IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	
v.	Criminal No. CR-01-N-135-S
ABB MIDDLE EAST & AFRICA PARTICIPATIONS AG,	Filed: April 11, 2001
Defendant.	Violation: 15 U.S.C. § 1

JOINT RULE 11 MEMORANDUM

The United States and defendant ABB MIDDLE EAST & AFRICA PARTICIPATIONS AG ("ABB MEA") submit this memorandum to set forth the factual basis for the parties' plea agreement pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. Pursuant to the plea agreement, ABB MEA has waived indictment and will plead guilty to the captioned one-count Information charging ABB MEA with violating the Sherman Act, 15 U.S.C. § 1. The United States and ABB MEA have entered into a plea agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure. This memorandum provides the Court with sufficient information for acceptance of the plea by setting forth the statute violated, a statement of facts supporting the plea agreement, and the terms of the plea agreement.

I

STATUTE VIOLATED

A. The Sherman Act

The Information charges ABB MEA with one count of bid rigging in violation of the Sherman Act, 15 U.S.C. § 1. Section One of Title 15, United States Code, provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

The Information charges that beginning at least as early as June 1989 and continuing until at least September 20, 1996, ABB MEA and others participated in a conspiracy to suppress and eliminate competition by rigging the bids on Contract 29, a wastewater construction contract funded by the United States Agency for International Development ("USAID") and performed in the Arab Republic of Egypt.

B. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt, are:

(1) the conspiracy charged was formed, and it was in existence at or about

the time alleged;

(2) the defendant knowingly formed or participated in that conspiracy; and

(3) the activity that was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

C. Maximum Penalty

The maximum penalty ABB MEA may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) $10 million; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II

FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for the guilty plea of ABB MEA. It is not intended to present all details surrounding the charged conspiracy.

A. Background

As a result of the Camp David Peace Accords in the late 1970s, the United States and other Western countries committed to fund extensive rehabilitation work on the water treatment and disposal facilities in the Arab Republic of Egypt. Pursuant to this commitment, USAID, an agency of the United States government, funded nearly a billion dollars in work by U.S. construction companies in the 1980s

and early 1990s. The USAID-funded contracts were designed to be awarded to prequalified United States contractors on the basis of competitive sealed bids. ABB MEA's conduct in this case affected Contract 29, a $134.775 million contract awarded to its affiliate, SAE Sadelmi USA, Inc.

B. The Conspiracy

Beginning at least as early as June 1989 and continuing until at least September 20, 1996, competitors for the USAID-funded contracts in Egypt entered into and participated in a combination and conspiracy to suppress and eliminate competition by rigging the bids on Contract 29. The conspiracy consisted of a continuing agreement, understanding, and concert of action among ABB MEA and its co-conspirators to rig the bids to ensure that SAE Sadelmi USA, Inc. won Contract 29. ABB MEA sought to guarantee that SAE Sadelmi USA, Inc. would be awarded the contract by agreeing with co-conspirators that they would submit an artificially inflated bid on Contract 29 in exchange for payment of $3.4 million.

For the purpose of forming and carrying out the charged combination and conspiracy, ABB MEA and its co-conspirators did those things that they combined and conspired to do, including, among other things:

(a) participating in meetings and conversations to discuss rigging the bids on Contract 29;

(b) agreeing, during those meetings and conversations, to bid at certain levels and otherwise to increase the price level of bids on

Contract 29;

(c) agreeing, during those meetings and conversations, to suppress or eliminate competition on Contract 29;

(d) agreeing, during those meetings and conversations, that ABB MEA, or an affiliate company, would compensate co-conspirators by a $3.4 million payment, in exchange for the submission of an artificially inflated bid on Contract 29;

(e) issuing bid tenders on Contract 29 in accordance with the agreement reached; and

(f) receiving payment on Contract 29 from USAID.

C. Interstate and Foreign Commerce and Venue

Contract 29, the USAID-funded contract in the Arab Republic of Egypt that is the subject of the charged conspiracy, involved a substantial amount of commerce. The business of the conspirators in bidding on and performing this contract was in a continuous and uninterrupted flow of, and substantially affected, interstate and foreign commerce. Acts in connection with the bidding on Contract 29, and in furtherance of the bid-rigging conspiracy, occurred in the Northern District of Alabama.

III

PLEA AGREEMENT

ABB MEA will enter a guilty plea in this case pursuant to a plea agreement

between ABB MEA and the United States. The plea agreement provides that ABB MEA will enter a plea of guilty pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure to a one-count criminal Information charging that from at least as early as June 1989 and continuing until at least September 20, 1996, ABB MEA and others entered into and engaged in a conspiracy to rig bids on Contract 29, a USAID-funded construction contract performed in the Arab Republic of Egypt, in violation of 15 U.S.C. § 1. The plea agreement and the Information have been filed in the Northern District of Alabama, where certain acts in furtherance of the conspiracy took place.

Also pursuant to the plea agreement, the United States and ABB MEA agree jointly to recommend that the Court impose a sentence requiring ABB MEA to pay a fine to the United States in an amount of fifty-three million dollars ($53,000,000), pursuant to 18 U.S.C. § 3571(d). The fine shall be payable in installments over five years without interest, in accordance with 18 U.S.C. § 3612(h) and U.S.S.G. § 8C3.2(b).[1] Should the Court reject the agreed-upon disposition of the case, ABB MEA will be free to withdraw its plea. The United States and ABB MEA also jointly request that the Court accept ABB MEA's guilty plea and immediately impose sentence on the day of arraignment pursuant to Fed. R. Crim. P. 32(b)(1) and U.S.S.G. § 6A1.1.[2]

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[1] ABB MEA has also agreed to make restitution to USAID in the amount of ten million dollars.

[2] The parties agree that sentencing can proceed without a presentence report.

ABB MEA and its parent organization, subsidiaries, and affiliates have agreed to cooperate fully with the United States in the conduct of the present criminal investigation of bid rigging on USAID-funded construction contracts in Egypt and any resulting criminal litigation or other criminal proceedings to which the United States is a party. Such cooperation includes, but is not limited to, the production of relevant documents under the control of ABB MEA and its parent organization, subsidiaries, and affiliates. ABB MEA and its parent organization, subsidiaries, and affiliates will also use their best efforts to secure, in connection with the present criminal investigation and any resulting criminal litigation, the full and truthful cooperation of any current or former directors, officers, and employees, who are identified by the United States as possessing information relevant to its criminal investigation. Such cooperation includes testifying truthfully in criminal trial and grand jury proceedings.

Pursuant to the plea agreement, the United States agrees, subject to the continuing full cooperation of ABB MEA and its parent company, not to bring further criminal proceedings against ABB MEA and its parent organization, subsidiaries, and affiliates for any act or offense committed prior to the date of the plea agreement in connection with the conspiracy to rig the bids on USAID-funded construction projects in the Arab Republic of Egypt. Subject to their continuing cooperation, the directors, officers, and employees of ABB MEA and its parent organization, subsidiaries, and affiliates, with the exception of Eberhard

VonKoerber, former member of the parent company's executive committee, will receive the same protection against prosecution.

Dated: April 11, 2001

Respectfully submitted,

/S/

MAX ABITBOL, President
ABB MIDDLE EAST & AFRICA
PARTICIPATIONS AG

/S/

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