

Transnet, SIU launch application to set aside irregular contracts

Transnet and the Special Investigating Unit (SIU) have launched an application at the High Court to review and set aside four contracts concluded by the parastatal in 2014.



Image: [Transnet on Facebook](#)

During March 2014, Transnet entered into contracts worth R54.4 billion with original equipment manufacturers (OEMs) to acquire 1,064 locomotives. This was one of the largest, single-procurement events undertaken by a State-owned company.

The contracts were with Bombardier Transportation South Africa (Pty) Ltd (BT); China South Rail, now called CRRC E-LoCo Supply (Pty) Ltd; China North Rail, now called CNR Rolling Stock South Africa (Pty) Ltd, and General Electric South Africa Technologies (Pty) Ltd (GE).

The litigation is a culmination of detailed investigations into various contracts, initiated by the new leadership of Transnet. Among these was the contract for the supply and award of the 1,064 new locomotives.

“Transnet and the SIU, in their court papers, show that the procurement was based on a flawed market demand strategy (MDS) and that the laws, government instructions and Transnet policy were deliberately ignored to make the tender awards,

conclude the contracts and effect payment to some of the OEMs,” Transnet and the SIU said in a statement.

The Constitution of the Republic of South Africa and the Public Finance Management Act (PFMA) require State-owned companies to conduct procurement processes that are fair, equitable and competitive.

The papers filed on Tuesday show that the transactions concluded by the previous Transnet management and board failed to meet the prescribed minimum standards.

In December 2018, Transnet invited the four OEMs to agree to enter into negotiations for a just and equitable remedy.



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“Transnet was unable to reach a negotiated agreement with BT, CNR and CSR, and the remedy agreed with GE requires supplementation in order to address Transnet's obligations and the public interest.

“Accordingly, Transnet and the SIU are asking the High Court to set aside the locomotive supply agreements and to impose a just and equitable remedy,” said Transnet and the SIU.

The key argument in the application is that the OEMs are not entitled to benefit from locomotive supply agreements that were awarded to them in an irregular and illegal manner, and particularly not when the OEMs conducted themselves in the manner that CSR and CNR did, in respect of agreements its parent company concluded with Regiments Asia/Tequesta.

Transnet and the SIU argue in their court papers that given the nature of the kickback agreements concluded by the parent company of CSR and CNR, they cannot claim to be innocent.

“The factual basis is established in the affidavit that neither can the other two OEMs, BT and GE, claim that they did not or could not reasonably have known that the procurement process and subsequent contracts were irregular and unlawful,” the statement read.

The application by Transnet and the SIU is lengthy, with the founding affidavit over 800 pages long and the annexures stretching into many lever arch files.

“The application is based on the extraction and analysis of over 29 million documents,” the statement said.

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