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Avoiding Disaster Due to Improper Licensing

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IT'S NOT ENOUGH FOR A CONTRACTOR TO BE LICENSED . . . it must be properly licensed.

We are reminded of this by the recent case of *JMS Air Conditioning and Appliance Service, Inc. v. Santa Monica Community College District, Bernards Bros., Inc.*, 30 Cal. App. 5th 945 (2018). In that case, JMS entered into an \$8.2M subcontract with Bernards to install an HVAC system in a new facility being built for the District. JMS held a C-20 warm-air heating, ventilating and air-conditioning license. A year into the project, Bernards sought permission from the District to substitute another subcontractor for JMS (as required under Public Contract Code Section 4107 for listed subcontractors on public works of improvement). Among other things, Bernards contended that JMS was not properly licensed to perform that portion of the work which consisted of hydronic plumbing and hydronic boiler work. JMS countered that this work was an integral part of installing an HVAC system, and relied on Business & Profession Code Section 7059, which permits work that is "incidental and supplemental to the performance of the work for which the specialty contractor is licensed," and a California State Licensing Board regulation which defines "incidental and supplemental" as meaning "essential to accomplish the work in which the contractor is classified." (Cal. Code Regs., tit. 16, §831.) However, at an administrative hearing before the District, Bernards submitted the statement of a former CSLB licensing deputy opining that the hydronic boiler work could not be performed under a C-20 HVAC license, but instead required a C-4 boiler license. The District granted Bernards' substitution request on grounds which included JMS' failure to be properly licensed for the boiler work. The Superior Court denied JMS' petition for writ of administrative mandamus, finding that substantial evidence supported the District's decision to allow substitution based on improper licensure, and the Court of Appeal affirmed. The lesson for contractors in California? Be conservative and over-cautious in licensing decisions. When there is any doubt at all as to which, or whether a, particular license is needed, seek advice and always err on the side of caution. Better to hold more licenses than may actually be required than to face termination and disgorgement of all payments received because you do not hold all necessary licenses to perform the work. Cal. Bus. & Prof. Code §7031.

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