# HSC PROCUREMENT BRIEFING BOOK

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**ABSTRACT**

The human services sector continuously experiences underfunding and financial stress through the lack of sufficient indirect funding, inadequate payment for services, and chronically delayed procurement processes, which prevent providers from cultivating a strong infrastructure. Government must support the sustainability of organizations and their programs by fully funding the sector.



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# About the Human Services Council of NY (HSC)


HSC fosters a diverse network of human service organizations. Together, we discuss ideas and take collective action on issues that impact the entire sector and those we serve. Through advocacy and collaboration, we support member organizations and their leaders in addressing their concerns around public policy, economic trends, and the regulatory environment. The human services workforce encapsulates 200,000+ employees in subsectors including housing access, childcare, older adult care, shelters, food pantries, mental health counseling, and disaster response. As the voice of the human services community, we highlight the struggles of those we serve, and amplify the need for a strong, well-invested sector.

HSC has a small staff and budget, but we represent a strong and broad-based network of leading organizations in the human services sector. By working together with our 170 members and other allies, we have real impact, bringing people together to solve problems and helping residents of our city gain the respect, dignity, and services they need and deserve.

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Human Services Council of New York

Human Services Council of New York - HSC

## Executive Summary

Every day across New York State, millions of individuals are served by human services providers. These programs impact and better the lives of New Yorkers—from children at childcare and teens playing basketball at the local community center, to older adults enjoying a hot meal and companionship at the senior center. Human services are provided mainly by nonprofits, which combine government money with foundation dollars and private donations to pay for these services. This public-private partnership is our system of meeting community needs from workforce development to housing the homeless; however, operating within it poses significant challenges. As of 2018, almost 20 percent of New York City human services nonprofits were fiscally insolvent because the true cost of delivering services was rarely covered by government contracts.

With the start of the recession and COVID-19, nonprofit providers were faced not only with an increase in service demand, but a drastic decrease in funding from all sources. This "perfect storm" exposed the flaws in the human services delivery system and further weakened an already fragile infrastructure. It is time to address the systemic issues that are deteriorating the foundation of the human services sector so nonprofits can provide services more efficiently, with better results. Like for-profit businesses, most nonprofits must manage personnel, accounting, real estate, IT, and other infrastructure systems to "produce" its programs. Yet, nonprofits are often treated as volunteer-only, donations-based charities. This model is not sustainable. Nonprofit organizations have program and infrastructure expenses – like all other industries–and cannot continue to absorb the costs of late payments, finance charges, or inadequate funding. For-profit government contractors are not called upon as nonprofits are to accept partial reimbursements for costs already incurred, yet nonprofits are consistently expected to do so and raise the remainder through philanthropic donations.

The nonprofit sector is treated this way because of who they serve and employ. Government savings are borne on the backs of low-income and Black, Indigenous, and people of color (BIPOC) communities who receive reduced and inequitable services. The workforce serving and advocating for these communities is predominantly made up of women (70%) and people of color (75%) who are disproportionately paid poverty-level wages. We hear over and over that the City and State are serious about equity, but it does not show up in how they fund services in underinvested communities or pay women of color on the frontlines.

Based on discussions with members through various workgroups, HSC has developed a set of recommendations to reform the procurement system and sustain the sector that provide critical services to New Yorkers. Government must transform into a reliable business partner that treats nonprofits as service experts and important community stakeholders: engaging with contractors as equal partners, managing procurement in a transparent and timely way, and accepting accountability for inequities. Providers want to solve problems in communities, but the procurement system, as currently designed, is not the mechanism for the deep change that tackles the root causes that led to the need for services.

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# I. INDIRECT FUNDING

## Background

Contract underpayments affect many budget components, but organizations suffer most from underfunding of indirect (overhead) costs. Spending on administrative costs is falsely equated with inefficiency, waste, and corruption, especially for human services programs. With few exceptions, government and private funders respond by underwriting little to none of the many necessary "indirect" costs of running an organization—like paying rent, maintaining facilities, purchasing equipment, fundraising, maintaining insurance, and managing human resources and accounting functions. In addition to these crucial program components, other indirect costs to an organization such as oversight management, risk assessment, and accountability functions are not covered, meaning nonprofits must cobble together funding for basic costs like repairing a roof. They have an even harder time funding new financial systems or program evaluations systems. Other industries do not face the same caps on indirect costs, and by neglecting to pay for necessary expenses, government has stripped providers of fundamental resources needed to operate successfully and equitably.

**Underpayment of indirect costs leads to:**

- Inadequate and obsolete facilities, equipment, and technology.
- Understaffed and under skilled accounting, HR, and administrative offices that reduce organizational ability to deliver programs, manage and raise funds, document results, support staff, and provide accountability, oversight, and compliance.
- Lack of continuing education and training for staff, resulting in lower quality of services.
- Lower productivity and substandard physical conditions.
- Fundraising to fill gaps, rather than applying those dollars toward innovation and service improvement.
- Increased financial vulnerability.

New York City developed the Indirect Cost Rate Initiative (ICR) to allow providers to develop individualized rates and have them funded on contracts, but then at one point backed away from funding the program and then restored it. On average, nonprofits reported a loss of $396,000 in FY2020 between the revenue that they had projected based on the indirect rate initially approved by the City and the revenue that they actually generated under the ICR. This means that prior to this initiative – and the needed funding – providers were subsidizing New York City, on average, about $400,000 a year to provide services, just on the indirect costs.

The State has made no effort in the area of indirect costs, despite federal guidance and a City model that could be easily adopted. The ICR is restored in the Mayor's Fiscal Year 2022 budget with a substantial investment of $120 million for the next two years. This is an important effort made by the City, with both the standard manual and the needed funding, and the sector needs to see a similar commitment from the State. The sector also needs assurances that the ICR will continue because the future is uncertain without a permanent commitment to indirect funding.

## Recommendations

1. Ensure that the Indirect Cost Rate Initiative is baselined as standard agency funding, so that the human services sector does not have to advocate for this funding yearly.
2. Remove indirect costs from the RFP process so providers can compete on the program, and then get their full indirect rate once awarded.
3. Ask the State to develop a process like the NYC ICR Initiative to claim true indirect costs.

# II. MASTER CONTRACT

## Background

The level of oversight that government exercises over nonprofit expenditures should be proportionate to the degree a contract is reimbursement-based versus performance-driven. Contracts tied heavily to performance must provide greater flexibility regarding expense decisions. Contracts that are more prescriptive in approach with straightforward reimbursement guidelines for specific outputs may offer less flexibility regarding spending. Nonprofits must be given flexibility and control over expense decisions if they are to be held accountable for specific outcomes, particularly when performance is tied to reimbursement. In addition, flexibility in adjusting outcome expectations must be given when factors outside the nonprofit's control are in play (such as the impact of an economic collapse on job placement expectations).

## Recommendations

1. Include language in City and State human services master contracts requiring government to design budgets that offer greater spending flexibility when contracts contain performance-based reimbursement.
2. Include contract language, and guidance to contract managers and contractors, that allow nonprofits to amend outcome expectations when outside factors beyond their control are in play.

# III. MODEL BUDGET

## Background

Human services providers compete for RFPs that contain scopes of work proposed by government that are typically developed without a market survey of costs or input from service providers. This results in RFPs that do not cover the real cost of services and inadequate compensation for a highly educated workforce, which are all essential to implement a high-quality program.

Agencies should design model budgets for RFPs that are developed with a market research survey to justify the cost allocations put forward in the creation of rates or overall budgets offered on human services programs. Additionally, if the RFP did not reflect market research, the agency should have to defend why crucial services and equitable wages were not fully funded. Forcing transparency in average costs versus proposed funding would help move procurements away from a place of scarcity where government budgets are balanced on the backs of nonprofits and frontline workers. The rate setting methodology should be transparent to the public especially for per-client or per-service rates, and should document the components and calculation of the rate.

**A model budget should include:**

- Adequate staff salaries that consider educational requirements, licensing requirements, and relevant experience.
- Fringe benefits.
- Cost escalators for staff salaries and increasing program costs due to inflation.
- Partnerships/Subcontracts.
- OTPS such as occupancy (rent, utilities, and maintenance), furniture and equipment, telecommunications, IT (including costs for maintaining client databases), program and office supplies, staff travel, client assistance (food, travel, and other), insurance, audit expenses, required file storage, and other expenses related to the proposed grant. If the grant requires an evaluation, the costs of the evaluation should be included. Additionally, costs of consultants should be included.
- Administrative/Indirect Rate.
- Start-Up funds.
- Performance Measurement Assumptions: Indicate what performance measures will be collected and analyzed, how frequently, and by which staff.

## Recommendations

1. Include a sample budget in all RFPs detailing how the government agency arrived at rates and overall funding.
2. Demonstrate before an RFP is released that its contracting agencies have surveyed contractors of current or similar services to determine appropriate costs.

# IV. COST ESCALATORS

## Background

Most contracts have not been adjusted for rising costs throughout their contract terms. You can potentially be working with the same amount of funding for 5 to 7 years even though cost of living increases, especially with inflation. Human services providers are not immunized against rent increases and spiraling health insurance premiums, but automatic contract renewals do not compensate for them, for compliance with unfunded mandates, or for any other increased expense. Contracts with government agencies therefore become more unaffordable every year, and rarely can be properly amended or surrendered for relief to the organization.

Contract renewals must accommodate cost escalations, including costs associated with legislative and policy changes. If a contract is premised on specific costs that increase during the contract term, then subsequent renewals must either accommodate the increased expense, or permit surrender of the contract. Underfunded nonprofits cannot be expected to make up the difference.

Contracts should also provide regular cost-of-living adjustments (COLAs) to their nonprofit partners so that salaries in the nonprofit sector are competitive and keep pace with inflation. This will allow nonprofits to attract and retain talent, especially as human services workers leave their positions to work for government, impacting programs and clients. In FY23, the State made a $500 million COLA investment, while the City provided a $68 million workforce investment. This workforce investment had many issues with implementation as providers waited months to receive guidance on disbursement of funds and had to apply for funding instead of receiving an automatic payment.

## Recommendations

1. Require RFPs to allow providers to submit proposals with cost escalators and lay out what the costs are in each year.
2. Include cost-of-living adjustments in every RFP.
3. Build regular adjustments into nonprofit contracts and mandated salary levels should be prohibited when contracts are renewed and extended.
4. Allow nonprofit contractors to alter service levels to fund wage increases when government agencies are unable to fund increases.

# V. AUDITS

## Background

Although PASSPort and the Statewide Financial System were created to streamline contracting, more efforts should be made to coordinate systems across levels of government. Duplicative reporting requirements and regulations should also be eliminated. The myriad of billing and claiming practices, audits, and reporting regulations make it difficult for nonprofits to provide financial reporting.

Oversight approaches that ensure that providers are financially and programmatically responsible should replace ineffective regulations and procedures. Once nonprofit human services providers enter a contract with government, they are subject to various independent audited financial statements, IRS Form 990 filings, and oversight by federal agencies and the New York State Charities Bureau. Many contracts are audited twice a year–first, to make sure that spending has been consistent with the agreement and second, to confirm that the program is delivering the required outcomes. Even one audit per contract per year can impose a significant burden on the many organizations that hold multiple agreements. Many of the regulations and government oversight mechanisms are redundant and seriously constrain a provider's ability to deliver services effectively.

Multiple audits waste money and time. The multiple audits conducted by government are probably the mostly costly—both in time and money—oversight requirement. An organization with multiple contracts may undergo as many as 250 audits a year. In addition to the staggering costs of multiple annual audits to taxpayers and providers, problems include:

- Preparation for multiple audits and managing them while they are underway is extremely labor-intensive.
- Full-time employees must be assigned to answer the questions of auditors, who are often unfamiliar with the programs they audit.
- The amount of paperwork and staff time required for these audits can interrupt services, compromising program outcomes and reducing the number of individuals assisted.
- Audits are needlessly duplicative. Federal law already requires most providers to undergo annual external audits performed by independent CPAs. There is no reason for City and State government auditors to duplicate this work, or each other's.
- Audits are uncoordinated, inconsistent, and randomly scheduled. There is no consistency in the documentation requested among agencies. An organization may even be audited simultaneously by different auditors from the same government agency for work performed during different time periods, or for different programs.
- Government audits can be conducted many years after a contract has ended. Few contracts contain a statute of limitations for audits. Records may have to be retrieved from archives for audits of ancient contracts, using staff time that would not have been needed had the audit been performed sooner after the contract ended.

## Recommendations

1. Standardize and consolidate audit requirements to avoid repeated and unnecessary audits, to minimize interruptions in nonprofit program services, and to reduce the cost to taxpayers of multiple audit teams.
2. Accept a federal OMB A-133 Single Audit in lieu of independent NYC and NYS audits, when applicable. If additional information is needed, the OMB Single Audit could be supplemented with program-specific questions.
3. Explore the use of risk profiles to focus limited auditing resources on organizations that need more attention.

# VI. LATE CONTRACTING

## Background

Frequent government contract payment delays put providers at risk of eviction and worsen deficits by forcing organizations to borrow to pay rent and salaries. The dominance of government funding puts human services providers at financial risk and operational uncertainty because contract payments are often made very late. Registration delays can be financially ruinous, as services are expected to begin on the first day of a contract, even if the contract has not yet been registered by the relevant agency. Nonprofits, therefore, incur substantial costs for service delivery before they have a legal right to be paid and are often forced to borrow to meet payroll. Interest payments on such borrowings are not reimbursable, except in rare cases, and must therefore be paid from reserves already stretched to the breaking point. That assumes that an organization can find a willing lender. Given their often-precarious financial conditions and years of underpayment, it is unconscionable that nonprofits are compelled to borrow to pay for space, furnishings, technology, reporting systems, and other expenses for new government-sponsored programs.

Government must accelerate contract registration and payment to ease the financial burden on nonprofits. Late contracts and late payments increase administrative costs for nonprofits because they must spend time and money chasing the dollars they are owed and shifting resources to fill temporary gaps. The requirements on government agencies to pay interest on late payments is beneficial in theory, but existing legislation should be strengthened to require agencies to make payments on time or pay interest above the contract value if payments are late.

## Recommendations

1. Provide quarterly contract advances that cover reasonable start-up costs on the State level, as the City already does.
2. Commit to paying providers in a timely way at all levels of government.
    a. Set clear timelines for payment at the City level that are always honored.
3. Legislate interest penalties for delayed payments that cannot be paid out of the value of the contract at both the City and State.
    a. Strengthen existing prompt payment legislation at the State by not allowing State agencies to offer “waivers” to providers for required interest payments.

# VII. PROCUREMENT POLICY BOARD

## Background

The Procurement Policy Board (PPB) is a critical regulatory body for contracting and ensuring that regulations are relevant and effective. The PPB's role is to put into effect rules on procurement, but the PPB currently does not meet or engage the public on a regular basis, and that should change. There needs to be guidance on how often the PPB meet, and a mechanism for transparency for PPB decision making. We need the PPB to hold public hearings regularly so they can establish rules, set timelines or penalty provisions for providers to be paid on time, and require all agencies to reimburse nonprofit providers for the cost of providing contracted services. This must all be done with the input of nonprofits and the public.

## Recommendation

1. The PPB should be required to meet four times per year and hold public hearings.

# VIII. GOVERNMENT PROCUREMENT SYSTEMS

## Background

The City has implemented PASSPort, which has been a crucial tool in streamlining the government procurement process. However, not all City agencies, such as the Department of Education (DOE), are required to use PASSPort. This has created additional administrative burdens and resource drawbacks for providers expected to navigate multiple procurement systems. Although PASSPort has made improvements, nonprofits are still experiencing delays in the procurement process. Contracting agencies have been unclear with the program requirements and protocols, creating additional delays and operational inefficiencies. Providers use multiple systems or archaic databases that do not streamline data reporting or reduce redundancies. There are also issues where State and City agencies do not coordinate their data with each other, which frustrate providers who track information in separate systems with different information. Agency staff ask for information in email form that is readily available to them in their systems, wasting staff time.

The State is in the process of developing the Statewide Financial System (SFS), which would replace Grants Gateway, requiring all State agencies to post their grant opportunities on this portal. SFS will provide a way for nonprofits to view and apply for funding opportunities, work on contracts, and complete payment processing all in one system. The grant application and contract templates will also be standardized. Although these potential process improvements are a step up from Grants Gateway, the State must ensure that nonprofits are a part of the development process since they would best know the problems with the current procurement system. It is crucial that the State incorporate provider feedback to improve contract management experiences for vendors.

## Recommendations

1. Ensure that all City contracting agencies are in PASSPort (including DOE).
2. Ensure PASSPort to be end-to-end, inclusive of all processes through registration with the Comptroller, as one transparent universal system where vendors can track contract progress and the public can see bottlenecks.
3. Train City and State agency staff on the government procurement systems, putting measures in place to prevent agency staff from circumventing the system.
4. Use PASSPort and SFS to establish timeframes for contract registration.
5. Meaningfully include nonprofits in the development of SFS.

# IX. OTHER IDEAS

## *A. Elicit Feedback and Encourage Innovation*

**Background**

Programs that work well require effective partnerships among the public sector, private funders, and human services providers. Human services providers with decades of experience would be instrumental in designing and implementing programs that more effectively serve New Yorkers and should be involved at the outset of program planning. To develop effective programs that maximize human potential and ensure wellbeing, government and philanthropies should start by convening a diverse group of stakeholders to assess need, evaluate the efficacy of existing initiatives and promising practices, and agree on a set of goals and a model to achieve them. Collaborations between government, nonprofit organizations, researchers, and private funders would create an environment in which pragmatic reform efforts can be proposed, evaluated, and developed.

To help accomplish this, government should engage its contracted and qualified nonprofit partners before designing and releasing a new RFP. Before creating a program, government should survey current contract providers in the appropriate area to understand how those contracts fare in the following areas:

- Are the metrics on the current contract appropriately related to achieving the goals of the program?
- Are the metrics of the current contract being met?
- What supplemental services are providers including in contracted programs to help them achieve success?

Both the City and State have procurement systems that identify prequalified vendors—vendors approved to do business in certain service areas—and should invite all those providers to submit comments and ideas before a concept paper is developed. Government has very real limitations on the time it has to design a program, and it has to make choices regarding from whom and how it can solicit feedback. By more strategically utilizing existing systems that identify qualified providers, government can more openly solicit feedback from those with knowledge in the field, and providers will be more involved in design.

Engaging nonprofits on the "front end" in government-nonprofit-philanthropic collaborations will ensure that the programs they ultimately administer are workable and effective for the individuals they are intended to help, and include:

- Evidence-based metrics aligned to the goals to be achieved
- Contract payments that reasonably cover the services proposed
- Incentives that encourage efficiency and service quality improvements

- Innovative new program models and
- A post-implementation evaluation process that identifies best practices and applies them to successive efforts.

This process should also be applied to the development of new programs, not just to appraise existing ones. While programs are underway, feedback should be regularly elicited from the selected provider(s) concerning what is working and what is not to shape future iterations. Bringing partners together would be the first step in fixing a costly and wasteful system that more often merely ameliorates social issues rather than curing them.

Moreover, nonprofits should be encouraged to take risks. Real innovation requires trial and error – and time to fairly evaluate a program's successes/failures in the community. Nonprofits should be given the safe space to talk openly about why an approach was not successful and not punished for taking reasonable risks. Honest reporting would significantly change the conversation.

### Recommendations

1. Require government agencies to adopt a feedback process designed to gather input regarding potential approaches from service providers, including during the formal solicitation process.
2. Empower program auditors to engage in real discussions with providers about the implemented approaches to understand why a program is or is not successful and make room for reasonable failures when incubating new approaches.

## *B. Address Contractual Barriers to Value-Based Payment (VBP) Participation*

The New York State Department of Health's (DOH) Value-Based Payment (VPB) program has certain requirements for healthcare organizations to contract with human services organizations to address social needs. However, due to various barriers and operational challenges, contracting has been limited and nonprofits continue to lack a sustainable source of funding for programs that result in savings or benefits to the health care sector. Despite the lack of contracting, CBOs, which provide invaluable services to their communities, continue to be approached to develop and participate in new programs, pilots, and other projects that often lack clear sustainability plans.

Health and human services providers contend daily with inconsistent or duplicative contractual obligations and terms that discourage, rather than incentivize, better outcomes. Contract variation increases administrative burdens on all parties because administering, complying with, and delivering on a variety of inconsistent agreements is labor-intensive and increases the risk of error. These burdens are exacerbated by the lack of uniformity in billing and reporting systems. Most human services CBOs also lack the resources necessary to assess risk and risk tolerance, negotiate fair terms, and develop sound contracts. Standardized contracts would offer clear pricing and terms of services and include language to minimize the risk incurred by human services CBOs. Replacing the fragmented contracting system with a more consistent and transparent approach would go a long way in helping all sectors collaborate in pursuit of a sustainable health care and human services delivery system.

### Recommendations

1. Engage community networks, members, and stakeholders when developing interventions to ensure that community needs are met.
2. Provide adequate funding, including indirect and cost-escalators, for value-based contracts and incentivize the services that CBOs provide.
3. Consider the value of the services CBOs can provide, which are not traditionally covered by Medicaid, to their members for better community health.
4. Minimize reporting requirements and designate appropriate costs for the contractor to design and implement data collection and measurements that would be most helpful for their service improvement.

## *C. Disaster Planning*

Human services organizations are the first and last responders to both large-scale crises and everyday emergencies in NYC. They often front the bulk of the costs, labor, and strategies for meeting these serious needs without support from existing contracts or other forms of potential partnership with governmental. This means that they serve the most complicated of immediate and long-term needs without the same resources, data, or other capabilities of government. More must be done to include human services in disaster planning and set aside resources in emergency reserves so that the sector can respond to community needs in real time. New York City and State must also create formal mechanisms in the contracting process to guarantee that human services nonprofits will be supported if there is an emergency, especially because COVID-19 has made it clear that how government structures offer response and recovery resources, and how individuals and families access them, is dependent on online services. The lack of funding for indirect costs that has been mentioned can also mean that human services organizations, their staff, and their clients may not have access to devices, internet, or technological literacy required to access and distribute these resources.

### Recommendations

1. Ensure that all human services standard contracts contain language and guidance for expedited approval and funds for amended deliverables and budgets when providers:
    a. Are unable to fulfill contract deliverables, but still have expenses including personnel costs that must be met regardless of service delivery.
    b. Need to alter or expand costs and deliverables to meet emergency needs among their staff or community, or new communities.
    c. Are asked by governmental partners to alter their services to assist in response and recovery efforts.

2. Accompany these contracts with:
    a. Written agreements or waivers developed between contract managers and contractors that outline the expedited amendment process and outline covered services to avoid unfunded emergency mandates.
    b. Resources for providers to develop emergency plans, implement Continuity of Operations Planning, and identify emergency services that can be pre-approved by Contract Managers and contracting agencies.
    c. Clarity on how "emergency" is defined by the City, State, or managing agency, including sharing the triggers for those emergency scenarios with providers prior to the incident.
3. Ensure all contracts budget the cost of broadband as a utility and direct program cost, not an indirect expense, due to its essential nature in program delivery. Broadband must be made universal with government committing to ensure access to all individuals and families, regardless of income.
4. Require that agencies with emergency plans and emergency management programs include human services providers in their emergency planning, exercising, and after-action processes.
5. Establish a disaster response and recovery fund designed for human services agencies (similar to those designed for healthcare systems) to cover necessary indirect expenses, including costs associated with:
    a. Deploying and protecting the human services workforce, such as PPE, overtime, and transportation.
    b. Dispersing supplies to the community, technology, client transportation, sanitation, and other infrastructure.

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