

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

UNITED STATES OF AMERICA )

v. )

ALABAMA CONTRACT SALES, )  
INCORPORATED )

CASE NO.:

**Deferred Prosecution Agreement**

The United States of America, by and through Alice Martin, the United States Attorney for the Northern District of Alabama, and Alabama Contract Sales (ACS), by and through its Vice-President, Timothy Neil Turnham, enter into this deferred prosecution agreement, as set out below:

1. ACS agrees to waive indictment and the United States agrees to file a one (1) count information in the United States District Court for the Northern District of Alabama charging ACS with program fraud in violation of Title 18 United States Code, Section 666(a)(2).
2. ACS agrees to accept and acknowledge responsibility for its conduct as set out in this Agreement and (ACS) agrees that the following is a true and correct statement of facts:
  - A. ACS is a corporation which sells products, primarily furnishings and equipment, and provides services to institutions, most of which are schools. Most, but not all, of the furnishings and equipment ACS sells have been the subject of competitive bids awarded to manufacturers and ACS has the contractual right to sell those items. ACS also provides design and other services to institutions as part of its sale of furniture and equipment to that institution. Typically, ACS does not charge the institution for the design services it provides.

In many instances when ACS does business with an institution, the products it sells are sold at price determined by a state-wide bid won by the manufacturer. In these instances, the manufacturer pays a portion of its proceeds from the sale of its products to ACS. ACS receives different percentages from different manufacturers.

B. ACS is a corporation owned by members of the Turnham family. Timothy Neil Turnham is an owner and Vice-President of ACS and is responsible for the overall operation of the business. Timothy Neil Turnham was the person who conducted or supervised ACS's business dealings with the Alabama Department of Post-Secondary Education and its subordinate institutions during the period of time from July, 2002 through July, 2006.

C. For the period of time from July, 2002 through July, 2006, ACS did business with the Alabama Department of Post-Secondary Education and its subordinate institutions. During this period of time, a former President of Southern Union Community College was the Chancellor of Post-Secondary Education. The Chancellor was the administrative head of the Alabama Department of Post-Secondary Education, and controlled the finances of that department.

D. During the time that the former President of Southern Union Community College was the Chancellor of Post-Secondary Education, ACS's business with that Department grew annually. In 2002, ACS's business with the Department totaled approximately thirty seven thousand dollars (\$37,000.00). In 2003, it was approximately six hundred fifty nine thousand dollars (\$659,000.00) In 2004, it was approximately one million seven hundred seventy nine thousand dollars (\$1,779,000.00). In 2005, it was approximately two million six hundred eighty eight thousand dollars (2,688,000.00). In 2006, it was approximately three million eight hundred eighty one thousand dollars (\$3,881,000.00). The total value of the business ACS conducted with the Alabama Department of Post-Secondary Education or its subordinate institutions during this period of time was approximately nine million dollars (\$9,000,000.00). The profit to ACS from this business was approximately eight hundred ninety thousand dollars (\$890,000.00).

E. During this period of time, ACS, by and through Timothy Neil Turnham, provided financial benefits to the Chancellor, a member of the Chancellor's family, and two close associates of the Chancellor who were employed by the

Alabama Department of Post-Secondary Education. Timothy Neil Turnham, through ACS provided these benefits in return for the Chancellor's efforts to have the Department of Post-Secondary Education's subordinate institutions do business with ACS. ACS provided the following benefits in return for the Chancellor's assistance:

(1) ACS paid for goods and services for the Chancellor's house in Opelika, Alabama:

(A) Sixteen thousand eighty-six dollars (\$16,086.00) paid to two businesses, Blinds and Things and House Dressings, for window shutters;

(B) Seven thousand three hundred ninety-one dollars and eighteen cents (\$7391.18) paid to Integrated Spaces for interior decorating services, including products and installation;

(C) Three thousand six hundred twenty-four dollars and sixty cents (\$3624.60) paid for furniture;

(D) Approximately four hundred twenty seven dollars and thirty eight cents (\$427.38) for transporting and installing cabinets.

(2) ACS paid for goods and services valued at two thousand seven hundred seventy two dollars (\$2,772.00) at the Chancellor's condominium in Orange Beach, Alabama.

(3) ACS paid one thousand nine hundred seventy nine dollars and sixty six cents (\$1,979.66) for wallpaper for Chancellor's mountain home. The Chancellor later told Timothy Neil Turnham that he was returning the wallpaper and, after this conversation, Timothy Neil Turnham found the wallpaper dumped in the ACS parking lot.

(4) ACS paid four thousand dollars (\$4000.00) to the Chancellor's son. The Chancellor asked Timothy Neil Turnham to pay his son in a telephone conversation the day before ACS was meeting with Lawson State Community College about a project.

(5) ACS paid three thousand two hundred sixty eight dollars (\$3,268.00) for shutters in the North Carolina home of a close associate of the Chancellor because of that associate's relationship with the Chancellor.

(6) ACS paid eleven thousand seven hundred dollars (\$11,700.00) to the business of a close associate of the Chancellor because of that associate's relationship with the Chancellor.

(7) ACS paid four thousand eight hundred dollars (\$4800.00) to the Chancellor's driver/assistant. One payment was a four thousand dollar check payable to the driver/assistant that Timothy Neil Turnham gave to the driver/assistant after the Chancellor told Timothy Neil Turnham that he needed to help the driver/assistant out. The other payment was eight hundred dollars in cash paid to the driver/assistant after the Chancellor told Timothy Neil Turnham that driver/assistant needed expense money because the driver/assistant was going to work on the Chancellors's mountain home.

F. At the Chancellor's direction, ACS included the value of benefits paid to the Chancellor in its invoices for design services for the Tuscaloosa Career Center. The total amount added was thirty-two thousand dollars (\$32,000.00). This figure also includes reimbursement for a seven thousand five hundred dollar (\$7500.00) campaign contribution to a State Board of Education member who was running for Mayor of Huntsville, Alabama, which the Chancellor had solicited from ACS.

G. ACS provided these benefits to the Chancellor, the Chancellor's family, and the Chancellor's associates for the purpose of gaining the Chancellor's assistance in obtaining business with institutions subordinate to the Alabama Department of Post-Secondary Education.

H. Before he became Chancellor and while he was president of Southern Union Community College, the Chancellor tied payments to his family members to business ACS sought from that college. In 1995-96, the Chancellor solicited and ACS paid a total of eight thousand thirty-eight dollars (\$8038.00) for the Chancellor's daughter in law's college tuition. In 1997, the Chancellor solicited and ACS paid a total of twelve thousand two-hundred dollars (\$12,200.00) for new office furniture for the Chancellor's son in law. At the Chancellor's suggestion, ACS added the cost of these payments to invoices for work done at Southern Union



Community College.

3. The United States, in light of ACS's willingness to acknowledge responsibility for its conduct, continue its cooperation, and demonstrate its future good conduct, agrees to recommend to the Court that prosecution of ACS on the information filed pursuant to Paragraph 1 of this Agreement be deferred for a period of two (2) years from the date of the filing of the Information. The United States will present this Agreement to the Court and move for a continuance of all further proceedings for a period of two (2) years, for speedy trial exclusion of all time covered by such a continuance, and for approval by the Court of this deferred prosecution. ACS agrees that this Agreement shall be publicly filed in the United States Court for the Northern District of Alabama as part of this request.

4. ACS agrees to pay to the victim, the State of Alabama, eight hundred ninety four thousand six hundred seventy four dollars and eighteen cents (\$894,674.18), which sum represents full restitution of (a) all profits obtained by ACS from doing business with the Alabama Department of Post-Secondary Education and any of its subordinate institutions for the period of time the former President of Southern Union Community College served as Chancellor of Post-Secondary Education, and (b) the cost of any items provided for the Chancellor's personal benefit for which ACS billed the Alabama Department of Post-Secondary Education or its subordinate institutions. ACS agrees to pay this sum in full within a period of two (2) years from the date of this agreement. ACS recognizes that the United States could institute a civil or criminal forfeiture action against at least those funds, and hereby expressly settles any and all civil and criminal claims presently held by the United States against those funds for the above-referenced amount.

5. ACS agrees to seek training from the Alabama Ethics Commission for all full-time employees. The expense of such training, if any, will be borne by ACS. Such training will include instruction on the prohibitions on providing things of value to public officials or employees who engage in business with ACS.

6. ACS agrees to cooperate fully in any and all investigations and prosecutions concerning officials and employees of the Alabama Department of Post-Secondary Education, its subordinate institutions, any and all entities doing business with that department and its subordinate institutions, and any other individual or entity known or connected to ACS or its owners and employees. Cooperation shall

include but not be limited to making ACS employees available to provide information, documents, and testimony at all reasonable times as requested by the United States Attorney, including testimony at federal grand juries and trials, as well as interviews with federal law enforcement authorities.

7. ACS agrees to refrain from doing any new projects with the Alabama Department of Post-Secondary Education, and any of its subordinate institutions, including serving as a sub-contractor on or receiving income or business indirectly from any new project for that department or its subordinate institutions, for a period of two (2) years from the date of this agreement.

8. ACS agrees that it will not, through its present or future agents, officers or employees, make any public statement contradicting any statement of fact contained in this Agreement or the Information. For the purposes of this Agreement, public statement includes any press release, statement in a press interview or statement in a public meeting. Any such contradictory public statement shall constitute a breach of this Agreement and ACS thereafter would be subject to prosecution. The decision as to whether any public statement will be imputed to ACS shall be at the sole reasonable discretion of the United States Attorney. Upon the United States Attorney determining that such a contradictory statement has been made by ACS, the United States shall so notify ACS in writing and ACS may avoid a breach of this Agreement by publicly repudiating such statement within forty-eight (48) hours after notification by the United States Attorney. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by the United States against such individual, unless such individual is speaking on behalf of ACS.

9. ACS agrees that should the United States Attorney, in her sole reasonable discretion, determine that ACS has given deliberately false, incomplete, or misleading information under this Agreement, has committed any federal or state felonies or misdemeanors, after the date of this Agreement, or has committed a willful and knowing breach of this Agreement, then this Agreement shall be null and void, and ACS, in the United States Attorney's sole reasonable discretion, shall be subject to prosecution for any federal criminal violation. Any such prosecution may be premised on information provided by ACS. Moreover, with respect to any crimes that are not time-barred by the applicable statute of limitations on the date

of this Agreement, ACS agrees that the applicable statute of limitations period for any such prosecution shall be tolled for a period of time equal to the term of this Agreement, so that such prosecution may be commenced against ACS in accordance with the terms of this Agreement, notwithstanding the expiration of the statute of limitation between the signing of this Agreement and the expiration of this Agreement. ACS's tolling of the statute of limitations is knowing and voluntary and in express reliance on the advice of counsel.

10. In the event that the United States Attorney determines that ACS has committed a willful and knowing material breach of any provision of this Agreement, the United States Attorney shall provide written notice to ACS of the alleged breach and provide ACS with a two-week period in which to make a presentation to the United States Attorney to demonstrate that no breach has occurred, or to the extent applicable, that the breach is not a willful and knowing material breach, or has been cured. ACS expressly understands and agrees that should ACS fail to make a presentation within the two week period it shall be conclusively presumed that ACS is in willful and knowing material breach of this Agreement. ACS understands and agrees that the United States Attorney's exercise of discretion under this paragraph of the Agreement is not subject to review. In the event that a breach of this Agreement results in a prosecution of ACS, such prosecution may be premised on information supplied by or on behalf of ACS to the United States at any time, unless otherwise agreed when the information was provided.

11. ACS agrees that in the event that the United States Attorney, in her sole reasonable discretion, determines that ACS has committed a willful and knowing material breach of any provision of this Agreement then (a) ACS will not contest the admissibility into evidence or contradict the contents of the incorporated Factual Statement and the information, (b) all statements made by or on behalf of ACS, or any testimony or statement given by ACS and any employee (current or former) before a grand jury or elsewhere, and any leads derived from any such statement or testimony shall be admissible in any and all criminal proceedings brought by the United States against ACS, and (c) ACS shall not assert any claim under the United States Constitution, Rule 410 of the Federal Rules of Evidence, or any other rule, that statements made by or on behalf of ACS before or after the signing of this Agreement, or any leads therefrom, shall be suppressed.

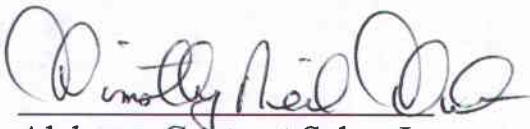


12. The United States agrees, provided that the Defendant ACS has fully complied with the terms of this agreement and has not engaged in any additional criminal conduct, to seek dismissal with prejudice of the information charging Defendant ACS within thirty (30) days of the end of that two (2) year deferral period.

13. ACS understands that this Agreement is binding on ACS, and the United States Attorney for the Northern District of Alabama, but does not bind any other federal agencies, or any state and local law enforcement agencies. The United States Attorney agrees to bring the cooperation of ACS and its compliance with the terms of this Agreement to the attention of other federal, state, and local law enforcement agencies if requested by ACS. Additionally, nothing in this Agreement restricts in any way the ability of the United States Attorney for the Northern District of Alabama to prosecute any individuals.

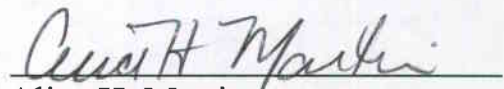
14. ACS is a corporation whose shares are owned by members of the Turnham family. Timothy Neil Turnham is an owner and is responsible for the overall operation of the business. A corporate resolution authorizing Timothy Neil Turnham to sign this Agreement is attached hereto as Exhibit A and incorporated herein by reference. ACS hereby warrants and represents that Timothy Neil Turnham has the authority to bind ACS.

15. This agreement contains the complete agreement of the parties and there are no promises or understandings not contained herein. This Agreement may not be modified except in writing signed by all the parties.



Alabama Contract Sales, Inc.  
By-Timothy Neil Turnham,  
Vice President

5/23/07  
Date



Alice H. Martin  
United States Attorney



Miles M. Hart  
Assistant United States Attorney



STATE OF ALABAMA,

LEE COUNTY.

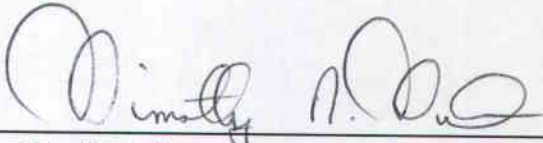
**CORPORATE RESOLUTION**

I, Timothy N. Turnham, do hereby certify that I am the duly elected Vice-President and Secretary of the Board of Directors of Alabama Contract Sales, Inc., and that at a meeting of said Board of Directors held at 507 Stage Road, Auburn, Alabama, on April 19, 2007, the following resolution was unanimously adopted:

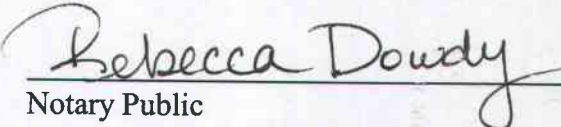
Resolved that Timothy N. Turnham, as Vice-President and Secretary of Alabama Contract Sales, Inc., is authorized to enter into and execute on behalf of Alabama Contract Sales, Inc., an agreement entitled Deferred Prosecution Agreement.

Timothy N. Turnham, as Vice-President and Secretary, or his successor, is authorized to consummate said agreement by executing whatever agreements or other instruments which may be required.

I also certify that a quorum was present at this meeting of said Board of Directors and that no Resolution contrary to this has been passed to this date.

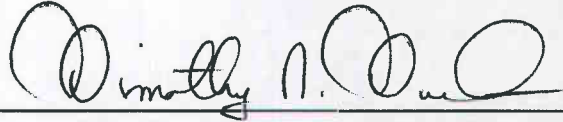
  
\_\_\_\_\_  
Vice-President/Secretary

SWORN to and subscribed before me this 19<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Notary Public  
MY COMMISSION EXPIRES APRIL 16, 2011

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I, Timothy N. Turnham, do hereby certify that I am the Vice-President and Secretary of Alabama Contract Sales, Inc., a corporation, and the foregoing is a true and correct copy of a resolution duly adopted by said corporation on April 19, 2007.



Secretary/Vice-President

CONFIDENTIAL  
SOUTHWORTH

COLLECTOR  
259 Cotton Fiber