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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM D. OPP,

Defendant.

CASE NO. 2:22-CR-00144-KJM

UNITED STATES' SENTENCING
MEMORANDUM

DATE: April 24, 2023
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

Defendant William D. Opp personally bribed a public official in order to cheat on government contracts. Opp, alongside his business partner Bill 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 Opp and Miller through bid rigging and no-bid emergency contracts. As a key player in the scheme and equal business partner with Miller, Opp went so far as to create a second construction company for the purpose of submitting purportedly competitive bids alongside bids from Miller's company. To evade detection by Caltrans, Opp created this second company in his wife's name, even though she was not familiar with construction work.

Even after Opp suffered a stroke in April 2017, he continued to be an active participant in the conspiracy, including by emailing Yong and Miller in 2018 to coordinate bribe payments to Yong. Then in 2019, after leaving California, Opp sued Miller because Opp believed that he was entitled to a larger share of the ill-gotten profits from the scheme. Opp actively participated in the conspiracy for well over three years, from April 2015 to August 2018. During that time, Opp and his business partner Miller provided over \$797,000 in cash payments and other benefits to Yong, including a cash bribe that Opp personally handed to Yong. Opp'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 Opp's crimes is 25 with a Guidelines range of 57-71 months imprisonment. Opp cooperated in this case and the United States has filed a motion for a downward departure pursuant to U.S.S.G. §5K1.1. Following the application of §5K1.1, the United States recommends that Opp be sentenced to 45-months imprisonment. Given the nature and circumstances of Opp'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 45 months in prison is sufficient but not greater than necessary in this case. Further, the United States supports the Probation Officer's recommendation that Opp be sentenced to two years supervised release, and a \$200 special assessment, and be ordered to pay \$797,940.73 in restitution (joint and several with certain co-conspirators as described below). *See* Sentencing Recommendation (Dkt. 18-1) at 1.

I. FACTS

A. **Opp Was an Early and Key Player in the Bribery and Bid-Rigging Scheme.**

Opp joined the conspiracy at an early stage and played a key role in operating the bid-rigging scheme. 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

1 maintenance facilities and bridge toll buildings in Caltrans's District 4. Miller met with Yong, and they
2 agreed that Yong would steer Caltrans construction contracts to Miller and other co-conspirators'
3 companies. In exchange, Miller (and other co-conspirators like Opp) would give Yong 10% of the value
4 of the contracts as bribes in the form of cash payments, construction work on Yong's house, cases of
5 wine, and furniture. As part of operating the conspiracy, however, Yong and Miller needed a second
6 company that would submit a non-competitive high bid (AKA a "sham bid") so that Miller's company
7 would win the contract. Or, in another iteration, Miller's company would submit the sham bid and the
8 second company would win the contract but still share the profits. That is where Opp played a key role.

9 Not long after Miller and Yong formed the conspiracy, Miller encouraged Opp, his long-time
10 friend, to return from where he had been living in China to help Miller bid on more Caltrans projects,
11 organize the work, and bribe Yong. In August 2015, after talking with Miller, Opp formed a second
12 construction company that Opp used to bid on Caltrans contracts. Because Opp was already publicly
13 associated with Miller's company, Opp created a new company with his wife as the nominal president to
14 conceal from Caltrans that Opp was behind the company. At this same time, Miller and Opp agreed to
15 split the profits generated by their work on Caltrans contracts.

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

28 In total, Miller and Opp rigged bids on and bribed Yong for awarding approximately \$8 million

worth of contracts to participants of the scheme. The vast majority of those contracts were awarded directly to Miller's sole proprietorship or to Opp's company.

B. Opp Bribed Yong Directly and Coordinated Bribes with Miller.

Yong kept a spreadsheet in which he tracked the Caltrans contracts for which Miller and Opp 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 \$797,940.23 in payments and benefits for contracts involving Opp. The largest of the bribes are listed in the factual basis to Opp'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.

As reflected in the second bullet above, as part of the conspiracy, Opp personally delivered a bribe payment in cash of over \$40,000. This illustrates how Opp was directly and actively involved in the bribery and not merely a passive beneficiary of the scheme. Opp took a large amount of cash and met Yong in a prearranged location to deliver the bribe in a face-to-face meeting with Yong.

Opp also coordinated making additional bribe payments with Yong and Miller via email. 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

1 email in the place of Yong's wife's name.)

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

3 Keith,

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

5 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]
6 so She can buy a car or something. Otherwise he will drag it out forever or worse.

7
8 After this email from Miller, Yong sent the following email with the subject line "Commission"
9 to Opp, copying Miller:

10 Bill Opp,

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

13 Thanx

14 Keith

15
16 "Lewelling" and "Queens" refer to the street location of two Caltrans maintenance facilities where
17 Opp's company had been awarded contracts to install LED lights. "Commission" means bribes.

18 Opp responded to this email on January 18, 2018, stating: "Lewelling project is not paid." This
19 meant that Opp was waiting for Caltrans to pay Opp before Yong would receive the bribe payment. On
20 March 8, 2018, Yong received \$37,300 in cash on behalf of Opp's company for the Lewelling and
21 Queens projects.

22 **C. Opp Involved Others to Conceal his Crimes.**

23 As mentioned above, when Opp was creating a second company that would participate in the
24 bid-rigging and bribery scheme, he did not use his own name. Instead, Opp created Wu Con Corp. using
25 his wife's name. Opp did this even though his wife was not actually familiar with the construction
26 industry or genuinely involved in running the company. Opp took these steps in order to evade
27 detection. Otherwise, Caltrans might have become aware that Opp was both working for Miller's
28

1 company and submitting bids for a second company that was a purported competitor. This concealment
2 was at least partially successful, as the Caltrans investigation was initiated around March 2019, after
3 Opp had left California and was no longer submitting bids on behalf of Wu Con Corp.

4 **II. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

5 The parties have agreed that Opp's total offense level is 25. Probation has determined that Opp's
6 criminal history category is I. *See* PSR (Dkt. 18) at 9. Therefore, Opp's Guidelines imprisonment range
7 is 57 to 71 months. *See id.* at 14. The United States recommends that Opp be sentenced to the low end
8 of the Guidelines range, two years supervised release, and a \$200 special assessment. Probation has
9 made the same recommendation. *See* Sentencing Recommendation (Dkt. 18-1) at 1. In addition, the
10 United States has filed a motion for a downward departure due to substantial assistance. With that
11 reduction, the United States is recommending a 45-month custodial sentence.

12 **III. THE COURT SHOULD ORDER RESTITUTION.**

13 As to Opp, the Court should order restitution of at least \$797,940.73 to be returned to Caltrans.
14 This restitution is jointly and severally owed by Opp, Yong, and Miller. In the plea agreement, Opp
15 agreed that the amount of restitution will be between \$700,000 and \$15 million. *See* Plea Agreement
16 (Dkt. 8) at 3.

17 Yong received \$797,940.73 in bribes, whether in the form of payments or benefits, on contracts
18 somehow involving Opp. These bribes represent the extra amount that Caltrans was forced to pay for
19 the goods and services provided by Opp and his co-conspirators as a result of the conspiracy and is
20 therefore the appropriate basis to determine restitution. The total amount of restitution should be
21 imposed jointly and severally between the co-conspirators depending on who was involved in the bribes.
22 Specifically, Yong received \$797,940.73 in bribes for contracts involving Miller and Opp; the remaining
23 \$186,758.80 of bribes paid to Yong were for contracts involving Miller but not Opp. Therefore, the
24 United States agrees with Probation that Opp should be sentenced to pay \$797,940.73 in restitution. *See*
25 PSR (Dkt. 18) at 18. This restitution should be joint and several with Yong and Miller.

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

27 There are no 18 U.S.C. § 3553(a) factors that would justify a downward variance. Opp is a
28 corrupt contractor who bribed a public official to line his own pockets with inflated profits on taxpayer-

1 funded contracts. The 18 U.S.C. § 3553(a) factors support the recommended 45-month sentence.

2 **A. The Nature and Circumstances of the Offense.**

3 Public corruption and bribery are serious threats to society that endanger the proper functioning
 4 of government institutions and the free market economy. First, the briber deprives the government
 5 institution of the loyalty of its employee. The government relies on its employees to be trustworthy
 6 stewards of public funds, and bribery destroys that reliance. Second, bribery can cause the public at
 7 large to lose trust in government institutions. “The harm done [by bribery] is intangible, but real
 8 enough: the undermining of public confidence, the loss of respect for and pride in our institutions.”
 9 *United States v. Morales*, 11 F.3d 915, 922 (9th Cir. 1993) (O’Scannlain, J., concurring in part). As the
 10 Supreme Court stated in *United States v. Mississippi Valley Generating Company*, in considering a
 11 government-contracting conflict-of-interest statute, “[t]he statute is directed at an evil which endangers
 12 the very fabric of a democratic society, for a democracy is effective only if the people have faith in those
 13 who govern, and that faith is bound to be shattered when high officials and their appointees engage in
 14 activities which arouse suspicions of malfeasance and corruption.” 364 U.S. 520, 562 (1961). Third,
 15 bribery in government contracting, like here, can cause tangible financial loss to the government
 16 institution and taxpayers because the government institution paid more than it should have for public
 17 works projects. When Opp bribed Yong and engaged in the bid-rigging scheme, he deprived Caltrans of
 18 the loyalty of its employee, risked harm to the public’s trust in government contracting, and caused
 19 Caltrans a pecuniary loss.

20 In Opp’s case, the sheer magnitude of the bribery is significant. \$797,940.73 is a significant sum
 21 of money. Opp had a key role in operating the scheme and in coordinating bribes to Yong. It is also
 22 noteworthy that the bribes were in connection to relatively small contracts—most below \$314,000 in
 23 value—but there were many such contracts. Opp, Miller, Yong, and others engaged in a longstanding
 24 scheme, covering dozens of contracts, and the bribes added up during over three years of Opp’s
 25 involvement. This was not a one-time mistake. At various points, Opp made important choices to
 26 perpetuate the conspiracy, including creating a second contracting company to submit sham bids and
 27 personally delivering a bribe payment to Yong. The length and breadth of Opp’s conduct fully warrants
 28 a 45-month custodial sentence.

B. The History and Characteristics of the Defendant.

Opp's own choices and avarice led him to knowingly join and perpetuate the bribery and bid-rigging scheme. Opp grew up in a stable and supportive family environment and graduated from college. *See* PSR (Dkt. 18) at 10-11. Opp has been licensed as a general contractor for decades and was earning a six-figure income immediately prior to joining the conspiracy. *Id.* at 12. Opp knew how to make an honest living through his construction work. 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 45-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 Opp 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, partly due to the very pervasiveness of the scheme that Opp was involved in. In this case, Opp bribed Yong over a significant period of time and the amount of the bribes was very significant. Nearly \$800,000 in bribes over more than three years puts this case in a unique position.

V. CONCLUSION

Opp'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 45 months in prison, two years supervised release, and a \$200 special assessment, and order restitution in the amount of \$797,940.73 (jointly and severally with Miller and Yong).

Dated: April 17, 2023

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Dated: April 17, 2023

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