

APR 06 2011

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JGC CORPORATION,)
)
 Defendant.)
 _____)

11 CR 260
Criminal No. _____

18 U.S.C. § 371
15 U.S.C. § 78dd-2

DEFERRED PROSECUTION AGREEMENT

Defendant JGC Corporation (“JGC”), a corporation organized under the laws of Japan, by its undersigned attorney, and pursuant to authority granted by its Boards of Directors, and the United States Department of Justice, Criminal Division, Fraud Section (the “Department”), enter into this Deferred Prosecution Agreement (the “Agreement”). The terms and conditions of this Agreement are as follows:

Criminal Information and Acceptance of Responsibility

1. JGC acknowledges that the United States will file a two-count criminal Information in the United States District Court for the Southern District of Texas charging JGC with (a) conspiracy to commit an offense against the United

States in violation of 18 U.S.C. § 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”), as amended, 15 U.S.C. §§ 78dd-1 and 78dd-2 (Count One), and (b) violating the anti-bribery provisions of the FCPA, 15 U.S.C. § 78dd-2 (Count Two). In so doing, JGC knowingly waives: (a) its right to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Southern District of Texas.

2. JGC admits, accepts, and acknowledges that it is responsible under U.S. law for the acts of its employees, subsidiaries, and agents as set forth in the Statement of Facts attached hereto as Attachment A, and incorporated by reference into this Agreement, and that the facts described in Attachment A are true and accurate. Should the Department pursue the prosecution that is deferred by this Agreement, JGC agrees that it will neither contest the admissibility of nor contradict the Statement of Facts in any such proceeding. Neither this Agreement nor the criminal Information is a final adjudication of the matters addressed in such documents.

Term of the Agreement

3. This Agreement is effective for a period beginning on the date on which the criminal Information is filed and ending two (2) years and seven (7) calendar days from that date (the “Term”). JGC agrees, however, that in the event that the Department determines, in its sole discretion, that JGC has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Department for up to a total additional time period of one year, without prejudice to the Department’s right to proceed as provided in paragraphs 13-16 below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

Relevant Considerations

4. The Department enters into this Agreement based on the individual facts and circumstances presented by this case. Among the facts considered were: (a) after initially declining to cooperate with the Department based on jurisdictional arguments, JGC began to cooperate, and has agreed to continue to cooperate, with the Department in its ongoing investigation of the conduct of JGC and its present and former employees, agents, consultants, contractors, subcontractors, subsidiaries, and others relating to violations of the FCPA; (b) JGC has undertaken remedial measures, including evaluating and enhancing its

compliance program, and has agreed to undertake further remedial measures as contemplated by this Agreement; and (c) the impact on JGC, including collateral consequences, of a guilty plea or criminal conviction.

5. JGC shall continue to cooperate with the Department, subject to applicable Japanese laws and regulations. At the request of the Department, and to the extent consistent with applicable U.S. and foreign laws and regulations, JGC shall also cooperate fully with other law enforcement authorities and agencies in any investigation of JGC, or any of its present and former directors, officers, employees, agents, consultants, contractors, subcontractors, and subsidiaries, or any other party, in any and all matters relating to corrupt payments and related false books and records and internal controls. Subject to the foregoing limitations, JGC agrees that its cooperation shall include, but is not limited to, the following:

a. JGC shall truthfully disclose all factual information, including documents, records, or other tangible evidence, not protected by a valid claim of attorney-client privilege or work product doctrine with respect to JGC's activities and those of its present and former directors, officers, employees, agents, consultants, contractors, subcontractors, and subsidiaries concerning all matters relating to corrupt payments and related false books and records and inadequate

internal controls, about which it has any knowledge and about which the Department may inquire.

b. Upon request of the Department, JGC shall designate knowledgeable employees, agents, or attorneys to provide to the Department the information and materials described in Paragraph 5(a) above on behalf of JGC. It is further understood that JGC must at all times provide complete, truthful, and accurate information.

c. JGC also shall use its best efforts to make available for interviews or testimony, as requested by the Department, present or former directors, officers, employees, agents, consultants, contractors, and subcontractors of JGC. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement and regulatory authorities. Cooperation under this Paragraph will include identification of witnesses who, to the knowledge of JGC, may have material information regarding the matters described in Paragraph 5(a).

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Department pursuant to this Agreement, JGC consents to any and all disclosures consistent with applicable law

and regulation to other governmental authorities of such materials as the Department, in its sole discretion, shall deem appropriate.

Payment of Monetary Penalty

6. The Department and JGC agree that the application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- A. The 2010 USSG Manual sets forth the appropriate guidelines to be used in this matter.
- B. Base Fine: Based upon USSG § 8C2.4 and USSG § 2C1.1(d)(1)(B), the base fine is \$195.4 million, which corresponds to the value of the benefit received in return for the unlawful payments.
- C. Culpability Score: Based upon USSG §8 C2.5, the culpability score is 8, summarized as follows:

(a) Base Culpability Score	5
(b)(1) The relevant organization had 1,000 or more employees, and individuals within high-level personnel participated in, condoned, or were willfully ignorant of the offense, and tolerance of the offense by substantial authority personnel was pervasive throughout the organization	+4
(g) The organization clearly demonstrated recognition and affirmative acceptance of responsibility for criminal conduct	<u>-1</u>
Total	8

D. Calculation of Fine Range: Based upon USSG § 8C2.7, the fine range is calculated as follows:

Base Fine	\$195.4 million
Multipliers	1.6/3.2
Fine Range	\$312.6 million/\$625.2 million

JGC agrees to pay a monetary penalty in the amount of \$218.8 million, or approximately 30% below the bottom of the applicable Sentencing Guidelines fine range of \$312.6 million. JGC agrees to pay this monetary penalty to the United States Treasury within ten days of the execution of this agreement. The \$218.8 million penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Department that, in the event of a breach of this Agreement, the \$218.8 million amount is the maximum penalty that may be imposed in any future prosecution, and the Department is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Department agrees that under those circumstances, it will recommend to the Court that the amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. JGC acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this \$218.8 million penalty.

Conditional Release from Criminal Liability

7. In return for the full and truthful cooperation of JGC, and its compliance with the terms and conditions of this Agreement, the Department agrees, subject to Paragraphs 13-15 below, not to use any information related to the conduct described in the attached Statement of Facts against JGC in any criminal case, except: (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; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. In addition, the Department agrees, except as provided herein, that it will not bring any criminal case against JGC related to the conduct of present and former directors, officers, employees, agents, consultants, contractors, and subcontractors of JGC, as described in the attached Statement of Facts, or relating to information JGC disclosed to the Department prior to the date on which this Agreement was signed.

a. This Paragraph 7 does not provide any protection against prosecution for any future corrupt payments, false books and records, or inadequate internal controls, if any, by JGC, or by any of its directors, officers,

employees, agents, consultants, contractors, subcontractors, and subsidiaries, irrespective of whether disclosed by JGC pursuant to the terms of this Agreement.

b. In addition, this Paragraph 7 does not provide any protection against prosecution of any present or former director, officer, employee, shareholder, agent, consultant, contractor, or subcontractor of JGC for any violations committed by them.

Corporate Compliance Program

8. JGC represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA, the anti-corruption provisions of Japanese law, and other applicable anti-corruption laws throughout its operations, including those of its affiliates, agents, and joint ventures, and those of its contractors and subcontractors whose responsibilities include interacting with foreign officials. Implementation of these policies and procedures shall not be construed in any future enforcement proceeding as providing immunity or amnesty for any crimes, not disclosed to the Department as of the date of signing of this Agreement, for which JGC would otherwise be responsible.

9. In order to address any deficiencies in internal controls, policies, and procedures regarding compliance with the FCPA, the anti-corruption provisions of

Japanese law, and other applicable anti-corruption laws, JGC 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 the existing internal controls, policies, and procedures within JGC. Where necessary and appropriate, and consistent with Japanese law, regulation, and accounting standards, JGC will adopt new or modify existing internal controls, policies, and procedures in order to ensure that JGC maintains: (a) a system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance code designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. The internal controls system and compliance code will include, but not be limited to, the minimum elements set forth in Attachment C, which is incorporated by reference into this Agreement.

Corporate Compliance Consultant

10. JGC agrees to engage a corporate compliance consultant. The consultant's term, duties, and authority, and the obligations of JGC with respect to the consultant and the Department, are set forth in Attachment D, which is incorporated by reference into this Agreement.

Deferred Prosecution

11. In consideration of: (a) the past and future cooperation of JGC described in Paragraphs 4 and 5 above; (b) JGC's payment of a monetary penalty of \$218,800,000; and (c) JGC's adoption and maintenance of remedial measures, including the compliance code described in Paragraphs 8 and 9 above, the Department agrees that any prosecution of JGC for the conduct set forth in the attached Statement of Facts, and for any conduct that JGC disclosed to the Department prior to the signing of this Agreement, be and hereby is deferred for the Term of this Agreement.

12. The Department further agrees that if JGC fully complies with all of its obligations under this Agreement, the Department will not continue the criminal prosecution against JGC described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within thirty (30) days of the Agreement's expiration, the Department shall seek dismissal with prejudice of the Information filed against JGC described in Paragraph 1.

Breach of the Agreement

13. If, during the Term of this Agreement, the Department determines, in its sole discretion, that JGC has (a) committed any felony under federal law subsequent to the signing of this Agreement, (b) at any time provided deliberately

false, incomplete or misleading information, or (c) otherwise breached the Agreement, JGC shall thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge and the Information described in Paragraph 1 may be pursued by the Department in the U.S. District Court for the Southern District of Texas. Any such prosecution may be premised on information provided by JGC. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against JGC 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, JGC agrees that the statute of limitations with respect to any prosecution that is not time-barred on the date of this Agreement shall be tolled for the Term plus one year.

14. In the event that the Department determines that JGC has breached this Agreement, the Department agrees to provide JGC with written notice of such breach prior to instituting any prosecution resulting from such breach. JGC 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 JGC has taken to address and remediate the situation, which

explanation the Department shall consider in determining whether to institute a prosecution.

15. In the event that the Department determines that JGC has breached this Agreement: (a) all statements made by or on behalf of JGC to the Department or to the Court, including the attached Statement of Facts, and any testimony given by JGC before a grand jury or any tribunal, at any legislative hearings, whether prior or subsequent to this Agreement, or any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against JGC; and (b) JGC shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence or any other federal rule, that statements made by or on behalf of JGC prior or subsequent to this Agreement, and any leads derived therefrom, should be suppressed. The decision as to whether conduct or statements of any JGC employee, officer, director, or agent will be imputed to JGC for the purpose of determining whether JGC has violated any provision of this Agreement shall be in the sole discretion of the Department.

16. JGC acknowledges that the Department has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if

JGC breaches this Agreement and this matter proceeds to judgment. JGC further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

Sale or Merger of JGC

17. JGC agrees that in the event it either 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, JGC 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 JGC

18. JGC expressly agrees that it shall not, through present or future attorneys, directors, officers, employees, agents, or any other person authorized to speak for JGC, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by JGC set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights described below, constitute a breach of this Agreement and JGC thereafter shall be subject to prosecution as set forth in Paragraphs 13-16 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 JGC for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify JGC, and JGC may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. Consistent with the obligations of JGC as set forth above, JGC shall be permitted to raise defenses and to assert affirmative claims in civil, regulatory, or foreign proceedings relating to the matters set forth in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former employee of JGC in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of JGC.

19. JGC agrees that if it or any of its direct or indirect affiliates or subsidiaries issues a press release in connection with this Agreement, JGC shall first consult the Department to determine whether (a) the text of the release is true and accurate with respect to matters between the Department and JGC; and (b) the Department has no objection to the release.

Limitations on Binding Effect of Agreement

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

Notice

21. Any notice to the Department under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, in each case, for the Department, addressed to Deputy Chief-FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, Fourth Floor, 1400 New York Avenue, N.W., Washington, D.C. 20005 and, for JGC, addressed to its outside legal counsel, Manny Abascal, Latham & Watkins, 355 S. Grand Avenue, Los Angeles, CA 90071. Notice shall be effective upon actual receipt by JGC's outside legal counsel.

Complete Agreement

22. This Agreement sets forth all the terms of the agreement between JGC and the Department. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the Department, the attorney for JGC, and a duly authorized representative of JGC.

AGREED:

FOR JGC:

By: Keitaro Ishii
Keitaro Ishii
Senior General Manager
Legal and Compliance Office
JGC Corporation

Manuel A. Abascal 4/6/11
Manuel A. Abascal
Latham & Watkins LLP

Counsel for JGC Corporation

FOR THE DEPARTMENT OF JUSTICE:

DENIS J. McINERNEY
Chief, Fraud Section
Criminal Division
United States Department of Justice

By: William J. Stuckwisch
William J. Stuckwisch
Assistant Chief
D.C. Bar No. 457278

Patrick F. Stokes
Patrick F. Stokes
Deputy Chief
Maryland State Bar

United States Department of Justice
Criminal Division, Fraud Section
1400 New York Ave., N.W.
Washington, D.C. 20005
Tel: (202) 353-2393
Fax: (202) 514-0152

Washington, D.C., on this 4th day of April, 2011.

SENIOR GENERAL MANAGER'S CERTIFICATE

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

I have carefully reviewed the terms of this Agreement with the Board of Directors of JGC. I have advised the Board of Directors fully of the rights of JGC, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the 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 behalf of JGC, 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 Senior General Manager, Legal and

Compliance Office, for JGC and that I have been duly authorized by JGC to execute this Certificate on behalf of JGC.

Date: April 6, 2011

JGC CORPORATION

By: Keitaro Ishii
Keitaro Ishii
Senior General Manager
Legal and Compliance Office
JGC Corporation

CERTIFICATE OF COUNSEL

I am outside counsel for JGC Corporation ("JGC") in the matter covered by this Agreement. In connection with such representation, I have examined relevant JGC documents and have discussed the terms of this Agreement with JGC's Board of Directors. Based on my review of the foregoing materials and discussions, I am of the opinion that: the representative of JGC has been duly authorized to enter into this Agreement on behalf of JGC, this Agreement has been duly and validly authorized, executed, and delivered on behalf of JGC, and this Agreement is a valid and binding obligation of JGC. Further, I have carefully reviewed the terms of this Agreement with the Board of Directors and the Senior General Manager, Legal and Compliance Office, for JGC. I have fully advised them of the rights of JGC, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of JGC to enter into this Agreement, based on the authorizations of JGC's Boards of Directors, is an informed and voluntary decision.

Date: April 6, 2011



Manuel A. Abascal
Counsel for JGC Corporation