

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 79-C-2496
v.)	
)	Filed: June 18, 1979
ARCOLE MIDWEST CORPORATION;)	
BRIGHTON BUILDING & MAINTENANCE)	
CO.;)	(31 U.S.C. §§ 231-235)
KRUG EXCAVATING CO.;)	
WESTERN ASPHALT PAVING CO.;)	
UNION CONTRACTING & MATERIALS CO.;)	
ROBERT R. ANDERSON COMPANY;)	
ALLIED ASPHALT PAVING COMPANY;)	
THOMAS J. BOWLER;)	
GEORGE B. KRUG, SR.;)	
GEORGE B. KRUG, JR.;)	
ERNEST A. BEDERMAN;)	
ROBERT R. ANDERSON; and)	
DONALD K. McLEAN,)	
)	
Defendants.)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants. The United States of America brings this suit under the False Claims Act (31 U.S.C. §§ 231-235) for double the amount of damages sustained, plus forfeitures.

I

JURISDICTION AND VENUE

1. The United States of America brings this suit under Sections 3490-3492, and 5438 of the Revised Statutes (1878) as amended; (31 U.S.C. §§ 231-235 as amended) commonly known as the False Claims Act.

2. Each of the corporate defendants transacts business and is found within the Northern District of Illinois.

3. Each of the individual defendants except Ernest A. Bederman resides and is found within the Northern District of Illinois.

4. Each of the defendants performed one or more of the acts complained of herein within the Northern District of Illinois.

II

DEFINITIONS

5. As used herein, the term:

- (a) "Airport runway construction" means the construction, reconstruction, building or rebuilding of airport runways and taxiways within the State of Illinois, including, but not limited to, concrete paving, asphalt paving, earth moving, lighting and allied construction performed in connection therewith;
- (b) "Airport runway construction contractor" means any business or legal entity engaged, directly or indirectly, in airport runway construction;

(c) "A.D.A.P. Project" means airport runway construction partially financed by the federal government in accordance with the terms and conditions of the Airport Development Aid Program established pursuant to the Airport and Airway Development Act of 1970, Title 49, United States Code, Sections 1701 et seq.

III

DEFENDANTS

6. Arcole Midwest Corporation, Allied Asphalt Paving Company, Robert R. Anderson Company, Brighton Building & Maintenance Co., Krug Excavating Co., Western Asphalt Paving Co., and Union Contracting & Materials Co., are made defendants herein. Each of these corporations is organized and existing under the laws of the state indicated below and has its principal place of business in the city indicated below. Within the period of time covered by this complaint each of these corporations has engaged in the highway construction business in the State of Illinois.

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Arcole Midwest Corporation	Illinois	Chicago, Illinois
Allied Asphalt Paving Company	Illinois	Hillside, Illinois
Robert R. Anderson Company	Delaware	Chicago, Illinois
Brighton Building & Maintenance Co.	Delaware	Chicago, Illinois
Krug Excavating Co.	Illinois	Chicago, Illinois

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Western Asphalt Paving Co.	Illinois	Chicago, Illinois
Union Contracting & Materials Co.	Illinois	Chicago, Illinois

7. Thomas J. Bowler, George B. Krug, Sr., George B. Krug, Jr., Ernest A. Bederman, Robert R. Anderson and Donald K. McLean are made defendants herein. During the period of time covered by this complaint each of these individuals has been associated in the position shown with the business organization named below, and has been engaged in the highway construction business in the capacity indicated.

<u>Individual</u>	<u>Capacity</u>	<u>Business Organization</u>
Thomas J. Bowler	President	Brighton Building & Maintenance Co.
George B. Krug, Sr.	Secretary	Krug Excavating Co.
George B. Krug, Jr.	Vice President	Union Contracting & Materials Co. and Western Asphalt Paving Co.
Ernest A. Bederman	President	Arcole Midwest Corporation
Robert R. Anderson	President Vice President	Robert R. Anderson Company and Allied Asphalt Paving Company
Donald K. McLean	President	Allied Asphalt Paving Company

8. Whenever in this complaint reference is made to any act, deed, or transaction of any corporate defendant, such allegations shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents,

employees, or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

9. The defendants at all times mentioned in this complaint were not and are not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States.

IV

CO-CONSPIRATORS

10. Various firms and individuals not made defendants herein, participated as co-conspirators with the defendants in the violations alleged herein and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

11. Chicago O'Hare International Airport, Chicago, Illinois (hereinafter referred to as "O'Hare") is part of a nationwide system of airports through which aircraft move in a continuous and uninterrupted stream of interstate commerce from and through one state to another. A substantial amount of the nation's goods move in interstate commerce through these airports via air transportation.

12. In the development of a nationwide system of airports, the federal government, and the City of Chicago have, within the time period covered by this complaint, cooperated in the financing and construction of such airports within the Chicago

city limits. In this connection, there was in existence a program for the development and improvement of airports financed by the City of Chicago and the United States of America and administered by the City of Chicago and the United States of America. This program was undertaken in accordance with the terms and conditions of the Airport and Airway Development Act of 1970, Title 49, United States Code, Sections 1701 et seq., and is commonly known as the Airport Development Aid Program. Under the Airport Development Aid Program the United States of America, through its agency, the Federal Aviation Administration, furnished and furnishes, in combination with the City of Chicago, the funds needed to pay the costs of certain airport runway construction at O'Hare, including the airport runway construction which is the subject of this complaint.

13. During the period of time covered by this complaint, there were in existence regulations of the Federal Aviation Administration governing the participation of state and local government entities, including the City of Chicago, in the Airport Development Aid Program. Those regulations provided in part:

- (a) Unless the Administrator approves another method for use on a particular airport development project, each contract for construction work on a project in the amount of more than \$2,500 must be awarded on the basis of public advertising and open competitive bidding under the local law applicable to the letting of public contracts [14 Code of Federal Regulations Part 152.53(a)]; and

- (b) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition [14 Code of Federal Regulations Part 152, Appendix M, paragraph 3(b)].

14. During the period of time covered by this complaint, the applicable local law which governed the awarding by the City of Chicago of A.D.A.P. projects at O'Hare was the State of Illinois' "Municipal purchasing act for cities of 500,000 or more population" [Ill. Rev. Stat. Chapter 24 §§ 8-10-1 through 8-10-24]. That statute provides in part:

- (a) Except as otherwise herein provided, all purchase orders or contracts of whatever nature, for labor, services or work, the purchase, lease, or sale of personal property, materials, equipment or supplies, involving amounts in excess of \$5,000, made by or on behalf of any such municipality, shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder . . . [Ill. Rev. Stat. Chapter 24 § 8-10-3]; and
- (b) Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement, or otherwise swear or affirm, that he has not been a party to any such agreement. Any disclosure in advance of the opening of bids, of the terms of the bids submitted in response to an advertisement, made or permitted by the purchasing agent shall render the proceedings void and shall require re-advertisement and re-award [Ill. Rev. Stat. Chapter 24 § 8-10-8].

15. During the period of time covered by this complaint, the City of Chicago, pursuant to the Airport Development Aid Program, invited contractors to submit sealed competitive bids

on A.D.A.P. projects at O'Hare. The City of Chicago awarded those contracts to the lowest responsible bidders following the opening of the sealed bids by its Purchasing Department.

16. During the period of time covered by this complaint, the City of Chicago required each bidder on A.D.A.P. projects to execute an affidavit providing in part:

Further, the undersigned being duly sworn deposes and says on oath that said undersigned has not entered into any agreement with any other bidder or prospective bidder or with any other person, firm or corporation relating to the price named in said proposal or any other proposal, nor any agreement or arrangement under which any person, firm or corporation is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among bidders and has not disclosed to any person, firm or corporation the terms of said bid or the price named herein.

17. During the period of time covered by this complaint, there was a substantial, continuous and uninterrupted flow of cement, asphalt and other essential materials from suppliers outside the State of Illinois to the job sites within the State for use by airport runway construction contractors on A.D.A.P. projects at O'Hare, including the project which is the subject of this complaint.

18. During the period of time covered by this complaint, highway and airport runway construction contractors whose principal places of business were outside the State of Illinois requested bidding proposals for A.D.A.P. projects at O'Hare.

19. The activities of the defendants, as described above, are within the flow of commerce and have a substantial effect on interstate commerce.

VI

VIOLATION ALLEGED

20. Pursuant to the terms and conditions of the Airport Development Aid Program established pursuant to the Airport and Airway Development Act of 1970, Title 49, United States Code, Sections 1701 et seq., the City of Chicago with the concurrence of the Federal Aviation Administration devised and designed the A.D.A.P. project on O'Hare runways 9R-27L and 14R-32L, let by the City of Chicago on June 14, 1974, known as D.P.W. Project No. C-3-086, PW-1126, A.D.A.P. Project No. 8-17-0022-01, State Project No. 71A-20-527, Specifications and Contract Documents No. 80.85-74-26, involving airport runway construction.

21. For the purpose of letting the aforesaid project for highway construction, the City of Chicago, pursuant to federal law, advertised and called for competitive bids from persons, including the defendants herein, to be submitted at its June 14, 1974 letting.

22. Beginning sometime in or about May, 1974, and continuing thereafter, the exact dates being to the plaintiff unknown, in part within the Northern District of Illinois, Eastern Division, defendants herein, and others known and unknown to the plaintiff, entered into and engaged in an agreement, combination and conspiracy to defraud the Government of the United States in the construction of the above referenced A.D.A.P. project by obtaining or aiding to obtain the payment and allowance of a false and fraudulent claim.

23. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were:

- (a) To allocate to a joint venture of Arcole Midwest Corporation and Allied Asphalt Paving Company the above referenced A.D.A.P. project;
- (b) To submit collusive, noncompetitive, and rigged bids to the City of Chicago in connection with the above referenced A.D.A.P. project; and
- (c) To provide for the payment of consideration of value to certain defendants or co-conspirators which were not designated as low bidder on the above referenced A.D.A.P. project.

24. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore charged, they have combined and conspired to do, including among other things:

- (a) Discussing the submission of the prospective bids on the above referenced A.D.A.P. project;
- (b) Designating the successful low bidder on the above referenced A.D.A.P. project;
- (c) Submitting an intentionally high or complementary bid on the above referenced A.D.A.P. project on which another defendant or defendants had been designated as the successful low bidder;

- (d) Submitting bids on the above referenced A.D.A.P. project containing false, fictitious and fraudulent statements and entries; and
- (e) Providing for the payment of consideration of value to certain defendants or co-conspirators which were not designated as low bidder on the above referenced A.D.A.P. project.

25. Pursuant to said combination and conspiracy, and as a result of the acts done in furtherance thereof, Arcole Midwest Corporation and Allied Asphalt Paving Company as a joint venture were awarded by the City of Chicago, with the concurrence of the Federal Aviation Administration, the above referenced A.D.A.P. project, on the basis of bids and quotations which defendants submitted and/or caused to be submitted and which defendants falsely and fraudulently represented to be bona fide, independent, competitive, and not the product of any collusion or agreement between the bidders, and the prices of which bids they further falsely and fraudulently represented to be normal, reasonable and competitive whereas in fact known to the defendants but unknown to the City of Chicago or the plaintiff, the said bids were a sham and collusive and not the result of open competition, and prices therefore were unreasonable, noncompetitive and falsely inflated.

26. Pursuant to said combination and conspiracy and in order to obtain approval by the Federal Aviation Administration of the award of said contracts, certain defendants falsely and

fraudulently executed and delivered certain affidavits the substance of which is set forth in paragraph 16 of this complaint which affidavits were false, fraudulent, and fictitious as the defendants well knew and made for the purpose and with the intent of defrauding the plaintiff.

27. With respect to the above referenced A.D.A.P. project, the defendants presented and/or caused to be presented to the City of Chicago for payment or approval by it numerous claims for payment, knowing such claims to be false, fictitious, or fraudulent, in that such claims were based on a contract which had been falsely or fraudulently procured by reason of the aforesaid bidding practices and that the amounts claimed were falsely or fraudulently inflated and excessive and that such claims would cause the City of Chicago to submit claims to the Federal Government for partial reimbursement.

28. As a result of the presentment to the City of Chicago of the aforesaid false or fraudulent claims, the City of Chicago has paid the false or fraudulent claims to certain of the defendants.

29. Based upon the payment by the City of Chicago of the aforesaid false or fraudulent claims, the City of Chicago has applied for and received partial reimbursement by the Federal Government in accordance with the terms and conditions of the Airport Development Aid Program established pursuant to the Airport and Airway Development Act of 1970, Title 49, United States Code, Sections 1701 et seq.

30. The foregoing considered, the defendants have agreed, combined, or conspired to defraud the Government or a department or officer thereof by submitting or causing to be submitted false, fictitious or fraudulent claims upon or against the United States or through the use of false documents, knowing the same to contain false or fictitious statements or entries for the purpose of obtaining or aiding to obtain the payment, allowance, or approval for payment of a claim upon or against the United States.

31. All of the foregoing constitutes a violation of Sections 3490-3492 and 5438 of the Revised Statutes (1878) as amended; (31 U.S.C. §§ 231-235 as amended) commonly known as the False Claims Act.

32. As a result of the illegal combination and conspiracy and the defendants' acts in furtherance thereof, plaintiff has been compelled to provide substantially greater funds for the airport runway construction on the above referenced A.D.A.P. project than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by defendants, in an amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America:

1. Prays that the Court adjudge and decree that the defendants, and each of them, have presented and/or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false, fictitious or fraudulent.

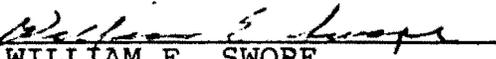
2. Demands that the Court enter judgment against defendants in favor of the United States for two thousand dollars (\$2,000) for each false, fictitious, or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Sections 3490, 3491, 3492, and 5438 of the Revised Statutes (31 U.S.C. §§ 231-235) together with interest thereon and the cost of this suit.

3. Prays it recover such other amounts and have such other and further relief as the Court shall deem just.



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