

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

UNITED STATES COURTS
 SOUTHERN DISTRICT OF TEXAS
 FILED

DEC - 9 2013

UNITED STATES OF AMERICA)	David J. Bradley, Clerk of Court
)	Criminal No. _____
v.)	
)	18 U.S.C. § 371
BILFINGER SE,)	15 U.S.C. §§ 78dd-1, 78dd-2
)	18 U.S.C. § 2
Defendant.)	
_____)	

INFORMATION

The United States charges that, at all times relevant to this Information, unless otherwise stated:

GENERAL ALLEGATIONS

The Foreign Corrupt Practices Act

1. Congress enacted the Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Section 78dd-1, *et seq.* ("FCPA"), for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for, or directing business to, any person.

The Defendant and Relevant Subsidiaries

2. Defendant BILFINGER SE, formerly Bilfinger Berger AG and Bilfinger Berger SE, ("BILFINGER") was an international engineering and services company involved in the industrial services, power services, building and facility services, construction, and concessions

business segments. BILFINGER was a German company with its headquarters in Mannheim, Germany.

3. Bilfinger Berger Gas and Oil Services Nigeria Ltd. (“BBGOS”) was a German company based in Nigeria that provided engineering, construction, and other services in the oil and gas industry. At the relevant time, BILFINGER owned 80% of BBGOS. In 2006, BILFINGER transferred its ownership interests in BBGOS to its wholly owned subsidiary, Bilfinger Berger Nigeria GmbH (“BBN”).

4. Julius Berger Nigeria (“JBN”) was a Nigerian company that provided construction services in Nigeria. BILFINGER owned 49% of JBN and the remaining 51% was owned by Nigerian nationals. Although BILFINGER did not own a controlling share of JBN, BILFINGER controlled JBN’s daily operations and its finances.

The EGGS Project and the EGGS Consortium

5. The Eastern Gas Gathering System (“EGGS”) was a natural gas pipeline system in the Niger Delta designed to relieve existing pipeline capacity constraints. The EGGS project, which was divided into two phases, consisted of the construction of a major natural gas pipeline system through remote, swampy and otherwise difficult terrain in the Niger Delta. EGGS Phase 1 involved engineering, procurement and construction of a pipeline from the Soku Gas Plant to the Bonny Island Liquefied Natural Gas Plant. EGGS Phase 1 included an optional scope of work (known as “EGGS Coating”) for the application of a Polyethylene-concrete coating to the EGGS Phase 1 pipeline to give it sufficient weight and protection. EGGS Phase 2 was another optional scope of work within the EGGS Phase 1 proposal, and contemplated the construction of a second pipeline from an area known as the Gbaran/Ubie node to the Soku Gas Plant. The EGGS Phase 1 contract price for “base scope” was approximately \$216,500,000; the EGGS

Coating optional scope price was approximately \$30,000,000; and the EGGS Phase 2 price was approximately \$141,000,000; for a combined total scope of work price of approximately \$387,500,000.

6. BBGOS entered into a consortium agreement with Willbros West Africa, Inc. (“WWA”) and Willbros Nigeria Ltd. (“WNL”) to bid on and perform the EGGS project (the “EGGS Consortium”). WWA and WNL were subsidiaries of Willbros International Inc. (“WII”), a Panamanian corporation, through which Willbros Group, Inc. (“WGI”) conducted its international work (collectively referred to herein as “Willbros”). Willbros provided construction, engineering and other services in the oil and gas industry. WGI and WII maintained their principal places of business in Tulsa, Oklahoma (until 2000), and in Houston, Texas (from 2000 to the present). WGI’s shares were traded on the New York Stock Exchange and registered pursuant to Title 15, United States Code, Section 78l, and WGI was required to file periodic reports pursuant to Title 15, United States Code, Section 78o(d). As such, WGI was an “issuer,” within the meaning of the FCPA, Title 15 United States Code, Section 78dd-1(a). WII was a “domestic concern” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B), because its principal place of business was in the United States.

The Nigerian Government Entities

7. The Federal Republic of Nigeria (“Nigeria”) was a sovereign African nation with substantial deposits of oil and gas within its territory. A particular political party (referred to herein as the “Political Party”) was the dominant political party in Nigeria.

8. The Nigerian National Petroleum Corporation (“NNPC”) was a government-owned company charged with the development of Nigeria’s oil and gas wealth and the regulation of the country’s oil and gas industry, and was the majority shareholder in certain joint ventures

with various multinational oil companies. National Petroleum Investment Management Services (“NAPIMS”) was a subsidiary of NNPC that, among other things, oversaw Nigeria’s investments in the joint ventures and other development projects. NNPC and NAPIMS were agencies and instrumentalities of the Government of Nigeria, within the meaning of the FCPA, Title 15, United States Code, Sections 78dd-1(f)(1)(A) and 78dd-2(h)(2)(A). NNPC owned 55% of a joint venture that was established by the Nigerian government in connection with the EGGS project (the “Joint Venture”). The other owners of the Joint Venture were multinational oil companies, including Shell Petroleum Development Co. of Nigeria, Ltd. (“SPDC”), which served as the operator of the Joint Venture. As the majority owner of the Joint Venture, the Nigerian government exercised control over the Joint Venture, including but not limited to having the ability to block the award of contracts related to the EGGS project.

Bilfinger Employees

9. An unnamed coconspirator, hereinafter referred to as Bilfinger Employee 1, was a German citizen who held a variety of positions at BILFINGER or its subsidiaries from in or around 1982 to in or around March 2011. Specifically, from in or around 1999 to in or around 2001, Bilfinger Employee 1 was the Managing Director of BBGOS. In or around May 2001, Bilfinger Employee 1 became the Commercial Director of JBN and served in that role until he stepped down in or around August 2010. As the Commercial Director of JBN, Bilfinger Employee 1 reported to Bilfinger Employee 2, the then Managing Director of JBN, as well as to Bilfinger Employee 3, a BILFINGER employee in Germany.

10. An unnamed coconspirator, hereinafter referred to as Bilfinger Employee 2, was a German citizen who held a variety of positions at BILFINGER or its subsidiaries beginning in or around 1976. Specifically, from in or around May 2001 to in or around November 2007,

Bilfinger Employee 2 was the Managing Director of JBN and a member of JBN's Board of Directors. As Managing Director of JBN, Bilfinger Employee 2 reported to JBN's Board of Directors and to Bilfinger Employee 3.

11. An unnamed coconspirator, hereinafter referred to as Bilfinger Employee 3, was a German citizen who, beginning in or around 1983, held a variety of positions in or related to BILFINGER's work in Nigeria, including Managing Director of JBN and, from in or around 2001 to in or around 2006, Technical Director for Nigerian Operations at BILFINGER. In or around 2006, Bilfinger Employee 3 became the head of BBN.

Willbros Employees and Agents

12. James Kenneth Tillery was a United States citizen and an officer of WII. In or around 2003, Tillery became the Executive Vice President of WII and he later became the President of WII, with responsibility for its global operations outside of North America until he was removed from that position in late 2004 and resigned in 2005.

13. Jason Edward Steph was a United States citizen and employee of WII. WII employed Steph from in or around 1998 to April 2005, when he resigned. Steph held the position of General Manager – Onshore in Nigeria from 2002 to April 2005.

14. Jim Bob Brown was a United States citizen and an employee of WII from at least 1990 through April 2005. From in or around November 2004 to in or around April 2005, Brown was the Managing Director of WII in Nigeria.

15. Paul Grayson Novak was a citizen of the United States who performed purported consulting services in Nigeria for WII on the EGGS project and, in doing so, offered and made corrupt payments to Nigerian officials on behalf of the EGGS Consortium.

16. Tillery, Steph, Brown, and Novak were each a “domestic concern” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

17. An unnamed coconspirator, hereinafter referred to as Nigerian Consultant 1, was a Nigerian national who also performed purported consulting services in Nigeria for WII on the EGGS project and, in doing so, offered and made corrupt payments to Nigerian officials on behalf of the EGGS Consortium.

COUNT 1

Conspiracy to Violate the Foreign Corrupt Practices Act (18 U.S.C. § 371)

18. Paragraphs 1 through 17 of this Information are re-alleged and incorporated by reference as if set out in full.

19. From at least in or around late 2003, through in and around late June 2005, in the Southern District of Texas, and elsewhere, the defendant, BILFINGER SE, did unlawfully and knowingly combine, conspire, confederate and agree with Bilfinger Employee 1, Bilfinger Employee 2, Bilfinger Employee 3, Willbros, Tillery, Steph, Brown, Novak, Nigerian Consultant 1, and others, known and unknown, to commit offenses against the United States, that is, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, to any foreign political party and official thereof, and to any person while knowing that all or a portion of such money and thing of value would be offered, given, and promised, directly and indirectly to any foreign official and foreign political party and official thereof, for purposes of: (i) influencing acts and decisions of such foreign official and foreign political party and official thereof in his and its official capacity; (ii) inducing such foreign official and foreign political

party and official thereof to do and omit to do an act in violation of his or its lawful duty; (iii) securing an improper advantage; and (iv) inducing such foreign official and foreign political party and official thereof to use his or its influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist BILFINGER and others, in obtaining and retaining business for and with, and directing business to, BILFINGER and others, all in violation of Title 15, United States Code, Sections 78dd-1 and 78dd-2.

PURPOSE AND OBJECT OF THE CONSPIRACY

20. The purpose and object of the conspiracy was to obtain and retain contracts related to the EGGS project through the promise and payment of over \$6 million in bribes to officials of NNPC, NAPIMS, the Political Party, an official in the executive branch of the Government of Nigeria, and others (collectively referred to herein as “Nigerian officials”).

MANNER AND MEANS OF THE CONSPIRACY

21. The manner and means by which BILFINGER and its coconspirators sought to accomplish the purpose and object of the conspiracy included, but were not limited to, the following:

a. BILFINGER, BBGOS, and Willbros agreed that BBGOS and WWA/WNL would form a joint venture consortium to bid on the EGGS project and its optional scopes of work.

b. BILFINGER and its coconspirators agreed that the EGGS Consortium would inflate the price of its bid for the EGGS project by 3% so it could cover the cost of paying bribes to Nigerian officials (which BILFINGER, BBGOS, and JBN employees commonly referred to as “landscaping” payments and Willbros employees and agents commonly referred to

as “commitments”) for their assistance in obtaining and retaining the EGGS project and its optional scopes of work. BILFINGER and its coconspirators further agreed that BILFINGER and BBGOS would pay the bribes to the officials from NNPC and NAPIMS and Willbros would pay the bribes to the officials from SPDC.

c. BILFINGER, BBGOS, and JBN employees agreed to make and made payments to Nigerian officials in cash using money obtained from a safe at JBN. The safe contained, in part, money that was mailed or flown to Nigeria from Germany for BBGOS’s and JBN’s local expenses, including “landscaping” payments.

d. Pursuant to the Consortium Agreement, BBGOS submitted invoices to WWA for its work on the EGGS project. WWA combined BBGOS’s invoices with its own invoices and, on behalf of the EGGS Consortium, submitted the invoices to SPDC for payment. The invoices requested payment of the inflated amount that the EGGS Consortium had included in its bid to cover the cost of paying bribes to Nigerian officials for their assistance in obtaining and retaining the EGGS project and its optional scopes of work.

e. When Willbros employees encountered difficulty obtaining money to make Willbros’s share of the promised bribe payments to Nigerian officials due to WGI’s internal investigation, BILFINGER agreed to loan, and caused BBGOS to loan, WWA/WNL \$1 million, with the understanding that the \$1 million would be used to pay some of the promised bribe payments to Nigerian officials, and with the understanding that Willbros employees would find other ways to obtain money to pay Willbros’s remaining share of the promised bribe payments.

OVERT ACTS

22. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the coconspirators committed and caused to be committed, in the Southern District of Texas, and elsewhere, the following overt acts, among others:

a. In or around mid 2003, BILFINGER agreed to create a joint venture with WWA/WNL to bid on the EGGS contract and its optional scopes of work.

b. In or around December 2003, BBGOS and WWA/WNL executed a "Consortium Agreement," which formalized BILFINGER's agreement to create a joint venture in connection with the EGGS project.

c. In or around late 2003, BILFINGER, Willbros, and others, known and unknown, agreed to make a series of corrupt payments totaling in excess of \$6,000,000 to Nigerian government officials to assist the EGGS Consortium in obtaining and retaining the EGGS contract and its optional scopes of work.

d. In or around December 2003, the EGGS Consortium submitted a commercial proposal to the Joint Venture, through the Joint Venture's operator, SPDC, for pipeline work on EGGS Phase 1 and, among other optional scopes of work, EGGS Coating and EGGS Phase 2.

e. In or around May 2004, after receiving NNPC and NAPIMS approval, the Joint Venture awarded EGGS Phase 1 to the EGGS Consortium.

f. In or around July 2004, representatives of the EGGS Consortium and of SPDC (the latter, as operator of, and thus on behalf of, the Joint Venture) executed the EGGS Phase 1 contract, which included the EGGS Consortium's offer to perform the optional scopes of work for EGGS Coating and EGGS Phase 2.

g. On or about July 19, 2004, WWA opened a bank account in the United States on behalf of the EGGS Consortium, into which payments for work conducted by the EGGS Consortium would be deposited and out of which payments would be made to BBGOS or WWA when authorized by both BBGOS and WWA.

h. In or around August 2004, after NNPC and NAPIMS approval, the Joint Venture awarded the optional EGGS Coating work to the EGGS Consortium.

i. In or around September or October 2004, Tillery told Bilfinger Employee 1 that he had promised an NNPC official (“Nigerian Official 1”) \$150,000 for helping the EGGS Consortium obtain and retain the EGGS contract.

j. In or around September or October 2004, Tillery asked Bilfinger Employee 1 to give the \$150,000 referred to in Paragraph 21(h) to Nigerian Official 1, in accordance with the agreement among and between Tillery, Bilfinger Employee 1, and others that BILFINGER (or BBGOS or JBN with BILFINGER’s knowledge) would make the corrupt payments to officials from NNPC and NAPIMS on behalf of the EGGS Consortium.

k. In or around September or October 2004, Bilfinger Employee 1 and Bilfinger Employee 2 agreed to make the corrupt payment requested by Tillery, as referenced in Paragraphs 21(i) and (j), using \$150,000 in cash from a safe in Bilfinger Employee 2’s office at JBN.

l. In or around October 2004, on two separate occasions, Bilfinger Employee 1 gave Nigerian Official 1 cash totaling the promised amount of \$150,000.

m. In or around late October 2004, Nigerian Individual 1, a business colleague and former NNPC official who had given Bilfinger Employee 1 advice regarding “landscaping payments” on previous projects, gave Bilfinger Employee 1 a list containing the

names of seven to nine officials from NNPC and NAPIMS and amounts totaling approximately \$1,000,000 that Nigerian Individual 1 “advised” BILFINGER pay the officials for helping the EGGS Consortium obtain and retain the EGGS contract.

n. In or around late October 2004, two of the Nigerian officials on the list referred to in Paragraph 21(m) told Bilfinger Employee 1 that they had been promised money for their assistance and that they would like to be paid, after which Bilfinger Employee 1 and Bilfinger Employee 2 agreed to pay the officials the amounts contained on the list (\$50,000 for one official and \$30,000-\$50,000 for the other official).

o. In or around January 2005, WGI announced Tillery’s resignation and the commencement of an internal investigation.

p. In or around January 2005, as a result of WGI’s internal investigation, WGI ceased paying WII’s purported consultants.

q. In or around January 2005, Bilfinger Employee 1, Bilfinger Employee 2, and others learned of demands by Nigerian officials for payment of the promised corrupt payments and, because they were concerned that failure to make the promised payment would result in interference with Phase 1 and the potential loss of the Phase 2 contract, they scheduled a meeting with Brown to discuss the promised corrupt payments and the status of the EGGS project.

r. On or about January 24, 2005, Bilfinger Employee 1 met with Brown, who had just arrived in Nigeria to replace Tillery, and discussed, among other things, the EGGS project generally, the fact that payments had been promised to Nigerian officials but had not yet been made, and the need to find out the particular promises that had been made so they could be fulfilled.

s. On or about January 25, 2005, Bilfinger Employee 1 telephoned Bilfinger Employee 3, who was in the United States, and asked Bilfinger Employee 3 to meet with Tillery in Boston, Massachusetts, to find out what payments had been promised to officials and whether the Phase 2 contract was at risk because those payments had not yet been made.

t. On or about January 27, 2005, Bilfinger Employee 3 flew from Houston, Texas, to Boston, Massachusetts, to meet with Tillery and inquire about the outstanding corrupt payments and the Phase 2 contract.

u. On or about February 12, 2005, Bilfinger Employee 1, Bilfinger Employee 2, Steph, Brown, and Nigerian Consultant 1 discussed the outstanding bribe payments, which totaled several million dollars.

v. On or about February 12, 2005, Bilfinger Employee 1, Bilfinger Employee 2, and others agreed, on behalf of BILFINGER, to make the outstanding payments to the officials from NNPC and NAPIMS and to loan Willbros money to help Willbros pay its share of the promised corrupt payments.

w. On or about February 19 and 21, 2005, Bilfinger Employee 1, Bilfinger Employee 2, and others caused BBGOS to loan WWA/WNL \$1,000,000, pursuant to a written loan agreement between the companies and to have the cash delivered to Brown in a suitcase in Lagos, Nigeria.

x. In or around May 2005, Bilfinger Employee 1 contacted WWA/WNL to establish a repayment schedule for the \$1,000,000 loan BBGOS had made to WWA/WNL on or about February 19, 2005.

y. In or around late June 2005, a senior executive in WGI's legal department sent a letter to BILFINGER refusing to establish a repayment schedule for the \$1,000,000 loan given the corrupt purposes for which the loan was made.

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

COUNTS 2-3

**Foreign Corrupt Practices Act
(15 U.S.C. §§ 78dd-1 and 78dd-2; 18 U.S.C. § 2)**

23. Paragraphs 1 through 17 and 20 through 22 of this Information are re-alleged and incorporated by reference as though fully set forth herein.

24. On or about the dates listed below, in the Southern District of Texas and elsewhere, the defendant, BILFINGER SE, together with Willbros Group Inc., an issuer under the FCPA, Willbros International Inc., a domestic concern under the FCPA, and their employees and agents, who were domestic concerns under the FCPA, and others, did make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, and to any foreign political party and official thereof, and to any person, while knowing that all or a portion of such money and thing of value would be offered, given, and promised, directly and indirectly to any foreign official and to any foreign political party and official thereof for purposes of: (i) influencing acts and decisions of such foreign official and foreign political party and official thereof in his and its official capacity; (ii) inducing such foreign official and foreign political party and official thereof to do and omit to do an act in violation of his or its lawful duty; (iii) securing an improper advantage; and (iv) inducing such foreign official and foreign political party and official thereof to use his or its influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist BILFINGER, Willbros, and others known and unknown, in obtaining and retaining business for and with, and directing business to, themselves and their co-conspirators.

25. In furtherance of the scheme to corruptly influence government officials, BILFINGER, together with Willbros Group Inc., Willbros International Inc., and others, caused the following means and instrumentalities of interstate and international commerce to be used on or about the dates listed below:

Count	Date	Means and Instrumentality
2	January 27, 2005	Flight from Houston, Texas, to Boston, Massachusetts to discuss promised bribe payments.
3	May 16, 2005	Wire transfer of \$2,804,496 from Houston, Texas, to Frankfurt, Germany, in connection with the EGGS contract.

All in violation of Title 15, United States Code, Sections 78dd-1 and 78dd-2, and Title 18, United States Code, Section 2.

DATED: December 9, 2013

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By:



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