

FILED IN OPEN COURT
ON 10/8/13
Julie A. Richards, Clerk
US District Court
Eastern District of NC

JB

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:13-CR-254-1H

UNITED STATES OF AMERICA)
)
 v.) DEFERRED PROSECUTION AGREEMENT
)
SKEDCO, INC.)

1. Skedco, Inc., ("Skedco") an Oregon corporation, by its undersigned attorneys and Chief Operating Officer pursuant to authority granted by its Board of Directors, and the United States Attorney's Office for the Eastern District of North Carolina ("USAO EDNC"), have entered into this Deferred Prosecution Agreement (the "Agreement"). Except as specifically provided below, the Agreement shall be in effect for a period of twenty four (24) months from the date this Agreement is accepted by the United States District Court for the Eastern District of North Carolina (the "Court").

2. The USAO EDNC has informed Skedco, that it will file a Criminal Information in the United States District Court for the Eastern District of North Carolina (the "Criminal Information"). The Criminal Information will charge Skedco, with a violation of 18 USC § 201(c)(1)(A). The filing of the DPA and attachments will be accompanied by a Motion to Seal same until such

time as they are formally accepted by the Court.

3. Skedco, and the USAO EDNC agree that, upon the filing, with a request for temporary sealing, of the Criminal Information in accordance with the preceding paragraph, this Agreement shall be publicly filed in the United States District Court for the Eastern District of North Carolina.

4. The USAO EDNC has entered into this Agreement in significant part due to Skedco's cooperation in the investigation and trial of United States v. Marak, the mitigating factors reflected in the evidence developed in that matter and Skedco's evident willingness to avoid such involvement in the future. These mitigating factors and assurance of future compliance include the following:

- a. Skedco's chief operating officer cooperated in the investigation and prosecution of the involved government employee and testified at length in that individual's trial. This officer did so in what the government believes to be a truthful and forthcoming manner.
- b. The initiator of the bribery which was the subject of this investigation and prosecution was the government employee, not Skedco, Inc.
- c. Skedco, is a relatively small enterprise which was particularly vulnerable to the predation of the government employee because of its dependence on government contracts and the limited nature of its product line.

d. Skedco, has committed itself to whatever future cooperation with the government is required of it both as to the subject matter of the investigation and trial referenced above, its own avoidance of any future events of this nature and any other matters the government may make legitimate regulatory or criminal enquiry about. Such obligation to cooperate will be limited to matters with the company's normal field of business operations as well as by the legitimately asserted constitutional rights of other business entities and individuals.

5. Skedco, hereby agrees, to the extent it is lawfully permitted to do so, to make any employee or officer available for interviews and/or testimony concerning any matter the government may legitimately make regulatory or criminal enquiry about. Skedco, will also make available whatever documentation requested by the government in the course of legitimate regulatory or criminal investigation. However, such cooperation will not extend in such manner as to constitute a violation of Skedco,s attorney/client privilege. Furthermore, the requirement to provide such cooperation will not be interpreted in such manner as to violate the constitutional rights of individual employees or officers.

6. The United States agrees that it shall defer prosecution of the Criminal Information and shall not, except in the event of a breach of this agreement during its term: (i) bring any criminal or civil case against

Skedco, or any of its employees or officers related in whole or in part to the investigation and prosecution referenced above or (ii) use any information related to the conduct described in the Criminal Information or the accompanying Statement of Facts ("Statement of Facts") against any such employees or officers. In the event the Court does not accept this Agreement, then (A) this Agreement shall be null and void, and the parties will revert to their pre-Agreement positions and may proceed as each deems appropriate; (B) nothing in this Agreement or the Statement of Facts shall be used directly against any party hereto or otherwise be admissible in any criminal or civil proceeding based in whole or part on the conduct described in the Criminal Information or the Statement of Facts.

7. Skedco, accepts and acknowledges responsibility for its conduct set forth in the attached Criminal Information and Statement of Facts (Attachments A and B).

8. Skedco, agrees that while this Deferred Prosecution Agreement is in effect, it will assemble its employees and officers for the purpose of listening to a live, in-person interactive business ethics lecture specifically designed for relevance to government contractors which will include the

topic of impermissible gratuities as required by the Administrative Agreement between the United States Army and Skedco dated June 29, 2012 (Attachment C). All costs related to the retention of such lecturer will be borne by Skedco.

9. Skedco agrees that, upon acceptance of this Deferred Prosecution Agreement it will consent to a forfeiture in the amount of \$300,000 which relates to the amount of the bribes demanded, paid/received in the course of the above-referenced misconduct. Such forfeiture will be satisfied with the payment of \$300,000 upon acceptance of the DPA by the Court. The attached Complaint for forfeiture is attached as Attachment D.

10. Skedco agrees that it will not, and will make a good faith effort to prevent any employee or officer either current or future from making any public statement (i.e. press release, press conference, response to analysts, press reports, press inquiries or other similar statements) contradicting any aspect of the Statement of Facts. Any such contradictory public statement may, in the sole discretion of the United States, be deemed a breach of this Agreement.

11. Any felonious conduct committed by Skedco, or its employees or officers acting within the scope of their employment, after the acceptance of this Agreement by the Court, may, in the

discretion of the USAO EDNC be deemed a breach of this Deferred Prosecution Agreement. Should the United States determine that, during the term of this Agreement, Skedco, or any of its employees or officers, knowingly and materially breached this Agreement, thereafter Skedco or any of its employees or officers may be subject to prosecution for any federal crimes of which the United States has knowledge, including crimes relating to the matters set forth in the Statement of Facts and which are set forth in the Criminal Information filed in conjunction with this Agreement. If such prosecution results in an obligation by Skedco to pay any fines, penalties or other similar payments for conduct taking place prior to the date of this Agreement, then Skedco shall receive a credit against such fines, penalties or other similar payments in an amount equal to the aggregate payments made pursuant to this Agreement.

12. Should the United States determine that, during the term of this Agreement, Skedco or any of its employees or officers, acting on behalf of Skedco knowingly and materially breached this Agreement, including committing any felonious criminal conduct, the USAO EDNC shall provide written notice to Skedco of the alleged breach and extend to it a thirty (30)-day window of opportunity within which to make a presentation to the United States to demonstrate that no breach occurred, or, to the

extent applicable, that the breach was not material or knowingly committed or that for other reasons Skedco should be permitted to cure such breach with specified remedial action. The parties further understand and agree that the determination whether Skedco has breached this Agreement rests solely in the discretion of the United States, and the exercise of such discretion by the United States under this paragraph is not subject to review in any court or tribunal outside the Department of Justice. In the event of a prosecution based on a breach of this Agreement, such prosecution may be premised upon any information provided by or on behalf of Skedco to the government prior to or during the course of the effective period of this Deferred Prosecution Agreement.

13. By entry into this Agreement, Skedco expressly waives all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Eastern District of North Carolina, for the period that this Agreement is in effect. Such waiver of speedy trial shall extend to all criminal charges potentially chargeable as of the acceptance of this Agreement by the Court.

14. By entry into this Agreement, Skedco also expressly waives the statute of limitations, that is 18 USC § 3282 et. seq.,

with respect to any criminal violation potentially chargeable relative to the investigation and prosecution referenced above, which would otherwise expire during the term of this deferred prosecution Agreement. This waiver is knowing and voluntary and in express reliance on the advice of counsel.

15. Skedco agrees that, if all or substantially all of its business operations are sold as they exist as of the date of this Agreement or merged into a single purchaser or group of affiliated purchasers during the term of this Agreement, Skedco shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.

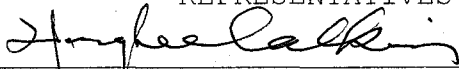
16. It is understood that this Agreement is limited to Skedco and its successors in interest and the USAO EDNC on behalf of the United States Department of Justice, and does not bind other federal, state or local authorities. However, the USAO EDNC will bring this Agreement as well as Skedco's cooperation as referenced above and compliance with its obligations under this Agreement to the attention of other prosecuting offices and/or regulatory authorities, if requested to do so.

17. This Agreement constitutes the full and complete agreement between Skedco and the USAO EDNC with respect to the resolution of the criminal investigation of this matter. No

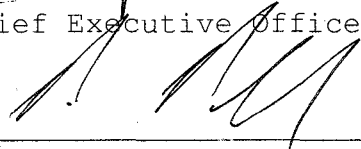
additional promises, agreements, or conditions have been entered into with respect to the resolution of the criminal investigation other than those set forth in this Agreement, and none will be entered into unless in writing and signed by the USAO EDNC, counsel for Skedco, and authorized representative of Skedco. It is understood that the USAO EDNC may, in its sole discretion, permit exceptions to or excuse particular requirements set forth in this Agreement, but any such permission shall be in writing and will not otherwise impact this Agreement.

So Agreed.

REPRESENTATIVES OF SKEDCO, INC.

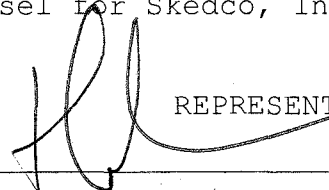


Chief Executive Officer of Skedco, Inc.



Counsel for Skedco, Inc.

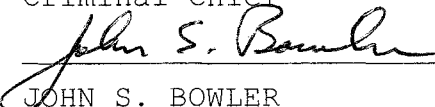
REPRESENTATIVES OF USAO EDNC



THOMAS G. WALKER
United States Attorney




ROBERT J. HIGDON, JR.
Criminal Chief



JOHN S. BOWLER
Assistant United States Attorney

Accepted by the Court
This 8th day of October
2013


SE US DIST JUDGE
EDNC