

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 21cr172 ECT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	PLEA AGREEMENT AND
)	SENTENCING STIPULATIONS
v.)	
)	
CLARENCE OLSON,)	
)	
Defendant.)	

The United States of America and Clarence Olson (“Defendant”) agree to resolve this case pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) on the terms and conditions that follow. This Plea Agreement binds only Defendant and the Antitrust Division of the United States Department of Justice (hereinafter referred to as “the United States”). This Plea Agreement does not bind any other federal or state agency.

1. **Charges.** Defendant agrees to plead guilty to the criminal charge in the Information, which charges Defendant with entering into and engaging in a combination and conspiracy to suppress and eliminate competition by rigging bids for concrete repair and construction contracts submitted to municipalities in the state of Minnesota, including the City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools. The combination and conspiracy engaged in by Defendant and his co-conspirators was a per se unlawful, and thus unreasonable, restraint of interstate commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. **Factual Basis.** Defendant agrees that, had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts beyond a reasonable doubt:

From at least as early as September 2012 and continuing through at least as late as July 2017 (the “Relevant Period”), in the District of Minnesota, Defendant and his co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by rigging bids for concrete repair and construction contracts to municipalities in the state of Minnesota, including the City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools.

During the Relevant Period, Minnesota’s Uniform Municipal Contracting Law, Minnesota Statutes § 471.345, governed the contracting process for counties, towns, cities, and school districts in the state of Minnesota (collectively, “municipalities”) when entering into contracts for the construction, alteration, repair, or maintenance of real or personal property. The law required that municipalities obtain two or more quotations from independent bidders before awarding a contract for an amount above a certain threshold. At times, municipalities set policies requiring two or more quotations at a lower threshold amount than that required by state law.

During the Relevant Period, the City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools were municipalities subject to the Minnesota Uniform Municipal Contracting Law. During the Relevant Period, the City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools solicited quotations for concrete repair and construction projects.

During the Relevant Period, Defendant was a resident of Minnesota and employed by COMPANY A.

During the Relevant Period, COMPANY A was a corporation organized and existing under the laws of Minnesota, and engaged in the business of concrete repair and construction

within the District of Minnesota. On behalf of COMPANY A, Defendant submitted quotes to provide concrete repair and construction services.

During the Relevant Period, INDIVIDUAL B, a resident of Minnesota, was the Chief Executive Officer of COMPANY B.

During the Relevant Period, COMPANY B was a corporation organized and existing under the laws of Minnesota, and engaged in the business of concrete repair and construction within the District of Minnesota. On behalf of COMPANY B, INDIVIDUAL B submitted quotes to provide concrete repair and construction services to COMPANY B's customers, including Minnesota municipalities.

During the Relevant Period, Defendant and INDIVIDUAL B prepared, submitted, and caused to be submitted quotations for concrete repair and construction projects to a number of Minnesota municipalities, including the City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools.

During the Relevant Period, for the purpose of forming and in furtherance of the charged combination and conspiracy, Defendant and his co-conspirators:

- engaged in discussions and communications with each other about concrete repair and construction contracts with municipalities, during which INDIVIDUAL B requested that Defendant submit quotations from COMPANY A for such contracts and provided prices for Defendant to use in COMPANY A's quotations;
- agreed that COMPANY A would submit quotations intended to be losing quotations containing prices higher than the prices contained in COMPANY B's quotations;

- submitted and caused to be submitted quotations from COMPANY A that were intentionally higher than COMPANY B's quotations for the same contracts, to make it appear to the municipalities that COMPANY A had competed for the contracts, when, in fact, Defendant and INDIVIDUAL B knew that COMPANY A's quotations were intended to lose to COMPANY B's quotations;
- submitted rigged quotations to City of Eden Prairie, City of Plymouth, Eden Prairie Schools, and Wayzata Public Schools;
- COMPANY B was awarded concrete repair and construction contracts, for which COMPANY A had submitted intentionally losing quotations; and
- COMPANY B accepted payment for concrete repair and construction contracts awarded at collusive and noncompetitive prices.

During the Relevant Period, the business activities of Defendant and his co-conspirators in connection with the concrete repair and construction projects that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce.

3. **Waiver of Indictment.** Defendant agrees to waive indictment by a grand jury on this charge and to consent to the filing of a criminal information. Defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Constitutional Trial Rights.** Defendant understands that he has certain rights (a) to be represented by an attorney; (b) to file pretrial motions in this case; (c) to plead not guilty to any criminal charge brought against him; (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty; (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his

defense at trial; and (f) not to be compelled to incriminate himself. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, Defendant knowingly, willingly, and voluntarily waives each of these trial rights, except the right to counsel.

5. **Elements of the Offense.** The elements of the charged offense are that:

- a. the conspiracy described in the Information existed at or about the time alleged;
- b. the defendant knowingly became a member of the conspiracy; and
- c. the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

6. **Statutory Penalties.** Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Act is:

- a. a term of imprisonment for 10 years (15 U.S.C. § 1);
- b. a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d));
- c. a term of supervised release of 3 years following any term of imprisonment; (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2));
- d. the Court may order him to pay restitution to the victims of the offense (U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d)); and
- e. a mandatory special assessment of \$100.00 upon conviction for the charged crime (18 U.S.C. § 3013(a)(2)(A)).

7. **Guideline Calculations.** The parties acknowledge that Defendant will be sentenced in accordance with the Sentencing Reform Act, 18 U.S.C. § 3551, *et seq.* Nothing in

this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following Guidelines calculations.

- a. Base Offense Level. The parties agree that the base offense level is **12**. U.S.S.G. § 2R1.1(a).
- b. Specific Offense Characteristics. The parties agree that the offense level should be increased by **1 level** because the conduct involved participation in an agreement to submit non-competitive bids. U.S.S.G. § 2R1.1(b)(1).
- c. Acceptance of Responsibility. The United States agrees to recommend Defendant receive a **2-level** reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, Defendant understands and agrees that this recommendation is conditioned upon the following: (i) Defendant testifies truthfully during the change of plea and sentencing hearings; (ii) Defendant provides complete and truthful information to the Probation Office in presentence investigation; and (iii) Defendant commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1(a).
- d. Criminal History Category. Based on information available at this time, the parties believe that Defendant's criminal history category is **I**. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status (which might impact Defendant's adjusted offense level) will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- e. Imprisonment Range. If the adjusted offense level is **11** as calculated above, and the criminal history category is **I**, the Sentencing Guidelines range is 8 to 14 months.
- f. Fine Range. Pursuant to the Sentencing Guidelines, the fine range for an individual convicted of a violation of the Sherman Act is from one to five percent of the volume of commerce, but not less than \$20,000. Therefore, the Guidelines fine in this case is **\$20,000**. U.S.S.G. § 2R1.1(c)(1).
- g. Supervised Release. The Sentencing Guidelines advise a term of supervised release of **at least one year but not more than three years** of supervised release. U.S.S.G. § 5D1.2(a)(2).

8. **Revocation of Supervised Release.** Defendant understands that if he violates any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximum set forth in 18 U.S.C. § 3583.

9. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guideline factors and the applicable criminal history category. The Court may also depart from the applicable Sentencing Guidelines range. If the Court determines that the applicable Guideline calculations or Defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement and Defendant will be sentenced pursuant to the Court's determination.

10. **Agreement as to Sentencing Recommendation.** Defendant reserves the right to make motions for departures or variances from the applicable Sentencing Guidelines range and to argue for a sentence outside the applicable Sentencing Guidelines range. The United States reserves the right to oppose any such motions or arguments made by Defendant. The United States agrees to recommend a sentence within the Guidelines range determined by the Court. Defendant understands that, if the Court does not accept the sentencing recommendations of the parties, Defendant will have no right to withdraw his guilty plea.

11. **Special Assessment.** The Sentencing Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which Defendant is convicted. U.S.S.G. § 5E1.3. Defendant agrees to pay the \$100 special assessment before sentencing.

12. **Cooperation.** Defendant has agreed to cooperate fully and truthfully with the United States and other law enforcement authorities in any matter as to which the United States requests such cooperation. This full, truthful, and continuing cooperation of Defendant includes, but is not limited to:

- a. providing all information and documents requested by attorneys and agents of the United States;
- b. making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;
- c. testifying fully and truthfully at any grand jury, trial, or other judicial proceeding subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), and contempt (18 U.S.C. §§ 401 - 402);
- d. when called upon to do so by the United States, participating in affirmative investigative techniques, including but not limited to making telephone calls, recording conversations, and introducing law enforcement officials to other individuals, with all such activity being conducted only at the express direction and under the supervision of attorneys and agents of the United States; and
- e. not committing, participating in, or attempting to commit or participate in any additional crimes.

Subject to the full, truthful, and continuing cooperation of the defendant, as defined above, and prior to sentencing in this case, the United States agrees to make the full extent of

Defendant's cooperation known to the Court. To enable the Court to have the benefit of all relevant sentencing information to determine a fair and just sentence, the United States may request, and Defendant will not oppose, that sentencing be postponed until his cooperation is complete.

Finally, Defendant understands that the United States is not required to accept any tendered cooperation on Defendant's part. If the United States, in its sole discretion, chooses not to accept tendered cooperation, Defendant will not be allowed to withdraw from the plea agreement based upon that ground. Nonetheless, Defendant has decided to plead guilty as set forth above.

13. **Restitution.** Defendant understands that, pursuant to 18 U.S.C. § 3663(a)(3) or 3583(d) and U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victim of the offense.

Defendant agrees that he will fully and completely disclose to the United States the existence and location of all assets in which Defendant has any right, title, or interest, or over which Defendant exercises control, directly or indirectly, including those assets held by a spouse, nominee or other third party, or any business owned or controlled by Defendant. Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution, fines, and forfeiture ordered by the Court. Defendant agrees to complete a financial statement fully and truthfully before the date of sentencing. Defendant agrees to complete a financial statement, agrees to execute any releases that may be necessary for the United States to obtain information concerning the defendant's assets, and expressly authorizes the United States to obtain a credit report on Defendant to evaluate his ability to

satisfy financial obligations imposed by the Court. If requested by the United States, Defendant agrees to submit to one or more asset interviews or depositions under oath.

14. **Debarment.** Defendant understands that he may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls what action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of Defendant as a matter for that agency to consider before determining what action, if any, to take. Defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

15. **Waivers of Appeal and Collateral Attack.** Defendant understands that he has rights to appeal his conviction, if he is found guilty, and to appeal the imposition of sentence against him. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, Defendant knowingly, willingly, and voluntarily waives the right to file any appeal or collateral attack. This appeal waiver includes, but is not limited to, an application or motion under 28 U.S.C. § 2241 or 2255, that challenges his conviction—including but not limited to any appeal or collateral attack raising an argument that (1) the statute to which he is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute—and an appeal under 18 U.S.C. § 3742 or an application or motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the stipulated Guidelines range set forth in Paragraph 7.e. of this Plea

Agreement, regardless of how this sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).

Nothing in this paragraph, however, will act as a bar to Defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. Defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.

16. **Representation of Counsel.** Defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to Defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, Defendant has made a knowing and voluntary decision to enter into this Plea Agreement

17. **Voluntary Plea.** Defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to Defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

18. **Violation of Plea Agreement.** Defendant agrees that, should the United States determine in good faith that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for Defendant in writing

by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and Defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against Defendant, the statute of limitations period will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

19. **Freedom of Information Act Waiver.** Defendant waives all rights to obtain, directly or through others, information about the investigation and prosecution of this case under the Freedom of Information Act and the Privacy Act of 1974, 5 U.S.C. §§ 552, 552A.

20. **Complete Agreement.** This Plea Agreement constitutes the entire agreement and understanding between the United States and Defendant concerning the disposition of the criminal charge in this case. There are no other agreements, promises, representations, or understandings.

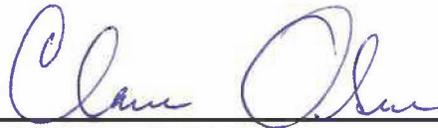
Date: September 27, 2021

U.S. DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION



BY: SANDRA TALBOTT, IL Bar. No. 6319526
MARY MCCARTHY, IL Bar No. 6306546
Trial Attorneys
Chicago Office
209 South LaSalle Street
Suite 600
Chicago, IL 60604
Tel: (312) 984-7200

Date: 9-27-21



CLARENCE OLSON
Defendant

Date: 9-27-21



DULCE J. FOSTER, MN Bar No. 285419
Counsel for Defendant