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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILL R. MILLER,

Defendant.

CASE NO. 2:22-CR-00206-KJM

UNITED STATES' SENTENCING
MEMORANDUM

DATE: April 17, 2023
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

Defendant Bill R. Miller bribed a public official to cheat on government contracts. Specifically, Miller agreed with Choon Foo "Keith" Yong, a California Department of Transportation (Caltrans) Contract Manager, to pay Yong bribes worth at least 10% of the value of state-funded contracts that Yong steered to Miller and his co-conspirators through bid rigging and no-bid emergency contracts. As a leader and organizer of the scheme, Miller recruited others, including his friends, family, and girlfriend, to participate in the conduct. Over the course of nearly five years, from February 2015 to December 2019, Miller's conspiracy paid over \$984,000 in cash bribes and other benefits to Yong, most

of it from Miller himself. Miller's conduct deprived the State of California of the loyal services of its employee, risked harming the public's trust in government institutions, and cheated Caltrans out of taxpayer funds.

Under the Sentencing Guidelines, the total offense level for Miller's crimes is 87-108 months imprisonment. The United States supports the Probation Officer's recommendation and recommends that Miller be sentenced to 87 months in prison, two years supervised release, and a \$200 special assessment, and be ordered to pay \$984,699.53 in restitution (joint and several with certain co-conspirators as described below). *See* Sentencing Recommendation (Dkt. 17-1) at 1. Given the nature and circumstances of Miller's offense, his history and characteristics, the seriousness of the offense, the need to promote respect for the law, the need to provide just punishment, and the need to afford adequate deterrence to criminal conduct, a sentence of 87 months in prison is sufficient but not greater than necessary in this case.

I. FACTS

A. **Miller Recruited Yong, Opp, and Others into the Bribery and Bid-Rigging Scheme.**

Miller orchestrated and was the driving force of the criminal conduct. Prior to the existence of the conspiracy, Miller, through his sole proprietorship construction company, had already been performing contracts for improvement and repair work on Caltrans' maintenance facilities. In February 2015, Miller was introduced to Yong by another Caltrans employee who told Yong he could make money through bribes and bid rigging with Miller. Yong was a Senior Transportation Engineer and Contract Manager for contracts to improve and repair Caltrans's maintenance facilities and bridge toll buildings in Caltrans's District 4. Miller met with Yong, and they agreed that Yong would steer Caltrans construction contracts to Miller and other co-conspirators' companies. In exchange, Miller and his co-conspirators would give Yong 10% of the value of the contracts in the form of cash payments, construction work on Yong's house, cases of wine, and furniture. In so doing, Miller and Yong formed the conspiracy that ultimately cheated a state agency out of taxpayer funds and corrupted what was supposed to be a competitive bidding process.

Not long after Miller and Yong formed the conspiracy, Miller encouraged his long-time friend, William D. Opp, to return from where he had been living in China to help Miller bid on more Caltrans

1 projects, organize the work, and bribe Yong. In August 2015, after talking with Miller, Opp formed a
2 separate construction company that Opp used to bid on Caltrans contracts. Because Opp was already
3 publicly associated with Miller's company, Opp created his company with his wife as the nominal
4 president to conceal from Caltrans that Opp was behind the company. At this same time, Miller and
5 Opp agreed to split the profits generated by their work on Caltrans contracts.

6 The bid-rigging scheme was successful. Yong, as a Contract Manager, was responsible for
7 compiling a list of eligible companies that would be invited to bid on certain Caltrans contracts. The
8 process required that Caltrans obtain at least two bids from qualified bidders before awarding the
9 contract to the lowest bidder. Yong communicated with Miller, Opp, and other co-conspirators about
10 which companies should be invited to bid so that bids would only be submitted by co-conspirators. The
11 co-conspirators who were selected to bid then colluded to determine who would submit a non-
12 competitive high bid (AKA a "sham bid") so that Miller's company or another co-conspirator's
13 company, like Opp's, would win the contract. This allowed Miller's company or another co-
14 conspirator's company to win the Caltrans contracts at inflated prices because Miller knew that he
15 would not be bidding against companies that were trying to win Caltrans' business fair and square. In
16 addition to the bid-rigged contracts, Yong also directed several no-bid contracts to be awarded on an
17 emergency basis to Miller and his co-conspirators' companies.

18 In total, Miller and his co-conspirators rigged bids on and bribed Yong for awarding over
19 \$8 million worth of contracts to participants of the scheme. The vast majority of those contracts were
20 awarded directly to Miller's sole proprietorship.

21 **B. Miller Bribed Yong and Coordinated Opp's Bribes to Yong.**

22 Yong kept a spreadsheet in which he tracked the Caltrans contracts for which Miller and their co-
23 conspirators owed him bribes. On the spreadsheet, he also recorded in what form he received the bribes
24 and sometimes from whom and where the exchanges took place. As stated above, Miller and his co-
25 conspirators bribed Yong with cash, construction work on Yong's house, cases of wine, and furniture.
26 The United States used the information on Yong's spreadsheet to determine that Yong received
27 \$984,699.53 in payments and benefits for contracts involving Miller. The largest of the bribes are listed
28 in the factual basis to Miller'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.

In addition to his own bribes to Yong, Miller also coordinated Opp's bribes to Yong. 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.

C. Miller Recruited Family Members and Others in His Crimes.

There is further evidence of Miller recruited other co-conspirators into the scheme. For instance, Miller’s cousin owned one of the companies that early-on during the conspiracy submitted “sham” bids that were intentionally high so Miller’s company would win contracts managed by Yong. Miller also had his girlfriend deliver a \$10,000 cash bribe to Yong on at least one occasion.

D. Miller Rigged-Bids in Another Caltrans District.

Miller’s criminal conduct was not limited to Caltrans’s District 4 under Yong. In September 2018, Miller also rigged bids for two contracts in Caltrans’s District 1, along California’s Northernmost coast. For those two contracts, Miller had non-competitive sham bids submitted on behalf of another construction company so that Miller’s company would win the inflated bids. These two contracts were cumulatively worth \$600,000.

II. THE GOVERNMENT’S SENTENCING RECOMMENDATION

The parties have agreed that Miller’s total offense level is 29. Probation has determined that Miller’s criminal history category is I. *See* PSR (Dkt. 17) at 9. Therefore, Miller’s Guidelines imprisonment range is 87 to 108 months. *See id.* at 14. The United States recommends that Miller be sentenced to the low end of the Guidelines range to 87 months in prison, two years supervised release, and a \$200 special assessment. Probation has made the same recommendation. *See id.* at 1.

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, Miller agreed that the amount of restitution will be between \$800,000 and \$15 million. *See* Plea Agreement (Dkt. 9) 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 Miller. Therefore, the United States agrees with Probation that \$797,940.73 of Miller's restitution should be joint and several with Yong and Opp, and another \$186,758.80 should be joint and several with only Yong (for a total of \$984,699.53 restitution owed jointly and severally by Miller). *See* PSR (Dkt. 17) 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. Miller is the quintessential corrupt contractor who bribed a public official to line his own pockets with inflated profits on taxpayer-funded contracts. The 18 U.S.C. § 3553(a) factors support the recommended low-end Guidelines sentence of 87 months.

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

1 who govern, and that faith is bound to be shattered when high officials and their appointees engage in
 2 activities which arouse suspicions of malfeasance and corruption.” 364 U.S. 520, 562 (1961). Third,
 3 bribery in government contracting, like here, can cause tangible financial loss to the government
 4 institution and taxpayers because the government institution paid more than it should have for public
 5 works projects. When Miller bribed Yong and engaged in the bid-rigging scheme, he deprived Caltrans
 6 of the loyalty of its employee, risked harm to the public’s trust in government contracting, and caused
 7 Caltrans a pecuniary loss.

8 In Miller’s case, the sheer magnitude of the bribery is significant. \$984,699.53 is a lot of money.
 9 Miller had a significant leadership role in orchestrating the scheme and in making sure that the bribes
 10 actually made their way to Yong. It is also noteworthy that the bribes were in connection to relatively
 11 small contracts—most below \$314,000 in value—but there were many such contracts. Miller, Yong,
 12 and others engaged in a longstanding scheme, covering dozens of contracts, and the bribes added up
 13 over the nearly five years of the conduct. This was not a one-time mistake. At various points when co-
 14 conspirators left the scheme, Miller recruited new sham bidders in order to perpetuate the conspiracy.
 15 The length and breadth of Miller’s conduct fully warrants a low-end sentence of 87 months
 16 imprisonment.

17 **B. The History and Characteristics of the Defendant.**

18 Miller’s own choice and greed led him to formulate and carry out the bribery and bid-rigging
 19 scheme. He had some college education and has been a licensed general contractor for decades. *See*
 20 PSR (Dkt. 17) at 12. He owned and operated his sole proprietorship from 2004 until 2020. He knew
 21 how to make an honest living through his construction work. It appears he provided for his children, all
 22 of whom are now in their 30s or 40s. *See id.* at 10. Miller was not forced into criminal activity by
 23 circumstance. He did not need to engage in this conduct, and he knew it was wrong.

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

25 A sentence of 87 months imprisonment would send a message to other government contractors
 26 and public employees that bribery and bid rigging will result in significant jail time. It also sends a
 27 message to the public that the government and the courts take this conduct seriously and nobody should
 28 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 Miller 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 United States has had difficulty finding similar cases to this bribery, antitrust, and public corruption case, part due to the very pervasiveness of Miller’s scheme. In this case, Miller bribed Yong over a significant period of time and the amount of the bribes was very significant. Nearly \$1 million dollars in bribes over about five years puts this case in a unique position. Moreover, Miller’s role in the offense as the leader and organizer who recruited the co-conspirators similarly puts Miller’s conduct in a category of its own.

V. CONCLUSION

Miller’s bribery and bid-rigging scheme deprived Caltrans of the loyalty of its employee, risked harm to the public’s trust in government contracting, and caused Caltrans a pecuniary loss. The United States respectfully requests that the Court impose a sentence of 87 months in prison, two years supervised release, and a \$200 special assessment, and order restitution in the amount of \$984,699.53.

1 Dated: April 10, 2023

PHILLIP A. TALBERT
United States Attorney

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

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6 Dated: April 10, 2023

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

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