A subcontract is an agreement between a prime contractor and a subcontractor under which the subcontractor agrees to perform a certain specialized part of the work. A subcontract does not establish any contractual relationship between the subcontractor and owner, and neither is liable to the other in contract. A subcontract binds only the parties to the agreement: the prime contractor and the subcontractor. Nevertheless, construction contracts frequently stipulate that all subcontractors shall be approved by the owner or architect-engineer. The bidding documents may require that a list of subcontractors be submitted with the proposal or that a similar list be submitted by the low-bidding prime contractor for approval by the owner after the proposal has been accepted (see Subparagraph 5.2.1 of Appendix C). When the owner is given the right of approval, the general contractor is not relieved of any of its responsibilities by the owner’s exercise of its prerogative.

If approval of subcontractors is required, such approval must be obtained before the general contractor enters into agreements with its subcontractors. There have been cases in which the owner refused to accept a subcontractor with which the prime contractor had already signed an agreement. It is possible in such a predicament that the general contractor must abrogate the existing subcontract and thereby render itself liable for damages to the subcontractor. Actually, the disapproval of a subcontractor is not a common occurrence. This is particularly true on public projects, where disapproval of a subcontractor may result in litigation and can be difficult to sustain by the public owner.

Although informal letters of proposal and acceptance may suffice for subcontracted work of small consequence, it is preferable that the prime contractor formalize all of its subcontracts with a written document that sets forth in detail the rights and responsibilities of each party to the contract. A well-prepared subcontract document can eliminate many potential disputes concerning the conduct of subcontracted work. The prime contractor may use a standard subcontract form, or it may develop its own special form to suit its particular requirements. The Associated General Contractors of America has prepared a subcontract form for building construction that is presented in Appendix L. Subcontract forms must be prepared with extreme care and with the advice of an experienced lawyer.

A frequent area of disagreement between the general contractor and a subcontractor is the form of subcontract used and the terms and conditions that the form includes. It is standard practice that a formal written contract be used between general contractor and subcontractor. The subcontractor knows this when it tenders its bid to the general contractor. When a subcontractor has done work before for a general contractor, the subcontractor tacitly assumes that the standard subcontract form of the general contractor will again be used. Consequently, the subcontractor's