IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: **15236/2019**

In the matter between:

DISTINCTIVE CHOICE SECURITY 447 CC t/a D C SECURITY	Applicant
DELTA CORPORATE SECURITY SERVICES (PTY) LIMITED	(Applicant in the intervention and joinder application)

and

WESTERN CAPE PROVINCIAL GOVERNMENT	First Respondent
ACTING DIRECTOR: SUPPLY CHAIN MANAGEMENT	Second Respondent
ACCOUNTING OFFICER OF THE DEPARTMENT OF FINANCE, WESTERN CAPE PROVINCIAL GOVERNMENT	Third Respondent
HEAD OF DEPARTMENT OF COMMUNITY SAFETY, WESTERN CAPE PROVINCIAL GOVERNMENT	Fourth Respondent
PRINCETON PROTECTION SERVICES (PTY) LIMITED	Fifth Respondent
RELIANCE CORPORATE SECURITY (PTY) LTD	Sixth Respondent
NIKAO PROTECTION SERVICES CC	Seventh Respondent

HEAD OF DEPARTMENT OF HEALTH, WESTERN CAPE PROVINCIAL GOVERNMENT (Respondent in the joinder application)

XOLISWA M HOLDINGS (PROPRIETARY) LIMITED t/a EAGLE AGE PROTECTION SERVICES (Respondent in the joinder application)

Heard: 18 September 2019

Delivered: 30 September 2019

JUDGMENT

MYBURGH AJ:

Introduction

[1] This matter comprises three applications:

1. Distinctive Choice Security 447 CC t/a D C Security ('DC Security'), applies to interdict the implementation of a tender by the first to fourth respondents ('the province'), pending the determination of a review under case number 5713/2019 ('the review application').

2. Delta Corporate Security Services (Pty) Limited ('Delta'), applies to intervene in this application and to join the Department of Health, Western Cape Provincial Government ('the Department of Health') and Xoliswa M Holdings (Pty) Limited t/a Eagle Age

Protection Services ('Eagle Age')[1]. Delta is a respondent in the review application.

3. The province opposes all three applications, as do Princeton Protection Services (Pty) Limited ('Princeton') and Reliance Corporate Security (Pty) Limited ('Reliance'), on the bases that neither a case for urgency nor the requirements for interim relief have been made out.

The tender

[2] The tender, which is called a 'transversal tender', is innovative in a number of respects. Ms Julinda Gantana ('Gantana'), the deponent to the answering affidavit filed on behalf of province, explains the concept of a transversal tender, its stated purpose and its implementation:

> 'The transversal tender for security services was facilitated by Provincial Treasury, on behalf of the 13 departments of the Western Cape Government.
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> The Provincial Treasury is established in terms of section 17 of the Public Finance Management Act, Act no. 1 of 1999 ('**PFMA**') and, in terms of section 18, must amongst others promote an enforced transparency and effective management in respect of revenue, expenditure, assets and liabilities of the provincial departments and provincial public entities.
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> In terms of section 18(2)(b), the Provincial Treasury must enforce the PFMA and any prescribed national and provincial norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in provincial departments. In terms of section 18(2)(e), Provincial Treasury

[1] Eagle Age was represented at the hearing and its counsel did address the court. However, it did not enter the fray, electing to abide by the decision of the court. The seventh respondent came to an arrangement with the applicant, which was made an order of court and did not participate further in the proceedings.

may assist provincial departments and provincial public entities in building their capacity for the efficient, effective and transparent financial management.

This mandate also confers on Provincial Treasury the powers to establish transversal contracts on behalf of a Provincial Government which is regulated in terms of National Treasury Regulations 16A6.5 to the PFMA which provide(s) as follows:

> "The accounting officer or accounting authority may opt to participate in transversal term contracts facilitated by the relevant treasury. Should the accounting officer or accounting authority opt to participate in a transversal contract facilitated by the relevant treasury, the accounting officer or accounting authority may not solicit bids for the same or similar product or service during the tenure of the transversal term contract".

In this regard the main objectives would be to establish economies of scale, reduce duplication of effort and provide for a more synergised approach towards the management of certain commodities.

Against the backdrop of these regulations the transversal tender for the security services was conceptualised and put together.

On 24 November 2017, the Provincial Government, via the Provincial Treasury, invited bids in respect of tender WCPT-TR01/2017/2018. Bidders were invited to participate in a multi-regional, multiservice Transversal Agreement with the Provincial Government for the provision of security services within the Western Cape on a 'as instructed' basis for a period of three (3) years, with the option to extend for a period of one (1) year . . . .

The objective of the envisaged Framework Agreement is to streamline the procurement of security services from the open market in order to fulfil the Provincial Government's strategic objectives, while maintaining transparency, fairness and equitability in the procurement process.

The potential users of the transversal tender may be the following Provincial Departments: Premier; Provincial Treasury: Agriculture; Community Safety; Cultural Affairs and Sports; Economic Development And Tourism; Education; Environmental Affairs and Development Planning; Health; Human Settlements; Local Government; Social Development; Transport and Public Works; and other organs of State as authorised by the Provincial Treasury.

. . . a Framework Agreement is an agreement with service providers which sets out the terms and conditions under which specified services may be procured during the period of the agreement. Such Framework Agreement does not constitute a contract or guarantee of work but rather sets out the terms and conditions for specific purchasers which are known as call-offs. A contract is only concluded once a call-off has been awarded. The Provincial Government further indicated that it would issue call-offs for the execution of the work during the set term of the Framework Agreement.

A call-off, as noted . . .. is the award of a single service to be performed at an institution within a specific region, service type and risk rating profile. A call-off can also be issued for multiple sites provided their risk ratings are the same.

No guarantees were made by the Provincial Government that the service providers on the Framework Agreement will be issued with a minimum number of call-offs during the set term of the Agreement. . . .

. . . If the Provincial Government exercises the option to balance the rates and prices offered for any service type by compiling an averaged set of common rates and prices, a Framework Agreement shall be concluded with those selected bidders for each region and service type who accept the average common pricing schedule for that region and that service type. The average prices will be calculated by averaging the salary rates and overheads quoted by the successful bidders for each service type per region. This is in fact what happened in the present case.

Provincial departments may conclude call-off contracts through direct award (without any re-opening of competition) or by the multi-source bidding process. This decision

would be based on the overarching principles of best value and best serving the strategic objectives of the Western Cape Government . . .. In the present instance call-offs were used'.

[3] Thus, instead of each department inviting bids independently, the process was facilitated by Provincial Treasury ('treasury'), who dealt with the provision of security services at the various departments' institutions, by way of one tender. The objective of this approach was, *inter alia*, to promote fairness and equity by spreading the work amongst a number of service providers. The successful bidders are placed on a list and, from that list, they are allocated work at particular institutions by way of call-offs, although there is no guarantee that those on the list would receive a minimum number of call-offs. Another characteristic of the tender which promoted equity is that the rates and prices are averaged, i.e. the successful bidders provide their services at the same rates and prices. The objectives of the innovative transversal tender process are laudable. Importantly, it prevents a situation where a small group of service providers get the lion's share of the work available. It also ensures that the work is spread between established service providers and new entrants to the market, an objective not achieved by the traditional 'first past the post' tender process.

The chronology

[4] The chronology is particularly important in this matter:

1. On 24 November 2017, the province invited bidders to tender for the transversal tender.

2. On 6 September 2018, the province announced the 19 successful service providers, which included DC Security and Delta. DC

Security obtained a service provider risk profile of 'very low' and Delta received a service provider risk profile of 'medium'. Both companies were listed in the service type 1: urban category.

3. On 26 September 2018, an awareness session with successful bidders was held at Century City.

4. From January 2019 to April 2019 some sites were awarded to successful bidders.

5. On 5 April 2019, DC Security launched the review application. In the review process, DC Security takes issue with both the facility risk rating of, *inter alia*, Groote Schuur Hospital and the functionality score of Princeton, who was awarded the Groote contract for security services a Groote Schuur Hospital in July 2019. DC Security submits that, if it prevails in the review application, it will be the only bidder eligible to provide security services at Groote Schuur. As it stands, it is not the only bidder eligible. Delta's grounds of review are similar, although, in addition, it argues that the bids of Eagle Age and Reliance were not compliant and should thus have been excluded.

6. On 18 April 2019, by way of an agreement which was made and order of the court, the review application was placed on the semi-urgent roll on 27 August 2019 with a timetable for the filing of papers.

7. On 30 April 2019, the province provided reasons and a record of the proceedings pertaining to the decisions under review.

8. On 9 May 2019, the legal representatives of the parties to the review application met and DC Security was informed at that meeting that it could expect work to the value of approximately R65 million over the three-year period of the tender. DC Security was also notified that it was not recommended for Groote Schuur, Tygerberg, Alexandra, Wesfleur and Valkenberg health facilities. However, it was recommended for eight other health facilities.

9. On 5 June 2019, DC Security filed an amended notice of motion and supplementary founding affidavit and on 16 August 2019, it delivered its final supplementary founding affidavit in the review application. By this time (on 5 June 2019 and 15 August 2019) DC Security had already challenged the risk ratings of various health facilities, including Groote Schuur, Tygerberg, Alexandra, Wesfleur and Valkenberg, contending that these facilities should be classified as high risk facilities. As stated above, the consequence of the risk ratings of the health facilities in question meant that DC Security was not the only bidder eligible for a call-off in respect of, *inter alia*, Groote Schuur.

10. The existing security agreements between DC Security and Delta on the one hand, and province on the other, were extended to the end of August 2019 and then again to the end of September 2019. In a letter addressed to DC Security on 16 August 2019, by Groote Schuur Hospital Supply Chain Management, it was made clear that the changeover to Princeton would occur on 1 October 2019.

[5] The review application was not able to proceed on 27 August 2019. The parties interacted regarding additional documents which DC Security said it required, and in this regard Gantana states the following:

'The fishing expedition entailed the following:

1. In "**YS8**", dated 10 May 2019, the Applicant demanded the facility risk ratings relevant for the call-offs as contemplated in pp. 630-647 of the Rule 53 record. This information was demanded within three days.

2. In "**YS9**", dated 16 May 2019, the Provincial Government pointed out that some 144 facilities have been processed and that a facility risk rating is done by each department with the self-assessment tool. The Provincial Government, through the State Attorney, further pointed out that the Applicant did not challenge any of the decisions by the departments to allocate a specific risk rating to a facility in its notice of motion. In the circumstances the request to supplement the Rule 53 record was denied.

3. In "**YS10**", dated 17 May 2019, the applicant requested an unredacted version of the recommended call-offs and it further insisted on the facility risk profiles which it claimed was 'readily available'. The Applicant further required the provision of 'process maps'.

4. There followed another letter from the Applicant, dated 20 May 2019 ("**YS11**") seeking the scoresheets and scoring for the functionality assessment (which determine the risk rating of the qualifying bidder), presumably of all the qualifying bidders.

5. These requests were responded to in a "without prejudice" letter from the State Attorney, dated 10 July 2019 ("**YS12**"). In this letter the Provincial Government reiterated that the information and documents sought do not form part of the Rule 53 record but in order to avoid any interlocutory "skirmishes" and because the Provincial Government has "nothing to hide", it undertook to provide some of the facility risk ratings referred to in the Applicant's Rule 30A application; as well as the

risk assessments of complying bidders. The requested security plans could not be provided as these contain sensitive information which may compromise the safety of the facilities and are irrelevant to the review. Provincial Treasury's "blueprint" accounting officer system ("**AOS**") was further provided. This is the supply chain system which was implemented.

6. In "**YS13**" the Provincial Government reiterated that it would not provide the security plans and requested that the Applicant explain why these are relevant.

7. In "**YS14**", dated 22 July 2019, the Applicant's attorneys demanded an unredacted version of the "call-out schedule", which contains the recommendations and not the final decisions regarding the call-offs to be made.

8. In "**YS15**", dated 23 July 2019, the Applicant's attorneys required certain "operational assessment reports" for certain bidders as well as the complete risk assessment tool reports in respect of certain facilities. A series of questions were also posed to the Provincial Government, such as how the facility risk scores were compiled, etc.

9. In "**YS16**", dated 1 August 2019, the Applicant's attorneys yet again demanded a series of further documents, including certain facility risk assessments; supply chain management or procurement policies; and the unredacted pages 631-647 as well as the security plans for each site.

10. In "**YS17**", dated 6 August 2019, the Applicant's attorneys posed even more questions regarding the risk assessments and demanded answers to questions (such as what a "mirror campaign" is).

11. In "**YS18**", dated 15 August 2019, the Provincial Government conveyed its final position, which was that:

11.1 it was not prepared to release the unredacted versions of the recommendations before the decisions were taken;

11.2 it recorded that certain information, including the Provincial Treasury's AOS, had already been provided to the Applicant's attorneys;

11.3 it conveyed that it would provide the further risk rating assessments as requested; and

11.4 it conveyed that the Provincial Government was not prepared to engage in question and answer sessions during the course of litigation'.

[6] What one side calls a fishing expedition, the others see as a legitimate attempt to obtain all the information necessary to prosecute the review. In my view it is not important who is correct on this score. The question relevant to this matter is how the delay (if it can be called that) impacted on the proceedings now before court, i.e. did the delays and the interactions between the parties pertaining to the review application justify the inaction of DC Security and Delta in respect of this application. In my view it did not. The review application and this application must not be conflated and have a different set of rules that applicants must observe when bringing the matters to court.

[7] On 30 August 2019, DC Security launched this application, which was initially set down for 9 September 2019. On 11 September 2019, by agreement between the parties, the application was postponed to 18 September 2019.

[8] On 16 September 2019, Delta launched the intervention and joinder applications, a mere two days before this application was to be heard. In doing so Delta placed the respondents under extreme pressure to answer their applications.

Urgency

[9] Regarding urgency in the present context, Justice Savage, in the *Mhonko Security Services CC* case ('the *Mhonko* case'),[2] held as follows:

> '[12] It is trite that urgency is a reason that may justify deviation from the times and forms the rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief. Where an application is brought on the basis of urgency, the court is permitted in rule 6(12) to dispense with the forms and service usually required and dispose of the matter in the manner it considers appropriate.[3] Rule 6(12)(b) requires that the applicant must set out the circumstances on which it is averred that it is urgent and the reasons why the applicant claims that it cannot be afforded substantial redress at a hearing in due course. A lack of urgency will entitle a high court in the exercise of its discretion to refuse to enrol a matter where the ordinary forms and procedures have not been followed, in which case the matter may be struck from the roll.[4]
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> [13] An applicant may not create its own urgency[5] and must bring an application at the first available opportunity, since the longer it takes to do so may have the effect of diminishing urgency.[6] It should be shown that there will be an absence of substantial redress if the applicant is not heard as a matter of urgency'.[7]

[10] As significant as the setting out of the legal principles in the *Mhonko* case, is the application of those legal principles to facts which bear

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[2] *Mhonko Security Services CC v The City of Cape Town and Others* (21132/2018) [2018] ZAWCHC 168 (30 November 2018).

[3] *Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner for South African Revenue Service v Hawker Aviation Services Partnership and Others* [2006] ZASCA 51; 2006 (4) SA 292 (SCA) ; [2006] 2 All SA 565 (SCA) at para 9.

[4] Ibid.

[5] *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2012] JOL 28244 (GSJ) at para 7.

[6] ***Collins*** *t/a Waterkloof Farm v Bernickow NO and Another* [2001] ZALC 223.

[7] *Mhonko* at [12]-[13].

material similarities to those in this matter. Savage J sets out the facts in the *Mhonko* case as follows:

'[14] The applicant has provided armed guarding services to the City in terms of contract awarded on tender to it. By agreement, the contract term was extended on month-to-month basis, from 2017 for an extended period, until notice of termination of the contract was given in a letter dated 30 October 2018. The reason provided for the termination was that the City was "operationalising" the tender in respect of which the applicant was unsuccessful and that is intended with effect from 1 December 2018 to deploy new service providers at the sites currently being serviced by the applicants. The applicant was aware that from 1 July 2018 it rendered services on a month-to-month basis, for a period of not more than six months, alternatively until implementation of the new tender, whichever occurred first, and that one month's notice of termination could be given the applicant.

[15] The notice of extension of the contract for six months, or until implementation of the tender, made it clear that a decision to implement the tender granted could lead to an early termination of the contract extension. The applicant would in July 2018, when the contract extension was granted, have been aware of the fact that such an early termination may in due course arise. This is so in that when the applicant was informed that its appeal against its unsuccessful bid in the tender process had not been successful, it would also have been apparent that if the City decided to implement the tender as awarded, the six-month extension may be terminated prior to the conclusion of the six month period. The City's decision to terminate the act in accordance with its contract with the applicant does not in itself create urgency. This is all the more so when the fact remained that the month-to-month contract was in place given that the tender process had not been concluded and the outcome implemented. As a consequence, the month-to-month contract was directly related to the award and implementation of the tender. It concerned the provision of the same services which were the subject matter of the tender and the six month contract had been granted on the express basis that it may be terminated as a result of the implementation of the tender in due course.

[16] As from 10 August 2018, when the applicant was informed that its bid had been unsuccessful, it was aware of that the tender would not be granted to it. It would also have been aware that, as a result of the award of the tender, the month-to-month contract would come to an end. In spite of this, and although the applicant's attorneys had threatened urgent proceedings, no steps were taken for three months to launch this urgent application. This was an extended an inordinate delay, in my mind, and one which was not explained adequate by the applicant.

[17] As was stated in *Gallagher v Norman's Transport Lines (Pty) Ltd*[8] the rules do not tolerate an illogical knee-jerk reaction to urgency. The entitlement to deviate from the rules is dependent on the urgency which is shown to prevail and this must be of some marked degree. It may not be self-created and a litigant may not simply sit back without taking steps to seek urgent relief, or seek such relief without a full and proper explanation for any delay in doing so'.

[11] The *Mhonko* case is instructive for a number of reasons:

1. An applicant in an urgent application is not permitted to rely on urgency it has created.

2. While a delay in bringing an urgent application is not in itself fatal, if it is not brought at the first availability, it does diminish urgency.

3. An applicant must show that it will not obtain relief if the application is not heard on an urgent basis.

4. An applicant cannot rely on an extension of its existing contract as an excuse for delaying the launch of its urgent application.

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[8] 1992 (3) SA 500 (W) at 502I – 503A.

5. The correct trigger for an urgent application in these circumstances is when an applicant is informed that its bid is unsuccessful and its tenure is coming to an end. To delay after this is known is to create your own urgency.

[12] On 9 May 2019, DC Security was informed that it was not recommended as security provider for, *inter alia*, the Groote Schuur Hospital site. Thus from this date it, without doubt, must have been under no illusion that it was not a candidate for a call-off for that institution. Despite this, it did not expeditiously launch an urgent application but rather, it would seem, remained focused on the review application.

[13] The extensions of the existing contracts after this date do not justify the failure to act. On the contrary, these extensions should have underlined the reality that the existing contracts were coming to an end and emphasised, for DC Security and Delta, the importance of launching a urgent applications if they wished to do so.

[14] Regarding Delta, it was informed on 3 December 2018 that it had been moved from a medium risk service provider to a low risk service provider and thus it could only be matched with low and medium risk facilities. On that date it knew that it would be precluded from working at high risk facilities. This was confirmed on 16 August 2019 when Delta was notified that it would only receive limited sites under the call-offs for the Department of Health.

[15] Delta did not launch an urgent application immediately after 3 December 2018. It waited almost a full month after 16 August 2019 to do so on 13 September 2019. When Delta did so, essentially on the eve of the hearing of this application, it provided the respondents with two days to prepare and file answering affidavits, as well as seeking to join Eagle Age to these proceedings.

[16] Thus, in the case of DC Security, 'urgent' proceedings were launched more than three and a half months after 9 May 2019 and, in Delta's case, more than nine months after 3 December 2018 and just short of a month after the confirmation of what Delta already knew on 16 August 2019.

[17] DC Security did not provide a reasonable explanation of why it waited until a significant period after the Groote Schuur call-off before it launched an urgent application. It states that it was surprised that the province decided to proceed with the call-off in the face of the review application. This is curious. There was no obligation on the province to pend the implementation of the tender due to the launch of the review application. It was incumbent on DC Security to apply for an interdict and, if it did not do so, the province was entitled to proceed with the implementation of the tender.

[18] Furthermore, in respect of Delta, a sufficient explanation was not provided as to why it waited almost a month after it says it knew of the position it faced on 16 August 2019. In any event, Delta did not need to intervene in these proceedings. It should have launched its own application expeditiously, instead of waiting to intervene in the current application.

[19] It was submitted on behalf of province that the 'game plan' of unsuccessful bidders such as DC Security and Delta is not new.

[20] In written argument, counsel for the province stated the following:

> '. . . The game plan is as follows:

To the extent that the new allocations do not suit you, try to identify some or other shortcoming in the tender process and then wait to the last minute to approach the Court to block the implementation of the new tender with interdict proceedings.

The 'low' threshold, as far as the establishment of a prima facie right is concerned, is always emphasised as well as, in respect of the requirement of harm and the balance of convenience, the plight of existing employees.

Although the incumbent obviously has no right to continue to provide the service for the relevant department (Health, in the present instance), if the interim interdict is granted, it effectively leaves the Provincial Government with no alternative but to continue with the incumbents. The health facilities need security services and if interdicted from appointing the new service providers, the Provincial Government has to extend the contract of the incumbents. Delta has gone a bit further and has asked the Court to order that it 'be permitted to continue rendering services it currently renders at Valkenberg, Alexandra and Stikland Hospitals pending a determination of the main application'.

The litigation is purely commercially motivated. For every month that the incumbents can keep the interim interdict in place, they appropriate a month from the contracts of the new service providers for themselves. With a little bit of luck and imaginative exploitation of the right to appeal, the incumbents can easily appropriate the lion's share of the contracts of the new service providers for themselves, even if they lose the review hands down.

One must also bear in mind that the ability and appetite of the new service providers to engage in expensive litigation in these matters are often limited. They do not profit while the incumbents cling on to the contracts. They have to incur expenses in order to take over the contracts without a guarantee that they will ever be handed the site; and without any claim against the government if the review succeeds.[9]

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[9] As per *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC).

The government agency is also often criticised for taking an overly aggressive stance against the incumbents in this kind of litigation, even for simply opposing same.

A new development is that the incumbents argue that even if they lose, **Biowatch**,[10] applies and that an adverse costs order cannot be made against them'.

[21] While I express no view as to whether DC Security and/or Delta are treading a well-worn path and adopting a pervasive and well-known game plan in their rushing to court at the last minute (as in my view both DC Security and Delta have done), the argument quoted above does raise a number of issues that bear consideration.

[22] The incumbent parties in this matter have raised the question of their employees, who they say will be out of work if the call-offs are implemented. Assuming that this will be the case, it is of course regrettable. However, in my view it is a neutral factor. For every guard employed by the incumbents that loses his or her employment, another gains employment for the new service providers. The stance of DC Security and Delta is to elevate their concerns regarding their employees above those of the new service providers, and this is problematic. There is also the prospect that the new service providers will take over at least some of the employees of the incumbents, should the employees be amenable such arrangement. However, whether this is so or not is, given the above, not a conclusive factor.

[23] It is a concern that once the interim relief is granted, and the incumbents' existing contracts are secured, the process, which starts with an application to be heard in the near future, could be drawn out by way of

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[10] *Biowatch Trust v Registrar, Genetic Resources, and Others* 2009 (6) SA 232 (CC).

appeals, and in so doing effectively shut the new service providers out of appointments made in their favour. It is so that it is possible to abridge time periods when prosecuting appeals, but there are no incentives for the incumbents to co-operate in doing so. Furthermore, as pointed out by counsel for Princeton and Reliance, if DC Security and Delta now prevail, they will be in the strong position that even if they ultimately lose the review, they will still generate a lot of money in the meantime, and this at the expense of the new service providers.

[24] It was argued, on behalf of DC Security in particular, that if the interim relief should not be granted and it should lose, in this case, the Groote Schuur contract, this would place its continued existence in jeopardy due to its obligations to its existing employees, who it might need to retrench, and due to its loss of revenue. In my view, not only has DC Security known about this state of affairs and as a business should have taken appropriate steps, but there is an element of neutrality about this aspect. It was argued on behalf of Princeton and Reliance that the new service providers have expended money in preparation for taking over the contracts, and that should they not be able to do so, they too would suffer financial loss. Once again, the incumbents elevate their concerns above those of the new service providers.

Conclusion

[25] Given the above, it is my view that both DC Security and Delta have not made out a case for urgency in that they have created the urgency on which they seek to rely. Bringing their applications to court in the manner they did impacts negatively on both the orderly functioning of the court

and the province. It was unnecessary for them to do so. They should have responded to the correct triggers and they did not do so.In the circumstances, it is my view that the main application, the intervention application and the joinder application should all be struck from the roll, with costs.

Order

[26] In the circumstances, I make the following order:

1. The application for interim relief brought by Distinctive Choice Security 447 CC trading as DC Security, as well as the application for intervention and joinder brought by Delta Corporate Security Service (Pty) Limited, are struck from the roll with costs, such costs to include the costs of two counsel, where employed.

P A MYBURGH

Acting Judge of the High Court

Appearances:

For the applicant in the main application: Advocate A C Oosthuizen SC

Advocate N De Jager

Instructed by R L Brown of Herold Gie Attorneys

For the applicant in the intervention and Joinder application:	Advocate R G L Stelzner SC Advocate J R Whittaker Instructed by T Erasmus of Erasmus Ranchod & Associates
For the 1st to 4th respondents:	Advocate H J De Waal SC Advocate A Christians Instructed by M Khomo of the State Attorney
For the 5th to 6th respondents:	Advocate D Welgemoed Advocate M Daling Instructed by J Kotze of Laas & Scholtz Attorney