UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No. l:05-cr-159 GLS
v.	:	Filed: 4/1/05
SEAN MORAN,	:	Violations: 15 U.S.C. § 1
Defendant.	:	

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PLEA AGREEMENT

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

RIGHTS OF DEFENDANT

1. 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.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) 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, that challenges the sentence imposed by the Court as long as the United States files a motion for a downward departure under U.S.S.G. § 5K1.1, regardless of how the 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).

3. Pursuant to Fed. R. Crim. P. 7(b), defendant will waive indictment and plead guilty at arraignment to an Information, in the form attached, to be filed in the United States District Court for the Northern District of New York. The Information will charge defendant with violating 15 U.S.C. §1 in connection with a conspiracy to rig bids for, and allocate roofing contracts awarded by, the Waterford, New York plant of the General Electric Company ("GE Waterford"), the Albany Medical Center ("AMC") and other purchasers of roofing products and services in the State of New York. The defendant

participated in the conspiracy from sometime in 1996 until at least July 2001.

4. Defendant, pursuant to the terms of this Agreement, will plead guilty to the criminal charge described in Paragraph 3 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11.

ELEMENTS OF THE OFFENSE

5. Defendant understands that the legal elements of the offense charged in the Information, a conspiracy to rig bids and allocate contracts in violation of the Sherman Antitrust Act (15 U.S.C. § 1), are as follows:

(a) First, that the conspiracy charged existed at or about the times stated in the Information, from sometime in 1996 until at least July, 2001;

(b) Second, that the defendant knowingly, that is voluntarily and intentionally, joined this conspiracy; and

(c) Third, that the activities of the defendant and co-conspirators were within the flow of and substantially affected interstate trade and commerce.

DEFENDANT'S COOPERATION

6. 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 antitrust and related criminal laws involving the roofing industry in the State of New York, 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 (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of defendant shall include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, in the possession, custody, or control of defendant, 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) 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);

(d) otherwise voluntarily providing the United States with any material or information, not requested in (a) - (c) of this paragraph, that

he may have that is related to any Federal Proceeding;

(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), obstruction of justice (18 U.S.C. § 1503) and contempt (18 U.S.C. §§ 401 - 402);

(f) agreeing to bring to the attention of the United States all crimes which he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he is or has been a subject, target, party, or witness; and

(g) consenting to adjournments of sentencing pending the completion of his cooperation, as determined to be necessary by the attorneys of the United States.

7. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, defendant agrees to fully disclose all assets in which he has any interest or over which defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. Defendant will promptly submit a completed financial statement to the attorneys of the United States. Defendant promises that his financial statement and disclosures will be complete, accurate and truthful.

8. Defendant will not commit any further crime whatsoever, nor will he violate any condition of release or supervision imposed by the Court.

GOVERNMENT'S AGREEMENT

9. Subject to the full, truthful, and continuing cooperation of defendant, as described in Paragraphs 6 and 7 of this Agreement, the United States will not bring further criminal charges against him under 15 U.S.C. §1 or 18 U.S.C. §§371, 1341, 1343, 1346 (insofar as those statutes relate to mail fraud or to a conspiracy to commit mail fraud) for any act or offense committed before the date of this Agreement, in connection with a conspiracy to rig bids for or allocate roofing contracts in the State of New York, which are known to the United States. 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" as defined by U.S.S.G. § 4B1.2(a).

POSSIBLE MAXIMUM SENTENCE

10. Defendant understands that pursuant to 15 U.S.C. § 1 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for a violation of Section One of the Sherman Antitrust Act (15 U.S.C. § 1), a class E felony, is:

(a) a term of imprisonment of not more than three (3) years;

(b) a fine of not more than the greatest of (1) $350,000, (2) twice the gross pecuniary gain from the offense, or (3) twice the gross pecuniary loss from the offense unless the imposition of a fine under such calculations would unduly complicate or prolong the sentencing process; and

(c) a term of supervised release of not more than one (1) year following any term of imprisonment. (18 U.S.C. § 3583(b)(3) and United States Sentencing Guidelines ("U.S.S.G.") § 5D1.2(a)(3)).

11. In addition, defendant understands that:

(a) pursuant to 18 U.S.C. §§ 3563(b)(2) or 3583(d) and U.S.S.G. § 5E1.1, 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 defendant to pay a $100.00 special assessment.

SENTENCING GUIDELINES

12. Defendant understands that the sentence to be imposed upon him is within the discretion of the sentencing Court, subject to the statutory maximum penalties and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines ("U.S.S.G," "Sentencing Guidelines," or "Guidelines") promulgated thereunder, as modified by *United States v. Booker* and *United States v. Fanfan*, __ U.S. __, 2005 WL 50108 (January 12, 2005). In imposing the sentence, the Court must take into account the Sentencing Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a). While the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard.

SENTENCING AGREEMENT

13. 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 is level 11, prior to any departure for substantial assistance or acceptance of responsibility, calculated as follows:

(a) The base offense level is 10, pursuant to U.S.S.G. § 2R1.1(a);

(b) Increase by 1 level because the conduct involved participation in an agreement to submit noncompetitive bids, pursuant to U.S.S.G. § 2R1.1(b)(1).

14. Defendant has demonstrated a recognition and affirmative acceptance of responsibility for his criminal conduct, thereby reducing the adjusted offense level by two levels to level 9, pursuant to U.S.S.G. § 3E1.1(a).

15. The United States and defendant stipulate the volume of commerce affected by the antitrust conspiracy is $344,500. The Guidelines antitrust fine for defendant is $20,000 pursuant to U.S.S.G. § 2R1.1(c)(1).

16. 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 Sentencing Commission in formulating the Sentencing Guidelines that should result in a departure under 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.

17. 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.

18. 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.

19. 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.

REPRESENTATION BY COUNSEL

20. 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 Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to defendant other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter

into this Agreement.

VOLUNTARY PLEA

21. Defendant's decision to enter into this 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 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 Agreement.

VIOLATION OF PLEA AGREEMENT

22. Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that defendant has failed to provide full and truthful cooperation, as described in Paragraphs 6 and 7 of this Agreement, or has otherwise violated any provision of this Agreement, the United States will notify 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 Agreement (except its obligations under this paragraph), and 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 Agreement. Defendant agrees that, in the event that the United States is released from its obligations under this Agreement and brings criminal charges against 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 Agreement and six (6) months after the date the United States gave notice

of its intent to void its obligations under this Agreement.

23. Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Agreement based on defendant's violation of the 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, 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

24. This Agreement constitutes the entire agreement between the United States and defendant concerning the disposition of the criminal charge in this case. The United States has made no other promises to or agreements with defendant. This Agreement cannot be modified except in a writing signed by the United States and defendant.

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

Dated: April 1, 2005 Dated:

/s/ /s/

SEAN MORAN MELVIN LUBLINSKI

/s/_____
STEPHEN R. COFFEY, ESQ.
Counsel for Sean Moran

/s/_____
EDWARD FRIEDMAN

Attorneys
U.S. Department of Justice
Antitrust Division
26 Federal Plaza, Room 3630
New York, NY 10278
212-264-9320