

Michael R. Spaan  
U.S. Attorney  
Federal Building and United States Courthouse  
Room C-252, Mail Box 9  
701 C Street  
Anchorage, Alaska 99513

Edward D. Eliasberg, Jr.  
Carolyn L. Davis  
United States Department of Justice  
10th & Pennsylvania Ave., N. W.  
Washington, D. C. 20530  
Telephone: (202) 633-2582  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

ALASKA BOARD OF REGISTRATION  
FOR ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS,  
Defendant.

Civil Action No. A82-423 CIV

Filed: November 18, 1983

FINAL JUDGMENT

Entered: May 17, 1984

Plaintiff, United States of America, having filed its Complaint herein on October 12, 1982, and plaintiff and defendant, by their respective attorneys, having 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 any evidence against or an admission by any 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 consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting 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.

As used in this Final Judgment: "Board certificate of registration holder" means any person holding a current certificate of registration as a professional architect, engineer or land surveyor issued by defendant, or any corporation holding a current certificate of authorization to practice architecture, engineering or land surveying issued by defendant.

III.

This Final Judgment applies to the defendant and to defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is hereby enjoined and restrained from directly or indirectly:

(A) Continuing, maintaining, adopting, entering into, carrying out, advocating or furthering any agreement, plan, program, or course of action which has the purpose or effect of

suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations.

(B) Promulgating, maintaining, adopting, disseminating, publishing, enforcing or seeking adherence to any rule, by-law, guideline, standard, code of ethics, statement of principle, policy, or collective statement which has the purpose or effect of suppressing, restraining, or discouraging Board certificate of registration holders from submitting competitive bids or price quotations, or which states or implies that competitive bidding or quoting prices is prohibited, unethical, unprofessional, or contrary to any policy of defendant.

(C) Refusing to issue a certificate to any applicant, or rescinding, suspending or refusing to renew a certificate of any holder, because of use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding.

V.

Nothing in this Final Judgment shall prohibit defendant from advocating or seeking legislation concerning competitive bidding or quoting prices, provided that such advocacy or discussion makes clear that defendant is not thereby suppressing, restraining or discouraging Board certificate of registration holders from submitting competitive bids or price quotations.



## VI.

Subsection 230(b) of the defendant's Rules of Professional Conduct [12 AAC 36.230(b)] which states that:

Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications for the proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

is hereby declared null and void because the subsection is in violation of Section 1 of the Sherman Act [15 U.S.C. § 1 (1977)]. Subsection 230(b) must be deleted from the Alaska Administrative Code within 60 days from the entry of this Final Judgment. Defendant is also ordered and directed to delete any other provision in its Rules of Professional Conduct, by-laws, resolutions, and policy statements, whether formal or informal, which prohibits, limits, or otherwise discourages the use or submission of competitive bids or price quotations, or solicitation of proposals for professional services on the basis of competitive bidding, by Board certificate of registration holders and applicants, or which implies that the use, submission, or solicitation of competitive bids or price quotations is prohibited, unethical, unprofessional, or contrary to any policy of the defendant.

## VII.

Within 60 days from entry of this Final Judgment:

A. The defendant is ordered to insert in the place of the text of subsection 230(b) [12 AAC 36.230(b)] and any other provision deleted pursuant to Section VI, above, a statement that

subsection 230(b) [12 AAC 36.230(b)] or other such provision has been deleted and the date of the deletion.

B. The defendant is further ordered to insert in the Alaska Administrative Code on the page where subsection 230(b) [12 AAC 36.230(b)] previously appeared the following Editor's Footnote:

Editor's Note: As of Register 88, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney in accordance with a Final Judgment entered, with the consent of the Board and the United States Department of Justice, by the United States District Court for the District of Alaska in United States v. Alaska Bd. of Registration for Architects, Engineers and Land Surveyors, Civil Action No. A82-423 CIV. This Judgment was entered because 12 AAC 36.230(b) was in violation of Section 1 of the Sherman Antitrust Act [15 U.S.C. § 1 (1977)]. The Final Judgment also prohibits further enforcement of any ban or Board policy against competitive bidding.

.. VIII.

Within 60 days from entry of this Final Judgment, notice of this Final Judgment consisting of a letter on the letterhead of the Division of Occupational Licensing of the Alaska Department of Commerce and Economic Development with a text identical to that of Appendix A of this Final Judgment, shall be sent: (1) to each current Board certificate of registration holder; (2) to each state, city and borough entity in Alaska which may purchase architecture, engineering, or land surveying services and to which the Board's roster is mailed under AS 08.48.081; and (3) to each trade association for contractors in the State of Alaska. In addition within 60 days from entry of this Final Judgment, such notice shall be published in the Alaska Construction and Oil



magazine, and in the Anchorage Times, Juneau Empire, Fairbanks News-Miner, Sitka Sentinel, Peninsula Clarion, Nome Nugget, Tundra Times, Ketchikan Daily News, and Kodiak Mirror newspapers in their general readership sections.

Furthermore, for a period of ten (10) years following the date of entry of this Final Judgment, such notice shall be sent to each new Board certificate of registration holder and to all others who receive the Board's roster under AS 08.48.081. The letter will also be published in every printing of the Board's pamphlet of statutes and regulations for a period of ten (10) years after the date of entry of this Final Judgment.

IX.

The defendant is ordered and directed to file with the Court and serve upon plaintiff, within one-hundred-twenty (120) days after entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Sections VI, VII and the first paragraph of Section VIII.

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 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 the Division of Occupational Licensing at 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 the Division of Occupational Licensing at its 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. The Antitrust Division of the United States Department of Justice will be considered a person who has filed a request for notice of proposed regulation actions by the defendant under AS 44.62.190 (a)(2) and will therefore be sent notice of those actions.

XI.

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

XII.

Jurisdiction is retained by the 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.

XIII.

Entry of this Final Judgment is in the public interest.

Entered: May 17, 1984

/s/ Chief Judge James A. von der Heydt  
United States District Court Judge