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Office of the Attorney General
State
of Tennessee

Opinion No. 81-452

August 6, 1981

RE: T.C.A. §62-601, et seq.

Honorable John T. Bragg
Representative

Dear Representative Bragg:

You have requested an opinion on the following:

Questions

1. Is it a violation of the **Contractors Licensing Act** of 1976 for a **contractor** to submit a **bid** to do work where his base **bid** does not exceed the **contractor's** monetary limitation, including his ten percent (10%) tolerance, but the base **bid** plus his add alternates do?
2. Is it unlawful for a **contractor** to **bid** on a project the advertised cost for which exceeds the **contractor's** monetary limitation on his **license**?

Opinion

1. Where add alternates are part of a contemplated project for which **bids** are sought and the inclusion of any or all of the add alternates in a **bid** submitted by a **licensed contractor** results in the **contractor** offering to do work in a monetary amount exceeding his monetary limitation plus ten percent (10%) tolerance, then the contractor has offered to engage in contracting in violation of his license and the Contractors Licensing Act of 1976.
2. It would not be unlawful for a **licensed contractor** to **bid** on a project, the estimated cost of which exceeds his monetary limitation plus his ten percent (10%) tolerance, provided the amount of his **bid** did not exceed the limit his **license** plus tolerance authorizes him to **bid**.

Analysis

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1. Your question requires a review of several areas of the law constituting the **Contractors Licensing Act** of 1976, codified at §62-601, *et seq.* Every person, firm or corporation wanting to do contracting work in Tennessee must be **licensed** in accordance with this Act. "**Contractor**", as defined in §62-602(2) embraces every person, firm, or corporation who engages in, or offers to engage in contracting. To offer to engage in contracting includes submitting a **bid** to do contracting.

As part of issuing a **license**, the **Board for Licensing Contractors** establishes a monetary limitation for each classification of work in which it **licenses a contractor**. §62-612(a)(1). This limitation is subject to being increased automatically, without a request for change in limitation from the **Board**, by virtue of Rule 0680-1-.13 which authorizes a ten percent (10%) tolerance on the monetary limitation issued with a **contractor's license**.

§62-603(a), in pertinent part, reads as follows:

"It shall be unlawful for any person, firm or corporation to engage in, or offer to engage in contracting or building as hereinabove described, unless such person, firm or corporation has been duly **licensed** under the provisions of this chapter."

Therefore, assuming, as is generally the case, that the add alternates were part of the contemplated project subject to the receipt of favorable **bids**, a **licensed contractor** who **bids** to do contracting work would be in violation of his **license** where the monetary value of the work he offered to engage in exceeded his monetary limitation plus ten percent (10%) tolerance. It would be of no consequence whether the add alternates were made part of the contract at the time of the award or later by change order or never utilized at all. The critical consideration is the monetary value of all the work in which the **contractor** offered to engage.

It must not be forgotten there are criminal sanctions regarding this matter. §62-621 imposes serious penalties against anyone either accepting a **bid** which is in violation of the **licensing** laws or anyone issuing a permit or work order to any bidder not holding a proper **license**. Furthermore, anyone violating the terms and conditions of the Act or his **license** likewise is subject to criminal sanctions. §62-621. The **Board** is charged with the enforcement of the Act and empowered to seek injunctions against anyone violating the provisions thereof. §62-622; §62-623.

2. As discussed above, it would matter not what the cost estimate of the completed work would be; the crucial factor to be considered is the monetary value of the work on which the **contractor bid**. So long as the **contractor bid** within his monetary limitation plus tolerance, the fact the cost estimate exceeded same would be of no legal consequence.

Very truly yours,
William M. Leech, Jr.

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