

BUDGET FACT SHEET 3

Municipalities and Outsourcing

Because large amounts of public money are spent on outsourcing important basic services, it is important that we consider why government uses outside companies to deliver services and how these companies are appointed and then monitored.

The purpose of this fact sheet is to help community members understand what outsourcing is, and the process and regulations the City must follow in appointing companies to deliver services on its behalf. This information will empower communities to help to monitor whether services are delivered properly.



1 WHAT IS OUTSOURCING?

The total amount allocated from the operating budget 2011/12 for **outsourcing** is

10.6%
of the
budget

R2.4 BILLION

Outsourcing is when government chooses an outside company to provide particular services on its behalf. Both the **Municipal Systems Act (MSA)** and the City of Cape Town Budget call these companies '**external mechanisms**'. The contract between the government and the company is called the **Service Delivery Agreement** (or **SDA**), and it states exactly what the company has to deliver.

The **Local Government Municipal Systems Act (MSA)** (Act 32 of 2000) is a piece of legislation that regulates how municipalities operate. Amongst other things, the MSA ensures that municipalities fulfil their Constitutional obligation to provide affordable access to essential services to all, and to work towards the social and economic upliftment of local communities. It also provides the framework for planning, performance management, and for the provision of services, by the municipality.

**MSA-
MUNICIPAL SYSTEMS ACT:**
Is a Legislation that regulates how municipalities are run.

**SDA-
SERVICE DELIVERY
AGREEMENT:**
The contract between the government and a company.

For 2011/12, the City of Cape Town allocated about **10.6%**

(R2.3 BILLION)

of its operating budget for outsourcing, referred to in the budget as "contracted services"¹.

2

The provision and maintenance of sanitation services in the City of Cape Town is one example of a basic municipal service that might be outsourced. Currently, some of the other services that Cape Town outsources to outside companies include:



EXAMPLES OF OUTSOURCING

For instance, the City appointed a company to service container toilets in informal settlements for 2 years and 10 months at a cost of R38.4 million. Another company has been appointed to supply and maintain portable non-flushing chemical toilets in informal settlements and at 'public transport interchange sites' in a tender to the value of R164 million, also for 2 years and 10 months.

Because large amounts of public money are spent on outsourcing these important basic services, it is important that we consider why government uses outside companies to deliver services and how these companies are appointed and then monitored.

BECAUSE LARGE AMOUNTS OF PUBLIC MONEY ARE SPENT ON OUTSOURCING THESE IMPORTANT BASIC SERVICES, IT IS IMPORTANT THAT WE CONSIDER WHY GOVERNMENT USES OUTSIDE COMPANIES TO DELIVER SERVICES AND HOW THESE COMPANIES ARE APPOINTED AND THEN MONITORED.

3 WHY DOES GOVERNMENT OUTSOURCE?

There are many reasons government may choose to outsource a service rather than providing it themselves (or 'in-house'). Sometimes a company has **more specialist skills and particular experience** and therefore is able to provide the service more efficiently and quickly, or may be able to provide a better quality service, than government could by itself. Government is often not able to be an expert in the delivery of all types of services, so it relies on the private sector. In some situations, government usually provides the services themselves, but they lack the capacity at present. In these cases, it may be easiest and quickest to use an outside company. In other instances, government decides that it is not cost-effective to build the capacity in-house to deliver the service and so they decide it is more efficient to use an outside company in the long-term.

There are also some disadvantages to outsourcing. By adding an additional organisation to the delivery process, outsourcing distances the municipality from the residents who are receiving the service and therefore can reduce government's **accountability**. Service provision may be **harder to monitor** when it is being delivered by an outside company. In some ways one can argue outsourcing is a way that government can distance itself from the **responsibility** of providing a particular service themselves.

ADVANTAGES

- *specialist skills*
- *more experience*
- *quick and efficient*
- *better quality service*

DISADVANTAGES

- *distances the municipality from the residents*
- *reduce government's accountability*
- *harder to monitor*
- *one can argue that government can distance itself from the responsibility*

THE MUNICIPAL SYSTEMS ACT (SECTION 1) DEFINES A BASIC MUNICIPAL SERVICE AS:

"A MUNICIPAL SERVICE THAT IS NECESSARY TO ENSURE AN ACCEPTABLE AND REASONABLE QUALITY OF LIFE AND, IF NOT PROVIDED, WOULD ENDANGER PUBLIC HEALTH OR SAFETY OR THE ENVIRONMENT".

4 WHAT DOES THE LAW SAY ABOUT BASIC MUNICIPAL SERVICES?

In South Africa, local government is responsible for delivering basic services to communities - this includes water, sanitation, refuse removal, electricity, and roads. The Constitution assigns local government with a developmental duty, which means that local government must conduct its planning, budgeting and administration in a way which gives priority to meeting the basic needs of the community and its social and economic development (Section 153).

By law, a municipality must act in line with the Constitution, give priority to the basic needs of the local community, promote the development of the local community, and ensure that all members of the local community have access **to at least the minimum level of basic municipal services**. The municipal services must also be equitable (fair and unbiased) and **accessible**, provided in a way so that the **quality improves over time**, and must be **regularly reviewed** (Section 73).

IN SOUTH AFRICA, LOCAL GOVERNMENT IS RESPONSIBLE FOR DELIVERING BASIC SERVICES TO COMMUNITIES - THIS INCLUDES WATER, SANITATION, REFUSE REMOVAL, ELECTRICITY, AND ROADS.

BASIC SERVICES THAT GOVERNMENT IS RESPONSIBLE FOR



WATER



SANITATION



REFUSE REMOVAL



ELECTRICITY



ROADS

5 WHAT MUST A MUNICIPALITY DO WHEN IT IS CONSIDERING APPOINTING AN EXTERNAL SERVICE PROVIDER?

A municipality cannot decide to use an outside company to provide municipal services without consulting the community and going through a particular process which is set out in law. According to the law, when a municipality is deciding whether to use an external company to deliver a service or to provide that service in-house using its own staff, the municipality must first give notice to the local community that it is considering outsourcing the service (MSA, Section 78).

The law says that the municipality must consider the following criteria when it makes the decision whether or not to use an external service provider:

IF A MUNICIPALITY DOES NOT HAVE THE CAPACITY TO PROVIDE THE SERVICE INTERNALLY, THIS IS NOT A SUFFICIENT REASON ON ITS OWN FOR APPOINTING AN EXTERNAL PROVIDER. THE OTHER CRITERIA MUST ALSO BE TAKEN INTO ACCOUNT.

- 01 the direct and indirect costs and benefits of both,
- 02 the capacity and potential future capacity of the municipality and of prospective service providers,
- 03 the views of the local community,
- 04 the likely impact on development and employment patterns in the municipality, and
- 05 the views of the labour unions.

6 WHAT IS THE PROCESS TO SELECT AN EXTERNAL SERVICE PROVIDER?

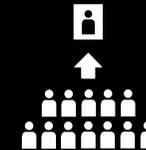
If the municipality has gone through the due process and decided that it is best to use an external company to provide the service, the law then specifies the process the municipality should use to decide on which company to appoint (MSA, Section 83). The selection process must:



- **be competitive, fair, transparent, equitable** and cost-effective;
- allow all prospective service providers to have **equal and simultaneous access to information** relevant to the bidding process;
- **minimise the possibility of fraud and corruption**;
- make the **municipality accountable to the local community** about **progress with selecting a service provider** and **the reason for any decision**; and
- take into account the **need to promote the empowerment of small and emerging enterprises**.



If the project to provide a basic municipal service is large and the government is considering appointing an outside company to carry it out, the municipality must by law follow certain procedures to 'put out a tender'. Usually this involves the following 7 steps:



01

First, the municipality must openly advertise that they are looking for a company to do the work and invite interested companies to submit proposals to the municipality by a particular deadline. The municipality will publish a document called the *tender specifications* which sets out the details of exactly the type of work they require - timeframes, quality, quantities and so forth.

02

Once the deadline has passed and all applications have been submitted, the municipality must then check the eligibility of the applications they received.

03

Those applications that are determined to be eligible are evaluated by a *Bid Evaluation Committee* and points are awarded in terms of a number of different criteria, which may include:

- *the price that the company will charge to do the work,*
- *their experience and qualifications,*
- *their proposed approach and work plan, and*
- *their BBBEE status.*

04

When all the eligible applications have been evaluated, the company ranked highest in terms of points is selected. Government may decide to appoint a different company than the one which scored the most points, but it must give good reasons for this. The accounting officer of the municipality must, in writing, notify the Auditor-General, the Provincial Treasury and the National Treasury of the reasons².

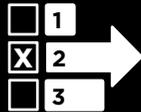
05

After a prospective service provider has been selected, the municipality must then negotiate the **final terms and conditions** of the **Service Delivery Agreement (SDA)** with the preferred service provider (MSA, Section 84).

SDA



The **SDA** includes all the details about the service to be provided, including exactly what needs to be done, who is meant to do it, when they must do it, when the agreement commences and expires, and how costs will be determined.



06

If the negotiations are **successful**, the municipality and the service provider must enter into the **SDA**.

07

If, however, they **cannot reach agreement within a reasonable time**, the municipality may negotiate with the next-ranked prospective service provider.

7 WHAT HAPPENS AFTER AN EXTERNAL SERVICE PROVIDER IS APPOINTED?

Even when an external company is appointed to provide a service to communities on behalf of the municipality, the **municipality still remains responsible for ensuring that those services are delivered properly**. By law, when a municipality enters into an **SDA** with an external provider, it must:

1. **regulate the provision of the service;**
2. **monitor and assess** whether the service provider is keeping to the agreement, including how well it is performing the service; and
3. use its authority to make sure that services are delivered without interruption and in the best interest of the local community.

WHEN AN EXTERNAL COMPANY IS APPOINTED... THE MUNICIPALITY STILL REMAINS RESPONSIBLE FOR ENSURING THAT THOSE SERVICES ARE DELIVERED PROPERLY.

HOW CAN THE LOCAL COMMUNITY LEARN ABOUT SDAs?

In general, South African law emphasizes that municipalities must allow local communities to participate in the affairs of the municipality and to submit petitions and complaints which the municipality must consider and respond to. Municipalities are obligated to consult with communities and report back to them about service delivery.

In terms of outsourcing, the law refers to a document called the **Service Delivery Agreement (SDA)** between the company and the municipality. However in practice, often the municipalities may not develop a single document called an SDA. Instead the municipality signs a contract with the outside company and attaches the tender specifications which set out the details of what work will be provided. The contract and the tender specifications then serve as the SDA.

SERVICE DELIVERY AGREEMENT



CONTRACT



TENDER SPECIFICATIONS

8

In terms of the SDAs, the law requires the municipality to do the following:

BEFORE

Before a municipality enters into an agreement with an outside company, it must establish a mechanism and programme for **community consultation** and **information dissemination** regarding the SDA. The contents of the agreement must be communicated to the local community through the media (MSA, Section 80).

AFTER

After a municipality has entered into an **SDA**, it must **make copies of the agreement available at its offices for public inspection during office hours**. It must also give notice in the media of details of the service that will be provided under the agreement, the name of the selected service provider and the place where and the period for which copies of the agreement are available for public inspection (MSA, Section 84). This means that you as a member of the community have the right to ask for the contract and tender specifications, because the law says that the SDA must be available to you. The law also requires municipalities to make all SDAs available on their websites⁴.

MODIFY

When a municipality and a service provider want to modify the SDA after the tender process has been completed, the municipality must give the local community:

- **reasonable notice** that it wants to change the agreement and the reasons for the proposed changes, and
- **sufficient opportunity** to make representation to the municipality. This also applies when the municipality wants to renew an SDA.

WHAT CAN THE LOCAL COMMUNITY DO?

If the local community requests it, a municipality must **review and decide on the appropriate mechanisms to provide a municipal service** (MSA, Section 77). This means that if the local community is unhappy or concerned about the way that a service is being provided, they can raise this with the municipality either by submitting a petition or a complaint, or by mentioning it at a public meeting or consultative session with the municipal council. The municipality must then review how the municipal service is delivered. This includes considering whether the service should be provided in-house by the municipality or through an outside company.

IF THE LOCAL COMMUNITY IS UNHAPPY OR CONCERNED... THEY CAN SUBMIT A PETITION OR A COMPLAINT, OR MENTION IT AT A PUBLIC MEETING.

9

IN SUMMARY

Community members have an important role to play in monitoring whether services are delivered properly.

It's important to remember that even if the municipality is using an outside company to deliver basic services, the municipality — not the company — is still responsible for whether those services are delivered on time, at the right quality, and to the right people.

The law requires municipalities to go through an open process when they appoint an outside company, and to make information about what services the company must provide, available to the public. This enables the community to be a part of the decision and to get involved in monitoring whether the company is delivering the services for which it is paid and which the municipality is obligated to deliver.

IT'S IMPORTANT TO REMEMBER THAT EVEN IF THE MUNICIPALITY IS USING AN OUTSIDE COMPANY TO DELIVER BASIC SERVICES, THE MUNICIPALITY — NOT THE COMPANY — IS STILL RESPONSIBLE FOR WHETHER THOSE SERVICES ARE DELIVERED ON TIME, AT THE RIGHT QUALITY, AND TO THE RIGHT PEOPLE.

REFERENCES:

1. City of Cape Town Adjustments Budget 2011/12, Table 7, pg. 17.8.
2. Section 114 of the Local Government Municipal Finance Management Act (Act 56 of 2003).
3. Section 81 of the Local Government Municipal Systems Act.
4. Section 75 of the Local Government Municipal Finance Management Act
5. Section 81 of the Local Government Municipal Systems Act

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