

Reportable:	<b>YES</b>
Circulate to Judges:	<b>YES</b>
Circulate to Magistrates:	<b>NO</b>
Circulate to Regional Magistrates:	<b>NO</b>



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION MAHIKENG**

**CASE NO: 4254/2025 & 3326/2025**

In the consolidated review applications between:

**CASE NO: 4254/2025**

<b>TSHENOLO WASTE (PTY) LTD</b>	<b>APPLICANT</b>
And	
<b>MEC FOR HEALTH: NORTH-WEST</b>	<b>FIRST RESPONDENT</b>
<b>ULTIMATE WASTE (PTY) LTD</b>	<b>SECOND RESPONDENT</b>
<b>AUDITOR-GENERAL OF SA</b>	<b>THIRD RESPONDENT</b>
<b>MEC FOR TREASURY: NORTH-WEST</b>	<b>FOURTH RESPONDENT</b>
<b>PROGRESSIVE PROJECTS ADMINISTRATION</b>	<b>FIFTH RESPONDENT</b>
<b>LIMPOPO SUPPLEMENTS TRADERS</b>	<b>SIXTH RESPONDENT</b>
<b>MAKHATHINI MEDICAL WASTE (PTY)LTD</b>	<b>SEVENTH RESPONDENT</b>
<b>SIYABONGA INDUSTRIAL SERVICES (PTY) LTD</b>	<b>EIGHTH RESPONDENT</b>

<b>SCELO BUSINESS CONSULTANCY (PTY) LTD</b>	<b>NINTH RESPONDENT</b>
<b>PLEASSANT MAPHOKA (PTY) LTD</b>	<b>TENTH RESPONDENT</b>
<b>VSL GENERAL TRADING (PTY) LTD</b>	<b>ELEVENTH RESPONDENT</b>
<b>MAHLABANA WASTE (PTY) LTD</b>	<b>TWELFTH RESPONDENT</b>
<b>MASA WASTE MANAGEMENT (PTY) LTD</b>	<b>THIRTEENTH RESPONDENT</b>
<b>PHUTHING MEDICAL WASTE MANAGEMENT (PTY) LTD</b>	<b>FOURTEENTH RESPONDENT</b>
<b>MAMPURU WASTE MANAGEMENT CC</b>	<b>FIFTEENTH RESPONDENT</b>
<b>BUHLE WASTE (PTY) LTD</b>	<b>SIXTEENTH RESPONDENT</b>
<b>KLT MEDICAL AND PROJECTS</b>	<b>SEVENTEENTH RESPONDENT</b>
<b>COMPASS MEDICAL WASTE SERVICES</b>	<b>EIGHTEENTH RESPONDENT</b>

**AND**

**CASE NO 3326/2025**

<b>TSHENOLO WASTE (PTY) LTD</b>	<b>APPLICANT</b>
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and

<b>MEC FOR HEALTH: NORTH WEST</b>	<b>FIRST RESPONDENT</b>
<b>AUDITOR-GENERAL OF SA</b>	<b>SECOND RESPONDENT</b>
<b>MEC FOR TREASURY: NORTH-WEST</b>	<b>THIRD RESPONDENT</b>
<b>ULTIMATE WASTE MANAGEMENT (PTY) LTD</b>	<b>FOURTH RESPONDENT</b>
<b>BUHLE WASTE (PTY) LTD</b>	<b>FIFTH RESPONDENT</b>
<b>MAHLABANA WASTE (PTY) LTD</b>	<b>SIXTH RESPONDENT</b>
<b>PHUTHING MEDICAL WASTE</b>	<b>SEVENTH RESPONDENT</b>

*This judgment is handed down electronically by distributing to the parties' legal representatives by e-mail. The date that the judgment deemed to be handed down is Friday, 5 June 2026 at 16h00.*

## **JUDGMENT**

### **MORGAN AJ**

#### **INTRODUCTION**

[1] There are three interrelated applications<sup>1</sup> before me for determination, all of which arise from the procurement by the North West Department of Health of services for the collection, transportation, treatment and disposal of healthcare risk waste generated at the public hospitals and health facilities of the North West Province. Healthcare risk waste is hazardous waste. Its safe removal and destruction is not an ordinary commercial convenience; it is a service upon which the health and safety of patients, healthcare workers and the public depends.

[2] The first application is a review application instituted by Tshenolo Waste (Pty) Ltd ("the applicant" or "Tshenolo") under case number 4254/2025, to review and set aside the decision of the MEC for Health, North West Province ("the first respondent" or "the MEC") to reject the applicant's bid and to award the four-year tender, Tender NWDOH 24/2024, to Ultimate Waste (Pty) Ltd ("Ultimate Waste") for the collection and disposal of medical waste from the public hospitals of the Province.

[3] The second application, under case number 3326/2025, is an interdict and review application by which the applicant sought to interdict the implementation of the four-year tender awarded to Ultimate Waste and to review the award of the closed, month-to-month tender (Tender NWDOH/CB/05/2025) which the MEC put in place

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<sup>1</sup> The papers in the applications were voluminous and the issues quite complex and intricate.

pursuant to the interim interdict that had earlier stayed the implementation of the four-year award pending these review proceedings.

[4] The third application is an interlocutory application brought by Ultimate Waste in terms of Uniform Rule 6(5)(g), to refer to oral evidence the question whether two documents emanating, on their face, from Absa Bank Limited an overdraft facility letter dated 21 December 2023 and a vehicle and asset finance facility letter dated 18 December 2019, which the applicant submitted with its bid, are authentic and genuine and sufficient to meet the bid requirements. This application was launched pursuant to the order I granted, by agreement between the parties, on 19 January 2026, in terms of which the MEC was directed to deliver the applicant's complete bid documents to Ultimate Waste, and Ultimate Waste was given leave either to file a further affidavit or to apply for a referral to oral evidence on that discrete issue.

[5] By my order of 19 January 2026 the two review applications were consolidated for hearing. I heard argument in open court on 19 January 2026 and, after the filing of the further affidavits and heads of argument, virtually on 26 and 27 February 2026. Adv K Tsatsawane SC appeared for Tshenolo Waste; Adv L Montsho-Moloiwane SC with Adv G I Mothibi for the first and fourth respondents (MECs Health and Treasury respectively); and Adv L J Morison SC with Adv A Laher for Ultimate Waste. I am indebted to all counsel for their submissions.

## **BACKGROUND AND COMMON CAUSE FACTS**

[6] The applicant (Tshenolo) is the incumbent service provider. It has rendered the healthcare risk waste service to the Department under an expired tender, latterly on a month-to-month basis, and it renders comparable services to a number of other organs of state in several provinces. Ultimate Waste is the entity to which the impugned four-year tender was awarded.

[7] Tender NWDOH 24/2024 was advertised on or about 12 November 2024. The closing date for the submission of bids was 9 December 2024. Sixteen bids were received. The bid validity period was 90 days, which on the respondents' own version expired on or about 9 March 2025. On 10 February 2025 the first respondent addressed a request for an extension of the validity period by 30 days, to 9 April 2025, to allow for the finalisation of the evaluation and adjudication.

[8] Before the award was made, the first respondent referred the procurement to its Provincial Internal Audit (“the PIA”) for a pre-award review. On 7 April 2025 the PIA furnished a report. The PIA raised a series of material concerns, including that: (a) ten of the sixteen bids were eliminated for failing the bidder requirements, four (including the applicant) for failing functionality, one was eliminated after “possible fraudulent issues” and one was recommended but with concerns; (b) the project plan reflected a three-year contract for some R200 million whereas the advertisement reflected four years; (c) the bid validity period had been incorrectly calculated; and, importantly, (d) “the extension of the validity period was not accepted by all bidders as required”, six of the bidders having failed to respond.

[9] Notwithstanding those findings, on 8 April 2025 the first respondent appointed Ultimate Waste, and the contract was signed on or about 15 April 2025. The applicant’s bid had been eliminated at the functionality stage on the basis that it failed to score the minimum functionality points; the bid evaluation committee having allocated it zero points for financial capacity on the footing that its overdraft facility documentation was older than three months.

[10] On 30 May 2025 Maodi AJ granted an interim interdict (Part A) restraining the first and second respondents (The MEC and Ultimate Waste) from implementing the award pending the determination of Part B, the review now before me. Reasons were furnished on 13 August 2025. In the related application under case number 3326/2025, Tsautse AJ struck Part A from the roll for lack of urgency on 5 and 11 September 2025, with costs. On 19 January 2026 I consolidated the two matters, directed the production of the applicant’s complete bid documents and made provision for the interlocutory application that followed.

## **THE ISSUES**

[11] Three questions fall to be decided. First, whether Ultimate Waste’s interlocutory application for a referral to oral evidence should succeed. Second, whether the decision to reject the applicant’s bid and to award Tender NWDOH 24/2024 to Ultimate Waste falls to be reviewed and set aside and, if so, what the just and equitable remedy is. Third, what consequential and ancillary relief, including any relief under the Prevention and Combating of Corrupt Activities Act 12 of 2004 (“PRECCA”), and what

costs orders, ought to follow. It is convenient to deal with the interlocutory application first, because Ultimate Waste contended that, if granted, it disposes of the reviews.

## **ULTIMATE WASTE’S INTERLOCUTORY APPLICATION TO REFER THE REVIEW TO ORAL EVIDENCE**

[12] Ultimate Waste’s case on the referral may be shortly stated. It contends that the applicant’s two Absa documents are “not genuine” and “fraudulent”; that the overdraft letter bears an internal inconsistency (it was approved on 21 December 2023 but stipulates a next review date of 30 December 2021); that the vehicle and asset finance letter, though addressed to the applicant, records the facility as having been granted to an unrelated entity, “Pegasus Group (Pty) Ltd”; and that the authenticity of these documents is a genuine, far-reaching dispute of fact which cannot be resolved on the papers and must be referred to oral evidence. It relied on *Mamadi*<sup>2</sup>, *Wallach*<sup>3</sup>, *Wightman*<sup>4</sup> and the *Plascon-Evans*<sup>5</sup> rule.

[13] The applicable principles are not in dispute. A court may, under Rule 6(5)(g), refer a matter to oral evidence where the application cannot properly be decided on affidavit and there is a genuine dispute of fact that is material to the relief. As the Constitutional Court reaffirmed in *Mamadi*, where, in a Rule 53 review, genuine, far-reaching and fundamental disputes of fact emerge which cannot be resolved on the *Plascon-Evans* approach, the proper course is generally a referral to oral evidence rather than a dismissal. But the converse is equally true: a referral is neither necessary nor appropriate where the dispute sought to be ventilated is not genuine or is not material to the outcome.

[14] I am not persuaded that a referral is warranted, for three reasons. First, the dispute Ultimate Waste seeks to ventilate is not genuine in the *Wightman* sense. Ultimate Waste does not allege, on personal knowledge or on any evidential basis, that Absa did not issue the documents. Its case rises no higher than that the

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<sup>2</sup> *Mamadi and Another v Premier, Limpopo Province and Others* [2022] ZACC 26; 2024 (1) SA 1 (CC) at paras 42–45.

<sup>3</sup> *Wallach v Lew Geffen Estates CC* 1993 (3) SA 258 (A) at 263H.

<sup>4</sup> *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at para 13.

<sup>5</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C.

documents are “problematic” and “do not appear to be genuine” because their authors have not filed confirmatory affidavits. An internal review-date inconsistency on a bank’s pro forma letter, and the fact that an asset-finance letter addressed to the applicant references a related financing vehicle, do not, without more, establish that the documents did not emanate from the bank. That is the “fog” against which the Supreme Court of Appeal cautioned in *Wightman*.

[15] Second, and decisively, the authenticity of the applicant’s financial documents is not material to the reviews. The MEC did not reject the applicant’s bid on the ground that its documents were not genuine. It rejected the bid on the entirely different ground that the overdraft documentation was older than three months. Neither the MEC nor Ultimate Waste challenged the authenticity of the applicant’s documents in their answering affidavits in the main reviews. The applicant’s entitlement to relief does not depend on proving that its documents are authentic; it depends on whether the impugned decisions are lawful. As I explain below, the applicant has established grounds of review wholly unrelated to the authenticity of its Absa documents.

[16] Third, a respondent who genuinely believed that the reviews could not be decided on the papers would have asked that the reviews be dismissed under Rule 6(5)(g); Ultimate Waste did not. Its election to seek only a referral of a discrete, immaterial issue is, as the applicant submitted, consistent with a strategy to delay the final determination of reviews while it continues to perform under an award that is under challenge. The referral would not advance the just and expeditious decision of the matter contemplated by Rule 6(5)(g); it would frustrate it.

[17] For these reasons the interlocutory application falls to be dismissed.

## **THE REVIEW APPLICATIONS: LEGAL FRAMEWORK**

[18] Section 217(1) of the Constitution requires that an organ of state which contracts for goods or services must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.<sup>6</sup> The award of a tender is administrative action and is reviewable under the Promotion of Administrative Justice

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<sup>6</sup> Section 217(1) of the Constitution of the Republic of South Africa, 1996.

Act 3 of 2000 (“PAJA”).<sup>7</sup> As the Constitutional Court emphasised in *Allpay*, the establishment of a single ground of review is sufficient; once a ground of review is established the conduct must be declared unlawful under section 172(1)(a) of the Constitution, and the consequences are then addressed in a just and equitable order under section 172(1)(b).<sup>8</sup> Procedural requirements may not be subordinated to a supposed inevitability of outcome, and deviations from a fair process “may themselves all too often be symptoms of corruption or maladministration in the process”.

### **FIRST GROUND: AWARD AFTER EXPIRY OF THE TENDER VALIDITY PERIOD**

[19] The tender validity period is the period within which the organ of state must award or cancel the tender. If a tender is not awarded within its validity period, the process comes to an end and there are no longer valid bids capable of acceptance. An organ of state may extend the validity period, but only by timeously requesting and obtaining the consent of all the participating bidders before the expiry of the period. These principles are settled.<sup>9</sup> They are reinforced by the applicable Provincial Treasury Instruction Note 1 of 2022/23, para 5.6, which provides that a bid may be deemed extended only if all bidders have accepted the request to extend.

[20] On the respondents’ own version, and on the findings of their own Provincial Internal Audit, the request to extend the validity period was not accepted by all bidders, six bidders did not respond. On the orthodox approach in *Takubiza*, the absence of consent from all participating bidders means the process came to an end, and the subsequent award was unlawful.

[21] The respondents resisted this conclusion. They relied on *Aventino*,<sup>10</sup> *Aurecon*<sup>11</sup>

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<sup>7</sup> Section 6(2) of the *Promotion of Administrative Justice Act 3 of 2000 (PAJA)*, *Millennium Waste Management (Pty) Ltd v Chairperson, Tender Board: Limpopo Province and Others* [2007] ZASCA 165; 2008 (2) SA 481 (SCA) para 4.

<sup>8</sup> *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* [2013] ZACC 42; 2014 (1) SA 604 (CC) paras 23–27 and 40.

<sup>9</sup> *City of Ekurhuleni Metropolitan Municipality v Takubiza Trading & Projects CC and Others* [2022] ZASCA 82; 2023 (1) SA 44 (SCA) paras 11–13; *Joubert Galpin Searle Inc and Others v Road Accident Fund and Others* [2014] ZAECPHC 19; 2014 (4) SA 148 (ECP).

<sup>10</sup> *Aventino Ecotroopers Joint Venture and Others v MEC for the Department of Roads and Transport, Gauteng Province and Others* [2025] ZASCA 32; 2025 (4) SA 419 (SCA).

<sup>11</sup> *Aurecon South Africa (Pty) Ltd v City of Cape Town* [2015] ZASCA 209; 2016 (2) SA 199 (SCA); and on appeal *City of Cape Town v Aurecon South Africa (Pty) Ltd* [2017] ZACC 5; 2017 (4) SA 223 (CC).

and *Wattpower*,<sup>12</sup> for the proposition that there is no purpose in seeking an extension from bidders who have already been eliminated, and that a supply-chain regime may treat non-responsive bidders as excluded. They also pointed to the recent decision in *Buhle Waste*,<sup>13</sup> in which a medical waste tender survived challenge because valid, consented extensions had been obtained.

[22] There is force in the submission that the validity-period ground is not, on these authorities, free from difficulty. In *Aventino* the exclusionary regime was expressly provided for in the supply-chain management policy, whereas in the present matter the respondents themselves accepted that the Provincial Treasury Instruction Note is “not clear” on the treatment of non-responsive bidders, and no equivalent exclusionary stipulation was placed before me. In *Buhle Waste* the extensions were consented to; here they were not. I am, on balance, satisfied that the applicant has the better of the argument on this ground. I need not, however, rest my decision on it alone, because the second and third grounds are, in my view, dispositive and place the matter beyond doubt.

## **SECOND GROUND: THE UNLAWFUL DISQUALIFICATION OF THE APPLICANT’S BID**

[23] Bidders were required to demonstrate financial capacity to self-fund the execution of the tender by submitting either stamped bank statements not older than three months *or* proof of an overdraft facility. The applicant submitted proof of overdraft facilities exceeding the prescribed amount. It was nonetheless allocated zero points and eliminated, the bid evaluation committee having resolved, on internal legal advice, that the “not older than three months” qualification applicable to bank statements applied equally to overdraft facilities.

[24] That reasoning is unlawful. The committee’s own minutes, annexed to the MEC’s answering affidavit, record that the “overdraft facility point was not explicit nor require a statement and it put the committee on the predicament to evaluate the requirement of the bidder”. The invitation to bid did not stipulate that an overdraft

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<sup>12</sup> *Wattpower Solutions CC v Transnet SOC Ltd* [2022] 1 All SA 892 (KZD) para 38.

<sup>13</sup> *MEC for Health: Gauteng Province and Others v Buhle Waste (Pty) Ltd* [2025] ZASCA 102 (15 July 2025), in which the Supreme Court of Appeal upheld a series of validity-period extensions to which all subsisting bidders had in fact consented.

facility had to be “not older than three months”, nor that the requirement applicable to bank statements applied to overdraft facilities. To introduce such a requirement during evaluation, and to apply it to eliminate the applicant without it ever having been communicated to bidders, rendered the process neither fair nor transparent and offended section 217 of the Constitution.<sup>14</sup>

[25] The point is underscored by the fact that the MEC has since amended the requirement in a subsequent tender to spell out, in terms, what proof of an overdraft facility entails. That the requirement had to be clarified confirms that it was not clear when it was used to disqualify the applicant. On this ground alone, the rejection of the applicant’s bid falls to be reviewed and set aside.

### **THIRD GROUND: ULTIMATE WASTE OUGHT TO HAVE BEEN DISQUALIFIED FRAUDULENT AND NON-GENUINE DOCUMENTS**

[26] The most serious ground concerns Ultimate Waste’s own bid. The applicant established, and it is in substance common cause, that two reference letters submitted by Ultimate Waste in support of the experience component of its bid purportedly from Unjani Clinic and from Sterling Hospital, both dated 1 October 2019, are not genuine and authentic.

[27] The letters are, tellingly, in materially identical terms and both refer to “Sterling Hospital”. The Chief Executive Officer of Unjani Clinics NPC has confirmed, in writing, that the document attributed to Unjani Clinic “has not been prepared by Unjani Clinic NPC and does not appear to be legitimate”; that Unjani does not use Ultimate Waste’s services and has never appointed it; and that the Welkom Clinic was not even operational in 2019, when the letter is dated. The letter attributed to Sterling Hospital is no better: Sterling Hospital, on its own public record, only commenced operations in 2022 and could not have appointed Ultimate Waste with effect from 1 November 2019. Of the seven references on which Ultimate Waste relied, only three confirmed its claimed experience.

[28] The submission of fraudulent or non-genuine documents in a bid is, on any approach, fatal. It is destructive of the fairness, integrity and competitiveness which

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<sup>14</sup> *AllPay* (above) paras 23–27; and see *Millennium Waste Management* (above), on the unfairness of disqualification for non-compliance with a requirement not clearly imposed.

section 217 demands, and it ought to have resulted in Ultimate Waste's disqualification. A bid procured or advanced by fraud cannot stand: *fraus omnia corrumpit* fraud unravels everything. Our courts have repeatedly recognised that fraudulent or dishonest conduct in a tender process stands on an entirely different footing from *bona fide* administrative error, and attracts consequences that mere negligence does not.<sup>15</sup>

[29] The significance of this ground is heightened by the position Ultimate Waste itself adopted. In support of its interlocutory application, Ultimate Waste contended, as a matter of principle, that the submission of documents which "are fraudulent and not authentic and genuine" is destructive of a bid and warrants disqualification, and that if such documents are demonstrated, the bidder's case "must fail". In its heads of argument on the referral, Ultimate Waste submitted that, if a bidder's documents are shown to be problematic and not genuine, "then [that bidder's] application must fail". That submission is a concession of the governing legal principle. It cuts both ways. Ultimate Waste cannot invoke the fatal consequences of non-genuine documents against the applicant while resisting the identical consequence for its own demonstrably non-genuine reference letters. On Ultimate Waste's own argument, its bid was liable to disqualification.

[30] It follows that, far from being a candidate for the award, Ultimate Waste ought never to have been awarded the tender. The MEC, once apprised of these facts, was under a duty to act; an organ of state may not sit by while an award tainted by illegality stands.<sup>16</sup> Its persistence in opposing the review, and its failure to place before the court its response to the adverse findings of its own Provincial Internal Audit, are matters I take into account below.

[31] Any one of the second and third grounds is sufficient to vitiate the award. Taken together they are overwhelming. The decision to reject the applicant's bid and to award

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<sup>15</sup> *Transnet Ltd v Sechaba Photoscan (Pty) Ltd* [2004] ZASCA 24; 2005 (1) SA 299 (SCA); *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2014] ZASCA 21, and on the principle that liability follows fraud, *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2022] ZACC 41; 2023 (2) SA 31 (CC); compare *Steenkamp NO v Provincial Tender Board, Eastern Cape* [2006] ZACC 16; 2007 (3) SA 121 (CC).

<sup>16</sup> *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* [2017] ZACC 40; 2018 (2) SA 23 (CC) paras 37–41.

Tender NWDOH 24/2024 to Ultimate Waste must be declared unlawful and set aside under section 172(1)(a) of the Constitution and section 6 of PAJA.

## REMEDY

[32] The applicant sought substitution an order awarding the tender to it alternatively remittal. The discretionary choice of a just and equitable remedy under section 172(1)(b) of the Constitution and section 8 of PAJA arises only after, and follows upon, the finding of invalidity.<sup>17</sup> The remedial power is generous and wide, bounded only by considerations of justice and equity.<sup>18</sup>

[33] Substitution remains the exception, not the rule. The ordinary course is to remit, because a court is generally slow to assume a discretion entrusted by statute to another functionary.<sup>19</sup> In *Trencon* the Constitutional Court held that the two factors that weigh most heavily are whether the court is in as good a position as the administrator to make the decision and whether the outcome is a foregone conclusion; these are considered cumulatively, together with other relevant factors such as delay, bias or incompetence, the ultimate question being what is just and equitable.<sup>20</sup>

[34] I have concluded that substitution is not appropriate here, notwithstanding the applicant's strong case. The vice in this procurement was not confined to the award; it infected the process as a whole. The Provincial Internal Audit identified pervasive irregularities in the confirmation of budget, the contract duration, the calculation and extension of the validity period, the verification of experience and the assessment of financial capacity affecting multiple bidders. In those circumstances the court is not in as good a position as a properly constituted evaluation, lawfully conducted, to determine who should be awarded the tender, and the outcome cannot be said to be

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<sup>17</sup> *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* [2010] ZACC 26; 2011 (4) SA 113 (CC) paras 83–84.

<sup>18</sup> *Electoral Commission v Mhlope and Others* [2016] ZACC 15; 2016 (5) SA 1 (CC) para 132; AllPay (above).

<sup>19</sup> *Johannesburg City Council v Administrator, Transvaal* 1969 (2) SA 72 (T); *Premier, Mpumalanga and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal* [1998] ZACC 20; 1999 (2) SA 91 (CC) para 50.

<sup>20</sup> *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC) paras 47–49.

a foregone conclusion. To award the tender to the applicant by substitution would be to build a fresh award on a foundation that has been shown to be unsound.

[35] The just and equitable course is to set aside the award and to direct the first respondent to commence a fresh tender process, *de novo*, conducted lawfully and transparently. Because the service in issue is the removal of hazardous healthcare risk waste from public hospitals, an interruption would imperil public health. To avoid that, and to preserve continuity pending a lawful award, the first respondent must continue to utilise the services of the applicant on a month-to-month basis under its existing arrangement until the new process is completed. This balances the vindication of legality against the practical necessity of an uninterrupted essential service, as the just and equitable jurisdiction permits.<sup>21</sup>

### **THE APPLICATION UNDER CASE NUMBER 3326/2025**

[36] The relief in case number 3326/2025 was directed at restraining the implementation of the four-year award and at the closed, month-to-month process the MEC adopted after the interim interdict. Given the setting aside of the four-year award and the interim arrangements I have directed in favour of the applicant pending a fresh process, the review under case number 3326/2025 succeeds to the extent reflected in the order. The interdictory relief is, in substance, subsumed in and rendered moot by the relief granted in the consolidated reviews.

### **REFERRAL UNDER THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT**

[37] This matter cannot end with the setting aside of the award. The court has found that documents which are not genuine and authentic were used in a public tender for a contract of very substantial value, and Ultimate Waste itself has characterised the use of such documents as “fraudulent”. The forgery or uttering of forged documents, and fraud, in connection with a public procurement engage the criminal law and the Prevention and Combating of Corrupt Activities Act 12 of 2004 (“PRECCA”).

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<sup>21</sup>Section 172(1)(b) of the Constitution of the Republic of South Africa, 1996; *AllPay* (remedy) and *Gijima* (above).

[38] Section 34 of PRECCA imposes a duty on any person who holds a position of authority which includes the accounting officer or accounting authority of a department who knows or ought reasonably to have known or suspected that another person has committed an offence of theft, fraud, extortion, forgery or uttering a forged document, or a corruption offence, involving an amount of R100 000 or more, to report that knowledge or suspicion to a police official of the Directorate for Priority Crime Investigation.<sup>22</sup> The value of this tender is well in excess of that threshold. The accounting authority of the first respondent, being seized of the facts found in this judgment, is obliged to comply with that duty.

[39] PRECCA also establishes the Register for Tender Defaulters, on which a court convicting a person of an offence under section 12 or section 13 of PRECCA may order the convicted person's particulars to be endorsed, with the consequence that the defaulter may be excluded from public contracting for a determined period.<sup>23</sup> The National Treasury, in turn, maintains the Database of Restricted Suppliers, on which a supplier that has committed fraud or misrepresented facts may be restricted from doing business with the State.

[40] Where a court, in the course of a review, becomes aware of apparent tender fraud, it is both entitled and, consistent with its constitutional duty to uphold the rule of law, well advised to direct that the matter be referred to the appropriate authorities. That course was followed in *Zinyana*,<sup>24</sup> where the court directed the persons concerned to comply with their section 34 duties, referred the matter to the Directorate for Priority Crime Investigation, and directed the registrar to transmit the judgment to the relevant authorities. The courts are enjoined to be vigilant against corruption in public procurement, and to play their part in ensuring that apparent wrongdoing is

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<sup>22</sup> Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.

<sup>23</sup> Sections 28 to 31 of PRECCA. This is distinct from the Database of Restricted Suppliers maintained by the National Treasury under the public finance legislation, on which suppliers who have, inter alia, committed fraud or misrepresented facts may be restricted.

<sup>24</sup> *Zinyana v Smith and Others* [2023] ZAGPJHC 827; 2023 (2) SACR 532 (GJ) para 33, in which the court directed the persons in positions of authority to comply with their reporting duties under section 34 of PRECCA, referred the matter to the Directorate for Priority Crime Investigation, and directed the registrar to transmit the judgment.

investigated by those charged with that function.<sup>25</sup>

[41] It is not for this Court to make any finding of criminal liability; that is the function of the prosecuting authority and, ultimately, of a criminal court. What this Court can and does do is to direct that the matter be placed before those who are charged with investigating and deciding whether offences have been committed and whether the second respondent should be restricted or listed. The order I make below gives effect to that, and to the section 34 duty of the accounting authority of the first respondent.

## **COSTS**

[42] Costs follow the result. The applicant has succeeded in both reviews and in resisting the interlocutory application. The first respondent and Ultimate Waste opposed the reviews unsuccessfully; the award was tainted by serious irregularity and by the use of non-genuine documents. It is just that they bear the costs of Part B jointly and severally, on the party-and-party scale, including the costs of two counsel where so employed, on scale C. Ultimate Waste, having brought and lost the interlocutory application, must pay the applicant's costs occasioned by it on the same basis, save for the costs occasioned by the postponement of 19 January 2026, which were the subject of a separate arrangement and as to which each party should bear its own costs.

## **ORDER**

In the consolidated review applications under case numbers 4254/2025 and 3326/2025, I make the following order:

1. The review applications under case numbers 4254/2025 and 3326/2025 succeed.
2. The first respondent's decision to reject the applicant's bid, and to award *Tender NWDOH 24/2024* to the second respondent (Ultimate Waste (Pty) Ltd), is reviewed, declared unlawful and set aside.

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<sup>25</sup> Section 165 of the Constitution, on the judicial authority and the obligation of organs of state to assist and protect the courts; and *AllPay* (above) para 27, on deviations from process as possible symptoms of corruption.

3. The first respondent is directed to commence a new tender process (*de novo*) for the procurement of the services that are the subject of *Tender NWDOH 24/2024*.
4. Pending the re-advertisement, the commencement of the new tender process and the award of a new tender, the first respondent is directed to utilise the services of the applicant (Tshenolo Waste (Pty) Ltd) and to extend the applicant's month-to-month contract awarded under the expired tender, so as to ensure the uninterrupted removal and disposal of healthcare risk waste promptly.
5. The accounting authority of the first respondent is directed, within 15 days of this order, to report the tender fraud and/or misrepresentation of information arising from the second respondent's use of documents which are not genuine and authentic, as found in this judgment, to the relevant authorities, including the accounting authority of the MEC for Treasury, North West Province, and the division or unit of the National Treasury responsible for processing complaints, investigating, and determining whether the second respondent ought to be restricted on the Database of Restricted Suppliers and/or endorsed on the Register for Tender Defaulters for contravening the applicable legislative and regulatory framework, including but not limited to the relevant provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004.
6. The accounting authority of the first respondent is further directed, within 15 days of this order and in compliance with its duty under section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004, to report the matter to the Directorate for Priority Crime Investigation of the South African Police Service to investigate and, if cause exists, to refer the matter to the relevant Director of Public Prosecutions to consider and decide whether a *prima facie* contravention of the applicable legislative framework, including but not limited to the relevant provisions of the Prevention and Combating of Corrupt Activities Act 12 of 2004, has been committed and whether a prosecution is warranted.
7. The Registrar of this Court is directed to submit a copy of this judgment, together with the full transcript of the proceedings of 26 February 2026, to the

National Treasury, to the North West Provincial and National Commissioners of the South African Police Service, and to the Provincial and National Directors of Public Prosecutions respectively.

8. The interlocutory application brought by the second respondent (Ultimate Waste (Pty) Ltd) to refer certain issues in the review applications to oral evidence in terms of Uniform Rule 6(5)(g) is dismissed.
9. The costs of Part B in the review application under case number 4254/2025 and in the review application under case number 3326/2025 shall be borne by the MEC for Health, North West Province (the first respondent) and Ultimate Waste (Pty) Ltd, jointly and severally, the one paying the other to be absolved, on the party-and-party basis, including the costs of two counsel where so employed, on scale C.
10. The second respondent (Ultimate Waste (Pty) Ltd) shall pay the applicant's costs in the interlocutory application on the party-and-party basis, including the costs of two counsel where so employed, on scale C, excluding the costs occasioned by the postponement of the matter on 19 January 2026.
11. Each party shall pay its own costs occasioned by the postponement of the matter on 19 January 2026.



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**M MORGAN**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**NORTHWEST DIVISION, MAHIKENG**

Heard on: 19 January 2026 (open court) and 26 & 27 February 2026 (Virtually).

Judgment delivered on: Friday, 5 June 2026

**Appearances on 19 January 2026 and 26 and 27 February 2026.**

**Counsel for Tshenolo Waste (Pty) Ltd** (Applicant in the review applications *Case No: 4254/2025 & Case No: 3326* and the respondent in the interlocutory application):

**Adv K Tsatsawane SC**

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**Counsel for the MEC for Health North West Province** (First Respondent in review applications and interlocutory application *Case No: 4254/2025 & Case No: 3326*) and **MEC for Treasury** (Forth Respondent in the interlocutory application):

**Adv L Montsho – Moloisane SC with Adv G I Mothibi**

Instructed by: State Attorney, Mafikeng

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*\*Both the MEC for Health and MEC for Treasury North West Province filed a notice to abide in the interlocutory application brought by Ultimate Waste (Pty) Ltd.*

**Counsel for Ultimate Waste (Pty) Ltd** (the Second Respondent in the review applications *Case No: 4254/2025 & Case No: 3326* and Applicant in the interlocutory application):

**Adv L J Morison SC with Adv A Laher**

Instructed by: Amod and van Schalk Attorneys Inc. C/O: Nienaber & Wissing Attorneys

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No appearance for the Seventh Respondent (Phuting Medical Waste Management (Pty) Ltd) in review applications and interlocutory applications before me, instead it filed a notice to abide dated 24 February 2026.

*\*The other parties cited in the applications whose appearance is not recorded herein, elected not deliver opposing paper(s) or notices to abide and did not appoint legal representatives or counsel to appear on their behalf on the set down dates.*