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ORIGINAL

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

NOV 09 2009

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES OF AMERICA

v.

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

CRIMINAL INDICTMENT

NO. 1:09-CR-_____

(Filed under Seal)

1:09-CR-490

THE GRAND JURY CHARGES THAT:

COUNT ONE
(Conspiracy)
(18 U.S.C. § 371)

1. From on or about no later than September 2004, through at least mid-2006, in the Northern District of Georgia and elsewhere, defendant THE PUBLIC WAREHOUSING COMPANY K.S.C., a/k/a Agility, did willfully, knowingly, and unlawfully combine, conspire, confederate, agree, and have a tacit understanding with others known and unknown to the Grand Jury to defraud the United States and an agency thereof and to commit certain offenses against the United States, in violation of Title 18, United States Code, Section 371, including the following:

- (a) **Major Fraud Against the United States**, that is, to execute and attempt to execute a scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses,

representations, and promises in the procurement of property and services as a prime contractor, with the United States with respect to the award of Prime Vendor Contract SPM300-05-D-3128, the value of such contract with the United States for such property and services being \$1,000,000 or more, in violation of Title 18, United States Code, Section 1031;

and

- (b) **False Statements and Documents**, that is, in the jurisdiction of the executive branch of the United States: (1) make material false, fictitious, and fraudulent statements and representations, and make and use false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, and (2) falsify, conceal, and cover up by trick, scheme, and device material facts, in violation of Title 18, United States Code, Section 1001.

BACKGROUND

At all times relevant to this Indictment unless otherwise stated:

The Defendant

2. Defendant THE PUBLIC WAREHOUSING COMPANY K.S.C. (hereinafter "PWC," a/k/a Agility) is a Kuwaiti shareholding company with a head office located in Sulaibiya, Kuwait.

3. Defendant PWC's principal business activities are logistics and related services. Defendant PWC currently is the Prime Vendor pursuant to Contract SPM300-05-D-3128 issued by the Defense Supply Center Philadelphia to provide Full Line Food and Non-Food Distribution for Authorized Customers in the Middle East, Zone I (Iraq, Kuwait, and Jordan), as listed in Solicitation SPM300-04-R-0323, as more fully described below.

The Acquisition of Foodstuffs For Military Personnel

4. 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.

5. Defense Supply Center Philadelphia (DSCP), the troop support center agency of the DLA, is the center for managing four major commodities: medical material, subsistence/garrison feeding, construction and equipment, and clothing and textiles. DSCP is also responsible for managing DOD's prime vendor contracts within those commodities, including prime vendor contracts for subsistence/garrison feeding for military personnel located in the Middle East.

6. As part of its mission of supporting troops worldwide, in particular in the Middle East, DSCP issued solicitations for the acquisition of foodstuffs and non-food items for various parts of the Middle East, including Iraq, Kuwait and Jordan. These solicitations sought proposals to provide foodstuffs and non-food

items pursuant to contracts. The offeror who is awarded such a contract becomes the "Prime Vendor" for that contract.

Prime Vendor-I

7. Solicitation SP0300-02-R-4003 was issued on May 10, 2002, by DSCP to establish contracts with prime vendors to provide food and non-food products to the military and other authorized customers of the DLA in three Overseas European Zones, including Zone III-the Middle East. This solicitation was for a one-year base period, up to four one-year options, and had an estimated total acquisition value of \$111,959,520.

8. Defendant PWC submitted a proposal and on May 28, 2003, DSCP issued a notice of award to PWC awarding it Contract SP0300-03-D-3061 (PV-I), to provide full-line food and non-food distribution in Zone III (Kuwait and Qatar).

9. On June 27, 2003, DSCP issued Modification P00001 to PV-I, creating an Iraqi Deployment Zone and providing that defendant PWC would also provide food and non-food items to the military in Iraq. This Modification provided that the maximum total acquisition value limit of PV-I could increase by as much as 1200% over the estimated contract dollar value.

10. While DSCP was in the process of soliciting proposals for a new prime vendor contract in the Middle East, on February 16, 2005, defendant PWC was awarded Contract SPM300-05-D-3119 (also known as Modification P00036 to PV-I). This "Bridge Contract"

provided for continued prime vendor operation under the terms and conditions of PV-I through December 15, 2005.

Prime Vendor-II

11. Solicitation SPM300-04-R-0323 was issued on September 3, 2004, by DSCP to establish a prime vendor contract for the acquisition of food and non-food items for the military and other authorized customers in several Middle East Zones, including Zone I comprised of Iraq, Kuwait, and Jordan.

12. On November 16, 2004, defendant PWC provided its initial proposal and on July 7, 2005, DSCP awarded Contract SPM300-05-D-3128 (PV-II) to PWC to provide food and non-food items to the military and other authorized customers in Zone I. The estimated value of the award over the life of the contract with options was \$4,668,890,200.

13. For the duration of the prime vendor contracts defendant PWC was paid the following approximate amounts: PV-I- \$934,000,000; Bridge- \$1 Billion; PV-II- \$6.6 Billion.

Subcontractor: T.S.C

14. T.S.C. is a Kuwaiti shareholding company based in Kuwait, also with operations in Oman and Jordan, and is a subcontractor to defendant PWC with respect to the prime vendor contracts.

15. At the time of the events referenced in the Indictment, defendant PWC and T.S.C. were related companies in that T.S.C. owned a portion of N.R.E.C. which in turn owned a portion of PWC.

In addition, the two companies had interlocking directorates with at least three directors in common.

16. In July of 2003, defendant PWC informed certain suppliers of local market ready items and fresh fruits and vegetables that T.S.C. was the "sole authorized procurement entity for all Prime Vendor related products until further notice."

17. On December 14, 2003, two agreements were signed by representatives from defendant PWC and T.S.C. The "Strategic Outsourcing Agreement," signed by C.T.S. on behalf of defendant PWC and by A.S. on behalf of T.S.C., provided the following. Defendant PWC appointed and retained T.S.C. to act as its "Preferred Supplier" in connection with PWC's performance as a prime vendor. T.S.C. was to price products such that their per-unit price was no higher than the prevailing retail market rate in Kuwait for similar or equivalent products. Within five days of the end of each month, T.S.C. was to provide defendant PWC a Statement of Account setting out what PWC owed to T.S.C; Defendant PWC "shall pay to T.S.C. all amounts shown on each Statement of Account within thirty (20) [sic] days" after receipt of the Statement by PWC's Purchasing Department. T.S.C. "shall keep a file of all records, correspondence, invoices, quotations and any other materials related to any Invoices for a period of no less than two (2) years from the date of the Invoice." "T.S.C. [was to] provide PWC with a copy of all original supplier invoices for the Products no later

than thirty (30) days after the receipt of such original supplier invoices by T.S.C." Further, "[f]or any Invoice, PWC [had] the right at all times to inspect and audit the Records related to such Invoice." The term of this Strategic Outsourcing Agreement was to be "simultaneous with the effectiveness and continuation of the Prime Vendor Contract" unless otherwise terminated by the parties.

18. As late as July 2006, defendant PWC's internal audit manager continued to refer to the "current Strategic Outsourcing Agreement with [T.S.C.]" and quote provisions found in the 2003 Agreement.

19. The second agreement was a "Services Agreement," signed by E.S. on behalf of defendant PWC and A.B. on behalf of T.S.C. In recognition of defendant PWC's appointment of T.S.C. as its Preferred Supplier in the Strategic Outsourcing Agreement, this Services Agreement provided in relevant part the following: T.S.C. "appoints and retains [PWC] to act as an independent contractor" to perform "warehousing and supply-chain solutions" in support of T.S.C.'s obligations as a Preferred Supplier. T.S.C. would pay defendant PWC for the Services in an amount designated a "Logistics Distribution Fee" equal to ten percent (10%) of the total invoices T.S.C. presented to PWC for payments for products supplied to the Customer or PWC.

20. A letter addressed to defendant PWC dated December 15, 2003, and signed by E.S. on behalf of PWC, and by A.S. on behalf of T.S.C., states that, "We hereby agree with you that the [Services] Agreement has not been authorized and/or duly executed by either TSC or PWC, and, that, as such, the Agreement is null and void and of no force or effect." The letter further asks defendant PWC to "destroy any copies of the Agreement in your possession."

21. As late as April 2005, C.T.S. of defendant PWC, in a discussion of a 10% "rebate" that PWC had been receiving from T.S.C. for a soft drink product, referred to the rebate as "our Logistics fee percentage."

22. During the execution of all of the prime vendor contracts, products designated Local Market Ready Items (LMRI) and Fresh Fruits and Vegetables (FF&V) were sold to defendant PWC primarily through T.S.C.

Offeror's Price Submission

23. The solicitations for PV-I and PV-II provided that all offerors were required to submit complete pricing data for a specified number of core items, referred to as the Market Basket. The pricing submitted had to include a Delivered Price (also called product price) for each item from the manufacturer or supplier.

24. The solicitation for PV-II further required that to establish the Delivered Price component of the pricing offer, offerors were to submit current supplier invoices for the specified

core items, meaning the invoices submitted should be from the time period two weeks prior to the solicitation issue date; i.e., the week of 15, Aug. 2004. If no invoice was available for that particular week, the Delivered Price was to be based on the last available price prior to the two-week period specified. If the price used was not based on pricing for the period two weeks before the issue date of the solicitation, the price submitted had to include the date of acquisition.

25. As part of its proposal to be awarded the PV-II contract, defendant PWC submitted pricing data with invoices and quotations for the Market Basket Items. Defendant PWC's proposal also stated that a component of the "Value of [its] Proposal" would be the "savings associated with our extremely competitive pricing for our market basket relative to pricing structure in our original Prime Vendor bid."

OBJECT OF THE CONSPIRACY

26. The object of the conspiracy was to defraud the United States by making and using material false statements and documents and concealing material facts in its proposal to impair and pervert the functioning of DSCP in its evaluation of proposals, to conceal the use of such false statements and documents, and to use such material false information to procure money and property, that is, the award of the PV-II contract.

MANNER AND MEANS OF THE CONSPIRACY

27. Among the manner and means utilized to carry out the conspiracy and effect the unlawful objects set forth above was to submit materially fraudulent representations and documents and to falsify, conceal, and cover up by trick, scheme, and device material facts regarding defendant PWC's submission of Delivered Prices for specified Market Basket Items used in the PV-II bid evaluation process.

OVERT ACTS

28. In furtherance of this conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators within the Northern District of Georgia and elsewhere. The acts described below are some examples of such overt acts.

28a In response to the September 3, 2004, PV-II solicitation, P.C.A., defendant PWC's contract consultant, furnished PWC "target prices" for approximately half the Market Basket Items specified in the solicitation. Defendant PWC and P.C.A. agreed that, contrary to the solicitation instructions, rather than PWC submitting Delivered Prices based upon PWC's current supplier invoices for a time period prior to the solicitation, PWC would ask suppliers to sell it a limited amount of a given Market Basket Item at a one-time, lower, pre-determined target price. Neither the supplier nor

defendant PWC had an expectation that the relevant Market Basket Item would be sold at the target price at any time, including as part of PV-II, other than the limited quantity sale used to create the Market Basket invoice.

28b Market Basket Item #5

Defendant PWC requested a quote on Item #5 from manufacturer G.S. On or about September 22, 2004, by wire communication from a representative for manufacturer G.S. in Conyers, Georgia, G.S. quoted defendant PWC a price of \$1.61 per pound.

This G.S. quote was below defendant PWC's then current supplier R.P.Q.'s price of approximately \$1.68 per pound. However, all of the quotes for Item #5 obtained by defendant PWC in mid-September, including the one from G.S., were above PWC's target price. Accordingly, on or about October 13, 2004, defendant PWC issued a purchase order to R.P.Q. for 1 pallet of Item #5 for the target price of \$1.25 per pound. On or about October 15, 2004, R.P.Q. provided defendant PWC with invoice #333306 that included the ordered Item #5 for \$1.25 per pound. Defendant PWC submitted this invoice to DSCP as part of its bid proposal. (The products on invoice #333306 were not shipped to defendant PWC by R.P.Q., and R.P.Q. subsequently gave PWC a credit for the amount of the invoice.) After the Market Basket submission, defendant PWC continued to

purchase Item #5 from vendor R.P.Q. at the pre-Market Basket invoice price of approximately \$1.68 per pound.

28c Market Basket Item #10

On or about October 7, 2004, defendant PWC, by wire communication to a sales representative for manufacturer Z.I. in Rome, Georgia, requested to buy Market Basket Item #10 for the target price of \$2.06 per pound. At the time, defendant PWC was purchasing Item #10 from Z.I. for approximately \$2.40 per pound. Z.I. was the only supplier for Item #10 as designated by the Army Center of Excellence, Subsistence (ACES) at that time. When Z.I. did not comply with the \$2.06 per pound purchase request, defendant PWC made follow-up requests by e-mail to Z.I. in Rome, Georgia on March 5, 2005; March 27, 2005; and March 31, 2005. In a wire communication by Z.I., its sales representative explained to defendant PWC that the \$2.06 per pound purchase order was "confusing" in that PWC was seeking to buy one pallet of Item #10 at a lower price than the regular price used to purchase the same product in container loads. Defendant PWC was not able to obtain a Z.I. invoice at the \$2.06 target price, and eventually had to submit an actual October 27, 2004, Z.I. invoice for \$2.40 per pound.

28d Market Basket Items #1, 18, 22, 27, 50, 52, 57, and 60

As part of the overall planned Market Basket price submission, defendant PWC issued Purchase Orders to vendor O.D., for Market Basket Items 1 and 18 and to vendor A.B. for Market Basket Items #22, 27, 50, 52, 57, and 60. These purchase orders were for limited quantities of each item and included a target price. The target prices were all well below what defendant PWC was then buying the items for from either A.B., O.D., or any other vendor. To help defendant PWC and to foster the business relationship between A.B., O.D., and PWC, a representative for A.B. and O.D. agreed to sell PWC a limited quantity of the items for the target price to generate the requested invoice to be used by PWC for its bid on PV-II. Defendant PWC submitted these invoices generated by the limited sales at the target prices to DSCP as part of the Market Basket pricing. After the Market Basket submission, defendant PWC's purchases of Items #1, 18, 22, 27, 50, 52, 57, and 60 returned to higher pre-Market Basket prices.

28e Market Basket Items #13, 15, 17

As part of the overall planned Market Basket price submission, defendant PWC issued Purchase Order #3654 to consolidator/distributor T.B. for a limited quantity of Market Basket Items #13, 15, and 17, including a requested target price. To help defendant PWC and to foster the business

relationship between T.B. and PWC, T.B. agreed to sell PWC a limited quantity of the items for the target price to generate the requested invoice to be used by PWC for its bid on PV-II. On or about October 28, 2004, T.B. issued Invoice #PWC 521 reflecting such purchase. Defendant PWC submitted this invoice at the target prices to DSCP as part of the Market Basket pricing. After the Market Basket submission, PWC's purchases of Items #13, 15 and 17 returned to the higher pre-Market Basket prices.

28f Market Basket Items #20, 21, 24, 31, 35, 40, 41, 42, and 69

As part of the overall planned Market Basket price submission, on October 7, 2004, defendant PWC sought quotes from T.S.C. for Market Basket Items #25, 32, 33, 34, 37, 47, 51, 52, and 67 at specified target prices. On October 15, 2004, P.C.A. and defendant PWC discussed target prices for LMRI. Defendant PWC formulated a further plan to ask T.S.C. for the temporary lower prices for some Market Basket items and about ten additional items "so that the temporary price decline in the catalogue will not be obvious to the DSCP." On or about October 23, 2004, defendant PWC transmitted an e-mail to T.S.C. concerning "New Solicitation (Lowering of LMR Prices and Quotation of PV Non-Hard Spec Items)." In this e-mail defendant PWC asked T.S.C. for a "Temporary Reduction for selective LMR products (for two weeks period)." The products

in the Market Basket were identified by their Item number (#20, 21, 23, 24, 31, 35, 40, 41, 42, and 69), their then current price, and the lower "target price." T.S.C. provided defendant PWC with invoices or quotes to be used by PWC in its Market Basket submission for the following LMRI Market Basket Items #20, 21, 24, 31, 35, 40, 41, 42, and 69. For each of these Items (with the exception of Item # 41 which had only one prior sales to DSCP), the price on multiple sales to DSCP was higher before the Market Basket submission and returned to a higher price after the award.

28g P.C.A. and defendant PWC continued to work together after PWC's initial Market Basket submission in the event lower prices could be submitted in response to additional requests. In this context, on or about November 10, 2004, P.C.A. told defendant PWC that "we are all losing sight of our goals for the market basket...the goal is to get the most economical price available to us...doesn't mean we are going to buy anything [] I don't care about catalog/con ops or anything like that...all I care about is price...and that is all you should be interested in as well."

28h On or about March 18, 2005, defendant PWC submitted a response to DSCP questions and requests. In that response defendant PWC claimed that in contrast with its "competition" whose submitted Market Basket pricing "likely represent the

lowest cost item that simply meets the specs," PWC's submitted Delivered Prices for the Market Basket items were "derived from the high quality products specifically requested (and provided) to our customers over the last 18 months." Further, in response to the specific "issue of consistency between offered delivered prices and catalog delivered prices concurrent to the offer submission," defendant PWC stated as follows. "As stated in our Business Proposal, PWC changes our delivered price upon the final receipt upon [sic] the newly purchased product. This process may occur in some instances up to 90 days from the time we procure that product. PWC is invoiced for product upon the issuance of a purchase order. As required, PWC has submitted invoices for the vast majority of the products encompassed in the market basket." However in an e-mail communication between defendant PWC and P.C.A. the day before the submission quoted above the following was stated: "Let us not forget that all the prices that were submitted in the Price Proposal are based on the target prices set by PCA which we met either through invoices or quotations."

281 In defendant PWC's final offer submitted on April 18, 2005, it again falsely assured DSCP that its offered prices were realistic.

28j Shortly after the first orders were processed under PV-II, DSCP contacted defendant PWC to request an explanation for the substantially higher prices being charged to DSCP in contrast to PWC's Market Basket pricing proposal. DSCP also asked more specifically about the prices of LMRI products.

 In response to DSCP's inquiries, defendant PWC contacted P.C.A. seeking assistance in coming up with a way to explain the substantially higher prices PWC was charging DSCP in comparison to its Market Basket Delivered Price submission. A comparison of the submitted Market Basket Delivered Prices to the then current catalog demonstrated that the prices in the catalog were as much as 220% higher than the prices PWC submitted for the Market Basket as part of its proposal. P.C.A. told defendant PWC they "knew this day would come." With regard to DSCP's inquiry on LMRI pricing, on February 8, 2006, P.C.A. recommended to PWC "that TODAY you re-shop the entire LMR[I] list, fire somebody, blame it on them and cover up with new pricing ASAP- THIS IS VERY SERIOUS."

28k On or about February 9, 2006, defendant PWC sent an explanation to DSCP addressing the Market Basket Purchase for local products. This explanation stated in relevant part that defendant PWC "has a coherent and concrete system in place that monitors and identifies best quality items at best possible prices to the Government," and that because PWC deals

with T.S.C. "[DSCP is entitled to] market leverage that is simply not available from buying direct." The claims in this communication are contrary to the following events that pre-date the explanation.

(1) As early as October 2004, defendant PWC found T.S.C.'s prices to be "exceedingly high," and PWC was not able to adequately monitor pricing because there was a "lack of current visibility on TSC pricing policy & cost structure."

(2) In January of 2005, defendant PWC acknowledged that "[T.S.C.] has been invoicing PWC delivered costs including all associated distribution fees. Net result is an overcharge to DSCP."

(3) In May of 2005, defendant PWC became aware that T.S.C. was providing nectar, a less expensive product, when the United States was paying for juice, a more expensive product, and had done so for over one year, resulting in an estimated overcharge of approximately 10%.

(4) In June of 2005, defendant PWC, citing examples of T.S.C.'s unacceptable product quality and a T.S.C. supplier's intentional sale to PWC of product from a banned source, found that while they afforded T.S.C. "Preferential treatment of a nature that is probably unprecedented in the commercial world" T.S.C. had demonstrated "performance shortcomings."

(5) In August of 2005, a check of T.S.C. prices found a number of items cheaper to buy at retail.

(6) In November of 2005, defendant PWC found that T.S.C. had "a much higher opinion of [its] service than [PWC], as overall [PWC] would have to rate [T.S.C.'s] performance as average at best," and while T.S.C. had a "Preferred status" and "unparalleled access to [PWC's] operation," PWC had been let down.

(7) In November of 2005, defendant PWC found it "rarely [got] the cost competitive prices from T.S.C.," and were "not allowed to conduct thorough pricing audits."

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
(Conspiracy)
(18 U.S.C. § 371)

29. From in or about no later than June 2003, through at least in or about December 2008, in the Northern District of Georgia and elsewhere, defendant PWC did willfully, knowingly, and unlawfully combine, conspire, confederate, agree, and have a tacit understanding with others known and unknown to the Grand Jury to defraud the United States and an agency thereof and to commit certain offenses against the United States in violation of Title 18, United States Code, Section 371, including the following:

- (a) **Major Fraud Against the United States**, that is, to execute and attempt to execute a scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations and promises in any procurement of property and services as a prime contractor with the United States, or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, where the value of the contract with the United States for such property and services was \$1,000,000 or more, in violation of Title 18, United States Code, Section 1031;
- (b) **False Statements and Documents**, that is, in the jurisdiction of the executive branch of the United States to: (1) make material false, fictitious, and fraudulent statements and representations, and make and use false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, and (2) falsify, conceal, and cover up by trick, scheme, and device material facts, in violation of Title 18, United States Code, Section 1001;
- (c) **False, Fictitious or Fraudulent Claims**, that is, to make or present to any person or officer in the civil, military, or naval service of the United States, or to

any department or agency thereof, any false, fictitious and fraudulent claim against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, and fraudulent in violation of Title 18, United States Code, Section 287; and

- (d) **Wire Fraud**, that is to knowingly devise and attempt to devise and participate in a scheme and artifice to defraud, and to obtain money and property by means of material false pretenses, representations and promises; and causing interstate wire communications to be made in furtherance of said scheme and artifice, in violation of Title 18, United States Code, Section 1343.

OBJECT OF THE CONSPIRACY

30. The object of the conspiracy was to defraud the United States and obtain money and property by means of false and fraudulent pretenses, representations, and promises, and concealment of material facts with respect to defendant PWC's role as the prime vendor on PV-I (with Modification 36), and PV-II, both Government contracts worth over \$1 million.

**Background, Manner and Means, and Overt Acts related to:
Failure By Defendant PWC To Purchase Less Expensive Product Because
The Vendor Did Not Offer A Prompt Payment Discount**

Background

31. The Grand Jury realleges the facts stated in Paragraphs 2 - 13 of this Indictment and incorporates the same by reference herein.

32. The ACES was responsible, along with others, for developing the 21-day Contingency Operations (ConOps) menu that established a standardized menu platform for sustained deployments and was the basis for feeding military personnel at dining facilities in Iraq and Kuwait. Some items on the catalog were brand specified, or "hard-speded." Other items were listed only by product specifications and could be provided by any approved source the prime vendor chooses to use so long as the product meets the specifications. Typically, products that were "hard-speded" were deemed to be of high quality, often were brand name products, generally were familiar to military personnel, and were intended to give troops, in part, a sense of home. When a product was "hard-speded" the prime vendors, including defendant PWC, were expected to purchase that product and not use a substitute unless it was approved by ACES. DSCP and ACES monitored prime vendor compliance as to the purchases of "hard-speded" products.

33. In a communication on or about July 7, 2004, an ACES representative informed defendant PWC, that ACES was making G.S. an

approved supplier of ground beef in that ACES had "evaluated the product and it is great and there is a significant cost savings." On August 27, 2004, the fact that G.S. was "hard speced" for ground beef was communicated to defendant PWC.

34. Defendant PWC's understanding of the implication of a product being "hard speced" is explained by PWC in its PV-II proposal which states "By following the Army's 21 Day Con-Ops menu and USAF's 14 Day menus for 'hard spec' items that they have tested through their subsistence organizations, PWC is mandated to utilize those suppliers providing specific items." The proposal also states that "we have rigorous control mechanisms with regards to all the listed products that our customers view in the catalogues, thus abiding by the relevant food menus and hard specifications (including NAPA) food products."

Manner and Means

35. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 through 30 above, PWC failed to purchase less expensive product that it was instructed by DSCP and ACES to purchase because the vendor did not offer PWC a "prompt payment" discount. To avoid complying with DSCP's requirements, defendant PWC submitted false statements and documents to DSCP in an attempt to justify its failure to comply with the prime vendor contract.

Overt Acts

36. In furtherance of the conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators in the Northern District of Georgia and elsewhere. The acts described below are some examples of such overt acts.

36a On September 22, 2004, G.S., with facilities in Conyers Georgia, quoted a Delivered Price to defendant PWC of \$1.61 per pound with payment terms of 10 days net. At the time, defendant PWC was buying the ground beef from R.P.Q. at a price of \$1.68 with a "prompt payment" discount of 5%/90 days, Net/91 days. Defendant PWC found G.S.'s lower price to be "totally unacceptable" in that G.S. was not offering PWC any term discount like the higher priced R.P.Q. product. Defendant PWC knew that R.P.Q. was charging more than the G.S. quote, as evidenced by a May 22, 2004, internal e-mail, which stated that R.P.Q.'s ground beef pricing was "20 cents over the market- from qualified suppliers," and that R.P.Q. was overall adding a "20% premium" to its product invoices.

36b On September 27, 2005, defendant PWC, responded to two DSCP inquiries why it was still not buying ground beef from G.S., given the prior ACES directive that the ground beef supplier should be G.S. In this reply, defendant PWC stated that it was still buying ground beef from R.P.Q. because of

"price and performance." Defendant PWC falsely claimed that G.S. "... came in at a significant (sic) higher price," and that PWC had "no problem with their [G.S.] brand and will consider it when the price is best value as they seem to be a sound company that can perform." Defendant PWC knew that its statement that G.S. had a significantly higher price was false as G.S.'s price was lower than that of R.P.Q., but PWC was buying from R.P.Q., in part, because R.P.Q. offered it a "prompt payment" discount, and G.S. did not. That same day, DSCP in an e-mail expressed surprise that ACES would permit defendant PWC to buy from R.P.Q. rather than G.S.

36c On March 5, 2006, defendant PWC responded to another DSCP inquiry expressing amazement that PWC still was buying ground beef from R.P.Q., rather than G.S. In this reply, defendant PWC again tried to explain its failure to comply with the ACES directive. Defendant PWC, again falsely claimed that R.P.Q., its selected vendor, "consistently beat[] the prices of other vendors in our price quotes, which has included G.S."

36d Defendant PWC did not buy any ground beef from G.S. until early 2007. From 2004 until 2007, defendant PWC ignored the directive of ACES to purchase ground beef from G.S. and often purchased it from R.P.Q., at an inflated Delivered Price, in part, because R.P.Q. gave PWC a "prompt payment" discount while G.S. did not.

**Background, Manner and Means, and Overt Acts related to:
The Use Of Interchange/VIP to Generate Fraudulent Billings**

Background

37. The Grand Jury realleges the facts stated in Paragraphs 2 - 13 of this Indictment and incorporates the same by reference herein.

Pricing Pursuant to PV-I and PV-II

38. Each of the prime vendor contracts, including the Bridge Contract, utilized the same pricing formula: "Delivered Price" + fixed "Distribution Price (or Fee)" = "Unit Price." The contracts further defined Unit Price as the total price (in U.S. Currency) charged to DSCP per unit for a product delivered to the Government. Depending on the product, Unit Price was stated on the basis of a case, weight, or another unit of measure.

39. The contracts defined the Delivered Price (also known as "product price" and/or "landed costs") based on whether the product was acquired in the continental United States ("CONUS") or acquired outside the continental United States ("OCONUS"). For CONUS purchases, the Delivered Price was the manufacturer/supplier's actual invoice price (in U.S. currency) to deliver product to the prime vendor's CONUS distribution point (sometimes called the CONUS Place of Performance). For those items being picked up by the Defense Transportation System (DTS), however, from the CONUS manufacturer's facility (also known as "source load"), the manufacturer incurred no transportation costs. Accordingly,

Delivered Price did not include any transportation costs to the prime vendor's CONUS distribution point. For OCONUS purchases, the Delivered Price was the manufacturer/supplier's actual invoice price (in U.S. currency) to deliver product to the prime vendor's OCONUS distribution point.

40. The fixed Distribution Fee was defined as a firm fixed price, offered as a dollar amount per some unit of measure such as case, pound or package, which represented all elements of the Unit Price, other than the Delivered Price. The Distribution Fee was to consist of the prime vendor's projected general and administrative expenses, overhead, profit, packaging costs, such as palletizing and labeling, transportation cost from the prime vendor's OCONUS distribution facility(s) to the final delivery point, high risk insurance, and any other projected expenses associated with the distribution function. The Distribution Fee was to include all expenses that defendant PWC incurred in performing the prime vendor contracts, as well as a profit for doing so, for each product that PWC provided to the military or other authorized customers pursuant to the prime vendor contracts. The Distribution Fee represented the only amount that defendant PWC, as prime vendor, contractually was allowed to add to the Delivered Price for a given product to arrive at that product's Unit Price.

41. Pursuant to the prime vendor contracts, defendant PWC was not to include in the Delivered Price any fees, costs, or expenses

charged by a subcontractor who assisted PWC in obtaining CONUS products or making CONUS purchases. Rather, such fees, costs, and expenses were to have been considered, accounted for, and included in the fixed Distribution Fee that defendant PWC charged the United States and which was a part of the Unit Price billed to DSCP by PWC. Thus, to the extent that there were such fees, costs, or expenses from a PWC subcontractor, they were to be paid from defendant PWC's fixed Distribution Fee and not otherwise included in the Delivered Price or the Unit Price.

42. Defendant PWC could buy products directly from manufacturers or suppliers if they were willing to sell direct to PWC. In some instances, manufacturers or suppliers chose to sell through intermediaries commonly known as consolidators/distributors. In other instances, defendant PWC chose to deal with consolidators/distributors rather than buying directly from manufacturers or suppliers.

43. A National Allowance Pricing Agreement (NAPA) is an agreement in which a manufacturer or supplier agreed to offer a discount to DSCP on products ordered under a prime vendor contract. NAPA allowances are deductions to the Delivered Price of a product ordered under the prime vendor contracts.

Interchange/VIP

44. In defendant PWC's proposals in response to the solicitations submitted to DSCP with respect to the prime vendor

contracts, PWC specified Places of Performance. These locations were incorporated into, and made a part of, the prime vendor contracts. If additional Places of Performance were specified by defendant PWC after the issuance of the prime vendor contracts, they were so designated through the issuance of contract modifications.

45. On February 8, 2006, Modification P00008 to PV-II was issued designating Interchange Port Services in Front Royal, Virginia (VIP) as an additional CONUS Place of Performance.

46. The pricing structure for the PV contracts is that any costs, other than Delivered Price and freight to a CONUS Place of Performance if the product is not source loaded, are part of defendant PWC's Distribution Fee. Accordingly, any costs incurred after the product is delivered to the CONUS Place of Performance, such as Interchange/VIP, is not to be included in the Delivered Price of any product sold by defendant PWC to the United States and not to be billed to the United States.

47. On or about October 20, 2005, defendant PWC, through its wholly-owned subsidiary PWC Global Logistics Ltd, entered into a Service Agreement with Interchange Group, Inc. ("Interchange") which operated at VIP. The Agreement was to be in effect for an initial term of 18 months from the commencement of the PV-II award to defendant PWC by DSCP. The Agreement further provided that defendant PWC would pay Interchange to provide management and operation of warehousing, including cold storage; consolidation

services, such as palletizing, wrapping and labeling; necessary certifications; cross docking; and distribution services (referred to collectively herein as "VIP Services").

48. When vendors selling product to defendant PWC utilized VIP Services, Interchange would bill PWC for such services and would be paid for such services by PWC and not by the respective vendor.

Manner and Means

49. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 to 30 above, PWC urged certain vendors to utilize the VIP Services. The cost of these VIP Services to the vendor was billed by Interchange to defendant PWC. In turn, defendant PWC charged the vendor for the VIP Services at an amount equal to Interchange's charge to PWC plus a PWC mark-up. Defendant PWC knew that the VIP Services PWC charged to the vendor (both the Interchange cost plus the PWC mark-up amount) were being included as an undisclosed component of the Delivered Price of the product, contrary to the terms of the PV contracts. Defendant PWC used this inflated Delivered Price as part of the Unit Price it invoiced to DSCP for the product resulting in the submission of false, fictitious, or fraudulent claims to the United States.

Overt Acts

50. In furtherance of the conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

50a In August 2006, defendant PWC discussed with a representative of CONUS manufacturer G.S., located in Conyers, Georgia, the purchase of ground beef by PWC for the PV contract, with G.S. utilizing the VIP Services provided by Interchange. G.S. agreed to utilize the VIP Services, but told defendant PWC that G.S. would "add these charges to the value of each invoice to PWC." In September of 2006, G.S. quoted a price to defendant PWC of \$1.61 per pound for the ground beef product. The first invoices G.S. issued for the purchase of the ground beef charged the quoted \$1.61 per pound and the VIP charges as a separate line item on the invoice. In February of 2007, defendant PWC informed G.S. that the VIP Services had to be included in the Delivered Price of the product on the invoice. Thereafter, G.S. sold ground beef to defendant PWC using VIP Services with the Interchange costs included in the Delivered Price thereby inflating the Delivered Price. G.S. paid defendant PWC for the cost of the VIP Services by allowing PWC to deduct the cost of such services from the G.S. invoiced price of the product.

Defendant PWC knew that the VIP Services to G.S. (both the Interchange cost plus the PWC mark-up) were being included as an undisclosed component of the Delivered Price of the product billed by G.S. to PWC. Defendant PWC used this inflated Delivered Price as part of the Unit Price that it invoiced to DSCP for the product resulting in fraudulent overcharges to the United States.

50b In the summer of 2006, defendant PWC began to negotiate with CONUS vendor C.S. about the possibility of making direct purchases from C.S. Previously, defendant PWC had been purchasing C.S. products through a consolidator/distributor, O.D. While defendant PWC, during the course of the negotiations, originally had considered a price structure that would reduce the price of the C.S. products to DSCP, PWC ultimately rejected that approach stating it "would rather [C.S.] keep their pricing the same." In a letter to C.S. dated September 6, 2006, defendant PWC proposed that C.S. utilize "product consolidation at PWC's VIP Interchange Facility." Defendant PWC also sought "better terms" from C.S. in exchange for buying "more products" from them. Defendant PWC was aware that its proposal that C.S. utilize VIP Services would result in C.S. including the VIP consolidation costs into the Delivered Price. On or about November 27, 2006, defendant PWC and C.S. agreed that C.S. would use VIP Services

with C.S. paying PWC for the cost of the VIP Services by allowing PWC to pay 2% less than the C.S. invoiced price of the product. In January 2007, C.S. started selling directly to defendant PWC. Defendant PWC knew that the VIP Services charged to C.S. (both the Interchange cost plus the PWC profit) were being included as an undisclosed component of the Delivered Price of the product from C.S. to PWC. Defendant PWC used this inflated Delivered Price as part of the Unit Price it invoiced to DSCP for the product resulting in fraudulent overcharges to the United States.

50c By early 2006, defendant PWC had been buying various products from consolidator/distributor T.B. for at least two years. In early 2006, defendant PWC proposed to T.B. that it start utilizing the VIP Services provided by Interchange and that it ship the products that it sold to PWC through the VIP facility. Initially, T.B. agreed to ship three chicken products through VIP. Later, T.B. started shipping other products through Interchange as well. T.B. paid defendant PWC for the cost of the VIP Services by allowing PWC to deduct the cost of such services from the T.B. invoiced price of the product. Defendant PWC knew that the VIP Services charged to T.B. (both the Interchange cost plus the PWC mark-up) were being included as an undisclosed component of the Delivered Price of the product. Defendant PWC used this inflated

Delivered Price as part of the Unit Price it invoiced to DSCP for the product resulting in fraudulent overcharges to the United States.

50d In June 2006, CONUS manufacturer P.F., which already was selling products to defendant PWC, offered to sell pre-cooked hamburgers to PWC. P.F. offered to sell the pre-cooked hamburgers to defendant PWC for a net price of \$2.10 (\$2.35 less a \$0.25 "rebate"). Later, P.F. referred to the \$0.25 rebate as a "bill back," meaning that PWC would issue a bill to P.F. for the \$0.25 per pound after the sale. In August 2006, an employee of defendant PWC met with an employee of P.F. and proposed that, as with other products that P.F. was selling to PWC, that P.F. use the VIP Services provided by Interchange. On August 22, 2006, P.F. agreed to use VIP Services with the cost (including PWC's mark-up) being included in the Delivered Price as part of the \$0.25 per pound allowance. Thus, while the actual Delivered Price of the pre-cooked burgers was \$2.10 per pound, the Delivered Price as stated on the P.F. invoices to defendant PWC was \$2.35 per pound (less a NAPA discount of \$.02). Defendant PWC used this inflated Delivered Price as part of the Unit Price it invoiced to DSCP resulting in fraudulent overcharges to the United States.

**Background, Manner and Means, and Overt Acts related to:
Manipulation and Inflation of Delivered Prices**

Background

51. The Grand Jury realleges the facts stated in Paragraphs 2 - 22, and 38 - 43 of this Indictment and incorporates the same by reference herein.

Rebates/Allowances/Discounts

52. The solicitation for PV-I, which was incorporated into the contract, contained a provision that rebates and discounts are to be returned to the United States when they are directly attributable to sales resulting from orders exclusively submitted by DSCP or its customers. It further provided that the prime vendor was to be as aggressive as possible in pursuing all rebates, including mail-in coupons and discounts for the customers supported under the contract.

53. In its proposal in response to PV-I solicitation, defendant PWC stated that in keeping with standard commercial practice in the food service industry with respect to rebates and allowances, PWC would pass to the United States off-invoice allowances including manufacturer promotions or allowances that were reflected on invoices to PWC Group, Applicable Non-Profit Allowances, and Specific Manufacturer Pricing, Rebates, or NAPAs. Defendant PWC further stated that with respect to the foregoing rebates and pricing, that it "... would be aggressive as possible in assisting DSCP in obtaining such rebates and discounts. Based on

our purchasing strength and strong relationships with manufacturers, we believe that PWC Group can assist DSCP in obtaining favorable rebates and allowances from manufacturers.”

54. Similarly in the solicitation for PV-II, which was incorporated into the contract, there was a provision that rebates and discounts were to be returned to the United States when they were directly attributable to sales resulting from orders exclusively submitted by DSCP or its customers.

55. As with PV-I, defendant PWC in its proposal in response to the solicitation for PV-II stated that in keeping with standard commercial practice in the food service industry with respect to rebates and allowances, PWC would pass to the United States off-invoice allowances including manufacturer promotions or allowances that were reflected on invoices to PWC Group, defined by PWC in its proposal, to consist of PWC, T.S.C., and N.R.E.C., Applicable Non-Profit Allowances, and Specific Manufacturer Pricing, Rebates, or NAPAs. Defendant PWC also stated that “based on our purchasing strength and strong relationships with manufacturers, we believe that PWC can assist DSCP in obtaining favorable rebates and allowances from manufacturers.” Contrary to the PWC statements in the proposal, as summarized in October of 2004, by a PWC employee: “[O]ur negotiations have centered on leveraging [purchasing] savings for terms and prompt pay discounts for PWC- so there is no way [to]

verify how the savings have been passed to DSCP. In reality- they have not."

Manner and Means

56. Among the means and methods employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 to 30, defendant PWC demanded that consolidator/distributors or vendors that provided products to it eliminate or reduce their distribution fees charged for such products by hiding or concealing all or a portion of such distribution fees in the Delivered Price of the products that they sold and billed to PWC, resulting in inflated Delivered Prices. Defendant PWC, in turn, submitted to DSCP as part of the Unit Prices the inflated Delivered Prices received from consolidators/distributors or vendors, resulting in the submission of false, fictitious, or fraudulent claims to the United States.

Overt Acts

57. In furtherance of the conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

57a In June 2004, defendant PWC sought a quote from CONUS consolidator/distributor O.D. for lobster. O.D. provided a quote to defendant PWC based on product that it obtained from K.F. and others. Defendant PWC knew that O.D. was obtaining

lobster from K.F. and that it could be purchased from K.F. for about \$18.00 per pound. Despite that, defendant PWC agreed to purchase and O.D. agreed to sell the lobster to PWC at a Delivered Price of \$21.05 per pound. The lobster was source loaded at the K.F. facility and was never handled, shipped to, or in any way processed by O.D. It was part of the agreement with O.D. that the Delivered Price of the product to defendant PWC was inflated above the price charged by K.F. by the following amounts: a five percent (5%) fee that would be returned to PWC as a prompt pay discount; a one and a half percent (1.5%) fee to finance the cost for O.D. to carry defendant PWC's receivable for 90 days; and a three percent (3%) distribution and consolidation fee, all resulting in a Delivered Price to PWC of \$21.05. Because the Unit Price defendant PWC charged DSCP included as a component the inflated Delivered Price charged by O.D., the United States paid an inflated price for the lobster, while eliminating O.D.'s distribution charges that PWC would have had to pay O.D. from the Distribution Fee that PWC received.

57b In late 2004, manufacturer B.F. started selling a chicken product directly to defendant PWC. As part of the negotiations regarding direct sales, B.F. quoted a price of \$37.20 per case before the NAPA allowance and pick-up allowance, an allowance sometimes provided by a manufacturers or supplier if the

product is source loaded. B.F. also offered an additional marketing allowance of \$1.50 per case to defendant PWC. Defendant PWC requested that B.F. call this marketing allowance a "prompt payment" discount but B.F. refused. Instead, it was called a "training" allowance. Defendant PWC requested that the allowance of \$1.50 per case not be disclosed on the invoice issued by B.F. to PWC. While the invoice did not reflect the allowance, defendant PWC paid B.F. the invoice price less \$1.50 per case. This allowance was not returned to the United States. In April 2005, defendant PWC returned the accrued "training" allowance to B.F. In late 2005-early 2006, PWC decided to start buying the chicken product in a bulk pack rather than in individually wrapped units. In November 2005, B.F. quoted a net Delivered Price of \$22.70 per case to defendant PWC for the bulk pack with payment terms of Net 30 days. In the spring of 2006, defendant PWC demanded from B.F. a "prompt payment" discount and suggested that B.F. should "rethink" its price decrease and instead offer PWC better "terms." In response B.F. agreed to increase the Delivered Price of the chicken by 3.5%, add 30 days to the payment terms and offer defendant PWC a 3% "prompt payment" discount resulting in an inflated net Delivered Price of \$23.50. Defendant PWC, in turn, billed DSCP an inflated Unit Price, which included as a component, the inflated Delivered Price

charged by B.F., resulting in a fraudulently inflated price to the United States for the bulk pack of chicken product. As a then employee of defendant PWC stated in an e-mail dated April 19, 2006, to colleagues at PWC, "...PWC will be enjoying the 3% discount instead of DSCP (through a lower list price)."

57c In October 2005, defendant PWC considered purchasing breakfast sandwiches from CONUS manufacturer P.F. P.F. advised defendant PWC that the Delivered Price of the breakfast sandwiches was \$90.00 per case with an allowance of 8% or \$7.20 per case meaning that the actual case price was \$82.80. P.F. indicated that it was willing to sell the breakfast sandwiches to defendant PWC through consolidator/distributor R.F.F. Defendant PWC did in fact decide to purchase the breakfast sandwiches from P.F. through distributor/consolidator R.F.F. It was part of the agreement between defendant PWC and R.F.F. that R.F.F. would quote a Delivered Price, not of \$82.80 or even \$90.00 per case as offered by P.F. to PWC, but an inflated Delivered Price of \$93.60 with no distribution fee charged by R.F.F. to PWC. Defendant PWC, in turn, invoiced DSCP the inflated Unit Price, which included as a component the inflated Delivered Price charged by R.F.F., resulting in a fraudulently inflated price to the United States for the breakfast sandwiches, while eliminating the distribution fee that PWC would have to pay to R.F.F.

57d In August 2006, defendant PWC sought a quote from consolidator/distributor T.B. to purchase cheesecake manufactured by A.C. T.B. quoted defendant PWC a Delivered Price of \$34.87 per case with a distribution charge of \$3.73. Defendant PWC advised T.B. that it should shift \$1 of T.B.'s distribution charge into the Delivered Price of the product resulting in a Delivered Price of \$35.87 while reducing the distribution charge to be paid by PWC to \$2.73. Subsequently, when T.B. invoiced defendant PWC for the cheesecake it did so at the Delivered Price of \$35.87 while reducing its distribution charge to \$2.73. Defendant PWC, in turn, billed DSCP an inflated Unit Price for the cheesecake, which included as a component the inflated Delivered Price received from T.B., resulting in a fraudulently inflated price to the United States for the cheesecake, while reducing the distribution charge that PWC had to pay T.B.

**Background, Manner and Means, and Overt Acts related to:
Failure to Return Rebates, Allowances, and Discounts**

Background

58. The Grand Jury realleges the facts stated in Paragraphs 2 - 13, 38 - 43, and 52 - 55 of this Indictment and incorporates the same by reference herein.

Manner and Means

59. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth

above in Paragraphs 29 to 30, PWC failed to return rebates, allowances, and discounts to the United States that were directly attributable to sales resulting from orders exclusively submitted by DSCP or its customers, even though the prime vendor contracts required that PWC return such rebates, allowances, and discounts to the United States, and even though PWC affirmatively represented to DSCP that it would do so.

Overt Acts

60. In furtherance of the conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

60a In July 2003, defendant PWC entered into an agreement with CONUS distributor/consolidator L.S. that contained a Growth Incentive provision that provided that L.S. would pay PWC a refund of the price of previously purchased products based on the volume of purchases made by PWC. Based upon defendant PWC's purchases made through L.S. for performance of the PV contracts, PWC received refunds from L.S. of \$542,473.01 in September 2004 and \$164,993.09 in January 2006. These amounts were refunded to defendant PWC through a reduction in the amount it owed and paid to L.S. Pursuant to the prime vendor contracts, defendant PWC was to return any rebates, allowances, or discounts directly attributable to sales to DSCP or its

customers as the foregoing rebates were. These funds should have been returned to the United States in a timely manner according to PV contracts, but defendant PWC did not do so.

60b Defendant PWC regularly purchased an electrolyte beverage to sell to DSCP and its customers. Defendant PWC purchased an electrolyte beverage from consolidator/distributor R.F.F./G.T.E. As part of its military sales program, the manufacturer of the electrolyte beverage had a rebate program that it made available to R.F.F./G.T.E. For the year 2004, R.F.F./G.T.E. received rebates with respect to its purchases of an electrolyte beverage for sale to the military, a portion of which it provided to defendant PWC for purchases that it made on behalf of DSCP and its customers. On February 16, 2005, G.T.E. issued a check to defendant PWC in the amount of \$558,909.32 as its share of the rebates for purchases of the electrolyte beverage made in 2004. In March 2005, G.T.E. issued another check to defendant PWC in the amount of \$154,820 in anticipation of rebates for electrolyte beverage purchases made by PWC on behalf of DSCP. Pursuant to the prime vendor contracts, defendant PWC was to return any rebates, allowances, or discounts directly attributable to sales to the United States as the foregoing rebates were. For over two years defendant PWC kept the foregoing rebates. Defendant PWC finally did provide the rebates to the United States on May 14,

2007, but only after it received a Department of Defense Inspector General's Office subpoena seeking documents with respect to its operation of the prime vendor program. In addition, contrary to the provisions of the prime vendor contracts, defendant PWC did not advise DSCP that it was providing the funds but simply deposited them into an account maintained by the Defense Finance & Accounting Services with no explanation offered for the deposit.

**Background, Manner and Means, and Overt Acts related to:
Fraudulent Concealment of Rebates, Allowances, and Discounts**

Background

61. The Grand Jury realleges the facts stated in Paragraphs 2 - 13, 38 - 43, and 52 - 55 of this Indictment and incorporates the same by reference herein.

Manner and Means

62. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 through 30 above, PWC retained rebates, allowances, and discounts offered by CONUS manufacturers, suppliers, and vendors that it should have returned to the United States or used to reduce the Delivered Prices of products sold to DSCP. Instead of doing so, defendant PWC used such rebates, allowances, and discounts to demand what it called "prompt payment" discounts, which PWC knew were not in fact "prompt payment" discounts, and to reduce or eliminate distribution charges that it owed to

consolidators/distributors rather than offering lower Delivered Prices to the United States.

Overt Acts

63. In furtherance of the conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

63a In January 2005, CONUS manufacturer S.L. engaged in discussions with defendant PWC about selling direct to PWC, rather than through a consolidator/distributor. From the outset, defendant PWC sought an "early payment discount" of 5%/60 days, but S.L. refused offering only 2%/20 days. In the summer of 2005, defendant PWC and S.L. had discussions about an increased discount, and S.L. proposed that any increase in any discount or allowance be tied to S.L.'s receipt of additional business, in particular, the purchase of pies from S.L. Defendant PWC advised S.L. that increasing the discount would make S.L. a "premier customer" and, as such, PWC would look to switch new business to S.L. S.L. agreed to offer defendant PWC a 5% discount on pie purchases. Defendant PWC started purchasing pies from S.L. shortly thereafter. Eventually, S.L. increased the discount to 5% on all products and increased the payment terms to 30 days. Throughout the discussions between defendant PWC and S.L. about discounts, PWC insisted that the

discount be called an "early payment discount," even though S.L. did not want to use that term and suggested that any discount offered to PWC be called what it was, a marketing allowance or rebate. Defendant PWC insisted that the allowance be labeled an "early payment discount" and claimed it could not be called a marketing allowance or rebate. Ultimately, S.L. agreed to use the label that defendant PWC demanded. Defendant PWC should have returned the foregoing allowances to the United States or used them to reduce the Unit Prices that it invoiced to DSCP, but it did neither and instead charged fraudulently inflated prices to the United States.

63b In late 2005, defendant PWC started purchasing flour from G.M. Prior to purchasing flour from G.M., defendant PWC was purchasing other G.M. products, and G.M. had offered PWC a "prompt payment" discount of 3%/30 days, net 45. Defendant PWC insisted that similar terms be extended with respect to its purchases of flour. G.M. refused, advising on January 19, 2006, that "no flour customers receive cash discount Terms on flour sales, flour margins are too tight to support this discount." Defendant PWC continued to request terms, and on January 26, 2006, G.M. agreed that, while it could not change the terms on flour invoices, G.M. would allow PWC to deduct 3% from the net amount on flour invoices, provided they are paid within the 30 days, and the deductions somehow would be cleared

as they came in. As of February 19, 2006, G.M. authorized defendant PWC to "deduct 3% from the Net amount on each of your flour invoices for damages. Without further claims to [G.M.] on flour damages." While G.M. continued to offer defendant PWC a "damage allowance" for flour, PWC regularly sought credits from G.M. for damaged flour. In addition, as G.M. noted in June 2007, while defendant PWC was deducting about \$250 from each flour invoice as a "damage allowance," the actual damages suffered by PWC on each load were only "\$7.00 to \$22.00." Even so, defendant PWC was "not satisfied" with the G.M. flour damages program. In July 2007, G.M. agreed to increase the damage allowance on flour to 3.5%. Defendant PWC should have returned the foregoing allowance to the United States or used it to reduce the Delivered Price of the flour that it purchased from G.M. It did neither and instead charged inflated Unit Prices to the United States.

63c In early 2005, defendant PWC was purchasing various chicken products from consolidator/distributor T.B. At the time, T.B. was offering defendant PWC "prompt payment" discounts of 5%/60 days. In February 2005, employees of defendant PWC and employees of T.B. met to discuss increasing the "prompt payment" discount that T.B. offered to PWC. As a result of that meeting, T.B. agreed to increase the "prompt payment" discount to 8.5%, 30 days, 7.5% 45 days, 7% 60 days,

and net 75 days. Defendant PWC and T.B. knew that the "prompt payment" discount was offered both to preserve T.B.'s business with defendant PWC and "further solidify our relationship and help it grow." Defendant PWC should have returned the foregoing allowances to the United States or reduced the prices that it charged DSCP. It did neither and instead charged fraudulently inflated prices to the United States.

63d On May 29, 2006, defendant PWC requested of all of its vendors that, "(i)t has been decided by PWC management to request that you **no longer** reflect prompt payment discounts on invoices. Please only print the net terms. However all the currently existing terms established between PWC and your organization will remain intact."

63e In the spring of 2006, defendant PWC was purchasing various products, including pre-cooked hamburgers, from CONUS manufacturer Z.I. located in Rome, Georgia. At the time, Z.I.'s "prompt payment" discount to defendant PWC was 4%/21 days, net 22 days. In an effort to increase the volume of its sales for the period May 29, 2006, through July 15, 2006, Z.I. offered defendant PWC special terms of 7%/21 days, net 22 days. The foregoing discount was a volume discount tied to defendant PWC's volume of purchases and not to how quickly it paid Z.I. Defendant PWC should have returned the foregoing allowance to DSCP or used it to reduce the prices that it charged DSCP. It

did neither and instead charged fraudulently inflated Delivered Prices to the United States.

63f In the summer of 2005, CONUS manufacturer P.F. approached defendant PWC about selling breakfast sandwiches and pork rib products to PWC. When it approached defendant PWC about possible purchases, P.F. offered PWC an 8% allowance or \$7.20 on each case of breakfast sandwiches and, in June 2005, an incentive program of one to 4% on the net purchases of pork rib products. In July 2005, P.F. decided to sell pork rib products to defendant PWC through consolidator/distributor R.F.F. A decision was made to sell both P.F. products to defendant PWC through consolidator/distributor R.F.F. and to provide an allowance of 8% on both products. The allowances were used to reduce or eliminate the distribution fees charged by R.F.F. to defendant PWC and to provide a "prompt payment" discount to PWC, even though the allowance offered on the pork rib product was correctly described by PWC on or about July 16, 2005, as a "growth program." In October 2006, P.F. stopped selling through R.F.F. and started selling directly to defendant PWC. At that point in time, the 8% allowances on the products were given to defendant PWC in the form of "prompt payment" discounts. Defendant PWC retained the foregoing allowances both when it purchased the products through R.F.F. and when it purchased them directly. Defendant PWC did not refund the

amount of the allowances to the United States and did not otherwise reduce the prices invoiced to DSCP and instead fraudulently over billed the United States.

Background, Manner and Means, and Overt Acts related to:
Defendant PWC Reduces the Pack Sizes of Products to Increase the Amount of Distribution Fees That It Claims From DSCP

Background

64. The Grand Jury realleges the facts stated in Paragraphs 2 - 13, and 38 - 48 of this Indictment and incorporates the same by reference herein.

Manner and Means

65. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 through 30 is the following: Pursuant to the PV contracts, in certain categories of products the fixed Distribution Fee (defined as a firm fixed price, offered as a dollar amount, which represented all elements of the Unit Price, other than the Delivered Price) was invoiced by defendant PWC and paid by the United States on a per case product basis. Given that defendant PWC could not control how much DSCP purchased of any given product, to increase the Distribution Fees paid to PWC by the United States for the same amount of product, PWC asked some vendors to decrease the amount of product in each case (generally referred to as pack size).

Overt Acts

66. In furtherance of this conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

66a In a meeting in the office of defendant PWC's employee, PWC asked a sales representative for vendor Z.I., a company located in Rome, Georgia, to change to a smaller pack size for several products for which the Distribution Fee was calculated on a per case basis. Thus, defendant PWC could bill DSCP for more cases of product sold and increase the amount of Distribution Fees that it would receive from DSCP for the same amount of product.

66b In an e-mail in early February 2004, in addressing defendant PWC's request to vendor Z.I. for a smaller pack size, P.C.A., a consultant to PWC, cautioned PWC to "Go slow and EASY on this" because PWC could blame the increased cost to the United States on the basis of production factors, only if the manufacturer would back up PWC's statements to DSCP and after that DSCP might drop or stop ordering the item.

66c Following the initial meeting, in February 2004, the sales representative for vendor Z.I. exchanged e-mails with several defendant PWC's employees discussing PWC's request to utilize smaller pack sizes.

66d As a result of defendant PWC's request, vendor Z.I. reduced the pack size on three products. Defendant PWC utilized the smaller pack size of these three products to invoice DSCP additional Distribution Fees totaling about \$1.4 million in excess of what those fees would have been without the artificial reduction in the pack sizes of the three products.

Background, Manner and Means, and Overt Acts related to:
Failure of Defendant PWC to Refund to DSCP Allowances and Rebates Received From TSC With Respect to OCONUS Purchases

Background

67. The Grand Jury realleges the facts stated in Paragraphs 2 - 22, 38 - 43, and 52 - 55 of this Indictment and incorporates the same by reference herein.

Manner and Means

68. Among the manner and means employed by defendant PWC to carry out the conspiracy and effect the unlawful objects set forth above in Paragraphs 29 through 30 is the following: Defendant PWC and T.S.C. entered into certain subcontracting agreements. As part of the execution of all PV contracts, defendant PWC acquired most food items classified as LMRI and FF&V through subcontractor T.S.C. T.S.C. invoiced defendant PWC a Delivered Price for the LMRI and FF&V acquired through it at the vendor's price to T.S.C. plus: (1) an amount to compensate T.S.C. for the subcontracting services it performed for PWC and (2) ten percent (10%) of the T.S.C. invoice

price that was later rebated to PWC after the sale. Defendant PWC invoiced DSCP for the LMRI and FF&V acquired from T.S.C. using T.S.C.'s invoice price. Based upon this invoicing, when DSCP purchased LMRI and FF&V that defendant PWC had acquired from T.S.C., it paid this Delivered Price which had been increased to include the compensation to T.S.C. and PWC's ten percent rebate. The Delivered Price of the LMRI and FF&V that was billed to DSCP by defendant PWC included the undisclosed ten percent amount that T.S.C. rebated to PWC. This rebate was not returned to the United States.

According to PWC's calculations, PWC received refunds from T.S.C. totaling \$62,251,780.70 for the first 41 months of PV-I, Bridge, and PV-II. This amount does not include any calculation of rebates attributable to the other 35 months of the contracts.

Overt Acts

69. In furtherance of this conspiracy, and to effect the objects and purposes thereof, various overt acts were committed by defendant PWC and its coconspirators. The acts described below are some examples of such overt acts.

On or about the date specified below in column C, defendant PWC paid invoices from T.S.C. for sales of LMRI and FF&V for the month and amount specified in column B (*converted from Kuwaiti Dinars to U.S. dollars). After defendant PWC's payment of the relevant invoices on or about the date specified in column D, T.S.C. refunded to PWC the amount specified in column E.

A	B	C	D	E
Overt Act	Sales T.S.C. to PWC month & amount*	Date PWC payment	Date TSC refund to PWC	T.S.C. Refund to PWC
69a	April 2004 \$3,807,568.57	5/30/04	7/31/04	\$ 380,756.87
69b	Sept. 2004 \$20,642,246.67	11/17/04	11/22/04	\$2,064,224.66
69c	Nov. 2004 \$24,137,363.74	1/26/05	1/31/05	\$2,413,736.36
69d	Nov. 2006 \$16,987,905.44	1/25/07	3/11/07	\$1,546,048.13

All in violation of Title 18, United states Code, Section 371.

COUNT 3

(Major Fraud Against The United States and
Aiding and Abetting Major Fraud)
(18 U.S.C. §§ 1031, 2)

THE CONTRACT AWARD

70. On or about May 28, 2003, the United States, in a procurement of services, awarded prime contract number SPM300-03-D-3061 (PV-I) to defendant PWC, the value of said prime contract being in excess of \$1,000,000.

BACKGROUND

71. The Grand Jury hereby realleges and incorporates by reference all of the factual allegations contained in Paragraphs 2 - 28 and 31 - 69 set out in Counts One and Two above.

THE SCHEME AND ARTIFICE

72. Beginning on or about June 2004, and continuing up to on or about December 2005, in connection with the foregoing

procurement, defendant PWC devised a scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and omissions of material facts.

73. It was part of the scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and omissions of material facts that defendant PWC would and did overcharge the United States for Distribution Fees by asking vendors to decrease the amount of product in each case (generally referred to as pack size) for no reason other than to charge the United States more for the same amount of product.

EXECUTION OF THE SCHEME AND ARTIFICE

74. Between on or about October 2004 and on or about December 2005, within the Northern District of Georgia, and elsewhere, defendant PWC knowingly executed and attempted to execute the foregoing scheme and artifice to defraud with the intent to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and omissions of material facts, in that PWC committed, and caused to be committed the following acts and in so doing caused a gross loss to the United States of approximately \$1.4 million: communicated with manufacturer, Z.I. in Rome, Georgia confirming PWC's request that Z.I. utilize smaller pack sizes for products being sold to PWC for

the PV-I contract. Defendant PWC utilized the smaller pack size of these three products to invoice DSCP additional Distribution Fees in excess of what those fees would have been without the fraudulent reduction in the pack sizes of the three products.

All in violation of Title 18, United States Code, Sections 1031 and 2.

COUNT 4

(Major Fraud Against The United States and
Aiding and Abetting Major Fraud)
(18 U.S.C. §§ 1031, 2)

THE CONTRACT AWARD

75. On or about July 7, 2005, the United States, in a procurement of services, awarded prime contract number SPM300-05-D-3128 (PV-II) to defendant PWC, the value of said prime contract being in excess of \$1,000,000.

BACKGROUND

76. The Grand Jury hereby realleges and incorporates by reference all of the factual allegations contained in Paragraphs 2 - 28 and 31 - 69 set out in Counts One and Two above.

THE SCHEME AND ARTIFICE

77. Beginning in or about August 2006, and continuing up to at least December 2007, in connection with the foregoing procurement, the defendant PWC devised a scheme and artifice to defraud the United States and to obtain money and property by

means of false and fraudulent pretenses, representations, promises, and omissions of material facts.

78. It was part of the scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and omissions of material facts that defendant PWC would and did overcharge the United States for Delivered Price of product purchased from manufacturer G.S. More specifically, defendant PWC urged G.S., to utilize the consolidation services of Interchange/VIP. The cost of these VIP Services to G.S. was billed by Interchange to defendant PWC. In turn, defendant PWC charged G.S. for the VIP Services at the amount equal to Interchange's charge to PWC plus a PWC mark-up. Defendant PWC knew that the VIP Services PWC charged to G.S. (both the Interchange cost plus the PWC mark-up amount) were being included as an undisclosed component of the Delivered Price of the product sold by G.S., contrary to the terms of the PV contracts. Defendant PWC used this inflated Delivered Price as part of the Unit Price that it invoiced to DSCP for the product resulting in the submission of false, fictitious or fraudulent claims to the United States.

EXECUTION OF THE SCHEME AND ARTIFICE

79. Between in or about August 2006, and continuing to at least December 2007, within the Northern District of Georgia, and elsewhere, defendant PWC knowingly executed and attempted to

execute the foregoing scheme and artifice to defraud with the intent to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations, promises, and omissions of material facts, in that PWC committed, and caused to be committed the following acts and in so doing caused a loss to the United States: PWC in e-mail communication with vendor G.S. in Conyers Georgia, instructed G.S. to invoice its product to PWC so that G.S.'s price would include the undisclosed consolidation charge for VIP Services plus the PWC mark-up that PWC charges G.S. Contrary to the contract, defendant PWC invoiced DSCP for a Unit Price which contained as a component the inflated Delivered Price of the G.S. product including the undisclosed consolidation charges, resulting in fraudulent overcharges to the United States.

All in violation of Title 18, United States Code, Sections 1031 and 2.

COUNTS 5 and 6

(Wire Fraud and Aiding and Abetting Wire Fraud)
(18 U.S.C. §§ 1343, 2)

80. In August 2006, in the Northern District of Georgia and elsewhere, defendant PWC, aided and abetted by others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud DSCP, a component of DLA, which in turn is a component of the Department of Defense, and to obtain money and

property by means of materially false and fraudulent pretenses, representations, and promises.

THE SCHEME

81. The scheme and artifice to defraud and to obtain money by means of materially false and fraudulent representations and promises is more particularly described in Paragraphs 2 - 13, and 32 - 48 of Counts 1 and 2 of this Indictment and the Grand Jury realleges and incorporates those paragraphs as if fully set forth herein; that is: Defendant PWC urged vendors, including G.S., to utilize the consolidation services of Interchange/VIP. The cost of these VIP Services to the vendor was billed by Interchange to defendant PWC. In turn, defendant PWC charged the vendor for the VIP Services at the amount equal to Interchange's charge to PWC plus a PWC mark-up. Defendant PWC knew that the VIP Services PWC charged to vendors (both the Interchange cost plus the PWC mark-up amount) were being included as an undisclosed component of the Delivered Price of the product, contrary to the terms of the prime vendor contracts. Defendant PWC used this inflated Delivered Price as part of the Unit Price that it invoiced to DSCP for the product resulting in the submission of false, fictitious or fraudulent claims to the United States.

Execution of the Scheme

82. On or about the dates listed in Column B, in the Northern District of Georgia, and elsewhere, defendant PWC aided

and abetted by others, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud, did cause interstate wire communications to be made as specified in Column C:

A	B	C	D
Count	Date	Wire Communications	Location
5	08/01/2006	Electronic mail from V.S. of PWC to B.D. of G.S.	Outside the state of Georgia to B.D. of G.S. in Georgia
6	08/18/06	Electronic mail from B.D. of G.S. to V.S. of PWC	In the state of Georgia to outside the state of Georgia

All in violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL
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