

Attorneys for the United States

UNITED STATES OF AMERICA,
Plaintiff,
v.
SHEET METAL CONTRACTORS
ASSOCIATION,
Defendant.

Entered: 4/19/88

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon 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 the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II.

DEFINITIONS

As used in this Final Judgment:

- A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;
- B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;
- C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;
- D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;
- E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

- F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;
- G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;
- H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and
- I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III.

This Final Judgment applies to the defendant Sheet Metal Contractors Association ("SMCA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting,

ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

- A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sheet metal sub-bids on construction projects;
- B. Suppressing, restraining, or discouraging sheet metal contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on that project;
- C. Stating that negotiation of sub-bids is contrary to any policy of SMCA; or
- D. Providing for review of sheet metal contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly

reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for sheet metal subcontracts or material supplies must be filed with the SMCA bid depository as well as with the relevant general contractor association bid depository;
2. Filed bids may not be altered or changed after the deadline for their filing;
3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;
4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and
5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any SMCA rules concerning bidding for contracts on construction projects a statement that no SMCA rule or policy prohibits negotiation of

sub-bids, or requires that subcontracts be accepted only on sub-bids filed in accordance with SMCA rules.

VI.

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject SMCA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII.

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of SMCA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of SMCA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins SMCA; and

C. Publish in the GCA Weekly Bid Bulletin, or in the event GCA ceases publication of its Weekly Bid Bulletin in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX.

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X.

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 United States 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 the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the 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 the defendant's principal office, the 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 the means provided in this Section X shall be divulged by any representative

of the Department of Justice to any person other than a duly authorized 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.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

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 the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII.

This Final Judgment shall expire ten (10) years from its date of entry.

XIII.

Entry of this Final Judgment is in the public interest.

Dated:

/s/ ALAN C. KAY

UNITED STATES DISTRICT JUDGE

United States v. Sheet Metal Contractors Association
Civil No.
Final Judgment