

IN THE HIGH COURT OF LESOTHO
(Commercial Court Division)

HELD AT MASERU

CCA/0057/2021

In the matter between:

QHOMANE CONSTRUCTION & TRANSPORT

APPLICANT

And

MASERU CITY COUNCIL

1ST RESPONDENT

PROCUMENT UNIT MASERU CITY COUNCIL

2ND RESPONDENT

**PUBLIC PROCUREMENT & ADVISORY
DEPARTMENT**

3RD RESPONDENT

**TSOELOPELE CONSULTANTS &
CONTRATORS (PTY) LTD**

4TH RESPONDENT

**MINISTER OF FINANCE & DEVELOPMENT
PLANNING**

5TH RESPONDENT

THE ATTORNEY GENERAL

6TH RESPONDENT

Neutral citation: Qhomane Construction & Transport v Maseru City Council
& 5 others [2022] LSHC 41 COM (28th February, 2023)

CORAM: MATHABA J
Heard On: 28th November 2022
Delivered On: 28th February 2023

SUMMARY

Public Procurement – Public procurement grounded on principles of legality, accountability, transparency and equal treatment of tenderers amongst others - Procurement Unit extending deadline for submission of tenders through telephone calls to businesses that bought tenders only – Principles of transparency and equal treatment of tenderers violated – The method adopted in extending the deadline is subversive to a credible tender procedure and could not have resulted into lawful award.

ANNOTATIONS:

Statutes

Public Procurement Regulations 2007

Cited Cases

Lesotho

Drytex Lesotho (Pty) Ltd v. Pyramid Laundry Services (Pty) Ltd and Others
LAC (2015-2016) 387

Procurement Policy Advice Division and Another v. Laxton Group Limited C
of A (CIV) No. 26/2022

Qingjian Group CO. Ltd v Procurement Unit (C of A (CIV) 80/19 [2020] LSCA
16 (29 May 2020)

Smally Trading Company v. Lekhotla Matsaba & 10 Others C of A (Civ)
17/2016 [2016] LSCA (25 May 2016).

South Africa

National Director of Public Prosecutions v Phillips and Others 2002 (4) SA 60
(W)

South African Veterinary Council and One v. Greg Szymanski (79/2001)

JUDGMENT

INTRODUCTION:

[1] The applicant approached this Court on an urgent basis for an interim relief to halt re-tendering of the construction and maintenance of Abia Main Road (classified as Lot 1). The final relief sought by the applicant is for this Court to review and set aside the decision of the 5th respondent to recommend the re-tendering of construction and maintenance of the road. Consequentially, the applicant seeks an order directing the 1st and 2nd respondents to enter into a contract with it for the construction and maintenance of the road.

[2] My brother *Mokhesi J* dismissed the applicant's prayer for interim interdict on 22nd July 2021 on the ground that the applicant failed to prove absence of alternative remedy in damages. He relied on the decision of **Smally Trading Company v. Lekhotla Matsaba & 10 Others C of A (Civ) 17/2016 [2016] LSCA (25 May 2016)**. He further ruled that the matter was not urgent as the applicant was dilatory in coming to court.

BACKGROUND:

[3] The 1st respondent advertised a tender in terms of which locally registered eligible contractors were invited to bid for the construction and maintenance of various roads in Maseru which were categorised into 5 Lots. The applicant and the 4th respondent submitted their bids for Lot 1. In terms of the invitation to tender all tenders had to be submitted on or before 7th January 2021 not later than 09hrs00. The invitation to tender further indicated that tenders would be opened at 09hrs30 on the same day.

[4] On 7th January 2021 the 1st respondent extended the deadline for submission of tenders telephonically to 10hrs00. Following opening of tenders, only the applicant and the 4th respondent qualified to go to the next stage of the tender process out of five tenderers who had submitted their bids for Lot 1.

[5] On 4th March 2021 the 1st respondent addressed a letter of intent to award to the applicant. The letter specifically informed the applicant that its bid had been accepted. The letter further advised the applicant of 15 days cooling off period to deal with queries that may arise relevant to the tender before contract negotiations.

[6] Unsurprisingly, the 4th respondent lodged a complaint with the 1st respondent on the 19th March 2021 copied to the 3rd respondent. This complaint threw a spanner in the works. The applicant was accordingly informed of the complaint and that a contract could not be entered into until the complaint was resolved. Amongst others the 4th respondent expressed dissatisfaction that the deadline for submission of bids was telephonically rescheduled to 10hrs00.

[7] Contrary to regulation 54 of the Public Procurement Regulations of 2007 as amended, the Procurement Unit of the 1st respondent did not hold complaint proceedings to resolve the 4th respondent's complaint. Resultantly, the 4th respondent invoked regulation 55 and appealed to the 3rd respondent. Pursuant to regulation 55(2), the 3rd respondent concluded that all Lots must be re-tendered including Lot 1. The conundrum arises out of this decision.

APPLICANT'S CASE:

[8] The premise of applicant's case is that as envisaged by the Regulations; upon filing of the complaint by the 4th respondent, all interested parties ought to have been informed of the nature of the complaint and be invited to complaint proceedings. Accordingly, failure to inform the applicant of the nature of the complaint from the onset constitutes a material irregularity which must be reviewed corrected and set aside, so contends the applicant.

[9] Furthermore, when the decision to re-tender was arrived at the applicant was not given an opportunity to be heard yet the decision is adverse to it. Not only is the attack of the decision premised on the Regulations, the applicant also complains that the decision was taken contrary to the *audi alteram partem*. Thus, the applicant wants the decision to be set aside to pave way for signing of the contract with the 1st respondent.

RESPONDENT'S CASE:

[10] The 4th respondent submits that it was irregular and unlawful for the 1st respondent to amend the deadline telephonically without publication through mass media as required by the Regulations. It relies on regulations 22 and 25 in this regard. Extending deadline through telephone calls tainted the perception of transparency and fairness in the procurement process, so argues the 4th respondent.

[11] As regards the 3rd respondent's failure to give the applicant a hearing before it reached the decision on re-tendering, the 4th respondent contended that the 3rd respondent was not enjoined to invite the applicant when it dealt with the 4th respondent's complaint. However, Counsel for the 4th respondent conceded during oral argument that the applicant ought to have been

heard before the decision was reached.

[12] According to the 4th respondent, the applicant failed to plead any ground of review to demonstrate that the 5th respondent acted irregularly when it recommended re-tendering of the project. It asserts that the purported irregularity committed by the Procurement Unit cannot be imposed on the 3rd respondent. Neither can it be used as a basis for reviewing the decision to re-tender, especially where the decision is lawful and regular.

[13] The 4th respondent further challenges the contention that the decision by the 1st respondent to abide by the 5th respondent's recommendation is grossly unreasonable, irrational and irregular. It asserts that the contention is not substantiated by evidence and does not even constitute a valid ground of review. Further that the applicant has failed to plead which regulations were breached by the 3rd respondent in making the recommendation.

[14] Concerning the applicant's contention that it had a legitimate expectation that it will negotiate and sign a contract, the 4th respondent argues that such expectation was unreasonable because after issuance of the letter of intent to award, other parties were still entitled to lodge their complaints. As a result, so contends the 4th respondent, it is fallacious to suggest that contractual rights and obligations were created when no contract existed between the applicant and the 1st respondent.

ISSUES:

[15] What I am called upon to determine in this case is the propriety of the decision to re-tender which was arrived at without affording the applicant a hearing.

APPLICABLE PRINCIPLES:

[16] The answer to the dispute lies in the Regulations. The procurement of goods and services in the public sector in Lesotho is grounded on principles of legality, accountability, efficiency, transparency and overall value for money. Procurement process must stimulate a competitive environment with equal treatment of bidders¹. As a safeguard to ensure that these principles are not compromised, the Regulations make provision for segregation of duties by introducing a number of structures in the procurement process. Amongst these structures are the Procurement Unit, The Tender Panel, the Public Policy and Advice Division, Appeals Panel. For present purpose I will only traverse on the powers and mandate of the Procurement Unit (*“the Unit”*) and the Public Policy and Advice Division (*“PPAD”*) relevant to resolution of this dispute.

¹ Regulation 6(1)

The Procurement Unit

[17] The Unit is a creature of regulation 3(1) of the Regulations. Public bodies including ministries, district councils, state owned legal entities and any other bodies covered by public law or any project implementing authority authorised to carry out public procurement and funded by foreign loans, grants and assistance, constitute a Procurement Unit when carrying out public procurement².

[18] The mandate of the Unit is to procure goods and services through inviting tenders for such goods and services, evaluating bids received in response to an advertisement, and awarding a tender to, and contracting with the successful bidder. In terms of the Regulations, the Unit has a mandate to make invitation to tender publicly through mass media and on the web page and the deadline for tender submission shall be provided in the invitation to tender³.

[19] It is apposite to quote the regulations that are relevant to invitation and opening of tenders which the Unit must observe.

“Public announcement of invitation to tender

22.(1) The Unit shall make the invitation to tender available publicly through the mass media and on the web-page. The date of dispatch for publication shall be the issue date.

² Regulation 3(2)

³ Regulation 22

- (2) The Unit shall announce detailed information concerning the tender openly and transparently and provide this to any interested body without delay.
- (3) The invitation to tender shall be published through the mass media in either of the official languages, for works, goods or services with a cost estimate exceeding the figure stipulated in Schedule 1.
- (4) The Unit shall post invitations to tender whose value exceeds the threshold value set out in Schedule 1 in the national press or mass media and on the web-based Tender Notice Board maintained by the Ministry and other bodies as set out in regulation 3(2).
- (5) The invitation to tender shall provide the following information:
 - (a) the identity of the Unit;
 - (b) a brief summary of the works, goods or services to be procured;
 - (c) the address at which tender documents and other information are available and to which tenders are to be submitted;
 - (d) the cost of the tender document;
 - (e) special requirements of the tender;
 - (f) the deadline for tender submission and the place, date and time of tender opening;
 - (g) the required validity period of the tenders;
 - (h) a statement that foreign tenderers and licensees are invited to compete;
 - (i) the procedure for granting a margin of preference; and
 - (j) the anticipated date by which bids will be evaluated and the contract awarded.

...

25. (1) The Unit shall provide all tenderers with sufficient and equal time to prepare and submit their tenders.
- (2) The Unit shall determine the submission deadline of tenders starting from the day tenders are issued, the deadline shall be a minimum of 30 working days from the date of initial announcement.
- (3) The Unit shall set the period of validity of tenders and ensure that the tender remain valid for the period of 30 working days after the set date for completion of evaluation and announcement of contract award.
- (4) The Unit shall, if it is required to make a site visit for tender preparation, the time necessary for the visit be included in the deadline timeframe.
- (5) The Unit shall set the timeframe for evaluating tenders after the tender opening, the time shall be specified in the invitation to tender and tender documents.

Submission of tenders

- 26.(1) Tenderers shall submit their tenders or revisions to tenders within the fixed deadline, at the stated address, and in the form specified in the tender documents.
- (2) Tenderers may withdraw or modify their bids within the fixed deadline.
- (3) Any tender received after the deadline or not submitted in the format specified in the tender documents shall be rejected and returned to the tenderer at the address stated on the tender documents.
- (4) Information related to the technical, price and other content of tenders, the evaluation of tenders and the qualification of tenderers' capacity shall remain confidential until a contract is signed.

Opening tenders

27. (1) The Tender Panel shall publicly open all tenders received, immediately after the fixed deadline for submission of tenders.
- (2) Tenderers or their representatives, or others interested bodies are entitled to attend the tender opening.

[20] Following interrogation of the bids in line with the Regulations and the evaluation criteria that would have been agreed in advance, regulation 30 (1) provides that:

“The Unit shall invite the tenderer who has satisfied the requirements specified and submitted the most favourable tender to enter into a contract.”

[21] Unsuccessful tenderers must be advised in writing that the successful tenderer has been invited to enter into contract⁴. It is apposite to mention that the Unit and the successful tenderer are to sign a contract within 15 working days following notification of the invitation to contract and within the tender validity period. However, the operation of the contract shall not come

⁴ Regulation 30 (2)

into force until 15 working days after the notice of contract award has been made⁵.

[22] Significantly, once the Unit has received a complaint in relation to the tender, it is barred from entering into the contract until the complaint is resolved except where the Minister of Finance determines that the suspension of the tender process is against public interest⁶.

Settlement of disputes

[23] The Unit also has to entertain complaints brought by dissatisfied tenderers. Where a tenderer or any persons with a legitimate interest in the award of the contract is dissatisfied with the Unit's decision, it may within 3 calendar months after the award of the contract submit its written complaint to the Unit⁷. Once a complaint has been lodged, the Unit is enjoined to notify all tenderers about the nature of the complaint and invite tenderers whose interest might be affected by a respective decision to the complaint proceedings⁸.

[24] The Unit is obligated to review the complaint and make a decision within 10 working days after the submission of the complaint and if the Unit

⁵ Regulation 30

⁶ Regulation 54 (5)

⁷ Regulation 54 (1)

⁸ Regulation 54(2)

does not consider the complaint to be valid, it must provide a justification for its decision in that regard and where the complaint is justifiable the decision of the Unit must explain how the deficiency is going to be rectified⁹.

The Procurement Policy Advice Division

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[25] In terms of Regulation 6(1) the PPAD is *‘responsible for the development of the public procurement system legality, accountability, efficiency, transparency, and overall value for money in the implementation of public procurement and by stimulating a competitive environment with equality of treatment among bidders in the public procurement process.’* Sub regulation 2 amongst others empowers the PPAD to monitor compliance with procurement policies and the regulations. In terms of regulation 55 the PPAD is empowered to handle appeals arising out of complaints lodged with the Unit in terms of regulation 54.

[26] It suffices to mention that one of the grounds upon which a complainant may appeal to PPAD is when the Unit failed to issue a decision on a complaint within the specified time¹⁰. Where the PPAD is of the opinion that the Unit did not comply with the provisions of the Regulations it is empowered to nullify or modify decisions of the Unit wholly or in part¹¹.

⁹ Regulation 54(4)

¹⁰ Regulation 55(1)(b)

¹¹ Regulation 55(2)

DISCUSSIONS:

[27] The applicant's claim on legitimate expectation is premised on the letter of intent to award. The requirements relating to legitimate expectation were neatly put together as follows by *Heher J* in **National Director of Public Prosecutions v Phillips and Others**¹²:

“The law does not protect every expectation but only those which are ‘legitimate’. The requirements for legitimacy of the expectation, include the following:

- (i) The representation underlying the expectation must be ‘clear, unambiguous and devoid of relevant qualification’ : *De Smith, Woolf and Jowell (op cit at 425 para 8-055)*. The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.
- (ii) The expectation must be reasonable: *Administrator, Transvaal v Traub (supra at 7561-757B)*; *De Smith, Woolf and Jowell (supra at 417 para 8-037)*.
- (iii) The representation must have been induced by the decision-maker: *De Smith, Woolf and Jowell (op cit at 422 para 8-050)*; *Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 All ER 346 (PC) at 350h-j*.
- (iv) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: *Hauptfleisch v Caledon Divisional Council 1963 (4) SA 53 (C) at 59E – G.*”

¹² 2002 (4) SA 60 (W) at 102 para 28

[28] This decision was quoted with approval by the Supreme of Court of Appeal of South Africa in **South African Veterinary Council and One v. Greg Szymanski** (79/2001) [2003] ZASCA 11 (14 March 2003) para 19. I am in respectful agreement with the principles consolidated by *Heher J.*

[29] Applying these principles, in my view, the applicant 's invocation of legitimate expectation on the basis of the letter of intent to award was misplaced. It is patently clear from the letter that the award to the applicant was depended on there being no queries which needed to be resolved before the parties could proceed to contract stage. Consequently, the applicant's expectation that the contract was going to be signed could not have been a reasonable one.

[30] All of that being said, it is pellucidly clear from the record that, contrary to the Regulations, the applicant was not heard before the decision to re-tender was made. However, I need not traverse much on this issue as the 4th respondent abandoned the argument that the 3rd respondent was not enjoined to afford the applicant a hearing before it made the decision to re-tender. The concession came after I brought to Counsel's attention the decision in **Procurement Policy Advice Division and Another v. Laxton Group Limited**¹³ where *Damaseb AJA* said the following in confirming that PPAD

¹³ C of A (CIV) No. 26/2022 paras 57 & 58

was enjoined to afford a ‘successful tenderer’ a hearing before it recommended re-evaluation of the tender:

“[57] However it became seized of the complaints, PPAD had the duty to follow the procedure set out in the Regulations for the adjudication of appeals to it. I have set out that procedure fully and need not repeat it here. Suffice it to say that PPAD was required to apprise Laxton of the complaints and afford it *audi* which it failed to do.

[58] Barring any illegality that tainted the award to Laxton, a clear case was made out for the review and setting aside of the decision by PPAD to halt the tender process for the EVMIS and ordering a re-evaluation of the tender.”

[31] This brings me to the next enquiry, namely whether failure to afford the applicant a hearing justifies the review and setting aside of the decision to re-tender despite the alleged unlawfulness in the tendering process. Where a party asserts the unlawfulness of an administrative act in order to thwart a primary remedy that is being sought, that constitutes a collateral challenge worthy of consideration. In **Laxton**¹⁴, *supra*, *Damaseb* AJA said the following concerning a collateral challenge:

“[64] A collateral challenge is relevant in so far as it determines whether the primary remedy should be granted and depending on the proceedings, a collateral challenge can be the applicant’s sword or the respondent’s shield. A collateral attack is therefore an attempt by a party to assert the unlawfulness of an administrative act whilst it does not itself seek a direct review of that administrative act. *Cocks v Thanet BC* is authority for the proposition that a public law challenge is permissible if it arose collaterally in the course of an ordinary civil action.

[65] in this case, the primary remedy sought by Laxton is the review and setting aside of PPAD’s decision adverse to Laxton. The collateral challenge is therefore the 3rd and 8th respondents’ shield against Laxton in its endeavour, by means

¹⁴ *Ibid*

of judicial review, to void PPAD's decision-making and to be considered the successful bidder in respect of the EVMIS on the strength of an equally invalid decision by the TP – an illegality that is apparent on the record. Australian courts have held that collateral challenge is presumptively available for errors appearing on the face of the record.

[66] collateral challenge of the TP's award was even more appropriate because in the absence of a direct challenge, it is presumed to have the force of law. there is nothing in the scheme of the Procurement Regulations that would prevent the PPAD from collaterally challenging the TP's decision making. On the contrary, the fact that the Procurement Regulations give the mandate to PPAD to enforce legality and integrity of the procurement process is all the more reason why in review proceedings initiated by others it should be competent to mount a collateral challenge."

[32] In dealing with disputes that arises out of tender processes the following dictum in **Qingjian Group CO. Ltd v Procurement Unit** cannot be overlooked¹⁵:

"procurement is prescriptive precisely because the award of public tenders is notoriously prone to influence and manipulation. Allowing discretion would weaken the law of its purpose of preferential procurement and curbing corruption."

[33] The crux of the 4th respondent's case is that the 1st respondent's decision to extend the deadline for submission of tenders telephonically was unlawful, irregular and in contravention of the Regulations. According to the 4th respondent, extending deadline by telephone "*betrayed the perception of transparency in the tender process*"¹⁶ and the reason that the 1st respondent extended the deadline was to favour other parties such as the applicant¹⁷.

¹⁵ (C of A (CIV) 80/19 [2020] LSCA 16 page 21-22 para 35

¹⁶ Pleadings, page 52 para 39.3

¹⁷ Ibid, page 57 para 45.4

[34] The applicant does not gainsay the 4th respondent regarding the unlawfulness and the implications of the telephonic extension. What seems to matter to the applicant is that the impugned decision was taken without affording it a hearing. The following extracts from the replying affidavit sums up the applicant 's attitude regarding the extension of the deadline for submission of the tenders:

“6 **AD PARAGRAPH 38.1 AND 38.2 THEREOF**

6.1 ...

6.2 Contents therein are noted. Save to aver that, whether the 1st Respondent was wrong or not in extending the time, the gist of my case is that Applicant being the successful bidder was not party to either of the proceedings which might have or could have taken place with the 1st Respondent and which certainly necessitated the recommendations directing a re-advertisement of **Abia Main Road** tender in terms of which the applicant was declared as a successful bidder.”

7

AD PARAGRAPH 39.1 TO 39.3 THEREOF

7.1 ...

7.2 Whilst we note the 4th Respondent's contention that the extension of the submission time was irregular and unlawful without even conceding to it, it is the Applicant's contention that for the purposes of this application, what is of materiality is that the very decision was made without the Applicant's participation although he was declared as the successful bidder of Abia Main Road and it was consequently re-tendered after such an adverse decision was taken.”

[35] The requirement for a tender invitation to be given a wide publicity and to reflect the deadline for tender submission and the place, date and time for

tender opening cannot be overemphasised. Similarly, it is easy to understand why tenders must be opened publicly immediately after the fixed deadline for their submission. These are safeguards to ensure a competitive tendering process that is characterised by transparency and accountability.

[36] The regulations minimise risk of corruption and abuse of process as well as ensuring that tenderers are given equal time to prepare and submit their bids. The very mischief which they seek to combat could be perpetuated if Procurement Units were to be allowed to alter deadlines for submission of tenders willy-nilly with telephone calls without giving such deadlines wide publicity through mass media and web-page as the prescribed methods of communication.

[37] Extending the deadline for submission and opening of tenders by telephone calls is inimical to these ideals, particularly when only businesses which bought the tender are informed of extension. This did not only deny other interested parties an opportunity to attend the tender opening, but it gives credence to the accusation that the extension was done to give unfair advantage to tenderers such as the applicant. Curiously, the applicant has not disputed this damning allegation.

[38] The 1st and 2nd respondents decided not to oppose the matter and to abide the decision of this Court. As a result, there is absolutely no explanation provided why the deadline for submission and opening of tenders was changed

on the date of submissions and why this was not done through the prescribed medium of communication. Tellingly, the regulations do not afford the 1st respondent a discretion to extend deadlines by telephone calls. The 1st respondent derives its powers from the regulations and if they afford it no discretion to extend deadlines by telephone calls, then it has none. Significantly, regulation 48(2) requires the Unit to make all communications related to the procurement only in writing and to make and maintain a record of such communication.

[39] Cognisant of the critical role that the PPAD plays in public procurement, *Cleaver* AJA said the following in delivering the unanimous decision of the Court of Appeal in **Drytex Lesotho (Pty) Ltd v. Pyramid Laundry Services (Pty) Ltd and Others**¹⁸

“[17] In my view the failure to comply with the recommendation of the PPAD and the requirements of Regulation 30 (1) is a breach of the procedure set out under the regulations and renders the process invalid and the subsequent contract with the first respondent void. Were this finding not to be made, the role of the PPAD as described in Reg. 6 (1) would be nullified. These reasons would also in my view satisfy the requirements for a successful review of the decision to award the contract to the first respondent.”

[40] In my view, the above *ratio* applies with equal force in the instant matter. Aware that the principles of fair competition and transparency were compromised, the PPAD concluded as follows:

“The Conclusion

¹⁸ LAC (2015-2016) 387 at 394 para B - D

The Maseru District Counsel (*sic*) should not have postponed the time for submission and opening of tenders by an hour. It is against procurement law to do that. Such a practice invites loops on the issue of fairness and transparently. There is a likelihood that one or more potential bidders whom are interested to MCC were late by that one hour. In line with Public Procurement Regulations 2007, 55 (2) the Ministry of Finance through PPAD recommends RE-TENDERING of the whole tender process along with its five lots.”

[41] The PPAD decision was aligned to regulation 39(2) which invalidates a procurement process and considers subsequent contract void or voidable if the Unit entered into the contract in breach of the procedures laid out in the regulations. The 1st respondent breached the regulations and undermined the core principles of public procurement as enshrined in the regulations by extending the deadline for submission and opening of intent to award to the applicant was invalid.

[42] Concerning the applicant’s contention that the 1st respondent’s decision to abide by the recommendation to re-tender is grossly unreasonable, irrational and irregular, no facts or factors have been pleaded to support such a contention. Consequently, there is no basis for holding that the 1st respondent acted unreasonably, irrationally or irregularly. It is accepted that the applicant ought to have participated in the complaints handling process, but the irregularity committed by the 1st respondent leading to the issuance of the letter of intent to award to the applicant is so grave that the decision to re-tender cannot be faulted.

[43] In the final analysis, the applicant 's nomination as the preferred bidder only came as a result of a faulty and irregular process. The ineluctable conclusion is therefore that the award of the tender done in breach of prescriptive procurement regulations is invalid and will not be enforced. I therefore have no difficulty in dismissing this application. What the 1st respondent did in extending the deadline for submission of tenders is subversive to a credible tender procedure and could not have resulted into lawful award of contract.

COSTS:

[44] Costs must follow the result and the 4th respondent be awarded the costs.

ORDER:

[45] I accordingly make the following order:

1. The application is dismissed with costs.

A.R. MATHABA J
Judge of the High Court

For the Applicant's: Advocate 'Musi-Mosae

For the 4th Respondent's: Advocate T. Fiee