

September 2015

CONSTRUCTION LAW BULLETIN

CAN THE STATE INVOKE A DEFENCE OF "NO BUDGET NO PAY"?

This question was addressed by the Supreme Court of Appeal ("SCA") in a recent case involving the Free State Department of Police, Roads and Transport ("Roads Department").¹

The case also touched on the interesting question as to whether a subcontractor of the main contractor can take action against an employer to enforce payment of amounts due to the subcontractor for work done.

In its opening remarks the SCA gave the Roads Department a verbal lashing, accusing it of having behaved unconscionably, without any integrity and with a total lack of transparency and accountability as enjoined by our Constitution.

THE FACTS

The Roads Department decided to embark on a road infrastructure programme, the stated aim of which was to promote accessibility, mobility and a safe road infrastructure network in the province that would be environmentally sensitive and would stimulate socioeconomic growth. The programme encompassed 23 roads located throughout the province.

The Roads Department called for tenders to be submitted for the necessary engineering services required in respect of the programme.

The SSI/Tshepega Joint Venture ("SSI") submitted a tender which culminated in it being awarded the contract on 19 April 2010.

¹ MEC v Terra Graphics (Pty) Ltd (483/2013) [2015] ZASCA 116, 10 September 2015.