

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. New Orleans Chapter, Associated General Contractors of America, Inc., U.S. District Court, E.D. Louisiana, 1970 Trade Cases ¶73,229, (Jul. 17, 1970)

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United States v. New Orleans Chapter, Associated General Contractors of America, Inc.

1970 Trade Cases ¶73,229. U.S. District Court, E.D. Louisiana, New Orleans Division. Civil Action No. 14190 Division "A". Entered July 17, 1970. Case No. 1777 in the Antitrust Division of the Department of Justice.

Sherman Act

Trade Associations—Restraints on Construction Bids—Restrictive Bidding Rule—Consent Decree.

—A trade association of New Orleans building contractors was barred by a consent decree from enforcing or adhering to any restrictive bidding rule preventing its general contractor members from submitting bids on projects where the owner or architect solicited bids directly from subcontractors. The association also was barred from directly or indirectly agreeing to refuse to bid on building construction projects in the New Orleans Metropolitan area where the owner or architect desires to take bids directly from one or more classifications of subcontractors or from enforcing any by-law, rule or regulation to this effect. Any restrictive bidding rule must be eliminated from the association's by-laws and publication of the substantive terms of the judgment must be inserted in a trade magazine.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, W. D. Kilgore, Jr., Allen A. Dobey, Charles L. Beckler, Arthur A. Feiveson and C. Brooke Armat, Attys., Dept. of Justice.

For the defendant: Deutsch, Kerrigan & Stiles, by R. Emmett Kerrigan, New Orleans, La. and Hogan & Hartson, by George W. Wise, Washington, D. C.

Final Judgment

CHRISTENBERRY, D. J.: Plaintiff, United States of America, having filed its complaint herein on January 28, 1964, and defendant having filed its answer to said complaint denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment with respect to "Bidding Rule C" without admission by either party respecting the allegations of the complaint relating only to "Bidding Rule C," summary judgment having been entered against the defendant by this Court on June 24, 1969, as to the remaining issues in this case;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issues of fact or law herein with respect to "Bidding Rule C," and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "New Orleans Metropolitan area" is comprised of the cities and towns of New Orleans, Metairie, Michoud, Jefferson, Gretna, Marrero, Kenner, Chalmette, Harvey, Westwego, Harahan, Slidell, Arabi, Terrytown, Bridge City, Mandeville and St. Rose, in the State of Louisiana;

(B) "General contractor" means a contractor or contracting firm engaged in the business of constructing, altering, remodeling, building additions to, renovating, reconstructing or repairing commercial buildings, manufacturing plants, hospitals, schools, Government buildings, religious institutions, libraries and similar structures, under direct contract with the owner or architect. General contractors sometimes perform all phases of a given construction project, and sometimes they arrange with subcontractors for the performance of certain mechanical and other special items or phases of the project;

(C) "Subcontractor" means a contractor or contracting firm engaged in the business of performing one or more mechanical or other specialized types of work in or upon structures or buildings, usually including the installation of equipment;

(D) "Bidding Rule C" means Rule C of the Bidding Rules of the Association's by-laws, providing:

C. Work to be Included.

Competitive bids shall not be submitted on any project unless all of the items necessary to complete the job are included in the bid on the general contract. All items entering into the general contractor's bid are to be based upon prices, costs and estimates solicited or otherwise obtained directly by the general contractor from the subcontractors or vendors involved. This Rule is intended to prohibit members from submitting competitive bids in cases where the owner or architect takes bids direct from one or more classifications of subcontractors.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its subsidiaries, successors, assigns, members, officers, directors, agents and employees'; and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Elimination of "Bidding Rule C"*]

The defendant is required to amend its by-laws so as to eliminate therefrom "Bidding Rule C" as defined in Section II(D) above.

V

[*Solicitation of Bids*]

The defendant is hereby:

(A) Perpetually enjoined from enforcing or adhering to "Bidding Rule C as defined in Section II(D) above;

(B) Perpetually enjoined from adhering to or enforcing or claiming any rights under any by-law, rule or regulation having any purpose or effect contrary to or inconsistent with any of the provisions of this Final Judgment;

(C) Perpetually enjoined from directly or indirectly agreeing to refuse to bid on building construction projects in the New Orleans Metropolitan area where the owner or architect desires to take bids directly from one or more classifications of subcontractors.

VI

[*Notification*]

The defendant shall within sixty (60) days after the entry of this judgment cause to be inserted in the trade magazine "Constructor" a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this Final Judgment. Said notice shall be repeated in at least three consecutive issues of said trade magazine. Defendant shall file with the Court proof of compliance with this paragraph.

VII

[*Compliance and Inspection*]

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access, during office hours of the defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment;

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reasonable reports in writing with respect to any matters contained in this Final Judgment as may from time to time be required.

No information obtained by the means permitted in this Section VII 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 plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Retention of Jurisdiction*]

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 and 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 contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.