



New Court Decision Adds to the Costs of Construction

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The Hawaii Supreme Court has issued a construction licensing opinion concluding that renovation contractors are not entitled to undertake specialty work (such as painting), directly related to and necessary for the completion of the renovation project, unless the cost and scope of the specialty work is “incidental and supplemental” in comparison to the overall cost and scope of the project.

The case involved jalousie removal and installation on a school renovation project. The work was bid for by a contractor with a renovation license, who was challenged as unlicensed to do the work because it didn't have a glazing license. The State, which accepted the contractor's bid and deemed it properly licensed for the jalousie work, argued the contractor had a renovation license and that entitled it to do specialty work “directly related to and necessary for the completion of” the renovation project.”

In a 3-2 decision, the Supreme Court said no: renovation contractors may only perform specialty work that is “incidental and supplemental” to a renovation job, taking into account the cost and scope of the work. The Court held the incidental and supplemental exception was supposed to have been work narrow and minor in scope. Yet, the decision provides virtually no guidance on what would qualify as “narrow and minor.” Thus, contractors don't know what percentage or amount of specialty work will be deemed legally unacceptable, nor what “work” is to be counted in making that determination.

Because the question of what is “incidental and supplemental” is now gray at best, it will likely be subject to continued bid protests and litigation. This is bad news for the long overdue renovation work needed at Hawaii's schools and other public buildings, which will now be subject to a new round of bid protests. Hawaii already leads the nation for cost of construction in nearly every category, and this decision will only add to that unfortunate statistic. This will also mean for every renovation project (homes, schools, airports, courthouses, for example) contractors may now need to hire subcontractors to perform work they used to perform themselves, which will mean more expense, and will also mean less work for the industry.

The brief we filed in the case for the General Contractors Association of Hawaii is available here: <http://www.jdsupra.com/legalnews/general-contractors-association-of-hawaii-69166/>.

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