Those “Quotes” Can Get You

Watch Out For Your Verbal Comments When You and a Supplier Are Putting a Bid Together; They Can Bite You

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Whether and under what circumstances a supplier or subcontractor can be bound to a quote given in connection with putting a job price together is an important question.

Recently, in Preload Technology, Inc. v. ABM, the United States Fifth Circuit Court of Appeals reaffirmed the general rule that unless a subcontractor can show that its quotation was not final, the subcontractor will be bound by his oral quote to a prime contractor who relied upon the quote.

In the construction industry it is predictable that a general contractor will rely on the low sub and supplier bids received by him in calculating his bid to the owner for the overall project. Thus, the rule has evolved in most states that a subcontractor may not revoke his bid, whether oral or written, after it has been justifiably relied upon by the general contractor, irrespective of whether it had yet been formally accepted. This is true even if the subcontractor made a mistake in calculating its bid!

The courts in those states have held that such “justifiable detrimental reliance” on a bid by its recipient will render the bid irrevocable, even though there may not exist any writings constituting an express contract based upon the bid.

In such jurisdictions, subcontractors should submit even their oral quotes or bids with the understanding that they can be held liable to perform the contract at the price specified in the bid. Conversely, a general contractor can usually count on his ability to enforce the bid of the subcontractor upon which he relied in preparing his bid for the owner. There are still other states, however,
in which an oral quote is not enforceable because "justifiable reliance" alone is not permitted to circumvent the requirement under the Statute of Frauds that such contracts must be in writing to be enforceable.

There are additional circumstances under which a subcontractor may submit a quote and not be bound by it. First, a contractor cannot accept or justifiably rely on a bid if it is clearly shown that the subcontractor’s offer, whether oral or written, was not final. Thus, if the subcontractor expressly makes his bid revocable, subject to revision or otherwise not final, the subcontractor cannot be bound by this bid.

Additionally, a bid which is clearly an estimate, is not something which a general contractor can accept or justifiably rely upon. Therefore, the subcontractor who does not wish to be bound by his quote should make it perfectly clear that his bid is only an estimate and not a firm, price quote. Furthermore, if a bid by a subcontractor is so palpably low that it suggests clear bid error, there can be no justifiable reliance or acceptance by the contractor.

The contractor must first ask the subcontractor to confirm his bid. Even if the bid is reasonable and justifiably relied upon by the contractor, the courts will not keep the bid open beyond a reasonable length of time. Thus, a contractor cannot expect to hold a subcontractor to a bid for an indefinite time.

Finally, because the legal doctrine binding a subcontractor to his bid is equitable in nature, when the contractor has engaged in practices such as bid shopping, courts may be reluctant to enforce a bid against the subcontractor.

Generally, the same rules apply regarding enforceability of supplier quotes to contractors, if the terms of the quote are sufficiently comprehensive and specific so as to form the basis of a contract for sale. Unlike contractor quotes, which usually have a defined scope drawn from the contract documents, supplier quotes must usually set forth their own terms and conditions.

If the quote is only on a unit price basis without specific quantity and payment terms (or incorporation of such terms by reference to other documents), courts may not later enforce the quote against the supplier because of its lack of specificity. Also, as with oral contractor quotes, an oral quote from a supplier cannot generally be enforced as an express contract for sale because it would violate the Statute of Frauds. However, many states will enforce an implied obligation if the recipient of the bid can establish justifiable reliance on it in putting its own bid together.