


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2026-096011

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
2026-05-28	
DATE	SIGNATURE

In the matter between:

WORKING ON FIRE (PTY) LTD

Applicant

and

**THE MINISTER OF THE DEPARTMENT OF FORESTRY,
FISHERIES AND THE ENVIRONMENT**

First Respondent

**THE DIRECTOR-GENERAL: THE DEPARTMENT OF
FORESTRY, FISHERIES AND THE ENVIRONMENT**

Second Respondent

THE SAYM-CEF JOINT VENTURE

Third Respondent

TEFLA GROUP (PTY) LTD

Fourth Respondent

NCC ENVIRONMENTAL SERVICE (PTY) LTD

Fifth Respondent

COMMUNITY ENTERPRISE FUND (PTY) LTD

Sixth Respondent

CATALYST ONE (PTY) LTD

Seventh Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 28 May 2026.

JUDGMENT

POTTERILL J

Introduction

[1] The applicant, Working of Fire (Pty) Ltd [WOF] on an urgent basis sought an interim interdict against the first and second respondents, the Minister and the Director-General of the Department of Forestry, Fisheries and the Environment [the Department] from entering into a Service Level Agreement [SLA] with the fourth respondent, TEFLA Group (Pty) Ltd [TEFLA] pursuant to TEFLA being awarded tender DFFE-T041. The Department and TEFLA opposed this application.

Background

[2] The Department in 2022 advertised a Tender for the appointment of a service provider on a five year contract for the Working on Fire programme. WOF and TEFLA were both bidders for the Tender.

[3] The bid evaluation process had five phases, TEFLA progressed to Phase 4, but WOF progressed to Phase 5. As a result the tender was awarded to WOF in November 2022 and a Memorandum of Agreement [MOA] was concluded with WOF on 30 December 2022. The termination date was 4 January 2028.

[4] TEFLA instituted a judicial review to set aside its disqualification and the award of the tender to WOF. The Department conceded the review and by agreement Ledwaba DJP made an order that set aside TEFLA's disqualification and set aside the award to WOF declaring it invalid. Paragraph 5 of the order reads:

“Pending the signing of a new service level agreement for any of the services referenced in the Agreement, pursuant to a re-award of the tender, or pursuant to a new tender process, the declaration of invalidity of the Agreement is suspended.”

[5] The Department re-awarded the Tender and TEFLA was determined to be the successful bidder. The Department entered into negotiations with TEFLA and concluded an agreement for two years instead of the original five years. The contract price was accordingly reduced to what TEFLA had quoted for year four and five of the Tender.

[6] The parties agreed that the matter was urgent.

Requirements for an interim interdict against an organ of state

[7] It is trite that WOF has to establish it has a prima facie right warranting interim relief pending the review of the tender award. Furthermore, it must have a well-grounded apprehension of irreparable harm if the interim relief is not granted, the balance of convenience must lie with WOF, absence of any other satisfactory remedy and the separation of powers harm must be considered.

WOF’s submissions on a prima facie right

[8] Everybody’s right to lawful, reasonable and procedurally fair administrative action is entrenched in our Constitution.¹ To invoke this right by means of an interim relief, something more is required; this right can only be prima facie if irreparable harm would follow if this right is not protected. The only right WOF is relying on is the right to review submitting that the award is reviewable.

WOF’s submissions on irreparable harm

[9] The irreparable harm set out by WOF is that it will be deprived of the opportunity to render further services in terms of the order of Court with consequential job losses.

WOF’s submissions on prospects of success

¹ Section 33

[10] It further submitted that the award is reviewable under PAJA due to a material deviation from the tender framework as the tender period awarded to TEFLA was shortened from a 5-year contract to a 2-year contract. This resulted in the award being arbitrary as a decision on pricing was not solicited. Negotiations on pricing only took place with TEFLA to which the other bidders involved were not privy. The negotiations was post-award.

[11] Furthermore, the Absa Bank guarantee on which the previous tender was set aside is still relevant and the explanation of TEFLA that it was formerly a close corporation and therefore it is correct that it banked at Absa since 30 October 2015 was incorrect. TEFLA's Central Supplier Database report indicated that its bank account was opened on 17 June 2020. TEFLA's financials were bad as the guarantee was only a purported guarantee. TEFLA also did not understand the scope of the Tender and that the reduced scope renders the award to be set aside. It also raised previous BEC comments concerning TEFLA's operational capacity.

[12] It submitted it had no alternative remedy.

Reasons for decision

WOF's prima facie right

[13] WOF has no prima facie right as a bidder in terms of a tender, the court order or the award. The previous award of the tender to WOF was set aside because WOF was disqualified from the Tender. The purpose of the order of the suspension of the invalidity of the tender that was awarded to WOF was to allow the Department to correct the defect, to advance effective public administration and to entrench the rule of law.² Suspension was a remedy, not compensation or reward to WOF, simply because it has no right to benefit from an unlawful contract.

[14] WOF also has no prima facie right because as submitted "it has a legal right to review the decision of the Department." In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) the Court made it clear

² *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC) par [29]

that because no right stems directly from a right as a mere bidder it must flow from a right, that “if not protected by an interdict, irreparable harm would ensue”.³

[15] The irreparable harm raised by WOF does not afford it a prima facie right. The rendering of further services was only a remedy, it cannot rely on a deprivation of these services as a prima facie right. No right can flow from a disqualification from a Tender and the consequential setting aside of the Tender.

[16] The job losses of the employees of WOF is not a ground sustaining irreparable harm. In terms of the SLA TEFLA is required, and commits to do so, to absorb the employees. This is not only a laudable programme in job creation, but also serves to address disaster management. The Tender has been awarded and the SLA is to be signed, no irreparable operational, commercial or organisational harm will occur.

[17] Lastly WOF submitted that if the interim interdict is not granted any success on review will be rendered as futile due to the contract expiring in 2028. The prospects of success of WOF being successful on review is poor. The initial numerous issues raised in the founding papers dwindled in argument to only two aspects.

[18] In argument the issues further petered out as the whole issue around Absa’s bank guarantee also had to be abandoned due to a fatal flaw in the argument.

[19] The only remaining issue was that the contract was negotiated with TEFLA for two years instead of the initial five years of the Tender, with payment as set out for respectively years four and five. This also reduced the scope of the work and rendered the award of the Tender reviewable.

[20] It is common cause that the Tender period expires in 2028. Furthermore, the award of the Tender was a re-award in terms of the Court Order. I find it difficult to conclude there are prospects of success that a Court will set aside the Tender with this as the only remaining ground of review. The Department explained that due to WOF being paid during the suspension, the remaining 2 years with budgetary constraints only allowed for a further 2 year allocation, not a new 5 year allocation.

³ Par [50]

[21] The Tender did not reduce the scope because it was advertised as for 5 years. The Department after negotiation with TEFLA, which is lawful, communicated an award for the remaining period of the original tender. After taking a judicial peak the prospects of success on review of the Tender is poor.


[22] WOF has not demonstrated that it has a prima facie right, even open to some doubt, to interdict the Department from concluding a SLA with TEFLA, pending a review. In finding it has no prima facie right I need not address the other requirements.

[23] I see no reason why the costs should not follow the result.

[24] The order is as follows:

The relief in part A of the notice of motion is dismissed. No interim interdict is granted.

The applicant is to carry the costs of the first, second and fourth respondents. The respondents are entitled to the costs of two counsel respectively, on scale C.


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-096011

HEARD ON: 19 May 2026

FOR THE APPLICANT: ADV. M. DEWRANCE SC

ADV. M. SMIT

INSTRUCTED BY: Cliffe Dekker Hofmeyr Inc.

FOR THE 1ST AND 2ND RESPONDENT: ADV. I. JAMIE SC

ADV. A.G. CHRISTIANS

INSTRUCTED BY: State Attorney, Pretoria

FOR THE 4TH RESPONDENT: ADV. D. MPOFU SC

ADV. N. CHESI-BUTHLEZI

INSTRUCTED BY: Mabuza Attorneys

DATE OF JUDGMENT: 28 May 2026