

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil No. 80-2067 |
| v. |) | Filed: February 16, 1982 |
| |) | |
| AMERICAN CONSULTING |) | Entered: May 28, 1982 |
| ENGINEERS COUNCIL, |) | |
| |) | |
| Defendant. |) | |

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint herein on August 15, 1980, and Plaintiff and Defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against or admission by either party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of both of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, (15 U.S.C. § 1).

II.

This Final Judgment shall apply to Defendant and to Defendant's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For purposes of this Section II, members of Defendant ACEC shall not be deemed to be in active concert or participation solely by virtue of their membership.

III.

Defendant ACEC is enjoined and restrained from directly or indirectly:

(A) Initiating, adopting, entering into, carrying out, or furthering any plan, program, or course of action which has the purpose or effect of suppressing, restraining, or discouraging its members from entering into design competitions, providing free services, or providing services on a contingent basis.

(B) Adopting, disseminating, publishing, or seeking adherence to any code of ethics, statement of principle, policy statement, rule, bylaw, guideline, standard, or collective statement which has the purpose or effect of suppressing, restraining, or discouraging its members from entering into design competitions, providing free services, or providing services on a contingent basis or which states or implies that design competitions, free services, or contingent arrangements are, in themselves, unethical, unprofessional, or contrary to any policy of Defendant.

Nothing in this Final Judgment shall prohibit an individual engineer or individual engineering firm, acting alone, from refusing to enter into design competitions, provide free services, or provide services on a contingent basis, or from otherwise expressing an opinion concerning the propriety of design competitions, free services, or contingent arrangements. Nor shall anything in this Final Judgment prohibit Defendant or any of its members from advocating or discussing legislation concerning design competitions, free services, or contingent arrangements or from advocating or discussing, with federal or state executive or purchasing agencies, rules, regulations, or policies concerning design competitions, free services, or contingent arrangements, or from advocating or discussing, in private or in public, the public policy considerations suggesting the need for legislation, rules, regulations, or governmental policies concerning design competitions, free services, or contingent arrangements, provided that such advocacy or discussion makes clear that Defendant and its members are not thereby suppressing, restraining, or discouraging the members of Defendant from entering into design competitions, providing free services, or providing services on a contingent basis.

IV.

Defendant AECB is ordered and directed to make a good faith effort to amend its policy statements, opinions of its ethics committee, manuals, handbooks, rules, constitution, bylaws, resolutions, and any other of its statements, guidelines, or publications either currently in its possession, custody, or control or published or issued in the future to eliminate therefrom any provisions which prohibit, discourage,

or restrain its members from entering into design competitions, providing free services, or providing services on a contingent basis or which state or imply that design competitions, free services, or contingent arrangements are, in themselves, unethical, unprofessional, or contrary to any policy of Defendant. Defendant may use fliers or errata sheets to note corrections with respect to statements, guidelines, or other publications currently in its possession, custody, or control with changes being made to the actual texts of any such statements, guidelines, or publications as new editions are issued or published.

V.

Defendant ACEC is ordered and directed within sixty days from the entry of this final Judgment to (1) send a copy of this Final Judgment to each of its member organizations, and (2) cause the distribution of this Final Judgment in conjunction with a mailing of the publication, "The Last Word." Defendant is further ordered and directed, for a period of ten years following the date of entry of this decree, to send a copy of this Final Judgment to each new member firm and each new member organization and to state in any publication of its guidelines for professional conduct that the guidelines do not prohibit design competitions, free services, or contingent arrangements.

VI.

The Defendant ACEC is ordered and directed to submit to Plaintiff an official written certification that none of its member organizations currently has in effect or seeks adherence to any code of ethics, statement of principle, policy statement, rule, bylaw, guideline, standard, or collective

statement which has the purpose or effect of suppressing, restraining, or discouraging its members from entering into design competitions, providing free services, or providing services on a contingent basis, nor does it pursue any other collective course of action which has the purpose or effect of suppressing or eliminating competition based upon designs, free services, or contingent arrangements. This certification shall be submitted within one hundred and twenty (120) days from the entry of this Final Judgment and shall be renewed annually for the period of this Final Judgment.

For purposes of carrying out Section VI, Defendant may rely in good faith upon the certification received from a member organization or, in the absence of such a certification, in any particular case, must make a good faith effort to ascertain the facts necessary to make this written certification with respect to any such member organization, which shall include reviewing the code of ethics and professional conduct guidelines and the directory of each such member organization.

VII.

Defendant is ordered and directed within sixty (60) days from the entry of this Final Judgment to attach to each copy of the current edition of "A Guide to the Procurement of Architectural and Engineering Services" ("Guide") in Defendant's possession, custody, or control and to all subsequent editions and versions of the Guide printed during the term of this Final Judgment a statement that nothing in the Defendant's code of ethics or guidelines for professional conduct prohibits its members from entering design competitions providing free services, or providing services on a contingent basis.

VIII.

Defendant is ordered to file with Plaintiff on the anniversary date of the entry of this Final Judgment, for a period of ten years, a report setting forth the steps it has taken during the prior year to comply with the provisions of this Final Judgment.

IX.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, regarding any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, employees, and agents of such Defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal office, Defendant shall submit such written reports,

under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized employee or representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X.

This Final Judgment shall remain in effect until ten (10) years from the date of entry.

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XII.

Entry of this Final Judgment is in the public interest.

Entered: May 28, 1982

/s/ Judge John Garrett Penn
John Garrett Penn
United States District Court Judge