IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: **192750/2025**

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

[redacted] 20 FEBRUARY 2026

SIGNATURE DATE

In the matter between:

THE SOUTH AFRICAN PROFESSIONAL AUCTIONEERS ASSOCIATION	Applicant

and

NATIONAL TREASURY	First Respondent
THE MINISTER OF FINANCE	Second Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 20th February 2026.

JUDGMENT

RETIEF J

INTRODUCTION

[1] On the 3 July 2025 the first respondent, National Treasury published an open tender on a centralised platform for the publication of government tenders referred to as, the e-Tender Portal. The publication occurred through an online request for bid *via* a tender notice for Tender No. RT46-2026 [tender notice]. The tender notice described the bid as a call for professional services for "*THE APPOINTMENT OF CONTRACTORS TO PROVIDE VEHICLE FLEET MAMAGEMENT SERVICES TO THE STATE FOR SIXTY (60) MONTHS.*"

[2] The applicant [Auctioneers Association], is an association who is acting in the interests of its members, and seeks to declare the manner in which National Treasury advertised the tender notice unconstitutional on the basis that it violated the requirements of a valid procurement process as set out in section 217(1) of the Constitution.[1] It contends that in seeking auctioneering services (Category E) the tender notice failed to announce that auctioneering services were even being sought. Flowing from such declarator the Auctioneers Association seeks, *inter alias*, to set the tender notice aside, alternatively, to set the portion of Tender No. RT46-2026 [the tender] which specifically deals with auctioneering services, 'Category E' aside.

[3] In consequence, Auctioneers Association, on an urgent basis, launched the review of National Treasury's conduct in terms of section 1(c) of the Constitution,

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1 Section 217 of the Constitution states that:

'*217. Procurement*

> (1) *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* <u>*must*</u> *(own emphasis) do so in accordance* <u>*with a system*</u> *(own emphasis) which is fair, equitable, transparent, competitive and cost-effective.*"

alternatively in terms of section 6(2)(i) of the Promotion of Administrative Justice Act, 3 of 2000 [PAJA].

[4] By way of background, the closing date for bid submissions in respect of the tender was the 11 August 2025. The tender validity period was open for 180 (one hundred and eighty) days expiring on the 7 February 2026 [tender validity period], a date which was prior to the hearing of this application. It is common cause that the new auctioneering contracts forming part of tender are to commence on the 1 April 2026. In argument, in contrast to the papers, the 1 April 2026 instead of the 7 February 2026 became the trigger date upon which urgency was pegged.

[5] Prior to launching the application, the Auctioneers Association failed to obtain an undertaking from National Treasury to, *inter alia*, readvertise the tender with a more accurate and inclusive description of the services it actually sought under the rubric of vehicle fleet management. On failure to obtain such undertaking, the Auctioneers Association then launched this application in terms of rule 6(12). Notwithstanding the urgency relied on, National Treasury and the Second Respondent were provided with the normal timelines to file documents prescribed in terms of rule 6(5). In this way, the Auctioneer's Association wished to cater for any prejudice which may arise as a result of the manner in which it launched the application whilst, at the same time, ensuring that the matter was heard before the 1 April 2026.

[6] National Treasury and the Second Respondent [collectively and, for convenience sake will be referred to as 'National Treasury'] opposed the application and placed urgency in dispute. After a thorough ventilation of urgency, this Court ruled that the matter was indeed urgent. In support, it noted that the consequence of delay in bringing and adjudicating any tender challenge appeared obvious and the need to move swiftly trite.[2] The foreseeable prospect of prejudicial consequences flowing from any delay, as a result of relief which seeks to disturb a tender process, as was before this Court, was apparent. In the absence of any

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2 **Infinite Blue Trading 29 CC t/a Motau Projects v City Power Johannesburg (SOC) Limited and Others** [2019] ZAGPGHC 169 (30 May 2019) at par 27.

prejudice demonstrated by the National Treasury of its inability to be in a position to deal with the merits of the application, the application was ruled as urgent and the matter proceeded on this basis.

[7] Other than urgency a further preliminary point was raised by the National Treasury by way of an in *limine* point of non-joinder. Both parties were *ad idem* that the non-joinder point would be dispositive, at this stage, of the application and therefore, in the event that the Court upheld the point, the necessity to deal with the merits of the application would not be triggered. It is therefore convenient to deal with this point first.

NON-JOINDER

[8] At this stage it is not necessary to deal with the background facts, most of which are common cause, and if necessary, the same will be dealt with when relevant.

[9] In argument on this point, National Treasury argues that the Auctioneers Association has failed to join the participants in the tender process who submitted bids. The reach of their argument included their failure to join two of the Auctioneers Association's own members, Auction 24 and Rihlazan Auctioneers. Both their members appeared to have responded to the tender notice seeking to bid for auctioneer services.

[10] The thrust of National Treasury's argument is that such participants to the ongoing process, 52 (fifty-two) bidders, appear to have a direct and a substantial interest in the relief which the Auctioneers Association seeks. This they contend is because the order, ostensibly to set aside the tender notice or portion of the tender, would affect all the bidders' rights or interest in a just administrative process and an equitable tender process. Therefore, if not joined and not provided an opportunity to be heard, their rights would be adversely affected or could likely be affected.[3]

3 **SA Riding for the Disable Association v Regional Land Claims Commissioner** 2017 (5) SA 1 (CC) at par 9. **Snyders v De Jager (joinder)** 2017 (5) BCLR 604 (CC) at par 9.

Counsel for National Treasury argued that the right to be heard, the *audi alteram partem* principle, is of such fundamental importance in our law that a Court may *mero motu* raise the issue of joinder[4].

[11] In support of this point, Counsel for National Treasury invited the Court to consider the unreported decision of Shine Africa Financial Services (Pty) Ltd v Buffalo City Metropolitan City[5][Shine Africa Case]. Laing J in the Shine Africa case upheld a non-joinder point after applying the settled principle reiterated by the Supreme Court of Appeal [SCA] in the Watson[6] matter namely that, any person is a necessary party and should be joined if such person has a direct and substantial interest in any order that the Court might make; alternatively, if such an order cannot be sustained or carried into effect without prejudicing such person, unless he or she has waived the right to be joined to the particular facts before him. Of relevance, the facts before Laing J were similar as before this Court, in that the applicant wished to disturb the tender process before the evaluation or adjudication of the bids had occurred and before there was any indication that any final award had subsequently been made.

[12] In upholding the point, Laing J, reasoned that the question was not whether the evaluation or adjudication of the bids had occurred but rather whether the bidders were necessary parties who should have been joined. In order to answer the question, Laing J considered the nature of the order and then found that because the bidders for the various tenders prepared and submitted their bids with a view of securing the appointment for the goods or services meant they had an expectation for their bids to be evaluated, an expectation of an award to any one of them and, the possibility of a lucrative contract arising. Therefore, any relief which interdict their interests in that tender process would affect any one of them.[7]

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4 **Amalgamated Engineering Union v Minister of Labour** 1949 (3) SA 637 (A) at 659.

5 Unreported case number EL1056/2022.

6 **Watson *N.O.* v Ngonyama** 2021 (5) SA 559 (SCA) at par [52].

7 **Judicial Service Commission and Another v Cape Bar Council and Others** 2013 (1) SA 170 (SCA) at par [12].

[13] Auctioneers Association matter conversely argued that "*The mere fact that entities may have submitted bids in a tender does not entitle them to a right to be joined*" and that the test is whether they have a legal interest in the relief being sought. Furthermore, that such legal interest will only exist after a bidder had been appointed as only then will such a bidder possess an accrued right.

[14] In support for this proposition Counsel for Auctioneers Association invited the Court to consider the NQK Communications and Consulting (Pty) Ltd v Nelson Mandela Bay Metropolitan Municipality and Another[8] [NQK matter] in which Roberson J had to decide whether two successful bidders should have been joined in circumstances when the relief sought was to set aside the tenders already awarded to them in the second tender process. On analysing the concept of what is meant by a 'direct and substantial interest' and accepting that such is "*.... an interest in the right which is the subject-matter of the litigation and .....not merely a financial interest which is only an indirect interest in such litigation'*[9] Roberson J considered the subject matter of the application which was before her and the effect a judgment would have on a successful bidder. As a fact before Roberson J, the party sought to be joined was a successful bidder who had been awarded the tender in the second tender process. Contextually and on the facts Roberson J found that any order seeking to disturb the bidders accrued rights they possessed by virtue of the tender already awarded to them would constitute a legal interest in the subject-matter.[10]

[15] Context is everything. The successful bidders' rights were but a factor, albeit weighty at the time, in the determination of the subject-matter of the litigation. Therefore, any bidders accrued rights as a pre-requisite to fulfil the concept of a direct and substantial interest in the subject-matter as applying in all matters is incorrect and the principle not established by relying on the NQK matter and nor could it, as will be dealt with below. Furthermore, the argument was unconvincing in that it ignores the fact that orders sought by parties in litigation, even in tender

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8 (174/2019) [2020] ZAECPEHC 11 (5 May 2020).

9 *Supra* at par [8], including the list of authorities relied on.

10 *Supra* at par [9 -11].

applications, differ and, as such, the determination of whether it is necessary to join a party must be determined on a case to case basis. No 'one size fits all' approach applies.

[16] From the relief sought Auctioneers Association wishes to terminate the tender process alternatively, to change the ambit or reach of the tender document by severing 'Category E' from the remaining services in the tender. In other words, to disturb the ability of have ones bid being evaluated after its submission alternatively, to have your bid evaluated on different terms altogether. It is common cause that a bidder could have bid for the rendering of service in more than one category and it is trite that a bidder who has submitted a bid in more than one category may have done so by placing more weight in one specific category rather than another.

[17] A bidder after submitting its bid surely has a right to a fair and equitable process. This includes on the terms consented to, the 'rules of the game' so to speak. From the moment of submission all bidders are locked into a process for a specific time. This is referred to as a tender validity period. On the facts the tender validity period was 180 days from the closing date. This application was launched during the validity period. The purpose of the validity period is not only to require bidders to keep their offers open for the period but, to allow the State to make a final award.

[18] The SCA in the Ekurhuleni Metropolitan Municipality v Takubiza Trading and Project CC and Others matter,[11] speaking to one of the fundamental 'rules of the game', the validity period and the ability to extend it confirmed that to extend the validity period all the bidders had to consent to an extension. This is because all the bidders possessed an interest in the right to a fair equitable bidding process according to rules of that particular tender.

[11] **Ekurhuleni Metropolitan Municipality v Takubiza Trading and Project CC and Others** 2023 (1) SA 44 (SCA) at par [13].

[19] It flows then that to disturb the rules of the game requires a buy in from all the bidders. Such requires their consent. Logically then to seek to terminate the process itself or to alter the terms of services requires, at the very least, that they receive notice to enable them to respond. That would be fair, transparent and equitable. The very requirements of section 217 of the Constitution and the very basis upon which the Auctioneer Association relies on in this application. Notice of the relief they did not get. Furthermore, it is unclear on the papers whether the members of the Auctioneer Association who submitted a bid received any notice of this application.

[20] This Court having regard to all the factors therefore finds that all the bidders have a direct and substantial interest in the order sought by the Auctioneers Association and are necessary to join. The point in *limine* is upheld. The Court is however acutely aware that the joinder of 52 (fifty-two) bidders at this stage during can become complicated let alone time consuming. Such complication the Courts have already entertained. In the Road Accident Fund v Legal Practice Council[12]matter, a matter in which thousands of parties were affected, the Road Accident Fund took various steps to notify (potential necessary parties) about the relief sought. In this matter the Court held the following:

> "*[T] This matter, in my view, is one where the joinder of the many thousands of parties, that could be affected by the order of this court, is unnecessary in the light of the steps taken by the RAF to notify as many parties of its application as possible. The steps taken are adequate. The number of affected parties is substantial, and the steps taken by the RAF to notify the sheer volume of parties that could be affected were sufficient to affect their joinder. Only the seventeenth to twenty third respondents responded and were joined in these proceedings. The failure to respond by those who were notified can be taken to equate to a waiver of the right to be joined.*"

12 2021 (6) SA 23 (GP) at par [10].

[21] In this way, informal notification of a necessary party may suffice in certain circumstances as this will allow a party to elect whether to join, or indicate unequivocally that it will abide by the decision of the Court or not respond, which may equate to a waiver of the right to be joined.[13] The point being that notification must be given so that the necessary party in the proceeding can be permitted to exercise such a right by making submissions before the Court who adjudicates the dispute, notwithstanding the fact that numerous parties may be involved. In this way the fundamental right of the *audi alteram partem* rule is upheld and a Court will too be in a position to discern whether a party has clearly communicated its intention to abide or otherwise waive their right to participate in proceedings in which they participated. This Court is of the view that that a similar approach should be adopted as it will achieve a similar result as ordering the Auctioneers Association to apply for all the bidders to be joined.

COSTS

[22] Counsel for the Auctioneers Association as a general proposition and also after arguing the merits of the matter, relied on the Biowatch principle[14] arguing that because this application was a constitutional matter involving an organ of State, the Auctioneers Association should be shielded from the obligation to pay costs to the State in circumstances where it was unsuccessful.

[23] It is so that the Auctioneers Association is asserting a constitutional right but the upholding of a point *in limine* is a preliminary step in which this Court applies the laws pertaining to non-joinder and what constitutes a direct and substantial interest in respect of the order sought by the Auctioneers Association. The merits of the matter in which the aspect of asserting constitutional rights has not been entertained at this stage. Therefore, there is no reason why the Auctioneers Association, at this stage, should not bear the costs attendant upon the point in *limine*.

[24] Therefore, the following order:

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13 In re: **BoE Trust Limited and Others** ***N.N.O*** 2013 (3) SA 236 (SCA), at 242A-C.

14 **Biowatch Trust v Registrar, Genetic Resources and Others** 2009 (6) SA 232 (CC).

1. The point in *limine* of non-joinder is upheld.

2. The application is postponed *sine die*.

3. In the event the Applicant wishes to persist with the application, it is to notify all of the bidders of Tender No RT46-2026 published on the 3 July 2025 and whose particulars are available on the First Respondent's website, within 10 (ten) days of this Order, alternatively and, only if such particulars are not available on the First Respondent's website, the First Respondent is ordered to provide such particulars to the Applicant within 10 (ten) days of such request.

4. The Applicant is to pay the costs the First and Second Respondents' costs attendant upon the point in *limine*, Counsel's fees to be taxed on scale C.

[redacted]

L.A. RETIEF
Judge of the High Court
Gauteng Division

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Date of hearing:	30 January 2026
Date of judgment:	20 February 2026