

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2023-115589

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
19 March 2026	
DATE	SIGNATURE

In the matter between:

PHUMELELE CONSULTING (PTY) LTD

First Applicant

and

EKURHULENI METROPOLITAN MUNICIPALITY

First Respondent

**CITY MANAGER OF EKURHULENI
METROPOLITAN MUNICIPALITY**

Second Respondent

EMC ASSOCIATES (PTY) LTD

Third Respondent

ENYANE SOLUTIONS (PTY) LTD

Forth Respondent

ZRW MECHANIKA CC

Fifth Respondent

JUDGMENT

WANLESS J

Introduction

- [1] This matter was heard by this Court as a Special Opposed Motion on 28 and 29 January 2026. Extensive argument was presented by Counsel for the Applicant and for the First, Second, Third and Fourth Respondents. The Fifth Respondent did not oppose the application. The Applicant sought to review and set aside a decision of the First Respondent in respect of tender number A-EE04-2023 for the appointment of electrical engineering firms to implement and manage technical audits, repairs, replacements and maintenance of electricity meters for the period 1 July 2023 to 30 June 2026.
- [2] The Applicant is Phumelele Consulting (Pty) Ltd (*“the Applicant”*), an unsuccessful bidder for the tender. The First Respondent is the Ekurhuleni Metropolitan Municipality, the municipal entity that issued the tender (*“the First Respondent”*). The Second Respondent is the City Manager of Ekurhuleni Metropolitan Municipality, cited in his official capacity (*“the Second Respondent”*). EMC Associates (Pty) Ltd (*“EMC”*) is the Third Respondent. The Fourth Respondent is Enyane Solutions (Pty) Ltd (*“Enyane”*) and the Fifth Respondent is ZRW Mechanika CC (*“ZRW”*). EMC, Enyane and ZRW were the successful bidders in terms of the tender and were appointed by the First Respondent.
- [3] The application was opposed by the First and Second Respondents; EMC and Enyane. ZRW abided by this Court's decision. This judgment pertains to Part B of the application. Part A was an urgent application for interim relief, including an interdict preventing the First Respondent from implementing the tender pending the final determination of Part B. That application was removed from the roll by the court on the basis that it lacked sufficient urgency and the Applicant was ordered to pay the costs. It is unnecessary to traverse the history thereof in detail, save to note that interim relief was not granted.

Background

- [4] During 2023, the First Respondent advertised tender number A-EE04-2023 for the appointment of electrical engineering firms. The tender was for a three-year

period. The Applicant submitted a bid. Following an evaluation process, the First Respondent disqualified the Applicant's bid and awarded the tender to EMC, Enyane and ZRW.

- [5] Aggrieved by this outcome, the Applicant launched the present application on 18 October 2023. The Applicant seeks an order:

5.1 Declaring that the First Respondent's decision to disqualify the Applicant's bid is unlawful and is reviewed and set aside.

5.2 Reviewing and setting aside the First Respondent's decision to award the tender to EMC, Enyane and ZRW.

5.3 Declaring that any contracts concluded between the First Respondent, EMC, Enyane and ZRW, pursuant to the award, are null and void.

5.4 A just and equitable order as contemplated in section 172(1)(b) of the Constitution.

5.5 Costs of the application.

- [6] During the proceedings, the Applicant sought to file a supplementary founding affidavit. The Respondents opposed the late filing of this affidavit. However, during the argument, it became apparent that much of the content of the supplementary affidavit was either repetitive of the founding papers or addressed issues that had already been canvassed. In the interests of finality and given that the Respondents had an opportunity to respond, this Court ruled that the supplementary affidavit would be admitted. The prejudice to the Respondents, if any, was minimal and could be addressed by way of a costs order.

The facts

- [7] The following facts are either common cause or cannot be seriously disputed by any of the parties, namely:

7.1. The tender process was governed by the Preferential Procurement Policy Framework Act 5 of 2000 (*“the PPPFA”*) and the Supply Chain Management Regulations of the First Respondent.

7.2. The Applicant's bid was disqualified on the basis that its proposed candidate did not meet the minimum academic qualification requirements, specifically a National Diploma in GISc (Geographical Information Science).

7.3. The Applicant contended that its candidate held a qualification that was equivalent to or met the requirements of the tender.

7.4. Enyane's bid included qualifications for its candidate, which the Applicant challenged as not being a genuine academic qualification in GISc.

7.5. EMC's bid included copies of passports and work permits for foreign nationals. The Applicant contended that this rendered the bid non-compliant as it did not demonstrate that the proposed personnel were South African citizens or permanent residents as required.

7.6. ZRW's bid submitted audited financial statements for the 2020, 2021 and 2022 financial years. The Applicant contended that the tender required financial statements for the 2021, 2022 and 2023 financial years.

7.7. The Bid Evaluation Committee (*"the BEC"*) and Bid Adjudication Committee (*"the BAC"*) recommended the award to EMC, Enyane and ZRW.

The issues

[8] The issues for determination by this Court were crystallised in the Joint Practice Note filed by the parties on 27 October 2025 and in their respective Heads of Argument. They are:

8.1. Whether the Applicant had made out a case for condonation of the late filing of the supplementary founding affidavit. As indicated, this affidavit was admitted and the issue has been dealt with, save for costs.

8.2. Whether the termination by the First Respondent of the contract with EMC (*if a valid contract*) has rendered the challenge to EMC's appointment moot. No conclusive evidence of termination was placed before this Court and, in any event, the relief sought extends to declarations of invalidity which have consequences beyond the mere existence of the contract. This point was not

pursued with much vigour on behalf of EMC, Enyane and ZRW. In light of the decision ultimately reached by this Court in the present matter, this Court is satisfied that this “*issue*” is, in fact, a non-issue.

8.3. In respect of the Applicant's disqualification whether the Applicant met the minimum staffing requirements as stipulated in the tender, specifically whether its candidate held a National Diploma in GISc or an equivalent qualification.

8.4. As to Enyane's bid, whether the qualifications submitted by its candidate constituted an academic qualification in GISc and whether Enyane's bid met the minimum requirements of the tender.

8.5. Whether EMC submitted a non-compliant tender bid by providing copies of passports and work permits for foreign nationals and whether this complied with the tender conditions regarding citizenship or residency.

8.6. Whether ZRW's bid complied with the tender in that it submitted audited financial statements for the period 2020, 2021 and 2022, whereas it allegedly ought to have submitted financial statements for the period 2021, 2022 and 2023.

8.7. Whether the Applicant is entitled to a just and equitable order for substitution and compensation if the review succeeds.

The law

[9] The legal principles applicable to this matter are well-established. Section 217(1) of the Constitution provides:

"(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."

[10] The PPPFA and its Regulations give effect to this constitutional mandate. Arising, *inter alia*, therefrom, the tender process must be scrupulously fair and any deviation from the prescribed process may render the decision reviewable

under the principle of legality or under the Promotion of Administrative Justice Act 3 of 2000 (*PAJA*).

- [11] The grounds for judicial review of administrative action are codified in section 6 of *PAJA*. In particular, section 6(2)(b) provides that a court may review an administrative action if "*a mandatory and material procedure or condition prescribed by an empowering provision was not complied with.*"
- [12] However, it is also trite that a court will not lightly interfere with the exercise of a specialised discretion by a tender committee. In *Chairperson: Standing Tender Committee and Others v JFE Sapela Electronics (Pty) Ltd and Others*,¹ the Supreme Court of Appeal ("*the SCA*") held that the function of a court is not to supplant the administrative decision-maker but to ensure that the decision was taken lawfully, reasonably and in a procedurally fair manner.
- [13] The test for whether a bid is compliant is an objective one, based on the terms of the tender invitation. In *Minister of Social Development and Others v Phoenix Cash & Carry Pmb*,² the court held that tender conditions must be applied uniformly and that non-compliance with a material condition will generally render a bid invalid.
- [14] Regarding the reviewability of decisions to award tenders, the Constitutional Court in *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*,³ confirmed that the proper approach is to determine whether the decision was lawful and rational, having regard to the applicable legal framework.
- [15] In *All Pay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*,⁴ the Constitutional Court held that a tender process must be "*scrupulously fair*" and

¹ (511/2004) [2005] ZASCA 90; 2008 (2) SA 638 (SCA) ; [2005] 4 All SA 487 (SCA) (26 September 2005).

² CC (189/06, 244/06) [2007] ZASCA 26; [2007] 3 All SA 115 (SCA); 2007 (9) BCLR 982 (SCA) (27 March 2007).

³ (32665/2014) [2015] ZAGPPHC 1079 (18 May 2015)

⁴ (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013).

that any material irregularity that could have affected the outcome may render the process invalid.

- [16] The consequences of invalidity are governed by section 172(1)(b) of the Constitution, which empowers a court to make any order that is just and equitable. This includes the power to set aside an unlawful decision, but also the power to decline to set it aside where doing so would be disproportionate or unjust, and to grant alternative remedies, such as compensation.

The Applicant's case

- [17] The Applicant's case, in essence, was that the First Respondent's decision to disqualify its bid was irrational and unlawful and that the awards to EMC, Enyane and ZRW were similarly unlawful because those bids did not comply with material tender conditions.
- [18] Regarding its own disqualification, the Applicant argued that its candidate held a qualification that was substantially equivalent to a National Diploma in GISc. It contended that the BEC and BAC applied an overly rigid interpretation of the tender requirements and failed to consider equivalence or relevant experience.
- [19] Regarding Enyane, the Applicant submitted that its candidate did not hold a valid National Diploma in GISc. The Applicant alleged that the qualification submitted was either fraudulent or did not meet the minimum requirements and that the BEC and BAC had therefore favoured Enyane's bid improperly.
- [20] Regarding EMC, the Applicant argued that the submission of passports and work permits for foreign nationals demonstrated non-compliance with a material condition that personnel be South African citizens or permanent residents. The Applicant submitted that Prince Kwembeva was not a South African citizen and that the tender required such citizenship.
- [21] In respect of ZRW, the Applicant submitted that the financial statements provided were for the incorrect period. The tender required financial statements for the three most recent financial years (2021, 2022 and 2023), whereas ZRW had

provided statements for 2020, 2021 and 2022. The Applicant argued that this was a material deviation that should have resulted in disqualification.

The First and Second Respondents' case

- [22] The First and Second Respondents (*Ekurhuleni Municipality and its City Manager*) opposed the application and defended the tender process. They submitted that the bid evaluation was conducted in accordance with the tender specifications and applicable legislation.
- [23] Regarding the Applicant's disqualification, these respondents contended that the Applicant's candidate did not hold a National Diploma in GISc, or any equivalent qualification recognised by the South African Qualifications Authority ("SAQA"). They argued that the BEC and BAC were entitled, and indeed obliged, to apply the tender requirements strictly. To do otherwise would be to undermine the fairness and integrity of the process.
- [24] In respect of the bid submitted by Enyane, the First and Second Respondents submitted that its candidate's qualifications were properly verified and met the tender requirements. They denied any improper favouritism and pointed out that the evaluation process was conducted by a committee with relevant expertise.
- [25] Regarding EMC, they submitted that the submission of passports and work permits did not render the bid non-compliant. The tender conditions did not expressly require that all personnel be South African citizens. Rather, it required that the bidder demonstrate its capacity to perform the work. The work permits confirmed the legal right of the foreign nationals to work in South Africa.
- [26] As far as ZRW is concerned, the First and Second Respondents conceded that the financial statements submitted covered a different period than that specified. However, they argued that this was not a material deviation because the statements still demonstrated the financial capacity of the bidder. The BEC and BAC exercised their discretion to accept the statements, and this decision was entirely rational.

The case for EMC

- [27] EMC supported the First and Second Respondents' opposition. It submitted that its bid was fully compliant. Regarding the issue of foreign nationals, it was argued that the work permits were sufficient proof of the legal status of the proposed personnel and that there was no requirement for South African citizenship *per se*. It further submitted that the Applicant's challenge was an attempt to find technical faults where none existed.

The case for Enyane

- [28] Enyane similarly opposed the application. It submitted that its candidate held the requisite qualification. It argued that the Applicant's challenge to its candidate's qualification was unsubstantiated and appeared to be based on confusion arising from the names of the two candidates (*which, remarkably, appear to have been identical*). It denied any irregularity in the evaluation of its bid.

Discussion and analysis

- [29] It is necessary for this Court to consider the respective cases put forward by each party.

The Applicant's disqualification

- [30] The Applicant's primary complaint concerns the disqualification of its own bid. The tender documentation specified that bidders must propose personnel with a National Diploma in GISc. The Applicant's proposed candidate did not hold such a diploma. The Applicant argued that her qualification was equivalent thereto, but no real evidence was placed before this Court to demonstrate that this qualification had been evaluated and found to be equivalent by SAQA or any other recognised body.
- [31] The principle of legality requires that tender conditions be applied uniformly. If the First Respondent were to accept qualifications that did not strictly meet the tender specifications for one bidder, it would be obliged to do so for all bidders.

This would create uncertainty and undermine the fairness of the process. The BEC and BAC were entitled, and indeed required, to apply the criteria as published. This Court finds that the decision to disqualify the Applicant's bid was lawful and rational.

Enyane's bid

- [32] The Applicant's challenge to Enyane's bid was based on an allegation that its candidate's qualification was invalid. However, the Applicant provided no evidence to substantiate this allegation. Enyane, in its answering affidavit, provided details of its candidate's qualifications and denied any irregularity. On the application papers before this Court, there is no basis to conclude that the BEC and BAC acted unlawfully in accepting Enyane's bid. The Applicant's case on this point amounts to speculation and is dismissed.

EMC's bid

- [33] The issue of foreign nationals and work permits requires closer examination. The Applicant argued that the submission of passports and work permits was non-compliant. However, the tender documentation did not explicitly require that all personnel be South African citizens. It required bidders to demonstrate their capacity to perform the work. The work permits confirmed that the foreign nationals were legally entitled to work in South Africa. In the absence of an express condition requiring citizenship, this Court cannot find that EMC's bid was non-compliant. The decision to accept the bid was rational.

ZRW's bid

- [34] ZRW's submission of financial statements for 2020, 2021, and 2022, rather than 2021, 2022, and 2023, is a somewhat more difficult issue. The tender conditions were clear. Financial statements for the three most recent financial years were required. ZRW's statements were for a period that included 2020 but excluded 2023.

- [35] The First and Second Respondents submitted that this was not a material deviation because the statements still demonstrated financial capacity. However, the principle of fairness and transparency in procurement requires that tender conditions be applied consistently. If a bidder submits financial statements that do not cover the required period, it may be argued that the bid is non-compliant.
- [36] Nevertheless, the question for this court is not whether the BEC and BAC *could* have reached a different decision, but whether the decision they *did* reach was lawful and rational. The BEC and BAC considered the financial statements and concluded that they were sufficient to demonstrate ZRW's capacity to carry out and complete the work in terms of the tender. They exercised a discretion. In the absence of evidence that this discretion was exercised arbitrarily or in bad faith, this Court is not persuaded that the decision is reviewable.

Overall assessment

- [37] The Applicant's case, when viewed as a whole, seeks to impugn the entire tender process on the basis of a series of alleged irregularities. However, the Applicant has failed to establish that any of these alleged irregularities were, in fact, material or that they rendered the process unfair or unlawful.
- [38] The test for review is *not* whether this Court would have reached the same decision as the BEC and BAC but whether they acted lawfully, reasonably and fairly. On the evidence before this Court, this Court is satisfied that the First Respondent's evaluation and award decisions were rationally connected to the purpose of the tender and the information available to it.
- [39] The Applicant's own disqualification was justified. Its challenges to the other bids are unsubstantiated. In the circumstances, the application must fail and be dismissed.

Conclusion

- [40] Having considered the application papers, the various Heads of Argument, and the able submissions of counsel, this Court accepts the case put forward on

behalf of the Respondents and rejects that of the Applicant. The Applicant has not made out a case for review under PAJA or in terms of the principle of legality. This Court finds that the decisions taken by the First Respondent were lawful, rational and procedurally fair.

Costs

- [41] The Respondents asked for costs, including the costs of two counsel where so employed. The general principle is that costs should follow the result. The Applicant has been unsuccessful and should bear the costs of the application.
- [42] The First, Second, Third and Fourth Respondents opposed the application and were represented by counsel. There is no reason to depart from the usual order that the unsuccessful party pay the costs of the successful parties. The Fifth Respondent did not oppose and took no active part in the proceedings. In the premises, no costs order is warranted in its favour.
- [43] Regarding the further supplementary affidavit, despite this Court admitting same, the late filing thereof caused the Respondents to incur additional costs. Those Respondents should be compensated by an appropriate order in respect of costs.
- [44] This Court is further satisfied that a cost order, including the costs of two counsel where so employed, is just and equitable. The matter was voluminous and, in certain respects, fairly complex. The Applicant itself employed two counsel. For the same reasons and in the further exercise by this Court of its general discretion in respect of costs, it would be just and equitable if the costs were payable on Scale B.

Order

- [45] This Court makes the following order:
1. The application is dismissed.
 2. The Applicant is to pay the costs of the First, Second, Third and Fourth Respondents, such costs to include the costs of two counsel where so

employed, including the costs occasioned by the late filing of the supplementary founding affidavit.

A handwritten signature in black ink, which appears to be 'BC Wanless', is written over a solid black rectangular redaction box.

**BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date of Hearing: 28 and 29 January 2026

Date of Judgment: 19 March 2026

Appearances

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