

PUBLICATION

Are You Really a Licensed Commercial General Contractor in Alabama?

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The Alabama Code (the "Code") and the Alabama State Licensing Board for General Contractors (the "Board") are the two authorities that give contractors the right to work on commercial projects in Alabama. However, in some circumstances, a contractor that holds a valid license may not actually be licensed to perform the work for which it contracted. This could void the contract and the contractor could go unpaid. These licensing restrictions also may apply where a contractor wants to perform work as a subcontractor. The contractor better have the license for the limited work in intends to perform as a subcontractor or again the contract could be void.

The Code requires that contractors and subcontractors apply to the Board for a license covering the type or types of contracts on which they may perform work. Ala. Code § 34-8-2 (a). The Board then classifies and issues a license to contractors and subcontractors according to the type or types of contracts on which the licensee may perform work. Id. Contractors and subcontractors are not allowed to bid on or perform work on projects that are not included in the license. Id.

Here come the limitations.

For an example of how a licensed contractors may not actually be licensed let's look at certain licensing that appears broad enough to encompass any work on any project. The Board's Administrative Code (the "Administrative Code") provides the definitions for both BC and BCU4. Administrative Code § 230-X-1-.27. BC is a Building Construction license and BCU4 is Building Construction Under Four Stories license. A BC license allows a contractor to construct buildings including excavation and foundation work for the buildings. BCU4 is essentially the same license, there are other limitations, but as you guessed, it is for structures under four stories.

Under BC there are special skills or trades that may me requested in lieu of the BC license. There are no special skills or trades that may be requested in lieu of the major classification of BCU4.

Contained within the Administrative Code are alternative classifications. These classifications include Municipal Utility ("MU") for example. MU work includes clearing, grubbing, grading, paving, curbs, gutters, walks, alleys, driveways. MU work would appear to be essential to the construction of a building. This classification would, at first glance, appear to be a classification for subcontractors. But that might not actually be the case. A BC or BCU4 licensee may need this or another classification to complete a project. This seems illogical but it may be the law.

The Administrative Code also contains the "Fifty-one Percent Regulation." This regulation provides that "contractors holding licenses with Building Construction (BC) appearing thereon may undertake to construct . . . any project even if 51% or more of the work as measured by the cost falls outside the major classification of Building Contractor (BC) so long as such work is required to make the building usable for its intended purpose." Administrative Code § 230-X-1-.26 2.

Is MU work required to make the building usable for its intended purpose? If not, and if MU type work exceeds 51% of the cost of the project, a contractor with a BC license may likely be required to employ a subcontractor with the license to perform the MU work or also have the MU classification. It also means that the contractor with the BC license may have been denied the ability to bid on the project since it was not properly licensed to complete the work.

This provision of the Fifty-one Percent Regulation seems to prevent a contractor with a BCU4 license from performing certain work or bidding on a project where the cost of certain work exceeds 51% or more as measured by the cost. Again, this seems illogical. The contractor at first glance appears to be licensed to perform the work of the whole project but cannot.

Another portion of the Fifty-one Percent Regulation states that a general contractor "may undertake to construct the construction of any project if 51% or more of the work as measured by the cost falls within the major classification, sub-classification, or specific sub-classification."

This section of the Administrative Code is simply confusing at best. The Administrative Code appears to have defined major classifications. But the Fifty-one Percent Regulation refers to sub-classifications and specific sub-classifications but does not appear to define what they are. Also adding to the confusion is whether the special skills or trades that may be requested in lieu of the major classification BC apply here. However, if they do, then the contractor is no longer licensed as BC.

"Fifty-one Percent Regulation" continues to state that "[o]n any project where no major classification, sub-classification, or specific sub-classification constitutes 51% or more of the work as measured by the cost . . . the contractor may undertake to construct . . . the construction of such project if the contractor is licensed in the major classification, sub-classification, or specific sub-classification which constitutes the greatest part of the work on the project as measured by the cost . . . Administrative Code § 230-X-1-.26 1.

This again seems to mean that a contractor with a BC or BCU4 license may also need additional classifications to bid on and perform the work on a project.

You would think that licensing would be simple enough, especially if you hold a BC or BCU4 license. However, the Code and Administrative Code have muddied the waters by placing limits on the types of work that contractors licensed in the most broad categories may perform. The confusion could lead to contractors requesting different licenses for each project or holding a license with each major classification, sub-classification, or specific sub-classification.