
Coates' Canons Blog: Contracting Without a License? Beware.

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You've just received bids on a construction project costing \$50,000, and discovered that the lowest bidder is not a licensed general contractor. When you bring this to the bidder's attention, she tells you that she will be licensed by the time the project is scheduled to start. Can you accept her bid?

Chances are you can't accept her bid—and, what's more, this bidder has probably just committed a Class 2 misdemeanor (punishable by up to 60 days in prison and up to a \$1,000 fine).

Under G.S. 87-1, anyone who bids on, constructs, or oversees the construction of a construction or repair project costing \$30,000 or more must be licensed as a general contractor unless one of the exceptions in G.S. 87-1 or G.S. 87-1.1 applies. And G.S. 87-13 makes it a Class 2 misdemeanor for someone who is not licensed as a general contractor to bid on a construction project (unless one of the exceptions applies).

So what are the exceptions? There are five situations where a general contractor's license is not required for a construction or repair contract:

1. A construction or repair contract costing less than \$30,000. G.S. 87-1.
2. A contract for "furnishing or erecting industrial equipment, power plan[t] equipment, radial brick chimneys, and monuments." G.S. 87-1.
3. The construction or alteration of a building on land owned by the person or entity performing the work, as long as the building will be occupied only by that entity or person (or his or her family). This exception means that local governments that use their own forces to perform construction or repair work on buildings owned by the local government are not required to use a licensed general contractor to perform that work. G.S. 87-1. (Note that the local government can only use its own forces to perform construction or repair work if the total cost of the project is \$125,000 or less, or if the total cost of the labor only is \$50,000 or less. G.S. 143-135.)
4. Public building projects where the local government contracts directly with a person or firm licensed under the electrical, plumbing, or heating and air conditioning licensing laws, as long as (1) a licensed general contractor performs all general contractor work, (2) the total amount of general contracting work does not exceed 25% of the total bid price, and (3) a licensee with the appropriate electrical, plumbing, or HVAC license performs all of the work that falls within those classifications. G.S. 87-1.1; 21 N.C. Admin. Code § 12.0210.
5. The installation of a modular building, as long as the installer has posted a \$5,000 surety bond ensuring compliance with the State Building Code's regulations governing installation of such buildings. *Petty v. Owen*, 140 N.C. App. 494, 501, 537 S.E.2d 216, 220 (2000).

So, let's assume that your construction project does not fall under any of these exceptions. We know that the bidder is required by law to have a general contractor's license—but does that mean you must reject her bid? There are no North Carolina cases that address this issue, so it's still an open question of law here. A New Jersey court has held that a local government has the discretion to reject a bid from an unlicensed contractor when the licensing statute required licensure in order for the contractor to bid on a contract; however, the court also pointed to the company's lack of experience as a reason for rejecting the bid. *Stano v. Soldo Constr. Co.*, 455 A.2d 541, 546 (N.J. Super. App. Div. 1983). On the other hand, an Illinois court held that a local government did not abuse its discretion in awarding a contract to an unlicensed bidder when the bidder had over 40 years of experience. *Thompson Elec. Co. v. Easter Owens/Integrated Sys., Inc.*, 702 N.E.2d 1016, 1020 (Ill. App. Ct. 1998). In that case, though, the court also held that the relevant licensure statute did not require a license to bid on the contract. *Id.* at 1019.

Accordingly, the best approach would be to require the appropriate license in your bid specifications. Note that G.S. 87-15 requires architects and engineers to include the relevant portions of the general contract licensing statutes in their



specifications for construction work. I would recommend making the licensure requirement very clear in your specifications as well, instead of just expecting potential bidders to read the statutes. If your specifications require that each bidder be licensed as a general contractor, then a bid from an unlicensed bidder would be considered non-responsive.

If you don't require a general contractor's license in your specifications, you may still be on shaky ground by accepting a bid from an unlicensed contractor, especially if the contractor lacks the experience to perform the work. Weigh the possibilities here: (1) you award to the low bidder to benefit from the cost savings, and get a bid protest from the second lowest bidder (who is licensed); (2) you award to the low bidder, benefiting from the cost savings, and none of the bidders protest the award, or (3) you reject the low bid, losing the cost savings from the bid, and, perhaps, inviting a bid protest from the unlicensed low bidder. It's tough to say whether a court would view your acceptance of a bid from an unlicensed bidder as an abuse of discretion, and it's much more likely that a court would approve of your rejection of a bid from an unlicensed bidder with approval. In other words, if you think it's likely that another bidder will protest (and in this economic climate, bidders are very eager to protest), the best approach would still be to reject the bid from the unlicensed bidder.

If you're looking for more information on the general contractor licensing requirements, or on construction contracts generally, I recommend my colleague Fleming Bell's book, *Construction Contracts with North Carolina Local Governments*. Fleming discusses the general contractor licensing requirements and the exceptions on pages 36-37 of his book.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_87/GS_87-1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_87/GS_87-13.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-135.html
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- appellate.nccourts.org/opinions/?c=2&pdf=17302
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