

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

UNITED STATES OF AMERICA

vs.

CRIMINAL NO. 6:07 CR 00010

ENGLISH CONSTRUCTION COMPANY, INC.

DEFERRED PROSECUTION AGREEMENT

ENGLISH CONSTRUCTION COMPANY, INC. ("Company"), a Virginia Corporation, by its undersigned attorneys, pursuant to authority granted by its Board of Directors, and the United States Department of Justice, United States Attorney's Office for the Western District of Virginia, ("Office") enter into this Deferred Prosecution Agreement ("Agreement").

1. The Office has informed the Company that it will file, on or shortly after March 1, 2007, an Information in the United States District Court for the Western District of Virginia alleging that the Company made a false statement in violation of 18 USC §1001.

2. In light of the Company's efforts to date and their willingness to: (a) initiate a Company compliance program, (b) continue cooperation with the Office and other governmental regulatory agencies, (c) conduct operations involving the Disadvantaged Business Enterprise ("DBE") program in compliance with all applicable State and federal laws and (d) consent to a civil forfeiture of \$2.5 million dollars as set forth in *Appendix A*, the Office shall recommend to the Court that prosecution of the Company be deferred for a period of 12 months from the filing of the Information. If the Court declines to defer prosecution for any reason, this Agreement shall be null and void, and the parties will revert to their pre-Agreement positions.

3. Upon execution of this Agreement, the Company will deposit \$2.5 million with the Clerk of the United States District Court in Roanoke, Virginia. The Clerk will disburse this money to the "United States Department of Justice" on or about March 1, 2007. The Company agrees to sign, concurrent with the signing of this Agreement, a settlement agreement acknowledging that the settlement sum represents proceeds of a violation of 18 U.S.C. §1341, and/or are forfeitable in lieu of certain property that would be otherwise subject to forfeiture pursuant to 19 U.S.C. § 1613(c). The Company agrees to cooperate fully in the forfeiture of this property and agrees to execute all documents, stipulations, consent judgments, court orders, and the like, which are reasonably necessary to pass clear title to the United States or otherwise effectuate forfeiture of the property. The Company understands and agrees that forfeiture of this property is proportionate to the degree and nature of the offense, and does not raise any of the concerns raised in *United States v. Austin*, 113 S.Ct. 2801 (1993). To the extent that such concerns are raised, the Company freely and

knowingly waives any and all right it may have to raise a defense of "excessive fines" under the Eighth Amendment to this forfeiture.

4. The company agrees that former director of human resources Max Guggenheimer was involved in the falsification of a report that was submitted within the jurisdiction of the United States Department of Justice in violation of 18 U.S.C. §1001. The facts are more fully set forth in *Appendix B*.

5. The Company agrees that its continuing cooperation during the term of this Agreement shall include the following:

- (a) Not engaging in or attempting to engage in any criminal conduct; and
- (b) Satisfaction of the forfeiture as set out in *Appendix A*.

6. Should the Office determine that, during the 12-month term of this Agreement, the Company knowingly and materially breached this Agreement, including committing any criminal act as referenced in Paragraph 6 (a), the Company and the former human resource director shall, in the discretion of the Office, thereafter be subject to prosecution for any federal crimes of which the Office has knowledge, including crimes relating to the matters set forth in *Appendix B*. Should no such determination be made, at the end of the 12-month term of this Agreement the Company, its affiliates and the former human resource director shall no longer be subject to such prosecution.

7. Should the Office determine that, during the term of this Agreement, the Company knowingly and materially breached this Agreement, the Office shall provide written notice to the Company and to Woods Rogers PLC c/o Talfourd Kemper, Esq. via Certified Mail of the alleged breach and provide the Company with a two-week period in which to make a presentation to the Office to demonstrate that no breach occurred, or, to the extent applicable, that the breach was not material or knowingly committed. The parties understand and agree that should the Company fail to make a presentation to the Office within the two-week period (or such time period as may be extended by agreement of the parties) after receiving written notice of an alleged breach, it shall be conclusively presumed that the Company is in breach of this Agreement. The Company further understands and agrees that final determination of whether the Company has breached this Agreement rests solely in the discretion of the United States Department of Justice, and the exercise of that discretion under this Agreement is not subject to review in any Court or tribunal outside the Department of Justice.

8. The Company expressly waives with respect to the Information all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rules of Criminal Procedure 48 (b), and any applicable Local Rules of the United States District Court for the Western District of Virginia, for the period the Agreement is in effect.

9. The Company agrees to waive the statute of limitations with respect to any matter known to the Office at this time that would otherwise expire during the term of the Agreement, and

this waiver is knowing and voluntary and in express reliance on the advice of counsel.

10. It is understood that this Agreement is limited to the Company and the Office and that the Office cannot bind another federal or State agency or authority. However, the Office will bring this Agreement and the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of other prosecuting and regulatory offices, if requested to do so. If requested for a recommendation to USDOT or FHWA concerning suspension and/or debarment, the Office will recommend against such action.

11. This ends the investigation of the Company on the matters known to the Office at this time, including individuals, in the Western District of Virginia.

12. Except as expressly set forth herein, there are no additional promises, understandings or agreements between the Office and the Company concerning any other criminal prosecution, civil litigation or administrative proceeding relating to any other federal, state or local charges that may be now pending or hereafter brought against the Company. Any additional agreement, understanding or condition must be in writing and signed by all parties. It is understood that the Office may permit exceptions to or excuse particular requirements set forth in this Agreement at the written request of the Company, but any such permission shall be in writing.

Effective Date: March 1, 2007

AGREED TO:

ENGLISH CONSTRUCTION COMPANY, INC.

By John M. Jordan Jr
Senior Vice President
English Construction Company, Inc.

By Paul R. Thomson Jr
Paul R. Thomson, Jr.
Counsel
English Construction Company, Inc.

UNITED STATES OF AMERICA

JOHN L. BROWNLEE
UNITED STATES ATTORNEY

By 

Thomas J. Bondurant, Jr.
Chief, Criminal Division
United States Attorney's Office
Western District of Virginia

APPENDIX A

(Copy of the Civil Forfeiture Documents)

APPENDIX B

Statement of Facts

English Construction Company, Inc. (the "Company") and the Office of the United States Attorney for the Western District of Virginia (the "Office") do hereby stipulate that the following constitutes the summary of the facts in this case.

In 1999 the Highway Division of the Company was the lowest bidder for the prime contract for construction of the Route 460 Interchange Project, including bridge construction. This was a partially federally funded project receiving funds from the Federal Highway Administration (FHWA) and administered by Virginia Department of Transportation (VDOT). The project required that 10% of the work be constructed by Disadvantaged Business Enterprises ("DBE"). This percentage was based upon the total value of the labor and materials to be used by the DBE in the construction.

The DBE contractor who performed the bridge work was Colyer Construction Company (Colyer). There existed a VDOT approved Mentor Protégé DBE relationship between the Company and Colyer, and Colyer was certified by the Commonwealth of Virginia as a DBE contractor. During the course of the construction contract Colyer was required by the DBE regulations to perform certain steel erection tasks unassisted by the prime contractor. Investigation revealed that some of these tasks were performed with the assistance of the Company.

On March 27, 2002, the Company submitted a Report to VDOT concerning compliance with the DBE regulations. This Report is set forth below as a part of *Appendix A*. The Company made false statements in response to Questions B-1 & 2; C-1 thru 5; and, D-3 of the Report. Max Guggenheimer, now retired, then Director of Human Resources and director of the DBE Compliance and Mentor Protégé program for the Company, filled out the form and some of the answers to the questions did not reflect the actual assistance given to Colyer in violation of 18 USC 1001. Colyer Construction Company was de-certified as a DBE contractor by VDOT in 2003.