



Publication: Cape Argus Late - Main
Title: Construction firms lose R5m Du Toitskloof Pass tender spat
Publish date: 29 Jun 2023
Page: 3

Reach: 10459
AVE:R 30717.92
Author: Mwangi Githahu

Construction firms lose R5m Du Toitskloof Pass tender spat

MWANGI GITHAHU
mwangi.githahu@inl.co.za

TWO construction firms that bid R5 million less than the winning tender for repairing a section of the Du Toitskloof Pass, have lost their case against the Province after Western Cape High Court Judge Robert Henney dismissed their application to have the tender set aside.

In 2021, the provincial Department of Transport and Public Works (now known as the Department of Infrastructure) published an invitation to tender for the periodic maintenance of a section of the Du Toitskloof Kloof Pass.

In response to this invitation, the applicants in the case, Quality Plant Hire Company and Expectra 388, entered their bid as a joint venture, specifically to execute the project. The signed version of their agreement was included in the bid they submitted.

On November 2, 2021, the applicants received a letter from the department telling them their bid



JUDGE Robert Henney.

was unsuccessful and the contract had been awarded to another company in the tender amount of R96.2m, even though the applicants' tender was R5m less.

They were told their bid was unsuccessful because under a Conditions of Contract clause, their joint venture agreement document had not been authenticated by a Commissioner of Oaths, and, as such, they had failed to fulfil the tender requirements.

Aggrieved by this decision, the applicants argued that this requirement was not that significant, and had been overlooked in compiling the bid,

and that their non-compliance had been an innocent omission.

They argued that they should have won the tender, as theirs was the lowest bid, and they wanted the matter reversed.

The department opposed the case and argued that, among other things, as the applicants' failure to comply with a material and mandatory term of the tender did not constitute an "acceptable tender", they had no choice but to reject the bid.

Dismissing the case, Judge Henney said the law placed great value on documents, especially agreements that were authenticated.

"The mere inclusion of an original Joint Venture Agreement without it being authenticated does not mean anything, and is no guarantee that any of the information as required (by law) to prevent fronting and the artificial manipulation of the joint venture.

"The department was, therefore, justified in declaring their bid as non-responsive, and, as a result, the application falls to be dismissed."