

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

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. CR-00-N-0298-S
)	
AMERICAN INTERNATIONAL)	Filed: 9/6/00 Under Seal; Seal Lifted
CONTRACTORS, INC.,)	9/7/00
)	
Defendant.)	Violation: 15 U.S.C. § 1
)	

JOINT RULE 11 MEMORANDUM

The United States and defendant American International Contractors, Inc. ("AICI") 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, AICI has waived indictment and will plead guilty to the captioned one-count Information charging AICI with violating the Sherman Act, 15 U.S.C. § 1. The United States and AICI 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 AICI 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 declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a 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 1988 and continuing until at least January 1995, AICI and others entered into and engaged in a conspiracy to suppress and eliminate competition by rigging the bids on certain wastewater construction contracts 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 AICI may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) ten million dollars; (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 AICI. 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 \$1 billion in work by U.S. construction companies during the 1980s and early 1990s. The USAID-funded contracts were awarded to prequalified United States contractors on the basis of competitive sealed bids. AICI's conduct in this case affected Contract 20A, a \$107 million contract awarded to a joint venture between two United States contractors: Harbert International, Inc. and J.A. Jones Construction Company ("Harbert-Jones"). Harbert International, Inc. is based in Birmingham, Alabama, and the joint venture operated out of and received payments into Harbert's Birmingham offices.

B. The Conspiracy

Beginning at least as early as June 1988 and continuing until at least January 1995, several 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 certain of these USAID-funded contracts.

The conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators to rig the bids on certain USAID-funded

contracts to ensure that the Harbert-Jones joint venture won those contracts. In particular, AICI and its parent company participated in an agreement to rig the bids on Contract 20A, which ultimately was awarded to the Harbert-Jones joint venture. AICI and its parent company agreed that AICI would protect Harbert-Jones' bid by not bidding on Contract 20A in exchange for payment of \$3 million from Philipp Holzmann AG, J.A. Jones' parent company.

For the purpose of forming and carrying out the charged combination and conspiracy, AICI and other 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 20A;
- (b) agreeing, during those meetings and conversations, to reduce or eliminate competition on Contract 20A;
- (c) agreeing, during those meetings and conversations, that AICI, or its parent company, would be compensated by the winning bidder, or its parent company, in exchange for the commitment not to compete on Contract 20A; and
- (d) causing AICI to issue a "no bid" letter in accordance with the agreements reached.

C. Interstate and Foreign Commerce

During the conspiracy, the conspiratorial activities of AICI and its co-conspirators were within the flow of, and substantially affected, interstate and foreign commerce.

III

PLEA AGREEMENT

AICI will enter a guilty plea in this case pursuant to a plea agreement between AICI and the United States. The plea agreement provides that AICI 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 1988 and continuing until at least January 1995, AICI and others entered into and engaged in a conspiracy to rig bids on certain USAID-funded construction contracts performed in the Arab Republic of Egypt, in violation of 15 U.S.C. § 1. The plea agreement and the Information will be 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 AICI agree to recommend jointly that the Court impose a sentence requiring AICI to pay a fine to the United States at the bottom of the range under the United States Sentencing Guidelines, as determined by the Court. The fine should be payable in equal installments over five years without interest, in accordance with 18 U.S.C. § 3612. The United States and AICI also jointly request that the Court accept AICI's guilty

plea and immediately impose sentence on the day of arraignment.¹ Should the Court reject the agreed-upon disposition of the case, AICI will be free to withdraw its plea.

AICI and its parent company have agreed to cooperate fully with the United States in the conduct of the present investigation of bid rigging on USAID-funded construction contracts in Egypt and any resulting litigation or other 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 AICI and its parent company or their agents. AICI and its parent company will also use their best efforts to secure, in connection with the present investigation and any resulting 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 investigation. Such cooperation includes testifying truthfully in trial and grand jury proceedings.

Pursuant to the plea agreement, the United States agrees, subject to the continuing full cooperation of AICI and its parent company, not to bring further criminal proceedings against AICI or its parent company 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 current and former directors,

¹ AICI will waive the presentence report.

officers, and employees of AICI and its parent company will receive the same non-prosecution protection.

Dated:

Respectfully submitted,

/S/

ALAN McNEIL, President
American International Contractors, Inc.

/S/

WILLIAM D. DILLON
JANET LEVINE NAHIRNY

/S/

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