

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 27234/13

15/5/2013

(1)	REPORTABLE: YES (NO)
(2)	OF INTEREST TO OTHER JUDGES: YES NO
(3)	REVISED.
	2013. 05. 15
	DATE
	<i>Tatu</i>
	SIGNATURE

In the matter between:

SECURITY SERVICES PROVIDERS FORUM

Applicant

and

THE MEC OF THE LIMPOPO PROVINCIAL
DEPARTMENT OF TREASURY

First Respondent

THE MEC OF THE LIMPOPO PROVINCIAL
DEPARTMENT OF ROADS AND TRANSPORT

Second Respondent

THE MEC OF THE LIMPOPO PROVINCIAL
DEPARTMENT OF EDUCATION

Third respondent

THE MEC OF THE LIMPOPO PROVINCIAL
DEPARTMENT OF HEALTH

Fourth Respondent

THE HEAD OF THE DEPARTMENT OF THE
LIMPOPO OF TREASURY

Fifth Respondent

J U D G M E N T

MAKGOKA, J:

[1] The applicant, seeks, on an urgent basis, an interim order that a consultation be held between it and the respondents, all members of the executive committee (MEC's) in the Limpopo provincial government, to discuss certain issues arising from a tender bid no. TC/LP 20/2013 (the bid). The applicant is an umbrella body for business people in the security industry. Its members currently provide security services to various departmental sites in the Limpopo Province arising from previous tenders advertised by the respondents.

[2] The applicant seeks an interim order pending an order reviewing and setting aside certain administrative actions taken by the first and fifth respondents concerning the tender bid. The applicant also seeks to declare the tender bid as invalid and unconstitutional. The first, third, fourth and fifth respondents have filed a notice of intention to oppose, but have not filed any answering affidavits. The second respondent has filed a notice to abide the decision of this court.

[3] On 15 April 2013, an invitation to bid went on sale inviting the provision of physical security services for various Limpopo provincial departments for the period of three years commencing from 1 July 2013 to 30 June 2016. The bid was set to close yesterday, 14 May 2013, at 11h00. The main complaint of the applicant and its members, is that the bid has introduced a range of new specifications which the applicant contends, are unconstitutional, unjust and unfair.

[4] On 19 April 2013 the applicant, through its attorneys, delivered a letter to the first and the fifth respondents, respectively, notifying them, among others, of their objections to the specifications and the grounds therefor. The letter called upon the first and fifth respondents to withdraw or cancel the bid; alternatively to postpone its closing date to enable the applicant to consult with the first and fifth respondents on the new procurement specifications, with the undertaking that the bidding process will be suspended pending consultation. The response sought from the first and fifth respondents was to be delivered within seven calendar days of delivery of the letter, failing which an urgent application would be launched to prevent the respondents from proceeding with the bid. There was no response.

[5] About five briefings of the bid were held, and attended by some members of the applicant, who, on each occasion, reiterated their concerns about, and objections against, the new specifications specifications. On 30 April 2013 applicant's attorneys delivered another letter to the respondents demanding their response. There still was no response. On 6 May 2013 this application was launched. Counsel for the respondents, Mr. *Mtsweni*, contested urgency. Mr. *Bredenkamp* SC, counsel for the applicant, submitted that the matter is urgent, given the fact that letters written to the respondents were not replied to.

[6] I disagree. The applicant and its members knew as early as 15 April 2013 of the new specifications. In the first letter to the first and fifth respondents, clear terms were put for a response. It is worth noting that in that letter, urgent application was mooted as a definite next step, should there be no response.

[7] In the founding affidavit, no explanation is furnished as to the inaction on the part of the applicant on the expiry of the seven days deadline set for a reply. By 30

April 2013 it was clear that the respondents were not going to reply to the applicant's letters. This application was launched only a week later. The applicant, on its own version, was aware that the bid would close on 14 May 2013, yet did nothing to launch this application earlier. The application was set down for 10H00 on the day the bid closed, allowing only for only 1 hour for a possible hearing and order. That was ambitious.

[8] By the time the matter was heard, the bid had closed. The urgency, if any, was self-created by the applicant's inaction.

[9] In the circumstances the application is struck off the roll with costs



TM MAKGOKA
JUDGE OF THE HIGH COURT

DATE OF HEARING	: 14 MAY 2013
JUDGMENT DELIVERED	: 15 MAY 2013
FOR THE APPLICANT	: ADV BREDENKAMP SC together with ADV DA ROCHA
INSTRUCTED BY	: NR MUNYAI ATTORNEYS, POLOKWANE
FOR THE RESPONDENTS	: ADV DV MTSWENI
INSTRUCTED BY	: STATE ATTORNEY, PRETORIA