

Mechanics of Construction Law: Contractor License Requirements in the Wake of the 2018 California Fires

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The 2018 California wildfires were nothing short of devastating; the Camp Fire was one of the deadliest and most destructive fires in California's history. Exacerbating the recovery, clean-up, and rebuilding efforts are shortages in construction labor and materials, which the San Francisco Chronicle estimates will result in years of backlogs, as the affected counties only have a fraction of the workers and supplies needed to rebuild thousands of homes, commercial, and institutional buildings, including schools, shopping centers, and infrastructure.

While many out-of-state contractors want to help with the clean-up and rebuilding in disaster areas, the Contractors State License Board (CSLB) has issued bulletins advising contractors that they must hold a valid California contractor license, in the appropriate classification, to perform most work on structures damaged or destroyed in a wildfire, flood, mudslide, or other natural disaster.

Licensure Requirements

Generally, anyone who contracts for or bids on a job that totals \$500 or more (labor and materials) must hold a valid contractor license from the CSLB in the appropriate classification. Additionally, anyone acting as a manager or consultant on a construction project is required to be a licensed contractor (California Business and Professions Code §7026.1). Even the removal and hauling of debris from a disaster area requires a contractor license, and all debris removal contractors must have a CSLB issued C-21 Building/Demolition license.

It is illegal and punishable as a felony to perform contracting work in a declared disaster area without a California contractor license. Punishment may include up to 16 months in state prison or a fine of up to \$10,000. As a result of increased activities by unlicensed contractors in disaster areas, the CSLB along with other agencies including the Department of Insurance, local District Attorney's offices, Sheriff's departments, and the Governor's Office of Emergency Services, have been conducting undercover sweeps in disaster zones, verifying the licenses of contractors working or soliciting work in these areas.

In addition to the criminal penalties, California Business and Professions Code section 7031(a) prohibits unlicensed contractors from recovering compensation for performance of work requiring a license. Specifically, Section 7031(a) provides:

“...[n]o person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person....”

Additionally, under Section 7031(b), an unlicensed contractor could be forced to disgorge all compensation it received for any work it performed as an unlicensed contractor.

The Federal Exception

Notwithstanding the foregoing, unlicensed contractors that are performing work on a federal project for the federal government are exempt for the California state licensing requirements. Specifically, the 9th Circuit, in *Gartrell Construction, Inc. v. Aubry*, 940 F.2d 437 (1991), explained that:

“Thirty-five years ago, the United States Supreme Court ruled on the issue before us today: whether a contractor performing services on a federal construction project can be required by the state to obtain a license from the state’s contractor’s licensing board. The Court held that a state licensing requirement is invalid as applied against a contractor with the federal government because it results in interference with federal government functions and is in conflict with federal procurement legislation; its application is therefore precluded by the Supremacy Clause of the United States Constitution.”

Additionally, in *Technica, LLC v. Carolina Casualty Insurance Company*, 749 F.3d 1149 (2014), the U.S. Court of Appeals for the Ninth Circuit held that a contractor who performed work on a federal project in California and who did not have a California contractor’s license could still pursue a claim under the Miller Act.

Any contractor that has questions or concerns requiring state licensing requirements should always consult a construction attorney to ensure that it is in compliance with the state’s laws and regulations governing contractor licenses.

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