IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

Case Number: 181079/2025

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: NO

24 March 2026 [redacted]

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD	**Applicant**
and	
TRANSNET SOC LIMITED	**First Respondent**
SINQOBILE EQUESTRIAN SECURITY SERVICES (PTY) LTD	**Second Respondent**
HLANGANANI PROTECTION SERVICES (PTY) LTD	**Third Respondent**
TAKE NOTE IT (PTY) LTD	**Fourth Respondent**

JUDGMENT

Mdalana-Mayisela J

Introduction

[1] This is an application for the judicial review of an administrative action. The applicant, Fidelity Security Services (Pty) Ltd ("Fidelity"), seeks to review and set aside a decision by the first respondent, Transnet SOC Ltd ("Transnet"), to award Tender No. HOAC-HO-55168 ("the tender") to the second respondent, Sinqobile Equestrian Security Services (Pty) Ltd ("Sinqobile"). The tender, valued at over R300 million, was for the provision of network security services for Transnet's rail infrastructure in the central corridor for a period of 12 months.

[2] Fidelity, an unsuccessful bidder, contends that the tender process was fatally flawed and unlawful. It argues that Transnet breached mandatory procurement regulations, irrationally disqualified Fidelity's bid, and favoured Sinqobile despite material deficiencies in its submission.

[3] Transnet opposes the application, arguing that the process was lawful, rational, and procedurally fair. It maintains that Fidelity was disqualified for failing to meet the mandatory 80% technical functionality threshold, achieving only 66.67%.

Factual Background

[4] On 12 August 2025, Transnet invited bids for a critical security contract. The closing date for submissions was a mere three days later, on 15 August 2025. The bid validity period, however, was set at 180 business days, expiring on 24 April 2026.

[5] Four bids were received. At the administrative stage, Bidder 1 (Take Note IT) was disqualified. Fidelity, Sinqobile (Bidder 2), and Hlanganani Protection Services (Bidder 3) proceeded to the technical evaluation stage. This stage carried a mandatory minimum threshold of 80%.

[6] The technical evaluation consisted of several criteria, with the "Transitional Plan" and "Community Engagement Plan" each carrying a 20% weighting. Fidelity scored 66.67% overall and was disqualified. The evaluators' notes stated, in essence, that Fidelity's plan did not address the 15-day takeover plan, recruitment, and community engagement requirements adequately.

[7] Sinqobile scored 90% (and 100% in other clusters) and was ultimately recommended as the preferred bidder. Fidelity was notified of its disqualification on 1 September 2025 and launched these review proceedings on 3 October 2025.

The Grounds of Review

[8] Fidelity's case for review rests on several pillars, which can be summarised as follows:

[8.1] *Non-compliance with Treasury Regulations*: The three-day advertisement period for a contract of this magnitude was a flagrant breach of Treasury Regulation 16A6.3(c), which mandates a minimum 21-day advertising period. Transnet failed to provide any evidence that the accounting officer had determined the matter to be urgent, as required by the regulation.

[8.2] *Irrational Disqualification of Fidelity's Bid*: The evaluators failed to apply their minds to Fidelity's comprehensive bid. Fidelity's "Transitional Plan" and "Community Engagement Plan" directly addressed all the criteria upon which it was marked down, including a demonstrable ability to deploy within 24 hours, well within the 15-day requirement.

[8.3] *Unequal Treatment and Failure to Consider Relevant Material*: Transnet failed to consider material regulatory non-compliance by Sinqobile, specifically an outstanding late-payment interest of over R8.4 million owed to the Private Security Sector Provident Fund, as well as non-compliance with FSCA Conduct Standard 1. Simultaneously, it disqualified Fidelity on what Fidelity argues are spurious grounds.

[8.4] *Procedural Unfairness:* The initial reasons provided for Fidelity's disqualification were inadequate. The subsequent, unexplained adjustment of Fidelity's score from 66.67% to 71.67% following a request for information only served to highlight the arbitrariness of the original evaluation.

The Legal Framework

[9] It is trite that Transnet, as an organ of state, is bound by section 217 of the Constitution, which mandates that its procurement system must be "fair, equitable,

transparent, competitive and cost-effective." This constitutional command is given effect by the Public Finance Management Act 1 of 1999 (PFMA), the Treasury Regulations issued thereunder, and the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The decision to award a tender constitutes administrative action and is therefore subject to review under PAJA.

[10] The Constitutional Court in *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency*[1] made it clear that the fairness of the process cannot be severed from the outcome. Once a ground of review under PAJA is established, the decision must be declared unlawful. The purpose of procedural requirements is to ensure even treatment of all bidders and to guard against a process skewed by wrongdoing.

[11] Furthermore, Treasury Regulation 16A6.3(c) is not a mere guideline; it has binding force. Compliance with it is a jurisdictional prerequisite for a lawful tender process. The regulation provides that bids must be advertised for a minimum of 21 days, "*except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine.*" The onus rests on the organ of state to demonstrate that the requirements for such an exception have been met.

Evaluation

The Advertisement Period

[12] The most fundamental irregularity in this case is Transnet's failure to comply with Treasury Regulation 16A6.3(c). The tender, valued at well over R300 million and requiring complex operational plans, was advertised for only three days. This is patently unreasonable and falls far short of the constitutionally mandated standard of transparency and competitiveness.

[13] Transnet's attempt to justify this by reference to its internal "*Procurement Manual for Activities Directed at Revenue Generation*" must be rejected. In its answering affidavit, Transnet argued that the procurement was conducted as a "*limited bidders'*

[1] [2013] ZACC 42 par 42.

mechanism" in terms of clause 8.9 of this manual, which permits a shorter response period.

[14] This defence is unavailing for several reasons. *First*, an internal policy manual cannot override a binding Treasury Regulation. The regulation sets a minimum standard of 21 days; an internal policy cannot authorise a departure from it. *Second*, even if clause 8.9 could be invoked, Transnet failed to comply with its own preconditions. The manual requires a "*reasonable period, being not less than 48 hours*," and for periods shorter than 48 hours, requires prior written approval from the Chief Procurement Officer. The record contains no such approval, no justification for the compressed timeline, and no evidence that the accounting officer made a determination of urgency as required by the Treasury Regulation itself.

[15] The absence of urgency is demonstrated by the tender's own terms. The RFP stipulated a bid validity period of 180 days, ending on 24 April 2026. This is wholly inconsistent with a genuine emergency requiring an expedited process. If the situation were truly urgent, one would expect a much shorter validity period to ensure a swift handover. The eight-month validity period reveals that Transnet anticipated a lengthy evaluation process, fatally undermining its belated attempt to invoke urgency.

[16] Transnet's supplementary answering affidavit sought to introduce a new justification, claiming the previous service provider was terminated for poor performance. Even if true, the termination of a contract does not, without more, justify a deviation from mandatory procurement timeframes. It points to a need for planning, not to an emergency that would make a 21-day advertising period impossible. The record contains no decision demonstrating that Transnet weighed the constitutional imperatives of fairness against any operational considerations before truncating the process. The three-day window was not a response to an emergency; it was a design feature that, on the probabilities, served to limit competition. The process was therefore constitutionally defective from its inception.

The Disqualification of Fidelity

[17] Even if the advertisement period were not fatal (which it is), the evaluation of Fidelity's bid was itself irrational and procedurally unfair. The test for rationality is

whether there is a rational connection between the decision and the purpose for which the power was conferred. The decision to disqualify Fidelity fails this test.

[18] The evaluators marked Fidelity down for failing to address the 15-day takeover plan. However, Fidelity's "*Business Continuity and Transitional Plan*," attached to its supplementary founding affidavit as "SA1," explicitly and repeatedly states that it can deploy within 24 hours. It sets out a detailed, hour-by-hour "*Start-up Execution*" plan achieving full operational readiness within 24 hours. The plan addresses recruitment, deployment, and employee takeover. In the face of this explicit and detailed evidence, the evaluators' note that "*Transitional plan did not address recruitment within 15 days*" is demonstrably false. It indicates a clear failure to consider relevant material, a ground of review under section 6(2)(e)(iii) of PAJA.

[19] Transnet's response in its answering affidavit is a bare denial, insisting that the plan was "*materially deficient*." It fails to point to a single aspect of Fidelity's 24-hour plan that does not meet the 15-day requirement. This is not a case of a court second-guessing a technical evaluation; it is a case in which the record shows that the evaluators ignored the very evidence before them.

[20] This conclusion is reinforced by Transnet's admission that, after Fidelity requested a roundtable meeting, it re-evaluated the applicant's bid, wherein the applicant's score increased from 66.67% to 71.67%. This unexplained revision is telling. It demonstrates that the original scoring was neither fixed nor unimpeachable and that the bid contained material that, upon a second (still non-transparent) look, warranted a higher score. This further supports the inference that the initial evaluation was not a proper application of the mind.

[21] Fidelity's contention that it was entitled to an additional 20%, which would have propelled it over the 80% threshold, is compelling. Transnet has offered no substantive rebuttal to the detailed evidence Fidelity provided to support this claim. The failure to meaningfully engage with this central point is fatal to its defence.

The Award to Sinqobile

[22] The process's irrationality is compounded by Transnet's treatment of Sinqobile. The second respondent's bid included a "*Private Security Sector Provident Fund*

Employer Status Confirmation Letter." This letter recorded an outstanding late-payment interest amount of R 8,487,666.13 and a failure to submit contribution schedules, warning of a resulting non-compliant status.

[23] This is a material fact. It goes directly to the financial discipline, regulatory compliance, and operational sustainability of a bidder for a labour-intensive, multi-million-rand security contract. Transnet was duty-bound to consider this as part of its risk and functionality assessment. The record is silent on any such consideration. By ignoring this red flag while rigidly applying a technical disqualification to Fidelity, Transnet acted in a manner that was neither equal, nor fair, nor rational.

Conclusion on Review

[24] The cumulative effect of these irregularities is profound. The process was unlawful from the outset due to the breach of Treasury Regulation 16A6.3(c). It was rendered substantively irrational by the failure to consider Fidelity's compliant bid and by the unequal treatment of Sinqobile. The applicant has clearly established multiple grounds of review under section 6(2) of PAJA. In terms of section 172(1)(a) of the Constitution, the impugned decisions must be declared unlawful and set aside.

[25] Having considered the voluminous papers, including the Rule 53 record, the comprehensive heads of argument, and the oral submissions, I conclude that the application must succeed. The tender process was indeed tainted by several material irregularities that render the decision to award the tender to Sinqobile unlawful and constitutionally invalid.

Remedy

[26] Having found that the decision to award the tender is unlawful, this court must now craft a just and equitable remedy in terms of section 8 of PAJA and section 172(1)(b) of the Constitution.

[27] Fidelity seeks two main forms of relief. Primarily, it seeks an order setting aside the award *ab initio* and directing Sinqobile to repay all profits earned under the unlawful

contract. Alternatively, it seeks an order remitting the matter to Transnet for a *de novo* evaluation.

[28] The primary remedy sought, disgorgement of profits, is severe. The Constitutional Court in *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, SASSA (AllPay II)*[2] , held that such an order may be just and equitable to ensure that illegality does not pay and to deter future malfeasance. However, the court also cautioned that it is not an automatic consequence of setting a contract aside. It requires a careful consideration of all circumstances, including the public interest, the contractor's blameworthiness, and the disruption to public services.

[29] In this case, the tender was for essential security services for 12 months. The contract is likely nearing completion or may already be completed. Ordering a disgorgement of profits at this stage would be highly disruptive and potentially penalise Sinqobile for Transnet's failures. While Sinqobile's own non-compliance with provident fund regulations is a relevant factor, there is no evidence in the papers that Sinqobile was complicit in Transnet's unlawful conduct. It simply submitted a bid. The primary fault lies with Transnet.

[30] Fidelity's alternative remedy, a *de novo* tender process, is the more appropriate course. Setting the award aside and remitting the matter for reconsideration best serves the constitutional imperative of a fair, transparent, and competitive process. It allows for a fresh start, untainted by the procedural and substantive irregularities that plagued this procurement. It would require Transnet to re-advertise the tender in compliance with the 21-day minimum period, allowing for full market participation. All bidders, including Fidelity and Sinqobile, would then be evaluated fairly and equally against the published criteria.

[31] The argument that this would be futile because the contract has almost run its course is not a bar to granting this relief. The principle of legality demands that unlawful conduct be declared as such. Furthermore, a *de novo* process would govern the procurement of future services, ensuring that they are provided under a lawful contract. It would vindicate the constitutional standards that Transnet failed to uphold.

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[2] [2014] ZACC 12 par 32.

Costs

[32] Fidelity has been substantially successful in these proceedings. The general rule is that costs follow the result. Furthermore, this is a matter of significant public importance concerning the integrity of public procurement. In line with the principle in *Biowatch Trust v Registrar, Genetic Resources*[3], a constitutional litigant who succeeds against the state should generally be awarded costs.

[33] I see no reason to depart from this principle. Transnet must pay Fidelity's costs.

ORDER

[34] In the result, I make the following order:

1. The applicant's non-compliance with the forms and service requirements is condoned, and the application is heard as one of urgency in terms of Uniform Rule 6(12).
2. The first respondent's decision to disqualify the applicant's bid and to award Tender No. HOAC-HO-55168 to the second respondent is reviewed and set aside.
3. It is declared that the process adopted by the first respondent in advertising and adjudicating Tender No. HOAC-HO-55168, in contravention of Treasury Regulation 16A6.3(c) issued under the Public Finance Management Act 1 of 1999, was unlawful and invalid.
4. The matter is remitted to the first respondent to conduct the tender process for the services which were the subject of Tender No. HOAC-HO-55168 *de novo*, in accordance with the Constitution, the Public Finance Management Act, and all applicable Treasury Regulations.

[3] [2009] ZACC 14 par 43.

5. The first respondent is ordered to pay the costs of this application, including the costs of senior counsel.

[redacted]

MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division

(Electronically delivered by uploading on Caselines and emailing to the parties)

Date of hearing:	9 March 2026
Date of Judgment:	24 March 2026
Counsel for the Applicant:	Adv K Tsatsawane SC
Instructed by:	Dirk Kotze Attorneys
Counsel for the First Respondent:	Adv K Ramolefe SC
Instructed by:	Motsoeneng Bill Attorneys Inc