

SIDEBAR 1

The Confidential Witnesses:

Note from the PCIJ: *Apart from the 54 witnesses identified in the “Record of Interviews” of the World Bank's Department of Institutional Integrity (INT), seven other persons testified on the alleged fraud and collusion in the National Road Improvement and Management Program-1 (NRIMP-1), The INT's report refers to them as the CWs or Confidential Witnesses. Their full testimonies follow:*

Confidential Witness No.1 (CW01):

“A former government official with personal knowledge of the DPWH bid process. CW01 requested that his identity remain confidential. CW01 expressed concern over collusion in the bidding for said projects, and stated that the primary 'arrangers' or 'facilitators' of the collusion included: a. contractor Eduardo de Luna (who)... was 'masterminding' bids, is close to Mike Arroyo (husband of President Gloria Macapagal Arroyo) and is a go-between for Mr Arroyo on foreign-assisted projects; and b. DPWH staffmember '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.”

“CW01 named multiple Congressmen and Senators who had taken bribes, including former Senator Barbers. 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.”

“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 anoint a winner prior to the bidding by identifying the winner to the District Engineer. The Congressman will tell the District Engineer, 'This is my Man.’”

“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.”

“CW01 said the winning bidder gives the losing bidders 1.5% of the contract value; government officials share in another 2-3%; BAC (bid and awards committee) members also sometimes take money in exchange for **not** forwarding bids to the central office.”

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

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

“In essence, CW01 said the bidding process is 'a sham.' The only contractors who get contracts are the ones who comply with the system.”

Confidential Witness No. 2 (CW02):

“...another government official with knowledge of the process asked that his identity remain confidential. He noted that witnesses had received threats related to the investigation.”

“Stated that DPWH staff, in particular Mr. Soriquez, would not move on the approval of a contract until a contractor pays them 5% for the approval. CW02 was aware of the 'SOP.’”

“He said contractors have told him that politicians, district engineers, BAC members, losing bidders, and the media are paid under the SOP. He said politicians in the provinces sometimes interfere with the bid award process if they have friends who want to bid; the politicians insist that their friends win.”

“CW02 said Boy Belleza is in charge of arranging the bids and prices for the losing bidder, and Tito Miranda is the arranger for locally-funded projects.”

“CW02 also identified multiple areas where the bid process was subject to manipulation, noting that (a) the ABC is sometimes padded and calls for more work and supplies than are needed; (b) contractors can shift their bids up as much as 30%, citing the danger of currency fluctuations; and c) contractors can obtain contract variations in order to increase their profits and recoup early losses; these variations can double the price of the contract.”

Confidential Witness No. 3 (CW03):

“CW03, a manager in the Philippines office of a foreign firm, participated in the bidding at issue here. CW03 insisted several times during his interview that his identity remain confidential.”

“CW03 told investigators that bids on public construction contracts are prearranged, the bid rigging is an “open secret,” everyone knows about it, and all contractors must participate to get work. He said every layer of the system is corrupt, and all details for the bid documents are prearranged.”

“CW03 said the bid-rigging system is present on contracts with the National Irrigation Administration, the Department of Transportation and Communications, and the Department of Environment and Natural Resources, as well as with the DPWH.”

“Based on his own personal interactions and involvement in the syndicate, CW03 named a number of other companies involved in the collusion. They include Hanjin, China State, Daelim, and Cavite Ideal. CW03 said Cavite Ideal is ‘famous’ for working with the syndicate, and that China State is a ‘very strong, big payer’.”

“CW03 said some companies meet to discuss bids and other issues on a regular basis. Government officials, according to CW03, act as ‘mediators,’ arranging the collusive pricing. ‘Mediators’ assign prices to the losing bidders for submission on the fraudulent bid documents. CW03 named Mr. Belleza and Mr. Miranda of DPWH as mediators; he specifically noted Mr. Belleza’s involvement in the 1.4B and 1.6 packages.”

“CW03 said mediators hold meetings at the Diamond Hotel near DPWH, before each contract goes out to bid. He told investigators that normally, all prequalified bidders attend these meetings. (He said the prequalification process itself is sometimes prearranged.) The mediator discloses the approximate budget amount to the contractors, and asks who is interested in the contracts.”

“Through private follow-up meetings with the interested contractors, the mediators decide on the winner – i.e., the company promises the largest kickbacks. The mediators assign prices to the losing bidders, and check colluders’ bids just before submission to be sure they are 'correct.' The winner gets the contract, and support from local politicians, in exchange for the promised payments.”

“Contractors make payments on the bidding date, on the award date, and when they receive payments under the contract. CW03 told investigators he knew about these matters first hand.”

“CW03 noted that the ABC is widely known by bidders. He told investigators that contractors typically add between 20% and 28% to the ABC.”

“CW03 told investigators that each percentage point added to the ABC and dedicated to a corrupt payment is known as a 'share.' The apportionment of shares typically is as follows:

1. the BAC members each receive one share;
2. the BAC Chairman receives one extra share;
3. the DPWH Legal Department receives one share;
4. relevant NGOs or local media receive one share (as payoff to avoid publicity);
5. the mediator receives one share;
6. four to five shares go to the Project Management Office (PMO); and
7. three to five shares are divided among the losing bidders.

“Thus typically between 17 and 20 shares must be allocated to the cartel’s various facilitators.”

“CW03 said contractors know they can add 25% to the ABC and the World Bank will approve the contract. So the winning bidder typically bids 24% higher than the ABC, and the losers bid higher than that.”

“CW03 said work suffers because of the bribes; contractors cut back on implementation, and simply pay off inspectors with food, lodging, and pocket money. CW03 also stated that corruption is “a way of life” in the Philippines. He predicted that even if solid evidence were to be provided, the government would do nothing to remedy the problem.”

Confidential Witness No. 4 (CW04):

“CW04, another foreign firm, has also participated in DPWH bidding. CW04 agreed to provide information only on grounds that it be treated confidentially. Investigators interviewed CW04A and CW04B, both officials in CW04’s manila office.”

“*General Description of Syndicate Operations.* CW04 told investigators, ‘(If) you have a project with DPWH, you have to give.’ CW04 said that the syndicate operates on a ‘gentlemen’s agreement,’ and it is understood in the syndicate that those who violate it will be excluded from future pre qualifications and will not win further contracts.”

“According to CW04, 'coordinators' – among them the winning contractors – arrange the prices at which losing bidders will bid. CW04 identified Mr. Belleza, (the DPWH Region 1V-A Assistant Director), and another DPWH official as coordinating the collusion for DPWH. They have networks of collaborating officials in all PMOs (i.e., PMOs for JBIC, ADB, and World Bank projects).”

“CW04 showed investigators a chart which outlined payments made and due to each of the

colluding contractors, as well as the amounts of their bids. Both individuals said the BAC is involved in the bid-rigging, but they do not know what share it receives, because payments to the BAC are handled by the contractors. Both said the payments would be distributed once the contract was awarded.”

“*Bid-Rigging on the 1.4B and 1.6 Contract Packages*, CW04 said companies sometimes pay a small amount to be prequalified. He said bribes and kickbacks paid by CW04 are hidden in financial reports under vague expense lines. He provided INT with a copy of an example record of payments to a DPWH official.”

“CW04 said contractors were engaged in negotiations with one another. CW04 said that in at least one of the bidding rounds, the company that was designated by the cartel to be the winner thereafter arranged the bids. CW04 confirmed that CW04 had placed bids that were ‘not meant to win’ because another company already had been designated to be the winner of the contract package. They nonetheless tried to demonstrate participation, in hopes of gaining future contracts.”

“CW04 explained that CW04 had been provided a ‘lump sum’ price to bid by a coordinator. He said he then had to ‘jack up’ the other items in the bid to meet the lump sum.”

“CW04 said the Bill of Quantities in CW04’s bids is obviously inflated by at least 20 to 25%. The choice of how to inflate the prices to meet the requested sum was not imposed by the syndicate but was left to each contractor.”

“*Other Contracts*. CW04 showed investigators other corporate records concerning cartel payments in other contracts. According to cartel procedure, the designated winning bidder was responsible for paying out a portion of the ABC to the losing bidders.”

“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.”

“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.”

“In a follow-up interview with investigators, CW04 identified an additional World Bank financial project manipulated by the cartel.”

Confidential Witness No. 5 (CW05):

“CW05 participated in bidding on these contracts. 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.”

“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.”

“CW05, just as CW03 and Mr Liu of China Harbour 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.’”

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

“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.”

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

“CW05 told investigators a bid may be inflated up to 50% if the bidder has the support of government officials and is willing to pay what he characterized as 'expenses.’”

“CW05 said companies sometimes withdraw from bidding because they hear the bids are rigged, and they feel a bid under these circumstances is hopeless.”

Confidential Witness No. 6 (CW06):

“CW06 participated in bidding on these contract packages. CW06 noted that he feared repercussions if his cooperation were to become known.”

“CW06 told investigators that Eduardo de Luna was managing the 1.4B and 1.6 contract packages, as well as the NRIMP 1.4A, 1.4C and 1.5 contract packages. He stated that Mr de Luna claimed to be able to arrange for companies to win any of the contracts for a fee.”

“CW06 said politicians were involved in the bid-rigging on Bank projects, and he identified particular individuals.”

Confidential Witness No. 7 (CW07):

“CW07 is a former employee of a DPWH contractor. CW07 agreed to speak only on conditions of anonymity.”

“CW07 told investigators that one of his employer's contracts had been prearranged by a DPWH employee.”

“CW07 said that for a given contract, the 'matchmaker,' who was in charge of arranging the bidders, would ask contractors if they were interested in a particular project. During a subsequent follow-up meeting, the arranged winner would negotiate the markup necessary, and arrange the payments of the bribes and kickbacks to government officials.”

“According to CW07, under the bid-rigging system, 'silent guidelines' are followed which direct the amounts of payoffs to which losing bidders in the cartel are entitled. Under these guidelines, the winner would set aside 3% of the ABC for the participating pre-qualifying and losing bidders to share.”

“CW07 told investigators that losing bidders are told the price they are to bid one day before the bid documents are to be submitted. The arrangers check the losing bidders' prices immediately before

submission to make sure they are 'correct.' CW07 said 'divers' can avoid the prearranged bidding by bidding lower than the others but they will be punished for it by the syndicate.”

“CW07 said that his company has placed bids for contract packages that it had no intention of winning. CW07 said his company received the bid price from the 'arranger.' His company then marked up the price computations to meet the arranged total bid price.”

“CW07 also acknowledged other kickbacks his company paid to the DPWH. He told investigators that he was approached by one senior DPWH official who demanded a kickback in connection with an ongoing contract. CW07 said he 'couldn't say no' and admitted that he paid off the official.”

“CW07 said the headquarters offices of some foreign companies know generally about the bid-rigging system in the Philippines, but prefer not to hear the details.” - *PCIJ, 2009*