

***Expired tenders mean exactly that
The High Court reinforces certainty in public procurement***

The High Court has once again reaffirmed a fundamental principle of public procurement law: once a tender validity period has lapsed, the tender process comes to an end and cannot be lawfully revived.

In *LTC Holding CC v Johannesburg Water SOC Ltd and Others* (Case No: 2024-131114), judgment the Court reviewed and set aside the award of a municipal tender after finding that the tender had lapsed before any lawful award was made.

Background to the dispute

The dispute arose from Tender JW OPS 003/23, which sought to appoint a panel of service providers for the supply and delivery of potable water over a 36-month period. An unsuccessful bidder approached the court to challenge the award, alleging that the tender validity period had lapsed before the award was communicated to the successful bidders.

Johannesburg Water maintained that the tender had been validly extended and internally awarded before its expiry. However, it was common cause that the award was only communicated to the successful bidders several weeks after the final extension of the tender validity period had lapsed.

The Court's findings

The Court reaffirmed several well-established procurement principles:

- Tender validity periods are “rules of the game” and are fundamental to a lawful, fair, and transparent procurement process.
- An organ of state has no authority to unilaterally extend a tender validity period. Any extension requires the timeous consent of all participating tenderers before the validity period expires.
- An internal decision to award a tender is not sufficient. A tender is only finally awarded once the decision is communicated to the successful tenderer.

- Once a tender validity period expires without a communicated award, the tender lapses, and any subsequent award is unlawful.

Importantly, the Court rejected Johannesburg Water's reliance on its internal Supply Chain Management Policy, finding that it had not been properly incorporated into the tender documents nor adequately communicated to bidders.

Upholding Procurement Law Without Disrupting Essential Public Services

While declaring the tender award unlawful and constitutionally invalid, the Court adopted a measured and pragmatic approach to remedy. Recognising the essential nature of potable water services, the Court suspended the declaration of invalidity for 150 days to allow Johannesburg Water to conduct a fresh tender process and ensure continuity of services.

This approach reflects the Constitutional Court's guidance that remedies in procurement matters must be just and equitable, balancing legality with the public interest.

Key Procurement Lessons from the Judgment

This judgment serves as an important reminder that:

- Procurement timelines matter, and administrative convenience cannot trump legality.
- Organs of state must strictly comply with tender conditions and applicable legislation.
- Bidders are entitled to expect certainty, transparency, and adherence to published rules.

For both public entities and private contractors, the decision reinforces the risks associated with informal extensions, delayed communication, and reliance on internal policies not properly incorporated into tender documentation.

Conclusion

This judgment reinforces the importance of finality, certainty, and procedural discipline in public procurement. At Majang Attorneys, we continue to advise clients in both the public and private sectors on procurement compliance, tender reviews, and litigation arising from irregular procurement processes.

Should you require advice or representation in a tender-related matter, our team is well placed to assist.