

15 March 2021

The Directors
Electronic Toll Collection (Pty) Ltd
36 Assegaai Wood Road
Centurion

ATTENTION: Mr Ettienne du Toit (ETC)

COPIED: Mr Steven Powell (ENS)
Mr Roy Gillespie (ENS)

By email: ettienne.dutoit@etc-solutions.co.za
spowell@ensafrika.com
rgillespie@ensafrika.com

Dear Sirs

AGREEMENT - ELECTRONIC TOLL COLLECTION (PTY) LTD & PROASH PROPERTY INVESTMENTS (PTY) LTD

1. We refer you to various email correspondence regarding the subject matter in the week of 8 March 2021.
2. As stated in the said correspondence, OUTA received additional whistleblower information regarding the contract between ETC and Proash. The information was sent to us via OUTA's whistleblower platform, and the whistleblower chose to stay anonymous. Except for the information submitted to us, we were also furnished with the following documents:
 - 2.1 Service Level Agreement (SLA) between Proash Business Services(Pty) Ltd (the "Contractor") and ETC Joint Venture (the "Customer"); (**Annexure "A"**)
 - 2.2 Supplier Application Form (SAF) and several attachments thereto. (**Annexure "B"**)
3. We believe that the above-mentioned documentation will already be in your possession and that you will have records of all the deliverables mentioned in the SLA.
4. After receiving the documents, the OUTA investigators and legal team scrutinised the documentation and found several sections that warrant further investigation. We,

therefore, request that your investigation team pay attention to the following issues and inform us of their findings regarding the questions and statements below with regards to the Service Level Agreement (SLA):

4.1 SLA Cover Page

The “Contractor” is cited as “Proash Business Services (Pty) Ltd. No company with this name could be found on the CIPC database. The registration number “1992/006532/07”, according to CIPC, belongs to a company registered as “Proash Property Investments (Pty) Ltd”.

4.2 Could it be that the name “Proash Property Investments (Pty) Ltd” was not fit for purpose? A Property Investment company rendering strategic B-BBEE advisory services would not sit well with anybody who peruses the contract. It should be established what the MOI for Proash Property Investments (Pty) Ltd determines and what services it was registered to deliver.

4.3 SLA Paragraph 2.1

The Commencement Date for this agreement was the date as defined by SANRAL in the tender document for the Gauteng Open Road Tolling Project (GORT). What is the reason for ETC to sign an agreement with a company to render certain services before the tender was awarded to them?

4.4 Did ETC perform any kind of due diligence on the Proash before the date of signing the agreement with them. If any due diligence was done, when was it done, who performed the due diligence and who from ETC instructed them to perform a due diligence? What was the outcome of such a vetting process, and what did it cost? Is there any proof of payment if the due diligence was performed by an external entity?

4.5 SLA Paragraph 2.2 (a), (b) and (c)

What are the reasons for classifying the details of services, price information of services, and terms of the agreement as confidential and not shared with third parties?

4.6 SLA Paragraph 2.6

The contents of this paragraph are noted as the “Duties and Functions” that **have to be provided** by the Parties, as stipulated in Schedule 1. The different duties and functions will be discussed in detail, but it is necessary that ETC confirm that these duties were, in fact, performed from the commencement date.

4.7 SLA Paragraph 5.5

Proash warrants that they are a B-BBEE Exempt Micro Enterprise (EME) and will provide the supporting documentation to ETC. Did Proash provide ETC with such an exemption certificate at the time when the agreement was signed?

4.8 Proash further undertakes to maintain their EME status for the duration of the Agreement. Did they provide ETC with the renewed certificate annually?

4.9 SLA Paragraph 5.6

Proash warrants that it is compliant with all legislation relating to procurement and corporate governance. What proof and/or warranty did Proash provide ETC regarding this statement.

4.10 SLA Paragraph 8

The agreement will commence from the time the tender was going to be awarded for a duration of one hundred and fourteen (114) months. This constitutes a period of nine and a half years! This is a very strange provision when the tender from SANRAL was for a maximum period of 8 years. (3 years design phase; 5 years operations phase). It seems that the monthly retainer would have been paid to Proash for another year and a half after the expiry of the tender. A clarification on this issue should be sought from ETC.

4.11 SLA Paragraph 9

This part of the agreement is about the termination of the agreement and the question naturally following from this is if any of the parties ever terminated the contract. If it was terminated, who was the party terminating, and what was the reason for termination? If it was not terminated, was the contract period completed?

4.12 SLA Paragraphs 12.2 and 12.3(b)

The whole part deals with arbitration. The mentioned paragraphs, however, seems very strange. Firstly that arbitration proceedings to be held in Cape Town. If a dispute is about a legal matter, the President of the Law Society of the Kwazulu Natal Division of the High Court will appoint an attorney to adjudicate the matter.

4.13 The choice where disputes will be arbitrated or who must appoint an attorney is strange when considering that both parties are conducting their business in Gauteng.

4.14 With respect to the author of this agreement, it seems that some parts were merely a “copy & paste” exercise and that the agreement was drafted in a rush without applying his/her mind to content and acceptable standards that one would expect when a R40 million Service Level Agreement is drafted.

4.15 SLA Paragraph 13.2

The last sentence in this paragraph refers the reader to “clause 14”. There is no clause 14. Our concerns, as stated in para 4.14 above, is repeated.

4.16 SLA Signature Page

It seems that D. Davey for ETC and M.S.C. Bawa for Proash Business Services (Pty) Ltd signed the agreement as authorised representatives for the respective parties in Johannesburg on 8 Septemeber 2009. This is confirmation that the agreement was signed before SANRAL awarded the Gauteng Open Road Tolling Project tender. Proof should be provided that Davey and Bawa were indeed authorised to sign the agreement and who authorised them, respectively?

4.17 SLA Schedule 1: The Services

Schedule 1 makes provision for several deliverables by the Contractor, including but not limited to:

- *Actively providing advice and support regarding the development of an optimal B-BBEE Plan for the ETC Joint Venture and provide a written plan to that effect*
- *Continually monitor related legislation, guidelines and trends to promote timeous understanding and compliance with the regulatory framework of B-BBEE entities and update the B-BBEE Plan accordingly, which updates will be made timeously with recommendations and proposals as to all courses of action available to the Customer*

4.18 It is evident that Praoash had to develop a B-BBEE plan for ETC. It is stated that this plan should be in writing. Did Proash perform in terms of this part of the Services? Does ETC have records of this written plan produced by Proash, and if so, when was it received?

4.19 Furthermore, Proash had to monitor and review the B-BBEE status of ETC and provide advice regarding compliance and scorecard improvements in written reports. These reports had to include recommendations and proposals of all

- courses of action available to ETC. Does ETC have a record of any of the mentioned reports and recommendations?
- 4.20 Regarding the identification of B-BBEE entities, Proash should have conducted B-BBEE assessments on a number of ETC contractors/suppliers. Does ETC have records of any such assessments done by Proash?
- 4.21 With regards to Enterprise Development, Proash had to submit written reports to ETC regarding the development of new enterprises for ETC to meet the objectives of the promulgated B-BBEE Codes of Good Practice. This should have reflected every year in the B-BBEE Plan. Does ETC have records of any such written reports submitted by Proash?
- 4.22 In terms of Schedule 1, Proash was also tasked to develop strategic plans regarding skills development in accordance with SETA requirements and to plan the implementation of such. Does ETC have records of any of the strategic plans mentioned and proof of skills development that Proash did?
- 4.23 It is OUTA's submission that for Proash to provide written reports, recommendations and proposals of all courses of action available to ETC on all relevant aspects of appropriate Employment Equity and Skills Development Plans to meet GORT Project targets, they would have had to have access to employee information. They would need to interact with employees and managers and record all relevant data. Does ETC have any records of the mentioned reports, recommendations and proposals?
- 4.24 Schedule 1 finally refers to ETC's Corporate and Social Investment Program provided by Proash in writing. Once again, the question is if ETC is in a position to provide proof of such a Corporate and Social Development Program that was prepared by Proash?
- 4.25 The Services, as described in Schedule 1, are mainly of a developmental and advisory nature. All the development of plans, programs or recommendations should, however, be in writing. It is OUTA's opinion that for Proash to compile all these documents, a lot of research should have been done, and a lot of engagement must have taken place between Proash personnel, ETC management, and ETC employees. We believe this had to be quite an operation, and long-serving ETC employees and former ETC employees would surely recall such engagements. Can ETC provide information on how Proash went about rendering the services as

required in Schedule 1 and give details of employees who participated in such engagements?

4.26 We received information that a certain Fiona Kahn was employed by ETC to *inter alia* manage its B-BBEE services internally. It is further our information that she performed most of the tasks set out in Schedule 1. Can ETC confirm her appointment and report on her job description and duties?

4.27 We were informed by several informants that none of the Services as described in Schedule 1 were rendered by Proash and that nobody we engaged with knew of the existence of Proash or that they were ever involved at ETC. Nobody could recall that they have ever seen or met any Proash officials or employees. These are serious allegations. It is therefore critically important that ETC provides proof of the documents that Proash had to produce and services they had to render in terms of Schedule 1 of the agreement between the parties.

4.28 SLA Schedule 2: Service Fees

It is OUTA's understanding that the total value of ETC's Contract Participation Goals (CPG) to be outsourced was calculated at an amount of R40 million. It is noted that no additional amount, over and above the R40 million, will be payable by ETC to Proash. Furthermore, no adjustments for any reason will be made in respect of this amount. All calculated payments would be made exclusive of value-added tax.

4.29 The payment schedule, as shown in Schedule 2, makes provision for several payments when certain milestones are reached and a monthly retainer for a period of 114 months. When the total amount payable in terms of this payment schedule is calculated, it amounts to R39,999,996-00 (excluding VAT). Interestingly, the payment schedule was arranged in such a manner that the total CPG spent on ETC would be paid to one company.

4.30 In previous discussions with ETC's investigators (ENS Africa), we were only aware of alleged payments to Proash in the amount of approximately R10million. It is critically important to know what was the total amount paid to Proash, especially in the light of allegations as set out in paragraph 4.27 above.

4.31 SLA Schedule 2 Paragraph 5

It is noted that the parties agreed that additional fees would be paid from ETC to Proash based on the principles used in this agreement to determine the Service Fee for any other Open Road Tolling contracts awarded to ETC by SANRAL where

through prior arrangement, Proash acted as an advisor and provided support to ETC.

4.32 The contents of paragraph 5 should be clarified by ETC and Proash, especially the “prior arrangement” referred to as well as when and where Proash acted as an advisor for ETC in the past.

4.33 Any other payments made by ETC to Proash should be declared, and reasons for such payments should be provided.

4.34 Schedule 2 Payment Schedule

It is OUTA’s understanding that the payments to Proash were aligned with when several different milestones were reached. It is OUTA’s submission that these milestones do not align with any of the services Proash were contracted to perform, as stated in Schedule 1.

4.35 The payment of R1,000,000.00 aligned with milestone one implies that Proash could influence SANRAL to approve the tolling system’s software and hardware design. This milestone had, in OUTA’s view, nothing to do with any of the Services Proash was required to provide.

4.36 The payment of R4,000,000.00 aligned with milestone two implies that Proash could influence SANRAL to commission the system and certify it ready for going live. Again, it is difficult to understand what influence the Services rendered by Proash had to do with issuing an operations certificate.

4.37 It is, therefore, OUTA’s submission that the provision of Strategic B-BBEE advisory services is not in any shape or form required to reach milestones 1 and 2.

4.37 It is also difficult to understand how the Services of Proash is aligned with the successful reaching of milestones 3 to 9.

4.38 It is OUTA’s submission that R40 million was a gross overpayment for the Services required by ETC.

5. As previously mentioned, we also received the Supplier Application Form (SAF) Proash submitted to ETC. Several questions with regards to the information submitted in this application arose when OUTA’s investigation and legal teams scrutinised the documentation, and we request that the following issues should be investigated:

5.1 SAF Date signed and submitted

It is noted that the Suppliers Application Form was signed by Mr MSC Bawa on 20 July 2011. This is almost two years after the agreement between ETC and Proash was signed. It is questionable why an application to become an ETC supplier was only signed and submitted in 2011. How is it possible to enter into an agreement with an entity and then, after two years, the same entity applies to become a supplier?

5.2 This is a serious concern, and it creates the impression that Proash was never registered as a vendor on the ETC suppliers list until 2011. ETC should clarify this issue with our previous concern regarding the due diligence done on Proash and the vetting procedures that were followed if any.

5.3 SAF Banking Details of Proash

In the SAF, Proash listed their business bank account that was held at BOE Bank. This is the bank account number that appears on the proof of payment that OUTA shared with ENS at a previous meeting. This is confirmation that ETC was in possession of Proash's banking details from at least 2009, although the SAF was only submitted in 2011. ETC should also confirm that this is the only account of Proash to where they made payments.

5.4 SAF Declaration to SANRAL

It is noted that Proash submitted a "Small Medium and Micro Enterprise" declaration/affidavit to SANRAL where they declared that they participate in Contract No NRA N.001-201-2008/1 for the procurement of an Open Road Tolling System in the Gauteng Province, South Africa and a National Transaction Clearing House as a sub-contractor to Electronic Toll Collection (Pty) Ltd.

5.5 Proash declared that they are an Exempt Micro Enterprise with a Level 3 BEE evaluation certificate. It was further declared that they employ six people (although they made an error with the maths on their own numbers) and that messers Mahomed and Bawa are the only directors and shareholders of the company.

5.6 Mr Bawa signed this declaration on behalf of Proash with the date of signature, 20 July 2011. Note that this is the same day Proash applied to be a service provider for ETC. However, it is very peculiar that the Commissioner of Oaths, a SAPS official at the SAPS Client Service Centre in Linden, only signed the document as Commissioner of Oaths on 11 August 2011. The date is in the official's handwriting and displayed on an official SAPS date stamp.

- 5.7 Attached to the declaration/affidavit of Proash to SANRAL is a BEE Status certificate issued by Independent BEE Consulting Services on 13 April 2011 and valid until 12 April 2012. In the SLA between ETC and Proash, it was required that Proash provide ETC with proof of their BEE status. This certificate shows that in 2011 Proash confirmed that Proash had a Level 3 BEE status, but the question remains if they, in fact, submitted such a certificate to ETC when the SLA was signed in 2009, as required by the agreement.
- 5.8 If all the documents submitted by Proash when they applied to be a service provider for ETC are evaluated, it does seem that these documents were prepared and submitted long after the SLA was signed (almost two years). It looks like some kind of “damage control” was done and that there was a need to get the paperwork in order. The fact that Proash declared to Sanral that they are a sub-contractor to ETC on the same day they applied to be a service provider for ETC confirms the suspicion that they never officially applied to be a service provider for ETC and that ETC did not do proper vetting on Proash before entering into an SLA with them.
- 5.9 The declaration by Proash to SANRAL two years after they entered into an SLA with ETC creates the impression that neither ETC nor Proash played open cards with SANRAL. Until 2011 they were never an official Service Provider for ETC.
6. It is our submission that the relationship between ETC and Proash raise severe concerns and creates the suspicion that the agreement between the parties was just a smokescreen to get an avenue to receive payment without rendering any legitimate services.
7. It is OUTA’s understanding that payments made to Proash were claimed back from SANRAL and did not form part of the GORT Project payment they received. ETC should be mindful that any funds that were spent on payments to ETC were Tax Payers’ money, and therefore it is critical to establish if the agreement and payments to Proash were legitimate.
8. We once again give you our undertaking to co-operate with any independent investigations on this matter. We once again request that you make your findings public and also share your findings with OUTA. If you are serious about the fight against corruption in this country, we need your undertaking to act on any wrongdoing that emerges out of this matter and that you will be transparent with the findings and your report.

9. Please take note that the information shared with yourselves will, like our previous report, be referred to the NPA in terms of Section 27 of the NPA Act.
10. We trust that you will find the information helpful with your investigations,
11. Please acknowledge receipt of this correspondence.

Kind regards



Stefanie Fick

Executive Director: Accountability Division
OUTA – Organisation Undoing Tax Abuse
Email: stefanie.fick@outa.co.za