FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Case No. : A224/2015

In the matter between:-

HT PELATONA PROJECTS (PTY) LTD Applicant

and

TOKOLOGO LOCAL MUNICIPALITY 1st Respondent

MAGIC LABOUR HIRE & SECURITY SERVICES CC 2nd Respondent

CORAM: KRUGER *et* MOLOI, JJ

HEARD ON: 23 NOVEMBER 2015

JUDGMENT BY: KRUGER, J

DELIVERED ON: 3 DECEMBER 2015

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[1] This is a tender review. The applicant wants us to set aside the award of a tender for water treatment works at Boshoff to the second respondent. The matter started as an application for an urgent interdict but the parties agreed to suspend the work and settled dates for this review. Mr Grobler appeared for the applicant, Mr Mnyandu for the first respondent (the Municipality that awarded the tender) and Mr Snyman for the second

respondent, the tenderer to whom the tender was allocated, being Magic Labour Hire and Security Services CC.

[2] The question in this review is whether the non-compliance of the second respondent with certain mandatory tender requirements was such that its tender should have been declared non-responsive. The applicant's case is that it should have been declared non-responsive, and should not have been considered at all. The respondents say the non-compliance with the requirements was not serious and could have been condoned. This review is unusual because not all the tenders are before us, only that of the second respondent. The respondents chose not to place the other tenders before court.

The History of the Tenders

[3] The first respondent called for tenders for a 4,5 mega litre water treatment works plant at Boshoff to be submitted by 1 July 2015. The first step in the consideration of tenders is that the Bid Specifications Committee (BSC) considers specifications and documentation in the tender and submits a report and recommendation to the Municipal manager. In this case nothing turns on what the BSC did. Thereafter the Bid Evaluation Committee (BEC) evaluates the tenders and makes a report to the Bid Allocation Committee (BAC). In this case the BEC made its report on 24 July 2015. The BEC found the bids of both applicant and second respondent responsive. It reported that several bidders, including applicant and second respondent should be considered for appointment.

[4] The first respondent, through its municipal manager, appointed the second respondent on 7 September 2015. The letter of appointment states that the project duration is 12 months and also contains the following:

> "The following contractual obligations should be met within 14 days of commencement date of the project.
>
> Guarantee 10% and copies of insurance policy together with receipts for the payment of premiums and of continuity of the policies with 14 days of the commencement date.
>
> Construction programme within 14 days of the commencement date.
>
> A detail health and safety plan with14 days."

<u>The Aurecon Report</u>

[5] In its founding affidavit applicant relied on a report prepared by Aurecon, who are the engineers of the municipality. The municipality never asked Aurecon for a report. Mr Mnyandu, for the first respondent pointed out that the three committees considered the application. They are (i) The Bid Specification Committee, (ii) The Bid Evaluation Committee, (iii) The Bid Adjudication Committee. (As set out in the Supply Chain Management and Preferential Procurement Code of Good Practice, para 4.14 (page 335)). The Bid Evaluation Committee does not have the power to delegate to other bodies. The applicant does not explain how the Aurecon report got before the Bid Evaluation Committee. In the light of the statement by the first respondent that it did not request the Aurecon report, the applicant

should have obtained an affidavit from Aurecon to explain its existence and presence at the Bid Evaluation Committee. The Aurecon report has no status and the recommendations and conclusions therein should carry no weight. This review must be assessed on the facts before the Bid Evaluation Committee.

Applicant's BBBEE Status

[6] The BAC left applicant's BBBEE status out of consideration and awarded it 57,09 for price and 0 HDI points. The BAC awarded the second respondent 76,30 points for price and 8 HDI points, giving a total of 84.3. The tenderer with the lowest price, Bankurp Engineering and Construction, who had 99 points was deemed to pose the highest risk and its price was too low. Thus the BAC recommended the appointment of the second respondent.

[7] The applicant contends that the first respondent erred in rejecting its BBBEE status report. The applicant's HDI status report was rejected because it was not issued by an agency accredited by SANAS. Para 5.3 of the Form of Tenders also provides for a certificate issued by an Auditor. Applicant complied. That report by the Auditor should have been accepted by the BAC. According to that report applicant has a level 5 status, which would give it 4 HDI points. The BAC gave applicant 57.09 points on price. If it were to add 4 HDI points, applicant would get 61.09 total. That is still less than the total of second respondent being 76.30. It is thus necessary to consider whether the Bid of the second respondent should have been considered responsive by the BAC and the first respondent.

Applicant's Contentions

[8] It is applicant's case that the tender of second respondent should have been found to be non-responsive due to material omissions.

[9] In the Conditions of Tender the following appears:

"F.3.13 Tenders will only be accepted if:

(a) the Tenderer submits **an original valid** Tax Clearance Certificate issued by the South African Revenue Services or has made arrangements to meet outstanding tax obligations;

(b) the Tenderer submits a letter of intent from an approved insurer undertaking to provide the Performance Bond to the format included in Part T2.2 of this procurement document;

(c) the Tenderer is registered with the Construction Industry Development Board in an appropriate contractor grading designation;

(d) the Tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004, as a person prohibited from doing business with the public sector;

(e) the Tenderer has not;

(i) abused the Employer's Supply Chain Management System; or

(ii) failed to perform on any previous contract and has been given a written notice to this effect;

(f) the Tenderer has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the Tenderer's ability to perform the Contract in the best interests of the Employer or potentially compromise the tender process;

(g) the Tenderer is registered and in good standing with the compensation fund or with a licensed compensation insurer;

(h) the Employer is reasonably satisfied that the Tenderer has in terms of the Construction Regulations, 2014, issued in terms of the Occupational Health and Safety Act, 1993, the necessary competencies and resources to carry out the work safely.

(i) the Tenderer has not failed to perform on any previous contracts and has not been given a written notice to this effect.

(j) the Tenderer need to provide a Valid Municipal Rates & Taxes Certificate, Valid Lease Agreement (If renting) and Latest Municipal Account for Entities Operating outside Tokologo Local Municipality."

These requirements are worded in mandatory terms.

[10] There is also the requirement for submission of a Day Work Schedule:

"The Tenderer shall insert in this Daywork Schedule the rates for the use of such Construction Equipment as he proposes to have available upon the Site to use for daywork."

[11] Mr Grobler, for applicant, contends that second respondent did not submit a number of documents, and its bid should have been declared non-responsive. The main documents in question are:

(i) Letter of intent to provide a performance bond.

(ii) Lease agreement.

(iii) Day work schedule.

(iv) Municipal rates certificate.

I deal with these seriatim:

(i) <u>Letter of Intent (F.3.13(b))</u>

[12] In terms of paragraph F.3.13(b) of the Conditions of Tender, a tenderer must submit a letter of intent from an approved insurer undertaking to provide a performance bond in the format in paragraph T2.17. This document is listed in T2.2 as one of the "Returnable Schedules required for Tender Evaluation Purposes".

Form A10 reads as follows:

"**<u>CERTIFICATE OF INSURANCE COVER</u>**

N**ote to Tenderer:**

In the event of the Tenderer being a joint venture/consortium, the details of the individual members must also be provided.

The Tenderer shall provide the following details of this insurance cover:

(i) Name of Tenderer:

(ii) Period of Validity:

(iii) Value of Insurance:

- Insurance for Works and Contractor's equipment

Company:...
Value:..

- Insurance for Contractor's personnel
  Company: ....
  Value:..
- General public liability
  Company: ....
  Value:..
- SASRIA
  Company: ....
  Value:.."

[13] The document attached to the tender of the second respondent reads as follows:

" 05 August 2014

Dear Sir/Madam

LETTER OF INTENT

Employer
Contractor Magic Labour Hire & Security Services
Contract Number
Description

This serves to confirm that Fusion Guarantees (Pty), issued a credit facility for **Magic Labour Hire & Security Services**, we shall therefore issue a performance guarantee should the contractor be awarded the project.

We trust the above to be in order.

Yours sincerely

<u>ILSE BECKER</u>
DIRECTOR

Fusion Guarantees (Pty)"

[14] The applicant says that the second respondent failed to provide the requisite letter of intent. To that allegation the second respondent says:

"Ad paragraph 13.6 thereof

The content hereof is denied. This document was attached to the back of the tender bundle of documents submitted in respect of the tender. This is a separate letter of intent and is not on the prescribed documents that could be supplied. A copy thereof is attached hereto as Annexure "B2"."

The document at page 693 ("B2") reads as follows:

"Tokologo Municipality
Private Bag X46
Boshof
8340

25 June 2015

Dear Sir

LETTER OF INTENT

Employer Tokologo Municipality

Contractor	Magic Labour Hire and Security Services cc
Tender Number	TLM/BWSBD/WTW/02
Tender Amount	R 24 000 000.00
Description	Construction of a new 4.5ML Water Treatment Plant in Boshof

This serves to confirm that **Fusion Guarantees (Pty) Ltd**, will issue a credit facility for **Magic Labour Hire and Security Services cc**, we shall therefore issue a Performance Guarantee for the above contract once all the security requirements have been met.

We trust the above to be in order.
Yours sincerely

ILSE BECKER
DIRECTOR

Fusion Guarantees (Pty) Ltd"

[15] The answer of the respondent is that the document by Fusion refers to the tender, and suffices for purposes of the tender and that the fact that the document at page 693 of the record dated 25 June 2015 differs from the document at page 336 of the record attached to the tender dated 5 August 2014 is immaterial, because the tender number is correct and the same in both.

(ii) Lease Agreement

[16] The second respondent's deponent and sole member says there is no written lease agreement between him, as owner of the premises and the second respondent as tenant:

“ 24.

Ad paragraph 10.4 thereof

I take note of the content hereof. It should, however, be taken into consideration that a tenderer can only submit what it has. The rates account of myself was attached. I am the owner of the property. Therefore the account is registered in my name as per the Municipality’s requirements. There is no written lease agreement between the applicant close corporation of which I am the sole member. To enter into such a written agreement would be ridiculous in the circumstances. I can therefore not attach a written agreement. The property is a business premises and occupied by the Second Respondent. Second Respondent has attached all the documents it should.”

[17] As to the absence of the lease agreement, Mr Snyman, for the second respondent submitted that the second respondent has an oral lease with its sole director who owns the property it does business from.

(iii) Day Work Schedule

[18] It is not in dispute that the second respondent did not provide a day work schedule as required in the Conditions of Tender. In its supplementary answering affidavit first respondent says:

“Ad paragraph 10.14 to 10.15

54. I admit that the second respondent did not provide a day work schedule. I refer to the above response in this regard as such information falls under the practicalities and programmes for implementation.

55. The municipality was satisfied that the second respondent did hold a plant hire account which is up-to-date with an entity styled

Umzinto Civils and Plant Hire. This entity did confirm an arrangement they had with the second respondent.

56. Where costs of plant hire and other equipment are involved, the necessary costing is found in the bills of quantities, a copy of which is found in the second respondent's bid submission.

57. It incorrect, and therefore denied, that an indication on monthly expenditure is one of the tools used to determine responsiveness of bids. The BSC of the municipality prepared a checklist schedule, for this purpose, that was used on all the bids without exception. Aurecon's input in this regard was unnecessary and undesired."

The applicant says that the second respondent's price could not have been validly considered in the absence of estimated duration of the contract.

Applicant says in reply:

"

40.

Ad paragraph 52 and 53:

40.1 The answer presented in this paragraph is significant.

40.2 The court will remember that I had explained (and this has not been seriously disputed) that the responsiveness of the bid cannot be determined if there is no indication of monthly expenditure, and moreover, where the bidder does not state how long it will take him or her to perform the works at issue. Exactly because there are items tendered on a time related basis, the time spent on the construction site is directly relevant so as to determine if the tender price is responsible. This evidence I gave in my founding affidavit has not been gainsaid.

40.3 The issue is not the ***'holding to'*** of any such a contractor to the estimates. It is the evaluation of the bid (after it is opened) for responsiveness that is in issue. With much respect, the Municipal Manager misses the point."

[19] As to the day work schedule, Mr Snyman pointed out that in second respondent's tender payment is made for the work done, and therefore it is possible to assess the costs of second respondent's tender without a day time schedule.

(iv) <u>Municipal Rates Certificate</u>

[20] Applicant's case is that the bid of second respondent should not have been considered at all. The main reason is that the rates clearance certificate of second respondent was not before the committee. This concern is addressed by the first respondent as follows in the supplementary affidavit:

"38. The requirement in F.3.13 requires a copy of municipal rates and taxes. I admit that the second respondent submitted a copy of rates and taxes bearing the name of its director and shareholder.

39. It is also the unexpressed intention of the municipality to verify the standing of the directors of entities that bid for goods and services, in respect of payment of municipal services, tax status and general financial status, whether they are insolvent or not.

40. The bid committees condoned the scanty compliance with this requirement for all bidders, including the applicant."

[21] The standard conditions of tender contains the following under paragraph (j) of F.3.13:

> “(j) the Tenderer need to provide a Valid Municipal Rates & Taxes Certificate, Valid Lease Agreement (If renting) and Latest Municipal Account for Entities Operating outside Tokologo Local Municipality.”

[22] It is not in dispute that the second respondent, the close corporation Magic Labour Hire and Security Services CC, did not provide a municipal rates certificate. There is no rates account which the municipality sends to the second respondent, because the deponent, Mr Baloyi, as owner of the premises pays the municipal account for the premises leased by the second respondent. In the tender of the second respondent in the record of the decision, page 30, the tenderer is not described as a CC. Baloyi is described as its “MD”. The Municipal Account is sent to Baloyi.

[23] The applicant in its supplementary founding affidavit says the following about this Municipal Certificate:

> “10.4 Clause F.3.13 (p 13 of the ROD) clearly obligates and casts as threshold requirement the submission of a valid Municipal rates and taxes certificate. If the tenderer rents a premises, a valid lease agreement is to be put up as well as ‘***the latest Municipal account for entities operating outside Tokologo Local Municipality***’.

10.5 This requirement deals with the tenderers' tax affairs. This is the reason behind the requirement and quint-essentially because no state contract may be awarded to a party that has fallen behind with its tax obligations.

10.6 As found by Aurecon, Magic Labour Hire did not submit such a certificate. A tax invoice was put up (see p. 312) for TC Baloyi by the Emfuleni Local Municipality. This however was insufficient, for the following reasons:

10.6.1 Mr Baloyi, as far as I could gather, is a functionary of Magic Labour Hire. The issuing of a tax invoice for him does not mean that the tax affairs of Magic Labour Hire are in order.

10.6.2 Secondly, and if Magic Labour Hire's business is conducted from the same premises (52 A Rhodes Avenue) it means that a valid lease agreement must have been put up. There is no such an agreement in the ROD and none was submitted."

The first respondent says in answer:

"Ad paragraph 10.4

32. I deny the imputation that clause F.3.13 created an option or choice of documents to be submitted. As I have demonstrated herein above, the applicant also did not fully comply with this clause.

33. The applicant is deliberately oblivious of the fact that it is an entity operating outside of Tokologo Local Municipality. Therefore, requests and demands made to these entities included the applicant.

Ad paragraph 10.5

34. What the applicant says here is correct, but it leaves out that the requirement of submitting tax certificates in F.3.13 is joined with the requirement to submit valid municipal rates, the two being joined by 'and'.

Ad paragraph 10.6

35. In addition to the contention that Aurecon's report enjoyed no status in the procurement process under this tender, the applicant is deliberately misleading this Honourable Court. The second respondent did as matter of fact submit its tax certificate. The mentioned finding of Aurecon is another instance indicating that this report is inaccurate, biased and was prepared with bad intentions.

Ad paragraph 10.6.1

36. I deny the contents in this paragraph. Mr Baloyi is not a functionary of the second respondent. He is the director and shareholder of the second respondent.

37. I have stated that the second respondent did submit a valid tax certificate.

Ad paragraph 10.6.2

38. The requirement in F.3.13 requires a copy of municipal rates and taxes. I admit that the second respondent submitted a copy of rates and taxes bearing the name of its director and shareholder.

39. It is also the unexpressed intention of the municipality to verify the standing of the directors of entities that bid for goods and services, in respect of payment of municipal services, tax status and general financial status, whether they are insolvent or not.

40. The bid committees condoned the scanty compliance with this requirement for all bidders, including the applicant.

Ad paragraph 10.7

41. I deny the allegations in this paragraph. I reiterate that a disqualification on the basis of non-compliance with the requirement in question, firstly, would have meant that no bids would have been left for consideration, secondly, the municipality's services under the tender would have been delayed, thirdly, the bid committees in their wisdom considered such non-compliance as non-essential and not material to the tender and the project generally.

42. The municipality has a right in terms of paragraph F.1.5 of the tender to accept any variation or deviation.

43. In addition to the above, and more pertinent, paragraph 13.1 of the municipality's Supply Chain Management policy empowers the authorised person, within the municipality, to accept any bid offer notwithstanding the fact that such offer does not conform to the conditions or specification set out in the bid document."

The second respondent says:

" 23.

Ad paragraph 10.3 thereof

The content hereof is admitted in so far as it corresponds with what is stated at paragraph F.3.8.1 referred to above.

24.

Ad paragraph 10.4 thereof

I take note of the content hereof. It should, however, be taken into consideration that a tenderer can only submit what it has. The rates account of myself was attached. I am the owner of the property. Therefore the account is registered in my name as per the Municipality's requirements. There is no written lease agreement between the applicant close corporation of which I am the sole member. To enter into such a written agreement would be ridiculous in the circumstances. I can therefore not attach a written agreement. The property is a business premises and occupied by the Second Respondent. Second Respondent has attached all the documents it should.

25.

<u>Ad paragraph 10.5 thereof</u>

The content hereof is denied. The tax affairs are defined in the regulations to the Preferential Procurement Policy Framework Act, Act No 5 of 2000 ("PPPFA") and furthermore in the tender document itself. They do not include any municipal rates or taxes.

26.

<u>Ad paragraph 10.6 thereof</u>

The content hereof is denied. The document from the Emfoleni Municipality is correct and I have already explained what the situation is. There is no written lease agreement. In law I am advised that it is also not necessary to have such written lease agreement. That does not detract from the validity of such an agreement.

27.

<u>Ad paragraph 10.7 thereof</u>

The content hereof is denied. A rates clearance certificate could not have been attached. It specifically refers to entities situated outside the First Respondent's municipal area where only a rate and taxes account needs to be attached and a valid lease agreement. There is no written lease agreement and therefore the documents attached are correct. In any event the Municipality accepted it in its discretion as referred to above as compliance with the relevant requirement."

In its further reply applicant says:

> "31.2 Paragraph 39 is correct. Magic Labour Hire's bid was thus evaluated on 'unexpressed intentions' of the Municipality. This vitiates the entire process. The call for tenders must be clear on its terms and state exactly to all renderers what is required. These are essential attributes of fair bidding.
>
> 31.3 The Municipality cannot evaluate the bid on an unexpressed intention and vague requirements. This is simply not permitted."

In the further replying affidavit, applicant's deponent also says:

> "15.3 In any event, these allegations are factually incorrect. HT Pelatona submitted a Municipal Rates and Tax Certificate which indicated that its local tax affairs are in order. There was nothing else that was required. What exactly is meant herein is certainly not explained.
>
> 15.4 The difference then between HT Pelatona and Magic Labour hire is that it submitted such a certificate, and the second respondent did not (at all)."

<u>Responsiveness</u>

[24] The test for responsiveness is contained in the Standard Conditions of Tender annexure "F" in para F3.8:

> "F.3.8.1 Determine, after opening and before detailed evaluation, whether each tender offer properly received:

(a) complies with the requirements of these Conditions of Tender,

(b) has been properly and fully completed and signed, and

(c) is responsive to the other requirements of the tender documents.

F.3.8.2 A responsive tender is one that conforms to all the terms, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

(a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,

(b) significantly change the Employer's or the tenderer's risks and responsibilities under the contract, or

(c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation."

The words "The Employer must" should probably be inserted before the last phrase, so as to read:
"The Employer must reject a non-responsive tender offer..."

Applicant's view on responsiveness is as follows:

"...Either a bid is responsive or it is not. If it is unresponsive, it must be declared as such. The Municipality does not have an unfettered discretion or capability to declare adequate what is inadequate. This is

> not permitted in a fair, equitable and transparent tender process. Where is the line drawn?"

Discretion

[25] The answer of the respondents is that there is a discretion. The words "in the Employer's opinion" in the last sentence of the introductory part of para F3.8.2 confer a discretion.

[26] Mr Snyman says the ultimate test is whether the absence of the documents and the information places a risk on the municipality. The deliberations show that the first respondent considered all documents. It is true that the municipal manager's initial response was that the required documents of the second respondent were there, and later he said the absence of the documents was condoned. He was not part of the decision-making body, namely the bid. Mr Snyman cautioned against the approach to look only at the fact that a specific document of a tenderer (i.e. the second respondent) was there or was adequate. All the tenderers and all the documents of each tenderer should be considered to decide upon weight to be attached to the absence of deficiency of a particular document in a specific tender. This appears to be a sensible approach.

Assessing the non-compliance

[27] Mr Mnyandu, for first respondent says, with reference to **Allpay Consolidated Investment Holdings (Pty) Ltd, and Others v Chief Executive Officer, South African Social Security Agency, and Others** 2014 (1) SA 604 (CC) par [28] that the first enquiry is to establish, factually, whether an irregularity occurred. Then the

irregularity must be legally evaluated to determine whether it amounts to ground for review under PAJA. This evaluation takes into account the purpose of the provision. The law permits condonation of non-compliance where condonation is not incompatible with the public interest and if such condonation is granted by the body in whose benefit the provision was enacted. (**Allpay** para [17]). The respondents contend that the requirement for the documents of the municipality taxes are for the benefit of the first respondent, and the requirement can be waived by it.

[28] Mr Grobler, for applicant contends that a person can only waive something of which that person is aware. You cannot condone an irregularity if you are unaware of the irregularity. Mr Grobler says the first respondent cannot rely on the exercise of a discretion when the facts show that no discretion was exercised.

Conclusion

[29] The question when there is a change in the version of the decision-maker is whether that attitude shows that the matter was not properly considered. One cannot condone something you are unaware of. The Bid Adjudication Committee should have noticed the deficiencies in the documentation of the second respondent.

[30] The most serious objection to the tender of the second respondent is the absence of proof that it has paid the municipal fees and taxes for the premises from which it does business. The second respondent filed a tax clearance certificate which was issued by the South African Revenue Service to “Magic Labour Hire and Security Services CC” (record page 284). All the previous

contracts it refers to were in the name of Magic Labour Hire and Security Services, not in the name of its member, Mr Baloyi. The omission of a lease agreement was serious, also because the second respondent did not say a word about an oral lease. This was a material omission. The letter of intent does not conform to the prescribed form, and all details required were not furnished.

[31] From the papers it is clear that the BAC did not notice that there was no municipal rates certificate in the name of the second respondent. That was the omission of a mandatory document. Before a tender can be allocated to a tenderer, the employer must be satisfied that fees due to the municipality by it have been paid up to date, or, being aware of such omission, consciously decide to condone the omission. The BAC and the municipal manager did also not notice the defects relating to the other documents detailed above. In this case the BAC and the municipal manager were initially not aware of the absence of the documents, did not condone their absence and could not have been so satisfied. The bid was allocated to the second respondent without proper consideration. The Bid of the second respondent should have been declared non-responsive. The decision of the first respondent to appoint the second respondent should be set aside.

Costs

[32] This application was originally brought as one for an urgent interdict to stop the second respondent from continuing with a tender. On 25 September 2015 it was postponed by agreement to 23 October 2015. Costs of that day were costs in the application.

[33] On 23 October 2015 an order was made by agreement that further work under the contract be suspended and that the matter be further dealt with as a review in terms of Rule 53. Costs of 23 October 2015 were reserved, and the matter was enrolled for 23 November 2015, the day we heard argument by counsel for the applicant, first and second respondents.

[34] There is no basis to make any differentiation as to the costs order for 23 October 2015.

ORDER

1. The first respondent's believed decision to declare as responsive the second respondent's bid in the adjudication process related to Contract No. **TLM/BWSBD/WTW/02** – Construction of an new 4,5 ml/day Water Treatment Work is reviewed and set aside.

2. The first respondent's decision to award the contract mentioned in prayer 1 above to the second respondent is reviewed and set aside.

3. In terms of section 8 of the Promotion of Administrative Justice Act 3 of 2000:

   3.1 any contract, and any right to a contract that may flow from the decision impugned herein between the respondents is set aside;

   3.2 the decision is remitted to the first respondent for reconsideration of the applicant and second respondent's bids, and the awarding of the contract afresh.

4. The first and second respondents are ordered to pay the costs of the application jointly and severally, payment by one, the other to be absolved (such costs to include the costs occasioned by the launching, prosecution and arguing of the interdict proceeding on 23 October 2015).

A. KRUGER, J

I agree.

K. J. MOLOI, J

On behalf of applicant:	Adv S Grobler Instructed by: Peyper Attorneys BLOEMFONTEIN
On behalf of first respondent:	Adv K Mnyandu Instructed by: Molefi Thoabala Inc. BLOEMFONTEIN
On behalf of second respondent:	Adv M Snyman Instructed by: Symington & De Kok BLOEMFONTEIN

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