

Defense Contractor Pleads Guilty To Major Fraud In The Provision Of Supplies To U.S. Troops In Afghanistan

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Supreme Foodservice Agrees To Pay \$389 Million In Fines, Damages and Penalties

PHILADELPHIA – The United States announced today the resolution of criminal fraud and civil False Claims Act cases against Supreme Foodservice GmbH, a privately-held Swiss company, and Supreme Foodservice FZE, a privately-held United Arab Emirates (“UAE”) company, in connection with a contract to provide food and water to the U.S. troops serving in Afghanistan. The companies pleaded guilty to major fraud against the United States and paid \$288.36 million in the criminal case, a sum which includes the maximum criminal fines allowed. In addition, Supreme Group B.V., a privately held Dutch corporation, and its subsidiaries, Supreme Foodservice GmbH and Supreme Foodservice FZE, have agreed to pay \$101 million to resolve allegations in a whistleblower lawsuit that Supreme violated the False Claims Act. The plea and settlement were announced by United States Attorney Zane David Memeger.

The Criminal Fraud

In 2005, Supreme Foodservice AG (which is now called Supreme Foodservice GmbH) entered into a contract with the Defense Supply Center of Philadelphia (“DSCP,” now called Defense Logistics Agency – Troop Support), to provide food and water for the U.S. forces serving in Afghanistan. According to court documents, between July 2005 and April 2009, Supreme Foodservice AG together with Supreme Foodservice KG (which is now called Supreme Foodservice FZE) devised and implemented a scheme to overcharge the United States in order to make profits over and above those provided in the \$8.8 billion Subsistence Prime Vendor Contract (“the SPV contract”). The companies fraudulently inflated the price charged for Local Market Ready goods (or LMR) and bottled water sold to the United States under the SPV contract. Supreme did this by using a UAE company it controlled, called Jamal Ahli Foods Co., LLC (“JAFCO”), as a middleman to mark up prices for fresh fruits and vegetables and other locally-produced products sold to the U.S. government, and to obscure the inflated price Supreme was charging for bottled water. The fraud resulted in a loss to the government of \$48 million. In addition, as a result of the criminal investigation, Supreme paid \$38.3 million directly to the DSCP as a refund for separate overpayments on bottled water.

Supreme AG, Supreme FZE, and Supreme’s owners (referred to in court documents as Supreme Owners #1 and #2) made concerted efforts to conceal Supreme’s true relationship with

JAFCO, and to make JAFCO appear to be an independent company. They also took steps to make JAFCO's mark-up on LMR look legitimate, and persisted in the fraudulent mark-ups even in the face of questions from DSCP about the pricing of LMR.

Even though the SPV contract stated that Supreme should charge the government the supplier's price for the goods, emails between executives at Supreme (referred to as Supreme Executive #1, #2, etc) reveal Supreme's deliberate decision to inflate the prices. For example, on or about August 22, 2005, a Supreme Executive sent an email to Supreme Owner#1 saying that the prices he proposed for certain items already included margins of "approximately 57-60%" over the price from the supplier. Another Supreme Executive sent a reply email recommending that Supreme not raise the prices further because "we would like to stay credible with the customer," and would not want to invite a "challenge" from the DSCP. In September of 2005, Supreme Owner#1 specifically instructed other top management within Supreme that he would personally "review the LMR mark-up before [JAFCO] makes its first shipment." Among other things, Supreme Owner#1 increased the markup that JAFCO would impose on non-alcoholic beer from 25 percent to 125 percent. On or about February 16, 2006, during a discussion about supplying a new product to the U.S. government, one Supreme Executive wrote to another: "I am very sure the best option is to buy it from Germany and Mark up via [JAFCO], like [non-alcoholic] beer."

On or about March 18, 2006, in discussing whether they could inflate the price for ice cubes to be sold to the DSCP, a Supreme Executive wrote to Supreme Owner#1, among others: "I don't think we can mark up through [JAFCO] since DSCP knows price from [the supplier]." That same day, Supreme Owner#1 forwarded that March 18, 2006 email to Supreme Owner#2, commenting "There are dozens of emails like that one."

In early March 2006, after a DSCP contracting officer told Supreme that she wanted to see a manufacturer's invoice for specific frozen products, Supreme lowered its prices for those products to prices that did not include a JAFCO mark-up. On March 14, 2006, instead of disclosing that the initial pricing had included a mark-up, a Supreme Executive misled the DSCP representative by explaining the change in pricing as follows: "Based on more realistic quantities, we have been able to negotiate a better price."

In June 2006, when a DSCP contracting officer raised questions about pricing, focusing on four specific items, Supreme Executives again misled the DSCP, claiming that the high prices were for a high quality of product, and offering to sell lower quality products for lower prices. Supreme did this even after analyzing its JAFCO margin on the four items in question and finding its profit margins were between 41 and 56 percent.

In September 2007, after a fired Supreme Executive threatened to tell the DSCP about the fraud, Supreme entered into negotiation of a "Separation Agreement" with that executive to induce that executive not to disclose the ways in which Supreme was overcharging the DSCP. That agreement stated that the executive would receive, among other things, a payment of EUR 400,000 in September of 2010, provided that the executive did not cause: a deterioration in the economic situation linked to the SPV Contract; the termination of the SPV Contract; or a

decrease in the price levels for products, specifically including both LMR and bottled water provided to the U.S. government.

Supreme's overcharging was exposed in early March 2009, when a former Supreme employee notified the DSCP that Supreme owned and controlled JAFCO, and that JAFCO was adding a mark-up to the Delivered Price of goods. The DSCP contacted Supreme and ordered the mark-ups stopped. The mark-ups ceased as of April 1, 2009.

Defendant Supreme GmbH pleaded guilty to Major Fraud Against the United States, Conspiracy to Commit Major Fraud, and Wire Fraud. Defendant Supreme FZE, which owns JAFCO, pleaded guilty to Major Fraud Against the United States. The Supreme companies agreed to jointly pay \$48 million in restitution, and \$10 million in criminal forfeiture. Each company also agreed to pay \$96 million in criminal fines. In addition, U.S. District Court Judge Gene E.K. Pratter ordered Supreme AG, as a condition of the five years' probation she imposed, to hold an annual service event to honor or assist veterans and/or the families of veteran.

The Civil Settlement

In a separate civil settlement agreement, Supreme agreed to pay another \$101 million to settle a whistleblower lawsuit filed in the U.S. District Court for the Eastern District of Pennsylvania, before U.S. District Court Judge Mary McLaughlin. The suit was filed by a former executive alleging that Supreme violated the False Claims Act by knowingly overcharging for supplying food and water under the SPV contract. The payment also resolves claims that, from June 2005 to December 2010, Supreme failed to disclose and pass through to the government rebates and discounts it obtained from its suppliers, as required by its SPV contract with the United States.

"These companies chose to commit their fraud in connection with a contract to supply food and water to our Nation's fighting men and women serving in the desert," said Memeger. "That kind of conduct is repugnant, and we will use every available resource to punish such illegal war profiteering."

"These cases demonstrate the continued commitment of the Defense Criminal Investigative Service (DCIS) and our partner agencies to protect the integrity of the Department of Defense's acquisition process from personal and corporate greed," said Craig W. Rupert, Special Agent in Charge, DCIS Northeast Field Office. "Each dollar lost to fraud is a taxpayer dollar unavailable to protect our warfighters. Ensuring the proper use of U.S. taxpayers' dollars and preventing contract fraud is in our nations' security interest and remains a DCIS priority."

"We are very pleased with this resolution, and are gratified that the public can now see what we've been aggressively investigating," said Frank Robey, the Director of the U.S. Army Criminal Investigation Command's Major Procurement Fraud Unit. "Companies that do business with the government must comply with all of their obligations, and if they overcharge for supplying our men and women in uniform who are bravely serving this nation, they must be held accountable for their actions."

The criminal and civil matters were the result of a coordinated effort by the U.S. Attorney's Office for the Eastern District of Pennsylvania, the Civil Division of the United States Department of Justice, the Department of Defense Office of Inspector General's Defense Criminal Investigative Service, U.S. Army's Criminal Investigative Command's Major Procurement Fraud Unit, and the Federal Bureau of Investigation.

The criminal matter is being handled by Assistant United States Attorney Bea L. Witzleben. The civil matter is being handled by Assistant United States Attorneys Colin M. Cherico and Joel Sweet, along with Art Coulter, Trial Attorney for the Civil Frauds Section of the Department of Justice.

The company's owners and assets are outside the reach of the United States.

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