Outsourced Services: Know Your Rights

WHAT ARE BASIC SERVICES?
A basic service is a municipal (local government) service, that is needed to ensure an acceptable and reasonable quality of life. If a basic service is not provided, it would endanger public health or safety, or the environment. Examples of basic services are water, sanitation, and waste removal.

WHAT IS AN OUTSOURCED SERVICE?
Sometimes a municipality decides to use other people or companies (contractors) to provide basic services for them. This is called outsourcing.

WHY DO MUNICIPALITIES OUTSOURCE?
Local municipalities are outsourcing more and more services. Some of the reasons for outsourcing are that private companies are:
1. Better and more efficient at providing the service.
2. They can do the job for less money than the municipality can.
3. They can transfer skills to city workers.
4. They have access to more money for specific jobs (capital).
5. They also minimize the risks and responsibilities for the municipality.

Municipalities and Our Rights
The South African Constitution lists the basic rights of everyone. The right to dignity and the right to equality are just a few of the rights contained in the Bill of Rights (section 2 of the Constitution). Healthcare, food, water, security, education, and access to basic sanitation are called socio-economic rights.

All levels of government, including municipalities, have a duty to respect, protect, promote, and fulfill these rights. Municipalities have a constitutional obligation to ensure fair and equitable service delivery to all communities – with an emphasis on basic services (Chapter 7 of the Constitution). Local governments also have to protect poor and working-class communities when providing services.

WHAT HAPPENS TO THE DUTIES OF LOCAL GOVERNMENT IF THEY OUTSOURCE SERVICES?
A municipality’s responsibilities remain the same, even if they outsource a service. Their role shifts from providing the service, to monitoring them, by making sure services are provided to an acceptable standard. Outsourcing is an ongoing process. At any point, a municipality must make sure that outsourcing does not stand in the way of its constitutional duty to fulfil our rights.

WHAT IS A SERVICE DELIVERY AGREEMENT (SDA)?
A Service Delivery Agreement (SDA) is an agreement between the municipality and private company, or organization, or groups of citizens to provide a basic service. It includes a signed contract and gives details about how the service will be provided.

WHAT IS A TENDER?
A tender is an offer to do work, provide a service, or supply goods, at a fair price. When a municipality puts out a tender, it is asking the public to provide them with a price (a quote) for the work they want done. Once the municipality accepts a tender it is available to anyone between the municipality and the person or company who won the tender.

Your Right to Know
When public money is spent, the public has a right to know how it was spent! Section 32 of the Constitution says that “everyone has the right to access any information held by the state.” This is a constitutional right that ensures government is open and transparent. This allows for communities to oversee the delivery of services, so that they can hold leaders to account in advancing the basic rights of all people.

WHAT DOES THE LAW SAY?
The Municipal Systems Act (MSA) and the Municipal Finance Management Act (MFFMA) require tenders and service delivery agreements to be published in any government gazette or newspaper. The SDA is available to anyone interested in the service that is being outsourced and to be posted on the contracting municipality’s website.

WHAT CAN YOU FIND IN A SDA?
SDAs set out details about what service the community will receive. What is included in the SDA is extremely important for holding municipalities and private companies to account, as it provides undeniable evidence that a certain level of service is being paid for and public funds have been used.

Case Study: Sannicare
Sannicare is a private company contracted by the City of Cape Town to collect and clean portable flush toilets in the City’s informal township areas. Handling faeces is a dirty and dangerous job and a high level of hygiene is required.

Sannicare workers have to use a chemical toilet and have no access to a shower, even though the depot they work at has showers. The City of Cape Town keeps those locked and reserved for municipal employees (non-outsourced). The Sannicare workers are supplied with protective clothing, but complain that they have nowhere to change, so they wear the protective gear over their own clothes, which get wet and dirty. They have complained for many occasions about the issue of not being able to clean themselves. “I feel like my right to privacy is violated. I’m an adult and sometimes my mother’s patient, I need to use the toilet.”

The City says Sannicare is responsible for providing toilet, showers, a canteen, and other facilities for its employees and suggested that staff report health and safety problems to their management.

According to law (Municipal Systems Act, Section 81), the City is still accountable for these issues, even though it may have been the responsibility of Sannicare, contractors, and the local community did not have access to the Service Delivery Agreement, making it very difficult to determine who was responsible. Sannicare was not made aware of the contract. The workers would have benefited if they knew exactly what Sannicare was supposed to provide and what the City was supposed to provide.

Eventually a container was provided for workers to change in and use as a canteen. This happened because of public pressure. A media article about this issue captured public attention, forcing the City to make sure Sannicare provided its workers with suitable facilities.

WHY ARE SERVICE DELIVERY AGREEMENTS (SDAS) IMPORTANT FOR COMMUNITIES?
The SDA is very useful for communities, because you can find out what level of service you should be receiving. You can also find out what is being paid for, how much is being paid, who will be doing the work and how. It can also contain information about norms and standards for the use of equipment and facilities for workers. When not directly providing services (by outsourcing), the municipality needs to make sure the contractor is doing what it is being paid to do (known as monitoring). The SDA should include information on how the service will be monitored. If the municipality is not doing this, then the SDA can help you to monitor the services in your area and ensure that you are getting the level of service that is being paid for.

If the contract says that refuse should be collected twice a week, you can check this yourself if refuse is only being removed once a week, then the contract is being broken. You can demand accountability from the municipality.

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The social audit resulted in a public hearing where community members asked their elected leaders the most basic question: Why is the City of Cape Town paying millions of Rands for a service that is not being fully delivered? The City was failing in its obligations to monitor and ensure an effective service. It continued to pay contractors, as it provided undeniable evidence that a certain level of service is being paid for and public funds have been used.

The social audit investigated the service that seven private contractors provided to residents in Khayelitsha’s informal settlements. The findings showed an unsatisfactory situation. Contractors were not providing services to the level outlined in the SDAs, and it was having a negative impact on communities.

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If you are a community member:

**STEP 1** Find out which basic services are outsourced in your community. You can do this by asking the municipality or by asking people who are providing services in your community.

**STEP 2** Find out which company provides this service. Ask the workers what the name of their employer is.

**STEP 3** Request the SDA for the basic service in your area from the municipal manager or Information Officer. Remember, by law, the SDA should be public. It’s your right to ask and to know. Even though legislation like the MSA and IMFA say that SDAs have to be made available to the local government’s offices and on their websites, in reality this is not always true. Use the “How to get SDAs” section of this guide to help you get access to SDAs for services in your area. Read through the SDA, making notes of facts around what kind of service should be provided. Find the most important information such as the company providing the service, how much is being paid, and the details about the service that should be delivered.

**STEP 4** Gather information about what is happening. There are many ways to do this. It’s better to do this with your neighbours. You could hold a meeting to talk about the service and decide how you will report it. Think about how you would record it, so that you can show the municipality the evidence. You could also think about doing a social audit.

**STEP 5** Compare your findings to the requirements in the SDA to see where the contractor is failing to provide what is being paid for. Use this information to demand better service delivery.

**STEP 6** Use this information to contact the contractor to demand proper delivery. Make sure to tell your municipality to show that the contractor is not abiding the signed agreement. Ask the contractor that their workers are not complying with the SDA. Demand action from the municipality to force the contractor to comply with the SDA. Demand that new services be explained thoroughly to your community before they start.

CASE STUDY: MSHENGO PORTABLE TOILETS PORTA PORTA

The City of Cape Town has outsourced sanitation to informal settlement dwellers throughout the metro. In Khayelitsha, many of these areas have communal flush toilets, but because of the services, some areas cannot have underground sewage systems. Portable toilets (the blue toilets you see at outdoor events) are offered as a solution. The City spends over R100 million a year in Khayelitsha. A company called Mshengu is contracted to supply, clean and maintain these portable toilets.

The workers out of the City of Cape Town paid Mshengu for a service that was not being fully delivered. The Social Justice Coalition (SJC), an activist organisation decided to do something about it.

If you are a worker:

You can ask the municipality for the contract between your employer and the municipality. This will give you detailed information on what everyone’s responsibilities are, allowing you to notify the municipality quickly, if the terms are being violated by the company or municipality.

**REQUEST THE SDA:**

While SDAs, by law, are supposed to be available in municipal offices and on their websites, this is often not the case in reality. Much like any request for information from government, you need to start with some basic questions:

1. What do you want?
2. Does it actually exist?
3. Who do you need to ask (who is responsible for giving you access to the SDA)?

**FAQ:**

**In what form do you submit your request?** You can do this by writing a letter, faxing it, or emailing it. We encourage you to put your request in writing.

**Who do you send your request to?** Your first and most important step is to request the SDA for that service. You also need to gather information on what everyone’s responsibilities are, allowing you to notify the municipality quickly; if the terms are being violated by the company or municipality.

**WHAT IS AN INFORMATION OFFICER?** The Information Officer is usually the person who is in charge of a government department, municipality or another public body. For a national or provincial government department, this would be the Director-General, executive director or the equivalent official of that department. For a municipality it is the municipal manager and in the case of most private bodies, it is the chief executive officer (CEO).

**COMMUNITY EDUCATION AND PARTICIPATION**

A municipality is obliged to establish a programme to educate the affected community about the appointment of the outsourced service provider and the contents of the service delivery agreement.

The Municipal Finance Management Act (MFMMA) also requires that for all contracts that are more than three years, a draft contract and a summary of the municipality’s obligations under the contract be made available. The municipality’s accounting office also needs to invite public comment.

**HOW TO GET SDAS**

**SDA:** SDAs are documents which are rules and conditions that exist! Some municipalities may not outsource services, which is why no SDAs are available.

**WHAT IS AN SDM?**

A SDM is a municipal manager or equivalent official of that department. For a municipality, it is the municipal manager and in the case of most private bodies, it is the chief executive officer (CEO).

**QUESTION 1:**

**WHAT DO YOU WANT?** Sometimes what you think is a single service, may have multiple contractors.

**QUESTION 2:**

**DOES IT EXIST?** Sometimes a service will be outsourced, but other times it is done by the council and no SDA actually exists! Some municipalities may not outsource services, which is why no SDAs are available.

**QUESTION 3:**

**WHO DO YOU NEED TO ASK?** This is probably the most important question to ask. Usually, the person you need to request information from is called the Information Officer. Usually, the Municipal Manager (or City Manager if it’s a metro) is the Information Officer. The Information Officer delegates their duties to another person (called the Deputy Information Officer), in order for requests to be dealt with quicker. Find out who you need to ask before you make your request.

**PROMOTION OF ACCESS TO INFORMATION ACT (PAIA) REQUEST**

Although the Constitution provides for the right to access information, it does not give enough detail about how this might happen. It is up to Parliament to enact legislation (laws) that can make it clear how people can exercise and protect their right to access information. The legislation that was passed is called the Promotion of Access to Information Act, which is known as PAIA.

PAIA provides a process and a set of rules that should make it easy and clear to everyone how and what information can be accessed.

A PAIA request is almost identical to a formal information request, except that it is backed up by law. Use the Ndifuna Ukwazi PAIA guide (available at: http://nu.org.za/open-and-participatory-budgets/paia-guide/) to help you make a PAIA request for SDAs. Take careful note of the time-lines and make sure you keep detailed records of your correspondence with the municipality – you may need this for court action.

**PUBLIC PRESSURE AND PROTEST ACTION**

This is often a step that needs to be taken when your requests are refused or ignored. It can also be done with your request, as it will put pressure on the municipality to comply with the law and give you your information. Remember, SDAs have to be made available and the municipality is breaking the law by not giving you access to them. Public outrage is often a great motivator for governments to comply with the law.

**LEGAL ACTION**

If these methods fail, you will need to take legal action. Start with a letter of demand from a lawyer and then if you are still unable to get access to the SDAs, you will need to go to court.