



arts & culture

Department
Arts and Culture
REPUBLIC OF SOUTH AFRICA

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Mr. F. Nyathela
President
South African Roadies Association (SARA)
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Johannesburg
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E-mail: 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



Department:
Arts and Culture
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Email: NyathelaF@saroadies.co.za

Dear Mr Nyathela

RE: IMPLEMENTATION OF THE SETTLEMENT AGREEMENT

The letter from the DAC dated 1 February 2016, and subsequent email correspondence received from SARA refer.

The DAC would like to place the following facts, based on the letter of the settlement agreement on record:

Settlement Agreement Section 4.1.1

That SARA shall submit its request for funding of its projects to the DAC in the form of proposal and with requisite supporting documentation. The DAC shall consider such request based on departmental policies, prescripts and budget allowable. Should SARA's request for funding be successful, the DAC shall consider funding on a 3 year funding cycle, based on the principles of the MGE. The parties shall, upon successful application by SARA, enter into a Memorandum of Agreement regulating the funding relationship. DAC agrees that it should take no longer than 30 days to consider and respond to SARA's above mentioned proposal.

Progress to Date

Two funding proposals were received by the DAC from SARA on 1 April 2014. 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 considered the proposals and communicated the following to SARA on 9 June 2014. The renovation proposal will be dealt within in Section 2.2 below, however with regard to the funding proposal requesting 3 year funding for operational and administrative funding:

- 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 international programme is currently funded and the three year contract will conclude in March 2017. A response from SARA is still outstanding with regard to the changes in the programme that SARA indicated were necessary which have implications for the contractual conditions of the current contract. Further to the current MOU with the regard to the international programme, the DAC would like to request urgent confirmation from SARA as to whether any training programmes which have implications for the DAC grant are underway or have been secured. It would be appreciated if this information could be provided by **Monday 14 March 2016**.

DAC has fulfilled its obligations.

Settlement Agreement Section 4.1.2

The parties agree that the Department shall in keeping with its existing agreement with Industrial Development Trust facilitate a process to evaluate the needs of SARA in regard to structural renovation of SARA House. DAC shall request IDT to do an assessment on SARA House with a review of establishing the cost related to the renovation of SARA House.

Progress to Date:

On 4 April 2014 DAC instructed Independent Development Trust (IDT) to conduct an assessment of the facility. The assessment concluded that the building was beyond its functional life.

The building was purchased with R3 million donated from the National Lottery Distribution Trust Fund (NLDTF). The budget submitted by SARA 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. A copy of the report was provided to SARA.

The Department indicated that it would not support the proposal, however this decision reversed since IDT indicated that the building could nevertheless be refurbished to meet occupational health and safety standards and a grant of R10 million was made to SARA to improve the conditions at SARA House. Concerns regarding the ability of the organisation to maintain the infrastructure remain.

DAC has indicated its intention in writing to fulfil this obligation, however SARA has indicated its dissatisfaction with the contractual conditions making it impossible for the spirit of the settlement agreement to be met.

Settlement Agreement Section 4.1.3

The DAC shall consistent with Clause 4.1.9 below immediately consider and intervene to remedy the health, safety and security risks uncovered at SARA house.

Progress to Date:

The assessment conducted by the IDT estimated that the costs of ensuring compliance with Occupational, Health and Safety legislation were R15 million. As highlighted above, these costs were regarded as prohibitive given the overall assessment of the state of the facility and the current value of the structure.

As indicated above, R10 million has been set aside for this work, however as indicated above, SARA is not satisfied with the terms of the grant offered and at the meeting of 15 January 2016 no agreement could be reached. At the request of SARA the substance of DAC's position in this regard was confirmed in writing. A formal response from SARA is still awaited. Clause 4.1.9 of the agreement stipulates that the "The DAC shall submit to PPSA a detailed project/implementation plan in regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of the health, safety and security risks uncovered at SARA House by the close of business on Tuesday 15 April 2014." This condition was met, and empowers the DAC to utilise other bodies in remedying the situation; SARA is the identified "body" in this regard as the organisation own the premises and should take responsibility for the execution of the project which will improve this facility.

It is important to note that DAC infrastructure funding to institutions such as the Market Theatre Foundation operates on similar principles; the DAC make a capital grant to the entity which then takes responsibility for the administration of the funds and the delivery of the project.

To facilitate the processes, the DAC hereby makes a revised grant offer of R15 million to the renovation project; to cover the full costs as assessed by the IDT and to factor in escalations. The funds will be available in the 2016/17 financial year; the grant conditions remain the same in that SARA will be expected to take responsibility to utilise a maximum of 10% of the the total value of the grant to appoint the necessary professionals and administer the work effectively. A response to this revised offered would be appreciated by **Monday 14 March 2016**.

Settlement Agreement Section 4.1.4

That SARA and the DAC will deploy and/or see to it that sufficient personnel, oversight and resources are set aside by DAC to see to it that this Agreement is adequately supported in order to implement the Objectives hereunder including respective obligations warranties and representations respectively.

Progress to Date:

A Deputy Director in the DAC responsibility for the development of the Technical Support Services sector in the Cultural Development Chief Directorate has been mandated to engage with SARA on the implementation of the Agreement.

The DAC has fulfilled its obligations in this regard. SARA however, continues to engage at multiple levels and through multiple parties, further delaying processes drafting formal correspondence.

Settlement Agreement Section 4.1.5

That SARA shall continue to seek funding from other prospective funding agencies.

Progress to Date:

The DAC has not been informed of any application made by SARA to other funding agencies, with the exception of the NAC.

SARA has requested DAC to investigate a matter pertaining to an application by the organisation to the NAC. DAC's internal auditors are investigating and it is anticipated that the process will be completed by the end of March 2016.

It would be appreciated if SARA could submit to the DAC an indication of other funders approached, and the outcome of such requests, by **Monday 14 March 2016**.

Settlement Agreement Section 4.1.6

That DAC and SARA commit to a continuous and harmonious relationship in ensuring that SARA's vision and mission, as a training organisation servicing the technical and production sections, is enhanced, facilitated and supported.

Progress to Date:

The DAC has continued to engage with SARA at a number of levels, both directly in terms of the support offered to SARA and also through efforts to engage with the Technical Services sector, including the Events Technical Production Transformation Forum and Interim Committee of the Creative and Cultural Industries Federation of South Africa (CCIFSA).

Further, provision has been made for SARA learners to be part of major DAC projects such as MOSHITO and the Nelson Mandela Sport and Culture Day, and the national day events. In addition, at the request of the Minister, the DAC has allocated funds to support the hosting of a national Technical Services and Events Conference in May 2015. As indicated in Section 2.1 DAC has received an application for 3 year funding of the conference, in the correspondence sent to SARA on 1 February 2016 the grant was confirmed, and in follow up correspondence to SARA sent on 22 February 2016, a grant value of R2,5 million over 3 years was confirmed. It acknowledged that the DAC did not respond to this request within the stipulated timeframe.

The DAC has fulfilled its obligations.

Harmonious relations have proved to be challenging, however the DAC has been notably more responsive to SARA's voluminous communications. SARA has however, written e-mail and text correspondence which has denigrated officials directly and to persons outside of the DAC including the Chairperson of the Portfolio Committee. When requested in formal correspondence from the DAC to desist; further denigrating email and text message correspondence was received.

SARA has not fulfilled its obligations in this regard.

Settlement Agreement Section 4.1.7

That in good faith and to the best of its ability, the DAC shall, facilitate SARA's application for funding of renovating its building to other Funding Agencies. Such facilitation shall be to the extent possible by the DAC and shall be for a period not longer than 1 year.

Progress to Date:

As outlined above, the DAC has set aside funds in its own budget support SARA's activities and the renovations of SARA House. As per the revised offer; the DAC will cover the costs of the renovation project in full, factoring in escalations and the necessary resources for project management.

Endorsement letters have been sent to all funding bodies identified by SARA.

The DAC has fulfilled its obligations.

Settlement Agreement Section 4.1.8

That the parties may, notwithstanding any other rights in law, take matters arising from any breach arising and not remedied 14 days after written notification by one party to the other concerning the breach to the PPSA and or any other forum of their respective choices.

Progress to Date:

There has been no formal communication in terms of the settlement agreement with regard to breaches to date and/or the remedy thereof.

The DAC has noted the allegation of breach of the settlement agreement referred by SARA to the Office of the Deputy Public Protector, without written notification to the DAC, however the department looks forward to hearing from his office with regard to the next steps.

Settlement Agreement Section 4.1.9

The DAC shall submit to PPSA a detailed project/implementation plan in regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of the health, safety and security risks uncovered at SARA House by the close of business on Tuesday 15 April 2014.

Progress to Date

The assessment was provided to the PPSA and SARA, and was discussed at the meeting with SARA in August 2015 and again in the meeting on 15 January 2016.

DAC has indicated its intention in writing, however the delays in concluding the MOU have once again impeded on the implementation of the settlement agreement. Once the MOU is concluded and a new project plan has been devised, updated documentation will be provided to the PPSA.

Any further correspondence with SARA on matters pertaining to the implementation of the settlement agreement shall be suspended until such time as the matter of the breach has been resolved.

Yours sincerely



VUSITHEMBA NDIMA

ACTING DIRECTOR-GENERAL

DATE: 04/03/2016

cc Advocate Kevin Malunda
Office of the Public Protector

Mr Mthutuzeli Machoba
Chairperson: SARA

Ms X Tom
Chairperson of the Portfolio Committee