



## Urgent Offer of Assistance

### *Pro Bono*

#### Cost-Cutting via PPPFA Section 3(c) Exemption to Restore Fiscal Stability

To: The Municipal Manager, [Municipality Name]

CC: The Chief Financial Officer

Per Email: [MM Email Address] / [CFO Email Address]

Dear Municipal Manager,

We are writing to you in light of the National Treasury's grave decision to withhold grant funding from your municipality. By invoking Section 216(2) of the Constitution, the National Treasury has established that your municipality is facing severe fiscal distress and persistent and serious non-compliance with the Municipal Finance Management Act (MFMA), and its supporting regulations, as a matter of common cause.

We understand the immense pressure your administration is under to implement immediate corrective actions, improve financial management, and return to a stable fiscal path.

#### **We want to help.**

As you undertake the difficult task of restructuring municipal finances to qualify for crucial national grants again, you will face acute, painful trade-offs. However, there is one cut that can be made without doing any damage to service delivery outcomes, and it is that opportunity of a win-win cut that improves your financial stability without doing any damage to service delivery whatsoever that we draw your attention.

The Preferential Procurement Policy Framework Act (PPPFA) provides for National Treasury calls "preference premiums" in procurement. Under section 2 of the PPPFA, and National Treasury regulations pursuant thereto, municipalities are legally obliged to award contracts that could deviate from "maximum value-for-money"<sup>1</sup> on procured goods and services for "specific

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<sup>1</sup> This is the phrase used by the Report of the Commission of Inquiry Into State Capture to distinguish "maximum value-for-money" procurement from procurement premiums paid as under Section 2 of the PPPFA. See Volume 1, Section "Problems in the legislative design".

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#### **IRR Legal**

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goals” other than value-for-money procurement to a significant extent. The 80/20 points system in section 2 of the PPPFA forces your municipality to accept bids that are up to 25% more expensive for contracts below R50 million. Similarly, the 90/10 points system in the same section dictates paying a premium of up to 11.1% for contracts above R50 million.

In the face of a constitutional funding freeze, continuing to inflate your expenditure by paying such premiums directly undermines your ability to restore 1) financial stability and 2) curb irregular, fruitless, and wasteful expenditure.

Regarding 2): The Report of the Commission of Inquiry Into State Capture found a nexus between the aforementioned preference premiums and corruption, as did the President's formal response to what is colloquially known as the Zondo Report, and Harvard University's Growth Lab report on "Inclusive Growth", among others. This is unpacked in the separately attached Annexure - **BEE Preference Premiums & State Capture**.

Since the preference premiums are mandatory under the PPPFA, your municipality is in a bind.

However, there is a solution.

"The Minister may, on request, exempt an organ of state from any or all the provisions of this Act if— ... (c) it is in the public interest."

– Section 3(c), Preferential Procurement Policy Framework Act  
(No. 5 of 2000)

The PPPFA provides a clear mechanism to halt these unnecessary expenditures. Under Section 3(c) of the PPPFA, your municipality has the statutory right to request an exemption from the Minister of Finance from applying these costly preference premiums. The Minister of Finance has denied you grant funding on the basis of your financially grave situation, so he cannot deny you an exemption request based on the same distressing facts. Every rand saved by procuring at true market value is a rand that can be redirected toward stabilizing your balance sheet, maintaining basic service delivery, and demonstrating the fiscal discipline required by the National Treasury to restore your funding. It is overwhelmingly in the national and public interest to immediately cease paying these premiums.

Furthermore, independently conducted opinion surveys indicate mass popular support for cutting out preference premiums. This is unpacked in the separately attached Annexure - **Majority's Will to Replace BEE Premiums with VfM**.

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Absent the implementation of such common sense measures, your municipality's lack of access to national grants will doubtless cause adverse, painful material impacts on residents and ratepayers in your municipality. You can stop that and we can help.

Our organization is prepared to offer our support and advisory services to your municipality entirely without charge to cut out preference premiums and attendant financial management concerns. We have attached a template exemption letter that can be tailored to your specific circumstances in the Annexure - **Save My Municipality through Value For Money**.

We will assist your Supply Chain Management and Budget & Treasury offices to formally facilitate, structure, and submit this Section 3(c) exemption request to the Minister of Finance if you so require.

We urge you to take advantage of this statutory relief mechanism. Please contact our offices at your earliest convenience so we may begin drafting the exemption application to aid in your fiscal recovery.

We look forward to partnering with you in the public interest.

Yours sincerely,

Gabriel David Crouse

Founding Executive Director

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