



U.S. Department of Justice

Criminal Division

Fraud Section

February 4, 2010

Lawrence Byrne, Esq.
Linklaters LLP
1345 Avenue of the Americas
New York, New York 10105

RE: United States v. BAE Systems plc

Dear Mr. Byrne:

1. This letter sets forth the full and complete plea offer to your client, BAE Systems plc (referred to herein as "BAES" or the "defendant"). This offer is by the Criminal Division and the National Security Division of the U.S. Department of Justice (collectively referred to as the "Department") and is binding upon both. It does not bind any other foreign, state or local prosecuting, administrative, or regulatory authority. However, the Department will bring this agreement to the attention of other foreign, state or local prosecuting, administrative or regulatory authorities or other government agencies, if requested by BAES. Upon receipt and execution by or on behalf of BAES, the executed letter will itself become the plea agreement. The terms of the offer are as follows:

2. **Charges:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), BAES agrees to waive its right to grand jury indictment and its right to challenge venue in the District Court for the District of Columbia, and to plead guilty to a one count Information charging BAES with conspiring to commit offenses against the United States, in violation of 18 U.S.C. § 371, that is, conspiring to impair and impede the lawful government functions of the United States of America, to make false statements in violation of 18 U.S.C. § 1001 and to violate the Arms

CRIM No. 10-35
(JDB)

FILED

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Export Control Act, ("AECA") 22 U.S.C. §§ 2751, *et seq.*, and the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120, *et seq.* It is understood that the guilty plea will be based on a factual admission of guilt to the offense charged and will be entered in accordance with Rule 11 of the Federal Rules of Criminal Procedure. This agreement does not apply to any charges other than those specifically mentioned herein. An authorized representative of BAES will admit that BAES is in fact guilty. By virtue of corporate resolution dated February 5, 2010, Appendix A, the defendant has authorized this plea and has empowered its Group General Counsel, and/or its outside counsel, Linklaters LLP, to act on its behalf for purposes of this plea. BAES agrees that it has the full legal right, power and authority to enter into and perform all of its obligations under this agreement and it agrees to abide by all terms and obligations of this agreement as described herein. The attached "Statement of the Offense," Appendix B, is a fair and accurate description of the facts the Department and BAE accept as a fair and accurate description of the facts underlying the offense. BAES is pleading guilty because it is guilty of the charge contained in the accompanying Information and admits and accepts responsibility for the conduct described in the Statement of the Offense. Prior to the Rule 11 plea hearing, the defendant, through counsel, will adopt and sign the Statement of the Offense.

3. **Potential penalties, assessments, and restitution:** The statutory maximum sentence that the Court can impose for each violation of 18 U.S.C. § 371 is a fine not exceeding \$500,000 or twice the pecuniary gain derived from the offense or twice the pecuniary loss from the offense suffered by a person other than defendant (18 U.S.C. § 3571), whichever is greater; five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). The parties agree that restitution is not required in this matter. The parties agree that a period of three years of corporate probation is appropriate.

4. **United States Sentencing Guidelines:** The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines. The Court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 3553(a). The parties agree that for purposes of determining an advisory sentencing guideline range, the 2009 Sentencing Guidelines apply as follows:

a. **Calculation of Offense Level:**

§ 2C1.1(a)(2)	Base Offense Level	12
§ 2C1.1(b)(2)	Benefit Received Over \$200,000,000	+28
§ 2C1.1(b)(3)	High Level Decision Maker	<u>+ 4</u>
TOTAL		44

b. **Calculation of Culpability Score:**

§ 8C2.5(a)	Base Score	5
§ 8C2.5(b)	5,000 or More Employees and High-Level Personnel Involvement/ Pervasive Tolerance	5
§ 8C2.5(g)(3)	Acceptance of Responsibility ¹	<u>-1</u>
TOTAL		9

¹ The compliance and remediation efforts of BAES are described in more detail in the Department's Sentencing Memorandum.

c. **Calculation of Fine Range:**

Base Fine: Greater of the amount from table in	\$72,500,000
U.S.S.G. § 8C2.4(a)(1) & (d) corresponding to	or
offense level of 44 (\$72,500,000), or the	\$200,000,000
pecuniary loss/gain from the offense	
(\$200,000,000) (U.S.S.G. § 8C2.4(a)(2)):	

Multipliers, culpability score of 9	1.8 – 3.6
(U.S.S.G. § 8C2.6)	

Fine Range (U.S.S.G. § 8C2.7):

Using Offense Level 44	\$130,500,000 to
(\$72,500,000)	\$261,000,000

Using gain/loss	\$360,000,000 to
(\$200,000,000)	\$720,000,000

The parties agree and stipulate that for purposes of applying U.S.S.G. § 2B1.1(b)(1)(O), as directed by U.S.S.G. § 2C1.1(b)(2), the value of the gain is at least \$200,000,000. The parties agree that the objects of the conspiracy should be grouped together for purposes of sentencing pursuant to U.S.S.G. § 3D1.2. The parties agree that pursuant to 18 U.S.C. § 3571 the maximum fine is \$400,000,000. The parties further agree that the final effective Sentencing Guideline range is \$360,000,000 to \$400,000,000.

5. **Penalties and Assessments:** Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Department and defendant agree that the appropriate sentence in this case, after consideration of (a) the Sentencing Guidelines, and (b) the factors set forth in 18 U.S.C. § 3553(a), is a criminal fine in the amount of \$400,000,000 and a special assessment of \$400. This \$400,000,000 fine and the \$400 special assessment shall be paid to the Clerk of Court, United States District Court for the District of Columbia, within ten (10) days of sentencing. Defendant acknowledges that

no tax deduction may be sought in connection with the payment of this \$400,000,000 penalty.

6. **Court is Not Bound:** The defendant understands that, if the Court rejects this agreement, the Court must: (a) inform the parties that the Court rejects the agreement, (b) advise the defendant's counsel that the Court is not required to follow the agreement and afford the defendant the opportunity to withdraw its plea, and (c) advise the defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the agreement contemplated. The defendant further understands that if the Court refuses to accept any provision of this plea agreement, neither party shall be bound by the provisions of the agreement, and either party can withdraw from this plea agreement in that event.

7. **Waiver of Rights:** Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The defendant expressly warrants that it has discussed these rules with its counsel and understands them. Solely to the extent set forth below, the defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Specifically, the defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with this plea agreement are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Department has fulfilled all of its obligations under this agreement and the Court has imposed the agreed-upon sentence, BAES nevertheless withdraws its guilty plea.

The parties further agree, with the permission of the Court, to waive the requirement for a pre-sentence report pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A), based on a finding by the Court that the record contains information sufficient to enable the Court to

meaningfully exercise its sentencing power. The parties agree, however, that in the event the Court orders the preparation of a pre-sentence report prior to sentencing, such order will not affect the agreement set forth herein.

The parties further agree to ask the Court's permission to combine the entry of the plea and sentencing into one proceeding. However, the parties agree that in the event the Court orders that the entry of the guilty plea and sentencing hearing occur at separate proceedings, such an order will not affect the agreement set forth herein.

If the Court orders a pre-sentence investigation report or a separate sentencing date, the parties agree to waive the time requirements for disclosure of and objections to the pre-sentence investigation report under Fed. R. Crim. P. 32(e), so as to accommodate a sentencing hearing prior to the date that would otherwise apply. At the time of the plea hearing, the parties will suggest mutually agreeable and convenient dates for the sentencing hearing with adequate time for (a) any objections to the pre-sentence report, and (b) consideration by the Court of the pre-sentence report and the parties sentencing submissions.

8. **Press Releases:** BAES agrees that if it or any of its direct or indirect affiliates or subsidiaries issue a press release in connection with this agreement, the defendant shall first consult the Department to determine whether (a) the text of the release is true and accurate with respect to matters between the Department and the defendant; and (b) the Department has no objection to the release. Statements made by BAES at any press conference or other public speaking event shall be consistent with the approved press release.

9. **Sales, Mergers or Transfers:** Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, the defendant agrees that in the event it sells, merges or transfers all or substantially all of its business operations as they exist as of the date of

this agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, BAES shall include in any such contract for sale, merger or transfer, a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this agreement, subject to U.K. law and BAES's corporate governance charter. The foregoing requirement shall not apply to the sale, merger or transfer of any of BAES's U.S. operations. Moreover, the foregoing requirement shall only apply if, after consultation between the Department and the U.K. Government (Her Majesty's Government ("HMG")), HMG and the Department approve inclusion of such a provision in such contract for sale, merger or transfer. Notwithstanding the foregoing, such provision shall be included in any such contract for sale, merger or transfer where the purchaser(s) or successor(s) in interest is affiliated with, controlled by or is a successor entity to BAES.

10. **Continuing Cooperation:** BAES shall: (a) plead guilty as set forth in this agreement; (b) abide by all sentencing stipulations contained in this agreement; (c) appear, through its duly appointed representatives, as ordered for all court appearances and obey any other ongoing court order in this matter, consistent with all applicable U.S. and foreign laws, procedures and regulations; (d) commit no further crimes under U.S. federal law, foreign laws implementing the OECD Anti-bribery Convention, or any other applicable anti-corruption laws; (e) be truthful at all times with the Court; (f) pay the applicable fine and special assessment; and (g) cooperate fully, as set forth specifically below, with the Department, the Federal Bureau of Investigation, Immigration and Customs Enforcement, Defense Criminal Investigative Service, and the General Services Administration Office of Inspector General, consistent with and subject to all applicable U.S. law and foreign laws and regulations including state secrets, the information being classified by HMG in accordance with its national laws and procedures ("U.K. classified

information”), labor, data protection, and privacy laws, upon request by the Department in any investigation or prosecution being conducted by the Department. BAES will inform the Department when any otherwise relevant information is withheld on the grounds that it is U.K. classified information. The Department may then decide to raise any issues regarding information withheld on this basis with HMG. BAES shall truthfully disclose upon request by the Department for any investigation or prosecution being conducted by the Department (consistent with and subject to all applicable U.S. and foreign laws and regulations including state secrets, U.K. classified information, labor, data protection and privacy laws) all non-privileged information relating to any conduct or events or other matters occurring prior to the date of the signing of this agreement and after the date of signing of this agreement for the agreed three year period of corporate probation with respect to the activities of BAES and its subsidiaries, its present and former directors, officers, employees, agents, consultants, contractors and subcontractors, concerning all matters relating to any undisclosed payments paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles that should have been disclosed under the AECA or ITAR in connection with their operations, about which BAES has any knowledge. This obligation of truthful disclosure includes the obligation, consistent with and subject to all applicable U.S. and foreign laws and regulations including state secrets, U.K. classified information, labor, data protection, and privacy laws, to provide upon request by the Department in any investigation or prosecution by the Department, any non-privileged document, record, or other tangible evidence in the custody and control of BAES relating to such undisclosed payments paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles that should have been disclosed under the

AECA or ITAR occurring prior to the date of the signing of this agreement-and after the date of signing of this agreement for the agreed three year period of corporate probation. Nothing in this agreement shall be construed to require BAES to conduct any further investigation other than as necessary to identify and produce relevant non-privileged documents, records or other tangible evidence within the custody and control of BAES related to the foregoing.

11. **Remediation:** BAES agrees, for itself and its non-U.S. subsidiaries, to maintain a compliance program that includes, at a minimum, the basic components set forth in Appendix D, which are hereby incorporated herein. BAES's program must be reasonably designed to detect and deter violations of the Foreign Corrupt Practices Act, Title 15 U.S.C. Sections 78dd-1 *et seq.*, foreign laws implementing the OECD Anti-bribery Convention, or any other applicable anti-corruption laws, both domestic and foreign, and designed to detect and deter violations of the AECA and ITAR, and similar export control laws. The foregoing agreement does not extend to BAES's U.S. operations subject to the Special Security Agreement because the Special Security Agreement restricts the exercise by BAES of influence and control over the day to day activities and management of those U.S. operations.

12. **Corporate Monitor:** Subject to the approval of the Court, BAES agrees that as part of its continuing cooperation obligations and to ensure that BAES implements and continues to implement an effective system of compliance with applicable anti-corruption and export control laws and regulations going forward, an individual, a U.K. citizen who is eligible for the appropriate national security clearances and acceptable to BAES and the Department, will serve as an independent monitor (the "Monitor") for a period not to exceed three (3) years from the date of acceptance of this agreement by the Court. The term of the monitorship and the Monitor's powers, duties and responsibilities will be as set forth in Appendix C. BAES agrees to

engage the Monitor within ninety (90) calendar days from the date of the acceptance of this agreement by the Court. If the Monitor resigns or is otherwise unable to fulfill his obligations as set out herein, including obtaining the appropriate national security clearances, BAES, or its successor, shall within thirty (30) calendar days recommend a pool of three qualified monitors from which to choose a potential replacement. BAES and the Department shall use mutual best efforts to agree on a replacement for the Monitor. If the Department, in its sole discretion, is not satisfied with the candidates proposed, the Department reserves the right to seek additional nominations from BAES. Any successor monitor will also be a U.K. citizen who is eligible for the appropriate national security clearances.

13. **Department Concessions:** In exchange for the defendant's guilty plea and the complete fulfillment of all of the defendant's obligations under this agreement, the Department agrees not to use any information related to the conduct described in the accompanying Information and Statement of the Offense, or any other conduct disclosed to the Department prior to the date of this agreement, against the defendant or any of its present or former subsidiaries or affiliates in any criminal case except in a prosecution for perjury or obstruction of justice, in a prosecution for making a false statement after the date of this agreement, or in a prosecution or other proceeding relating to any crime of violence. In addition, the Department agrees that it will not bring any additional criminal charge against the defendant, or any of its present or former subsidiaries or affiliates, for conduct that (i) arises from or relates in any way to the conduct of the defendant or its present and former employees, consultants and agents alleged in the accompanying Information and Statement of the Offense, or (ii) that arises from or relates in any way to information disclosed by the defendant to the Department prior to the date of this agreement or otherwise known to the Department prior to the date of this agreement. This

paragraph does not provide any protection against prosecution for any violations of U.S. criminal law if made in the future by the defendant, or any of its then officers, directors, employees, agents or consultants, whether or not disclosed by the defendant pursuant to the terms of this agreement. This agreement will not close or preclude the investigation or prosecution of any natural persons, including any current or former officers, directors, employees, stockholders, consultants or agents of the defendant, who may have been involved in any of the matters set forth in the accompanying Statement of the Offense or in any other matters. Finally, the Department agrees that it will file a Sentencing Memorandum in support of the proposed agreed-upon sentence that will include a description of (a) relevant facts, (b) the nature of the offense, and (c) BAES's compliance and remediation measures including the fact that the Department is aware of no evidence that any present member of the BAES Board of Directors or any present members of the BAES Executive Committee had knowledge of or involvement in the offense charged in the criminal Information. The Department further agrees to cooperate with BAES, in a form and manner to be agreed, in bringing facts relating to the nature of the charge and to BAES's remediation and its present reliability and responsibility as a government contractor to the attention of other U.S. and foreign governmental authorities as requested.

14. **Full Disclosure/Reservation of Rights:** In the event the Court directs the preparation of a pre-sentence report, the Department will fully inform the preparer of the pre-sentence report and the Court of the facts and law related to the defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

15. **Waiver of Appeal Rights:** The defendant knowingly, intelligently, and voluntarily waives its right to appeal the conviction in this case. The defendant similarly

knowingly, intelligently, and voluntarily waives its right to appeal the sentence imposed by the Court, provided such sentence is consistent with the terms of this plea agreement. The defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date this agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) the defendant violates this agreement; or (c) the plea is later withdrawn. The Department is free to take any position on appeal or any other post-judgment matter.

16. **Breach of Agreement:** The defendant agrees that if it fails to comply with any of the provisions of this plea agreement, makes false or misleading statements before the Court, commits any further crimes, or attempts to withdraw the plea after sentencing even though the Department has fulfilled all of its obligations under this agreement and the Court has imposed the sentence (and only the sentence) provided in this agreement, the Department will have the right to characterize such conduct as a breach of this plea agreement. In the event of such a breach, (a) the Department will be free from its obligations under the agreement and may take whatever position it believes appropriate as to the sentence (for example, should the defendant commit any conduct after the date of this agreement – examples of which include but are not limited to, obstruction of justice and false statements to law enforcement agents, the probation office, or the Court – the Department is free under this agreement to seek an increase in the sentence based on that post-agreement conduct); (b) the defendant will not have the right to withdraw the guilty plea; (c) the defendant shall be fully subject to criminal prosecution for any other crimes which it has committed or might commit, if any, including perjury and obstruction of justice; and (d) the Department will be free to use against the defendant, directly and

indirectly, in any criminal or civil proceeding any of the information or materials provided by the defendant pursuant to this agreement, as well as the admitted Statement of the Offense.

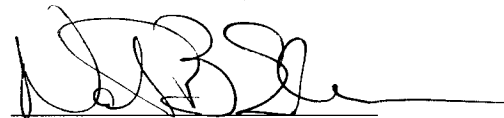
In the event of such breach, any such prosecutions of the defendant not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the running of the applicable statute of limitations in the interval between now and the commencement of such prosecutions. The defendant knowingly and voluntarily agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

17. **Complete Agreement:** No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein. Nor will any such agreements, promises, understandings, or representations be made unless committed to in writing and signed by defendant, defendant's counsel, an attorney for the U.S. Department of Justice, Criminal Division, Fraud Section and an attorney for the U.S. Department of Justice, National Security Division, Counterespionage Section. If the foregoing terms and

conditions are satisfactory, BAES may indicate its assent by signing the agreement in the space indicated below and returning the original once it has been signed by BAES and its counsel.

PAUL E. PELLETIER
Acting Chief
MARK F. MENDELSON
Deputy Chief
Criminal Division, Fraud Section

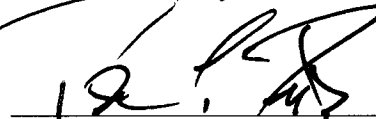
By:



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JOHN J. DION
Chief, Counterespionage Section
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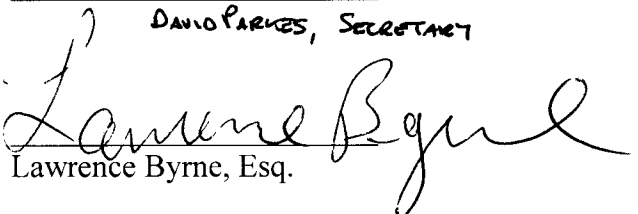
Patrick T. Murphy
Trial Attorney
United States Department of Justice

For BAE Systems plc

Counsel for BAE Systems plc



DAVID PARNES, SECRETARY



Lawrence Byrne, Esq.

OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with counsel for BAES Systems plc ("BAES"). I understand the terms of this Agreement and voluntarily agree, on behalf of BAES, to each of its terms. Before signing this Agreement on behalf of BAES, I consulted with the attorney for BAES. The attorney fully advised me of the rights of BAES, of possible defenses, and of the consequences of entering into this Agreement.

I have carefully reviewed this Agreement with the Board of Directors of BAES. I have advised, and caused outside counsel for BAES to advise, the Board fully of the rights of BAES, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me to enter into this Agreement. I am also satisfied with the attorney's representation in this matter.

I certify that I am an officer of BAES and that I have been duly authorized by BAES to execute this Agreement on behalf of BAES.

Date: February 5, 2010

BAE Systems plc

By:



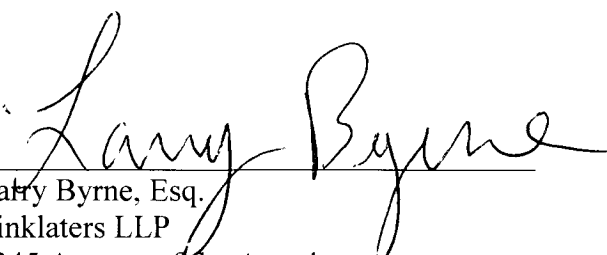
DAVID PARNES, SECRETARY

CERTIFICATE OF COUNSEL

I am counsel for BAE Systems plc ("BAES") in the matter covered by this Agreement. In connection with such representation, I have discussed this Agreement with the Board of Directors of BAES. Further, I have carefully reviewed every part of this Agreement with the Board of Directors and General Counsel of BAES. We have fully advised them of BAES' rights, of possible defenses, and of the consequences of entering into this Agreement. Based on my review of the foregoing materials and discussions, I am of the opinion that BAES' representative has been duly authorized to enter into this Agreement on behalf of BAES. This Agreement has been duly and validly authorized, executed, and delivered on behalf of BAES and is a valid and binding obligation of BAES. To our knowledge, BAES' decision to enter into this Agreement is an informed and voluntary one.

Date:

2-5-10


Larry Byrne, Esq.
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New York, NY 10105-0249