

SABC



POLICY AND PROCEDURES FOR THE PROCUREMENT OF LOCAL TELEVISION PROGRAMMES

Broadcasting is an entrepreneurial and deeply competitive industry that brings together profitability, best practice and public service.

While there are a wide range of variables over which the broadcaster has little or no control, this document represents a landmark in the SABC's efforts to create workable strategies that balance the revenue imperative of the SABC with its national mandate and social responsibility.

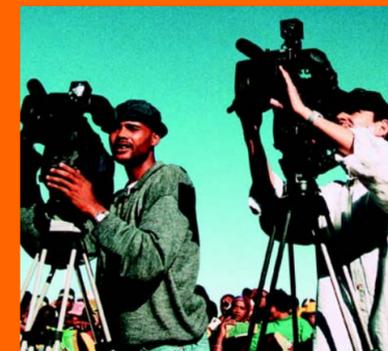
It redefines the manner in which the SABC enters into a trade relationship with its content suppliers, and we believe it sets a new benchmark for production in the African television industry.

Solly Mokoetle

Group Chief Operating Officer
South African Broadcasting Corporation



www.sabc.co.za



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SABC POLICY AND PROCEDURES FOR THE PROCUREMENT OF LOCAL TELEVISION PROGRAMMES

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FOREWORD

Broadcasting is an entrepreneurial and deeply competitive industry that brings together profitability, best practice and public service. While there are a wide range of variables over which the broadcaster has little or no control, this policy and its accompanying procedures represents a landmark in the SABC's efforts to create workable strategies that balance the revenue imperative of the SABC with its national mandate and social responsibility.

The publication is divided into two parts.

The first part, **SABC Policy for the Procurement of Local Television Programmes**, covers the SABC's policy framework for local programme procurement. It comprises four sections.

The first section sets out the policy framework regarding the SABC's terms of trade with independent producers, distributors or their agents and other content suppliers. Further details regarding the terms and conditions between the SABC and independent producers with respect to commissioning, can be found in the SABC Standard Production Agreement (see Appendix 6.11).

The second section of the policy framework outlines the SABC's policy regarding the methods and procedures to be followed in the procurement of local television content.

The third section addresses the utilisation of SABC facilities, while the fourth section places equity and industry development in perspective.

The second part of the publication, **SABC Procedures for the Procurement of Local Television Programmes**, contains detailed operating procedures for the procurement of local television programme content. These stipulate the steps to be followed, who is responsible and who is accountable in each instance. This part of the document is hereafter referred to as the Procedures Document.

These two documents should be read in conjunction with the Delegation Document, the SABC Technical Standards for Programme Delivery, the SABC Standard Production Agreement and the Barter Transaction Guidelines, all of which have been included as appendices for ease of use. Also included as appendices are a range of other guidelines, templates and tools to facilitate consistent decision-making, and effective, efficient and transparent management of the procurement processes.

The SABC's Procurement Policy and Procedures are informed by a rigorous development process which spanned more than a year. A comprehensive internal review was undertaken; the SABC's practices were benchmarked against those of local and international broadcasters; and independent producers were surveyed. The draft policy and procedure was sanctioned by the SABC Board Programming Sub-Committee in May 2003, and was then debated extensively both inside the SABC as well as externally. Various stakeholders, including independent producers and unions, were consulted.

We believe that the **SABC Policy and Procedures for the Procurement of Local Television Programmes** redefines the manner in which the SABC enters into a trade relationship with its content suppliers, and sets a new benchmark for production in the African television industry.

Solly Mokoetle

Group Chief Operating Officer
South African Broadcasting Corporation

SCOPE OF POLICY STATEMENT

The scope and application of the Policy for the Procurement of Local Television Programmes is defined as follows:

- This policy applies to all permanent employees of the SABC as well as fixed-term contractors. It excludes short-term contractors (i.e. freelance service providers and agencies contracted to undertake specific short-term assignments) and temporary staff of the SABC.
- The primary purpose of the Content Hub is to manage the SABC's aggregation of content (commissioning, co-production, acquisition, repurposing, reversioning and content exploitation), both locally and internationally. This policy is thus duly administered in accordance and in conjunction with any other policy, procedure, process or practice implemented by the Content Hub.
- The distribution of this policy document will be the responsibility of the Group Chief Operating Officer.
- The policy is equally applicable to the following business units: SABC 1, SABC 2, SABC 3, SABC Africa, SABC News, SABC Sport, SABC Education and SABC regional TV channels.

The application of this policy **excludes** the following areas:

- the procedure, practice and processes for stock management;
- the procedure, practice and processes for the amortisation of assets; and
- the licensing of news content and sports rights.

ACRONYMS

APB	Approved Production Budget
BEE	Black Economic Empowerment
CE	Commissioning Editor
CEO	Chief Executive Officer
CCIR	Consultative Committee for International Radio (standard)
DOP	Director of Photography
GM	General Manager
GMC	General Manager Commissioning
ECATA	Electronic Communication and Transaction Act
EBU	European Broadcasting Union
HR	Human Resources
HG	Head of Genre
ICASA	Independent Communications Authority of South Africa
ILCAPs	International and Local Commissioning and Acquisition Plans
IP	Intellectual Property
ISU	Interactive Services Unit
NPD	New Product Development
PAJA	Promotion of Administrative Justice Act
PFMA	Public Finance Management Act
RFP	Request for Proposals
SABC	South African Broadcasting Corporation
SGM	Senior General Manager
SLA	Service Level Agreement
TV OPEXCO	TV Operations Executive Committee

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SABC POLICY FOR THE
PROCUREMENT OF
LOCAL TELEVISION
PROGRAMMES

POLICY

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POLICY STATEMENT

The SABC, as the national public broadcaster, is committed to providing the South African public with a wide range of high quality local programmes that reflect the diverse cultures, languages, life experiences, interests and needs of its audiences. The SABC is, furthermore, committed to fostering a vibrant local production industry and to contributing to empowerment and development in that industry.

Quality local programmes are key drivers of the SABC's audiences and revenues, and the Corporation's sustainability in an increasingly competitive media environment. Procurement of the best local programme content is core to the SABC's mandate and business strategy. The Corporation's procurement of local content should be cost effective, efficient and operate within set guidelines that limit the risk to the SABC.

The SABC will use its procurement of local content to actively promote equity and redress historical imbalances in the production industry. In particular, it seeks to promote black economic and creative empowerment, which is a vital part of the SABC's mandate as public broadcaster.

The policy complies with the requirements of the Broadcasting Act No. 4 of 1999 as amended, ICASA regulations, the Public Finance Management Act (PFMA) No. 1 of 1999, the Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 and other relevant legislation and regulations.

POLICY OBJECTIVE

The objective of this policy is to provide an effective framework for the procurement of local television programmes by the SABC. This ranges from the commissioning of content that has not yet been produced, in which the SABC is either the sole investor or shares equity, through to the licensing of programmes.

Within this policy framework, the SABC will:

- a. procure the best possible content in an affordable and cost-efficient manner;
- b. develop a flexible approach to the business of procurement;
- c. develop systems that guarantee efficiency, transparency, fairness and accountability;
and
- d. improve the control environment governing the procurement process.





METHODS OF CONTRACTING

The SABC has three distinct approaches to procuring local content, all of which are governed by set criteria, terms and conditions.

The SABC uses the following approaches to procure local content:

- *Commissioning.* Here the SABC provides 100% financing for a programme that is yet to be produced.
- *Joint ventures.* Here the SABC enters into a co-financing agreement or a co-production with either a co-investor or a co-producer of a programme, or enters into a pre-sale agreement for a programme that is yet to be produced.
- *Acquisition.* Here the SABC licenses or acquires rights in a programme which is already complete, or an existing programme format or concept.

1.1 Commissioning – 100% financing

Where deemed appropriate, the SABC will provide 100% financing for a programme which is yet to be produced.

1.1.1 Determining the budget available for a programme or slot

The budget available for a particular programme or slot will be determined through the SABC's internal **Business Planning Processes** (see 2.1 below).

The available budget should form the basis for a guide price to producers, to be included in the Request for Proposals (RFP) issued to the local production industry. The guide price should reflect the top limit that the SABC intends to pay for the programmes. The SABC will, in general, only award commissioning contracts to proposals that fall at or below the guide price. Under exceptional circumstances, the SABC may select a proposal which exceeds the guide price. In such instances, the decision must be escalated to a higher authority level for approval as per the Procedures Document (see page 37 onwards).

1.1.2 Determining the price to be paid to the producer

The price that the SABC will pay to an independent producer (referred to as "the producer") will be based on the cost of the production plus a mark-up or producer's fee based on a set sliding scale linked to the Rand value of the production.

The approved production budget should be appropriate and sufficient to ensure the delivery of the programme, and any other specified deliverables, to the required specifications and standards as stipulated in the content brief from the channel and in the Standard Production Agreement (Appendix 6.11) between the SABC and the producer.

The approved production budget will comprise the agreed production costs as well as the producer's mark-up fee.

1.1.2.1 Production cost evaluation

The proposed production budget will be evaluated on a line-by-line basis against the SABC's pricing norms, taking into account the specific needs of the production, and will be agreed between the SABC and the producer. The SABC's pricing norms will be revised annually to ensure that they remain competitive and market-related, and take into account the SABC's business imperatives.

Ancillary products that are additional to, but related to, a programme (e.g. different versions, material to be used on-line or on other media platforms etc.) and commissioned from the same supplier, should be budgeted for separately.

1.1.2.2 Producer's mark-up or fee

The producer's mark-up or fee will be based on a set sliding scale to be determined by the SABC, linked directly to the agreed cost of the production and to the accumulated cost of all productions awarded to the producer during the course of a fiscal year.

The scale will be reviewed on an annual basis and adjusted for inflation where appropriate.

1.1.2.3 Exceptions

In pursuit of its business objectives to acquire the best content in a cost-efficient manner, the SABC may choose in exceptional circumstances, and at its own discretion, to

- agree that certain line items in a specific budget – such as presenters, actors or DOP – may exceed the set norms where it can be demonstrated to have a direct business benefit for the Corporation; and
- increase the mark-up of a production that has exceptional brand, IP or strategic value to the SABC. In this instance, the SABC may choose to negotiate a mark-up with the producer outside the parameters set in the sliding scale.

In the case of all exceptions, approval will be on a project-by-project basis, based on a sound business case, and will be escalated to a higher approval level, as per the Procedures Document.

1.1.3 Editorial control

The SABC will retain full editorial control of commissioned programmes and will ensure that the programme/s delivered meet the quality and editorial standards and requirements of the SABC, as stipulated in the content brief and Standard Production Agreement between the SABC and the producer.

The SABC will manage the editorial process through the approval of key creative aspects of the production, *inter alia*, key creative personnel and cast, set and other elements where appropriate. Editorial content will be managed through the approval of, *inter alia*, series outlines, treatments, scripts, off-line and on-line versions of the programmes.

Selected indicators of programme performance will be shared with the producer where such feedback is expected to improve the performance of the programme against its business plan and/or align the producer to the SABC's business objectives.

1.1.4 Expenditure control and payments

The SABC's principal approach to controlling production expenditure is covered by three processes: advance payment to production houses or

producers, expenditure monitoring and expenditure auditing. These are detailed below.

1.1.4.1 Advance payment to production houses or producers

The SABC will advance finance to productions based on agreed production, budget, cash-flow schedules and delivery, subject to the SABC receiving the required cost reports, verified through supporting invoices and bank statements.

The producer shall be required to operate a separate bank account for each production.

1.1.4.2 Expenditure monitoring

The following principles will guide the accounting for production costs. The SABC will

- a. apply proper accounting methods for expenditure;
- b. apply appropriate control processes for the business risk; and
- c. may specify particular suppliers for certain services.

Producers will be expected to provide the SABC with cost reports for the production based on the approved production budget and cash-flow schedule.

The producer will be required to provide detailed cost reports and supporting documentation to verify all expenditure items including, *inter alia*, copies of artist and production staff contracts, invoices, bank statements and any other proof of expenditure as pre-determined by the SABC and/or stipulated per the contract. The SABC may also appoint a full-time production controller to the production.

The SABC may, if it so wishes, depending on the financial and business risks, request detailed supporting documentation for designated line items as will be defined in the Standard Production Agreement.

The standard list of designated line items and suppliers will be reviewed on a regular basis during the course of the production.

The SABC retains the right to scrutinise all banking records pertaining to the production, and requires the producer to open a separate bank account wherein transactions for each production may be isolated for control purposes.

Where producers share financial risk in the production, the SABC may correspondingly adjust its expenditure control requirements. Such decisions must be escalated to a higher level of approval as specified in the Procedures Document.

To facilitate advance payment for the first drawdown and subsequent payments, producers must invoice the SABC on a phased basis as per the agreed production budget and cash-flow schedule. All payments subsequent to the first payment will be subject to the producer providing the SABC with the required cost reports.

The SABC is moving towards electronic transaction processing and will expect producers to be able to accommodate such transactions.

More detailed terms and conditions pertaining to production expenditure are included in the Standard Production Agreement.

1.1.4.3 Expenditure auditing

The SABC reserves the right to have the production audited by its own internal auditor or an independent auditor and, in the event of finding discrepancies, the SABC reserves the right to have any earlier production(s) audited. Such audits will be conducted at the SABC's own cost and budgeted for separately by the SABC.

1.1.5 Ownership and rights

In the case of commissioned productions, which are 100% financed by the SABC, the following will apply:

- a. All the intellectual property rights in and associated with the production as a whole shall vest exclusively in the SABC, including, *inter alia*, the copyright in elements such as trademarks, characters and formats.
- b. All the rights to commercially exploit the production, including, *inter alia*, exploitation of broadcast rights, theatrical rights, prequel or sequel rights, character rights, multimedia variations and merchandising howsoever related to the production, shall vest in the SABC.
- c. The SABC shall pay the producer 15% of all net profits derived by the SABC through the exploitation of the programme *per se*, i.e. licensing the broadcast rights of the programme as a whole to third parties anywhere in the world. The SABC shall pay the producer of the programme an additional 10% of its net profits as a finder's fee, where the producer materialises the formal introduction of a third party to the SABC with regard to the selling or licensing of broadcast rights in the relevant programme, and where that contact results in the conclusion of such a transaction between the SABC and such third party. "Net profits" for these purposes means gross income made from exploitation minus distribution commission to a maximum of 35%, marketing and promotional expenses to a maximum of 10%, direct costs associated with editing, dubbing and/or sub-titling, travelling for purposes of exploitation of the production and all payments relating to royalties, residuals and the like, manufacturing and/or transfer costs.

- d. Any income derived from any form of commercial exploitation other than described in paragraph 1.1.5c above, like merchandising, licensing of the concept, multimedia variations and other spin-offs related to the production, shall be for the SABC's benefit.
- e. The SABC may consider sharing rights and/or further income or benefits derived from the production, with the producer or some other third party at its own discretion, should there be a sound business case for the SABC to do so. The proposed business case shall be evaluated on a case-by-case basis, but must always involve some commercial benefit to the SABC, the prospect of which must be better than the SABC exercising its rights by itself. This could be a direct financial benefit, or an indirect benefit, such as increasing brand value. In such cases, the basis of income/benefit-sharing shall be negotiated between the SABC and the producer or third party on an *ad hoc* basis. SABC approval will be on a project-by-project basis and will be escalated to a higher approval level, as per the Procedures Document.
- f. The producer shall not be entitled to produce a film or production, which is similar to, or based on the concept, story, or characters of the commissioned production without the consent of the SABC; neither may the producer co-operate with others to do so.
- g. It shall be within the sole discretion of the SABC to renew a commissioned production.
- h. Producers are obliged to obtain full clearance of all rights pertaining to contributors and all elements of the production and must provide verification of these, as specified in the terms and conditions in the Standard Production Agreement.
- i. Where a production requires the use of pre-existing stock footage, the SABC requires that producers obtain full clearance of rights (world-wide in perpetuity and across all media). Where full clearance is not possible, the onus is on the producer to inform the SABC and to obtain prior written approval from the SABC of the degree and nature of the rights to be obtained.
- j. The SABC is responsible for the payment of repeat fees to performers and writers and the share in proceeds through commercial exploitation to producers, performers and writers in accordance with the terms of the SABC's prescribed Writers' and Freelance Artists' Contracts as well as the Standard Production Agreement.
- k. The simultaneous broadcast of the production on any platform shall not constitute a repeat broadcast or commercial exploitation.
- l. Where the SABC packages content of which the production forms part, for broadcast purposes on any platform which is provided by a third party, it shall not constitute a repeat broadcast, but shall be regarded as commercial exploitation of the production.

m. The SABC shall consider requests from producers or third parties to use the production or parts thereof for non-commercial purposes on an *ad hoc* basis. This will include using the production for training/educational purposes, or in cases where such usage may assist the SABC in fulfilling its mandate as a public broadcaster, but which normally do not involve a profit motive. Should the SABC grant a producer such rights, the SABC shall be entitled to be credited in a manner deemed appropriate by the SABC.

1.1.6 Deliverables

All deliverables and any specifications related to them must be clearly specified in the Standard Production Agreement.

All tapes, finished programmes, shot footage, assets and archive material (and any other additional deliverables) as specified in the Standard Production Agreement remain the property of the SABC (unless otherwise agreed) and must be delivered to the SABC as per the terms and conditions set out in the Standard Production Agreement.

All contracts and records related to the production, including but not limited to copies of all agreements with performers, composers and other contributors, music cue sheets and such other documentation as specified in the Terms and Conditions must be delivered to the SABC, as prescribed in the Standard Production Agreement.

The final payment to the producer will not be made until all required deliverables are received by the SABC.

1.2 Joint venture agreements

Joint venture agreements include co-production, co-financing and pre-sale agreements.

1.2.1 Co-production/co-financing

- a. A co-production/co-financing agreement is one in which the SABC will jointly contribute with other parties towards the financing of a programme which is not yet completed. Such other parties may either be investors who merely make a financial contribution and who are not directly involved in the production as such, or they may be an investor who is directly involved in the production.
- b. An investor in a co-production/co-financing agreement is defined as a party who makes a contribution, whether in cash or kind, towards the funding or making of a production prior to its completion.
- c. Such investment will involve a sharing of risk and the parties' respective rights and obligations, the sharing of editorial control as well as equity, and copyright will be agreed on a project-by-project basis.

- d. The SABC reserves the right to decide its level of participation and contribution based on an assessment of the business case and of the risks involved. The SABC must manage and mitigate its risk, and ensure that it receives benefits (e.g. rights, returns) relative to its contribution or investment.
- e. A producer wishing to enter into or secure (on behalf of other investors) a co-production agreement with the SABC can submit such proposals to the SABC either in response to an RFP or as an unsolicited proposal.
- f. Should a producer intend to enter into a co-production/co-financing agreement with the SABC, based on their contribution or some third party's contribution to the financing of the production, this should be communicated to the SABC as part of the proposal submitted to the SABC.
- g. Approval of co-production/co-financing agreements will be on a project-by-project basis and will be escalated to a higher approval level as per the Procedures Document.
- h. When equity arrangements are negotiated in co-financing or co-production agreements, the SABC will not share sponsorship and/or advertising revenue derived by the SABC from the broadcast of the programme.

1.2.1.1 Financial aspects - Determining the SABC's investment contribution

- a. The SABC, as a prospective investor, will evaluate the overall budget for the programme and agree a reasonable budget with the producer and/or other investors. The SABC will agree its investment contribution after evaluating the business case for the project, which should indicate the value and return on investment that the SABC will receive for its contribution.
- b. The SABC may express intent to participate in the co-production, but will not contractually commit to doing so until all the required investment is secured. The producer must supply guarantees for co-financing monies before any co-production agreement is signed by the SABC.
- c. Warranties and indemnities for co-production/co-financing monies must be supplied before any co-production/co-financing agreement is signed by the SABC.
- d. In order to further manage risk, the SABC will require either a completion bond or appropriate production insurance to be in place.
- e. Where the value of the co-production deal and potential returns for investors are based on projected income derived from exploitation of the programme content, proposals to the SABC should include sales and revenue forecasts produced by reputable agents, and/or guaranteed pre-sale agreements.

- f. Sponsorship, trade exchanges, or any other revenue sourced by the producer or some third party, which is dependent on the use of the SABC's commercial airtime, does not constitute co-financing for a production. The sales and/or exploitation of SABC's airtime remains the sole prerogative of the SABC and any sourcing of such revenue by the producer or a third party will be subject to prior agreement between them and the SABC airtime sales unit.

1.2.1.2 Expenditure control and payments

The SABC will require approval of the total production budget for the programme and of the production and delivery schedule.

The SABC will also require cost reports, supported by invoices and bank statements, pertaining to the production as a whole.

Specific requirements with respect to the above will be negotiated on a case-by-case basis.

Payment methods

The SABC will negotiate, on a case-by-case basis, whether to apply either an "advance payment" or "payment on delivery" method of payment.

1.2.1.3 Editorial control

Where the SABC is the dominant investor, the SABC may insist on full editorial control, but in consultation with the other co-production/co-financing party(ies).

Where the SABC is not a dominant investor, the SABC will expect to be consulted with respect to all editorial matters, *inter alia*, scripts, treatment, performers, and creative team, off-line and on-line approval.

In cases where the SABC will not exercise editorial control, the SABC will not guarantee to broadcast the programme on its channels/services. The decision whether to broadcast or not will in such cases be taken in the SABC's sole discretion.

1.2.1.4 Ownership and rights

As a general rule with regard to co-production deals, ownership, rights or benefit-sharing shall be determined in accordance with and be *pro rata* to the contribution or investment made by the parties towards the production. The co-production parties shall negotiate each model, including rights/benefit sharing and recoupment of investment, on an *ad hoc* basis.

After investors have recouped their investment, profits will be shared among the investors and, where appropriate, with the producer, in terms of the agreement between the parties.

1.2.1.5 Deliverables

All deliverables, including tapes, assets and archive material as well as contracts, releases, financial and other production records to be delivered to SABC, must be specified in the co-production contract.

1.2.2 Pre-sale agreements

- a. The SABC will, from time to time, commit to acquiring rights in a programme (e.g. the right to broadcast it in specific territories) before production has commenced, or at any time before it is completed.
- b. Editorial and financial risk to the SABC will be managed by withholding payment or by applying the same risk mitigation approaches and controls as obtained in a co-production.
- c. Fees for pre-sale will be determined based on the value of the rights being acquired. Such value will be assessed using either the standards benchmarks used for licensing or the pricing mechanism for co-production.
- d. Approval of pre-sale agreements will be on a project-by-project basis and will be escalated to a higher approval level as per the Procedures Document.

1.3 Acquisition of completed local programmes

The SABC may license existing, completed local content programmes from producers and/or distributors or their agents.

1.3.1 Financial aspects – Defining price

As a general rule with regard to licensing acquisition deals, the SABC shall have market-related price ranges for each genre, which shall be applied to determine the licensing fee of each such deal. These ranges will be revised annually. Approval to exceed the SABC's price ranges must be escalated to a higher approval level as per the Procedures Document.

1.3.2 Expenditure control and payments

Payments will be made on delivery of material within technical requirements, as per agreed payment schedules.

1.3.3 Editorial control

SABC must select, view and editorially approve all licensed programming prior to broadcast.

SABC will withhold payment until delivery of material to the required standards of the SABC.

1.3.4 Ownership and rights

Ownership will be retained by the licensor.

The SABC will determine, as part of its acquisition strategies and buying plans, what rights it requires to procure, including, *inter alia*, consideration of the following:

- platforms (e.g. terrestrial, satellite, internet or other new media);
- any other rights to be acquired (e.g. merchandising, sub-licensing);
- number of transmissions;
- licence period;
- exclusivity;
- first right of refusal.

Approval for licensing deals that deviate from the requirements set out in the channels' buying plans must be escalated to a higher approval level as per the Procedures Document.

1.3.5 Deliverables

All deliverables, including tapes, releases, publicity material, to be delivered to SABC, and those to be returned to the licensor, must be specified in the licensing agreement.

1.4 Barter agreements

- a. Barter agreements are generally agreements between the SABC and an advertiser in terms of which the SABC acquires rights in a product, which may or may not be completed. The SABC does not fund the making of the production in cash, but rather receives a finished product in return for airtime for commercial exposure granted to the advertiser by the SABC.
- b. Barter agreements, including the determination of price and editorial, financial and production control, will be determined and negotiated on a case-by-case basis and approval will be escalated to a higher level as per the Procedures Document.
- c. In cases where the SABC will not exercise editorial control, the SABC will not guarantee to broadcast the programme on its channels/services. The decision whether to broadcast or not will in such cases be taken in the SABC's sole discretion.
- d. Barter agreements are also governed by and subject to the SABC's Airtime Sales' "Barter Transaction Guidelines" (see Appendix 6.16)

1.5 Licensing of pre-existing intellectual properties other than programmes

The SABC will from time to time acquire pre-existing intellectual properties (e.g. published works, formats, characters and stock footage), that would form the basis for, or an element of, a production to be commissioned, co-financed or licensed by the SABC and which may be owned by a third party.

1.5.1 Television format licensing

Format licensing can be defined as licensing the right to use in a SABC production an existing programme format, which format belongs to another party and which has previously successfully been used as a basis of a programme made for television.

Format licensing mostly involves two separate agreements, one in terms of which the format is licensed from the third party, and one for the local production of the programme based on the format. In some cases the party owning the format, may

- produce the programme itself;
- determine the producer who will produce the programme, either at its own discretion or in consultation with the SABC; or
- allow the SABC to appoint its own producer.

Unless otherwise required by a contract entered into between the SABC and the format owner, the SABC will apply the same standard policy and procedures as set out in this document, to the management of the production. Approval for format licence contracts that deviate from the standard policy must be escalated to a higher approval level as per the Procedures Document.

1.5.2 Other pre-existing intellectual properties

The SABC will from time to time license other pre-existing intellectual properties – *inter alia* published material, characters and artistic works – either indirectly or through a producer for use within a television programme or another SABC media product.

The terms of such agreements with respect to price, ownership and rights will be determined and negotiated on a case-by-case basis and approval will be escalated to a higher level as per the Procedures Document.

Where a production requires the use of pre-existing stock footage, the SABC requires that producers obtain full clearance of rights, (world-wide in perpetuity and across all media.) Where full clearance is not possible, the onus is on the producer to inform the SABC and to obtain a prior written approval from the SABC of the degree and nature of the rights to be obtained.



PROCUREMENT MODELS, PROCEDURES AND APPROVALS

The procurement process will follow a structured cycle on an annual basis and be governed by consistent operating procedures.

The following procedures will govern the acquisition of local content by the SABC.

2.1 Business planning process

2.1.1 Channel business plans

Each of the SABC channels will develop three-year and annual business plans or cases to be reviewed and approved annually by the Group Executive and the Board.

The channel business plans must include a programming and scheduling strategy and plan which specifies the programming required by the channel and the targets to be achieved across the schedule, and per

slot, including, *inter alia*, cost, revenue, mandate requirements and audience delivery targets. To ensure that targets set are realistic and appropriate, the setting of such targets should be based on a thorough performance review of the channel and analysis of mandate requirements and market conditions. The channel's target setting should be done in consultation with relevant divisions/departments within the SABC including for example, the Content Divisions, Production Finance, Airtime Sales, Market Intelligence, Corporate Marketing, and Technology.

The channel business plans should also stipulate the channels' overall requirements and budget allocations for specific genres with respect to:

- existing programme/s (local and international) to be re-commissioned or renewed;
- new local programming required to be commissioned and/or acquired;
- new international programme acquisition;
- research and development projects required, e.g. scripts, pilots.

The channel business plans will be approved by the Group Executive and the Board, following the annual TV summit of the TV OPEXCO and will be reviewed on a quarterly basis at quarterly TV summits.

2.1.2 Content brief from channels to the SABC's internal content divisions

Based on their three-year and annual business plans, each channel is required to create a detailed internal content brief to the SABC's content divisions (including SABC News, SABC Sport, SABC Education and the SABC Content Hub) which shall manage local programme procurement on behalf of the channels.

The content brief should indicate the channels' overall requirements as well as a slot-by-slot editorial brief, budget allocation, audience and revenue target as well as any specific mandate-related, creative or other specifications to be met.

2.1.3 Commissioning and acquisition strategy and plans

The content divisions must, on an annual basis, prepare a three-year commissioning and acquisition strategy and plan for both local and international programming. These should include long-term planning and the effective management of commissioning and acquisition over a multi-year period, to meet the programming requirements of the channels as specified in the content brief as well as other targets related to financial performance, supplier management, spread of work and equity, and internal resource management.

The SABC shall inform the local production industry, on an annual basis, about approximate levels of investment commitment projected for the year, including both re-commissioning of existing local programmes and the commissioning of new local programmes.

2.2 Methods for sourcing local programming

The SABC will use five principal means to source quality local programme content, irrespective of the method of contracting to be pursued:

- a. soliciting of programme proposals for commissioning or completed programmes for licensing through open RFPs;
- b. re-commissioning or re-licensing of existing programmes/series;
- c. accepting unsolicited proposals;
- d. pursuing an existing programme concept or format;
- e. sourcing joint venture proposals.

These means of sourcing content are subject to different methods of contracting, as appropriate.

The detailed procedures that are to be followed with respect to each of the sourcing methods above are specified in the Procedures Document. The Procedures Document covers both the steps to be followed as well as the assignment of roles and accountabilities with respect to all aspects of the procurement process including sourcing, selection, contracting, editorial and financial management.

The procedures are governed by the following principles:

- i. All decision-making with regard to procuring content will be made by teams that have been appropriately designated.
- ii. Proper record-keeping will be enforced.
- iii. Media and entertainment interests of all Content Hub staff must be declared on an ongoing basis so that potential conflicts can be identified and managed according to the Procedures Document.

In all cases, decisions regarding the commissioning or acquisition of the programme/s will be based on a comprehensive business case, approved at the appropriate level in terms of the Corporation's delegation of authority. The business case shall include all relevant information pertaining to the strategic, editorial, and financial aspects of the production as well as the terms of the deal and proposed contractual relationships.

The procedures will be reviewed from time to time to ensure that they are aligned to best practice and the SABC's operational requirements. The policy framework for procedures to be followed is set out below.

2.2.1 Soliciting programme proposals

- a. RFPs shall be issued according to a structured annual calendar and the procedures must ensure that the process is fair and transparent. Producers may tender either proposals for programmes still to be made, or offer completed programmes that meet the requirements of the RFP, but which they wish to license to the SABC.
- b. Proposals will be evaluated on clearly defined and weighted criteria, which will include empowerment criteria in all instances. In considering and evaluating proposals, the SABC shall have the discretion to take into account other factors which, if taken into account and applied, would in the opinion of the SABC, produce a fair, objective and reasonable result or outcome.
- c. In some circumstances, the SABC will set qualifying criteria around niche genres or Black Economic Empowerment (BEE) projects that will limit proposals to those producers who qualify against the given criteria. These "limited" RFPs will be ratified by TV OPEXCO and the reasons for limiting the tender will be clearly indicated in the RFP.
- d. Where a producer pitches a proposal to the SABC in response to a RFP and decides to include their own contributions as a means of reducing the cost (price) for the SABC, this will be taken into account in the selection and awarding of commissioning contracts. Should such contributions give the producer a competitive advantage over other proposals received and result in the SABC awarding the contract to the producer, the producer will only be entitled to the rights as stipulated under section 1.1.5. related to 100% financing, and not to any share of rights or equity as mentioned under joint venture agreements.
- e. The SABC reserves the right to declare an RFP null and void if none of the proposals received meets the required standard.
- f. The SABC will not re-consider unselected proposals unless they are re-submitted by producers in response to a new RFP or as an unsolicited proposal.
- g. Where the SABC rejects a proposal, the SABC shall give written reasons for its decision, if required by the party whose proposal has not been successful, in terms of applicable legislation.

2.2.2 Re-commissioning and re-licensing of existing programmes

Criteria for re-commissioning or re-licensing an existing programme will have been set and agreed in the channel business planning process and will be based on performance targets which may include delivery on revenue, audience and mandate, as well as other strategic considerations. The Corporation will not be obliged to re-commission or re-license any programme, regardless of its performance.

The channels will indicate in their annual business plans the extent to which they will utilise re-commissioning and re-licensing in the forthcoming fiscal year. Re-commissioning and re-licensing will be reviewed and confirmed on a quarterly basis at the quarterly TV summits.

Although a programme may have been identified for re-commissioning or re-licensing, a new contract must be entered into with the producer, taking into account possible changes in deal structure, production costs, editorial content and empowerment criteria.

2.2.3 Accepting unsolicited proposals

- a. Unsolicited proposals, including licensed or advertiser-funded programmes, may be pitched at any time to the SABC, but will only be considered if they convincingly demonstrate, and at the SABC's sole discretion are deemed to be of, strategic or competitive advantage for the Corporation.
- b. The commissioning or licensing of unsolicited proposals should not displace a RFP process. Unsolicited proposals can be considered for appropriate broadcast slots, for which a RFP has not yet been issued.
- c. Procedures and criteria for the acceptance of unsolicited proposals are outlined in the Procedures Document.
- d. Approval for the commissioning or licensing of unsolicited proposals must be escalated to a higher level of authority as per the Procedures Document.

2.2.4 Pursuing an existing programme concept or format

The SABC will, at its discretion, pursue programme concepts or formats that match its business objectives. Should third parties own these concepts or formats, and the SABC is restricted in its choice of local producer by the rights holder, then the SABC may appoint that producer without issuing a RFP.

Approval for this must be escalated to a higher level of authority as per the Procedures Document.

2.2.5 Sourcing of joint venture proposals

- a. A party wishing to enter into a joint venture agreement with the SABC can submit such proposals to the SABC either in response to a RFP or as an unsolicited proposal. Joint venture proposals must indicate clearly the total costs of the project, and the terms of the deal proposed to the SABC and to other co-production partners (whether the producer and/or other investors).
- b. The SABC will from time to time initiate joint ventures with other partners. Where a South African producer is required for such a joint venture, and is not yet attached to it, the SABC will solicit a producer for it through a RFP. Where the project already has an attached producer, the SABC may directly appoint that producer.

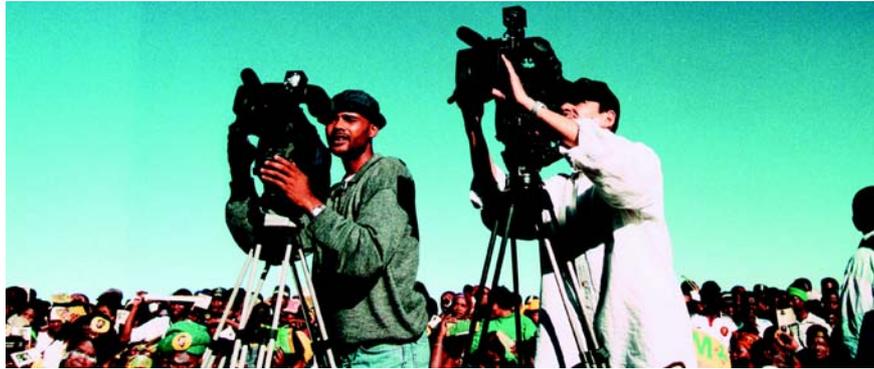


UTILISATION OF SABC FACILITIES

While the SABC has internal production facilities, and a business imperative to optimise their utilisation, the SABC is committed to a fair and competitive process in determining the facilities to be used for a commissioned production.

Where the SABC's facilities are to be used for a commissioned production, producers will be expected to manage their relationship with SABC facilities directly and will be held accountable for all aspects of the production. A service-level agreement will be concluded between SABC facilities and the producer for each production before it commences.

SECTION FOUR



EQUITY AND INDUSTRY DEVELOPMENT

The SABC has three key priorities with respect to the development and transformation of the local production industry.

The SABC's three priorities with respect to the development and transformation of the local production industry are:

- BEE and equity;
- skills development (both inside the SABC and within the independent production industry); and
- the promotion of diversity, economic development and international competitiveness in the local production industry.

The SABC will set specific, measurable targets in each of these areas. Such targets, as well as the tools to measure and monitor them, will be established within six months of the approval of this policy, following a baseline survey and audit of the local production industry and further consultation with industry stakeholders. Thereafter they will be monitored and reported on annually.

4.1. Black Economic Empowerment

In the context of programme commissioning and acquisition, black empowerment will be assessed using the following dimensions:

- company ownership;
- company employment equity profile; and
- empowerment profile of the key creative personnel to be used on the production.

Empowerment of black South Africans (African, Coloured and Indian South Africans) and empowerment of women will be considered for all three dimensions. Ownership will include indirect ownership so that the empowerment status of legal entities owning direct shares in the company can be assessed. Employment equity will take into account all permanent staff employed by the company. Key personnel will include senior decision-makers in the key creative areas of the production.

The SABC will increase the spread of work and investment to black-empowered companies, by

- giving weight to black empowerment criteria in the sourcing and selection of proposals, and keeping an accurate register of production companies' ownership and control profiles of each and every production company tendering and/or providing a production;
- ring-fencing proportions of the commissioning budget exclusively for small companies and in particular smaller black production companies; and
- using larger, long-running commissioning contracts to leverage sub-contracting and other forms of empowerment for small companies and especially smaller black companies.

Following a baseline survey and audit of the local production industry and further consultation with industry stakeholders, specific, measurable targets for BEE will be set within six months of the approval of this policy, and will be reported on annually thereafter. The SABC will develop and maintain an effective register of producers including such information as may be necessary to establish their empowerment profile.

4.2 Skills development

The SABC will, *inter alia*, apply the following approaches to fostering skills development. The SABC will:

- work with industry stakeholders to identify specific sets of skills requiring development and use commissioning contracts to promote training and development in these areas;

- require producers, as part of large and/or long-term contracts, to engage in training and empowerment processes and to report on these; and
- provide direct support for industry-based skills development initiatives that match the SABC's business and mandate objectives.

4.3 General industry economic development and international competitiveness

To achieve diversity and general economic development in the local production industry, the SABC will, in alignment with its business objectives and its mandate

- a. spread work to diverse companies, with different ownership, while at the same time leveraging the benefits of consolidation;
- b. proactively support and facilitate international collaboration and international investment in local programming;
- c. encourage and facilitate new and innovative financing partnerships for local production; and
- d. be increasingly open to new business models in which risk and benefits can be shared between the SABC and producers.