

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Attorney General) v. Force Construction Ltd.*,
2009 NSCA 96

Date: 20090917

Docket: CA 304815

Registry: Halifax

Between:

Attorney General of Nova Scotia representing
Her Majesty the Queen in Right of the Province of Nova Scotia

Appellant

v.

Force Construction Limited

Respondent

Judge: The Honourable Justice Bateman

Appeal Heard: September 17, 2009

Written Judgment: September 18, 2009

Subject: Tendering.

Summary: Force Construction Limited submitted an apparently compliant tender on a Government project. After tenders had closed, but before choosing the successful bidder, the Government learned that the window supplier listed in Force's bid could not supply a particular kind of window essential to the contract. This was unknown to Force. Government extended the award date over a weekend and required Force, by noon on the Monday, to provide written confirmation of the availability of the windows from another supplier. Force was unable to supply written confirmation by that deadline although maintaining throughout that it would supply the windows and providing verbal assurance that it had an alternate source. The judge found that Government had not treated

all bidders fairly by requiring the lowest bidder to provide additional assurances. Finding that Force would have been awarded the contract but for the Government's breach, he awarded damages equal to lost profits.

Issue: Did the judge err in finding a breach and in his calculation of damages?

Result: Appeal dismissed orally with costs.

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 2 pages.