

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
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)
)
Engineering Dynamics, Inc.)
2113 38th Street)
Kenner, LA 70065)
)
)

Respondent)

ORDER RELATING TO ENGINEERING DYNAMICS, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Engineering Dynamics, Inc. (“EDI”), of its intention to initiate an administrative proceeding against EDI pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to EDI that alleged that EDI committed one violation of the Regulations. Specifically, the charge is:

¹ The violations alleged to have been committed occurred in 1995-2007. The Regulations governing the violations at issue are found in the 1995-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1995-2007)). The 2007 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

Charge 1 15 C.F.R. §764.2(d) – Conspiracy

Between on or about March 1, 1995, and continuing through on or about February 28, 2007, EDI conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations by agreeing to export an engineering software program from the United States to Iran, via Brazil, without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”), before the engineering software program, an item subject to the Regulations³ and the Iranian Transactions Regulations (“ITR”)⁴, could be exported from the United States to Iran. Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction subject to the ITR. In furtherance of the conspiracy, EDI and his co-conspirators devised and employed a scheme under which they would market, sell, and service the engineering software program to Iranian clients through a co-conspirator in Brazil. In so doing, EDI committed one violation of Section 764.2(d) of the Regulations.

WHEREAS, BIS and EDI have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$132,791.39 is assessed against EDI, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, EDI will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

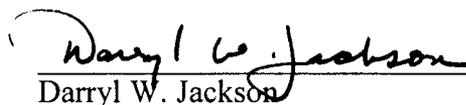
³ The engineering software program is classified under Export Control Classification Number (“ECCN”) 8D992.

⁴ 31 CFR § 560 (1995-2007)

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to EDI. Accordingly, if EDI should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of EDI's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 18th day of April, 2008.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Engineering Dynamics, Inc.)
2113 38 th Street)
Kenner, LA 70065)
)
)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Engineering Dynamics, Inc. ("EDI") and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act"),²

WHEREAS, BIS has notified EDI of its intention to initiate an administrative proceeding against EDI, pursuant to the Act and the Regulations;

¹ The violation alleged to have been committed occurred between 1995-2007. The Regulations governing the violations at issue are found in the 1995-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1995-2007)). The 2007 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA").

Settlement Agreement
Engineering Dynamics, Inc.
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WHEREAS, BIS has issued a proposed charging letter to EDI that alleged that EDI committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. §764.2(d) – Conspiracy

Between on or about March 1, 1995, and continuing through on or about February 28, 2007, EDI conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations by agreeing to export an engineering software program from the United States to Iran, via Brazil, without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury ("OFAC"), before the engineering software program, an item subject to the Regulations³ and the Iranian Transactions Regulations ("ITR")⁴, could be exported from the United States to Iran. Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction subject to the ITR. In furtherance of the conspiracy, EDI and his co-conspirators devised and employed a scheme under which they would market, sell, and service the engineering software program to Iranian clients through a co-conspirator in Brazil. In so doing, EDI committed one violation of Section 764.2(d) of the Regulations.

WHEREAS, EDI has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, EDI fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, EDI enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, EDI states that no oral promises or representations have been made to it other than the agreements and considerations herein expressed;

³ The engineering software program is classified under Export Control Classification Number ("ECCN") 8D992.

⁴ 31 CFR § 560 (1995-2007)

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Engineering Dynamics, Inc.
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WHEREAS, EDI neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, EDI wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, EDI agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over EDI, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against EDI in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the proposed charging letter:
 - a. EDI shall be assessed a civil penalty in the amount of \$132,791.39, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
 - b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to EDI. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of EDI's export privileges for a period of one year from the date of imposition of the penalty.
3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, EDI hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including,

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Engineering Dynamics, Inc.
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without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$132,791.39 civil penalty, BIS will not initiate any further administrative proceeding against EDI in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No oral agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which

Settlement Agreement
Engineering Dynamics, Inc.
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will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

Thomas Madigan
Thomas Madigan
Acting Director
Office of Export Enforcement

Date: March 19, 2008

ENGINEERING DYNAMICS, INC.

Richard Newcomb
Richard Newcomb, Esq.
Baker, Donelson, Bearman, Caldwell &
Berkowitz PC
Attorney for Engineering Dynamics, Inc.

Date: March 11, 2008

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Engineering Dynamics, Inc.
2113 38th Street
Kenner, LA 70065

*Attn: Mr. John Fowler
President*

Dear Mr. Fowler:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Engineering Dynamics, Inc. (“EDI”) of Kenner, Louisiana has committed one violation of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that EDI committed the following violation:

Charge 1 15 C.F.R. §764.2(d) – Conspiracy

Between on or about March 1, 1995, and continuing through on or about February 28, 2007, EDI conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations by agreeing to export an engineering software program from the United States to Iran, via Brazil, without the required U.S. Government authorization. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of Treasury (“OFAC”), before the engineering software program, an item subject to the Regulations³ and the Iranian Transactions Regulations (“ITR”)⁴, could be exported from the United States to Iran. Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction subject to the ITR. In furtherance of the conspiracy, EDI and his co-conspirators devised and employed a

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2007). The alleged violation occurred between 1995 and 2007. The Regulations governing the alleged violation at issue are found in the 1995-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1995-2007)). The 2007 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,321 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

³ The engineering software program is classified under Export Control Classification Number (“ECCN”) 8D992.

⁴ 31 CFR § 560 (1995-2007)

scheme under which they would market, sell, and service the engineering software program to Iranian clients through a co-conspirator in Brazil. In so doing, EDI committed one violation of Section 764.2(d) of the Regulations.

* * * * *

Accordingly, EDI is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;⁵
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If EDI fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If EDI defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to EDI. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

EDI is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. EDI is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should EDI have a proposal to settle this case, EDI or his representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, EDI's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

⁵ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

In addition, a copy of EDI's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Gregory Michelsen
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Gregory Michelsen is the attorney representing BIS in this case; any communications that EDI may wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

EDI is further notified that under the Small Business Regulatory Enforcement Flexibility Act, EDI may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

Sincerely,

Thomas Madigan
Acting Director
Office of Export Enforcement