
SCA considers a moot appeal for public benefit in relation to a government procurement

Public procurement – mootness in appeals – ambiguous tender documents

On 28 November 2025, the Supreme Court of Appeal (“SCA”) handed down judgment in *Tekoa Consulting Engineers (Pty) Ltd v Alfred Nzo District Municipality* [2025] ZASCA 180, declaring tender documents unlawful for vagueness, despite the work already having been completed.

In this matter, the Bid Evaluation Committee (“BEC”) of the Alfred Nzo Municipality, disqualified Tekoa’s bid, because Tekoa failed to provide proof of registration with the CIDB, and the required grading, as specified in the tender document. The tender was awarded to the other competing bidders.

Tekoa instituted an application in the Eastern Cape Division of the High Court to review and set aside both the disqualification of its bid and the award of the tender to other bidders. The High Court, per Laing J, granted an order declaring that the tender process conducted by the Municipality was unlawful. It further reviewed and set aside the Municipality’s decision to disqualify Tekoa’s bid and to award the tender to the other bidders.

The Municipality was granted leave to appeal to the full court, which upheld the appeal, set aside the High Court’s order, and replaced it with an order dismissing Tekoa’s review. The SCA granted Tekoa special leave to appeal.

At the SCA, it was common cause that, at the time of hearing, (i) the services for which the tender had been issued had been completed, and (ii) there was no extant contractual relationship between the Municipality and the successful bidders. The SCA’s decision, therefore, would not have any practical effect on the tender in question.

In determining whether it was in the interests of justice to hear the appeal, despite its mootness, the SCA emphasised the importance of organs of state to comply with the obligations imposed by section 217 of the Constitution. The SCA held that mootness was no bar to the determination of an appeal if it is in the interests of justice to do so. The ultimate factor was whether the Court’s decision would benefit the public at large and promote legal certainty. The SCA went further to state that tenders should be clear and unambiguous so as not to offend public policy and the principle of legality.

The Municipality argued that Tekoa’s tender was non-responsive as it lacked a CIDB certificate of registration. However, as the Court held, the requirement for the compulsory submission of a CIDB registration certificate was not contained in the tender document. However, elsewhere in the tender document, it was stated that the company’s profile should include “*proof of registration with professional bodies (e.g., CIDB, LGSETA) if applicable*”.

The SCA concluded that it was unclear from the tender document whether the CIDB was required, or if the bidder had an election whether to submit it or not, in light of the stipulation, “if applicable”.

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The Court therefore held that the disqualification of Tekoa for its failure to submit a CIDB certificate warranted judicial consideration as the method of disqualification would impact other parties in future tenders of that nature.

The appeal was accordingly upheld despite its mootness.

The key lesson from this judgment is that the mootness of a matter does not necessarily prevent a court from entertaining it and granting relief to guide similar future matters and to promote legal certainty. Furthermore, for procurement matters, this judgment emphasises that tender requirements ought to be clearly set out and unambiguous, since failing to do so could result in an unfair assessment.

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