

Intergovernmental Agreements: Doing More With Less??

In the Boardroom

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GENERAL OVERVIEW:



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3. IGAs and Innovation Grants
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5. Benefits of IGAs
6. The IGA Thought Process
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“Intergovernmental Agreements” An Overview



What is an Intergovernmental Agreement?

- An Intergovernmental Agreement (IGA) is an “agreement for the receipt or furnishing of services or the joint exercise of any power or duty required by law.” Wis. Stat. § 66.0301.
- May be used for mandatory services or other services.

Applicable Statutes

- **Wis. Stat. § 66.0301**

... in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state. ...

- **Wis. Stat. § 66.0131(2)**

INTERGOVERNMENTAL PURCHASES WITHOUT BIDS. Notwithstanding any statute requiring bids for public purchases, any local governmental unit may make purchases from another unit of government, including the state or federal government, without the intervention of bids.

Applicable Statutes (cont.)

- Wis. Stat. § 59.52(7)

JOINT COOPERATION. The board may join with the state, other counties and municipalities in a cooperative arrangement as provided by s. 66.0301, including the acquisition, development, remodeling, construction, equipment, operation and maintenance of land, buildings and facilities for regional projects, whether or not such projects are located within the county. If a county is required to establish or maintain an agency, department, commission, or any other office or position to carry out a county responsibility, and the county joins with another county or municipality by entering into an intergovernmental cooperation contract under s. 66.0301 (2) to jointly carry out the responsibility, the jointly established or maintained agency, department, commission, or any other office or position to which the contract applies fulfills the county's obligation to establish or maintain such entities or positions until the contract entered into under s. 66.0301 (2) expires or is terminated by the parties. In addition, if 2 or more counties enter into an intergovernmental cooperation contract and create a commission under s. 66.0301 (2) to jointly or regionally administer a function or project, the commission shall be considered to be a single entity that represents, and may act on behalf of, the joint interests of the signatories to the contract entered into under s. 66.0301 (2).

Who Can Enter Into an IGA?

- “Municipality”

... means the state or any department or agency thereof, or any city, village, town, county, or school district, the opportunity schools and partnership programs under subch. IX of ch. 115 and subch. II of ch. 119, the superintendent of schools opportunity schools and partnership program under s. 119.33, or any public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, local professional football stadium district created under subch. IV of ch. 229, local cultural arts district created under subch. V of ch. 229, long-term care district under s. 46.2895, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district, regional planning commission, housing authority created under s. 66.1201, redevelopment authority created under s. 66.1333, community development authority created under s. 66.1335, or city-county health department.

Intergovernmental Agreements – the Basics

- ... for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties...
- If a county is required to establish or maintain an agency, department, commission, or any other office or position to carry out a county responsibility, and the county joins with another county or municipality by entering into an intergovernmental cooperation contract under s. 66.0301 (2) to jointly carry out the responsibility, the jointly established or maintained agency, department, commission, or any other office or position to which the contract applies fulfills the county's obligation to establish or maintain such entities or positions until the contract entered into under s. 66.0301 (2) expires or is terminated by the parties....

General Restriction on County Authority to Enter into IGAs

- A county must have statutory authority for the underlying duty it will perform in an IGA.
 - A county may not use an IGA to perform a duty for which it does not otherwise have statutory authority.
- Be careful about defining the scope of a county's authority!

IGAs are Encouraged

- Wis. Stat. § 66.0301(2): “...This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.”

IGA Administration



Creating a Commission

- Wis. Stat. § 66.0301(3) – (5):

(3) Any contract under sub. (2) **may** provide a plan for administration of the function or project, which may include but is not limited to provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts.

(4) A commission created by contract under sub. (2) may finance the acquisition, development, remodeling, construction and equipment of land, buildings and facilities for regional projects under s. 66.0621. Participating municipalities acting jointly or separately may finance the projects, or an agreed share of the cost of the projects, under ch. 67.

(5) No commission created by contract under sub. (2) may, directly or indirectly, do any of the following:

(a) Acquire, construct or lease facilities used or useful in the business of a public utility engaged in production, transmission, delivery or furnishing of heat, light, power, natural gas or communications service, by any method except those set forth under this chapter or ch. 196, 197 or 198.

(b) Establish, lay out, construct, improve, discontinue, relocate, widen or maintain any road or highway outside the corporate limits of a village or city or acquire lands for those purposes except upon approval of the department of transportation and the county board of the county and the town board of the town in which the road is to be located.

IGAs and Innovation Grants



Innovation Grants

- Counties can apply through March 31, 2026
- Wis. Stat. § 79.038(1)(a): “... counties and municipalities may apply to the department of revenue, in the form and manner prescribed by the department, for innovation grants to be used to implement innovation plans. For purposes of this subsection, an “innovation plan” is a plan submitted by a county or municipality to transfer county or municipal services or duties described in par. (b) to a county, municipality, nonprofit organization, or private entity.”

Services or Duties

Wis. Stat. § 79.038(1)(b)1.

1. The department of revenue may award a grant for an agreement or contract under par. (a) only for a transfer of one or more of the following services or duties:

- a. Public safety, including law enforcement, but not including jails.
- b. Fire protection.
- c. Emergency services.
- d. Courts.
- e. Jails.
- f. Training.
- g. Communications.
- h. Information technology.
- i. Administration, including staffing, payroll, and human resources.
- j. Public works.
- k. Economic development and tourism.
- L. Public health.
- m. Housing, planning, and zoning.
- n. Parks and recreation.

Innovation Grant IGA Requirements

Wis. Stat. § 79.038(1)(a)1.

1. The county or municipality provides to the department a copy of a signed agreement or contract with a county, municipality, nonprofit organization, or private entity to transfer one or more services or duties to the county, municipality, nonprofit organization, or private entity, and the agreement or contract satisfies all of the following:

- a. The agreement or contract specifies the services or duties to be transferred to the county, municipality, nonprofit organization, or private entity.
- am. The agreement or contract is entered into no earlier than the date identified in the notice under 2023 Wisconsin Act 12, section 244 (1).
- b. The agreement or contract transfers all services or duties specified under subd. 1. a. for a period of at least 3 years.
- c. The agreement or contract indicates the cost to the county or municipality transferring a service or duty of performing each service or duty specified under subd. 1. a. in the year immediately preceding the transfer of the service or duty under the agreement or contract, and, if the agreement or contract transfers a service or duty specified under subd. 1. a. to a county or municipality, the cost to the county or municipality to which the service or duty is transferred of performing each transferred service or duty in the year immediately preceding the transfer of the service or duty.
- d. The agreement or contract specifies the amount that the county or municipality will pay to the county, municipality, nonprofit organization, or private entity to which the service or duty is transferred for performing each service or duty specified under subd. 1. a. for the entire term of the agreement or contract.
- e. The agreement or contract specifies the allocation of grant moneys between the counties or municipalities that are parties to the agreement or contract.

Additional Considerations – Admin Code

- Chap. Tax 21.05(3)

(3) AUDIT AND CERTIFICATIONS. (a) Each county, municipality, and tribe participating in an approved innovation project shall maintain detailed records for a minimum period of 4 years after receiving the first grant payment distribution.

(b) The department may require additional documentation to complete an audit required by s. 79.038 (1) (f) 1., Stats.

(c) The department may require each grant participant to submit a report or certification to the department attesting the required cost savings have been realized.

(d) The department may direct the department of administration to delay the final grant distribution while an audit under s. 79.038 (1) (f) 1., Stats., or review of the report or certification in par. (c), is pending.

(e) The department shall direct the department of administration to reduce the final grant distribution of any county, municipality, or tribe that has not realized the projected savings outlined in the approved innovation project as required under s. 79.038 (1) (d) 3., Stats.

Additional Considerations – Admin Code (cont.)

- Which party will prepare the required materials?
- Which party will submit?
- What happens if a grant is suspended or reduced?

An IGA is a Contract!



It Does NOT Matter What You Call It...

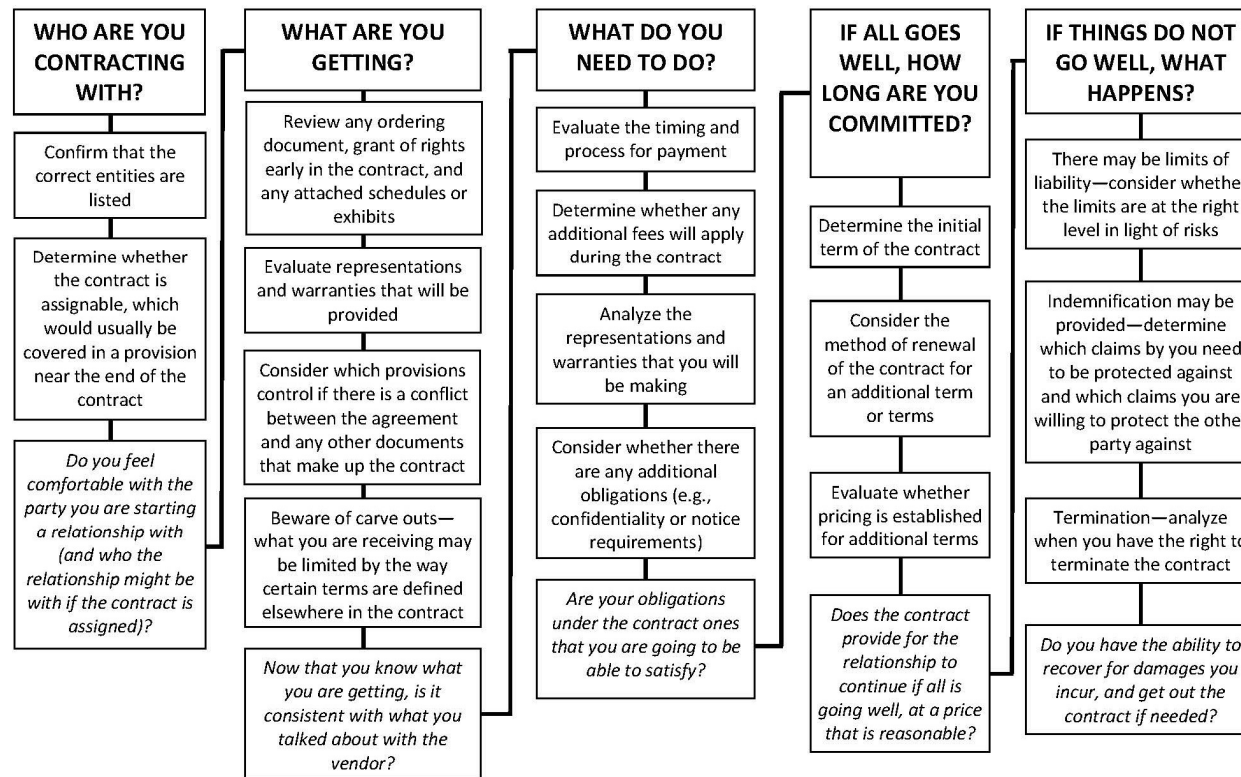
- Section 66.0301(2):

...in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. ...

It Does NOT Matter What You Call It...

- What is the difference between a contract, agreement, MOU, MOA and covenant??

Contract Terminology and Road Map



Benefits of Intergovernmental Agreements



Benefits of IGAs

- Three primary benefits of IGAs:
 - Improve quality of services
 - Generate cost savings
 - Create efficiencies

Benefits of IGA: Improve Quality of Services

- Combining resources may allow for an increase in quality.
- Utilize a partner with more expertise.

Benefits of IGA: Generate Cost Savings

- Pooling resources to deliver needed (and mandated) services.
- Especially critical in rural areas.

Benefits of IGA: Create Efficiencies

- Doing more with less is a definitional impossibility. The appropriate question is how can we maintain (or increase) service level by doing things differently?
- If there is operational efficiency to be achieved through collaboration, it is important to explore opportunities.

But How Do We Get There???



The Biggest REQUIREMENT

- Almost every contract, no matter how well written, will provide an opportunity for one party to take advantage (real or perceived) of the other party.
- Every contract, including an IGA, relies upon the good faith performance by each party.
- What this means is that we have a high degree of TRUST in one another.

						Trust
Compete	Co-exist	Communicate	Cooperate	Coordinate	Collaborate	Integrate
Competition for clients, resources, partners, public attention	No systematic connection between agencies	Inter-agency information sharing (e.g., networking)	As needed, often informal interaction on discrete activities or projects	Groups and organizations systematically adjust and align work with each other for greater outcomes	Longer team interaction based on shared mission, goals; also shared decision-making and resources	Fully integrated programs, planning, and funding
Turf						

So Who is the Appropriate “Dance Partner?”

- Identify the county’s objectives or the problem that needs to be solved
- Identify any limitations on who can be the partner
 - Geographic
 - Powers
 - Statutory Restrictions
- Engage the potential partner
- Develop a Term Sheet outlining the contract parameters

Potential Risks and Pitfalls of IGAs



Potential Risks and Pitfalls of IGAs:

- Governance and Accountability: Shared services can blur lines of responsibility, making oversight more complex.
- Funding Disputes: Disagreements over cost-sharing arrangements can arise, especially as service demands change.
- Public Perception: Residents may resist change or fear a loss of local control.
- Legal Complexity: Crafting a durable and legally sound agreement often requires careful legal and financial planning.

IGA Drafting Considerations



Drafting Considerations: The Commitment

- Determine how long the contract is going to last.
 - A shorter contract term allows a county to “test the waters.”
 - But, a longer contract term may be desirable if there will be full-scale integration of a shared service model.
- Will the contract automatically renew?
- If a party wants to leave the contract, what type of notice is required?

Drafting Considerations: Breach

- What will be considered a material breach of contract?
- What happens in the event of breach?
 - Will we allow a party to cure a breach?
- Does material breach automatically result in immediate termination?
- Who is the decision maker for each party to the contract?

Drafting Considerations: Purpose and Scope

- A contract depends upon a “meeting of the minds” on all material terms of a contract.
- A purpose section in a contract could help with documenting the parties’ intent.
 - But be cautious because a purpose section may also create conflict with other contract terms or otherwise cause ambiguity.
- The scope of a contract is important – who will do what, for whom, when, and under what conditions.

Drafting Considerations: Dispute Resolution

- We are government agencies – we don't like suing one another!
- The public doesn't like to see us suing one another either.
- Early intervention often leads to swift dispute resolution.
- Depending upon the complexity of the contract, mediation might be a good dispute resolution option.



QUESTIONS?



THANK YOU!



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