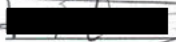




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2021/54420

(1)	REPORTABLE: <i>NO</i>
(2)	OF INTEREST TO OTHER JUDGES: <i>NO</i>
(3)	REVISED
<i>4/09/2025</i>	
DATE	SIGNATURE

In the matter between:

TRANSNET SOC LIMITED

Applicant

And

LIMACON CC

1st respondent

NOLUTHANDO TSHABALALA

2nd respondent

JUDGMENT

MOTHA J

[1] What serves before this court is an opposed self-review application to declare the tender for refurbishing the Class D43 locomotives' compressors unlawful and to set it aside, along with the resultant contract, following Limacon's successful tender bid to Transnet. Often, in these self-review applications, there is more than meets the eye. Rarely, in my experience, do courts find angels of justice committed to promoting the rule of law and adherence to s 217 of the Constitution

or who take the court into their confidence; instead, the court is left with the sense that a disgruntled group is exposing another.

The parties

- [2] The applicant is Transnet, a state-owned company registered and incorporated in accordance with the company laws of the Republic of South Africa.
- [3] The first respondent is Limacon CC, a close corporation duly registered in accordance with the laws of the Republic of South Africa ("Limacon").
- [4] The second respondent is Noluthando Tshabalala, a female adult and member of Limacon.

Facts in brief

- [5] To maximize the lifespan of its locomotives and meet prescribed customer availability and reliability standards, as well as service level agreements with external trading parties, Transnet continuously performs scheduled maintenance and unscheduled breakdown repairs.
- [6] On 23 June 2020, Transnet Engineering division (TE), a division of Transnet that specializes in refurbishing and maintaining various class locomotives—including D43 and D44 class locomotives, which are a relatively new fleet—as well as manufacturing and maintaining different rail-bound vehicles such as passenger coaches, locomotives, and freight wagons, issued an expression of interest ("EOI") under EOI number TE20-KLP-9HL-12370, inviting interested parties to submit bids for the continued refurbishment of compressors.
- [7] A compressor performs the most critical functions, such as operating the air or vacuum braking systems, high tension switches, pantographs, air horns, sanding gear, and windscreen wipers in a locomotive. It provides a high rate of airflow for charging the brake pipes on long trains, ensuring the train stops safely within the required distance and time frame.
- [8] At the time of issuing the EOI, Transnet had 21 compressors that were out of service. The appointment process consisted of two stages: first, shortlisting

respondents who succeeded during the pre-qualification and evaluation stage, as specified in the EOI, and second, the RFP stage.

[9] During the EOI process, nine bidders submitted bids; these were:

1. African Commodity Handling Projects (Pty) Ltd;
2. Bryte Choice Africa;
3. Compair SA;
4. ECOAN Engineering (Pty) Ltd;
5. Limacon;
6. N&C Maintenance and Spares (Pty) Ltd;
7. Phineas Engineering CC;
8. Umnotho Mining (Pty) Ltd; and
9. Wabtec South Technologies (Pty) Ltd.

[10] After the EOI bid evaluations, three bidders were shortlisted to proceed to the RFP stage, namely:

1. Limacon: R7,735,436.99;
2. Bidder 2: R20,443,900.01', and
3. Bidder 3' R9,018,286,20,

[11] Significantly, Transnet's EOI section 4 states that the refurbishment concerns the entire class D43/D44 Locomotives Compressors. Perhaps, it is prudent to refer to the document itself:

"STATISTICS (The Goods)

Paragraph 2 of the EOI provides as follows:

Respondents expressing an interest to participate in this RFI/EOI stage must qualify in terms of the minimum predetermined requirements and have the capacity to supply/provide the full range of Products/Services, as set out below:

Minimum Eligibility Criteria are as follows:

- (I) Bidder must score eighty (80) points in the test for technical capability as per test thereof specified on section three (3) as well as section 4,4 of this document.

TECHNICAL CAPABILITY

Respondents are required to indicate their existing technical capability by ticking the applicable box in the table below:

TE specification: PD_COMP_NAT_SOW_016		
Section	Indicate YES if Complies to Specification	Indicate NO if Does Not Complies to Specification and reasons/shortcomings A separate annexure may be added along with bid, should the space provided below be found to be insufficient.
1	yes	1. Division of Technical Services 2. Division of Technical Services 3. Division of Technical Services 4. Division of Technical Services 5. Division of Technical Services 6. Division of Technical Services 7. Division of Technical Services 8. Division of Technical Services 9. Division of Technical Services 10. Division of Technical Services 11. Division of Technical Services 12. Division of Technical Services
2	yes	
3	yes	
4	yes	
5	yes	
6	yes	
7	yes	
8	yes	
9	yes	
10	yes	
11	yes	
12	yes	

13	Yes	
14	Yes	
15	Yes	
16	Yes	
17	Yes	
18	Yes	
19	Yes	
20	Yes	
21	Yes	

Note: Bidder must return a copy of Transnet Specification PD_COMP_NAT_SOW_016 with their bid. Every page of specification must be signed, in acknowledgement of the requirements of Transnet as well as in substantiating of the comments on technical capability in section 3 above

- [12] Clauses 18 and 21.1 are central to this self-review application and are stated as follows:

SCOPE OF WORK FOR 43 CLASS COMPRESSOR- EXHAUSTER WLPC9G (Gardner Denver)

Date of release

14 DECEMBER 2017

DOC. No PD_COMP_NAT_SOW_016

Revision – 01

18	Should any component require a replacement, only OEM spares parts shall be used.
21	Documentation requirements. 21.1 Repairer must be in possession of all OEM overhaul manual and spare parts catalogue for this compressor as Transnet Engineering will not provide the OEM manuals and specifications.

- [13] Regarding D43 Class Compressor Scope of Work, it is noteworthy that it "covers the requirements for stripping, inspection, repair or replacement of various

components, assembly and testing of WLPC9G reciprocating compressors/exhauster for Rotating Machines Business."

- [14] The Original Equipment Manufacturer (OEM) and specifications manuals referred to in the D43 Class Compressor Scope of Works refer to the operating manuals of Denver Gardner, the original equipment manufacturer. The OEM manuals address key mechanical issues related to the assembly of parts, repair, and service.

Issues

- [15] The genesis of this self-review is that, contrary to the peremptory requirements in clause 21.1, the respondents did not possess the OEM Overhaul Manual or the Spare Parts Catalogue. Instead, the respondents had the Service Manual and Parts List as stated in their answering affidavit:

"4.5. At time of tender Limacon had the following manuals which were not supposed to be submitted, but for one to confirm having those through ticking the boxes on the capacity sheet provided:

4.5.1. Service Manual 13-3-643 version 0:0 of December 2010; and

4.5.2. Parts List 13-3592 version 01 of January 2011."

- [16] Second, the applicant submitted that the respondents failed to close the non-conformances before awarding the tender, as required by the assessment report, dated 29 July 2020.

- [17] Finally, in the supplementary affidavit, the applicant referred to the respondents' total disregard of the OEI requirements by employing the services of Precision Engineering without seeking the approval of Transnet.

The law

- [18] Examining self-reviews by organs of state, the court, in *Greater Tzaneen Municipality v Bravospan*,¹ held:

¹ 252 CC (CCT 342/22) [2024] ZACC 20; 2025 (1) BCLR 1 (CC); 2025 (1) SA 557 (CC) (2 October 2024)

"The Constitution enjoins organs of state to maintain and promote a high standard of professional ethics. Moreover, when contracting for goods and services, organs of state are mandated to do so in accordance with systems that are fair, equitable, transparent, competitive and cost-effective."²

[19] It is trite that compliance with s 217 of the Constitution is peremptory. It reads:

"When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost-effective."

[20] In court in *Steenkamp NO v Provincial Tender Board of the Eastern Cape*³, held:

"There can be no doubt that in procuring goods and services for the state, a tender board must act consistently with its statutory mandate. It must act fairly, impartially and independently. Equally, it may not act with negligent or reckless disregard for the protectable interests of tenderers. It must act within the legislative power conferred on it and properly and honestly exercise the discretion it may have. A tender board must in doing its work act transparently and be held accountable, when appropriate. In other words it must in its work observe and advance the basic values and principles governing public administration as envisaged by section 195 of the Constitution."⁴

Submissions

Applicant's counsel

[21] Addressing the issue of delay, counsel for the applicant submitted that the engagement with the respondents was the cause of the delay in executing the review. Furthermore, he argued that it was during the COVID-19 period, and Transnet premises were empty as employees were working from home. When Transnet eventually engaged lawyers, it took two months to launch the application, which, he said, was not unreasonable given the unlawfulness of the

² Supra para 1

³ (CCT71/05) [2006] ZACC 16; 2007 (3) SA 121 (CC); 2007 (3) BCLR 300 (CC) (28 September 2006)

⁴ Supra para 35.

tender. On the merits of the matter, he asserted that the respondents raised two defences in their papers.

- [22] First, they argued that the tender number the applicant relied on was incorrect because the tender numbers in the EOI and the RFP differed. The respondents did not persist with this argument during the hearing.
- [23] The second defence is that the tender document did not refer to any particular OEM manual. He submitted that this is incorrect because by ticking yes and signing the returnable documents, they acknowledged possessing the Overhaul manual and spare parts catalogue.
- [24] In the face of the unlawfulness, he submitted that Limacon should not have been awarded the tender. In addition, he referred to their supplementary affidavit and stated that by subcontracting to Precision Engineering, Limacon acted contrary to its obligation to notify Transnet in advance before subcontracting.
- [25] When focusing on the audit findings, he submitted that someone realized they had been caught or, if it was a mistake, they needed to engage Limacon to close the assessment report findings, *ex post facto*. In light of all the tabulated unlawfulness, he submitted that Transnet ought not to have shortlisted Limacon for the RFP stage nor awarded it the tender.

Counsel for the respondents

- [26] Right off the bat, counsel for the respondents conceded that they did not possess an OEM Overhaul manual or spare parts catalogue. He submitted that they had a Service Manual 13-3-643 version 0:0 of December 2010 and Parts List 13-3592 version 01 of January 2011. When the court pointed out that the two manuals – Overhaul and Service manuals - are different, he argued that the tender document itself did not explain the differences. It was his submission that an expert would have been necessary to explain the differences. In this tender, they did not hold a formal tender briefing, the argument continued.
- [27] He accepted the court's proposition that it was of paramount importance that the specifications in a tender document were followed to the letter. His submission

was that questioning whether the respondents had a service manual or an overhaul manual was tantamount to splitting hairs. What would have assisted, he continued, was if Transnet had defined the specifications instead of stating, as in 21.1, that: "Transnet Engineering would not provide OEM manuals and specifications". The two manuals, service and overhaul, are related, and if, *ex post facto*, it turned out that the service manual was not what Transnet wanted, he argued, Transnet should provide the OEM manuals.

- [28] Continuing with his argument, seemingly unbothered whether it was meritorious or not, he submitted that the Overhaul manual was not defined. From the sublime to the ridiculous, he maintained that there was uncertainty about what was meant by the Overhaul manual. As if that was not enough, he insisted that Transnet should have made the manuals available to the respondents.
- [29] His get-out-of-jail-free card, as it were, was that the auditors wrote in the assessment report: "Based on the assessments conducted at Ndalama Amarturo Winders, the audit team was confident that Limacon has the capacity and capability to provide Transnet Engineering with products that are refurbished in line with customer requirements."
- [30] Rather conveniently, he ignored the sentence that followed, which read: "However, Limacon should ensure that all non-conformances raised are closed before the awarding of the tender. Moreover, the audit team would like to perform First Article Inspection (FAI) at the Ndalama Armature Winders in order to verify and validate product conformance before it is delivered to Transnet Engineering. Once the compressor is ready to be delivered, Limacon must inform Transnet Engineering so that an inspection can be conducted."
- [31] When engaged by the court on the mentioned non-conformances, he submitted that the respondents were not informed of any concerns or non-conformances. He asserted that this assessment report was never communicated to the respondents, as it was an internal document intended for use within the organization. The court referred him to the respondents' answering affidavits, which read:

"The Applicant conducted a scheduled site survey around the premises of Limacon, to determine whether we have a suitable site for purposes of delivering in terms of the contract. In this site inspection, the applicant's technical team raised few concerns which we attended to and these concerns were raised as Non-Conformance. If Limacon was not meeting its contractual obligations, then, as the applicant originally purported to do, it had to act in terms of the contract. Now is not the time to unlawfully attempt to impinge the procurement process."

- [32] Following this interaction, he acknowledged that non-conformances were raised but addressed. To summarize his submission, he reluctantly admitted that clause 21.1 was not complied with and that the non-conformances were recorded. Regarding the supplementary affidavit, he stated that it pertained to contractual relations after the tender was awarded.

Assessment

- [33] The first point of concern is the delay in starting these proceedings. Unlike in Paja reviews, there is no specified time limit for bringing a self-review. Addressing the issue of delay, the court in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* said:

"Legality review, on the other hand, has no similar fixed period. This Court in Khumalo endorsed the test enunciated by the Supreme Court of Appeal in Gqwetha for assessing undue delay in bringing a legality review application (Khumalo test). Firstly, it must be determined whether the delay is unreasonable or undue. This is a factual enquiry upon which a value judgment is made, having regard to the circumstances of the matter. Secondly, if the delay is unreasonable, the question becomes whether the court's discretion should nevertheless be exercised to overlook the delay to entertain the application."⁵

- [34] Limacon's successful tender bid was conveyed in a letter dated 10 March 2021. At that juncture, TE was busy engaging Transnet SCM regarding the irregularities in the tender process. It is hardly surprising that on 22 April 2020, a letter was sent to Limacon to address the issues raised in the assessment report

⁵ Supra para 48.

during the audit of Ndalama Armature Winders, as Limacon was planning to outsource the compressor repair process to them.

[35] However, a new audit became necessary because Limacon decided to conduct the repairs internally. The audit aimed to assess Limacon's technical capabilities and infrastructure to ensure compliance with Transnet Engineering's specified repair requirements. On 18 May 2021, an audit was conducted at Limacon's premises, where several non-conformities were identified.

[36] The engagement continued until Transnet briefed its lawyers to prepare the application in September 2021, and the application was launched in November 2021. If I calculate the delay from April 2021, it amounts to at most eight months. Considering that this occurred during the COVID-19 pandemic and taking into account the circumstances of this case, I do not find that Transnet unduly delayed in bringing this application. Therefore, I do not need to proceed to the second stage of the Khumalo test.

Assessment of the merits

[37] Limacon's version purportedly had in its possession the "Service Manual", as opposed to the OEM Overhaul Manual. Counsel's submission that the procurement document did not specify which manual was required is without substance, especially if regard is had to the fact that servicing and overhauling are two distinct engineering processes. I agree that the former denotes maintenance, and the latter refers to refurbishment. To manufacture some confusion around these words is a pitiful attempt at obfuscation.

[38] In view of the email correspondence between Limacon's Engineering manager, Shadrack Dube, and Gardner Denver's Manager of Engineering, Robert L. Smith, counsel's submissions that the respondents were uncertain about the meaning of the overhaul manual is nothing but a tall story. The email exchanges were as follows:

"Greetings Robert

My name is Shadrack Dube from a company called Limacon cc in RSA.

We have recently been partially awarded a tender to do some repairs on your compressor unit WLPC9G.

While we are able to source some repair or overhaul spares from your approved spare parts agents, we would appreciate it if you may kindly favor us with some sections of your manuals with key mechanical dimensional tolerances which would enable us to confirm if the tolerances are to the OEM specs.

These include:

- i) Crank shaft sizes and wear limits
- ii) ...
- iii) ...
- iv) ...
- v) Key information (from your overhaul manual) that may assist in the parts qualification, condemning limits compliance to before assembly of the parts into a complete unit as specified in the attached Transnet spec as extracted from the net."

[39] In view of this paper trail, the respondents appreciated the differences in various manuals and understood that an overhaul manual was indispensable. Therefore, they were less than candid when stating that:

"It is also denied that Limacon did not have the service manual drawings and specifications from Gardner and Denver. There was no specific manual which Transnet required for purposes of executing this work. It merely said that one must be in possession of the Service Manual from Gardner and Denver which Limacon had those manuals."⁶

[40] In the same answering affidavit, the respondents continued:

"It must also be understood when the document indicated that repairer must be in possession of all OEM overhaul and spare parts catalogue for this compressor

⁶ Answering affidavit para 10.2.

as Transnet engineering will not provide their OEM manuals and specifications merely indicated that I must be in possession of manuals from Denver and Gardner.”⁷

- [41] The respondents cannot be allowed to approbate and reprobate. The tender documents either specified the manuals required or did not. To suggest that they did but meant something else must be rejected.
- [42] Additionally, the respondents did not possess the spare parts catalogue, as required under clause 21.1. Consequently, if a part needed replacement, the respondents would not comply with clause 8, which mandated that only the OEM spare parts be utilized. Without the spare parts catalogue, the ineluctable question is how they would have ordered the spare parts. With millions of rands at stake with each breakdown, this is no trivial issue. The use of original parts is essential. Contained in the OEM catalogue are precise technical specifications, including the specific fitting and angling to prevent damage and ensure proper function. In essence, the OEM catalogue is vital for maintaining quality assurance.
- [43] Since these were returnable documents, the respondents signed and confirmed Transnet's scope of work policy, which referenced the OEM overhaul manual and the spare parts catalogue.
- [44] Pursuant to the shortcomings outlined above, the respondent was unable to meet the minimum threshold of 80% required under STEP FOUR for both technical criteria and functional requirements, with 50 points for compliance with the scope of work as outlined in the Transnet Engineering technical specification and 20 points for the outcome of the physical technical audit at the premises/facilities of the supplier.
- [45] Regarding the non-conformances, the respondents failed to close them before the award. As early as July 2020, the assessment report noted the existence of non-conformances that needed to be closed within thirty (30) days, and definitely before the award was made. The respondent was awarded on 10 March 2021,

⁷ Supra para 8.8.

yet, on 23 April 2021, a letter was sent to the respondents requiring them to provide proof of closing the following findings.

No.	Priority Level (Low, Medium, High)	Finding
1	High	At the time of the audit, there were no OEM drawings and specifications REF DOC: ISO 9001:2015 clause 8.1 read with 8.4.3 read with 8.5.1 (a)
2	High	At the time of the audit, job card no: 20-0235 was found at the assembly station without mechanical measurements for stripping and qualification of components. REF DOC: ISO 9001:2015 clause 8.5.1
4	High	At the time of the audit, there was no evidence of crack detection and balancing for components being outsourced. REF DOC: PD_COMP_NAT_SOW_016 rev 1 clause (8.3) (8.4) read with ISO 9001:2015 clause 8.1 read with 8.4.3 read with 8.5.1 (a)
5	Medium	At the time of the audit, it was noted that some calibration laboratories were not SANAS accredited. E.G SA calibration and ACME handy man calibration REF DOC: ISO 9001:2015 clause 7.5.2 (a)
6	Medium	At the time of the audit, there were no records of in-house training for crack detection at the inspection station. REF DOC: ISO 9001:2015 clause 7.2 (d)
7	Low	At the time of the audit, was observed that the flow chart available was related to AC motors and not compressors
8	Low	At the time of the audit, the test bench was strictly designed for motor coach compressors but not suitable for diesel compressors.

[46] Since the audit findings were not closed, the respondents should not have been shortlisted, let alone awarded the tender. Even more concerning, Limacon was re-audited at its premises after the appointment, and several non-conformances were identified. In the result, Transnet's decision to award Limacon the tender was unlawful and should be reviewed and set aside; it did not comply with Section 217 of the Constitution.

[47] The supplementary affidavit did not assist this court. I am of the view that it raises contractual issues involving Precision Engineering, a party that is not before this

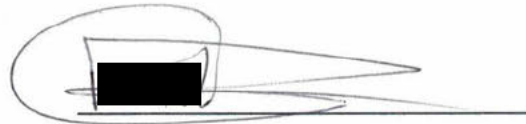
court. I, therefore, must decline the invitation to deal with the issues raised in the supplementary affidavit and restrict myself to the self-review notice of motion.

Costs

[48] On 15 December 2021, the parties appeared before my sister Fisher, and the costs were to be taxed as costs in the cause. The chickens have come home to roost; the respondents are to bear the costs of that matter. The costs for today's hearing will follow the well-trodden path, which is that costs follow the results. Since the parties did not argue the costs reserved on 18 January 2022, those costs remain reserved.

Order

1. The applicant did not unduly delay launching the application.
2. The tender issued by the applicant to the first respondent to undertake the refurbishment of Class D43 locomotives' compressors under RFP Number TE20-KLP-9HL-1237V01 is reviewed and set aside as unlawful.
3. The contract concluded between the applicant and the first respondent pursuant to the award of the tender to the first respondent is set aside.
4. The respondents are to pay the costs of this application jointly and severally, the one paying the other to be absolved on scale B.
5. The respondents are to pay the costs of the matter heard on 15 December 2021 jointly and severally, the one paying the other to be absolved on scale B.
6. The costs of the case heard on 18 January 2022 remain reserved.



MP MOTH A
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARANCES:

Date of Hearing: 22 July 2025
Date of Judgment: 04 September 2025

For Applicant: ADV MABUBULA
Instructed by NINGIZA ATTORNEYS

For 1st to 4th Respondents: ADV NYANGIWE
Instructed by: GM TJIANE ATTORNEYS