

PROVIDING MUNICIPAL SERVICES

To provide services economically and efficiently, municipal officials may consider various alternatives for the provision of services, including contracting with the private sector, providing services in-house by the municipality, or contracting with other governmental entities to provide services.

Contracting for Services with the Private Sector

Many Colorado municipalities contract with the private sector for services. Privatization is a viable alternative when the city or town does not have the specialized skills or equipment to provide a needed service. Municipal officials often cite lower costs and better quality as a benefit of contracted services.

In-House Provision of Municipal Services

Some projects can be more expensive to contract out or quality may not come up to standard when contracted, so communities may opt for in-house services. Reasons municipal officials cite for providing services in-house include lack of control over contractor results, timeliness, contract disputes, citizen complaints of contractors, contractors' lack of sensitivity to community input, and difficulty in finding contractors willing to provide services in rural areas.

Policy Considerations When Reviewing Privatization

Advantages

- Lower costs and better quality may be realized because of competition arising from contracting.
- Growth of government, or at least of governmental employment, may be limited.
- Contracting may be a more effective way to provide services than hiring staff or acquiring equipment or facilities.
- Contracting can be particularly appropriate when there is a need to procure highly specialized talent or equipment on a recurring or part-time basis.
- New services or increased levels of services can be provided without large initial start-up costs for personnel and equipment.
- Privatization may be the only way to keep up certain services in communities experiencing rapid growth.
- Program size can be adjusted without municipal employee layoffs.
- Service costs become more visible, providing a yardstick for comparison.
- Municipal managers can devote their attention to overseeing, rather than administering, day-to-day operations, so municipal administrators may gain time and energy to improve key services by privatizing other services.
- Contracting requires a clear definition of services and monitoring of performance that provides management information that might not otherwise be available.

Disadvantages

- Higher costs, reduced quality, or lack of reliability may result from a contractor's profit motive, and, in turn, increases the cost to the municipality in monitoring the contract.
- Close monitoring is necessary to ensure compliance with the contract.
- Governmental accountability and control can be reduced.
- Services may be interrupted if a contractor declares bankruptcy, goes out of business, or suffers a strike or work slowdown.
- Public employees may be displaced or experience lower job morale.
- Contracts that clearly define desired services are difficult to write in many areas and may have cost-plus-fixed-fee provisions that give no incentive for efficiency.
- Responding quickly to emergencies or major changes in service needs may be difficult due to contract constraints. (Maintaining a pool of in-house employees who provide many different services creates a reserve that can be targeted at key problems with little advance planning.)
- Citizens may associate contracting out with a reduction in services.
- Services may become unaffordable for disadvantaged citizens or may become more costly for those in geographically remote areas.

Intergovernmental Agreements

Municipal governments frequently contract with other governmental entities, using intergovernmental agreements (IGAs) to provide services. IGAs are a formal cooperative arrangement in the form of contract entered into, between, and among governmental entities. Local governments enter into IGAs for many purposes, including the provision of public

services such as construction and financing of public infrastructure and facilities; joint land planning; revenue sharing; the use of real estate; and the establishment of separate governmental entities.

Authority

The Colorado voters approved an amendment to Article XIV § 18 of the Colorado Constitution in November 1970 to expressly authorize political subdivisions of the State of Colorado, including home rule municipalities, to enter into IGAs that involve delegation of municipal powers. In 1971, the General Assembly enacted Section 29-1-201, et seq., C.R.S., known as the Intergovernmental Relationships Act, which authorizes IGAs generally. IGAs have become common and useful tools in cooperatively managing services and projects among local governments throughout Colorado.

Municipalities have broad authority to enter into IGAs in the Colorado Constitution.¹ Additionally, the Intergovernmental Relationships Act is construed to authorize and encourage governments to make the most efficient and effective use of their powers and responsibilities. Municipalities may enter into IGAs with other “governments,” including any agency or department of the state government, a federally recognized tribal entity, any political subdivision of an adjoining state, and any political subdivision of the State of Colorado. A “political subdivision” includes any municipality, county, city and county, service authority, school district, local improvement district, city or county housing authority, special districts, and “any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.”²

As set forth in the Colorado Constitution, contracting governmental entities may “provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, imposition of taxes, or incurring of debt.”³ The Colorado Supreme Court has ruled that this phrase means governmental entities may provide services or perform functions outside their respective jurisdictions, even if not otherwise lawfully authorized, if each contracting entity is lawfully authorized to perform the subject activity within its respective jurisdiction.⁴ Furthermore, courts recognize that certain powers and decision-making authority may be delegated to one of the contracting governmental entities as the “lead agency” whereby several governmental entities act jointly and permit one to act for all.

While there are many legal considerations that are specific to IGAs, probably the most pragmatic consideration relates to the role of various governmental entities. As a rule, governmental entities are protective of their authority and power, as well as diligent in securing fair and justifiable terms in contracts. When two or more governmental entities attempt to structure the terms of an agreement, negotiations can become bogged down by insistence on certain terms that governmental entities often require in contracts. Governmental entities are often reluctant to concede to the demands of another governmental entity. Thoughtful negotiations and appreciation for the goals and responsibilities of each governmental entity will result in more productive negotiations and a more functional IGA that better serves the parties’ mutual objectives.

Establishment of separate governmental entity

The Colorado Constitution states, “Nothing in this constitution shall be construed to prohibit the authorization by statute of a separate governmental entity ... by cooperating or contracting political subdivisions.” (Article XIV § 18(2)(b).)

Under this general authority, political subdivisions may wish to create separate governmental entities, especially for the joint operation and control of regional public infrastructure or provision of regional services. Specific authorization by statute must exist to ensure that the “separate governmental entity” will enjoy independent governmental status, protections under the Colorado Governmental Immunity Act, and clear authorization for financing and issuance of debt.

IGAs serve many purposes and come in many forms for municipalities and other local governments in Colorado. Although IGAs are essentially contracts, unique considerations arise depending upon the subject matter of the agreement and the extent to which the agreement commits or restricts the governmental authority of the parties. Thoughtfully drafted IGAs can serve local governments well for many years by increasing efficiencies and enhancing mutual cooperation.

¹ COLO. CONST. art. XIV § 18(2)(a).

² C.R.S. § 29-1-202(2).

³ COLO. CONST. art. XIV § 18(2)(a).

⁴ City of Durango v. Durango Transp., Inc., 807 P.2d 1152 (Colo. 1991).