UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. C-80-225
v.	)	
	)	Filed: July 9, 1980
REA CONSTRUCTION COMPANY,	)	
	)	Entered:
Defendant.	)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On July 9, 1980, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) to enjoin the above-named defendant from continuing or renewing violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

Count One of the complaint alleges that beginning in or about August 1979, the defendant and certain unnamed co-conspirators engaged in a combination and conspiracy to restrain interstate commerce by submitting collusive, noncompetitive and rigged bids on a project for the construction and reconstruction of various runways and taxiways at Douglas Municipal Airport, operated by the City of Charlotte, North Carolina (Project No. 6-37-0012-15). Count Two of the complaint alleges that beginning in or about July 1978, the defendant and certain unnamed co-conspirators engaged in a conspiracy to restrain interstate commerce by

submitting collusive, noncompetitive and rigged bids for construction projects on highways in the State of North Carolina (Projects 8.7340005 and 8.7340013). The complaint seeks a judgment by the court that the defendant engaged in the conspiracies in restraint of trade in violation of Section 1 of the Sherman Act as alleged in Counts One and Two of the complaint and an order that enjoins the defendant from continuing or resuming such conspiracies and that restrains the defendant from engaging in other combinations and conspiracies having similar purposes or effects.

This proceeding arose as a result of grand jury investigations into the bid-rigging activities of the defendant and others in Virginia and North Carolina. Rea Construction Company was charged in a two count information with conspiring with others to submit collusive, noncompetitive and rigged bids on the two projects which are the subject of the complaint. Pursuant to a plea agreement, the defendant plead guilty and was sentenced to a fine of $350,000. Two of the defendant's employees were charged in separate criminal informations with conspiring with others to submit collusive, noncompetitive and rigged bids on the Douglas Airport project which is the subject of Count One of the complaint. These individuals were sentenced to two and four months incarceration, respectively, as a result of their guilty pleas to the informations pursuant to plea agreements.

II

THE TERMS OF THE ALLEGED CONSPIRACIES

During the period of time covered by the complaint, the defendant engaged in the business of highway construction and airport runway and taxiway construction in the State of North Carolina.

Count One of the Complaint

On August 28, 1979, the City of Charlotte solicited sealed bid proposals from construction contractors for Project No. 6-37-0012-15. That project required contractors to submit sealed bids for the furnishing of labor, equipment and materials for the construction and reconstruction of the runways and taxiways at Douglas Municipal Airport, and the City of Charlotte was required under North Carolina law to award the project to the lowest responsible bidder. Under the Airport and Airway Development Act of 1970 (49 U.S.C. § 1701 et seq.), the United States funded 75 percent of the costs of Project No. 6-37-0012-15.

The complaint alleges that, beginning in August 1979, the defendant and other unnamed co-conspirators conspired to restrain interstate commerce in violation of Section 1 of the Sherman Act, by submitting collusive, noncompetitive and rigged bids for Project No. 6-37-0012-15. To effectuate the conspiracy, the defendant and unnamed co-conspirators discussed the submission of prospective bids on the project, agreed that the defendant would be the low bidder on the project and submitted intentionally high or complementary bids. According to the complaint, the conspiracy had the effect of stabilizing the price of Project No. 6-37-0012-15 at an artificial and noncompetitive level and of denying the City of Charlotte and the United States the benefits of free and open competition on Project No. 6-37-0012-15.

Count Two of the Complaint

During the period of time covered by Count Two of the complaint, the North Carolina Department of Transportation invited highway construction contractors to submit sealed competitive bids on highway construction projects, two of which were Projects 8.7340005 and 8.7340013, let by the State of North Carolina on July 25, 1978. The State of North Carolina

awards such contracts to the lowest responsible bidder. Pursuant to the Federal-Aid Highway Act (23 U.S.C. § 101 et seq.), the United States furnished, in combination with the Department of Transportation of the State of North Carolina, a portion of the funds to pay the cost of Projects 8.7340005 and 8.7340013.

Count Two of the complaint alleges that, beginning in or about July 1978, the defendant and certain unnamed co-conspirators conspired to restrain interstate commerce in violation of Section 1 of the Sherman Act, by submitting collusive, noncompetitive and rigged bids on Projects 8.7340005 and 8.7340013. To effectuate the conspiracy, the complaint alleges that the defendant and unnamed co-conspirators discussed the submission of prospective bids on Projects 8.7340005 and 8.7340013, agreed that the defendant would be the low bidder on those projects and submitted intentionally high or complementary bids, or withheld bids on the projects. Count Two of the complaint further alleges that this conspiracy had the effect of establishing the price of Projects 8.7340005 and 8.7340013 at an artificial and noncompetitive level and of denying the State of North Carolina and United States the benefits of free and open competition on those projects.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment may be entered by the court at any time after compliance with the Antitrust Procedures and Penalties Act. The Final Judgment between the parties provides that there is no admission by any party with respect to any issue of fact or law. Pursuant to Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment enjoins the defendant from entering into, adhering to, maintaining, enforcing or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any person to (a) fix, determine, establish, maintain or stabilize the prices, discounts or other terms or conditions for the sale of asphalt to any person or government agency; (b) submit noncompetitive, collusive, or rigged bids on any contract for asphalt or concrete paving with any person or government agency; or (c) allocate contracts, rotate or divide markets, customers or territories with respect to contracts for asphalt or concrete paving with any person or government agency.

The proposed Final Judgment also enjoins the defendant from communicating to, requesting from or discussing with any other manufacturer of asphalt or concrete or any other asphalt or concrete paving company information about (a) any past, present, future or proposed bid, or the consideration of whether to make any bid, for the sale of asphalt or concrete to any third person or for any contract for asphalt or concrete paving; (b) any past, present, future or proposed price, discount or other term or condition for the sale of asphalt or concrete or the consideration of whether to make any change in any actual or proposed price, discount or other term or condition for the sale of asphalt or concrete; or (c) asphalt or concrete production or sales volume or costs. These restrictions on communication do not apply to (1) any communication relating to prices for asphalt that is made to the public or the trade generally and that is not made solely to any other contractor or seller of asphalt, and (2) to any necessary communication in connection with a bona fide contemplated or actual purchase, sale, subcontract or joint venture transaction between the parties to the communication.

The proposed Final Judgment requires the defendant to take affirmative steps to advise each of its employees who has any responsibility for bidding or estimating contracts for asphalt or concrete paving or any responsibility for or authority over the establishment of prices for asphalt (hereinafter "described employee") of the defendant's and the described employee's obligations under the Final Judgment and the Sherman Act. The defendant must furnish a copy of the Final Judgment to each described employee within 60 days after judgment is entered, and to each person who becomes a described employee within 60 days after he assumes the position that brings him within the description. In addition, the defendant is required to distribute, at least once every two years, a copy of the Final Judgment and a written directive to each of the described employees. The directive must include a warning that noncompliance will result in disciplinary action, which may include dismissal, and advise that the defendant's legal advisors are available to confer on compliance questions. Upon receipt of the judgment and directive, the described employee must sign a statement to his employer acknowledging that he has read the judgment and directive, that he has been advised and understands that noncompliance with the judgment may result in conviction for contempt of court, fine and/or imprisonment. The defendant must retain copies of the described employee's statement in its files. The defendant must file with this court and serve on the United States within 90 days from entry of this Final Judgment an affidavit as to the fact and manner of its compliance with the requirement that it serve, within 60 days after entry of this Final Judgment, a copy thereof to each described employee.

The proposed Final Judgment also provides that the defendant require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its asphalt and concrete business, that the acquiring party agree to be bound by the provisions of the Final Judgment. The acquiring party must file with the court, and serve on the United States, its consent to be bound by the judgment.

The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant subject to reasonable notice requirements, in order to examine such records to determine compliance or noncompliance with the Final Judgment. The Department is also granted access to interview officers, directors, agents or employees of the defendant to determine whether the defendant and its representatives are complying with the Final Judgment. Finally, the defendant, upon the written request of the Department of Justice, shall submit reports in writing, under oath if requested, with respect to any of the matters contained in the Final Judgment.

The Final Judgment is to be in effect for ten years from its date of entry.

IV

REMEDIES AVAILABLE TO LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. The entry of the proposed Final Judgment will neither impair nor assist the state of North Carolina in bringing or prosecuting any treble damage antitrust claim arising out of the combination and conspiracy

charged in the complaint. Under Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), this Final Judgment may not be used as prima facie evidence in legal proceedings against the defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Anthony V. Nanni, Chief, Trial Section, Department of Justice, Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Antitrust Procedures and Penalties Act. The comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is appropriate and necessary to the public interest. The proposed Final Judgment provides that the parties may apply to the court for such orders as may be necessary or appropriate for its modification or enforcement.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will dispose of the United States' claim for injunctive relief. The only alternative available to the Department of Justice is a trial of this case on the merits. Such a trial would require a substantial expenditure of public funds and judicial time. Since the relief

obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to obtain after winning a trial on the merits, the United States believes that entry of the proposed Final Judgment is in the public interest.

Respectfully submitted,

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Dated: July 9, 1980