Contracting Out to Other Local Governments
Irene Rubin, University of Northern Illinois
ASPA 2004

When academics talk about contracting out, they often mean with the private sector. The major advantages of reduced cost due to increased efficiency are supposed to occur in the private sector due to competition. The industry must be structured so that there is competition, and the bidding process must be structured so that local governments can take advantage of that competition to lower prices. Proximity is important, because there may be competition in the industry, but not in the area where the local government is located. Under this model, local governments would have little to gain by contracting with other governmental units, which typically do not have much competition.

Nevertheless, we find that service contracting with other units of government is relatively common at the local level. Presumably there is a gain from this practice that does not have anything to do with competition and the reported private sector gains in efficiency, or with the bidding process that takes advantage of that efficiency. We set out to explore this intergovernmental service contracting, the reasons why local governments do it, its limits and successes, and how it differs from contracting with the private sector.

We began with the idea that there were some functions that were inherently governmental, and that these inherently governmental functions would be the ones that local governments contracted for when they could not provide them efficiently themselves. This hypothesis was only partly supported by the data we collected. We also hypothesized that intergovernmental service contracting would be less formal than contracting with the private sector, because of the commonality of values. Again, the real picture was more complex.

Discussion of methods and design, data base
The study is based primarily on telephone interviews with local government officials. We also used documents, such as contracts and news stories. The focus is on service contracting rather than joint contracting for capital projects, although many interviewees talked about the latter as well. The interviews are part of a larger project on local level contracting which includes material on contracting with private sector companies and non profits. One of the research questions from the larger project is whether the sector with which the contract occurs, and the structure of that sector, matters, and if so, what difference it makes.

Most of the interviews were carried out in February and early March of 2004. There were 19 telephone interviews, 17 interviewees. Two people were interviewed twice to follow up on specific issues. The interviews ranged from 13 minutes to an hour and ten minutes, with the typical interview lasting about a half an hour. Interviewees were contacted initially by phone or by email, at which time the project was described in some detail. Many of the interviewees prepared material before the phone call, reviewing contracts and drawing up lists themes they wanted to cover and examples they wanted to
discuss. There was also some follow up via email, and several interviewees sent documentary material to show us what they were talking about.

The interviewees were located in Illinois, Iowa, Minnesota, California, and Missouri. We generally followed network connections to find local governments engaged in these interlocal service agreements. The selection was not in any sense random, hence the interviewees should not be considered representative of all local governments. Nevertheless, we did interview a range of people, occupying different positions, including board members, city managers, assistant city managers, attorneys, contracting officers, township managers, and consultants specializing in interlocal agreements. We talked to those providing services and those contracting for those services. By interviewing in different states, we were able to look at the effect of different laws governing or encouraging interlocal agreements and different degrees of pressure from the state to form and utilize intergovernmental service arrangements. We looked at a range of different types of intergovernmental service agreements, including those by a smaller unit of government with a larger one for services and those involving the creation of a new unit of government run by the participating jurisdictions. The city sizes varied from several thousand to about 120,000 population.

After receiving permission from the interviewees, each interview was recorded digitally. Many interviewees requested a copy of the transcribed interviews, for possible correction or additions. We coded the transcripts for themes and concepts, which became the basis of the paper. These results were supplemented and checked against sample contracts, lists of intergovernmental service agreements in Iowa (obtained from an interviewee), and a list of intergovernmental service agreements between counties and between counties and their cities in New Jersey (obtained from the internet), as well as newspaper stories.

The major concepts we coded for include: type of service (such as restaurant inspection, police dispatch, planning and zoning, building inspection, recreation facilities, public works garage); contract provisions (degree of formality, performance measures, duration, renewal or termination clauses); costs and benefits; trends over time, cooperation and trust, and preconditions for success. These were ideas that enabled us to compare intergovernmental with private sector contracting, but they also helped us understand what was happening in the intergovernmental service contracts. Questions about type of service were also addressed by the documents collected, and helped us respond to the question about whether intergovernmental contracts were competing with private sector contracts, or whether they were reserved more for “inherently governmental” functions.

We asked whether there were some functions the interviewees considered to be inherently governmental, but found that most of our interviewees did not view their functions dichotomously, as either inherently governmental or inherently commercial, so instead we examined the particular services that governments were contracting with each other for, and sorted them into groups we labeled ourselves. We did ask however whether any of services that were being contracted with other governmental units could be contracted with the private sector, and if not, why not. We also asked about the degree
of formality of contracts, but found in this case, they viewed formality as dichotomy, where an agreement was formalized with a contract; the absence of a contract was treated as an informal agreement. Consequently to get at the degree of formality we asked about various features of contracts that we associated with the degree of formality, such as duration, assignment of risk, termination procedures, and performance measures. We also asked how contracts differed from each other or whether they were all pretty similar.

Statement of themes

1. Which services are contracted for with other governmental units?
One possible answer to our initial research question is that local governments contract for a different set of responsibilities with the public sector than they do for the private sector, and that these are functions that, if not inherently governmental, are difficult or impossible or inappropriate to contract for with the private sector.

We used three sets of data to find out what services were being contracted to or with other governmental entities, one is a list of Iowa 28 e agreements, (provided by the Institute of Public Affairs at Iowa State), the second is a report of a survey carried out by the New Jersey Association of Counties, and the third is a compilation of examples given by our interviewees, spread across five states, mostly in the midwest. We have deleted from these lists intergovernmental agreements that involve only cooperative purchasing and other non service agreements, but retained overhead items such as shared insurance.

From a list of formal agreements in the State of Iowa, the most common ones and their frequencies are: Police services (32); recreation (12); solid waste commissions and disposal (11); street construction, repair and maintenance, (20); wastewater treatment (6); library services (6); and equipment and labor sharing (15).

A list of shared service agreements between counties in New Jersey and a second list of services shared between counties and their constituent units of government in New Jersey, gives further clues to the areas in which these agreements take place.

County to county
Cumberland-Salem County Medical Examiner
Cumberland-Salem County Health Department
Somerset-Middlesex County Juvenile Detention Facility
Raritan Valley Community College (Somerset/Hunterdon Counties)
Shared Workforce Investment Boards (Somerset/Hunterdon Counties)

County to constituent governments:
Employee education and training
911 & police dispatch – both primary and secondary services
Drug and alcohol testing for county and municipal employees
Joint bidding on construction and demolition projects
Resurfacing of county and municipal roadways
Road maintenance vehicles and equipment
Public works facilities
Engineering services
Gas purchases
Traffic signal maintenance
Clean up and redevelopment of superfund sites
Health and environmental services
General maintenance
Recycling
Land Use and Planning

The survey report added that several counties encourage constituent municipalities to jointly bid on construction and demolition projects causing bidders to discount rates accordingly. Other counties provide employee education and training in computer literacy for both county and municipal employees at no cost to the municipalities. Reportedly, a number of counties share public works equipment and facilities with those municipalities that cannot afford them.

In the present study, our interviewees mentioned the following: police, dispatch, and juvenile detention; water, wastewater, sewer collection and maintenance, landfill, and recycling; public health, emergency response, and hazardous materials; shared equipment, office space, gas tank, salt domes, playgrounds or parks, and garages; sports facilities; departmental overhead functions, such as training, drug and alcohol testing, health insurance, and joint provision of computer software and server; economic development, including land use and zoning; restaurant inspections, building inspections, and animal control; housing partnerships; social services (for example, a program to prevent juveniles from getting involved in illegal activities and a victim treatment center). Interviewees also mentioned a shared bus system.

These three lists can be divided roughly into categories, such as 1) regulatory activities, or quasi regulatory activities, such as restaurant and building inspections, planning and zoning, 2) environmental protection through water and waste water treatment, sanitary collection, landfills, and recycling; 3) public health and safety, including emergency 911 systems, hazardous materials, police, fire and ambulance dispatch, and public health, 4) shared facilities and equipment, including office space and busses; and 5) overhead, such as health insurance, computer training, drug and alcohol testing. Social services could be a 6th category, though these often include non profits, such as hospitals and nurses associations, as well as governmental bodies.

One could make a case for regulatory activities and public health and safety functions as inappropriate for private sector contracting. It is difficult even to imagine a private provider of public health functions, not only because there is little profit to be made, but also because the benefits are truly collective and not individualized. One can easily make a case for regional planning and implementation of that plan through sewer development, as an essentially public function; one can also argue that the protection of the environment is an inherently public goal and function and if left to the private sector the
environment would not be protected. In a sense these are arguments for the protection of the “commons,” and for attention to the long term public good.

When asked directly if some functions were inherently governmental, one interviewee responded,
C: police and fire. I think you can probably make an argument for the other ones, snow removal, street cleaning, you know. And then the other one that obviously you would be hard pressed to farm out to the private sector would be a library. (Callahan, February 19, 2004)
The interviewee segued from “inherently governmental” to “difficult to privatize,” reflecting the thinking of many of the practitioners with whom we spoke.

Another interviewee thought that police dispatch should not be contracted out. Rather than argue that this function was somehow inherently governmental, however, he argued that a private sector company would just not know the community in the same way.

I think when we do an intergovernmental agreement, it is usually in the best interest to keep it within the municipalities, I don’t think we would ever consider outsourcing to a private company dispatching, because, although they may be very good at what they do, I don’t think they would understand municipal issues to the extent that actual municipalities do. So as far as that, I haven’t had any experience with that. And to my knowledge that is not anything that has been considered. (Erb, Mt Prospect, 2/22/04)

Other interviewees thought street cleaning was not inherently governmental, but that snow removal might be because all communities would need to do it at the same time, which would cause problems with contracted provision, again blurring the idea of inherently governmental and difficult to contract for with the private sector.

However, not all the functions listed as those contracted with other governmental units fall into this inherently governmental-hard to contract with the private sector category. Some of them can be and sometimes are provided by the private sector, such as sports facilities and overhead functions like training and insurance. Interviewees justified the use of intergovernmental contracts in these situations, either because there was insufficient profit to rouse the interest of the private sector or because the costs of group provision were substantially lower than those in the private sector. Sharing facilities and equipment was justified on the basis of costs savings fully utilizing specialized equipment that each governmental unit does not use all the time. Again, the argument was that buying such specialized equipment and moving it around between enough distant sites to keep the equipment occupied was not a profitable niche for the private sector. When the private sector cannot provide a service, cooperation among several governmental units can help keep costs down.

Interviewees argued that sharing equipment or facilities is not done if the private sector can do it more cheaply. In those service areas where private sector provision was a possibility, public officials generally turned to intergovernmental service provision only after private provision was considered and rejected.
B: But if it is maintenance equipment, like a street sweeper, we have talked, we haven’t actually gone through and done it yet, but we have talked about owning a street sweeper for five communities to use. The street sweeper would spend one day in each community instead of sitting in the garage for four days, and not being used. You only need to sweep once a week. Ah, however, the private sector, provides sweeping services at least in our area very competitively, [so] we haven’t gone to that [cooperative] route yet.

Le: You are not using private street sweepers right now?

B: I am using private street sweepers as opposed to buying one. I thought it was cheaper to contract out. There is always that.

Le: And you are not thinking about changing that any time soon?

B: No, probably the outsourcing is cheaper than collectively doing it through intergovernmental agreement. But we examine all these different kinds of things. (Barber, February 13, 2004)

Interviewees argued for an intergovernmental contract if the private sector was not interested in serving them because the market was perceived as too small, or if the private sector could not make a profit on the function, leaving it to the public sector. Another reason given was that private provision sometimes led to inadequate levels of service, where the private sector was motivated to provide the least expensive or smallest system and one not concerned with future growth and capacity. Sometimes it was not their own experience with private sector failures that public officials learned from, but the experiences of others, which was distilled into a story with a lesson. The sanitary collection system of St. Louis county became one such cautionary tale. As one interviewee described:

We had a very large area, outside the city of Springfield [Missouri] which we had trunk sewers, and at that time, we had discussions and it was determined that we did not want to see what happened in St Louis county, where there were a lot of private sewer companies, out there providing sewer service. The subdividers or the developers would incorporate and provide for a private sewer company, they build out the subdivision, and then these small sewer companies would kind of have trouble operating, and there wasn’t any long term plan for really maintaining these sewers. In St. Louis county it became a huge problem, and that led to the creation of a metropolitan St Louis sewer district. And then the sewer district had to come along and buy out all these little private sewer companies, basically fix the problem, which was [that] a lot of them were causing pollution. So we decided we have authority under our city charter, under chapter 250 of the statutes to operate sewer systems outside our city limits, ok?

So we said we would be the metropolitan sewer district, and we would provide sewer service, because outside the limits of the city ... we were trying to address a specific concern, which was we did not want a bunch of private sewers out there, districts, and then find out we had the same problem they had in St. Louis. (Springfield, MO, Wright, 02/02/04)
In this case, the solution was an intergovernmental service agreement with surrounding communities.

A long time observer of the intergovernmental service agreements in Iowa argued that the private sector was unlikely to pick up the functions currently performed by IGAs.

Le: ... you didn’t seem to think that the functions performed by IGAs were functions that would go to the private sector, could you maybe expand on that a little bit?
C: typically, in the state of Iowa, they do not, because the functions, the private sector cannot make a profit. One rare exception might be landfills. We have a landfill that is located in Illinois, just across the river near Moline, so the area is privately owned... landfill, and some of the garbage from Iowa goes over into that landfill, and of course they are making money on it, that is an exception. That is one area where it could happen. But when it comes to things like police protection, fire protection, you know street and snow removal, there is not really a way for the private sector in Iowa to say, you know, “oh, I will do that, and I will make a profit.”
Le: even for snow removal? Or, street cleaning maybe? Or garbage collection?
C: In Iowa, it has just not taken off. Because most of the time, the equipment is so specialized, you would buy it and use it very infrequently, it would just sit there. And so we have not seen the private sector in Iowa come forward and say, “Oh, I can make a profit doing that.” It just doesn’t happen. But maybe if they take a risk and try it, but some of this equipment is so expensive, that sometimes it is hard for someone in the private sector to say, well I will...do it that way. We have had a few isolated cases around the state, for example in law enforcement, we have had one case, in the eastern part of the state, where a group came together, and it was kind of a privately owned thing, and they attempted to provide law enforcement, in two smaller towns. And it lasted for a while, but it later dissolved, and they don’t do it any more. The only other area that we occasionally see the private sector get involved in, besides the landfills, and that is garbage collection. A private company will go out and buy the trucks, and hire the personnel and they just go pick up garbage in a number of different towns.
Le: you have seen a couple of instances of that though?
C: yes. There are some instances around the state of Iowa. But if I were going to see a trend, I would see it maybe going in just the opposite, where towns that have private contracts, are now shifting back to either doing it themselves or contracting with a city to do it. I am not sure what the reasons are... I can speculate... when the city does it or they do it on their own, they don’t have to show a profit. You know with the private sector, if you are not going to show a profit, why do it? you are not in the business to lose money.
(Callahan, interview 1 transcribed February 19, 2004)

At LOGIS, a kind of cooperative for software applications for government agencies in the twin cities area of Minneapolis-St. Paul, the interviewee made it explicit, that if there were private sector providers in a competitive market, LOGIS would not provide that function. They were in the business of providing services that the private sector did not, or did not perform as well for their needs. When asked if LOGIS designed web pages, the interviewee responded,
No, there are so many private sector or individuals that do that, that it is easy to acquire that, it may be more expensive if we were to do it, but we are not into the designing of the web page. We host them, we host the servers, we host the firewalls, gosh a lot of stuff we host. We host blocking of inappropriate web pages, all kinds of stuff like that, but we don’t actually do the design part. (Garis, LOGIS, 2/15/04)

When asked about present and future competition from the private sector, the interviewee’s response was that the private sector had in recent years created businesses to do some of what LOGIS was doing, for private sector companies, but it hadn’t taken off as an industry in the way expected, and that the industry as a whole was oriented to the private sector because there was so much more profit to be had there. As a result, these private companies didn’t tailor their products to the relatively small market segment of public sector organizations.

A second interviewee added to this idea of lack of a viable market for the private sector by arguing that smaller cities were more likely to contract with each other or provide the service themselves, while larger cities were more likely to contract out with the private sector.

Actually I would say the larger they are, it seems the more they contract out. I hadn’t really thought about why that is, but yah I guess maybe it is the economics of it... the bigger communities all have franchises for electric and [are] more willing to have a metropolitan sewer district or a private water supply company, that sort of thing. There is probably, part of that is there is certainly more money in the bigger areas, a lot of big cities have had high speed internet access and fiber and all that, because there are a lot of potential customers, so the private sector was willing to invest in them. In smaller communities you are not drawing the attention of those big companies, and so many of those small communities because they want those same services will actually start to provide them on their own. (Butzrollah, 9/30/2003)

The provision of social services was an exception to the rule of checking to see if the private sector could do it more cheaply. Instead, there may have been a combination of agencies, some non profits and some public sector agencies, or a collection of public sector agencies to do something for which there was no market for the private sector. In one case the purpose of the intergovernmental agreement was to fund a program that would keep juveniles out of trouble and out of jail; in a second case the purpose of the program was to train nurses to deal with victims of crime so that evidence would not be destroyed and protocol would be followed to enhance the likelihood of successful prosecution of defendants, while taking good care of the victims.

In short, even in those areas that the private sector could conceivably provide a service, interviewees argued that their corner of the market was too small and unprofitable to attract the attention of business.

2. Trends and limits
The literature suggests that some local governments, especially the midsized ones, may have reached their limits in contracting out with the private sector, and as mentioned above, one interviewee argued many have begun taking some of those functions back in house. Presumably there is a saturation point, where everything that it makes sense to contract for in a given market area is already contracted for or an equilibrium might develop where the rate of new contracts with the private sector equals the rate of taking older functions back in house. What about the intergovernmental agreements, is there a logical cap or limit on them, and if so, have some governments reached saturation or some kind of equilibrium and plateaued, or is the trend toward increased or decreased intergovernmental contracting?

Callahan from Iowa State argued that the trend was still increasing, but not by leaps and bounds.

We are experiencing revenue shortfalls, much like your state is, the state legislature is cutting back considerably on how much money they are willing to kick in to cities and counties and schools ... so as they cut back and put more restrictions on how much money you can raise for things like property taxes, it is making it more and more difficult to provide service, because costs continue to go up but the revenues are getting curtailed. Many cities are in the middle of that situation in Iowa right now, so as a result of that they are turning to other ways to try to get things done. So rather than giving up completely in providing a service, they are looking at the feasibility of joint effort. So at this point I can’t say it is a HUGE rush to do more of these, but I think we are not too far away from the point where you can see quite a bit more interest in this, and you already discussion and movement I mean in the state legislature. Callahan, 2/19/04)

Other interviewees also saw long term financial problems as motivators of potential future intergovernmental agreements.

There may also be, I don’t know if this is just my own opinion, but with the way the tax caps are for some of the school districts and libraries, there may be an opportunity for them to come under the wing of the municipality that may be not under the tax caps, to be able to provide that service. ’Cause under the caps, they may be too restrictive. To continue to function, it may be better to come under the arm of the local government. That is just my thinking (Erb, Mt. Prospect, 2/22/04)

Interviewees saw not just more intergovernmental agreements in the future, but a kind of progression, where a simpler kind of cooperation with clear benefits for everyone opened the way to look for more complex or radical agreements.

I think there maybe a trend to providing more than just dispatch services, there may be an opportunity to combine police or fire services, so that if individual towns have their own police or fire force with layers of management, there may be some opportunity to take that intergovernmental agreement to the next level, and say we will have one combined police department with you know cutting out some of the mid layers, and just being able to I guess manage all those functions with not all the layers. I think that is something that is definitely a possibility.
While contracting with another governmental unit for service may not give the government unit that is contracting for service with a lot of say over implementation, when the intergovernmental agreement creates a new entity run by the cooperating governments, it requires a level of ongoing participation to keep the service going and solve problems. This need for ongoing participation creates some informal limits to how many of these agreements can be entered into. Moreover, the negotiations themselves to set up such intergovernmental entities and work out voting and payment formulas can take time, so that one pretty well needs to be settled before another can be considered. On the other hand, these regular meetings between officials, both elected and appointed, help build a trust level that facilitates other agreements among the same parties.

For example, one interviewee described the length of time it takes to develop consensus.

Jane: well, first of all you have to develop consensus, and the more parties you have to an agreement, the more time it is going to take to make sure you develop that consensus. If you are wanting to have a 28 e agreement with multiple levels of government, local, state, that is going to take more time too. So it can be time consuming to do that. Developing the consensus can also be time consuming. On the one hand, that can be a barrier, on the other hand, it is one of the greatest strengths. (Halliburton, Story, Iowa, February 17, 2004)

One interviewee talked about the time commitment of actually running a joint dispatch center.

We have two groups that meet, we have a management committee that basically runs the center, and that is the police chiefs and fire chiefs for each of the cities. And then one of the city managers sits on that committee and chairs it. And then we have an operating committee, they are the ones that deal with a little more of the procedural questions of the day to day operations. And they met pretty frequently, the operating committee especially met pretty frequently. (Urbandale, February 23, 2004)

A second interviewee talked about the ongoing time commitment, but used similar terms, drawing out the tension between the number of meetings on one hand, but the increased level of trust on the other. This interviewee noted, however, there was a limit to how many meetings any elected official would be willing to attend.

It gets a little long sometimes, every week you have two or three meetings to go to. But it is nice, because you develop a good work relationship. And they develop that sense of trust. Which seems to go from one student group to the next. They have an ex officio member who sits on the city council. That person is appointed by the GSB - president, does not vote, because that person hasn’t been voted in by the electorate by any means, but he sits and can make whatever comments he wishes, and can he can participate, he just can’t vote. And so now they are asking whether one of the city council members, and it will be interesting to see how the council reacts to it because, they are asking whether one of the city council members wants to go to GSB meetings. Well we will see
if the council can put up the time. (laughter). We will have to see if one of the council members is willing to do that. (Lundt, Ames Iowa, February 26, 2004)

One interviewee described in detail this process of building trust and how it worked to make additional agreements possible.

We have the ability to build on these things and develop a [n attitude of] “well let’s solve the problem.” ... everyone said having a program, for example we have a police substation on university property. That is another really good example of cooperation, I mean that is a tremendous example, a really good example. I am told we are the envy of many universities because we have a police substation, and it is all by contract, and one of the big issues was how do you house, I mean what is the legal relationship, and so liability was part of that issue, and we were able to work through the liability question. I think my city manager is very innovative, we have monthly meetings, with between city officials, the university, and we also have a monthly meeting with our twelve officials, the county officials. Now that is three more meetings a month, on top of your schedule, (chuckling) but I think I mean communications are not always perfect, they are not always good, but we-- you know we have learned in terms of how you communicate, if you or I are going to lunch at a meeting, once a week or once a month, we sit there, we break bread, and we are not always going to talk about business, we are talking about families and interests and all that kind of stuff, and that tends to produce a congeniality, that is more that is more conducive, so when I call some of you up, I don’t get a you know “what’s he want or she want,” its “ok, that’s my buddy, my friend so I will talk,” and so I think that our city manager has developed that, and I think it has been pretty successful.

...not to say there is no conflict, because right now Green county is, to give you an example, Green county is out and we are going to vote February 3, on another increase in the law enforcement act. But they didn’t come to the city and they didn’t sit down and say, let’s work out an agreement on how the funds will be used, how it will work, what are the goals and objectives, they just said, here is what we are going to do, take it or leave it. And we will see the consequences. The city is not supporting that law enforcement tax.

(Wright, Springfield Mo, 2/02/04)

3. Public sector and private sector compared
Our initial assumption was that contracting with the public sector would be more informal than contracting with the private sector. The culture should be similar, similar values and goals, and hence there should be less need to force the government providing the service to do so in a way that achieves the goals. Their interests should be the same. If the interests are different, then they probably will not enter into intergovernmental contracts. As one interviewee put it, you don’t want to contract out with neighboring jurisdictions for planning, because there is an inherent conflict of interest.

First, we assumed, and interviewees confirmed, that there would be no formal arms length bidding process; second, we assumed that as a result of consensus based bargaining and ongoing collective management, there would be little reason to include in
the contracts either detailed performance standards or reasons for contract termination. Since there would be little if any competition and bidding process to force the price artificially low, there would be little or no unexpected price increases or service decreases, so that neither of these would have to be anticipated in the language of enforceable contracts to lock in quality and price. If a problem arose, officials from the two governmental units involved would talk over the problem and work it out. We also assumed that government units, because they are not in the business of making profits, would not charge each other above cost, charging either marginal or average costs, or dividing the costs on the basis of usage. (Some interviewees reported that other government units did not charge them for some services at all). The unit contracting for the services should know that it is either getting better services or the same services for less than it would cost to produce in house; hence it should not be inclined to look too closely at levels of performance. In this model, public complaints should be the major form of feedback and accountability, rather than performance measures.

When we asked about informal contracts, we found that nearly all of our interviewees thought of formality as a dichotomy, where informal meant verbal, and formal meant written. Informal contracts were considered generally inappropriate if not illegal, and opened the way for corruption, and hence interviewees were quick to indicate that most if not all their intergovernmental contracts were formal, that is, they were based on a written agreement. Exceptions were sometimes at the beginning of a service, which was later formalized in a contract, or sometimes after a long running contract had lapsed, it continued informally just as it had been. The overall direction was toward more formality, writing a contract for nearly every intergovernmental agreement.

The main purpose of the contract, though was not to lock in price or quality, but to divide up responsibilities, to specify the purposes of the agreement, and to assure participation over the long run. Rather than ease of exit in case of non performance, many of these contracts were designed to be difficult or expensive to get out of, to encourage long term membership. This is especially the case where there is joint spending for a capital item, or a bond that needs to be repaid. One interviewee explained that intergovernmental contracts are usually for longer periods than are contracts with the private sector.

Intergovernmental agreements are usually for very long terms. Usually we do them for ten years. I don’t think the statute allows us to go beyond twenty. But we put a lot of effort into an intergovernmental agreement, because the personalities change, we may get along with the township highway commissioner now, but he may change at the next election, so you want to make sure that your interests are protected in the words of the agreement. The same is true with the mayor, the mayor of Beecher may change and he may not like the township, and he may want to do something different. But if you have got it in writing, then you are guaranteed. So yes, the intergovernmental agreement is like a contract. As far as outsourcing, ah, usually those are more short term. One year, two year deals. Because the prices change, you want to [go with whoever] gives you the best price. Beecher
Once we got across the idea that we were interested in degrees of formality within the contract rather than whether there was or was not a written contract, interviewees were readily able to distinguish between more and less formal contracts.

One interviewee made a distinction in the degree of formality based on the number of parties involved and their sophistication. They [the contracts] are really, again, they are more formal the more organized and complex the other party is. If they are more sophisticated organizations, you have got more complex contracts. If they are fairly simple small organizations or businesses, or not for profits, they tend to be very simple contracts, not off the shelf kind of stuff, so I take a little more creativity in them, but so they are very different. There is so little consistent between the number of contracts that are out there. (Butzrollah, 9/30/03)

Specific intergovernmental agreements can look very different from contracts with the private sector, because they create a new entity that provides the service. The agreement is about the new entity, its decision making structure and its funding and its purposes, rather than about a specific service for a specific price. LOGIS, the Information Technology provider in the Twin Cities area, exemplifies this model.

We really refer to them not so much as contracts as but what we call a joint and cooperative agreement. But it is a contract, I suppose, the way you would look at it. It is not really like a service level agreement or contract, it is a contract in terms of having the city or other entity joint LOGIT as a member organization responsible for the assets and liabilities of the association, so it is almost like they are joining LOGIT as an association member, and that is the way it lays it out in terms of responsibilities for payment and charges and fees, and the governance of the association, it is a kind of contract or again, what we call the joint cooperative agreement, that they sign. It is not like a vendor contract where you sign a contract for a specific application or a specific service,. for example, like, yes I am buying a new financial system and you will provide updates and I am signing a software maintenance agreement, etc. We are just a different animal in that once you are a part of this organization, then [you get] the applications that you [want]; it is more informal, you just say, I would like you to send a letter and say, Ok I am joining and here is my signed joint powers agreement. ... you sign it and then you say, ok, I would like to use LOGIS for the following applications, payroll and utility billing. (Logis/it twin cities 2/15/04)

A few of the agreements were pretty informal. Two were mentioned specifically, one was a drug enforcement team, one was a group of volunteers who helped allocate social service funding. In both cases, the degree of volunteerism was intended to make the program flexible, to enable government units to opt out of funding or staffing, or disagree with specific decisions, not to be bound by other government’s decisions.

Performance measurement was typically not a part of the contract language. In some cases, performance was assumed, because there were guidelines from the state in areas such as clean water, or waste water treatment. In other cases, the quality of service was better than the jurisdictions could provide on their own--as in the case of a joint dispatch center that allowed smaller governments to use more updated and more expensive
equipment and newer routines for selecting units to send to the scene--so performance was not considered an issue.

Le: are there performance measures in the contract?
B: ah, yeah, it depends on what you consider performance measures. Actually the response times on the fire end have probably improved. Because they have the autoaid system, now, where the dispatch center can dispatch different jurisdictions into the same call, without going into different dispatch centers, it all goes into one center. (Beecher, 2/17/04)

One interviewee explained how performance was handled.

Any of the performance measures, anything that is built into the agreement, is again a joint agreement between all the entities, so there is a mutual agreement for what services are going to be provided. What is the time limit, what standards are expected, and internally they would keep track of whether they were meeting those standards. That is not anything that I have seen that is built into the actual intergovernmental agreement, I think it is more so an operational policy within that organization, so that the dispatchers would have to meet certain standards of response time, clarity of dispatch, that kind of thing, but nothing that comes back to being able to void a contract if these standards are not being met. I don’t think there is any of that going on with these contracts. (Erb Mt. Prospect, 2/22/04)

One interviewee noted that coming to agreement among several jurisdictions as to what an appropriate performance measure might be was sometimes difficult, especially in light of the different sizes and expectations of the parties (Halliburton, 2/21/04). Several interviewees indicated that they did not put performance measures into the contracts.

Conclusions
Local governments entered into these intergovernmental contracts for a variety of reasons, including better quality services, more efficient provision of services, lower cost services, access to service the private sector was unable to provide profitably, and solving collective problems collectively. The impetus for the agreements included long term fiscal stress and state encouragement or even mandate. They were generally in the areas commonly thought of as inherently governmental--public safety, public health, regulatory activities-- but when they were considered in areas that could be provided by the private sector, a cheaper private sector alternative was preferred if available.

These intergovernmental agreements were often quite different from contracts with the private sector, even when one locality was contracting for a service with another in the same way that they might contract with a private company, but especially when there were multiple governments involved and a new entity was set up to manage whatever project was afoot. The emphasis was more on coming to consensus on precisely what the entity was to do and how it would be paid for, and by whom, as well as on how the day-to-day issues and the policy issues would be managed. Locking in these difficult to achieve agreements over the years was often an important concern, while the opposite was said to be true of contracts with the private sector, where you didn’t want to get
locked in too long, lest the market change and something else better or cheaper become available. Interviewees in the other part of the project, on contracting with the private sector, noted how carefully they had to monitor the environment, because sometimes the private sector was cheaper and sometimes it was not.

Interviewees expressed little concern about whether costs would rise during the term of the contract or whether or how they could terminate a contract. Several had to look up the clauses in the contracts dealing with such matters, as they didn’t recall them. For the newly created agencies providing services to a number of group members, not only were costs distributed by an agreed on formula or a fee for service basis, but the operating costs were voted on collectively, so no cost increase could be passed without all the participating jurisdictions agreeing to it. Some of the projects and programs were supported in part by grants, which made costs very low with respect to benefits. In other cases, the service provider simply didn’t pass along all the costs entailed with the service because a collective good was being achieved and the providing government wanted to encourage continued membership. When these advantages are combined with the economies of scale and higher utilization rates of specialized equipment, participants in these intergovernmental arrangements generally considered them highly successful, and were actively looking for more such opportunities.

One of the more interesting and important differences between the contracts with the private sector and those with other governmental units was that the trust necessary to achieve the agreements and the frequent contact necessary to implement them built further trust and facilitated additional agreements. Some of the interviewees were becoming more daring in thinking about what might be possible in the way of future collaboration, such as combined police departments between two cities, or an economic development coalition to steer and control expected development around a new airport.

Some of these agreements have been generated from the bottom up, some have come from the top down, but interestingly, they have not been spawned by short term crises. Longer term issues, such as failed septic fields, inflow and infiltration problems, and pollution, tax and spending limits passed at the state level (exacerbated by downturns in the economy), and unregulated growth and urban sprawl have been more important in stimulating intergovernmental service contracting. The time taken to negotiate the more complex agreements requires long term motivation to handle problems unlikely to away by themselves. The projects and agreements often last for years, such as the skating rink in Ames Iowa, or the sewer collection system around Springfield Missouri.

The longer duration, the foundation of trust, the somewhat lesser formality of the contracts, lack of built in performance levels and fixed prices and relative inattention to escape clauses-- is more suggestive of a marriage than a commercial transaction. There is no motivation to lowball to get a contract, so the kinds of problems that occur with the private sector, such as price or scope creep or poor performance levels, generally do not occur. There is no need to show a profit--even savings were typically not documented by the interviewees. When problems arise, they are dealt with and resolved, or ignored because the quality of service is better than it would be without the intergovernmental
agreement, the cost is fair (the division of expenditures was carefully negotiated and closely watched), and sometimes state or federal regulations make cooperation necessary.

It is not that the participating governments are not interested in performance, but that they often get to control the performance levels the same way they control the performance of their own employees. Also, performance levels may be mandated by the state or federal government, or by professional standards. And there is always the backup of citizen complaints if something goes awry.

Intergovernmental service contracts are not a new tool, but they are an expanding one. They represent a kind of optimism about the public sector as well. At the very least, they create efficiencies when equipment, staff, and physical plants are shared, holding down costs and increasing service levels; they fill in for the private sector when a particular service is not likely to be profitable; but most important, they provide a chance to address collective problems collectively, whether those are in public transit, housing, public health, clean water and streams, emergency response, or planning and economic development.

These intergovernmental agreements are expanding not only because of the fiscal constraints that so many local governments are laboring under, but because of years of suburbanization that leave many small communities without the means to deal with the density and fragmentation they have created. The lack of planning creates overcrowded highways, spillovers between towns where gangs in one town kill kids in a neighboring community, and the costs of creating new sanitary treatment plants. These agreements are between jurisdictions that are close enough to share equipment, to use a joint dispatching system and call the car closest to the scene, to build sewer pipes that will direct waste water to a central facility with underused capacity. They help overcome the intense competition between localities to solve some of the problems resulting from urban agglomeration.

28 e refers to the part of the statutes that enables local governments to contract with each other or the private sector for any function that they are authorized to perform themselves. As these agreements have to be registered, it was apparently not difficult to compile a list of all of them over the years.