When a roofing contractor is informed his or her bid is being accepted, he or she sometimes is asked to sign and return a letter of intent reciting the parties’ intentions to contract. Properly drafted, a letter of intent may be a binding contract. But in some cases, letters of intent are unenforceable “agreements to agree,” potentially allowing either party to subsequently reject the contract without liability for breach of contract. It is important you are aware of the potential enforceability of letters of intent so they are not executed without due consideration and deliberation.

What is a letter of intent?
A letter of intent outlines the intention of two parties to do business with each another. A letter of intent notifies the subcontractor of the plan to award the subcontract and may authorize the performance of certain preliminary work, such as preparing submittals. A letter of intent typically is only a one-page document, and though it may set forth a basic agreement regarding price and scope of work, many of the terms and conditions are left to be resolved in the formal contract. Nonetheless, despite the absence of an agreement regarding most terms and conditions, a formal contract is not essential for the parties to have a binding agreement—a letter of intent may be construed as a binding contract, and each party may be liable for breach even if they never sign a formal subcontract.

Although a letter of intent issued and signed by the parties resembles a contract to provide some work in exchange for payment, not all letters of intent are enforceable contracts. Some letters of intent are considered mere agreements to agree—nonbinding contracts to enter into a formal contract in the future—whose material terms are left unresolved.

Letters of intent that are agreements to agree provide no independent basis for recovery in a breach of contract if the general contractor fails to pay for the work performed by the roofing subcontractor or if one party backs out of the agreement.

The enforceability of a letter of intent depends on a number of factors such as the specific language used in the letter, the circumstances surrounding issuance of the letter and whether the letter—either by itself or in conjunction with other writings or the parties’ conduct—proves the parties’ intention to enter into a binding contract.

The key to enforceability
The enforceability of a letter of intent as a binding legal contract usually will turn on the parties’ intent. If the parties actually intended to be bound by the letter of intent, a binding contract has been formed. If there was no intent to be bound, no enforceable contract will exist.

Some letters of intent clearly state there is no agreement until a formal contract is executed. In this case, the intent of the parties is stated in the letter of intent and there is no enforceable contract until the agreement is signed. However, if the agreement only provides the parties intend to sign a formal contract later, the court may find the parties’ intent was to be bound by the letter of intent.

Because conduct may be evidence of intent, courts also will look to the specific conduct of the parties when determining whether an enforceable contract exists. If the parties act as if they have a contract, such as beginning to perform portions of the work, this may suggest their intention when executing the letter of intent was to establish a binding contract. If the letter of intent, taken in conjunction with the parties’ conduct, indicates an agreement has been reached, recovery may be permitted for breach of the letter of intent.

This may be the case even if the parties later have a legitimate dispute about terms and conditions that were not addressed in the letter of intent. The question at that point may turn on the significance of the disputed term or whether the court believes one party was not negotiating in good faith. Not every disagreement about the terms and conditions permits the subcontractor to invalidate the letter of intent. If this were the case, subcontractors would have a free pass to abandon every executed letter of intent by citing a disagreement with some portion of the general contractor’s contract form. For this reason, a subcontractor that is considering to refuse performing any work called for by a signed letter of intent should be cautious and consult with legal counsel to avoid being found in breach of the letter of intent.
Doctrine of quantum meruit

Given the urgency many owners and general contractors experience to get their projects started, there is no doubt roofing contractors will continue to be called upon to perform preliminary work pursuant to letters of intent before the execution of formal contract documents. When this occurs, be aware the letter of intent may not constitute a binding agreement for which a claim for payment for such work can be made. Instead, you only will be entitled to recover in breach of contract if an enforceable contract is found to exist. Absent an enforceable contract, you will need to look to other legal theories for recovery such as the legal doctrine of quantum meruit.

The legal doctrine of quantum meruit provides for the recovery of the reasonable value of services provided when no contract exists between two parties. Generally speaking, you would need to prove the following to recover against a general contractor for the costs incurred by you when relying on a letter of intent:

• You provided services to the general contractor.
• The services were accepted by the general contractor.
• You expected to be compensated for the services.
• The value of services provided is reasonable.

Assuming these elements can be proven, you would be entitled to compensation even if you could not maintain a breach of contract action.

Remain cognizant

If you are asked to sign a letter of intent, remain cognizant of the specific language used in the letter, the circumstances surrounding issuance of the letter and whether the letter—either by itself or in conjunction with other writings or the parties’ conduct—evidences the intention of the parties to enter into a binding contract.

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