

Hawaii Case: A Subcontract is Valid and Binding Without a Signature

Executive Summary: Contractors too often allow their subcontractors to commence work without a fully executed subcontract. A contract between the two parties can be binding even without a signature. Learn from this June, 2017 case in Hawaii how a contract can be formed without a signature.

No signature required. Pacific Commercial Services, Inc. (PCS) sued LVI Environmental Services, Inc. (LVI) for breach of contract. The case involves two projects, here I discuss the HECO project.

PCS and LVI traded emails in March and April of 2012 regarding their agreement. LVI wrote, in reference to the subcontract/purchase order

terms: "Let me know if these are acceptable to PCS and we will get this out to you." PCS responded with "We accept what you proposed below. Please revise it and send it to me for signature." (emphasis added) At or about this time, PCS started work for LVI. The United States District Court ruled that this email exchange "demonstrate[d] a proposal of a contract, bargained-for revisions to the contract, a meeting of the minds on all essential terms, and finally, an acceptance of the Subcontract." The Court deemed it a valid and binding subcontract even absent signatures by either party.

The "Beef". Two problems arose between the parties: (1) PCS billed LVI for a particular waste at \$700/drum versus \$700/ton and (2) LVI changed subcontractors for disposal without terminating PCS.

On the first matter of the billing of per drum versus per ton, the Court ruled that the existing contract "invite[d] further discussion or negotiations" between the parties to resolve this adjustment. I'm sure the parties will resolve this out of court.

On the second matter of LVI switching out PCS for another subcontractor (likely as a result of the unit pricing discussed above), the error by LVI was that they did not formally terminate PCS in accordance with their contract. If the termination for convenience had been sent, only the unit price issue would have been on the table. Absent this three-day notice of termination for convenience, LVI has a larger fight on their hands.

The Lesson. A contract does not require a signature, but rather the items listed in the box above. Don't try to be cute about whether or not a subcontract is in place without the actual fully memorialized document, simply take the time to get it done or know that whether you think so or not, you may have a contract!

The following email exchange created a valid and binding contract:

- Proposal of a contract
- Bargained-for revisions (negotiation)
- Meeting of the minds
- Acceptance (**No signature needed!**)



My Story. If a project manager has done this once, they've done it a hundred times. Me, probably 200 times. The job is going 100 mph and I just need the subcontractor out here now! The general understanding was always that the contract started the moment the sub walked on the job or the moment we paid them. Judge J. Michael Seabright certainly helps clarify this issue and should serve the industry well.

Further information. The information used for this article was provided in [Construction Claims Monthly](#), Volume 39, Number 9 (September 2017) issue. The case information can be found in 2017 U.S. App. Lexis 11671 (D.C. Cir. June, 2017).