

1 PHILLIP A. TALBERT
United States Attorney
2 LEE S. BICKLEY
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

CHRISTOPHER J. CARLBERG
6 TAI S. MILDER
Trial Attorneys
7 U.S. Department of Justice, Antitrust Division
450 Golden Gate Avenue, Rm 10-0101
8 San Francisco, CA 94102
Telephone: (415) 934-5300
9 Facsimile: (415) 934-5399

10 Attorneys for Plaintiff
United States of America
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12 IN THE UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
15
16 Plaintiff,
17
18 v.
19 CHOON FOO YONG AKA KEITH YONG,
20 Defendant.

CASE NO. 2:22-CR-00053-KJM
UNITED STATES' SENTENCING
MEMORANDUM
DATE: April 24, 2023
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

20 Defendant Choon Foo "Keith" Yong was a public official who took bribes in return for
21 facilitating a long-running conspiracy to cheat on government contracts. Yong was a California
22 Department of Transportation (Caltrans) Contract Manager. Over the course of nearly five years, from
23 February 2015 to December 2019, Yong received over \$984,000 in cash bribes and other benefits from
24 Bill Miller and Bill Opp, who were contractors bidding for Caltrans contracts. Yong and Miller agreed
25 that Yong would receive bribes worth at least 10% of the value of state-funded contracts that Yong
26 steered to Miller and other co-conspirators through bid rigging and no-bid emergency contracts.
27 Yong's conduct deprived the State of California of the loyal services of its employee, risked harming the
28

1 public's trust in government institutions, and cheated Caltrans out of taxpayer funds.

2 Under the Sentencing Guidelines, the total offense level for Yong's crimes is 27 with a
3 Guidelines range of 70-87 months imprisonment. Yong cooperated in this case and the United States
4 has filed a motion for a downward departure pursuant to U.S.S.G. §5K1.1. Following the application of
5 §5K1.1, the United States recommends that Yong be sentenced to 49 months imprisonment. Given the
6 nature and circumstances of Yong's offense, his history and characteristics, the seriousness of the
7 offense, the need to promote respect for the law, the need to provide just punishment, and the need to
8 afford adequate deterrence to criminal conduct, a sentence of 49 months in prison is sufficient but not
9 greater than necessary in this case. Further, the United States agrees with the Probation Officer's
10 recommendation that Yong be sentenced to two years supervised release, and a \$200 special assessment,
11 and be ordered to pay \$984,699.53 in restitution (joint and several with certain co-conspirators as
12 described below) and a \$12,500 fine. *See* Sentencing Recommendation (Dkt. 27-6) at 1.

13 I. FACTS

14 A. **Yong Took Bribes to Facilitate Collusion.**

15 Yong was a Senior Transportation Engineer and Contract Manager for contracts to improve and
16 repair Caltrans's maintenance facilities and bridge toll buildings in Caltrans's District 4. In February
17 2015, Yong was introduced to Miller by another Caltrans employee who told Yong that he could make
18 money through bribes and bid rigging with Miller. Miller met with Yong, and they agreed that Yong
19 would steer Caltrans construction contracts to Miller and other co-conspirators' companies. In
20 exchange, Miller and the other co-conspirators would give Yong 10% of the value of the contracts in the
21 form of cash payments, construction work on Yong's house, cases of wine, and furniture. In so doing,
22 Miller and Yong formed the conspiracy that ultimately cheated a state agency out of taxpayer funds and
23 corrupted what was supposed to be a competitive bidding process.

24 The bid-rigging scheme was successful. Yong, as a Contract Manager, was responsible for
25 compiling a list of eligible companies that would be invited to bid on certain Caltrans contracts. The
26 process required that Caltrans obtain at least two bids from qualified bidders before awarding the
27 contract to the lowest bidder. Yong communicated with Miller, co-conspirator William D. Opp, who
28 started his own construction company in his wife's name, and other co-conspirators about which

companies should be invited to bid so that bids would only be submitted by co-conspirators. The co-conspirators who were selected to bid then colluded to determine who would submit a non-competitive high bid (AKA a “sham bid”) so that Miller’s company or another co-conspirator’s company, like Opp’s, would win the contract. This allowed Miller’s company or another co-conspirator’s company to win the Caltrans contracts at inflated prices because Miller knew that he would not be bidding against companies that were trying to win Caltrans’ business fair and square. In addition to the bid-rigged contracts, Yong also directed several no-bid contracts to be awarded on an emergency basis to Miller and his co-conspirators’ companies.

In total, Miller and Opp rigged bids on and bribed Yong for awarding over \$8 million worth of contracts to participants of the scheme. The vast majority of those contracts were awarded directly to Miller’s sole proprietorship and to Opp’s company.

B. Miller and Opp bribed Yong.

Yong kept a spreadsheet in which he tracked the Caltrans contracts for which Miller and their co-conspirators owed him bribes. On the spreadsheet, he also recorded in what form he received the bribes and sometimes from whom and where the exchanges took place. As stated above, Miller and Opp bribed Yong with cash, construction work on Yong’s house, cases of wine, and furniture. The United States used the information on Yong’s spreadsheet to determine that Yong received \$984,699.53 in payments and benefits for contracts involving Miller (of which \$797,940.73 also involved Opp). The largest of the bribes are listed in the factual basis to Yong’s plea agreement and reincorporated below:

- From approximately April 2015 to approximately November 2017, Miller directed his employees to perform over \$130,000 worth of remodeling and construction work at Yong’s house.
- On or about September 9, 2016, Yong received over \$40,100 in cash directly from Opp on behalf of Miller and Opp.
- On or about March 8, 2018, Yong received \$37,300 in cash on behalf of Opp’s company for two projects for which Miller’s company submitted sham bids.
- On or about June 28, 2018, Yong received \$90,000 in cash on behalf of Miller’s company and Opp.

- On or about August 24, 2018, Yong received \$96,000 in cash on behalf of Miller's company and Opp.
- On or about July 26, 2019, Yong received \$60,000 in cash on behalf of Miller and Miller's company.
- On or about December 18, 2019, Yong received over \$25,000 in cash on behalf of Miller and Miller's company.

For example, in January 2018, Miller sent Yong the following email telling Yong that he had told Opp (here "bill") that Opp needed to pay the bribes he owed Yong. (The bracketed words were edited into the email in the place of Yong's wife's name.)

On Thursday, January 18, 2018, 4:20 AM, Bill Miller <billrm@sbcglobal.net> wrote:

Keith,

I told bill he needs to pay you, he said he was going to wait until you asked him directly.

You need to call him (Not e-mail) and tell him to please give it to me so I can give it to [Yong's wife] so She can buy a car or something. Otherwise he will drag it out forever or worse.

After this email from Miller, Yong sent the following email with the subject line "Commission" to Opp, copying Miller:

Bill Opp,

The Lewelling and Queens led projects were completed and payment for the contracts were made. Please pass the commission to Bill Miller and he will pass it on to my wife.

Thanx

Keith

"Lewelling" and "Queens" refer to the street location of two Caltrans maintenance facilities where Opp's company had been awarded contracts to install LED lights. "Commission" means bribes. On March 8, 2018, Yong received \$37,300 in cash on behalf of Opp's company for these two projects.

As another example, in 2015, Yong solicited bribes in the form of wine from Miller. Yong wrote

the following e-mail on April 2, 2015, with a subject line of 2013 Doctor's Vineyard Pinot Noir: "Bill [Miller], Let's schedule 4/16/2015 Thursday to visit Testarossa. I will accept as many Doctors Pinot Noir as you are willing to donate. Thanx Keith." Testarossa is a winery and Doctor's Vineyard Pinot Noir is a type of high-end wine sold by Testarossa with a current list price of \$76 per bottle.¹

II. THE GOVERNMENT'S SENTENCING RECOMMENDATION

The parties have agreed that Yong's total offense level is 27. Probation has determined that Yong's criminal history category is I. *See* PSR (Dkt. 27) at 9. Therefore, Yong's Guidelines imprisonment range is 70 to 87 months. *See* Dkt. 27-6 at 1. The United States recommends that Yong be sentenced to the low end of the Guidelines range, two years supervised release, a fine of \$12,500, and a \$200 special assessment. Probation has made the same recommendation. *See id.* at 1. In addition, the United States has filed a motion for a downward departure due to substantial assistance. With that reduction, the United States is recommending a custodial sentence of 49 months.

III. THE COURT SHOULD ORDER RESTITUTION.

The Court should order restitution of at least \$984,699.53 to be returned to Caltrans. Some of this restitution is jointly and severally owed by Yong and Miller, and the rest of it is jointly and severally owed between Yong, Miller, and Opp. In the plea agreement, Yong agreed that the amount of restitution will be between \$800,000 and \$15 million. *See* Plea Agreement (Dkt. 10) at 3.

Yong received \$984,699.53 in bribes, whether in the form of payments or benefits, on contracts somehow involving Miller. These bribes represent the extra amount that Caltrans was forced to pay for the goods and services provided by Miller and his co-conspirators as a result of the conspiracy and is therefore the appropriate basis to determine restitution. The total amount of restitution should be imposed jointly and severally between the co-conspirators depending on who was involved in the bribes. Specifically, Yong received \$797,940.73 in bribes for contracts involving Miller and Opp; the remaining \$186,758.80 of bribes paid to Yong were for contracts involving only Miller (and sometimes other coconspirators). Therefore, the United States agrees with Probation that \$797,940.73 of Yong's restitution should be joint and several with Miller and Opp, and another \$186,758.80 should be joint and

¹ See <https://store.testarossa.com/shop/product/2567/2019-doctors-vineyard-pinot-noir>.

several with only Miller (for a total of \$984,699.53 restitution owed jointly and severally by Yong). See PSR (Dkt. 27) at 18.

IV. NO 18 U.S.C. § 3553(A) FACTORS JUSTIFY A VARIANCE DOWNWARD.

There are no 18 U.S.C. § 3553(a) factors that would justify a downward variance. Yong was a public official who lined his own pockets with inflated profits on taxpayer-funded contracts at the expense of taxpayers. The 18 U.S.C. § 3553(a) factors support the recommended 49-month sentence.

A. The Nature and Circumstances of the Offense.

Public corruption and bribery are serious threats to society that endanger the proper functioning of government institutions and the free market economy. First, the briber deprives the government institution of the loyalty of its employee. The government relies on its employees to be trustworthy stewards of public funds, and bribery destroys that reliance. Second, bribery can cause the public at large to lose trust in government institutions. “The harm done [by bribery] is intangible, but real enough: the undermining of public confidence, the loss of respect for and pride in our institutions.” *United States v. Morales*, 11 F.3d 915, 922 (9th Cir. 1993) (O’Scannlain, J., concurring in part). As the Supreme Court stated in *United States v. Mississippi Valley Generating Company*, in considering a government-contracting conflict-of-interest statute, “[t]he statute is directed at an evil which endangers the very fabric of a democratic society, for a democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.” 364 U.S. 520, 562 (1961). Third, bribery in government contracting, like here, can cause tangible financial loss to the government institution and taxpayers because the government institution paid more than it should have for public works projects. Yong represented the public. He was the individual who was supposed to say no to bribes and responsibly spend California’s taxpayers’ money on maintaining necessary infrastructure. However, he deprived Caltrans of the loyalty of its employee, risked harm to the public’s trust in government contracting, and caused Caltrans a pecuniary loss.

In Yong’s case, the sheer magnitude of the bribery is significant. \$984,699.53 is a lot of money. The bribes were in connection to relatively small contracts—most below \$314,000 in value—but there were many such contracts. Miller, Yong, and others engaged in a longstanding scheme, covering dozens

of contracts, and the bribes added up over the nearly five years of the conduct. This was not a one-time mistake. Yong's abuse of public trust and the length and breadth of Yong's conduct fully warrant a sentence of 49-months imprisonment.

B. The History and Characteristics of the Defendant.

Yong's own choices and greed led him to participate in and carry out the bribery and bid-rigging scheme. He was a college graduate who had a very good job. *See* PSR (Dkt. 17) at 11-12. He was making \$145,000 a year. He was not forced into criminal activity by circumstance. He did not need to engage in this conduct, and he knew it was wrong.

C. Need for the Sentence to Afford Adequate Deterrence to Criminal Conduct.

A sentence of 49-months imprisonment would send a message to other government contractors and public employees that bribery and bid rigging will result in significant jail time. It also sends a message to the public that the government and the courts take this conduct seriously and nobody should accept this kind of corruption with taxpayer funds. "We need not resign ourselves to the fact that corruption exists in government. Unlike some criminal justice issues, the crime of public corruption can be deterred by significant penalties that hold all offenders properly accountable. . . . Public corruption demoralizes and unfairly stigmatizes the dedicated work of honest public servants." *United States v. Spano*, 411 F. Supp. 2d 923, 940 (N.D. Ill. 2006).

Deterrence of collusion and bribery is particularly important in government contracting. Competitive bidding for state and federal public projects is critical to minimize the costs for the contracts and obtain the best value for taxpayers' money. Competitive bidding will be particularly important in the coming years as billions of new dollars in infrastructure spending are allocated to the states. Bid rigging on public procurement contracts drives up prices and the taxpayer is left paying the bill. Bid-rigging conspiracies also diminish public confidence in the competitive process and undermine the benefits of a competitive marketplace. A significant prison sentence for Yong will help deter others from engaging in collusion on state and federal government contracts.

D. Need to Avoid Unwarranted Sentencing Disparities Among Similarly Situated Defendants.

Courts have rightly imposed substantial sentences on those who bribe public officials. The

1 United States has had difficulty finding similar cases to this bribery, antitrust, and public corruption
2 case, partly due to the very pervasiveness of Miller and Yong's scheme. In this case, Yong received
3 bribes over a significant period of time and the amount of the bribes was very significant. Nearly \$1
4 million dollars in bribes over about five years puts this case in a unique position.

5 **E. Yong's Wife should not be a reason to Vary Downward.**

6 The defendant may argue he should not be sentenced to a significant sentence given that he takes
7 care of his wife. However, Mrs. Yong appears to have the resources and family support to address her
8 medical issues, namely their financial assets and two children. *See* PSR (Dkt. 17) at ¶¶ 56, 71.
9 Moreover, there is evidence that, during the bid-ridding and bribery scheme, Yong took trips without his
10 wife for several weeks at a time. For instance, in a thread responding to the January 18, 2018 email
11 shown above where Miller tells Opp to give the money owed to Yong to Yong's wife, Yong wrote, "I
12 will do that when I get back in March." Therefore, it is not clear that Mrs. Yong has needed to rely on
13 Mr. Yong for caregiving.

14 **V. CONCLUSION**

15 Yong's bribery and bid-rigging scheme deprived Caltrans of the loyalty of its employee, risked
16 harm to the public's trust in government contracting, and caused Caltrans a pecuniary loss. The United
17 States respectfully requests that the Court impose a sentence of 49 months in prison, two years
18 supervised release, a fine of \$12,500, and a \$200 special assessment, and order restitution in the amount
19 of \$984,699.538 (jointly and severally with Miller, and \$797,940.73 of it jointly and severally with
20 Opp).

1 Dated: April 17, 2023

PHILLIP A. TALBERT
United States Attorney

2
3 By: /s/ LEE S. BICKLEY
LEE S. BICKLEY
4 Assistant United States Attorney

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6 Dated: April 17, 2023

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

7
8 By: /s/ TAI S. MILDER
CHRISTOPHER J. CARLBERG
9 TAI S. MILDER
10 Trial Attorneys