



SPECIAL TRIBUNAL

EST: ACT 74 OF 1996

TO: ALL MEDIA

18 March 2021

R4, 8 MILLION KWAZULU-NATAL BLANKET CONTRACT REVIEWED AND SET ASIDE

The SIU and Zain Brothers CC (“Zain Brothers”) have amicably reached a settlement agreement in an application by the SIU to review and set aside the R4, 8 million contract entered into between the KwaZulu-Natal Department of Social Development (“KZN Social Development”) and Zain Brothers for the supply of the 12 000 blankets KZN Social Development sourced from Zain Brothers as part of its response to the Covid19 pandemic.

In the application the SIU filed in the Special Tribunal in November 2020, SIU alleged that it sought an order reviewing and setting aside the contract on the basis that prior to concluding the contract and contrary to the applicable procurement legislation and policies, KZN Social Development did not undertake a needs analysis in respect of the blankets and that when procuring the blankets, KZN Social Development did not follow a competitive bidding process. The SIU also sought an order for the recovery of the full contractual amount from Zain Brothers which had been paid to Zain Brothers in terms of the contract after it had duly delivered the blankets to KZN Social Development.

An investigation by the Office of the Premier in KwaZulu-Natal had initially revealed irregularities in the awarding of the contract. Further investigations by the SIU also found irregularities in the awarding of the contract. However, it found no wrongdoing on the part of Zain Brothers. Zain Brothers conceded that the contract ought to be cancelled due to the established irregularities. Hence the parties entered into settlement negotiations regarding the just and equitable relief to be granted to the SIU under these circumstances. The parties reached an agreement in line with the Constitutional Court judgments in similar matters that Zain Brothers is not entitled to benefit from a contract that was awarded unlawfully and that it would pay back to the SIU any profit it has derived from the contract. Following this agreement, on 11 February 2021, the SIU approached the Special Tribunal to grant an order by consent between it and Zain Brothers reviewing and setting aside the contract and making provision for Zain Brothers to pay back to the SIU an amount of **R718,550** including the SIU’s legal costs.

On 12 February 2021, Judge Lebogang Modiba presiding in the Special Tribunal directed the SIU to file an affidavit setting the basis for the settlement and reasons why the settlement is in the public interest. In its affidavit filed on 5 March 2021 in

compliance with the Special Tribunal's directive, the SIU explained that given that it found no wrong doing on the part of Zain Brothers, if it were to pursue the review application to finality, it is unlikely to recover more than the profit Zain Brothers derived from the contract. Therefore, pursuing the review application to finality does not serve the public interest given the legal costs it would incur to achieve the outcome which Zane Brothers had conceded to.

On 16 March 2021, Judge Lebogang Modiba granted the consent order having satisfied herself that the settlement agreement reached between KZN Social Development and Zain Brother is founded on a sound legal basis and that it serves the public interest. In terms of the consent order, the contract is reviewed and set aside. Zain Brothers would pay back R718,550 being the profit it derived from the contract including the SIU's legal costs.

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