IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No. 03-601-A
	)	
v.	)	
	)	
AJIT S. DUTTA,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

If this matter were to proceed to trial, the United States would prove the following beyond a reasonable doubt.

A. BACKGROUND

1. The United States Agency for International Development (USAID) is an independent agency of the United States. Under guidance from the United States Secretary of State, USAID dispenses and monitors United States Government financial assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms. Pursuant to its stated mission, USAID has country offices known as "Missions" in over 80 countries worldwide.

2. From at least 1993 continuing until 2003, Datex, Inc., (Datex) a company headquartered in Falls Church, Virginia, has had approximately 41 separate contracts, grants or agreements with USAID. Under the contracts, Datex was obligated to provide administrative and logistical support services to USAID Missions and to disburse USAID grants to various governmental and non-

governmental regional organizations. The total dollar value of these contracts, grants or agreements is approximately $71 million. In particular, in the fiscal year of 1998, Datex had received from the United States far in excess of $100,000 under a contract with USAID.

3. The defendant, AJIT S. DUTTA, a resident of Fairfax County, Virginia, owned 100 per cent of Datex. Defendant DUTTA also owned 100 per cent of Dannix, Inc. Dannix was a subchapter S corporation with no employees, whose place of business was defendant DUTTA's residence.

B. DEFENDANT DUTTA'S SCHEME TO DEFRAUD USAID

4. A large percentage of Datex's contracts with USAID were cost reimbursable. Under these contracts, Datex was obligated annually to certify the percentage of its indirect costs, such as overhead and general administrative costs, that were both incurred in the performance of USAID contracts and that were "allowable" under the Federal Acquisition Regulations (hereinafter referred to as "the FAR"). In an effort (i) to obtain a larger reimbursement for Datex than what he was entitled to receive or (ii) to justify the amount of provisional payments that USAID periodically paid to Datex which were designed to cover Datex's anticipated indirect costs, defendant DUTTA created artificial and non-existent indirect costs for Datex and then listed and certified these costs, along with his legitimate

costs, in Datex's incurred cost reports submitted annually to USAID. This resulted in a continuous revenue stream for Datex from 1994 through 2000 that was fraudulently inflated in total by $867,462.

5. The primary vehicles used to create artificial costs were as follows: having Datex (i) pay defendant DUTTA'S wife a salary and listing her as a full time Datex employee, when in fact she was employed full time elsewhere, (ii) pay a consulting company, Dannix, for non-existent work, when defendant DUTTA himself owned Dannix 100 percent, and (iii) pay rent to the defendant's wife for the use of a second Datex office, when the office did not serve as an office but was in fact a condominium the defendant DUTTA and his wife owned as a second residence in New Jersey.

C. THE ROLE OF THE DEFENSE CONTRACT AUDIT AGENCY

6. The Defense Contract Audit Agency (DCAA) performs all contract audits for the Department of Defense and certain other United States Government agencies. Under an agreement with USAID, DCAA periodically audited Datex with respect to the costs Datex claimed to have incurred in the performance of USAID contracts and certified as allowable under the FAR.

D. OBSTRUCTION OF A FEDERAL AUDIT

7. In 2001 DCAA had been tasked by USAID to audit Datex's costs for fiscal year 1998. In June 2001, at Datex's Falls

Church, Virginia, office, the DCAA auditor met with a Datex official and told him what expense accounts she wanted to review. These expenses involved pensions, domestic and international travel, rent, other direct labor costs, and $75,000 in subcontractor/consulting fees, later identified as payments to Dannix.

8. In connection with the $75,000 payment to Dannix, the DCAA auditor received no supporting documentation. When the auditior questioned the Dannix costs in their entirety, the Datex official directed the auditor to defendant DUTTA.

9. Defendant DUTTA told the auditor that most of the work done by Dannix was conducted by email. DUTTA then tried to find a record of some such correspondence on his computer but said that it had been erased. DUTTA told the auditor that Dannix was used to obtain business for Datex overseas. DUTTA was unable or unwilling at that time to provide additional detail regarding the Datex/Dannix relationship. After the meeting with DUTTA, the auditor remained unconvinced that Dannix had performed any work for Datex.

10. Approximately one week later, DCAA sent a letter to Datex, questioning the costs previously discussed with the Datex official. The letter stressed the need for backup documentation on a number of matters, including the subcontractor/consulting fee costs paid to Dannix.

11. A month later, on July 25, 2001, defendant DUTTA sent a letter to the DCAA office, to the attention of the auditor's supervisor. Among other matters, DUTTA'S letter addressed the $75,000 payment to Dannix. DUTTA explained that the payment was for a retainer agreement with Dannix. DUTTA then argued that under federal regulations costs associated with retainer agreements are not based upon specific statements of work performed. DUTTA went on to state that "this subcontractor [Dannix] has been retained by Datex since 1995, and continues to be used to provide international consulting services..." DUTTA then referred to a document, enclosed with the letter, that purported to describe the extent of Dannix's work performed for Datex in 1998. The document was addressed to "Mr. Dutta" and opened with the statement: "As requested here are further details of the work carried out by us under our consultancy agreement with Datex."

12. The document listed three objectives: (i) establishing a credit bureau in the Far East, (ii) setting up information technology training institutes in the Indian subcontinent, and (iii) setting up information technology recruitment centers. The document then listed the number of hours spent on projects, foreign trips, and at conferences by Dannix employees who were listed by name. A number of the meetings described in the document included meetings with defendant DUTTA in such places as

Singapore and India. Included with the Dannix description of work performed was a one page summary of approximately $35,000 in travel expenses associated with Dannix's work.

13. Defendant DUTTA knew that the information supplied in the document was false. In addition, nowhere in the letter or in any documentation furnished to DCAA was it revealed that defendant DUTTA owned Dannix and that Dannix operated out of DUTTA'S Fairfax County residence.

14. Unaware that the representations made by defendant DUTTA were false, DCAA decided at the close of its audit that the 1998 $75,000 Dannix costs were allowable under federal regulations.

Respectfully submitted,

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By:
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Seen and Agreed:

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_____
Steven Tabackman
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