PERFORMANCE BASED CONTRACTING: RULES FOR THE ROAD

AMBASSADOR INSIGHTS
September 25, 2015
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BACKGROUND

An ally of the mayor’s office in a major American city turned to the Leap Ambassadors Community for advice as it develops a framework for performance- (i.e., outcomes-) based contracting. Given the community’s commitment to advancing the “performance matters” mindset in the social and public sectors and many ambassadors’ deep knowledge and relevant experience in performance-based contracting, they shared sound input and resources for this city’s challenging road ahead.

SUMMARY

Thirteen Leap Ambassadors and two outside advisors, several with battle scars from engaging in the hard work of performance-based contracting, responded. Their overarching advice: Performance-based contracting has a potential role to play in driving local governments to do business differently and help move performance to center stage. But proceed with caution. The status quo is deeply entrenched. There’s a right way and a wrong way to approach this. A few highlights from their collective advice:

1. **Prepare for politics.** There is no “blanket standard” for performance-based contracting. There are complexities and nuances that must be worked out along the way. But the harsh reality is that nuance and complexity can be lost on government when financial arrangements are seen as purely transactional and fail to take the political and social implications fully into account. As Michael Shaver explains:

   “While our thinking about how to structure the work, payment, and accountability is necessarily layered with nuance and complexity, the political narrative can be more coarse. Profiting at the expense of the needy, financially incentivizing doing the right thing, using contracts and financing to punish an already beleaguered sector are just a few examples.”

In other words, prepare for your motives to be questioned. As Shaver warns, “When something doesn’t go as planned—a near certainty—the entire approach becomes suspect, rather than the complexities of a particular service or contract.”

Caroline Whistler offers advice for navigating this tricky environment: Focus on “changing the process for resource allocation, not finding the perfect program.” She explains:

“Evidence-based programs remain the best hypothesis to deliver outcomes, but governments need to set up processes that continuously track results for communities and allow providers to learn, improve, and respond to changing community dynamics over time. Locking providers into service delivery ‘recipes’ stifles their ability to learn, improve performance, and measurably improve lives...”
Emphasizing continuous learning and improvement from the get-go and resisting the rush to “find what works and scale it” may help both recipients and government agencies prepare for the perilous political course ahead.

2. **Center relationships.** Like all relationships between grantees and funders, partnerships between nonprofits and government are fraught. This problem is exacerbated in the public sector due to many agencies’ dependence on government for large swaths, sometimes even the majority, of their funding. **Daniel Stid** puts it bluntly:

   “The big issue/challenge here is the problem of ‘monopsony’ arising from the fact that city agencies hold dominant market power as practically speaking [they are] the sole buyer for many human services in a given jurisdiction. This can lead to some bad and heavy-handed behavior on their part that undermines the partnership aspect needed to negotiate and execute true performance-based contracts.”

What to do? **Joe McCannon** says it’s about “shared accountability” and describes what that looks like:

   “They [the government agency and the recipient of the funding] should sit on the same side of the table with one another, jointly invested in solving the problem, creating an environment that is safe for failing and learning, where the government agency is responsible for removing barriers to progress, as opposed to just sitting in judgment.”

Shaver emphasizes transparency and creating a sense of shared cause. Performance contracting “shouldn’t be done TO contracted service providers; it should be done WITH them,” he advises. “In my experience, it’s very rare to find a provider who is not just as invested in successful outcomes as the funder. Approach the work with that assumption in mind.”

Service providers should be involved in the contract design not only to generate mutual trust, but also, **Antony Bugg-Levine** explains, “to develop more reasonable and informed contracts.” As **Gordon Berlin** notes, performance-based contracting and its focus on outcomes can bring a valuable return on investment to the public sector and, done well, it can simultaneously strengthen service provider effectiveness. But only if consciously designed “not to eat away at margins” and “the ability to perform at a high level for their clients.” It’s in the government’s interest to reward the nonprofit when it delivers (for example, by reimbursing its overhead costs), “not nickel and dimed until it struggles.”

And finally, as Stid reminds us, maintaining the “performance matters” mindset (and staffing performance-based contracts not with bean counters, but those who understand and embrace that mindset) helps get past relationships that are purely
transactional: “Demand an understanding of the outcomes in question and what it takes to produce them, as well as the ability to identify and work with nonprofits who will provide the best value via their performance, not simply the lowest price.”

Always keep in mind, however, that change is hard. Bugg-Levine points out the challenge that's often overlooked: “The current system, however inefficient it is, has participants who value their role in it and that any attempt to build a new way of working must acknowledge and manage those allegiances.” People will adapt to a better way of working when they are able to take pride in their role in it.

3. **Build confidence by building data.** Government data is often inadequate and hard to access, yet performance contracting isn’t possible without data in which all parties have a great deal of confidence. Shaver advises: “If it’s not available, build it first. Both government and service providers need to have confidence there is a verifiable way to move the needle in a way that both validates outcomes and is consistent with the cost model upon which the contract is based.”

Whistler warns about jumping into performance contracting without reckoning with the reality that “you can only contract for what you can measure” and further notes that most “systems have been structured for compliance, not outcomes/impact tracking.” Since evidence-based contracting depends on evidence-based decision making, it’s critical that tracking systems adapt to what nonprofits and government agencies learn along the way. As outcomes are further refined, data tracking must be, too. Building the capacity in both government and nonprofits to work in an outcomes-oriented system isn’t easy (or cheap), but it’s the ball game.

To complicate things further, Berlin offers an important warning: “If the right things aren’t measured, rewarding ‘what you measure’ isn’t necessarily a good thing. Government agencies and service providers must agree upon meaningful characteristics of those served to avoid creating pressure on the nonprofit to alter who they serve just to get paid.”

4. **Never, ever forget the people you serve:** Relationships within and between government and service providers aren't the only ones that matter. “To measure success or failure against a performance contract often requires a higher level of intrusiveness into the lives of people served,” Bugg-Levine reminds us. “Successful contracts that improve performance over time will engage program participants to create a dynamic and understanding which really does align their interest to program success rather than just stipulate that alignment.”

For further relevant input from the community that augments the guidance above, see SIBs: What’s Missing?
Leap Ambassadors recommend benefiting from the advice of experts with knowledge in the field, including:

- **Linda Gibbs, Bloomberg Associates**, heads the Social Services team, which assists the Mayor in shaping interventions with an approach that is data driven and evidence based. (Michele Jolin)

- **Simone Brody, Results for America (RFA)**, is RFA’s What Works Cities Executive Director. RFA helps cities with performance-based contracting in its What Works Cities program (Michele Jolin)

- **Caroline Whistler, Third Sector**, would be happy to share thoughts with the city based on work with pay for success and outcomes-based contracting at Third Sector

- **Idara Nickelson** helped implement and oversee performance-based contracting at DC’s Department of Human Services. She also worked with other cities in interested in doing the same, providing technical assistance and support through workgroups established by various affinity groups.

Outside advisors also recommend:

- **Gary Glickman, Accenture**, is managing director of Pay for Success initiatives, formerly an official at the U.S. Treasury and Office of Management and Budget (Steve Goldberg)

- **Jeffrey Liebman, Harvard Kennedy School**, is Professor of Public Policy, formerly an official at the Office of Management and Budget. Provides pro bono assistance to state and local governments interested in implementing pay for success contracts using social impact bonds. (Steve Goldberg)

**RECOMMENDED REPORTS, ARTICLES, AND OTHER REFERENCES**

Leap Ambassadors recommend the following resources to begin to establish a knowledge base about both the history and current thinking on performance-based contracting:


- **Cream-Skimming, Parking and Other Intended and Unintended Effects of Performance-Based Contracting in Social Welfare Services**, IZA Discussion Paper, Pierre Koning and Carolyn Heinrich, 2010 (Jennifer Brooks)

- **The Promise and Pitfalls of Performance-Based Contracting**, Seedco, Dennis Smith and William Grinker, 2004 (Daniel Stid)
PERFORMANCE BASED CONTRACTING RULES FOR THE ROAD

• **Five Ways to Navigate the Fiscal Crisis**, Stanford Social Innovation Review, Daniel Stid and Willa Seldon, 2012 (Daniel Stid)

• **The Toxicity of Pay for Performance** (in healthcare) by Don Berwick, Institute for Healthcare Improvement, 1995 (Joe McCannon)

• **Uncontrolled**, Jim Manzi, on the near impossibility of replicating successful results in an RCT setting, 2012 (Caroline Whistler)

• **Truly Making a Difference: The Outcome/Impact Dilemma**, Gordon Berlin, MDRC, Investing in Results, 2017

• **The Other Pay for Success: The Promise and Peril of Paying for Outcomes**, Social Innovation Research Center, 2015 (Patrick Lester)

• **The Next Phase of Pay for Success: Driving Public Sector Outcomes**, Third Sector Capital Partners, April 24, 2017 (Patrick Lester)

• **How Seattle Used Results-driven Contracting to Improve Homeless Services podcast**, Gov Innovator, May 10, 2017 (Patrick Lester)

• **Transforming the Culture of Procurement in State and Local Government podcast**, Gov Innovator, April 20, 2017, (Patrick Lester)

• Urban Institute’s Center on Nonprofits and Philanthropy has produced a fairly robust body of research on this topic. (Mary Winkler)

• **Online blog series**, Stanford Social Innovation Review, about the process by which communities define positive outcomes they want to achieve in their contracting and how continuous learning (vs. pass/fail metrics) are critical to supporting a transition to outcomes. Shoutout to Ambassador Jennifer Brooks who contributed with “Making the Case for Evidence-Based Decision-Making,” 2016 (Caroline Whistler)


• **Fostering Accountability: Using Evidence to Guide and Improve Child Welfare Policy**, Oxford University Press, 2010, includes “a painstaking walk-through of our approach, the numbers, and lessons learned,” based on working in the public sector with Illinois’ and Philadelphia’s child welfare systems. (Michael Shaver)

• Third Sector Capital Partners is focusing on helping governments develop integrated data systems (IDS) with UPenn’s Actionable Intelligence for Social Policy (AISP) to build the infrastructure to underwrite outcomes contracts. **Annie Casey has done some great work on this** including a short film overview of Integrated data systems, including Cuyahoga County’s Pay for Success project, 2017 (Caroline Whistler)
• **Streamlined Contracting**, performance-based contracting in New Zealand supported by Results-Based Accountability, 2016 (Adam Luecking)

Outside advisors also recommend:

• **From Funding Activities to Investing in Results: How Do We Get from Here to There?** Antony Bugg-Levine, Nonprofit Finance Fund, *Investing in Results*, 2017


**ACKNOWLEDGMENTS**

Sincere thanks to the thirteen ambassadors who shared the guidance and resources that made this Ambassador Insight possible: Molly Baldwin, Gordon Berlin, Jennifer Brooks, Paul Carttar, Michelle Jolin, Patrick Lester, Adam Luecking, Joe McCannon, Idara Nickelson, Michael Shaver, Daniel Stid, Caroline Whistler, and Mary Winkler. Two outside advisors, Antony Bugg-Levine and Steve Goldberg, also shared keen insights and we are grateful.

**APPENDIX**

**FULL TEXT OF AMBASSADOR’S INDIVIDUAL CONTRIBUTIONS**

**REQUEST FOR INPUT FROM KATIE PARIS, MAY 26, 2017**

Hey folks,

This week, a loyal ally of the Leap community reached out to the support team to solicit some advice. We’re turning to you for help.

The mayor’s office of a major American city is working with several municipal agencies to develop performance- (i.e., outcomes-) based contracting as a way to decrease administrative burdens and increase program effectiveness.

As they develop their outcomes-based framework across a few different human service sectors, they are simply looking for sound input from people who have been down this road before and/or who have relevant experience.
We know this is a big topic, but would be grateful input from any and all of you (but especially those of you from the public sector) based on what you’re seeing or doing in the field today. Words of encouragement and caution, case studies, and required reading recommendations are all welcome.

Thanks in advance for considering,

Katie

PS: The last time we came to the community with a similar request, it resulted in the publication of an Ambassadors Insight: SIBs: What’s Missing?, which was circulated to key stakeholders (with the permission of all who contributed, of course). Just a reminder of how our conversations here can evolve!

**AMBASSADORS RESPONSES**

**DANIEL STID, MAY 26, 2017**

Thanks Katie. I have attached a couple of resources here that might be helpful. One is a solid case study of the development of performance based-contracting in NYC, which has been a municipal leader in this field. The paper is a bit dated now but I think would still be very relevant because it traces the organic development of this approach over time -- it sounds like the city you are asking on behalf of is at an early stage so this framing might be helpful. As the authors note at one point,

“New York City’s history of measuring and managing the performance of governmental and nonprofit agencies is by no means as venerable as the city’s heavy reliance on nonprofits for service delivery. Nevertheless, as this paper will show, the city has also been a trailblazer in this area, experimenting earlier and often more actively than other jurisdictions with methods of assessing what service providers do and holding them accountable for their performance. As we shall also see, the pace and vigor of work has been uneven, suggesting lessons about the degree of follow-up and attention that is needed to bring performance measurement and management systems to maturity.”

I am also including an article I wrote a few years ago when I was at Bridgespan with my colleague Willa Seldon, “Five Ways of Navigating the Fiscal Crisis.” This piece assesses the challenges of government agency contracting from the standpoint of the nonprofit leaders who are the agencies’ counter-parties, but this might also be useful. The big issue / challenge here is the problem of “monopsony” arising from the fact that city agencies hold dominant market power as practically speaking the sole buyer for many human services in a given jurisdiction. This can lead to some bad and heavy-handed behavior on their part that undermines the partnership aspect needed to negotiate and execute true performance-based contracts. Here is a relevant section from this piece:
“The idea of “performance-based contracts” came to the fore in the 1990s with the reinventing government movement. Such a contract makes some portion of the government’s payment contingent on the nonprofit realizing the desired outcomes, as opposed to the usual focus on accountability for inputs or outputs. In theory, under performance-based contracts, nonprofits that are in a better position to hit the outcome targets and track the fact that they have done so would have a competitive advantage and, over time, could increase their share of government funding. In several instances where performance-based contracting has been systematically applied, such as with child welfare services in Illinois or Tennessee, or at the municipal level in New York City, there has been an improvement in outcomes for beneficiaries, sometimes with a reduction in the overall cost of services.

Yet for all the success of performance-based contracting in a few geographies and policy domains, it has not been widely replicated. Among the obstacles are a lack of consensus on appropriate outcome measures, the difficulty and expense for nonprofits to track outcomes, and—not least—the complex challenges that government agencies themselves face in focusing on monitoring and paying for outcomes. As the CEO of a large Los Angeles-based nonprofit told us: “Many of the government funding sources go through the motions of tying funding to outcomes, but it doesn’t really work like that. There is a bit of smoke screen that gives people the impression that it’s going on, but in reality they are still counting heads and counting meals.”

(Also,...) politics clearly plays its part. As an entrepreneurial nonprofit CEO who has been repeatedly frustrated in his efforts to expand his agency into new jurisdictions told us: “To get a contract now, you basically have to take it away from someone else. There is no new money on the table. ... If you are better friends with the government, then you will be keeping the contract.” It stands to reason that in a $100 billion market, there will be a lot of nonprofits that will vigorously defend their interests and their contracts, even when other providers have a better track record of demonstrating outcomes. One retired state commissioner who had been frustrated in his efforts to bring in new high-performance providers to his state told us that the incumbent nonprofits were largely to blame: “The old crowd is politically powerful. They were fighting tooth and nail for every penny they could get. Our approach was a direct threat to them, and they were able to work their contacts in the legislature like nobody’s business to oppose what we were trying to do.”

If I were a city leader wanting to move to performance-based contracting, I’d want to make sure that I either had or put some of my highest caliber people in the procurement / contracting office. In many places these are backwaters of the municipal civil
service, staffed by bean counters focused on contracting with low cost bidders. That is insufficiently nuanced for structuring and sourcing performance-based partnerships, which demand an understanding of the outcomes in question and what it takes to produce them, as well as the ability to identify and work with nonprofits who will provide the best value via their performance, not simply the lowest price.

**PATRICK LESTER, MAY 26, 2017**

Here are a few resources:


**MARY WINKLER, MAY 26, 2017**

Urban Institute’s Center on Nonprofits and Philanthropy has produced a fairly robust body of research on this topic. You can find links to a dozen or more articles, briefs, or research reports here:


A lot to wade through, I know - but we are coming upon a long weekend!

**CAROLINE WHISTLER, MAY 26, 2017**

I’d be happy to share some thoughts with the city based on my work with pay for success and outcomes based contracting at Third Sector. Please let me know how I can help!

**JOE MCCANNON, MAY 26, 2017**

Based on some experiences at HHS/Medicare and Medicaid, I would proceed cautiously with performance-based contracting. My experience is that there is a right way and a wrong way to do it, and that government organizations often do it the wrong way.
I would describe the wrong way as contracting that sets performance objectives for individuals and entities with a general philosophy that pits the government agency against the organizations they fund – a ‘prove it to me’ mentality. This creates unintended consequences, including general mistrust, fudging of data, over-focus on pleasing the government source of funds (versus the customer), and arguments over means and quality of tools used to assess performance. Inspection-and-reward systems create fear and conservatism that undermine needed change.

I would describe the right way as contracting that agrees upon a shared aim for outcomes, and creates a shared accountability for achieving that between the government agency and the recipient. They should sit on the same side of the table with one another, jointly invested in solving the problem, creating an environment that is safe for failing and learning, where the government agency is responsible for removing barriers to progress, as opposed to just sitting in judgment. Continued funding can be contingent on performance (and denied in cases of gross negligence) but it is generally used as less of an incentive and more of a natural way to stop and reflect on needed adjustments in the approach the contractor is taking.

The evidence for most types pay-for-performance in health care, where I’ve done most of my work, is mixed. I guess people like Deming and Daniel Pink have written about the general idea most famously but health care/government thought-leaders like Don Berwick have done so, as well (here http://www.ihi.org/education/ihiopenschool/resources/Pages/Publications/ToxicityofPayforPerformanceArticle.aspx).

**JENNIFER BROOKS, MAY 26, 2017**

I have found Carolyn Heinrich at Vanderbilt to be quite thoughtful in this space. I believe she does training for public agencies on the topic and has a lot of experience from when Wisconsin tried this in their welfare system. Her training focuses on how to avoid some of the perverse incentives that can come about in performance-based contracting.

A few of her seminal papers are here:


MICHELE JOLIN, MAY 27, 2017

I would suggest that the Mayor’s office talk to our What Works Cities team. This is the kind of thing that we help cities with in our What Works cities program.

I also would suggest that they contact Linda Gibbs with Bloomberg Associates. Simone would be happy to connect the Mayor with Linda.

MICHAEL SHAVER, MAY 27, 2017

Meaty topic, but one I think is always worth taking up.

When I hear performance-based contracting, I assume it’s more than just clarifying outcomes. I assume it involves “enterprise risk,” and that performing well is financially incentivized and that failing to perform has implications for the service provider’s balance sheet. If this isn’t the case, and it’s more about clarity around outcomes, what follows may be of limited value.

I worked in state government during the late 90s and was part of the performance contracting efforts in child welfare referenced in Daniel Stid’s excellent summary email from yesterday. We had some real progress with what was then about $60M in service contracts covering about 30,000 children in foster care. It was a very different approach at the time, and was recognized by the (then) Harvard Innovations in Government Award in 2000. It was also developed as a Harvard Kennedy School case study written by Professor Bob Behn, a longtime thinker in performance management in government. A variation of the basic model (unique to Illinois) was replicated with the Philadelphia child welfare system using the grant award from the Harvard Innovations competition.

Just a couple of quick observations coming directly from my battle scars:

- Obviously, it’s complicated. Extremely complicated. Government is far better when dealing with the political frame than it is the rational frame. There can be profound tension between aligning contract outcomes and financial outcomes when it comes to how public dollars are spent. This is especially true with respect to services for vulnerable populations – no surprise. Accordingly, while our thinking about how to structure the work, payment and accountability is necessarily layered with nuance and complexity, the political narrative can be more coarse. Profiting at the expense of the needy, financially incentivizing doing the right thing, using contracts and financing to punish an already beleaguered sector are just a few examples. For this reason, the “why” becomes incredibly important. I think it’s risky to think about performance contracting as a blanket standard operating procedure for how
government contracts will work. When something doesn’t go as planned—a near certainty—the entire approach becomes suspect, rather than the complexities of a particular service or contract.

- Start with the end in mind, and target the most inefficient parts of the system first. Doing this makes it easier to find ways to potentially invest in building capacity in a budget neutral way and builds a sense that achieving better results is doable.

- Data, data, data. If it’s not available, build it first. Both government and service providers need to have confidence there is a verifiable way to move the needle in a way that both validates outcomes and is consistent with the cost model upon which the contract is based.

- Lastly, it’s important to be transparent, and to engage in the work as a real partnership. It shouldn’t be done TO contracted service providers, it should be done WITH them. In my experience, it’s very rare to find a provider who is not just as invested in successful outcomes as the funder. Approach the work with that assumption in mind.

Just to make sure I didn’t over-simplify this, I’ll add one additional resource penned by yours truly along with a couple of my colleagues from Illinois. Our work on performance-based contracting in child welfare was written up in chapter 10 of Fostering Accountability published by Oxford University Press in 2010. It’s a painstaking walk-through of our approach, the numbers and lessons learned. The other chapters aren’t bad either ;P.

I hope this is useful, Katie. If I can be of any further help to our loyal ally, don’t hesitate to let me know.

**IDARA NICKELSON, MAY 27, 2017**

Plenty of great information shared so far. I helped to implement then oversee performance based contracting while serving as a senior leader in DC’s Dept of Human Services.

Happy to be connected with the requestor to share my on the ground experience if that would be helpful. During that time, I also worked with other cities in interested in doing the same, providing TA and support through workgroups established by various affinity groups.
ADAM LUECKING, MAY 30, 2017

Here is a link to an example of some “performance-based contracting” work we supported in New Zealand:


I also have some examples from a mid-sized American city and a few state HHS departments if anyone wants to explore further. Thanks.

CAROLINE WHISTLER, JUNE 8, 2017

Incredible and humbling to see the outpouring of resources and expertise for a topic I am so passionate about! And also to hear that allies of the community are interested in using one of government’s most powerful resources (our taxpayer dollars!) to drive outcomes.

As well-worn travelers in the Pay for Success field, Third Sector has many learnings to share about the challenges around outcomes contracting and some of the factors we have seen drive local governments to do business differently. Here’s an overview of the challenges and our next steps.

To echo some of the great points made already:

Governments need appropriate data infrastructure to underwrite outcomes:

- Many folks “jump” to Pay for Success or outcomes contracts without realizing that you can only contract for what you can measure--and their systems have been structured for compliance, not outcomes/impact tracking. Here’s an article on how to structure data systems for outcomes contracting.
- We’re focusing on helping governments develop integrated data systems (IDS) with Upenn’s Actionable Intelligence for Social Policy (AISP) to build the infrastructure to underwrite outcomes contracts. Annie Casey has done some great work on this including a short film overview of Integrated data systems (which talks about Cuyahoga’s Pay for Success project--go Cavs!)

You get what you pay for. How you define (and refine!) Outcomes goals for policy and contracts matters--

- We led an online blog series in SSIR about the process by which communities define positive outcomes they want to achieve in their contracting, and how continuous learning (vs. pass/fail metrics) are critical to supporting a transition to outcomes (shout out to Ambassador Jen Brooks who contributed with “making the case for evidence-based decision-making”--thank you!)
Outcomes contracting is about unlocking innovation by changing the process for resource allocation, not finding the perfect program.

- This nuance is often lost on government in the “find what works and scale it” language--but given the complexity and ever changing nature of communities, the reality shown by multiple evaluations is that it is near impossible to replicate successful results in an RCT setting (See Jim Manzi’s “Uncontrolled”).

- Evidence-based programs remain the best hypothesis to deliver outcomes, but governments need to set up processes that continuously track results for communities and allow providers to learn, improve, and respond to changing community dynamics over time. Locking providers into service delivery “recipes” stifles their ability to learn, improve performance, and measurably improve lives...

Also, Nonprofit Finance Fund just published a book with Federal Reserve on Investing in Results of resources for investing in outcomes. Many of the authors are friends and members of the Ambassador community--it’s a fantastic resource!