

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL D. BEAUDOIN,

Defendant.

Filed: JUNE 29, 2005

Case No. 05-CR-165

PLEA AGREEMENT

1. The United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and R. Hewitt Pate, Assistant Attorney General for the Antitrust Division, and the defendant, Daniel D. Beaudoin, individually and by attorney Patrick J. Knight, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in an information which alleges a violation of Title 15, United States Code, Section 1.

3. The defendant has read and fully understands the charge contained in the information and fully understands the nature and elements of the crime with which he has been charged. In addition, the charge and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

4. The defendant voluntarily agrees to waive prosecution by indictment in open court.

5. The defendant voluntarily agrees to plead guilty to the offense charged in the information, which is set forth in full in Attachment A.

6. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense described in paragraph 5 and set forth in Attachment A. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits to these facts and that these facts establish his guilt beyond a reasonable doubt:

During the course of the conspiracy charged in the information, while employed by James Cape & Sons Company (Cape), Daniel Beaudoin and others agreed to submit rigged or noncompetitive bids for street, highway, and airport construction projects awarded by the Wisconsin Department of Transportation (WisDOT) and other bidding authorities in the State and Eastern District of Wisconsin. Generally, Beaudoin would meet in person with purported competitors, including the principals of Vinton Construction of Manitowoc, Wisconsin (Vinton), and the principals of Streu Construction of Two Rivers, Wisconsin (Streu), to allocate upcoming projects among themselves and to arrange for each other to submit complementary bids for or refrain from bidding on particular projects.

In advance of specific bid deadlines, Beaudoin and the principals of Vinton and Streu would contact one another to exchange last-minute numbers and confirm each other's bids. After exchanging this information, Beaudoin and his coconspirators would cause rigged bids to be submitted from the offices of Vinton and Streu in Manitowoc County and from Cape's offices in Racine County to WisDOT and other entities. With respect to projects awarded by WisDOT, the rigged bids would be accompanied by false certifications that the bidder had not participated in any collusion or taken any action in restraint of free competitive bidding.

During Beaudoin's participation in these activities, his employer received contracts totaling in excess of \$17.1 million for projects which had been the subject of the conspiracy. The vast majority of these projects were federally funded, and the business activities of Beaudoin and his coconspirators were within the flow of, and substantially affected, interstate commerce.

This information is provided for the limited purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of or participation in this offense.

PENALTIES

7. The parties understand and agree that under 15 U.S.C. § 1 and 18 U.S.C. § 3571, the offense to which the defendant will enter a guilty plea carries a maximum term of imprisonment of three (3) years and a maximum fine in an amount equal to the greatest of: (a) \$350,000; (b) twice the gross pecuniary gain the conspirators derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators. The offense also carries a mandatory special assessment of \$100 and a maximum term of supervised release of one (1) year. The parties further recognize that a restitution order may be entered by the court.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney.

ELEMENTS

9. The parties understand and agree that to sustain the charge of bid rigging, as alleged in the information, the United States must prove each of the following propositions beyond a reasonable doubt:

First, a conspiracy or combination existed;
Second, the defendant knowingly became a member of the conspiracy or combination;
and
Third, the activity that was the object of the conspiracy was within the flow of, or substantially affected, interstate trade or commerce.

SENTENCING PROVISIONS

10. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

11. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

12. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offense to which the defendant is pleading guilty. The defendant acknowledges and agrees that his attorney, in turn, has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

13. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history for purposes of assisting the sentencing court in determining the defendant's criminal history category under the sentencing guidelines. The parties further acknowledge and understand that,

at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of defendant's criminal history category.

Sentencing Guidelines Calculations

14. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

15. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which defendant is pleading guilty.

16. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual §§ 1B1.3 and 2R1.1, the sentencing court may consider the total volume of commerce attributable to the defendant's submission of noncompetitive bids, even if not

specifically alleged in the offense of conviction, and use the total amount in calculating the sentencing guidelines range.

17. For purposes of determining the defendant's offense level under the sentencing guidelines, the parties agree to recommend to the sentencing court that, based on evidence available to the government and admissible against the defendant, the government is able to establish that the volume of commerce attributable to the defendant is approximately \$17.1 million. The parties acknowledge and understand that the agreed volume of commerce may differ from the amount of any restitution ordered by the sentencing court.

Base Offense Level

18. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in the information is ten (10) under Sentencing Guidelines Manual § 2R1.1(a).

Specific Offense Characteristics

19. Because the defendant's conduct involved an agreement to submit noncompetitive bids, the parties agree to recommend a one-level increase to the defendant's offense level under Sentencing Guidelines Manual § 2R1.1(b)(1).

20. Based on the volume of commerce attributable to the defendant, the parties further agree to recommend a five-level increase to the defendant's offense level under Sentencing Guidelines Manual § 2R1.1(b)(2)(E).

Role in the Offense

21. Pursuant to Sentencing Guidelines Manual §§ 3B1.1 and 3B1.2, the parties agree to recommend to the sentencing court that no adjustment be given for an aggravating or mitigating role in the offense.

Acceptance of Responsibility

22. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. The defendant acknowledges, understands, and agrees that conduct consistent with the acceptance of responsibility includes but is not limited to the defendant's voluntary identification and disclosure to the government of any and all actual or potential victims of the offense prior to sentencing. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b) because the defendant timely notified authorities of his intention to enter a plea of guilty.

Sentencing Recommendations

23. Both parties reserve the right to advise the district court and the probation office of any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

24. Both parties reserve the right to make any recommendation regarding any other matters not specifically addressed by this agreement.

25. The government agrees to recommend that a sentence be imposed within the applicable sentencing guideline range, as determined by the court, except as modified by this agreement.

Court's Determinations at Sentencing

26. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of the sentencing guidelines and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 7 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

27. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

28. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations.

Fine

29. The government and the defendant agree that the defendant does not have the ability to pay the fine otherwise required by Sentencing Guidelines Manual § 2R1.1(c)(1) and §

5E1.2 even with the use of a reasonable installment schedule. Therefore, the government and the defendant both agree to recommend to the United States Probation Office and the sentencing court that, pursuant to Sentencing Guidelines Manual § 5E1.2(e), the defendant be sentenced to pay a fine of \$10,000 at the time of sentencing.

Special Assessment

30. The defendant agrees to pay the special assessment in the amount of \$100 prior to or at the time of sentencing.

DEFENDANT'S COOPERATION

31. The defendant, by entering into this agreement, further agrees to fully and completely cooperate with the government in its investigation of this and related matters, and to testify truthfully and completely before the grand jury and at any subsequent trials or proceedings, if asked to do so. The government agrees to advise the sentencing judge of the nature and extent of the defendant's cooperation. The parties acknowledge, understand, and agree that if the defendant provides substantial assistance to the government in the investigation or prosecution of others, the government, in its discretion, may recommend a downward departure from any applicable statutory mandatory minimum and the applicable sentencing guidelines range. The defendant acknowledges and understands that the court will make its own determination with regard to the appropriateness and extent to which such cooperation should affect the sentence.

DEFENDANT'S WAIVER OF RIGHTS

32. In entering this agreement, the defendant acknowledges and understands that in so doing he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.
- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify on his own behalf.

33. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offense to which the

defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

34. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

35. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

Further Civil or Administrative Action

36. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

GENERAL MATTERS

37. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

38. Subject to the full, truthful, and continuing cooperation of the defendant, as described in paragraph 32 of this plea agreement, and upon the court's acceptance of the guilty plea called for by this plea agreement, the government will not bring further criminal charges against the defendant for any act or offense committed before the date of this plea agreement that was undertaken in furtherance of the antitrust conspiracy, relating to the submission of rigged or non-competitive bids for street, highway, and airport construction projects awarded by the Wisconsin Department of Transportation (WisDOT) or other bidding authorities in the State of Wisconsin, charged in the information to which the defendant is pleading guilty pursuant to this plea agreement. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

39. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

40. The parties acknowledge and agree that the United States Attorney's Office and Antitrust Division are free to notify any local, state, or federal agency of the defendant's conviction.

41. The defendant understands that pursuant to the Victim and Witness Protection Act and the regulations promulgated under the Act by the Attorney General of the United States, the victim of a crime may make a statement describing the impact of the offense on the victim and

further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

Further Action by Internal Revenue Service

42. Nothing in this agreement shall be construed so as to limit the Internal Revenue Service in discharging its responsibilities in connection with the collection of any additional tax, interest, and penalties due from the defendant as a result of the defendant's conduct giving rise to the charges alleged in the information.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

43. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

VOLUNTARINESS OF DEFENDANT'S PLEA

44. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney, and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 6/28/05

_____/s/_____
DANIEL D. BEAUDOIN
Defendant

I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 6/28/05

_____/s/_____
PATRICK J. KNIGHT
Attorney for Defendant

For the United States of America:

Date: 6/28/05

_____/s/_____
STEVEN M. BISKUPIC
United States Attorney

Date: 6/28/05

_____/s/_____
DIANE LOTKO-BAKER
Trial Attorney

Date: 6/28/05

_____/s/_____
ANDREW K. ROSA
Trial Attorney

Date: 6/28/05

_____/s/_____
RICHARD G. FROHLING
Assistant United States Attorney