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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable/Not reportable

Case no: 2026-209737

In the matter between:

RODPAUL CONSTRUCTION (PTY) LTD t/a RODS CONSTRUCTION	Applicant

and

CITY OF CAPE TOWN	First Respondent
SUPPLY CHAIN MANAGEMENT BID ADJUDICATION COMMITTEE CITY OF CAPE TOWN	Second Respondent
THE CITY MANAGER, CITY OF CAPE TOWN N.O.	Third Respondent
RAPID BUILDERS AND CONTRACTORS (PTY) LTD	Fourth Respondent

Heard: 21 October 2026

Delivered: 3 November 2026

Summary: Application for urgent interim interdict precluding the implementation of a decision of the first respondent to award a tender to the fourth respondent - No case made out for urgency applicant failed to demonstrate irreparable harm - No exceptional circumstances justifying restraint of public power.

ORDER

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1. The application is dismissed with costs, including costs of two counsel where employed, on the Scale C and B.

JUDGMENT

NDITA, J

[1] This is an urgent application for interim relief interdicting the Second, Third and Fourth Respondents from taking any further steps in connection with the Tender advertised by the First Respondent ("the City") for the construction of a Public Safety Training College, including Additions and Alterations to the existing Facility ("the college"), pending a review of the decision in terms of Part B of the Notice of Motion, awarding the Tender to the Fourth Respondent. It is undisputed that the Applicant's application was found to be 'unresponsive' due to failure to comply with the terms of the Tender. More specifically, the Applicant seeks relief couched in the following terms:

"2. Pending the final determination of the relief in Part B (including any appeal) the First, Second, and Third Respondents are restrained from:

2.1 concluding, signing or countersigning any contract or Form of Offer and Acceptance with the Fourth Respondent pursuant to Tender 9[...], if not already signed:

2.2 issuing any letter of acceptance, purchase order, works order, commencement Instruction, notice to proceed or site-handover/possession instruction to the Fourth Respondent;

2.3 permitting the Fourth Respondent or any subcontractor to establish on site or to commence or continue any works pursuant to Tender 9[...];

2.4 accepting any performance guarantee, or making any payment or incurring any contractual liability pursuant to Tender 9[...];

2.5 taking any further step to implement the decision to award Tender 9[...]."

Factual background

[2] On 27 November 2025, the First Respondent placed an advertisement in the local press inviting Tenders from suitably qualified contractors for the construction of the college with the closing date on 12 December 2025. The nature of the Tender is described in these proceedings as being pivotal to the provisioning of safety and security within the City. The Tender is a lumpsum contract in the amount of R151 474 269 ,23 (excluding VAT) an R174 195 409.62 (including VAT), subject to contract price adjustments. Clause C 2.1.4.7provides as follows:

"C.2.1.4.7 Good standing with Bargaining Council

Only those Tenders submitted by Tenderers who are in good standing with the Building Industry Bargaining Council (BIBC) at the time of the Tender

> award will be declared responsive. Tenderers must attach such proof to the schedule titled Declaration in respect of Compliance with Labour Legislation or obtain upon being requested to do so in writing and within the period contained in such a request, failing which their Tenders will be declared unresponsive."

[3] In line with clause C 2.1.4.7 the Applicant was required to submit with the Tender documents a letter of good standing from the BIBC, however, the Applicant attached to its bid a certificate of registration with the BIBC. The certificate of registration expressly states that:

> "This certificate merely confirms that the holder is registered with the BIBC as an employer and does not indicate any decree of compliance competency or capability."

[4] It is common cause that the Applicant passed the functionality test with the highest score among all the Tenderers and was recommended for the granting of the Tender. At that stage, the Bid Evaluation Committee ("BEC") treated the Letter of Good Standing as a post-recommendation, pre-award verification step. As earlier alluded to, the BEC on 25 February 2026, recommended the Applicant for award and resolved that basic due diligence be conducted on the Applicant as the recommended bidder. The deadline for a response for the letter of good standing was 27 February 2026. By 26 February 2026, the Applicant furnished the BIBC Certificate for Tendering and Quotation Purposes only and explained that it was registered with BIBC but had not yet secured a Western Cape project generating contributions, it undertook to obtain a full Letter of Good Standing on award and commencement and expressly invited the City to raise any concerns.

[5] On 9 March 2026, the BEC convened the seventh meeting during which it was recorded that it was agreed at the last BEC meeting to

request a basic due diligence on the recommended Tenderer, the Applicant. The Applicant provided the Certificate of tendering. The Applicant was still not in good standing because it did not have current projects and did not make any contributions towards employee benefits as prescribed in Clause C.2.1.4.7. The extract from the BIBC Certificate for Tendering stated that the Applicant could not currently be issued with a compliance certificate generated from the BIBC website because it was at that time non-compliant on the system. For this reason, the Certificate did not meet the requirements of Clause C.2.1.4.7.

[6] The record reveals that notwithstanding the recommendation for award, the BEC declared the Applicant non-responsive on 20 April 2026 because of its failure to provide the requisite letter of good standing. The minutes record the decision as follows: "*The BEC agreed with the legal opinion and deemed Rodpaul Construction is non-responsive in terms of clause C.2.1.4.7*."

[7] According to the Applicant, the BEC's own earlier record (BEC 7, 9 March 2026), shows a contrary provisional view to the effect that the deficiency (failure to provide a letter of good standing) *"was through no fault of the Tender*er", the Applicant had *"a very strong case … being prejudiced"*, and the exclusion would be discriminatory. It also shows that the legal opinion was sought *"to provide the BEC comfort in the direction it should proceed"*.

[8] On 25 May 2026, the Second Respondent awarded the Tender to the Fourth Respondent. Prior thereto the Applicant made submissions seeking condonation of its non-compliance, to no avail. I have already indicated that the Applicant's appeal to the relevant statutory body was also unsuccessful. Thus, the present proceedings.

[9] The Applicant further avers that as discernible for the grounds of review, it enjoys good prospects in the review application (PART B of the Notice of Motion), which tilts the balance of convenience in its favour.

Grounds of Review

[10] In seeking to review the decision awarding the Tender to the Fourth Respondent, the Applicant raises the following grounds of review:

10.1 **Failure to consider relevant material (s 6(2) (a) (iii).**

Under this rubric, the Applicant states that the submission it made on 12 August and its comparator were directly relevant and provably received.

10.2 **Abdication of discretion (s 6(2)(iv); legality)**

The Applicant alleges that on BEC 8, the BEC simply agreed with the legal opinion without independent evaluative reasoning, having earlier held a contrary view;

10.3 **Inconsistent treatment/ s 217.**

According to the Applicant the City's absence of the same type of certificate in Tender 1[...] demonstrates that the Applicant's certificate was capable of satisfying the requirement's purpose, treating it as fatally deficient was unequal and irrational.

10.4 **Error of law/misconstruction (s 6(2)(d), (f)(i)**

It is further alleged that the City applied clause C.2.1.4.7 as a closing/valuation-stage bar, contrary to its express **"**time of

the Tender award" wording and its request-and cure-mechanism.

10.5 **Procedural Fairness (s 6(2) (c) s 3)**

The Applicant alleges that the City solicited the certificate, formed an adverse view and excluded the Applicant without reverting despite the Applicant's express invitation to engage and despite no competitive advantage arising from the verification.

10.6 **Irrationality/unreasonableness (s 6(2) (f) (ii)(h)**

The Applicant alleges that the exclusion of the highest-functionality, lower-priced Tenderer, whom the BEC found blameless, was not rationally connected to the material before the City.

The answering affidavit

[11] In response to the Applicant's allegations, the City denies that a proper case has been made for urgency and states that neither has the Applicant made out the clearest of cases for the relief it seeks as it has no reasonable prospects of success in the review proceedings; in short, the Applicant has failed to meet the requirements for an interim interdict against the City at every level.

[12] With regard to urgency, the City avers that the Applicant has not pleaded any facts in its founding papers which show that it cannot be afforded substantial redress in ordinary course. Moreover, so further contends the City, the Applicant states in the founding affidavit that *"if*

the contract is concluded and implemented, third party rights may be affected", which does not constitute a ground for urgency.

[13] According to the City, the Certificate produced by the Applicant did not meet the threshold of what was required under clause C.2.1.4.7 as it merely confirmed registration with BIBC something that was inadequate purpose of the Tender award.

[14] On 9 March 2026, the BEC convened the seventh meeting during which it was recorded that it was agreed at the last BEC meeting to request a basic due diligence on the recommended Tenderer. Furthermore, the BEC noted concerns there might be risks of audit queries and adverse findings from the Auditor-General in the event that the Tender was awarded to the Applicant on the basis of the Certificate of Tendering.

Urgency

[15] This matter was in the motion court urgent roll but due to its voluminousness it could not be heard and was then postponed to 21 October 2026, and the question of urgency was reserved. It considering urgency, it must be accepted that the Applicant was obliged to comply with section 7(2)(a) of Promotion of Administrative Justice Act 3 of 2000 ("PAJA") and exhaust internal remedies. To this end, the internal appeal was concluded and dismissed on 21 August 2026, and the present application was launched on 28 August 2026. In my view, the Applicant therefore moved with the requisite haste in launching this application.

[16] Regarding urgency, Rule 6(12)(b) of the Uniform Rules of Court provides that in every affidavit filed in support of any application under Rule 6(12) (a), the applicant must set forth explicitly circumstances which it avers render the matter urgent and the reasons why it claims it could not be afforded substantial redress at a hearing in due course.

[17] The import of the rule is explained by Notshe AJ, in *East Rock Trading (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) thus;

> "[5] The issue of whether a matter should be heard as an urgent application is governed by the provisions of 6(12)(b) of the Uniform Rules. The aforesaid subrule allows the court or a Judge to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as to it seems meet. It further provides that in the affidavit in support of an application the applicant '. "... shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.
>
> [6] The import thereof is that the procedure set out in rule 6 (12) is not there for the taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in due course. The rule allows the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress."

[18] Flowing from the aforegoing principles, the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. In paragraph 13 of the founding affidavit, the Applicant advances the reasons for urgency and states that:

> "Substantial redress in due course will not be available if the contract is concluded and implemented, third party rights, public expenditure and completed works will substantially undermine the efficacy of the review."

Plainly, the issue of third party rights and public expenditure are irrelevant considerations in assessing urgency. The Applicant has failed to provide any reasons why it will not be afforded substantial redress in due course. Thus, no case has been made out for urgency, and the matter falls to be struck off the roll. Furthermore the Constitutional Court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18, 2012 (6) SA 223 (CC), 2012 (11) BCLR 114 (CC) (20 December 2012) at para [50], held that the right to review impugned decisions does not require preservation pendente lite, and there are no allegations made in relation to malice or abuse on the part of the City which may impact on the rule of law or public purse that would have warranted an urgent intervention by the Court. Nonetheless, I proceed to assess the merits as the matter was fully argued.

Evaluation

[19] The requirements for an interim interdict are (a) a prima facie right even if it is open to some doubt; (b) injury actually committed or reasonably apprehended; (c) the balance of convenience; and (d) absence of similar protection by any other remedy.

[20] What the Applicant seeks in Part B is the setting aside of the award of the Tender to the Fourth Respondent and a reconsideration of the matter. At the interim stage, the Applicant must show, on the basis of a prima facie right an entitlement to have the contract and the preceding Tender set aside. In terms of section 8(1) of PAJA, in proceedings for

judicial review a court may grant any order that is just and equitable, including the granting of a temporary interdict or other temporary relief. That said, it is a principle of our law that a court should preserve restraint and only halt the exercise of statutory power in the "*clearest of cases*" and where a compelling, and exceptional justification is established. It should exercise restraint before limiting or curbing the implementation of a decision taken in the exercise of the public power, and that considerations of public interest and of the constitutional distribution of powers. (*National Treasury and Others v Opposition to Urban Tolling Alliance and Others*, supra, para [18]. The court at para [66] further emphasised that "*a court must carefully consider whether the grant of the temporary restraining order pending review will cut across or prevent the proper exercise of a power or duty that the law has vested in the authority to be interdicted, and must assess the real-world impact of the interdict on the dissemination of public resources*. Against this backdrop, I turn to consider the various requirements of a temporary interdict with more particularity,

A prima facie right

[21] The first question to be determined is whether the Applicant has established a *prima facie* right to the interim stopping of the execution of the Tender. The Applicant contends that the grounds of review constitute a *prima facie* case. It must be accepted, as correctly contended by Counsel for the Respondents that the Applicant, for the purpose of interim relief had to demonstrate apart from the right to review and set aside the impugned decisions, a *prima facie* right that is threatened by an impending or imminent irreparable harm. I have already indicated that the right to review the impugned decisions did not require any

preservation *pendete lite*. The Applicant may establish a prima facie right by demonstrating prospects of success on review.

Irreparable harm

[22] It is well-established in our law that the test in regard to apprehension of harm is objective; the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm. In *Minister of Law and Order and Others v Nordien and Another* (473/85) [1987] ZASCA 24 [1987] 2 All SA (A) (26 March 1987) at para [8] explained thus:

> "Á reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. The applicant to an interdict is not required to establish that, on a balance of probabilities flowing from undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result. However, the test for apprehension is an objective one, this means that, on the basis of the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."

[23] In the founding affidavit, the Applicant contends that if the interim relief is not granted, the implementation of the tender awarded to the Fourth Respondent would "*create contractual and third party rights, sink public funds, and render effective relief substantially more difficult*. This averment hardly addresses the irreparable harm the implementation of the Tender would have on the Applicant.

The Balance of Convenience

[24] According to the Applicant, the balance of convenience favours the granting of the interim interdict *inter alia* because a short preservation order pending an expedited review causes limited prejudice whilst

implementation of a potentially unlawful award causes greater and potentially irreversible prejudice to the Applicant and lawful procurement. According to the Applicant, the City has been aware of this dispute since 2026.

[25] In weighing the balance of convenience a court must also consider the probable impact of the restraining order on the constitutional and statutory powers of the state functionary or organ of state against whom the interim order is sought. The balance of convenience involves a consideration of the prospects of success in the main proceedings – the stronger the prospects of success with the review

No other satisfactory remedy

[26] In relation to whether it there was no other satisfactory remedy to pursue but for the interdict, the Applicant merely states that it had exhausted the internal remedies; only interim relief can preserve an effective review. Given that the Applicant seeks to constrain statutory power, the averment is grossly inadequate to justify such a restriction. For example, the Applicant has not explained why a damages claim would not be an adequate remedy, should the review court find for it in Part B. As these are motion proceedings, the Applicant is obliged to make its case in its founding affidavit. Whilst it may be so that damages are not an assured or adequate substitute for effective public law relief, that the Applicant failed make the averments relating to exceptional circumstances that would justify a restriction of public power is fatal to this application.

[27] Much was made about the prospects of success of the review on the basis that the City abdicated its discretion and relied on a legal opinion without evaluative reasons whereas it has a discretion to

condone non-compliance with the terms of the tender. In *Overstrand Municipality v Water and Sanitation Services South Africa* (Pty) (Ltd) [2018] ZASCA 50 para 50, the Court commenting on *Millenium, Waste Management*[1] and *Dr JS Moroka and others*[2] on the issue of condonation of non-compliance with statutory requirements, the Court said that:

> "I am alert to the debate concerning the possible sufficiency of substantial or adequate compliance with what, in conventional terms, is described as mandatory requirements. One should also guard against invalidating a Tender that contains minor deviations that do not materially alter or depart from the characteristics, terms conditions and other requirements set out in Tender documents. In the present case the non-compliance is not of a trivial or minor nature."

[28] Without delving much on the merits of the review, it must be stated that the letter of good standing is central to the granting of the tender and it is not immediately clear that in the exercise of its discretion the City ought to have condoned the Applicant's non-compliance. At best, this is point is arguable and it cannot be said with certainty that the reviewing court will in probability find for the Applicant. In my judgment, the declaration of non-responsiveness is consistent with the discretion of the Respondents.

[29] Insofar as irrationality or unreasonableness of the City's decision to exclude the highest-functionality, lower-priced tender, it is doubtful that this ground of review may pass muster because the terms of the tender were clear, the letter of good standing had to be presented in

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[1]Millenium Waste Management (Pty) Ltd v Chairperson Tender Board: Limpopo Province & others 2008(2) SA 481 (SCA);

[2] Dr J S Moroka Municipality & others v Bertram (Pty) Ltd & another [2013] ZASCA 186; [2014] 1 All SA 545 (SCA)

order for the Applicant to be declared responsive. Likewise, the contention that the BEC applied C.2.1.4.7 incorrectly raises serious doubt about its sustainability of the because the express wording of the aforesaid clause unequivocally makes the letter of good standing a prerequisite for the awarding of the Tender. To the extent that clause C.2.1.4.7 may be construed to be ambiguous in relation to whether City prematurely excluded the Applicant on 20 April 2026, depends on the construction of the clause, a fact which renders it arguable.

[30] The review ground of procedural unfairness is rooted on whether it the City ought to have reverted to the Applicant after it became clear that the latter was unable to present the requisite letter of good standing. Again, it is not in my view, the clearest case of procedural unfairness.

Conclusion

[31] I have in this judgment held that the Applicant has not made out a case for urgency and ordinarily, the matter should have been struck off the roll but because it was fully argued, I considered the merits as well. I have found that the Applicant has failed to establish a prima facie right to the relief sought as it has failed to demonstrate that exceptional circumstances exist that justify the restraint of the public power. It also has not pleaded any facts on the basis of which a consideration of whether the curbing of the City's power could be found to be justified. The Applicant also failed to place any facts demonstrating the irreparable harm it will suffer, neither has it alluded to any facts showing that it has no alternative remedy. In the circumstances, the application must fail all levels.

Order

[32] In the result, the following order is issued:

[32.1] The application is dismissed with costs, including costs of two counsel where employed, on the Scale C and B.

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T C NDITA

Judge of the High Court

Appearances

For applicant:	Advocate M Combrink
Instructed by:	Neerajh Ghazi Attorneys obo De Waal Boshoff
For respondent:	Advocate R Goodman SC with M Mokhaetsi
Instructed by:	Cluver Markotter Attorneys