

SFO - Serious Fraud Office

BAE fined in Tanzania defence contract case

21 December 2010

Today at Southwark Crown Court BAE Systems Plc was fined £500,000 after admitting it had failed to keep adequate accounting records in relation to a defence contract for the supply of an air traffic control system to the Government of Tanzania.

This outcome follows a settlement by BAE as part of a global agreement it reached earlier this year with the Serious Fraud Office and the US Department of Justice concerning contracts in a number of countries. The settlement with the SFO relates to the Tanzania contract whereby BAE agreed to pay an ex-gratia payment for the benefit of the people of Tanzania of £30 million less any fine imposed by the Crown Court.

Additionally, BAE was ordered to pay £225,000 costs to the SFO.

SFO Director Richard Alderman said

, "I am delighted that the Judge stressed the seriousness of BAE's actions and that he recognised that the true victims were the people of Tanzania".

Outline

A contract for the supply of a radar defence system for Dar-es-Salaam International Airport was agreed in 1999 between British Aerospace Defence Systems Ltd and the government of Tanzania. (This followed negotiations that had been conducted since 1992 initially by Siemens Plessey Systems which was acquired by BAE in 1998). The value of the contract was US \$39.97 million.

BAE's practice was to engage advisers to help with its marketing. These advisers were either classified by BAE as 'overt' (i.e. that is they operated openly as BAE's in-country representatives), or 'covert'. The latter operated in circumstances where there was a need for confidentiality. In order to maximise confidentiality with regard to its use of covert advisers and the making of payments to them, BAE set up Red Diamond Trading Company, incorporated in the British Virgin Islands.

In Tanzania a local businessman, Shailesh Vithlani, was recruited at an early stage (initially by Siemens) to advise BAE on its negotiations with the government on the radar contract. Shortly before the contract was signed two new adviser arrangements with Vithlani were concluded. One was made between Red Diamond and a Vithlani-controlled Panama-incorporated company, Envers Trading Corporation. This was a 'covert' arrangement where the fee for Vithlani's services was to be not more than 30.025% of the radar contract price. The other arrangement was 'overt' and was for services direct to BAE by a Vithlani-controlled business, Merlin International, registered in the B.V.I. It did not involve Red Diamond and the fee was 1% of the radar contract value.

Between January 2000 and December 2005 around \$12.4 million was paid to Vithlani's two companies. BAE has accepted that there was a high probability that part of this sum would be used to favour it in the contract negotiations.

The payments were not subject to proper and adequate scrutiny or review. Furthermore, it was not possible for any person auditing the accounts to investigate and determine whether the payments were properly accounted for or were lawful.

In sentencing BAE, the Judge said that he took the view that BAE were concealing from the auditors and ultimately the public the fact that they were making payments to Vithlani; 97% of them via two offshore companies, with the intention that he should have free rein to make such payments to such people as he thought fit in order to secure the radar contract for BAE but that BAE did not want to know the details.

The Judge took into account in sentencing BAE that the group had committed itself to a process of change following the Report of Lord Woolf and that BAE would be making a payment for the benefit of the people of Tanzania of £30 million less the fine. The Judge said that the people of Tanzania were the real victims. The Judge decided in these circumstances to impose a fine of £500,000.

Background

The SFO commenced an investigation into BAE Systems PLC in 2004. The investigation, which was prompted by allegations received concerning a defence contract with Saudi Arabia, ultimately also included contracts between BAE and a number of other countries (including Czech Republic, Romania and South Africa). The SFO investigation relating to Saudi Arabia was discontinued in December 2006 in the interest of national security.

On 5 February this year BAE concluded settlement negotiations with the US Department of Justice in relation to contracts with Saudi Arabia and Central and Eastern Europe, and with the SFO in relation to the Tanzania contract. The prosecution case opened at Southwark Crown Court on 20 December 2010 before Mr Justice Bean.

Documents relating to the proceedings are now published on the SFO website. These are (a) the prosecution

Note for Opening

, (b) the

Settlement Agreement and Basis of Plea

and (c) the

Charge

The Judgment can be seen on

<http://www.judiciary.gov.uk/media/judgments/2010/r-v-bae-systems-plc>

Notes for editors:

The Serious Fraud Office is a government department responsible for investigating and prosecuting serious and complex fraud. The SFO is headed by the Director (Richard Alderman) who exercises powers under the superintendence of the Attorney General. These powers are derived from the Criminal Justice Act (1987).

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