activities
24 and those of its present and former directors, officers, employees,
25 agents, consultants, contractors, subcontractors, and subsidiaries
26 concerning all matters relating to fraud involving aircraft parts,
27 about which MacKenzie has any knowledge or about which the United
28 States may inquire. This obligation of truthful disclosure

1 includes the obligation of MacKenzie to provide to the United
2 States, upon request, any document, record or other tangible
3 evidence relating to such fraud about which the United States may
4 inquire of MacKenzie.

5 b. Upon request of the United States, with respect to
6 any issue relevant to its investigation of fraud involving aircraft
7 parts, MacKenzie shall designate knowledgeable employees, agents
8 or attorneys to provide to the United States the information and
9 materials described in Paragraph 5(a) above, on MacKenzie's behalf.

10 It is further understood that MacKenzie must at all times provide
11 complete, truthful, and accurate information.

12 c. With respect to any issue relevant to the United
13 States' investigation of fraud involving aircraft parts in
14 connection with MacKenzie's operations, or any of its present or
15 former subsidiaries or affiliates, MacKenzie shall use its best
16 efforts to make available for interviews or testimony, as requested
17 by the United States, present or former officers, directors,
18 employees, agents and consultants of MacKenzie, as well as the
19 officers, directors, employees, agents and consultants of
20 contractors and subcontractors. This obligation includes, but is
21 not limited to, sworn testimony before a federal grand jury or in
22 federal trials, as well as interviews with federal law enforcement
23 and regulatory authorities. Cooperation under this Paragraph shall
24 include identification of witnesses who, to MacKenzie's knowledge,
25 may have material information regarding the matters under
26 investigation.

27 d. With respect to any information, testimony,
28 documents, records or other tangible evidence provided to the

1 United States pursuant to this Agreement, MacKenzie consents to any
2 and all disclosures to other governmental authorities, including
3 United States authorities, of such materials as the United States,
4 in its sole discretion, shall deem appropriate.

5 **Payment of Monetary Penalty**

6 6. The United States and MacKenzie agree that, in
7 recognition of, among other considerations, MacKenzie's cooperation
8 with the United States' investigation, its commitments in this
9 Agreement, and the civil settlement agreement MacKenzie has entered
10 into with the United States whereby MacKenzie has paid a settlement
11 amount of \$300,000, no monetary penalty will be imposed under this
12 Agreement.

13 7. However, nothing in this Agreement shall be deemed an
14 agreement by the United States that no penalty may be imposed in
15 any future prosecution. In the event of a future prosecution, the
16 United States is not precluded from arguing that the Court should
17 impose a criminal fine, and the parties have no agreement as to the
18 recommended fine range to be calculated pursuant to the Sentencing
19 Guidelines.

20 **Conditional Release from Criminal Liability**

21 8. In return for MacKenzie's full and truthful cooperation,
22 and its compliance with the terms and conditions of this Agreement,
23 the United States agrees, subject to paragraphs 12 through 15,
24 below, not to use any information related to the conduct described
25 in the Statement of Facts, attached hereto as Exhibit A, against
26 MacKenzie or any of its wholly owned or controlled subsidiaries in
27 any criminal or civil case, except: (a) in a prosecution for
28 perjury or obstruction of justice; (b) in a prosecution for making

1 a false statement; (c) in a prosecution or other proceeding
2 relating to any crime of violence; or (d) in a prosecution or other
3 proceeding relating to a violation of any provision of Title 26 of
4 the United States Code. In addition, the United States agrees,
5 except as provided herein, that it will not bring any criminal case
6 against MacKenzie or any of its wholly-owned or controlled
7 subsidiaries related to the conduct of present and former officers,
8 directors, employees, agents, consultants, contractors and
9 subcontractors, as described in the Statement of Facts, attached
10 hereto as Exhibit A.

11 a. This Paragraph does not provide any protection
12 against prosecution for any fraud involving aircraft parts or any
13 other criminal violation, if any, that occur in the future by
14 MacKenzie, or by any of its officers, directors, employees, agents,
15 consultants, contractors, subcontractors, and subsidiaries,
16 irrespective of whether disclosed by MacKenzie.

17 b. In addition, this Paragraph does not provide any
18 protection against prosecution of any present or former officer,
19 director, employee, shareholder, agent, consultant, contractor, or
20 subcontractor of MacKenzie for any violations committed by them.

21 **Corporate Compliance Program**

22 9. MacKenzie will enter into a three-year corporate
23 compliance agreement with the United States Department of Defense
24 Defense Logistics Agency, which requires MacKenzie to undertake
25 various compliance obligations designed to ensure full compliance
26 with all applicable laws, rules, and regulations governing
27 government contracting. Among other provisions, the compliance
28 agreement includes an independent Monitor that will monitor the

1 compliance of MacKenzie throughout the three-year term. The
2 Defense Logistics Agency will monitor MacKenzie's compliance with
3 the corporate compliance agreement and enforce any breaches in
4 accordance with the remedies set forth in the corporate compliance
5 agreement.

6 **Deferred Prosecution**

7 10. In consideration of: (a) MacKenzie's past and future
8 cooperation described in Paragraph 5 above; (b) MacKenzie's payment
9 of a monetary civil settlement of \$300,000; and (c) MacKenzie's
10 corporate compliance agreement with the Defense Logistics Agency,
11 the United States agrees that any prosecution of MacKenzie for the
12 conduct set forth in the Statement of Facts be and hereby is
13 deferred for the Term of this Agreement.

14 11. The United States further agrees that if MacKenzie fully
15 complies with all of its obligations under this Agreement, the
16 United States will not continue the criminal prosecution against
17 MacKenzie described in Paragraph 1 and, at the conclusion of the
18 Term, this Agreement shall expire. Within thirty (30) days prior
19 to the Agreement's expiration, MacKenzie shall submit to the United
20 States a written certification that MacKenzie is in compliance with
21 this Agreement. Within thirty (30) days of the Agreement's
22 expiration, the United States shall seek dismissal with prejudice
23 of the Criminal Information filed against MacKenzie described in
24 Paragraph 1.

25 **Breach of the Agreement**

26 12. If, during the Term of this Agreement, the United States
27 determines, in its sole discretion, that MacKenzie has (a)
28 committed any felony under federal law subsequent to the signing

1 of this Agreement, (b) at any time provided deliberately false,
2 incomplete, or misleading information, or (c) otherwise breached
3 the Agreement, MacKenzie shall thereafter be subject to prosecution
4 for any federal criminal violation of which the United States has
5 knowledge, and the information and the facts described in the
6 Statement of Facts, attached hereto as Exhibit A, may be pursued
7 by the United States in the United States District Court for the
8 Southern District of California or any other venue appropriate
9 under law. Any such prosecution may be premised on information
10 provided by MacKenzie. Any such prosecution that is not
11 time-barred by the applicable statute of limitations on the date
12 of the signing of this Agreement may be commenced against MacKenzie
13 notwithstanding the expiration of the statute of limitations
14 between the signing of this Agreement and the expiration of the
15 Term plus one (1) year. Thus, by signing this Agreement, MacKenzie
16 agrees that the statute of limitations with respect to any
17 prosecution that is not time-barred on the date of the signing of
18 this Agreement shall be tolled for the Term plus one (1) year.

19 13. In the event that the United States determines that
20 MacKenzie has breached this Agreement, the United States agrees to
21 provide MacKenzie with written notice of such breach prior to
22 instituting any prosecution resulting from such breach. MacKenzie
23 shall, within thirty (30) days of receipt of such notice, have the
24 opportunity to respond to the United States in writing to explain
25 the nature and circumstances of such breach, as well as the actions
26 MacKenzie has taken to address and remediate the situation, which
27 explanation the United States shall consider in determining whether
28 to institute a prosecution.

1 14. In the event that the United States determines that
2 MacKenzie has breached this Agreement: (a) all statements made by
3 or on behalf of MacKenzie to the United States or to the Court,
4 including the Statement of Facts attached hereto as Exhibit A, and
5 any testimony given by MacKenzie before a grand jury, a court, or
6 any tribunal, or at any legislative hearings, whether prior or
7 subsequent to this Agreement, or any leads derived from such
8 statements or testimony, shall be admissible in evidence in any and
9 all criminal proceedings brought by the United States against
10 MacKenzie; and (b) MacKenzie shall not assert any claim under the
11 United States Constitution, Rule 11(f) of the Federal Rules of
12 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
13 any other federal rule, that statements made by or on behalf of
14 MacKenzie prior or subsequent to this Agreement, and any leads
15 derived therefrom, should be suppressed. The decision whether
16 conduct or statements of any individual will be imputed to
17 MacKenzie for the purpose of determining whether MacKenzie has
18 violated any provision of this Agreement shall be in the sole
19 discretion of the United States.

20 15. MacKenzie acknowledges that the United States has made
21 no representations, assurances, or promises concerning what
22 sentence may be imposed by the Court if MacKenzie breaches this
23 Agreement and this matter proceeds to judgment. MacKenzie further
24 acknowledges that any such sentence is solely within the discretion
25 of the Court and that nothing in this Agreement binds or restricts
26 the Court in the exercise of such discretion.

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Sale or Merger of MacKenzie

16. MacKenzie agrees that in the event it 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 is structured as a stock or asset sale, merger or transfer, it shall include in any contract for sale, merger, or transfer a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement.

Public Statements by MacKenzie

17. MacKenzie expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for MacKenzie make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by MacKenzie set forth above or the facts described in the attached Statement of Facts, attached hereto as Exhibit A. Any such contradictory statement shall, subject to cure rights of MacKenzie described below, constitute a breach of this Agreement and MacKenzie thereafter shall be subject to prosecution as set forth in Paragraphs 12-15 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to MacKenzie for the purpose of determining whether MacKenzie has breached this Agreement shall be at the sole discretion of the United States. If the United States determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the United States shall so notify MacKenzie, and MacKenzie may avoid a breach of this Agreement by publicly repudiating such statement(s) within

1 five (5) business days after notification. Consistent with the
2 obligations of MacKenzie as set forth above, MacKenzie shall be
3 permitted to raise defenses and to assert affirmative claims in
4 civil and regulatory proceedings relating to the matters set forth
5 in the Statement of Facts. This Paragraph does not apply to any
6 statement made by any present or former employee of MacKenzie in
7 the course of any criminal, regulatory, or civil case initiated
8 against such individual, unless such individual is speaking on
9 MacKenzie's behalf.

10 18. MacKenzie agrees that if it or any of its direct or
11 indirect affiliates or subsidiaries issues a press release in
12 connection with this Agreement, MacKenzie shall first consult the
13 United States to determine whether (a) the text of the release or
14 proposed statements at the press conference are true and accurate
15 with respect to matters between the United States and MacKenzie;
16 and (b) the United States has no objection to the release.

17 **Limitations on Binding Effect of Agreement**

18 19. This Agreement is binding on MacKenzie and the United
19 States but specifically does not bind any other federal agencies,
20 or any state, local or foreign law enforcement or regulatory
21 agencies, or any other authorities, although the United States will
22 bring MacKenzie's cooperation and compliance with its other
23 obligations under this Agreement to the attention of such agencies
24 and authorities if requested to do so by MacKenzie.

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Complete Agreement

20. This Agreement sets forth all the terms of the agreement between MacKenzie and the United States. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for MacKenzie, and a duly authorized representative of MacKenzie.

Dated: April 26, , 2011.

AGREED:

FOR MACKENZIE AIRCRAFT PARTS, INC.:

Date: April 25, 2011 By: Toni Mackenzie

TONI MACKENZIE
President and Chief Executive Officer
MacKenzie Aircraft Parts, Inc.

Date: 4/25/11 By: Michael Pancer

MICHAEL PANCER, ESQ.
Counsel for
MacKenzie Aircraft Parts, Inc.

FOR THE UNITED STATES OF AMERICA:

SOUTHERN DISTRICT OF CALIFORNIA
LAURA E. DUFFY
United States Attorney

Date: 4/26/11 By: South Devins for Annalou Tirol

ANNALOU TIROL
Assistant United States Attorney

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COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for MacKenzie Aircraft Parts, Inc. ("MacKenzie"). I understand the terms of this Agreement and voluntarily agree, on behalf of MacKenzie, to each of its terms. Before signing this Agreement, I consulted outside counsel for MacKenzie. Counsel fully advised me of MacKenzie's rights, of possible defenses, and of the consequences of entering into this Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on MacKenzie's behalf, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the President and Chief Executive Officer of MacKenzie Aircraft Parts, Inc.

Date: April 25, 2011

By: Toni Mackenzie

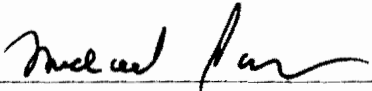
TONI MACKENZIE
President and CEO
MacKenzie Aircraft Parts, Inc.

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CERTIFICATE OF COUNSEL

I am counsel for MacKenzie Aircraft Parts, Inc. ("MacKenzie") in the matter covered by this Agreement. In connection with such representation, I have examined relevant MacKenzie documents and have discussed the terms of this Agreement with MacKenzie representatives. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of MacKenzie has been duly authorized to enter into this Agreement on MacKenzie's behalf and that this Agreement has been duly and validly authorized, executed, and delivered on MacKenzie's behalf and is a valid and binding obligation of MacKenzie. Further, I have carefully reviewed the terms of this Agreement with Toni MacKenzie, President and Chief Executive Officer of the company. I have fully advised her of MacKenzie's rights, of possible defenses, and of the consequences of entering into this Agreement. To my knowledge, MacKenzie's decision to enter into this Agreement is an informed and voluntary one.

Date: 4/26/11, 2011

By: 

MICHAEL PANCER, ESQ.
Counsel for
MacKenzie Aircraft Parts, Inc.

ATTACHMENT A**STATEMENT OF FACTS**

1
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3 The following Statement of Facts is incorporated by reference
4 as part of the Deferred Prosecution Agreement ("the Agreement")
5 between the United States Attorney's Office for the Southern
6 District of California (the "United States") and MacKenzie Aircraft
7 Parts, Inc. ("MacKenzie"), and the parties hereby agree and
8 stipulate that the following information is true and accurate. As
9 set forth in Paragraph 2 of the Agreement, MacKenzie admits,
10 accepts, and acknowledges that it is responsible for the acts of
11 its officers, employees, and agents as set forth below.

- 12 1. MacKenzie Aircraft Parts, Inc. ("MacKenzie") is a
13 California corporation located in Vista, California that
14 specializes in sales of aircraft and helicopter parts.
15 From 2004 to 2008, Joel Potter ("Potter") was employed
16 by MacKenzie.
- 17 2. During the time of his employment, Potter was the
18 MacKenzie employee primarily responsible for the sale of
19 aircraft parts to Science Applications International
20 Corporation ("SAIC"). These sales to SAIC involved
21 "spot buys" where MacKenzie obtained and sold aircraft
22 parts to SAIC, which had a contract with the United
23 States Department of Defense ("DOD") to provide aircraft
24 parts to the DOD when needed.
- 25 3. For certain aircraft parts, the contract between SAIC
26 and the DOD required specified and approved
27 manufacturers. The SAIC/DOD contract further required
28 "new manufactured" parts for other aircraft parts under

1 the contract; surplus parts were not allowed. On behalf
2 of MacKenzie, Potter submitted bids several times to
3 provide aircraft parts to SAIC for this contract.
4 Potter knew the requirements of the SAIC/DOD contract
5 when he submitted bids, and when he obtained and sold
6 the aircraft parts to SAIC.

7 4. Despite the contract requirements, Potter knowingly and
8 with the intent to defraud sold thousands of non-
9 compliant aircraft parts to SAIC on behalf of MacKenzie
10 on numerous occasions in response to bids awarded by
11 SAIC to MacKenzie.

12 5. Potter knew that these non-compliant aircraft parts
13 included Critical Safety Items necessary for the safe
14 operation of aircraft by the DOD, and that they were in
15 and affecting interstate commerce.

16 6. Potter also knew that these non-compliant aircraft parts
17 fraudulently sold to SAIC by Potter on behalf of
18 MacKenzie included: (a) parts supplied by non-approved
19 manufacturers; and (b) surplus parts.

20 7. In particular, Potter submitted a bid on behalf of
21 MacKenzie to provide 408 bolts manufactured by a
22 specified and approved supplier. Potter then
23 fraudulently provided bolts from a non-approved
24 manufacturer instead of supplying bolts from the
25 specified and approved manufacturer.

26 8. Potter also knowingly and with the intent to defraud
27 signed a purchase order on behalf of MacKenzie in the
28 Southern District of California on or about April 26,

1 2006, falsely stating that the bolts would be
2 manufactured by the approved supplier specified on the
3 purchase order. Subsequently, on or about August 17,
4 2006, with Potter's knowledge, another MacKenzie
5 employee signed a false Certificate of Conformance that
6 certified the supplier conformed to the purchase order
7 for the bolts.

8 9. In addition, MacKenzie does not dispute and agrees the
9 Government can prove that:

10 a. These bolts were defective, and ordered for
11 installation and use on Sikorsky CH-53E helicopters
12 operated by the DOD that were in wide, active use
13 around the world, including war zones;

14 b. The DOD considered these eight-inch bolts essential
15 for the safe operation of the helicopters since
16 they attach the tail rotor blades to the
17 helicopters;

18 c. The DOD discovered that the bolts were non-
19 compliant only after the head of one bolt broke off
20 when it was being installed manually by hand on a
21 helicopter; and

22 d. Subsequent testing and investigation by the DOD
23 revealed that the heat treating and plating of the
24 bolts was done improperly, and that the bolts had
25 been installed on at least four more Sikorsky CH-
26 53E helicopters in use by the DOD.

27 10. The parties agree that the United States paid at least
28 \$137,000 for the thousands of non-compliant aircraft

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parts. The parties further agree that at the time of this Agreement the cost to the United States to rectify the actual and potential disruption caused by the fraud was at least \$107,000.

11. The parties further agree that Potter's actions as described in this Statement of Facts were within the scope of Potter's employment with MacKenzie and were intended, at least in part, to benefit MacKenzie.