



TENDER CANCELLATIONS:

Nature, causes and impacts on
the South African Construction Industry



June 2022 Report

Introduction

Tendering is a multiphase process that is followed religiously to award a project to a qualified contractor or service provider. It is a procurement procedure that invites potential suppliers or contractors to make a firm and unequivocal offer on the price and terms to supply specified goods, services or works, which, on acceptance, shall be the basis of a contract (Lysons and Farrington, 2006). Tendering is based on the principles of competitiveness, fairness, accessibility, transparency, openness and probity (World Bank, 2008). Internationally, all public entities are subjected to open tendering by law to prevent fraud, waste, unethical practices or local protectionism.

Section 217 (1) of the South African Constitution states that:

When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is equitable, transparent, competitive and cost-effective.

Subsection (2) states that an organ of state may specify ...

categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

The implementation and actualisation of these constitutional provisions is expressed in the regulations and guidelines of the Preferential Procurement Policy Framework Act (PPPFA), Act No 5 of 2000.

Infrastructure delivery is further governed by legislation and prescripts defined by the Construction Industry Development Board (cidb). These prescripts are codified in the National Treasury Infrastructure Delivery Management System and the cidb Standard for Uniformity in Engineering and Construction Works Contracts, which advise on appropriate procedures when calling for tenders, adjudicating tender submissions and managing infrastructure projects.

For contractors, responding to tenders is expensive in both time and resources. It is especially onerous for emerging contractors without established in-house teams that track cost of materials and understand the depth and breadth of the various construction contracts recommended by the cidb. These contractors rely mainly on external service providers to help them submit responsive tenders. Consequently, small contractors spend huge amounts of money responding to tenders in the hope of successfully landing profitable projects to sustain their companies.

The PPPFA Regulations allow cancellation of tenders under very strict conditions. Regulation 8(4) (13[1] PPPFA Regulations, 2017) states that an organ of state may, before the award of a tender, cancel the tender if:

'...due to changed circumstances, there is no longer a need for the services, works or goods requested; funds are no longer available to cover the total envisaged expenditure; no acceptable tenders are received; there is a material irregularity in the tender process'

Public sector clients have, however, tended to unilaterally cancel tenders at different stages of the project cycle without considering the effect of this practice on small contractors. Anecdotal evidence shows that some clients cancel tenders during the administrative stage, at either bid evaluation or adjudication, where tendering service providers are not privy to information about the winning bidder. Projects have been cancelled after the announcement of the winning bidder, much to the chagrin of the successful contractor.

As mentioned earlier, this practice has dire consequences for tenderers and may disrupt service delivery where good service providers fail to respond to calls for tenders by clients prone to cancel tenders. Unilateral tender cancellations are also suspected to fuel industry corruption, with contractors reporting that this practice is used to 'test the market' to pass on market information to preferred bidders. Arbitrary tender cancellations also affect industry confidence when communities fail to receive their planned infrastructure on time, leading to community unrest and destruction of facilities already installed.

This study investigated tender cancellations in the South African construction industry to unearth their causes among public projects and their impact on different stakeholders of public projects.

A questionnaire survey was developed citing common causes of tender cancellations in published literature, causes mentioned in conversations with contractors and consultants, and legislated reasons. Data were collected between July and August 2021. The questionnaire, which was distributed to all active cidb-registered contractors, elicited 770 responses from contractors, consultants and clients.

Through web scraping, the reported types and sizes of tenders cancelled were investigated. Key word searches considered relevant for tenders cancelled between February 2016 and March 2020 were conducted on the National Treasury project database and the cidb Register of Projects. This process returned 147 cancelled tenders, details of clients that cancelled tenders and the stage at which the tender was cancelled.

Findings

1. Almost half (46.4%) of all respondents in the study have been involved in cancelled tenders. General building was the most common class of construction works with cancelled tenders at 47.3%, followed by civil engineering at 22.1%. The party most reported to have cancelled tenders are clients (41.6%).

1.1 Clients most likely to cancel tenders

The client category most likely to cancel tenders are state-owned entities (SOEs) and local government. Very few cancellations were reported by either provincial or national government.

Table 1 shows the 10 clients with the greatest number of reported cancelled tenders. This result represents client departments that comply with both National Treasury and cida regulations and publish their tender data on national databases as prescribed in National Treasury regulations.

Table 1: Top 10 clients with cancelled tenders

Rating	Organisation	Level of government	Number of cancelled tenders
1	KwaDukuza Local Municipality	Local	23
2	City of Tshwane	Local	19
3	Rand Water	SOE	14
4	South African National Parks	SOE	12
5	Johannesburg Road Agency	SOE	11
6	Limpopo Provincial Government	Provincial	11
7	Eskom	SOE	11
8	Air Traffic and Navigation Services SOC Limited	SOE	9
9	Development Bank of Southern Africa	SOE	7
10	Gauteng Legislature	Provincial	5
Total			122

1.2 Cancellation stages

Figure 1: Stages of tender cancellations

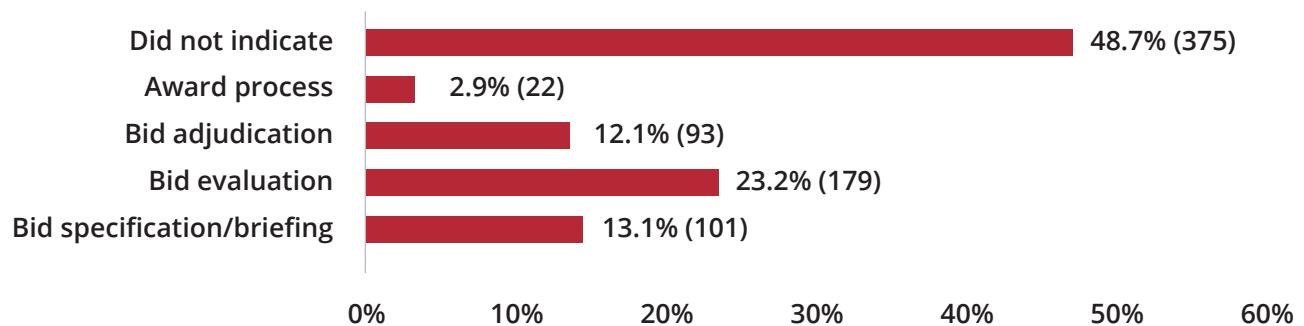
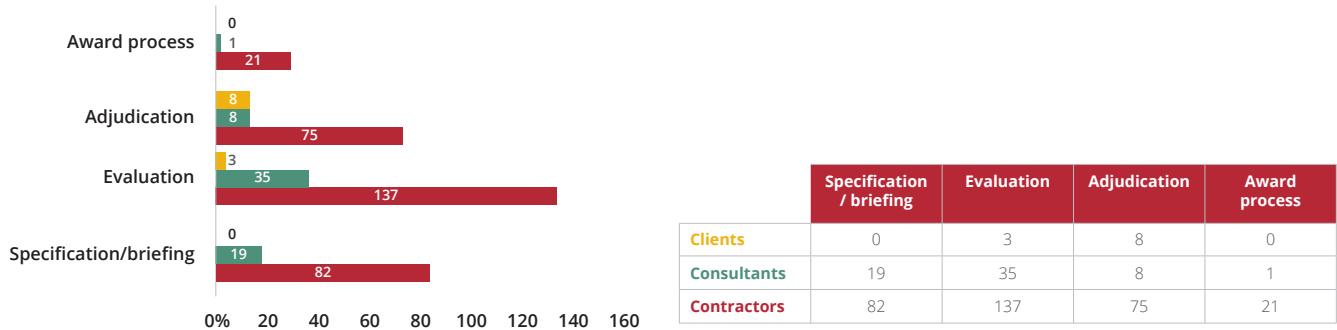


Figure 1 shows the stages at which tenders were cancelled. Many respondents (48.7%, $f = 375$) did not specify this. Based on the number of reported cancelled tenders, it was assumed that these respondents had not experienced any cancellations and they were removed before further analyses. PPPFA Regulations provide for cancellation at pre-award and adjudication phases. Post-award cancellation is illegal.

1.3 Cancellation by category

The figure below presents results by category (contractors, consultants and clients) for the 51.3% (395) respondents who had experienced tender cancellations.

Figure 2: Tender cancellation by respondent category



Contractors

Contractors reported the highest rate of cancellations - 267. About half (51% or 137) were cancelled during evaluation. Significant cancellation also occurred during bid specification (31% or 82) and bid adjudication (28% or 75). The rate of cancellation at award phase is low (7% or 21).

Consultants

As with contractors, consultants also reported the highest cancellation at bid evaluation (55% or 35), followed by bid specification (30% or 19) and adjudication (13% or 8). Consultants reported the least number of tenders cancelled at award phase.

Client departments

Very few clients responded to the questionnaire, with nine of 12 (75%) reporting that most of their tenders are cancelled at bid adjudication stage and three reporting cancellation of three tenders at specification and evaluation.

1.4 Retendering

It is costly to prepare tender submissions and every cancelled tender means a significant loss of money. This insult is worsened by the practice of clients retendering the same project shortly after cancellation. Participants were asked for their views on this.

Figure 3: Projects retendered after cancellation

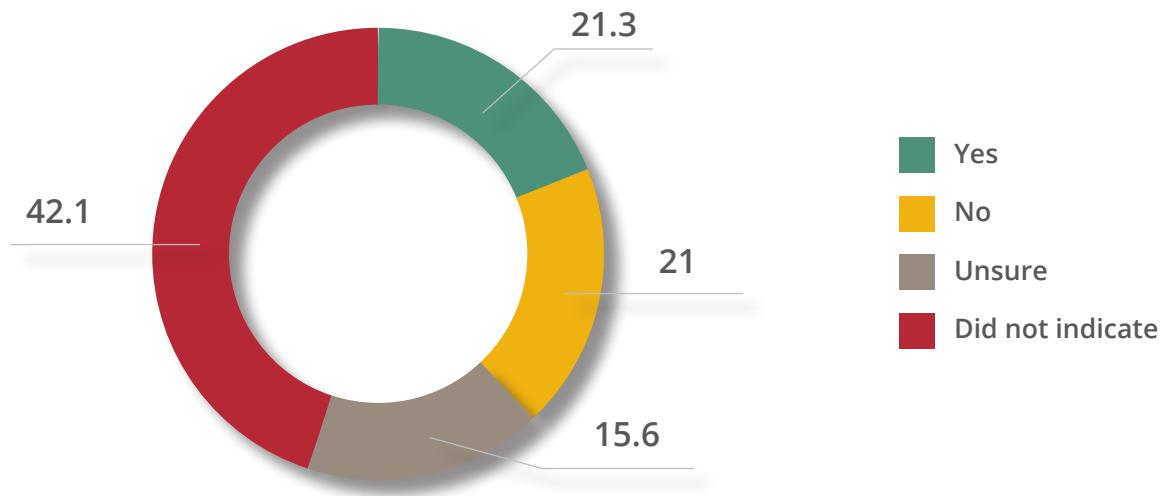


Figure 3 shows that 21.3% of the cancelled tenders were subsequently retendered, while contractors were aware that 21% were not retendered. Some respondents were either unsure of whether the projects were retendered (15.6%) or did not respond to this question (42.1%), perhaps because they had lost interest in projects from a client that had previously cancelled tenders.

Respondents further indicated that 14.9% of previously cancelled and retendered projects were awarded in a short time. Contractors responding to the first call lost more time and money responding to the second. Anecdotal evidence shows that clients advertise tenders, cancel them and immediately retender the same project to try to get tendered amounts within their budgets.

2. Cancellation causes

As mentioned earlier, the South African Constitution lists the only valid reasons for tender cancellations as changed circumstances that negate the need for the services, works or goods requested; inadequate funds for the project as happened with the prioritisation of government expenditure because of the Covid-19 pandemic; absence of acceptable tenders, and material irregularity in the tender process.

This report classifies these reasons as:

- Administrative – these are factors internal to the client department including application of supply chain management policies and budget confirmations.

- Political - there is no longer a need for the services due to reprioritisation by political leadership, especially local government.
- Technical - insufficient technical information is provided in the call for tenders, rendering the tenders received unacceptable.

Table 2: Reasons for tender cancellation

	Number	Percentage	Rank
Tenderer unfairly eliminated or unduly included for functional/technical evaluation	400	55.1	1
Change in political climate	397	54.2	2
Inconsistencies in applying the scoring of approved evaluation criteria	397	52.4	3
Incorrect application of regulations (supply chain management policy)	397	52.0	4
Change in economic climate	400	51.5	5
Inaccurate bill of quantities	393	50.3	6
No score sheets provided for recommended tenderer	399	50.2	7
Project funds no longer available	421	50.0	8

Administrative causes cited by respondents included inconsistencies in applying the approved evaluation criteria, incorrect application of supply chain management policies that make the process illegal, inappropriate allocation of scores for recommended tenders, and lack of budget. Non-availability of project funds is the only reason for tender cancellation justified in the PPPFA regulations.

Technical issues such as human resources constraints were noted as common reasons for tender cancellations. This usually happens when clients do not provide a comprehensive technical description and scope of the project, resulting in inconsistencies in the project bill of quantities. On these occasions, tenderers include items in the bill not considered by the client departments, making the process non-transparent and unfair. It was also suggested that clients use tender cancellation to test the market when they do not have the technical skills and competence to estimate a realistic project value. Open tenders give client departments insight into realistic project costs through tenderers' bids.

Administrative and technical problems with tendering can be rectified by appointing qualified and competent personnel, training personnel and adhering to standard operating procedures.

Politics manifest when tender cancellations are sometimes seen as facilitating corruption and as a ploy to favour predetermined tenderers. Also, when new political leadership reprioritises planned infrastructure projects and changes budgets, tenders issued by the old administration may be cancelled. It was also suggested that new political leadership may wish to award projects to their supporters, who may not necessarily be strong in the existing advertised tenders. In these cases, clients cancel the tender to give their preferred providers time to gear up their businesses and submit their bids.

3. Impact of tender cancellations

Tender cancellations negatively affect clients, contractors, consultants and communities that are beneficiaries of planned infrastructure. The most highly ranked impacts of tender cancellations for each category are:

- For clients, the inability to deliver municipal services, leading to breakdown in governance.
- For consultants, the inability to achieve set goals, bringing into question the integrity of their committee structures.
- For contractors, the costs incurred in preparing tenders and cashflow disruptions in failing to secure further work.
- For communities, diminished trust in the government and lost potential employment opportunities during construction. These impacts are detailed below.

Clients

For the clients, especially the government, a cancelled tender means inability to achieve set goals (80.0%) which is the core function of the government, inability to procure services (78.0%) and inability to deliver municipal services and the high cost of maintenance services for aging infrastructure (74.0%).

Table 3: Impact of tender cancellations on clients

Impact of tender cancellation on clients	N	Clients		Overall	
		%	R	%	R
Inability to deliver municipalities services	421	74.0	3	67.9	1
Breakdown in governance	415	70.0	6	67.4	2
Backlog in infrastructure development	418	72.0	5	67.4	2
High cost of maintenance services of aging infrastructure	416	74.0	3	66.4	4
Lack of public trust	420	70.0	6	65.7	5
Inability to procure services	412	78.0	2	65.4	6
Money losses value as it remains with the body for an extended period of time	421	68.0	10	64.9	7
Inability to achieve set goals	425	80.0	1	64.7	8
Increased cost of re-advertising cancelled tender	420	70.0	6	63.7	9
Loss of return on investment	419	70.0	6	63.2	10

Consultants

Consultants are employed as client agents to project manage infrastructure delivery. They lose potential earnings when projects are cancelled, putting their companies at risk and possibly incurring reputational damage from association with cancelled tenders. Furthermore, cancelled projects affect their cashflows and company sustainability as they have to bring in extra capacity after winning tenders.

Table 4: Impact of tender cancellations on consultants

Impact of tender cancellation on consultants	N	Consultants		Overall	
		%	R	%	R
Inability to achieve set goals due to cancellation of tenders	419	71.3	3	65.9	1
Questionable integrity of the committee members	422	71.9	2	65.4	2
Disruption of consulting organisation's cash flow	410	79.0	1	64.7	2

Contractors

Contractors, especially small, micro and medium enterprises (SMMEs), bear the heaviest cost of cancelled tenders because many do not have in-house tender preparation capacity and must outsource it at great cost. Contractors lose their investment on tenders cancelled before award. This is exacerbated if the same tender is readvertised shortly after cancellation as contractors may be tempted to resubmit. This does not imply that contractors always secure projects for which they tender, but a cancelled project readvertised raises their hopes of success.

Losses are greater if a tender is cancelled after award or during project execution because, once awarded a project, the contractor allocates resources for execution and readies itself for site operations. This is a very emotional and costly exercise for many SMMEs, thus cancellation results in not only financial losses, but emotional stress. Project cancellation during execution is the most stressful as contractors will have already incurred additional employee costs and sometimes will not have received prompt payment from clients, seriously disrupting their cashflows. Additionally, project quality is compromised as high-calibre contractors lose faith in client departments and ignore future tenders, leaving projects in the hands of those who may not deliver the required standards.

Table 5: Impact of tender cancellations on contractors

Impact of tender cancellation on contractors	N	Contractors		Overall	
		%	R	%	R
Contractors' loss due to cost incurred in the cancelled tender process	420	68.9	1	70.3	1
Job loss for construction workers	427	67.6	3	69.5	2
Disruption of contractor's cash flow	421	67.4	4	69.5	2
Lack of trust in the tendering process	438	68.1	2	69.4	4
Contractor's bankruptcy	418	63.8	5	36.5	5
Lack of subsequent interest of contractors	421	59.0	6	59.9	6
Greater chance of collusion or ring formation among contractors	420	58.6	7	59.9	6
Submission of multiple tenders for the same project to increase chances of winning	422	55.0	8	56.4	8

Communities

Tender cancellation, especially by the government, has significant impact on the recipients of projects. A cancelled tender may cause communities to lose trust in government's ability to deliver promised infrastructures (71.6%). Since most government infrastructure projects are designed to create jobs and training opportunities for people in the immediate area, cancellation means lost employment opportunities (71.6%). This, coupled with loss of trust in the government's ability to deliver required services (71.1%) may lead to frustration and strikes or unrest.

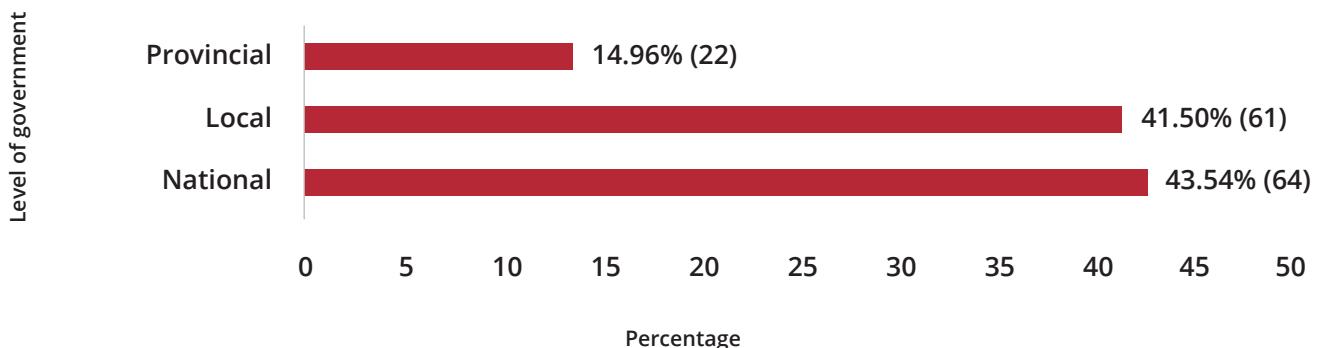
Table 6: Impact of tender cancellations on communities

Impact of tender cancellation on recipients (community)	N	Overall	
		%	R
Lack of trust in the capability of the government	444	71.6	1
Loss of employment for the community	442	71.6	1
Interruption in service delivery	436	71.1	3
Extended frustration for the recipients	438	70.1	4
Reduction in the quality of services	429	69.7	5
Loss of training opportunity for the community	447	69.7	5
Community strike (Civil unrest)	439	68.1	7
Resources not produced at the needed time, which affects productivity and resource planning	442	66.5	8

4. Cancellations by level of government

Secondary data mined from national records was used to show the reported reasons for tender cancellations from a client perspective. Of 147 records recovered, 43.54% (64) were from SOEs and national departments, 41.5% (61) from local government and 14.97% (22) from provincial government.

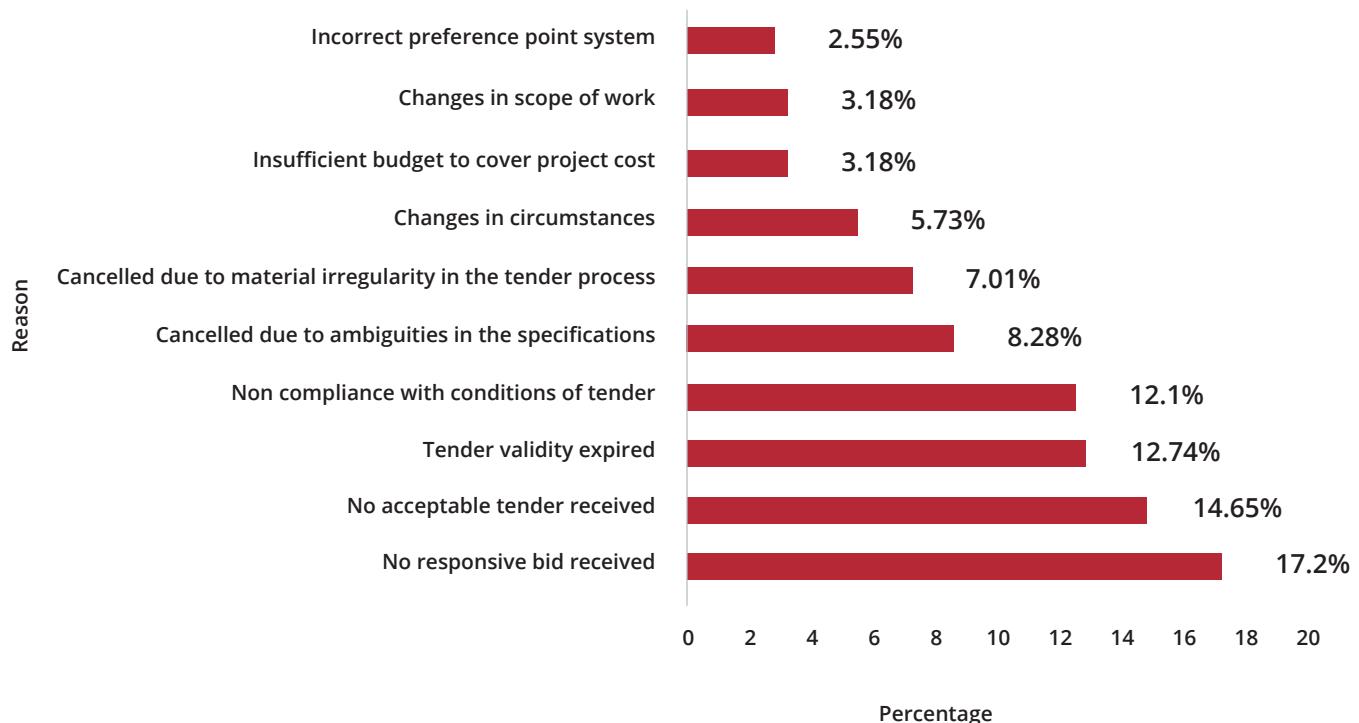
Figure 4: Cancellations by government level



5. Reasons for tender cancellations: Client perspective

Client departments advanced both technical and administrative reasons for tender cancellation. The top five were non-responsive bids, non-acceptable tenders, expiry of tender validity, contractor non-compliance with tender conditions and cancellation due to ambiguities in tender specifications. An analysis of all reported reasons presented below shows that most tender cancellations are client-related issues. Thus, actions must be undertaken to protect construction companies from the practices of clients and to ensure sustainable growth of the industry.

Figure 5: Clients' reasons for tender cancellation



Conclusions and recommendations

The study concluded that:

1. Tender cancellation occurs across national, provincial and municipal government spheres and all classes of works, with the most cancellations in civil engineering and general building projects.
2. Most cancellations occur at bid evaluation phase.
3. Many contractors that have taken part in tenders that are later cancelled choose to not retender when these projects are readvertised.
4. The major causes of cancellations are administrative, technical and political
 - Administrative - incorrect application of supply chain regulations and policy, inconsistencies in applying the scoring of approved evaluation criteria, tender validity expiration before award, evaluation of submissions from tenderers that did not attend the compulsory briefing session, and project funds no longer available.
 - Technical - inaccurate bill of quantities, absence of score sheets for evaluation and change in scope of works.
 - Political - change in the political and economic climate, and evaluation of tenderers not present at compulsory briefing session.
5. The impact of these tender cancellations varies for the different parties involved in infrastructure delivery:
 - Construction client (government) - inability to deliver services, breakdown in governance, backlog of infrastructure development, high cost of maintaining ageing infrastructure, loss of public trust and inability to procure services.
 - Consultants - inability to achieve set company goals due to tender cancellation, questionable integrity of committee members, cashflow issues and possible bankruptcy.
 - Contractors - financial loss due to costs incurred in preparing and submitting tenders, job loss for construction workers, disruption of cashflow, possible bankruptcy and complete loss of trust in the tendering process.
 - Community - lack of trust in the government's ability to deliver basic services, loss of potential employment opportunities, disruption of services and frustration with lack of services.

Recommendations

The study recommends capacitation of client departments and enhanced contractor development. The following are suggested:

For clients:

1. Ongoing capacity development to enable clients to develop tender documents that are compliant with legislation, including proper management of the tender validity period, accompanied by comprehensive bills of quantities and appropriate evaluation sheets.
2. Engaging technically competent client agents to develop comprehensive tender documents reflecting the work to be done to avoid unnecessary change of scope and the attendant impact on contractors.
3. Improving client understanding of supply chain management policies and cidb prescripts to avoid inconsistencies in policy application and subsequent tender cancellation.
4. Capacitation of bid committees to avoid inconsistent scoring and arbitrary alteration of scoresheets.
5. Tender readvertisement only after the reasons for cancellations are investigated, addressed and reported.

For tenderers – contractors and consultants:

1. Training in the interpretation of tender documents to ensure compliant and responsive submissions.
2. Willingness to accept the outcomes of tendering processes and legitimate reasons provided by clients.
3. Suspected foul play to be reported to authorities.

For the cidb:

1. Enhanced scope of client capacitation interventions to improve client capacity.
2. Provision of a reputable register of contractors and consultants that reduces reliance on paper-based documents and promotes transparency.
3. Increased client compliance with the cidb Register of Projects and promotion of comprehensive reporting on tender adverts, awards and/or cancellations and terminations.
4. Development and promotion of technology platforms to alleviate reliance on failure-prone paper-based systems.



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