

Opinion No. 58-84

April 18, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. H. B. Wood, Board Manager, Contractors' License Board, P. O. Box 179, Santa Fe, New Mexico

QUESTION

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1. "With reference to Sections 67-16-1 and 67-16-3, N.M.S.A., 1953 Comp., is there a requirement that prior to submitting bids on work covered by the definition of 'contractors' in the State of New Mexico, that such contractor be first licensed by the Contractors' License Board?"
2. "If answer to the first stated question is in the affirmative, does any distinction arise from the fact that a contemplated contract would be let by an agency or department of the State of New Mexico, e.g., University of New Mexico?"
3. "Does the Contractors' License Board have authority and power to promulgate rules and regulations by which any person, firm or corporation must be first duly licensed by said Board before submitting bids on any work or job to be carried out within the State?"

CONCLUSIONS

1. Yes.
2. No.
3. Yes.

OPINION

ANALYSIS

The question first above stated has been earlier considered in two opinions by this office, to-wit: Opinion No. 3637, dated October 5, 1940, and No. 4006, dated January 29, 1942. Referring to the latter, it has been held that:

"Chapter 197, Sections 1 and 3, Laws of 1939, require that a contractor secure a license from the State Board before he offers to act as a contractor or purports to have the capacity of a contractor. Under that language, it is a violation of the law to submit a

bid to perform certain work coming within purview of this law without first obtaining a contractor's license."

In view of the fact that no changes have been made in the original law nor court decisions lending construction different from that aforesaid, it is our concurring opinion that any person, firm, or corporation, prior to submitting any bid must first be duly licensed by the Contractors' License Board.

Under the provisions of Sections 6-6-1 and 6-6-2, contracts by ". . . every office, department, institution, board, commission or other governing body or officer thereof . . ." shall, whenever practicable, be awarded to New Mexico contractors. Foreign corporations, qualified to conduct business in this State are included in the term "New Mexico contractor." Accordingly, it is our further opinion that a state agency, department, or office must look only to duly licensed contractors in letting bids.

Finally the Contractors' License Board has authority to promulgate rules and regulations requiring that all contractors be duly licensed prior to holding themselves out as such.

Authority to adopt rules and regulations by the Contractors' License Board, as will facilitate carrying out the provisions of the act (67-16-1 to 67-16-9, 67-16-12 to 67-16-16) is contemplated specifically in §§ 67-16-5, 67-16-17 and 67-16-18. In view of the prohibition of § 67-16-1, that:

"It shall be unlawful for any person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, to engage in the business or act or offer to act in the capacity or purport to have the capacity of contractor within this state without having a license therefor as herein provided, unless such person, firm, copartnership, corporation, association or other organization is particularly exempt as provided in this act."

it is our opinion that rules and regulations as afore suggested may be adopted.

For your information, please find enclosed copies of Opinions No. 3637 and No. 4006.