



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

CASE NO: 8913/2022

- (1) REPORTABLE: ~~YES~~/ NO  
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
 (3) REVISED.

**31/03/22**

.....

DATE

.....

SIGNATURE

In the matter between:

**HALIFAX GROUP (PTY) LTD**

(Registration No. 2013/205374/07)

Applicant

and

**NATIONAL MINISTER OF HOME AFFAIRS**

1<sup>st</sup> Respondent

**DIRECTOR GENERAL: DEPARTMENT OF HOME AFFAIRS**

2<sup>nd</sup> Respondent

**DELIBLOX (PTY) LTD**

(Registration No. 2013/021502/07)

3<sup>rd</sup> Respondent

---

**JUDGMENT**

---

**MNGQIBISA-THUSI, J**

- [1] In Part A of its application, the applicant, Halifax Group (Pty) Ltd, is seeking, on an urgent basis, an interim interdict restraining the first respondent from concluding a contract flowing from, Bid No. DHA12-2021: Appointment of a Service Provider for Infrastructure/Refurbishment/Construction, including consequential general building, electrical, mechanical, structural, civil and engineering works at the Department of Home Affairs offices, Refugee Centres and Ports of Entry (“the tender”), with the third respondent, Deliblox (Pty) Ltd, pending the determination of a pending review application (Part B).<sup>1</sup>
- [2] The applicant is an unsuccessful bidder and the third respondent is the successful tenderer.
- [3] The first respondent, the Minister of Home Affairs, is the political head of the national Department of Home Affairs (“DHA”). The second respondent is the Director General and accounting officer of the DHA.
- [4] In its review application (Part B) the applicant seeks the following relief:
- 4.1 that the decision to award contract flowing from Bid No. DHA12-2021 be reviewed and set aside;
- 4.2 that the award of the contract to third respondent be declared null and void ab initio and set aside;
- 4.3 that the decision to award the tender to third respondent be referred back to the first respondent.

---

<sup>1</sup> Section 217 of the Constitution prescribes that government may procure goods and services only through a tender system which is ‘fair, equitable, transparent, competitive and cost-effective’.

- [5] In brief the following facts are common cause.
- [6] During August 2021 the first respondent issued an invitation to tender for the services alluded to in paragraph 1 above. The applicant and others submitted their bids. As part of its tender document the applicant submitted, *inter alia*, the following: (i) a declaration of interests; (ii) a Central Supplier Database report and for purposes of Broad-Based Black Economic Empowerment (“B-BBEE”) verification, (iii) a certificate issued by Mosela Rating Agency; and (iv) a share certificate of the FAH Trust (“the Trust”).
- [7] On 18 January 2022 the DHA informed the applicant that it was unsuccessful in its bid.
- [8] Subsequent thereto the applicant, through its attorneys of record, sought from the first respondent reasons for its application being unsuccessful.
- [9] When the respondent did not respond to the request for reasons, the applicant’s attorneys sent a letter to the first respondent in which it sought an undertaking that it would not conclude a contract with the third respondent pending its decision to review the decision to award the tender to the third respondent.
- [10] On 2 February 2022, the first respondent responded to the applicant’s request for reasons which reads in part:

- “2. Your office is advised that your Client’s application for the above bid was rejected on the grounds that your Client provided the Department with false information or misrepresented information relevant to assessing the Broad-Based Black Economic Empowerment (B-BBEE) status of his company, which is in contravention and an offence in terms of Section 130(1)(a) and (c) of the Broad-Based Black Economic Empowerment Act, 2003 (Act NO. 53 of 2003) (B-BBEE Act).
3. Consequently, the Department has a legal obligation in terms of Section 13A of the B-BBEE Act not to enter into contractual agreements with your clients should they exist”.

[11] On 8 February 2022 the applicant’s attorneys sought clarification from the first respondent with regard to its assertion that the applicant did not comply with the B-BBEE Act.

[12] In response thereto the first respondent sent the applicant’s attorneys a letter on 10 February 2022 in which it intimated that the applicant did not qualify as a ‘Black person’ for purposes of Black Broad Based Empowerment as he only became a South African citizen by naturalisation after the cut-off date of 27 April 1994.

[13] It is the applicant’s contention that this application is urgent in that if the interim interdict sought is not granted and a contract between the first respondent and the third respondent was concluded and the services subsequently rendered, and in the event of the impugned decision being reviewed and set aside, it being successful in reviewing and having the impugned set aside, it will suffer financial loss as it would not be able to recover the financial benefits of the contract.

- [14] The applicant contends that it and not the third respondent should have been awarded the tender as it qualified as having a Level 1B-BBEE status. In this regard, the applicant asserts that the FAH Trust ('the Trust') owns 100% of the shares in the applicant and that the deponent to the founding affidavit's children are the beneficiaries of the Trust. It is further the applicant's contention that its bid was the lowest. No basis is, however, set out in the founding affidavit why the applicant believes its bid was the lowest and why the third respondent should not have been awarded the tender.
- [15] The applicant further contends that it was disqualified from the tender because the first and second respondent are biased against it due to the fact that, as the successful tender for the same services in a previous contract, there are current disputes between the parties which are still not resolved.
- [16] The respondents contend that the applicant's bid was disqualified mainly on the ground it had provided false information with regard to the assessment of its B-BBEE status.
- [17] For an applicant to succeed in an application for an interim interdict it has to satisfy the following requirements:
- 17.1 that it has a *prima facie* right, though open to some doubt;
  - 17.2 that the balance of convenience favours the granting of the interim interdict;
  - 17.3 that it has a reasonable apprehension of irreparable harm and imminent harm to the right if the interim interdict is not granted; and

17.4 that it has no other satisfactory remedy.<sup>2</sup>

[18] To establish that it has a *prima facie* right which ought to be protected, it was contended on behalf of the applicant that by virtue of being an unsuccessful tenderer, it has a right to fair administrative action in terms of the Constitution on the grounds as set out in the provisions of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”)<sup>3</sup>. It was further submitted that the applicant was disqualified because the first and second respondents had incorrectly assumed that its B-BBEE status did not qualify for Level 1 B-BBEE status.

[19] It was further submitted on behalf of the applicant that the balance of convenience favour it in that if the interim interdict is not granted and its review application is successful, it would lose income it would have generated from the contract. Further, that the financial benefits that would have accrued to it as the successful tenderer would be irrecoverable as there was no available suitable alternative remedy as it would not be able to claim the profits to be deprived from the contract.

[20] Respondents dispute that the matter is urgent on the ground that the applicant has delayed in launching these proceedings and had as a result burdened the respondents with truncated time periods to respond to its application even though it must have been clear to the applicant that its application for a review would not be successful. Further, the respondents oppose the relief sought

---

<sup>2</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227.

<sup>3</sup> In this regard the applicant relies on sections 6(2) (a)(iii); 6(2)(c); 6(2)(d); 6(2)(f)(ii) and 6(2)(h) of PAJA.

by the applicant on the grounds that it has not met all the requirements for the granting of an interim interdict.

[21] Regarding the *prima facie* right claimed by the applicant, it is the respondents' contention that the applicant has not shown that its application meets the requirements which have to be satisfied for an interim interdict to be granted. It was submitted that the applicant has not shown that it has a right which, if not protected by an interim interdict, it will suffer irreparable harm.

[22] According to the respondents, which fact is not denied by the applicant, under its declaration of interest, the applicant did not declare any other interest other than that the deponent to the founding affidavit was a director of the applicant and only attached the verification certificate. It was submitted on behalf of the respondents that what the deponent to the founding affidavit, Mr Olurufeni Adedoyini Adeleke (Mr Adeleke") alleged about the Trust holding 100% of the shares in the applicant was inconsistent with what is contained in the Central Supplier Database ("the CSD") which formed part of the applicant's bid documentation, which reflects, *inter alia*, that Mr Adeleke owns 100% shares in the applicant. It is the respondents' contention that because of this inconsistency, it is unlikely that the applicant will succeed in its review application. It was argued that, because of the failure of the applicant to disclose the status of the ownership it was correctly disqualified. Further that, even if the court was to find in favour of the applicant on the disclosure of its ownership, the tender would not have been awarded to it as its bid was not the lowest.

- [23] It is the respondents' contention that the balance of convenience favours the dismissal of the application in that the first respondent has a constitutional and statutory duty to provide services to the public and since this tender involves critical projects where there is a need for urgent remedial work to be done, the granting of an interim interdict would hamstring the first respondent in the performance of its constitutional and statutory obligations.
- [24] Further it was submitted on behalf of the respondents that if the interim interdict is granted, the first respondent and the public at large would suffer irreparable harm in that planned essential remedial works would have to be halted until finalisation of the review proceedings. On the other hand, should the review application be successful, the applicant can still sue for any damages it may have suffered.
- [25] With regard to urgency, I am satisfied that the matter is urgent when one takes into account that the first and second respondents had undertaken not to enter into a tender contract with the third respondent until the 25 March 2022. I am of the view that it was prudent of the applicant to have instituted these proceedings now as, if they were to be successful in their review application, whatever rights they may have would have been scuppered by the fact that the contract would have been implemented and or completed by the time the review application is heard. Further, since the matter relates to the procurement of services by government which services appear to be essential.



- [26] The main issue to be determined is whether the applicant has satisfied the requirements of an interim interdict to be granted. As correctly pointed out by counsel for the applicant, the merits of the pending review application are not in issue in these proceedings.
- [27] The applicant as an unsuccessful tenderer complains about the manner in which he was disqualified from the tender. It cannot be disputed that having regard to the provisions of the Constitution, in particular s 33 of the Constitution, the applicant has a right to vindicate its administrative justice rights. As an unsuccessful tenderer which complains about being unfairly disqualified because of wrong assumptions made by the first respondent with regard to its B-BBEE status, I am of the view that the applicant has established a prima facie right even if there is some doubt. The respondents' assertions that the applicant did not disclose its ownership status and its share certificate appears to be incorrect when one takes into account the applicant's annexure to the founding affidavit marked 'H1' which includes the FAH trust share certificate and the verification certificate issued by Mosela Rating Agency. It cannot be disputed that these documents formed part of the applicant's bid documents. Taking into account the reasons given by the first respondent for the disqualification of the applicant and the evidence contained in the bid documentation, I am of the view that the applicant has established a prima facie right though open to some doubt.
- [28] If the interdict is granted, it would not have final effect in that should the review application be dismissed, the first respondent can proceed implementing the tender contract. However, if the application for an interim

interdict is not granted and the review application is successful, the applicant would suffer irreparable harm in that the contract between the first and third respondents would have been concluded and implementation would have taken place. Even though the services related to the tender contract appear to be essential that cannot trump the applicant's constitutionally guaranteed right.

[29] As correctly contended for by counsel for the applicant, if the interim interdict is not granted and the tender contract is implemented, and the review is successful, the applicant would not be able to claim any financial benefits should it be qualified to have been awarded the contract.

[30] With regard to the costs of this application, I am of the view that it would be fair and reasonable that the costs be determined on finalisation of the whole application.

[31] In the result the following order is made:

1. That this application be dealt with as an urgent application in accordance with Rule 6(12) of the Uniform Rules of Court and that any non-compliance with the Uniform Rules of Court is condoned.
2. That the first and second respondents are interdicted and restrained from giving effect to, or further effect if it has commenced, to the contract flowing from Bid No. DHA12-2021: Appointment of a Service Provider for Infrastructure/Refurbishment/Construction, including consequential general building, electrical, mechanical, structural, civil

and engineering works at the Department of Home Affairs offices, Refugee Centres and Ports of Entry.

3. That the interim interdict shall operate with immediate effect, pending the finalisation of Part B of this application.
4. That leave is granted to the applicant to supplement the application relating to the relief sought in Part B of this application upon a date to be determined by the Registrar.
5. Costs to be costs in the cause.

---

**N P MNGQIBISA-THUSI**  
**Judge of the High Court**

**Date of hearing : 23 March 2022**

**Date of Judgement: 31 March 2022**

Appearances

For Applicant: Adv C M Rip (instructed by De Jager Inc.)

For First and Second Respondents: Adv J Hershensohn with Adv P Nyapholi –  
Motsie (instructed by the State Attorney)

For Third Respondent: Adv A Vorster (instructed by Cox & Yeats Attorneys)