



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, FEBRUARY 26, 2001
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NEW YORK FOOD COMPANY AND PRESIDENT PLEAD GUILTY TO RIGGING BIDS ON NYC BOARD OF EDUCATION CONTRACTS

President Also Pleads Guilty to Conspiring to Defraud the IRS

WASHINGTON, D.C. -- A Long Island, New York food distribution company and its president today pleaded guilty to rigging bids to the New York City Board of Education (NYCBOE), the Department of Justice announced. The president also pleaded guilty to conspiring to defraud the IRS and to evade income taxes.

Gordon Kerner of Lloyds Neck, New York, and Landmark Food Corp., of Holtsville, New York, pled guilty in U.S. District Court in Manhattan to participating in a scheme to rig bids to supply produce to the NYCBOE. Kerner and Landmark were charged in a May 31, 2000 indictment with participating in the bid-rigging conspiracy from approximately 1991 to 1999.

Additionally, Kerner was charged today with one count of conspiring to defraud the IRS and to evade income taxes in connection with the bid-rigging scheme. Landmark was paid \$100,000 in cash by its co-conspirators in return for its promise to "sit out" or intentionally lose the bidding for NYBOE contracts. Kerner received approximately \$30,000 of this money, which was not reported as income on his and his wife's federal tax returns filed in 1998 and 1999. Landmark also failed to report to the IRS certain sales it made and then used the money from those unreported sales to pay Kerner and other workers "off the books" compensation.

Including today's filing, the Department's ongoing investigation of bid rigging, bribery, fraud, and tax-related offenses in the food distribution industry has resulted in the Antitrust

Division's New York Field Office charging 27 individuals and 14 food companies with rigging bids for the supply and delivery of food to various public and private customers in the New York metropolitan area.

Landmark's plea agreement with the United States requires it to join the U.S. in recommending that the company pay \$1.5 million in restitution to the NYCBOE. This recommendation is subject to court approval.

"Today's case demonstrates the Antitrust Division's commitment to protecting consumers and providing restitution to victims of bid-rigging schemes," said John M. Nannes, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "The Antitrust Division will prosecute aggressively all cases where taxpayers have been cheated out of the benefits of competition."

The NYCBOE operates New York City's public school system, the largest in the United States. It services a student population of nearly 1.1 million, and serves approximately 640,000 lunches and 150,000 breakfasts every day. It is the second largest customer for food in the United States, behind only the Department of Defense. It receives the bulk of its funding from the federal, state, and city governments and most of the meals it serves are subsidized by the United States Department of Agriculture pursuant to the National School Lunch Act of 1946.

In addition to public schools, numerous private and religious schools also receive food under the NYCBOE's contracts, pursuant to programs that provide free or reduced-price meals to needy students. More than 80 percent of the students fed by the NYCBOE receive free meals; another 10 percent receive reduced-price meals.

For Kerner, the bid-rigging count, which violates 15 U.S.C. § 1, carries a maximum penalty of three years of imprisonment and a \$350,000 fine. In addition, the conspiracy count,

which violates 18 U.S.C. § 371, carries a maximum penalty of five years of imprisonment and a \$250,000 fine. For Landmark, the bid-rigging count carries a maximum fine of \$10 million. All of the maximum fines may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

The ongoing investigation is being conducted by the Antitrust Division, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food distribution industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0679 or the New York Division of the FBI at (212) 384-3252.

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