



Province of the
EASTERN CAPE
HEALTH

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Dear Honourable Speaker

RESPONSE TO MEMBER STATEMENT ON AEROMEDICAL SERVICES

Please find the response to the member statement on aeromedical services as raised in the sitting of the House on Wednesday, 9 February 2022.

Leli Investment has not rendered aeromedical services as per the award by the Department. The company was put to terms as per the Service level Agreement and when still not compliant, the process of managing a breach of contract was followed by the Department. This has required legal guidance to ensure that due process is strictly adhered to.

In the interim, every effort has been and is being made to find an alternative service provider, whilst the cancellation of the Service Level Agreement with Leli Investments is being processed. A new tender will be issued to the market once the final termination of the contract to Leli Investments is completed.

BACKGROUND

1. The Department had set out a bid to procure air ambulance services. The bid was successfully concluded and the joint venture, LELI INVESTMENTS BLACK EAGLE CONSORTIUM, with registration number: 2019/259734/07 was awarded the contract for the provision of an appropriately configured air ambulance programme for a period of 36 months. A service level agreement was concluded on 13 October 2020 between the Department and the Joint Venture in this regard.
2. The air ambulance services had previously been provided to the Department by NAC (Pty) Ltd ("NAC"), whose contract with the Department had come to an end.
3. Dissatisfied with the decision by the Department to award the contract to the Joint Venture, NAC launched an urgent application to the High Court, Eastern Cape Division, Grahamstown.
4. In part A of its Notice of Motion, NAC sought an urgent interim order interdicting the Department and the Joint Venture from giving effect to the Service Level Agreement – pending the outcome of a review application in which NAC sought, in part B of its Notice of Motion, an

order reviewing and setting aside both the decision to award the contract to the Joint Venture and the Service Level Agreement itself.

5. The Department opposed the granting of the urgent interim interdict. It filed an answering affidavit deposed to by relevant senior manager of the Department's Supply Chain Management unit. The Joint Venture similarly opposed the interim interdict and it, too, filed opposing papers. NAC filed a replying affidavit.
6. Full argument was heard by the Honourable Mr Justice Dukada J on or about 27 October 2020 where senior counsel appeared on behalf of the Department and argued that the interim interdict should be refused.
7. The Honourable Mr Justice Dukada, unfortunately, shortly thereafter issued an interim interdict in the terms sought by NAC.
8. The Department initially filed an application for leave to appeal against the order of Dukada J, but on guidance from appointed legal counsel, that application was not proceeded with, advising that the Department's best interests would be served by resolving the review itself as expeditiously as possible.
9. The Joint Venture, however, took a different view of matters and sought leave to appeal against the order of Dukada J. In June 2021, Judge Zilwa set aside the interdict and granted Joint Venture Leave to Appeal.
10. There were various interlocutory proceedings between the Joint Venture and NAC pursuant to that decision. The outcome is that those interactions delayed the review itself and, ultimately, NAC has withdrawn the original claim. The Department has issued an instruction that this matter be settled, in accordance with legal guidance.

Cancellation of the Service Level Agreement

11. The Service Level Agreement was concluded with the Joint Venture made up of Leli Investments (Pty) Ltd and Black Eagle, as discussed above.
12. On 19 August 2021 Leli Investments (Pty) Ltd and Black Eagle signed an agreement terminating their Joint Venture. In terms of that agreement, Leli Investments assumed all the obligations formerly resting on the Joint Venture to provide the air ambulance services to the Department.
13. The Department then applied due process to the consideration of the cession and confirmed that Leli Investments could proceed with the assumption of the obligations that formerly rested with the Joint Venture.

14. There was an undertaking by Leli investments that the service would commence on the 1 November 2021.
15. Despite assuming all the obligations to provide the air ambulance services in the agreement of 19 August 2021, Leli Investments has not provided any air ambulance services to the Department.
16. It has accordingly been in breach of its obligations in terms of the Service Level Agreement.
17. The Department, on the 24 November 2021 made demand on Leli Investments (Pty) Ltd to remedy its breach of the service level agreement. The notice is compliant with clause 19 of the service level agreement which stipulates that the Department is entitled, on breach by the Joint Venture, to demand that the breach be remedied and failing such remedy to cancel the Service Level Agreement.
18. Leli Investments sought to resist any possible cancellation of the Service Level Agreement. There were various discussions between Leli and the Department to ensure that any reasons cited by Leli Investments were not valid concerns that prevented the provision of the service.
19. Following these discussions, Leli Investments undertook to render services from the 15 December 2021.
20. However, Leli Investments did not commence the service on the 15 December 2021, in the main, because the Department had not yet signed the settlement agreement with NAC, where NAC had withdrawn from their claim to review the original award to the Joint Venture.
21. The Department communicated formally with Leli Investments in this regard and sought legal counsel on the matter.
22. Following the legal advice, cancellation of the Service Level Agreement with Leli Investment was tabled to the Bid Adjudication Committee on the 31 December 2021 and supported.
23. Leli Investments then responded with an appeal to the office of the Honourable MEC in January 2022. Legal counsel was once more sought, to ensure that all issues being raised had been considered fairly and any decisions and steps taken by the Department could withstand legal muster.
24. On the 17th February 2022, Senior Counsel has advised the Department that the contentions advanced by Leli Investments remain without merit. Given that Leli Investments was deemed entitled to assume the obligations of the Joint Venture in terms of the Service Level Agreement when the Joint Venture was terminated, Leli Investments was then required to meet its obligations without further delay. The terms of the Service Level Agreement do not allow the service provider to suspend its obligations because the Department had not yet concluded the settlement agreement process, following the withdrawal of the review request by NAC. Leli

Investments had no right *not to provide* the air ambulance services contemplated by the Service Level Agreement.

25. Leli Investments thus remains in breach of the Service Level Agreement, and the Department is entitled to cancel it.
26. It must be noted, throughout the processes above, the concern of the Department has always been that the Emergency Medical Service capability be augmented by an aeromedical service. Given the time taken to issue and award a new bid, and that the festive season was upon us, the Department tried to ensure that the awarded contractor provided the service by the time of the festive season, as they had agreed to, and as they were legally obligated to.
27. When the contractor failed to honour its contractual obligations, alternative service providers were approached to provide interim relief, whilst the correct processes were being followed to resolve the failure of Leli Investments to re-commence the aeromedical service. These efforts were unfortunately not successful as the service providers were not able/ willing to provide an interim service.

ACTIONS TAKEN:

28. Actions taken since the legal advice provided by senior counsel on the 17th February 2022:
 - 28.1. The State Attorney has been instructed to sign the settlement agreement following NAC's withdrawal of their request for review of the original award to the joint Venture by the Head of Department
 - 28.2. The final termination letter to Leli Investments has been signed by the Head of the Department
 - 28.3. The Honourable MEC Has responded to the appeal lodged by Leli Investments
 - 28.4. The Department is preparing to implement the competitive bidding process and will advertise the bid for aeromedical services to the market, following the conclusion of the cancellation of the Service Level Agreement, indicated above
 - 28.5. A procurement plan has been tabled to the Accounting Officer as set out below:

Action	Date
Approval of Demand Memo	21 February 2022
Bid Specification Committee Process	28 February 2022
Bid Advert	04 March 2022
Bid Closing	04 April 2022
Bid Evaluation and Civil Aviation Authority Consultations	15 April 2022

Action	Date
Bid Adjudication	25 April 2022
IBAC Review	30 April 2022
Notice of Commencement	May Month
Commencement of New Contract	01 June 2022

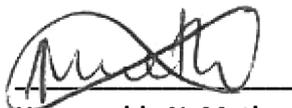
The Department, however, will endeavour to deliver before the indicated timelines. Due to the technical nature of the bid and previous experience in evaluation processes, the realistic timelines have been indicated in the table above.

In Conclusion

The Department regrets that the aeromedical service is not provided at this time, despite the award having been made to a successful bidder. There have been various legal proceedings and interactions that have affected this service, as described above.

Though time-consuming, it was deemed necessary. On the one hand, the Department wants to ensure that the needs of the people of this province are met in the shortest available time and on the other, it is as important to ensure that due processes are followed diligently and fairly, cognisant that one operates in a highly litigious environment.

Kindest regards



Honourable N. Meth
MEC for Health

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