

You Better Honor Your Bid on Bid Day Mr. Subcontractor



Executive summary. As a general contractor you can rely on your subcontractor's bid on bid day as a binding agreement. But not in all states. Read on to learn about protection granted by the *Doctrine of Promissory Estoppel*.

Call your attorney. I'm not a lawyer, and I don't know what state you're in, so consult with your attorney on this article. But know that there's a reasonable chance you can

get whole on the difference between the bid day subcontract price and the one you had to actually contract with on the project because your subcontractor did not honor his quote from bid day.

Sub bids on bid day. As a general contractor, a significant percentage of your bid to the Owner on bid day can be comprised of subcontractor quotes. Did you ever have a subcontractor call you *after* the bid went in, and refuse to honor their quote? That bid you received via phone, fax, email, or mail can be fully binding even without a subcontract.

What's a doctrine? In layman's terms, a doctrine is a simple and basic legal position which has been established by a solid precedent. Probably the most well-known construction doctrine is the *Spearin Doctrine* which states that a contractor shall not be held responsible for the consequences of building to an owner's faulty plan and specifications. Other doctrines related to our industry include *Cardinal Change*, *Contra Proferentum*, and *Superior Knowledge*.

Doctrine of Promissory Estoppel. This doctrine holds a subcontractor, or supplier I presume (please verify), liable for their proposal on bid day. There are some conditions:

1. Offer must be clear and definite.
2. The subcontractor's expectation that the general contractor will rely on the proposal.
3. Reasonable reliance by the general contractor.
4. Damage to the general contractor and a refusal to perform.

So, what does this mean. This means that on bid day the subcontractor must make a definite offer/proposal, the subcontractor must expect that the general contractor is going to use the subcontractor's number, and that the general contractor deems the subcontractor's proposal as reasonable.

Remedy. The general contractor can chase the subcontractor for the economic loss suffered. For example, say a proposal was received on bid day for \$450,000 and the subcontractor called back the next day and “rescinded” its bid. And say the work was subcontracted to another party for \$650,000. This difference of \$200,000 would be the direct cost loss to the general contractor and the minimum desired economic relief. However, word of warning to the general contractor, make sure you can establish this was a reasonable bid. If the sub left \$200,000 on the table and the next subcontractor was a \$650,000, is this a reasonable bid as interpreted by a responsible contractor? Careful.



My story. I’ve never sued, or been sued, in a matter like this. But there’s been plenty of times when I’ve been 23 minutes from closing a bid and I get in a wild sub proposal. Painters and electricians are good at this. They are all over the map in pricing and they’re late (the electricians are always the last bid to come in).

I was bidding a large treatment plant project and had two coatings/paint subcontractors with prices around \$4 million. Then, with 25 minutes to go before the bid turns in we get another number: \$1.9 million. This is greater than a \$2 million cut in the bid. I’m not saying I scratched my head and said “oh, no worries, if these guys made a mistake I’m covered by the Doctrine of Promissory Estoppel”, but I am saying I wondered if I had any legal recourse against this sub. In this case and the others like it, I always call the subcontractor and confirm he’s confident in his number and that I fully understand his scope of work.

Work safe!