

LEGISLATIVE UPDATE: UNDERSTANDING SUBCONTRACTOR LICENSURE LAW IN ALABAMA

An important and common issue for subcontractors, is proper licensure. Each state has rigid requirements. Alabama's laws are perhaps as strict as anywhere. As an overview, "construction" is defined broadly in Alabama so for the most part anyone working on a construction project under a contract exceeding \$50,000 should be licensed with the Alabama General Contractors Licensure Board. Not having a license is a complete defense to any claim to collect amounts owed for work. Also, many subcontractors are not aware that if they use another company, including labor brokers, for a portion of their work that company must also have a general contractor's license. If not, the portion claimed to be owed for that work does not have to be paid. As for strategies to get around the licensing statutes by things like license sharing or other loopholes, cases in Alabama impose a catchall roadblock. Alabama disallows "creative schemes designed to circumvent its requirements."

Who is a "Contractor" in Alabama for Licensure Purposes?

Per the licensing statute, a State of Alabama General Contractor's license is needed for any company, including subcontractors, who construct or superintend any type of construction, repair, maintenance, demolition, etc. where the cost of the project including labor and materials is \$50,000 or more, or if constructing a swimming pool, \$5,000 or more.

What are the Basic Requirements for Licensure?

Licensure requirements are covered by Alabama Code § 34-8-2 and additional rules created by the Licensing Board for General Contractors. To briefly summarize, a general contractor must apply to the licensure board by completing the required forms and paying an application fee of \$300 or a renewal fee of \$200. Renewals are required annually. The forms must be accompanied by proof of liability insurance. General contractors are classified into categories based upon the last financial statement prepared by a certified public accountant, as well as previous experience and equipment. Contractors may not bid on a type of work not included in their request for license. When initially applying, an examination may be required by the licensure board to determine the contractor's qualifications.

Once all of the requirements have been met, the board will issue a certificate to engage in general contracting. The certificate will stipulate the type or types of work the contractor is allowed to bid upon or perform as well as setting maximum bid limits for a single contract, which are set by the lesser of no more than ten times the net worth or ten times the working capital shown in the contractor's latest financial statement as follows:

- A Not to exceed \$100,000.00
- B Not to exceed \$250,000.00
- C Not to exceed \$500,000.00
- D Not to exceed \$1,000,000.00
- E Not to exceed \$3,000,000.00
- U Unlimited

Subcontractor licensure requirements also include an annual application with a \$150 fee (renewal fee of \$100). However, instead of the other required documents, subcontractors are required to provide references from three general contractors, architects, or engineers.

Potential Fines, Punishments and Repercussions

Anyone found to be engaging in contractor work without the proper license or who is using an expired or revoked license

may be found guilty of a Class A misdemeanor, which can carry up to a year in prison and a fine up to \$6,000.00. It is a Class B misdemeanor to neglect to provide the licensure number to an awarding authority. There is likewise potential misdemeanor liability for an awarding authority who considers and accepts a bid from an unlicensed contractor. Further, the subcontractor cannot recover any amounts if it was not properly licensed. Claims relying on work from an unlicensed sub-subcontractor, including a labor broker company, are not collectable even if the work has been performed. Because of that it is important to check to see if any company providing subcontractor work or labor has a proper State of Alabama general contractor's license. In my experience most labor brokers do not.

Complications and Caveats

Alabama courts have routinely held that general contractors must have their license in place before bidding on a job. However, subcontractors may bid without a license if their license is current before their work on the project begins. A contractor or subcontractor's failure to obtain proper licensing is a complete defense to any attempt he or she may make to collect a judgment or enforce a lien in a civil lawsuit for non-payment.

Also complicating matters for contractors is Regulation 230-X-1-.26, commonly known as the 51% Rule. It allows a general contractor to take a job as long as 51% or more of the work is in a classification in which the contractor is licensed. If no part of the work makes up 51% of the project, the contractor must be licensed in the type of work which is the largest amount. The types of "Major Classifications" can be found in Regulation 230-X-1-.27 as follows:

- Building Construction (BC) - includes specialties such as sitework, concrete, masonry, metal, carpentry, moisture protection, etc.
- Building Construction under 4 stories (BCU4)
- Highways and Streets (HS) - includes specialties such as guardrails, fencing, bridges, etc.
- Municipal Utility (MU) - includes specialties such as sewer, water, gas, telecommunications, etc.
- Heavy/Railroad (H/RR) - includes specialties such as retaining walls, tunnels, landfills, etc.
- Specialty Construction – includes swimming pools, HVAC, electrical, etc.

The Licensing Board advises that if an applicant is not qualified for a Major Classification, it should request to be classified under one of several Sub-Classifications or Specialty Classifications. It is important to note that a contractor can be licensed in one specialty and still be claimed to be in violation of the licensure rules if that subcontractor additionally performs work for which it is not licensed. For example, a contractor licensed in the major classification of Building Construction with a specialty in sitework may not be able to also pour concrete foundations. There are no court rulings at this time regarding general contractors who are licensed within a Major Classification but who start a project in a specialty under that classification for which they do not have the proper license. Unless the Rules are revised and clarified, the question could be eventually decided by the Alabama Supreme Court in a way that surprises contractors who believed they were complying. Thus, the best practice is to ensure that the contractor is licensed for any specialties that may be included in its work.

Conclusion

Alabama contractor licensing law can be a bit brutal, but it is generally fair and predictable. A subcontractor's knowledge of the requirements and preparation are key. While compliance with Alabama's laws may require an initial investment of money, time, checking for licenses for its sub-subcontractors and mental effort, proper licensure is essential to avoid far more expensive conflicts that could arise later, including a loss of remedies for non-payment.