



PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2009

**State of New York
Office of the State Comptroller**

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State Comptroller**

**Prepared by the Bureau of Contracts
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EXECUTIVE SUMMARY

Chapter 166 of the Laws of 1991 added Article XI-B (the Prompt Contracting Law) to the State Finance Law to promote prompt contracting with not-for-profit (NFP) organizations. State agencies are required to report on programs affected by the provisions of the Prompt Contracting Law to the Office of the State Comptroller (OSC) for the preceding twelve-month period. The central objective of the law is to expedite the contract process and corresponding payments to NFPs in order to avoid service interruptions and financial hardships.

Even though the Prompt Contracting Law has been in place since 1991, State agencies continue to have great difficulty meeting the time frames set forth in the law. For the 2009 reporting period, State agencies self-reported that 82 percent of NFP grant contracts did not meet the statutory time frames. Furthermore, as in 2008, the amount paid in prompt contracting interest is not consistent with the magnitude of late contracting.

The data reported by State agencies is as follows:

- State agencies reported that a total of **9,413** new and renewal contracts with NFPs, associated with **217** programs, were affected by Article XI-B of the State Finance Law.
- State agencies met the prompt contracting time frames for **1,665** contracts, including **1,436** new and **229** renewal contracts.
- State agencies did not meet the time frames for **7,685** contracts, including **5,462** new and **2,223** renewal contracts.
- Interest totaling **\$176,034** was paid by six State agencies to NFPs on **736** contracts.

OSC recognizes the importance of the services provided by the NFP sector and the adverse impacts that contracting delays cause. In an effort to increase accountability and encourage State agencies to address these concerns, OSC has engaged in the following activities:

- Promulgated regulations to clarify when interest is owed to NFPs due to contracts being executed late;
- Reached out to the NFP community, advising them of their rights and responsibilities and hearing their concerns about contracting with New York State;
- Provided technical assistance to State agencies on a variety of “best practices” for the financial management of grant contracts;
- Worked collaboratively with the Not-for-Profit Contracting Advisory Committee to further the objectives of the Prompt Contracting Law; and
- Expanded information available to NFPs on OSC’s *Your Money New York* website.

OSC’s data on grant contracts with NFPs received during the 2009 calendar year indicates that the percentage of late contracts continues to rise. Of the 6,318 grant contracts approved by OSC during 2009, 5,844 (92.5 percent) were approved after the contract start date. The difference between State agency self-reported

data and OSC data may be explained by the fact that contracts valued at less than \$50,000 are not approved by OSC and thus not included in the OSC totals. Additionally, OSC is reporting on grant contracts approved during calendar year 2009, which may include contracts with start dates from prior years. Data reported by State agencies only includes those grant contracts with start dates in 2009 as required by the statute.

The adverse effects of late contracting and the associated late payments on the NFP community and the people they serve are significant. When grant contracts are executed several months past the contract start date, the consequences can include missed payrolls, reduction or elimination of services, employee layoffs, and borrowing on lines of credit in order to maintain operations. The cumulative effect is to undermine the stability and financial viability of the entire NFP sector.

OSC has made a number of recommendations to address these chronic problems, including:

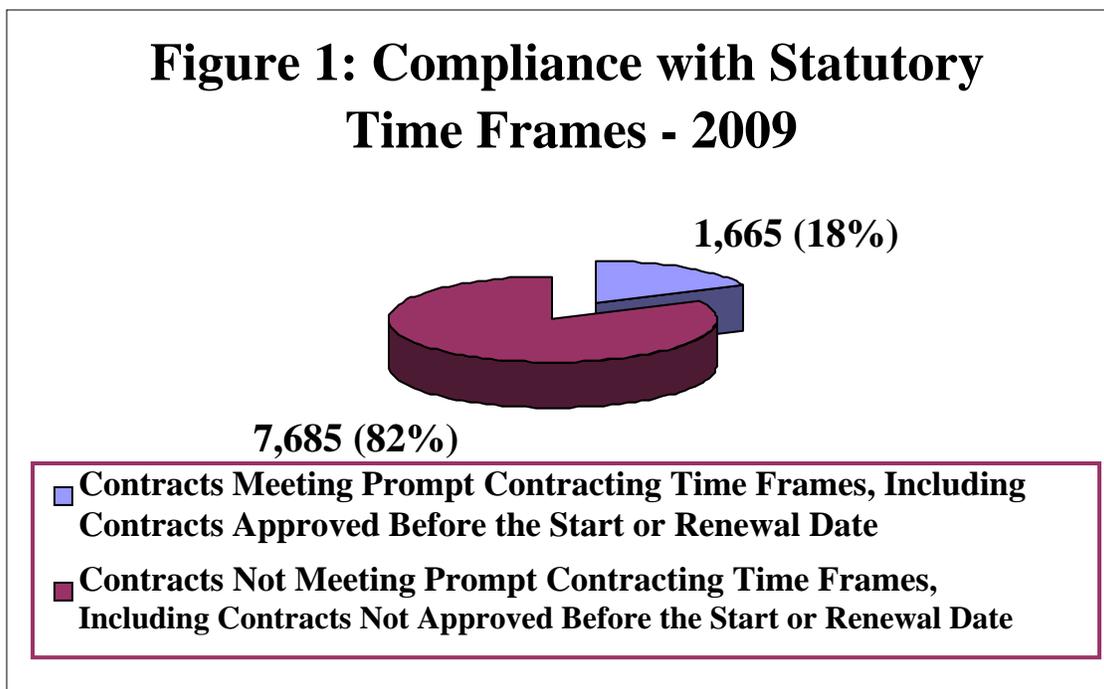
- Agency heads must make timely NFP contracting a high priority, and ensure sufficient resources are available to allow for contracts to be approved prior to the start dates.
- The Not-for-Profit Contracting Advisory Committee should continue to meet regularly to review these recommendations and complete an analysis of data collected by the Committee on the causes of late contracting.
- Standardize Contracts – Currently, 80 percent of State agencies who contract with NFPs utilize a standard boilerplate contract adopted many years ago. Unfortunately, the amount of variation in effect within that standard (e.g., different payment terms, documentation requirements, and budget requirements, etc.) significantly reduces the benefits intended by standardization.
- Master Contracts – Explore the use of a “master contract” to simplify administration for multi-funded service providers and to promote an integrated, outcome-focused service delivery approach.

I. SUMMARY OF DATA REPORTED BY STATE AGENCIES

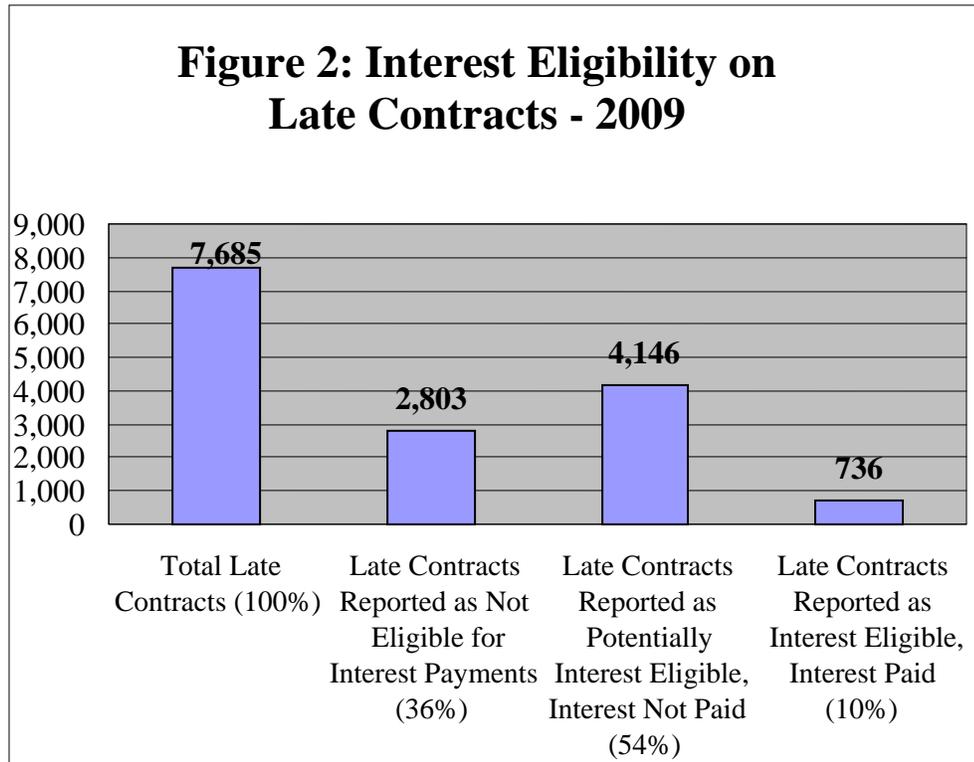
Reports were submitted to OSC from all 33 of the State agencies contracting with NFPs, thus making the response rate 100 percent (*Refer to Appendix A*). The data submitted by State agencies has been aggregated and summarized as follows:

- State agencies reported that a total of 9,413 new and renewal contracts with not-for-profit providers, associated with 217 programs, were affected by Article XI-B of the State Finance Law.
- State agencies were able to meet the prompt contracting time frames for execution for 1,665 contracts (18 percent), including 1,436 new and 229 renewal contracts.
- State agencies did not meet the prompt contracting time frames for 7,685 contracts (82 percent), including 5,462 new and 2,223 renewal contracts.
- Interest totaling \$176,034 was paid by six State agencies on 736 contracts (\$134,463 paid by the Department of Health and \$40,751 by the Office of Children and Family Services). Four other State agencies (Division of Housing and Community Renewal, Department of Labor, Department of Environmental Conservation, and the Office of Temporary and Disability Assistance) paid a total of \$820.

**Figure 1: Compliance with Statutory
Time Frames - 2009**



Out of the 7,685 total late contracts reported by State agencies, 2,803 (36 percent) were reported as not eligible for interest payments, 4,146 (54 percent) were reported as potentially eligible for interest payments, but interest payments were not made, and 736 (10 percent) were reported as interest eligible and interest was paid. Late contracts are defined as contracts not approved by OSC prior to the start or renewal date.



State agencies reported various reasons why program contracts were not approved by the start or renewal dates. The two most frequent—“Contract documents not returned by NFPs in a timely manner” and “Agency processing delays due to external State circumstances, such as budget cuts”—account for more than half of the total responses. The implementation of the Agency Spending Controls protocol in November 2008 by the Division of the Budget (DOB) is believed to have had a major impact on State agencies’ ability to process contracts timely for the 217 reported programs in 2009. This may account for the frequency of State agencies identifying external State circumstances as a reason for late contracting.

Table 1 Explanations for Late Contracting Reported by State Agencies – 2009	
27%	Contract documents not returned by NFPs in a timely manner.
27%	Agency processing delays due to external State circumstances, such as budget cuts.
22%	No explanation provided.
15%	Agency processing delays due to internal circumstances, such as resource shortages.
9%	Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.

The following table provides a three-year comparison of data:

Table 2						
Three-Year Comparison of Prompt Contracting Data as Reported by State Agencies						
January 2, 2007 – January 1, 2010						
			Contracts Not Approved by the Start or Renewal Date			
Reporting Period	Total Contracts	Contracts Approved by the Start or Renewal Date	Total Not Approved Timely	Total Eligible for Interest	Total Contracts Where Interest Paid	Value of Interest Paid
1/2/07 – 1/1/08	10,970	3,310	7,438 (68%)	3,732	612	\$203,637
1/2/08 – 1/1/09	11,765	3,366	7,448 (63%)	2,638	465	\$144,906
1/2/09 – 1/1/10	9,413	1,665	7,685 (82%)	4,882	736	\$176,034

II. ACTIONS AND INITIATIVES OF THE OFFICE OF THE STATE COMPTROLLER

➤ OSC Comparison of Data Reported by State Agencies to OSC Data

Although not required to do so under Article XI-B, OSC has independently collected data on the number of grant contracts pre-audited by the OSC Bureau of Contracts for the period from January 2, 2009 to January 1, 2010. This data includes the number of grant contracts with NFPs, the number of late grant contracts with NFPs, and the number of waivers of interest received with determinations of whether waivers were warranted or unwarranted. (*Refer to Tables 3 and 4 for this data.*)

OSC data on the total number of new and renewal grant contracts subject to the Prompt Contracting Law is significantly less than the number self-reported by State agencies: 6,318 received by OSC as compared to 9,413 reported by the State agencies. State agencies are required to report on all contracts and renewals with start dates in 2009 regardless of the dollar amount. Consequently, the agency-reported number of contracts and renewals includes contracts valued at less than \$50,000 which are not subject to OSC pre-audit. In addition, OSC reports data on all contracts received during 2009; however, the contract start dates may not fall within 2009.

Table 3	
Number of Contracts Approved by OSC Bureau of Contracts	
Subject to the Prompt Contracting Law	
January 2, 2009 – January 1, 2010	
6,318	Grant contracts with NFP organizations approved by the Bureau of Contracts <ul style="list-style-type: none"> • 3,926 new contracts • 2,392 renewal
5,844	Grant contracts with NFP organizations approved by the Bureau of Contracts after the contract start date <ul style="list-style-type: none"> • 3,670 new contracts • 2,174 renewal

Of the 6,318 NFP grant contracts submitted to OSC for approval, 5,844 or 92.5 percent, were approved after their start date and were consequently late. State agency self-reported data showed 82 percent of the 9,413 contracts reported were approved late. This is a significant difference, which may be partially explained by the fact that contracts valued at less than \$50,000 are not incorporated in the OSC totals.

➤ **Rules and Regulations Promulgated by OSC**

On November 18, 2009, a revised Part 22 of 2 NYCRR entitled “Prompt Contracting and Interest Payments for Not-For-Profit Organizations” became effective. These regulations were updated by OSC in order to provide guidance to State agencies regarding the Prompt Contracting Law. In particular, the revised regulations are intended to provide clear guidance to agencies on:

1. Determining when prompt contracting interest is due and the manner in which to calculate that interest.
2. Use of written directives for both new and renewal contracts.

➤ **OSC Outreach to the Not-for-Profit Community**

Comptroller’s Forums

State Comptroller Thomas P. DiNapoli has issued a report on critical issues facing the NFP sector (*Refer to Appendix B*) and conducted a series of forums across the State to discuss the challenges faced by the NFP community during the current economic crisis. The economic downturn has created significant challenges for NFPs, including substantial loss in public and private funding and charitable donations, as well as increased demand for services. Delays in the contract process and resultant late payments only serve to exacerbate these problems for the NFP sector. The Comptroller’s report includes a series of administrative and financial proposals that would improve State accountability and oversight of NFP contracts, decrease administrative burdens for NFPs, and help maintain the financial viability of the NFP sector.

NFP Training

OSC has developed a training module to assist NFPs in understanding their rights and responsibilities under the Prompt Contracting Law. In 2009, OSC conducted presentations at the New York State Community Action Association Leadership Summit and a training session in Rochester, New York hosted by the New York State Catholic Conference. These sessions are designed to clarify the rights and responsibilities of NFPs under the Prompt Contracting Law (*Refer to Appendix C*), and to provide a greater understanding of the New York State contracting process.

➤ **OSC Compliance Oversight**

Waivers of Interest

The 2007 amendments to the Prompt Contracting Law gave OSC an increased role in the oversight of interest waivers. An agency must submit each waiver to OSC for review and a determination as to whether the waiver of interest is warranted. OSC reviews waivers to determine whether: (i) all time frames required by the Prompt Contracting Law have been met; (ii) the State agency and the

NFP have mutually agreed in writing to waive any interest due; and (iii) the waiver is properly justified. If the Comptroller determines that the waiver of interest is unwarranted because these criteria have not been met, OSC will inform the State agency, the Division of the Budget, and the NFP of such determination. The State agency is then responsible for submitting a voucher to OSC for the interest due. If the voucher is not received within 30 days, OSC will assess the amount of unpaid interest.

Table 4 Waivers of Interest and Interest Paid* January 2, 2009 – January 1, 2010	
136	Grant contracts with NFPs received with waivers
35	Unwarranted waivers, potential interest due
28	Unwarranted waivers, no interest due
73	Warranted waivers
0	Amount of interest paid on unwarranted waivers, potential interest due**

*The total number of waivers reported in 2009 (136) reflects a 74 percent reduction from the number of waivers reported in 2008 (523). The number of waivers deemed to be warranted increased by 17 percent from 2008 to 2009.

** As noted in the Prompt Contracting Annual Report for Calendar Year 2008, OSC’s review of State agency compliance with the Prompt Contracting Law determined that ambiguities in the law allowed for different interpretations as to whether and how much interest is due. Consequently, OSC was not successful in assessing interest in 2009. Subsequently, OSC promulgated regulations to provide clear guidance to State agencies on the calculation of interest.

➤ **OSC Technical Assistance for State Agencies**

The OSC provides technical assistance to State agencies on a variety of financial management practices through training sessions, the issuance of guidance Bulletins and other means, including:

- Accounting Bulletin A-316, entitled “Not-for-Profit (NFP) Prompt Contracting,” was updated to clarify the calculation of interest payments based on the amended regulations. (*Refer to Appendix D.*)
- OSC Bureau of Contracts procurement approval letters now alert agencies to potential interest due when contracts are not executed before the start date. When State agencies issue a competitive Request for Applications (RFA) or Request for Proposals (RFP), the entire procurement process is documented in the form of a procurement record. The procurement record is submitted to OSC for audit before contracts are processed. OSC provides the State agency with an approval or non-approval letter for each procurement record.
- Contract payment terms are being reviewed by OSC to ensure compliance with the intent of the Prompt Contracting Law. OSC had previously found that State agencies were not using clear payment terms as a way of avoiding possible interest payments to NFP organizations when contracts are processed after the contract start date. OSC requires State agencies to ensure that contract payment language clearly defines the payment terms.
- Outreach and technical assistance throughout 2009 to State agency staff includes formal and informal training sessions, conference calls, correspondence, and the issuance of a quarterly

grants newsletter, *The Procurement Record*, for State agencies containing current topical information regarding the contract process.

➤ **OSC Participation on the Not-for-Profit Contracting Advisory Committee**

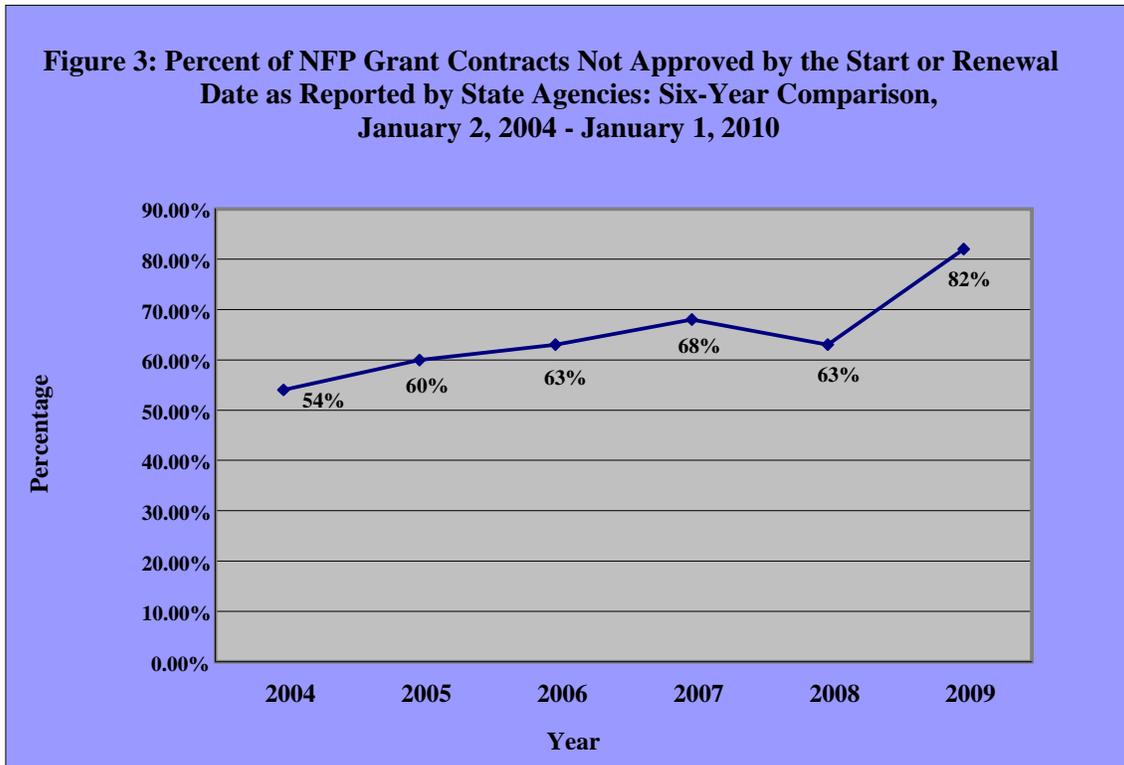
OSC has continued to work actively as a member of the Not-for-Profit Contracting Advisory Committee providing data on late contracting and prompt contracting interest paid. OSC has developed a quarterly report for use by the Committee which provides agency-specific data on the timeliness of both new and renewal contracts.

III. EFFECTIVENESS AND IMPLEMENTATION OF THE PROMPT CONTRACTING LAW

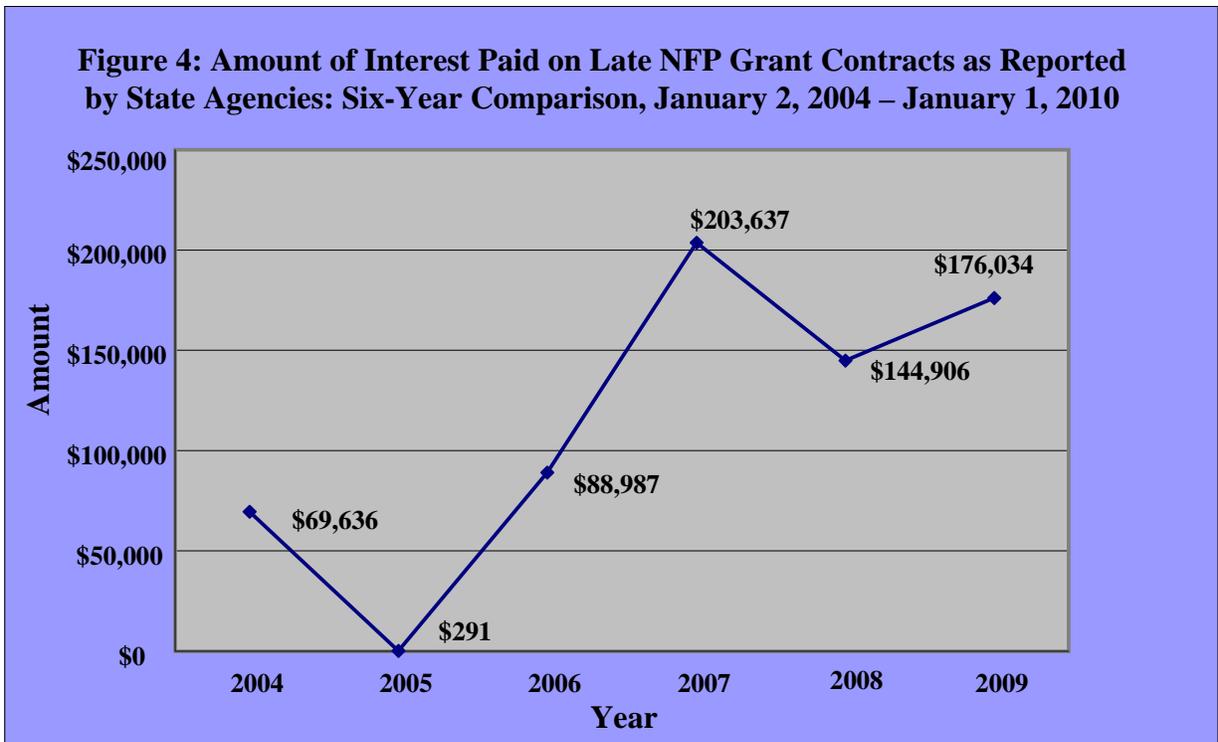
The following analysis is based on the data provided by the State agencies for 2009.

➤ **Late Contracting**

Although the Prompt Contracting Law has been in place since 1991, State agencies continue to have difficulty meeting the established time frames. In 2009, State agencies reported that 82 percent of grant contracts with NFPs were not approved by the start or renewal date. OSC's analysis of grant contracts with NFPs valued at \$50,000 or more and submitted to OSC for prior approval indicates that 92.5 percent were approved after their start date.



The following figure documents the amount of interest paid on late NFP grant contracts. Over the six-year period (2004-2009), annual total interest payments on late contracts have varied from less than \$500 to more than \$200,000 (*Figure 4*). It should be noted that in 2005, neither the Office of Children and Family Services nor the Department of Health reported data on interest payments. Both of these agencies award a significant number of grant contracts and have historically paid the largest portions of interest each year.



Agencies cite three primary reasons for late contracting:

- Contract documents are not returned by NFPs in a timely manner;
- Agency processing is delayed due to external State circumstances, such as budget cuts; and
- Agency processing is delayed due to internal circumstances, such as resource shortages.

It appears that the Prompt Contracting Law has not addressed the root causes of late contracting. Until these causes are accurately identified and the problems are solved, State agencies will continue to have high percentages of late contracts. The Not-for-Profit Contracting Advisory Committee, established by the 2007 amendments to the Prompt Contracting Law and comprising sixteen appointed members representing NFPs and State agencies, needs to continue to assess strategies for addressing this issue.

➤ **Interest Payments**

As compared to 2008, the number of contracts on which interest was paid increased by approximately 33 percent in 2009. In addition, the amount of interest paid by State agencies on late contracts increased by 18 percent. The increase in the number of contracts and agencies paying interest likely reflects OSC's efforts to clarify through regulations the prompt contracting interest requirements, as well as significantly enhanced efforts to provide information and training, to clarify contract payment terms, and to notify agencies of potential interest through the contract audit

process. However, this year's data suggests State agencies continue to fall far short of full compliance with the requirement to pay prompt contracting interest. Interest was paid on only 736 of the 4,882 contracts that the agencies reported as potentially eligible for interest. Explanations provided by State agencies as to why interest was not paid indicate that agencies do not fully understand the statutory requirements or circumvent requirements through contract language that postpones payments well into the contract term.

➤ **Waivers of Interest**

Up until the enactment of the 2007 Prompt Contracting amendments, many NFPs had, as a matter of course, signed waivers of interest as a prerequisite to the execution of a contract. Waivers of interest are only deemed warranted if the time frames for the execution of a contract, as set forth in the Prompt Contracting Law, have been met. Before January 1, 2008, waivers of interest were not subject to OSC oversight. The lack of oversight left the impression that the waivers of interest were warranted, despite State agencies not meeting the statutory time frames. Accordingly, State agencies did not pay interest on late contracts when waivers of interest were signed.

During the 2009 report period, OSC audited waivers of interest to determine whether each waiver of interest submitted by a State agency was warranted. *Table 4* shows that of the 136 waivers of interest submitted to OSC for review, 26 percent were determined to be unwarranted with potential interest due. This data reflects a major decrease in the number of waivers of interest issued by State agencies and submitted to OSC for review as compared to 2008. Of the 523 waivers of interest submitted in 2008, 56 percent were determined by OSC to be unwarranted with potential interest due. This trend appears to signify an increase in the appropriate use of waivers of interest by State agencies.

IV. REVIEW OF RECOMMENDATIONS MADE IN THE PROMPT CONTRACTING ANNUAL REPORT FOR CALENDAR YEAR 2008 (ISSUED IN MAY 2009)

In 2009, State Comptroller DiNapoli made a number of recommendations in order to reduce late contracting and interest payments, including:

1. Agency heads must make timely NFP contracting a high priority, and ensure sufficient resources are available to allow for contracts to be approved prior to their start dates.

As presented in the self-reported State agency data, late contracting has not improved and, in fact, has increased by 19 percent from 63 percent in 2008 to 82 percent in 2009. Factors that may have contributed to this increase are: the State's financial crisis resulting in program budget reductions, which required contract amendments* and increased workloads; a State agency personnel hiring freeze; and the impact of DOB's Agency Spending Control protocols, which State agency staff report as causing processing delays.

*These transactions are not reflected in late contracting data, since contract reductions are not affected by the Prompt Contracting Law.

- 2. The Not-for-Profit Contracting Advisory Committee should continue to meet regularly to review these recommendations, along with any additional recommendations of the grant-making agencies.***

The Not-for-Profit Contracting Advisory Committee continued to meet during 2009. Discussions included: potential outreach opportunities between State agencies and the NFP community; proposed changes to the existing Prompt Contracting Law to eliminate the January 1, 2010 sunset and make permanent two provisions added in the 2007 amendment; and the potential impact of State cash flow difficulties on NFPs. In addition, the Committee decided to gather more information as to the root causes of late contracting. A survey of the NFP community was developed to determine why NFPs are submitting their contract documents after the due date requested by State agencies. Also, the three State agencies with the greatest number of contracts approved after the contract start date were asked to complete a tracking document that captures the timeline for processing an NFP grant contract. The results from these efforts are expected to be available to the Committee for analysis later in the year.

- 3. The Office for Technology and the Division of the Budget should ensure that future State agency Financial Management Systems (FMS) are designed to assist State agencies in the timely execution and reporting of grant contracts, as required by the Prompt Contracting Law.***

Compliance with the Prompt Contracting Law is being taken into consideration as efforts advance to develop the comprehensive Statewide Financial Systems (SFS) for the State agencies.

- 4. State agencies should work to clarify and simplify contract submission instructions for NFPs through increased outreach and guidance. OSC is available to assist in this effort.***

It is not clear what efforts have been made in this area. It is noted, however, that State agencies selected “Contract documents not returned by NFPs in a timely manner” as an explanation for late contracting approximately 50 percent less frequently in 2009 than in 2008. This may indicate improvements in State agency guidance to NFPs.

- 5. State agencies should document common mistakes made by providers during the contracting process. These mistakes should be studied so that solutions can be implemented.***

As mentioned earlier, the Not-for-Profit Contracting Advisory Committee with its State agency members has begun the process of gathering more detailed information regarding the factors that delay the contracting process and lead to grant contracts with NFPs being executed after the contract start date.

- 6. State agencies should make greater use of the provision of the statute allowing for the suspension of the time frames when appropriate.***

OSC has begun to see an increase in the use of suspension letters that allow State agencies to suspend the legislated time frames when it is determined that there are significant and substantive differences between them and the NFP during the negotiation of a grant contract. State agencies have requested technical assistance from OSC in the drafting of these letters. Several State agencies noted in the self-reported data that the reason they did not owe interest on potentially interest-eligible contracts is due to their issuance of suspension letters.

7. *State agencies should choose start dates for grant contracts that are later than April 1st, so that the processing of contracts is not affected by the timeliness of the State budget.*

According to OSC records of grant contracts with NFPs received during the report period for 2009, six percent of them have an April 1st start date. Approximately 100 percent (99.5 percent) of these contracts were approved after the April 1st start date. This decrease in the number of April 1st contract start dates is a major improvement over the 27 percent with April 1st start dates recorded for the 2008 report period.

8. *State agencies should ensure NFP grant contract language includes clear payment terms.*

As stated earlier, OSC increased efforts to ensure that contract payment terms are in compliance with the intent of the Prompt Contracting Law. OSC has worked collaboratively with State agencies to draft contract language that provides clear payment terms.

9. *State agencies should provide OSC with notification letters indicating their intent to renew or terminate contracts, as required by the statute.*

During 2009, OSC did not receive a significant number of notification letters. It is unclear whether NFPs are receiving sufficient notice of the State agencies' intent to renew or terminate the grant contracts.

V. PROMPT CONTRACTING ANNUAL REPORT RECOMMENDATIONS FOR 2010

State Comptroller DiNapoli recognizes the challenges and hardships faced by NFPs, especially during this current fiscal crisis. Consistent with this, he makes the following recommendations in an effort to improve timely processing of grant contracts.

1. Executive Accountability – Agency heads must make timely NFP contracting a high priority, and ensure sufficient resources are available to allow for contracts to be approved prior to their start dates.
2. Standardize Contracts – Currently, 80 percent of State agencies who contract with NFPs utilize a standard boilerplate contract adopted many years ago. Unfortunately, the amount of variation in effect within that standard (e.g., different payment terms, documentation requirements, and budget requirements, etc.) significantly reduces the benefits intended by standardization. Further work is necessary to reap the benefits of standardization, allowing uniform contract terms across all programs and agencies and reducing the time and expenses for NFPs in contracting with the State. Such a process would also enable greater coordination and efficiency in monitoring and oversight of NFPs that contract with multiple State agencies.
3. Not-for-Profit Contracting Advisory Committee – Analysis of the data being collected on the causes for late contracting needs to be completed. Once the core reasons are identified, the Committee needs to make recommendations for eliminating or reducing the delays in the contracting process which are obstructing prompt contracting.
4. Master Contracts – Explore the use of a “master contract” to simplify administration for multi-funded service providers and to promote an integrated, outcome-focused service delivery approach. For NFPs that contract with multiple State agencies, the designation of a “lead” State agency,

creating one contract to handle multiple funding streams, would provide more efficient use of State and NFP resources and decrease the processing time associated with multiple contracts.

5. **Legislative Oversight** – The State Assembly’s Committee on Governmental Operations held a hearing on June 15, 2009, to review the effectiveness of the Prompt Contracting Law in ensuring that State entities pay NFPs in a timely manner for the services they provide. NFP agencies and representatives of OSC testified that State agencies continue to be delinquent in executing both new and renewal contracts with NFPs, and that such delay represents a real threat to the NFP sector’s ability to provide services on which many of New York’s communities depend. The Assembly passed legislation subsequently enacted into law as Chapter 232 of the Laws of 2009 which removed the January 1, 2010 sunset and made permanent two important provisions added in the 2007 amendment. Both provisions increased OSC oversight and added enhanced protection to NFP contractors. The law required OSC to approve a State agency’s assertion that unusual circumstances prevented timely notification to an NFP of its intent to renew or terminate a contract, and to determine that all waivers of interest are warranted or are potentially interest-eligible. Testimony gathered at this hearing will contribute to the Committee’s efforts to strengthen compliance with this law in the 2010 Legislative Session. OSC stands ready to assist the legislature in continuing to review and improve the Prompt Contracting statute.
6. **OSC Prompt Contracting and Interest Payments Regulations** – State agency staff need to familiarize themselves with the requirements of the Prompt Contracting Law as clarified in OSC’s Regulations issued in November 2009. In OSC’s review of the reasons for not paying prompt contracting interest on late contracts given by State agencies, it was evident that there was not a clear understanding of the statute. State agency staff explained, for instance, that interest was not due because reimbursement for service payments was made within 30 days of receipt. This is an obvious confusion between the requirements for prompt payment and prompt contracting.
7. **Multi-Year Contracting** – State agencies should continue to convert their grant programs that renew contracts on an annual basis to contracts with longer contract terms, as appropriate. This streamlined process allows contractors to plan their program more efficiently, and eliminates potential interest payments to NFPs while freeing up limited staff resources.
8. **Suspension Letters** – State agencies should ensure that suspension letters are issued when appropriate to *freeze* the legislative time frames, thus reducing potential interest liabilities. Self-reported State agency data indicates that late contracting is believed to occur 27 percent of the time due to NFPs not returning contract documents in a timely manner. Use of a suspension letter under these circumstances would notify NFPs of the problem and document for the record the legitimate reason for delays. At the same time, however, State agencies must allow for a reasonable time frame for the NFPs to complete and return the required documents.
9. **Notification Letters** – The 2007 amendment to Article XI-B requires State agencies to provide notification letters indicating their intent to renew or terminate grant contracts as required by the statute, and to provide these letters to OSC to include in the procurement record. OSC does not routinely receive this documentation. State agencies should provide OSC with notification letters, in order to document that sufficient notice is being provided to NFPs for planning purposes.
10. **April 1st Contract Start Dates** – State agencies should choose start dates for grant contracts that are later than April 1st, so that the processing of contracts is not affected by the timeliness of the State budget.

APPENDIX A

**State Agencies Providing Information for the Prompt Contracting Annual Report
Calendar Year 2009**

Agency Name	Number of NFP Contracts (Total)	Number of NFP Contracts (New)	Number of NFP Contracts (Renewals)	Number of NFP Late Contracts (Total)
Aging, Office for the	469	469	0	189
Agriculture and Markets, Department of	200	122	78	200
Alcoholism & Substance Abuse Services, Office of	168	168	0	57
Arts, Council on the	295	295	0	0
Banking, Department of	14	14	0	14
Children & Family Services, Office of	1,837	1,492	345	1,772
Corrections, Department of	7	7	0	7
Crime Victims Board	120	0	120	120
Criminal Justice, Division of	256	256	0	253
Economic Development, Department of	20	20	0	20
Education, Department of	1,236	980	256	1,221
Environmental Conservation, Department of	44	27	17	36
Health, Department of	1,209	467	742	1,191
Higher Education Services Corporation	38	38	0	8
Homeland Security, Office of	68	68	0	68
Housing and Community Renewal, Division of	410	410	0	246
Interest on Lawyer Accounts	73	73	0	73
Labor, Department of	243	225	18	168
Mental Health, Office of	385	35	350	359
Mental Retardation & Developmental Disabilities, Office of	645	193	452	365
Motor Vehicles, Department of	90	90	0	4
Parks, Recreation and Historic Preservation, Office of	339	339	0	339
Parole, Division of	5	0	5	0
Prevention of Domestic Violence, Office for the	4	2	2	4
Probation and Correctional Alternatives, Division of	25	8	17	9
Quality of Care and Advocacy for Persons with Disabilities, Commission on	3	3	0	2
Science, Technology and Innovation, New York State Foundation of	29	19	10	29
State, Department of	820	820	0	730
State Emergency Management Office	0	0	0	0
State University of New York Administration	47	39	8	35
Temporary and Disability Assistance, Office of	165	132	33	165
Transportation, Department of	98	98	0	0
Veterans Affairs, Division of	51	51	0	1
TOTALS:	9,413	6,960	2,453	7,685



New York State's Not-for-Profit Sector

Thomas P. DiNapoli
New York State Comptroller

Comptroller Thomas P. DiNapoli has reached out to leaders in the not-for-profit (NFP) sector across the State to seek solutions that could be implemented to address the serious challenges resulting from this economic downturn. There are a number of promising proposals which could streamline processes and lower administrative burdens for NFPs in contracting and/or improve State accountability and oversight.

Overview: Not-for-Profits and New York State

New York State's NFP sector has been seriously challenged. NFPs are being called upon to provide more services during this economic downturn, while suffering substantial losses in funding and charitable donations. From youth programs to senior centers, from arts councils to financial education services, the support which helps millions of New Yorkers every day is being threatened.

In 2006, the over 24,000 NFPs, including numerous human service organizations, in New York State reported revenue of \$132.9 billion¹ and provided nearly 1.2 million jobs, about 17 percent of the State's workforce.² In June 2009, New York State had nearly 31,000 active contracts with NFPs totaling \$14.6 billion.³ NFPs also stimulate the State economy, spending their funds in New York and using community-based vendors and suppliers, when possible.

In 2006, not-for-profits in New York State:

- ▶ Numbered over 24,000, including numerous human service organizations.
- ▶ Reported revenue of \$132.9 billion.
- ▶ Provided nearly 1.2 million jobs, representing 17 percent of the State's workforce.

In June 2009, New York State had nearly 31,000 active contracts with NFPs totaling \$14.6 billion.

The ability of NFPs to serve their clients has been significantly challenged by the economic crisis, through State budget cuts, decreased fundraising, and increased demand for services.

Proposed action -- such as standardizing contracts, implementing performance-based contracting, and centralizing audit management -- could help the NFP sector make more effective use of State funds without compromising accountability.

Issues Facing NFPs in the Current Economic Climate

NFPs have been significantly challenged during the current fiscal crisis. Among the many issues that NFPs must face are:

Increases in Clients and Demand for Services – Between November 2008 and November 2009, unemployment in New York State increased from 5.8 percent to 8.9 percent; in New York City, from 6.0 percent to 10.3 percent.⁴ Participation in the Food Stamp program increased by 388,003 people or 17.5 percent between January and October 2009.⁵ In addition, the number of individuals receiving benefits from the Home Energy Assistance Program (HEAP) increased by 406,548 or 36.3 percent

between September 2008 and September 2009.⁶ NFPs across the State have seen a sharp spike in demand for services as more individuals and households have sought assistance of all types.⁷

State Budget Deficits – State contracts represent a significant portion of NFP funding. With New York State facing a budget deficit of up to \$4.1 billion for State Fiscal Year (SFY) 2009-10 and a three-year projected deficit of more than \$23 billion through SFY 2011-12, NFPs will continue to be negatively affected as the State struggles to deal with these deficits and subsequent cuts to program funding.

Decreases in Fundraising and Philanthropy – The financial crisis has caused personal charitable giving to decline.⁸ Further, private corporations and philanthropic organizations, which have long provided significant funding for NFPs, can no longer be counted on to increase or even maintain funding. Between 2007 and 2008, endowments for philanthropic foundations declined by an average of 29 percent. Many foundations indicate that they will continue to decrease the amount of grants and/or restructure grant-making activities as they seek to prioritize investments.⁹

Contract Delays and Late Payments Thousands of NFPs receive funding from the State through contracts supporting their programs and services.¹⁰ In May 2009, a report by the Office of the State Comptroller (OSC) found that up to 87 percent of contracts with NFPs were approved late, forcing NFPs to perform services without a contract in place and without any payments. As a result, an increasing number of NFPs have resorted to borrowing.¹¹ Further, in a recent survey, 69 percent of NFP respondents indicated that in the last two years they have needed to borrow money due to delayed government contracts and/or payments.¹²

Proposals for Streamlining the Process

Administrative Proposals

The following measures would improve State accountability and oversight of NFP contracts and decrease administrative burdens for NFPs:

Standardize Contracts – Currently, 80 percent of State agencies who contract with NFPs utilize a standard boilerplate adopted many years ago. Unfortunately, the amount of variation within that standard (e.g., different-- payment terms; documentation requirements; and budget requirements, etc.) in effect significantly reduce the benefits intended by standardization. Further work is necessary to reap the benefits of standardization allowing standard contract terms across all programs and agencies and reducing the time and expenses for NFPs in contracting with the State. Such a process would also enable greater coordination and efficiency in monitoring and oversight of NFPs which contract with multiple State agencies.

Establish Performance-Based Contract Measures Collaboratively – Outcome or performance-based contracting is a viable means for State policy makers to make informed, strategic decisions on program funding. Contract language should reflect that outcome-based contracts and performance measures should be collaboratively established and negotiated between the government agency and the provider.

Centralize Monitoring and Audit Management – For NFPs that contract with multiple State agencies or local governments, designate a “lead” oversight agency and adopt a “single audit” approach by the lead agency, which would share significant audit findings with all State and local funders. This would provide for more efficient use of State and NFP resources and decrease processing time.

Address Prompt Contracting Issues – OSC, based on a review of State agency compliance with prompt contracting, has issued new regulations to clarify how interest should be calculated when State agencies approve NFP contracts late. OSC will continue to monitor this matter and consider additional steps to improve the performance of State agencies in contracting with NFPs as needed.

Financial Proposals

The following actions would help to stabilize the financial viability of the NFP sector:

Make Contract Payments Timely – Late payments to NFPs, largely caused by late approval of contracts, are forcing them into positions where it is difficult to make payroll, pay bills to maintain offices and continue to provide services effectively. More timely release and management of requests for proposals for multiyear State grants is also needed to ensure that NFPs can properly plan and start newly approved and funded projects.

Prioritize State Funding – The State can best achieve cost savings through a prioritization process to eliminate or reduce funding for programs that are inefficient and not cost-effective. An across-the-board approach applied without regard to a program's performance history, or to the importance of its place in a continuum of service delivery, can result in considerable setbacks for effective programs and services.

Encourage Financial Support – Given the high percentage of NFPs that have had to borrow money during this economic downturn, efforts should be made to encourage nongovernmental financial support of NFPs.¹³

The Human Services Council, working with New York City officials, has made progress on a number of these proposals, including: a standardized human services contract; a Master Service Agreement for procurement; and centralized monitoring and audit management of contracts. These accomplishments suggest some effective means to achieve similar results for New York State.

Assistance by the Office of the State Comptroller

As the State's Chief Fiscal Officer, the Comptroller has a responsibility to oversee compliance with the New York's Prompt Contracting Law, which recognizes the need for timely contract review and approval, and corresponding payments to NFPs in order to avoid service interruptions and financial hardships.

OSC works to review and approve NFP contracts expeditiously, and pay NFPs timely. While OSC does process NFP contracts expeditiously, State agencies do not always do so. Under the law, State agencies must pay interest to NFPs when contracts are approved late, the NFP received a written directive authorizing them to begin work, and services have been provided and payment is late as a result of the contract being approved late.

In May 2009, OSC issued its annual prompt contracting report. The report found that in 2008, 87 percent of NFP contracts valued at more than \$50,000 were not approved by the start or renewal date, forcing NFPs to perform services without a contract in place and without any payments. In total, OSC found 5,260 of 6,033 contracts, valued at \$2.7 billion, were approved late in 2008 — an average of 184 days late. Analysis of a sample of 95 late contracts between NFPs and State agencies approved over a four-month period in 2008 found:

- New contracts were approved almost nine months after the contract start date on average.
- On average it takes State agencies and NFPs 233 days from the renewal notification date to the date OSC approves the renewal contract, far exceeding the 90-day timeframe required by law. Consequently these contracts were approved an average of 145 days, or 5 months late.

- State agencies failed to notify NFPs within 90 days of expiration whether their contracts would be renewed, leaving some organizations with little time to plan for a loss of funding.
- No interest was paid to the organizations in the sample. OSC estimated that approximately \$102,000 in interest should have been paid to these NFPs, as required by State law.

Further, in 2008, State agencies processing late NFP contracts paid only \$144,906 in interest overall, a 29 percent decrease from 2007. OSC has now put regulations into effect which clarify the procedure for calculating the interest due to NFPs.

An increasing number of organizations have been unable to make payroll or risked losing other funding because their State contracts were significantly delayed.¹⁴ It is important that NFPs know their rights under the Prompt Contracting Law. OSC has conducted training sessions for NFPs regarding their rights and responsibilities under the prompt contracting law and is committed to continuing that training effort.

Comptroller DiNapoli remains committed to assisting the NFP sector, achieving more effective use of State dollars without compromising accountability. OSC has enabled the public to see all active contracts and to see who is doing business with the State through *Open Book New York* (www.OpenBookNewYork.com), and put resource information online at *Your Money New York* (www.YourMoneyNewYork.com) to benefit consumers and those served by NFPs. OSC's VendRep (Vendor Responsibility) enables registered NFPs to see when their contract has been received by OSC and its status quickly and easily.

The Comptroller welcomes comments on these resources, as well as suggestions on other ways that OSC can aid NFPs and the people of New York. For further information, please contact Elliot Pagliaccio, Assistant Comptroller, Division of Strategic Planning at (518) 473-7520 or epagliaccio@osc.state.ny.us or Angela S. Dixon, Deputy Comptroller, Human Resources and Administration at (518) 474-5512 or adixon@osc.state.ny.us. For contract related questions, please contact Margaret Becker, Deputy Comptroller, Division of Contracts and State Expenditures at (518) 486-9544 or mnbecker@osc.state.ny.us.

The Office of the State Comptroller appreciates the insights provided by the following agencies during the preparation of this report: the United Way of New York State, the New York Council of Nonprofits, the Catholic Conference, UJA-Federation of New York, the New York State Community Action Association, and the Human Services Council.

¹ National Center For Charitable Statistics. <<http://nccsdataweb.urban.org/PubApps/nonprofit-overview-sumRpt.php?v=sumFilters&tepc&f=0>>. Includes organizations that report gross receipts of more than \$25,000 in a fiscal year which are generally required to file with the IRS a return for an organization exempt from income tax (Form 990) unless they are religious congregations, denominations, or controlled by a congregation or denomination.

² New York State Department of Labor.

³ Office of the State Comptroller.

⁴ *Ibid.*

⁵ New York State Office of Temporary and Disability Assistance. Temporary and Disability Statistics. January 2009 and October 2009, Table 2. <<http://www.otda.state.ny.us/main/bdma/>>.

⁶ New York State Office of Temporary and Disability Assistance. Temporary and Disability Statistics. September 2008, pg. 26, Table 25 <<http://www.otda.state.ny.us/main/bdma/2009/2009-09-stats.pdf>>. September 2009, pg. 26, Table 25 <<http://www.otda.state.ny.us/main/bdma/2009/2009-09-stats.pdf>>.

⁷ United Way of New York. In 2009, 2-1-1 information and referral centers in the State handled over 330,000 calls seeking help with basic needs, a 43 percent increase over 2008. Updated Jan 7, 2010. Independent Sector.

<https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm>.

⁸ New York Times. "Charitable Giving Declines, a New Report Finds." June 10, 2009.

⁹ "Many Foundations Have Lost Almost One-Third of Their Assets, Chronicle Study Finds." *Chronicle of Philanthropy*. National Council of Nonprofits. Jan. 21, 2009.

¹⁰ Office of the State Comptroller.

¹¹ Independent Sector. <https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm>.

¹² New York Council of Nonprofits, Inc. Jan 14, 2010

¹³ Independent Sector. <https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm>.

¹⁴ *Ibid.*

APPENDIX C

What Are My Rights and Responsibilities as a New York State Contractor/Grantee?

Rights

- You have a right to protest the awards made by a State agency. Complaints need to be based in substantive, documented irregularities in the award process.
- You have a right to be paid for the work you perform.
- If your contract or renewal is not fully executed (approved by the Office of the State Comptroller) prior to its start date, you have the right under the Prompt Contracting Law (State Finance Law, Article XI-B) to receive interest under the following circumstances:
 - You received a written directive to begin work on either a new or a renewal agreement before your contract was approved. A written directive is a written request by a State agency to a not-for-profit (NFP) organization authorizing such organization either to begin providing services during the negotiation of a contract or to continue providing services during the negotiation of a renewal contract. With respect to new contracts, if the State agency has provided the NFP with a proposed contract containing a start date, in that case such start date shall be deemed the date of the written directive. With respect to a renewal contract the State agency has provided notice to the NFP of its intent to renew the contract.
 - The contract is approved after the start date.
 - The first payment is late as a result of your contract being approved late.
- An NFP organization that has borrowed funds to provide services pursuant to a written directive may be entitled to reimbursement of interest costs incurred.
- If you do not receive a renewal or termination notice within 90 days of the end date of your contract, the contract is deemed extended under the same terms and conditions until such time as you receive such notice and, consequently, you have a right to receive payment for any expenses you incurred between the time that your contract ended and 90 days after you receive a renewal or termination notice.
- Once the contract is in place (fully executed) and the first payments are made, under Prompt Payment Law (State Finance Law, XI-A), you have the right to receive interest if your voucher and payment is not made within 30 days of the due date.

Responsibilities

- You have a responsibility to submit your contract and any associated documents in a timely manner once you receive instructions from the State agency.
- You have a responsibility to complete vendor responsibility documents as required. Contracts can only be awarded to responsive and responsible vendors. A vendor responsibility questionnaire must be completed if your contract is over \$100,000. To complete your questionnaire online, go to:
<https://portal.osc.state.ny.us/wps/portal>

- You have a responsibility to register and maintain registration with the Office of the Attorney General (OAG) as a charitable organization. To register online, go to: http://www.charitiesnys.com/registration_reporting_new.html
- You have a responsibility to submit your requests for payment in a timely manner.
- You have a responsibility to perform consistent with the terms of the agreement.
- You have a responsibility to notify the State agency if there are changes that may be needed in your contract, either in terms of the work to be performed or the agreed upon budget (including the line items in the budget).

Who Plays a Role in the Grant Contracting Process?

- **Legislative Sponsor:** If the agreement is a legislative initiative, the legislative sponsor will be your first point of contact.
- **State Agency:** The State agency will be your primary contact throughout the grant contracting process for all agreements, including legislative initiatives.
- **Division of the Budget (DOB) and the Governor's Office of State Operations:** Since November of 2008, these agencies must approve all contracts and all payments in excess of \$500 before they are sent to the Office of the State Comptroller (OSC) for approval.
- **Attorney General (OAG):** OAG will be approving your agreement. OAG will also require that you complete a *Certification Appendix Disclosure and Accountability Certification*, which must be returned with your signed legislative initiative contract.
- **Office of the State Comptroller (OSC):** OSC must approve your contract if it is valued in excess of \$50,000. In addition, OSC will approve all payments to you. OSC may also perform an onsite audit of your program.

Funding Opportunity Notices

State agencies are required to list any funding opportunities in the New York State Contract Reporter and/or the State Register (grants only). The Contract Reporter is available online at www.nyscr.org and the State Register at www.dos.state.ny.us/info/register.htm. If you are not familiar with the Contract Reporter, a free 30-day trial subscription is available at that website.

In addition, you should check the various State agency websites. Many State agencies list their grant opportunities on the site along with the requirements for submitting applications.

APPENDIX D

Summary of Guidance Provided in Accounting Bulletin A-316

The revision to OSC's Accounting Bulletin A-316 established key factors for consideration when State agencies calculate prompt contracting interest:

- If an NFP organization provides services to a State agency pursuant to a written directive prior to the date the contract has been fully executed, interest shall be due to the NFP organization for each payment that would have been due if the contract had been fully executed before the scheduled commencement date.
- Interest shall be calculated for the period commencing 30 calendar days after the end of each billing period as specified in the contract and ending on the date payment is actually made, except where under the terms of the contract the NFP organization is entitled to a payment or payments on specified dates without the submission of an invoice or voucher, in which case interest shall run from each such specified date or dates.
- Interest shall be calculated separately with respect to each payment due under the contract.
- If a contract does not specify billing periods or a payment schedule, it shall be presumed that the NFP is authorized to submit invoices or vouchers at the end of each month for a pro rata portion of the total contract amount.
- The State agency is responsible for calculating interest due and preparing a separate voucher to pay such interest.
- A State agency may not deny interest to an NFP organization on the basis that it failed to submit invoices or vouchers during the period prior to final execution of the contract. However, where an NFP fails to submit an invoice or voucher for such payment within 30 calendar days of the contract becoming fully executed, no additional interest shall accrue after such thirtieth day.

In addition to providing procedural clarification to State agencies in determining whether interest is due, and how much interest is due, OSC also reinforced the process of authorizing NFPs to begin or continue services without a fully executed contract through the issuance of a written directive. The OSC revisions to A-316 provided the following clarifications of the written directive process consistent with the revised regulations:

- A "written directive" means a written request by a State agency to an NFP organization authorizing such organization either to begin providing services during the negotiation of a contract or to continue to provide services during the negotiation of a renewal contract.
- A State agency shall be deemed to have issued a written directive with respect to a renewal contract when it has provided notice, either by mail or electronic mail, to the NFP organization of its intent to renew the contract or has provided the NFP organization with a proposed renewal agreement. In order for a State agency to exercise an option in an existing contract to provide for an additional quarter of financing or any advance payment to the NFP organization, the State agency must issue a written directive.

- A State agency may use a written directive to authorize commencement of services for a new contract, but is required to issue a written directive for renewal contracts.
- Any NFP organization receiving a written directive to perform services under a new contract that has not been fully executed by the start date may be eligible for interest payments.
- The revised regulations provide that a written directive will be considered issued if a State agency has provided the NFP with a notification letter stating its intent to renew the NFP contract; or, in the case of a new contract, if the State agency has provided the NFP with a proposed contract containing a start date.
- A written directive is needed in order for an agency to exercise an option to provide for an additional quarter of financing or advance payment.
- Any NFP in receipt of a written directive from a State agency with an existing contract which does not contain an optional financing quarter may be eligible for an advance payment.

APPENDIX E

REPORTING METHODOLOGY

Using information gathered from New York State's Central Accounting System (CAS), OSC's Bureau of Contracts was able to identify 33 State agencies as having grant contracts with not-for-profit organizations (*Refer to Appendix A*). An electronic reminder requesting that the State agency's prompt contracting information be submitted to OSC by March 31, 2009, was sent to each of these agencies, along with the following reporting format and reporting instructions. To ensure consistency in reporting, central agencies with multiple regional offices reported the required information for all regional offices.

Appendix E - Continued
Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP) Grant Contracts with Start Dates of January 2, 2009 through January 1, 2010
Due Date: March 31, 2010

For compliance and reporting purposes, this report should contain the following information by column:

- Column 1** Enter the name of the Grant Program. If you have more than one reportable Grant program (i.e., Child Care, Youth Center Services, Meals on Wheels, etc.), report each program separately. If you are reporting Legislative Initiative Grant Contracts – **STOP** – please use instructions/template entitled *Prompt Contracting Reporting Instructions/Template Covering Not-For-Profit (NFP) Legislative Initiative Contracts With Start Dates of January 2, 2009 Through January 1, 2010*.
- Column 2** Enter by Grant Program, the total number of new and renewal NFP Grant contracts that had start dates of January 2, 2009 through January 1, 2010, and are subject to the Prompt Contracting Law.
- Column 3** Enter the total number of new and renewal NFP Grant contracts that met legislated time frames (executed and approved/fully executed time frames).¹
- Column 4** Enter the total number of new and renewal NFP contracts that did not meet legislated time frames and were not approved/fully executed by the contract start or renewal dates.
- Column 5** Percentage of NFP Grant contracts that did not meet legislated time frames and were not approved/fully executed by the contract start or renewal date (**this data field is automatically calculated**).
- Column 6** Enter the number of potentially interest-eligible contracts (Column 4 contracts that did not receive an advance or an initial payment by the scheduled payment date within the contract). If the number in Column 6 is 0, which indicates that all Column 4 contracts received payments on time, there is no potential interest liability. **Note: Late contracts that do not receive timely payments are potentially interest-eligible.**
- Column 7** Enter the number of Column 6 contracts for which interest was paid.
- Column 8** Enter the total dollar amount of paid interest on Column 7 contracts.
- Column 9** From the drop-down list, choose by program the appropriate primary explanation for why Column 4 NFP Grant contracts did not meet legislated time frames and were not approved/fully executed by the contract start or renewal dates. You should choose the most prevalent reason for why the majority of the contracts did not meet legislated time frames and were not approved/fully executed by the contract start or renewal dates.

¹ Refer to OSC Bulletin A-316 for information on time frames for new and renewal NFP contracts.

Appendix E – Continued

The available explanations are:

- Contract documents not returned by NFP organizations in a timely manner.
- Agency processing delays due to internal circumstances, such as resource shortages.
- Agency processing delays due to external State circumstances, such as budget cuts.
- Agency failure to suspend time frames associated with the Prompt Contracting Law.
- Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.

- Column 10** Enter the number of Column 4 NFP Grant contracts that were represented by the primary reason in Column 9.
- Column 11** Enter the appropriate secondary explanation for why Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start or renewal dates. You should choose the second most prevalent reason for why Column 4 contracts did not meet legislated time frames and were not approved by the contract start or renewal dates. Please note that “Other” is available as an added option in the drop-down list of choices.
- Column 12** Enter the number of Column 4 NFP Grant contracts that were represented by the secondary reason in Column 11.
- Column 13** If “Other” was selected as the secondary reason for why Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start or renewal dates, please specify the reason.
- Column 14** If applicable, enter an explanation for why interest was not paid on Column 6 contracts.
- Column 15** Enter the total number of NFP Grant contracts that met legislated time frames for execution but were not approved/fully executed by the contract start or renewal dates.

Appendix E - Continued
Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP) Legislative Initiative
Contracts with Start Dates of January 2, 2009 through January 1, 2010
Due Date: March 31, 2010

Instructions for Completion

For compliance and reporting purposes, this report should contain the following information by column:

- Column 1** **No entry required.**
- Column 2** Enter the total number of new NFP Legislative Initiative contracts that had start dates of January 2, 2009 through January 1, 2010 and are subject to the Prompt Contracting Law. **Note: NFP Legislative Initiative contracts are not renewed.**
- Column 3** Enter the total number of NFP Legislative Initiative contracts that met legislated time frames (executed and approved/fully executed time frames).²
- Column 4** Enter the total number of NFP Legislative Initiative contracts that did not meet legislated time frames and were not approved/fully executed by the contract start dates.
- Column 5** Percentage of NFP Legislative Initiative contracts that did not meet legislated time frames and were not approved/fully executed by the start dates (**this data field is automatically calculated**).
- Column 6** Enter the number of potentially interest-eligible contracts (contracts that did not receive an advance or initial payment by the scheduled payment date within the contract). If the number in Column 6 is 0, which indicates that all Column 4 contracts received payments on time, there is no potential interest liability. **Note: Late contracts that do not receive timely payments are potentially interest eligible.**
- Column 7** Enter the number of Column 6 contracts for which interest was paid.
- Column 8** Enter the total dollar amount of paid interest on Column 7 contracts.
- Column 9** From the drop-down list, choose the appropriate primary explanation for why Column 4 NFP Legislative Initiative contracts did not meet legislated time frames and were not approved/fully executed by the contract start dates. Choose the most prevalent reason for why a majority of the Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start dates.

² Refer to OSC Bulletin A-316 for information on time frames for new NFP contracts.

Appendix E - Continued

The available explanations are:

- Contract documents not returned by NFP organizations in a timely manner.
- Agency processing delays due to internal circumstances, such as resource shortages.
- Agency processing delays due to external State circumstances, such as budget cuts.
- Agency failure to suspend time frames associated with the Prompt Contracting Law.
- Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.

- Column 10** Enter the number of Column 4 contracts that were represented by the primary reason in Column 9.
- Column 11** Enter the appropriate secondary explanation for why Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start dates. You should choose the second most prevalent reason for why Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start dates. Please note that “Other” is available as an added option in the drop-down list of choices.
- Column 12** Enter the number of Column 4 contracts that were represented by the secondary reason in Column 11.
- Column 13** If “Other” was selected as the secondary reason for why Column 4 contracts did not meet legislated time frames and were not approved/fully executed by the contract start dates, please specify the reason.
- Column 14** If applicable, enter an explanation for why interest was not paid on Column 6 contracts.
- Column 15** Enter the total number of NFP Legislative Initiative contracts that met legislated time frames for execution but were not approved/fully executed by the contract start dates.

Appendix E - Continued

OFFICE OF THE STATE COMPTROLLER
Prompt Contracting Reporting Template For Legislative Initiative Contracts With Not For Profit (NFP) Entities With Contract Start Dates Of January 2, 2009 Through January 1, 2010

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Legislative Initiatives	Total NFP Legislative Initiative Contracts (Row) Legislative Initiative Contracts or Agreements Not Get Y Excused (Removed)	Total NFP Legislative Initiative Contracts Meeting Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date	Total NFP Legislative Initiative Contracts Not Meeting Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date	Percentage of NFP Legislative Initiative Contracts Not Meeting Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date	Number of Columns 4 Potentially Interest Eligible	Number of Columns 5 Where Interest Was Paid	Total Paid Reported	Primary Reason Why Column 4 Contracts Did Not Meet Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date	Number of Column 4 Contracts Associated With Primary Reason	Secondary Reason Column 4 Contracts Did Not Meet Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date	Number of Column 4 Contracts Associated With Secondary Reason	If "Other" was Selected as Secondary Reason, Did the Column 4 Contracts Did Not Meet Legislated Time Frames and Were Not Approved/Fully Executed by the Contract Start Date in the "Other" Reason(s)	Explanation of Why Interest Was Not Paid on Column 4 Contracts	Total Number of NFP Legislative Initiative Contracts Meeting Legislated Time Frames for Execution But Were Not Approved/Fully Executed by the Contract Start Date
	New	New	New	New	New	New	New							
Legislative Initiatives				0%										
Legislative Initiatives				0%										
Totals	0	0	0	0%	0	0	\$0.00							

APPENDIX F

Background of the Prompt Contracting Law

The Prompt Contracting Law

Chapter 166 of the Laws of 1991 added Article XI-B (the Prompt Contracting Law) to the State Finance Law to promote prompt contracting with NFPs. A central objective of the Prompt Contracting Law is to expedite the contract process and corresponding payments to NFPs so that service interruptions and financial hardships for these organizations are avoided. More specifically, the Prompt Contracting Law sets specific time frames for the execution of grant contracts and related documents; provides for written directives to authorize contractors to begin or to continue to provide services; allows State agencies to waive interest payments under certain conditions and provides for advance and loan payments to NFPs when those time frames cannot be met; and requires interest payments to NFPs when contract payments are late due to untimely processing of contracts when no advance or loan payment was provided.

Chapter 648 of the Laws of 1992 made several changes to Article XI-B. The 1992 revisions provided more reasonable time frames for processing legislative initiative contracts and other contracts with NFPs which have been identified for a State agency without the use of an RFP; eliminated interest penalties for contracts executed and funded in whole or in part for services rendered in a prior fiscal year; and limited the total amount of time a State agency may suspend time frames to no more than four and one-half months in any fiscal year.

Chapter 292 of the Laws of 2007 added further amendments to Article XI-B. The 2007 amendments: prohibit State agencies from requiring NFPs, as a prerequisite for the execution of a contract, to waive claims for interest that would otherwise be due; provide that a contract is automatically deemed to continue and remain in effect when a State agency does not timely notify an NFP of its intent to terminate the contract; require that any waiver of interest be subject to OSC approval, and provide for the calculation and payment of interest to NFPs when OSC deems a waiver of interest to be unwarranted; require State agencies to report prompt contracting information to OSC for inclusion in annual reports; and expand the Not-for-Profit Contracting Advisory Committee to 16 members, require meetings at least quarterly, and expand the scope of the Committee's responsibility.

Chapter 232 of the Laws of 2009 removed the January 1, 2010 sunset and made permanent two important provisions added in the 2007 amendment to the Prompt Contracting Law. Both provisions provide added protection to NFP contractors by requiring OSC to approve an agency's assertion that unusual circumstances prevented timely notification from being provided to an NFP, and to determine that all waivers of interest are warranted.

Prompt Contracting Law Time Frame Requirements

The Prompt Contracting Law requires State agencies to execute grant contracts with NFPs within specific time frames. A contract is regarded as executed when it has been signed by the NFP and the State agency. The Prompt Contracting Law also requires State agencies to execute grant contracts fully with NFPs within specific time frames for both new and renewal contracts. A contract is regarded as fully executed when it has been signed by the State agency and the NFP, and approved by OSC and the Office of the Attorney General (OAG), if required.

- The time frame for execution of new competitive grant contracts is 150 days from the latest State appropriation of funds date (usually the date the State budget is enacted), with 30 additional days for

approval by the OAG and OSC. The State agency has a total of 180 days to fully execute an NFP grant contract resulting from a competitive process.

- The time frame for execution of new noncompetitive grant contracts (such as legislative initiatives) and federally funded grant contracts is 120 days from the date the NFP is identified to the State agency or from the receipt date of the federal grant notification award, with an additional 30 days for approval by OAG and OSC. Thus, a State agency has a total of 150 days to fully execute a noncompetitive NFP grant contract.
- Renewal grant contracts must be fully executed by the beginning of the new contract period.

Reporting Requirement

In accordance with the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 2 - Audit and Control, Chapter 1, Section 22.9(d), and in accordance with Article XI-B of the State Finance Law as amended by Chapter 292 of the Laws of 2007, State agencies are required to report on programs affected by the provisions of the Prompt Contracting Law for the preceding twelve-month period. State agencies are required to submit their reports on the following information to OSC by March 31st of each year:

- The number of grant programs affected by State Finance Law, Article XI-B;
- The ability of State agencies to meet State Finance Law, Article XI-B time frames for the execution of NFP grant contracts (180 or 150 days);
- The number of new and renewal NFP grant contracts both complying and failing to comply with said time frames;
- The number of NFP grant contracts on which interest was paid;
- The amount of interest paid by each State agency; and
- Any other relevant information regarding the implementation of prompt contracting and payments affecting NFPs.

The Prompt Contracting Law as amended in 2007 requires that OSC make available to the public, as of May 31st of each year, a report aggregating the State agency information, and prepare an analysis examining the effectiveness and implementation of prompt contracting and payments, including recommendations deemed necessary to improve existing contracting and payment methods between State agencies and the NFPs. In addition, this report is submitted to the Governor, the Temporary President and Minority Leader of the Senate, the Speaker and Minority Leader of the Assembly, the Director of the Division of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.