



PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2011

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

**Thomas P. DiNapoli
State Comptroller**

**Prepared by the Bureau of Contracts
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Introduction

New York State's Prompt Contracting Law, enacted in 1991 as Article XI-B of the State Finance Law, recognizes the importance of not-for-profit organizations (NFPs) that provide critical services and support to residents throughout the State. New York State relies heavily on the not-for-profit sector as a partner in the delivery of services. Pursuant to the Prompt Contracting Law, the Office of the State Comptroller (OSC) is required to issue this Prompt Contracting Report annually.

The Prompt Contracting Law was designed to expedite the contracting process and corresponding payments to NFPs in order to prevent delays that could adversely affect residents and the organizations that serve them. OSC has long championed efforts to streamline administrative processes and make State contracting more efficient. In addition to monitoring prompt contracting, Comptroller Thomas P. DiNapoli has been committed to improving the State's partnership with the not-for-profit sector since taking office in 2007.

The 2012 Prompt Contracting Annual Report for Calendar Year 2011 highlights the need for continued hard work as the problem of late contracting worsened during the year. Since 2007, OSC has reported publicly on State agencies' compliance with the Law, as well as making recommendations for improving the timeliness of contracting. For 2011, State agencies report:

- A total of 3,815 new and renewal contracts were subject to the Prompt Contracting Law, a decrease of 1,763 (32 percent) from the prior year.
- Contracts were late more than 80 percent of the time, a 9 percent increase from 2010 when 71 percent were reported late.
- State agencies did not meet contracting time frames for 3,060 contracts (80 percent). Only one in five contracts (755) were reported timely.
- Agencies reported that 1,996 contracts were eligible for interest, but interest totaling \$195,136 was paid on just 736 (37 percent) of those.

In 2009 and 2010, Comptroller DiNapoli met with NFP leaders throughout New York State, focusing on issues faced by NFPs in light of the national recession. OSC released a report in 2010 entitled *New York State's Not-for-Profit Sector*, which analyzed the tremendous economic impact NFPs have on our State and local economies. At that time, NFPs accounted for 14 percent of the State's workforce or 1.25 million jobs.

In 2011, OSC released a follow-up report, *Delayed State Contracts and Payments Hurt Service Providers*, which highlighted ongoing problems with the State's contracting and payments process. The report contained a series of recommended reforms to the way in which New York State does business with its nonprofit partners. The report addressed the front end of the contract process, as well as the overall management of grant contracts. Recently the Office of the Attorney General issued a report entitled *Revitalizing Nonprofits, Renewing New York*, which recommended improvements in NFP contracting, and the Governor has also made proposals for reform. The Comptroller has expanded OSC's agency training program by introducing a fraud detection and prevention program for NFPs in 2012.

Efforts are underway by the Executive to streamline the grant process and implement electronic grant contracting. The Attorney General, OSC and numerous NFPs have assisted in these efforts, and there is every reason to believe they represent a significant step forward, aimed at full implementation later in the fiscal year. However, beyond the establishment of a clearer and more efficient contracting process, there needs to be:

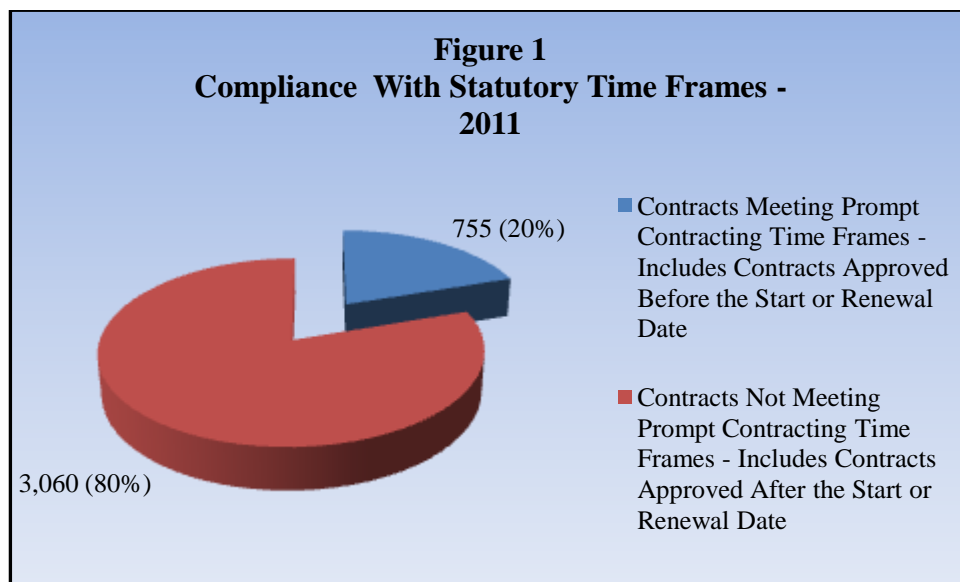
- Continued efforts to achieve compliance with the Prompt Contracting Law by every agency. Agency leadership should take responsibility for ensuring compliance.
- Priority given to finalizing the development and implementation of a grant management system in concert with the new Statewide Financial System (SFS).
- Assurance that every State agency streamlines its own internal grant program planning and development process.
- Expanded use of multiyear contracts and the realignment of contract start dates to reflect achievable results in contract development and implementation.
- More effective use of advance payments to alleviate cash flow issues for NFPs waiting for contracts.

I. Summary of Data Reported by State Agencies

Reports were submitted to OSC from all 29 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:

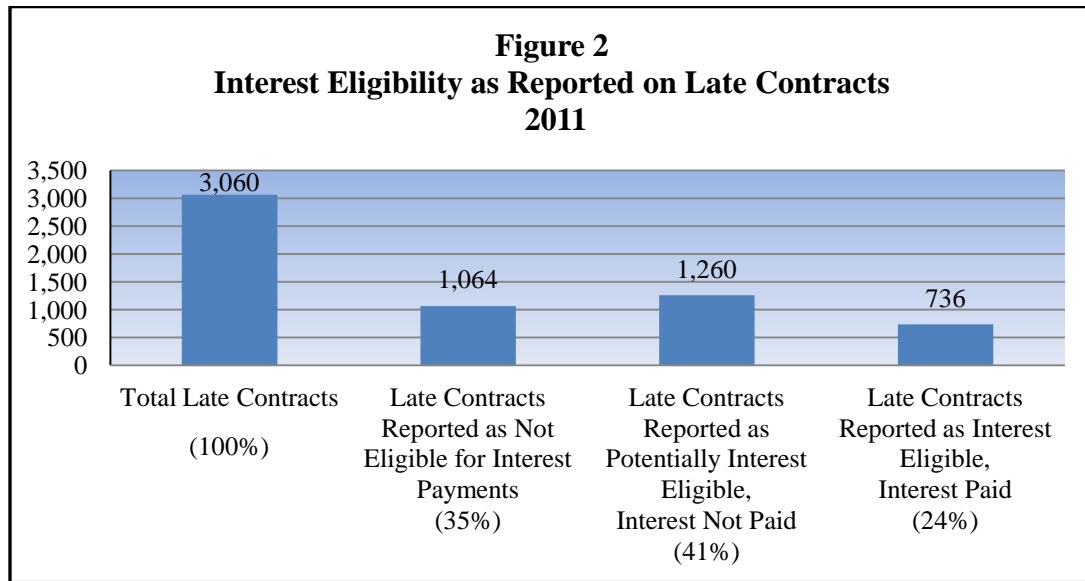
- State agencies reported that a total of 3,815 new and renewal contracts with NFP providers, associated with 207 programs, were subject to Article XI-B of the State Finance Law.
- State agencies were able to meet the Prompt Contracting time frames for execution for 755 contracts (20 percent), including 495 new and 260 renewal contracts.
- State agencies did not meet the Prompt Contracting time frames for 3,060 contracts (80 percent), including 1,509 new and 1,551 renewal contracts.

Of the 3,060 total late contracts reported by State agencies, 1,064 (35 percent) were reported as not eligible for interest payments. The remaining 1,996 contracts were reported as potentially eligible for interest.



Seven State agencies paid interest totaling \$195,136 on 736 of those contracts eligible for interest—a decrease of almost \$20,500 from the prior year. However, of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid increased from 29 percent to 37 percent. The Department of Health (DOH) accounted for \$134,126 of that amount (69 percent) and the Office of Children and Family Services (OCFS) accounted for an additional \$24,879 (13 percent). Five State agencies together paid a total of \$36,131. No interest payments were made for the remaining 1,260 (41 percent) of late contracts reported as potentially eligible for interest. Note: for contracts with start dates in 2011 that are not executed until 2012, agencies would not calculate or make interest payments within the reporting period.

Figure 2 below summarizes interest eligibility as reported on late contracts in 2011.



State agencies reported various reasons why program contracts were not approved by the start or renewal dates. When explanations were provided, 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 39 percent of the total responses. In addition, State agencies selected “Other” in order to attribute late contracts to delays in approving budget certificates by the Division of the Budget (DOB) and the Agency Spending Controls Protocol outlined in Bulletin B-1184. This was the third most frequently chosen explanation.

Table 1 below summarizes the explanations for late contracting reported by State agencies in 2011.

Table 1 Explanations for Late Contracting Reported by State Agencies 2011	
29%	No explanation provided.
21%	Agency processing delays due to external State circumstances, such as budget cuts.
18%	Contract documents not returned by NFPs in a timely manner.
18%	Other.
7%	Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.
7%	Agency processing delays due to internal circumstances, such as resource shortages.

Table 2 provides a three-year comparison of Prompt Contracting data.

Table 2 Three-Year Comparison of Prompt Contracting Data as Reported by State Agencies January 2, 2009 – January 1, 2012						
			Contracts Not Approved by the Start or Renewal Date			
Reporting Period	Total Grant 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
1/2/09 – 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
1/2/11 – 1/1/12	3,815	755	3,060 (80%)	1,996	736	\$195,136

Over the past three years, the number of grant contracts has steadily declined. New streamlined processes, such as multiyear contracting, may have contributed to this reduction, as well as the end of Federal American Recovery and Reinvestment Act (ARRA) funding, a reduction in the number of legislative initiatives and, potentially, State budget reductions.

II. Actions and Initiatives of the Office of the State Comptroller

OSC is charged with the responsibility under Section 112 of the State Finance Law to approve State contracts valued over \$50,000 before the contracts can become effective and binding on the State. OSC's pre-audit of NFP contracts provides an independent review to ensure a level playing field for all organizations competing for State funds.

OSC assures that grant applicant's rights are upheld by affording an independent review of any bid protests of NFP award determinations. In addition, OSC review helps reduce exposure and potential State liability through its examination of contract terms and conditions, ensuring trust in the process on the part of New York State citizens.

➤ Comparison of Data Reported by State Agencies to OSC Data

Although not required to do so under Article XI-B of the State Finance Law, 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, 2011 to January 1, 2012. 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*).

There are differences between the data reported by State agencies and data available to OSC. The total number of grant contracts approved by OSC that are subject to the Prompt Contracting Law is more than the number self-reported by State agencies: 3,917 received by

OSC as compared to 3,815 reported by the State agencies. State agencies are required to report on *all* contracts and renewals *with start dates in 2011*, 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 2011; however, the contract start dates may not fall within 2011.

Table 3 Number of Contracts Approved by OSC Bureau of Contracts Subject to the Prompt Contracting Law January 2, 2011 – January 1, 2012			
	Total Contracts	New Contracts	Renewal Contracts
Total Approved	3,917	1,850	2,067
Approved After Start Date	3,421	1,790	1,631

Of the 3,917 NFP grant contracts submitted to OSC for approval, 3,421 or 87 percent were approved after their start date and were consequently late. State agency self-reported data showed 80 percent of the 3,815 contracts reported were approved late.

➤ **OSC Monitors State Agency Compliance with Prompt Contracting Interest Payment Requirements**

Prompt Contracting Interest Audit

To improve the timeliness of payments of Prompt Contracting interest, OSC has instituted a prompt contracting interest monitoring program for new contracts included in the State Fiscal Year 2011-12 Budget. The program was established to assess State agency efforts to determine when interest is due and to calculate the interest properly.

The monitoring program 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. 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 letters also provide 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 January 1, 2011 to December 31, 2011, OSC identified 477 grant contracts from twenty State agencies that were potentially interest eligible. Initial contract payments were made on 434 contracts. State agencies did not agree that interest was owed on 21 of the contracts.

As of this report, \$50,530 was paid in Prompt Contracting interest on 94 grant contracts out of the 477 determined to involve interest payments for the reporting period from January 1, 2011 to December 31, 2011. In addition, \$246,062 in Prompt Contracting interest was paid during 2011 on 867 grant contracts for which BOC had issued a “Potential Interest Due” letter during calendar year 2010. Overall, \$296,592 was paid on 1,344 late grant contracts tracked by the OSC Prompt Contracting Interest Audit for the past two years.

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.

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.

Table 4 Waivers of Interest January 2, 2011 – January 1, 2012	
75	Total NFP grant contracts received with waivers
9	Unwarranted waivers, potential interest due
7	Unwarranted waivers, no interest due
59	Warranted waivers

➤ OSC Outreach to the Not-for-Profit Community

In 2009 and 2010, Comptroller DiNapoli conducted a series of discussions with NFP leaders throughout New York State. These discussions focused on the challenges faced by NFP organizations in the context of the national recession, including increased demand for

services, government funding cutbacks and declines in charitable donations. As a result of these meetings OSC released a report in 2010 entitled *New York State's Not-for-Profit Sector*, which analyzed the tremendous economic impact NFPs have on our State and local economies. (www.osc.state.ny.us/reports/economic/nfp2010.pdf)

OSC subsequently released a follow-up report, *Delayed State Contracts and Payments Hurt Service Providers*, which highlighted ongoing problems with the State's contracting and payments process. The report contained a series of recommended changes and reforms to the way in which New York State does business with its NFP partners. (www.osc.state.ny.us/press/releases/nov11/111411.htm)

During 2011, OSC also developed a fraud detection and prevention training program designed for accountants, directors, board members and staff of NFPs. The *Don't Get Burned* program became available in early 2012 and sessions are planned throughout the State. Taught by forensic auditors from the Comptroller's Office and featuring real-life examples, the training is designed to give NFPs the tools and resources they need to better detect and prevent fraud in their organizations.

Comptroller DiNapoli also named an NFP Contracts Liaison and an NFP Community Liaison to assist with issues, problems and inquiries. To date, they have fielded numerous calls, emails and inquiries and assisted hundreds of NFP organizations.

➤ **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 and as a result, 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 State agency contract staff.
- Outreach and technical assistance throughout 2011 to State agency staff includes informal training sessions, conference calls, correspondence, and the issuance of a semiannual grants newsletter, *The Procurement Record*, which contains current topical information regarding the grant contract process for State agencies.
- The State Financial System (SFS) workgroup reviewed enterprise approaches for grant contracting. The solution would result in a streamlined, standardized contract

management system, leading to improvements and efficiencies. The workgroup's objectives were to:

- Develop and agree on an approach for selecting an enterprise grant management solution; develop and agree on evaluation criteria;
 - Identify vendor products to evaluate; and
 - Make recommendations to the SFS Steering Committees and the SFS Governance Board.
- Review of the proposed New York State Consolidated Funding Application (Open for Business). Provided feedback on the evaluation and award methodology to ensure a fair and competitive process and maintain program integrity.

➤ **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

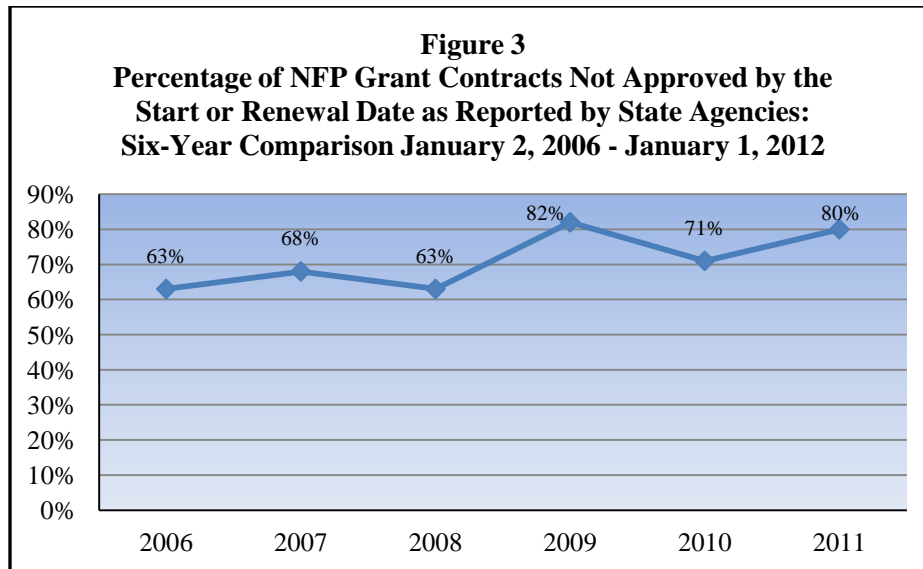
The following analysis is based on the data provided by the State agencies for 2011.

➤ **Late Contracting**

State agencies continue to have difficulty meeting the established time frames as illustrated in *Figure 3*. In 2011, State agencies reported that 80 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 71 percent in 2010, indicating a worsening trend from the prior year. OSC's analysis of grant contracts with NFPs valued at \$50,000 or more and submitted to OSC for prior approval indicates that 87 percent were approved after their start date, which is a modest improvement from the prior year's result of nearly 93 percent late. Agencies cite three primary reasons for late contracting:

- Agency processing is delayed due to external State circumstances, such as budget cuts;
- Contract documents are not returned by NFPs in a timely manner; and
- Other, which includes DOB delays in approving budget certificates and its Agency Spending Controls Protocol (B-1184).

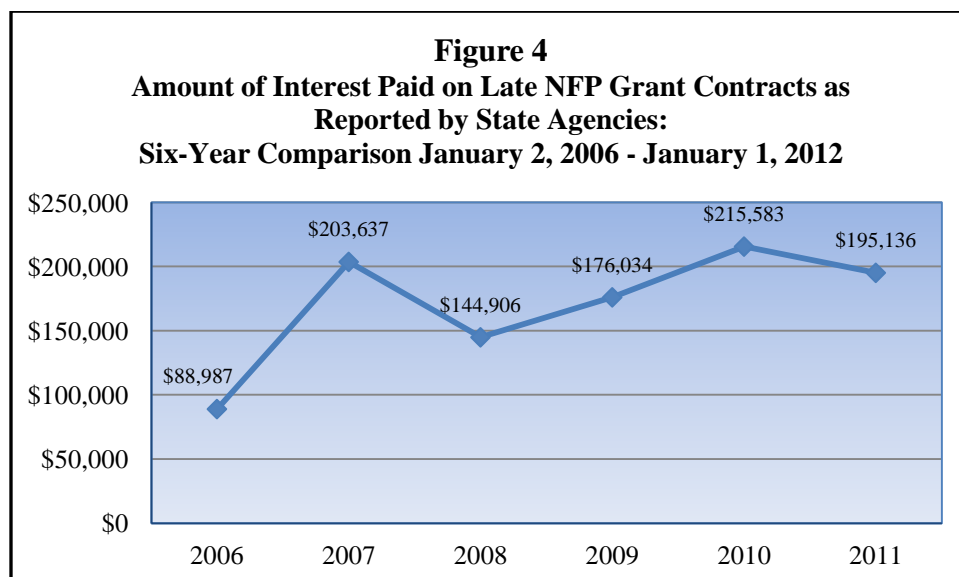
Given that fewer grant contracts were entered into in 2011 than in 2010 while agency-reported processing times have worsened, it is clear that significant obstacles to prompt contracting remain.



➤ **Interest Payments**

In 2011, the number of contracts on which interest was paid decreased from 2010 by approximately 6 percent. However, interest payments were made for a higher percentage of the total number of grant contracts where interest was due (37 percent) than the prior year (29 percent). In addition, the amount of interest paid by State agencies on late contracts decreased by 10 percent. Although State agencies continue to fall far short of full compliance with the requirement to pay Prompt Contracting interest, OSC’s efforts have increased State agency awareness leading to fewer interest eligible grant contracts and more State agencies paying interest. Still, in 2011 interest was paid on only 736 of the 1,996 contracts that the agencies reported as potentially eligible for interest.

Figure 4 summarizes the amount of interest paid on late NFP grant contracts. Over the six-year period (2006-2011), annual total interest payments on late contracts have varied from \$88,987 to more than \$200,000.



➤ **Waivers of Interest**

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 2007 amendments to the Prompt Contracting Law, waivers of interest were not subject to OSC oversight. As a result, State agencies asked for waivers of interest even though in many cases the agencies did not meet the statutory contracting time frames, and agencies did not pay interest on late contracts when waivers of interest were signed.

During the 2011 report period, OSC audited waivers of interest to determine whether each waiver of interest submitted by a State agency was warranted. The data reflects a decrease in the number of waivers of interest issued by State agencies and submitted to OSC for review as compared to 2010. As shown on *Table 4* above (on page 7), of the 75 waivers of interest submitted to OSC for review, 59 waivers (79 percent) were determined to be warranted with no interest due. Of the 87 waivers of interest submitted in 2010, 31 waivers (36 percent) had been determined by OSC to be warranted with no interest due. OSC's audit of waivers has helped to double the rate of appropriate waiver use.

IV. Review of Recommendations Made in the Prompt Contracting Annual Report For Calendar Year 2010 (Issued in May 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.*

OSC data shows that 87 percent of all grant contracts in 2011 were executed past the start date versus 71 percent in 2010 – a worsening trend. Although the Executive is working to streamline grant processing, results are not yet evident. Agency performance measures should be established, including the time allotted for DOB to process its reviews under the Agency Spending Control Protocols (B-1184).

The Executive has appointed a new Inter-Agency Coordinator for NFPs to help coordinate efforts to reform the State's procurement and contracting systems and address challenges NFPs face in their business relationships with State agencies.

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.*

The Legislature has reintroduced OSC's proposal in the 2012-2013 Legislative Session to require State agencies pay NFPs all Prompt Contracting interest due at the time of the first payment. Based on OSC analysis, some State agencies pay Prompt Contracting interest up to a year later.

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 1 SFS implementation.*

In April 2011, SFS convened a Grants Workgroup, comprising representatives from various grant-making State agencies including OSC, to discuss and review approaches for a potential enterprise grants management solution. In December 2011, a contract was awarded for business transformation services focused on a statewide reform of grant management and contracts.

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.*

In January 2012, the Sage Commission made the following recommendations to the Governor for his consideration:

- Develop standard Master Contract for Grants.
- Implement a Statewide Grants Management Portal to standardize grant application, contract, payment and reporting activities.

When implemented, these recommendations should improve the timeliness of grant contract processing and reduce the number of late NFP grant contracts.

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.*

An OSC analysis based on active grant procurements indicates that 45 percent of the procurements utilize multiyear contracts. Those State agencies not adopting multiyear structures cited financial and programmatic uncertainties as the reason. OSC continues to work with State agencies to discuss their concerns and address barriers.

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.*

The Committee met three times during 2011 and continues to advocate for solutions to the root causes of late contracting and appropriate measures that lead to more efficient processing.

7. *State agencies should increase use of performance contracting, the Master Contract, coordinated oversight and other best practices to streamline contract development and monitoring.*

Both the Attorney General and the Governor have recently called for similar measures. The Executive is now actively working to implement reform ideas, including a Master Contract and streamlined processing.

V. Prompt Contracting Annual Report Recommendations for 2012

1. State agencies should make prompt contracting a priority. This remains the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention of State agency leadership are needed. Timely review and allocation of funding for contracts are imperative.
2. State agencies should pay prompt contracting interest with the first payment due after the start of a late contract. The Legislature reintroduced legislation to this effect this year and is actively addressing an OSC proposal to codify this recommendation.
3. Grant-making State agencies should accelerate work to ensure that the grant award and contracting process is automated and aligned within the new SFS to facilitate the timely execution of grant contracts.
4. State agencies need to streamline their internal program planning processes to alleviate redundancies and implement measures to reduce procurement time frames.
5. State agencies should realign contract start dates to reflect time required for the procurement process. In many cases, dates which have been used historically fail to provide for timely execution of contracts.
6. State agencies should standardize their procurement evaluation tools to reduce discrepancies and scoring problems. State agency personnel would benefit from addressing the design of such tools, which quantitatively measure and assess an applicant's ability to successfully provide services.
7. State agencies should expand the use of multiyear grant contracting, thereby reducing the amount of time spent in contract development, streamlining contract management for the State agencies and NFPs, reducing the risk of potential interest payments for the State, and helping to control the overall volume of contract transactions inherent in annual renewals.
8. State agencies should consider more effective use of advance payments to alleviate the late State contracting burden on NFPs.
9. State agencies should align their contract development processes with long-term contract management – taking advantage of efficiencies afforded by coordinated audit and oversight with other State agencies – in order to reduce resource burdens on the State and NFPs.

Appendix A

Table 1

State Agencies Providing Information for the Prompt Contracting Annual Report
Calendar Year 2011 - Data in Alphabetical Order by Agency Name

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	22	22	0	5
Agriculture & Markets, Department of	73	41	32	71
Alcoholism & Substance Abuse Services, Office of	42	42	0	4
Arts, Council on the	159	159	0	159
Children & Family Services, Office of	589	169	420	424
City University of New York	5	3	2	3
Corrections and Community Supervision, Department of*	12	10	2	12
Criminal Justice Services, Division of	249	249	0	204
Economic Development, Department of**	35	35	0	34
Education, Department of	216	216	0	141
Environmental Conservation, Department of	2	2	0	2
Health, Department of	944	263	681	928
Higher Education Services Corporation	11	11	0	7
Homeland Security and Emergency Services, Office of***	70	70	0	1
Housing & Community Renewal, Division of	11	11	0	11
Interest on Lawyer Account	69	69	0	69
Labor, Department of	80	69	11	24
Mental Health, Office of	429	46	383	390
Motor Vehicles, Department of	96	96	0	39
Parks, Recreation and Historic Preservation, Office of	0	0	0	0
People with Developmental Disabilities, Office of	298	33	265	251
Prevention of Domestic Violence, Office for the	0	0	0	0
Public Service, Department of	1	1	0	0
Quality of Care and Advocacy for Persons with Disabilities, Commission on	0	0	0	0
State, Department of	36	36	0	27
State University of New York Administration	53	49	4	47
Temporary & Disability Assistance, Office of	203	203	0	203
Transportation, Department of	106	95	11	0
Veterans Affairs, Office of	4	4	0	4
TOTALS:	3,815	2,004	1,811	3,060

*Department of Corrections and Community Supervision includes data for the Division of Parole due to merger.

** Department of Economic Development includes data for the New York State Foundation for Science, Technology and Innovation due to merger.

***Office of Homeland Security and Emergency Services includes data for the State Emergency Management Office due to merger.

Appendix A

Table 2

State Agencies Providing Information for the Prompt Contracting Annual Report
Calendar Year 2011 -- Data in Order by Number of Late Contracts

Agency Name	Number of NFP Contracts (Total)	Number of NFP Contracts (New)	Number of NFP Contracts (Renewals)	Number of NFP Late Contracts and Percentage (Total)
Health, Department of	944	263	681	928 (98%)
Children & Family Services, Office of	589	169	420	424 (72%)
Mental Health, Office of	429	46	383	390 (91%)
People with Developmental Disabilities, Office of	498	33	265	251 (84%)
Criminal Justice Services, Division of	249	249	0	204 (82%)
Temporary & Disability Assistance, Office of	203	203	0	203 (100%)
Arts, Council on the	159	159	0	159 (100%)
Education, Department of	216	216	0	141 (65%)
Agriculture & Markets, Department of	73	41	32	71 (97%)
Interest on Lawyer Account	69	69	0	69 (100%)
State University of New York Administration	53	49	4	47 (89%)
Motor Vehicles, Department of	96	96	0	39 (41%)
Economic Development, Department of*	35	35	0	34 (97%)
State, Department of	36	36	0	27 (75%)
Labor, Department of	80	69	11	24 (30%)
Corrections and Community Supervision, Department of**	12	10	2	12 (100%)
Housing & Community Renewal, Division of	11	11	0	11 (100%)
Higher Education Services Corporation	11	11	0	7 (64%)
Aging, Office for the	22	22	0	5 (23%)
Veterans Affairs, Office of	4	4	0	4 (100%)
Alcoholism & Substance Abuse, Office of	42	42	0	4 (10%)
City University of New York	5	3	2	3 (60%)
Environmental Conservation, Department of	2	2	0	2 (100%)
Homeland Security and Emergency Services, Office of***	70	70	0	1 (1%)
Public Service, Department of	1	1	0	0 (0%)
Transportation, Department of	106	95	11	0 (0%)
Parks, Recreation and Historic Preservation, Office of	0	0	0	0 (0%)
Prevention of Domestic Violence, Office for the	0	0	0	0 (0%)
Quality of Care and Advocacy for Persons with Disabilities, Commission on	0	0	0	0 (0%)
TOTALS:	3,815	2,004	1,811	3,060 (80%)

*Department of Economic Development includes data for the New York State Foundation for Science, Technology and Innovation due to merger.

**Department of Corrections and Community Supervision includes data for the Division of Parole due to merger.

***Office of Homeland Security and Emergency Services includes data for the State Emergency Management Office due to merger.

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 29 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, 2012, 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, 2011 through January 1, 2012**

Due Date: March 15, 2012

[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, 2011 through January 1, 2012, 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.

OFFICE OF THE STATE COMPTROLLER

Prompt Contracting Reporting Template for Grant Contracts with Not For Profits Approved 1/2/11 - 1/1/12 ****Do Not Modify This Form - OSC will be Analyzing this Form via an Automated Program - Modified Forms will not be Accepted****

AGENCY:

1	2		3		4		5		6		7		8		9	10	11	12	13	14	15	16
Grant Program	Total NFP Grant Contracts		Total NFP Grant Contracts Meeting Legislated Time Frames		Total NFP Grant Contracts Not Approved by the Contract Start or Renewal Dates		Percentage of NFP Grant Contracts Not Approved by the Contract Start or Renewal Dates (do not enter - this column is formula driven)		Number of Column 4 NFP Grant Contracts Potentially Interest Eligible		Number of NFP Grant Contracts Where Interest Was Paid		Total Paid Interest Reported		Primary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates	Number of Late Contracts Associated With Primary Reason	Secondary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates	Number of Late Contracts Associated With Secondary Reason	If "Other" was Selected as the Primary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates, Fill in the "Other" Reason(s)	Number of Late Contracts Associated With "Other" Reason(s)	Explanation of Why Interest Was Not Paid on Contracts That Were Not Approved by the Contract Start or Renewal Dates	Total Number of NFP Grant Contracts That Met Legislated Time Frames But Were Not Approved by the Contract Start or Renewal Dates
	New	Renewal	New	Renewal	New	Renewal	New	Renewal	New	Renewal	New	Renewal	New	Renewal								
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
					0	0	0%	0%														
Totals	0	0	0	0	0	0	0%	0%	0	0	0	0	\$0.00	\$0.00								

**Prompt Contracting Reporting
Instructions
Covering Not-for-Profit (NFP) Legislative Initiative Contracts with Start Dates of
January 2, 2011 through January 1, 2012**

Due Date: March 15, 2012

[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, 2011 through January 1, 2012 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.¹
- 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.

¹ 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.

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Prompt Contracting Reporting Template for NFP Legislative Initiative Grant Contracts with Not For Profits Approved 1/2/11 - 1/1/12 ***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 Meeting Legislated Time Frames	Total NFP Legislative Initiative Grant Contracts Not Approved by the Start Dates	Percentage of NFP Legislative Initiative Grant Contracts Approved by the Start Dates (do not enter - this column is formula driven)	Number of Column 4 NFP Legislative Initiative Grant Contracts Potentially Interest Eligible	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	Secondary Reason Why NFP Legislative Initiative Grant Contracts Were Not Approved by the Start Dates	Number of Late Contracts Associated With Secondary 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 Not 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 on 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 applicable 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 a Request for Proposals (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 provision 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.

In November 2009, a revised Part 22 of 2 the New York Codes, Rules & Regulations (NYCRR) entitled "Prompt Contracting and Interest Payments for Not-For-Profit Organizations" became effective. These regulations were updated by the Office of the State Comptroller in order to provide clear guidance to State agencies regarding Article XI-B of the State Finance Law: Prompt Contracting and Interest Payments for Not- for-Profit Organizations. In particular, the revised regulations were intended to provide clear guidance to agencies for determining when prompt contracting interest is due, the manner in which to calculate that interest, and the use of written directives and agency notifications for both new and renewal contracts.

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. A 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 time frames for the execution of NFP grant contracts under State Finance Law, Article XI-B (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.