

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

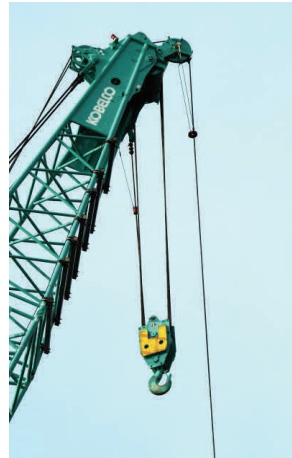
Any contractor that engages in public work is familiar with the provisions of General Municipal Law section 103, which governs advertising for public bids and offers.

Bidding a public project requires a significant time commitment and attention to detail. But what happens when the bidding contractor makes a mistake in its bid?

Subsection 11(a) of the statute addresses this situation. In order to withdraw its bid based

on a mistake, the contractor must 1), notify the public entity within 3 days after opening the bid; 2) establish that the bid price would make enforcement unconscionable; 3) establish that the bid was submitted in good faith, based upon credible evidence; 4) establish that the bid error is due to an unintentional error which can be established by objective evidence; 5) establish that it is possible to place the public entity in the status quo.

Keeping detailed bidding calculations and work sheets is necessary



in order to establish a bid mistake.

It must also be noted that the sole remedy for a bid mistake is withdrawal of the bid. The bid may not be amended or reformed.

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CASE LAW UPDATE

On February 4, 2016, Justice Shirley Werner Kornreich, of the New York County Supreme Court, decided the case of *E.E. Cruz/Nicholson Joint Venture, LLC v. Lend Lease (US) Constr. LMB, Inc.*

The case involved the construction of multiple buildings in upper Manhattan for Columbia University.

The subcontractor (ECN) was hired to construct slurry walls and building foundations. After ECN encountered significant difficulties on the project,

it commenced an action against the GC (Bovis) alleging, among other things, that Bovis ordered out of sequence work, failed to pour the first floor concrete in two buildings within ECN's 75 day window, provided faulty construction drawings and plans, and so on.

ECN claimed delay damages of over \$1.5 million as a result of Bovis' delays. Bovis filed a motion to dismiss the delay damages due to a "no damage for delay" clause in the subcontract. ECN responded that it should be excused from

enforcement of the no damage for delay clause because Bovis' actions amounted to gross negligence.

The court dismissed ECN's delay damages cause of action due to the contractual clause. It held that Bovis had engaged in "inept contract administration," but the no damage for delay clause was still enforceable.

The contents herein are for informational purposes only. No contents herein should be construed as legal advice or create an attorney/client relationship.

Consult your attorney regarding specific legal needs. This may be construed as attorney advertising. Prior results do not guarantee a similar outcome.