



arts & culture

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A1

Attention: Ms Elmarie Lewis

Office on Institutions Supporting Democracies (OISD)  
Parliament  
PO Box 500  
CAPE TOWN  
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**PROGRESS ON THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT  
BETWEEN THE DAC AND THE SOUTH AFRICAN ROADIES ASSOCIATION (SARA)**

Your email correspondence to the Department on 22 January 2015 refers.

In response, I have enclosed a report which provides an overview of progress with regard to the implementation of the Settlement Agreement between SARA and the Department.

As you know, the Settlement Agreement process and the subsequent interactions with SARA have proved complex and challenging; however I am confident that the DAC is fulfilling its obligations to the agreement as outlined in the attached report. Further, it should be noted that interaction between the DAC and SARA is ongoing through the appointment of the President of SARA, Mr Freddy Nyathela on the Interim Committee of the Creative and Cultural Industries Federation (CCIFSA) and through a joint process run by the DAC and DTI on transformation of the Live Events, and Technical Services Sector through the implementation of a BBBEE Charter.

The DAC remains committed to working with SARA in the years to come, through the existing agreement that supports the organisations international interactions and in working together to find a solution to the accommodation requirements of the organisation and the processes outlined above. In addition the DAC has favourably reviewed a further proposal from the organisation, submitted after the Settlement Agreement to host a Live Events and Technical Services conference in 2015.


It must be noted however, that the relationship between DAC and SARA is often fractious, fuelled by what appear to be unrealistic expectations on the part of the beneficiary with regard to the levels of support that can be expected from the Department and the extent to which this support can be relied on into the future. The DAC has a wide mandate and a large range of stakeholders and beneficiaries, all of which have financial needs and which the DAC attempts to manage in as fair and transparent a manner as possible, and within the policy and legislative frameworks which guide service delivery in the arts sector and the public sector.



I hope that this report reassures the OISD that the DAC is in fact fulfilling its obligations and goes some way to putting the matter to rest.

Please contact my office if you require any further information.

Warm regards

A handwritten signature in black ink, appearing to read 'Vuyo Jack', written over the printed name.

**VUYO JACK**

**ACTING DIRECTOR-GENERAL**

**DATE:** 30-01-2015

cc Ms X Tom

Chairperson: Portfolio Committee on Arts and Culture

Advocate K Malunga

Deputy Public Protector



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## **UPDATE ON THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT BETWEEN THE DAC AND SARA**

### **BACKGROUND**

SARA is an association of young and emerging sound and stage technicians which provides Technical Production for the Live Events industries, mainly to live music concerts and theatre shows which form part of a bigger industry-known as the Events and Technical Services sector. SARA also provides hands on training programmes and coupled with international exchange activities for the young and aspirant technicians. As a stakeholder in the arts sector, DAC has had extensive engagements with the organization, directly and through its agencies such as the National Arts Council. In the period between 1997-2012 the Department has invested R4,369,728.00 in supporting SARA's activities and development.

Although there has been significant engagement and support, there have also been challenges and in this light, SARA lodged a complaint with the Public Protector which concluded in April 2014 with a Settlement Agreement.

### **PROGRESS WITH REGARD TO THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT**

The main points of the Settlement Agreement can be summarised as follows:

- a) SARA would submit its request for funding of its projects to the DAC. The DAC shall consider such request based on the departmental policies.
- b) The parties shall upon successful application by SARA, enter into a Memorandum of Agreement (MOA) regulating the funding relationship.
- c) DAC would assist SARA in accessing funding opportunities in the public and private sector.

Subsequent to the conclusion of the Settlement Agreement, SARA submitted two proposals:

- a) Building Renovation Proposal which requested R39,295,545.96 for the renovation of the SARA House
- b) A funding proposal encompassing a three year request for operational and administrative funding to the value of R17,206,444.63 and R2,838,920.80 for an international interactions programme.

In response to these proposals, the DAC communicated the following to SARA:

- a) With regard to the funding proposal, full support of the international interactions proposal over three years. A contract has been concluded and funds transferred in accordance with the contract.
- b) With regard to the request for operational and administrative funding the DAC indicated that it would not grant funding in this regard, given prevailing rules and statutes in the public service. The organisation is welcome to submit further proposals as part of the standard DAC processes, such as the open calls for the Mzansi Golden Economy (MGE).



- c) With regard to the building renovation proposal, based on an assessment of the facility conducted by the Independent Development Trust (IDT) at the request of the DAC which concluded that the building was beyond its functional life. The DAC understands that the building was purchased with R3 million donated from the National Lottery Distribution Trust Fund (NLDTF). The current budget is over 10 times the original purchase cost of the facility. Its current state is an indication of the lack of capacity of the organisation to maintain the infrastructure, and as such the enormous cost of the proposed refurbishment would over capitalise the structure and not constitute sound investment of government funds. The department indicated that it would not support the proposal, however that discussions would be held with SARA regarding accommodation options. A site visit was conducted by DAC officials in January 2015.
- d) The DAC offered to include provisions for SARA interns to work within large scale projects such as MOSHITO and Nelson Mandela Sport and Culture Day for example, an intervention that has yielded good results for the event, DAC and SARA. This will continue in the coming years.

In support of the commitment to engage with issue of accommodation R500 000 has been set aside in the Capital Works budget in 2014/2015 to procure the services of a provider to review the needs of the organisation and make present options for the future accommodation of the sector. To support these recommendations R10,000,000 has been set aside in the 2015/2016 financial year Capital Works budget to facilitate the implementation of the approved option.

Further to the request for facilitation of funding, the DAC has not received requests for letters of support and/or endorsement from the organisation to date.

#### **OUTSTANDING MATTERS WITH REGARD TO THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT**

The primary outstanding issues based on the Settlement Agreement pertain mainly to the building; however as indicated in above, some engagement has taken place and will inform a formal correspondence to SARA and further engagements throughout the process. It must be noted that this may be a long term programme over a few years, however before 31 March 2015 a formal engagement with SARA will be held on the planned processes with regard to the identification of new facilities and accommodation for the organisation and a service provider will be appointed to review accommodation options. A meeting will be scheduled with SARA in February 2015 to discuss this process.

A challenge arising out of the agreement is the interpretation of clauses pertaining to facilitation. SARA is of the view that DAC should actively introduce the organisation to potential funders and act as broker in this regard, however the DAC's view is that it will draft the necessary supporting document such as letters of endorsement at the request of SARA for funding opportunities as the department's mandate is not fundraising for organisations. This matter has yet to be resolved. Further, based on correspondence received from SARA, it would appear that SARA regarding the matter of operational funding as outstanding, however in the DAC's view this proposal was reviewed and formally declined.

#### **ADDITIONAL SUPPORT PROVIDED OVER AND ABOVE THAT STIPULATED UNDER THE SETTLEMENT AGREEMENT**

Based on a further request from SARA, the DAC has committed funds towards the hosting of a Live Events Conference in May 2015.



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Mr F Nyathela  
President  
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Newtown,  
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2001

Email: [NyathelaF@saroadies.co.za](mailto:NyathelaF@saroadies.co.za)

Dear Mr Nyathela

### **RE: MEETING AT THE OFFICES OF THE PUBLIC PROTECTOR TO DISCUSS THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT**

We refer to the above-mentioned meeting which took place at the Offices of the Public Protector on the 20<sup>th</sup> of April 2016 as well as to our letters dated 01 February 2016 and 04 March 2016 respectively, the contents of which are incorporated into this letter.

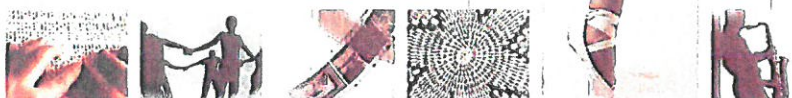
#### **Confirmation of funding and DAC support**

The Department re-iterates its commitment to fund the renovations to the SARA House in the total sum indicated in our letter dated 04 March 2016, a copy of which is already in your possession. In this regard, the Department confirms having instructed its Project Manager for Events and Technical Services Portfolio, Mr Collen Hlatshwayo to form part of the Project Steering Committee and provide SARA and SARA's appointed contractor with the necessary support in executing the project.

#### **Funding for operations and administration costs**

We confirm that the Department only funds projects which advance its mandate and not the operational costs of Beneficiaries. As an example, the Department would fund SARA's costs of conducting training and the purchase of training material but cannot fund the costs associated with the employment of any staff by SARA.

Having said that, the Department allows Beneficiaries including SARA to utilise a maximum of 10% of the total funding towards project management costs or administration fees. Among others, these funds are usually utilised to pay for the preparation of audited financial statements or the accounting officers report indicating that the funds have been used in accordance with the contract and other ancillary attendances.



## **Challenges regarding the implementation of the Settlement Agreement**

You will recall that in our letter dated 04 March 2016, we indicated various clauses in the Settlement Agreement which pose a challenge in relation to their implementation. Nevertheless, we reported positive progress in respect thereof.

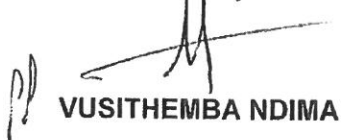
We confirm that during our aforesaid meeting with the Public Protector, the parties conceded that there was a mistake common to all the parties in the drafting of some of the clauses. In the circumstances, it became apparent that in certain instances it would be impossible for one party to perform through no fault of its own. As an example, clause 4.1.9 of the Settlement Agreement requires the DAC to submit to PPSA a detailed project/implementation plan among others. Our submission is that the DAC cannot provide funding to SARA and simultaneously implement the project on behalf of SARA as that would compromise the checks and balances required to ensure openness and transparency in the utilisation of public funds.

You will recall that the DAC funded SARA recently for the International Interactions programme wherein funds were disbursed to directly to SARA's bank account in accordance with the contract signed between the parties. In return, SARA as the recipient of funds, has the responsibility to account for the utilisation of funds by submitting to the DAC a progress report on the deliverables achieved as well as an expenditure report with supporting invoice and or vouchers. In this instance, the approach to be adopted in the project for renovations to the SARA House is similar to SARA's previous projects that the DAC funded.

### **Conclusion**

Upon receipt of the implementation plan with itemised deliverables and budget projections and other documentation stated in the contracts checklist, we will commence with drafting the Memorandum of Agreement with regard to the transfer of funds from DAC to SARA for renovations to the SARA House. Given the recent budget cuts by the National Treasury, it is advisable that the project be commenced with immediately in order to secure the committed funds.

Yours sincerely

  
**VUSITHEMBA NDIMA**

**ACTING DIRECTOR-GENERAL**

**DATE:** 29.04.2016

cc Advocate Kevin Malunda  
Office of the Public Protector

Mr Mthutuzeli Matshoba  
Chairperson: SARA

Ms X Tom

Chairperson of the Portfolio Committee



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Mr. F. Nyathela  
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2001

E-mail: [NyathelaF@saroadies.co.za](mailto:NyathelaF@saroadies.co.za)

Dear Mr Nyathela

### **REGARDING THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT BETWEEN THE SOUTH AFRICAN ROADIES ASSOCIATION (SARA) AND THE DEPARTMENT OF ARTS AND CULTURE (DAC)**

We refer to the above and to the meeting held on 15 January 2016 between SARA and DAC regarding the implementation of the Settlement Agreement as well as correspondence received from SARA thereafter.

As advised during the meeting, we wish to confirm the DAC's position as follows:

#### **1. Total allocation / funding amount for the renovations**

DAC confirms that an amount in the sum of R10 000 000.00 (Ten Million Rand Only) has been ring-fenced as a once-off grant to be paid by the DAC directly to SARA for the renovation of the SARA house as per the funding proposal. DAC appreciates that SARA has in principle accepted the funds and DAC has noted the issues raised regarding the work to be carried out, notably that SARA does not have the expertise and skills necessary to monitor and oversee the carrying out of renovations.

DAC confirms that it also does not have the necessary expertise and skills to monitor and oversee the carrying out of renovations itself. DAC confirms further that the carrying out of renovations and other building work falls outside of its scope and mandate. In this regard, DAC confirms having undertaken to make available further funds (professional fees) to enable SARA to appoint a Service Provider or other technical experts that would assist SARA in this regard.

DAC confirms having taken cognisance of the time that has lapsed since it confirmed its available budget for the renovations as well as the possible escalation in price or costs of materials to be used during renovations, general labour, professional fees



Also, it will assist that current issues be responded to first prior to raising new ones as new correspondence will further delay the response since it might impact on the department's responses that have already been prepared. You are kindly requested to continue channeling your correspondence via Mr C. Hlatshwayo who is the Project Manager for the Events and Technical Services Portfolio which includes SARA programmes.

I trust the above is in order and looking forward to your response.

Warm regards

A handwritten signature in black ink, appearing to read 'Vusithemba Ndima', with a large, fluid loop at the end.

VUSITHEMBA NDIMA

ACTING DIRECTOR-GENERAL

DATE: 01/02/2016



## **TERMS OF REFERENCE**

### **APPOINTMENT OF A PROJECT MANAGER TO COORDINATE AND MANAGE THE RENOVATIONS PROJECT OF THE SOUTH AFRICAN ROADIES ASSOCIATION (SARA) BUILDING IN 2016/17.**

#### **1. INTRODUCTION**

The South African Roadies (SARA) is presently embarking on a project to renovate SARA House in the financial year 2016/17. The renovations are aimed at improving the current conditions of the building in response to an assessment on the condition of the building that was conducted by the Independent Development Trust (IDT) in 2014.

#### **2. BACKGROUND AND CONTEXT**

- 2.1. SARA has entered into a Memorandum of Agreement (MOA) with the Department of Arts and Culture, securing funding for the renovation of the SARA House Building. The Agreement commenced in 2016 for duration of the 2016/17 financial year.
- 2.2. In April 2014, DAC instructed the IDT to conduct an assessment for the renovation of the SARA House for the purposes of the refurbishment of the building elements and items that are significant for the proper functionality of the facility.
- 2.3. The assessment produced a report of the physical assessment of the condition of the building, a renovation programme and a preliminary cost estimate. A copy of the report is attached as **(ANNEXURE A)**.

## *Draft Document: For Review*

### **3. TASKS DIRECTIVE**

SARA seeks to commission a service provider (hereafter referred to as a Project Manager or Project Management Company) to oversee, coordinate and manage the renovations project to ensure that the project is completed within the allocated budget and to the satisfaction of organisation.

To confirm that, the bidders have read and understood the task description, they should indicate as such in the relevant column below:

ITEM	DESCRIPTION	Qty	Noted	BUDGET
<b>1.</b>	<b>COMPETENCY</b>			
1.1	The service provider should be a company/individual specializing in construction and project management and be able to demonstrate through references their competency in this regard. Individual or team qualifications in the built environment professions, including architecture, engineering and quantity surveying would be an added benefit.			
<b>2</b>	<b>TASKS</b>			
	The following tasks would be required of the service provider.			
2.1	To develop a roadmap and implementation action plan with clear timeframes for undertaking the task			
2.2	To validate the price quotation for the proposed scope of works as reflected in the IDT report attached as <b>ANNEXURE A</b> . This will include reviewing the IDT report and bringing it up to date;			

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ITEM	DESCRIPTION	Qty	Noted	BUDGET
	building evaluation, interior design and structural design to be measured against the intended use of the building as described in the IDT report and in consultation with SARA plans, the location, city by laws, city developments planned for the future within the vicinity of the building etc.			
2.3	To produce a reviewed implementation and action plan to be submitted to SARA, the DAC and subsequently the PPSA			
2.4	To co-ordinate and manage tendering and contracting processes in line with SARA's internal policies and processes to appoint suitably qualified contractors/or contractor			
2.4	Reporting as is required to SARA management, the Project Steering Committee.			
<b>3</b>	<b>PROFESSIONAL STAFF</b>			
3.1	<p>The service provider will be required to appoint appropriate experts required to achieve the refurbishment goal to include, but are not limited to the professions listed below:</p> <ul style="list-style-type: none"> <li>a) Architecture Services</li> <li>b) Quantity Surveying Services</li> <li>c) Civil/Structural Engineering Services</li> <li>d) Electrical/Mechanical Engineering Services</li> <li>e) Heritage Specialists</li> <li>f) Health and Safety</li> <li>g) Interior Designer</li> </ul>			

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ITEM	DESCRIPTION	Qty	Noted	BUDGET
4	<b>CONTRACTING ARRANGEMENT</b>			
4.1	<p><b>a. Main Contract.</b></p> <p>i. The Project Manager or Project Management Company will be contracted to SARA through contract to be drafted by SARA in accordance with the organisation's policies and procedures.</p> <p><b>b. Sub-contracting.</b></p> <p>i. The service provider (Project Manager or Project), utilising SARA's policies and procedures will be expected to sub-contract all other necessary expertise and services required to ensure the successful implementation of the project in line with SARA's policies and procedures.</p> <p>ii. A list of sub-contracted companies should be provided to SARA at the first meeting (after appointment).</p> <p>iii. Copies of invoices of all sub-contracted companies should be presented with final invoices for verification.</p> <p>iv. The service provider should not add any mark-ups on the subcontracting price as they will be charging a project</p>			



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ITEM	DESCRIPTION	Qty	Noted	BUDGET
	management fee.			
<b>5</b>	<b>FINANCIAL ARRANGEMENTS</b>			
5.1.	The service provider must stipulate the service fee for the tasks outlined.			
5.2.	The service provider must demonstrate how the fee was arrived at by including a detailed work breakdown structure with clear timeframes			
5.3.	The service provider should consider the IDT initial costing, the scope of work and escalations that might have occurred overtime since 2014 to 2016.			
5.4.	<p>The appointment of the Service Provider should demonstrate fairness, transparency and competitiveness by applying the three price quotation system.</p> <p>The service provider must note that cost effectiveness will be a critical factor in evaluation of the proposal due to prevailing economic challenges and austerity measures that government supported projects should consider.</p>			
5.5.	The service provider should include VAT in their service fee quotation and in the price quotation.			
5.6.	The service provider will be managed by SARA and therefore the service provider will direct all invoices to the organisation for processing.			
<b>6</b>	<b>COMPULSORY SUBMISSION OF PROPOSAL AND PRESENTATION</b>			
6.1	The service provider should submit the proposal no later than the date to be stipulated by SARA			

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ITEM	DESCRIPTION	Qty	Noted	BUDGET
	before commence.			
6.2	All proposals to be submitted by e-mail to SARA's email address or in accordance with the process stipulated by SARA.			
6.3.	The service provider should be available to make a presentation of the proposal on the [date] and [time] and [venue] to be stipulated by SARA.			
7	<b>INFORMATION TO BE FURNISHED</b>			
7.1.	The service provider should provide the following information with the proposal document:			
7.2	List of previous work done of all service providers involved in the project			
7.3	Contact names and numbers			
7.4	A detailed proposal with set deadlines			
7.5	A service (Project Management Fee) for the project to be rendered			
7.6	An original copy of the latest Tax Clearance Certificate.  The project is a government funded projects, therefore in terms of the PPPFA and its Regulations, the bid will not be awarded an individual or company whose tax affairs are not in order as determined by SARS. This is also applicable to outsourced service providers who will be sub-contracted by the service provider.			
7.6	Original and valid and / or certified copy of B-BBEE status level certificate bearing SANAS logo from an accredited verification agency or qualified registered accountant / auditor if EME. Failure to submit a valid B-BBEE certificate will result in zero preference points being awarded for B-BBEE.			

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ITEM	DESCRIPTION	Qty	Noted	BUDGET
7.7	CV's of all personnel including of outsourced service providers.			
7.8	Company registration documents (Proof of ownership/ shareholding certificate) if applicable			
7.9	Original Certified Company Resolution or Letter of authority or Letter of appointment authorizing the signatory of the Entity to sign the contract with the SARA.			
7.10	Certified I.D. copies of all personnel including of outsourced service providers.			
7.11	Detailed background, evidence of experience for outsourced services			
8	<b>ENQUIRIES</b>			
	South African Roadies Association (SARA) Tel: 011-639-7940.			
9.	<b>LIAISON</b>			
9.1	Make contact with SARA.			
9.2	Attend all meetings as requested by SARA and by DAC Monitoring and Evaluation tea.			
10.	<b>SKILLS DEVELOPMENT</b>			
10.1	The service provider should use services of young people in order to create skills. The tender should provide a report on what skills were developed / transferred during the event.			
10.2.	<b>Job Creation and Skills Development</b>			
	The tender should provide statistics detailing amount of jobs that will be created and skills developed during the event. Women, youth and people with disability statistics should be provided.			

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**4. EVALUATION CRITERIA**

NO	CRITERIA	WEIGHT	VALUE RATING	TOTAL
	Knowledge of the objectives of SARA	10	0 – 6 Poor 7 – 12 Below Average 13 – 18 Average 19 – 23 Above average 25 – 30 Good	
	Experience in managing Construction and Built environment renovations.	30	0 – 4 Poor 5 – 8 Below Average 9 – 12 Average 13 – 16 Above average 17 – 20 Good	
	Understanding of the scope of work at hand.	30	0 – 6 Poor 7 – 12 Below Average 13 – 18 Average 19 – 23 Above average 25 – 30 Good	
	Qualifications of individual/team member	30	0 – 6 Poor 7 – 12 Below Average 13 – 18 Average 19 – 23 Above average 25 – 30 Good	



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**The table below depicts the B-BBEE status level of contribution:**

B-BBEE Status Level of Contribution	Number of points (80/20 system)	Number of points (90/10 system)
1	20	10
2	18	9
3	16	8
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant Contributor	0	0