

*ACCOUNTABILITY OR DISCRETION?
Challenges for Multi-service Nonprofit
Agencies in Performance-Based
Contracting in New York City: A
Preliminary Report*

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January 2009

¹ An earlier version of this paper was presented at the 30th Annual Research Conference of the Association for Public Policy Analysis and Management, Washington, DC, November 6-8, 2008. The authors appreciate the assistance of Annie Balocating and Sarah Gowrie.

Executive Summary

Performance-based contracting has become an increasingly important practice between public sector and nonprofit organizations in local public service delivery. By studying a case of a nonprofit human service agency that receives multiple performance-based contracts from New York City, this paper reports that a simple, focused outcome measure is preferred by nonprofits to multiple outcome indicators that lead to heavy reporting burdens. There is a lack of discretion and flexibility for nonprofits to manage multiple performance-based contracts, and nonprofits are short of the human resources with skills that are required by the new environment. Current fiscal constraints further complicate the process of increasing the requirements for service agencies to adhere to performance-based contracting. There is also an opportunity to aggregate the individual performance measures into overall social trends and goals.

Introduction

Measurement of the effectiveness of contractor performance is an essential element of public management; nowhere is it more important than in the provision of human services in the City of New York. Human services contracts have amounted to between \$2.5 billion and \$3.8 billion annually for the past three years, and they constitute the primary vehicles for delivering public funded human services in the City. During fiscal year 2008, procurements for human services amounted to 15 per cent of the total of \$16.5 billion in City contracts.² See Table 1 for the number and amounts of human services contracts by City department for the last two fiscal years. This pattern of large commitments of public funds for human services contracts is likely to continue with amounts varying annually, depending on the number of new and renewed contracts that are approved, generally for a multi-year period. As one City official put it, "In general government workers are the gatekeepers, determining eligibility for services but services themselves are the province of outside contractors."³

This paper is the second examination we have undertaken of the practice of performance contracting by City government departments with nonprofit providers of these human service programs in New York.⁴ The focus here is on the issues in effectively implementing performance contracting requirements that are accurate and useful measures, feasible for both government departments and nonprofit contracting agencies to manage, and informative to the public about what public programs are accomplishing in the human services area.

The use of performance measures in public contracts with nonprofit service delivery organizations is an increasingly popular practice. Performance measurement can demonstrate the quality of service delivered and ensure accountability by organizations that contract with government. It is important to analyze the contribution of this practice to both public understanding of the impact of services and to the effective functioning of the government-nonprofit system that typifies delivery of human services.

City of New York government managers are continuing to introduce additional performance requirements into their contracts, and the practice is likely to continue to grow. A senior City contracts official confirmed that "the City is doing more performance-based contracting..."⁵ Based on a Baruch College 2007 survey of executives of nonprofit human services agencies, there is acceptance of the importance of measuring performance by human services

² City of New York, Mayor's Office of Contract Services, [Agency Procurement Indicators](#), City of New York, Fiscal Year 2008

³ Official in the New York City Human Resources Administration, email January 21, 2008

⁴ See also Jack Krauskopf, "Performance Measurement in Human Services Contracts: Utilization, Operational Feasibility, and Value in New York City," paper prepared for presentation at the 29th Annual Research Conference of the Association for Public Policy Analysis and Management, Washington, DC, November 8-10, 2007 (also published by [New York Nonprofit Press](#), February 08, www.nynp.biz)

⁵ Official in the Mayor's Office of Contract Services, email January 8, 2008

agencies that contract with City government.⁶ However, the process by which performance contracting is carried out elicits considerable concern on the part of these nonprofit executives, as we will discuss.

In general, greater attention has been given to the government funding department's role in performance measurement and contract management activities than to the concerns of the contracted agencies. Examination of contractors' goals, strategies and perceptions of performance-based contract specifications and management issues would further enhance our understanding of the contracting system and how its design could be improved.

This report is a preliminary examination of the challenges of implementing performance-based contracting in New York City through a case study of a multi-service nonprofit agency that relies on government contracts to provide services. The objectives of the study are to investigate (1) the types of performance indicators that are used in government-nonprofit performance contracts; (2) the process of implementing performance-based contracts; (3) the challenges that arise from managing multiple performance contracts for nonprofit organizations; and (4) the strategies that nonprofit organizations employ to meet these challenges.

The paper also concludes with a discussion of how performance measures might be designed and administered to provide broader information about social trends and the achievement of broad social goals that have been established by the City. We attempt to answer the question as to whether performance contract measures can be aggregated to better inform government, contractors, and citizens about how publicly supported programs contribute to protecting vulnerable families, increasing economic self-sufficiency, and improving the lives of people with disabilities.

A Case Study Approach

A case study approach was employed, given the hypothesis-generating (rather than hypothesis-testing) nature of this study. The case study method provides researchers with vicarious experience of the case, by detailing situation and in-depth examinations of individuals, programs or processes. The spirit of this study is therefore exploratory.

A nonprofit organization located in a low-income area of New York City, which we will call the ABC agency, was selected for case study. ABC was selected because it is a typical example of multi-service nonprofit agencies that receive multiple contracts from City, State, and private funders that include performance provisions. Many of these are also multi-year contracts for which performance standards and related payments do not always fit neatly into a single contract year. ABC provides approximately 13 types of

⁶ "Providing Services; Measuring Performance: Human Services Executives Expect to be Accountable for Contracts, But Seek a Better Process," *New York City Nonprofit Executive Outlook Survey*, Baruch College, School of Public Affairs, Spring 2007, http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/documents/95_NP_Report_2007.pdf

human services, ranging from early education, family childcare to employment assistance, employment assistance and mental health services. With a staff of 500, its annual budget is \$30 million, of which 90% comes from government contracts. ABC currently has 29 contracts that they consider to be performance-based. The agency is operating these City-funded service programs with multiple departments of government. ABC agreed to participate in the research and provided us with an access to their contracting documents.

In October 2008, following earlier discussions with the executive director and other senior staff, we interviewed 6 ABC program managers in charge of these contracts about their experience in implementing a performance-based contracting system. The performance-based contracts these managers are running range from adult education, homeless, HIV-AIDS programs to workforce development. We are planning to interview the finance director and information technology manager to hear their experiences, as well. To get a full picture of issues related to implementing performance-based contracting, we will also interview a number of program managers working for the different city Departments to hear their perspectives.

Preliminary Results

Performance Measures

The first objective of this study is to categorize the types and examine the nature of performance indicators that are used in government-nonprofit performance contracts for human services in New York City. When the focus is placed on performance, accurate assessment and performance measurement become critical. The distinctions among measures of inputs, outputs and outcomes are critical to understand the performance-based contracting. Inputs are used for production to create outputs, and outputs lead to outcomes. Inputs include budget, staff resources, and the like. Measures of outputs would include the number of persons enrolled in the program or the percentage of enrollees finishing the program. Outcomes are described as effects, results, or impacts of the program delivered. Outcome performance measures are generally believed to be preferable in performance contracting (Frederickson and Frederickson 2007). It reflects a shift from a process-oriented mindset to an outcome-oriented one. Yet the concept of outcome is also multidimensional, which can be divided into intermediate outcomes, enabling outcomes, and ultimate outcomes. Intermediate outcomes are partial outcomes that consist of movement or steps toward the ultimate outcome of behavioral change. Enabling outcomes are those that make it possible or more likely to achieve ultimate outcome (Monsma and Soper 2006).

For program managers we interviewed, "performance-based" contracts means that payment is contingent on performance at specified levels. Yet the performance can have different meanings for different contracts. Some focus on outputs and some on outcomes. According to these managers, almost all of

the performance-based contracts are a hybrid combination of line-item inputs, outputs and outcomes. The results of our interviews suggest that there is indeed an increased outcome-orientation. However, program managers generally welcome an emphasis on a simple final outcome measure, rather than numerous, multiple outcomes. By keeping the number of outcome measures small, they can be free from heavy, cumbersome reporting requirements. Respondents also revealed a tendency for the funding agencies to measure quantifiable outcomes rather than quality outcomes. "They want to see the numbers."

This same point is made by some City officials, who would prefer a more focused and limited number of measures. This perspective suggests that measuring too much reduces the value of the performance contracting process: "Allowing a laundry list of performance standards to be written into a contract is too big an invitation to throw a hundred things in and being left with situation where it is hard to tell who is performing well because everyone can claim to be doing well on something. Also having lots of performance standards in contracts gives government in my view too big a role in contracts. Government should not be monitoring every aspect of performance."⁷

At one of contracts ABC administers, there is only one payment point, placing people in housing. However, In addition to this outcome measure, ABC must report and track about 20 other case management services to get the full payment.

However, it may be inevitable that measures will be a mix of outputs, as well as outcomes. As noted by the City official, "That being said, performance based measures must include a combination of outcome measures --- getting people jobs, getting people out of shelter, etc --- a few key process ones that are important."⁸

Although all the program managers generally support performance-based contracting, they have substantial reservations and concerns about the way it is being applied and implemented. Studies suggest that a shift to outcome measurement requires new skills, including participatory planning, negotiated rules, quantitative and qualitative yardsticks, valid and reliable data collection, and a system for feeding information back into strategic planning systems (Frumkin 2001). Good communication between public and nonprofit managers early in the contracting process is essential. It is also important in the implementation stage to revisit the selection of performance measures to ensure that the right outcomes have been selected.

Yet in reality, nonprofits consistently complain that performance standards are prescribed by funding agencies without extensive consultation and communication with service providers. The program managers reported that they have had zero input into the development of performance measures. And they also have no idea how the funding agencies developed the measures. In one instance, the funding agency did survey the contractors about their

⁷ Official in the New York City Human Resources Administration, *op. cit.*

⁸ *Ibid.*

opinion on performance measures, but there was no follow-up after the survey. Those nonprofit agencies have been in the field for many years and gained a lot of hands-on experience in the delivery of services. They strongly believed that their ideas would be crucial in the designing of sound performance measures. In other instances, when issuing an RFP, The City has specified that the performance payments will be decided after the contract is let. Thus, nonprofit contractors do not even know the terms on which they will be paid if they are awarded the contract.

Challenges and Strategies

It is our objective to identify the challenges that arise from managing multiple performance contracts for nonprofit organizations and to investigate the strategies that nonprofit organizations employ to meet these challenges. We dig deeper into the operational challenges facing the contracted nonprofit agencies.

The first challenge is that nonprofits are burdened by heavy and multiple reporting requirements due to the complexity and number of performance measures. Each program funder is generally setting up their own computer system to track and monitor performance indicators that they believe important. Therefore, the reporting requirements are not consistent across different programs. The contracted agencies must develop separate response capabilities for each program area for which they contract, and their staff members have to input large amounts of data. The combination of the different kinds of requirements increases the administrative burden on agencies, especially those with multiple city contracts. The funding agencies do not provide adequate technical support and training to the contracting agencies to guide their reporting. Often contractors are not trained on anything other than how to input data. Most line staff members are learning by doing. The words and phrases we heard frequently from our interviews are “burned out” and “stressful.” With these fragmented systems, contractors are not able to extract reports on tracking their own organizational performance.

The second challenge is the lack of discretion and flexibility to manage the multiple performance-based contracts. There is clearly greater financial risk for contractors under performance-based contracts. With a few exceptions, most performance-based contracts would not allow the contractors to compensate for their underperformance on one milestone by utilizing gains from over-performance on another. Such a practice is also not available in multi-year contracts, which are typical of New York City human services contracting. For example, the executive director of a different nonprofit organization noted that he could not transfer cost savings from efficient provision of a service to pay for a penalty assessed for serving fewer people: “In general, I support performance contracting but resent the inflexibility of the City’s approach.”⁹

⁹ Executive director of a nonprofit human services agency, email February 20, 2008

The Executive Director of ABC reported a similar challenge. They can usually only break even or lose against their initial line item budget. If there is any surplus in funds over expenses (because the full budget hasn't been fully spent), generally it has to be used in that year on that program. Because of timing, utilizing all funds is difficult, unless they are only used for staff bonuses. Although a few multi-year contracts allow surplus to be used during the life of the contract, these are the exceptions and not the rule. By contrast, for some employment contracts, for-profit contractors are allowed to make a profit or retain a surplus, while nonprofits are not allowed to retain surpluses. Another example of inflexibility is that a contractor cannot get paid for more than the contracted number of units of service. As an example, if a contract calls for prevention of 100 evictions and yet the contractor prevents 110, there is no extra payment.

On the one hand, performance-based contracts can demonstrate the quality of service delivered and ensure accountability by organizations that contract with government. On the other hand, nonprofit service providers that receive government contracts worry about losing the autonomy and discretion needed to effectively manage their resources for survival. Scholars studying nonprofit and voluntary organizations have warned that these organizations' increasing dependence upon government funding may be weakening the independence and vitality of the sector (Smith and Lipsky 1993; Chambre 2001; Gronbjerg 2001; Alexander, Nank and Stivers 1999) and that an eventual consequence of "privatization" and government "reinvention" may be the inadvertent transformation of the nonprofit sector into an arm of the state. The nonprofit sector runs the risk of "mission creep," a term describing the gradual alteration of a nonprofit organization's original mission to meet changing state priorities and keep government contract dollars flowing (Kennedy and Bielefeld 2006).

The third challenge is about human resources management. All the program managers we interviewed were trained as social workers. However, they shared the feeling that they are not social workers any more but "managers." Under the new environment of performance-based contracting, they must self develop into effective managers of the reporting process. They also expressed frustration at higher turnover among their staff. Those junior staff members are mostly recent college graduates with good intentions for serving disadvantaged clients. Yet the intensity of work loads to meet the requirements of performance-based contracting is stressful and demanding. Staff are also required to develop skill sets, such as budgeting, data analysis, data tracking, program evaluation, and other quantitative skills that are not typical for social workers. According to our respondents, only those who are quantitatively oriented and ready to do multi-tasking can handle the job.

To deal with these challenges, nonprofits become more "business-like." They are more proactive in responding to requests for proposals. They will weigh very carefully the financial implications of any performance-based contracts for their organizations. ABC might in the past have entered into a

contract that had an unattainable performance measure, hoping that they could meet other measures. Now, if they don't believe that they can meet goals that appear unrealistic, they prefer not to take the contract. Once they do take a contract, an internal mechanism is usually needed to constantly monitor the progress of programs on a weekly or monthly basis.

Conditions in New York

It is also important to take local conditions and other related actions of government into account in assessing the environment in which performance contracting is occurring. Some of these conditions may be unique to New York City at this time, but others are common issues that can affect the government-contractor relationship in any setting in which human services are provided by nonprofit organizations utilizing public funds.

The current budget climate at both City and State levels has become the central point of concern for human services organizations, and some reduction have already affected programs. The City budget, which began July 1, 2008, included significant reductions in several human services programs, particularly for the elderly and for other community-based services. State reductions have also already been implemented, and the Governor and Mayor of New York, as well as fiscal oversight and watchdog agencies, have announced large projected deficits in the current New York State fiscal year and in the years to follow. In 2008, ABC was informed well into its contract period that it would be cut by 6 percent retroactive to the beginning of the calendar year for several of its youth services programs. While cycles of growth and decline in government budgets are not unusual, the severity of the current shortfalls certainly means that human services agencies will be managing with substantially less public support than in recent years. Since most human services providers are funded by a combination of city, state, and federal funds, their capacity to adapt to new performance reporting and other requirements while dealing with these financial constraints is uncertain.

This period of fiscal constraint occurs as several City agencies are developing new approaches to providing and supporting major programs that involve nonprofit contractor service delivery. The City Department for the Aging has initiated a "modernizing" policy that involves redesigned services, service delivery areas, and performance measures for case management, home-delivered meals, and senior citizen centers. Although an RFP that would have made substantial changes in senior centers was withdrawn after provider protests, there are still major changes for contractors in how and where they provide services.

More than a year ago, the Department of Homeless Services reorganized its outreach contracts to find, identify, and serve homeless people in each of New York's five boroughs. A single prime contractor was selected for each borough, and that contractor is responsible for managing a network of other nonprofit agencies and accounting to the City for defined performance on the

part of all agencies in the network in locating homeless people and getting them into shelter or permanent.

Currently, the City's child welfare system is undergoing significant changes, although a request for proposals that would redefine the contracting system for foster care, family preventive services, and the City's entire approach to serving at-risk children and their families has been delayed. Like most other City human services contracts, those which will be issued by the Administration for Children's Services for child welfare will be for multiple years, most likely for three years, renewable for additional periods, and thus will determine the nature of child welfare services for the foreseeable future.

The point of these examples is not to question the value of the changes contained in new programmatic provisions. New thinking is to be encouraged, given the large cost and substantive challenges that New York City undertakes in provision of human services. The issue to be raised is how best to implement these changes in an environment of reduced funding and greater attention to performance measurement.

Other distractions that can undermine the laudable goals of performance contracting are endemic to the contracting process itself. Contracts that are registered late in the City system have bedeviled nonprofit contractors for years because they prevent cash flow, cause agencies to borrow, and delay programs. Based on the most recent report of the Mayor's Office of Contract Services, which tracks carefully late contracts by each City department, the situation is generally not improving. The report notes that "agency performance on this indicator declined significantly during Fiscal 2008," despite efforts by City departments to improve procedures.¹⁰

Reporting and documentation requirements also add burdens to the process. Because each City department—and sometimes separate programs within the same departments—are developing their own measures and the ways in which they must be reported, contracting agencies must meet many diverse requirements. Different data systems are utilized, and as our case study respondents indicated, social workers spend inordinate time doing management reporting on different systems. Two City departments might each have its own separate documentation requirements for similar indicators of performance, adding to the administrative time and effort of contractors.¹¹ In the case of ABC, no technical assistance on systems implementation has been provided by the City, only maintenance for the required tracking and reporting systems.

Part of the reason that City departments require what contractors consider to be excessive documentation is that these departments are subject to audit and programmatic scrutiny by City and State Comptrollers, various committees of the Legislature and City Council, federal agencies, and other oversight entities. The adequacy of documentation for a contractor's services

¹⁰ City of New York, Mayor's Office of Contract Services, Agency Procurement Indicators, City of New York, Fiscal Year 2008

¹¹ Krauskopf, op. cit.

is often a topic in such audits. For example, a City Comptroller audit of the Human Resources Administration program that assists welfare recipients with mental and physical disabilities to become employable found that "HRA has not established a formal program monitoring and evaluation process with regard to verification of contractor-submitted data, thereby increasing the risk that HRA will not be aware of contractors' noncompliance with provisions of their contracts." The report goes on to call for a "formal process for performing verifications of contractor-submitted data on a regular basis."¹² The point here is not to assess the merits or adequacy of HRA contract monitoring, but rather to note the pressure for increased documentation that comes from an oversight agency.

Whether City agencies could better simplify and consolidate their reporting and documentation processes is certainly a question worth asking. So too is an effort to get the oversight agencies to understand the nature of the process that they are, in part, responsible for determining and to see whether more reasonable standards could be agreed upon. The ultimate goal should be an accurate and feasible performance contract system.

Social Trends and Social Goals

Finally, it is important to consider whether the specific measures that are used for particular service contracts can be aggregated in any way to provide information about progress toward reaching public goals for human services. The City has posited "themes" for its social services programs, as follows:

"Fostering health and well-being - promoting self-sufficiency and independence - protecting children - supporting families."¹³

The City reports 123 indicators, some from direct operations of City departments and some derived from the work of nonprofit contractors, although they are not identified as such. It is very difficult to translate from the specific measures such as timely child abuse investigations, meals served in senior citizen centers, child care center capacity that is filled, families placed from homeless shelters into permanent housing, and the like into the broad goals stated above. And clearly, there are factors beyond the control of public policy and programs which affect these broad measures of social well-being. The state of the economy, neighborhood conditions, and many other external issues affect whether progress is being made.

Nevertheless, it is worth asking whether, in designing performance measures, the aggregation of the individual measures could be done in such a way as to inform policymakers and the public about what is being

¹² City of New York, Office of the Comptroller, Bureau of Management Audit, "Audit Report on the Oversight of the WeCARE Program Contractors by the Human Resources Administration," MG08-083A, June 30, 2008, Audit Report in Brief, http://comptroller.nyc.gov/bureaus/audit/07-03-08_MG08-083A.shtm

¹³ City of New York, Mayor's Office of Operations, [Citywide Performance Reporting](http://www.nyc.gov/html/ops/cpr/html/themes/themes.shtml), Social Services, 2008 (<http://www.nyc.gov/html/ops/cpr/html/themes/themes.shtml>)

accomplished toward social betterment, in addition to the current use of these measures for assessing program and contractor performance and accountability. Perhaps, the kind of consultative process suggested earlier by our case study respondents would lead to a fruitful dialog between City officials and nonprofit organization staff about how to achieve and measure mutual goals.

The City is working on a redefinition of the measures of poverty to take into account the value of housing, food assistance, child care, and other services.¹⁴ While this work addresses the identification of appropriate measures of resources and costs and does not utilize performance indicators as such, it does demonstrate the City's interest in understanding broad measures of well-being. Perhaps, future attention could be devoted to how program performance also affects overall well-being.

Overall, the application of performance measures and performance-based contracts is well-established between New York City departments and the nonprofit service providers. This paper has noted areas of concern, especially from the standpoint of agencies which provide services through multiple contracts. These problems should be addressed in order to continue and expand the accountability and performance benefits that are possible with the City's contracting process. Attention to these reporting, administrative, measurement, risk, and human resources issues should be a priority for both City government and the nonprofit contract agencies which are relied upon to provide vital human services in New York.

¹⁴ Center for Economic Opportunity, *The CEO Poverty Measure, A Working Paper* by the New York City Center for Economic Opportunity, August 2008

Table 1. New York City Human Services Contracts

Agency	Fiscal 2008		Fiscal 2007	
	Count	Value	Count	Value
Admin for Children's Services	98	\$220,697,276	340	\$2,221,373,768
Criminal Justice Coordinator	51	\$165,334,953	N/A	N/A
Dept For The Aging	613	\$138,773,485	649	\$172,416,209
Dept of Homeless Services	73	\$226,147,702	87	\$556,386,540
Dept of Juvenile Justice	22	\$36,336,518	11	\$17,187,203
Dept Of Correction	14	\$7,618,012	6	\$4,608,000
Dept Of Health & Mental Hygiene	361	\$720,018,522	435	\$253,619,149
Dept of Public Records	65	\$1,706,892	115	\$1,736,546
Dept of Small Business Services	49	\$33,945,320	38	\$34,785,386
Dept of Youth & Community Dev	1,654	\$374,771,661	2,123	\$195,490,506
Fire Dept of New York	1	\$750,000	0	\$0
Dept of Housing Preservation & Dev	113	\$14,675,183	96	\$10,344,057
Human Resources Administration	214	\$613,000,095	162	\$375,959,226
Dept of Probation	1	\$275,000	3	\$5,094,895
Other agencies, small amounts	*	*	*	*
TOTAL	3,333	\$2,554,190,228	4,076	\$3,849,840,630

Source: Mayor's Office of Contract Services, *Agency Procurement Indicators*, City of New York, Fiscal Year 2008, Appendix D-4 (as modified)

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