

**Testimony of Michael Owh,
Acting Director of the Mayor's Office of Contract Services, and
City Chief Procurement Officer
Before the New York City Council Committee on Contracts
March 23, 2016**

Good morning, Chair Rosenthal and members of the City Council Committee on Contracts. My name is Michael Owh and I am the Acting Director of the Mayor's Office of Contract Services (MOCS) and the City Chief Procurement Officer (CCPO). Thank you for the opportunity to testify today regarding the Fiscal 2017 Preliminary Budget.

New York City is one of the largest contracting jurisdictions in the nation. In Fiscal 2015, City agencies procured \$13.8 billion worth of goods, services, and construction through more than 68,000 transactions.

Governing the procurement of those goods, services, and construction are rules promulgated by the Procurement Policy Board (PPB), whose work MOCS coordinates. The PPB Rules ensure that the City's procurements are competitive, fair and result in contracts with vendors who have the requisite business capacity and integrity. MOCS is charged with overseeing agency compliance with the PPB Rules and various local laws that involve procurement. MOCS performs this responsibility through its relationship with the City's Agency Chief Contracting Officers (ACCOs), who execute the contract actions in accordance with the PPB Rules.

One of MOCS's most important duties is to jointly administer the City's Minority and Women-Owned Business Enterprise (M/WBE) program, with the Department of Small Business Services ("SBS"), under the leadership of Counsel to the Mayor and Citywide M/WBE Director

Maya Wiley. MOCS supports City agencies in their efforts toward Mayor de Blasio's ambitious goal of awarding \$16 billion to City-certified M/WBE firms by 2025. This Administration is dedicated to ensuring the success of this program and we are off to a good start. Fiscal 2015 saw approximately \$1.6 billion awarded to City-certified M/WBEs, putting the City on pace to meet Mayor de Blasio's \$16 billion goal. As part of this unprecedented effort, MOCS provides aggregated reports of M/WBE contract awards, hands-on technical assistance to City agencies regarding goal-setting, pre-award waiver requests, post-award modifications, and coordinates policy changes designed to benefit the M/WBE community.

In addition to the administration of the M/WBE program and procurement reviews, MOCS is also responsible for publishing numerous reports as required by law as well as many other activities related to contracting. For instance, MOCS coordinates public hearings for all applicable contract awards, including 16 public hearings for 517 contracts valued at approximately \$4.8 billion in Fiscal 2015, and assists vendors with enrollment in the Payee Information Portal. MOCS oversees the Franchise and Concession Review Committee process, including the administration of public meetings and hearings that resulted in approvals of 42 concession awards with a projected revenue of \$40.7 million and 5 franchises with a projected revenue value of \$546.4 million in Fiscal 2015.

MOCS manages the VENDEX database – one of many tools City agencies use to determine the responsibility of vendors. MOCS collects information from vendors that have a value of more than \$100,000 in contracts with the City within a twelve month period. MOCS staff gathers and enters vendor and principal information and makes it available to City agencies through the VENDEX database. In Fiscal 2015, MOCS received 12,360 VENDEX submission packages.

Another tool used to determine vendor responsibility is the City's performance evaluation database, which is managed by MOCS. City agencies are required to complete annual performance evaluations for all contracts except for goods procured via competitive sealed bids below the small purchase limit. In Fiscal 2015, MOCS processed 7,295 performance evaluations.

Local Law 34 of 2007 created the Doing Business Accountability (DBA) database, which includes information on all entities that are doing or seek to do business with the City, as well as their principal officers, owners, senior managers, and lobbyists. In compliance with the law, MOCS processed 12,300 DBA forms in Fiscal 2015, resulting in 8,500 entities and 28,100 people identified to be doing or seeking to do business with the City.

To offer specific support to nonprofit providers as well as the City's human service agencies, MOCS created the Capacity Building and Oversight (CBO) unit in 2008. MOCS has since:

- Provided training, in coordination with the Council, to more than 4,000 nonprofit leaders, Council members and staff, and umbrella organizations;
- Responded to more than 10,000 CBO Hotline requests for assistance annually;
- Vetted more than 7,000 discretionary awards annually; and
- Completed 521 nonprofit governance reviews.

MOCS also develops and disseminates best practices standards for nonprofits and constantly works with partners at City agencies and HHS Accelerator to improve the procurement process for nonprofits.

In Fiscal 2016, MOCS took over management of the 19 shared services audit contracts and coordinated the assignment of 416 program audits with the 6 human services agencies that utilize task orders to procure third party audit services. Fiscal 2016 was also the first year MOCS

managed the City's group purchasing contract with Essensa, providing a free service to 817 nonprofit members to reduce their costs for goods and services. Essensa reports \$27 million was spent by members since the start of the contract.

MOCS works on citywide labor compliance issues, including City agency compliance with Prevailing and Living Wage requirements pursuant to Executive Order 102 as well as the apprenticeship requirements on contracts. MOCS was involved in the Project Labor Agreement (PLA) negotiations in Fiscal 2015 and works with agencies to ensure proper administration. The new PLAs will cover an estimated \$8 billion of construction projects throughout the terms of the agreements and are expected to save the City approximately \$347 million. The new PLAs are also designed to provide open-shop contractors greater flexibility on PLA contracts and further increase construction contract opportunities for city-certified M/WBEs.

Finally, simultaneous to our current work, MOCS is undertaking a thorough review of the City's procurement process in order find opportunities for improvement. Our goal is to provide leadership and technical assistance in the procurement process and we are committed to working with all City agencies to ensure compliance with relevant legal and regulatory requirements so they can further their respective missions. We look forward to working together with the Council to achieve that aim. Thank you again for the opportunity to testify today. I would be happy to answer any questions the committee may have.



FEDERATION OF PROTESTANT WELFARE AGENCIES

TESTIMONY

Preliminary Budget Hearing: Contracts Committee

Presented to

New York City Council, Contracts Committee

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My name is Carlyn Cowen and I am a policy analyst at the Federation of Protestant Welfare Agencies (FPWA). I would like to thank Chairperson Rosenthal and the members of the Contracts Committee for the opportunity to testify before you today and for your leadership on issues that deeply affect New Yorkers.

FPWA is an anti-poverty, policy and advocacy nonprofit with a membership network of nearly 200 human service and faith-based organizations. FPWA has been a prominent force in New York City's social services system for more than 92 years, advocating for fair public policies, collaborating with partner agencies, and growing its community-based membership network to meet the needs of New Yorkers. Each year, through its network of member agencies, FPWA reaches close to 1.5 million New Yorkers of all ages, ethnicities, and denominations. FPWA strives to build a city of equal opportunity that reduces poverty, promotes upward mobility, and creates shared prosperity for all New Yorkers.

In order to support our nearly 200 human service member agencies, as well as other nonprofit and human service organizations, to successfully provide the variety of critical services they deliver, FPWA urges the City Council to invest in strengthening the nonprofit and human service sector by:

- **Establishing a working group to implement the OMB Guidance, and to use this avenue as an opportunity to take up the greater issue of the real cost of providing human services.**
- **Continue to work to implement the \$15/hour wage floor for nonprofit workers**

OMB Indirect Guidance and the Real Cost of Human Service Contracts

Nonprofit human service organizations suffer greatly from the underfunding of indirect costs, or costs that cannot be identified with a single cost objective such as a program or facility (indirect costs often include personnel and administrative costs). The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards issued by the federal Office of Management and Budget, known as the OMB Guidance, issued in 2013, required state governments, local governments and other organizations that pass through federal funds to reimburse the reasonable indirect cost on nonprofits. However, thus far, New York City and State have not yet implemented this guidance and their contracts are still plagued by low indirect payment rates. According to Nonprofit Finance Fund's State of the Nonprofit Sector 2015, over half of nonprofit respondents reported indirect cost rates of 9% or less on City contracts, and over half of nonprofits reported indirect costs rates of less than 10% on State contracts, although federal rates ranged from 17% to 23%.¹

In most cases, government and private funders underwrite few of the necessary indirect costs of organizational operation, such as rent, facilities maintenance, equipment and furnishings, fundraising, risk assessment or accountability. There is a false, yet pervasive, notion that nonprofit human service organizations spend too much on indirect costs, or that philanthropy will cover these important investments.

The underwriting and underpayment of these costs means that organizations struggle to pay for the most basic costs like rent or building repair, never mind more abstract costs like developing more efficient financial systems, or creating new monitoring and evaluation systems. Low indirect costs mean that organizations cannot successfully perform key functions, such as:

- Acquire, maintain, or modernize mission-critical facilities and equipment;
- Harness the power of technology to realize efficiencies;
- Provide training for staff to ensure high-quality service delivery;
- Pay living wages and provide career ladder opportunities to attract and retain qualified staff;

¹

State of the Nonprofit Sector 2015, Nonprofit Finance Fund (NFF), 2015

- Invest in strategic planning or innovation to ensure sustainability; or
- Expand services to meet growing need as inequality becomes amplified

Low indirect cost rates on human service contracts are especially difficult for nonprofit organizations because government funding accounts for the majority of revenue, and private funders are unlikely to offer significant indirect funding, if at all. This means that nonprofit human service organizations facing low indirect rates often struggle to maintain infrastructure and keep up with rising costs. For example, nonprofits are still subject to rent increases, rising health insurance premiums, and other inflation-adjusted costs, but automatic contract renewals do not account for those increased expenses, making government contracts more unaffordable each year. When government contracts become so unaffordable that nonprofits try to surrender them, they are faced with the double bind of being forced to find another provider to assume the contract, as happened when Turning Point Brooklyn, a supportive housing provider, tried to surrender a contract to the Department of Health²

In order for nonprofit human service providers to deliver and maintain quality services, and continue providing critical services across the city and state, changes to the way that they contract and get paid by the City and State must reflect the true cost of human services. The OMB Guidance should be seen as an attempt to “right-size” the funding of indirect costs.

FPWA urges the City to establish a working group to implement the OMB Guidance, and to use this avenue as an opportunity to take up the greater issue of the real cost of providing human services. In order to successfully implement the OMB Guidance, the City should work closely with the nonprofit human services sector to determine the true cost of running a successful program that achieves meaningful results, to define program costs, overhead costs, administrative costs and indirect costs, and adopt a more accurate and just way of determining reasonable and realistic indirect cost rates for programs.

Support for Nonprofit Workers and Career Ladder

The City annually contracts out \$5 billion in social services to nonprofits. These nonprofit employees provide a range of vital services from early childhood education, foster care, senior care and case management, to after school programming, care for homeless families, and supportive housing for vulnerable populations. Since they provide important City services, this nonprofit workforce is effectively the City’s indirect workforce. **FPWA applauds the Mayor for last year’s inclusion of a first-ever \$11.50 per hour wage floor for the City’s contracted social service workforce, and for this year’s commitment to a phased in \$15 wage floor by 2018, and thank the Council for their support.** This \$15 wage floor will result in a raise for 30,000 nonprofit employees, and is an important first step in ensuring a living wage for this essential workforce. FPWA is working closely with the administration to implement this wage floor, and looks forward to continued progress over the coming months.

Expanding Advocacy to the State Level

FPWA is aware that, while City contracts make up a substantial portion of nonprofit funding, many nonprofits receive funding from both City and State contracts. To help nonprofits function more effectively and to make assist in ease of implementation of the City wage floor, FPWA has launched the #15andFunding Campaign, along with our partners at the Fiscal Policy Institute and the Human Services Council.

²

City Won’t Let Homeless Group with Poor Record Out of Contract, James Fanelli, DNAinfo, November 24th, 2015

The #15andFunding Campaign, supported by more than 80 nonprofits from across the state, supports Governor Cuomo's proposal to increase the statewide minimum wage to \$15 for all New Yorkers, in line with the timeline proposed in the Mayor's plan. To ensure that nonprofits with State contracts and Medicaid funding are able to cover the wage increase, the campaign is advocating to the Governor and the legislature to include funding for the nonprofit workforce in the budget to address both the cost of the increase and spillover costs for staff currently making above minimum wage.

We hope that the state will follow the cities lead by investing in this essential workforce, their organizations, and the communities they serve.

Conclusion

We thank the City Council for the opportunity to testify. We hope that you will consider our priorities and recommendations during this year's budget negotiation process, and look forward to continue working closely with you to nonprofits and human service organizations receive sufficient support to help them achieve meaningful results in their communities.



TESTIMONY
New York City Council
Committee on Contracts
Hearing on the Preliminary Fiscal Year 2017 Budget
Wednesday, March 23, 2016

Good afternoon, Chairwoman Rosenthal and members of the New York City Council Committee on Contracts. I am Allison Sesso, Executive Director of the Human Services Council of New York ("HSC"). Thank you for the opportunity to testify regarding the preliminary New York City budget for Fiscal Year 2017. In my comments I will address the human services components of the budget. In short, HSC believes that the Mayor's proposal reflects his commitment to equity and would better position human services organizations to carry out their work, creating opportunities for *all* New York City residents to live healthy, productive lives. I urge you to build on this proposal by further investing in the human services workforce, aligning funding with the true cost of program delivery, and working with us to optimize the human services planning and contracting processes.

HSC is a membership association representing more than 170 of New York's leading nonprofit human services organizations, including direct service providers and umbrella and advocacy groups. Our members provide essential supports to a broad spectrum of New Yorkers, including children, the elderly, the homeless, people with disabilities, individuals who are incarcerated or otherwise involved in the justice system, immigrants, and individuals coping with substance abuse and other mental health and behavioral challenges. We serve our membership as a convener, a coordinating body, and an advocate. We are also an intermediary between the human services sector and government, fostering cross-sector collaboration. We help our members better serve their clients by addressing matters such as government procurement practices, disaster preparedness and recovery, government funding, and public policies that impact the sector.

Today I will focus on the following topics:

- The recommendations of the Commission to Examine Nonprofit Human Services Organization Closures regarding:
 - Cross-sector program collaboration
 - Appropriate funding and payment of contracts, including indirect costs
 - Streamlining of mandates
- The human services workforce

Recommendations of the Human Services Closures Commission

Last year, HSC established the Commission to Examine Nonprofit Human Services Organization Closures ("the Commission"), a diverse group of leaders from the nonprofit, for-

profit, academic, and philanthropic sectors, to examine the systemic problems contributing to the instability of so many nonprofit human services organizations. The Commission's charge was to develop thoughtful and succinct recommendations for building a strong human services delivery system in New York and addressing obstacles to providing high-quality programs. Those recommendations were released last month in the Commission's report, "New York Nonprofits in the Aftermath of FEGS: A Call to Action."¹ Among the recommendations concerning government are earlier and more meaningful collaboration among providers, government, and philanthropy for purposes of program design; streamlining of regulatory mandates; and more appropriate funding and payment of contracts.

Cross-sector Program Collaboration

Key among the Commission's recommendations is the creation of partnerships among the public sector, private funders, and human services providers to develop effective programs. The Commission found that Programs intended to build human potential and social welfare are too often developed without consulting the human services providers who will be responsible for implementing them, resulting in ineffective and unworkable programs. The City should leverage the on-the-ground experience of service providers—who truly know their communities—when creating programs and developing performance metrics. The opportunity for meaningful input will be even more important as the State transitions to a value-based payment model under the Medicaid Managed Care system.

Appropriate Funding and Payment of Contracts

The nonprofit human services sector suffers from cash flow problems and chronic underfunding largely because government contracts and philanthropic grants rarely cover operating costs—and payment is often late and unpredictable. Contracts and grants must fully cover indirect costs such as information technology, compliance, building maintenance, program evaluation, accounting, human resources, and employee training. Agreements should include cost escalation clauses that accommodate increases in the cost of doing business and/or allow for the surrender of contracts when they become unsustainable due to unforeseen circumstances. In a city where the already sky-high rent steadily increases—on top of unrelenting increases in health care and other insurance costs—it is unreasonable to hold a provider to the same level of funding for the life of a multiyear contract. In addition, with the transition to value-based payment, providers will face costs associated with training, technology upgrades, and outcome measurement, to name a few. Finally, payments must be timely and reliable to avoid further destabilization of the sector.

HSC continues to work with both the City and the State to address the urgent infrastructure and administrative needs of nonprofit human services organizations. In particular, we have focused on the implementation of the now two-year-old Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards issued by the federal Office of Management and Budget ("OMB") on December 26, 2013 ("Guidance").² This Guidance requires that agencies receiving and redistributing federal funds to nonprofit organizations pay an indirect cost rate of no less than 10 percent on contracts supported by federal dollars. Unless and until contracts cover the full cost of services, any increase in indirect cost rates will

¹ The report can be downloaded at <http://www.humanservicescouncil.org/Commission/HSCCommissionReport.pdf>.

² 2 C.F.R. §§ 200.400-200.475. Available at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

mean a reduction in program funding. Like the minimum wage increase, however, the federal Guidance should be viewed as an attempt to “right-size” the funding of indirect costs.

Low indirect cost rates have starved the human services sector of adequate funding for many years. Our members report receiving indirect cost rates as low as 2.3 percent,³ which is unquestionably a factor contributing to the precarious position of the sector. Stigma around indirect costs and the common misperception that philanthropy will cover these critical investments are the leading causes of anemic contracts. Without adequate indirect cost reimbursement, organizations cannot:

- Acquire, maintain, or modernize mission-critical facilities and equipment;
- Harness the power of technology to realize efficiencies;
- Provide training for staff to ensure high-quality service delivery;
- Pay living wages and provide career ladder opportunities to attract and retain qualified staff;
- Invest in strategic planning or innovation to ensure sustainability; or
- Expand services to meet growing need as inequality becomes amplified.

A recent example of the consequences of low indirect cost rates is the New York City homeless shelter dispute of last Fall. Shelters are held to stringent safety and sanitation standards, as they should be, but their contracts do not cover the costs of meeting these standards. Now the Governor seeks to authorize city comptrollers to revoke contracts and close shelters for safety and sanitation violations, but he has not provided appropriate funding for repairs. The continued tension between ensuring that the increasing homeless population is sheltered and that shelters are in good condition—the perennial tension between quantity and quality—is a result of chronic underfunding in organizations. The solution requires investment by all levels of government.

As the City and State work to implement the OMB Guidance, it is an opportune time to take up the larger issue of the real cost of human services. The government should work closely with the sector to determine what it actually costs to run a successful program, to identify what is truly a program cost and what is truly an “indirect” cost, and to adopt a more accurate and just way of determining what a reasonable and realistic indirect cost rate is for a given program.

We note that failure to comply with the Guidance could result in the rescission of federal contracts, depriving organizations of the funding necessary to carry out their missions. HSC calls on the Council and the Mayor to take the lead not only in holding City agencies accountable for implementing the Guidance, but also to set an example for the State in extending the same indirect cost principles to City-funded contracts. We stand ready to assist in the development and implementation of a sensible indirect cost strategy.

Streamlining of Mandates

Providers must be held accountable for delivering the promised results under their contracts and for wisely managing the public funds that are entrusted to them. As we have seen, however, the current regulatory framework does not deter bad actors and poor managers from engaging in behaviors that put organizations and their clients at risk. The tendency of government has been to create more mandates in response to every high-profile case of fraud or mismanagement. As a result, many large nonprofit organizations undergo *hundreds* of audits each year, and yet red flags still go unnoticed until irreparable damage has been done. At the

³ On some contracts, no indirect costs are reimbursed.

same time, duplicative, unfunded mandates divert resources from program delivery and hamper investment in infrastructure and administration. Ineffective oversight processes with meaningful government oversight approaches that ensure that providers are financially and programmatically responsible.

The recommendations above are directed at government and philanthropy. The Commission report also contains recommendations for providers. These recommendations share a common theme: responsibility for risk assessment. One such recommendation, which HSC will play a lead role in implementing, is the creation of solicitation rating system and government agency performance survey to illuminate the risks associated with doing business with government. We would like the Council's support for this initiative.

The Human Services Minimum Wage

HSC deeply appreciates the Mayor's decision to include City-funded human services workers in his minimum wage increase—and to provide funding for its implementation. The City relies heavily on nonprofit organizations to deliver essential services that empower individuals and uplift communities, but the compensation for these services is notoriously low. Human services workers, most of whom are women and people of color,⁴ are a significant part of the City's workforce and could contribute much more to the economy if they were paid a living wage.

The Mayor's ambitious plan, which is projected to affect approximately 50,000 people, is an excellent step toward stabilizing the human services workforce. The human services sector has been prone to high attrition rates as low-wage workers leave for better paying jobs with more attractive benefits. This, in turn, compromises the continuity and quality of their services. A fully funded minimum wage increase will not only improve the lives of those who care for others, but it will also improve service delivery.

An important next step in the minimum wage initiative is to address the issue of wage compression. As wages for those at the very bottom of the pay scale increase, they will match those of workers who are already making \$11.50 an hour.⁵ Without additional funding to increase the wages of workers who are already paid at or slightly above \$11.50 an hour, there will be two unintended effects. First, workers who are currently paid \$11.50 an hour will become minimum wage employees overnight. This will have repercussions for employee morale and relations. Second, and more importantly, as wages become compressed, workers with vastly different duties, skill sets, and education levels will receive similar wages. This will impact both worker morale and the ability of organizations to maintain an attractive career ladder. Accordingly, wages across the sector must be recalibrated to prevent compression and ensure that nonprofit human services providers remain viable. HSC looks forward to working with you on the details of both the minimum wage increase and the prevention of wage compression.

⁴ See FPWA, Fiscal Policy Institute, and Human Services Council of New York, *A Fair Wage for Human Services Workers: Ensuring a government funded \$15 per hour minimum wage for human services workers throughout New York State*. ("Women make up 82 percent of the statewide workforce; people of color account for 50 percent of human services workers in the State.")

⁵ The minimum wage for human services workers who were not covered by the living wage funding will be \$10.50 per hour beginning July 1, 2016.

Cost-of-Living Adjustments

In previous years, HSC has advocated for cost-of-living adjustments (COLAs) for human services workers because many under contract with the City did not receive a pay increase for five consecutive years. During that time, both the cost of living and the City poverty rate rose significantly.⁶ The FY 2016 City COLA, combined with the \$11.50 living wage funding, was a good first step towards adequate workforce investment, and this year's minimum wage increase is a monumental opportunity to recalibrate the entire the human services wage scale. This "right-sizing" of human services wages is our current priority, and once an appropriate wage structure is established, we hope to work with the Council and the Administration to systematize COLAs.

Notwithstanding the welcome news regarding the minimum wage increase, we are cognizant of the slow and tedious implementation of last year's City COLA. The COLA took effect on July 1, 2015, but most covered providers are still waiting for their increase. Additionally, the spreadsheet that providers were required to complete was time-consuming and confusing, and duplicious of information already reported pursuant to contracts. Furthermore, while the City took months to articulate an implementation plan, providers were given only eight days to complete and submit a "one-size-fits-all" form that did not fit all providers. HSC is working closely with the City Office of Management and Budget to improve the process going forward, and we would like the Council to support a streamlined approach. For example, simply calculating the cost based on the Personal Services line and making the adjustment and recouping during an audit in the event of a problem would save organizations a significant amount of time.

Conclusion

HSC supports the Mayor's continued focus on promoting equity and empowering New Yorkers of all backgrounds to reach their full potential. The preliminary FY 2017 budget shows his bona fides and is a bold example for the State to follow. We look forward to working with the Mayor, the City Council, and the Administration to ensure that our sector is better funded and that City policies help, rather than hinder, service delivery. Together we can make good on the promise of a fair, safe, healthy, and sustainable city. Thank you.

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⁶ Roberts, Sam. "Poverty Rate Is Up in New York City, and Income Gap Is Wide, Census Data Show." *The New York Times*. Sept. 19, 2013. See also Baruch College NYCityData™, "[Consumer Price Index \(CPI\) Annual Averages](#)."

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