



# **PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2010**

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

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## INTRODUCTION

Two decades ago, the New York State Legislature passed the Prompt Contracting Law, which requires agencies to contract timely with the not-for-profit (NFP) providers that support a host of critical services to our citizens (Chapter 166 of the Laws of 1991). These include community-based agencies that care for our elderly, people with developmental and other disabilities, children, and those with personal, health, or other crises—in short, those most in need of New York’s support.

The Prompt Contracting Law was intended to help avoid service interruption for consumers and financial hardship for the NFP service providers. But two decades later, State agencies are still not meeting the requirements of the Law to contract timely and to pay any resulting interest from late payments. Pursuant to Chapter 292 of the Laws of 2007, the Office of the State Comptroller (OSC) has been reporting on annual contracting results reported by State agencies and making recommendations to improve the effectiveness of prompt contracting. In 2010, agencies report that they failed to contract timely more than 71 percent of the time—an 11 percent improvement from 2009, when more than 82 percent were late.

In summary, the data reported by State agencies indicates:

- A total of 5,578 new and renewal contracts were subject to the Prompt Contracting Law.
- State agencies met the prompt contracting time frames for 1,617 contracts—29 percent of the time.
- State agencies did not meet the time frames for 3,961 contracts—71 percent of the time.
- Interest totaling \$215,583 was paid by four State agencies on 780 contracts.

The service providers supporting New York’s array of programs are critical to the health and vitality of communities across the State. Adverse impacts of late contracting are exacerbated by the difficult economy, which drives more individuals to seek help and hampers private giving. In an effort to increase accountability and encourage State agencies to address these concerns, OSC took the following actions:

- Developed recommendations in consultation with the NFP community on ways that New York can not only improve prompt contracting, but also streamline agency oversight and monitoring of contracts, provide interim financing for NFPs awaiting grant contracts, and improve the centralized collection and maintenance of contract information which will reduce costs to agencies and NFPs.
- Implemented new protocols to monitor agency compliance with Prompt Contracting Rules and Regulations.
- Provided technical assistance to State agencies on the Prompt Contracting Rules and Regulations.
- Worked collaboratively with the Not-for-Profit Contracting Advisory Committee to further the objectives of the Prompt Contracting Law.
- Expanded information available to NFPs on OSC’s *Your Money New York* website.

OSC continues to promote good contracting and other practices not only to meet the requirements of the Prompt Contracting Law, but also to ensure the continued viability of the important NFP sector in New York. This year, OSC recommends that:

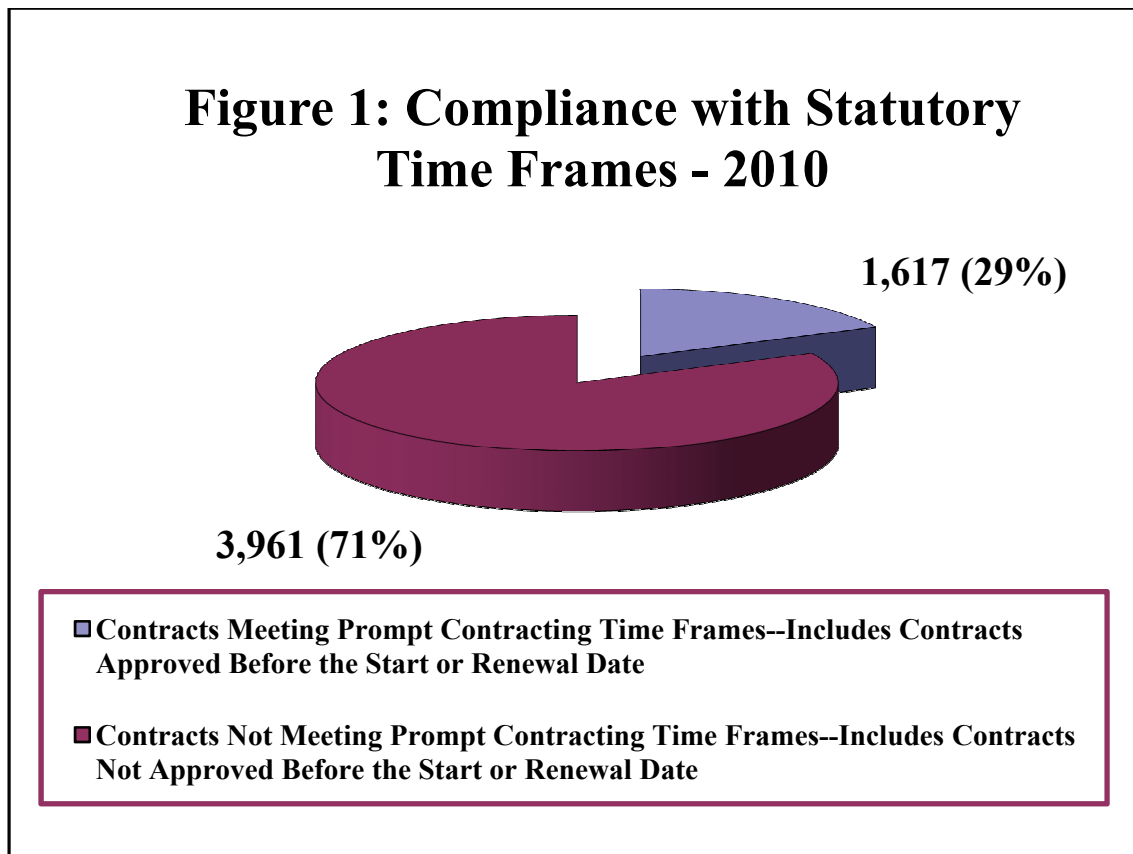
1. State agencies make prompt contracting a priority. This is the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention of leadership are needed. Timely review and allocation of funding for contracts is imperative.
2. State agencies pay prompt contracting interest with the first payment due after the start of a late contract. OSC has submitted legislation to codify this recommendation.
3. The Statewide Financial System (SFS) work with grant-making State agencies to ensure that the grant award and monitoring process is included in the new system to facilitate the timely execution of grant contracts.
4. The Spending and Government Efficiency Commission (SAGE), charged by the Governor with improving the delivery of government services and increasing government efficiency and accountability, should make prompt contracting a priority and consider the recommendations in this report, as well as recommendations of the Not-for-Profit Contracting Advisory Committee, to achieve efficiencies and reduce costs in this critical area.

## I. SUMMARY OF DATA REPORTED BY STATE AGENCIES

Reports were submitted to OSC from all 32 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:

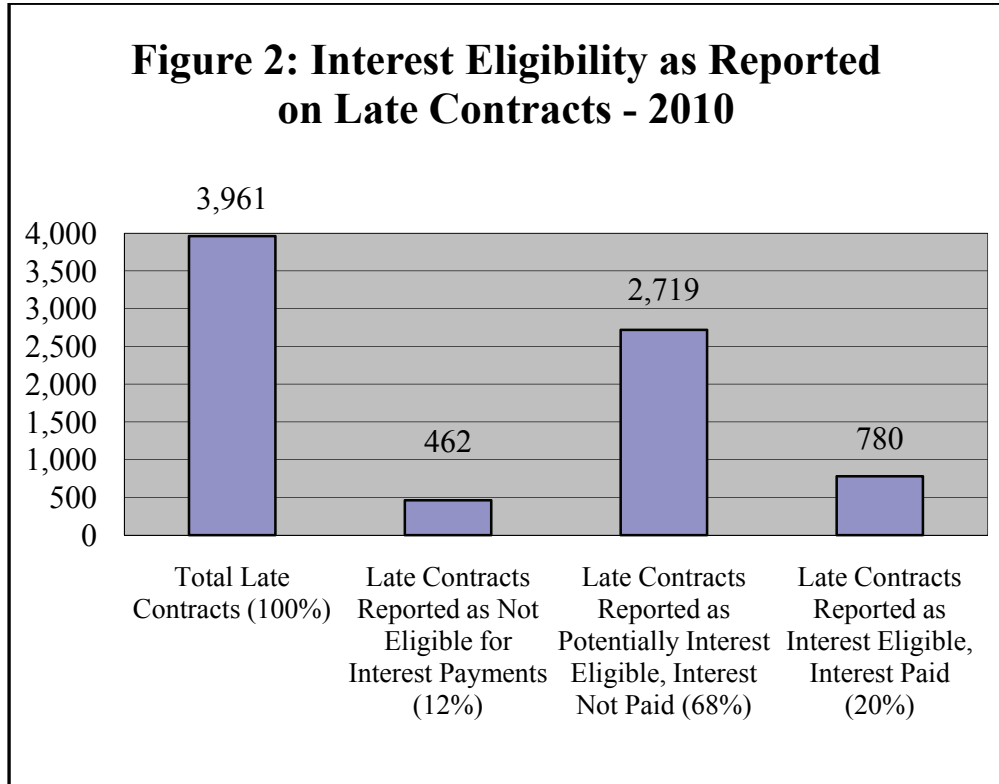
- State agencies reported that a total of 5,578 new and renewal contracts with NFP providers, associated with 245 programs, were subject to Article XI-B of the State Finance Law.
- State agencies were able to meet the prompt contracting time frames for execution for 1,617 contracts (29 percent), including 1,471 new and 146 renewal contracts.
- State agencies did not meet the prompt contracting time frames for 3,961 contracts (71 percent), including 1,922 new and 2,039 renewal contracts.

Of the 3,961 total late contracts reported by State agencies, 462 (12 percent) were reported as not eligible for interest payments. The remaining 3,581 contracts were reported as potentially eligible for interest.



Four State agencies paid interest totaling \$215,583 on 780 of those contracts eligible for interest—an increase of almost \$40,000 from the prior year, which may be due to increased monitoring by the Office of the State Comptroller. The Department of Health accounted for \$153,720 of that amount (71 percent) and the Office of Children and Family Services accounted for an additional \$56,466 (26 percent). The State Education Department and the Office of Alcohol and Substance Abuse together paid a total of \$5,397. No interest payments were made for the remaining 2,719 (68 percent) of late contracts reported as potentially eligible for interest. Note: for contracts with start dates in 2010 that are not executed until 2011, agencies would not calculate or make interest payments within the reporting period.

Figure 2 below summarizes interest eligibility as reported on late contracts in 2010.



State agencies reported various reasons why program contracts were not approved by the start or renewal dates. The two most frequent-- “Agency processing delays due to external State circumstances, such as budget cuts” and “Contract documents not returned by NFPs in a timely manner” -- account for 82 percent of the total responses. The November 2008 implementation of the Agency Spending Controls protocol by the Division of the Budget is believed to have had a major impact on State agencies’ ability to process contracts timely for the 245 reported programs in 2010. In addition, reductions in program funding after grant contracts have been executed exacerbate the problem. Limited staff resources were redirected from grant procurement processing to processing the reductions. This may account for the frequency of State agencies’ identifying external State circumstances as a reason for late contracting during this year.

Table 1, below, summarizes the explanations for late contracting reported by State agencies in 2010.

<b>Table 1 Explanations for Late Contracting Reported by State Agencies – 2010</b>	
53%	Agency processing delays due to external State circumstances, such as budget cuts.
29%	Contract documents not returned by NFPs in a timely manner.
14%	No explanation provided.
3%	Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.
1%	Agency processing delays due to internal circumstances, such as resource shortages.

Table 2 provides a three-year comparison of prompt contracting data.

<b>Table 2 Three-Year Comparison of Prompt Contracting Data as Reported by State Agencies January 2, 2008 – January 1, 2011</b>						
			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
1/2/08 – 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
1/2/10 – 1/1/11	5,578	1,617	3,961 (71%)	2,719	780	\$215,583

Over the past three years, the number of grant contracts has steadily declined. It is thought that streamlined processes, such as multiyear contracting, have contributed to this reduction, as well as the end of federal American Recovery and Reinvestment Act (ARRA) funding and, potentially, State budget reductions.



## 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, 2010 to January 1, 2011. This data includes the number of grant contracts with NFPs, the number of late grant contracts with NFPs, and the number of interest waivers received with determinations of whether waivers were warranted or unwarranted (*Refer to Tables 3 and 4 for this data*).

The total number of grant contracts approved by OSC that are subject to the Prompt Contracting Law is less than the number self-reported by State agencies: 4,101 received by OSC as compared to 5,578 reported by the State agencies. State agencies are required to report on *all* contracts and renewals *with start dates in 2010*, 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 2010; however, the contract start dates may not fall within 2010.

<b>Table 3 Number of Contracts Approved by OSC Bureau of Contracts Subject to the Prompt Contracting Law January 2, 2010 – January 1, 2011</b>			
	<i>Total Contracts</i>	<i>New Contracts</i>	<i>Renewal Contracts</i>
Total Approved	4,101	2,307	1,794
Approved After Start Date	3,807	2,220	1,587

Of the 4,101 NFP grant contracts submitted to OSC for approval, 3,807 or 92.8 percent, were approved after their start date and were consequently late. State agency self-reported data showed 71 percent of the 5,578 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.

### ➤ OSC Pilot Program to Monitor State Agency Compliance with Prompt Contracting Interest Payment Requirements

To address continuing concerns regarding agencies not paying prompt contracting interest, OSC initiated a prompt contracting interest pilot monitoring program for *new* contracts included in the State Fiscal Year 2010-11 Budget. The program was established to assess agency efforts to determine when interest is due and to properly calculate the interest. OSC updated regulations to clarify procedures for making these determinations and calculations on November 18, 2009.

The monitoring program commenced in July 2010, after passage of the Budget. It includes all new contracts received by OSC at least 120 days beyond the contract start date. Most agencies make payments on a quarterly basis. Therefore, most contracts will not be considered late until they have

passed 90 days, plus 30 days leeway for the payment period. Agencies that use special payment terms referred to as “5<sup>th</sup> quarter financing” were excluded from monitoring because they typically avoid late payments for new contracts under this approach.

To conduct the program, OSC auditors in the Bureau of Contracts (BOC) identified grant contracts submitted to OSC for approval that appeared to have potential interest owed to the NFP because the contracts were executed after the start date. Letters were issued to the State agency and the NFP, notifying each party that interest was potentially due and providing instructions for the submission of interest payment vouchers. The letter also provided an opportunity for State agencies that did not agree with the OSC assessment to explain why interest should not be due.

OSC’s Bureau of State Expenditures (BSE) was also notified of the contracts identified by BOC so that payments could be monitored, beginning with the initial payment made by an agency under the contract. OSC can only begin to assess whether and how much interest is actually due when payments are requested. The BSE effort also includes a review of the payments with each State agency:

- If agencies agreed interest was due, BSE would provide technical assistance with the calculation of late contracting interest.
- If agencies disagreed, BSE would seek to verify that the State agency determination was correct.

From September 30, 2010 through December 31, 2010, OSC identified 92 grant contracts that were potentially interest eligible. Of those, agencies had made the initial contract payment on 80 contracts. Summary results are, as follows:

- The Department of Health (DOH) accounted for 72 of the 80 contracts, and agreed that interest is owed on all of them.
- The State Education Department accounted for three contracts and agreed that interest is owed on all three.
- The Office of Temporary and Disability Assistance accounted for one contract and agreed that interest is owed on it.
- For the four remaining contracts, agencies were found not to owe interest. They include: the Department of State; the Department of Criminal Justice Services; and the Office of Parks, Recreation and Historic Preservation.

The remaining 12 contracts are pending review or an initial payment. These include contracts for the Office of Alcohol and Substance Abuse Services, the Office of Children and Family Services and DOH.

As of this report, \$7,171 was paid in prompt contracting interest on two contracts out of the 76 determined to be due interest for the reporting period.

OSC will continue to monitor new contracts for potential interest due, and work with agencies and the NFP community to ensure interest is paid timely. OSC has proposed legislation requiring agencies to pay interest due with the first payment to the NFP under a contract.

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

Comptroller's Forums

Comptroller Thomas P. DiNapoli conducted a series of forums with the NFP community designed to discuss strategy and alternatives for operating in a difficult economy. Issues raised at these sessions included:

- continued and worsening delays in prompt contracting and payment by State agencies;
- duplicative and cumbersome monitoring, contracting and oversight procedures; and
- the need for strategic alliances, shared services and other collaborative models to achieve efficiencies in the NFP sector and ways government could be of assistance in such efforts.

A June 2010 meeting of Not-for-Profit and State Leaders was the culmination of these efforts and resulted in recommendations for short- and long-term actions to address these issues. These include: a collaborative effort among agencies and OSC with input from NFPs on solutions and best practices to address efficiency in contracting and prompt contracting through best practices such as standard contract terms; needed efforts to provide interim financing (revolving loan fund) where payments are delayed; and electronic document storage. The OSC 2010 Fall Conference included training for agencies in prompt contracting and a host of contracting best practices. OSC is also working through the Not-for-Profit Contracting Advisory Committee with representatives of agencies and NFPs to advance these and additional recommendations.

NFP Technical and Other Assistance

OSC provides ongoing assistance to NFPs in identifying the status of contracts and payments and in assisting, where possible, in raising concerns about critical delays to the Division of the Budget (DOB) and other agencies. The new Pilot Interest Monitoring Program has afforded valuable opportunity for OSC to advise agencies and NFPs of the requirements and procedures for complying with the law. In addition, OSC provided a large umbrella NFP organization with information about State procedures so that the organization could establish a liaison program for members with contract and payment issues.

➤ **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: (1) all time frames required by the Prompt Contracting Law have been met; (2) the State agency and the NFP have mutually agreed in writing to waive any interest due; and (3) 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, DOB 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 summarizes the waivers that OSC has received from agencies for review and any associated interest.

<b>Table 4</b>	
<b>Waivers of Interest and Interest Paid*</b>	
<b>January 2, 2010 – January 1, 2011</b>	
<b>87</b>	Grant contracts with NFPs received with waivers
<b>29</b>	Unwarranted waivers, potential interest due
<b>27</b>	Unwarranted waivers, no interest due
<b>31</b>	Warranted waivers
<b>0</b>	Amount of interest paid on unwarranted waivers, potential interest due**

\*The total number of waivers reported in 2010 (87) reflects a 36 percent reduction from the number of waivers reported in 2009 (136). The number of unwarranted waivers increased by 18 percent from 2009 to 2010. OSC believes that this is due to the few State agencies that continue to inappropriately issue waivers of interest for all of their grant contracts, as opposed to limiting waivers to those contract transactions that meet the statutory time frames.

\*\* When agencies issue an unwarranted waiver, interest may be due on a contract. OSC promulgated regulations to provide clear guidance to State agencies on the calculation of interest; it appears that State agencies continue to misconstrue prompt contracting requirements.

#### ➤ **OSC Technical and Other Assistance for State Agencies**

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

- Potential Interest Due Letters are issued to agencies when a grant contract audit determines that the State agency may owe interest for missed payments of grant contracts executed after the start date. The letters help agencies ensure they are following prompt contracting law and practice, and provide a means for OSC to train staff on requirements.
- Review of contract payment terms by OSC seeks 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 NFPs when contracts are processed after the contract start date. Like Interest Due Letters, this review assists agencies in complying with the law and enables OSC to provide ongoing on-the job training to agency contract staff.
- Outreach and technical assistance throughout 2010 to State agency staff includes formal and informal training sessions, conference calls, correspondence, and the issuance of a semiannual grants newsletter, *The Procurement Record*, that contains current topical information regarding the grant contract process for State agencies. A comprehensive overview of the Prompt Contracting Rules and Regulations was featured in the Spring/Summer 2010 edition of the newsletter.

At the OSC Office of Operations' 2010 Fall Conference, a workshop entitled State Agency Compliance with Prompt Contracting Regulations was offered for State agency personnel managing grant contracts.

➤ **Not-for-Profit Contracting Advisory Committee**

OSC has continued to work actively as a member of the Not-for-Profit Contracting Advisory Committee, which comprises sixteen members representing NFPs and State agencies providing data on late contracting and prompt contracting interest paid.

**III. EFFECTIVENESS AND IMPLEMENTATION OF THE PROMPT CONTRACTING LAW**

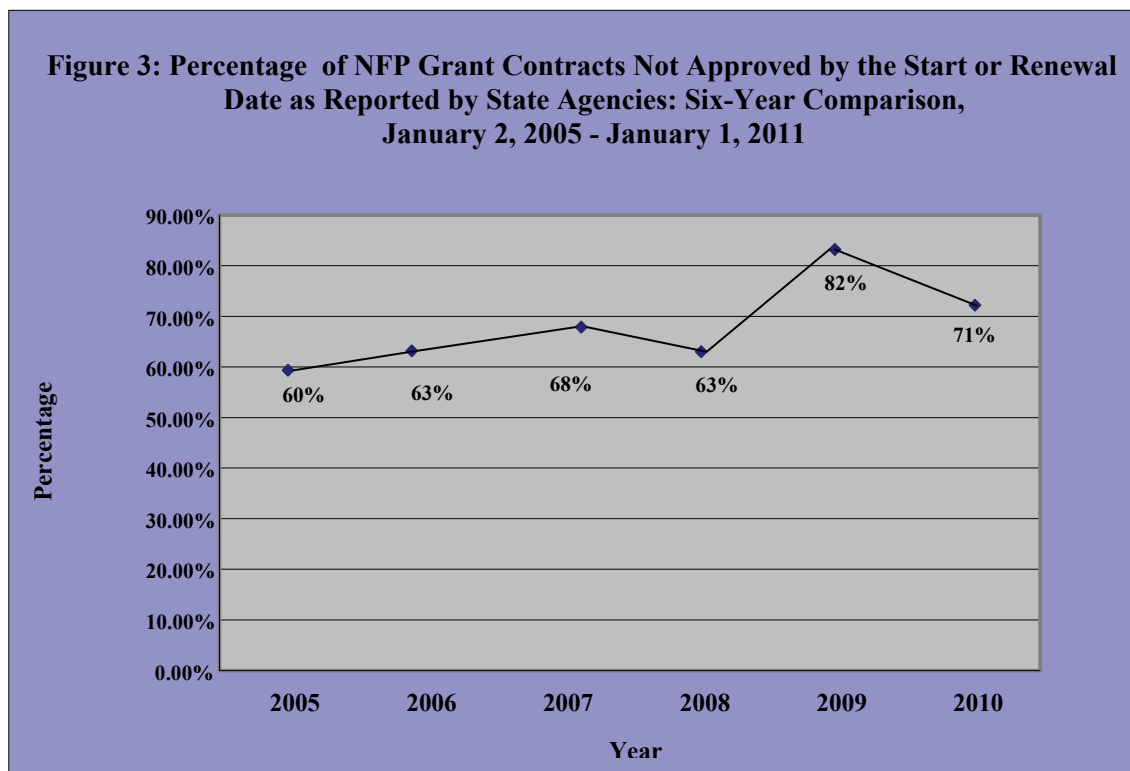
The following analysis is based on the data provided by the State agencies for 2010.

➤ **Late Contracting**

Although the Prompt Contracting Law has been in place since 1991, State agencies continue to have difficulty meeting the established time frames as illustrated in *Figure 3*. In 2010, State agencies reported that 71 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 92.8 percent were approved after their start date. Agencies cite two primary reasons for late contracting:

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

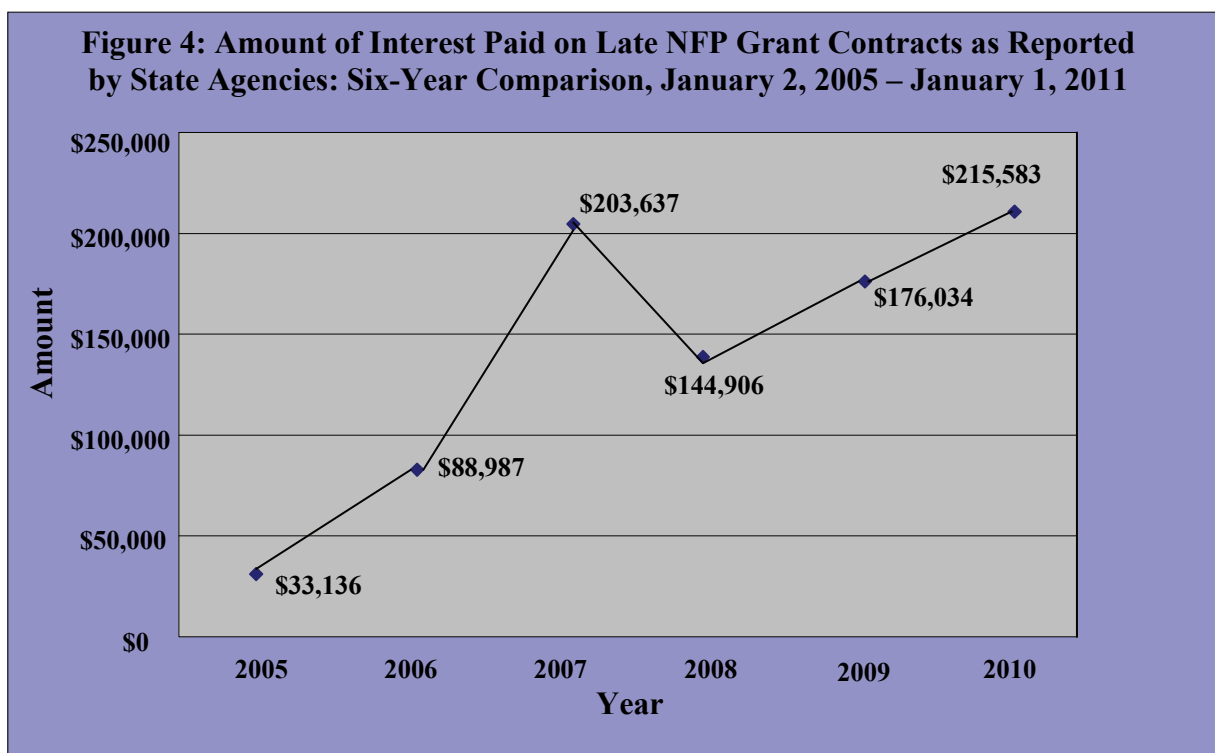
The Prompt Contracting Law has not addressed the root causes of late contracting. Agencies need to make prompt contracting a priority. The Not-for-Profit Contracting Advisory Committee should continue to press for improvement.



➤ **Interest Payments**

In 2010, the number of contracts on which interest was paid increased by approximately 6 percent. In addition, the amount of interest paid by State agencies on late contracts increased by 22 percent. The increase in the number of contracts where interest was paid and the increase in the amount of interest paid likely reflects OSC’s efforts to notify State agencies of potential interest due and to clarify the prompt contracting interest requirements. However, State agencies continue to fall far short of full compliance with the requirement to pay prompt contracting interest. Interest was paid on only 780 of the 2,719 contracts that the agencies reported as potentially eligible for interest. Explanations provided by State agencies as to why interest was not paid indicate that some agencies still do not fully understand the statutory requirements, or circumvent requirements through contract language that postpones payments well into the contract term.

Figure 4 summarizes the amount of interest paid on late NFP grant contracts. Over the six-year period (2005-2010), annual total interest payments on late contracts have varied from \$33,000 to more than \$200,000.



## ➤ **Waivers of Interest**

Up until 2007 and the amendments to the Prompt Contracting Law, many NFPs had, as a matter of course, signed waivers of interest as a prerequisite to the execution of a contract. Waivers 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. Prior to the amendments, waivers of interest were not subject to OSC oversight. As a result, agencies asked for waivers of interest even though in many cases the agencies did not meet the statutory contracting time frames. Accordingly, State agencies did not pay interest on late contracts when waivers of interest were signed.

During the 2010 report period, OSC audited waivers of interest to determine whether each waiver of interest submitted by a State agency was warranted. As shown on *Table 4* above, of the 87 waivers of interest submitted to OSC for review, 33 percent were determined to be unwarranted with potential interest due. The 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 2009. Of the 136 waivers of interest submitted in 2009, 26 percent were determined by OSC to be unwarranted with potential interest due.

## **IV. REVIEW OF RECOMMENDATIONS MADE IN THE PROMPT CONTRACTING ANNUAL REPORT FOR CALENDAR YEAR 2009 (ISSUED IN MAY 2010)**

In 2010, State Comptroller Thomas P. DiNapoli made a number of recommendations in order to reduce late contracting and interest payments. The following summarizes progress on these:

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.*

No action is more important than simply making prompt contracting a priority at agencies, starting at the top. According to the 2010 self-reported State agency data, late contracting has decreased by 11 percent from 82 percent of contracts late in 2009 to 71 percent in 2010. Factors that may have contributed to this decrease are:

- OSC efforts to notify agencies of requirements and potentially late contracts;
- An increase in the use of multiyear contracts and a decline in the total overall number of individual contracts; and
- Increased awareness among NFPs of prompt contracting requirements.

However, the analysis of grant contracts submitted to OSC for approval during 2010 (including contracts with start dates in prior years) indicates the number of contracts potentially late which are greater than \$50,000, and approved by OSC during 2010, remains high—at 92.8 percent.

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.*

OSC has continued to offer technical assistance to agencies, including formal training in October 2010. However, OSC has not observed significant progress in this area.

- 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.*

The Not-for-Profit Contracting Advisory Committee surveyed NFPs and major contracting agencies regarding the factors affecting prompt contracting. Responses confirm that resources at NFPs and agencies are limited, time frames for response are tight, and the requirements of contracting (e.g., aggregating necessary information and approvals) cumbersome for many organizations. OSC advised that more active use of the Vendor Responsibility System by agencies would help reduce duplication of common forms and the Division of the Budget is considering how agencies can be encouraged to use this system more actively. DOB is also exploring the use of centralized contract management systems used by some agencies, prior to availability of contract support through the new Statewide Financial System. Advisory Committee members representing the NFP community agreed to follow up with member organizations to identify instances of late interest payments. The Committee provided recommendations, including those advanced through the 2010 Prompt Contracting Report and other OSC reports, to the Division of the Budget for consideration by the new Administration. The Committee will be providing similar input to the new Spending and Government Efficiency (SAGE) Commission.

- 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.*

During the year, OSC provided assistance to the New York State Council on Children and Families to assist its ongoing work to advance master contracts among agencies. OSC is not aware that any significant progress has been made in this area, however.

- 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.*

The Comptroller advanced legislation to improve prompt contracting by requiring agencies to pay prompt contracting interest on the first payment due under a late contract. The Comptroller also submitted legislation to improve procedural requirements for grant procurements that will help standardize the process for and streamline grant making in agencies.

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.*

Data indicate that the number of late contracting interest payments is increasing as agencies are made aware of the requirements. OSC provided training in October 2010 to State agency personnel on the Prompt Contracting Regulations and continues to offer technical assistance. More important, the OSC prompt contracting interest monitoring program initiated this year has increased awareness and payments by agencies.

However, nothing is more important for ensuring compliance with the Prompt Contracting Law than for agencies to make prompt contracting a priority, hold managers accountable for achieving results, and ensure sufficient training and resources are committed to staff.

7. ***Multiyear 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.*

It appears that State agencies may have adopted the use of multiyear contracting for their grant programs, as evidenced by the decrease in the number of both new and renewal grant contract transactions with NFPs.

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.*

Through the OSC pilot prompt contracting monitoring program, OSC has found minimal use of Suspension Letters in the past year. The monitoring program is one way that OSC will continue to advise agencies of this mechanism.

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.*

OSC has received an increased number of notification letters from State agencies.

10. **April 1<sup>st</sup> Contract Start Dates** – *State agencies should choose start dates for grant contracts that are later than April 1<sup>st</sup>, so that the processing of contracts is not affected by the timeliness of the State budget.*

State agencies continue to reduce the number of grant programs with April 1 contract start dates. In 2009, 6 percent of the grant contracts subject to Prompt Contracting had April 1 start dates. In 2010, 1 percent of the grant contracts subject to Prompt Contracting Law had April 1 start dates.

## **V. PROMPT CONTRACTING ANNUAL REPORT RECOMMENDATIONS FOR 2011**

1. Agencies must make it a priority to award contracts timely and to execute contracts fully before the start date. No other single recommendation is more important for addressing the continuing issue of late contracting. The Division of the Budget (DOB) must ensure review of spending and allocation of funds is done timely to support this goal.
2. Agencies should pay interest due with the first payment to an NFP under a late contract. The Comptroller submitted legislation to address this issue. Protracted delays in the payment of prompt contracting interest is inconsistent with the goal of ensuring that NFPs are treated as respected partners in providing critical State services. Moreover, delays in payment harm NFPs and make it difficult to monitor compliance.
3. The Statewide Financial System (SFS) should work with grant-making State agencies to develop an information technology enterprise system that will streamline the grant award process and monitor the timely execution of grant contracts. Such an enterprise system should be implemented as soon as practical after the Phase I SFS implementation.
4. The Spending and Government Efficiency (SAGE) Commission, charged by the Governor with improving the delivery of government services and increasing government efficiency and accountability, should take into consideration the Prompt Contracting information and recommendations included in this Report and those provided by the Not-for-Profit Contracting Advisory Committee.
5. Where appropriate, State agencies should continue to expand the use of multiyear contracts, which serve to reduce the risk of potential interest payments and the volume of contract transactions by eliminating annual renewals.
6. The Not-for-Profit Contracting Advisory Committee should continue collaborative efforts among state agencies and NFPs to address issues in order to reduce the number of late contracts.

7. State agencies should increase use of performance contracting, master contracts, coordinated oversight and other best practices to streamline contract development and monitoring.

**APPENDIX A**  
**State Agencies Providing Information for the Prompt Contracting Annual Report**  
**Calendar Year 2010**

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	348	348	0	55
Agriculture & Markets, Department of	81	41	40	78
Alcoholism & Substance Abuse Services, Office of	35	35	0	4
Arts, Council on the	292	292	0	0
Children & Family Services, Office of	839	442	397	620
City University of New York	2	2	0	2
Corrections and Community Supervision, Department of	5	5	0	4
Crime Victims Board	120	0	120	120
Criminal Justice Services, Division of *	237	237	0	116
Economic Development, Department of	12	12	0	11
Education, Department of	687	513	174	585
Environmental Conservation, Department of	33	24	9	33
Health, Department of	1,220	493	727	1209
Higher Education Services Corporation	30	30	0	0
Homeland Security, Office of	83	83	0	83
Housing & Community Renewal, Division of	3	3	0	3
Interest on Lawyer Account	171	171	0	0
Labor, Department of	73	62	11	69
Mental Health, Office of	386	23	363	357
Motor Vehicles, Department of	95	95	0	6
Parks, Recreation and Historic Preservation, Office of	0	0	0	0
Parole, Division of	0	0	0	0
People with Developmental Disabilities, Office of	430	105	325	350
Prevention of Domestic Violence, Office for the	5	3	2	5
Quality of Care and Advocacy for Persons with Disabilities, Commission on	20	20	0	11
Science, Technology and Innovation, New York State Foundation for	23	13	10	23
State, Department of	109	109	0	109
State Emergency Management Office	1	0	1	0
State University of New York Administration	37	31	6	26
Temporary & Disability Assistance, Office of	96	96	0	77
Transportation, Department of	100	100	0	0
Veterans Affairs, Division of	5	5	0	5
<b>TOTALS:</b>	<b>5578</b>	<b>3393</b>	<b>2185</b>	<b>3961</b>

\* Division of Probation and Correctional Alternatives data is reported with the Division of Criminal Justice Services due to the merger of the two State agencies.

## **APPENDIX B**

### **REPORTING METHODOLOGY**

Using information gathered from New York State's Central Accounting System (CAS), OSC's Bureau of Contracts was able to identify 32 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 15, 2011, 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.

**Prompt Contracting Reporting Instructions for Reporting Agency Specific Data on  
Approved Not-for-Profit (NFP) Grant Program Contracts with Start Dates of January  
2, 2010 through January 1, 2011  
Due Date: March 15, 2011**

[Instructions for Completion](#)

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 for Reporting NFP Legislative Initiative Grant Contracts.
- Column 2** Enter by Grant Program the total number of new and renewal NFP contracts that had start dates of January 2, 2010 through January 1, 2011, and are subject to the Prompt Contracting Law.
- Column 3** Enter by Grant Program the total number of new and renewal NFP Grant contracts that met legislated time frames.
- Column 4** Enter by Grant Program the total number of new and renewal NFP contracts that were not approved by contract start or renewal dates.
- Column 5** Percentage of NFP Grant contracts not approved by the contract start or renewal date: **(this data field is automatically calculated).**
- Column 6** Of the number of NFP Grant contracts not approved by the start or renewal dates (Column 4), enter by program how many of the new and renewal NFP Grant contracts did not receive an advance or initial payment on time. If the number in Column 6 is 0 (which indicates that all late NFP Grant 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 by Grant Program **only** the number of potentially interest eligible (column 6) new and renewal NFP Grant contracts for which interest was paid.
- Column 8** Enter by Grant Program the total dollar amount of paid interest for both the new and renewal NFP Grant contracts noted in column 7.

**Column 9** From the **drop-down list**, choose by program the appropriate primary explanation for why Column 4 NFP Grant contracts were not approved by the start or renewal dates. You should choose the most prevalent reason for why most of the contracts were late.

Here are the drop-down choices for why contracts were late:

- ◆ 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 Prompt Contracting Law
- ◆ Prompt Contracting law time frame requirements do not provide adequate time for agency procurement process
- ◆ Other

**Examples:**

- ◆ Of 100 late contracts, 51 were late due to a mandatory reduction of funds. Select from the drop-down choices “*Agency processing delays due to external State circumstances, such as budget cuts,*” as the primary reason for late contracts.
- ◆ If most of the contracts were late due to delinquent charity registration, select from the drop-down choices “*Contract documents not returned by NFP organization in a timely manner*”, as the primary reason for late contracts.

**Column 10** Enter by program the number of NFP Grant contracts that were represented by the primary reason in column 9.

**Column 11** Enter by program, the appropriate secondary explanation for Column 4 NFP Grant contracts that were not approved by the start or renewal dates. You should choose the second most prevalent reason for why most of the contracts were late.

**Column 12** Enter by program the number of NFP Grant contracts that were represented by the secondary reason in column 11.

**Column 13** If necessary, enter an “Other” reason (one that was not provided in the drop-down menu) as an explanation for why Column 4 NFP Grant contracts were not approved by the start or renewal dates.

**Column 14** Enter by program the number of contracts that are represented by the “Other” reason in column 13.

**Column 15** Enter by program an explanation for why interest was not paid on NFP Grant contracts that were potentially interest eligible (Column 6).

**Column 16** Enter by program the total number of NFP Grant contracts that met legislated time frames but were not approved by the start or renewal dates.





**Prompt Contracting Reporting  
Instructions  
Covering Not-for-Profit (NFP) Legislative Initiative Contracts with Start Dates of  
January 2, 2010 through January 1, 2011  
Due Date: March 15, 2011**

[Instructions for Completion](#)

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

- Column 1**      **No entry required** – The name of this program is Legislative Initiatives.
- Column 2**      Enter the total number of new NFP Legislative Initiative Grant contracts that had start dates of January 2, 2010 through January 1, 2011 and are subject to the Prompt Contracting Law. **Note: NFP Legislative Initiative Grant contracts do not get renewed.**
- Column 3**      Enter the total number of new NFP Legislative Initiative Grant contracts that met legislated time frames.<sup>1</sup>
- Column 4**      Enter the total number of new NFP Legislative Initiative Grant contracts that were not approved by the start dates.
- Column 5**      Percentage of NFP Legislative Initiative Grant contracts not approved by the start date: **(this data field is automatically calculated).**
- Column 6**      Of the number of NFP Legislative Initiative Grant contracts not approved by the start dates (Column 4), enter the number of contracts that did not receive an advance or initial payment on time. If the number in Column 6 is 0 (which indicates that all late NFP Legislative Initiative Grant 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 only the number of potentially interest eligible (column 6) new NFP Legislative Initiative Grant contracts for which interest was paid.
- Column 8**      Enter the total dollar amount of paid interest for the late NFP Legislative Initiative Grant contracts noted in column 7.
- Column 9**      **From the drop-down list**, choose the appropriate primary explanation for why Column 4 NFP Legislative Initiative Grant contracts were not approved by the start dates. You should choose the most prevalent reason for why most of the contracts were late.

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<sup>1</sup> Refer to OSC Bulletin A-316 for information on time frames for new NFP contracts.

**Examples:**

- ◆ If most of the contracts were late due to legislative initiative forms not received timely, select from the drop-down choices “*Agency processing delays due to external State circumstances, such as budget cuts,*” as the primary reason for late contracts.
- ◆ If most of the contracts were late due to delinquent charity registration, select from the drop down choices *Contract documents not returned by NFP organization in a timely manner,* as the primary reason for late contracts.

- Column 10** Enter the number of contracts that were represented by the primary reason in column 9.
- Column 11** Enter the appropriate secondary explanation for Column 4 NFP Legislative Initiative Grant contracts that were not approved by the start dates. You should choose the second most prevalent reason for why most of the late contracts were late.
- Column 12** Enter the number of contracts that were represented by the secondary reason in column 11.
- Column 13** If necessary, enter an “Other” reason (one that was not provided in the drop-down menu) as an explanation for why Column 4 NFP Legislative Initiative Grant contracts were not approved by the start dates.
- Column 14** Enter the number of contracts that are represented by the “Other” reason in column 13.
- Column 15** Enter an explanation for why interest was not paid on contracts that were potentially interest eligible (Column 6).
- Column 16** Enter the total number of NFP Legislative Initiative Grant contracts that met legislated time frames but were not approved by the start dates.

**OFFICE OF THE STATE COMPTROLLER**

Prompt Contracting Reporting Template for NFP Legislative Initiative Grant Contracts with Not For Profits Approved 1/2/10 - 1/1/11 \*\*\* Do Not Modify This Form - OSC will be analyzing this form via an automated program - the

format must not be altered in any way\*\*\*

AGENCY:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Legislative Initiatives	Total NFP Legislative Initiative Grant Contracts (Note: Legislative Initiative NFP Grant Contracts do not get Renewed)	Total NFP Legislative Initiative Grant Contracts	Total NFP Legislative Initiative Grant Contracts	Percentage of NFP Legislative Initiative Grant Contracts	Number of NFP Legislative Initiative Grant Contracts	Number of NFP Legislative Initiative Grant Contracts Where Interest Was Paid	Total Paid Interest Reported	Primary Reason Why NFP Legislative Initiative Grant Contracts Were Not Approved by the Start Dates	Number of Late NFP Legislative Initiative Grant Contracts Associated With Primary Reason Approved by the Start Dates	Secondary Reason Why NFP Legislative Initiative Grant Contracts Were Not Approved by the Start Dates	Number of Late Contracts Associated With Primary Reason	If "Other" was Selected as the Primary Reason Why NFP Legislative Initiative Grant Contracts Were Not Approved by the Start Dates, Fill in the "Other" Reason(s)	Number of Late Contracts Associated With "Other" Reason	Explanation of Why Interest Was Not Paid on Contracts That Were Approved by the Start Dates	Total Number of NFP Grant Contracts That Met Legislated Time Frames But Were Not Approved by the Start Dates
	New	New	New	New	New	New	New								
Legislative Initiatives			0	0%											
Totals	0	0	0	0%	0	0	\$0.00								

## APPENDIX C

### 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 not-for-profit organizations (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 amendments 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 31<sup>st</sup> 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 31<sup>st</sup> 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.