



File No. 15/6/5

SUBMISSION TO THE CHIEF EXECUTIVE

1. SUBJECT

Request Chief Executive to approve the deviation for emergency work done on the 2 mini-substation transformers at Pudimoe Water Treatment Works.

2. PURPOSE

The purpose of the submission is to request the Chief Executive to:

Approve the payment of the service provider. The service provider was appointed on an emergency basis to carry out the work at Pudimoe Water Treatment Works to repair the 2 mini-substation transformers which were damaged by lightning on the 13th April 2024.

3. BACKGROUND

Pudimoe WTWs is located along N18 Road, just outside Pudimoe Township, and the source of raw water supply is the Vaalharts irrigation scheme, which supplies water to an estimated population of 100,000 within the Naledi Local Municipality (LM) and Greater Taung Local Municipality (LM). The WTWs is comprised of three (3) Modules, Module One (1) with a design capacity of 6Mℓ/d, Module Two (2) with a design capacity of 7Mℓ/d, and Module Three (3) with a design capacity of 7Mℓ/d. The combined design capacity of all three Modules is 20Mℓ/d. Modules 1 and 3 supply water to Naledi LM, and a fraction to Dryharts with an average of 5Mℓ/d each, whilst Module 2 supplies water to Greater Taung LM with an average operating capacity of 6Mℓ/d.

4. DISCUSSION

The electricity at Pudimoe Water Treatment Works is supplied through a high-voltage power line from Eskom, and then stepped down by three mini-substation transformers at the plant. The three mini-sub transformers supplies electricity to the three modules to operate the electrical equipment and other process units within the plant. Module 1 and 2 are supplied by 2 mini-substation at the plant which are directly connected to the 2 modules. The plant is also has a capability to operate on the diesel generators as part of the contingency to deal with the power outages that may occur or any other electrical interruptions.

On the 13th April 2024, Pudimoe module 1 and 2 experienced electrical outage which was caused by the lightning that damaged the 2 mini-substations supplying the 2 modules. The 2 modules was unable to operate due to the damage and they were both operated by the diesel generator. Magalies Water then appointed the service provider (Gilema Construction) to repair the 2 mini-substations on an emergency. The service provider completed the first mini-substation which was taken back in operation on the 23rd May 2024, the second mini-substation was severely damaged and required to be refurbished completely. There was a delay in the completion of the refurbishment of the second mini-substation which affected the full commission and installation of the (2 × 1000 kVA 22000/400) mini-substations. This delay was caused by the specialised materials which are sourced internationally as per the service provider's feedback and secondly the other mini-sub has technical problems which needed to be repaired and resolved to minimise recurring equipment failure. The service provider appointed has completed the installation and commissioning on the 29th January 2026 and furnish Magalies Water with all the test and commissioning report as per the attached (Annexure 1: Completion letter Mini-substations Pudimoe and Annexure 2: Technical Report_2 Mini-Substations Pudimoe Plant). The (Annexure 5 : Letter from service provider) providing clarity on the delay and the cost breakdown is attached for reference.

4.1. Scope Of Work

The nature of the emergency work to be executed could not be descriptively scope due to the unknown impact of the damage caused as this may limit the term service provider from giving the optimal workable solution that restores the intended function and the quality of workmanship. Much as this submission does not delve into a detailed description of the specific scope of work, it is imperative that the term service provider undertake the following critical actions without delay:

4.2 Site Assessment:

Upon sorting the emergency process from SCM, the service provider proceeded directly to the site to conduct a thorough assessment of the existing conditions. The assessment encompasses all aspects of the site, including structural integrity, safety hazards, and any other relevant factors that may affect the restoration process. The in-depth assessment was required and both mini-substations were taken out of site.

4.3 Safety Measures:

The conditions of the mini-substation poses significant safety risks due to high voltage. The service provider was required to implement all necessary corrective measures to ensure the safety of the site. It is crucial to note that the responsibility for maintaining site safety will remain with Magalies Water and the appointed service provider.

4.4 Temporary Solution:

The Pudimoe WTW is equipped with the backup diesel generator which was installed to operate the plant during loadshedding and power failures. Due to the emergency that occurred, the plant had to be operated on the diesel generator while the mini-substation was taken out for repairs.

The delay for the submission is caused by the complexity of the specialized manufacturing of the mini-substation and the challenges which was faced with the service provider in the completion of work.

5. ORGANIZATIONAL IMPLICATIONS

This unforeseen incident affected the sustainable water supply within the operational area due to interruptions that occurred when the plant was operating on the backup generators which was only meant to run as contingency measures for a short period.

6. FINANCIAL IMPLICATIONS

The overall financial cost for the installation and commissioning of the 2 mini-substation amounts to **R 3 305 588.75** inclusive of VAT (see attached Annexure 3 : Mini Sub - Tax Invoice TI290126 revised)

7. LEGAL IMPLICATIONS

Refer to annexure 6

8. COMMUNICATION IMPLICATIONS

All the affected stakeholders were notified about the failure to sustainably distribute water to the communities. The notices were also issued and distributed to the affected communities as per attached (Annexure 4: Water Supply Interruption at Pudimoe plant due to electrical outage).

9. OPTIONS

Option 1: To appoint the service provider that will execute the repairs and refurbishment of the damaged mini-substation transformers.

10. DELEGATION

Submission is within the delegation of the Chief Executive.

11. RECOMMENDATION

It is therefore recommended that the Chief Executive to:

- Approve the Expo-Facto deviation for emergency work which is completed on the refurbishment and replacement of 2 mini-substation transformer at Pudimoe Water Treatment Works.

SUBMITTED BY:

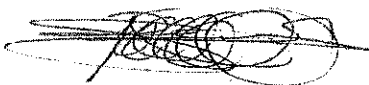


SAM SITHOLE
ACTING REGIONAL MANAGER: SOUTH-WEST

19/08/26

DATE

SUPPORTED / ~~NOT SUPPORTED~~ :

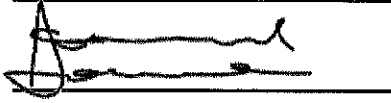


19/08/2026

ADV PETROS MORWANE
LEGAL MANAGER: CORPORATE SERVICES

DATE

SUPPORTED / ~~NOT SUPPORTED BY:~~

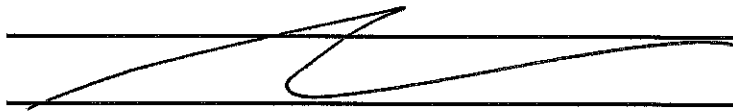


PULE LEKONE
ACTING GENERAL MANAGER: WATER SERVICES

19/08/2026

DATE

RECOMMENDATION: ~~SUPPORTED/ DEFERRED/ WITHDRAWN/~~ APPROVED



OFENTSE NTHUTANG
CHIEF EXECUTIVE OFFICER

20/08/2026
DATE



APPLICATION FOR EX POST FACTO-APPROVAL

Instructions for the completion of this application form

1. The Magalies Water's SCM Policy and Procurement Procedures are applicable and must be consulted.
2. This application must be accompanied by a completed form ST 87.1.
3. Applications must be signed by the senior manager or an equivalent rank.

APPLICATION:

Application is hereby made for ex post facto-approval in terms of Regulation 3(4) (give a description):

Indicate under which circumstances action was taken.

- **In case of best interest to Magalies Water;**

It is hereby certified that the action did not occur as a result of negligence or ignorance and it was taken both as a result of an emergency following the cost that was incurred during the existence of Sedibeng Water. This action was taken with care and coincided with what is expected of a reasonable person and that no fruitless expenditure had been incurred.

Division: Water Services

Address : Delmey Street

Hartswater

8570

Tel : _____

SIGNATURE (APPLICANT) Sam Sithole

CAPACITY: Regional Manager(Acting)

DATE: 19-08-2026

0838095151

(Acting)

NAME OF GM: PULE LEKONE

SIGNATURE GM: _____

DATE 19/08/2026

ANNEXURE TO APPLICATION: CASES OF EMERGENCY

NB: This form must be completed and submitted under cover of a completed ST 87 in matters where action was taken in the case of emergency.

1. Full particulars of the circumstances which could not be foreseen

On the 13th April 2024, Pudimoe module 1 and 2 experienced electrical outage which was caused by the lightning that damaged the 2 mini-substations supplying the 2 modules. The 2 modules were unable to operate due to the damage, and they were both operated by the diesel generator. Magalies Water then appointed the service provider (Gilema Construction) to repair the 2 mini-substations in an emergency. The service provider completed the first mini-substation which was taken back into operation on the 23rd May 2024, the second mini-substation was severely damaged and required to be refurbished completely.

2. Outline the dangerous or perilous condition or misery or defect that occurred as a result of the state of emergency or could have resulted or damage that could have been incurred.

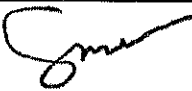
The substation we both struck by lightning and resulted in removing for emergency repairs and during that time, the plant was powered by a standby generators, consuming 3000 litres of fuel every day. The generators were only meant to operate for a short period as a contingency measures and not as an alternative source of power for longer operational needs, this resulted in high fuel consumptions and higher maintenance costs during the period the mini-substations were out for repairs. The sustainability of supply was also compromised immensely to the erratic and low production of the plant during the period of operating the plant on the generator, therefore the sales volumes were ultimately affected negatively. There were internal communication with supply chain on the completion of the work by the contractor and the advice was that the matter should be presented before BAC for approval such that the outstanding amounts may be settled, hence the matter is being presented before BAC. The component was transported to the site and connected, but it had a defect that the contractor could not solve, therefore it had to be returned for repairs again. The turnaround time for the manufacturing of the new mini-substation transformer was between 6-8 months as these are not readily available and dependency on other suppliers of the equipment components.

3. Indicate what was aimed at with the action in order to relieve, stem or to prevent the state of emergency.

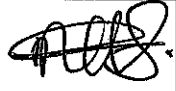
The immediate repairs of the 2 mini-substation transformers was inevitable to ensure the reliability of plant operation for the achievement of sustainable water provision within the service area of Dr Ruth Segomotsi Mompati District Municipality.

4. **What was the actual result of the action with regard to the appointed goal?**
The SCM department recommended that this matter must be presented before the BAC for recommendation such that the outstanding amount may be paid to the service provider for the completed work.
5. **Furnish exact detail of time and time scales applicable at the time of action.**
- 5.1 Date on which requirement became known: 13th April 2024
- 5.2 Date on which the supply or service had to be available: 23rd April 2024
- 5.3 Date on which supplier was requested or contract awarded or order was placed:
13th April 2024
- 5.4 Period required by supplier for performance: As practicably possible to ascertain the fault.
- 5.5 Date of commencement: 13th April 2024
- 5.6 Date of completion: 29th January 2026
6. **What attempts were made to obtain prior authorisation from the Procurement Centre (If not, reasons must be furnished)**
The matter was reported to the SCM for initiating the appointment of service provider.
7. **Describe the manner of in which price quotations or tenders, placement of order as well as payment were handled.**
N/A
8. **Which tender / contract conditions was applicable.**
N/A
9. **Furnish a price analysis and comparison with normal price.**
The overall financial cost for the installation and commissioning of the 2 mini-substation amounts to **R3 305 588.75** inclusive of VAT
10. **Indicate whether the application is arising from an Audit inquiry or not.**
Not an audit
11. **APPROVAL STATUS**

RECOMMENDATION STATUS

	NAME	SIGNATURE	DATE
SUPPORTED / NOT SUPPORTED: BAC MEMBER	Sibongiseni Mbadamana		19/08/2026
SUPPORTED / NOT SUPPORTED: BAC MEMBER	Teleni Ntabeni		19/08/2026
SUPPORTED / NOT SUPPORTED: BAC MEMBER	Rabelani Mulaudzi		19/08/2026
SUPPORTED / NOT SUPPORTED: BAC MEMBER	Kelebogile Mogamisi		19/08/2026
SUPPORTED / NOT SUPPORTED: BAC MEMBER	Matshidiso Tabane		

14. APPROVAL STATUS

	NAME	SIGNATURE	DATE
APPROVED / NOT APPROVED: CHIEF EXECUTIVE	Ofentse Nthutang		20/08/2026
Comment:			

GILEMA CONSTRUCTION & TRADING

27 Mosetlha Street, Tlhabane West, 0300

Tel: 014 592 7948

REG No: 2006/121357/23

CSD: MAAA1116397

VAT: 4120238540



TECHNICAL REPORT

Project name: Repair, Installation and Commissioning of Two 100kVA 22kV/400V Mini Substations

Location: Pudumoe Water Treatment Plant

Date: 28 January 2026

Prepared by : Robert Majako

1. Introduction

This report provides a comprehensive technical assessment for the repair, installation, and commissioning of two 100kVA 22kV/400V mini substations at Pudumoe Water Treatment Plant.

The project aims to restore electrical infrastructure damaged by vandalism and ensure reliable plant operations.

2. Objectives

The objective of the project is to repair and install the two damaged substations and restore power to the affected water treatment plant. To ensure that the equipment is safe, reliable and compliance with the electrical supply requirements and quality requirements

3. Scope of Work

Both mini substations were transported to the repair facility for detailed repairs. The scope of work included:

1. Repair of salvageable electrical and mechanical components
2. Replacement of irreparably damaged equipment
3. Repairs and reassembly of transformers, switchgear, and distribution panels
4. Restoration of insulation integrity and termination standards
5. Reinstatement of protection and control circuit including faulty components on the control circuit Brakers, Relays, ammeters, voltmeters, switches and fuses)

All repair works were conducted in accordance with applicable electrical standards and manufacturer specifications.

4. Technical Specifications

1. Transformer Rating: 100kVA
2. Primary Voltage: 22kV
3. Secondary Voltage: 400V
4. Frequency: 50Hz

5. Site assessment and findings

A detailed inspection of both faulty mini substations was conducted and revealed extensive damage to major

electrical components. The following observations were made:

1. The transformers, HV switchgear, LV distribution panels, and associated control circuit components
2. were burnt and severely damaged.
3. The transformer radiator fins were swollen, indicating catastrophic internal failure and thermal distress.
4. Damage was observed on key components and termination points, including the incomer switch
5. terminations, which did not meet the required ratio specifications.
6. The condition of the substations necessitated removal from site for comprehensive repair and refurbishment.

Specific observations include:

ABB switchgear associated with the substations exhibited damage in areas where electrical faults had occurred

1. Evidence of arc flash caused by incorrect or inadequate insulation protection at the incomer terminations.
2. The arc propagated to the feeder switch, causing further damage.
3. LV compartment stripped, with LV bushings left without connections.
4. Main circuit breaker missing or stripped, rendering the LV section non-operational.

6. Testing and Commissioning

Following successful testing, the substations were transported back to the Pudomoe Water Treatment Plant

and installed on site. The installation process included:

1. Positioning and mechanical securing of substations
2. Reconnection of HV and LV cabling

3. Verification of termination integrity
4. Functional checks of protection and control systems
5. Control Circuit wiring
6. Interfacing with the existing power supply circuit to supply the existing load

Commissioning activities were then conducted, including energization and operational verification under load conditions. Both mini substations were confirmed to be functioning within design parameters and were successfully returned to service.

7. Quality Assurance

Prior to reinstallation, Site Acceptance Testing (SAT) was conducted to verify operational readiness and

compliance. The following tests were performed:

1. Current injection testing
2. Voltage ratio testing
3. Short circuit testing
4. Protection and control circuit validation
5. Insulation resistance testing (Megger testing)
6. Copper loss testing
7. Core (iron) loss testing
8. Transformer functional checks
9. HV and LV operational verification
10. Switching and load response checks

All parameters were confirmed to be within acceptable operational limits and All test results confirmed that the substations were safe to be operational.

8. Compliance and Standards

All work will comply with:

1. Occupational Health and Safety Act (South Africa)
2. SANS 10142 (Wiring Code)
3. NRS 097 (Grid interconnection standards)
4. Utility-specific standards (ESKOM)
5. All (MV) repair work is conducted by a competent electrical contractor authorized work on (1kv to 33KV/54KV)

9. Photographic Evidence

The two tables below will illustrate the condition of the substation before the repairs were undertaken and after the repair work has been conducted

Table 9.1: Before repair works

Item	Description	Image	Date
9.1.1	Damaged 100KVA mini sub		May 2024
9.1.2	11KV Damaged HV switch gears		May 2024
9.1.3	630amps Three phase breaker with loose connections		May 2024

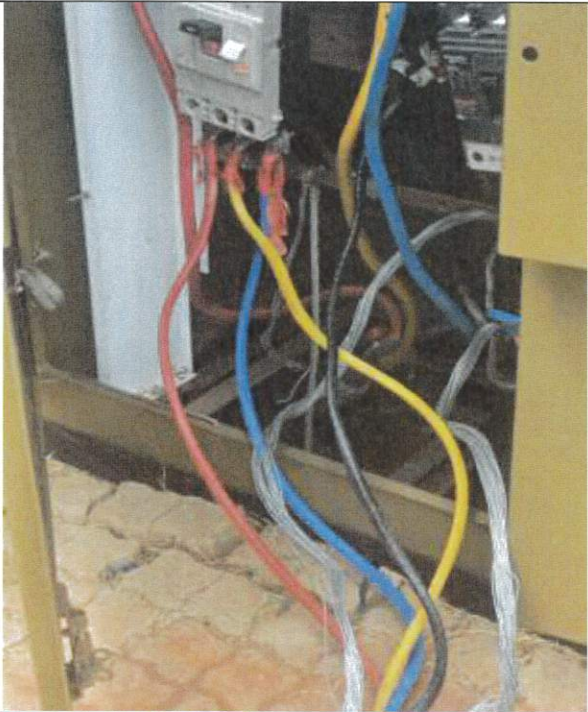
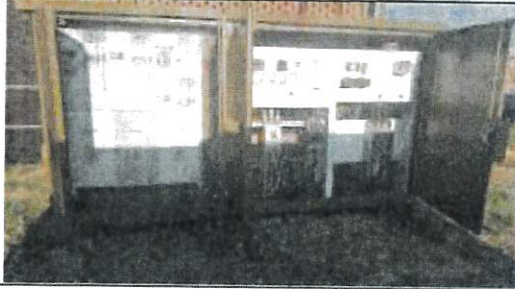
9.1.4	Damaged breaker cabling and earthing cable		May 2024
9.1.5	Supply cable connection with open trench		??

Table 9.2: After repair works

Item	Description	Image	Date
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9.2.1	Replacement of damaged links and fuses after installation of mini substation		27 January 2026
9.2.2	New 100KVA mini sub		27 January 2026

10. Conclusion

The two 1000 kVA mini substations at the Pudomoe Water Treatment Plant experienced severe component damage due to electrical faults and inadequate insulation protection at critical termination points.

Comprehensive repair, replacement, testing, installation, and commissioning activities were undertaken to restore functionality.

Post-commissioning verification confirmed that the substations are operating reliably and in accordance with required technical standards, ensuring stable power supply to plant operations.

Technical report compiled by.


Robert Majako

Electrician Technician
GILEMA CONSTRUCTION & TRADING

28 January 2026

DATE



Gilema Construction & Trading

27 MOSETLHA STREET, TLHABANE WEST

Fax: 086 666 7367 TEL: 014 592 7948

REG No: 2006/121357/23

CSD: MAAA1116397 VAT: 4120238540

TAX INVOICE

To:

Magalies Water

38 Heystek Street

Rustenburg

0299

Vat No.4930111143

Tax Invoice Date: 29/01/2026

Tax Invoice# TI290126

Repairs, Installation, and Commissioning of 2 × 1000 kVA 22000/400 Mini Substations at Pudomoe Water

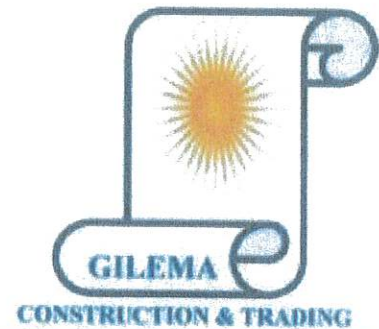
Item	Description	Quantity	Unit Price	Amount
1	Mini substation 1000 KVA 22KV/400V NEW	1	R 690 000.00	R 690 000.00
	Mini substation 1000 KVA 22KV/400V REFURBISHED	1	R 570 000.00	R 570 000.00
	REPAIR EQUIPMENTS(REFURBISHED MINI-SUB)			
1.1	Transformer	1	R 30 000.00	R 30 000.00
1.2	HV Switch gear	1	R 25 000.00	R 25 000.00
1.3	LV Distribution Panel	1	R 15 000.00	R 15 000.00
1.4	Earthing and Lightning protection	1	R 6 000.00	R 6 000.00
1.5	Mini Substation Enclosure	1	R 49 000.00	R 49 000.00
Sub - total				R 1 385 000.00
2.	INSTALLATION OF EQUIPMENTS			
2.1.2	Cable Trenches	2	R 5 500.00	R 11 000.00
2.1.3	Earth Pits	2	R 3 250.00	R 6 500.00
2.2.	Mechanical Installation	2	R 7 500.00	R 15 000.00
2.2.1	Positioning and fixing Mini substation	2	R 2 900.00	R 5 800.00
2.2.2	Mini Sub Installation	2	R 35 000.00	R 70 000.00
2.2.3	Oil Filling	2	R 2 500.00	R 5 000.00
Sub – total				R 113 300.00
2.3	Electrical Installation	2	R 212 500.00	R 425 000.00
2.3.1	HV Termination	2	R 6 500.00	R 13 000.00
2.3.2	LV Termination	2	R 6 500.00	R 13 000.00
2.3.3	Control Circuit wiring	2	R 8 250.00	R 16 500.00
2.3.4	Earthing Connection	2	R 41 250.00	R 82 500.00
2.3.5	Interfacing with existing Module 3 and Module 1 Pump station	2	R 17 500.00	R 35 000.00
Sub - Total				R 585 000.00

3.	TESTING AND COMMISSIONING			
3.1	Site acceptance Test	2	R 7 500.00	R 15 000.00
3.1.1	Insulation Resistance Test	2	R 3 500.00	R 7 000.00
3.1.2	Transformer Ration Test	2	R 5 000.00	R 10 000.00
3.1.3	Functional Testing of protection relays	2	R 4 000.00	R 8 000.00
3.1.4	Earth Resistance Test	2	R 5 000.00	R 10 000.00
3.1.5	Phase Rotation Test	2	R 6 575.00	R 13 150.00
3.1.6	Load Test	2	R 7 500.00	R 15 000.00
Sub-total				R 78 125.00
4	LABOUR			
4.1	External Labour Cost (1 Site Supervisor,2 Technicians, 1 Hi-up crane Operator, Tools and Machinery, 6 General Workers)	2	R 125 000.00	R 250 000.00
Sub-total				R 250 000.00
5.	TRANSPORTATION	2	R 20 000.00	R 40 000.00
6.	ACCOMODATION	2	R 9 000.00	R 18 000.00
7.	RE - REPAIRS 1000KVA 22000/420 V MINI SUBSTATION X1			
7.1	Rewind of HV & LV	1	R 220 000.00	R 220 000.00
7.2	Virgin Oil	1	R 25 000.00	R 25 000.00
7.3	Tapswitch	1	R 110 000.00	R 110 000.00
7.4	Installation and Commissioning	1	R 50 000.00	R 50 000.00
Sub-total				R 405 000.00

Sub-total:	R 2 874 425.00
Tax:	R 431 163.75
Total:	R 3 305 588.75

GILEMA CONSTRUCTION & TRADING

27 Mosetlha Street, Tlhabane West, 0300
Tel: 014 592 7948
REG No: 2006/121357/23
CSD: MAAA1116397
VAT: 4120238540



To
MAGALIES WATER
38 HEYSTEK
RUSTENBURG
0299
Vat No:4930111143

09 June 2026

Subject: Mini-Sub Transformer Invoice

Good Day

Gilema Construction hereby confirms receipt of your email and provides the below response.

We have attached the amended Tax Invoice with the price breakdown on the new and refurbished mini-sub stations. The price for the old refurbished mini-sub transformer is hereby corrected, and we apologise for the error on the invoice.

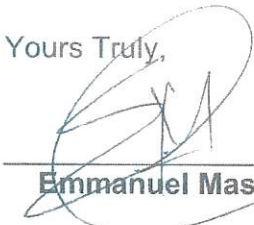
Secondly, on the cause of the delays:

1. The mini-substation transformers are obsolete and the parts are sourced outside the country, there is a long lead time of 6 - 9 months for manufacturing and shipping of parts as these are specially made.
2. The repaired mini-sub transformer was successfully commissioned but had some technical issues later on which had to be removed on-site for repairs which caused more delays in completion of the project.
3. The project required a huge amount of deposit to be paid in order to place materials for shipping and the return job had additional costs for the work done. This has also placed the company under financial strains as well due to long waiting periods for sourcing of materials.

Hoping this matter will be dealt with speedily to avoid more financial stress that I have also suffered.

For more information and clarity, please do not hesitate to contact me on 079 482 0606

Yours Truly,


Emmanuel Masilo



Enquiries: Adv Petros Morwane
Legal Services Manager
Email: petrosm@magalieswater.co.za
20th May 2026

**To the BAC Chairperson
BAC Committee**

**Re: Legal Opinion/ Informed Submission on Mini Sub Transformer/ Gilema
Construction & Trading / Payment of Invoices**

1. LEGAL QUESTION

Whether Magalies Water may lawfully withhold or refuse payment to the Service Provider for services initially procured on an emergency basis, where the services continued beyond the period reasonably necessary to address the emergency and the procurement was not thereafter reassessed or otherwise lawfully addressed, notwithstanding that Magalies Water received the benefit of the services rendered.

2. APPLICABLE LAW

2.1 Constitutional procurement framework

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

Emergency procurement is an exception to ordinary competitive procurement. It does not remove the obligation to act lawfully, rationally, transparently and within the entity's approved SCM framework. Any deviation must remain connected to the emergency requirement and must not be used to avoid ordinary procurement processes once those processes become reasonably practicable.

Section 172(1)(a) of the Constitution requires a court to declare unconstitutional conduct invalid. Section 172(1)(b) permits court to make a just-and-equitable order concerning the consequences of invalidity.

The just-and-equitable remedial power belongs to a court. Magalies Water cannot itself validate an unlawful procurement retrospectively merely by approving an ex post facto deviation. The case law is nevertheless relevant in determining the legal risk attached to withholding payment after receiving a benefit from completed work.

2.2 PFMA and Treasury requirements

Magalies Water is required to comply with the Public Finance Management Act 1 of 1999 ("PFMA"), applicable Treasury Regulations, Treasury Instructions, its SCM Policy and delegation framework.

Section 50(1) of the PFMA requires members of the accounting authority to exercise utmost care, act with fidelity, honesty and integrity, and manage the financial affairs of the entity responsibly.

Section 51(1)(a)(iii) requires the accounting authority to maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Section 51(1)(b)(ii) requires the accounting authority to take effective and appropriate steps to prevent irregular expenditure and fruitless and wasteful expenditure.

Section 76(4)(c) empowers National Treasury to make regulations and issue instructions concerning the procurement and provisioning system of public entities.

PFMA SCM Instruction No. 03 of 2021/2022 recognizes emergency procurement where a serious and unexpected situation poses an immediate risk to health, life, property or the environment and requires urgent action.

Irregular expenditure and fruitless and wasteful expenditure are distinct.

Irregular expenditure concerns non-compliance with applicable legislation, including applicable Treasury requirements and prescribed procurement processes. Fruitless and wasteful expenditure concerns expenditure made in vain which could reasonably have been avoided.

2.3 Case law

2.3.1 MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute [2014] ZACC 6; 2014 (3) SA 481 (CC) paragraph 101:

"...Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked...."

The principle is that an organ of state may not simply ignore its own decision because it later considers the decision unlawful. This does not prevent Magalies Water from investigating or reviewing an unlawful procurement decision, it does however caution against unilateral refusal to recognize the legal consequences of an appointment, instruction or acceptance of performance.

2.3.2 State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd [2017] ZACC 40; 2018 (2) SA 23 (CC). The Constitutional Court declared the relevant appointment and extensions invalid, however, paragraph 3(b) of the Court's order provided that the declaration of invalidity:

"The order of constitutional invalidity in paragraph 3(a) does not have the effect of divesting the respondent of any rights it would have been entitled to under the contract, but for the declaration of invalidity."

The decision does not validate non-compliant procurement. It preserves any rights that the respondent might have been entitled to under the contract but for the declaration of invalidity; the Court did not decide whether any such rights had in fact accrued.

2.3.3 Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd [2019] ZACC 15; 2019 (4) SA 331 (CC),

The municipality permitted the contractor to continue performing while it delayed in challenging the agreement.

At paragraph 105, the Constitutional Court held:

“...justice and equity dictate that the Municipality should not benefit from its own undue delay and in allowing the respondent to proceed to perform in terms of the contract....”

The Court declared the agreement invalid but did not set it aside. The case is relevant where an organ of state knowingly permits performance, receives the benefit of work done and later seeks to rely on procurement defects. It does not establish a general rule that every irregularly procured claim must be paid in full.

2.3.4 Greater Tzaneen Municipality v Bravospan 252 CC [2024] ZACC 20

The municipality sought to avoid payment after an unlawful extension of a security-services arrangement, the contractor continued to perform at the municipality's request, and the municipality received the services.

In refusing leave to appeal, the Constitutional Court left undisturbed the Supreme Court of Appeal's order that the contractor was entitled to compensation, with the matter remitted for determination of the quantum of compensation.

The case confirms that an organ of state may face legal consequences where it receives the benefit of performance from an innocent contractor and thereafter relies on its own procurement failure to resist payment.

The decision must, however, be distinguished from a routine invoice-approval matter. It does not authorize retrospective validation of an irregular procurement process, nor does it establish an automatic right to payment of the full invoiced amount.

2.3.5 Municipal Manager: Qaukeni Local Municipality v FV General Trading CC [2009] ZASCA 66; 2010 (1) SA 356 (SCA).

At paragraphs 21 and 26, the Supreme Court of Appeal confirmed that an agreement concluded contrary to mandatory procurement requirements is unlawful and may not be enforced as though it were an ordinary valid contract.

This case supports the contrary position: where the procurement process was materially non-compliant, the Service Provider may not necessarily enforce the full contractual invoice merely by relying on the agreement.

3. ANALYSIS

3.1 Whether the extended duration necessarily defeats the emergency basis

PFMA s38 (1)(a)(iii) Treasury Regulation 16A, 4 PFMA Instruction 03 of 2021/22C. The Constitution Act of 1996. – Principle: Contracts that breach s217(1) of the Constitution- fair, equitable transparent, competitive and costs effective.

Principle.

Reference CASE Law

The fact that services continued beyond the initial emergency period does not, on its own, establish that the original emergency appointment was unlawful or that all subsequent services were unauthorized.

An emergency intervention may develop into technically complex remedial work, delays caused by specialized materials, technical defects, safety requirements, supply-chain constraints or unforeseen damage may be relevant in determining whether continued performance remained reasonably connected to the original emergency.

However, emergency procurement is not intended to operate indefinitely, once the immediate emergency has been stabilized and the remaining work becomes capable of being scoped, priced and procured through ordinary or alternative approved processes, Magalies Water may have been required to reassess the procurement method.

3.2 Considerations supporting payment

Payment may be legally supportable if the available evidence establishes that the Service Provider was initially appointed through an authorized emergency process and that the work performed fell within the approved scope or was otherwise authorized by a properly delegated official before it was performed.

The case for payment would be strengthened where Magalies Water knew that the work continued, did not instruct the Service Provider to stop, accepted or used the completed work, and received a measurable operational benefit from it. It would also be relevant whether the Service Provider acted in good faith and was not involved in fraud, collusion, misrepresentation or another procurement impropriety.

The amount claimed would require technical and financial verification. This includes verification that the work was completed, commissioned and accepted; that the invoiced quantities and rates are supported; that the pricing is commercially reasonable; and that the claim does not include work outside the approved scope.

Where these considerations are established, Kirland, Gijima, Buffalo City and Bravospan indicate that Magalies Water may face difficulty in relying solely on its own procurement non-compliance to retain the benefit of services without making fair payment.

This does not mean that the original procurement becomes regular merely because the work was completed. It means that procurement invalidity and payment for verified benefit received are legally distinct questions.

3.3 Considerations supporting withholding, reduction or deferral of payment

Magalies Water may have grounds to withhold, reduce or defer payment where the evidence establishes that the Service Provider performed work outside the approved scope, continued working after its authority had expired, or proceeded with additional work, time extensions or price escalations without the required approval.

The position may similarly differ where the delay was materially caused by the Service Provider, where the works were defective, incomplete or not technically accepted, or where the invoiced amount is inflated, unsupported or commercially unreasonable.

A refusal or reduction of payment may further be justified where the Service Provider participated in an unlawful procurement arrangement, misrepresentation, collusion or misconduct, or where the amount claimed relates to work that did not produce a benefit for Magalies Water.

Where these considerations apply, Qaukeni is relevant. The Service Provider may not be entitled to enforce the arrangement as a valid contract. Any claim for compensation would require a proper legal basis and proof of the actual benefit received by Magalies Water.

3.4 PFMA implications

A finding that the procurement was not reassessed or otherwise lawfully addressed, when necessary, may require consideration as possible irregular expenditure. That assessment should be conducted separately from the question whether Magalies Water received a benefit from the completed work.

An irregular expenditure finding does not automatically mean that the entire amount paid or payable constitutes fruitless and wasteful expenditure. A payment may be irregular because the required procurement or approval process was not followed, while the work itself may remain necessary, useful and beneficial to Magalies Water.

Conversely, any avoidable expenditure requires separate examination. This may include costs arising from contractor-caused delay, unjustified price escalation, defective work, unauthorized work, inadequate contract management or failures to obtain the required approval.

The PFMA requires appropriate investigation, recording, accountability and, where applicable, recovery. It does not itself create an entitlement for Magalies Water to retain a proven benefit without paying an innocent Service Provider the verified value of that benefit.

4. CONCLUSION

The continuation of services beyond the immediate emergency period may create a legitimate procurement-compliance concern. Depending on the original appointment, scope, approvals and reasons for delay, Magalies Water may have been required to reassess the procurement process and lawfully address the continued requirement.

The second part of the invoice does not qualify as emergency procurement. The end used was supposed to assess the urgency and re-procure the service through the normal competitive process under the PFMA framework.

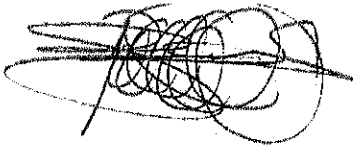
The continuation and waiting for equipment to be delivered late confirms breach of the PFMA and poor planning go the Supply Chain Management process. In the case of *Kunene Ramapala Inc v NW Department of Education (SCA) 460/2022* the court closed by saying that bypassing competitive bidding because Service Provider has already appointed is acceptable and contravenes s217. In the case of *Valor IT v Premier NW 2021 (1) SA 42 SCA* court held that S217 exist to prevent patronage and corruption but to promote fairness and impartiality and that extending emergencies to non-emergency seems like circumvention.

Where Magalies Water authorized or knowingly accepted continued performance, received and retained the benefit of completed work, and the Service Provider acted

without misconduct, an outright refusal to pay solely because the emergency process was not revisited will expose Magalies Water to legal risk.

Possible irregularity does not, by itself, determine that payment is not due.
The second part of the invoice must be investigated as a possible fruitless and irregular expenditure for failure to reassess the emergency of the procurement process

Yours faithfully



Adv. PJ Morwane

Legal Services Department



URGENT NOTICE

**Water Supply Interruptions
Greater Taung Local Municipality**

Tuesday, 23 April 2024

Subject: Water Supply Interruption at Pudumoe Water Treatment Plant due to Electricity Outage

Due to the breakdown that occurred on the 14th April 2024, at Pudumoe Water Treatment Plant wherein two transformers were damaged by lightning affecting the plant's normal operation. The community is hereby informed that the transformers have been taken for repairs.

The plant is currently running on the backup generator, until the two transformers have been repaired. In order to mitigate the situation, there will be water tankers that will be dispensed to areas that are most affected while the supply is gradually recovering.

The following areas remain affected:

Dryharts, Ncweng, Pudumoe Township, Myra, Mogopela A & B, Khibicwane and Khibicwane EXT, Cokonyane, Veertien, Kgatleng, Ditshilong, Richblock, Chiefs court, Nommer 1, Pinagare, Ext 4,5,6 and 7, Taung Station, Matolong, Rooival, Itireleng, Huhudi, Colour Block, Ext 25 & 28.



Magalies Water apologizes for the inconvenience that this has caused.

Issued by: Trinity Bogosi
Communications Officer
Cell: 083 520 4019
Email: trinityb@magalieswater.co.za

David Magae
Manager: Communications and Media Relations
Tel: 014 597 4636
Email: davidmag@magalieswater.co.za