IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case no: 21070/2024

In the matter between:

TMT SERVICES AND SUPPLIES (PROPRIETARY) LTD
t/a TRAFFIC MANAGEMENT TECHNOLOGIES
(Registration number: 2000/022850/07)

Applicant

and

CITY OF MATLOSANA First Respondent

SYNTELL (PROPRIETARY) LTD Second Respondent

Coram: Miller AJ
Heard: 16 September 2025
Delivered: 10 December 2025

ORDER

1. Declaring that the bid submitted by the second respondent in Tender No: COM/SCM/T/09/2023/24 ("*the Tender*") is invalid.

2 The decision of the first respondent taken on 5 February 2024 to award the Tender to the second respondent is reviewed and set aside.

3. Any contract(s) concluded between the first respondent and the second respondent pursuant to the first respondent's decision to award the Tender to the second respondent is/are reviewed and set aside with effect from 31 March 2026.

4. The first respondent is liable for the costs of this application, such costs to include the costs of counsel on scale C.

JUDGMENT

Miller, AJ

Introduction

[1] This application relates to the decision of the first respondent ("*the Municipality*") to award a public tender to the second respondent

("*Syntell*") on 5 February 2024 for the provision of traffic management services to the Municipality.

[2] The applicant ("*TMT*") seeks a declarator that Syntell's bid was non-responsive and therefore invalid and an order reviewing and setting aside the decision to award the tender to Syntell and any contract(s) awarded under the tender.

[3] Syntell did not participate in this application. It abides this court's decision.

[4] The Municipality opposes the application on two grounds: first, that TMT lacks *locus standi* to bring this application because its bid was non-responsive (i.e. non-compliant) and second, that the review should fail on the merits.

[5] After setting out the material facts, which were common cause, I deal with each of the grounds of opposition.

<u>The facts</u>

[6] The Municipality called for tenders for the provision of traffic management services with a closing date of 16 November 2023. These services relate to capturing and processing traffic violations for speeding.

[7] The tender was governed by a document titled "Evaluation Process and Criteria" ("*the Bid Criteria Document*").

[8] The Bid Criteria Document contained the following mandatory term:

> "*Bidders must initial each page of the Tender Document, including all returnable documents submitted as part of this bid. Failure to Initials*

> *[sic] the Bid Document along with all the returnable documents will lead to the immediate disqualification of the Bidder…".*

[9] I shall call this term of the Bid Criteria Document "*the mandatory provision*".

[10] The Municipality received bids from TMT, Syntell and Dunamis Emporium Services (Pty) Ltd.

[11] TMT was told informally by the Municipality that Syntell's bid was successful.

[12] TMT then tried to obtain written reasons from the Municipality as to why its bid was not successful. Despite demand, the Municipality failed to give TMT these reasons. TMT then launched an urgent application to obtain these reasons. The Municipality initially opposed this application, but then conceded it by providing TMT with the BEC and BAC minutes of its decision.

[13] Dunamis Emporium Services (Pty) Ltd's bid was disqualified as it failed to initial the majority of its bid document.

[14] TMT's bid was also disqualified. One of the reasons for such disqualification was that TMT failed to initial 3 out of the 550 pages comprising its bid document.

[15] The Municipality awarded the tender to Syntell and concluded a contract with it for the provision of the traffic management services.

[16] TMT's bid price of R125.35 was the lowest. Syntell's bid price was R174.80.

[17] The BAC stated in its minutes that the bids of TMT and Dunamis Emporium Services (Pty) Ltd were fairly disqualified and that it "*applied due diligence on the bid tender document of Syntell…and confirmed that the bidder was compliant as per the Bid Evaluation Report*".

[18] TMT noticed that certain pages from Syntell's bid were missing from the Rule 53 record furnished to it. TMT called for these missing pages. The Municipality subsequently supplemented the Rule 53 record with the missing pages. It was then that TMT learned that despite what was stated in the BAC minutes, Syntell's bid contained 39 pages that were not initialled (and in some instances were not certified).

[19] Thereafter, TMT launched the present application.

<u>Locus standi</u>

[20] The Municipality contends that TMT lacks *locus standi* to challenge the award of the tender to Syntell because its own bid was disqualified.

[21] Counsel for the Municipality argued that once TMT fell out of the race it no longer had any rights that were adversely affected by the decision to award the tender to Syntell and that there was therefore no legally relevant administrative action for it to review.

[22] Counsel for TMT contended that the Municipality's position is contrary to the authorities referred to below.

[23] In *WDR Earthmoving Enterprises* the SCA overturned the decision of the court *a quo* that a non-responsive bidder lacked *locus standi* to challenge the award of the tender in question. It did so on the basis that the non-responsive bidder's rights were directly affected by the decision to exclude that bid. This was because setting aside the award of the tender would require the tender process to be re-commenced and the non-responsive bidder would be entitled to compete for the tender.[1]

[24] In *Mojojobela* the court held that:

> "*On the issue of legal standing, the applicant does not have to make out a case that the bid would have been granted to it, or that it was poised for success in respect thereof, if the tender process had run its course but for the untimely cancellation thereof. It establishes such standing instead in my view on the basis of its legitimate expectation to a fair outcome in the tender process which, after the bids were closed, left it and its co-bidders in a race to the conclusion entailing an evaluation of the competing compliant bids in due course and a proper adjudication thereof, even if the recommendation flowing from such process was going to be that the tender should be re-advertised.*"[2]

[25] The Constitutional Court in *Allpay* entertained a review at the instance of a bidder who did not qualify for an assessment on finance and preference points.[3]

[26] With reference to *Giant Concerts*[4], this division in *Syntell (Pty) Ltd* held that because a losing bidder participated in the tender process

1 *WDR Earthmoving Enterprises CC v Joe Gqabi District Municipality* (392/2017) [2018] SASCA (30 May 2018) at paras 12 to 17.

2 *Mojojobela v MECfor the Rural Development and Agrarian Reform, Eastern Cape* [573/2017 ZAECBHC 8 (6 October 2017) at para 26.

3 *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency* 2014 (1) SA 604 (CC) at para 13.

4 *Giant Concerts CC v Rinaldo Investments (Pty) Ltd* [2012] ZACC 28.

by submitting a bid, its commercial interest is direct and real and not hypothetical or academic.[5]

[27] These authorities make it clear that TMT has *locus standi* in this application. This ground of the Municipality's opposition to the application must therefore fail.

Merits

The law

[28] Section 217(1) of the Constitution requires organs of state contracting for goods and services to do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

[29] The Constitutional Court in *Allpay* held that:

> *"Compliance with the requirements for a valid tender process, issued in accordance with the constitutional and legislative procurement framework, is thus legally required. These requirements are not merely internal prescripts that SASSA may disregard at whim. To hold otherwise would undermine the demands of equal treatment, transparency and efficiency under the Constitution. Once a particular administrative process is prescribed by law, it is subject to the norms of procedural fairness codified in PAJA."*[6]

5 *Syntell (Pty) Ltd v Department of Community Safety, Security, and Liaison, Mpumalanga Provincial Government and Others* 11988/2024 (19 May 2025) paras 28 to 38.

6 *Allpay* supra at para 40.

[30] The court in *Allpay* also cited with approval that principle in *Steenkamp* that tender processes require "... *strict and equal compliance by all competing tenderers*...".[7]

[31] The award of a public tender is obviously administrative action that must, in terms of section 33 of the Constitution, be lawful, procedurally fair and reasonable. PAJA gives contents to these requirements. I deal with the relevant provisions of PAJA in the following section.

[32] The import of what Froneman J in *Allpay* called the "*proper legal approach*" to assessing irregularities in public tenders is as follows:

32.1 First, the court must determine whether there has been an irregularity in the sense that there has been a contravention of a legal requirement of the tender process.

32.2 Second, the court must determine whether this irregularity gives rise to a recognized ground of review under PAJA. In determining this issue, the court should, where appropriate, take into account the materiality of any deviance from the legal requirements by linking the question of compliance to the purpose of that provision.

32.3 Third, if the irregularity is material, section 172(1)(a) of the Constitution requires the decision to be declared unlawful.[8]

[33] The Preferential Procurement Policy Framework Act, 5 of 2000 ("*the PPPFA*") supplements section 217 of the Constitution. It is clear from

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7 At para 39, citing *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA (CC) at para 60.

8 *Allpay* supra at paras 22 to 30.

section 2 of the PPPFA that it is aimed at regulating what it describes as an "*acceptable tender*". An "*acceptable tender*" is defined in section 1 as being "*any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document*".

[34] The SCA in *JFE Sapela Electronics* held that the "... *acceptance of a tender which is not 'acceptable' within meaning of the Preferential Act is therefore an invalid act that falls to be set aside. In other words, the requirement of acceptability is a threshold requirement*".[9]

[35] The SCA in *Dr JS Moroka Municipality* held that "... *a failure to comply with prescribed conditions will result in a tender being disqualified as an 'acceptable tender' under ... the Procurement Act unless those conditions are immaterial, unreasonable or unconstitutional.*"[10]

[36] In a similar vein, the SCA in *Overstrand Municipality* held that a tender was "... *not an 'acceptable' one in terms of the Procurement Act, in that it did not 'in all respects' comply with the specifications and conditions set out in the RFP*".[11]

Applied

[37] I turn now to apply the abovementioned legal principles to the facts of this application.

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9 *Chairperson, Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd* 2008 (2) SA 638 (SCA) at para 11.

10 *Dr JS Moroka Municipality v Betram (Pty) Ltd* [2014] 1 All SA 545 (SCA) at para 10.

11 *Overstrand Municipality v Water Sanitation Services South Africa (Pty) Ltd* [2018] 2 All SA 644 (SCA) at para 50.

Materiality

[38] I deal first with the question of the materiality of the mandatory provision.

[39] TMT's counsel submitted that the mandatory provision is material. In essence, this is because it ensures the following: that the bidder acknowledged the contents of each page; a reduced risk of the bid document being tainted by fraud or tampering; contractual certainty; that the bidder attests to the truth and correctness of the information contained in the bid document; and the authenticity of the returnable documents.

[40] For the reasons advanced by TMT's counsel, the mandatory provision is material. The Municipality's counsel correctly conceded in argument that this is so.

[41] For the same reasons, the mandatory provision is not immaterial, unreasonable or unconstitutional.

Irregularity

[42] The next issue is whether there was an irregularity in Syntell's tender or, more specifically, whether Syntell's offer complied with the mandatory provision.

[43] The Municipality accepts that Syntell's bid contained 39 pages that were not initialled.

[44] The Municipality attempted to escape the obvious conclusion that Syntell's bid was irregular as a result of non-compliance with the mandatory provision by contending that:

44.1 On its proper construction, the mandatory provision only applied to those items or documents that appeared above it on the Bid Criteria Document and not to those items that appeared below it.

44.2 The pages that were not initialled formed part of the "*Product Brochure*", which appeared below the mandatory provision on the Bid Criteria Document.

44.3 As a result, the mandatory provision did not apply to the pages that were not initialled and Syntell's tender did not contain any irregularity.

[45] It is settled that interpretation is a unitary exercise requiring the consideration of text, context, and purpose.[12] The approach is objective: it entails the attribution of meaning to the words used by the parties as they would be understood in context by a reasonable reader.[13]

[46] In my view, there is no merit in the Municipality's argument. This is for the reasons that follow.

[47] First, there is nothing in the plain wording of the mandatory provision to sustain the contention that it applies only to those items that appear above it on the Bid Criteria Document. On the contrary, the express requirement that each tenderer was required to initial "*each page of the Tender Document, including all returnable documents*

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12 *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18.

13 *Endumeni* (supra) at para 19. See, too, more recently *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC) at paras 64-66.

submitted as part of this bid" indicates that each page forming part of the tender must be initialled regardless of whether they formed part of a document that appeared above or below the mandatory provision.

[48] Second, the mandatory provision expressly states that the failure to initial the "*Bid Document along with all the returnable documents will lead to the immediate disqualification of the Bidder.*" There is no definition of "*Bid Document*". In my view, there is no basis, and none was suggested to me in argument, to interpret this term other than to include all the pages forming part of the tender regardless of whether they formed part of a document that appeared above or below the mandatory provision.

[49] Third, it would be insensible to interpret the Bid Criteria Document in the manner contended for by the Municipality as this would mean that important documents forming part of the tender would not need to be initialled. If this was so, it would undermine the purpose of the requirement that the tender documents be initialled. For example, the "*Product Brochure*", which appears below the mandatory provision, includes verification that all the equipment can perform in full compliance with specification or better. This is clearly a critical document in the tender. There is no reason that I can discern, and none was suggested to me, why the remaining documents below the mandatory provision are not similarly important and therefore should also be initialled.

[50] For these reasons, I conclude that on its proper construction the mandatory provision required Syntell to initial all the pages forming part of its tender regardless of whether they formed part of a document that appeared above or below the mandatory provision.

[51] Syntell's failure to do so meant that Syntell's bid breached the mandatory provision and was therefore irregular.

Grounds for review

[52] Once it is established that Syntell's bid contains an irregularity, it follows that TMT has established the grounds to set aside the decision to award the tender to Syntell. In essence, this is on one or more of the following bases:

52.1 The Municipality made a material error of fact and/or law by failing to conclude that Syntell's bid was irregular either because it overlooked the relevant facts or incorrectly concluded that the failure to initial all the pages of the tender was a legal requirement. The Municipality's decision to award the tender to Syntell falls to be set aside in terms of sections 6(2)(e)(iii)[14], 6(2)(d) and/or 6(2)(f)(i) of PAJA.

52.2 By disqualifying TMT's bid on the basis that it did not comply with the mandatory provision and by failing to disqualify Syntell's bid for the same non-compliance, the Municipality failed to treat TMT and Syntell equally. Such equal treatment is the cornerstone of procedural fairness in tenders. The unequal treatment also rendered the Municipality's decision arbitrary and capricious. The Municipality's decision to award the tender to Syntell therefore falls to be set aside in terms of section 6(2)(c) and/or section 6(2)(e)(iv) of PAJA.

52.3 Syntell's non-compliance with the mandatory provision meant that its bid was not an "*acceptable tender*" in terms of the

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14 *Chairman, State Tender Board v Digital Voice Processing (Pty) Ltd* 2012 (2) SA 16 (SCA) at para 34.

PPPFA and was thus unlawful. The Municipality's decision to award the tender to Syntell therefore falls to be set aside in terms of section 6(2)(i) of PAJA.

[53] Although there are other grounds upon which the Municipality's decision falls to be set aside, it is not necessary to canvass them as the grounds for review set out above have been clearly established.

[54] Those grounds are sufficient to sustain the applicant's cause of action for the declaratory relief that it seeks and to set aside the Municipality's decision to award the tender to Syntell and to conclude a contract or contracts with it for the traffic services. As the Constitutional Court held in *Allpay*, "*[o]nce a ground of review under PAJA has been established there is no room for shying away from it. Section 172(1)(a) of the Constitution requires the decision to be declared unlawful.*"

Conclusion

[55] For these reasons, the application must succeed.

[56] As there were no other compliant bids, the question of remitting the decision back to the Municipality or the substitution thereof does not arise.

[57] The appropriate order is to declare that Sytnell's bid was non-compliant and to set aside the Municipality's decisions to accept Syntell's tender and award any contract(s) to it for the provision of traffic services.

[58] This means that the tender process must start afresh.

[59] Counsel for both TMT and the Municipality accepted that it will take the Municipality some time to complete that process and that I must therefore allow the existing contract(s) to remain in place to accommodate that process. In my view, allowing the Municipality time until the end of March 2026 to complete a new tender process is sufficient.

[60] In respect of costs, they must follow the result.

Order

[61] In the circumstances, I make the following Order:

61.1 Declaring that the bid submitted by the second respondent in Tender No: COM/SCM/T/09/2023/24 ("*the Tender*") is invalid.

61.2 The decision of the first respondent taken on 5 February 2024 to award the Tender to the second respondent is reviewed and set aside.

61.3 Any contract(s) concluded between the first respondent and the second respondent pursuant to the first respondent's decision to award the Tender to the second respondent is reviewed and set aside with effect from 31 March 2026.

61.4 The first respondent is liable for the costs of this application, such costs to include the costs of counsel on scale C

[redacted]

MILLER AJ

Acting Judge of the High Court, Cape Town

APPEARANCES

Counsel for the Applicant:	Adv LW Ackerman
Instructed by:	Pepler O' Kennedy Attorneys
Counsel for the First Respondent:	Adv Jaco van Rooyen
Instructed by:	V A Mazabane Attorneys Inc.