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TO: Standing Committee on
Finance
&
Select Committee on
Finance

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SUBJECT: **Fiscal Framework & Revenue Proposals**

Dear Finance Committees,

IRR Legal directs this submission to your attention in regards to the Fiscal Framework & Revenue Proposals (FF&RP). There are three major issues that warrant your attention.

- BEE Premiums are not transparently accounted for in the FF&RP-related documents.
- The forthcoming cost of making BEE Premiums transparent, in other words the accounting cost of administration, under the Public Procurement Act (PPA) are themselves not accounted for in the FF&RP-related documents.
- BEE Premiums are, although invisible, also unaffordable.

These matters are dealt with in turn. Both Finance Committees are urged to play their constitutionally enshrined oversight roles at this juncture. Better late than never.

Business of this Committee

This Committee is confronted by the need to provide *oversight* of the fiscal framework. The Money Bills Amendment Procedure and Related Matters Act, Act No 9 of 2009 defines the fiscal framework as including estimates of ***all expenditure***, budgetary and extra-budgetary specified separately, for that financial year.

Therefore, the absence of BEE Premiums from the fiscal framework is a violation of the requirement that estimates be made of how much will

be spent on BEE Premiums in terms of the above-named Act. It is this Committee's clear, constitutional duty to remedy the error.

Furthermore, according to the National Treasury's (NT) 2026 Estimates of National Expenditure: "Consolidated government expenditure is expected to increase at an average annual rate of 3.9 per cent, from R2.58 trillion in 2025/26 to R2.89 trillion in 2028/29."

That FF&RP-related document then tabulates that estimated expenditure over more than one thousand pages. Multiple axes of breakdown are accounted for in this document.

However, there is no point in the document where the cost of BEE premiums are estimated.

There can be zero doubt that there will be costs paid related to BEE Premiums. First, the Public Procurement Policy Framework Act (PPPFA) in section 2 requires the payment of what Acting Chief Procurement Officer Willie Mathebula has called "preference premiums" on the well-known 90/10 and 80/20 points systems of preference. Under those systems the premium is "capped", as Mr Mathebula put it, at "11.1%" and "25%" respectively.

Second, Mr Mathebula has assured both of the Committees that BEE "preference premiums" are being paid, have been paid, and will be paid both under the PPPFA and the Public Procurement Act (PPA).

Since the payments are allowed or required by law, and since the payments come out of the fisc, the estimated cost of these payments must be reported in FF&RP-related documents, including the 2026 Estimates of National Expenditure.

The authority of the "must" in the paragraph above is the Constitution of the Republic of South Africa, which states that public procurement "must" take place "in accordance with a system which is fair, equitable, transparent, competitive and cost-effective." (Section 217(1), emphasis added).

Furthermore, both Finance Committees are creatures of Parliament, which in turn is responsible for national legislation. The Constitution is clear on your responsibilities in regards to transparency; expenditure control, and uniform expenditure classifications:

“National legislation must...prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—

- (a) generally recognised accounting practice;
 - (b) uniform expenditure classifications; and
 - (c) uniform treasury norms and standards.”
- (Section 216(1) emphasis added).

Furthermore, the Committee’s review of the FF&RP falls under “budgetary processes”. Section 215(1) of the Constitution states:

“National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.”

What is totally missing from the 1,095 page 2026 Estimates of National Expenditure document is the expenditure classification: “Preference Premiums”, and the further classification “BEE preference premiums” vs “other ‘special goals’ preference premiums”, provided for in section 2 of the PPPFA.

These are also missing from the 2026 Budget Review, which is 269 pages long. These are also missing from the Report of the Minister Finance to Parliament.

Put simply: the budgetary process does not promote transparency with regards to BEE Premiums, or any premiums paid pursuant to Sections 217(2) and (3) of the Constitution.

There can be no doubt that the payment of BEE premiums is controversial. President Cyril Ramaphosa addressed the issue of BEE at length in Parliament in response to responses to his State of the Nation Address (SONA). The amount paid must be reported in FF&RP documents.

BEE Premiums Recorded at Point of Contract:

BEE Premiums are recorded where constitutionally compliant public procurement takes place. Under the 90/10 or 80/20 points system under

the PPPFA all that is needed is the value amount of a contract award, and the points awarded for price, to calculate the BEE Premium.

This information was explicitly required to be separately recorded under Instruction No. 1 of 2015/2016. Section 4.2 stated:

"PFMA compliant institutions must submit the following information on successful bids to the relevant treasury's eTender Publication Administrator within seven (7) working days of awarding the bids:

...

- (b) ...preference points claims;
- (c) Contract price(s), if possible;"

This Instruction was repealed and replaced by Instruction No. 9 of 2022/2023, which requires the distinct recording of all relevant "bid information" in section 3.3., which preserves the substance of the requirement 4.2(b) and (c) of the earlier Instruction quoted above.

Compliant organs of state show how this works. For example, SARS has published data breaking down points awarded from price and contract value, which allow the simple calculation of BEE Premiums.

Previously, Committee members have appeared to labour under the false impression that the information necessary to record BEE Premiums is not being generated at the coalface of action in the public procurement system. The truth is that the fault does not lie there. The fault lies at NT, and at the Committee, for failing to insist that these numbers be reported and estimates in forthcoming expenditure be provided.

How to Remedy the Fault:

The Committees could remedy this unconstitutional problem by introducing, or causing to be introduced, the following uniform classifications in, inter alia, the Estimates of National Expenditure and Budget Review:

- "Preference Premiums"; to be subdivided into
- "BEE Premiums"; and
- "Other Preference Premiums".

A “preference premium” in any contract is the difference between the cost of that contract and the cost that would have been paid for equally valuable required goods and services absent a system of preference.

However, this need not be done through new legislation. Instead, the Public Finance Management Act (PFMA) already allows NT to provide for the needed uniform classification via regulation, as well as upstream reporting in FF&RP related documents under NT norms and standards. Furthermore, the Public Procurement Act (PPA) also provides the necessary powers to NT to fulfil this function.

It is NT’s place, and not the Committee’s, to pass regulations. It is the Committee’s responsibility to ensure that NT is acting as is required in order that the FF&RP documents are constitutionally compliant through its oversight function. IRR Legal provides draft Regulations that NT could pass that would assure that the problem is remedied going forward (see below, Annexure A and B).

The Committee is empowered to ask NT why it does not pass such Regulations, or Regulations to that effect. If it transpires that NT believes that national legislation fails to empower NT to do what is necessary to assure constitutional compliance in terms of transparency of the FF&RP documents, then this Committee is uniquely well-placed to address that.

Hence, the Committee should request that NT do its duty and provide for the uniform classifications referred to above.

Cost of Accounting Also Not Transparent

In SONA President Ramaphosa referred to the looming implementation of the PPA. Specifically, he said: “Measures will include the use of technology and the finalisation of new Public Procurement Act regulations by mid-2026”.

These regulations are arguably the most consequential in recent South African history.

Section 2 of the PPA states the “Objects of Act”, specifically requiring that the objects “must” ensure “the assessment of the costs”; and “combat corruption through access to procurement information and other transparency measures”.

Section 24 specifically stipulates requirements of the regulations that President Ramaphosa referred to:

24(1) “The Minister must prescribe a framework within which a procuring institution must develop and implement its procurement system, referred to in section 8(1)(b), which includes—

...

(d) the criteria for evaluation of bids, which must include, but are not limited to, cost-effectiveness, capability, functionality and technical requirements, without limiting new entrants or emerging suppliers or both.”

The amendment of the word “may” to “must” in section 24(1)(d) was made in response to public submissions made by IRR Legal. The PPA now requires that “cost-effectiveness” is one criterion that “must” be evaluated for bids. Where those bids are conducted through “set-asides” in terms of section 17 of the PPA, or “prequalification” under section 18, or preferential “subcontracting” under section 19 the evaluation of “cost-effectiveness” requires:

- I) Conducting independent market research to establish the cost of the relevant required goods or services in the normal market-related course of business to establish what the Zondo Report referred to as the option that would derive “maximum value-for-money” in a bid.
- II) Comparing the actual cost to the “maximum value-for-money” alternative.

This two-step process is clearly required by the “must” in section 24(1)(d) of the PPA, and was agreed to by NT in Parliamentary engagement with IRR Legal.

However, this two-step process is also clearly expensive. The cost of evaluating the cost of BEE premiums under the PPA is significantly more onerous than under the PPPFA, because while the PPPFA’s point system “caps” nominal BEE Premiums at 25%, the PPA removes that cap. This shift in systems also increases the practical burden in establishing what the deviation from a “maximum value-for-money” bid amounts to.

IRR Legal expected, after President Ramaphosa’s SONA announcement that the PPA regulations will be tabled by mid-2026, that

the costs of implementing this now cost-effectiveness evaluation would be estimated in the 2026 Estimates of National Expenditure and other FF&RP-related documents. However, there is no such estimate of the new, incoming accounting costs related to the PPA.

We remind the Committees, that in the process of passing the draft PPA, then-Chairperson Yunus Charim seriously criticized the false claim that implementing the PPA will be costless.

BEE Premiums Unaffordable

Finally, it is noteworthy that BEE Premiums are unaffordable.

The report colloquially known as the Zondo Report stated, in Volume 1: “Ultimately in the view of the Commission the primary national interest is best served when the government derives the maximum value-for-money in the procurement process and procurement officials should be so advised.”

Also, polling commissioned by IRR both in late 2024 and in early 2025 found that a majority (up to 81%) of respondents prefer BEE Premiums to be reduced to zero. This can be done through making value for money the only criterion, or by preserving race, or other criteria, as tiebreakers.

Regards,
IRR Legal Executive Director,
Gabriel David Crouse

Annexure A: National Treasury Regulations: Norms and Standards for Budgeting, Accounting, Reporting, and Cost Managing Preferential Premiums in Public Procurement

Issued in terms of Section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), read with the Preferential Procurement Policy Framework Act, the Broad-Based Economic Empowerment Act, and the Constitution of the Republic of South Africa, 1996.

PREAMBLE RECOGNISING that section 215(1) of the Constitution requires national, provincial, and municipal budgets and budgetary processes to promote transparency, accountability, and the effective financial management of the economy, debt, and the public sector;

AND RECOGNISING that section 215(2)(c) mandates that budgets must show the way in which proposed expenditure will comply with national legislation;

AND RECOGNISING that section 216(1) requires measures to be prescribed to ensure both transparency and expenditure control in each sphere of government by introducing uniform expenditure classifications, and uniform treasury norms and standards;

AND RECOGNISING that section 217(1) requires a procurement system that is transparent, and that this transparency must extend to the cost of implementing legislatively provided for categories of preference pursuant to section 217(2)(a);

NOW THEREFORE, to ensure that the unrequited subsidies paid to achieve constitutional transformation goals are visibly budgeted for, accurately accounted for, transparent, and subject to democratic expenditure controls, the following Regulations are issued:

1. Definitions In these Regulations, unless the context indicates otherwise:

- **"Base Price"** means the price of the acceptable tender that scores the maximum 90 points for price in terms of section 2(1)(b)(i) of the Preferential Procurement Policy Framework Act, 2000 (Act. No. 5 of 2000), or the maximum 80 points for price in terms of section 2(1)(b)(ii) of that Act, as applicable.
- **"BEE Premium"** means a Preference Premium pursuant "broad-based black economic empowerment" as defined specifically in 1(d) and 1(f) of the Broad-Based Black Economic Empowerment Act, 2004 (Act No. 25899 of 2004).
- **"Other Preference Premium"** means a Preference Premium other than a BEE Premium.
- **"Preference Premium"** means the exact financial difference between the final contract price of the successful tender and the Base Price, which amount shall be zero where the successful tender scored the maximum points for price under the applicable section.
- **"Required Expenditure"** means the economic value of the Base Price, classified purely as a transactional payment for goods, services, or capital assets.
- **"Unrequited Subsidy"** means the economic value of the Preference Premium, classified as a targeted subsidy paid to the preferred bidder.

2. Application These regulations apply to all "organs of state" as defined by the Preferential Procurement Policy Framework Act, (Act. No. 5 of 2000).

3. Records of Base Price and Preference Premiums

- **(1)** Upon the award of any contract the accounting officer must record the Base Price, and the Preference Premium, separately.
- **(2)** The accounting officer must further record the Preference Premium as either a BEE Premium or an Other Premium.
- **(3)** The Base Price must be recorded and accounted for under the relevant "Goods and Services" or "Capital Assets" Standard Chart of Accounts (SCOA) classification.
- **(4)** The Preference Premium must be recorded and accounted for against the appropriated "Transfers and Subsidies: Preferential Procurement" SCOA classification as either a BEE Premium or Other Premium.

4. Annual Reporting

- **(1)** The Annual Financial Statements must disclose the aggregate total of Preference Premiums paid during the financial year as a distinct note as a necessary condition of compliance with the transparency imperatives of both sections 216(1) and 217(1) of the Constitution.
- **(2)** The accounting officer must reconcile these aggregate unrequited subsidies against the prospective budget initially allocated in terms of Regulation 5 to demonstrate the way in which the expenditure complied with national legislation.

5. Estimates of National Expenditure and Budget Review

- **(1)** All annual budgets and Medium-Term Expenditure Framework (MTEF) submissions must, pursuant to section 215(1)(c) of the Constitution, explicitly report the anticipated future cost of Preference Premiums.
- **(2)** Where applicable Preference Premiums must be reported as a component in every separate Vote to quantitatively show the way in which such expenditure complies with legislation that establishes Preference Premiums.
- **(3)** Accounting officers must establish a dedicated sub-programme or line item designated as "Transfers and Subsidies: Preferential Procurement" within each applicable Vote.
- **(4)** The appropriated amount must be forecasted using historical procurement data, sector-specific transformation targets, and the authorized budget ceiling of the procuring entity.

6. Budget Depletion and Procurement Restrictions

- **(1)** The aggregate payment of Preference Premiums in any financial year may not exceed the quantum specifically appropriated for that purpose under Regulation 5.
- **(2)** When the expenditure against the "Transfers and Subsidies: Preferential Procurement" line item reaches 90% of the appropriated limit, the accounting officer must formally review all pending and upcoming procurements to prevent unauthorized expenditure.
- **(3)** The accounting officer may formally review pending and upcoming procurements at an earlier stage in order to mitigate against the risk of exceeding the appropriated limit referred to in (2).

7. Mandatory Exemption Application

- **(1)** If the appropriated budget for Preference Premiums is definitively exhausted, the procuring institution is prohibited from incurring further unrequited expenditure for the remainder of the financial cycle.
- **(2)** Upon expenditure against the "Transfers and Subsidies: Preferential Procurement" line item reaching 90% of the appropriated limit, the accounting officer must proactively apply to the Minister for exemptions in terms of section 3 of the Preferential Procurement Policy Framework Act, 2000 (No. 4 of 2000) to avoid exceeding the budget for Preference Premiums.
- **(3)** The exhaustion of democratically appropriated transformative funds shall serve as the mandatory "public interest" justification for granting said exemption.

8. Withholding Funds to Enforce Compliance

- **(1)** If an organ of state fails to comply with section 3 for more than 4% of its annual expenditure amount, then the Minister of Finance shall initiate a review to determine the cause of failure.
- **(2)** If an organ of state fails to comply with section 3 in terms of the 4% threshold for two financial years in a row, then the Minister of Finance may withhold funds from that organ of state in terms of section 216(2) of the Constitution.

Annexure B: National Treasury Regulations: Norms and Standards for Budgeting, Accounting, Reporting, and Cost Managing Preferential Premiums in Public Procurement

Issued in terms of Section 63 of the Public Procurement Act, 2024 (Act No. 59967 of 2024), read with the Public Procurement Policy Framework Act, the Broad-Based Economic Empowerment Act, and the Constitution of the Republic of South Africa, 1996.

PREAMBLE RECOGNISING that section 215(1) of the Constitution requires national, provincial, and municipal budgets and budgetary processes to promote transparency, accountability, and the effective financial management of the economy, debt, and the public sector;

AND RECOGNISING that section 215(2)(c) mandates that budgets must show the way in which proposed expenditure will comply with national legislation;

AND RECOGNISING that section 216(1) requires measures to be prescribed to ensure both transparency and expenditure control in each sphere of government by introducing uniform expenditure classifications, and uniform treasury norms and standards;

AND RECOGNISING that section 217(1) requires a procurement system that is transparent, and that this transparency must extend to the cost of implementing the categories of preference authorized by section 217(2)(a);

NOW THEREFORE, to ensure that the unrequited subsidies paid to achieve constitutional transformation goals are visibly budgeted for, accurately accounted for, transparent, and subject to democratic expenditure controls, the following Regulations are issued:

Part 1: Definitions and Application

1. Definitions In these Regulations, unless the context indicates otherwise:

- **"the Act"** means the Public Procurement Act 2024, (Act No. 59967 of 2024).
- **"Base Price"** means the price of the directly required good or service on the open market absent unrequited subsidies imposed by set-asides, prequalification, and sub-contracting requirements in terms of Sections 18, 19, and 20 of the Act.
- **"BEE Premium"** means a Preference Premium pursuant "broad-based black economic empowerment" as defined specifically in 1(d) and 1(f) of the Broad-Based Black Economic Empowerment Act, 2004 (Act No. 25899 of 2004).
- **"Preference Premium"** means the exact financial difference between the Base Price and the final contract price awarded to a preferred bidder pursuant to set-asides, prequalification, and sub-contracting requirements in terms of Sections 18, 19, and 20 of the Act.
- **"Required Expenditure"** means the economic value of the Base Price, classified purely as a transactional payment for goods, services, or capital assets.
- **"Unrequited Subsidy"** means the economic value of the Preference Premium, classified as a targeted, transformative subsidy paid to the preferred bidder.

2. Application These regulations apply to all organs of state as defined in the Act.

3. Records of Base Price and Preference Premiums

- **(1)** Upon the award of any contract the accounting officer must record the Base Price, and the Preference Premium, separately.
 - (a)** The tender bid process must include calculating the Base Price as part of the evaluation criterion of "cost-effectiveness" pursuant to section 24(1)(d) of the Act, as prescribed.

- (b) If the tender bid process has not produced a reported Base Price, then the accounting officer is prohibited from authorising payment.
- (c) Exemptions from the requirement in (b) may be requested from the Minister of Finance. Such exemption requests may only be granted where they are in the public interest, and where the request is accompanied by a written explanation of the failure to comply and a written explanation of what steps will be taken to ensure transparency and cost management going forward through Base Price evaluation of all tender bids managed by the relevant accounting officer with particular and practical emphasis on the kind of contract in question.
- **(2)** The accounting officer must further record the Preference Premium as either a BEE Premium or an Other Premium.
- **(3)** The Base Price must be recorded and accounted for under the relevant "Goods and Services" or "Capital Assets" Standard Chart of Accounts (SCOA) classification.
- **(4)** The Preference Premium must be recorded and accounted for against the appropriated "Transfers and Subsidies: Preferential Procurement" SCOA classification as either a BEE Premium or Other Premium.

4. Annual Reporting

- **(1)** The Annual Financial Statements must disclose the aggregate total of Preference Premiums paid during the financial year as a distinct note as a necessary condition of compliance with the transparency imperatives of both sections 216(1) and 217(1) of the Constitution.
- **(2)** The accounting officer must reconcile these aggregate unrequited subsidies against the prospective budget initially allocated in terms of Regulation 5 to demonstrate the way in which the expenditure complied with national legislation.

5. Estimates of National Expenditure and Budget Review

- **(1)** All annual budgets and Medium-Term Expenditure Framework (MTEF) submissions must, pursuant to section 215(1)(c) of the Constitution, explicitly report the anticipated future cost of Preference Premiums.
- **(2)** Where applicable Preference Premiums must be reported as a component in every separate Vote to quantitatively show the way in which such expenditure complies with legislation that establishes Preference Premiums.
- **(3)** Accounting officers must establish a dedicated sub-programme or line item designated as "Transfers and Subsidies: Preferential Procurement" within each applicable Vote.
- **(4)** The appropriated amount must be forecasted using historical procurement data, sector-specific transformation targets, and the authorized budget ceiling of the procuring entity.

6. Budget Depletion and Procurement Restrictions

- **(1)** The aggregate payment of Preference Premiums in any financial year may not exceed the quantum specifically appropriated for that purpose under Regulation 5.

- **(2)** When the expenditure against the "Transfers and Subsidies: Preferential Procurement" line item reaches 90% of the appropriated limit, the accounting officer must formally review all pending and upcoming procurements to prevent unauthorized expenditure.
- **(3)** The accounting officer may formally review pending and upcoming procurements at an earlier stage in order to mitigate against the risk of exceeding the appropriated limit referred to in (2).

7. Mandatory Exemption Application

- **(1)** If the appropriated budget for Preference Premiums is definitively exhausted, the procuring institution is statutorily prohibited from incurring further unrequited expenditure for the remainder of the financial cycle.
- **(2)** "(2) Upon expenditure against the "Transfers and Subsidies: Preferential Procurement" line item reaching 90% of the appropriated limit, the accounting officer must proactively apply to the Minister for an exemption in terms of section 61 of the Public Procurement Act, 2024 (Act No. 28 of 2024)."
- **(3)** The exhaustion of democratically appropriated transformative funds shall serve as the mandatory "public interest" justification for granting said exemption.

8. Withholding Funds to Enforce Compliance

- **(1)** If an organ of state fails to comply with section 3 for more than 4% of its annual expenditure amount, then the Minister of Finance shall initiate a review to determine the cause of failure.
- **(2)** If an organ of state fails to comply with section 3 in terms of the 4% threshold for two financial years in a row, then the Minister of Finance may withhold funds from that organ of state in terms of section 216(2) of the Constitution.