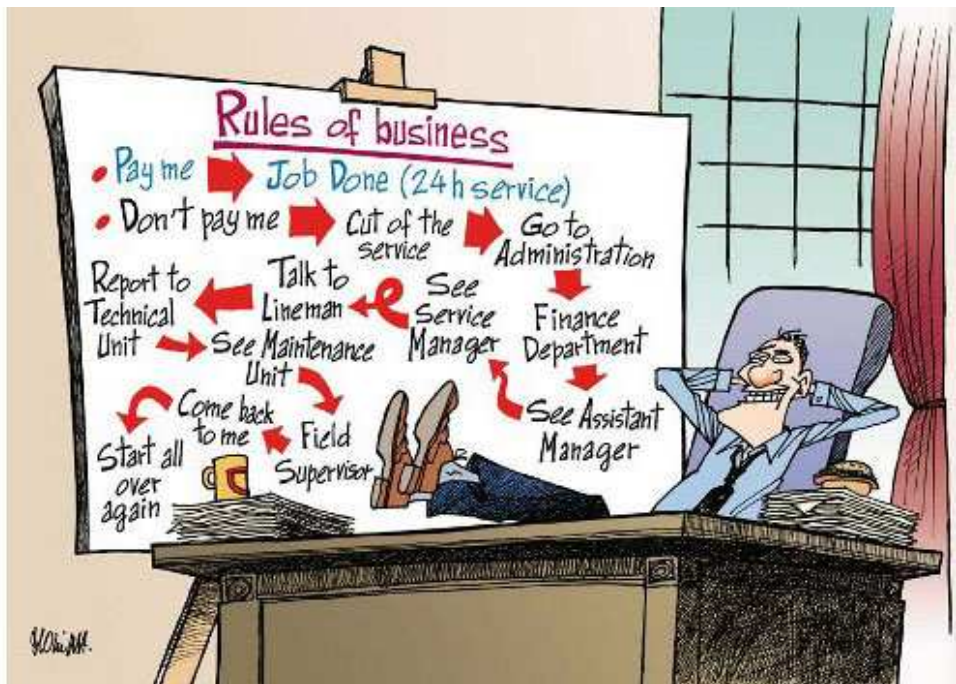


Water Services Trust Fund

Sanitation Service Provision - Outsourcing

Contract Establishment Guideline



Cartoon from WSP Water and Sanitation Program Calendar 2006

29th July 2009



Financial support for improved access to water and sanitation

Water Services Trust Fund [Urban Projects Concept]



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Contract Establishment Guideline

1 LEGAL BACKGROUND OF SANITATION PROVISION IN KENYA

Due to its multi-disciplinary nature, sanitation service provision usually does not fall under one ministry at national level. In most cases at least the water ministry and the ministry of health are involved to some extent in sanitation service provision. Therefore, coordination and joint decision making between the ministries involved is critical with regard to the national level.

In Kenya, the coordination role on national level with regard to sanitation has been given to the Ministry of Public Health and Sanitation. However, significant improvements in sanitation service provision can only be achieved if the contributions of each sector involved (health, water, education, housing, etc.) are maximised. There is a need to create an enabling framework where the contributions of all sector institutions are accepted, appreciated, and advocated.

For the delivery of sanitation services a combination of infrastructure development, service provision, provision of financing mechanisms, hygiene education and marketing is needed. All of these elements need to be an integral part for any organisation or institution from the various sectors involved in planning and implementing sanitation projects.

In addition to the policy level and sector institutions, municipalities, communities, and households have to play an active role in sanitation provision at local level, in order to ensure ownership, awareness, acceptability and sustainability of sanitation.

According to the Water Sector Sanitation Concept Implementation Plan (WSSC+IP) 2009, Water Service Providers (WSPs) shall participate in the construction of sanitation facilities financed by the Water Services Trust Fund (WSTF) and/or the Water Services Boards (WSBs) according to the Urban Project Cycle (UPC).

The challenge is to use the skills and entrepreneurship of many levels of the private sector in effective partnership with universal service obligation of the public sector.

2 GUIDING PRINCIPLES FOR CONTRACT ESTABLISHMENT

Historically, municipalities were the main providers of public toilets, but these facilities suffered from poor maintenance and cleanliness and were if possible avoided by the public.



Today, pay-and-use public toilets have become well established across Kenya, most of them funded by donors and a large proportion operated by non-governmental organisations (NGOs) or small contractors. These facilities are often better maintained than the standard municipal toilets and are consequently more popular with the public.

While NGO- and community-based organisation (CBO) operated toilet complexes are now quite common, much less has been done to develop the role of the commercialised WSPs in financing, developing, and managing public toilet complexes. However, during the sector reform it was recognised that the responsibilities of local authorities could be transferred to the WSBs/WSPs to ensure better service and maintenance of public sanitation facilities.

Besides, sanitation blocks with shared facilities may be essential not simply as a convenience to travellers and shoppers, but as the only possible means of providing access to sanitation in crowded slums that are characterized by small plots and little open space.

It is perfectly clear that operating public toilet facilities is not a core activity of a WSP. Therefore, it is important to provide incentives to encourage WSPs to take over responsibilities while at the same time ensuring that a professional and flexible service provision is guaranteed.

The WSP wishing to contract out the management and operation of a public sanitation facility should design a contract around the identified needs of the customer and the effective service provision. Such a contract, therefore, should not simply be a codification of the service that has been historically provided. The specification should, as far as possible, be defined in terms of outputs, including targets for improved service provision.

Contracting out the operation of public sanitation facilities through a service contract between the WSP and a private contractor or operator appears to be easier to implement, with the potential to deliver substantial benefits, than building capacity within the WSPs, because suitable resources might not be available internally. Besides, it is advisable not to put any additional burden on the partially fairly young water utilities by asking them to expand their tasks and responsibilities. It is seen to be crucial that the WSPs by themselves take the decision to get involved into public sanitation service provision.

It is important to emphasise that outsourcing the operation of public sanitation facilities should not be interpreted as an easy way to remove a “problem” which the WSPs were unable and unwilling to tackle successfully. Outsourcing (contracting out) can be justified by pointing at the potential for specialisation as well as in the incentive to reduce costs. Outsourcing is also said to result in increased value for money, improved quality and consistency of service and greater flexibility whilst at the same time creating employment opportunities.

Thereby WSPs should follow the following guidelines:

Management issues:

- Retain in-house control over strategic direction.

- Retain responsibility for setting standards to which the operator must conform.
- Make the operator responsible for service delivery.
- Be prescriptive about the service requirements rather than the method of service delivery.
- Expect value for money, but accept the operator's need to make a profit.
- Understand the strategic, political, and managerial implications of the scope of your outsourcing.
- Define the operator's point of contact.
- Have an appropriate person to manage the contract.
- Keep procedures simple.
- Regularly review the contract and relationship with the operator.
- Re-tender contracts at defined intervals.
- Monitor the operator's resource levels and business knowledge.
- Retain and exercise the right to conduct audits.
- Aim for continuous improvement.

Human resource issues:

- Ensure a sufficient number and quality of in-house staff to manage the contract.
- Promote a good relationship between the operator and his customers / users.
- Regularly review in-house staff skills and numbers (if more than one).
- Involve customers in monitoring service delivery against targets.

Service / business issues:

- Match expectations with needs.
- Recognise that requirements will change and be willing to adjust costs accordingly.
- Ensure that service level agreements are always realistic and do not expect them to remain static.
- Continue to benchmark the service and consider alternative approaches.
- Discuss with all concerned, and at the earliest possible stage, plans which could affect services.

Communication issues:

- Clearly define the scope and interface of public sanitation service provision.
- Establish unambiguous roles and responsibilities for the customer and operator.
- Maintain regular customer - operator contact at various levels, even when things are going well.

- Establish an open relationship, be prepared to compromise.
- Build a relationship of trust with the operator.
- Hold regular meetings to monitor achievements.
- Define clear escalation procedures.
- Encourage the operator to propose changes based on his expertise.
- Ensure customer awareness, understanding and commitment.

3 SUITABLE CONTRACT TYPES

The WSP wishing to contract out the operation of a public sanitation facility needs to design a contract around identified needs of the potential customers and effective service provision, and not simply a codification of the service that has been historically provided. The specification should, as far as possible, be defined in terms of outputs, including targets for improved service provision.

Therefore, management contracts (MCs) for the day-to-day operation of the facilities should be put in place. Within this context, MCs are considered to be contracts in which a community, user group, an individual or the private sector manages some aspect of water or sanitation service provision in collaboration with a WSP.

MCs are a simple form of private sector participation (PSP) whereby the WSPs retains overall responsibility for operation and maintenance of the infrastructure, except for specific components that are contracted out. The contractor's responsibility is limited to managing its own personnel and services efficiently.

Any promotion of formal contracting-out should recognise small-scale independent providers (SSIPs) as a resource to be used, to promote competition amongst contractors and to provide local employment, a vital component of poverty alleviation.

In Kenya, small-scale, independent providers have emerged and managed to fill the service delivery gaps left by the utilities. This applies to pit latrine and septic tank emptying as well to water vending. In many cases SSIPs account for a larger share of the market of sanitation services provision, particularly in informal settlements, than the licensed utilities. They are also well placed to complement and even compete with public service providers in tailoring services to the urban poor. In some circumstances, the SSIPs can be seen as informal service contractors, taking on a particular task that the direct service provider has failed to deliver. At the end of the public-private-partnership (PPP) spectrum they can sometimes be perceived as informal concessionaries, investing in service provision and delivering that service in exchange for revenue from customers, complete with monopoly rights acquired within the local power structure.

Communities also have the potential to act as direct providers of sanitation services. This applies to:

- 'community partnered' construction contracts as well as to

**Small scale
independent
providers**

**Community
contracting**

- providing any kind of operation services.

When it comes to sanitation service provision in informal settlements in urban Kenya, construction contracts given to the community, particularly by NGOs or private funding agencies, have been common. Community contracts tend to take longer than anticipated and in most cases they clearly take longer than conventional contracts. With regard to quality of works, although difficult to measure, it seems that there has often been disagreement as to what was an appropriate level of quality to aim at, with government client engineers sticking with their standard specifications and communities wishing to promote what they perceive as sustainable. Usually one will find considerable transaction costs involved in the community approach with either NGO facilitators or government staff having to invest significant amounts of time during the development of the participation process.

But there were also wider benefits of the development in that the approach can be seen as a means to enable empowerment and greater control to households and community groups with employment opportunities. This leads directly to income generation within the community and small enterprise development as local micro-contractors develop in addition to increased business for local building material suppliers.

Community groups acting as operators should be considered as a potential resource for outsourcing as they know their area and might have a competitive advantage when it comes to income generation as they have a high interest in providing better services to the area they actually live in.

The contract to be established in this context covers the aspect that a community or user group or the private sector operates a public sanitation facility maybe combined with a water kiosk in collaboration with a WSP.

These contracts should incorporate the following guiding principles:

1. Contract preparation / process
 - (a) Contracts should be suitably packaged in order to make business sense and attract capable operators.
 - (b) The service to be contracted out should be clearly defined and specified in the contract documents, preferably with a definition of the precise outputs expected from the contracted services.
 - (c) The procedure for application (procurement) and contract award should be transparent and clearly stated prior to the invitation of applications.
 - (d) The application process should include an assessment of the applicant's capability to achieve the project objectives and this should be described in the documents.
 - (e) Risks should be identified and allocated to the party best able to manage, estimate and carry the risk.
 - (f) The conditions of contract should be comprehensive and include references to relevant legislation.
 - (g) Contracts should be in an easily comprehensible language with guidance notes where necessary.

Guiding principles of contract establishment

- (h) Key service provision and cost recovery problems should be identified and addressed, either within or outside the contract.

2. Payment aspects

- (i) Appropriate incentives to encourage successful performance (against carefully chosen indicators and targets that relate to the contract's objectives) can be included in the contract. Redundant incentives (success incentives that are not achievable) should be avoided.
- (j) Appropriate penalties to discourage poor performance (against carefully chosen indicators and targets that relate to the contract's objectives) can be included in the contract.
- (k) The payment process should be specified in the contract. There should be provision for delays in payments and methods of compensation (such as interest) for the delays, including interruption of work or termination of the contract.
- (l) Suitable accounting for contracted services is desirable as a means of improving transparency, and an aid to resolving disputes.

3. Partnership aspects

- (m) The method of financing the contract should be clearly specified.
- (n) The contract documents should clearly define the roles and duties of all involved. The organisation system for implementation of the contract should be specified. There should be separation of roles of Contract Administrator (representing the client), Project Manager (representing the operator) and an independent adjudicator.
- (o) The contractor should have autonomy over its own personnel, although minimum requirements for key staff may be stated.
- (p) A speedy method of dispute resolution should be clearly set out in the contract documents and an impartial adjudicator specified.
- (q) Provisions for the client's monitoring and evaluation should be included in the contract.

'Learning by doing'

It is important to mention that contracts with respect to contracting out the operation of public sanitation facilities are not new. Therefore, it is crucial to learn lessons from existing / old contracts, which are then incorporated into subsequent improved service / management contracts for new projects. This is 'learning by doing' and emphasises the value of experimenting with contracting out, but building on lessons learnt elsewhere to avoid 'reinventing the wheel'.

Considering the contract environment

Generally, contracting the operation of public toilets to the private sector or local communities requires consideration of the following key issues:

1. Location

Sanitation facilities in markets or transport terminals might be more profitable than in low-income residential areas. The WSPs can encourage potential operators to take on services in low-income areas by:

- offering them incentives (e.g. reduced payment of operating costs e.g. water bill);
- combining management of kiosks and public toilets incl. offering a bulk rate for water supply; and/or
- allowing the development of small businesses alongside public toilets.

2. Increasing competition

To increase competition, one would expect that a call for tenders would be the option of choice. In most cases, however, there is no real competition between private applicants and no means of ensuring that the contract will be signed with those who will in the end deliver the best service. When starting the procurement process the WSPs should carefully think about if restrictions on competition in such a way that only specific groups (e.g. CBOs) are allowed to apply are desirable. Most important, it has to be ensured that the selection process is fair and based on specific (defined) criteria to ensure transparency and, that at the end of the day an operator is assigned that is able to carry out the assigned tasks to the full satisfaction of the WSP.

In some cases, there are distinct advantages in contracting out to, or working with, community groups / co-operatives, as they have a better understanding what is and what is not acceptable in that community. In addition, they are likely to be competitive in terms of labour costs in their own area, because they want to improve services for themselves and their neighbours.

3. Duration of the contract

The duration of the contract must be sufficient to encourage operators to maintain the facilities and secure the loyalty of their 'customers'. It is recommended that contracts are let for at least one year with the option to extend the contract if the service is provided in a satisfactory way.