When a Sub Changes the Price

by Quenda Behler Story

It shouldn't be difficult to picture the following situation: One of your subs sends you a quote, which you then use as part of your bid as general contractor on a project. You don't accept the sub's quote, however, because you're waiting to see if you get the job. After the owner accepts your bid, but before you can get back to the sub to accept his quote, the sub discovers that he's made a mistake with his figures.

In this all-too-common scenario, somebody always gets burned. It's just a question of who.

If you knew or should have realized that the sub's quote was too good to be true, then you can't use it in a contract that will bind the sub. Or if the sub had set a time limit, such as five or ten days, on the quote, you cannot bind the sub if that time limit has expired

Most of the time, however, the situation is not that clear cut. Instead, let's assume that there was a mistake of some kind, but you didn't know anything about it when you included the sub's quote in your bid. Now the question is: How binding is the subcontractor's quote and when can that quote be changed?

Several factors may cause the sub to lose confidence in the price he or she gave you. The sub may find an outright mistake, like an error in addition or an oversight with regard to the scope of the work. Or the sub may decide that the profit built into the quote was not high enough.

In these and other similar situations, the sub may be allowed to change the quote between the time your bid to the owner is accepted and the time when you sign the contract with the sub. But it depends on which state you're working in.

A Quote is Not a Contract

A contract requires both "offer" and "acceptance." A handful of states reason that, because the quote was not accepted until after the overall project bid was submitted to and accepted by the owner, it is merely an offer, not a contract. In that case, the sub may change the quote or withdraw it altogether, up to the moment when you formally accept it.

Reasonable Time for Acceptance

Many more states hold that the sub can't change or withdraw the quote until you have had a reasonable amount of time to accept it. I hear you asking, "Exactly how many days is a reasonable amount of time?" Unfortunately, the problem with a term like "reasonable" is that it's not specific. To figure out what a reasonable amount of time is, the courts will look at what is customary in the industry in your area, and also what was customary between you and your sub. If the procedure you followed this time was the same as the procedure you followed in other situations involving the same sub, and if other contractors in your area follow similar procedures, then the court may rule in your favor and not allow the sub to modify the quote.

The court will also look at the particular situation. For instance, the court will consider factors such as a labor shortage or strike. That kind of problem could significantly shorten what the court would consider to be a "reasonable" amount of time.

Reliance on Quote

About half of the states say that the sub can't withdraw the quote because you relied on it when you made your bid to the owner. It's crystal clear that there isn't a contract between you and the sub — the sub made an offer, but you didn't formally accept it. With no contract, the court turns to the "reliance" theory to determine whether it would be fair to allow the sub to change the quote.

> In most states, if you formally asked a sub for a quote and used it in your bid, the sub's quote will stand

To win your case in states that use the reliance theory, you will have to satisfy three requirements. First, you must demonstrate that it was reasonable for you to rely on the quote. The sub won't be held to the quote, for example, if material terms were missing. In this case, the court reasons that it wasn't reasonable for you to rely on the quote, because obviously the sub hadn't included the full scope of work. This would also be the reasoning in states that use the "reasonable time" test.

Second, you must show that you really did rely on the quote. If you merely

asked the sub for a "ballpark figure," it's difficult to argue that you were relying on the quote. If you formally solicited a price, however, and can show that you included it in your bid, the sub's quote will stand. Obviously, if your request was in writing, you'll have an easier time proving your case.

Finally, you must demonstrate that the sub knew, or should have known, that you would rely on the quote. The case is clear if you told the sub that the quote was for a bid. If you never mentioned a bid, however, the court will look at what the sub should have known. For example, suppose your company does insurance work exclusively, and you always submit a bid. If the sub knew that this was the case, he or she will find it hard to argue that your request for a quote was for anything other than a bid.

Avoid Misunderstandings

If you sue the sub and win, most courts will require the sub to pay you damages in the amount of the difference between the original quote and the actual cost of a replacement sub. If you find a sub who quotes the same amount, however, you will not have suffered any legal damages. You won't collect anything, even though you lost time and incurred overhead expenses.

Neither outcome is very attractive. There's a chance you'll win damages, but it's certain you'll lose the good will of the original sub. And if you work in a small community, you may find that other subs are reluctant to give you a price on future work. The best strategy is to prevent misunderstandings altogether by using a written request for quotes from subcontractors that spells out what the quote is for and how you plan to use it. When the inevitable happens and one of your subs discovers an error, negotiate with both the sub and the owner. You may be pleasantly surprised at how quickly you can resolve the problem.

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