

In the United States Court of Federal Claims

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ADMARK KOREA, LIMITED)
502 Nowon Building)
717-1 Sanggye-dong, Nowon-gu)
Seoul, Republic of Korea)
)
Plaintiff,)
)
v.) No. 11-778C
) Judge Christine O. C. Miller
THE UNITED STATES,)
)
Defendant.)
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**AMENDED COMPLAINT ON A CLAIM
UNDER AN IMPLIED-IN-FACT CONTRACT**

NATURE OF THE ACTION

1. Plaintiff Admark Korea, Limited, 502 Nowon Building, 717-1 Sanggye-dong, Nowon-gu, Seoul, Korea (Admark Korea), a closely-held and single-employee Korean company, files this Amended Complaint in accordance with RCFC 7(a)(1) and

RCFC 15(a)(1)(A). Admark Korea seeks a money judgment under the Tucker Act, 28 U.S.C. § 1491(a)(1). Admark Korea's Claim arises from the implied-in-fact Contract promising fair and honest consideration of Competitive Proposals, *Scott Timber Co. v. United States*, 333 F.3d 1358, 1369 (Fed. Cir. 2003), submitted in response to a Solicitation for a successor concession Contract, *Joyce Terry, d/b/a Shirt Shack v. United States*, 98 Fed. Cl. 736, 737 (2011), issued by the Army & Air Force Exchange Service—PACRIM Region) (AAFES), Wireless Telecommunications Services Solicitation Number KO-93-053-99-23.

2. Admark Korea asserts: (1) in exchange for a bribe and a promised share of the proceeds of the successor concession Contract, Clifton Choy, AAFES' Pacific Region Services Business Manager, or other AAFES employees working for Clifton Choy, examined the Competitive Proposal submitted by Admark Korea and thereafter completed a blank Competitive Proposal submitted by another Offeror, Samsung Rental Company, Limited (Samsung) so as to ensure that Samsung had offered the highest

concession fee; (2) that as a direct and immediate consequence of this breach of the implied-in-fact Contract of fair and honest consideration, Admark Korea, the incumbent concession Contractor providing mobile telephones to United States Forces in Korea, incurred expectancy damages over the five-year term of the successor concession Contract awarded to Samsung which amount to \$8,355,852; and (3) alternatively, that Admark Korea, by reason of the award of the successor concession Contract to Samsung, lost the value of its \$400,000 inventory of mobile phones and was required to under Korean law to pay \$45,000 in severance to its Korean employees, these restitution damages amounting to \$445,000.

3. Admark Korea asks that the Court enter a money judgment: (1) for \$8,355,852, the amount of Admark Korea's expectancy damages, else; (2), alternatively, that the Court enters a money judgment for \$445,000, the amount of Admark Korea's restitution damages.

PARTIES

4. Admark Korea is a closely-held and single-employee Korean company which holds a Business Registration Certificate, Registration Number 106-81-56140, issued by the Nowon Tax Office. Admark Korea provides mobile phone leases and sales and prepaid airtime card sales. Prior to the award of the successor concession Contract to Samsung on July 19th, 1999, Admark Korea had provided wireless telecommunications services under concession Contracts with AAFES.

5. Admark Korea is a proper party for purposes of the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(2)(B)(ii), i.e., Admark Korea is a private party and a closely-held single-employee Korean company which at the time this Amended Complaint on a Claim Under an Implied-in-Fact Contract is filed has not more than 500 employees and whose net worth does not exceed \$7,000,000 averaged over the past three years.

6. AAFES is a joint Major Command of the United States Army and the United States Air Force under the jurisdiction of the Chief of Staff, United States Army, and the Chief of Staff, United States Air Force. AFFES is an integral part of the Departments of the Army and Air Force and is a nonappropriated fund instrumentality of the United States. AAFES is an “Agency” as defined in 28 U.S.C. § 451.

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 1491(a)(1). The Solicitation for a successor concession Contract here in issue establishes a contractual relationship which provides Admark Korea a substantive right to money damages. *Frazier v. United States*, 67 Fed. Cl. 56, 59 (2005). The implied-in-fact Contract promising fair and honest consideration of Competitive Proposals submitted in response to the AAFES Solicitation for a concession Contract is, under 28 U.S.C. § 1491(a)(1), an implied-in-fact Contract with the United States.

8. This Civil Action is timely filed. On January 24th, 2007 “STARS AND STRIPES,” a news magazine distributed online and in print (<http://www.stripes.com>, last visited November 16th, 2011), publicly disclosed that Jeong Gi-hwan, Samsung’s principal, had given bribes to Clifton Choy and other AAFES employees to obtain the award of other AAFES concession Contracts. This Civil Action is timely filed within six years after this public disclosure, a disclosure which Admark Korea first learned about on January 25th, 2007. 28 U.S.C. § 2401(a). Likewise, this Amended Complaint on a Claim under an Implied-in-Fact Contract is timely filed within twenty-one days after service on the United States of Plaintiff Admark Korea’s Complaint on a Claim under an Implied-in-Fact Contract, RCFC 4(c), and this on Friday, November 18th, 2011.

AVERMENTS

The Implied-in-Fact Contract.

9. The implied-in-fact Contract asked for submission of Competitive Proposals for on-post leasing of English-language configured wireless telecommunications

equipment and for on-post sale of prepaid airtime cards and wireless telephone accessories at United States Military installations in the Republic of Korea. The implied-in-fact Contract promised award to the responsive, responsible Offeror offering the highest concession fee to AAFES on total gross revenues generated by these activities. The proposed successor concession Contract was for a two-year performance period commencing on August 29th, 1999 and could be extended for a total period of five years.

10. The implied-in-fact Contract obligated Offerors not to disclose, prior to award of the successor concession Contract, their offered concession fee. Likewise, the implied-in-fact Contract obligated Offerors not to communicate with others “for the purpose of restricting competition or manipulating awards” AAFES was expressly obligated by the implied-in-fact Contract not to make award to any Offeror which had not independently determined its offered concession fee.

11. Admark Korea was the incumbent AAFES concession Contractor for wireless telecommunications services, and Admark Korea had provided these services to AAFES since August 1998. Admark Korea had accumulated an inventory of 4,000 new and used English-language configured mobile phones, and Admark Korea had a full-time staff of 15 people leasing these mobile phones and selling prepaid airtime cards and wireless telephone accessories from AAFES facilities at 8 United States Military installations in the Republic of Korea.

12. Admark Korea had some 3,960 customers. Admark Korea's gross sales to AAFES in 1998 were \$554,850. Admark Korea's gross sales to AAFES in 1999 were \$2,742,695.

13. The AAFES Solicitation for a successor concession Contract was issued on May 7th, 1999. Competitive Proposals were due on June 4th, 1999. The award of a successor concession Contract was to be effective starting August 29th, 1999.

14. Shortly after the AAFES Solicitation for a successor concession Contract was issued, and before Competitive Proposals were submitted and an award announced, AAFES instructed Admark Korea to cease selling prepaid airtime cards which might remain effective after August 28th, 1999. Nonetheless, Admark Korea timely submitted its Competitive Proposal to AAFES on June 4th, 1999. Admark Korea faithfully complied with the Solicitation's admonition requiring independent determination of the concession fee there offered by Admark Korea to AAFES.

15. On July 19th, 1999 AAFES notified Admark Korea that the successor concession Contract had been awarded to Samsung. Admark Korea challenged this award. Admark Korea's challenges were unsuccessful. Samsung performed the successor concession Contract throughout its entire five-year term.

Breach of the Implied-in-Fact Contract.

16. Before the time set for receipt of Competitive Proposals for the successor concession Contract, Clifton Choy, AAFES' Pacific Region Services Business Manager,

an AAFES employee widely known to be corrupt and widely known for taking bribes in return for guaranteed concession Contract awards, announced his intention to take the successor concession Contract from Admark Korea and to award the successor concession Contract to another Korean company. Admark Korea was unaware of this announcement, and Admark Korea was unaware of Clifton Choy's proclivity for taking bribes. Attachment. The Attachment submitted with this Amended Complaint includes the second page of the notarized Declaration of Thomas D. Casey; this second page was omitted from the Complaint filed November 18th, 2011.

17. It is Admark Korea's information and belief that the concession fees offered to AAFES in the Competitive Proposal on which the successor concession Contract with Samsung was based were not independently determined. Indeed, Jeong Gi-hwan, Samsung's principal (and now a Federal inmate), paid Clifton Choy, AAFES's Pacific Region Services Business Manager (now deceased), \$100,000 and a five

percent monthly kick-back of the successor Contract proceeds so as to obtain the successor concession Contract.

18. It is Admark Korea's information and belief that Samsung submitted, and AAFES accepted, two Competitive Proposal packages from Samsung, one completed, and one which was blank. After the closing date for submission of Competitive Proposals and before award of the successor concession Contract was announced, Clifton Choy, or other AAFES employees working for Clifton Choy, examined the Competitive Proposals which had been submitted and thereafter completed the blank Competitive Proposal package which had been submitted by Samsung so as to ensure that Samsung had offered the highest concession fee.

COUNT I
PLAINTIFF'S EXPECTATION DAMAGES.

19. Admark Korea incorporates and re-alleges paragraphs numbers 1. through 18. hereinabove as if fully set forth herein.

20. The actions of Clifton Choy and other AAFES personnel were breaches of the implied-in-fact Contract of fair and honest consideration which Admark Korea and AAFES entered into upon the submission of Admark Korea's Competitive Proposal.

21. As a direct and immediate consequence of these breaches by which AAFES denied Admark Korea a fair opportunity to compete for the successor concession Contract, Admark Korea incurred expectancy damages over the five-year term of the successor concession Contract, and these expectancy damages amount to \$8,355,852.

COUNT II
PLAINTIFF'S RESTITUTION DAMAGES

22. Admark Korea incorporates and re-alleges paragraphs numbers 1. through 18. hereinabove as if fully set forth herein.

23. Admark Korea effectively lost the value of its \$400,000 inventory of new and used English-language configured mobile phones as a result of the award of the successor concession Contract to Samsung. And Admark Korea was required un-

der Korean law to pay severance to its employees. These severance costs paid by Admark Korea were not less than \$45,000.

24. The actions of Clifton Choy and other AAFES personnel were breaches of the implied-in-fact Contract of fair and honest consideration which Admark Korea and AAFES entered into upon the submission of Admark Korea's Competitive Proposal.

25. As a direct and immediate consequence of these breaches by which AAFES denied Admark Korea a fair opportunity to compete for the successor concession Contract, Admark Korea incurred restitution damages, and these restitution damages amount to \$445,000.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Admark Korea respectfully requests the Court to grant Judgment for Admark Korea in this Civil Action, and to Order the following relief:

(a) a Money Judgment in the amount of \$8,355,852 by reason of the expectancy damages which Admark Korea incurred as a direct and immediate consequence of AAFES' denial of a fair opportunity to compete for the successor concession Contract; or

(b) alternatively, a Money Judgment in the amount of \$445,000 by reason of the restitution damages which Admark Korea incurred as a direct and immediate consequence of AAFES' denial of a fair opportunity to compete for the successor concession Contract; and

(c) such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Cyrus E. Phillips IV

Cyrus E. Phillips IV
Virginia State Bar Number 03135

November 22nd, 2011

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ATTACHMENT

CERTIFICATE OF ACKNOWLEDGMENT OF EXECUTION OF AN INSTRUMENT

KOREA

(Country)

CITY OF SEOUL

(County and/or other political division)

EMBASSY OF THE

(County and/or other political division)



SS:

UNITED STATES OF AMERICA

(Name of foreign service office)

I, **Olivette D. Smith**
Consular Associate

of the United States of America at **Seoul, Korea**

duly commissioned and qualified, do hereby certify that on this

day of **23 MAY 2011**, before me personally appeared

Date (mm-dd-yyyy)

THOMAS D. CASEY X X X

to me personally known, and known to me to be the individual-described in, whose name _____ IS _____ subscribed to,
and who executed the annexed instrument, and being informed by me of the contents of said instrument _____ HE _____
duly acknowledged to me that _____ HE _____ executed the same freely and voluntarily for the uses and purposes
therein mentioned.

[SEAL]

In witness whereof I have hereunto set my hand and
official seal the day and year last above written.

Olivette D. Smith
Consular Associate of the United States of America.

NOTE: Wherever practicable all signatures to a document should be included in one certificate.

DECLARATION OF THOMAS D. CASEY

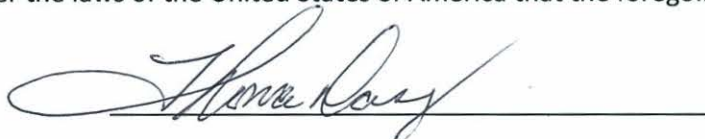
1. I am Thomas D. Casey, a US citizen and an honorably discharged and retired US Army soldier, who has worked and resided in Seoul, Korea for over 35 years. My residence is located in Seoul, Korea and I can be reached at PSC 450, Box 202, APO AP 96206-202. My Korean residence telephone number is 82-2-749-9391 and my Korean Cell phone number is 82-11-259-3882. My purpose for living in Korea is because I am a partner in a Korean company that holds contracts with the US Army to maintain and run recreational swimming pools on US military bases Korea-wide.
2. Over the last 30 years I have been involved in several businesses and business activities in Korea, in various capacities, and I have many contacts with the USFK. Because of these activities, I have known Mr. Clifton W. Choy, PACRIM Services Manager for AAFES, as both an acquaintance and business associate for more than 20 years.
3. On or about the Spring of 1999, I was having lunch on Yongsan US Army Base in Seoul, Korea at the South Post Shopette when I saw and greeted Mr. Clifton Choy. We began a casual conversation about various general and business related matters. I was aware at that time, that Mr. Martin Cohen and his Korean wife, Janette Chung Cohen, and their company Admark Korea, Ltd., also a Korean contractor, (doing business as "Rent-a-Cell"), had a new and very successful business with AAFES renting cell phones to GIs on several bases all around Korea. I knew that this was a very good business opportunity and I had heard that Admark was operating on short-term, 2-month renewable concessionaire contracts, and that Admark had requested Mr. Choy to give them a Single Source 5-Year Contract. I wanted to know if this type of Single Source contract was going to be awarded or, if Mr. Choy was planning to announce a regular 5-year contract solicitation whereby any qualifying contractor could submit their bid and compete for this business.

I asked Mr. Choy what he thought Admark's chances were of being awarded a Single Source contract. I must have hit a nerve with him, because he replied, in a rather abrupt and pompous way, that "Admark would never get the contract, and that Cohen had burned his bridges and that he, (Clifton Choy), would guarantee that another Korean contractor would get it.

I knew that Mr. Choy would be the AAFES Contracting Officer that would award this highly lucrative 5-year contract. I knew Mr. Choy on a personal basis for over 20 years and I knew how he conducted his business. It was widely known that Mr. Choy was corrupt and that he secretly took compensation in return for guaranteeing lucrative contract awards. There was no need to be indirect about how contracts were negotiated with him and AAFES. It was all about the money. We talked about it and he told me that there were already several groups interested in this business/contract and that if I was interested I should make him an offer. I did not "make him an offer", nor did I pursue this matter any further and I have never told anybody about this until now.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 3 MAY, 2011



Thomas D. Casey