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Challenges and Opportunities for Contractors in Disaster Areas

During the recent fires many residents have seen their homes and residential property destroyed or damaged, and some have lost pets and livestock as well. These residents need contractors' expertise to rebuild, but contractors must remain aware of special legal constraints during the rebuilding and mitigation process.

Seven day notices of cancellation

First, contractors must use seven (7) day notices of cancellation for any residential work in the areas impacted by the recent fires, because Governor Brown has declared all of the current burn areas a disaster. California Business & Professions Code section 7159(e)(7)(A). This replaces the normal three day right to cancel notice, and must be given in a specific format at a specific location in the home improvement contract.

Specific prohibitions against price gouging

Second, California Penal Code 396, *Overpricing of goods and services following state of emergency or major disaster*, is in effect through **June 4, 2018**, prohibiting what is commonly known as "price gouging." Under this law, "it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency" and for contractors specifically, "it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency." There is a limited defense available if the seller can show that the price increase was caused by an increase in the seller's cost in obtaining the materials and labor necessary to provide the services or materials to the consumer. The burden of proof is on the contractor to establish the defense:

"However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency or local emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or



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service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.”

Relaxed bidding requirements for State contracts for mitigation and recovery

Third, one positive development is that Governor Brown’s disaster declaration waives certain public contracting requirements, making it easier for state agencies to award contracts with private companies without all of the normal advertising, bidding and award procedures. Prevailing wage, licensing, DIR registration, building code, proper accounting, and other requirements still apply to work done under these state contracts.

Conclusion

Also bear in mind that due to the heavy influence of insurance funding in any disaster scenario, insurers will be alert to potential overbilling for insurance-funded reconstruction. Additionally, the CSLB commonly conducts stings during disaster recovery to weed out those contractors who are taking advantage of consumers and unfairly competing with honest contractors.

A copy of Governor Brown’s declaration can be found here:

<http://www.oesnews.com/governor-brown-declares-state-of-emergency-in-ventura-county-due-to-thomas-fire/>

For questions without our practice areas of construction, employment, business, and real estate, The Green Law Group can be contacted at (805) 306-1100, or Scott@thegreenlawgroup.com.

If you have any questions or comments regarding this article, please do not hesitate to contact Daniel Spurgeon at The Green Law Group, LLP.

Please note that this article is only intended to provide some general educational information. For your particular legal questions, be sure and consult with an attorney.

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