UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 792-3
	)	
SIEMENS MEDICAL SOLUTIONS USA INC., f/k/a SIEMENS MEDICAL SYSTEMS,	)	Hon. John W. Darrah

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, SIEMENS MEDICAL SOLUTIONS USA INC., f/k/a SIEMENS MEDICAL SYSTEMS ("SMS"), by its authorized representative and attorney, VINCENT J. CONNELLY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth in paragraph 20 below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 05 CR 792.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, SMS, by its authorized representative and attorney, VINCENT J. CONNELLY, have agreed upon the following:

1. Defendant acknowledges that it has been charged in a Superseding Information with obstruction of justice, in violation of 18 U.S.C. §§ 1512(b).

2. SMS has the corporate authority to plead guilty, and has authorized VINCENT J. CONNELLY, its authorized representative and attorney, to sign this Plea Agreement on its behalf. A signed corporate resolution demonstrating the authority of the corporation to consent to this plea agreement is attached as Exhibit A hereto and incorporated in the parties' agreement.

3. Defendant SMS' authorized representative has read the charges against defendant contained in the Superseding Information, and those charges have been fully explained to defendant's corporate officials by defendant's attorneys.

4. Defendant SMS' authorized representative and its board fully understand the nature and elements of the crime with which defendant has been charged.

5. Defendant SMS, by its authorized representative, will enter a voluntary plea of guilty to the Superseding Information in this case.

6. Defendant SMS will plead guilty because it is in fact guilty of the charge contained in the Superseding Information. In pleading guilty, defendant admits the following, which establish its guilt and relevant sentencing facts beyond a reasonable doubt:

From in or about November 2000, and continuing until in or about October 2001, at Chicago, in the Northern District of Illinois and elsewhere, SIEMENS MEDICAL SOLUTIONS USA, INC. f/k/a SIEMENS MEDICAL SYSTEMS, together with others and acting through its authorized agents, knowingly engaged in misleading conduct toward another person, namely, a judge of the U.S. District Court of the Northern District of Illinois, with intent to cause or induce persons to with-hold testimony, records and documents from an official proceeding, namely, the lawsuit in the

United States District Court captioned *GE Co. v. County of Cook, et al.*, 00 C 6587; in violation of Title 18, United States Code, Sections 1512(b)(2)(A) and 2.

(a) Background

Siemens Medical Solutions USA, Inc., formerly known as Siemens Medical Systems, is a Delaware corporation with a field office in Hoffman Estates, Illinois.

Faustech Industries, Inc. ("Faustech") was a Delaware corporation, then located in River Grove, Illinois, and was certified by Cook County as a Minority Business Enterprise ("MBE") for certain activities.

Co-defendant Faust Villazan was the Chief Executive Officer and sole owner of Faustech.

Cook County was a unit of local government in Illinois in the process of building and equipping a new Cook County Hospital building in the year 2000. As part of that process, Cook County issued a number of bid packages for separate contracts, including Bid Package #3.

DD Industries, LLC, a/k/a Siemens/Faustech ("DD Industries"), purported to be a joint venture arrangement incorporated as a limited liability corporation, formed by SMS and Faustech for the sole purpose of bidding on Bid Package #3.

Co-defendant Daniel Desmond was the District Business Administrator of the Chicago-area office of SMS in Hoffman Estates. Desmond functioned as the president of DD Industries, and was authorized to take actions with respect to DD Industries on behalf of SMS.

Co-defendant Ellen Roth was an in-house attorney for Siemens, Corp., a corporate affiliate of SMS. Roth acted as the principal corporate decisionmaker for SMS responsible for creating DD Industries, and for drafting certain portions of Bid Package #3, including the Affidavit of Joint Venture submitted by DD Industries with Bid Package #3.

(b) Bid Requirements, including the MBE/WBE Requirement

On or about May 15, 2000, Cook County issued Bid Package No. 3, seeking bids for a complete turnkey package for Radiology Equipment and a Picture Archiving and Communication System ("PACS") for the new Cook County Hospital (later renamed Stroger Hospital).

The bid package and the applicable law at the time the bid was solicited in 2000 required all bidders to satisfy a series of conditions. The instructions to bidders stated, among other things, that "This contract is a competitively bid public contract of Cook County government subject to laws and ordinances governing public contracts. The bidder shall at all times observe and comply with all laws, ordinances, regulations and codes of the Federal, State, County and other local government agencies which may in any manner effect the preparation of the Bid Proposal or the performance of the contract." SMS acknowledges that it was aware of these requirements.

Applicable law in effect in June 2000 included the County's Minority Business Enterprise ("MBE") and Women's Business Enterprise ("WBE") ordinances. These ordinances provided that no bidder would be awarded an eligible contract unless the County's Office of Contract Compliance had approved its MBE and WBE plans or granted a waiver to the bidder. Conditions to the bid package incorporated the MBE and WBE requirements, namely that bidders set aside not less than 30% and 10%, respectively, of the total contract value for the participation of MBEs and WBEs.

Bidders could satisfy the County's MBE/WBE participation by forming a joint venture entity. In the event MBE/WBE participation was to be in the form of a joint venture, the bid provided that the participation of the MBE/WBE could be counted only if: (a) the MBE/WBE joint venturer(s) shared in the ownership, investment, control, management responsibilities, risks, and profit of the joint venture in proportion with the MBE/WBE ownership percentage; (b) the

MBE/WBE joint venture(s) was responsible for a clearly defined portion of work, commensurate with its percentage joint venture ownership, to be performed with its own workforce and/or equipment; and, (c) the work assigned to the MBE/WBE joint venturer must have been clearly designated in a Joint Venture Agreement and must be work which the MBE/WBE joint venturer had the skill and expertise to perform. SMS acknowledged these policies were reviewed by Ellen Roth and Daniel Desmond, acting on behalf of SMS.

Where MBE/WBE participation was to be achieved through a joint venture, the contractor was required to submit a notarized Schedule B Affidavit of Joint Venture ("Affidavit"). The bid package required the bidding entity to provide sworn information regarding the venturers' relationship, including: the MBE/WBE percentages of profit and loss sharing, the means and manner of any compensation to any managing partner, and any "material facts or additional information pertinent to the control and structure" of the joint venture. The Affidavit also required the joint venture partners to identify "other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control," and directed the partners to provide copies of "all" written agreements between venturers concerning the project. Signatories were also warned that any material misrepresentation would be grounds for contract termination and action under federal or state laws concerning false statements. SMS acknowledged these policies were reviewed by Ellen Roth and Daniel Desmond, acting on behalf of SMS.

(c) Faustech Industries

At the times involved herein, SMS believed that Faustech was a Delaware corporation. Its sole owner and president was Faust Villazan. Faustech was approved by Cook County as an MBE as a Distributor of Medical & Safety Products; Office Furniture Supplies and Equipment; Computer

Equipment and Supplies; Delivery Services, and Industrial & Commercial Hardware Products & Equipment. Faustech's sole full-time employees were Faust Villazan and two administrative secretarial employees. SMS acknowledges that it knew in the spring of 2000 that Faustech did not have the capacity to perform substantial work on the contract specified in Bid Package No. 3.

(d) SMS' Negotiations with Faustech

Prior to negotiating bid terms, Villazan arranged for SMS employees at Hoffman Estates to meet with County Employee A, an employee of the Cook County Office of Contract Compliance, which had responsibility for reviewing MBE compliance on bid submissions. County Employee A explained to the SMS employees that if they wanted to bid as a joint venture, the venture partners would have to certify to the County that they were complying with its requirements and County ordinances.

On or about May 23, 2000, Villazan, his lawyer, SMS Manager A, Ellen Roth, and County Employee A met for dinner at Carmine's restaurant in Chicago. Before the dinner, on May 22, 2000, Villazan's lawyer drafted and sent to Ellen Roth a joint venture agreement, the terms of which summarized his understanding of what SMS Manager A and Villazan had agreed would be the scope and obligations of their joint venture relationship.

During the dinner, Villazan asked SMS Manager A to be paid a fee of 10% of the profits on the deal. SMS Manager A told Villazan that SMS would only pay Villazan a flat fee commission, which would be substantially less than 30% of the profits to be realized by the joint venture. SMS Manager A further told Villazan that Faustech would do only the work that SMS told it to do.

Villazan and SMS Manager A subsequently met on May 25, 2000, and agreed to terms that SMS Manager A had reduced to writing and e-mailed to Roth, whereby SMS would pay Faustech a flat fee of $450,000 and a bonus of $50,000 if certain conditions were met.

(e) The Siemens/Faustech Agreement

SMS acknowledges that it did reach a flat fee agreement with Faustech on the terms negotiated by Villazan and SMS Manager A. (These agreed terms were referred to in the civil lawsuit with GE Medical Systems as the "side agreement.") SMS acknowledges that this agreement was not related to profits to be realized from the project, and that it did not contemplate Faustech doing 30% of the work on the project or, indeed, any substantial work, other than sales and liaison work. SMS further acknowledges that its actual agreement with Faustech provided that Faustech was not to have any actual management or control over the work, and was not to have any financial risk from the project. SMS acknowledges that this agreement was contrary to Cook County's requirements for Bid Package #3.

On May 25, 2000, the assistant to SMS Manager A sent an e-mail to Roth and other SMS employees. The e-mail stated in part: "Attached is the agreement that was decided upon today by [SMS Manager A, another employee,] and Faust Villazan. [SMS Manager A] would like you to review and discuss with [Villazan's lawyer]." Attached was an unsigned term sheet reflecting the agreement that SMS Manager A, on behalf of SMS, had reached with Villazan, on behalf of Faustech. The terms were:

- a $50,000 payment if the purchase order was issued to Siemens by August 2000;
- a $100,000 payment at issuance of the purchase order;

- a $200,000 payment when Siemens received a payment of the delivery portion from the County;
- a $150,000 payment when the County made its final payment for Cook County; and
- a guarantee of $450,000 total from the deal.
- an additional 1% on any change orders.

On the same day, May 25, 2000, Villazan's lawyer sent Roth an e-mail stating the same essential terms, along with a request for indemnification. SMS acknowledges that the terms reflected in the term sheet constituted the only compensation agreement with Villazan for the project.

Ellen Roth and members of SMS' management team were aware of the terms of the actual agreement between SMS and Faustech. SMS's management approved the terms of the actual agreement, which was not disclosed to Cook County as part of SMS' bid.

In late May or early June 2000, several members of the top-level management of SMS, including a corporate officer, met and approved SMS' agreement to pay Faustech a one-time, flat fee of $500,000, to be booked as a sales commission. SMS believed that Villazan would be entitled to the $500,000 payment if SMS was awarded the contract, regardless of what the joint venture's profit on the sale of the equipment would be. Under the agreement between SMS and Villazan, Faustech was not to receive any share of the joint venture's profit.

(f) The Bid Documents

On or about June 20, 2000, DD Industries (the joint venture between SMS and Faustech) submitted a joint venture bid to provide and service radiology equipment for the new Cook County Hospital. The joint venture agreement was drafted by Roth and she participated in the drafting of the Affidavit of Joint Venture. Roth was the principal person assigned by SMS to prepare the final

bid documents related to the joint venture and to assure compliance with County requirements, on behalf of the corporation.

The Affidavit of Joint Venture stated, among other things:

- profit and loss sharing between SMS and Faustech would be in accordance with each party's ownership percentage, or 70% for SMS and 30% for Faustech;
- there were no other applicable ownership interests, including ownership options or other agreements which restricted or limited ownership and/or control between the joint venture partners; and,
- services agreements between DD Industries and its members established payment for equipment and services rendered.

Each of these statements was false, and were known by SMS and Roth to be false at the time the Affidavit was submitted. The Affidavit was signed by Villazan, Desmond, and SMS Manager A, and an SMS corporate officer.

Other than the joint venture agreement, there were no other agreements provided to the County, including the actual agreement reached on or about May 25, 2000. On June 20, 2000, Roth sent an e-mail with a revised joint venture agreement to Villazan's lawyer, Desmond, SMS Manager A, and another SMS employee. In her transmission e-mail, Roth wrote,

> Please note that the two side agreements (services agreements with Faustech and SMS, including the information on payment schedules and milestones) have not been included in this package. They will be prepared and reviewed but they are not a part of the County's documentation for bid review. These are, and should be treated as, confidential to the parties.

SMS acknowledges that the services agreements, which were never drafted, would have contained the terms for payment to SMS and Faustech.

In a June 22, 2000, e-mail to SMS personnel, an SMS Manager described the joint venture as "Merely a necessary Sales tactic to Bid on large County Project in Chicago. Nothing incremental to our Forecast. The entity is a Shell & has no relevance beyond winning the Contract. Officially approved by Legal. Either Ellen Roth or myself are best contacts on any questions."

(g) The Bid Opening

The bids in this matter were opened on or about June 22, 2000, at a bid opening with one County Commissioner present. After the bids were opened, they were referred to the County's Contract Compliance Department for review, to ensure the bids complied with the bid requirements, including the MBE/WBE ordinance.

(h) The County's Questions about Compliance

On June 28, 2000, a supervisor in the Cook County Office of Contract Compliance questioned whether the MBE was actually providing services and equipment, and prepared a memo regarding her concerns. The supervisor then called Villazan requesting that he answer certain questions about his role in DD Industries. In response, Desmond provided a list of equipment for a response letter, which was signed by Villazan. The letter provided a false breakdown of "work to be performed by Faustech," listing "equipment that will be Faustech's responsibility to obtain." All of that equipment was actually equipment manufactured and provided by SMS, and Faustech had no significant role in obtaining or providing it. SMS acknowledges that the terms of the flat fee agreement were intentionally not disclosed to the County.

On July 10, 2000, the Office of Contract Compliance informed the County that the bid was in compliance with the M/WBE requirements. SMS acknowledges that its employees intentionally misled the County, believing that DD Industries' bid would have been rejected by Cook County as

non-conforming if SMS/Faustech had disclosed the flat fee agreement between SMS and Faustech, and that SMS' misrepresentations and omissions to Cook County were material.

(i) The Award of the Contract

After the County reviewed the DD Industries bid and a bid by GE Medical Systems, on July 11, 2000, Cook County's purchasing agent presented them to the Cook County board, in a report stating that the joint venture bid from DD Industries was the lowest qualified bidder meeting specifications. The Cook County Board formally awarded the contract provided for by Bid Package #3 (the "Radiology Contract") to DD Industries on or about August 9, 2000. The contract price, as awarded and prior to any change orders, was $49,337,491.

(j) The Return of Villazan's Capital Contribution and the Advance Payment to Him

Prior to the award of the bid, Faustech provided $30,000 and SMS provided $70,000 to set up a bank account for the joint venture. On August 9, 2000, the same day the bid was awarded to DD Industries, Dan Desmond wrote a check from the joint venture's bank account to Villazan for $29,250, or a return of Villazan's ownership investment in the joint venture, less $750. By this check, Faustech's investment in DD Industries was returned. SMS acknowledges that Faustech had no significant further exposure to any of the joint venture's financial risks.

Later in August 2000, Desmond sought permission from higher-level managers at SMS to pay Villazan an initial payment of $300,000, which amount would have included paying $150,000 earlier than had been negotiated under the $500,000 flat fee agreement. In considering approval of the payment, an SMS manager called Ellen Roth and asked her if SMS had struck any deal with Villazan other than the $500,000 payment to him. He also specifically asked Roth if there were any other payment terms in the joint venture agreement that prevented him from paying Villazan

$500,000 or any portion thereof, to be capped at a total eventual payment of $500,000. Roth assured the manager that the only deal SMS had with Villazan was for $500,000, and no more than $500,000. Based on that assurance, the SMS Manager approved an August 23, 2000, payment to Villazan for $300,000, which constituted an advance payment of $150,000 over what Faustech was entitled to under the terms of the flat fee agreement. On August 29, 2000, SMS wrote a check to Villazan for $300,000.

(k) The Bid Litigation

On October 24, 2000, GE Medical Systems ("GEMS") filed a complaint against Cook County seeking an injunction challenging its award of the contract to DD Industries. GEMS alleged that the bid awarded to DD Industries was contrary to state law, county ordinances and the bid terms. The case was assigned to U.S. District Judge Blanche Manning and U.S. Magistrate Judge Geraldine Soat Brown. In October 2000, Judge Brown denied GEMS' motion for a temporary restraining order, but ordered expedited discovery and a preliminary injunction hearing that began in January 2001. DD Industries intervened in the litigation, and hired SMS Outside Attorney, a partner at a Chicago-based law firm, to represent it.

GE argued, among other things, that: (1) Faustech could not have performed the commercially useful functions it identified in the joint venture affidavit submitted with the bid; and, (2) the flat fee compensation agreement was never disclosed to Cook County and was a material omission.

On November 27, 2000, GEMS' outside counsel met with SMS Outside Attorney and asked him to produce all documents related to agreements with Faustech, including the "side agreement." That day, SMS Outside Attorney e-mailed Desmond and Roth, among others, asking whether there was any compensation arrangement with Villazan where he was going to be paid any amount other

than $500,000, and whether that agreement had been reduced to writing. SMS, through SMS Outside Attorney, subsequently turned over documents, including Villazan's lawyer's reference to a preliminary agreement between SMS and Villazan. However, SMS failed to turn over the May 25, 2000, term sheet containing the terms of the flat fee compensation agreement. SMS acknowledges that it possessed the term sheet, and that SMS decided not to disclose the document to counsel for GEMS.

(l) SMS' Litigation Position

SMS took the position in court that there was no flat-fee agreement with Faustech, and that the only agreement with Faustech was the joint venture agreement to give Faustech 30% of the profits to be realized from the bid. In court, SMS characterized the August, 2000 payment of $300,000 to Faustech as an advance of profits, and not as a payment under the actual compensation agreement. SMS claimed that the $500,000 agreement was the position requested by Faustech, but one that had never been agreed to by SMS. SMS acknowledges that all of these positions were intentionally false and/or misleading to the Court in that they failed to disclose and confirm the "flat fee" agreement reached with Villazan.

(m) False Testimony Presented by SMS

DD's principal witness on Villazan's compensation was co-defendant Daniel Desmond, who was president of DD Industries and the SMS District Business Administrator. At his deposition, Desmond testified that SMS had agreed to pay Faustech $500,000 for his "commercially useful contribution and his consultative services, management services [and] professional services towards the project." Desmond distinguished Faustech's fee from the $14.8 million in services the Affidavit

represented he would supply, by testifying that any reference to 30% was simply a reflection of the 70/30 split in joint venture investment, and unrelated to Faustech's actual anticipated services.

At the trial, Desmond testified falsely, saying that his prior deposition testimony was wrong. Desmond testified at trial that Villazan's $500,000 payment was Faustech's "recognized profit at this point in the project," and that the payment was "an advance of profits." Desmond further testified that Faustech had not been paid more money to that point because it was difficult to estimate profits on large, ongoing, projects. He testified that he was not aware of a "side agreement," since he wasn't involved in bid negotiations. He also testified that the joint venture affidavit submitted with the bid was accurate. SMS acknowledges that Desmond's testimony as to these material issues was false and misleading.

During the injunction hearing, SMS Outside Attorney interviewed SMS Manager A to prepare him to testify. During their meeting, SMS Manager A informed SMS Outside Attorney that the only deal with Faustech was a flat-fee deal, and that Faustech did not have a profit-sharing deal with SMS. SMS Outside Attorney thereinafter decided not to call SMS Manager A as a witness, and falsely informed counsel for GEMS that SMS Manager A had nothing to add. SMS Outside Attorney did not disclose that SMS Manager A would have testified that the only agreement with Faustech was the flat-fee agreement. SMS acknowledges that the failure to disclose the substance of the interview of SMS Manager A was misleading.

(n) Reports to Management

SMS Lawyer A sent regular trial updates to SMS personnel, including, SMS Officer A, SMS Officer B, and Roth. In those memos, SMS Lawyer A informed the recipients, *inter alia,* that:

- County Employee C, the director of the Office of Contract Compliance, testified at the trial that "if she knew of a side deal between Siemens and Faustec [sic] to relieve Faustec of liability, she would have referred the agreement to the State's Attorney. She was never informed of such an agreement."

- It was SMS Lawyer A's opinion that if the side agreement were in effect, it would be "against the [MBE] statute." He said a release of Faustech from liability was "also against the statute." SMS Lawyer A said that Desmond denied knowledge of any such agreements, and that SMS' questioning focused on how those agreements predated the final signed agreement.

- The court admitted testimony about the advance of funds to Faustech, with SMS Lawyer A observing that "[t]he morning session did not go well in that the [joint venture] came across as a fraud, that Siemens was merely using the MBE WBE as a flow through for Siemens equipment (note, DD testified that a major portion of the equipment that the WBE would purchase is Siemens equipment, thus they are not really fulfilling a "commercially useful" service.)"

- Villazan hurt SMS by testifying that "the 500 K payment was his profit, no more or less. That his understanding is that he would not have to pay anything back if profits are less than anticipated (thus violating the law). He also hurt us on the WBE arrangement."

- SMS Manager A "will have to deal with these issues, but we are in a conflict in that things he said along with some of Dan's testimony hurts the integrity of the JV. If the judge decides the JV is a sham, she has grounds for voiding the entire bid award and contract."

Top-level SMS managers, including SMS Officer A and SMS Officer B, received those documents, but took no action based upon them.

(o) Post-Trial Filing

SMS Outside Attorney filed post-trial papers on behalf of SMS. DD Industries LLC's Proposed Findings of Fact, dated February 22, 2001, included the following claims:

> 1. There is no side agreement between Faustech Industries, Inc. ("Faustech") and Siemens Medical Systems, Inc. ("SMS") that is at variance with the terms of the DD Joint Venture Operating Agreement.

* * *

> 3. There is no agreement between Faustech and SMS other than the DD Joint Venture Operating Agreement regarding the total amount to be paid to Faustech for its participation in DD.
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> * * *
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> 7. The payment of $300,000 to Faustech represents an advance payment against DD's profits.
>
> 8. The value of Faustech's participation in the Contract is $14,789,403.
>
> 9. $500,000 was an estimate of the profit Faustech would derive as a 30% owner of DD, based on his proportionate ownership share.
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> * * *
>
> 15. There was no agreement between Faustech and SMS that SMS would hold Faustech harmless from any claim, loss or expense asserted against Faustech or the joint venture.
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> * * *
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> 53. The letter from [Villazan's lawyer] to Ellen Roth . . . was not the basis for an agreement between SMS and Faustech concerning the payment of money to Faustech or the limitation of risks to Faustech.
>
> * * *
>
> 55. $500,000 was the total amount of profit that Faustech was to receive on an accelerated basis for its participation in the DD joint venture. This was the agreement Villazan reached with [the District Manager] of SMS.

These claims were false and misleading, and were known by SMS to be false and misleading.

(p) <u>The Magistrate Judge's Decision</u>

On March 5, 2001, Judge Brown recommended enjoining the County from awarding the contract to DD Industries. Among her findings were: (1) the Joint Venture did not expect Faustech to perform a commercially useful function, and it could not have done so even if it had wanted to do so; and, (2) DD submitted a false bid, because it did not disclose the side agreement to the County.

(q) Notice to SMS Management of SMS Litigation Positions

As noted above, SMS Lawyer A was present throughout the injunction hearing and sent regular trial updates to SMS personnel, including members of SMS management, senior inside counsel, and Roth. After the hearing, on or about July 25, 2001, the SMS Outside Attorney sent a draft memo entitled, "Talking Points for Legal Briefing for Management on Cook County Hospital Litigation" to in-house lawyers at SMS, including Roth and SMS Lawyer A. The draft acknowledged that the litigation arguments of SMS were inconsistent with the facts concerning the flat fee agreement between SMS and Faustech. He added:

> We did not call Faustech's lawyer at trial precisely because we were afraid that his testimony would undercut our position. We did [not] call [SMS Manager A] because we were convinced after attempting to prepare him for testifying that he could not say with a straight face that no flat-fee agreement had been reached. We relied on the testimony of SMS' Dan Desmond, who was not involved in the negotiations with Faustech, but could at least say that in the administration of the contract it was his understanding that Faustech would share in the profits. We also attempted to rely on Faust Villazan of Faustech, but his testimony was so unbelievable in the end that the Magistrate would not have believed any spin he might put on it. In addition, notwithstanding explicit instructions from me and from others who participated in the preparation of Villazan for his in-court testimony that he was to say his sole compensation would come from the profits of the venture, Villazan basically blew this aspect of his testimony on direct questioning by the Magistrate.
>
> Each of the bad facts discussed above concerning the use of a limited liability company to serve as a joint venture gives rise to a conclusion that DD was formed for the purpose not of truly complying with the MBE requirements, but for the purpose of avoiding them. [Emphasis added.]

Later the same day, SMS Outside Attorney wrote an in-house attorney at Siemens an e-mail confirming that he had wanted SMS Manager A to testify the deal was an advance of profits, but SMS Manager A would not:

> In answer to your question whether there was an agreement to pay Faust a flat fee, there is no question in my mind that [SMS Manager A] struck that deal with Faust. We put a spin on it at trial, but this is really why we didn't call [SMS Manager A]. Our intention was to have him say that there was no such agreement, despite the fact

> that Faust's lawyer had written an email that said I understand that Faust and [SMS Manager A] have made this agreement. Once we prepared him we knew he wouldn't be able to refute that with any real conviction. [Emphasis added.]

Ths SMS attorney responded by e-mail that he "presumed that was the case."

A revised, final draft of the Talking Points memo was sent to the same people, and others including a top SMS manager, on July 26, 2001. The final draft contains much of the same language, but omitted the discussion about SMS Outside Attorney's efforts regarding the testimony of Desmond and SMS Manager A. Instead, SMS Outside Attorney wrote that he could not call Villazan's lawyer as a witness for DD because Villazan's lawyer's testimony would be inconsistent with DD's position during the litigation.

SMS took no action to bring this memo to the Court's attention.

(r) Judge Manning's Ruling and the Settlement

On September 28, 2001, Judge Manning upheld the report and recommendations of the Magistrate Judge, and upheld the injunction. The County filed a notice of appeal, but ultimately did not pursue it. All parties eventually settled the litigation in October 2001, with SMS providing limited equipment and services to GE and its own MBE/WBE. Until the settlement, and as late as a letter sent by Desmond to the County dated October 5, 2001, SMS continued falsely to maintain that all facts concerning the "side agreement" had been disclosed in court, and that SMS was honoring the joint venture agreement, and not the flat fee agreement.

(s) SMS' payments to Faustech

SMS paid Faustech the full $500,000 ($300,000 in an August 29, 2000, check and $200,000 in a December 21, 2001, check). SMS acknowledges that the $500,000 paid to Villazan was unrelated to any anticipated or realized profits from the contract.

7. For purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The November 2006 Sentencing Guidelines are applicable to defendant's offense, under the Seventh Circuit's decision in *United States v. Demaree*, 459 F.3d 791, 793-95 (7th Cir. 2006).

(b) The base offense level under Guideline § 2J1.2(a) is 14.

(c) The offense level is increased by three levels pursuant to § 2J1.2(b)(2) because defendant's conduct resulted in substantial interference with the administration of justice in the civil proceeding *GE Co. v. County of Cook*.

(d) The parties agree that although Guideline § 8D1.1 recommends a term of probation of a least one year, a term of probation is not necessary in this case.

(e) The defendant and its attorneys and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department may conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

8. The parties agree that upon execution of this Agreement, SMS shall provide a copy of the Plea Agreement to all government agencies with which SMS is currently engaged in business or other contracting matters, including but not limited to the Department of Health and Human

Services and the Defense Logistics Agency, as well as other appropriate federal, state, and local agencies.

9. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw its plea on the basis of such corrections.

10. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. Defendant understands the count to which defendant will plead guilty carries the following penalties: (a) a maximum term of probation for defendant of five years; (b) a maximum fine of $500,000, or a fine of twice the pecuniary gain to the defendant or twice the pecuniary loss to the victims, whichever is greater; and, (c) any restitution ordered by the Court. The parties agree that for purposes of the fine, the pecuniary loss exceeded $500,000, the maximum statutory fine, pursuant to 18 U.S.C. § 3571(c) and (d) is at least $1 million. The parties agree that, pursuant to 18 U.S.C. § 3571(d), the pecuniary gain or pecuniary loss (for purposes of the statutory maximum fine provision) would be difficult to ascertain or estimate due to the nature and circumstances of defendant's offense and any attempt at such calculation would unduly complicate and prolong the sentencing process.

12. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $400 on each count to which it has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $400 at the time of sentencing with a cashier's check or money order made payable to the Clerk of the U. S. District Court.

13. Defendant understands that by pleading guilty it surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against it, it would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and its attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict defendant unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in its own behalf. If the witnesses for defendant would not appear voluntarily, it could require their attendance through the subpoena power of the court.

(e) At a trial, if defendant desired to do so, defendant could, through its agents, testify in its own behalf.

(f) Defendant understands that it has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives its right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that it has been prosecuted by way of the Superseding Information.

14. Defendant understands that by pleading guilty it is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to it, and the consequences of his waiver of those rights. Defendant further understands it is waiving all appellate issues that might have been available if it had exercised his right to trial, and only may appeal the validity of this plea of guilty or the sentence.

15. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement.

16. Defendant understands that the superseding indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

17. Defendant agrees that its obligations under this Plea Agreement survive any change in its corporate name, form or status.

18. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against it, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

19. Defendant agrees to fully and truthfully cooperate with the government in any matter in which it is called upon to cooperate, at any time such cooperation is necessary. This cooperation will include:

(a) requiring all current SMS employees (except for co-defendants Roth or Desmond) and requesting and urging all former SMS employees and agents, to fully and truthfully cooperate with the government in any matter in which it is called upon to cooperate, at any time the government deems that such cooperation is necessary, including providing complete and truthful information in any investigation and pretrial preparation, and complete and truthful testimony, before any federal grand jury and United States District Court proceeding; and

(b) waiving its attorney-client privilege, including the work product doctrine, with regard to oral and written communications, records and documents relating to the preparation and submission of Bid Package #3 and the hearing in *GE Co. v. County of Cook*, No. 00 C 6587.

20. This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that:

(a) The sentence imposed by the Court shall not include a term of probation.

(b) As a part of the sentence, and applying the provisions of Guideline section 8C2.10 and 18 U.S.C. §§3553 and 3572, the parties have agreed that the court shall order defendant to pay a fine in the amount of $1,000,000. The parties agree that this fine reasonably reflects the seriousness of defendant's offense and the need to provide just punishment and adequate deterrence and that this fine is consistent with the factors enumerated in 18 U.S.C. §§ 3553 and 3572 as relevant to the imposition of a fine. The parties agree that the full $1,000,000 fine shall be paid by cashier's check or wire transfer of federal funds payable to the Clerk of the United States District Court on or before the date of sentencing.

(c) Other than the agreed terms set forth in paragraphs 20(a) through 20(b) above, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the parties' agreed terms, the defendant may not withdraw this plea as a matter of right under Federal Rules of Criminal Procedure 11(c) and (d). If, however, the Court refuses to impose the agreed terms, thereby rejecting the Plea Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

21. Regarding restitution, defendant agree that the offense to which it is pleading guilty is an offense that resulted in consequential damages to Cook County of $1,516,683. Defendant agrees to pay that amount as restitution, pursuant to 18 U.S.C. § 3553A(a)(3). Defendant agrees to pay this amount by cashier's check or wire transfer of federal funds on or before the date of sentencing. Defendant understands that, pursuant to Title 18, United States Code, Section 3663A, the Court must order restitution to the victim of the offense, minus any amounts already paid back to any victim. Defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in determining

restitution. Defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of its economic circumstances. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

22. Nothing in this Agreement shall limit any government agency from making decisions regarding suspension or debarment from participation in government contracts or any other matter within their decision-making authority.

23. Defendant understands that its compliance with each part of this Plea Agreement extends throughout and beyond the period of its sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. Defendant further understands that in the event it violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

24. Solely for purposes of this Plea Agreement, SMS agrees to waive any and all defenses to the charge contained in the Superseding Information based on the applicable statute of limitations. This waiver is expressly conditioned on the validity of this Agreement. The Government understands and agrees that in the event the Court does not accept this Plea Agreement, or the Government voids the Plea Agreement as described above, SMS will be able to assert any defenses based on the statute of limitations that are available to it on the date of the signing of this Agreement.

25. Defendant and its attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

26. After sentencing on the Superseding Information, the government will move to dismiss the Superseding Indictment as to SMS only.

27. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

28. Should the judge refuse to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

29. Defendant acknowledges that it has read this Agreement and carefully reviewed each provision with its attorney. Defendant further acknowledges that it understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: ____________________

____
PATRICK J. FITZGERALD
United States Attorney

____
SIEMENS MEDICAL SOLUTIONS,
f/k/a SIEMENS MEDICAL SYSTEMS,
by: ___________________________
Its Attorney and Authorized Representative

____
BARRY A. MILLER
LISA M. NOLLER
Assistant United States Attorneys

____
VINCENT J. CONNELLY
Attorney for Defendant