

NOVA SCOTIA COURT OF APPEAL

Citation: Rhyno Demolition Inc. v. Nova Scotia (Attorney General), 2006 NSCA
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Date: 20060210
Docket: CA 244019
Registry: Halifax

Between:

Rhyno Demolition Incorporated

Appellant

v.

The Attorney General of Nova Scotia and
The Department of Transportation and Public Works
for the Province of Nova Scotia and
Dineen Construction (Atlantic) Inc.

Respondent

Judge: The Honourable Justice Freeman

Appeal Heard: January 19, 2006

Subject: Contracts; Public Tenders; Bid and Performance Security;
Compliance

Summary: The Nova Scotia Department of Transportation and Public Works (DTPW) let tenders through the Public Tenders Office for various phases of the proposed \$12,600,000 renovation of a publicly owned building, but agreed in the interest of flexibility that the construction company, engaged as project manager, should call the tenders for the Phase A and Phase B demolition work. The appellant, the successful bidder for the Phase A demolition, was underbid for the Phase B contract and brought action claiming it should have been awarded the contract because the low bid was not compliant with the tender call. Unlike the Phase A tender call the Phase B call did not require bid security. It required only that after the successful tenderer was identified it should provide a certified cheque for ten per cent of the tender amount as performance security. The bidder provided a cheque for roughly half the amount

when the contract was awarded and one for the balance after demolition began. The trial judge found that the bid was compliant and dismissed the action. The appellant appealed and the construction manager cross-appealed.

Issue: Did the project manager award the Phase B demolition contract on the basis of a non-compliant bid?

Result: The appeal was dismissed with costs. There was no need to consider the cross-appeal, which became moot. The trial judge did not err in concluding the bid of the successful Phase B bidder was compliant. The tender call required not bid security but performance security, a “far less” technical matter.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 8 pages.