

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

THE PUBLIC WAREHOUSING
COMPANY, K.S.C., A/K/A AGILITY

Criminal Action No.

1:09-CR-490-TWT-AJB

Government's Notice of Filing Plea Agreement and Information

The United States of America, by John A. Horn, United States Attorney, and Steven D. Grimberg, Nathan P. Kitchens and Kamal Ghali, Assistant United States Attorneys for the Northern District of Georgia, files this Notice of Filing Plea Agreement and Information. Attached hereto is an information and fully executed binding plea agreement (partially redacted), which the parties intend to present to the Court for its consideration on June 8, 2017, at 10 am, or as otherwise scheduled by the Court.

Respectfully submitted,

John A. Horn
United States Attorney

/s/Steven D. Grimberg
STEVEN D. GRIMBERG
Georgia Bar No. 312144
NATHAN P. KITCHENS
Georgia Bar No. 263930
KAMAL GHALI
Georgia Bar No. 805055

Certificate of Service

This is to certify that the foregoing pleading was formatted using Book Antiqua 13 point, in accordance with Local Rule 5.1C, and was served today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

May 23, 2017

/s/ Steven D. Grimberg

Steven D. Grimberg

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

THE PUBLIC WAREHOUSING COMPANY,
K.S.C., a/k/a AGILITY

INFORMATION
Criminal Action No.

1:17-CR-177-TWT-AJB

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

(Theft of Government Funds)
(18 U.S.C. § 641)

1. On or about June 17, 2007, in the Northern District of Georgia and elsewhere, the defendant, THE PUBLIC WAREHOUSING COMPANY K.S.C., a/k/a Agility, embezzled, stole, purloined, and knowingly converted to its own use and the use of another money belonging to the United States, namely, funds paid by the Defense Logistics Agency.

BACKGROUND

2. THE PUBLIC WAREHOUSING COMPANY K.S.C., a/k/a Agility (hereinafter “PWC”), is a Kuwaiti shareholding company with a head office located in Sulaibiya, Kuwait. Defendant PWC’s principal business consists of supply chain and logistics services.

3. The Defense Logistics Agency (“DLA”) is a logistics combat support agency within the Department of Defense (“DOD”), which is a department of the United States.

4. The Defense Logistics Agency Troop Support, f/k/a Defense Supply Center Philadelphia (“DSCP”), is the field activity of the DLA responsible for managing four major commodities: medical material, subsistence/garrison feeding, construction and equipment, and

clothing and textiles. DSCP is also responsible for managing the DOD's prime vendor ("PV") contracts regarding those commodities, including PV contracts for subsistence/garrison feeding for military personnel located in the Middle East.

5. Between 2003 and 2005, DSCP awarded three PV contracts to PWC for the provision of foodstuffs and non-food items in various parts of the Middle East. On or about May 28, 2003, DSCP awarded Contract SP0300-03-D-3061 (also known as the "PV-I Contract") to PWC. On or about February 17, 2005, DSCP awarded Contract SPM300-05-D-3119 (also known as "Mod P00036" or the "PV Bridge Contract") to PWC. On or about July 7, 2005, DSCP awarded Contract SPM300-05-D-3128 (also known as the "PV-II Contract") to PWC. PWC performed under these contracts (collectively, the "PV Contracts") until on or about December 4, 2010.

6. On or about October 20, 2005, PWC, through its wholly-owned subsidiary PWC Global Logistics Ltd., entered into a service agreement with Interchange Group, Inc. ("Interchange"), a company that provided a variety of warehousing and consolidation services at the Virginia Inland Port in Front Royal, Virginia ("VIP").

7. Under the terms of its service agreement, PWC would pay Interchange for a variety of services, including cold storage, palletizing, packaging, wrapping, labeling, certifications, and cross docking (collectively, the "VIP Services"). PWC would then charge its suppliers for any VIP Services that were performed for the suppliers' products.

8. From in or about 2006 through in or about 2008, pursuant to its service agreement, Interchange provided PWC with VIP Services for products that PWC ordered for DSCP and its customers under the PV-II Contract.

THEFT OF GOVERNMENT FUNDS

9. On or about June 17, 2007, PWC sent an invoice to DSCP reflecting an artificially inflated Delivered Price (as defined in the PV Contracts) for a product that included a charge for VIP Services, plus an additional mark-up to PWC, as a component of the Delivered Price, contrary to the terms of the PV Contracts, and PWC knowingly and willfully took a profit of \$551 in connection with the VIP Services that Interchange performed on this product, in violation of Title 18, United States Code, Section 641.

JOHN A. HORN

United States Attorney



STEVEN D. GRIMBERG

Assistant United States Attorney

Georgia Bar No. 312144



NATHAN P. KITCHENS

Assistant United States Attorney

Georgia Bar No. 263930



KAMAL GHALI

Assistant United States Attorney

Georgia Bar No. 805055

600 U.S. Courthouse

75 Ted Turner Drive SW

Atlanta, GA 30303

404-581-6000; Fax: 404-581-6181

GUILTY PLEA and PLEA AGREEMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CRIMINAL NO. 1:17-CR-177-TWT-AJB

The United States Attorney for the Northern District of Georgia ("the Government") and Defendant The Public Warehousing Company, K.S.C., a/k/a Agility ("PWC"), in consideration of separate written agreements entered into between PWC and the United States, and between PWC and the Defense Logistics Agency, as further described herein, enter into this plea agreement, as set forth below in Part III, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. PWC, having received a copy of the above-numbered Criminal Information and having been arraigned, hereby pleads GUILTY to the Information.

I. ADMISSION OF GUILT

1. PWC admits that it is pleading guilty because it is in fact guilty of the crime charged in the Information.

II. ACKNOWLEDGMENT & WAIVER OF RIGHTS

2. PWC understands its rights and understands that by pleading guilty pursuant to this Plea Agreement, it is giving up a number of rights including the right:

- a. to plead not guilty to the criminal charge brought against it;
- b. to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
- c. to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

- d. to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could have been filed;
- e. to appeal its conviction if it is found guilty; and
- f. to appeal the imposition of sentence against it.

Subject to this Court's approval of this Plea Agreement, PWC knowingly and voluntarily waives the rights set out in Paragraph 2(a)-(f) above. PWC understands that by pleading guilty pursuant to this Plea Agreement, it is giving up all of these rights and there will not be a trial of any kind.

PWC also understands that it ordinarily would have the right to appeal its sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, PWC may be waiving some or all of those rights to appeal and to collaterally attack its conviction and sentence, as specified below.

Finally, PWC understands that to plead guilty, it will, through its counsel of record in this action, have to answer, under oath, questions posed by the Court concerning the rights that PWC is giving up and the facts of this case, and PWC's answers, if untruthful, may later be used against it.

III. PLEA AGREEMENT

3. PWC, its counsel, and the Government, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

Binding Sentence Agreement

4. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and in consideration for the benefits derived herein, the Government and PWC agree that the Court will

require PWC to pay a maximum of \$551 in restitution, but will not impose a criminal fine or forfeiture against PWC, contingent on the execution of:

- a. A signed settlement agreement resolving the pending civil case captioned *United States of America ex rel, et al. v. the Public Warehousing Company, et al.*, Case No. 1:05-cv-02968-TWT;
- b. A signed settlement agreement between PWC and the Defense Logistics Agency ("DLA") resolving all pending and potential administrative claims between PWC and DLA involving the Armed Services Board of Contract Appeals;
- c. A signed settlement agreement between PWC and DLA resolving PWC's suspension and debarment from federal government contracting.

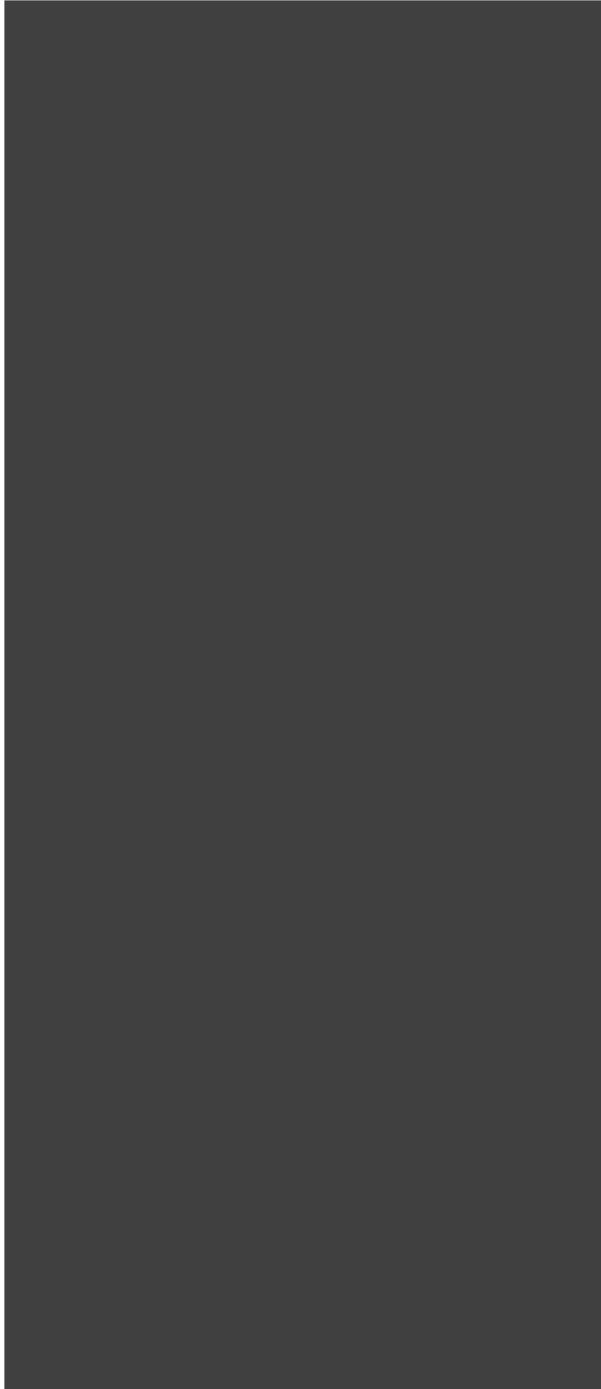
Dismissal of Pending Indictment

5. Contingent on PWC entering into the separate signed settlement agreements referenced in Paragraph 4 above, the Government agrees that, upon the entry of the Judgment and Commitment Order, any and all remaining counts in the pending Indictment against PWC, Case Number 1:-09-cr-0490-AJB-TWT, shall be dismissed pursuant to Standing Order No. 07-04 of this Court and to Rule 48(a) of the Federal Rules of Criminal Procedure.

No Additional Charges

6. The United States Attorney for the Northern District of Georgia agrees not to bring any further criminal charges against PWC arising out of or related to the solicitation, administration or performance of the PV Contracts, as defined below. At PWC's request, and based on PWC's representation that based on its investigation the following individuals have potential criminal exposure relating to this matter and have expressed an interest to be included in this plea agreement, the United States Attorney for the Northern District of Georgia agrees not

to bring criminal charges arising out of or related to the solicitation, administration or performance of the PV Contracts, against:



Waiver of Defenses

7. PWC agrees to waive all defenses relating to the charge to which it is pleading guilty pursuant to this Plea Agreement, including but not limited to the statute of limitations and any other time-related defense, venue, and service of process.

Factual Basis

8. The parties agree that the following is provable by admissible evidence and beyond a reasonable doubt:

- a. The Public Warehousing Company K.S.C., a/k/a Agility (hereinafter "PWC"), is a Kuwaiti shareholding company with a head office located in Sulaibiya, Kuwait. PWC's principal business consists of supply chain and logistics services.
- b. The Defense Logistics Agency ("DLA") is a logistics combat support agency within the Department of Defense ("DOD"), which is a department of the United States.
- c. The Defense Logistics Agency Troop Support, f/k/a Defense Supply Center Philadelphia ("DSCP"), is the field activity of the DLA responsible for managing four major commodities: medical material, subsistence/garrison feeding, construction and equipment, and clothing and textiles. DSCP is also responsible for managing the DOD's prime vendor ("PV") contracts regarding those commodities, including PV contracts for subsistence/garrison feeding for military personnel located in the Middle East.
- d. Between 2003 and 2005, DSCP awarded three PV contracts to PWC for the provision of foodstuffs and non-food items in various parts of the

Middle East. On May 28, 2003, DSCP awarded Contract SP0300-03-D-3061 (also known as the "PV-I Contract") to PWC. On February 17, 2005, DSCP awarded Contract SPM300-05-D-3119 (also known as "Mod P00036" or the "PV Bridge Contract") to PWC. On July 7, 2005, DSCP awarded Contract SPM300-05-D-3128 (also known as the "PV-II Contract") to PWC. PWC performed under these contracts (collectively, the "PV Contracts") until December 4, 2010.

- e. On or about October 20, 2005, PWC, through its wholly-owned subsidiary PWC Global Logistics Ltd., entered into a service agreement with Interchange Group, Inc. ("Interchange"), a company that provided a variety of warehousing and consolidation services at the Virginia Inland Port in Front Royal, Virginia ("VIP"). PWC asserts that it entered into the service agreement with Interchange in an effort to improve the supply chain for products that it provided to DSCP and its customers under the PV Contracts.
- f. Under the terms of its service agreement, PWC would pay Interchange for a variety of services, including cold storage, palletizing, packaging, wrapping, labeling, certifications, and cross docking (collectively, the "VIP Services"). PWC would then charge its suppliers for any VIP Services that were performed for the suppliers' products.
- g. From in or about 2006 through in or about 2008, pursuant to its service agreement, Interchange provided PWC with VIP Services for products that PWC ordered for DSCP and its customers under the PV-II Contract.

- h. The Government asserts that from in or about 2006 through in or about 2008, PWC sent artificially inflated invoices to DSCP that included Interchange's charges, plus the additional mark-up to PWC, whenever vendors utilized VIP Services. PWC denies this assertion but admits that, in its performance of the PV-II contract, PWC charged a vendor that utilized VIP Services an amount equal to Interchange's charges plus an additional mark-up to PWC. Contrary to the terms of the PV Contracts, PWC included this charge as a component of the Delivered Price (as defined in the PV contracts) and sent an invoice to DSCP reflecting an artificially inflated Delivered Price for a product. Specifically, on or about June 17, 2007, PWC knowingly and willfully took a profit of \$551 in connection with the VIP Services that Interchange performed on this product reflected on one invoice. This \$551 profit that PWC obtained was separate from the profit that PWC obtained through the Distribution Price that PWC charged for the sale of this product.
- i. Thus, PWC knowingly converted to its own use \$551 of government funds, in violation of Title 18, United States Code, Section 641.

**Right to Answer Questions, Correct Misstatements,
and Make Recommendations**

- 9. The parties reserve the right to inform the Court and the Probation Office of all facts and circumstances regarding PWC and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law.

Special Assessment

10. PWC agrees that it will pay the mandatory special assessment in the amount of \$125 by money order or certified check made payable to the Clerk of Court, U.S. District Court, 2211 U.S. Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303, on or before the date of sentencing.

Limited Waiver of Appeal

11. To the maximum extent permitted by federal law, PWC voluntarily and expressly waives the right to appeal its conviction and sentence and the right to collaterally attack its conviction and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any grounds, provided that the Court sentences PWC in accordance with the parties' Binding Sentence Agreement, as set forth in Paragraph 4, above. Claims that PWC's counsel rendered constitutionally ineffective assistance are excepted from this waiver. PWC understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a direct appeal of the sentence imposed, PWC may file a cross-appeal of that same sentence.

FOIA/Privacy Act Waiver

12. PWC hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

Corporate Authorization

13. PWC shall provide to the U.S. Attorney and the Court a certified copy of a resolution of its Board of Directors, affirming that the Board of Directors has authority to enter

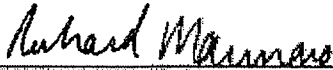
into the Plea Agreement and has (1) reviewed the Criminal Information in this case and the proposed Plea Agreement or has been fully advised of the contents thereof; (2) consulted with legal counsel in connection with this matter; (3) voted to enter into the proposed Plea Agreement; (4) voted to authorize PWC to plead guilty to the charge specified in the Plea Agreement; and (5) voted to authorize its counsel of record in this action to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement.

14. PWC agrees that its counsel of record in this action will appear on behalf of PWC and will enter the guilty plea and will also appear for the imposition of sentence.

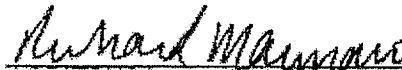
No Other Agreements

15. There are no other agreements, promises, representations, or understandings between PWC and the Government, concerning resolution of the criminal case.


In Open Court this ____ day of _____, 2017.



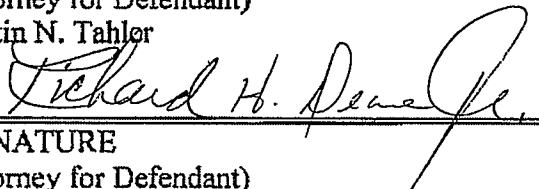
SIGNATURE
(Attorney for Defendant)
Richard Marmaro



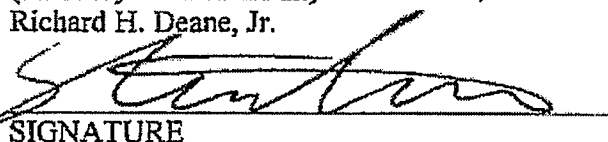
SIGNATURE
(Defendant by Representative)




SIGNATURE
(Attorney for Defendant)
Kristin N. Tahl



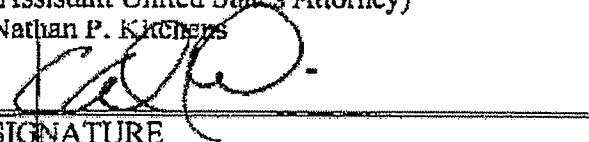
SIGNATURE
(Attorney for Defendant)
Richard H. Deane, Jr.



SIGNATURE
(Assistant United States Attorney)
Steven D. Grimberg



SIGNATURE
(Assistant United States Attorney)
Nathan P. Kitchens



SIGNATURE
(Assistant United States Attorney)
Kamal S. Ghali



SIGNATURE
(Approving Official)
Randy S. Chartash

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	Case No. 1:17-CR-177-TWT-AJB
DEFENDANT'S NAME:	THE PUBLIC WAREHOUSING COMPANY, K.S.C., a/k/a AGILITY
PAY THIS AMOUNT:	\$125.00

Instructions:

1. Payment must be made by **certified check** or **money order** payable to:

Clerk of court, U.S. District Court
personal checks will not be accepted
2. Payment must reach the clerk's office within 30 days of the entry of your guilty plea.
3. Payment should be sent or hand delivered to:

Clerk, U.S. District Court
2211 U.S. Courthouse
75 Ted Turner Drive S.W.
Atlanta, Georgia 30303
(Do Not Send Cash)
4. Include defendant's name on **certified check** or **money order**.
5. Enclose this coupon to insure proper and prompt application of payment.
6. Provide proof of payment to the above-signed AUSA within 30 days of the guilty plea.