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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

1. Alliance Mechanical, LLC, and
(Count 1)

2. Kendall Pope
(Count 1)

Defendants.

CRO7- 913 PHX JAT

INDICTMENT

VIO: 15 U.S.C. § 1
(Bid-Rigging)
Count 1

THE GRAND JURY CHARGES:

COUNT 1

I.

Description of the Offense

1. The following corporation and individual are hereby indicted and made defendants on the charge stated below:

A. ALLIANCE MECHANICAL, LLC;

B. KENDALL POPE.

2. Beginning in or around January 2005 and continuing until May 16, 2005, the exact dates being unknown to the Grand Jury, the defendants, James Govostes, and another co-conspirator entered into and engaged in a combination and conspiracy to suppress and eliminate competition by rigging bids on contracts for the installation of commercial refrigeration in the Phoenix, Arizona metropolitan area. The combination and conspiracy

1 engaged in by the defendants and their co-conspirators was in unreasonable restraint of
2 interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3 3. The charged combination and conspiracy consisted of a continuing agreement,
4 understanding and concert of action among the defendants and their co-conspirators, the
5 substantial terms of which were to submit rigged bids to Safeway Inc. for the installation of
6 commercial refrigeration equipment in grocery stores in the Phoenix, Arizona metropolitan
7 area.

8 II.

9 Means and Methods of the Conspiracy

10 4. For the purpose of forming and carrying out the charged combination and conspiracy,
11 the defendants and their co-conspirators took various actions, including, among other things:

- 12 a. discussing among themselves the submission of bids for commercial
13 refrigeration installation projects at Safeway Inc. grocery stores in the Phoenix,
14 Arizona metropolitan area;
- 15 b. agreeing to allocate bids for commercial refrigeration installation projects at
16 Safeway Inc. grocery stores among themselves according to which
17 co-conspirator company had a maintenance agreement in place at the particular
18 Safeway Inc. grocery stores for which bids were let;
- 19 c. agreeing to raise margins on bids for commercial refrigeration installation
20 projects at Safeway Inc. grocery stores;
- 21 d. soliciting other individuals to join and facilitate the conspiracy to rig bids for
22 commercial refrigeration installation projects at Safeway Inc. grocery stores;
- 23 e. designating which co-conspirator would submit the low bid for the commercial
24 refrigeration installation project at Safeway Store #2088;
- 25 f. submitting a rigged bid for the commercial refrigeration installation project at
26 Safeway Store #2088 to Safeway Inc. as they had agreed upon; and
- 27 g. accepting payment from Safeway Inc. for work done on the commercial

1 refrigeration installation project at Safeway Store #2088 awarded as a result of
2 a rigged bid submitted in furtherance of the conspiracy.

3 III.

4 Defendants and Co-conspirators

5 5. ALLIANCE MECHANICAL, LLC ("ALLIANCE") is an Arizona limited liability
6 corporation with its principal place of business in Phoenix, Arizona. During the period
7 covered by this Indictment, Alliance was engaged in the installation of commercial
8 refrigeration in Arizona, including in the Phoenix metropolitan area.

9 6. During the period covered by this Indictment, defendant KENDALL POPE was the
10 president and co-owner of defendant ALLIANCE.

11 7. Another corporation and James Govostes, who were not made defendants in this
12 Indictment, participated, as co-conspirators, in the offense charged in this Indictment and
13 performed acts and made statements in furtherance of the charged offense.

14 8. Whenever in this Indictment reference is made to any act, deed, or transaction of any
15 corporation, such allegation shall be deemed to mean that the corporation engaged in such
16 act, deed, or transaction by or through its officers, directors, agents, employees, or
17 representatives while they were actively engaged in the management, direction, control, or
18 transaction of its business or affairs.

19 IV.

20 Trade and Commerce

21 9. Commercial refrigeration includes the refrigerated cases in grocery stores such as deli
22 cases, dairy cases, and frozen food cases.

23 10. During the period covered by this Indictment, substantial quantities of refrigeration
24 fixtures, materials, and equipment, necessary for the defendants and their co-conspirators to
25 perform commercial refrigeration installation projects in the Phoenix, Arizona metropolitan
26 area, were transported across state lines in a continuous and uninterrupted flow of interstate
27 commerce and in a manner substantially affecting interstate commerce. Namely, a

1 substantial portion of refrigeration equipment installed by the defendants and their
2 co-conspirators in the provision of their commercial refrigeration services in Arizona was
3 manufactured outside the State of Arizona.

4 11. During the period covered by this Indictment, both the general business activities of
5 the victim, Safeway Inc., which is headquartered in California, and the commercial
6 refrigeration installation activities of a co-conspirator, also headquartered in California, were
7 conducted across state lines and had a not insubstantial effect on interstate commerce. The
8 co-conspirator does refrigeration installation business throughout the western United States
9 while Safeway Inc. does business throughout the United States.

10 12. During the period covered by this Indictment, the defendants and their
11 co-conspirators communicated in furtherance of the conspiracy across state lines between
12 Utah and Arizona, and both invoices and payments for the provision of the defendants and
13 their co-conspirators' commercial refrigeration services to Safeway Inc. were transmitted
14 across state lines.

15 13. During the period covered by this Indictment, the commercial refrigeration
16 installation activities of the defendants and their co-conspirators that are the subject of this
17 Indictment were within the flow of, and had a not insubstantial effect on, interstate trade and
18 commerce.

19 V.

20 Jurisdiction and Venue

21 14. The combination and conspiracy charged in this Indictment was carried out, in part,
22 within the District of Arizona within the five years preceding the return of this Indictment.

23 In violation of Title 15, United States Code, Section 1.

24 A TRUE BILL

25 /S/

26 FOREPERSON OF THE GRAND JURY
27 Date: August 14, 2007

28 KALINA M. TULLEY
Attorney, Antitrust Division

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