
THE ROLE OF QUALITY IN THE ADJUDICATION OF PUBLIC TENDERS**G Quinot*****SUMMARY**

The quality of the goods or services that government procures is obviously a very important consideration in deciding which supplier should be awarded a particular public tender. It follows that in the regulation of public procurement, particular attention should be given to the role of quality (also called functionality) in the adjudication of public tenders and the final award decision. In South African public procurement law, the role of functionality in public tender adjudication has been a fairly controversial issue that has resulted in a continuing interaction between courts and law-makers on how and when quality should be assessed and should impact on the final award decision within the framework for public procurement found in section 217 of the *Constitution*. This contribution tracks the development of the role of functionality in public tender adjudication as prescribed by public procurement regulation since the enactment of the *Preferential Procurement Policy Framework Act* 5 of 2000, which spearheaded the development of contemporary public procurement regulation in South Africa. The analysis shows how the role of functionality has constantly changed since the enactment of the PPPFA and remains uncertain. This uncertainty relates to different interpretations of the constitutional requirements for public procurement primarily contained in section 217(1) of the *Constitution*. Whether functionality is used as a qualification criterion, an award criterion or both holds particular practical implications for both suppliers and contracting authorities. It is accordingly important to have certainty on this question. However, it cannot be said that the *Constitution* and section 217 in particular dictates one approach rather than another. The issue should thus be resolved with reference to the statutory scheme adopted under the PPPFA.

* Geo Quinot. BA LLB (Stellenbosch) LLM (Virginia) MA (UFS) LLD (Stellenbosch). Professor, Department of Public Law, Stellenbosch University; Director, African Public Procurement Regulation Research Unit (APPRRU). Email: gquinot@sun.ac.za. I wish to thank participants in the Law@Work course on public procurement regulation at the University of Cape Town, 12-13 June 2013 and the participants in the SAFCEC workshop on public procurement regulation in the construction industry in Johannesburg, 20 June 2013 as well as my colleague Phoebe Bolton for sharing their thoughts on and debating the issues raised in this paper with me.

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