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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BAKERSFIELD ASSOCIATED PLUMBING  
CONTRACTORS, INC.; KERN, INYO  
AND MONO COUNTIES SHEET METAL  
CONTRACTORS ASSOCIATION, INC.;  
and KERN COUNTY ELECTRICAL  
CONTRACTORS ASSOCIATION, INC.,  
  
Defendants.

Civil Action No. 1479-ND  
MODIFIED FINAL JUDGMENT

This is a proceeding filed by the Government on June 28, 1955 against the above-named defendants, alleging an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in plumbing, heating and ventilating, sheet metal, and electrical supplies, materials and fixtures, in violation of Section 1 of the Sherman Act. The relief sought is of an equitable nature. The defendants appeared and filed their joint and several answer to such complaint denying the substantive allegations thereof. The case was tried by the Court sitting without a jury.

After trial, the Court considered the evidence presented, the proposed findings and counter-findings prepared respectively by counsel for plaintiff and defendants, in accordance with the Court's Order of December 30, 1957, and after having held hearings on April 25, 1958 and May 2, 1958 for the

purpose of settling such findings and judgment in this matter the Court on May 26, 1958 filed its findings of fact, conclusions of law, and judgment. The aforesaid judgment which was entered in the docket of the above-entitled Court on May 29, 1958, provided in part as follows:

Provided, however, that the defendants may within a period of one year after the entry of this judgment, upon notice to the Government, present to the Court a plan for the operation of a bid depository, and if, after hearing, the Court approves of such plan or any modification thereof, the Court may, within said period of one year from the date of entry of this judgment, modify this judgment to permit the operation of a bid depository in accordance with such plan or modification thereof.

On October 21, 1958, pursuant to the aforesaid provision in such judgment, the defendants filed their petition for approval of a plan for the operation of a bid depository in accordance with certain rules which are fully set forth in such petition. A copy of such rules is attached as Exhibit A. On November 17, 1958, a hearing was held on said petition, at which evidence was offered by defendants in support of their petition for modification of such judgment.

The Court having considered the matters presented at the previous proceedings, having read such petition for modification of the judgment heretofore entered, having heard the evidence in support of such petition, and having found nothing objectionable in the rules which are attached as Exhibit A insofar as this proceeding is concerned,

IT IS ORDERED, ADJUDGED AND DECREED that the judgment heretofore entered be modified to provide as follows:

I

The Court has jurisdiction of the subject matter hereof and of the parties herein. The defendants Bakersfield Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc., and Kern County Electrical Contractors Association, Inc., by adopting on or about October 27, 1954 and enforcing Rules 6, 8, and 12 B of the Bakersfield

1 Construction Industry Bid Depository hereinafter described, have combined  
2 and conspired among themselves and with others to unreasonably restrain  
3 interstate trade and commerce, in violation of Section 1 of the Act of  
4 Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled  
5 "An Act to protect trade and commerce against unlawful restraints and  
6 monopolies," commonly known as the Sherman Act.

7 II

8 As used in this judgment:

9 (a) The term "Bakersfield Trade Area" shall refer to and include the  
10 city of Bakersfield, and the county of Kern, State of California.

11 (b) The term "construction supplies" shall refer to plumbing, heating  
12 and ventilating, sheet metal, and electrical supplies which are furnished by  
13 subcontractors in connection with the performance of construction contracts.

14 (c) The term "bid depository" shall refer to a facility through which  
15 bids of subcontractors are received and processed and made available to  
16 general contractors, in accordance with the rules for the operation of  
17 such bid depository.

18 (d) The term "Bakersfield Construction Industry Bid Depository" is  
19 a facility established, maintained, and operated by the defendants,  
20 through which bids of subcontractors are received and processed and made  
21 available to general contractors in accordance with the rules for the  
22 operation of such bid depository. A copy of such rules is attached to  
23 plaintiff's complaint as Exhibit A and has been incorporated in the  
24 findings of fact made by the Court in this action.

25 III

26 The provisions of this judgment applicable to any defendant shall  
27 apply to such defendant, its officers, directors, members, managers,  
28 agents, employees, successors and assigns, and to all persons acting or  
29 claiming to act under, through, or on behalf of them, or any of them, and  
30 to any user of any bid depository operated by the defendants, or any of  
31 them, who shall have had actual notice of the provisions of this judgment.

32

IV

The defendants, and each of them, are enjoined and restrained from:

(a) engaging in or participating in agreements, understandings, practices, or arrangements having a purpose or effect of continuing, reviving, or renewing the aforesaid combination or conspiracy;

(b) adopting, enforcing, or continuing in effect, any of the provisions of any rule for the operation of a bid depository which

(i) requires the submission of separate bids for plumbing, or separate bids for heating and ventilating;

(ii) attaches any condition with respect to the price at which any combination bid for plumbing and heating and ventilating may be submitted;

(iii) requires that subcontractors who have been awarded contracts as a result of bids deposited at such bid depository shall pay any fees which, in the aggregate and in combination with any other fees collected pursuant to any such rule, are in excess of the amount reasonably required for the operation and maintenance of such bid depository;

(c) coercing, inducing, or attempting to coerce or induce, any contractor who has submitted a bid through a bid depository operated by defendants, or any of them, to withdraw such bid after it has been opened, announced, or published at such bid depository; and

(d) soliciting, receiving, or accepting money or any other things of value as an inducement to the withdrawal of any bid submitted through a bid depository operated by the defendants, or any of them, after it has been opened, announced, or published at such bid depository.

IV A

The defendants are ordered and directed:

(a) to open in public at the office of any bid depository operated by the defendants, or any of them, a copy of each bid received at such bid depository, and to announce or publish such bid to those present at such bid opening at least six hours prior to the time specified by the awarding

1 authority for the opening of general contractors' bids, and two hours prior  
2 to the time when the sealed bids received at such bid depository are avail-  
3 able to the general contractors to whom they are addressed;

4 (b) to notify all general contractors and subcontractors known to be  
5 interested in bidding on any project through which bids have been or are  
6 invited to be received at a bid depository operated by the defendants, or  
7 any of them, of the time when such bids will be opened at such bid  
8 depository; that such bids shall be opened under the conditions specified  
9 in paragraph IV A (a) hereof and that they are at liberty to attend; and

10 (c) to notify all general contractors and subcontractors who in the  
11 past have taken bids from, or placed bids with, a bid depository operated by  
12 the defendants, or any of them, that bid openings are to be conducted under  
13 the conditions specified in paragraph IV A (a) hereof, and that they are  
14 invited to attend such openings.

15 IV B

16 The Court is of the view that the method of operating a bid depository  
17 as outlined in Exhibit A attached to this judgment, does not violate the  
18 antitrust laws of the United States, provided that the defendants in so  
19 operating shall, in all other respects, be subject to all of the provisions  
20 of this judgment.

21 V

22 For the purpose of securing compliance with this judgment, and for no  
23 other purpose, and subject to any legally recognized privilege, duly  
24 authorized representatives of the Department of Justice shall, upon written  
25 request of the Attorney General or the Assistant Attorney General in charge  
26 of the Antitrust Division, and on reasonable notice to any defendant made  
27 to its principal office, be permitted (1) access during the office hours of  
28 such defendant to those parts of the books, ledgers, accounts, correspondence,  
29 memoranda and other records and documents in the possession or under the  
30 control of such defendant which relate to any of the subject matters  
31 contained in this judgment; and (2) subject to the reasonable convenience  
32 of such defendant and without restraint or interference from it to interview

1 officers or employees of said defendant, who may have counsel present. No  
2 information obtained by the means provided in this Section V shall be  
3 divulged by any representative of the Department of Justice to any person  
4 other than a duly authorized employee of the Department, except in the course  
5 of legal proceedings to which the United States of America is a party for  
6 the purpose of securing compliance with this judgment, or as otherwise  
7 required by law.

8 VI

9 Jurisdiction is retained for the purpose of enabling either party to  
10 this judgment to apply to this Court at any time for such further orders  
11 and directions as may be necessary or appropriate for the construction of  
12 or the carrying out of this judgment, for the modification or termination  
13 of any of the provisions thereof, and for the enforcement of compliance  
14 therewith and punishment of violations thereof.

15 VII

16 Judgment is entered against the defendants, and each of them, for all  
17 costs to be taxed in this proceeding.

18  
19 Dated: December 22, 1958.

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21 /s/ LEON R. YANKWICH  
22 Chief United States District Judge  
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1                   BAKERSFIELD CONSTRUCTION INDUSTRY BID DEPOSITORY

2                   BAKERSFIELD ASSOCIATED PLUMBING CONTRACTORS, INC.

3                   KERN, INYO AND MONO COUNTIES SHEET METAL CONTRACTORS

4                   ASSOCIATION, INC.

5                   KERN COUNTY ELECTRICAL CONTRACTORS ASSOCIATION, INC.

6                   Dated \_\_\_\_\_

7  
8   1. PURPOSE: These rules are established for the purpose of providing  
9   fair and open competition between the members of the plumbing, heating  
10   and ventilating, sheet metal and electrical industries and to eliminate  
11   the unfair practice of bid peddling.

12   2. APPLICABILITY: The rules herein established shall govern any  
13   proposal, tender or offer to contract the installation of plumbing,  
14   heating and ventilating, sheet metal or electrical, upon all projects  
15   within the Counties of Kern, Inyo and Mono for the plumbing, heating and  
16   ventilating, and sheet metal industries, and the County of Kern for the  
17   electrical industry, wherein the awarding authority has designated and  
18   advertised a specific time for the opening of contract bids for the  
19   performance of work upon said project by a user of the bid depository  
20   or member of the associations.

21   3. DEPOSITORY: To achieve the objects of this agreement, the Bakers-  
22   field Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties  
23   Sheet Metal Contractors Association, Inc., and the Kern County Electrical  
24   Contractors Association, Inc., hereinafter referred to as the associations,  
25   will establish and maintain a bid depository at 1421 - 24th Street,  
26   Bakersfield, California. The bid depository box shall be equipped with  
27   two locks; the first two persons depositing bids on any specified project  
28   that will be present for the opening of such bids will lock the depository  
29   box and retain the keys thereto; upon the specified time for the opening  
30   of such bids, the persons retaining the keys will unlock the box; all  
31   bids will then be publicly announced and tabulated by the respective  
32   associations' secretaries.

33   4. DEPOSIT OF BIDS: The bid depository maintained by the associations  
34   shall be available to all plumbing, heating and ventilating, sheet metal  
35   and electrical contractors desiring to bid upon the designated project.

36   5. TIME OF DEPOSIT: All bids must be received by the depository  
37   normally not later than six hours prior to the time designated for the  
38   opening of bids by the awarding authority; provided, however, that if the  
39   time designated by the awarding authority for opening bids is such that  
40   deposit six hours prior thereto would not be during normal working hours,  
41   then the Board of Directors of each association shall coordinate and  
42   designate the time at which bids must be deposited; in the event of time  
43   designation by the association Board of Directors all bidders known to  
44   be interested in bidding the project shall be notified sufficiently in  
45   advance of the time of deposit by the office of the depository. Bids  
46   received later than the time hereinabove provided shall be returned to  
47   the bidding contractor unopened.

48   6. COMBINATION BIDS: Contractors submitting bids to the depository may  
49   submit separate bids for plumbing, heating and ventilating, sheet metal  
50   and electrical work, and may submit a bid representing a combination of

1 all or any two or more thereof. All bids are to be submitted to the  
2 depository upon the condition that either the plumbing, or heating and  
3 ventilating, or sheet metal or electrical portion of any bid may be used  
4 by the general contractor with any other plumbing, or heating and  
5 ventilating, or sheet metal or electrical bid or portion of a bid  
6 submitted through the depository. Any bid purporting or attempting to  
7 restrict such use in combination with other depository bids shall be  
8 invalid.

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10 7. BID OPENING: The procedure for ~~submission~~ and opening of bids shall  
11 be as follows:

12 A. To assure uniformity of bids, all bids must be submitted  
13 upon the bid forms supplied by the depository; forms will be  
14 mailed by the depository to all contractors indicating an intent  
15 to bid the project; bids not submitted upon the depository bid  
16 form will not be recognized.

17 B. Bidders shall submit to the depository a separate, sealed  
18 bid addressed to each general contractor with whom the bidding  
19 contractor intends to bid, and shall submit an additional bid  
20 addressed to the depository.

21 C. Bids addressed to the depository will be opened at 1421 -  
22 24th Street, Bakersfield, California, six hours prior to the bid  
23 opening of the awarding authority, unless a different time has been  
24 designated in Paragraph 5; bids will be opened at such time solely  
25 for the purpose of determining whether the bids conform to depository  
26 requirements; bids so opened shall not be deemed an offer to any  
27 general contractor at the time of such opening.

28 D. Bids addressed to the general contractors shall be available  
29 to the general contractors two hours following the opening of bids  
30 addressed to the depository; provided, however, that no bid shall  
31 be delivered to a general contractor until said contractor has  
32 agreed in writing to accept the bid if it is the low bid accepted  
through the depository.

33 E. Bids shall be opened, in public, and all general contractors  
34 and subcontractors, known to be interested in bidding on the  
35 project, shall be notified that they are at liberty to attend  
36 and witness the opening of bids; likewise all general contractors  
37 who have in the past, taken bids from the depository shall be  
38 notified in writing by the secretaries of the respective associations,  
39 that bid depository openings are open to the public and that they are  
40 invited to attend all bid openings.

41 8. DEPOSITORY FEE: The successful bidder or bidders shall pay to the  
42 depository fund, as a depository fee, a sum equal to one-half of one  
43 per cent (1/2 of 1%) of the contract awarded to each bidder for plumbing,  
44 one-half of one per cent (1/2 of 1%) of the contract for heating and  
45 ventilating, one-half of one per cent (1/2 of 1%) of the contract for  
46 sheet metal and one-half of one per cent (1/2 of 1%) of the contract  
47 for electrical; provided, however, that the depository fee pertaining  
48 to any one of the aforementioned subcontracts shall not exceed \$250.00.  
49 The depository fee shall be paid at the time the contractor receives  
50 the first payment on the contract. A contractor failing to pay the  
51 required depository fee within thirty (30) days of the date specified  
52 herein shall be denied the privileges of the depository until the fee  
53 has been paid.

- 1 9. COLLECTION OF DELINQUENT FEES: In the event of litigation to collect  
2 a delinquent depository fee, or to collect a delinquent withdrawal fee,  
3 the delinquent contractor shall pay all attorneys' fees, costs of suit,  
4 and other expenses reasonably incurred in connection with such litigation.
- 5 10. REOPENING OF PROJECTS: When bids for a specified project are once  
6 opened, there shall be no further bidding on said project for a period of  
7 one hundred twenty (120) days by contractors who did not bid such project  
8 in the first instance unless the plans and specifications have been  
9 revised in an amount exceeding twenty-five per cent (25%) of the work  
10 and/or materials prescribed in the original plans and specifications.
- 11 11. CONDITIONS OF BID: All plumbing, heating and ventilating, sheet  
12 metal and electrical bids shall be submitted upon the condition that the  
13 bid may be used only in combination with a plumbing, heating and ventilating,  
14 sheet metal or electrical bid which has been submitted through the  
15 depository. Said condition of bid will be printed upon the bid form  
16 provided by the depository.
- 17 12. WITHDRAWAL OF BID: The procedure for withdrawal of a bid shall be as  
18 follows:
- 19 A. Any bid in the depository may be withdrawn, without penalty,  
20 at any time prior to the opening of bids as outlined in Paragraph 7  
21 hereof.
- 22 B. After the opening of bids as outlined in Paragraph 7 hereof,  
23 a bid may be withdrawn prior to the time that bids are made available  
24 to the general contractors; provided, however, that a bid may be  
25 withdrawn at that time only upon payment of one per cent (1%) of the  
26 total amount of said bid, said penalty not to exceed \$1,000.00. Pay-  
27 ment of the penalty herein provided must be made within ten (10) days  
28 of the withdrawal. Notification that a bid is to be withdrawn must  
29 be made by the contractor or his agent.
- 30 C. In the event that a bid is not withdrawn prior to delivery to  
31 the general contractor, the bid shall become an irrevocable offer to  
32 the general contractor and shall not be withdrawn thereafter; the  
consideration for the option herein provided shall be the execution  
by the general contractor of the agreement to accept low bid at the  
time of receipt of the subcontract bid.
13. NAMING OF SUBCONTRACTORS: In the event that any plumbing, heating  
and ventilating, sheet metal, or electrical contractor intends to subcon-  
tract a part of his bid to another contractor signatory to this agreement,  
such contractor shall designate the name of said subcontractor to be used  
by him on the bid form; subcontractors so named shall not be changed  
thereafter in the absence of showing good cause therefor.
14. RECORDATION OF BIDS: All bids submitted through the depository shall  
be accurately recorded and placed on file in the office of the depository;  
said bids will be available for inspection by any participant or user of  
the depository or any other person or persons approved by the Board of  
Directors. All such bids shall be maintained in the files of the depository  
for a period of one year after date of opening.

29 In consideration of the observance of the foregoing rules by other  
30 participants in the depository, and in consideration of the maintenance of  
31 the bid depository, I hereby agree to abide by the rules and conditions  
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1 hereinabove prescribed, and to pay any fee or fees provided in said rules  
2 and conditions.

3 \_\_\_\_\_  
4 Date

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6 Name of Firm

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8 Signature

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