

IMPORTANT NOTICE TO LICENSEES

REGARDING OKADA TRUCKING AND “INCIDENTAL AND SUPPLEMENTAL”

I. Introduction

The Contractors License Board (“**CLB**”) would like to remind all licensees about the Hawaii Supreme Court’s decision in Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Haw. 450, 40 P.3d 73 (2002), which addresses the types of work that general contractors can perform. In addition, the CLB would like to inform all licensees about the new “incidental and supplemental” test that is summarized in the CLB’s October 22, 2013 “Board’s Final Order Upon Remand” (“**BFO**”)¹.

II. Okada Trucking Decision

Based on the Hawaii Supreme Court’s decision in the Okada Trucking case, the CLB has determined that an “A” General engineering or a “B” General building contractor can bid or act as the prime on “A” and “B” projects, respectively; however, they can only perform work in the “C” specialty contractor classifications that were automatically provided under HAR chapter 16-77 or obtained on their own, and any work that is “incidental and supplemental” to these specialty contractor classifications.

III. “Incidental and Supplemental”

As summarized in its **BFO**, the CLB stated that to qualify as “incidental and supplemental” work, two components must be satisfied: (1) the work must represent less than a “majority” or less than fifty per cent (50%) of the project, as measured at least in relation to the project’s total “cost and extent” of work, and (2) the other specialty contracting work must be subordinate to, directly related to, and necessary for the completion of the work of greater importance that is within the scope of the licensee’s license (i.e., the primary work the specialty contractor is licensed to perform).

Note: the above “incidental and supplemental” test is applied on a case-by-case basis, and the result depends upon the facts of each case.

¹ The BFO was issued pursuant to the Hawaii Supreme Court’s ruling in District Council 50 v. Lopez, 129 Hawai’i. 281, 298 P.3d 1045 (2013) (“**DC 50**”). The BFO was subsequently upheld by the Circuit Court on November 6, 2014, and the Intermediate Court of Appeal’s on December 21, 2015. On May 10, 2016, the Hawaii Supreme Court rejected a March 28, 2016 “Application For Writ of Certiorari” in the DC 50 case.