

## **BAE Systems plc (United Kingdom)**

**Case ID:**

ST-52

**Case Cluster :**

BAE Systems plc

**Jurisdiction of Settlement:**

United Kingdom

**Jurisdiction of Settlement / Enforcement Agency:**

Serious Fraud Office

**Jurisdiction of Foreign Public Official(s) :**

Tanzania

**Year of Settlement:**

2010

**Month/Day of Settlement (or Notes):**

12/21

**Other Jurisdictions of Settlement:**

United States

**Settlement with Individual or Legal Person?:**

Legal Person

**Type of Settlement:**

Criminal

**Legal Form of Settlement:**

Guilty Plea

**Monetary Sanctions (Types):**

Criminal Fine, Criminal Reparation, Legal Costs

**Total Monetary Sanctions (US\$):**

\$46,914,016.00

**Criminal Fine/Penalty (US\$) :**

\$776,080

**Criminal Restitution / Reparation (US\$):**

\$45

788

700

**Monetary Sanctions Returned / Ordered Returned (US\$):**

\$45,788,700

**Monetary Sanctions Returned / Ordered Returned (Explanation):**

Ex Gratia Payment to Tanzania

**UNCAC Articles(s) Implicated:**

Art.16

Art.23

Art.26

**OECD Anti-Bribery Convention Articles Implicated:**

Art. 1, Art. 2, Art. 7, Art. 8

**Offenses - Alleged:**

Failure to Keep Accounting Records contravening section 221(5) of the Companies Act 1985

**Offenses - Settled:**

Failure to Keep Accounting Records contravening section 221(5) of the Companies Act 1985

**Public Procurement Contract / SOE Involved?:**

Yes

**Summary:**

According to the UK Serious Fraud Office Press Release, "Today at Southwark Crown Court BAE Systems Plc was fined £500,000 after admitting it had failed to keep adequate accounting records in relation to a defence contract for the supply of an air traffic control system to the Government of Tanzania. This outcome follows a settlement by BAE as part of a global agreement it reached earlier this year with the Serious Fraud Office and the US Department of Justice concerning contracts in a number of countries. The settlement with the SFO relates to the Tanzania contract whereby BAE agreed to pay an ex-gratia payment for the benefit of the people of Tanzania of £40 million less any fine imposed by the Crown Court. Additionally, BAE was ordered to pay £225,000 costs to the SFO. [ ] A contract for the supply of a radar defence system for Dar-es-Salaam International Airport was agreed in 1999 between British Aerospace Defence Systems Ltd and the government of Tanzania. (This followed negotiations that had been conducted since 1992 initially by Siemens Plessey Systems which was acquired by BAE in 1998). The value of the contract was US \$39.97 million. BAE's practice was to engage advisers to help with its marketing. These advisers were either classified by BAE as 'overt' (i.e. that is they operated openly as BAE's in-country representatives), or 'covert'. The latter operated in circumstances where there was a need for confidentiality. In order to maximise confidentiality with regard to its use of covert advisers and the making of payments to them, BAE set up Red Diamond Trading Company, incorporated in the British Virgin Islands. In Tanzania a local businessman, Shailesh Vithlani, was recruited at an early stage (initially by Siemens) to advise BAE on its negotiations with the government on the radar contract. Shortly before the contract was signed two new adviser arrangements with Vithlani were concluded. One was made between Red Diamond and a Vithlani-controlled Panama-incorporated company, Envers Trading Corporation. This was a 'covert' arrangement where the fee for Vithlani's services was to be not more than 30.025% of the radar contract price. The other arrangement was 'overt' and was for services direct to BAE by a Vithlani-controlled business, Merlin International, registered in the B.V.I. It did not involve Red Diamond and the fee was 1% of the radar contract value. Between January 2000 and December 2005 around \$12.4 million was paid to Vithlani's two companies. BAE has accepted that there was a high probability that part of this sum would be used to favour it in the contract negotiations. The payments were not subject to proper and adequate scrutiny or review. Furthermore, it was not possible for any person auditing the accounts to investigate and determine whether the payments were properly accounted for or were lawful. In sentencing BAE, the Judge said that he took the view that BAE were concealing from the auditors and ultimately the public the fact that they were making payments to Vithlani; 97% of them via two offshore companies, with the intention that he should have free rein to make such payments to such people as he thought fit in order to secure the radar contract for BAE but that BAE did not want to know the details. The Judge took into account in sentencing BAE that the group had committed itself to a process of change following the Report of Lord Woolf and that BAE would be making a payment for the benefit of the people of Tanzania of £40 million less the fine. The Judge said that the people of Tanzania were the real victims. The Judge decided in these circumstances to impose a fine of £500,000." (Source: UK Serious Fraud Office Press Release, "BAE fined in Tanzania defence contract case," December 21, 2010, accessed at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>.)

**Sources :**

United Kingdom Report to the OECD, "Steps taken to implement and enforce the OECD

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Information as of 16 August 2011), accessed at <http://www.oecd.org/dataoecd/17/30/48362318.pdf>; UK Serious Fraud Office Press Release, "BAE fined in Tanzania defence contract case," December 21, 2010, accessed at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>; Between: R - and - BAE SYSTEMS PLC, Case No. Case No: S2010565 (Southwark Crown Court), December 21, 2010, accessed at <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-bae-sentencing-remarks.pdf>; Prosecution Note for Opening, accessed at <http://www.sfo.gov.uk/media/133543/bae%20opening%20statement%2020.12.10.pdf>; Settlement Agreement between the Serious Fraud Office and BAE Systems plc, February 2010, accessed at <http://www.sfo.gov.uk/media/133535/bae%20-%20settlement%20agreement%20and%20basis%20of%20plea.pdf>; Charge, accessed at <http://www.sfo.gov.uk/media/133535/bae%20-%20settlement%20agreement%20and%20basis%20of%20plea.pdf>.

**Documents:**

<b>Attachment</b>	<b>Size</b>
 BAE_UK_SFO_Court_Sentencing_Remarks_2010.pdf	77.58 KB
 BAE_UK_Settlement_Tanzania_SFO_PR_Feb_5_2010.pdf	83.35 KB