

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Halifax (Regional Municipality) v. England Paving & Contracting Ltd.*,
2009 NSSC 224

Date: 20090716

Docket: Hfx. No. 312485

Registry: Halifax

Between:

The Halifax Regional Municipality

Applicant

and

England Paving & Contracting Limited

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: July 9, 2009

Written

Decision: July 16, 2009

Subject: Construction Contract Tender

Summary: HRM issued a call for tenders for extensive road work. England filed lowest tender at \$1,194,333.16. Dexter second lowest at \$1,529,082.10 and two further tenders. Following opening of tenders, HRM discovered Schedule of Quantities and Unit Prices was not in the tender documents filed by England. England maintains it did file the Schedule. HRM applies for declaration that tender substantially compliant but continues denial of receipt of Schedule.

Issues:

- (1) Has England established on a balance of probabilities that it filed with its tender the Schedule of Quantities and Unit Prices?
- (2) If not, was there substantial compliance?

- (3) England failed to “insert” addendum into contract binder. Compliance?
- (4) England whited a change in total tender price, but failed to initial it. Compliance?

Result: Issue (1): Finding of fact that England failed to establish Schedule of Quantities and Unit Prices filed with tender.

Issue (2): Unit prices in a unit price contract as opposed to a fixed price contract a fundamental term and failure renders tender non-compliant.

Issue (3): Failure to “insert” into bound binder far too technical and of no merit.

Issue (4): Failure to initial whited amount of tender might have been fatal had it not been for the fact the same amount appeared on more than one portion of the tender and no doubt as to the total tender price for the estimated work.

Outcome: HRM’s application for a declaration tender compliant dismissed.

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