

Contract and bid rescission: Be careful when submitting bids and exercise due diligence, NYREJ

By Andrew L. Richards, co-managing partner Long Island office of Kaufman Dolowich & Voluck, LLP (KD) and Chair Construction Law practice group.

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Contractors are continually requested by owners to submit non-revocable bids or proposals for construction work whereby the bid or proposal is binding on the contractor for a certain period of time so that the owner can determine which contractor it wants to hire. During this process there are times when a contractor figures out that it underbid the project and seeks to withdraw its bid. However, a bid may be rescinded only under very specific circumstances.

Bids may be rescinded due to mutual mistake, fraud and unilateral mistake. Mutual mistake exists when the bid was provided based on a mistake by both parties that was so substantial that there is no “true meeting of the parties’ minds” to form a contract. For a court to rescind a bid based on mutual mistake both parties must have based their transaction on mistaken information that was known and relied upon by both parties. Mutual mistake is generally easy to determine since both parties understood the same set of facts and relied on the same information.

On the other hand, rescinding a bid based on fraud is harder to prove. For a court to rescind a bid based on fraud, the complaining party must show that it justifiably relied on an intentional misrepresentation of fact from the other party in submitting a bid. The key here is that the complaining party must show that it did not have or could not have determined with due diligence the truth of the fact that was misrepresented by the other party. The hardest ground to prove that a contract or bid should be rescinded is by a unilateral mistake. Many parties to contracts believe that if they can prove that they made an honest mistake then they can easily have a contract or bid rescinded. Not so fast.