



DEPARTMENT OF WATER AFFAIRS AND FORESTRY

**Guideline and Model Contract
for a Water Services Authority
to enter into a Contract with a
Community Based Organisation as a
Water Services Provider**

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1 Introduction

- ◆ This document comprises two parts:
 - the first part consists of this guideline
 - the second part consists of the model contract

- ◆ The Water Services Act (No. 108 of 1997) states in Section 19(7) that the Minister of Water Affairs and Forestry may provide model contracts to be used as a guide for contracts between water services authorities and water services providers.

- ◆ Some of the Act's primary concerns are that the contract should not be unbalanced or compromise the standards of water provision in South Africa or result in a poor service to the consumer. In respect of compulsory provisions that are the subject of regulation, the Act clarifies that water services contracts should:
 - provide for water services on an efficient, equitable, cost-effective and sustainable basis;
 - set terms that are fair and equitable to the water services authority (WSA), the water services provider (WSP) and the Consumer; and
 - comply with the Act.

2 Model Contract

- ◆ The attached contract is a 'model contract' provided by the Department of Water Affairs and Forestry (DWAF) on behalf of the Minister of Water Affairs and Forestry that can be used as a contract between a WSA and a community based organisation (CBO) as a WSP for the provision of water services.

- ◆ The model contract attempts to achieve the Act's objects and has been developed in line with DWAF's regulations for contracts between WSAs and WSPs. A copy of the regulations can be obtained from DWAF. It is intended to be a simple, fair and binding contract, and it is hoped that parties will use it as a guide in regulating the management of the provision of water services for and on behalf of the WSA.

- ◆ The model contract is based on the following assumptions:

- a) That the CBO WSP is established as a new organisation, requiring a period of capacity building and training
- b) that the CBO WSP is responsible for the following WSP functions:
 - management of the water services system, being operations and minor repairs and minor maintenance
 - revenue services
 - customer relations
- c) that the level of service is household connections with meters
- d) that the method of payment is through billing based on meter readings
- e) that payments for water services are paid to the CBO WSP
- f) that the CBO WSP is responsible for covering the costs of providing the water services
- g) that the WSA is responsible for maintenance and preventative maintenance including the development of a maintenance programme
- h) that the WSA provides support services to the CBO WSP

3 Using the Model Contract

- ◆ The contract is a *model contract*, which should be amended by the parties to the contract to suit their specific needs and circumstances.
- ◆ Where there are alternative clauses, which may be appropriate, the various alternatives are provided so that the correct clause can be utilised as appropriate. Those clauses that are not appropriate should be deleted.
- ◆ An electronic copy of the model contract is available on the internet at the following address:

4 Disclaimer

- ◆ The publication of this model contract is not intended as a substitute for legal advice. It is designed to provide parties, including the WSA, the WSP and the consumer with a framework for the negotiation and conclusion of a WSA - CBO WSP contract. In all instances regard must be had to the provisions of the Act and DWAF's regulations for contracts between water services authorities and water services providers. The Government does not compel the parties to rely on the model contract, and Government is not liable for damages arising from reliance on this contract.

- ◆ In the model contract itself, notes appear which clarify drafting choices. These are purely for guidance and should not be incorporated into the contract. Furthermore, it is not intended that the parties will merely complete the contract by filling the gaps. The model contract should be used as a guide in independently drawing up a contract suitable for the purposes of the parties. As every situation depends on its own facts and circumstances only specific professional advice should be relied upon.

5 CBO WSP Guideline

- ◆ The Department of Water Affairs and Forestry has produced a *Community Based Organisations as Water Services Providers (CBO WSP) Guideline* which defines what a CBO WSP is, legal status of a CBO as well as the features of a CBO WSP. The *CBO WSP Guideline* also contains an example of a model constitution for a CBO WSP. Water Services Authorities are encouraged to familiarise themselves with the *CBO WSP Guideline* when entering into contracts with CBO WSPs.

6 Functions of CBO WSP and support services

- ◆ It should be noted that the water services provider functions that a CBO WSP fulfils might vary depending upon the specific circumstances and the capacity of the CBO WSP. In some cases a CBO WSP may be able to fulfil all the WSP functions, however in other cases some functions may need to be fulfilled by the WSA as support services to the CBO WSP.
- ◆ In the case where certain functions are to be fulfilled as support services, for example major maintenance, bulk purchasing, financial and administrative mentoring, the WSA remains responsible for these functions. Thus the contract will specify the support services as the obligation of the WSA. The WSA may fulfil these functions itself, or it may contract a Support Services Agent (SSA) to fulfil the functions on its behalf. The WSA will however remain responsible for the fulfilment of these obligations in terms of its contract with the WSP CBO.

7 Contract with a new CBO

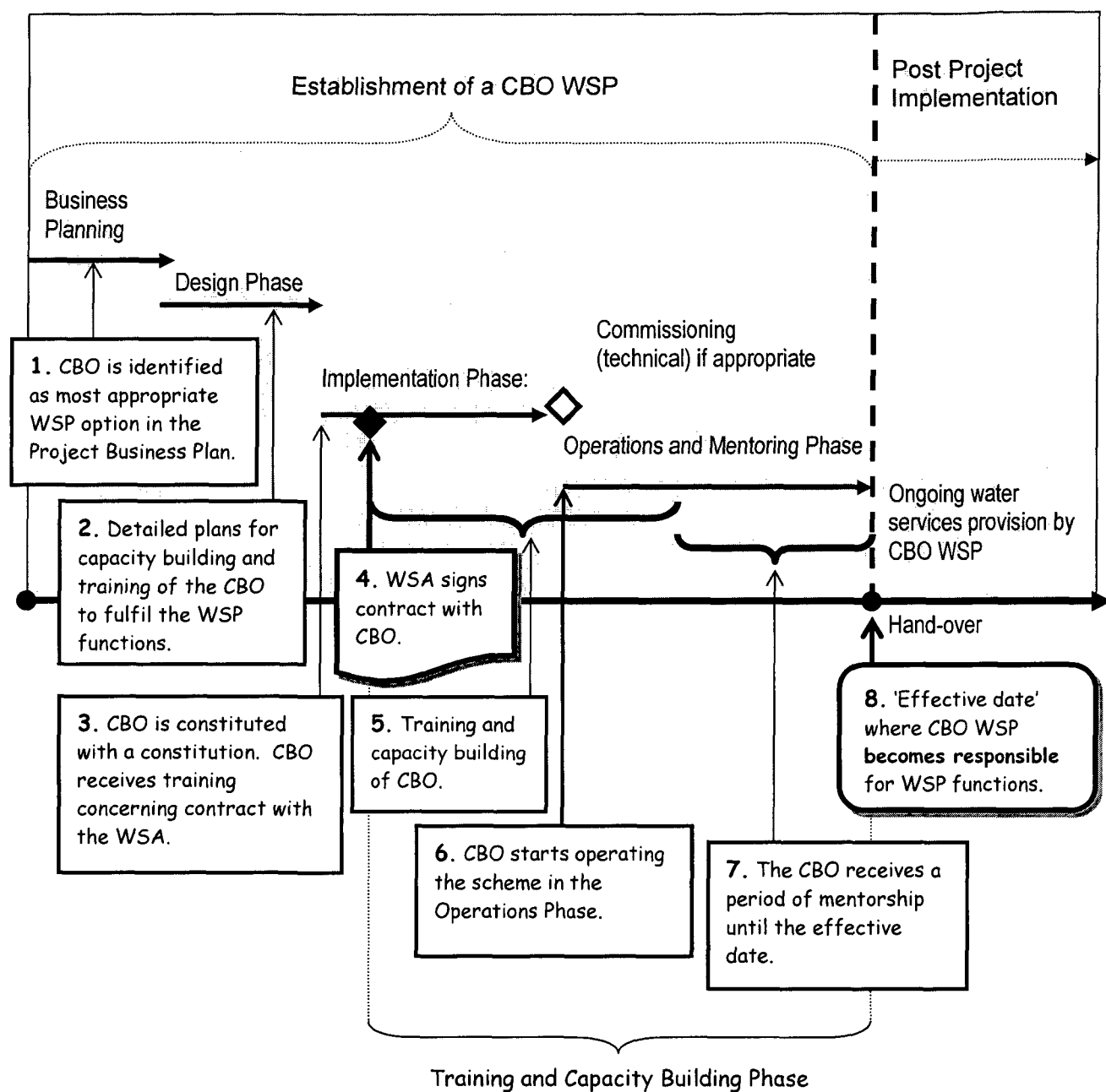
- ◆ A contract with a CBO that is being established to fulfil the role of WSP will be slightly different to a contract with a CBO that is already established and fulfilling water services provider functions.
- ◆ The attached model contract is for a new CBO being established to fulfil WSP functions.

- ◆ In the case of a new CBO being established to fulfil WSP functions, there is a period of time when the CBO goes through capacity building and training and when it starts to fulfil water services provision functions with mentoring support. It is important that during this phase, the CBO and the WSA fulfil certain obligations. For example, since resources are committed to capacity building and training of the CBO, the CBO needs to commit to ultimately fulfilling the WSP functions that it is being trained to fulfil. Likewise, the WSA needs to provide a commitment to the CBO that it will contract the CBO as the WSP. A written agreement to these obligations is required. Thus the model contract between the CBO WSP and the WSA is drafted in a way that provides for the CBO to be contracted prior to the date on which it becomes responsible for the water services provision function, being the effective date.

- ◆ The establishment of the CBO WSP may take place as part of the implementation of a project or in circumstances where the WSA decides that a CBO WSP is the most appropriate WSP option for an existing scheme.

- ◆ It is important to note that until the effective date, the WSA remains *responsible* for the water services provision functions even though the CBO WSP will start operating and managing the water services prior to the effective date.

- ◆ The diagram below illustrates the following:
 - the point at which the WSA and CBO WSP enter into a contract
 - the capacity building and training phase of the CBO WSP
 - the mentorship period
 - the effective date, when the CBO WSP becomes responsible for fulfilling the water services provider functions



- ◆ The period from the date that the WSA signs the contract with the CBO WSP (commencement date) to the effective date is called the training and capacity building phase in the Contract between the WSA and CBO WSP.
- ◆ In the case of a CBO WSP being established as part of project implementation, the effective date will be the same as the hand-over date.
- ◆ In the event that either the CBO WSP or the WSA have not fulfilled their obligations prior to the effective date, the contract provides for the effective date to be postponed, or for termination of the contract.