

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) CIVIL ACTION NO. 79-C-1816
 v.)
) Filed: May 4, 1979
 BRIGHTON BUILDING & MAINTENANCE)
 CO.;) (15 U.S.C. §§ 1 and 15A;
 KRUG EXCAVATING CO.;) 31 U.S.C. §§ 231-235)
 WESTERN ASPHALT PAVING CO.;)
 UNION CONTRACTING & MATERIALS CO.;)
 ARCOLE MIDWEST CORPORATION;)
 PALUMBO EXCAVATING CO.;)
 THOS. M. MADDEN CO.;)
 J. M. CORBETT CO.;)
 THOMAS J. BOWLER;)
 GEORGE B. KRUG; SR.;)
 ERNEST A. BEDERMAN;)
 PETER A. PALUMBO;)
 ROBERT J. MADDEN; and)
 JAMES C. CORBETT,)
)
 Defendants.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants in two counts. As a first claim, the United States of America brings this suit under Section 4A of the Clayton Act (15 U.S.C. § 15A) to recover its actual damages (Count One). As a second claim, the United States of America brings this suit under the False Claims Act (31 U.S.C. §§ 231-235) for double the amount of damages sustained, plus forfeitures (Count Two).

COUNT ONE

1. As a first claim, the United States of America brings this suit against the defendants under Section 4A of the Clayton Act (15 U.S.C. § 15A) to recover damages which it has sustained due to violations by defendants of Section 1 of the Sherman Act, (15 U.S.C. § 1). The claims alleged in this count are asserted as an alternate to those alleged in Count Two to the extent that any transaction complained of may give rise to liability under both counts.

2. Each of the corporate defendants transacts business and is found within the Northern District of Illinois.

3. Each of the individual defendants resides and is found within the Northern District of Illinois.

4. Many of the acts complained of herein occurred within the Northern District of Illinois.

II

DEFINITIONS

5. As used herein, the term:

- (a) "Highway construction" means the construction, reconstruction, building or rebuilding of public roads within the State of Illinois, including, but not limited to, the building or construction of bridges, grade separation structures, concrete or asphalt paving, and the earth moving and culverting performed in connection therewith;

- (b) "Highway construction contractor" means any business or legal entity engaged, directly or indirectly, in highway construction; and
- (c) "F.A.I. Project" means highway construction on the Federal-Aid Highways comprising a portion of the Interstate System partially financed by the federal government in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et. seq., commonly known as the Federal-Aid Highway Act.

III

DEFENDANTS

6. Brighton Building & Maintenance Co., Krug Excavating Co., Western Asphalt Paving Co., Union Contracting & Materials Co., Arcole Midwest Corporation, Palumbo Excavating Co., Thos. M. Madden Co., and J. M. Corbett Co. are made defendants herein. Each of these corporations is organized and exists under the laws of the state indicated below and has its principal place of business in the city indicated below. Within the period of time covered by this complaint each of these corporations has engaged in the highway construction business in the State of Illinois.

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Brighton Building & Maintenance Co.	Delaware	Chicago, Illinois
Krug Excavating Co.	Illinois	Chicago, Illinois
Western Asphalt Paving Co.	Illinois	Chicago, Illinois

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Union Contracting & Materials Co.	Illinois	Chicago, Illinois
Arcole Midwest Corporation	Illinois	Chicago, Illinois
Palumbo Excavating Co.	Illinois	Hillside, Illinois
Thos. M. Madden Co.	Illinois	Chicago, Illinois
J. M. Corbett Co.	Illinois	Chicago, Illinois

7. Thomas J. Bowler, George B. Krug, Sr., Ernest A. Bederman, Peter A. Palumbo, Robert J. Madden, and James C. Corbett are made defendants herein. During the period of time covered by this complaint, each of these individuals has been associated in the position shown with the business organization named below, and has been engaged in the highway construction business in the capacity indicated.

<u>Individual</u>	<u>Capacity</u>	<u>Business Organization</u>
Thomas J. Bowler	President	Brighton Building & Maintenance Co.
George B. Krug, Sr.	Secretary	Krug Excavating Co.
Ernest A. Bederman	President	Arcole Midwest Corporation
Peter A. Palumbo	President	Palumbo Excavating Co.
Robert J. Madden	President	Thos. M. Madden Co.
James C. Corbett	President	J. M. Corbett Co.

8. Whenever in this complaint reference is made to any act, deed, or transaction of any corporate defendant, such allegations shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents,

employees, or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

IV

CO-CONSPIRATORS

9. Various firms and individuals not made defendants herein, participated as co-conspirators with the defendants in the violations alleged herein and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

10. Federal-Aid Interstate Route No. 55 is part of a nationwide network of interconnecting highways over which motor vehicles move in a continuous and uninterrupted stream of interstate commerce from and through one state to another. A substantial amount of the nation's goods move in interstate commerce over these highways via truck transportation.

11. In the development of a nationwide network of interconnecting highways, including Federal-Aid Interstate Route No. 55, the federal government and the State of Illinois have, to the date of this complaint, cooperated in the financing and construction of such highways in the State of Illinois. In this connection, within the period of time covered by this complaint, there was in existence a program for the development and improvement of highways financed by the State of Illinois and the United States of America and administered by the State of Illinois and

the United States of America. This program was undertaken in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et. seq., commonly known as the Federal-Aid Highway Act. Under this program the United States of America, through its agency the Federal Highway Administration, furnished and furnishes, in combination with the State of Illinois, through its Department of Transportation, the funds needed to pay the costs of certain highway construction within the State of Illinois, including the highway construction which is the subject of this complaint.

12. During the period of time covered by this complaint, Section 112 of Title 23 of the United States Code governed the letting of contracts by state highway departments, including the Illinois Department of Transportation, for F.A.I. projects.

That section provided in part:

(a) In all cases where the construction is to be performed by the State highway department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary [of Transportation]. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding. . . .

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this

section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State highway department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof. [23 U.S.C. § 112(a), (b), (c) and (d)]

13. During the period of time covered by this complaint, there was in effect a State of Illinois law entitled "The Illinois Purchasing Act," Ill. Rev. Stat. Chapter 127 §§ 132.1 through 132.13, which governed the awarding of F.A.I. projects by the Illinois Department of Transportation. That statute provided in part:

(a) It is the purpose of this Act and is hereby declared to be the policy of the State that the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State Agency. [Ill. Rev. Stat. Chapter 127 § 132.2]

14. During the period of time covered by this complaint, the Illinois Department of Transportation invited highway construction contractors to submit sealed competitive bids on highway construction projects including F.A.I. projects. Such invitations are known as highway lettings and occur approximately ten times per year in Springfield, Illinois. The State of Illinois awards contracts to the lowest responsible bidders following the opening of the sealed bids by its Department of Transportation.

15. During the period of time covered by this complaint, the State of Illinois, in accordance with Section 12 of Title 23 of the United States Code, required each bidder on F.A.I. projects to execute an affidavit providing in part:

That

(Insert name of Individual, Co-partnership or Corporation Submitting Bid)

its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.

16. During the period of time covered by this complaint, there was a substantial, continuous and uninterrupted flow of steel, cement and other essential materials from suppliers outside of the State of Illinois to the job sites within the State of Illinois for use by highway contractors in the construction of F.A.I. projects, including the job sites of the projects which are the subject of this complaint.

17. The activities of the defendants, as described above, are within the flow of commerce and have a substantial effect on interstate commerce.

VI

VIOLATION ALLEGED

18. Beginning sometime in or about July, 1975, and continuing thereafter, the exact dates being to the plaintiff unknown, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendants herein, and others known and unknown to the plaintiff, entered into and engaged in a combination and conspiracy to suppress and eliminate competition in the construction of specific portions

of Federal-Aid Interstate Route No. 55 in the State of Illinois in unreasonable restraint of the above described interstate trade and commerce, in violation of Title 15, United States Code, Section 1, commonly known as the Sherman Act.

19. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were:

- (a) To allocate to Brighton Building & Maintenance Co., Krug Excavating Company, and Western Asphalt Paving Co. two specific F.A.I. projects let by the State of Illinois on July 29, 1975, Contract 30855, Item 82, and Contract 30858, Item 83, each of which comprises a portion of Federal-Aid Interstate Route No. 55;
- (b) To allocate to J. M. Corbett Co., Thos. M. Madden Co., and Palumbo Excavating Co. one specific project let by the State of Illinois on July 29, 1975, Contract 30856, Item 84, which comprises a portion of Federal-Aid Interstate Route No. 55;
- (c) To allocate to Arcole Midwest Corporation two specific F.A.I. projects let by the State of Illinois on July 29, 1975, Contract 30857, Item 85, and Contract 30861, Item 88, each of which comprises a portion of Federal-Aid Interstate Route No. 55; and

- (d) To submit collusive, noncompetitive, and rigged bids to the State of Illinois in connection with the five above referenced F.A.I. projects.

20. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore alleged, they have combined and conspired to do, including:

- (a) Discussing the submission of prospective bids on five F.A.I. projects let by the State of Illinois on July 29, 1975, Contract 30855, Item 82, Contract 30858, Item 83, Contract 30856, Item 84, Contract 30857, Item 85, and Contract 30861, Item 88;
- (b) Designating the low bidder on the five above referenced F.A.I. projects;
- (c) Submitting intentionally high, or complementary, bids on the above referenced F.A.I. projects on which another defendant or co-conspirator had been designated as the successful low bidder;
and
- (d) Submitting bid proposals on the five above referenced F.A.I. projects containing false, fictitious and fraudulent statements and entries.

VII

EFFECTS

21. The aforesaid combination and conspiracy alleged herein has had the following effects:

- (a) Prices of the F.A.I. projects referred to in paragraph 19 of Count One of this complaint have been fixed, maintained, and established at artificial and non-competitive levels;
- (b) Competition in the construction of the five above referenced F.A.I. projects has been restrained, suppressed, and eliminated;
- (c) The State of Illinois has been denied the right to receive sealed competitive bids for the five above referenced F.A.I. projects; and
- (d) The State of Illinois and the United States Government have been denied the benefits of free and open competition for the five above referenced F.A.I. projects.

22. As a result of the illegal combination and conspiracy alleged herein, the defendants' acts in furtherance thereof, the United States of America has been compelled to provide substantially greater funds for highway construction than would have been the case but for the illegal conduct complained of herein and has been injured and financially damaged by defendants in an amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America:

1. Prays that the herein alleged combination and conspiracy among defendants be adjudged and decreed to be in unreasonable restraint of interstate commerce and in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Demands judgment against defendants for such damages as suffered by it due to defendants' violation of the antitrust laws, as provided for in Section 4A of the Clayton Act (15 U.S.C. § 15A) together with such interest thereon as is permitted by law, and the cost of this suit.

3. Prays that it recovers such other amounts and has such other and further relief as the Court shall deem just.

COUNT TWO

23. As a second claim the United States of America brings this suit under Sections 3490-3492, and 5438 of the Revised Statutes (1878) as amended; (31 U.S.C. §§ 231-235 as amended) commonly known as the False Claims Act. The claims alleged in this count are asserted as an alternative to those alleged in Count One to the extent that any transaction complained of may give rise to liability under both Counts.

24. The allegations contained in paragraphs 2 through 21 are here realleged with the same force and effect as though set forth in full detail.

25. The defendants at all times mentioned in this complaint were not and are not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States.

26. The acts alleged in this complaint to have been done by each of the corporate defendants were authorized, ordered or done by the officers, agents, employees or representatives of each corporate defendant while actively engaged in the management, direction, or control of its affairs.

27. Pursuant to the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et seq., commonly known as the Federal-Aid Highway Act, the State of Illinois with the concurrence of the Federal Highway Administration devised and designed five F.A.I. projects involving highway construction on Federal-Aid Interstate Route No. 55, which contracts are: Contract 30855, Item 82, Contract 30858, Item 83, Contract 30856, Item 84, Contract 30857, Item 85, and Contract 30861, Item 88.

28. For the purpose of letting the aforesaid projects for highway construction, the State of Illinois, pursuant to federal law, advertised and called for competitive bids from persons including the defendants herein to be submitted at its July 29, 1975 letting.

29. Pursuant to said combination and conspiracy, and as a result of the acts done in furtherance thereof, Brighton Building & Maintenance Co., Krug Excavating Company, and Western Asphalt Paving Co. were awarded by the State of Illinois, with the

concurrence of the Federal Highway Administration, three F.A.I. projects, Contract 30855, Item 82, Contract 30858, Item 83, and Contract 30856, Item 84, and Arcole Midwest Corporation was awarded by the State of Illinois, with the concurrence of the Federal Highway Administration, two F.A.I. projects, Contract 30857, Item 85, and Contract 30861, Item 88, on the basis of bids and quotations which defendants submitted and which defendants falsely and fraudulently represented to be bona fide, independent, competitive, and not the product of any collusion or agreement between the bidders, and the prices of which bids they further falsely and fraudulently represented to be normal, reasonable and competitive whereas in fact known to the defendants but unknown to the State of Illinois or the plaintiff, the said bids were a sham and collusive and not the result of open competition, and prices therefore were unreasonable, noncompetitive and falsely inflated.

30. Pursuant to said combination and conspiracy and in order to obtain approval by the Federal Highway Administration of the award of said contracts, the defendants falsely and fraudulently executed and delivered certain affidavits the substance of which is set forth in paragraph 15 of this complaint which affidavits were false, fraudulent, and fictitious as the defendants well knew and made for the purpose and with the intent of defrauding the plaintiff.

31. With respect to the five F.A.I. projects referred to in paragraph 27 of this complaint, the defendants presented and/or caused to be presented to the State of Illinois for payment or approval by it numerous claims for payment, knowing such claims to be false, fictitious, or fraudulent, in that such claims were based on a contract which had been falsely or fraudulently procured by reason of the aforesaid bidding practices and that the amounts claimed were falsely or fraudulently inflated and excessive and that such claims would cause the State of Illinois to submit claims to the Federal Government for partial reimbursement.

32. As a result of the presentment to the State of Illinois of the aforesaid false or fraudulent claims, the State of Illinois has paid the false or fraudulent claims to certain of the defendants.

33. Based upon the payment by the State of Illinois of the aforesaid false or fraudulent claims, the State of Illinois has applied for and received partial reimbursement by the Federal Government in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et seq., commonly known as the Federal-Aid Highway Act.

34. The foregoing considered, the defendants have agreed, combined, or conspired to defraud the Government or a department or officer thereof by submitting or causing to be submitted false, fictitious or fraudulent claims upon or against the United States or through the use of false documents, knowing the same to contain

false or fictitious statements or entries for the purpose of obtaining or aiding to obtain the payment, allowance, or approval for payment of a claim upon or against the United States.

35. As a result of the illegal combination and conspiracy and the defendants' acts in furtherance thereof, plaintiff has been compelled to provide substantially greater funds for the highway construction on the F.A.I. projects referred to in paragraph 27 of this complaint than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by defendants, in an amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America:

1. Prays that the Court adjudge and decree that the defendants, and each of them, have presented and/or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false, fictitious or fraudulent.

2. Demands that the Court enter judgment against defendants in favor of the United States for two thousand dollars (\$2,000) for each false, fictitious, or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Sections 3490, 3491, 3492, and 5438 of the revised statutes (31 U.S.C. §§ 231-235) together with interest thereon and the cost of this suit.

3. Prays it recover such other amounts and have such other and further relief as the Court shall deem just.



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