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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 v.

13 BECHTEL CORPORATION, BECHTEL
14 INCORPORATED, BECHTEL POWER
15 CORPORATION, BECHTEL INTER-
16 NATIONAL, INC., and BECHTEL
INTERNATIONAL CORPORATION,

17 Defendants.

18 Civil No. C 76 99 (GBH)

19 Filed: January 10, 1977

20 COMPETITIVE IMPACT STATEMENT

21 Pursuant to Section 2(b) of the Antitrust Procedures and Penal-
22 ties Act (15 U.S.C. §16(b)-(h) P.L. 93-528 (December 21, 1974))
23 ("APPA"), the United States of America hereby files this Competitive
24 Impact Statement ("C.I.S.") relating to a proposed Final Judgment
25 in the above-entitled action to be entered against all defendants.
26

27 (1) NATURE AND PURPOSE OF THE PROCEEDING

28 This action was filed on January 16, 1976, against Bechtel Cor-
29 poration, Bechtel Incorporated, Bechtel Power Corporation, Bechtel
30 International, Inc., and Bechtel International Corporation ("defend-
31 ants"). Either Bechtel Corporation or Bechtel Incorporated, which
32 are themselves affiliated, wholly own, directly or indirectly, the

1 other defendants. The Complaint alleged that defendants and certain
2 co-conspirators entered into and, in the United States, implemented
3 a combination and conspiracy which resulted in an unreasonable
4 restraint in the provision of parts, systems, material, equipment
5 or services in connection with Major Construction Projects*/ in
6 Arab League Countries in violation of Section 1 of the Sherman Act
7 (15 U.S.C. §1).

8 The defendants filed their Answer to the Complaint on April 26,
9 1976. They raised several affirmative defenses to the Complaint's
10 allegations. Principal among these were that (a) the Arab League
11 Boycott of Israel is political in nature and beyond the scope of
12 the Sherman Act; (b) other agencies of the United States Government
13 sanctioned the very participation in the Boycott with which defend-
14 ants were charged and the Government is therefore estopped from this
15 prosecution; and (c) the defendants are not liable because of the
16 sovereign compulsion and act of state defenses.

17 More than one month prior to filing the Answer, preliminary
18 discussions exploring possible settlement of this action were com-
19 menced. Negotiations continued for the next eight months and led
20 to the submission of this proposed Final Judgment.

21
22 (2) PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED
23 VIOLATION OF THE ANTITRUST LAWS

24 (a) The Commerce Involved

25 Defendants and other affiliated companies ("Bechtel Group")
26 jointly constitute one of the largest Prime Contractors for Major
27 Construction Projects in the world. Prime Contractors sell their
28 services primarily to governmental and large commercial Clients.
29 These services generally include some or all of the following:

30
31 */ When terms are used in this C.I.S. that are defined in
32 Section II of the proposed Final Judgment, the definition
appearing there shall also apply here. Such terms will
appear in both documents with initial capital letters.

1 construction design, construction engineering, procuring and de-
2 livering equipment and supplies, site and economic feasibility
3 studies, consulting and managing in connection with construction,
4 and actually constructing such Major Construction Projects as
5 refineries, pipeline systems, airports, nuclear or conventional
6 power generating facilities, harbors, transportation systems, and
7 building complexes.

8 In providing these services, Prime Contractors regularly deal
9 with Subcontractors which produce or provide parts, systems, materi-
10 al, equipment or services used in connection with Major Construction
11 Projects.* / Prime Contractors frequently provide one or more of
12 the following services to Clients in dealing with Subcontractors:
13 suggest to the Client a list of qualified Subcontractors from which
14 bids may be solicited; solicit Subcontractor bids; contract with
15 specific Subcontractors for the furnishing of specified goods or
16 services on their own behalf or on behalf of the Client; expedite
17 the production, shipping and use of goods or services; inspect the
18 quality of goods or services provided; arrange for forwarding goods
19 and services to the construction site; and manage or monitor the
20 use of those goods and services at the project site.

21 Three types of contractual arrangements between Prime Contrac-
22 tors and Clients on Major Construction Projects are most common.
23 First, the Prime Contractor may be engaged on a "turn-key" basis.
24 This means that the Client pays the contractor a single price
25 (either in one lump sum or in installments paid at various stages
26

27 * / As used here and in the proposed Final Judgment, Subcon-
28 tractors are businesses which sell goods as well as services
29 for use in Major Construction Projects. Thus, for example,
30 a manufacturer of steel or electronic equipment which is
31 purchased for use in a Major Construction Project would
32 be a Subcontractor, as would an electrical contractor which
installs wiring and circuitry. Subcontractors in some cases
enter into contractual relationships directly with Clients.
However, the Prime Contractor usually has a substantial
role in the Subcontractor selection process in those situ-
ations as well.

1 of the construction) for all design, procurement and construction
2 services provided by the Prime Contractor, and for all Subcontract-
3 tors' goods and services which the Prime Contractor has purchased
4 for the project in its own name. Second, the Prime Contractor's
5 fee for the project may be determined on a "cost-plus" basis. In
6 this arrangement the Client pays for the Prime Contractor-supplied
7 services either at a cost plus mark-up which reflects the time spent
8 on the Client's project by the Prime Contractor's personnel, or re-
9 flects the nature of the specific tasks performed. Subcontractors'
10 goods and services are purchased by the Prime Contractor, usually in
11 its own name, and then resold to the Client at a mark-up, specified
12 in the contract, to cover the cost of procurement services. Third,
13 the Prime Contractor may charge the Client for its services, either
14 on a time or task basis, including procurement services, and the
15 Client directly purchases all Subcontractors' goods and services.
16 The Subcontractor selection procedures used by the Prime Contractor
17 with the second and third types of arrangements are customarily the
18 same. In both, the Prime Contractor usually develops and evaluates
19 bids and makes a purchase recommendation to the Client. The Client
20 then makes the final Subcontractor selection. The difference between
21 the second and third type of arrangement lies in the party which
22 directly pays the Subcontractor. Turn-key arrangements leave con-
23 struction contracting decisions and payments to the Prime Contrac-
24 tor's discretion, subject to any specific contractual limitations.

25 There are several large Prime Contractors operating throughout
26 the world. Some of the largest of these, including the Bechtel
27 Group, are incorporated in the United States. These large Prime
28 Contractors are capable of serving Clients in any region of the
29 world. In the past few years an increasing percentage of large-
30 scale construction projects have been undertaken in the Arab League
31 Countries and elsewhere in the Middle East. Of the approximately
32 \$12 billion in overseas new construction contracts awarded to

1 United States Prime Contractors in 1974, \$1 billion was awarded
2 for the construction of projects in the Middle East. In 1975,
3 total foreign contracts increased to approximately \$22 billion,
4 with approximately \$7.1/2 billion in awards from Middle East clients
5 --nearly two-thirds of the total increase. The Bechtel Group has
6 current construction projects in a number of Middle East states
7 which, upon completion, will have cost a total of several billion
8 dollars. Parts, systems, material, equipment and services supplied
9 by Subcontractors generally represent 30-50% of the total cost
10 of a Major Construction Project. The terms of trade with respect
11 to Major Construction Projects are substantially similar throughout
12 the world. One exception affects Major Construction Projects
13 in many Arab League Countries: on these projects, the parties
14 must generally observe the Arab League Boycott of Israel ("Boycott")

15
16 (b) The Arab Boycott

17 In 1946 the Council of the Arab League established a permanent
18 boycott committee to implement its decision to institute a member
19 state boycott of "Zionist" goods and products. Pursuant to this
20 decision the Arab League established local boycott offices in sev-
21 eral of its member countries. While the initial boycott of 1946
22 was designed only to prevent entry of "Zionist" goods into Arab
23 countries, its scope was broadened in 1951 to encompass a secondary
24 boycott against third parties viewed as being friends of or provid-
25 ing assistance to the State of Israel. To effectuate this broader
26 purpose, the Arab League established the Central Office for the
27 Boycott of Israel in Damascus, Syria. The Central Boycott Office
28 assumed primary responsibility for establishing the terms of and
29 for policing the Boycott.

30 The principal means for effectuating the Boycott is the prepar-
31 ation and publication of blacklists which name business entities
32 and individuals with whom Arab League Country purchasers may not

1 deal, or whose goods and services may not be imported into Arab
2 League Countries. These blacklists are not widely published;
3 however, constantly updated versions are regularly provided
4 to the local boycott offices in those Arab League member states
5 which actively participate in the Boycott. Some member states
6 prepare individualized blacklists effective within their own
7 jurisdiction. These are based upon the master blacklist furnished
8 by the Central Boycott Office, but reflect particular local con-
9 siderations. A recent version of the blacklist promulgated
10 in Saudi Arabia contains the names of more than twelve hundred
11 United States business entities, including firms which manufacture
12 goods or provide services used in construction projects. Those
13 United States firms designated on this and similar boycott lists
14 are referred to as "United States Blacklisted Persons".

15 The terms of the Boycott include the requirement of adherence
16 to the blacklist with respect to business in Arab League Countries.
17 Several member states, including Saudi Arabia, have promulgated
18 decrees, including codes of regulations, which require compliance
19 with the Boycott as a matter of national law by all Persons within
20 their respective jurisdictions. These laws provide penalties
21 ranging from confiscation of blacklisted goods, to fines, to im-
22 prisonment for several years. Accordingly, those doing business
23 in such states are under compulsion to participate in the Boycott.
24 Arab League Country purchasers of goods and services, including
25 Clients undertaking Major Construction Projects, are responsible
26 for seeing that goods and services furnished by Blacklisted Persons
27 are not imported into Arab League Countries. The customs services
28 of these member states police compliance with the Boycott through
29 their power to inspect, confiscate or refuse entry to unauthorized
30 imports.

31 In sum, the Boycott is a long-standing arrangement among cer-
32 tain Arab League Countries, the Central Boycott Office, enterprises

1 doing business in those Arab League Countries, and others, pursuant
2 to which international import trade and commerce in those countries
3 is conducted consistent with a concerted refusal to deal with Black-
4 listed Persons--including United States Blacklisted Persons. It is,
5 as such, a horizontal agreement among purchasers in Arab League
6 Countries, the purpose of which is to restrain the trade between
7 those countries and others in the products of Blacklisted Persons.
8

9 (c) The Nature of the Violation of the Antitrust Laws

10 A conspiracy, even if entered into abroad among foreigners,
11 may be subject to United States antitrust law if it is capable
12 of effecting a restraint upon, and is intended to affect United
13 States domestic or foreign commerce. (See, e.g., United States
14 v. Aluminum Company of America, 148 F.2d 416, 444 (2d Cir. 1945)).
15 However, here, since (1) the United States may not be reasonably
16 expected to achieve compliance by the attempt to impose its own law
17 in conflict with that of a foreign jurisdiction; (2) the illegal
18 conduct is to take place in the territory of the foreign sovereign;
19 and (3) the application of United States antitrust law to foreign
20 conduct directly conflicts with foreign law valid in a foreign
21 sovereignty thereby imposing substantial hardship upon the one
22 against whom it would be applied, it would be inappropriate
23 both as a matter of law and enforcement policy to apply United
24 States law to this concerted refusal to deal as it operates in Arab
25 League Countries. This is the principle of comity which makes it
26 possible for nations with conflicting laws and policies to deal
27 among themselves. (Restatement, Second, Foreign Relations Law
28 of the United States, Section 40, A.L.I. 1965). Accordingly,
29 for the reasons just stated, it would be inappropriate to
30 apply United States antitrust law to the Arab Boycott as so far
31 described.

32 However, a principal element of the charge against the

1 defendants contained in the Complaint was that they had not only
2 agreed to implement the Boycott as to several Major Construction
3 Projects in Arab League Countries, but had, in fact, implemented
4 it within the sovereign jurisdiction of the United States by means
5 of actions and agreements aimed against Blacklisted Persons. It
6 was this actual implementation in restraint of United States com-
7 merce which clearly subjected defendants to United States antitrust
8 law. Such implementation in the United States could not be ex-
9 cused on the ground that it was directed by a foreign state, since
10 that would intrude on the terms of trade within the sovereign ter-
11 ritory of the United States where United States law is paramount.
12 If Arab states have a valid claim to control significant commercial
13 conduct within their sovereign territories under the principle of
14 comity, so does the United States Government within its sovereign
15 territory. Accordingly, a restraint of trade in United States com-
16 merce in violation of the Sherman Act may result from the Boycott
17 although it is a requirement of law in a foreign jurisdiction.

18 The Complaint alleges that, beginning at least as early as
19 1971, and continuing to at least the date of the filing of the
20 Complaint, the defendants joined the Boycott conspiracy against
21 United States Blacklisted Persons and furthered that conspiracy
22 in the United States. At trial the Government would have shown
23 that the defendants signed contracts requiring them to black-
24 list certain United States Persons with whom they might other-
25 wise deal in the procurement of Subcontractor services as to Major
26 Construction Projects; that they actually effectuated these con-
27 tracts to the detriment of certain blacklisted potential United
28 States Subcontractors; and that they entered into agreements with
29 non-blacklisted United States Subcontractors requiring them to
30 refuse to deal with United States Blacklisted Persons as their
31 own Subcontractors in connection with providing goods and services
32 to Major Construction Projects in Arab League Countries where the

1 Bechtel Group was the Prime Contractor.

2 The Government was prepared to show further, that defendants'
3 actions implementing the Boycott had a substantial and direct
4 effect on United States commerce in that (i) certain Persons were
5 denied the opportunity to sell goods and services for use in con-
6 nection with Major Construction Projects in Arab League Countries
7 or even to submit bids to supply such goods and services because
8 they were United States Blacklisted Persons; or (ii) Persons which
9 were or desired to become Subcontractors on Arab League Country
10 Major Construction Projects were restrained from freely doing
11 business in or with Israel for fear of being blacklisted them-
12 selves. The relief sought in the Complaint was a judgment decree-
13 ing that the alleged conduct was a violation of the Sherman Act
14 and enjoining defendants from continuing that conduct.

15 The Government further would have contended that, as a matter
16 of law, none of the affirmative defenses raised in defendants'
17 Answer (see page 2 above) could defeat the relief sought in the
18 Complaint. First, in response to the assertion that the Arab Boy-
19 cott was politically motivated, the United States would have con-
20 tended, inter alia, that its implementation by defendants had
21 an anticompetitive effect on United States interstate and foreign
22 commerce and, thus, was illegal under the Sherman Act regardless
23 of the motivation. (see, e.g., Fashion Originators' Guild of
24 America v. Federal Trade Commission, 312 U.S. 457 (1941)). Second,
25 even if it were found as a matter of fact that certain agencies of
26 the United States Government had acquiesced in, or even encouraged,
27 participation in the Boycott by United States enterprises of the
28 kind with which defendants were charged (a fact which the Government
29 would have vigorously disputed), the United States could not be
30 estopped from seeking prospective relief by enforcing a law express-
31 ing its sovereign and public interest (see, e.g., Pan American Co.
32 v. United States, 273 U.S. 456 (1927)). Finally, as to the third

principal defense, (foreign sovereign compulsion and act of state) the Government would have contended that foreign sovereign compulsion may not override enforcement of conflicting United States law expressing a sovereign and public interest as to conduct within the United States (see, e.g., Sabre Shipping Co. v. The American President Line Ltd., 285 F. Supp. 949 (S.D.N.Y. 1968)) and that the act of state defense does not apply to conduct outside the territory of the state whose acts are invoked as its basis, especially where the law of that state is not the applicable law for testing the legality of the extraterritorial conduct (see, e.g., Banco Nationale de Cuba v. Sabbatino, 376 U.S. 398 (1964); United States v. Sisal Sales Corp., 274 U.S. 268 (1927)). While the Government believes it would prevail at trial, this proposed settlement means that these issues as raised by the facts of this case will not be judicially determined in this action.

(3) EXPLANATION OF THE PROPOSED FINAL JUDGMENT
AND ITS EFFECTS ON COMPETITION

This section of the C.I.S. is divided into two parts. In the first part the principal prohibitory provisions of the proposed Final Judgment, which are found in Section IV, are described and explained, followed by a similar description and explanation of specific limitations set forth in Section V. The second part will discuss the various procedural and formal provisions of the proposed Final Judgment.

(a) The Conduct Prohibited by the Proposed Final Judgment

The heart of this proposed Final Judgment is found in Sections IV and V. Section IV describes the conduct in which defendants may no longer engage. Section V describes five specific forms of conduct which might possibly be interpreted as falling within Section IV's prohibitions, but which the proposed Final Judgment in-

1 tends to permit defendants to continue.

2 The framework created by Sections IV and V is designed to
3 prohibit defendants from continuing to engage in the conduct to
4 which the allegations of the Complaint were addressed. In paragraph
5 22 of the Complaint, it is alleged that, pursuant to the Arab Boy-
6 cott conspiracy, defendants and Persons acting on their behalf,
7 within the jurisdiction of the United States, did a number of
8 things including: (i) refusing to deal with Blacklisted Persons
9 as Subcontractors in connection with Major Construction Projects;
10 (ii) requiring Subcontractors to refuse to deal with Blacklisted
11 Persons on such projects where defendants were Prime Contractors;
12 and (iii) obtaining lists and other identification of Blacklisted
13 Persons to aid in the foregoing refusals to deal. The proposed
14 Final Judgment specifically enjoins these practices and a number
15 of related practices as well.

16 Section IV(A)

17 This section generally enjoins and restrains defendants from
18 refusing to deal with United States Blacklisted Persons as Subcon-
19 tractors in connection with Major Construction Projects where a
20 defendant is acting as a Prime Contractor or Subcontractor. The
21 provision refers to performing, implementing or enforcing a con-
22 tract, agreement, arrangement or understanding since it is only
23 contracts, combinations or conspiracies in restraint of trade which
24 are prohibited by Section 1 of the Sherman Act.

25 Section IV(A) prevents defendants from taking steps to effec-
26 tuate such an agreement in the United States, but not in an Arab
27 League Country. The focus of the Complaint in this case was that
28 defendants be subject to United States antitrust enforcement if they
29 did some act implementing an agreement to boycott blacklisted United
30 States Subcontractors, even if that agreement was entered into in
31 an Arab League Country under a requirement of that country's law.
32 Such an agreement cannot be the basis for justifying any conduct

1 or imposing any binding obligation to perform acts in violation of
2 this Final Judgment. When United States Prime Contractors act
3 to prevent the use of goods or services of United States Blacklisted
4 Persons in connection with Major Construction Projects in Arab
5 League Countries, they implement the Arab Boycott conspiracy
6 in United States commerce and, it follows, the Court can enjoin
7 such conduct under the Sherman Act. This is what Section IV(A)
8 and other provisions of the proposed Final Judgment are designed
9 to do.

10 Section IV(B)

11 This section prevents defendants from requiring that other
12 Persons refuse to deal with United States Blacklisted Persons in
13 connection with Major Construction Projects. For example, defend-
14 ants would not be permitted to require a Subcontractor to use only
15 those products manufactured by a company which is not a United
16 States Blacklisted Person. Imposing such a requirement on Subcon-
17 tractors pursuant to the Arab Boycott would be yet another form
18 of Boycott implementation in the United States beyond the power
19 of Arab sovereign compulsion.

20 Section IV(C)

21 This section would reach possible situations of Arab Boycott
22 implementation not reached by Sections IV(A) and IV(B). Defend-
23 ants are here enjoined from implementing the Boycott even where
24 there is no direct contractual relationship between them and
25 a Client or other Prime Contractor, or where they do not directly
26 contract with Subcontractors. For example, Prime Contractors
27 often organize separate corporations, the activities of which
28 are limited to doing business in particular countries or areas
29 of the world, or to building a single Major Construction Project.
30 While the actual work is performed by the parent corporation
31 itself or by personnel normally associated with the parent cor-
32 poration, these separate corporations are the contracting parties.

1 Thus, this proposed Final Judgment would prohibit defendants from
2 carrying out those provisions of agreements, on behalf of a separ-
3 ately incorporated Arab League Country signatory, which require
4 that the signatory refuse to deal with United States Blacklisted
5 Persons in connection with a Major Construction Project.

6 Also, under this section, defendants would be prohibited from
7 interfering with a Subcontractor which selects a United States
8 Blacklisted Person as its own Subcontractor, or from acting in any
9 way to review or approve a list of Persons the Subcontractor pro-
10 poses to use as its own Subcontractors, for the purpose of eliminat-
11 ing United States Blacklisted Persons. This prohibition would apply
12 even where the Prime Contractor is not a signatory to Subcontractor
13 agreements between the Client or one of its agents and the Sub-
14 contractor. This is consistent with the terms of Section V(D)
15 (see page 20 below).

16 Section IV(D)

17 Agreements in restraint of United States commerce negotiated
18 and entered into within the United States are violations of United
19 States law which always can be reached by our Courts, whether or
20 not they are implemented, since the Sherman Act prohibits conspira-
21 cies in restraint of trade themselves as well as acts in furtherance
22 of those conspiracies. See, e.g., United States v. Trenton Pot-
23 teries Co., 273 U.S. 392 (1927); United States v. Socony Vacuum Oil
24 Co., Inc., 310 U.S. 150 (1940). Thus, defendants are specifically
25 enjoined from negotiating and entering into agreements within the
26 United States to refuse to deal with United States Blacklisted
27 Persons or to require others to do so regardless of any requirement
28 by the Arab state in which the project is located.

29 Section IV(E)

30 As United States Prime Contractors, in many instances, do
31 not directly purchase the products of Subcontractors, this section
32 is designed to prohibit defendants from doing anything in United

1 States commerce which would knowingly facilitate direct enforcement
2 of the Boycott by the Client or any other Person. Of the situations
3 to which this provision would apply, the following occurs most
4 frequently: The Prime Contractor selects qualified Subcontractors
5 for a Client and then, either before or after bids are solicited,
6 participates in the Client's decision to remove all United States
7 Blacklisted Persons from consideration. The Client then contracts
8 directly with the selected Subcontractor. This section would pro-
9 hibit any such participation in Subcontractor selection decisions
10 where the Client refuses to deal with United States Blacklisted
11 Persons, and would prohibit defendants, as well, from providing
12 any other services related to the procurement of Subcontractor
13 goods and services. However, if the Client specifically and
14 unilaterally selects the Subcontractor, even if according to
15 Boycott principles, and simply directs defendants to procure
16 the required goods or services from its choice, under Section
17 V(C) defendants will be permitted to do so and to perform certain
18 other procurement-related services since they will not be taking
19 any conspiratorial action which violates antitrust law.

20 On some Middle East Major Construction Projects, Clients
21 have engaged a second Prime Contractor to act as a consultant
22 only. Such second Prime Contractor may either select the Sub-
23 contractor for the Client or participate in the Client's Sub-
24 contractor selection decision, leaving to defendants all other
25 procurement services, such as issuance of purchase orders and
26 inspection of Subcontractor performance, even though defendants
27 were not involved in the selection of Subcontractors. If defendants
28 know or have reason to know of the participation of this second
29 Prime Contractor or any other Person in a Client's Subcontractor
30 selection decision and that in making that decision, United States
31 Blacklisted Persons were excluded from consideration, then Section
32 IV(E) prohibits defendants from providing any procurement ser-

1 vices related to the Subcontractor selection process. This is so
2 because to do so, in the language of Section IV(E), defendants
3 would be implementing a "contract, agreement, arrangement or under-
4 standing which provides that [a] Client boycott or refuse to deal
5 with any United States Blacklisted Person as a Subcontractor in
6 connection with any Major Construction Project," However,
7 if defendants have reason to believe that a Subcontractor was
8 "specifically and unilaterally" selected by the Client, then
9 under Section V(C) (see pages 18-19 below), they may continue to
10 provide procurement services.

11 Section IV(F)

12 This provision is designed to complement other provisions
13 of Section IV, in particular Section IV(E). As Clients for Major
14 Construction Projects in Arab League Countries become more sophis-
15 ticated in the manner in which they undertake such projects, they
16 are likely to assume some of the functions which Prime Contractors
17 have in the past performed, especially the final selection of
18 Subcontractors of significant services and materials. However,
19 these Clients may well continue to require the assistance of Prime
20 Contractors to develop lists of bidders, write the specifications
21 furnished to bidders, actually solicit the bids, evaluate them
22 and make a recommendation as to which Subcontractor to select
23 on technical grounds. Under Section IV(F), defendants must not
24 discriminate against United States Blacklisted Persons in perform-
25 ing any of these functions.

26 Section IV(F) could, as well, facilitate the opening up
27 of Arab League Country Major Construction Project business to
28 United States Subcontractors which are blacklisted. Under this
29 section the bid solicitation process may, in some instances,
30 result in the Bechtel Group recommending a Subcontractor for the
31 Client's selection which is a United States Blacklisted Person
32 because that Subcontractor submitted the low bid or was other-

1 wise the best choice. A Client, operating wholly within an Arab
2 League Country, would be free to ignore that recommendation for the
3 sole reason that the Subcontractor was blacklisted. However, the
4 Client would at least receive the bid of a United States Blacklisted
5 Person--something which under present practices would not happen.

6 Section IV(C)

7 This provision involves the reverse situation from that dealt
8 with by Section IV(F). Here it is contemplated that the Client
9 might present the defendants with a list of possible Subcontractors
10 for bid solicitations from which United States Blacklisted Persons
11 have been excluded. If defendants are not permitted to add to
12 this list the names of qualified potential bidders who are United
13 States Blacklisted Persons, or if defendants know or have reason
14 to know that United States Blacklisted Persons have been excluded
15 from this list, then the services which defendants can provide
16 to the Client are limited to making a recommendation only as
17 to which listed Subcontractor would be the best choice. They may
18 not then proceed to solicit bids, make a final selection from
19 among submitted bids or even procure, in their own name or in
20 the name of the Client, goods or services from the selected
21 Subcontractor. By prohibiting defendants from providing
22 normal Prime Contractor procurement services where it is
23 clear that the Client will not even consider bids from
24 potential Subcontractors which are United States Blacklisted
25 Persons, the proposed Final Judgment will prevent defendants
26 from actively aiding Clients seeking to enforce the Arab Boy-
27 cott conspiracy in United States commerce.

28 Section IV(H)

29 As the Arab Boycott blacklist is the means by which this
30 conspiracy has been implemented, this section prohibits defend-
31 ants not only from using the blacklist for any purpose prohibited
32 by Section IV, but even simply from maintaining it in the United

1 States, in connection with Major Construction Projects in Arab
2 League Countries. The provisions of this section apply both to
3 blacklists and lists of approved or accepted Subcontractors from
4 which the names of qualified United States Blacklisted Persons have
5 been excluded. Defendants are not prevented, however, from having
6 any copy of the blacklist in their possession, so long as it is not
7 used to further the conduct enjoined in the proposed Final Judgment.

8 Section V(A)

9 It is a common practice in the construction industry (which
10 is required in some Arab League Countries) that the parties provide
11 in the prime contract that it be interpreted according to the laws
12 of the country in which the project is located. As defendants may
13 not be able to negotiate such clauses out of contracts for Major Con-
14 struction Projects in Arab League Countries, and as such clauses
15 cannot in themselves be made the subject of antitrust enforcement
16 under the theory of this action, since this action focuses on their
17 implementation, the United States has agreed to permit such clauses
18 to be included, provided that their language, in form or substance,
19 is limited to a simple statement of which jurisdiction's laws shall
20 apply, provided that the import of such an agreement is limited by
21 the conditions of this Final Judgment and, provided further, that
22 these contracts are negotiated and signed outside the United States.
23 The position of the Department is that entering into an agreement in
24 the United States which incorporates by reference a body of law in-
25 cluding Boycott statutes, if intended to bring the Arab Boycott to
26 United States shores, falls within the Sherman Act's prohibition
27 against conspiracies in restraint of trade. All such agreements
28 entered into in the United States are proscribed to avoid the neces-
29 sarily difficult inquiry into the intent of such language. (See the
30 discussion at pages 7-8 and 12-13 above.)

31 Section V(A) was not intended, however, to permit or empower
32 defendants to engage in any conduct, directed or authorized by

1 such clauses, which would be in violation of the proposed Final
2 Judgment, as the proviso at the end of the section makes clear.
3 This provision deals solely with permissible agreements outside
4 the United States and does not pertain to any activity by defend-
5 ants within the United States.

6 Section V(B)

7 This provision recognizes that the proposed Final Judgment,
8 like the Complaint, is directed at Arab Boycott enforce-
9 ment in United States commerce. If defendants, acting outside
10 the United States, solicit bids on an Arab League Country project
11 from only non-Blacklisted foreign companies operating outside
12 the United States, and specifically do not solicit bids from any
13 United States Subcontractors, they will not be discriminating
14 among United States Persons based on the Arab Boycott. However,
15 if defendants solicit a bid from even one United States firm then,
16 under Section IV(F), they must not exclude Persons from that bid
17 solicitation because they are United States Blacklisted Persons.
18 It would be the act of excluding United States Blacklisted Per-
19 sons when bids are being solicited from other United States busi-
20 nesses which results in the requisite effect on United States
21 commerce for appropriate Sherman Act application. It should be
22 noted that under Section II(D), a United States Blacklisted Person
23 would include either a Blacklisted Person organized under the
24 laws of a foreign country, but which has its principal office or
25 place of business in the United States, or a subsidiary or Affil-
26 iate of any foreign Blacklisted Person which is organized under
27 the laws of the United States or one of its subdivisions.

28 Section V(C)

29 This section establishes what may well be the basic struc-
30 ture of future Subcontractor selection with respect to Major Con-
31 struction Projects in Arab League Countries, if Clients there
32 persist in observing the Boycott. Under this section, defendants

1 will have to inform the Client that, under Sections IV(E) and
2 IV(F), they cannot screen potential bidders for United States
3 Blacklisted Persons and similarly cannot participate in any manner
4 in the decision to select a Subcontractor. They can simply
5 solicit bids from all Persons who, in defendants' professional
6 judgment, should be invited to bid on the project. They also can
7 study those bids independently, recommend a Subcontractor, and
8 then proceed to procure the equipment after the Client has specif-
9 ically and unilaterally made its choice from the submitted bids.
10 The Department realizes that even this total isolation of defend-
11 ants from the Client's Subcontractor determination does not pre-
12 vent the Client from refusing to deal with low-bidding United
13 States Subcontractors which are blacklisted. Rather, this pro-
14 vision recognizes the Client's right to determine independently
15 the specific source of the goods or services it wishes to procure.
16 However, at the very least, the United States Prime Contractor
17 will no longer be doing any screening or gatekeeping.

18 Even though defendants will continue to be able to partici-
19 pate in Major Construction Projects where the Client refuses to
20 deal with United States Subcontractors who are blacklisted, Sec-
21 tions IV(E), IV(F) and V(C) should have a beneficial effect on
22 competition in that United States Blacklisted Persons will be
23 able to, at least, bid upon the major business opportunities re-
24 lating to projects in Arab League Countries and, perhaps, on eco-
25 nomic grounds, even to convince a few Arab purchasers to relax
26 their adherence to the Boycott. Further, if a Client seeks to
27 use defendants' procurement expertise in making its final Sub-
28 contractor selection decision, the Client must agree not to
29 reject a bidder solely because that bidder is a United States
30 Blacklisted Person. Otherwise the defendants would be participat-
31 ing in the Boycott process.

32 //

1 Section V(D)

2 In some Major Construction Projects, Clients independently
3 procure the goods and services of Subcontractors leaving to the
4 Prime Contractor only design and construction functions. Where
5 the Client has truly acted independently, without defendants'
6 participation, in soliciting bids, evaluating those bids, and
7 selecting a Subcontractor, defendants have not enforced the Arab
8 Boycott conspiracy against United States Blacklisted Persons,
9 no matter what the source or basis of the Client's selection of
10 Subcontractors. Thus, this provision permits defendants to con-
11 tinue to perform construction, design and other functions on
12 Major Construction Projects in such a situation. However, to
13 assure that defendants remain totally removed from the Boycott-
14 influenced Subcontractor selection process, a proviso reaffirms
15 the affirmative requirements of Section IV(E) (see pages 13-15
16 above) by prohibiting defendants from performing any inspection
17 services in the United States where the object of such inspection
18 is to determine whether Subcontractors are United States Black-
19 listed Persons..

20 Section V(E)

21 This section simply assures that defendants will be able
22 to continue to engage in the normal process of soliciting com-
23 petitive bids, evaluating those bids and making a recommendation
24 based on professional judgment and normal criteria, where such
25 practices are permitted elsewhere within Sections IV and V.
26 Defendants can perform these normal functions where a Client
27 has proposed a list of Subcontractors (even though defendants
28 arguably knew or may have known that no United States Blacklisted
29 Persons were included), provided defendants are not limited to
30 soliciting bids from only those Subcontractors suggested by
31 the Client. As Section IV(F) requires, they must solicit bids,
32 as well, from qualified United States Subcontractors who are

1 blacklisted.

2 (b) Procedural Provisions

3 The Stipulation

4 The United States and defendants have stipulated that the
5 proposed Final Judgment, in the form negotiated by the parties,
6 may be entered by the Court at any time after compliance with
7 the procedures of the APPA, provided that the United States
8 has not withdrawn its consent. This stipulation also provides
9 that there has been no admission by either party with respect
10 to any issue of fact or law.

11 Section I

12 Section I of the proposed Final Judgment is a statement
13 by the Court that it has jurisdiction over the subject mat-
14 ter and the parties and that the Complaint states a cause
15 of action under Section 1 of the Sherman Act.

16 Section III

17 The proposed Final Judgment applies to the defendants and
18 each of their respective directors, officers, agents, members,
19 employees and subsidiaries, and to all Persons in active concert
20 or participation with defendants, who received actual notice
21 that the proposed Final Judgment has been entered. It would
22 also apply to successors and assigns of Bechtel Corporation
23 or Bechtel Incorporated, of which all companies of the Bechtel
24 Group are subsidiaries.

25 Section VI

26 This section and Section VII would entitle defendants
27 to a modification of the proposed Final Judgment in certain
28 specific instances. Under Section VI, defendants would be
29 entitled to a modification permitting them to exercise rights
30 or benefits with respect to business in Arab League Countries
31 that others, not subject to the proposed Final Judgment, may be
32

1 entitled to exercise or enjoy, where such rights are created by
2 an Act of Congress or an International Agreement. "International
3 Agreement," as defined by Section II(J), is limited to formal
4 treaties, Presidential agreements and other agreements entered
5 into on behalf of the United States which are sufficiently
6 important to require subsequent Congressional approval. Further,
7 such rights or benefits are limited only to those which defend-
8 ants could enjoy consistent with antitrust law. This provision,
9 while unusual in antitrust consent judgments, recognizes that
10 the Arab Boycott involves issues other than those of antitrust
11 enforcement which may be the subject of overriding diplomatic
12 or legislative action.

13 Section VII

14 As it is conceivable that the United States may seek
15 to enforce antitrust law against other United States Prime
16 Contractors for Boycott-related violations similar to those
17 alleged in the Complaint in this case, Section VII was included
18 to protect defendants from being placed at a competitive disad-
19 vantage where another such case is terminated by a consent
20 judgment more favorable than this proposed Final Judgment.
21 Defendants would have to show that they would, in fact,
22 necessarily be placed at a competitive disadvantage with
23 respect to Major Construction Projects by being held to the
24 terms of this proposed Final Judgment.

25 Section VIII

26 The proposed Final Judgment also affords the United States
27 a method for monitoring compliance with its provisions by in-
28 specting documents and records in control of defendants and
29 by conducting interviews with officers, directors, employees
30 and agents of each defendant, provided that counsel may be
31 present at any such interviews. Defendants may also be required
32 to report to the plaintiff in writing under oath with respect

1 to any matters contained in the proposed Final Judgment. Section
2 VIII further gives defendants the right to receive notice before
3 certain specified documents or other information obtained pur-
4 suant to this section are disclosed to other Persons by the
5 Department. This applies only where documents are pre-marked
6 and are of the type described in Rule 26 (C)(7) of the Federal
7 Rules of Civil Procedure, or are diplomatically sensitive.
8 Such notice need not be given where the disclosure contemplated
9 would be (i) to a duly authorized representative of the Executive
10 Branch of the federal government, (ii) in a Grand Jury proceeding
11 or (iii) in any legal proceeding where a defendant is a party.
12 This provision, however, gives defendants no automatic right
13 to prevent or limit disclosure. Once they receive notice, de-
14 fendants will have the option of making an application to the
15 Court (pursuant to Section IX) for a protective order, which
16 the Department is free to oppose.

17 Section IX

18 Under this section the Court will retain jurisdiction for the
19 purpose of enabling any of the parties to the Final Judgment to
20 apply at any time for any order as may be necessary for the inter-
21 preting and carrying out of the Final Judgment or its modifica-
22 tion or enforcement, for the punishing of violations of the
23 Final Judgment, or for the purpose of enabling any defendant
24 to make objections arising out of Section VIII.

25 Section X

26 The proposed Final Judgment provides that it shall be termi-
27 nated twenty years from the date of its entry. This does not mean
28 defendants will then be free to resume the activities upon which
29 the Complaint was based.

30 Section XI

31 Finally, this Section constitutes a determination that entry
32 of the proposed Final Judgment is in the public interest. Under

1 the provisions of Section 2(e) of the APPA (15 U.S.C. §16(e)),
2 entry is conditioned upon this Court's determination that it
3 is in the public interest.

4
5 (4) EFFECTS ON PRIVATE PLAINTIFFS

6 Section 4 of the Clayton Act (15 U.S.C. §15) provides that
7 any person who has been injured as a result of conduct prohibited
8 by the antitrust laws may bring suit in federal court to recover
9 three times the damages such person has suffered, as well as
10 costs and reasonable attorney's fees. The entry of the proposed
11 Final Judgment will not have any effect on the right of any po-
12 tential private plaintiff who claims to have been damaged by the
13 alleged violation to sue for monetary damages or any other legal
14 or equitable remedies. However, this Final Judgment may not be
15 used as prima facie evidence in private litigation pursuant to
16 Section 5(a) of the Clayton Act (15 U.S.C. §16(a)).

17 (5) PROCEDURES AVAILABLE FOR MODIFICATION OF THE
18 PROPOSED CONSENT JUDGMENT

19 The proposed Final Judgment is subject to a stipulation
20 between the United States and the defendants providing that
21 the United States may withdraw its consent to the proposed
22 Final Judgment until such time as the Court has found that its
23 entry is in the public interest. The proposed Final Judgment
24 provides, in Section IX, for retention of jurisdiction of this
25 action by the Court to permit, among other things, the parties
26 thereto to apply to the Court for such orders as may be necessary
27 or appropriate for its modification.

28 As provided in the APPA, any person wishing to comment upon
29 the proposed Final Judgment may, for a 60-day period prior to
30 the effective date of the proposed Final Judgment, submit them
31 in writing to the United States Department of Justice, Joel
32 Davidow, Chief, Foreign Commerce Section, Antitrust Division,

1 Washington, D.C. 20530. The comments and the Department's re-
2 sponse to them will be filed with the Court and published in the
3 Federal Register. The Department of Justice will thereafter
4 evaluate any and all such comments and determine whether there
5 is any reason for withdrawal of its consent to the proposed Final
6 Judgment.

7
8 (6) ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT
9 ACTUALLY CONSIDERED BY THE UNITED STATES

10 The United States gave active consideration to several
11 alternative proposals for final relief in this proceeding.

12 These alternative proposals fall into two general categories:

13 (a) full trial on the merits or motion for summary judgment,
14 either of which would have led to a litigated judgment imposed by
15 the Court, or (b) a proposed final judgment with provisions dif-
16 ferent from, or not included in the proposed Final Judgment being
17 submitted with this C.I.S.

18 (a) A Litigated Judgment

19 As in any antitrust case, the Department had the alternative
20 of rejecting all settlement proposals and proceeding to a deter-
21 mination of the lawsuit by the Court on the merits. This may have
22 been achieved either by a full evidentiary trial or by a motion
23 for summary judgment based on facts not in dispute. These
24 alternatives are never finally rejected until the Department
25 is able to examine and compare a proposed judgment against
26 the relief which might have been obtained after a successful
27 determination by the Court of the issues in dispute. Here it
28 was determined that no significant additional relief could have
29 been obtained in a litigated judgment. Accordingly, there was no
30 justification for undertaking the risks and costs of litigation.

31 (b) Alternative Provisions for a Proposed Final Judgment

32 Throughout its negotiations with defendants, the Department

1 considered various provisions not found in the proposed Final
2 Judgment and different versions of the provisions which have
3 been included. While numerous proposals have been considered
4 and rejected for grammatical, technical and legal reasons,
5 only those provisions discussed below were given serious con-
6 sideration as alternatives to the language finally agreed to.

7 Section IV

8 The United States initially considered proposals regarding
9 the principal prohibitory section of the proposed Final Judgment,
10 Section IV, which did not include the present subsections, IV(F),
11 IV(G) and IV(H). Sections IV(F) and IV(G) were added, as is
12 stated in Part 3 of this C.I.S., to reach particular aspects or
13 methods of Subcontractor selection.

14 The original proposal for Section IV(H) considered by the
15 United States would have prohibited defendants from obtaining,
16 maintaining, communicating or using, in connection with any Major
17 Construction Project, the two types of lists described in this
18 provision. This broad alternative was rejected since the Com-
19 plaint charged only using the blacklist to aid in the refusal
20 to deal with United States Blacklisted Persons. This Section
21 was further limited to prohibit only maintenance of the described
22 lists in the United States since: (i) it is the enforcement of
23 the Boycott in the United States which is the offense charged;
24 and (ii) defendants may be required to maintain such lists within
25 the Arab League Country in which they are doing business.

26 Section V

27 The original proposal the United States considered did not
28 include any of the provisions of Section V. In general, the
29 United States agreed to include these limitations because a
30 judgment without them would have jeopardized the continued con-
31 duct of any business by defendants (and possibly others) in Arab
32 League Countries, and would have forced conduct by the defendants

1 which went beyond the theory of the case. Without these pro-
2 visions, some of the broad prohibitions of Section IV could have
3 been interpreted to require defendants to refrain from acting
4 as Prime Contractors wherever they had reason to believe that
5 the Arab Boycott was a factor in the selection of any Person
6 to participate in Major Construction Projects--a fact that can
7 be reasonably inferred with respect to every Major Construction
8 Project in certain Arab League Countries, including those where
9 the Bechtel Group does extensive business. Further, these pro-
10 visions may have appeared to impinge upon the sovereignty of
11 Arab League Countries over their internal affairs with a possible
12 result that, instead of opening up this commerce to United States
13 Blacklisted Persons, it would be closed off entirely for all
14 United States Prime Contractors and Subcontractors. This would
15 have been beyond the purpose and allegations of the Complaint.

16 The following alternative or additional proposals were con-
17 sidered with respect to individual subsections of Section V.

18 Section V(A)

19 The United States considered an alternative which would have
20 limited this section's scope to contracts, agreements and purchase
21 orders which provide that defendant abide by the laws of the
22 country in which the Major Construction Project is located
23 only as to its activities within that country. As explained
24 in Part 3 of this C.I.S., it is standard practice in the con-
25 struction industry to provide in contracts that the law of the
26 locality in which a project is located shall govern the per-
27 formance of such contracts wherever that performance takes place.
28 Thus, if defendants were building an oil refinery in Texas, it
29 would be common to provide that the state law of Texas would
30 apply, or, if they were building a pipeline in Venezuela, the
31 law of that country would be stipulated. As long as there is
32 no specific reference to the Arab Boycott, or no inclusion of

1 a specific Boycott clause, the United States believes it is not
2 necessary to create a special exception to the normal construction
3 industry practice for projects in Arab League Countries.

4 As it originally appeared in the proposed Final Judgment,
5 this Section did not include the proviso stating that defendants
6 were not otherwise relieved from any specific prohibitions or
7 obligations of the judgment. The original proposal, while in-
8 tended to apply only to the language of contracts, agreements
9 or purchase orders and not defendants' conduct or performance
10 under them, was believed to create a potential ambiguity which
11 could permit defendants to engage in Boycott enforcement in the
12 United States because the laws of the Arab League Country in
13 which the project was located would invariably include specific
14 statutes requiring Boycott enforcement as to business conducted
15 in that country. The proviso eliminates any such ambiguity.

16 Section V(B)

17 An alternative provision considered included a clause at
18 the end of Section V(B) which would have denied to defendants
19 protection where they were engaging in a concerted refusal to
20 deal with all United States Persons. Since the investigation
21 uncovered no evidence of such a conspiracy, and the Complaint
22 only dealt with what was uncovered, a refusal to deal with
23 United States Blacklisted Persons, this clause was not required.
24 If it is found in the future that defendants are refusing to deal
25 with all United States Subcontractors for all of its Major Con-
26 struction Projects in Arab League Countries in order to avoid
27 dealing with United States Blacklisted Persons, the Department
28 will have to make an independent determination as to the appro-
29 priate course of action.

30 Additional Section V Provision Considered

31 An additional provision of Section V which was considered
32 would have permitted defendants to insert in their agreements

1 with Subcontractors a clause providing that, if that Subcontractor's goods or personnel were refused admittance into the country in which the Major Construction Project was located due to the laws, regulations, policies or official acts of that country, the Subcontractor would assume the risks of loss and hold defendants harmless. Another alternative version of this provision would have required, where such a clause was included, that defendants make a good faith effort to obtain the admission of the Subcontractor's goods or personnel into the project country. It was agreed that the question of who shall bear the cost of any failure or inability of the Subcontractor's goods or personnel to gain admission into the project country should be left either to general principles of law or contractual negotiations between Subcontractors and the defendants. Including this provision in the proposed Final Judgment was viewed as creating unnecessary inflexibility for all parties: Subcontractors, defendants and the Department; and it was agreed that the wiser course would be to handle each situation on a case-by-case basis. The Department does not believe that the defendants are necessarily obligated to assume all risks of loss to be in compliance with this proposed Final Judgment.

22 Section VII

23 As originally considered by the United States, this section would have empowered the Court to modify the Final Judgment to conform to any judgment entered in any other antitrust case, arising out of the Arab Boycott, brought by the Department of Justice, even if the United States lost that case and the judgment entered discharged that defendant from any liability. This provision was not acceptable because of the vagaries of litigation and because special facts might result in the loss of other Arab Boycott cases while the Department's legal theory remained unaffected. Consequently, the right of defendants to a modification

1 of the Final Judgment was limited only to those instances where
2 a consent judgment was entered in a similar case. At the same
3 time a proviso was added making it clear that all parties retained
4 their right to petition the Court for a modification, pursuant
5 to the general jurisdictional grant reserved to the Court under
6 Section IX, in light of the results of a litigated case.

7 Section VIII

8 The United States considered an alternate version of this
9 clause which did not include the second sentence of the last
10 paragraph of the section providing for ten days' notice to defend-
11 ants before the disclosure, under some circumstances, of certain
12 pre-designated material obtained pursuant to this section. As
13 the additional language created no prohibition to the disclosure
14 otherwise permitted under the section, but simply set up a
15 notice procedure, the Department agreed to its inclusion on
16 the grounds of fairness.

17 Section X

18 Early proposals for a Final Judgment in this case did not
19 include a date for the expiration of its provisions. Such a per-
20 petual judgment was rejected because of the volatile nature of
21 Middle East relationships. Neither the Department nor the de-
22 fendants should be forever wedded to a judgment based upon 1977
23 facts and the present statutory and decisional state of antitrust
24 law. Automatic termination of the judgment would permit the
25 parties to adjust their positions accordingly at that time.

26 Additional Separate Sections Not Included in the
27 Proposed Final Judgment

28 The United States originally considered including in the
29 proposed Final Judgment provisions which would have required the
30 defendants to file with the Department of Justice extensive and
31 detailed reports of all phases of the Subcontractor selection
32 process if defendants entered into any contract, outside the

1 United States, which included a clause requiring them or their
2 Subcontractors to refuse to deal with United States Blacklisted
3 Persons. As with this proposed Final Judgment, this earlier
4 version would not have specifically prohibited entering into such
5 contracts outside the United States so long as, pursuant to such
6 clauses, defendants did not refuse to deal, or require others
7 to refuse to deal with United States Blacklisted Persons. Also
8 included was a provision requiring defendants to use "good faith
9 efforts" to attempt to gain the entry of the products of Black-
10 listed Persons selected as Subcontractors into Arab League
11 Countries.

12 These provisions were rejected in favor of the more standard
13 and general visitation provisions (Section VIII of the proposed
14 Final Judgment) since they would have required the Antitrust
15 Division to become involved extensively in the regulation of
16 defendants' daily business affairs. This would be a highly
17 undesirable precedent and would create an undue strain on the
18 Antitrust Division's resources. It might also so severely increase
19 the cost to defendants in doing business in the Middle East that
20 they would be placed at a competitive disadvantage with respect
21 to other United States and foreign contractors--a result incon-
22 sistent with the Department's objective, under the antitrust laws,
23 to promote competition. Further, when the prohibitions and obli-
24 gations of Section IV were made more specific, and Section V's
25 narrow and limited exceptions were added, it became unnecessary
26 to require defendants to submit to detailed regulatory-type
27 observation of their affairs. The Department's power under Section
28 VIII should be sufficiently broad to meet any need for discovery
29 into the conduct of defendants on Arab League Country Major Con-
30 struction Projects which the Department could reasonably have
31 under its judgment enforcement and monitoring responsibilities.

32 Finally, any requirement that defendants make a good faith

1 effort to achieve the entry of the goods or personnel of selected
2 blacklisted Subcontractors was similarly rejected as impractical
3 and not capable of policing. It is possible that this require-
4 ment would have placed the Department of Justice, a law enforce-
5 ment agency, in the anomalous position of requiring defendants
6 to engage in conduct subject to another country's sovereign
7 jurisdiction which violated the laws of that country.

8 (7) DETERMINATIVE DOCUMENTS

9 There are no materials or documents which the Government
10 considered determinative in formulating this proposed Final
11 Judgment. Therefore, none are being filed with this document.

12 Respectfully submitted,

13 
14 DOUGLAS E. ROSENTHAL

15 
16 DONALD A. KAPLAN
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20 Dated: Washington, D.C.
21 January 16, 1977
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