

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

JAN 16 2013

CHRIS R. JOHNSON, Clerk  
By Deputy Clerk

UNITED STATES OF AMERICA )  
 )  
v. ) No. 1:13CR10002-001 + 002  
 )  
 ) 18 U.S.C. § 371  
 ) 18 U.S.C. § 666(a)(1)(B)  
JAMES MICHAEL HESTERLY and -001 ) 18 U.S.C. § 666(a)(2)  
HARRY CLEMONS JR. - 002 )

INDICTMENT

The Grand Jury charges:

INTRODUCTION

1. At all times material to this Indictment :

a. The Defendant, James Michael Hesterly (hereinafter Hesterly), was the County Judge of Ouachita County, Arkansas, and was thus an agent of a local government as defined in 18 U.S.C. § 666.

b. The Defendant, Harry Clemons Jr. (hereinafter Clemons) was the owner and operator of Clemons Construction, a business located in Bearden, Arkansas.

c. The Federal Emergency Management Agency (hereinafter FEMA) was an agency of the United States Government responsible for providing federal assistance to state and local governments in connection with major disasters as declared by the President of the United States.

2. During the calendar year 2010, FEMA provided federal assistance in excess of \$10,000 to Ouachita County, Arkansas.

3. On or about April 8, 2010, Hesterly, as an agent of Ouachita County, signed a FEMA Project Worksheet (PW-1835) applying for federal funds to help Ouachita County pay for a contract with Clemons Construction and Davis Dozer to remove and dispose of 8000 cubic yards

of vegetative debris on county roads and rights of way that resulted from two tornadoes that struck Ouachita County on October 29, 2009 (hereinafter referred to as "the Contract").

4. By the terms of the FEMA program, if the application was approved by FEMA, federal funds would be used to pay 75% of the costs of "the Contract" while the state of Arkansas and Ouachita County would each be responsible for paying 12.5% of the costs.

5. Under federal regulations (44 C.F.R. § 13.36), Ouachita County would only be eligible to receive federal funds for "the Contract" if "the Contract" had been procured through a sealed bid process and in a manner providing for full and open competition. The federal regulations also required that the applicant follow state law regarding the procurement of contracts.

6. The Project Worksheet (PW-1835), which was signed by Hesterly as the applicant, represented that Hesterly had advertised and received bids for the proposed work on March 26, 2010, that there were three bids, that the low bid was from Clemons Construction in the amount of \$120,730, and that the other bids were in the amount of \$137,500 and \$145,000. Copies of the three bids were attached to the Project Worksheet as back-up documentation.

7. On or about August 2, 2010, "the Contract," which was dated July 26, 2010, was signed by Hesterly on behalf of Ouachita County, by Clemons on behalf of Clemons Construction and by Jeff Davis on behalf of Davis Dozer. The contract price of \$124,730 was \$4000 more than the bid price.

8. By means of an invoice submitted to Hesterly and dated August 12, 2010, Clemons and Jeff Davis stated that all the work associated with "the Contract" had been completed and requested payment from Ouachita County in the amount of \$54,865 for Davis Dozer and \$69,865 for Clemons Construction.

9. By means of a document signed by Hesterly and dated August 20, 2010, Hesterly certified

to the state of Arkansas and FEMA that all the work as set forth in “the Contract” had been completed.

10. On or about September 23, 2010, federal funds totaling \$91,842.81, which included FEMA’s share of the cost of “the Contract,” were paid to Ouachita County by direct deposit.

11. On October 13, 2010, Hesterly, as Ouachita County Judge, signed an order allowing the claim made by Clemons Construction in the invoice dated August 12, 2010, thereby authorizing Ouachita County to pay the claim.

12. On October 15, 2010, the Ouachita County Treasurer issued check # 19192 to Clemons Construction in the amount of \$69,865 as payment on “the Contract.”

COUNT 1  
Conspiracy to Defraud An Agency of the United States  
(18 U.S.C. §371)

13. The Grand Jury hereby adopts, re-alleges, and incorporates by reference herein, the allegations set forth in paragraphs 1-12 of this Indictment.

14. Beginning at a time unknown but at least as early as March 16, 2010, and continuing until on or about October, 2010, in the Western District of Arkansas, El Dorado Division and elsewhere, the defendants, **JAMES MICHAEL HESTERLY and HARRY CLEMONS JR.,** did knowingly and intentionally combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury to defraud an agency of the United States, namely FEMA.

MANNER AND MEANS OF THE CONSPIRACY

15. It was part of the conspiracy that Hesterly and Clemons conspired and agreed that Hesterly would award Clemons “the Contract” through a corrupt bidding process in exchange for Clemons agreeing to make a payment to Hesterly’s re-election campaign.



16. As part of the conspiracy, Hesterly in an effort to ensure that Clemons received “the Contract” and to conceal the corrupt bidding process, failed to comply with Arkansas law regarding the bidding of “the Contract” as required by FEMA regulation in that:

a. He failed to follow a sealed bidding process in violation of A.C.A. 14-22-101, et seq.;

b. He failed to advertise the bid in the newspaper not less than 10 days prior to the date fixed for opening the bid in violation of A.C.A. 14-22-101(2)(A), in that the advertisement for bid occurred on March 18, 2010 and the bid opening date was March 26, 2010;

c. By corrupting the bidding process, he failed to award the contract to the lowest responsible bidder in violation of A.C.A. 14-22-111; and

d. He failed to file with the County Clerk an order approving “the Contract” along with all documents and bids pertaining to the solicitation of bids and awarding of the contract in violation of A.C.A. 14-22-112.

17. As part of the conspiracy and in effort to obtain FEMA approval to use federal funds to pay for “the Contract”, Hesterly and Clemons conspired and agreed to take actions that would create the appearance that “the Contract” had been awarded as the result of a legitimate, competitive bidding process.

18. As part of the conspiracy, Clemons agreed to obtain and did obtain from another individual, known to the Grand Jury, bids that were intentionally inflated to be higher than the bid that Clemons submitted for “the Contract,” thereby creating the false appearance that “the Contract” was awarded as the result of a legitimate bidding process.

19. As part of the conspiracy, Hesterly corruptly agreed to accept and did accept the intentionally inflated bids for “the Contract,” thereby creating the false appearance that the

contract was awarded as the result of a legitimate, bidding process.

20. As part of the conspiracy, Hesterly, with the knowledge and agreement of Clemons, falsely represented to FEMA in the Project Worksheet that “the Contract” had been awarded through a competitive bidding process in which Clemons’s bid was the lowest of three bids when in truth and fact there was no such legitimate, competitive bidding process.

#### OVERT ACTS

21. In order to accomplish the objectives of the conspiracy, at least one member of the conspiracy committed and caused to be committed the following overt acts, among others:

a. On or about March 17, 2010, Hesterly and Clemons discussed and agreed that Clemons would get a friend to submit intentionally inflated bids for “the Contract.”

b. Between March 17, 2010 and March 25, 2010, Clemons spoke with another individual, known to the Grand Jury, and arranged for and caused this individual to submit intentionally inflated bids for “the Contract.”

c. On or about March 25, 2010, at the direction and request of Clemons, this individual submitted via fax to the Ouachita County Judges’ office an intentionally inflated bid for “the Contract” in the amount of \$137,500.

d. On or about March 25, 2010, at the direction and request of Clemons, this individual submitted via fax to the Ouachita County Judges’ office another intentionally inflated bid for “the Contract” in the amount of \$145,000.

e. On or about March 26, 2010, Clemons met with Hesterly at the Ouachita County Judges’ Office and submitted a bid on “the Contract,” in partnership with Davis Dozer, in the amount of \$120,730.

f. On or about March 26, 2010, Hesterly accepted the bid submitted by Clemons and

the two intentionally inflated bids faxed to the County Judge's office on March, 25, 2010.

g. On or about April 8, 2010, Hesterly signed a FEMA Project Worksheet applying for federal funds from FEMA that represented that Clemons Construction was the low bidder among three bids that had been received and which had attached, as supporting documentation, the bid submitted by Clemons along with the two intentionally inflated bids.

h. On or about August 2, 2010, Hesterly and Clemons signed "the Contract."

i. On or about August, 2010, Clemons submitted an invoice to Hesterly dated August 12, 2010 stating that all the work associated with "the Contract" had been completed and requesting payment of \$69,865 for Clemons Construction.

j. On or about August, 2010, Hesterly, by means of a document dated August 20, 2010, certified to the state of Arkansas and FEMA that all the work as set forth in "the Contract" had been completed.

k. On October 13, 2010, Hesterly, as Ouachita County Judge signed an order allowing the claim made by Clemons Construction in the invoice dated August 12, 2010.

l. On or about October, 2010, Clemons received a check from Ouachita County in the amount of \$69,865 as payment on "the Contract".

All in violation of 18 U.S.C. 371.

COUNT 2  
Bribery Concerning a Program Receiving Federal Funds  
(18 U.S.C. § 666(a)(1)(B))

22. The Grand Jury hereby adopts, re-alleges, and incorporates by reference herein, the allegations set forth in paragraphs 1-12 of this Indictment.

23. On or about March 16, 2010, in the Western District of Arkansas, El Dorado division, the defendant, **JAMES MICHAEL HESTERLY**, being an agent of a local government, did



knowingly, willfully, and corruptly solicit, demand, and agree to accept anything of value from a person, intending to be influenced and rewarded in connection with any business, transaction, and series of transactions of Ouachita County, Arkansas, involving a thing of value of more than \$5,000, that is, the defendant, **JAMES MICHAEL HESTERLY**, as agent for Ouachita County, Arkansas, did corruptly solicit, demand, and agree to accept money in the form of a campaign contribution in connection with awarding a contract on behalf of Ouachita County which was valued in excess of \$5000, in violation of 18 U.S.C. §666(a)(1)(B).

COUNT 3  
Bribery Concerning a Program Receiving Federal Funds  
(18 U.S.C. § 666(a)(2))

24. The Grand Jury hereby adopts, re-alleges, and incorporates by reference herein, the allegations set forth in paragraphs 1-12 of this Indictment.

25. On or about March 16, 2010, in the Western District of Arkansas, El Dorado division, the defendant, **HARRY CLEMONS JR.**, did corruptly agree to give anything of value to any person, with the intent to influence and reward an agent of a local government in connections with a transaction of the local government involving a thing of value of more than \$5000, that is, the defendant, **HARRY CLEMONS JR.**, did corruptly agree to give money in the form of a campaign contribution to Ouachita County Judge James Michael Hesterly, an agent for Ouachita County, Arkansas, with the intent to influence and reward Hesterly in connection with awarding Clemons a contract with Ouachita County which was valued in excess of \$5000, in violation of 18 U.S.C. §666(a)(2).

FORFEITURE ALLEGATION

26. The allegations contained in Counts 1 through 3 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 28 U.S.C. §

2461(c), incorporating by reference 18 U.S.C. § 981(a)(1)(C). Upon conviction of any or all of Counts 1 through 3, the defendants, **JAMES MICHAEL HESTERLY and HARRY CLEMONS JR.**, shall forfeit to the United States pursuant to 28 U.S.C. § 2461(c), incorporating by reference 18 U.S.C. § 981(a)(1)(C), any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of the said violations.

27. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without

difficulty, it is the intent of the United States, pursuant to 28 U.S.C. § 2461(c), incorporating by reference 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

A True Bill.

/s/Grand Jury Foreperson  
Grand Jury Foreperson

CONNER ELDRIDGE  
UNITED STATES ATTORNEY

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