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STATE CAPITOL
PHOENIX, ARIZONA

December 27, 1965

DEPARTMENT OF LAW LETTER OPINION NO. 66-5-L (R-39)

REQUESTED BY: ROY L. THORNBURGH
Registrar of Contractors

QUESTIONS:

1. Is an Arizona contractor's license required of a contractor who bids upon federal aid highway projects?
2. If your answer to Question No. 1 is "Yes", is the above outlined procedure improper?
3. If your answer to Questions No. 1 and 2 is "Yes", what course of action, if any, should this department take?

ANSWERS:

1. See Body of Opinion
2. See Body of Opinion
3. Not applicable

A. R. S. Sec. 32-1122, as amended, provides in part:

"Examination of applications; qualifications
B. . . .

3. He shall never have been refused a license or had a license revoked for reasons that should preclude granting a license, or shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter, nor shall he act as a contractor between the filing of the application and actual issuance of the license."

Opinion No. 66-5-L
(R-39)
December 27, 1965
Page Two

This section indicates that an applicant who has submitted a bid on any construction work within one year prior to application for a license from the Registrar of Contractors is precluded from qualifying for such license.

A. R. S. Sec. 32-1163 provides:

"Effect of chapter upon federal aid contracts

If any provision or condition contained in this chapter conflicts with any provision of federal law, or a rule or regulation made under federal law pertaining to federal aid contracts, such provision in conflict with the federal law, rule or regulation shall not apply on federal aid contracts to the extent such conflict exists, but all provisions of this chapter with which there is no such conflict, shall apply to federal aid contracts. "

Pursuant to this provision it is incumbent to determine whether the requirement of A. R. S. Sec. 32-1122(B)(3), as amended, is in conflict with any provision of federal law, rule or regulation made under federal law, and the extent of such conflict.

Pursuant to authority of Sec. 315, 72 Stat. 915, 23 U. S. C. 315, the following regulation has been adopted by the Bureau of Public Roads, Department of Commerce:

"Sec. 1.16 Licensing and qualification of contractors

With respect to Federal-aid projects, no procedure or requirement for prequalification,

Opinion No. 66-5-L

(R-39)

December 27, 1965

Page Three

qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by or may be awarded to a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's experience, personnel, equipment, financial resources, and performance record." (Emphasis added.) Part 1, Chapter 1, Title 23, Code of Federal Regulations.

Opinion No. 66-5-L
(R-39)
December 27, 1965
Page Four

To the extent that an applicant may not qualify for a contractor's license by reason of having submitted a bid for federal aid contracting work, the statute appears in conflict with the pertinent regulation.

The Arizona Highway Commission has adopted the following regulation:

"1.9 License:

No contractor will be prequalified for any project until he has obtained a license from the Arizona Registrar of Contractors, provided however, that on projects financed in whole or in part with funds made available by a Federal agency, it is not necessary for prequalification of a contractor that he have a license issued by the Arizona Registrar of Contractors, although even with respect to Federal-aid projects it will be necessary that such license be obtained prior to the award of contract.

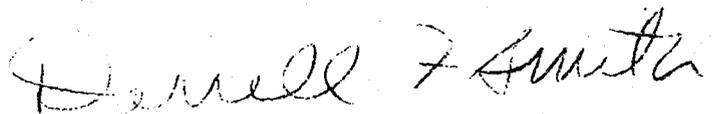
Parties not licensed by the Arizona Registrar of Contractors who are interested in bidding on any Federal-aid projects advertised by the Department shall make prompt application for such license so that the decision of the Registrar in this regard can be made within the award period." July 28, 1960

It is quite obvious that a conflict exists with regard to the requirements of A. R. S. Sec. 32-1122 (B)(3) and the federal regulations.

Opinion No. 66-5-L
(R-39)
December 27, 1965
Page Five

Consequently, it is our opinion that an Arizona contractor's license is not required of a contractor who bids upon federal aid highway projects and the prohibition of A. R. S. Sec. 32-1122 with regard to submission of a bid on any contracting work does not apply to federal aid project bids. The philosophy exhibited by the Arizona Supreme Court in the recent case of Westinghouse Electric Corporation v. Rhodes, 97 Ariz. 81, 397 P. 2d 61, supports this conclusion.

Respectfully submitted,



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The Attorney General

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