

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

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On 26 March 2007 the SCA delivered judgment in *Minister of Social Development and Pensions v Phoenix Cash and Carry CC* (Case nos 189/06 and 244/06).

The respondent was an unsuccessful tenderer for a contract to supply food parcels to indigent people in Kwazulu-Natal. Its bid was by a long way the most cost-effective but it was rejected without further consideration on the ostensible ground that the bidder had failed to supply proof in the form prescribed by the tender conditions of the availability of the financial resources needed to carry out the contract.

The respondent applied successfully to the Pietermaritzburg High Court for an order setting aside the award of the tender to four other parties. That court found that the conditions were so vague as to conflict with the constitutional standards which require an organ of state to contract 'in accordance with a system which is fair, equitable, transparent, competitive and cost-effective'.

The Minister and certain of the successful tenderers appealed to the SCA. The SCA found that the conditions were not uncertain but that the constitutional principles had nevertheless been frustrated by the bid committee in relying unduly on the form of the proof furnished by the respondent at the expense of the substance of such proof: supporting documentation submitted in support of the respondent's bid had satisfied

the requirement that proof of financial resources be provided even though the nature of the proof did not fall strictly within the examples given in the bid conditions. The appeal was accordingly dismissed with costs.

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