

IN THE MATTER OF
THE CENTRAL FLORIDA ELECTRICAL BID DEPOSITORY,
INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9132. Complaint, Nov. 28, 1979—Decision, Jan. 22, 1981

This consent order requires, among other things, a Winter Park, Fla. corporation operating a non-profit electrical bid depository service, and nine individuals to cease engaging in any course of action, conspiracy or agreement which has the purpose or effect of fixing, maintaining, stabilizing, or tampering with the price of electrical contracting services, including: encouraging or requiring members or signatories to exchange relevant bid information prior to bid opening time; barring them from negotiating or submitting bids after the bid filing deadline; requiring them to function exclusively through the bid depository; and penalizing those who fail to do so. Further previously suspended recalcitrants must be reinstated, and the corporation is required to promptly amend its rules and regulations so as to conform with the terms of the order.

Appearances

For the Commission: *Truett M. Honeycutt and David R. Flowerree.*

For the respondent: *William A. Harmening, Stanley, Harmening, Lovett & Cohen, Orlando, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Central Florida Electrical Bid Depository, Inc., a corporation, and David Perry, Robert Behe, Larry Poirier, and Fred Newton, individually and as officers and directors of said corporation, and Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly, and Lynn Harden, individually and as directors of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purposes of this complaint the term "*bid filing deadline*" shall mean the time set by The Central Florida Electrical Bid Depository, Inc., for the receipt by the depository of final bids from electrical contractors to general contractors for a specific job.

2. For the purposes of this complaint the term "*bid shopping*" shall mean the practice of a general contractor seeking to obtain an offer, after the bid filing deadline but either before or after the award of the prime contract, from an electrical contractor to perform work at a price lower than that submitted by that electrical contractor or another electrical contractor bidding through The Central Florida Electrical Bid Depository, Inc.

3. For the purposes of this complaint the term "*bid peddling*" shall mean the practice of an electrical contractor offering, after the bid filing deadline but either before or after the award of the prime contract, to perform work at a price lower than that submitted by himself or another electrical contractor bidding through The Central Florida Electrical Bid Depository, Inc.

II. PARTIES

PAR. 1. Respondent The Central Florida Electrical Bid Depository, Inc., (hereinafter sometimes referred to as corporate respondent, or CFEBD) is a nonprofit corporation, organized and existing under the laws of the State of Florida, with its principal office and place of business located at 707 Nicolet Ave., Winter Park, Florida.

Respondents David Perry, Robert Behe, Larry Poirier and Fred Newton are the officers and directors of the corporate respondent, and Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly, and Lynn Harden are directors of said corporation (hereinafter sometimes referred to as individual respondents). They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondent CFEBD was organized for, and serves its members and users as, an instrumentality which promotes cooperative activity among member and user contractors, collects business data from such contractors, and generally purports to assist them in the operation of their businesses. One of the functions of respondent CFEBD is the operation of a bid depository. Said respondent CFEBD's members and users represent a substantial, if not dominant, part of the construction industry contractors in the central area of the State of Florida.

For the purposes of this complaint, the members and users of the bid depository operated by respondent CFEBD consist of two groups: "participating members" (hereinafter sometimes referred to as "members") and "signatories to the depository" (hereinafter sometimes referred to as "signatories"). The members group is composed of electrical contractors who perform their electrical contracting services principally in Flagler, Volusia, Lake, Seminole, Orange, Osceola and Brevard Counties, Florida. The signatory group is composed of general contractors who wish to avail themselves of the bid depository service offered by respondent CFEBD as hereinafter described and for that purpose become signatories to such service.

III. COMMERCE

PAR. 3. Respondents maintain, and have maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

IV. COUNTS

A. Price-Fixing

PAR. 4. Since at least 1976, respondent CFEBD, individual respondents, and the signatories to and members of its bid depository have agreed to engage, and have engaged, in unfair and unlawful acts, policies and practices, the purpose or effect of which is, or may be, to fix, maintain, raise, stabilize or otherwise tamper with prices and thereby unlawfully hinder, restrain or destroy competition in the providing of electrical and general contracting services related to building construction in or affecting commerce.

Pursuant to, and in furtherance of, said agreement, respondents have engaged in the following acts, policies and practices, among others:

(1) Prohibiting, in the rules and regulations of the CFEBD, any electrical contractor from engaging in bid peddling or from otherwise submitting bids to general contractors using the services of the depository unless such bids were deposited with the depository in accordance with the rule regarding the bid filing deadline.

(2) Prohibiting, in the rules and regulations of the CFEBD, any general contractor using the services of the depository from engaging in bid shopping or from otherwise submitting a bid to an awarding authority unless such bid uses the price for electrical contracting

services which was chosen from those bids filed with the depository in accordance with the rule regarding the bid filing deadline.

(3) Facilitating, as part of the aforesaid agreement, the restraint on bid shopping and bid peddling or facilitating, fixing, raising, stabilizing or otherwise tampering with prices by:

(a) Providing in the rules and regulations of CFEBD for the exchange, among member electrical contractors, prior to the bid filing deadline, of the names of those member electrical contractors who express their intent to bid on a project for which bids will be received through the bid depository.

(b) Encouraging in the rules and regulations of CFEBD that electrical contractors who are members of the depository register with the depository any jobs which are the subject of negotiation between such electrical contractors and general contractors and providing that all parties so registering shall be provided with the names of those previously or subsequently registering for a specific job.

(c) Providing in the rules and regulations of the CFEBD that any job which has been registered by two or more electrical contractors is automatically required to be bid through the bid depository.

B. Group Boycott

PAR. 5. Since at least 1976, respondent CFEBD, individual respondents, and the signatories to and members of its bid depository have agreed to engage, and have engaged, in unfair and unlawful acts, policies and practices, the purpose or effect of which is, or may be, to create and perpetuate a group boycott or concerted refusal to deal which unlawfully hinders, restrains, or destroys competition among companies providing electrical and general contracting services related to building construction in or affecting commerce.

Pursuant to and in furtherance of said agreement, respondents have engaged in the following acts, policies and practices, among others:

(1) Providing a bid service or depository in which participating members and signatories of said respondent corporation agree, with respect to any specific job for which they use the depository, to function exclusively through the aforesaid bid depository.

In particular, on any specific job which an electrical contractor participates in the respondents' bid depository program, the electrical contractor may not accept a contract for that particular job from

any general contractor who did not participate in the bid depository on that same job.

(2) Facilitating, as part of the aforesaid agreement, a group boycott or concerted refusal to deal by:

(a) Threatening directly or indirectly suspension from participation in the bid depository of:

(i) Any member electrical contractor for submitting bids to general contractors in violation of said bid depository rules and regulations; and,

(ii) Any signatory general contractor for awarding a contract based upon bids received in violation of bid depository rules and regulations from electrical contractors who have not submitted bids through said bid depository.

(b) Providing in the rules and regulations of CFEBD for the circulation of the name of any member or signatory suspended from use of the respondents' bid depository among the members and signatories of the CFEBD.

V. VIOLATIONS

PAR. 6. The aforesaid acts and practices of respondents have been and are now having the effect of hampering and restraining competition in providing electrical and general contracting services, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an

admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules, and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Central Florida Electrical Bid Depository, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 707 Nicolet Ave., in the City of Winter Park, State of Florida.
2. Respondents David Perry, Robert Behe, Larry Poirier, and Fred Newton are officers and directors of said corporation. Respondents Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly and Lynn Harden are directors of said corporation. Their address is the same as that of said corporation.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents The Central Florida Electrical Bid Depository, Inc., a corporation, its successors and assigns, the officers and directors, David Perry, Robert Behe, Larry Poirier, and Fred Newton, individually and as officers and directors of said corporation, and Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly, and Lynn Harden, individually and as directors of said corporation, and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, or through any member of or signatory to its bid depository, in connection with the receipt, solicitation, use, submission or transmission of bids or estimates which are, or may be, employed in the awarding of building construction contracts and subcontracts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from

entering into, continuing, cooperating in, or carrying out, any course of action, conspiracy, undertaking or agreement:

(1) Which requires or provides that electrical contractors using the services of a depository are prohibited from (a) negotiating, after the deadline for the filing or deposit of bids with the depository, with general contractors using the services of the depository; or (b) submitting further bids to such general contractors after the deadline for the filing or deposit of bids with the depository; or (c) accepting a contract at a price other than the price submitted by such electrical contractors through the depository prior to the deadline for the filing or deposit of bids;

(2) Which requires or provides that general contractors using the services of a bid depository are prohibited from (a) negotiating, after the deadline for the filing or deposit of bids with the depository, with electrical contractors using the services of the depository; or (b) attempting to obtain or obtaining further offers to perform jobs for which bids were taken through the depository; or (c) awarding contracts to electrical contractors at prices other than those submitted through the depository prior to the deadline for the filing or deposit of bids;

(3) Which requires or encourages the exchange, prior to bid opening time, among member electrical contractors of the names, addresses or other identifying information with respect to those member electrical contractors who register or otherwise express their intent to bid on a project, or provides for the disclosure to any member or participant in the depository of the name, address, or other identifying information with respect to any subcontractor who expresses an intent to bid and requests confidentiality for such information prior to the opening of bids by those companies, firms, or individuals to whom bids are submitted;

(4) Which encourages, provides for or requires the registration of or exchange of information among member electrical contractors with respect to any job which is the subject of negotiation between member electrical contractors and companies, firms, or individuals engaged in general contracting;

(5) Which requires or provides that any work which is the subject of negotiation between any general contractor and one or more electrical contractors and has been registered by two or more electrical contractors is automatically required to bid through a depository;

(6) Which requires or provides that any member, signatory, company, firm or individual that uses a bid depository operated by

one or more of the respondents with respect to any specific job shall receive or solicit bids from, or submit bids to, only those companies, firms or individuals that are using the services of the depository with respect to that job;

(7) (a) Which subjects any member, signatory, company, firm or individual using a bid depository to submit bids in connection with any specific job, to suspension from the use of the bid depository or to a fine, penalty or any other sanction, or threat of sanction, for submitting any bid to any company, firm or individual that is not a member of or signatory to the bid depository or that is not using the bid depository with respect to that job;

(b) Which subjects any member, signatory, company, firm or individual using a bid depository to solicit or receive any bids in connection with any specific job, to suspension from the use of the bid depository or to a fine, penalty or any other sanction, or threat of sanction, for soliciting or receiving any bid from any company, firm, or individual that is not a member of or signatory to the bid depository or is not using the bid depository with respect to that job; or,

(c) Which subjects any member, signatory, company, firm, or individual using a bid depository to solicit or receive any bids in connection with any specific job, to suspension from the use of the bid depository or to a fine, penalty or any other sanction, or threat thereof, for awarding any contract based upon any bid received from any company, firm or individual that did not use the bid depository with respect to that job;

(8) Which requires or provides that any member, signatory, company, firm, or individual that in any fashion uses a bid depository operated by one or more of the respondents shall receive or solicit bids from, or submit bids to, only those companies, firms, or individuals that are also members, signatories or participants in said bid depository;

(9) (a) Which suspends from participation in a bid depository, or fines or imposes any other sanction or threat of sanction upon any member, signatory, company, firm, or individual that submits any bid in any fashion to any company, firm, or individual that is not a member of or signatory to said bid depository, or that does not employ or use said bid depository.

(b) Which suspends from participation in a bid depository, or fines or imposes any other sanction or threat of sanction upon any member, signatory, company, firm, or individual that receives or solicits any bid in any fashion from any company, firm, or individual

that is not a member of or signatory to said bid depository, or that does not employ or use said bid depository;

(c) Which suspends from participation in a bid depository, or fines or imposes any other sanction or threat of sanction upon any member, signatory, company, firm, or individual for awarding any contract based upon any bid received from any company, firm, or individual that is not a member of or signatory to said bid depository or that does not employ or use said bid depository in connection with the particular job for which the contract was awarded; or,

(10) Which requires or provides for the circulation of any notice that any member or signatory of a bid depository operated by one or more of the respondents shall be, or has been, suspended or otherwise disciplined for violation of the rules and regulations of the bid depository;

(11) Which has the purpose or effect of fixing, maintaining, stabilizing, or tampering with the price of electrical contracting services.

It is further ordered, That respondents shall immediately reinstate any company, firm, or individual suspended from participation in said depository, which suspension resulted from conduct engaged in by respondents, which hereafter would amount to a violation of this order.

It is further ordered, That respondents shall promptly amend the rules and regulations of the corporate respondent and all documents used by the corporate respondent in the operation of its bid depository so that such rules, regulations and documents are consistent with the terms of this order.

It is further ordered, That each individual respondent named herein promptly notify the Commission at such time as he may discontinue his affiliation with the corporate respondent, its successors or assigns. In addition, each individual respondent shall for a period of fifteen (15) years after the date of service of this order promptly notify the Commission of each new affiliation of himself as officer, director, employee or consultant with any corporation or association whose activities include the operation of a bid depository. Such notice shall include the respondent's business address at such corporation or association and a statement of the nature of the affiliation, as well as a description of the respondent's duties and responsibilities in connection with said affiliation.

It is further ordered, That respondent corporation shall within fifteen (15) days of the service of this order distribute a copy of this order to all individuals who are employees, officers and directors as

of the time of service of this order and to all members, signatories, companies, firms, or individuals that have participated in said bid depository at any time prior to service of this order. Furthermore, respondent corporation shall within fifteen (15) days of the date that individuals, companies, or firms become affiliated with, or commence participation in such bid depository, its successors or assigns, distribute a copy of this order to all such new employees, officers and directors who become affiliated with the bid depository, its successors or assigns, and to all such new members, signatories, companies, firms, or individuals that begin participation in the bid depository, its successors or assigns.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order or at least thirty (30) days prior to the formation by or with the participation of any respondent of any other corporation or organization which conducts the business of a bid depository.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
MOBIL OIL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3054. Complaint, Jan. 22, 1981—Decision, Jan. 22, 1981

This consent order requires, among other things, a New York City manufacturer of chemical, fuel and lubrication products to cease representing in the advertising, labeling and sale of "Mobil 1" that its use in automobiles will reduce the consumption of engine lubricating oil, unless, in conjunction with such representation, respondent sets forth a prescribed statement advising new users of the product to check the oil level of their cars frequently because some cars will experience higher oil consumption with low viscosity oils like Mobil 1.

Appearances

For the Commission: *Joseph L. Hickman, John McNally and Sam Carusi.*

For the respondent: *John McGrath, Donovan, Leisure, Newton & Irvine, Washington, D.C., and Susan Csia and John McConnin, in-house counsel.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Mobil Oil Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mobil Oil Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 150 East 42nd St., New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, sale and distribution of various fuel, chemical and lubrication products throughout the United States for use by industry and by the general public.

PAR. 3. For several years last past, respondent has manufactured, and has sold and distributed to the general public through automo-