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URGENT

Attention: Ms Khanyisile Kweyama

Chairperson : Board of Control
Passenger Rail Agency of South Africa
PRASA House
1040 Burnett Street
Hatfield, PRETORIA

Manamela Marobela & Associates

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Your Ref: Ms K Kweyama

Our Ref: KM/ls/D3666

Date: 30 August 2018

Ms Kweyama,

RE: INVESTIGATION INTO 20 SELECTED CONTRACTS ABOVE R10 MILLION AWARDED BY PRASA FROM 2012 TO DATE – DAVID SEKGOBELA AND ASSOCIATES (PTY) LTD
in respect of TENDER NUMBER: HO/PR/OP/250/09/2013

INTRODUCTION

1. We refer to the above and advise hereby that we act in this matter on behalf of our client, David Sekgobela and Associates Proprietary Limited (our client).
2. We are instructed to direct this letter to you regarding a report prepared by Bowman Gilfillan (Bowmans) for the National Treasury of the Republic of South Africa (National Treasury) dated December 2016.



09:52

Directors: Khashane Manamela LLM (Tax Law) (Wits), LLM (Corporate Law) (Pret), Master of Business Leadership (UNISA), Postgraduate Diploma in Forensic and Investigative Accounting (Pret); Meriam Marobela LLB (Pret), LLM (Corporate Law) (Pret)
Associate: Nyiko Ngobeni LLB (UL)

3. The report by Bowmans, obtained by our client through a random internet search, contains inaccurate, shocking, careless and defamatory material about our client and its director/shareholder.
4. Further the Bowmans' report implicates officials of your organisation, the Passenger Rail Agency of South Africa (PRASA) of being complicit in malfeasance, corruption and tender-rigging. The following is extracted from the Bowmans' report:

"Conclusions and Remedial Action

55. You concluded your report with recommendations or a call for remedial action, as follows:

“19.1 The payment by PRASA on the over-invoicing by David Sekgobela and Associates constitutes fruitless and wasteful expenditure, as defined in section 1 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999).

19.2 The PRASA Board should consider disciplinary action against the individuals involved and all fruitless and wasteful expenses as detailed above should be recovered from the supplier.

19.3 Internal controls must be implemented through the establishment of a fruitless and wasteful register [sic], disclosure in the annual financial statements and additional control as stipulated in the National Treasury Fruitless and Wasteful expenditure guidelines. [See pars 19.1 – 19.3 on p 34 of the Bowmans report attached]

[underlining added for emphasis]

CORRESPONDENCE WITH BOWMANS

5. In May 2018, we wrote to Bowmans and requested that *“the report be publicly withdrawn and its contents retracted or corrected by [Bowmans] or [National Treasury] or anyone related to its production and/or publication”*. A copy of our letter to Bowmans is included herewith and marked **“PRA1”**. The Bowmans’ report is included as annexure “BG1.2” to our letter (i.e. “PRA1”).

6. Bowmans responded in June 2018 and, among others, referred to their duty not to disclose privileged and confidential information, and directed us to National Treasury. A copy of Bowmans’ letter dated 20 June 2018 is included herewith and marked **“PRA2”**.

CORRESPONDENCE WITH NATIONAL TREASURY

7. On 11 July 2018, we wrote to Mr Vukani Ndaba of the National Treasury re-iterating our request previously made to Bowmans and stated in paragraph 5 above. A copy of our letter dated 11 July 2018 to National Treasury is included herewith (without annexures in order to avoid duplication) and marked **“PRA3”**.

8. The National Treasury promptly responded to our letter (i.e. “PRA3”), but the material part of their letter (a copy of which is included and marked **“PRA4”**) only stated that:

“3. The report has not been publicly released because the Board of PRASA is still considering it.”

PRASA’S CONSIDERATION OF THE REPORT

7. In response to the letter from the National Treasury, part of which is quoted above, we are instructed by our client to hereby enquire from you as to whether indeed the report has been referred to the Board of PRASA for consideration.

8. Should the report have indeed been referred to the PRASA Board, we hereby draw the Board’s attention to the contents of our letter to Bowmans dated 17 May 2018 (included herewith as an annexure marked “PRA1”) in terms of which we clearly state our client’s complaints about the Bowmans’ report.

9. You will note from our letter (i.e. "PRA1") that the report not only contain inaccurate information about the billing by our client to PRASA and payments by PRASA to our client, but also included material ostensibly sourced through a desk-top-like investigation. The report dismally attempts to link our client's director and shareholder, Mr David Sekgobela to corruption scandal in the Mpumalanga Economic Empowerment Corporation and stated that our client's Mr Sekgobela is a former Chief Financial Officer in the Office of the Premier. This is a blatant inaccuracy as Mr Sekgobela has never been employed by those entities. An accurate investigation would have revealed that another Mr David Sekgobela was involved and not our client's. You will no doubt agree that taxpayers or public funds ought not to be wasted on reports whose contents is not only baseless, but a fiction.

CONCLUSION

10. We are, therefore, instructed to enquire from you as to whether PRASA will be taking any particular action regarding the impugned report, particularly with regard to its inaccuracies and falsehood regarding our client, and if so, what form of action and when such action will be taken.
11. You will no doubt agree with us that the contents of the Bowmans' report is causing our client irreparable harm, as it makes prospects of securing work or contracts from the state and state-owned companies impossible. The report represents the anti-thesis of black economic empowerment; is punitive and was prepared with complete disregard of our client's rights.
12. We thank you and look forward to hearing from you at your earliest convenience, but not later than 14 September 2018.

Yours faithfully

MANAMELA MAROBELA AND ASSOCIATES

Per: Nyiko Ngobeni / Khashane Manamela