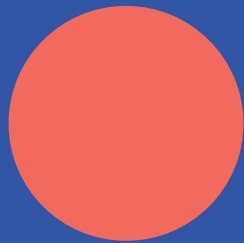
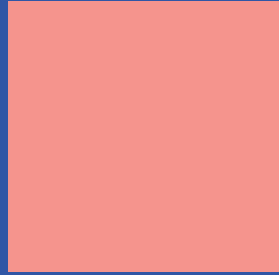




# **Guide to Performance-Based Contracting For Human Services Contracts**

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To accompany  
Civic Service Design Tools + Tactics  
and the Guide to Collaborative Communication  
with Human Services Providers



# Guide to Performance-Based Contracting for Human Services Contracts

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An Agency User Guide developed by the  
Nonprofit Resiliency Committee (NRC)

*To accompany Civic Service Design Tools + Tactics  
and the Guide to Collaborative Communication  
with Human Services Providers*



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## Background

This Guide to Performance-Based Contracting For Human Services Contracts (“Performance-Based Guide”) was developed by the Nonprofit Resiliency Committee (NRC), a partnership between the City of New York and the health and human services sector.

Mayor Bill de Blasio launched the NRC on September 28, 2016 to offer opportunities for collaboration and to expand lines of communication between the City of New York (“City”) and nonprofit human services sector.

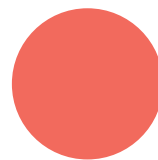
The NRC is charged with identifying, designing, and launching solutions to support the sector in the areas of streamlining administrative processes, expanding participation with stakeholders in program service design, and building organizational infrastructure.

Visit [www.nyc.gov/nrc](http://www.nyc.gov/nrc) to learn more about the NRC and the policy initiatives it has led.



# Overview





The Performance-Based Guide offers a roadmap for City agencies to determine whether programs or services could be most effectively designed through a performance-based contract.

Performance-based contracts have a myriad of benefits for nonprofit providers and City agencies, such as budgeting flexibility and alignment with intended outcomes, but also carry risks. This guide outlines a framework for agencies to make a benefit-risk analysis to inform their decisions about contract structure. If a City agency chooses to advance with a performance-based contract, this guide highlights design considerations, such as establishing performance deliverables, rates, contract terms, data reporting, and auditing criteria.

Section 1 of this guide describes the key principles that underscore all performance-based contracts. Sections 2, 3, and 4 explain the technical aspects of creating an effective performance-based contract.

Although this guide focuses on human services contracts awarded through Requests for Proposals (RFPs) – which is the City’s primary tool for presenting the design of a program service model to potential providers and soliciting competitive proposals – many of the principles also apply to contracts resulting from other types of procurement methods.



## Definitions

**Performance-based contract:** Contract payments are based on the achievement of mutually agreed upon performance goals, such as outcomes, outputs, and performance standards.


**Cost-based contract:** Contract payments are based on reimbursement of expenses associated with the labor and materials necessary to perform the contract obligations.

**Hybrid contract:** A portion of contract payments are cost-based and the remainder are performance-based. For example, the provider is reimbursed for some of the contract value based on expenditure of costs (e.g., labor and materials) while the remaining contract value is paid to the provider based on meeting mutually agreed upon performance goals.

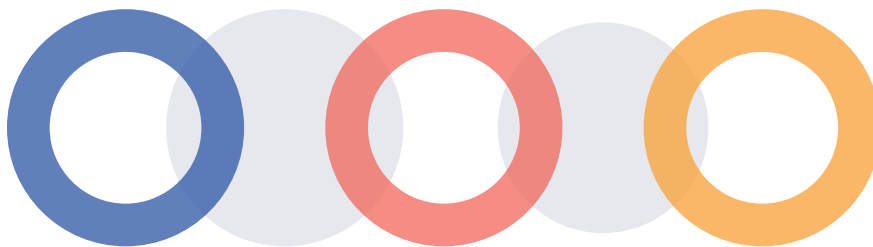
**Conflated contract:** Contract payments that are based on the achievement of performance goals are also subject to contractual provisions found in cost-based contracts, such as budget modification requirements and/or recoupment of overspending in budget categories.

**Performance-based deliverable:** The deliverable is the contract milestone the provider must meet to receive payment under a performance-based contract.

**Reporting requirement:** A contract may require the reporting of information that is not contingent upon payment.



# Collaborative Contracting Toolkit



The Performance-Based Guide is the third book in a series that has been collaboratively designed with human services providers. You can find the other guidebooks – **NYC Civic Service Design Tools + Tactics** (“Tools + Tactics”) and **Guide to Collaborative Communication with Human Services Providers** (“Collaborative Communication Guide”) – on the NRC website. The Performance-Based Guide applies the recommendations made in the first two guides to structure an effective performance-based contract.

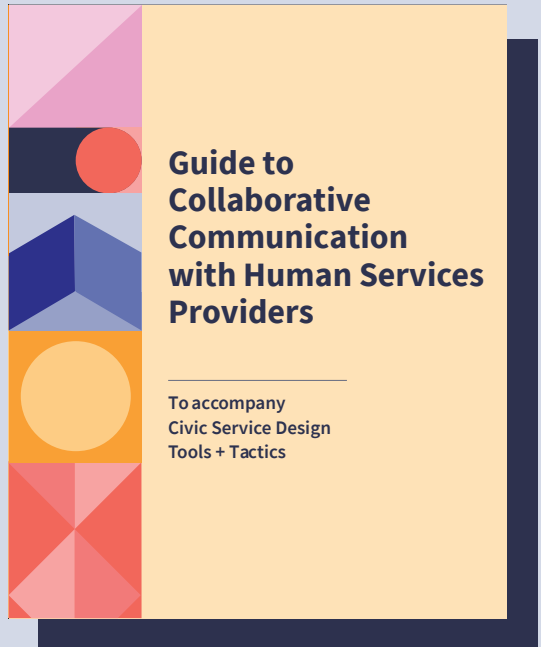
## NYC Civic Service Design Tools + Tactics

As defined by Tools + Tactics, “service design” refers to the practice of creating, better understanding, and improving upon programs at any stage. “Civic service design” means applying the tools and methods of service design to government-run or funded programs. The discipline of civic service design supports development of solutions that are rooted in insights about the holistic experiences of those affected by public services and considers how people, processes, communications, and technology are part of the solution. The goal of Tools + Tactics is to provide specific, tangible tools of the trade, tailored to complement and support the expertise of the people who develop and deliver New York City programs. Crucial aspects of program design in a performance-based contract include defining the outcomes a provider is responsible for, establishing the deliverables to reach those outcomes, identifying the metrics that will be used to measure the provider’s performance, and specifying how the provider will be paid for its services.

## **Guide to Collaborative Communication with Human Services Providers**

The Collaborative Communication Guide identifies when and how City agencies can engage providers to gather essential information before, and at certain points after, the issuance of the concept paper and RFP. The Collaborative Communication Guide outlines tools, such as requests for information (RFIs), pre-solicitation conferences, and one-on-one focus groups, that agencies can use to gather feedback from providers on what the community needs and how programs are currently administered.

By applying collaborative communication principles to the performance-based contracting process, City agencies can gain insight from providers that offer existing programs to similar populations in similar settings to establish rates and to develop deliverables that are measurable, data-driven, align with the realities of running the programs, and can demonstrate success.





# Principles

The following principles are critical to establishing an effective performance-based contract. This section explains how agencies can apply these principles to decide whether to use a performance-based contract, then develop an RFP and draft a contract.

- 1 Collaboration
- 2 Reimbursement Tied to Performance
- 3 Compliance with Underlying Funding Requirements
- 4 Operational Flexibility
- 5 Opportunity for Risk and Reward
- 6 Clarity and Transparency

# 1 Collaboration



Collaboration can be most robust when there is not yet an active solicitation in circulation. The City agency can facilitate conversations with stakeholders to inform program design through a variety of methods described in the Collaborative Communication Guide referenced earlier in the Performance-Based Guide. In addition, it is critical to the success of a performance-based RFP that the contracting agency engage with oversight agencies and intra-agency teams (e.g., program, procurement, legal, and fiscal) at the front end and throughout the process of RFP development.



## AGENCY PERSPECTIVE

“ From early on, the Mayor’s Office of Criminal Justice (MOCJ) committed to including the perspectives of justice-involved individuals and related service providers to ensure a meaningful program was established. MOCJ held focus groups with both nonprofit providers and justice-involved individuals to gain knowledge about what components needed to be included in the development of the program. MOCJ also included the Mayor’s Office of Operations early on in the planning phase for project management, so that all of the feedback received would be properly captured and integrated. That iterative process allowed MOCJ to build a program that leveraged the expertise of nonprofit providers and highlighted the importance of partnership across providers and City agencies. ”

— *NYC Mayor’s Office of Criminal Justice*

## PROVIDER PERSPECTIVE

“ MOCJ has provided significant opportunities for service providers and criminal justice stakeholders to share their feedback about what program components will be needed and how services can best be implemented. We at Fortune feel that we are engaged in a truly collaborative process with the shared goals of effective program design and commitment to design of a reimbursement process where effective service providers will be fully funded for the cost of the services. ”

— *The Fortune Society*

## 2 Reimbursement Tied to Performance

The City and providers should work together to develop a payment structure that ties the funding amount associated with the performance goals to the actual cost of achieving those goals. This can be accomplished by engaging providers to identify cost data relevant to the services being provided.

The deliverables should be based upon verifiable, evidence-based data, such as past performance and field research providing similar services to a comparable population under comparable circumstances, and the RFP should identify the data sources that informed the deliverables.

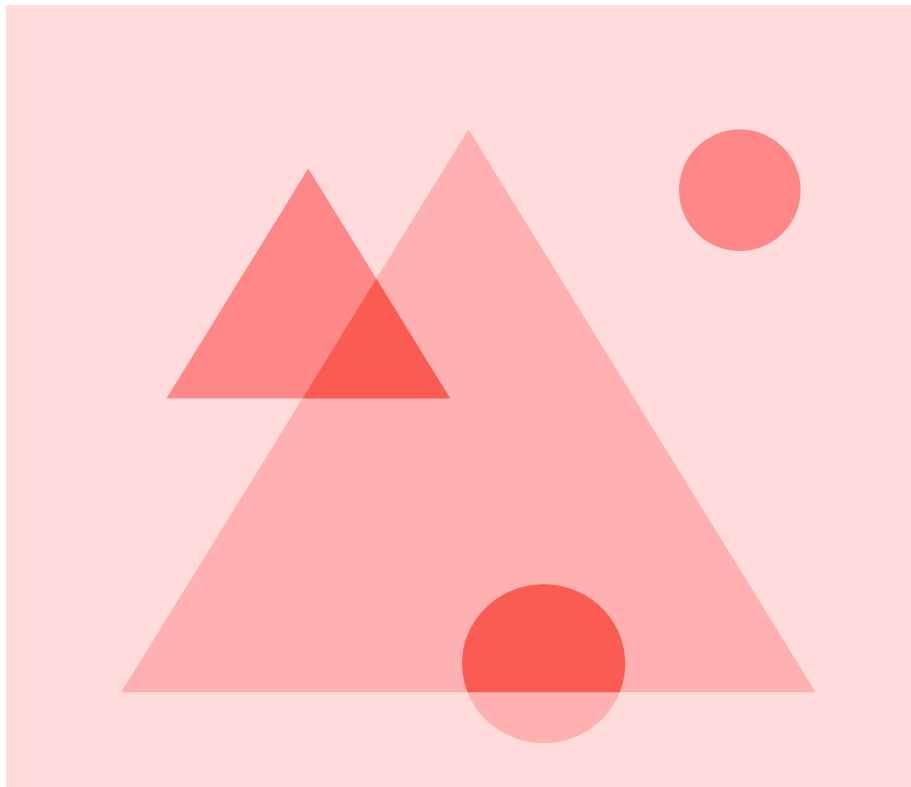
### AGENCY PERSPECTIVE

## Partnering with Community Based Organizations

“Housing Preservation and Development (HPD) has worked to refresh our relationship with our provider community in line with our efforts to strengthen the agency’s mission to provide affordable and sustainable housing for every New Yorker. Through the use of the performance-based contract model, HPD hopes to further our relationship building as we partner with community based organizations (CBOs) to gain greater awareness of, and sensitivity to, the issues that swirl around affordability. The performance model encourages engagement with our vendor community as stakeholders in seeking positive outcomes for our outreach work. Our deepening relationship with our CBOs also helps in further identifying the unique indicators that drive the complexities of change across the landscape of New York City’s neighborhoods.”

— *NYC Housing Preservation and Development*

### 3 Compliance with Underlying Funding Requirements



If a human services agreement is funded by a state or federal grant or cooperative agreement, a private funding source, or if the provider is a subrecipient of a non-City funding source, an agency should ensure that the proposed payment structure complies with the grant program requirements. For example, if the funding source requires the auditing of expenses, a performance-based contract would not be appropriate unless there is express authorization from the underlying funding source.

## 4 Operational Flexibility

The performance-based contract model increases flexibility in operations while reducing the need for budget modifications. Greater flexibility is possible because payment is linked directly to the outcomes and services provided, rather than specific line-item spending. Providers can concentrate on how to best achieve the required outcomes, rather than on how to spend specific line items. Providers are thereby incentivized to increase efficiencies and divert resources to more broadly strengthen their services and operations.

### What are “efficiencies”?

Through performance-based contracts, providers have the potential to meet performance deliverables while also saving costs and may use those funds to enhance mission-related services. Nonprofit organizations do not realize a profit when they save costs, as a for-profit business does, because nonprofit organizations are prohibited by law from realizing a financial gain from their activities. Instead, savings are considered “efficiencies” that will be put back into programs or the organization’s infrastructure. Efficiencies can be used for:

1. **Program enhancements**, such as adding an art class at a senior center or funding the analysis of programmatic outcomes to guide improvements to services
2. **Capital needs**, including making building upgrades or investing in new technology
3. **Organizational infrastructure**, such as strategic planning and staff training

The goals of a performance-based contract are to deliver high quality services that result in the intended outcomes; when providers are able to meet these goals while also finding efficiencies, the performance-based model creates even stronger organizations and better services.

Performance-based contracting can facilitate the City's goals to realize programmatic outcomes, increase performance accountability, and strengthen mechanisms for collecting data to measure performance over multiple years.

Cost-based and hybrid contract models promote easy budgeting of fixed costs and start-up costs. Hybrid contracts that use line-item budgets in the first year of a new program can generate data on the cost of running the program, upon which the provider and City can base future performance-based payment rates.

## **5 Opportunity for Risk and Reward**

Performance-based contracts should offer the provider the opportunity for risk and reward. The provider's failure to achieve performance objectives can result in recoupment of less than the full contract amount, but meeting the performance targets more efficiently should result in the opportunity to deepen the provider's services and infrastructure through the reinvestment of efficiencies.

## **6 Clarity and Transparency**

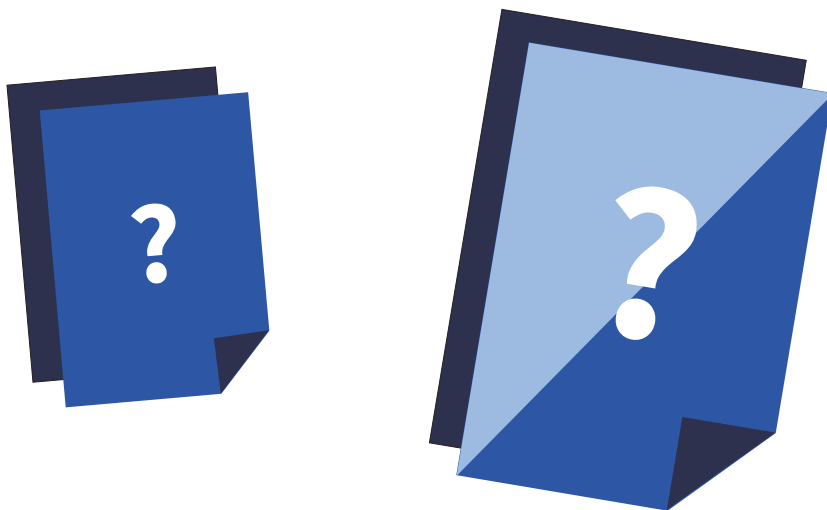
Transparency in a contract's payment structure and rate development enables providers to manage their operations, such as cash flow, payrolls, and staffing, which is vital for the stability of the organization and the contracted programs. The RFP should outline the payment structure with specificity, pursuant to Section 4 of this guide, or if open to negotiation, should state this option clearly in the RFP. The City agency can evaluate the payment proposals, issue a conditional award, and agree to the final payment structure with the selected provider during the contract negotiation phase.

If the contract is grant-funded, the RFP should identify the source of the grant funds. If that source is through federal funding, the RFP should state whether the agreement is a subrecipient agreement. The RFP should also state any limitations the funding source imposes on the reimbursement structure.

**2**

# **Assessing Whether to Use a Performance- Based Contract**

Before issuing a new RFP for an existing or new program, agencies have the opportunity to determine whether to use a performance-based contract. This section highlights key considerations to guide agencies in making this decision, followed by a risk assessment of each contract structure.



## Considerations

The City agency should consider a number of factors when assessing whether to use a performance-based contract, including, but not limited to the following:

- **Do requirements of a federal or state funding source restrict performance-based contracting?** The nature of funding may dictate the need for a cost-reimbursement model if a performance-based contract would violate the grantor's requirements.
- **Can relatively objective, observable, and measurable outcomes be achieved during the term of the contract?** The City and provider should analyze past outcomes, field research, and provider input to determine which outcomes can and should be measured. Prior experience can inform the development of reasonable performance targets.
- **Will basing payment on achievement of deliverables enhance services?** Of primary consideration is how a performance-based payment model affects the quality of services and the intended recipients of those services.
- **Does the program include priority goals that are not amenable to quantitative measurement?** A performance-based structure can drive performance toward the measurable outcomes that have funding attached and thereby de-prioritize goals that providers would not be paid for achieving.

A performance-based contract may be appropriate when the contracting parties agree on deliverables and when there is prior experience as to what performance targets might be reasonable. However, a newly funded initiative may not have the historical data to support a performance-based contract. Instead, City agencies may consider beginning the contract with start-up deliverables that



are specifically related to startup activities and achievements. Alternatively, City agencies may consider a hybrid model in which the contract starts as cost-based to determine outcomes and then shifts to performance-based in subsequent years, thus giving providers and agencies the opportunity to collect data during the first year or two to inform the negotiation of performance deliverables in a multiyear contract or at time of renewal. When this is the intent, the City should state its anticipated goal in the RFP and involve providers in the development of the performance outcomes. Hybrid contracts may also be appropriate when certain fixed costs are best treated as reimbursable expenses while some portion of the contract is better suited for pure performance-based goal setting.



### Creaming

**Creaming occurs when providers select clients who are more likely to achieve a given outcome, as opposed to clients who most need the services.**

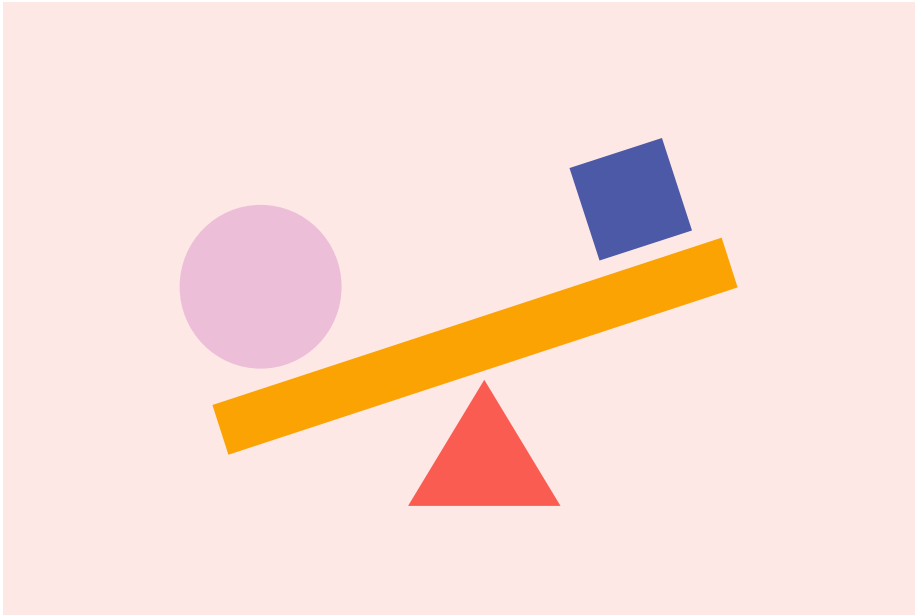
This may be more likely to occur under performance-based contracts because of the increased need to meet outcomes that are tied to payment.

Contracts should not be performance-based if the City and providers believe that the contract will have the unintended consequence of not serving clients who need the services the most.

One strategy to avoid creaming is to create a tiered outcomes and payment structure that allocates a higher rate for achieving outcomes with more vulnerable populations to account for the greater risk the provider incurs. Another strategy is to use a front-end client risk assessment tool to document whether providers are reaching the target high-needs population, e.g., Tests of Adult Basic Education (TABE) to measure numeracy and literacy skills.

## Risk Assessment

Risk is inherent in all types of payment structures. This section outlines those risks to help providers and City agencies decide whether performance-based contracting is appropriate and implement effective risk mitigation measures.



**Performance-based contracts:** Performance-based contracts require payment upon achievement of performance deliverables. Providers risk non- or partial- payment if they fail to meet deliverables and outcomes despite incurring expenses. In addition, providers may incur indirect costs, such as those associated with tracking deliverables and collecting data, which are not separately reimbursable under the contract.

Performance-based contracts require City agencies to shift the focus of the audit staff from purely financial considerations to program outcomes. Additionally, agencies may have to allocate resources to providers (especially small nonprofits) that need technical assistance to comply with a performance-based contract.

**Cost-based contracts:** Cost-based payment structures may lock providers into certain categories of spending that restrict the flexibility to change delivery of a program that does not work as originally planned, and thus necessitate budget modifications that may increase administrative burden. To reduce this burden, the City now offers automated budget modifications that allow providers to modify up to 10% of a sub-budget value using an automated review and approval process.

Whereas tracking deliverables is incorporated directly into the performance-based contract structure, cost-based contracts lack this built-in mechanism to hold providers accountable for achieving desired outcomes. Instead, the City agency must rely on such mechanisms as corrective action plans, contract discontinuation, and contract non-renewal if providers have not met their performance goals. This heightens the risk that the City agency may spend funds without fully achieving its objectives.

**Hybrid contracts:** Hybrid contracts apply performance-based and cost-based payments to different terms of the contract. Therefore, the provider is paid based upon achieving deliverables under some provisions and according to a line-item budget for other provisions. Providers and City agencies face the same types of risks, but also the same types of protections from risks, as offered by the cost-based and performance-based payment models. Clearly drafting a hybrid contract to define which portions are cost-based and which are performance-based avoids the unintended result of creating a conflated contract with its myriad risks and problems, as described below.

**Conflated contracts:** Different from hybrid contracts in both structure and results, conflated contracts tie line item obligations to performance-based outcomes, which has the effect of mandating that providers realize specific outcomes and deliverables without giving them the spending flexibility as to how to approach those goals. Conflated contracts are not recommended because they create substantial risks to both the City and provider while not delivering the benefits of the three other contractual structures.

Providers also face both fiscal and programmatic audits and the possibility that the City may seek recoupment of funds even when deliverables are met. Providers may have to make unfunded investments in infrastructure costs for fiscal and quality improvement/quality assurance (QI/QA). For City agencies, conflated contracts require extensive and costly monitoring by program, fiscal, and audit staff.



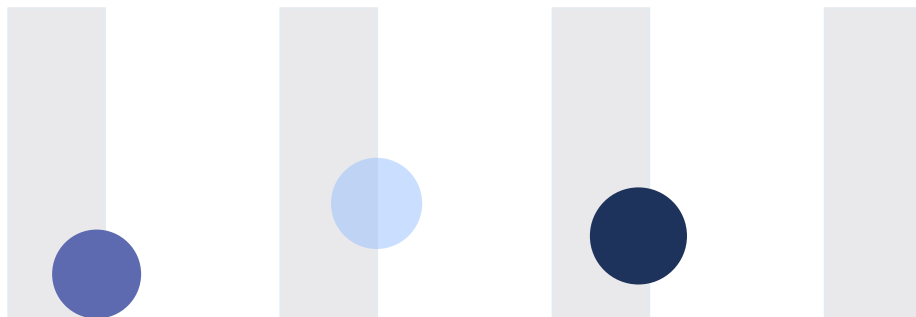
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# **Structuring a Performance-Based Contract**

Having agreed that some or all of the payments in a human services contract are based on meeting performance deliverables, agencies should conduct provider engagement, following the principles set forth in the Collaborative Communication Guide, to inform program design and the accompanying RFP.



## Performance Deliverables

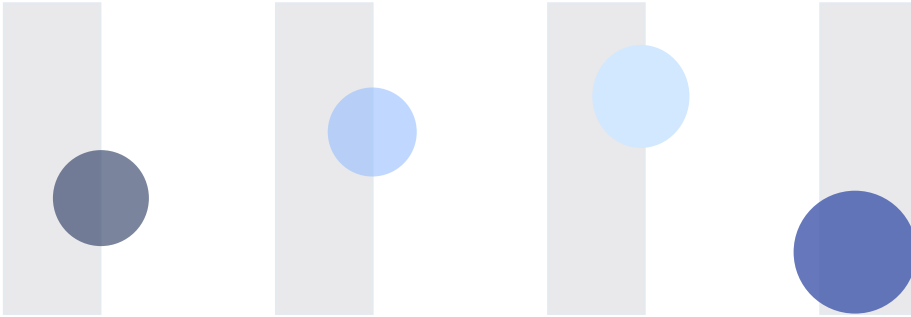


The agency, in collaboration with providers, should first delineate the objectives of the contract and identify what is reasonable to hold providers accountable for. This may be approached by considering the agency’s overarching goals (for example, to reduce homelessness) that can then be broken down into smaller measurable goals (such as placements from shelters into permanent housing). Having a comprehensive understanding of these goals can guide the development of performance deliverables.

### Types of Deliverables

A performance-based contract may incorporate one or more approaches to identifying deliverables, as mutually agreed upon by the City and providers, based on the nature of services being provided. Although not always clearly distinct, the three most common approaches are:

- **Payments based on outputs:** Delivery of a particular service, such as number of clients served, units of medical tests conducted, or days of an afterschool program
- **Payments based on outcomes:** Achievement of a particular result, such as each job placement or housing secured for a family
- **Payments based on performance standards:** Quality, quantity, or timeliness, such as achievement of a service response within a particular timeframe



The total contract value should reflect the cost of meeting agreed upon deliverables, and payments for units should cover the actual costs of the service.

## Measuring Performance Deliverables

Performance deliverables and reporting requirements, which are covered in the Reporting Requirements and Data Collection section of this guide, can often be one and the same, but not always. The parties should choose performance deliverables that are:

- **Easily verifiable** (e.g., the number of medical examinations),
- **Essential to the program** (e.g., the number of clients served), or
- **Subject to monitoring and/or analysis** (e.g., the number of students that achieved higher reading levels)

Using the above criteria to develop performance deliverables will reduce invoice processing times and overly burdensome monitoring and analysis.

The contract should include clear definitions of what the deliverables are and how they will be measured, including what records will serve as proof that the outcome has been met. Reporting should also comply with privilege or confidentiality provisions that would preclude sharing of client-identifying information.

## Mitigating Risks of Overpromising Deliverables

Negotiating achievable performance targets is in the interest of both the City and the provider. Whenever possible, performance targets should be supported by historical information, which should be based upon similar services to a similar population delivered in a similar setting, to ensure that the performance targets are realistic for the services and population being targeted.

A provider assumes risk by tying payment to outputs, outcomes, and standards that are not completely within the provider's control. For example, a provider that has no control over volume may struggle to meet deliverables based on the number of clients served.

To reduce this risk, deliverables may be written so that the provider is compensated even if the desired number of deliverables is not achieved.

For example:

Contractor agrees to **provide up to 100 units** of service at a rate of \$X per unit.

*Creates less financial risk for the provider than:*

Contractor agrees to **provide 100 units** of service at a rate of \$X per unit.

In both cases the provider may not receive the full contract value, but the second example may create a contract breach if the provider achieves fewer than the 100 units.

Another method of reducing risk is to allow the provider to use overachievement in certain deliverables to compensate for underachievement in others within the same contract, thus increasing the flexibility as to how providers realize the intended outcomes and enhancing the opportunity to earn the full amount of the contract.

To further mitigate risk, the City may consider using multi-year averages to determine performance targets instead of relying on a single year of data. Using a multi-year average provides a more predictive model and levels the impact of one-time fluctuations.



# Rates

When developing a performance-based contract, rates should be established by conducting a cost analysis in collaboration with service providers or, if developed unilaterally by the City agency, the rates should be transparent and based upon relevant data that is available for review.

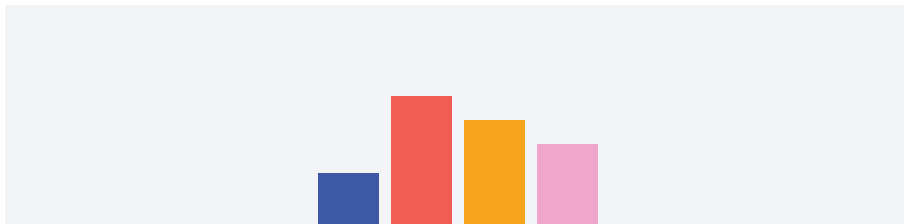
## Establishing the Rate

The RFP should include a clear method for setting the baseline cost per unit of service, and the City should consider requesting the following information as part of the RFP to facilitate cost analysis:

- **Budget that clearly articulates cost/unit:** This provides the City with an understanding of program costs and allows for comparative analysis across providers.
- **Historical spending:** If available, historical spending for similar programs can provide context for new budget proposals. The level of detail requested in historical line-item spending reports may offer baseline data for meaningful assessment of program and contractual budget design, and providers should be given the opportunity to explain any significant changes in spending.
- **Multi-year spending projection:** For multi-year contracts, incorporating known cost increases during initial contract negotiation mitigates risk for both the provider and the City. Cost escalators over the life of the contract may alleviate the burden of predictable cost increases, such as rent, utilities, and health insurance.

To gain an understanding of program costs and to ensure that direct services are properly funded, agencies require a summary budget that reflects projected expenses by cost centers, but should not require line-item budgets nor permit detailed expense reporting to impact funding. The periodic review of the overall contract structure, including costs, is desirable for both the City and provider, who can use the data to set future performance-based rates and to analyze costs and benefits of a program. Parties to a contract may choose to renegotiate contract terms to reflect changes in circumstance that were unanticipated at the time the contract was made.

## Factoring in Central Administrative and Indirect Costs



Providers incur administrative and overhead costs to operate an organization. Any indirect costs should be incorporated into the unit rate using the indirect rate calculation that is consistent with citywide practices. The City’s *Health and Human Services Cost Policies and Procedures Manual* outlines policies for the preparation and claiming of indirect cost rates, cost definitions and treatments.

## Mitigating Risks of Underestimating Rates

While some variations in cost may be unforeseeable, exercising due diligence during the cost negotiation phase will help mitigate risk. If the provider requests additional funding during a contract period, the City should have a reasonable understanding of the cost calculation and may request additional expense information from the provider to evaluate the request.

## Contract Term

Setting the proper contract term can ensure continuity of service, reduce costs, and create stability for providers and their clients. In accordance with the Procurement Policy Board (PPB) rule 2-04, multi-year contracts for client services are appropriate when:

1. The City benefits from obtaining continuity of services;
2. Performance involves high start-up costs; or
3. Changeover of providers involves high phase-in/phase-out costs or a significant gap in services over a transition period.

In addition to the PPB guidelines, the parties should consider the following in determining contract and renewal terms:

- **Stability of performance deliverables:** Consider deliverables that are based on stable historic performance data where there is a multi-provider baseline with a similar population in a similar setting (e.g. discontinuance of primary substance in a substance abuse treatment program or job retention for 30, 90 and 180 days) or deliverables that rely on government policy or practice (e.g., school disciplinary procedures or City arrest procedures); however, recognize that these may also change under certain circumstances and over time.
- **Proportion of the program to the provider's entire portfolio:** If the contract is a large portion of the provider's overall portfolio, a longer term may provide more stability in operations.
- **Source of funding:** Funding from other sources may include limitations that would make a longer term contract unwise.

An escalation clause may be included in a longer term contract to address the predicted increases in costs.

An additional way to address cost-escalation is to project the anticipated costs over the term of the contract and then use the cost anticipated for the midpoint of the full contract term to set unit prices for the performance-based contract. For example, for a three-year contract, use the projected cost for the second year to set the rates. Implicit in this structure is the idea that the surplus in the first year of the contract will cover underfunding in the third year.

## Reporting Requirements and Data Collection

Reporting requirements are used to monitor and collect program metrics (e.g., number of referrals, specific type of service provided, client demographics) that may be analyzed for renewal discussions. Agencies may also request data outside the scope of the performance-based metrics to track operations, support continuous

quality improvement, troubleshoot and refine program models, enable future formal evaluation, and meet other City reporting requirements, such as the Mayor's Management Report. The reporting data may be the same as performance deliverables, but collected less frequently (e.g., quarterly v. monthly).

## Data Collection Capabilities

The reporting requirements should not be unduly burdensome and should be consistent with the provider's capability to collect and report on required metrics. By addressing reporting obligations during conversations to inform the RFP and during contract negotiations, the provider can prepare the infrastructure needed to facilitate such reporting, including creating or updating a data reporting system or hiring additional staff to manage the data.

## Cost-Based Reporting

The collection of information by oversight agencies, the City Council, and the public in regards to how the City is spending public funds is appropriate as a reporting requirement in a performance-based contract. However, the City should make clear that any cost-based information it collects is for reporting purposes only and will not impact currently allocated funding. The City should also limit the frequency of cost-based reporting, e.g., annual or bi-annual, to reduce the administrative burden required to manage and report this information. When possible, the parties should mutually agree upon reasonable cost-based metrics, such as reporting by job title as opposed to individuals' names, especially for programs with a large number of personnel.

## Cost-Based Requirements

Pure performance-based contracts should not contain any language that ties payments to a budget or suggests recoupment of funds if providers do not spend in accordance with a budget. However, City agencies may tie payments to satisfactory performance of deliverables. Hybrid contracts should make clear that the auditing of costs is only applicable to the portion of the funding that is based on costs.

## Structuring a Hybrid Contract Around Program Needs

“ In 2016, MOCJ began a negotiated acquisition for a contract with Safe Horizon to lead the operation of the City’s five Child Advocacy Centers (CACs), where children who have suffered sexual abuse or severe physical abuse are treated by caring professional teams who are dedicated to ending child abuse and helping children and families heal from trauma.

The contract was structured as a hybrid contract: certain fixed costs were to be reimbursable expenses under the contract with the remainder of the contract value to be earned through performance deliverables. The reimbursable expenses, determined to be fixed and non-dependent on volume, included the rent that Safe Horizon would be required to pay each month to house the various CACs, as well as expenses associated with expanded hours of the medical providers. The performance-based deliverables were based on the various functions that Safe Horizon performs at the CACs: paying Safe Horizon a set amount for each forensic interview session, victim support and advocacy interaction, and therapeutic intervention, as defined in the contract. In developing milestone budgets, Safe Horizon prepared a detailed three-year budget and then used the cost anticipated for the midpoint of the full contract term to set unit prices for the performance-based milestones. Goals were set for each deliverable based on historical volume data, projections for increased volume at each CAC, and the percentage of total funding provided by that contract. Hypothetically, if there are 3,000 forensic interviews per year and the contract funds 60% of the total cost of running the program, then the contract will fund 1,800 of the interviews.

The flexibility associated with the performance deliverables allows Safe Horizon, for example, to modify its staffing structure based on need without going through the budget modification process. This also reduces the agency’s administrative burden while ensuring that City goals are being met. The contract also requires annual expense reports with agreed upon detail to provide transparency on how contractual funding was spent. ”

— *Safe Horizon*



# **Audit Guidance**

The City agency should consider the following principles when auditing a performance-based contract:

## **1 Funding Requirements**

The audit should identify state, federal, or other funding requirements.

## **2 Focus on Outcome**

The audit should focus on how the contract defines the deliverables and how the deliverables are to be measured, including what records will serve as proof that the outcome has been met.

## **3 Alignment with Contract**

Whereas other types of audits are conducted primarily for fiscal oversight, an audit of a performance-based contract should mainly focus on ensuring that providers have met the deliverables according to the contract.

## **4 Clear Guidelines for Supporting Documentation**

Agency manuals should contain a list of acceptable supporting documentation, both for establishing rates in the contract and for measuring outcomes, that is clear to providers and auditors.



# Get in Touch!

For support on performance-based contracting or to get involved in other NRC initiatives, contact the Mayor's Office of Contract Services.





## Mayor's Office of Contract Services

[nyc.gov/mocs](http://nyc.gov/mocs)

The Mayor's Office of Contract Services (MOCS) is a New York City oversight and service agency that is dedicated to optimizing existing operations and transforming processes to make it easier to do business with the City. MOCS's mission is to lead procurement in New York City that is fair, responsible, and timely. MOCS manages the Nonprofit Resiliency Committee (NRC).



## Mayor's Office for Economic Opportunity

[nyc.gov/opportunity](http://nyc.gov/opportunity)

The Mayor's Office for Economic Opportunity (NYC Opportunity) uses evidence and innovation to reduce poverty and increase equity. We advance research, data, and design in the City's program and policy development, service delivery, and budget decisions. Our work includes analyzing existing anti-poverty approaches, developing new interventions, facilitating the sharing of data across City agencies, and rigorously assessing the impact of key initiatives. NYC Opportunity manages a discrete fund and works collaboratively with City agencies to design, test, and oversee new programs and digital products. It also produces research and analysis of poverty and social conditions, including its influential annual Poverty Measure, which provides a more accurate and comprehensive picture of poverty in New York City than the federal rate. Part of the Mayor's Office of Operations, NYC Opportunity is active in supporting the de Blasio administration's priority to make equity a core governing principle across all agencies. The Design Studio at NYC Opportunity created the design of the Performance-Based Contracting Guide.







Mayor's Office of  
Contract Services

Mayor's Office for  
Economic Opportunity

Nonprofit Resiliency  
Committee