

Chapter 8

ALTERNATIVE SERVICE DELIVERY ARRANGEMENTS: THE CASE OF MUNICIPAL AGENCIES

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8.1 Introduction

In the last thirty years, the public sector's traditional role has shifted, away from financing, owning and managing projects to parcelling out of aspects of delivery through the use of alternative service delivery (ASD) arrangements. ASD arrangements vary from public-private partnerships (PPPs) to the use of agencies and are not new to South Africa. The most recent agency, the Municipal Infrastructure Support Agency (MISA), a national agency operating in the local sphere, was established in 2011 (MISA, 2011). Unlike government departments that have a portfolio of activities and responsibilities, a defining characteristic of an agency is its narrower, specialised purpose. In theory, this characteristic, coupled with significant operating independence, allows agencies to bypass many of the challenges that their bureaucratic counterparts experience, thus providing the potential for innovation.

8.1.1 Problem Statement and Objectives of the Research

Agencies are established to assist government in improving service delivery and facilitating economic and social development. The rationale is that the organisational form of agencies allows them to innovate and improve performance. In South Africa, the majority of municipal agencies are active in development/planning activities related to local economic development (LED), the provision of water and social housing. However, the country cannot claim success simply because agencies (rather than government departments) are active in these sectors, for gaps in access to water and social housing persist and LED remains elusive in a number of municipalities.

This begs the question whether government is using agencies for the right activities, leveraging the potential benefits they can offer, or are other, intervening reasons inhibiting their success. The objectives of the research are:

- To assess whether agencies are appropriately used in municipalities
- To propose a diagnostic tool that policy-makers can use when deciding on the appropriate mode of delivering services at the local government level.

8.1.2 Rationale of Study and Relationship to Research Strategy

Millions of tax-payers' rands are regularly allocated to government initiatives to improve service delivery performance. In 2007, it was estimated that 33% of the population (or 15 million people) do not have access to proper sanitation, 8% (or 3.5 million people) do not have access to safe, potable water, and 8% (or 3.5 million people) do not have access to electricity, (StatsSA, 2007). However, the traditional service delivery approach has limitations, and (if used properly) ASD arrangements present an opportunity to innovate and improve service delivery. In addition to using creative delivery mechanisms responsibly, explicit accountability measures need to be put in place to avoid fruitless expenditure and other types of mismanagement.

This research project is located under the theme of "Accountable Institutions" in the Financial and Fiscal Commission's (the Commission) Five-Year Research Strategy (FFC, 2008). This refers to accountability in service delivery, policy-making and planning, aspects that come into play when considering the use of ASD arrangements. The theme of the Commission's Submission for the Division of Revenue 2013/14, is "Moving People out of Poverty: Supporting Innovation

in Intergovernmental Financing". The study fits well into this theme, as ASD mechanisms, such as agencies, represent a shift away from bureaucratic, traditional models of service delivery and have the potential to aid innovation in public service delivery.

The chapter is divided into six sections. Section 8.2 sets out the methodology, which is followed by the literature review and theoretical underpinning of the study in section 8.3. Section 8.4 provides the South African context, outlining the sectors where municipal agencies are found and the regulatory environment guiding their use. Section 8.5 zones in on important areas of discussion regarding agencies in the South African local government sphere while Section 8.6 highlights key principles that should be considered when establishing an agency. Section 8.7 concludes and proposes recommendations.

8.2 Methodology

One of the objectives researched is to develop a diagnostic tool, or set of principles, that policy-makers can use when deciding on the appropriate mode of delivering basic services at the local government level. The idea is to get government spheres to ask the right questions and consider the right aspects prior to embarking on reforms. This is intended to assist in making the approach to reforming delivery mechanisms more systematic and thereby improve performance.

After establishing a thorough understanding of best practice methods based on international and national literature about ASD arrangements and agencies, the considerations pertinent to the South African context will be teased out.

The development of this diagnostic tool will be further strengthened by drawing on lessons learned from previous reform exercises, interviews with selected agencies and by assessing the performance of municipal agencies/entities to date. In this regard, key data sources will include StatsSA's Non-Financial Census, 2009/10, which provides information on municipalities that have commercialised or outsourced services, the number of consumer units that have access to basic services and audit outcomes published by the Auditor-General (StatsSA, 2011).

This methodological approach will allow for the development of a diagnostic tool, which is not only based on international best practice but also complemented by country-specific evidence of the agency experience in South Africa.

8.3 Literature Review

Alternative ways of structuring service delivery, which include but are not limited to outright marketisation, have gained prominence, as policy-makers realise the constraints of traditional bureaucratic government structures. This phenomenon of 'unbundling bureaucracy' is commonly referred to as ASD arrangements (Wilkins, 2003). Ford and Zussman (1997, p 6) provide a formal definition of ASD arrangements as, "a creative and dynamic process of public sector restructuring that improves the delivery of services to clients by sharing governance functions with individuals, community groups and other government entities". ASD arrangements can range from very basic reorganisation to more extreme options such as privatisation (Wilkins, 2003).

The wide array of structural arrangements associated with ASD arrangements can be clustered into four main categories (Good and Carin, 2003):

- Mainstream government (ministries, departments)
- Agencies (statutory and non-statutory)
- Partnerships (other organs of state, contracts)
- Private entities (not-for-profit, for-profit).

The focus of this research is statutory agencies. According to Schick (2002), agencies are diverse in nature: some are departments with operational freedom; some are free-standing, with no formal link to departments, while others are newly created entities, established to assist government with new responsibilities. Irrespective of the precise form of

an agency, the golden thread that distinguishes them from traditional government departments is that they are not “conglomerations of multiple activities. The typical agency has a single or relatively narrow purpose, and each has substantial operating independence, even if it is still housed within a department” (Schick, 2002, p 8). Internationally, the appetite for establishing agencies peaked during the 1980s and 1990s.¹ Where governments are concerned with maintaining policy coherence, agencies usually form part of ministries/departments. Alternatively, the emphasis is on administrative independence, agencies are established as free-standing entities, usually with management boards (Schick, 2002).

According to Laking (2005), agencies work well and even facilitate improvements in public performance within developed countries. The evidence is less conclusive with respect to developing countries or those in transition. In more developed countries, agencies are classified into three main types: departmental agencies (form part of ministries, staff are employed within the parameters of general public service rules and funding is through the state/national budget); public law administrations (partially or fully separate, personnel guidelines are subjected to the general framework for public servants); and private law bodies (quasi-corporations, staff are employed under general labour laws and budgets are separate to those of ministries). In developing and transition economies, examples of agencies include (Laking, 2005, p 12):

- Parastatals, which refer to government trading enterprises that will potentially be corporatised or privatised. They are generally run along corporate governance rules.
- Non-profit or non-governmental agencies, which are usually involved in public works.
- Social funds or organisations that focus on funding a wide range of projects aimed at poverty alleviation (also referred to as social investment funds).
- Extra-budgetary fund administrations, for example pension funds, health insurance funds, agricultural subsidy funds.
- Independent revenue authorities, which refer to agencies charged with tax collection and administration within general tax policy.

Laking (2005) highlights the risks of shifting to agencies. The risks occur when the foundational issues in setting up an agency are not thoroughly thought through and clarified. The first risk is setting up an agency without a clear public policy justification, or whether the reason driving the establishment of an agency is compatible with the principles of good governance. The second concerns the lack of rules and systems in place to ensure external direction and control of new organisations. To avoid this risk, governance rules guiding the operation of an agency should be clear upfront, and political control must be maintained to ensure that the agency stays compliant with the original reason for its establishment. A contingency plan needs to be in place for when agency performance goes awry. The failure to adequately supervise/oversee performance of agencies is not unique to developing countries. Government/parent ministries should strive for a good balance between providing support and micro-managing. The final risk for governments is to guard against creating an agency that is not capable of managing itself. Agencies are usually established to improve performance. Underlying this improved performance is that management is provided with autonomy, i.e. the discretion to allocate resources to achieve objectives. An agency that lacks quality management and requires micro-management from the parent ministry is effectively futile.

In 1988, Britain’s efforts at agency-building, known as the Next Steps Initiative, gained momentum. The Next Steps Initiative process of establishing agencies can be considered a good model for implementing the agency model (Schick, 2002). The process is based on eight steps, detailed in Table 8.1.

1 It should however be noted that agencies date as far back as the 16th and 17th centuries (Laking, 2005, p9).

Table 8.1. Phases in the Next Steps Initiative

Stage	Description
Candidate stage	The stage during which an activity is designated as a candidate to become an agency. The stage usually lasts for 3–9 months, during which time the appropriateness of the agency form is assessed
Prior options	A formal review, where the agency's mission and alternative ways of carrying out the mission are considered
Ministry-agency relationships	The relationship with the parent ministry is clarified, including decisions on aspects where the agency will be authorised to govern itself
Framework document	This document formally sets out the agency's objectives, operating conditions, responsibilities of the chief executive, relationship with the parent department and information related to financial and human resource arrangements
Chief executive	Filling of this critical position is based on the principle of open competition. The contract for the position is based on a specified working conditions and performance expectations
Performance targets	These targets are published annually and allow agencies to know exactly what their performance will be assessed against
Annual reports	These reports must contain information/comparisons of actual relative to targeted performance
Periodic reviews	Every five years, a review is carried out, to evaluate performance and to determine whether operating-type changes are necessary

Source: Schick, 2002, p16-17.

As the various stages in the Next Steps Initiative imply, what happens prior to the launching of an agency (the foundational phase) is critical in determining future performance.

Based on international literature, an overview of the key considerations that need to be factored in when governments decide to use agencies is given below².

The decision to use ASD arrangements can be assessed through various lenses. While this paper draws heavily from transaction cost theory and broader new institutional economics, equally valuable advice is offered by the public values and rights approach (which argues that over and above efficiency and equity concerns, aspects such as equality, accountability and efficacy should also be factored into the decision on whether or not to use ASD arrangements).

Transaction costs exist for both in-house and outsourced service delivery. Transaction costs refer to the management costs involved in delivering a service that arise because of "limited information, uncertainty about the future, and the prospect that people or organisations behave opportunistically in their interactions with others" (Brown and Potoski, 2005). In deciding whether or not to outsource, governments need to find a balance regarding the transaction costs associated with in-house versus outsourced service delivery. Transaction cost theory, which centres on inter-firm contractual hazards, provides a useful lens for analysing contracting problems, such as the make-or-buy challenge confronting governments (Williamson, 1998). Service-specific characteristics, which affect the efficacy of contracting, are identified (Brown and Potoski, 2005), allowing government officials to devise safeguards to prevent *ex ante* and/or *ex post* contracting hazards. Some of the key hazards associated with contracting out include wastage, fraud and poor

² These considerations are not unique to agencies but are similar for the various types of alternative service delivery mechanisms.

service delivery. Three key service-specific characteristics that affect the efficacy of contracting relate to the ease of measurement, asset specificity and the frequency with which contracts recur (Brown and Potoski, 2001, p 2):

- Ease of measurement, or metering, refers to the ease with which service delivery can be monitored or anticipated outcomes measured. Where service delivery outcomes are difficult to monitor, transaction cost theory advises against outsourcing and vice versa.
- Asset specificity refers to the extent to which specialised investment is required to perform a function or deliver a service. Examples of specialised investment include using highly specialised human skills that cannot be used for other purposes, using specialised tools or a complex system designed for a single purpose. High asset specificity brings the risk of monopolistic bargaining, as the winner of the first contract has an advantage in subsequent rounds of contracting. In such cases, governments may opt for internal service provision.
- Frequency of contracting, can give rise to monopolistic situations, which is particularly likely for long-term contracts.

Table 8.2 categorises municipalities according to asset specificity and meterability.

Table 8.2. Examples of municipal services according to asset specificity and metering

	LOW ASSET SPECIFICITY	HIGH ASSET SPECIFICITY
EASY METERING	<p><i>Meterable Market Services</i></p> <ul style="list-style-type: none"> • Residential/commercial solid waste • Traffic signs • Utility meter reading/billing • Street repair 	<p><i>Meterable Monopoly Services</i></p> <ul style="list-style-type: none"> • Operation of bus service • Operation of airports • Tax collection • Electricity/water distribution
DIFFICULT METERING	<p><i>Non-Meterable Market Services</i></p> <ul style="list-style-type: none"> • Child welfare • Public health programmes • Ambulance services • Animal control 	<p><i>Non-Meterable Monopoly Services</i></p> <ul style="list-style-type: none"> • Crime prevention • Traffic control • Prisons and jails • Fire prevention

Source: Brown and Potoski, 2001.

The aspects described above give rise to transaction costs that, “make specifying, monitoring and enforcing contracts difficult and lead to incomplete contracts” (Brown and Potoski, 2001, p2). So, while ASD arrangements are popular because of their potential to facilitate greater efficiency, definite risks and costs are attached to their use.

In addition to the characteristics of the service in question, the organisational form (i.e. public, private or non-profit organisations) affects the suitability of the service provider. This argument is based on incentives power and authority types, and the belief that different organisational forms are subject to different incentives and authority types (Barbieri and Salvatore, 2010).

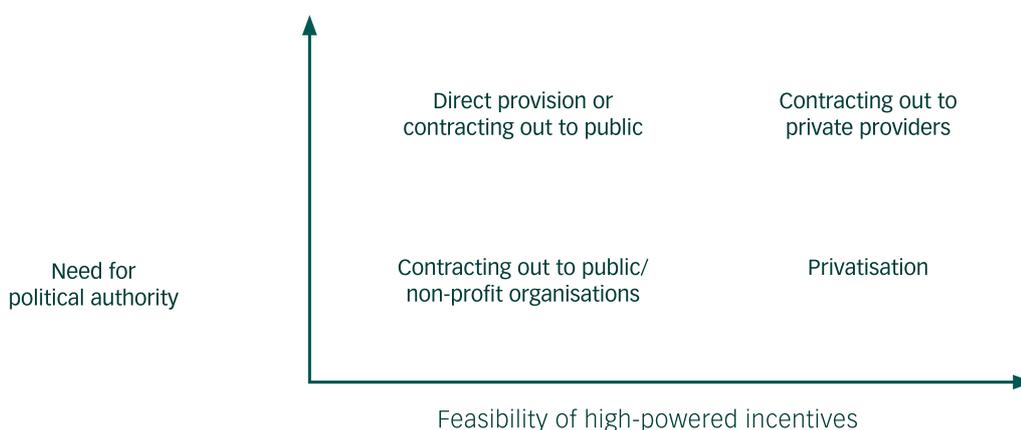
High-powered incentives revolve around “transactions in which efficiency gains flow directly to the individuals transacting and are typically offered by governance structures similar to ‘pure’ market” (Barbieri and Salvatore, 2010, p 352). In contrast, low-powered incentives are those provided by transactions “in which individuals involved are not able to personally lay claim to the gains from trade, except perhaps in terms of a pay rise or a promotion. A governance structure that typically provides low-powered incentives is the ‘pure’ hierarchy” (Barbieri and Salvatore, 2010, p 352).

Measurability is the key to deciding between the feasibility of low- versus high-powered incentives.

The rule of thumb for the incentive dimension of services is that low-powered incentives are preferable when a service provider's performance is hard to assess, or when a service provider is required to fulfil numerous objectives (for example equity and efficiency) and at least one of these objectives is difficult to measure. Within this framework, private organisations provide higher incentives than public and non-profit organisations. Public and non-profit organisations have a non-distribution constraint, which means that profits earned are not distributed to those individuals exercising control. Thus, there is no incentive to increase revenues or reduce costs. Of the two organisational types that have a non-distribution constraint, government or public institutions are in a better position to ensure that self-interested actions are minimal. For example, establish legal requirements for public organisations to return all unspent financial resources to national treasuries. In contrast, "private firms' shareholders have an incentive to devise high-powered compensation schemes, if feasible, because giving employees a part of the increased revenues or reduced costs may improve their overall residual profits" (Barbieri and Salvatore, 2010, p355).

Underlying the authority dimension of services is the question of scope and what governments should or should not be involved in. For example, the delivery of public goods is usually the domain of governments. According to Barbieri and Salvatore (2010), two aspects need to be considered when thinking about the authority dimension of services. The one relates to excludability: the more difficult or costly it is to exclude consumption or externalities, the more political authority is required. The second aspect is an ethical one and relates to instances where people, due to poverty, are unable to access certain services (for example health care); in this case delivery of the service requires more political authority and should not be contracted out. Figure 8.1 graphically depicts the above discussion.

Figure 8.1. Incentive power, authority type and service delivery choice



Source: Barbieri and Salvatore, 2010, p 358.

Institutional dynamics, specifically organisational capacity, are critical when considering the use of ASD arrangements. Financial resources, availability of adequately skilled and sufficient human capital and the existence of unions should be prioritised. Unions often present a political hindrance to shifts away from traditional service delivery forms because of the belief that such a shift will result (in the short term) in possible lay-offs and (in the longer term) fewer government employment opportunities (Brown and Potoski, [Sa]). Thus, tensions may arise when governments embrace the use of ASD arrangements such as agencies, which imply a more New Public Management (NPM) type approach underlined by a less active, leaner government bureaucracy focused on maximising efficiency and using the economic market as a model for political and administrative relationships. This is in opposition to the more developmental-type state preferred by unions.

The rise in the use of ASD arrangements, particularly agencies, has hollowed out, or eroded, the state, and this trend promotes institutional fragmentation, such that "service delivery will depend increasingly on linking sets of organisations" (Rhodes, 1994, p 146). Delivery will entail a plethora of organisations, which cut across the public, private and voluntary sector, cooperating. Such extreme organisational interdependence makes the provision of strategic direction difficult (Rhodes, 1994). Finally, drawing on the public values/rights approach, where public services/tasks are allocated to actors other than government, substantive (fundamental rights of citizens) and procedural (due process) public values need to be promoted and safeguarded (Auby, 2009).

The literature highlights that government and policy-makers need to factor in a variety of aspects when deciding how to arrange the delivery of a service. These aspects are diverse and are drawn from different theoretical perspectives in order to avoid a narrow focus. The nature of the service plays a role in determining the best delivery option and so does the type of organisation (public, private, non-government) tasked with delivery. Governments are increasingly driven by efficiency concerns, but institutional dynamics (such as existing capacity and the existence and strength of unions) need to be balanced against the need to improve performance. Finally, from human rights perspective, maintaining general public values and constitutional obligations to citizens cannot be ignored or dismissed.

8.4 South African Context

In South Africa, roles and responsibilities are allocated to different spheres of government under Sections 4 and 5 of the Constitution (South Africa, 1996). Section F of the 1998 White Paper on Local Government emphasises the need for creative service delivery arrangements to enhance service provision, especially given the backlogs created during the apartheid era (South Africa, 1998). Options listed for municipalities to consider include corporatisation, public-private partnerships, partnerships with community-based or non-government organisations (CBOs or NGOs), contracting out and privatisation. The White Paper stresses that, when selecting a delivery option, the key consideration should be achieving government policy objectives.

Chapter 8 of the *Municipal Systems Act* (South Africa, 2000) is dedicated to the provision of municipal services, including mechanisms for delivery. Section 76 of the Act defines internal and external delivery mechanisms. Internal mechanisms are defined as delivery by: a department or administrative unit, a business unit established by the municipality or any other component of the administration. External mechanisms include municipal entities, another municipality, an organ of state, CBOs or NGOs. Section 78 lists aspects that municipalities need to consider when deciding how services will be delivered. These include the costs and benefits of the delivery option, the municipality's existing and future capacity and skills, the impact on job creation and development within the municipality, and the views of organised labour.

Chapter 10 of the *Municipal Finance Management Act* (MFMA) speaks to the establishment and financial governance of municipal entities and PPPs (South Africa, 2004). Similar to the *Municipal Systems Act*, the MFMA explicitly emphasises that municipalities need to be aware of the impact on the municipality's staff and assets of shifting a function to an entity. When motivating for ASD arrangements, other principles to consider are affordability and value for money.

These local government policies and legislation entrench alternatives to traditional, government-led service delivery. These guiding documents do not simply mention the use of alternatives to traditional service delivery, but motivate for government and municipalities to make use of creative means to enhance the delivery of public services. However, policy and legislation are also emphatically clear on the processes to be followed and the aspects to be considered prior to adopting ASD arrangements. The question is whether policy and legislation stimulate practically the use of creative delivery arrangements and, equally important, if pre-establishment guidelines are being well adhered to; or whether it is a case compliance for the sake of compliance. Certain regulatory requirements may stifle the use of ASD arrangements. For example, Section 33 of the MFMA requires additional approvals to be obtained if a contract runs in excess of three years. These additions range from ensuring some form of public participation to obtaining views/recommendations from provincial and national treasuries, the national department responsible for local government and the relevant sector department (thus, the Department of Water Affairs if the ASD arrangement concerns water). This lengthy process can prolong the contracting stage and jeopardise service delivery.

As at 2009/10, the Auditor-General's report listed a total of 54 government agencies (Auditor-General, 2011). Most municipal agencies focus on promoting social and economic development, in particular local economic development, tourism, access to social housing and the provision of water, sewerage and solid waste management. Municipal agencies in South Africa take various forms, including (Auditor-General, 2011):

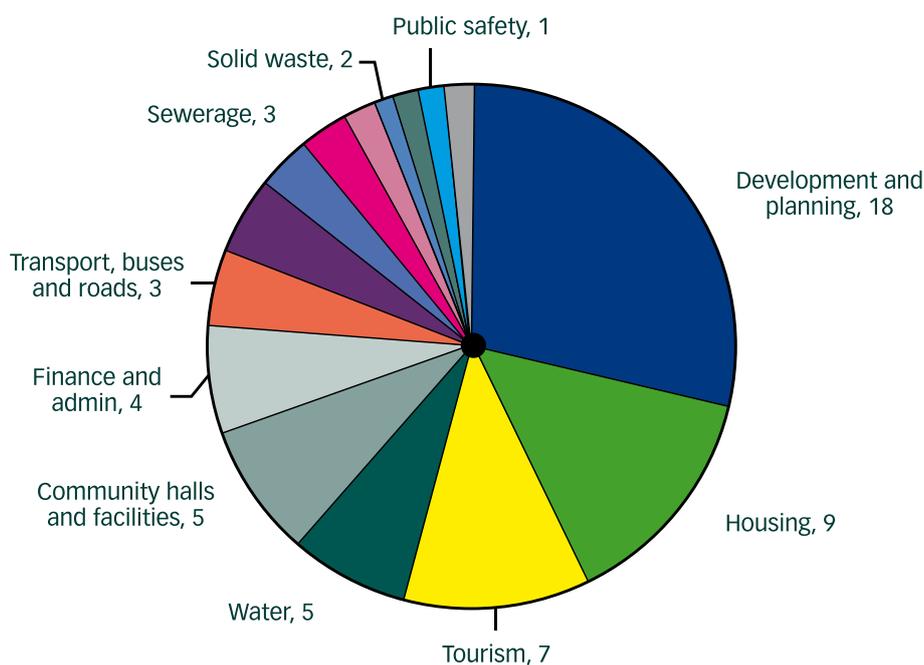
- Section 21 companies, for example, Blue Crane Development Agency in the Eastern Cape, Johannesburg Tourism Company in Gauteng or Hibiscus Coast Development Agency in KwaZulu-Natal.
- Private companies, such as Amathole Economic Development Agency in the Eastern Cape, City Power, Johannesburg Development Agency in Gauteng and Overstrand Local Economic Development Agency in the Western Cape.

- Trusts, for example the Rustenburg Water Services Trust in the North West Province or Khayelitsha Community Trust in the Western Cape.
- Service utilities, such as Johannesburg Social Housing Company or Pikitup both in Gauteng. Some service utilities are multijurisdictional in nature, for example, the Kouga Development Agency in the Eastern Cape.

Within local government, social funds (organisations that focus on aspects related to poverty alleviation) are particularly prevalent. Within national government, priority is attached to extra-budgetary fund administrations, such as the proposed National Health Insurance (NHI) and the South African Social Security Agency (SASSA).

Figure 8.2 illustrates the sectors where municipal agencies are used.

Figure 8.2. Number of municipal agencies per sector (30 June 2010)

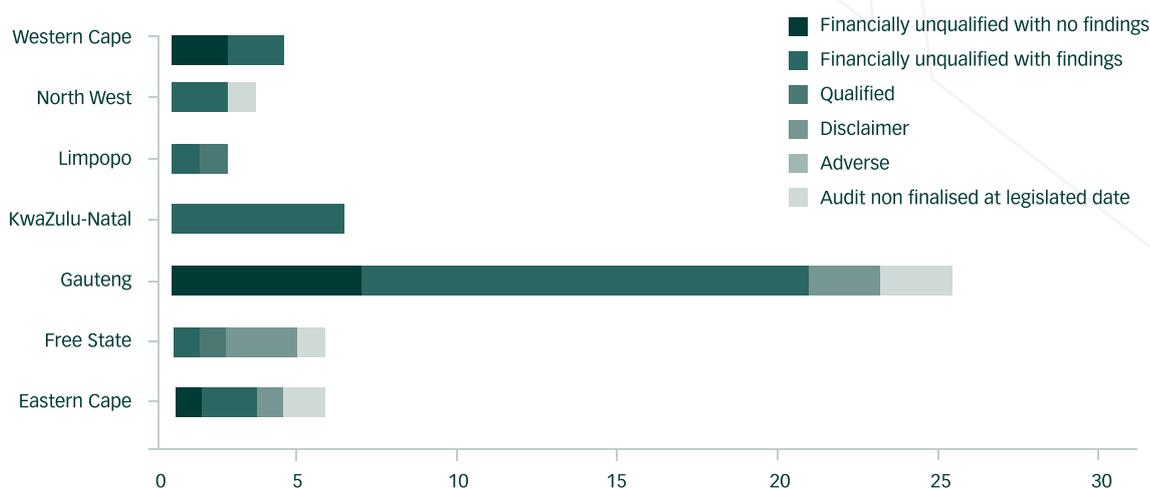


Source: National Treasury, 2010.

As is evident from Figure 8.2, most municipal agencies are involved in development and planning, an area where objectives are numerous and not easily measurable. As such, this function is appropriate to lie within government and with a government agency, based on the theory regarding whether services are good candidates for internal/government or external/private delivery. Good candidates for outsourcing to a private company are solid waste and certain financial and administration related functions (of which billing is part) because asset specificity is low and measurability is high. In such an instance, the innovative approach of the private sector reaps benefits. Poverty and ethical concerns and constitutional obligations around access to basic services, make water service particularly appropriate to be kept within the public sector/municipal agency domain.

Numerous municipal agencies have been established, and their performance outcomes, specifically audit opinions, are mixed. Figure 8.3 summarises the audit outcomes of these agencies from 2009/10. Gauteng has the largest number of agencies, while municipalities in the Northern Cape and Mpumalanga have no agencies. Over half of the agencies received financially unqualified audits with findings.

Figure 8.3. Number of municipal agencies per province with particular audit outcomes, 2009/10



Source: Auditor-General, 2011

The Auditor-General's report also cautioned against municipal agencies that rely heavily on grant funding and have weak own-revenue generating abilities. Specific highlights from the report include:

- R155 million categorised as unauthorised expenditure (mainly as a result of over-expenditure)
- R113 million attributed to irregular expenditure, which was related to irregular supply chain management practices
- R21 million, which was the result of fruitless and wasteful expenditure.

Despite enjoying significant operational autonomy, these agencies seem to produce similar audit outcomes to their bureaucratic counterparts. The concern is the apparent lack of success in engendering a culture of performance within municipal agencies, which raises the question of whether the agencies are able to manage themselves and be sustainable.

In accordance with Sections 74 and 178 of the MFMA, municipalities report to the National Treasury on any entities under their control. National Treasury provides an overview of the performance, and the Auditor-General provides information on the audit outcomes of municipal agencies. However, access to annual reports of agencies is not as easy to find. Most lesser-known municipal agencies do not have websites, while those that do have websites do not feature their annual reports. This implies that very little information is available in the public domain (visible reporting), which can be seen as a contravention of Section 127(5)(a)(i) of the MFMA that requires a municipal entity to make public its annual report immediately after being tabled in council (South Africa, 2004). The 2010 Afrec study on municipal entities raised the lack of a central portal of (financial and performance-related) information on municipal agencies (Afrec, 2010). Table 8.3 lists some of the agencies that either do not have websites or have websites but do not provide access to annual reports.

8.5 Discussion

The following areas are key considerations related to municipal agencies in South Africa.

8.5.1 New Public Management vs. the Developmental State

The use of ASD mechanisms, such as agencies, falls within the rubric of New Public Management, where the focus is on a less active, leaner government bureaucracy that maximises efficiency and uses the economic market as a model for political and administrative relationships. Contrary to this school of thought are proponents of the developmental state who advocate for a more interventionist approach. The state is seen as critical in effecting redistribution and plays a significantly more participative/active role. Within South Africa, unions resist strongly any type of reform that may result in the loss of jobs. The South Africa Government is a large employer, employing just over one million people, or 9.7% of total employment in 1999. As at March 2010, the number of public servants rose to 1.272 million or 10% of total employment (SAIRR, 2010, p 206). Labour usually treats ASD arrangements with caution, viewing them as a step closer to full privatisation, a shift away from traditional service delivery that threatens job security and conditions of service.

Given the power of labour unions in South Africa, this is a politically sensitive issue that government needs to manage. Furthermore, from a public rights perspective, the South African Constitution guarantees the progressive realisation of certain basic services. As a result, government needs to walk a fine line between achieving efficiency and the need for equity, accountability and protecting the broader values of the public service.

Table 8.3. Agencies without websites or not listing annual reports

Province	Municipality	Entity
No website as at February 2012		
Eastern Cape	Maletswai	Mthombo Sediba Development Agency
Free State	Maluti-A-Phofung	Maluti-A-Phofung Water (Pty) Ltd
Gauteng	Ekurhuleni	Lethabong Housing Institute
Gauteng	City of Tshwane	Civirelo Water
KwaZulu-Natal	Hibiscus Coast	Hibiscus Coast Development Agency
Limpopo	Polokwane	Polokwane Housing Association
Western Cape	Knysna	Knysna Economic Development Agency
Western Cape	Overstrand	Overstrand Local Economic Development Agency
Website is available but no annual reports listed		
Eastern Cape	Buffalo City	Buffalo City Development Agency
	Blue Crane	Blue Crane Development Agency
Free State	Mangaung	Centlec (Pty) Ltd
Gauteng	City of Joburg	Joburg Property Company
		Johannesburg Tourism Company
	Ekurhuleni	Ekurhuleni Development Company (Pty) Ltd
KwaZulu-Natal	Ilembe	Ilembe Management Development Enterprise (Pty) Ltd

8.5.2 ASD Arrangements Do Not Erase the Need for Adequately Skilled Human Capital

Government needs to be clear about its role in the public sector: will it directly deliver public services, or facilitate and oversee delivery by an external party, or use a combination of these strategies. Whichever course is chosen, adequate capacity will remain a challenge. Government would be remiss to view the use of ASD arrangements as a means of bypassing the need for skilled public servants. Where service delivery is outsourced, the ability of the public sector to oversee, monitor and evaluate the work of its agencies is critical to ensure the sound management of agencies and outsourced public service delivery. Government should avoid establishing a new agency and transferring the same inadequate skills from the parent department to staff at the new agency, which is almost certainly a recipe for continued poor performance.

8.5.3 Performance of the Parent Department/Municipality

In the 2009/10 audit, 53 municipalities received disclaimers and seven received adverse audit outcomes. In addition, 43 municipalities showed no result as the audit was not finalised by the legislated date. Poor performance is widespread across South African municipalities. The health of agencies is intricately linked to the performance of the parent department (Schick, 2002; Upton, 2001), and for municipal agencies, the parent department is the municipality. If the parent department has "not paid for their independence in ... the hard currency of performance through the prior imposition of proper accountability machinery, then all manner of things can go unchecked" (Upton, 2001). A municipality

that is barely capable of managing itself is likely to be incapable of effectively managing others. The question that arises is whether the activities/outcomes delivered by agencies are adequately monitored to ensure alignments with municipal/developmental objectives.

8.5.4 Regulatory Environment to Facilitate Use of ASD Arrangements

South African legislation and policy are vocal about the use of ASD arrangements and provide reasonable instruction on the steps that should be followed when deciding to shift away from traditional bureaucratic-based service delivery. The legislation calls for affordability assessments, cost-benefit analyses and to ensure that the shift to an ASD arrangement is well thought out and based on likely sound benefits to the public and value for tax-payers money. While fulfilling these regulatory requirements cost significant time and financial resources, this cost needs to be incurred prior to setting up the preferred service delivery arrangement. Following these various affordability, cost-benefit assessments, municipalities should ideally be able to easily set up ASD arrangements and appropriate mechanisms to ensure effective oversight, monitoring and evaluation of agency operation. However, certain legislative requirements introduce prohibitive costs. For example, Section 33 of the MFMA prescribes additional onerous requirements (including soliciting views/recommendations from provincial/national treasuries) on a municipality where a contract is in excess of three years. Where a municipality has done the 'ground work', proving the benefits of moving towards an ASD arrangement, certain concessions should be allowed in terms of the period for which the municipality is allowed to contract for. External parties may be hesitant to make significant investment in a venture where a contract risks not being renewed after three years.

8.5.5 Scope for Corruption

When implemented for the right type of service, ASD arrangements are likely to enhance performance. However, the use of these arrangements, including agencies, may not solve public sector corruption. Compared to business as a form of organisation, governments are unlikely to be effective in fighting corruption for various reasons, including (Banfield, 1975):

- Government's objectives are numerous, vague, often ambitious and sometimes contradictory. An objective may be as vague as 'improving the quality of life'. Such vagueness provides room for subjective decision making and makes monitoring such decisions difficult.
- Good and services delivered by governments are often not based on market prices and are regulated to ensure access. This process of regulation may often provide scope for breaking the law and/or bribery.

Municipalities need to ensure legislation related to reporting is strictly enforced, particularly the need for municipal agencies to make their annual reports public and easily accessible. A lack of transparency in this regard can foster an environment conducive to corrupt activity.

8.5.6 National Agencies Operating in the Local Sphere

In addition to agencies operating within municipalities, national agencies also operate in the local government sphere. Examples of these are the Development Bank of Southern Africa (DBSA) and the newly established Municipal Infrastructure Support Agency (MISA). The operations of the DBSA and the anticipated activities of MISA focus on local capacity-building. These types of national agencies need to take care to avoid scope creep, that is becoming involved in much broader activities than originally envisioned.

Different spheres that focus on the same issue provide an opportunity for inter-agency collaboration. By sharing critical information and resources, such collaboration provides space for solving public problems in creative ways and enables governments to increase responsiveness to diverse circumstances and changing conditions (Page, 2004). Pooling expertise has an added benefit of increased value for money. However, effective collaboration requires the parties involved being clear about what they are accountable for, and guidelines/regulations should serve to facilitate such partnerships.

8.5.7 ASD Arrangements Are Reactive rather than Proactive

In many cases, agency establishment in South Africa is driven by poor or variable performance by government departments, or existing agencies (as in the case of MISA). A more proactive approach to improving performance can be taken by applying the theoretical underpinnings of when to use an agency or even outsource. For this to work requires addressing the territoriality of government officials. One example is billing: most municipalities (whether well-resourced or not) experience serious problems with billing, which is an activity that has low asset specificity and high measurability. Yet very few municipalities relinquish control of this function, and the result is worsening municipal consumer debt. Municipal billing is an area where definite gains can be achieved by using an ASD arrangement.

8.6 Towards a Set of Principles

The following guidelines are proposed for evaluating whether to establish an agency:

- The service in question is eligible for delivery by an entity other than government. As the literature highlights, key aspects are asset specificity and measurability.
- The establishment and use of agencies should be based on sound public policy reasoning and not on political interference or desire to garner political support.
- An agency's mandate should be precise and specialised, which will ensure agency activities are not duplicated by other organs and (importantly) better monitoring and oversight by parent departments/organs of state.
- The establishment of an agency should depend on the ability of a parent department/municipality to manage its own operations well, in order to ensure sound oversight and that social objectives are maintained at the core of public service delivery.

8.7 Recommendations

With respect to alternative service delivery arrangements (with a focus on municipal agencies), the Commission recommends that:

- Government's approach to regulating agency formulation should balance maximising the potential benefits of utilising an alternative service delivery (ASD) arrangement with minimising the attendant risks. In the quest to improve performance and efficiency, ASD arrangements may (in appropriate circumstances) provide a creative way for municipalities to deliver services, particularly against the backdrop of limited financial and human capital resources. Therefore, the regulatory framework for municipal entities should ensure that:
- The use of an ASD arrangement is contingent on a demonstrably sound business case for its establishment and sustainable operation;
- Unnecessary, costly and time-consuming regulations are avoided. To this end, government should review existing legislation, specifically Section 77 and Section 78 of the *Municipal Systems Act* and Section 33 of the MFMA, which places onerous demands on municipalities wanting to use an ASD arrangement.
- Establishment of municipal agencies, or any ASD arrangement, should be linked to the parent municipality having an adequate level of performance and effective oversight ability. Determining whether performance is adequate or not should be linked to the audit outcomes of the parent municipality. Government should discourage the creation of agencies where the parent municipality is manifestly weak; for example, if the municipality is found to have a severely qualified, adverse or disclaimed audit result.
- Legislation that requires municipal entities to make public details of their performance and plans (as required in terms of Section 127(5)(a)(i) of the MFMA) should be strictly enforced, and non-compliance reported to the Auditor-General. This is necessary not only for compliance but also for greater transparency of agency performance, thereby enabling better monitoring and oversight by parent municipalities and treasuries.

- Government should establish a central portal of financial and performance-related information on municipal agencies. Such a facility could also serve as a peer-learning mechanism through which success stories are shared. Municipalities and agencies could also use the information to benchmark their performance, while greater public availability of this information will improve oversight and transparency. National government should take a more proactive approach, perhaps through the National Treasury's PPP Unit, to advising municipalities, especially lesser resourced ones, on the applicability of using an ASD arrangements in different instances.
- Government (particularly the National Treasury's PPP Unit) should put together a list of criteria to assist municipalities in deciding whether a sound business case for the creation of entities exists. The criteria should:
 - Establish whether benefits exceed potential costs;
 - Ensure potential risks are mitigated;
 - Focus on aspects such as measurability and asset specificity of the service in question.

Annexure 8A. Municipal Agencies 2009/10

The table below outlines municipal agencies listed in the 2009/10 audit report published by the Auditor-General, including whether the entity has a website and whether annual reports are reflected on the website.

Appears in both the Auditor-General's Audit report for 2009/10 and the National Treasury Entities Report as at 30 June 2010

Province	Municipality	Municipal Agency	Website	Regular Annual Reports Available
Eastern Cape	Amathole	Amathole Economic Development Agency (ASPIRE)	Yes	Yes
	Blue Crande Route	Blue Crane Route Development Agency	Yes	No (2007/08)
	Buffalo City	Buffalo City Development Agency	Yes	No
	Kouga	Kouga Development Agency	Yes	No (2007/08)
	Nelson Mandela Bay	Mandela Bay Development Agency	Yes	No
	Maletswai	Mthombo Sediba Development Agency	No	No
	O.R. Tambo	Ntinga O.R. Tambo Development Agency	Yes	No
Free State	Mangaung	Centlec (Pty) Ltd	Yes	No
	Lejweleputswa	Lejwe Le Putswa Development Agency (Pty) Ltd	No	No
	Maluti-A-Phofung	Maluti-A-Phofung Water (Pty) Ltd	No	No
	Metsimaholo	Metsimaholo Mayoral Trust	No	No

Province	Municipality	Municipal Agency	Website	Regular Annual Reports Available
Gauteng	City of Johannesburg	City Power	Yes	Yes
		Joburg Property Company	Yes	No
		Johannesburg City Parks	Yes	No
		Johannesburg Civic Theatre	Yes	Yes
		Johannesburg Development Agency	Yes	Yes
		Johannesburg Fresh Produce Market	Yes	No
		Johannesburg Metropolitan Bus Services	No	No
		Johannesburg Roads Agency	Yes	Yes
		Johannesburg Social Housing Company	Yes	Yes
		Johannesburg Tourism Company	Yes	No
		Johannesburg Water	Yes	No (2008/09)
		Johannesburg Zoo	No	No
		Pikitup Johannesburg	Yes	No
		Roodepoort Civic Theatre	No	No
	Metropolitan Trading Company	No	No	
	City of Tshwane	Sandspruit Works	No	No
		Civirelo Water	No	No
		Housing Company Tshwane	Yes	No
	Ekurhuleni	Pharoe Park Housing Company (Pty) Ltd	No	No
		East Rand Water Care Company (Erwat)	Yes	Yes
Brakpan Bus Company		No	No	
Germiston Phase 2 Housing Company (Pty) Ltd		No	No	
Ekurhuleni Development Company (Pty) Ltd		Yes	No	
Lethabong Housing Institute		No	No	
KwaZulu-Natal	eThekweni	Durban Marine Theme Park (Pty) Ltd	Yes	No
		ICC, Durban (Pty) Ltd	Yes	Yes
	Hibiscus Coast	Hibiscus Coast Development Agency	No	No
	iLembe	Ilembe Management Development Enterprise (Pty) Ltd	Yes	No
	Ugu	Ugu South Coast Tourism	Yes	No
	Umkhanyakude	Umhlosinga Development Agency	Yes	No
	Newacastle	Uthukela Water (Pty) Ltd	Yes	No
Limpopo	Polokwane	Polokwane Housing Association	No	No
	Musina	Zelpy 1903 (Pty) Ltd Trading as Letsema	No	No
	Moses Kotane	Moses Kotane Development Agency	No	No
	Rustenburg	Rustenburg Water Services Trust	No	No
Western Cape	City of Cape Town	Cape Town International Convention Centre	Yes	No
		Khayalitsha Community Trust	Yes	Yes
	Overstrand	Overstrand Local Economic Development Agency	No	No

Appears on the list of municipal entities audited by the Auditor General as part of the audit for 2009/10 but not on the National Treasury entities report as at 30 June 2010

Free State	Fezile Dabi	Fezile Dabi District Municipality Trust	No	No
		Krynaauwlust Farming Trust (Pty) Ltd	No	No
North West	Dr. Kenneth Kaunda	Dr KKDM Economic Agency (Pty) Ltd	No	No
Western Cape	Knysna	Knysna Economic Development Agency	No	No

Appears in the National Treasury entities report as at 30 June 2010 but not on the list of municipal entities audited by the Auditor General as part of the audit for 2009/10

Eastern Cape	Inxuba Yethemba	Mmotlie Investments	No	No
	Kouga	Kouga Cultural Centre	No	No
	Nkonkobe	Nkonkobe Economic Development Agency	No	No
	Port St. Johns	Port St. Johns Development Agency	No	No
Gauteng	City of Tshwane	Temba Roodeplaat Water Service Trust	No	No
		Tshwane Centre for Business Information and Support	No	No
KwaZulu-Natal	Msunduzi	Safe City	Yes	No
	uThungulu	uThungulu Financing Partnership	No	No
Mpumalanga	Govan Mbeki	Govan Mbeki Housing Company	Yes	No
	Mbombela	Mbombela Development Trust	No	No
	Umjindi	Umjindi Local Economic Development Agency	No	No
	Nkangala	Munsoft Section 21 Company	Yes	No
Northern Cape	Kamiesberg	Namaqualand South Development Association	No	No
Western Cape	George	George Housing Association	No	No

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