

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED 9-12-07
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA)
)
 v.)
)
 RAUL JORGE MIRANDA,)
)
 Defendant.)

Criminal No. 07-313-L
Filed
Violation: 18 U.S.C. § 201(b)(2)(B)

PLEA AGREEMENT

The United States of America and Raul Jorge Miranda ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (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;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty; and
 - (h) to appeal the imposition of sentence against him.

Fee _____
Process _____
X Dkt _____
Crim Dep _____
Doc. No. _____

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(h) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. §§ 2241 or 2255. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information (Attached) to be filed in the United States District Court for the Eastern District of Louisiana. The Information will charge the defendant with soliciting and agreeing to accept a bribe in violation of 18 U.S.C. § 201(b)(2)(B).

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) Hurricane Katrina struck New Orleans in August 2005 causing extensive damage to the levee systems. In August 2006, the United States Army Corps of Engineers (hereinafter "USACE") solicited bids for the reconstruction and enlargement of the Lake

Cataouatche Levee, south of New Orleans, Louisiana, a Hurricane Protection Project, solicitation No. W912P8-06-R0194. The value of this contract was in excess of \$15 million.

(b) At all times relevant to the Information, the defendant was a public official, as defined in Title 18, United States Code, Section 201(a)(1), that is, he was a contractor consultant for the USACE, and as such an employee or person acting for or on behalf of the United States, or any department or agency or branch of Government thereof, in any official function, under or by the authority of any such department or agency or branch of Government.

(c) At all times relevant to the Information, Subcontractor A was a sand and gravel subcontractor.

(d) Beginning on or about August 1, 2006, and continuing thereafter through October 25, 2006, the exact dates being unknown to the United States, in the Eastern District of Louisiana, and elsewhere, in connection with the foregoing procurement, the defendant, directly and indirectly, did corruptly demand, seek, and agree to accept something of value, that is, money in the amount of approximately \$299,000, from Subcontractor A, in return for, and with the intent of being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, that is, he disclosed confidential bid, proposal and source selection information, to Subcontractor A, before the award of the contract.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Title 18, United States Code, Section 201(b)(2)(B) is:

- (a) a term of imprisonment for fifteen years;
- (b) a fine in an amount of not more than three times the monetary equivalent of the thing of value;
- (c) he may be disqualified from holding any office of honor, trust, or profit under the United States; and
- (d) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. §§ 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) § 5D1.2(a)(2)).

6. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. §§ 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order him to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not

ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.

§ 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8.

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B) and in an effort to assist the Court in its determination of the appropriate Sentencing Guidelines range, the United States and defendant agree that defendant's adjusted offense level applicable to the charges described in the attached Information, prior to any departure for substantial assistance, is calculated as follows:

- (a) under U.S.S.G. § 2C1.1(a)(1), the defendant, as a public official, has a base offense level of 14;
- (b) under U.S.S.G. § 2C1.1(b)(1), the offense involved more than one bribe resulting in a 2 level increase;
- (c) pursuant to U.S.S.G. § 1B1.8, the self-incriminating information that the defendant provided to the United States regarding the exact dollar amount of the bribe may not be used against him, so an increase in the base offense level under U.S.S.G. § 2C1.1(b)(2) is not appropriate;
- (d) under U.S.S.G. § 3C1.1, the defendant attempted to obstruct or impede the administration of justice with respect to the investigation of the instant offense and the obstructive conduct related to the offense of conviction, resulting in an increase of 2 offense levels; and

- (e) the defendant has demonstrated a recognition and affirmative acceptance of responsibility for his criminal conduct, thereby reducing the adjusted offense level by three levels to level 15, pursuant to U.S.S.G. §§ 3E1.1(a) and (b).

9. An offense level 15, Criminal History category I, results in a term of imprisonment of 18-24 months and a fine of \$4,000-\$40,000 under U.S.S.G. § 5E1.2. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

10. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside of the advisory Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

11. Defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence defendant will receive. Defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the stipulations and recommendations in this Agreement, he nevertheless has no right to withdraw his guilty plea. However, the United States will inform the Court and the Probation Office of (a) this Agreement; (b) the nature and extent of defendant's activities with respect to this case and all other activities of defendant which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent, and significance of defendant's cooperation and his commitment to prospective cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by defendant both prior and

subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violation charged in the attached Information, the participation of defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of defendant, and to supply any other information that the Court may require. The United States and defendant are free to recommend or argue for any specific sentence to the Court.

12. If the United States determines that defendant has provided substantial assistance in any Federal Proceedings, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence defendant in light of the factors set forth in U.S.S.G. §§ 5K1.1(a)(1)-(5) and thus impose, in the Court's discretion, a sentence below the applicable Sentencing Guidelines fine and incarceration ranges. The United States and defendant are free to recommend or argue for any specific sentence to the Court.

13. Defendant acknowledges that the decision whether he has provided substantial assistance in any investigations or prosecutions is within the sole discretion of the United States. It is understood that should the United States determine that defendant has not provided substantial assistance in any Federal Proceeding, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle defendant to withdraw his guilty plea once it has been entered. Defendant further understands that whether or not the United States files a motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains

within the sole discretion of the sentencing judge, and the defendant has no right to withdraw his plea of guilty.

14. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 15 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

DEFENDANT'S COOPERATION

15. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal criminal laws involving the reconstruction and enlargement of the Lake Cataouatche Levee, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;
- (b) making himself available for interviews upon the request of attorneys and agents of the United States;

- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);
- (d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a)-(c) of this paragraph, that he may have that is related to any Federal Proceeding; and
- (e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-02), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

GOVERNMENT'S AGREEMENT

16. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the United States 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 his scheme to corruptly demand, seek, and agree to accept something of value in return for confidential bid, proposal, and source selection information regarding current and future sand and gravel subcontracts for the reconstruction and enlargement of the Lake Cataouatche Levee. 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.

REPRESENTATION BY COUNSEL

17. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The 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 the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

18. The 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 the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 15 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify

his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall 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. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing 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.

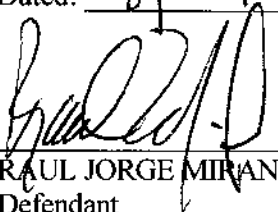
20. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided 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 any such further prosecution. 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.

ENTIRETY OF AGREEMENT

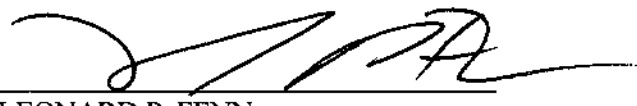
21. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

22. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Dated: 8/20/07



RAUL JORGE MIRANDA
Defendant



LEONARD P. FENN
Attorney for the Defendant Raul Jorge Miranda


Respectfully submitted,



DUNCAN S. CURRIE
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