

1 Michael R. Spaan
2 U.S. Attorney
3 Federal Building and United States Courthouse
4 Room C-252, Mail Box 9
5 701 C Street
6 Anchorage, Alaska 99513

7 Edward D. Eliasberg, Jr.
8 Carolyn L. Davis,
9 United States Department of Justice
10 10th & Pennsylvania Ave., N.W.
11 Washington, D. C. 20530
12 Telephone: (202) 633-2582
13 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ALASKA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,

13 v.

14 ALASKA BOARD OF REGISTRATION
15 FOR ARCHITECTS, ENGINEERS,
16 AND LAND SURVEYORS,

17 Defendant.

Civil No. A 82-423-CIV

COMPETITIVE IMPACT
STATEMENT

Filed: November 18, 1983

18 Pursuant to Section 2(b) of the Antitrust Procedures and
19 Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits
20 this Competitive Impact Statement relating to the proposed
21 Final Judgment submitted for entry in this civil antitrust
22 proceeding.

1.

NATURE AND PURPOSE OF THE PROCEEDING

23 On October 12, 1982, the United States filed a civil
24 antitrust complaint alleging that, in violation of Section 1 of
25 the Sherman Act, 15 U.S.C. § 1, defendant Alaska Board of
26 Registration for Architects, Engineers and Land Surveyors
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1 ("Board") and co-conspirators have been engaged in a
2 combination and conspiracy to restrain competition in the sale
3 of architectural, professional engineering, and land surveying
4 services in Alaska.

5 The Complaint alleged that the substantial terms of this
6 agreement, understanding, and concert of action have been and
7 are that the Board promulgate, adopt, publish and distribute a
8 provision in its Rules of Professional Conduct, 12 Alaska
9 Administrative Code 36.230(b) ("Rule 36.230(b)" or "Rule"),
10 prohibiting Board certificate of registration holders and other
11 architects, professional engineers and land surveyors
12 practicing in Alaska from knowingly soliciting or submitting
13 proposals for professional services on the basis of competitive
14 bidding. The Complaint further alleged that the effect of the
15 conspiracy has been to suppress and eliminate competition in
16 the sale of architectural, professional engineering, and land
17 surveying services in Alaska.

18 The relief sought in the Complaint was that the Board be
19 required to cancel its ban on competitive bidding and every
20 other resolution or statement of policy which has as its
21 purpose or effect the suppression or elimination of competitive
22 bidding by Board certificate of registration holders. The
23 Complaint also asked that the Board be enjoined from adopting
24 or suggesting any rule prohibiting competitive bidding or any
25 practice, plan, program or device having a similar purpose or
26 effect. The Complaint further asked that the Board be required
27 to notify all holders of Board certificates of registration,
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1 Alaska city, borough, and state officials, and the general
2 public of the rule change.

3 Entry of the proposed Final Judgment will terminate the
4 action, except that the Court will retain jurisdiction over the
5 matter for further proceedings which may be required to
6 interpret, enforce or modify the Judgment, or to punish
7 violations of any of its provisions.

8 II.

9 DESCRIPTION OF PRACTICES INVOLVED IN 10 THE ALLEGED VIOLATION

11 Defendant is a state licensing board consisting entirely of
12 architects, engineers, and land surveyors who are also private
13 practitioners. Under Alaska law, individuals may not practice
14 or offer to practice the profession of architecture,
15 professional engineering, or land surveying unless they hold a
16 current certificate of registration from the Board to practice
17 architecture, professional engineering, or land surveying.

18 In 1974, the Board adopted "Rules of Professional Conduct"
19 intended to regulate the practice of architecture, professional
20 engineering, and land surveying in Alaska. The Board can
21 suspend, refuse to renew, or revoke the certificate of
22 registration of any certificate of registration holder who
23 violates any of the Board's Rules of Professional Conduct.

24 Among the Rules which the Board adopted in 1974 is
25 Rule 36.230(b), which provides that an architect, professional
26 engineer, or land surveyor may not knowingly solicit or submit
27 proposals for professional services on the basis of competitive
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1 bidding. This Rule is still in effect. In December, 1980, the
2 Board voted to retain Rule 36.230(b) despite the recommendation
3 of the Alaska Attorney General that it be repealed. In May
4 1982, the Board refused to repeal the rule on an emergency
5 basis. In September 1982, the Board voted to retain the Rule.

6 Had this case gone to trial, the United States would have
7 offered evidence to show that the Rule has had an adverse
8 impact on consumers of architectural, engineering and land sur-
9 veying services in Alaska by restricting practitioners' ability
10 to compete and thereby raising prices. As a result of the
11 Board's ban on competitive bidding, certificate of registration
12 holders have refused to submit competitive bids although pur-
13 chasers have requested such bids, and architectural, profes-
14 sional engineering, and land surveying associations have made
15 reference to the ban in an attempt to discourage purchasers in
16 Alaska from requesting or insisting upon competitive bids. Had
17 this case gone to trial, the Government would also have adduced
18 evidence that the Board informed potential purchasers that
19 competitive bidding was in violation of its Rules and took
20 other steps to ensure compliance with its Rules.

21 III.

22 EXPLANATION OF THE PROPOSED
23 FINAL JUDGMENT

24 The United States and the Board have stipulated that the
25 Court may enter the proposed Final Judgment after compliance
26 with the Antitrust Procedures and Penalties Act, 15 U.S.C.
27 § 16(b)-(h). The proposed Final Judgment provides that its
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1 entry does not constitute any evidence against or admission by
2 either party with respect to any issue of fact or law.

3 Under the provisions of Section 2(e) of the Antitrust
4 Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed
5 Final Judgment may not be entered unless the Court finds that
6 entry is in the public interest. Section XIII of the proposed
7 Final Judgment sets forth such a finding.

8 The proposed Final Judgment is intended to ensure that the
9 Board completely eliminates all formal or informal rules,
10 policy statements, or ethical codes proscribing or discouraging
11 competitive bidding. It is also intended to ensure that Board
12 certificate of registration holders and purchasers of
13 architectural, professional engineering and land surveying
14 services in Alaska are made aware that competitive bidding is
15 now permissible.

16 A. Prohibited Conduct

17 Section IV of the proposed Final Judgment prohibits three
18 categories of conduct. First, it enjoins the Board from
19 directly or indirectly entering into, continuing, adopting,
20 advocating, or furthering any plan, agreement, program, or
21 course of action which has the purpose or effect of
22 suppressing, restraining, or discouraging Board certificate of
23 registration holders from submitting competitive bids. Second,
24 Section IV enjoins the Board from promulgating, adopting,
25 maintaining, or seeking adherence to any rule, guideline,
26 statement of principle, policy, or collective statement which
27 has the purpose or effect of suppressing, restraining, or
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1 discouraging Board certificate of registration holders from
2 submitting competitive bids or price quotations, or which
3 states or implies that competitive bidding or quoting prices is
4 prohibited, unethical, unprofessional, or contrary to any
5 policy of the Board. Finally, the Board is also enjoined from
6 refusing to issue a certificate to any applicant, or
7 rescinding, suspending or refusing to renew a certificate of
8 any holder, because of use or submission of competitive bids or
9 price quotations, or solicitation of proposals for professional
10 services on the basis of competitive bidding.

11 Section V provides that nothing in the proposed Final
12 Judgment shall prohibit the Board from advocating or seeking
13 legislation concerning competitive bidding, provided that such
14 advocacy or discussion makes clear that the Board is not
15 thereby suppressing, restraining, or discouraging board
16 certificate of registration holders from submitting competitive
17 bids or price quotations.

18 B. Affirmative Obligations

19 The affirmative obligations of the proposed Final Judgment
20 are found in Sections VI-VIII.

21 Section VI declares Rule 36.230(b) null and void and
22 requires its deletion from the Alaska Administrative Code
23 within 60 days from entry of the proposed Final Judgment.
24 Section VI also requires the Board to delete any other
25 provision in its Rules of Professional Conduct, by-laws,
26 resolutions, and policy statements, whether formal or informal,
27 that prohibits, limits, or otherwise discourages the use or
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1 submission of competitive bidding or price quotations or which
2 implies that the use, submission, or solicitation of
3 competitive bids or price quotations is prohibited, unethical,
4 unprofessional, or contrary to any policy of the Board.

5 Section VII of the proposed Final Judgment requires the
6 Board within 60 days from entry of the proposed Final Judgment
7 to insert in the place of the text of Rule 36.230(b) and any
8 other provision deleted pursuant to Section VI a statement that
9 Rule 36.230(b) or other such provision has been deleted and the
10 date of the deletion. The Board is also required within 60
11 days from entry of the proposed Final Judgment to insert in the
12 Alaska Administrative Code on the page where Rule 36.230(b)
13 previously appeared a statement that the Rule was deleted in
14 accordance with the proposed Final Judgment and that the
15 proposed Final Judgment also prohibits further enforcement of
16 any ban or Board policy against competitive bidding.

17 Section VIII contains various requirements for
18 dissemination of the proposed Final Judgment. First, Section
19 VIII provides that within 60 days from entry of the proposed
20 Final Judgment notice of the proposed Final Judgment consisting
21 of a letter on the letterhead of the Division of Occupational
22 Licensing of the Alaska Department of Commerce and Economic
23 Development with a text identical to that of Appendix A of the
24 proposed Final Judgment shall be sent to (1) each current Board
25 certificate of registration holder, (2) each state, city, and
26 borough entity in Alaska which may purchase architectural,
27 engineering, or land surveying services and to which the
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1 Board's roster is mailed under Alaska Statute 08.48.081, and
2 (3) each trade association for contractors in the State of
3 Alaska. Second, Section VIII further provides that within 60
4 days from entry of the proposed Final Judgment this notice will
5 also be published in the general readership sections of various
6 publications and newspapers in Alaska. Third, this Section
7 also requires that this notice be sent to each new Board
8 certificate of registration holder and to all other persons who
9 normally receive the Board's roster each year for the next ten
10 years. Finally, the Section also provides that the letter will
11 also be published in every printing of the Board's pamphlet of
12 statutes and regulations for the next 10 years.

13 C. Scope of Final Judgment

14 Section XI provides that the proposed Final Judgment will
15 remain in effect for 10 years. Section III provides that the
16 proposed Final Judgment applies to the Board and to the Board's
17 officers, directors, agents, employees, successors, and
18 assigns, and to all other persons in active concert or
19 participation with the Board who shall have received actual
20 notice of the proposed Final Judgment by personal service or
21 otherwise.

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23 IV.

24 COMPETITIVE EFFECT OF THE
PROPOSED FINAL JUDGMENT

25 The relief in the proposed Final Judgment is designed to
26 permit competitive bidding with regard to architectural,
27 professional engineering, and land surveying services in Alaska.

1 Three methods for determining compliance with the terms of
2 the Final Judgment are provided. First, Section IX requires
3 that the Board file within 120 days after entry of the Final
4 Judgment an affidavit as to the fact and manner of its
5 compliance with Sections VI, VII and the first paragraph of
6 Section VIII of the Final Judgment. Second, Section X provides
7 that, upon reasonable notice, the Department of Justice shall
8 be given access to any of the Board's records relating to
9 matters contained in the Final Judgment and permitted to
10 interview any officers, directors, employees, or agents of the
11 Board. Third, Section X also provides that, upon written
12 request, the Department of Justice may require the Board to
13 submit written reports about any matters relating to the Final
14 Judgment. Finally, Section X provides that, pursuant to Alaska
15 Statute 44.62.190(a)(2), the Department of Justice will be sent
16 notice of proposed regulation actions by the Board.

17 The Department of Justice believes that this proposed Final
18 Judgment contains adequate provisions to prevent further
19 violations of the type upon which the Complaint is based and to
20 eradicate the effects of the alleged conspiracy.

21 V.

22 REMEDIES AVAILABLE TO POTENTIAL
23 PRIVATE LITIGANTS

24 Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that
25 any person who has been injured as a result of conduct
26 prohibited by the antitrust laws may bring suit in federal
27 court to recover three times the damages suffered, as well as
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1 costs and reasonable attorney's fees. Entry of the proposed
2 Final Judgment will neither impair nor assist the bringing of
3 such actions. Under the provisions of Section 5(a) of the
4 Clayton Act, 15 U.S.C. § 16(a), the judgment has no prima facie
5 effect in any subsequent lawsuits that may be brought against
6 the Board.

7 VI.

8 PROCEDURES AVAILABLE FOR
9 MODIFICATION OF THE
10 PROPOSED FINAL JUDGMENT

11 As provided by the Antitrust Procedures and Penalties Act,
12 any person believing that the proposed Final Judgment should be
13 modified may submit written comments to John W. Poole, Jr.,
14 Chief, Special Litigation Section, Antitrust Division, U.S.
15 Department of Justice, 10th Street and Pennsylvania Avenue,
16 N.W., Washington, D.C. 20530, within the 60-day period provided
17 by the Act. These comments, and the Department's responses,
18 will be filed with the Court and published in the Federal
19 Register. All comments will be given due consideration by the
20 Department of Justice, which remains free to withdraw its
21 consent to the proposed Judgment at any time prior to entry.
22 Section XII of the proposed Final Judgment provides that the
23 Court retains jurisdiction over this action, and the parties
24 may apply to the Court for any order necessary or appropriate
25 for the modification, interpretation or enforcement of the
26 Final Judgment.

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VII.

ALTERNATIVE TO THE
PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Department of Justice was a full trial of the issues on the merits and on relief. The Department considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violation alleged in the Complaint and is the identical relief that would have been sought at trial.

VIII.

DETERMINATIVE MATERIALS
AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Dated: November 18, 1983

Respectfully submitted,

/s/ Edward D. Eliasberg, Jr.
EDWARD D. ELIASBERG, JR.

/s/ Carolyn L. Davis
CAROLYN L. DAVIS

Attorneys, United States
Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530
Telephone - (202) 633-2582