



Publication: Sunday Tribune - Main
Title: KZN transport department and subcontractor in dispute
Publish date: 23 Oct 2022
Page: 3

Reach: 49903
AVE: 50796.24
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COURT CASE

KZN transport department and subcontractor in dispute

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A DURBAN subcontractor who was appointed and stood to receive R4.5 million from the KwaZulu-Natal department of transport has sought the intervention of the Pietermaritzburg High Court after the department re-advertised the tender without her knowledge.

The subcontractor, which had allegedly started providing services, has also alleged that it was denied a R2m payment, which was to be settled by the department when the company had met some of its contractual obligations.

In July last year, the department issued a tender notice inviting contractors experienced in roadworks to tender for the rehabilitation of a main road in the Greater Kokstad Municipality.

The appointed contractor would provide entrepreneurial and construction skills including in-service training to participants of the Expanded Public Works Programme (EPWP).



A DURBAN subcontractor has dragged the KZN department of transport to court for unlawfully advertising a tender already awarded to a service provider. | File.

Rorisang Holdings, a construction company in Johannesburg was awarded the tender. As the company was entitled to appoint a training service provider of its choice, it went ahead and sealed the deal in June with Sanele Ndlovu, an engineer and director of Westville-based Magnacorp Project Managers.

The original contract stipulated that 50% of the lump sum would be paid once the contractor had secured and prepared the training venue. In the beginning of September, Magnacorp had allegedly deployed personnel on site to recruit trainees, for the sourcing of training venues and printing of study material.

As agreed, the first invoice for the 50% of the lump sum was submitted to the department but Thabisa Dlamini, the department's project manager, allegedly refused to release the money saying that "subcontractors had not been appointed yet and the trainees had not started on site".

Ndlovu claimed that on September 20, she was invited by the department to a meeting in Kokstad where she was to be formally introduced as the trainer and to "discuss better ways to communicate, the distribution of the quotation documents and other issues relating to documents".

She claimed that a notorious business forum was in attendance, which led to her being excluded from the meeting.

A week after that meeting, Ndlovu said she learnt that Dlamini had issued an invitation with an identical contract number and specifications for the appointment of a new service provider to conduct EPWP training.

She immediately consulted her legal team, attorney Ukhona Gqencu of Cebisa Attorneys and Sandhya Mahabeer SC of Ubunye Chambers who instructed the department to cancel the advertisement and the re-awarding of the tender.

When the department allegedly failed to respond, Ndlovu approached the high court seeking an interim interdict.

On October 5, in the absence of the department's legal representatives, Judge Elsje-Marie Bezuidenhout granted an interim order prohibiting the department from re-advertising and awarding the work to another service provider.

She gave the department a week to respond, postponing the matter to Tuesday.

In her response Dlamini claimed that her legal team from NW Zondi Incorporated had not given enough notice, resulting in their late arrival when the matter had been heard.

She added that the appointment of Magnacorp Project Managers was not done through "an open competitive bidding process". Bids had to be advertised for a period of 21 days before closure.

"Rorisang Holdings simply ignored all these policies when Magnacorp Project Managers was appointed," she said.

"We were left in the dark as to how Magnacorp Project Managers were appointed."

"For all these reasons we published an invitation to quote as a service provider for training."

Dlamini said the department was entitled to do so due to the unlawful process followed by the two companies.

She said Rorisang Holdings was allowed to proceed with the tender process that it initiated to appoint an on-site trainer.

"The crux of this matter is that an outside contractor from Durban was appointed while local people and contractors had no chance to bid," Dlamini said.

The parties appeared again on Tuesday and the matter was postponed to next year.

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