



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 015484/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED
- (4) Date: 18 September 2025

Signature: _____

In the matter between:

FIPRO INVESTMENTS CC

Applicant

REGISTRATION NUMBER CK 1999/040248/23

And

CHIEF EXECUTIVE OFFICER (SANRAL)

First Respondent

CHIEF FINANCIAL OFFICER (SANRAL)

Second Respondent

SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD

Third Respondent

SANKOFA INSURANCE BROKERS

Fourth Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] The applicant and fourth respondent were both bidders on an insurance brokerage tender SANRAL NFT 61510/2022/01 issued by the first respondent. The tender was after an evaluation process, awarded to the fourth respondent.

[2] The applicant now seeks:

2.1 An order holding the first and second respondents in contempt of a court order granted by Acting Judge Lingenfelder dated 7 October 2024. And

2.2 the reviewing and setting aside of the decision of SANRAL to award the tender: SANRAL HO RFT 61510/1025/2022/01 (hereinafter “the tender”) to the fourth respondent (SANKOFA) as well as ancillary agreements and Service Level Agreement.

B. THE PARTIES

2.3 Applicant is FIPRO Investments CC, Registration No. CK 1999/040248/23, a Close Corporation duly incorporated in terms of the Close Corporations Act, Act number 69 of 1984.

- 2.4 First respondent is Mr Reginald Demana who is sued herein in his official capacity as the Chief Executive Officer of SANRAL.
- 2.5 Second respondent is Mr Dumisani Maluleka who is sued herein in his official capacity as the Acting Chief Financial Officer of SANRAL. The Chief Financial Officer is the overall head of procurement for SANRAL.
- 2.6 Third respondent is the South African National Road Agency SOC Ltd (SANRAL), a state-owned company responsible for the management, maintenance and development of South Africa's proclaimed National Road Network.
- 2.7 Fourth respondent is SANKOFA Insurance Brokers (Pty) Ltd, a private company duly incorporated in terms of the company laws of the Republic of South Africa, imbued with legal personality to sue and be sued on its own.

C. BACKGROUND

- [3] On or about 24 March 2022, SANRAL published an Invitation to Tender, NFT 61510/1025/2022/01 for the provision of insurance brokerage advisory services as well as claims administration to the third respondent for a period of three (3) years. The Invitation to Tender included an instruction to bidders to include a provisional sum of five hundred thousand rand (R500 000.00), which was prepopulated in Part H: Pricing Instruction under item 1.2 Pricing Schedule of the third respondent's bid document, to their offered price to make up the total Bid Price offered.

- [4] The fourth respondent was awarded the tender. The applicant is of the view that the tender ought to have been awarded to it due to it having the lower price in its response. In the tender document the price was the decider.¹
- [5] After the tenders were opened, the following was apparent:²
- 5.1 The price quoted by the applicant was R573 000 (five hundred and seventy-three thousand rand) and
- 5.2 The price quoted by the third respondent was R893 360 (eight hundred and ninety-three thousand, three hundred and sixty rand)
- [6] The price quoted by the applicant was manifestly lower than the price quoted by the third respondent and the award should have followed suit.
- [7] The respondents opposed the application, contending that the evaluation process which was followed by SANRAL to award the tender to SANKOFA was procedurally and substantively correct, and that decision should be allowed to stand.
- [8] The respondents rely on the Special Conditions of Contract for the Tender – [Part E-2] (“the SCC”) which should be read together with the submitted documents.
- [9] SANRAL submitted that one important aspect of this tender was that SANRAL provided each tenderer with an upfront amount of R500 000.00 in the form of a “Provisional Sum for unforeseen business changes” and which amount was to

¹ Applicant's founding affidavit clause 6.2

² As reflected in Annexure FM2.

form part of the total amount that each tenderer would submit. This is reflected in Annexure FM10.³

[10] As noted from the proposed Pricing Schedule form, each tenderer was expected to complete this form with its, his, or her offers for year 1, year 2 and year 3. Thereafter, the Provisional Sum was to be added to give a Sub total, then the tenderer was to add the Value Added Tax at 15%. The said additions were to give a total tender price amount and be carried forward to Form C-1 of the offer.⁴

[11] When FIPRO submitted their tender documents, their tender amount was R573 000.00. When the SANRAL checked for any arithmetical errors, omissions and discrepancies it was discovered that FIPRO had omitted to add the provisional sum of R500 000.00 which was a line item in terms of the Fixed Annual Fee of the Pricing Schedule of the Tender Data.⁵

[12] The provisional sum of R500 000.00 was added to the tender amount of R573 000.00 and the total was R1 073 000.00. The corrected tender sum of R1 073 000.00 was used for evaluation purposes. Resultantly, SANKOFA with its total amount of R893 360.00, scored 80 points for the financial point score whilst FIPRO scored 63.91.⁶

[13] The applicant (FIPRO) calls into question the award made to SANKOFA as not being in compliance with the requirements of section 217⁷ of the Constitution, which are trite by now.

³ FM 10 at Caselines 01-95, annexure to the founding affidavit.

⁴ Answering affidavit para 26.

⁵ Ibid para 185.

⁶ Ibid paras 186 -188.

⁷ "(1) 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 fair, equitable, transparent, competitive and cost effective,"

- [14] The applicant questions firstly, whether SANRAL was entitled to add the amount of R500 000.00 to FIPRO's tender price; and secondly, whether the price evaluation of FIPRO and SANKOFA was done on a fair, equitable and transparent basis.
- [15] The applicant submitted that Clause 5.9 of the Tender document makes provision for correction of the tender price under certain circumstances, but these do not include increasing the tender price. Even when minor corrections are made, the tenderer should be notified of the corrections and should indicate acceptance thereof. It is not in dispute that FIPRO was not informed of the correction and provided an opportunity to respond thereto. The minutes of the meeting held on 27 July 2022 where the correction was made, record the fact that: *"FIPRO scored 90 points and qualified to be evaluated further on Price and preference... FIPRO's price was corrected however there was no need to communicate with them as they were not a preferred bidder"*.
- [16] Applicant's view is that failure to notify it of the correction alluded to above resulted in the process followed not being fair, equitable and transparent.⁸
- [17] The applicant is also unhappy with the wording of the pricing instruction contained in Part H of the tender document, asserting that it is capable of different interpretations as it is unclear whether it was mandatory to carry the provisional sum over with the tender price for the years 1, 2 and 3.
- [18] Applicant then in the same vein makes reference to the section under *"General"* where it is stated that if a tenderer does not enter a price in the pricing schedule, SANRAL shall regard such price to be included elsewhere, or to be provided free of charge. It is applicant's view that *"Nowhere is there an explicit instruction under*

⁸ Para 24 of applicant's chronology.

“General” that the amount of R500 000.00 must be added to the tender price for the 36 months”.⁹

[19] The applicant then explicitly stated as follows:

“FIPRO submits that it deliberately excluded the sum of R500 000.00, as it was seen as a duplication, and the provisional sum was not an amount that the tenderer would be entitled to as part of the tender price.”¹⁰

[20] In support of its contention that the process used in evaluating its bid as well as that of SANKOFA, the applicant’s assertion is that SANKOFA also did not include the provisional sum of R500 000.00 in its tender price. As evidence of this fact, applicant states that *“SANRAL does not deny anywhere in its answering affidavit that the amount of R500 000.00 was not included in SANKOFA’s tender price, but merely reiterates that FIPRO did not include the amount of R500 000.00...”¹¹*

[21] Adv S. Baloyi SC submitted on behalf of the respondents that the parties were not before court to relitigate the orders granted by Lingenfelder AJ which were the applicant’s basis for seeking a contempt order. There had been no evidence before that court pertaining to the non-inclusion of the R500 000.00 in the 4th respondent’s bid documents. Reference was made to SANKOFA’s bid documents being Annexure AA1 to the respondents’ answering affidavits.

[22] The respondents’ submissions were that no new evidence was presented, what was presented is what served before the Bid Adjudication Committee (“BAC”) consequent to the decision to re-evaluate the tenders as ordered by Lingenfelder AJ.

⁹ Ibid para 26.

¹⁰ Applicant’s chronology para 27.

¹¹ Ibid para 28.

[23] As regards the issue of contempt of the court order, the correspondence filed by the respondents' attorneys state that the respondents have complied with Lingenfelder AJ's order.

[24] What stands out starkly in this application is that the applicant's case is rooted in suspicion and innuendo without any coherent foundation. This can be discerned over and above what has been summarized above, the applicant draws the conclusion that:

*"There is no reason why this information was not disclosed to the court, and this leads to the conclusion that the provisional amount was thus probably also not included in SANKOFA's tender price."*¹²

[25] This is contradicted by SANKOFA in its answering affidavit.¹³

D. APPLICATION TO STRIKE OUT

First to third respondents' notice to strike:

[26] Ms Thema dealt with the application by first to third respondents to have some averments in the applicant's founding affidavit struck out on the basis that same are baseless, reckless and defamatory.

[27] The impugned paragraphs are listed in the 'notice to strike' out as follows:

¹² Applicant's chronology para 28.

¹³ At paragraphs 57 to 60; and 79.

- 27.1 Founding affidavit, Paragraph 8.10, as set out in Paragraph 48 of the answering affidavit.
- 27.2 Founding Affidavit, Paragraph 12, as set out in Paragraph 50 of the answering affidavit.
- 27.3 Founding Affidavit, Paragraph 13.6, as set out in Paragraph 59 of the answering affidavit.

Fourth respondent's notice to strike:

[28] Mr Mabaso, who appeared for the fourth respondent moved the latter's application to have some of the applicant's allegations struck out. The notice as filed read as follows:

AD PARAGRAPHS 7.6 —7.8 READ WITH 10 —10.8

- 28.1 The contents of these paragraphs contain allegations which are abusive to and defamatory of the fourth respondent, as fully set out in paragraphs 93 —96 of the fourth respondent's answering affidavit, and as such, the impugned allegations are scandalous; and
- 28.2 The contents of these paragraphs contain allegations which convey an intention to harass and annoy the fourth respondent, as fully set out in paragraphs 93 – 96 of the fourth respondent's answering affidavit, and as such, the impugned allegations are vexatious.

[29] Legal argument was advanced with reference to case law. It is important to highlight at this stage, that the notice on behalf of the first to third respondents

was as sparse in detail as appears above. The fourth respondent's notice on the other hand was more specific.

[30] In the matter of **Vaatz v Law Society of Namibia** 1991 (3) SA 563 (NH) at 566, Levy J stated the following:

"The grounds for striking out as set out in the said Rule are... scandalous or vexatious or irrelevant. Needless to say, allegations may be irrelevant but not scandalous or vexatious. Even if the matter complained of is scandalous or vexatious or irrelevant, this court may not strike out such matter unless the respondent would be prejudiced in its case if such matter were allowed to remain."

[31] The operative consideration, is therefore, "prejudice".

E. APPLICANT'S CONTENTIONS

[32] SANKOFA tender price was R893 360.00 (Eight hundred and ninety-three thousand three hundred and sixty rand only) inclusive of 15% VAT since SANKOFA is a VAT vendor.

[33] Stripped of the VAT component, the price should reflect the total as R776 834.78 (Seven hundred and seventy-six thousand eight hundred and thirty-four rand and seventy-eight cents).

[34] According to the applicant, item (d) of Part H: PRICING INSTRUCTION (Annexure FM3) *"the total for the period of 36 months must be carried to the form of offer."* That is exactly what applicant did. The R573 000.00 is the total for the period of 36 months. Applicant therefore complied with the tender data instruction.

- [35] The Bid Evaluation Committee deviated from the tender documentation when it forced the inclusion of the amount of R500 000.00 in applicant's tender documents and not inform the latter of this development.
- [36] Annexure H, the Pricing Schedule does not state that it was compulsory for a tenderer to include the sum of R500 000.00 in its price offer. In any event, first respondent has not stated in its papers that all the other bidders included the sum of R500 000.00 in their offer price. It is therefore clear that it was not compulsory to include the R500 000.00 in the offer price
- [37] Annexure H (Pricing Schedule) does not expressly require tenderers to include a fixed sum of R500 000.00 in their price offers. The first respondent has not shown that all other bidders included this amount, indicating it was not a universally applied or mandatory condition. Imposing such a requirement retrospectively would be inconsistent with principles of fairness, transparency, and equal treatment in procurement.
- [38] As an example, it is important to note that the lowest quoted price was R413 750.00 by Kunene Makopo Risk Solutions. This company was later disqualified with the stated reason for its disqualification per the minutes of the Bid Evaluation Committee dated 28 June 2022 being recorded as the fact that its contactable references were inadequate in terms of experience.
- [39] Having regard to the replies to the clarification questions asked, nowhere was it pointed out that all tenderers must add R500 000.00 to their quoted price. There appears to be no basis for the alleged correction of the tender price of the applicant. It is a stipulation of tender documents that any amendment to the price must be discussed with the tenderer who must agree to it. Applicant never agreed to the increased price.

F. RESPONDENT'S VERSION

- [40] The first to third respondents' timeline regarding their compliance with Court Order Dated 7 October 2024 is provided in their answering affidavit.
- [41] On 7 October 2024, the judgment and order issued by Acting Judge Lingenfelder were uploaded to the Caseline profile by the Judge's Secretary. SANRAL was notified of the judgment and order on the same day.
- [42] Following receipt of the judgment and order from SANRAL's attorneys, the Legal Department brought the matter to the attention of the Chief Executive Officer, as well as the Acting Chief Financial Officer and the Chief Procurement Officer on 9 October 2024. The Legal Department advised that, in accordance with the terms of the order, the bids submitted by the applicant and the fourth respondent were to be re-evaluated.
- [43] Upon receiving the advice and explanation from the Legal Department, the first to third respondents set forth to comply with the order as directed.
- [44] On 11 October 2024, acting in implementation of the Court's order, the Chief Procurement Officer (CPO) instructed the procurement officials to retrieve the original tender file and to review its contents in accordance with that order.
- [45] On 25 October 2024, the CPO appointed three members to constitute the Bid Evaluation Committee (BEC) for the specific purpose of re-evaluating the two bids previously submitted in respect of the tender.
- [46] On 31 October 2024, the BEC convened to re-evaluate the original bids of both the Applicant and the fourth respondent. The fourth respondent's bid document served before the BEC contained, in its pricing schedule, a provisional sum of R500 000.00 as part of the total Bid Price.

- [47] Attached to the respondents' answering affidavit, as annexure "AA1" is a copy of the fourth respondent's original bid document and the pricing schedule on page 12-22 on Caselines, where the provisional amount of R500 000.00 is expressly recorded as included in the Bid Price.
- [48] The respondents concede that annexure "AA1" was not placed before the Court in the earlier review application and confirm that the Court did not accept SANRAL's submission that the fourth respondent's Bid Price included the provisional amount of R500 000.00.
- [49] Considering annexure "AA1," the BEC took into account the R500 000.00 provisional amount and applied it as part of the fourth respondent's total Bid Price when re-evaluating the offers.
- [50] The BEC could not have understood Acting Judge Lingenfelder to have intended that SANRAL should add a further R500 000.00 provisional sum on top of the amount already recorded in the fourth respondent's bid. Were that the correct interpretation, the BEC would effectively have doubled the provisional allowance to R1 000 000.00.
- [51] Such an approach would have unduly disadvantaged the fourth respondent — whose bid already included the R500 000.00 provisional amount - while leaving the applicant's bid unchanged, as the applicant's price did not include any provisional sum prior to the Order of Acting Judge Lingenfelder. The BEC unanimously determined that this could not have been the intention of the Court's Order.
- [52] The BEC accordingly added the provisional sum of R500 000.00 to the price originally offered by both the fourth respondent and the applicant, on the basis that the sum was already included in the fourth respondent's total Bid Price and thus complied with the terms of Acting Judge Lingenfelder's order.

- [53] As a result of applying the provisional amount to both bids, the fourth respondent's adjusted price remained the lowest of the two submissions.
- [54] The BEC resolved to recommend to the Bid Adjudication Committee (BAC) that the tender be awarded to the fourth respondent on account of its lowest evaluated price.
- [55] A copy of the record of the BEC, including the minute of the meeting in which the decision was taken to recommend the appointment of the fourth respondent was attached to the respondents' answering affidavit as Annexure "AA2".
- [56] On 6 November 2024, the BEC submission served before the BAC and, on 2 December 2024, the BAC concluded that the decision of the BAC of 2022 to award the tender to the fourth respondent would stand. The record of the BAC re-consideration of the bids was attached as Annexure "AA3".
- [57] Neither SANRAL nor its CEO and CFO ever disregarded the Court Order. They effectively took steps to comply with the Order and the fourth respondent emerged as the bidder with the lowest price. In accordance with the Order, SANRAL accordingly awarded the tender to the bidder with the lowest price. SANRAL thus deny that it is in contempt of the Order.

G. ANALYSIS AND CONCLUSION

- [58] The Invitation to Tender instructed bidders to include a provisional amount of R500 000.00 and, as appears from "AA4", the fourth respondent complied with the instruction. This resulted in a Bid Price of R893 360.00.
- [59] The applicant on the other hand conceded that it deliberately omitted the provisional amount of R500 000.00 from its tender documents and submitted a

firm offer of R573 000.00 (five hundred and seventy-three thousand). When the respondents added the mandatory provisional amount, the applicant's bid amount shot up to R1 073 000.00.

[60] The order of Acting Judge Lingenfelder required that SANRAL include a provisional sum of R500 000.00 to both bids.

[61] Contrary to the terms of the Order, the applicant contends that SANRAL should have excluded the R500 000.00 provisional sum from its Bid Price. That contention is untenable and finds no support in the language of the Order.

[62] The re-evaluation of the fourth respondent's bid necessarily incorporates the provisional sum, as expressly directed by the Order. Similarly, the re-evaluation of the applicant's bid applies the same provisional amount. The outcome thus aligns squarely with the Court's instruction that the tender must be awarded to the bidder submitting the lowest evaluated price.

[63] Accordingly, SANRAL fully complied with the Order by taking the R500 000.00 provisional sum into account in both bids. SANRAL's implementation of the Order does not constitute a reviewable administrative act.

[64] For all the above reasons, the prayer for a review of the award to the fourth respondent cannot succeed.

H. COSTS

[65] The law regarding the award of costs in litigation is trite: costs should follow the cause; the successful party should be indemnified from the expenses occasioned by the necessary opposition of the matter. There are no reasons advanced that may justify a departure from the norm in this matter.

I. ORDER

[66] The following order is made:

- (i) the applications to strike are dismissed with no order as to costs.
- (ii) The application for contempt of a court order as well as the review application are dismissed, the applicant to pay the respondents costs on a party and party scale.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 03/03/2025

Date of Judgment: 18 September 2025

On behalf of the Applicant: Ms L Mbanjwa

Instructed by: L. Mbanjwa Incorporated, Pretoria

On behalf of the 1st, 2nd and 3rd Respondents: Adv. S Baloyi SC

With her : Ms S Thema

Instructed by: GITHIRI Attorneys, Sandton

c/o NDABA H.E. Incorporated, Pretoria

On behalf of the 4th Respondent: Adv SR Mabaso

Attorneys for the 4th Respondent: Mota Africa Inc Attorneys

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 18 September 2025.