

165. Ms. [redacted] told investigators there usually is an overcharge of up to 30% above ABC on internationally-funded projects.¹⁶⁸

166. According to Ms. [redacted], her company had submitted bids under the syndicate arrangement about ten times, winning contracts on occasion under Asian Development Bank (ADB) funding.¹⁶⁹

167. Ms. [redacted] said her company bid high on packages 1.4A and 1.4C as well – the former because it was not interested in the package, and the latter because [redacted] had been so instructed by the syndicate.¹⁷⁰

168. Ms. [redacted] said actual interactions with the other companies and the politicians were conducted by her father and/or husband. She did not know Tito Miranda or Boy Belleza.¹⁷¹

b.

169. [redacted], bidding by itself, was disqualified in the second round of bidding on package 1.4B and the bidding for package 1.6A. In joint ventures, [redacted] c was disqualified in the first round of 1.4B and the second round of 1.6; qualified but withdrew in the first round of 1.6; and qualified but submitted an invalid bid in the third round of 1.4B. The company also failed to prequalify in bids for packages 1.4A and 1.4C.¹⁷²

170. Investigators interviewed [redacted], who owns [redacted].¹⁷³

i. General Description of Syndicate Operations

171. Mr. [redacted] said that traditionally, contractors in Philippine construction projects would obtain the ABC for a package by bribing individuals within the agency. The bidders would then coordinate which contractor would win the bid.¹⁷⁴

172. Mr. [redacted] said that this system has changed, and in many instances now, politicians organize the bidding. Contractors engage in a sort of auction, where the contractor willing to pay the largest bribe can win the politicians' support. The politicians then work to ensure that the "winning" contractor wins the contract.¹⁷⁵

173. Currently, Mr. [redacted] told investigators, in large government contracts, the process is completely fixed. Prices are determined, and winners and losers are determined, before the bidding even takes place. He said this was true of the majority of all public works projects in the Philippines.¹⁷⁶

174. Mr. [redacted] said everyone cooperates with this collusive scheme, because they are scared. They know they have to cooperate. He said bidders who do not cooperate are subject to elimination from bidding in future contracts.¹⁷⁷

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175. Mr. [redacted] noted his first-hand experience with this system. He said when a recent project was announced, he approached a local politician, to see if the politician would support Mr. [redacted]'s company in the bid. The politician agreed to support Mr. [redacted], on the "usual" understanding that he would be paid by the company when it received its advance payment under the contract (the "SOP" payment). But after the pre-qualifications, the politician was approached by a Chinese company which undercut Mr. [redacted] by paying the politician the "SOP" payment in advance, thereby transferring the politician's support from Mr. [redacted]'s company to the Chinese company.¹⁷⁸

176. Mr. [redacted] said that usually there are in fact two politicians involved – the politician whose area is hosting or affected by the contract, and the politician who controls the implementing agency (in this case, DPWH).¹⁷⁹

177. Mr. [redacted]'s company had been rejected at the prequalification stage in the first round of IAB because of a determination that it could not supply the proper quantity or quality of cement. This explanation, Mr. [redacted] told investigators, was merely a pretext used to exclude the company from the bid collusion that was to be formalized by the other bidders.¹⁸⁰

178. Pre-qualification, Mr. [redacted] said, is based on whom you know, not experience. In order to pre-qualify to bid on contracts, the company has to be close to certain government

officials and politicians. If the company does not cooperate with these officials, they can "kick you out."¹⁸¹

179. Mr. [redacted] said sometimes the syndicate agrees to let a small contractor be prequalified, "for strategic reasons." He did not elaborate on this statement.¹⁸²

180. Mr. [redacted] explained that the syndicate gives losing bidders a number for which they have to aim in preparing their bids; this number is designed to ensure that the selected bidder wins the award. The bidders then adjust aspects of their bids to achieve the desired figure. According to Mr. [redacted], the big quantities are the easiest to manipulate, but care must be given to make the bid look real.¹⁸³

181. Losing bidders were previously paid off by the winning bidder, who would usually provide them with 3% of the advance payment, which they would share between themselves. This amount would exceed the costs incurred by losing bidders in preparing their bid documents. The politicians would then receive their SOP monies from the same advance payment.¹⁸⁴

182. In recent days, Mr. [redacted] said, this payoff process has changed. (He did not specify exactly when.) Now, a percentage of the advance payment goes to the syndicate leaders, who split the payment 50/50 between the politicians and the arrangers (who pay off the losing

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companies). Mr. _____ understands the total payoff to equal between 15-20% of the total value of the contract.¹⁸⁵

183. Mr. _____ said all payments are made in cash, and that his company's books do not reflect any of these payments in any event, because the books are faked to avoid taxes.¹⁸⁶

184. Mr. _____ said Mr. Miranda and Mr. Belleza both actively work to manipulate bidding. Mr. _____ said that Mr. de Luna is "behind" Mr. Miranda, and the husband of Philippine President Gloria Arroyo, First Gentleman Mike Arroyo, is "behind" Mr. de Luna. Mr.

_____ said Mr. de Luna takes an active role in arranging collusive bid schemes on behalf of contractors and politicians. Mr. _____ said Senator Robert Z. Barbers (now deceased) was very active in using his influence to further the collusive bid schemes.¹⁸⁷

185. Mr. _____ said that the Secretary of the DPWH (at the time of the interview, Mr. Soriquez) exercises a very large influence on the schemes and ensures their success.¹⁸⁸

186. Mr. _____ said the colluders' meetings take place in different places, which change frequently. Meetings used to happen at the Diamond Hotel in Manila, but also now occur elsewhere. Mr. _____ said he attended a meeting two weeks before the interview (i.e., in

early November 2006) at the Diamond Hotel, to fix the bidding in a project financed by the Japan Bank for International Cooperation (JBIC).¹⁸⁹

187. Mr. [redacted] said normally, companies recoup the monies they have to spend in SOP by increasing the price of the contract. This is accomplished by either having change orders (or variations) agreed upon, or by having the budget for the contract increased by the government.

Mr. [redacted] said the fact that contract budgets are increased by the government in order to accommodate the SOP underscores how influential the syndicate is.¹⁹⁰

ii. Specific Instances of Bid-Rigging on Bank Contracts

188. With respect to the first round of bidding on package 1.6, for which [redacted] pre-qualified but withdrew, investigators asked Mr. [redacted] why he withdrew. He said that a collusive arrangement had been agreed to, and was in effect, in that tender. "All bids are fixed," he said. Mr. [redacted] told investigators that his joint venture was a designated loser in the scheme, and that the company did not have the time to put together a bid on a package when they knew it would be unsuccessful. Mr. [redacted] said that such a response from designated losers is not uncommon.¹⁹¹

189. With respect to the third round of bidding on package 1.4B, in which [redacted] submitted a joint bid with [redacted] and [redacted] (which was later rejected), Mr. [redacted] admitted that the bid was part of a collusive scheme.¹⁹²

190. Mr. [redacted] told investigators that prior to the preparation of the bid, he had a telephone conversation with [redacted], the Vice President for Business Development of [redacted]. Mr. [redacted] informed Mr. [redacted] that he had received the bidding price from the "arrangers," and that he would prepare the bid to reach the pre-determined price. Mr. [redacted] understood that the bid was not going to win, and was not prepared in order to win the contract.¹⁹³

191. Mr. [redacted] said the bid was prepared and submitted by Mr. [redacted] on behalf of the joint venture. Mr. [redacted] said the failure of the bid to pass review (due to nonconforming bid securities) was a mistake on the part of [redacted]; that company had erred by obtaining the bid security in its name alone, rather than in the name of the joint venture.¹⁹⁴

192. Mr. [redacted] admitted to collusion on a World Bank-funded contract in Zamboanga province. He said because the contract was resubmitted to bid, he did not need to pay SOP, because such payments are contingent on winning the contract.¹⁹⁵

c.

219. [redacted], in a joint venture with [redacted], was disqualified in the first round of 1.4B and 1.6. [redacted] was then disqualified again, by itself, in the second round of bidding for both packages.

220. Investigators interviewed, among others, Mr. [redacted], the General Manager of [redacted]'s Manila branch office.

221. According to Mr. [redacted] Mr. [redacted] had participated in "arrangements" with top government officials and government contractors to fix contract tendering processes. Mr. [redacted] said he is unwilling to participate in such arrangements, and therefore [redacted] has no hope of winning Bank-funded contracts.²²¹

222. Mr. [redacted] said the DPWH rejection of his company's application for prequalification in 1.6 was "suspicious," and that some minor excuse was utilized by the government to support its decision.²²²

223. Mr. [redacted] identified Mr. Belleza and Mr. Miranda as agents and messengers for the government officials who arranged the bid-rigging.²²³

224. Mr. [redacted] told investigators he was told to form a relationship with EC de Luna if he wanted a contract, because of Mr. de Luna's connections to Mike Arroyo. Mr. [redacted] said he understood Mr. de Luna's connection to Mr. Arroyo was through Mr. de Luna's father-in-law.²²⁴ (INI has not been able to identify Mr. de Luna's father-in-law.)

225. Mr. [redacted] told Mr. [redacted] he had bid with Mr. de Luna to take advantage of Mr. de Luna's connections. Mr. [redacted] refused to team up with Mr. de Luna.²²⁵

226. Mr. [redacted] said he had not personally participated in any of the "arrangements," nor had he been solicited to participate in them. He said his knowledge was based entirely on his discussions with Mr. [redacted], and on "rumors."²²⁶

f.

227. [redacted] bid unsuccessfully in the first round of bidding on package LAB. It failed to prequalify in the second and third rounds of bidding for both packages.

228. Investigators interviewed Mr. [redacted], CEO and General Manager of [redacted]'s Manila branch, and Mr. [redacted], the branch's Chief Engineer.

229. Mr. [redacted] said before a contract was bid, Mr. Belleza would tell [redacted] a contractor was interested in the contract, implying that [redacted] would lose if it submitted a bid; in

others – deviated widely from the ABC. The fifteen losing bids were more than 20% over ABC; ten of these were more than 30% over.²⁵³

k.

259. [redacted] is a Japanese company headquartered in [redacted] prefecture, Japan. Its annual revenue is about one billion yen (US\$8.5 million). Investigators interviewed

260. [redacted] purportedly placed a bid in the first round on both package 1.4B and package 1.6. Mr. [redacted], however, said that the company had not placed a bid on either contract, and in fact had left the Philippines in 2002.²⁵⁴

261. Regarding the bid documents, Mr. [redacted] claimed not to know who prepared them or that they were submitted, and said that his signature on each page in Chinese characters was forged.²⁵⁵

262. Mr. [redacted] said that on at least one occasion while in the Philippines he met with Senator Barber and Mr. Arroyo. Mr. [redacted] had no direct contact with President Arroyo.²⁵⁷

263. Mr. [redacted] stated that Senator Barbers and Mr. Arroyo "first discussed bribes" and that they had a "rough approach." Mr. [redacted] stated he "learned that money was important to do business in the Philippines," which was a "fundamental difference in the way of thinking."²⁵⁸

264. Mr. [redacted], [redacted]'s agent at the time, said [redacted] would have to pay to get a contract. Mr. [redacted] also said dollars would resolve any problems with the World Bank.²⁵⁹

265. Mr. [redacted] said he met with Mr. [redacted] in 2001 at the Diamond Hotel, with policemen and public officials, and "Lito" Miranda. The group discussed payments. Mr. [redacted] said he thought Mr. Miranda was a secretary to Senator Barbers; Mr. Miranda asked Mr. [redacted] to pay the cost of a trip to Japan for Senator Barbers, and Mr. [redacted] refused.²⁶⁰

266. On another occasion, in a meeting with Senator Barbers, Mr. [redacted] said it had been made clear to him that there would be no business in the Philippines without paying money. Money would have to be paid as high up as the president, senior government officials and politicians in order to do any further business in the country. To win a contract it would also be necessary to pay the head of the bureau and politicians several million yen (several tens of thousands of US dollars).²⁶¹

2. Confidential Witnesses

272. The detailed testimony of collusion and corruption provided by non-confidential witnesses was buttressed by other witnesses who requested confidentiality out of a fear of retribution.

a. CW01

273. Investigators interviewed CW01, a former government official with personal knowledge of the DPWH bid process. CW01 requested that his identity remain confidential.²⁶⁷

274. CW01 expressed concern over collusion in the bidding processes for road projects, and stated that the primary "arrangers" or "facilitators" of the collusion included:

- a. contractor Eduardo de Luna (of EC de Luna). CW01 said Mr. de Luna was "masterminding" bids, is close to Mike Arroyo (husband of President Gloria Arroyo), and is a go-between for Mr. Arroyo on foreign assisted projects; and
- b. DPWH staff member "Boy" Belleza, whom CW01 described as a long-time "arranger" dating back to the Marcos regime. CW01 said Mr. Belleza had been barred for a time from the DPWH offices.²⁶⁸

275. CW01 named multiple Congressmen and Senators who had taken bribes, including former Senator Barbero.²⁶⁹

276. According to CW01, members of the DPWH who have taken bribes include: former Secretary Florante Soriquez (who is close to Mr. Arroyo and Mr. de Luna) and Project Director Lope Adriano.²⁷⁰

277. CW01 knew details of the operations of the cartel, and echoed others in stating that this process was known as the "Standard Operating Procedure." First, a Congressman would appoint the winner prior to the bidding by identifying the winner to the District Engineer. The Congressman will tell the District Engineer, "this is my man."²⁷¹

278. CW01 said contractors pay 15-20% of the contract to the Congressman who sponsors them, either up front or progressively through the various stages of a project.²⁷²

279. CW01 said the winning bidder gives the losing bidders 1-3% of the contract value; government officials share in another 2-3%. BAC members also sometimes take money in exchange for *not* forwarding bids to the central office.²⁷³

280. CW01 stated that the ABC can also be "padded" by engineers who are paid to increase required quantities and thus manipulate contract specifications to increase the price.²⁷⁴

281. CW01 also said contractors take shortcuts in the execution of contracts to cover these various costs; according to CW01, DPWH loses between 15-27% on each contract, not including up to 20% in unnecessary costs added to projects.²⁷⁵

282. In essence, CW01 said, the bidding process is "a sham." The only contractors who get contracts are the ones who comply with the system.²⁷⁶

318. CW04 said the winner paid off politicians for election campaign funds, and paid direct bribes to senior DPWH officials. He provided documentary evidence of some of these payments.³¹³

319. CW04 explained that, to avoid bookkeeping problems, CW04 obtained fake receipts to balance out any payment discrepancies. The books were prepared by a certified public accountant, and were sent to CW04's head office without any supporting details. Moreover, he said, CW04's submissions to the Philippine Bureau of Internal Revenue ("BIR") did not necessarily reflect the company's true financial condition, as CW04 was also bribing officials of the BIR.³¹⁴

320. In a follow up interview with investigators, CW04 identified an additional World Bank-financed project manipulated by the cartel.³¹⁵

e. CW05

321. CW05 participated in bidding on these contracts.

322. CW05 began his interview by noting that he is afraid for his safety if he speaks about Mr. de Luna; he asked the Bank to protect him.³¹⁶

323. CW05 said it has become difficult to do business in the Philippines. In the last three or four years, he said, politicians have gotten involved in the construction business; they ask for money, and his company does not want to pay it.³¹⁷

324. CW05, just as CW03 and Mr. [REDACTED] had, described corruption in Philippine road projects as an "open secret." "Everyone knows the situation in the Philippines but no one wants to talk about it because they have to survive."³¹⁸

325. CW05 commended the Bank for its rejection of the bid results in the 1.4B and 1.6 contract packages. He said this rejection showed the Bank understood how corruption had infected the bids.³¹⁹

326. CW05 said Tito Miranda, DPWH Region IV-A Assistant Director, is close with both Mr. de Luna and important politicians. CW05 said that Mr. de Luna appears to have connections with the police, within the agencies and with the first family.³²⁰

327. CW05 said under the syndicate system, contractors are to inform Mr. Miranda of their interest in a contract. CW05 said contractors cannot say no to Mr. Miranda, and he noted that a contractor in North Luzon was shot in the mid-1990's because he would not go along with the syndicate.³²¹

328. CW05 told investigators a bid may be inflated up to 30% if the bidder has the support of government officials and is willing to pay what he characterized as "expenses."³²²

329. CW05 said companies sometimes withdraw from bidding because they hear the bids are rigged, and they feel any bid under those circumstances is hopeless.³²³

inflation appears to be largely consistent with that of other witnesses, as well as the bid data itself.

2.

a. Third Round of Bidding, 1.4B and 1.6

427. On August 1, 2006 – seven days before bids were to be submitted and opened in the third round for the 1.4B, 1.6A, and 1.6B contract packages – Bank investigator _____ received an e-mail from the address _____. The author did not identify himself, except as “one of the bidder[s].” He noted that he was writing in reference to the 1.4B, 1.6A and 1.6B bid processes.⁴²⁴

428. In the e-mail, _____ wrote:

As one of the bidder[s], we strongly feel there is no level play fair in the Philippines, although we are the first time join the bid, we heard previously two times bidding for the projects were fail because of indecent rigging in the bidding. [A] so called company EC DELUNA is control most of the bidding in DPWH . . . although third time they are doing more secretly, but the way they act the same as before. Under the control of EC DELUNA, the projects assigned to three different companies by pre-arrange respectively, they are CHINA GEO for 1.4B, CHINA ROAD for 1.6A, and CHINA WUYI for 1.6B.

Right now the three companies is distribute the bid price, hope world bank will closely monitor and interval [sic] the inappropriate competition. And ensure the bid will be right, fair, and open.⁴²⁵

429. The same day, Mr. [redacted] responded, seeking more information from [redacted].⁴²⁶

On August 3, 2006, [redacted] wrote back:

I would like to report to you the latest move of EC DELUNA, this days they are busy in raising the project ABC and force other contractors give to China Geo in 1.4B, CHINA ROAD in 1.6A and CHINA WUYI in 1.6B, they use the name of first gentleman and local politain like congressman PARAS in [Negros] and congressman PICHY in [Surigao]. if the contractors dont want to coordinate with them, they will blacklist you, or they will disqualify you always.⁴²⁷

430. A back-and-forth correspondence followed.⁴²⁸ On August 5, 2006, [redacted] wrote:

they already fix everyone, the ABC adjusted (higher than 10-15% original agency estimate), contractors arranged, SOP [divided] (FG 5%, local polit[ician] 5-6%, contractors 3% and some other expenses), the bid price already allocated to different bidders, the bid price of the three companies will be 15% higher than the new ABC. Other bidders will be 30% higher than adjusted ABC.⁴²⁹

431. In the early morning of August 8, [redacted] wrote again:

[Y]ou know it is very dangerous for me to discuss with you without any protection, as a contractor, I still need to work here and also i have to treasure my life since my family is here, please understand my position, and [investigate] the fraud bid. . .

By the way, the three [predetermined] winner[s] have bid check in manila Hyatt hotel start from Jan.⁴³⁰

432. Later that morning, the bids were submitted and opened. The winners were, as [redacted] had predicted:

- a. China Geo in 1.4B (which bid 15.6% over the ABC);
- b. China Road in 1.6A (which bid 13.4% over the ABC); and
- c. China Wu Yi in 1.6B (which bid 16.9% over the ABC).⁴³¹

433. The other qualifying bidders on these packages bid in the following ranges:

- a. The other 1.4B bidders ranged from 20 to 22% over the ABC;
- b. The other 1.6A bidders ranged from 30% to 41% over the ABC (30 to 40% when corrected); and
- c. The other 1.6B bidders ranged from 36% to 42% over the ABC.⁴³²

434. On August 9, [redacted] e-mailed again, noting: "the corruption involvement in this bidding is extensively from FG [i.e., the First Gentleman, Mr. Arroyo], congressmen to DPWH officer and contractors. no one have the ability to stop it."⁴³³

435. Efforts by investigators to meet personally with [redacted] were unsuccessful.

b. Bidding on 1.4A.1

436. On November 6, 2006, [redacted] again e-mailed [redacted] with reference to bidding scheduled for the following day in Manila. He wrote: