

IS CONTRACTING OUT IN NEW YORK CITY TINKERING OR REINVENTING GOVERNMENT?¹

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ABSTRACT. This article examines whether contracting out of government services in New York City has been tinkering or reinventing government, with a detailed examination of the layers of approval now required for awarding contracts to safeguard against possible corruption. The use of Compstat, by the New York Police Department, is seen to be a reinvention of how crime is fought in the city.

INTRODUCTION

Is contracting out in New York City (the “City”) merely tinkering? In the following examination, we offer limited but specific examples to support our conclusion that contracting out in New York City has been mostly tinkering, not reinventing government. However, tinkering has resulted in changes that have reinvented the fight against crime in the City. Since the accountability standards used for this fight have been adopted by other city agencies, one may argue that this has the promise of reinventing government.

To begin our discussion, some definitions of terms are necessary. According to Merriam Webster’s 1994 *Collegiate Dictionary*, tinkering

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is defined as “to repair, adjust, or work, with something in an unskilled or experimental manner.” “Reinventing” was chosen for the first word in the title of Osborne’s and Gaebler’s 1992 book, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* to convey a sense of dramatic change, not just tinkering (Nathan, 1995, p. 213). Basically, the “Reinventing Government” movement of the past 20 years has attempted to meet the challenge of government working better and costing less by changing the culture of government and its processes by decentralizing authority, flattening organizational structures, increasing employees’ involvement in and control of their workplaces, and focusing more on the needs of their customers, their citizens, by improving both the timeliness and the quality of response (Kamensky, REGO, 1996). Noting that governments constantly change, Osborne and Gaebler (1992) suggested ten principles for entrepreneurial governments to meet the opportunities and problems of a “postindustrial, knowledge-based global economy,” a detailed discussion of which is beyond the scope of this paper. According to then Vice President Al Gore, the twin missions of the National Performance Review, to make the federal government work better and cost less, were not solely about cutting spending, but were also about closing the trust deficit: proving to people that their tax dollars would be respected (National Performance Review, 1993, p. i).

HISTORICAL BACKGROUND

Beginning in the late 1800s, with an attack on the political spoils system and patronage jobs, through the rise of the civil service system, and the progressive era of the 1930s, there have been efforts focused on how to transform and improve the efficiency function of local government. A basic level of mistrust of local public officials exists, in part, an enduring reaction to New York Mayor John Lindsay’s failure to have Queens streets timely cleared after a major 1969 snowstorm (Hicks, 1994); the separate scandals of Vice President Spiro Agnew and President Richard Nixon in the early 1970s in which both resigned in disgrace; and New York City’s fiscal crisis later in the same decade. These events, and others, have resulted today in a “panoptic vision” dominating government’s need to control corruption (Anechiarico & Jacobs, 1996, pp. 23, 28). In 1978, the *Federal Inspectors General Act* (Public Law 95-452) broadened the definition of corruption to include incompetence, indifference, negligence, and non-feasance, in addition to

bribery and other criminal activity (Anechiaro & Jacobs, 1996, pp. 24-25).

In an effort to combat fraud, waste, and abuse, as well as corruption, legislation has been enacted in New York City to safeguard the contracting out process against corruption, but it was not until scandals were uncovered that the legislature took action. In the 1980s, three major scandals put the spotlight on corruption in New York City. One involved then Mayor Koch's Talent Bank that went from a job referral service, designed to aid women and minorities, to a patronage mill not unlike the days of Plunkitt's Tammany Hall. Another involved the Parking Violations Bureau (PVB) scandal in which Bronx Democratic Party boss Stanley Friedman pushed the PVB and the New York City Board of Estimate, then the City's oversight agency, to award a multi-million dollar contract for hand-held computers to Citysource, a company largely owned by Friedman (Anechiaro & Jacobs, 1996, pp. 46, 103). A third headline-making scandal, known as WedTech, involved a Bronx Congressman using his political influence to obtain federal contracts for WedTech that benefited his friends (Anechiaro & Jacobs, 1996, p. 105).

Since the 1980s, New York City officials and other municipal government leaders, have struggled with the demands of providing more, and better services, while facing voter opposition to raising taxes, which has been frequently accompanied by declining tax bases and reduced federal and state aid (Blackstone & Hakim, 1997, p. PS4).

To meet the demand to do more with less, city officials have come to rely on non-tax dollars to support public services (Perlmutter & Cnaan, 1995, p. 29). Contracting out is perhaps the most common form of privatization of work or services previously provided by the government: While the government raises the money for the service, and maintains its responsibility for service delivery, private organizations, either non-profit, or for profit, deliver the services (Perlmutter & Cnaan, 1995, p. 29). E. S. Savas (2001, pp. 265, 268) noted that for a long time many of the social services administered by New York City have been provided by contract, and summarized privatization activities, including contracting out, of the Giuliani Administration.

CONTRACTING OUT AND THE FEERICK COMMISSION

The previously mentioned scandals, and others, put the spotlight on the City's system of contracting out. As a defensive reaction to the negative publicity generated by the scandals, the City's contracting process has been saddled with an ever-increasing plethora of rules, procedures and reviews by many different oversight bodies (Anechiaro & Jacobs, 1996, p. 135). For example, in response to these scandals, in 1987 then Governor Mario Cuomo set up a blue-ribbon commission, the New York State Commission on Government Integrity, known as the Ferrick Commission, to investigate New York City's procurement practices and to make recommendations on anti-corruption rules and strategies. The Commission's scathing report, *A Ship Without a Captain: The Contracting Process in New York*, stated: "...the City's labyrinthine contracting system wastes millions of dollars...is mired in red tape, scares away vendors, and remains vulnerable to corruption" (Quoted in Anechiaro & Jacobs, 1996, p. 134).

The Ferrick Commission made five recommendations for improving the City's contracting system:

- The City should attract more contractors, rather than identifying bad ones.
- The Mayor should appoint a temporary deputy mayor whose sole responsibility would be to oversee and to reform city contracting.
- Each city agency should appoint a Chief Contracting Officer (ACCO) with a professional procurement background.
- The City must train contracting personnel so that they have the skills and tools necessary to get the best possible deal for the City.
- The City should review contracts on a "selective post-audit basis" to make sure that procurement rules are followed (Anechiaro & Jacobs, 1996, p. 135).

Reaction Leads to Reinvention

The question remains: Was the City tinkering or reinventing? To answer this question, we must first answer: Was New York City reactive or proactive in its efforts to improve its methods of contracting out?

It is clear that New York City was reactive, forced to change by oversight commissions, the news media, and public opinion. However,

pressured by the rhetoric of the Feerick Commission, New York City took a fresh look at the way it contracted out, drawing upon the expertise of the private sector and organizations such as the National Institute of Government Purchasing (NIGP) and the National Association of State Procurement Officers (NASPO) to reinvent itself. Through reinventing government, the City implemented significant changes to the way it contracts out:

- The New York City Charter was completely revised in 1989. Major changes included making contracting out an executive function under the mayor, removing the Board of Estimate's authority to approve contracts, and restricting the types of contracts that can be awarded without competitive bids. For example, emergency contracts are exempt from competitive bidding if they can be justified by a threat to life, safety, or property. All other contracts must be awarded to the lowest responsive and responsible bidder (City of New York, 2001b, Chapter 13, Section 313).
- The revised City Charter also established the Procurement Policy Board (PPB) that sets citywide procurement through its purchasing rules. Moreover, PPB members come from both the private and public sectors, providing new ideas from the business community to help the City provide services. The mission of the PPB is to create a set of contracting rules that promote competition, fix accountability with each agency, and provide each agency with the authority to make timely and efficient procurements. Currently, approximately seven billion dollars worth of goods, services, construction and construction-related services are contracted out annually using the PPB rules that are only 133 pages long (New York City, 2001a; New York City, 2001c).
- PPB rules include an ethics guide that states, in part, that City contracting personnel have a responsibility to act honestly and fairly and award contracts to responsive and responsible bidders (New York City, 2001c).
- New York City assisted contracting personnel by establishing a vendor database known as the Vendor Information Exchange System (VENDEX), which contains useful information about a contractor's background (i.e., debarments, indictments, convictions or other violations).

- However, because of the government's mistrust of its workforce, the City has created additional layers of bureaucracy to monitor contracting out. For example, a Conflicts of Interest Board was established that requires that all contracting personnel complete a questionnaire divulging their personal finances—(New York City, 2001b, Chapter 68).
- At the same time, the Department of Investigation (DOI), using Inspectors General, was given broad powers to investigate city employees' personal finances and contractors eligible for a city contract. The additional layering enabled DOI to “approve” a contractor before an award is made (New York City, 2001d).

While New York City has made significant strides in changing procurement, efficiency and effectiveness have been stymied by creating additional layers of approval and oversight. Has this resulted in tinkering or reinvention? These changes indicate reacting to scandals and creating an additional layer of oversight and approval to avoid their reoccurrence. There is no reinventing here, according to measures described in Campbell's and McCarthy's account of redefining government in New York City's decision to contract out the provision of most services to the homeless:

The shift from direct to contracted operations requires a complete redefinition of the role of government. An agency that undergoes such a drastic change must establish guidelines from all operations of the agency-reporting requirements, auditing, budgeting, staffing, training for staff of both the government and its contractors, and oversight of all functions of the contracted providers (Campbell & McCarthy, 2000, pp. 342-343).

To oversee contracting out in New York City, a captain of the ship was named, known as the City Chief Procurement Officer (CCPO). Michael Rogers, one of the city's first CCPOs, and an entrepreneur from the private sector, was instrumental in steering the ship, transforming what was thought of as a clerical task into a procurement profession that is recognized around the world. Although New York City created the Procurement Training Institute (PTI) to provide procurement personnel with the necessary skills and tools to contract out, the City has neither made attendance mandatory nor provided financial rewards for receiving national certification by the National Association of State Purchasing Officers that demonstrates proficiency in the procurement profession. All

training at the PTI is provided on a charge-back basis to agencies (New York City, 2001e).

A further attempt at streamlining contracting out has been to allow the New York City Comptroller to review all contracts on a post-audit basis after registration. However, the Comptroller has interpreted this role to include pre-auditing contracts by exerting authority to investigate a contractor's background and reject a contract based on fear of fraud or corruption (New York City, 2001e).

New York City has changed from traditional contracting methods to placing more emphasis on performance-based contracting to achieve its mission of enabling more than 1.2 million welfare recipients to make the transition from unemployment to employment. The Human Resources Administration used performance-based incentives in contracts to allow non-profit and for-profit organizations to earn a set fee for each welfare recipient the contracting organizations successfully placed in a job (Giuliani, Lhota, & Carpinello, 2001, p. 106). The Department of Design and Construction includes incentive clauses in its construction contracts that provide contractors bonus payments for each day that they finish a contract ahead of schedule, as well as assess penalties for work not finished on schedule (Giuliani, Lhota, & Carpinello, 2001, p. 198). Performance-based contracting has become a norm in New York City.

More recently, to implement a charter revision passed in 1999 that sought to simplify the City's procedures for awarding contracts and certifying vendor integrity review, the Mayor's Office introduced in June 2001 a new initiative, "Buy-Wise," an intranet site accessible by city agencies for electronic procurement (New York City, 2001f). "Buy-Wise" plans to have sample specifications for actual contracts, including technical updates, and will enable procurement personnel to access an all-inclusive central bidders list, designed to include more than 70,000 registered contractors, including minority- and women-owned-businesses. The "Buy-Wise" intranet site plans to include human services contracts, and all other contracts for goods, services and construction. "Buy-wise" will enable the City's procurement system to be more standardized, and more efficient (New York City, 2001f).

Layering is not Reinventing

To further complicate the myriad of forms, procedures, oversights, and approvals, the City has added additional layers of oversight in the

contracting out process. Empowered by the mayor, the following four offices have these responsibilities:

- The Department of Investigation (DOI) performs background investigations and approves proposed contractors prior to award.
- The Trade Waste Commission (TWC) performs background investigations and approves sanitation private carting contractors prior to award. (“New Agency,” 1996)
- The Mayor’s Office of Contracts (MOC) performs background investigations and approves private contractors prior to award.
- Additionally, the Office of Management and Budget (OMB) regulates and monitors fiscal spending and approval of large contracts prior to award.
- The City Comptroller performs background investigations and serves as the final approval authority as powers under the City Charter require the Comptroller to object to contracts for reasons of fraud or corruption (New York City, 2001e).
- The New York State Financial Control Board (FCB), created by legislation in 1975 to oversee the City’s finances during the fiscal crisis, now monitors fiscal spending in New York City and approves large contracts prior to award (*The New York Red Book*, 2001-2002, p. 621; Cooper, 2002).
- The City Council serves as the legislative branch of the City with power to approve the City’s budget and to conduct oversight hearings on City contracting.

According to Eric Lane, former Counsel and Executive Director of the New York City Charter Revision Commission, nothing has changed in procurement in terms of the length of the process (Eric Lane, personal comment, November 15, 2001.)

Bargaining Tools to Tinker

The City has also used the contracting out process not to reinvent government, but again as a reaction to a situation it faced: Negotiating a new contract with the Uniformed Sanitationmen’s Association. This powerful 6,500-member union had a record of “negotiating rings around City Hall.” (“Getting Tough,” 1994). Under agreements reaching back years, many sanitation workers, working assigned routes, collected a full

day's pay for as little as four hours of work. Labor agreements required other workers to collect recyclables, and prohibited sanitation workers from being asked to start another route after completing the initial assigned route. This established system wasted money, and previous mayors had pledged to reform the process, all with little success.

When negotiations stalled in 1994, Mayor Giuliani threatened to privatize curbside garbage collection and instructed his staff to take the necessary steps to contract out the service. The preparations and contingency planning for a wildcat strike forced the union to cave in, to agree to productivity concessions, and the threat of contracting out disappeared ("Getting Tough," 1994). In the same year, the mayor sought, and won, a new round of negotiation regarding school custodians by threatening to contract out the service (Mitchell, 1994). Contracting out was used as a bargaining chip, a form of tinkering with the city's government, and not a reinvention of it.

New York City has made tremendous strides in reinventing how it contracts out, but these gains have been foreshadowed by the way it reacts to corruption. However, its tinkering has made contracting out a rules bound, bureaucratic process that is fraught with delays, mistrust, and a lack of accountability. It is clear that government is not an opportunity seeker but a protector of the status quo. As a New York City transportation official said in 1992:

We're trying to streamline our extensive procurement system, but each time we take a step forward the PPB adopts a new and more complex set of procurement rules that creates more paperwork and slows things down.... We sacrifice speed and efficiency in order to prevent corruption (Quoted in Anechiarico & Jacobs, 1996, p. 123).

Tinkering and Reinventing

During the past 16 years, citizens' demands for safe streets and clean streets have been met in part by contracting out for additional services provided by now more than 44 Business Improvement Districts (BIDS) within the City (New York City, 2001g). Since 1981 an ordinance has allowed property owners to create such districts with the majority vote of all owners in designated area ("Administrative Code and Charter," 1989, Title 25, Chapter 4). The initial, experimental nature of the BIDS appears to fit the definition of tinkering. Although the services will be contracted out, the City Council must review and approve plans for the districts'

services, thus maintaining oversight against the possibility of corruption. A city-private partnership is maintained as the City's Department of Finance collects the annual assessments and returns the money to the district for security and street cleaning. In effect, the property owners are taxed twice for desired levels of service. Although a new use, designated assessments have been a common municipal finance tool. So once again, although copying is not reinventing, through the BIDS, citizens, governing themselves, with oversight from others, have achieved a level of service not available through traditional city services.

Early in his administration, then Mayor Rudolph Giuliani supported BIDS as "filling in for government." Others have expressed concern that BIDS are governed more by the desire to produce results, which have often been achieved, despite sloppy internal processes and criticism of methods used to remove the homeless (Lueck, 1994). Such tinkering though, supplies more pressure to elected and appointed city officials to improve conditions within the city, which can lead to reinvention, with or without contracting out, as demonstrated by the following account of the City's transformation of its fight against crime.

The New York Police Department (NYPD) offers an example of reengineering and reinvention without contracting out services. The following insights about the process are contributed by team member John Sharp, a 20-year veteran of the NYPD. In the early 1990s, the department evaluated itself through incremental changes in the crime statistics and internal measures that did not reflect true performance or the impact on the public. The department spent little time thinking strategically about crime and disorder. Specialized units addressed particular segments of criminal activity, but no one viewed the problem holistically. As a result, the related problems of guns and drugs and violence were reaching alarming rates in some neighborhoods (Hevesi, 1994).

In addition, the 1993 report on the Crown Heights disturbance had found, in part, that the violence was out of control and that the police were in retreat. (Finder, 1993) The NYPD had withdrawn from enforcing public order, allowing conditions to develop in many neighborhoods that empowered criminals and fed the public's fear. Reports by the Knapp Commission in the 1970s, later followed by the 1993 Mollen Commission Report Investigating Police Corruption, had eroded public confidence in the NYPD (James, 1995).

After Rudolph Giuliani became mayor in 1994, the NYPD went through a period of reengineering and reinvention that placed the fighting of crime and disorder as its primary mission. The mayor and his first Police Commissioner William Bratton changed the NYPD's definition of success: Rather than incremental declines in crime, the mission would be a dramatic reduction of crime, disorder and fear.

To change the NYPD into an organization capable of achieving these goals, Commissioner Bratton assembled a team of police professionals comprised of the late Jack Maple, the esteemed architect of Compstat; Chief of Patrol Louis Anemone, an expert field commander; Chief of Department John Timoney, who was later named the Philadelphia Police Commissioner, and considered one of the department's brightest; and from the private sector, Management Consultant John Linder. They introduced a new management philosophy and established strategies for using the NYPD's full resources to effectively combat guns, drugs, youth and domestic violence, and public disorder. The strategies cut across all levels and bureaus of the NYPD, and involved precinct commands, which were not previously at the forefront of fighting crime.

The department began to use crime statistics not just as a year-end score card, but in a way to make day-to-day adjustments in tactics. Precinct commands joined borough commanders and precinct detective squad commanders in tough, probing weekly meetings that energized the command staff and kept the focus on crime reduction. The meetings are called *Compstat* (Computer Comparison Statistics, after the system that allows police to track crime incidents almost as soon as they occur). Information on the crime, the victim, the location, the time of day, and other details, result in a computer-generated map illustrating where and when crime is occurring citywide. With this high-tech "pin mapping" approach, police can quickly identify emerging patterns and trouble spots and then target resources to fight crime strategically.

Compstat meetings also serve as an internal informational tool and a benchmark, as indicated by the following:

The meetings serve as a forum in which precinct and other operational units commanders communicate to the agency's top executives the problems they face, while also sharing their successful crime reduction tactics with other commanders. The process allows top executives to carefully monitor issues and activities within precincts and operational units, to evaluate the skills and

effectiveness of middle managers, and to properly allocate the resources necessary to reduce crime and improve police performance (New York City, 2002).

Compstat meetings are held twice weekly from 7 to 10 a.m. at police headquarters. Individual police commanders are given 36-hours advanced notice to prepare for their presentations and questioning. Presentations take place in the Command and Control Center. Precinct commanders stand behind a podium at the front of the Command Center and face the Executive Staff surrounded by the commander's peers. Behind the commander are three 8x8 foot computer screens that display the computerized map of their precinct with various crime problems highlighted. The Executive Staff receives briefing books prior to the meeting that contain profiles of the commander, giving the commander's rank, education, and specialized training, as well as the most recent performance evaluation and information about the command, including the number of personnel, the number of radio runs and accidents, summons activity, absentee rates, overtime expenditures and incidences of domestic violence.

Questioning of commanders is tough and pointed in a stressful atmosphere, and it can be embarrassing. Compstat meetings also present an opportunity for commanders to demonstrate their ability to manage. Innovative and effective tactics are quickly communicated to all present with the expectation that other commanders will replicate the successful tactics. However, failed tactics receive the same immediate treatment. At times, commanders have been relieved of their commands in front of their peers.

The Compstat process became a part of every level of management and bureau within the NYPD. Pre-Compstat meetings are held throughout the department so that no one's "boss" would be embarrassed at the Compstat meetings.

Compstat-style meetings developed for other issues, such as Trafficstat, monthly meetings at Police Headquarters of precinct commanders to discuss steps to reduce traffic accidents and to keep traffic moving (New York City, 2001h). Compstat became a way for supervisors to keep all ranks of the NYPD involved in situations or incidents of crime and with efforts to try to prevent or deter future incidents.

The revolutionary idea of Compstat helped reinvent the way crime is fought and viewed in New York City and around the world. The NYPD has shared its new policing strategies, as indicated by 44-pages of re-engineering initiatives in the *Reengineering Municipal Services 1994-2001* (Giuliani et al., 2001), and instruction about implementing Compstat with police executives from around the globe who attend the yearly three-day International Compstat Conference in New York (New York City, 1998).

CONCLUSION

The implementation of Compstat was credited by former Mayor Giuliani as showing that “a new philosophy of management can transform an entire culture and improve millions of lives” by reducing the overall crime rate in New York City by 57% from 1993 to 2000, and a 65% reduction in the homicide rate during the same years to a level last seen in 1967 (Giuliani, 2001).

The mayor unveiled his Citywide Accountability Program, known as CapStat in August 2001. Modeled after Compstat, this program was designed to initially improve the effectiveness and accountability of 17 city agencies that provide an array of services from fighting fires to maintaining parks (“City Hall Says,” 2001). CapStat data, designed to create a culture of accountability, is posted on the City’s website at www.nyc.gov/capstat. The *New York Daily News*’ “City Hall Says,” which was published in the sports pages, was the sole newspaper account of the program found in a database search made November 1, 2001. The posting on the City’s Official Web Site of the Mayor’s Weekly Column, detailing the new program was made on September 10, 2001 (Giuliani, 2001).

The unprecedented tragic events of the following day, and the recovery now facing the City, pose multiple difficult decisions for all New Yorkers, now led by a new mayor, Michael Bloomberg, and a City Council with a majority of members serving their first terms. Undoubtedly, city agencies will be held to new standards of accountability. Although our research has indicated that contracting out has been primarily tinkering, due in part to institutionalized safeguards to prevent corruption, we have also shown that New York City’s government can reinvent itself, and it will continue to do so.

NOTES

1. This article has been updated from a group paper originally prepared by the authors while they were graduate students in a Government Contracting class in the School of Public Affairs at Baruch College, The City University of New York, during the fall semester of 2001.

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