

## Opinion No. 55-6099

February 7, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. George R. Roy, Office Manager, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

We are in receipt of your letter of February 1st requesting an opinion concerning whether or not a contractor's license can be revoked for submitting a bid to a prime contractor and then upon having the prime contract granted to the bidding contractor, the subcontractor withdraws his bid. Section 67-16-9, N.M.S.A., 1953, provides as follows:

"The contractors' license board may upon its own motion, and shall upon the verified complaint in writing of any person investigate the actions of any contractor within the state, and shall have power to temporarily suspend, or permanently revoke, a license issued under the provisions of this act if the holder, while a licensee hereunder, is guilty of or commits any one (1) or more of the following acts or omissions:

- (a) Abandonment of any contract without legal excuse.
- (b) Diversion of funds or property received for prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract, obligation or purpose.
- (c) Fraudulent gross or negligent departure from or disregard of plans or specifications in any material respect, without consent of the owner or his duly authorized representative.
- (d) Willful and deliberate disregard and violations of the rules and regulations promulgated by the state contractors' license board, pertaining to plumbing or the construction of buildings.
- (e) Failure to keep records showing all receipts and disbursements of the licensee in all of his transactions as a contractor as that term is defined in this act.
- (f) Misrepresentation of a material fact by the applicant in obtaining a license.
- (g) The doing of any wilful, fraudulent act by the licensee as a contractor in consequence of which another is substantially injured."

A contract is a promise by one whose promise is accepted by the other with consideration to do a lawful act. A bid submitted to a contractor and relied upon by him to make his prime bid, is at the time of submission of the bid to the third person,

probably a conditional acceptance of the bid by the prime contractor, which acceptance is dependent upon the acceptance by the person granting the contract. Thus at the time the contract is accepted by the person accepting the prime bid, the subcontractor's bid to the prime contractor becomes a binding contract.

It appears to this office that § 67-16-9 (a), N.M.S.A., 1953, providing for a revocation in case of abandonment of any contract without legal excuse, and § 67-16-9 (g), N.M.S.A., 1953, the doing of any wilful, fraudulent act by the licensee as a contractor in consequence of which another is substantially injured, would be sufficient grounds for revocation in case a subcontractor refused to carry out his bid to a prime contractor. We believe further that the prime contractor has a civil action against the subcontractor for such damages which he may incur as a result of the withdrawal of the bid by the subcontractor.

It is, therefore, the opinion of this office that the Contractors' License Board may revoke a license of any contractor who submits a bid and then withdraws the same after such bid is acted upon by virtue of the authority vested in it by § 67-16-9 (a) and (g).

We sincerely hope that this answers your inquiry satisfactorily.

By Fred M. Standley

Assistant Attorney General