



[Does the Acceptance of a Bid Create a Binding Contract?](#)

By: [Ryan M. McLane](#)
rmclane@dbllaw.com

Those in the construction industry typically understand the basics of contracts. Even the word “contractor” reflects their regular use and experience with them. Nevertheless, the question of whether acceptance of a bid creates a binding contract comes up frequently. This question is not always answered easily, but a look at the legal nature of contracts helps answer it.

In the legal sense, a “contract” is an agreement whereby one party promises to pay money or perform services in exchange for another party’s promise to do the same. It creates rights between these parties that are enforceable under the law. Contracts are formed by an “offer” and an “acceptance.” Therefore, whether acceptance of a bid creates a contract largely depends on whether that bid legally constitutes an “offer.”

An offer capable of forming the basis of a contract must specifically state its essential terms. Those terms include the identity of the parties, the subject matter of the contract, and the consideration (which is the price and services to be exchanged). For example, if a subcontractor’s bid sets forth those terms, then the contractor’s acceptance of that bid will typically create a binding contract between them.

Despite this general rule, one should pay close attention to the language of the bid documents. For example, the bid documents may state that both acceptance of the bid *and* execution of a formal written agreement are conditions to the formation of a contract. A court will likely uphold such a requirement.

Finally, a contract arising from the acceptance of a bid does not eliminate the benefits of a formal written contract. A detailed, written agreement provides the parties the opportunity to fine tune the details of their respective obligations. The careful contractor will see that the parties’ obligations are set forth in more detail through a formal written agreement.