



# **PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2012**

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

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State Comptroller

**Prepared by the Bureau of Contracts  
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# Introduction

Not-for-Profit (NFP) service providers are frequently key partners with the State in delivering critical public services throughout New York. With community-based organizations and networks, NFPs provide insight into issues and address needs in ways that would be virtually impossible to carry out on a centralized basis. For more than two decades, New York has recognized the value added by NFPs through the State's Prompt Contracting Law, which was created to facilitate the contracting process and prevent payment delays that could impair services to some of our most vulnerable citizens.

Enacted in 1991 as Article XI-B of the State Finance Law, the Prompt Contracting Law establishes reasonable timeframes for executing new and renewal contracts and requires agencies to pay interest on late contracts. NFPs frequently provide the same service for many years and "new" contracts often include the continuation of services with the same NFP after the expiration of a prior contract. When payments for their services are delayed, many NFPs borrow or dip into reserve accounts to cover the shortfall. Beginning in 2007, the Law also requires the Comptroller to report annually on whether agencies have met the timeframes and made progress in achieving more timely contracts, and to recommend actions to improve contracting timeliness (see Appendix C for more information on the Prompt Contracting Law).

The Office of the State Comptroller (OSC) is committed to streamlining administrative processes for NFPs and making State contracting more efficient. Comptroller Thomas P. DiNapoli has also created a strong partnership with the NFP community. Since 2011, OSC has delivered training to more than 1,300 NFP staff and managers to help prevent fraud and improve operations.

The 2013 Prompt Contracting Annual Report for Calendar Year 2012 highlights the need to advance efforts to improve the contracting process as late contracting remains a significant and persistent problem. For 2012, agencies reported:

- A total of 4,134 new and renewal contracts were subject to the Prompt Contracting Law, an increase of 319 (8 percent) from the prior year.
- State agencies did not meet contracting timeframes for 3,206 contracts—this represents approximately 4 out of every 5 contracts (78 percent). The results are virtually unchanged from 2011, when 80 percent of contracts were reported late.
- Agencies reported that 1,953 contracts were eligible for interest, but interest was paid on just 735 (38 percent) of those totaling \$237,538.

During 2012, OSC's continuing efforts to reinforce requirements of the Law and monitor implementation have:

- Helped improve compliance with interest payments. OSC has provided clear guidance for determining when prompt contracting interest is due and for calculating that interest properly. OSC has also alerted State agencies and NFP organizations of potential interest owed due to late payments, culminating in a \$42,500 increase in interest payments to NFPs in 2012.
- Clarified the use of written directives and agency notifications which must be submitted to OSC for both new and renewal contracts. This improves the planning process for agencies and NFPs, reduces uncertainty in contracting and helps provide a more seamless delivery of services.

- Encouraged the use of advance payments and multiyear contracts to help NFPs improve cash flow and predictability in contracting. As more multiyear contracts are employed, the overall number of contracts is also reduced, saving agencies and NFPs time and money.
- Improved how State agencies use waivers of interest. For the first time in 2012, OSC found no unwarranted waivers.

The Executive has initiated efforts to streamline the grant process using updated, standard contract documents and electronic applications, filing and contract management. These measures hold significant promise to improve contract processing timeframes. Within the past month, a new Master Contract template has been created for use with new contracts. Additionally, a web-based portal has been created to facilitate the centralized notification of grant opportunities and serve as a repository for standard documents required from all contracting State agencies. OSC, the Office of the Attorney General and numerous NFPs have assisted in these efforts, which are aimed at full implementation later in the fiscal year. There is every reason to believe they represent a significant step forward.

Beyond the establishment of a clearer and more efficient contracting process, OSC strongly recommends that:

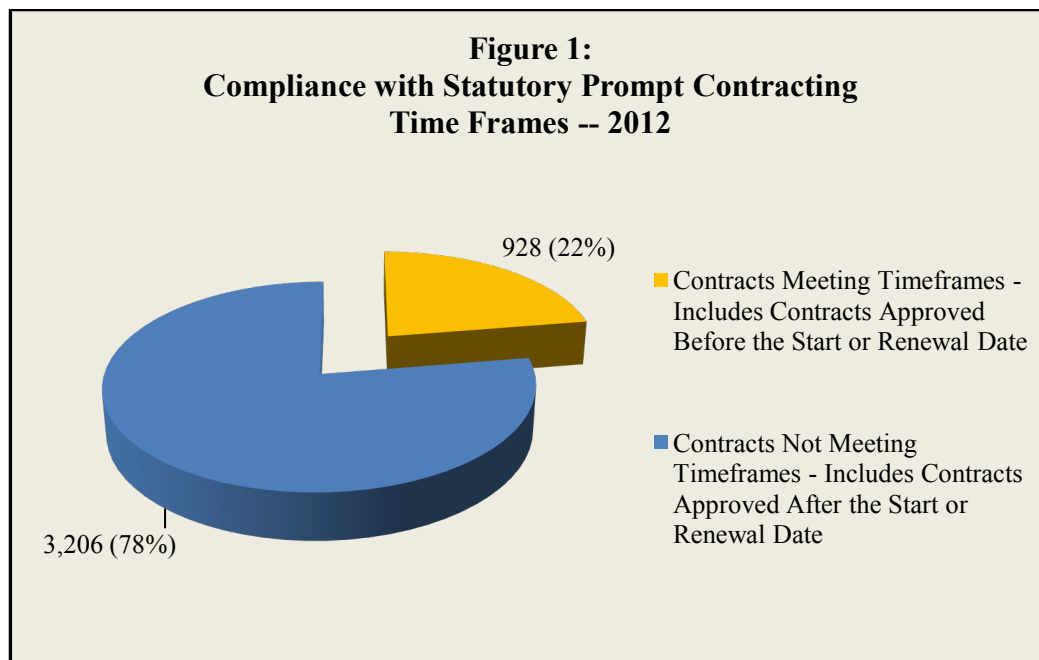
- State agencies make prompt contracting a priority. This remains the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention of State agency leadership are needed. Timely review and allocation of funding for contracts are imperative.
- The Executive ensures that the new grant management system currently being developed and implemented take full advantage of the opportunities to streamline systems in concert with the new Statewide Financial System (SFS). It is essential that interfaces with other required reporting and review systems (e.g., by other oversight agencies) be considered early in the development process to ensure efficient processing.
- State agencies pay all prompt contracting interest with the first payment due after the start of a late contract.
- State agencies streamline their own internal grant program planning and development processes, realigning where necessary 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.)
- The Executive ensures that sufficient training is available to NFP providers on the new web-based portal and the data vault.

# I. Summary of Data Reported by State Agencies

Reports were submitted to OSC from all 33 State agencies contracting with NFPs during 2012. (refer to Appendix A).

- State agencies reported that 4,134 new and renewal contracts with NFP providers, associated with 214 programs, were subject to Article XI-B of the State Finance Law.
- State agencies met prompt contracting timeframes for 928 contracts (22 percent), including 525 new and 403 renewal contracts.
- State agencies did not meet prompt contracting timeframes for 3,206 contracts (78 percent), including 1,606 new and 1,600 renewal contracts.

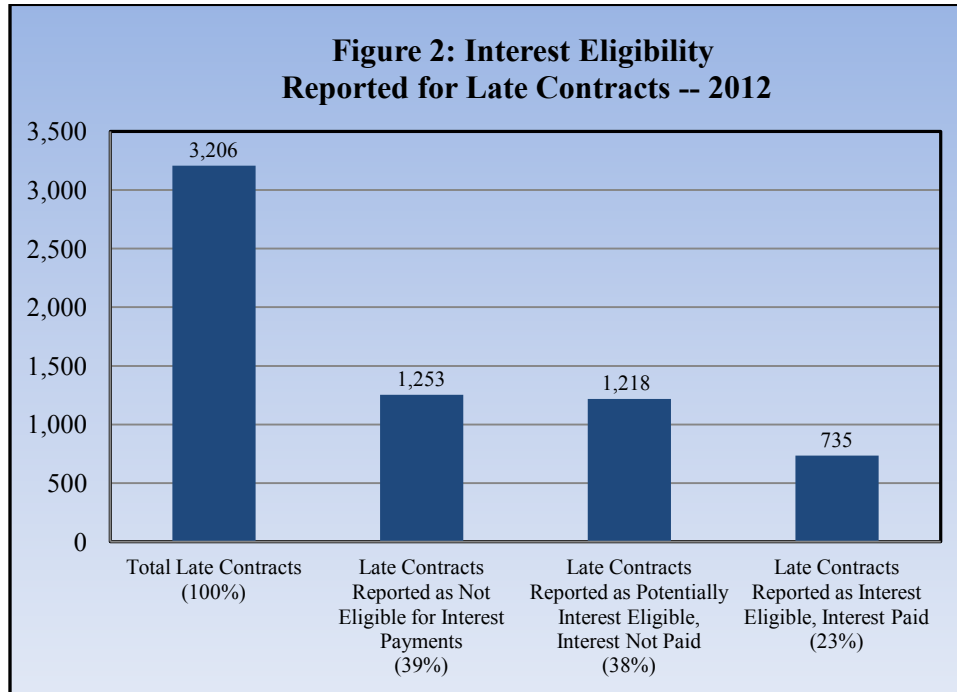
Of the 3,206 total late contracts reported by State agencies, 1,253 (39 percent) were reported as not eligible for interest payments. The remaining 1,953 contracts were reported as potentially eligible for interest.



Six State agencies paid interest totaling \$237,538 on 735 contracts eligible for interest—an increase of almost \$42,500 from the prior year. Of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid is 38 percent. The Department of Health (DOH) accounted for \$204,987 of the interest paid (86 percent), and the Office of Children and Family Services (OCFS) accounted for \$27,514 (12 percent). Four State agencies together paid a total of \$5,037. No interest payments were made for the remaining 1,218 (62 percent) late contracts reported as potentially eligible for interest.

Note: For contracts with start dates in 2012 that are not executed until 2013, State agencies would not calculate or make interest payments within the reporting period (1/2/12 – 1/1/13), thus these interest payments will go unreported. It is difficult to determine, after the fact, whether the interest will be paid.

Figure 2 below summarizes interest eligibility as reported on late contracts in 2012.



State agencies reported various reasons why program contracts were not approved by the start or renewal dates. When reasons were provided, the three most frequent – “Agency processing delays due to external State circumstances, such as budget cuts”, “Other” and “Contract documents not returned by NFPs in a timely manner” – accounted for 64 percent of the total responses.

Table 1 below summarizes the explanations for late contracting reported by State agencies in 2012.

23%	Agency processing delays due to external State circumstances, such as budget cuts.
21%	Other. Various explanations provided.
21%	No explanation provided.
20%	Contract documents not returned by NFPs in a timely manner.
15%	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</b> <b>Three-Year Comparison of Prompt Contracting Data as Reported by State Agencies</b> <b>January 2, 2010 – January 1, 2013</b>						
			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
2010	5,578	1,617	3,961 (71%)	2,719	780	\$215,583
2011	3,815	755	3,060 (80%)	1,996	736	\$195,136
2012	4,134	928	3,206 (78%)	1,953	735	\$237,538

Over the past three years, the number of grant contracts has fluctuated significantly. However, the number of contracts where interest was paid has remained relatively stable.



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

Under Section 112 of the State Finance Law, OSC is charged with the responsibility to approve most State contracts generally valued over \$50,000 before the contracts can become effective and binding. 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 applicants’ 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 and protecting New York State residents and taxpayers.

### ➤ 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, 2012 to January 1, 2013. This data includes the number of NFP grant contracts, the number of late NFP grant contracts, 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 other data available to OSC. State agencies are required to report on *all* contracts and renewals *with start dates in 2012*, 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 2012; however, the contract start dates may not fall within 2012. For 2012, OSC received 3,358 grant contracts for review while State agencies reported a total of 4,134 NFP contracts.

<b>Table 3</b> <b>Number of Contracts Approved by OSC Bureau of Contracts</b> <b>Subject to the Prompt Contracting Law</b> <b>January 2, 2012 – January 1, 2013</b>			
	Total Contracts	New Contracts	Renewal Contracts
Total Approved	3,358	1,603	1,755
Approved Before Start Date	432	38	394
Approved After Start Date	2,926	1,565	1,361

Of the 3,358 NFP grant contracts submitted to OSC for approval, 2,926 or 87 percent were approved after their start date and were consequently late. This compares with 78 percent late for the 4,134 contracts reported by State agencies.

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

### **Prompt Contracting Interest Review**

In 2010, OSC established a prompt contracting interest monitoring program to assess State agency efforts to determine when interest is due and calculate the interest properly. OSC continued the program for new contracts included in the State Fiscal Year 2012-13 Budget.

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 contract payment dates will not be missed until they have passed 90 days, plus 30 days leeway for the payment period. OSC auditors in the Bureau of Contracts (BOC) identify grant contracts submitted to OSC for approval that appear to have potential interest owed to the NFP because the contracts were executed after the start date and appear to have missed a payment date. Letters are issued to the State agency and the NFP, notifying each party that interest is potentially due and providing instructions for the submission of interest payment vouchers. The letters also provide an opportunity for State agencies that do not agree with OSC's assessment to explain why interest should not be due.

OSC's Bureau of State Expenditures (BSE) is also notified of the contracts identified by BOC so that payments can 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.

From January 1, 2012 to December 31, 2012, OSC identified 362 grant contracts from 23 State agencies that were potentially eligible for interest, in contrast to 349 contracts identified in 2011 – a 4 percent increase. Initial contract payments were made on 322 contracts.

As of this report, \$22,258 was paid in prompt contracting interest on 54 grant contracts potentially eligible for interest. This amount does not include interest paid in 2012 on prior year transactions.

OSC continues to educate State agencies and the NFP community about when prompt contracting interest is owed and how to calculate the amount. While 16 State agencies agreed to owing interest on 244 contracts during 2012, no interest payments have been made to date on those contracts. The law requires State agencies to report how much interest was paid during the reporting year. However, when the interest is not paid until subsequent years, as is the case with the 244 contracts, then there is no way to adequately ensure that the law is being implemented.

Both Houses of the Legislature passed OSC-proposed legislation in 2012 requiring agencies to pay interest due with the first payment to the NFP under a contract. However, the bill was vetoed pending budget negotiations. No further action was taken to ensure NFPs would receive interest timely.

## 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 to determine whether the waiver of interest is warranted. OSC reviews are to determine whether: (1) all timeframes 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, the NFP and the Division of the Budget (DOB) 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.

OSC has made special efforts to ensure State agencies do not propose unwarranted waivers, including outreach to those State agencies with excessive waivers. For the first time, in 2012 OSC received only waivers deemed to be warranted.

<b>Table 4</b> <b>Waivers of Interest</b> <b>January 2, 2012 – January 1, 2013</b>	
<b>70</b>	Total NFP grant contracts received with waivers
<b>0</b>	Unwarranted waivers, potential interest due
<b>0</b>	Unwarranted waivers, no interest due
<b>70</b>	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](http://www.osc.state.ny.us/reports/economic/nfp2010.pdf))

OSC subsequently released a follow-up report in 2011, *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 NFP partners. ([www.osc.state.ny.us/press/releases/nov11/111411.htm](http://www.osc.state.ny.us/press/releases/nov11/111411.htm))

In 2012, OSC implemented a fraud detection and prevention training program designed for accountants, directors, board members and staff of NFPs. The *Don't Get Burned* program was presented 13 times in 2012 in nearly every region of the State. To date, more than 1,300 NFP leaders and accountants have taken advantage of the training, and additional sessions are planned for 2013. Taught by OSC forensic auditors 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. In order to reach a wide audience with this program,

OSC has partnered with regional United Way organizations, other NFP umbrella organizations, such as the Human Service Council and the UJA Federation of New York, as well as the Met Council and the New York State Society of Certified Public Accountants. Additionally, the program has been embraced by several State agencies that have encouraged their contracting providers to participate.

The NFP Contracts Liaison and the NFP Community Liaison at OSC continue 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 in the Guide to Financial Operations (GFO) and other means, including:

- Potential interest due letters issued to agencies when a grant contract review determines that the State agency may owe interest for missed payments on grant contracts executed after the start date. The letters help State agencies ensure that the Prompt Contracting Law is followed and provide a means for OSC to train agency staff on its requirements.
- Review of contract payment terms by OSC ensures compliance with the intent of the Law. OSC previously found that State agencies were not using clear payment terms and, as a result, were avoiding possible interest payments to NFPs when contracts were processed after the contract start date. As with the issuance of 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, which includes informal training sessions, conference calls, correspondence and the issuance of a semiannual grants newsletter, *The Procurement Record*, containing current topical information regarding the grant contract process for State agencies.
- Review of the Intelligrants Grants Management System and Master Contract for Grants initiated by the Executive. OSC assisted with vendor selection and provided technical assistance on grant processing for the new system. Staff from both OSC and the Office of the Attorney General worked with representatives of the Executive and the DOB to draft a standardized boilerplate that will be used by all grant-making State agencies. The document includes standard New York State contract terms and conditions, as well as templates for uniform work plan, budget and program reporting. These improvements will serve to enhance public transparency and heighten compliance with State, federal, legal and audit requirements.

➤ **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 16 members representing NFPs and State agencies.

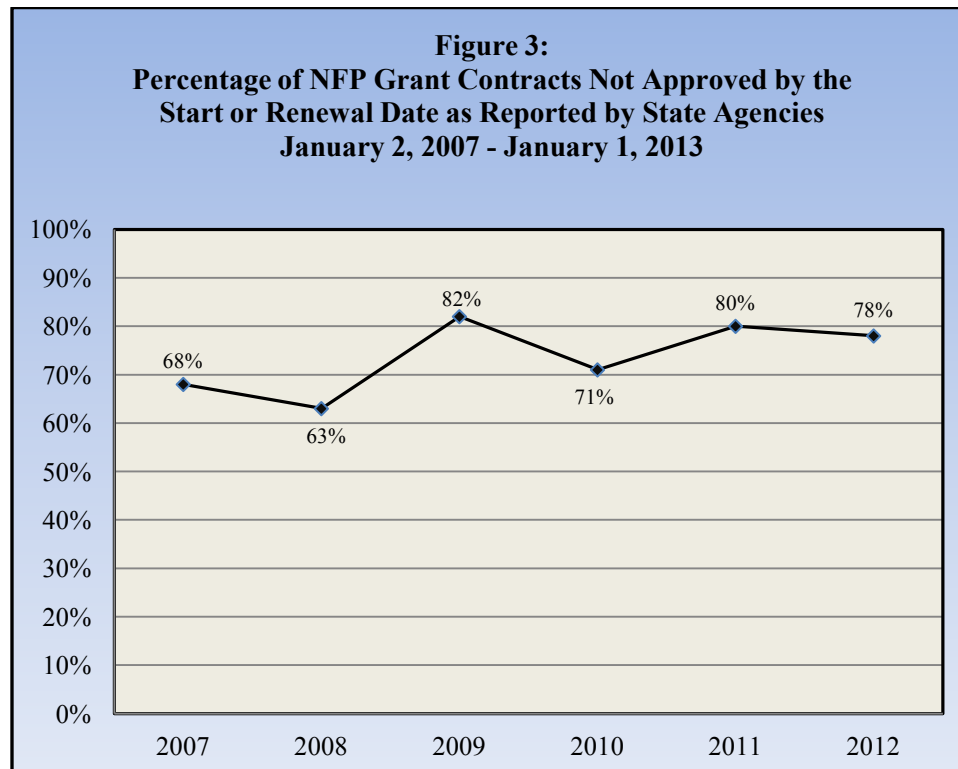
### III. Effectiveness and Implementation of the Prompt Contracting Law

The following analysis is based on the data provided by State agencies for 2012.

#### ➤ Late Contracting

State agencies continue to have difficulty meeting the established timeframes as illustrated in *Figure 3*. In 2012, State agencies reported that 78 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 80 percent in 2011, indicating a slight improvement from the prior year. However, the overall trend remains steady with more than 70 percent of contracts reported late each year since 2009. 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 consistent with the prior year’s result of nearly 87 percent late. Reasons cited by State agencies for late contracting include delays due to external circumstances and delays in returning contracts from NFPs.

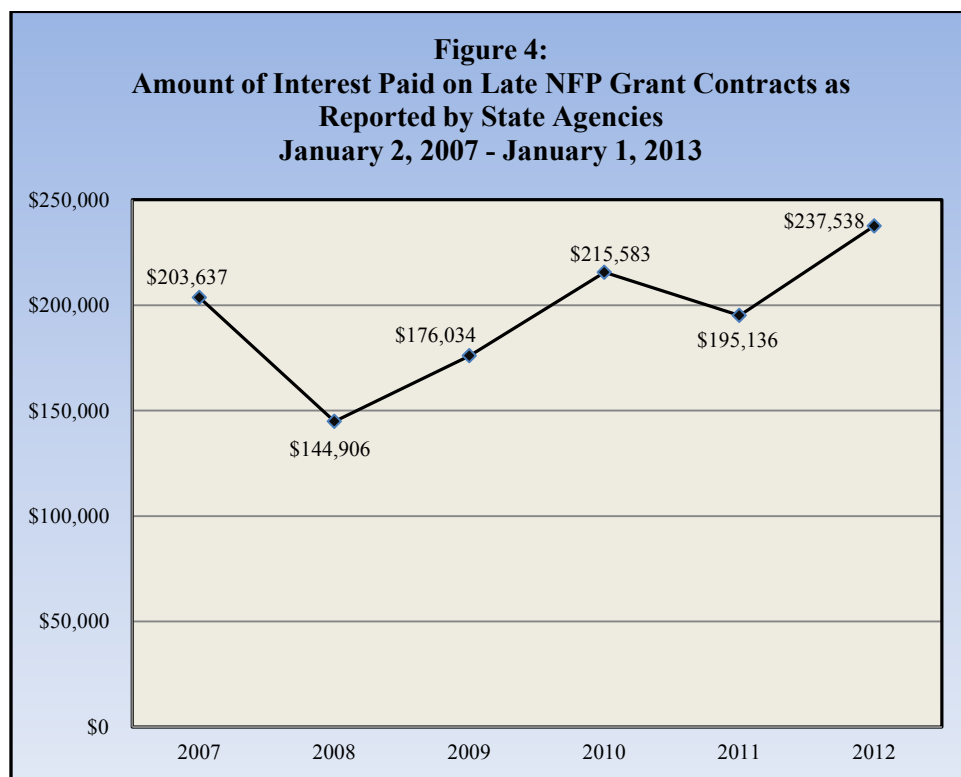
More grant contracts were entered into in 2012 than in 2011. While agency-reported processing times have improved, it is clear that significant obstacles to prompt contracting remain.



## ➤ Interest Payments

The number of contracts on which interest was paid in 2012 remained essentially the same as in 2011 (735 versus 736). This represents 37 and 38 percent respectively of the number of grant contracts where interest was due in 2011 and 2012. The amount of interest paid by State agencies on late contracts increased by 22 percent in 2012. 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 increased interest payments.

Figure 4 summarizes the amount of interest paid on late NFP grant contracts. Over the six-year period (2007-2013), annual total interest payments on late contracts are trending upward from a low of approximately \$145,000 to more than \$237,000.



## ➤ Waivers of Interest

Waivers are only deemed warranted if the timeframes for the execution of a contract as set forth in the Prompt Contracting Law have been met. Prior to the 2007 amendments to the 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 timeframes, and agencies did not pay interest on late contracts when waivers of interest were signed.

During the 2012 report period, OSC reviewed waivers 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 2011. Of the 75 waivers of interest submitted in 2011, 59 waivers (79 percent) were determined by OSC to be warranted with no interest due. As shown on *Table 4* above, of the 70 waivers of interest submitted to OSC for review, all waivers were determined to be warranted with no interest due. OSC's review, along with targeted outreach, has succeeded in helping State agencies understand the appropriate use of waivers.



## **IV. Review of Recommendations Made in the Prompt Contracting Annual Report for Calendar Year 2011 (Issued in May 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.*

OSC data shows that for all grant contracts executed in both 2011 and 2012 that were subject to OSC review, 87 percent were executed past the start date. Approximately 80 percent of all State agency-reported contracts were late. Although the Executive is working to streamline grant processing, there has not yet been an impact on processing times. The implementation of the new grants management system will allow for greater transparency in measuring and identifying future improvements in the grants contract approval process.

- 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.*

In 2012, the Legislature passed the OSC-proposed bill, which was subsequently vetoed pending negotiations related to the State Budget. Paying interest in a timely manner does not increase costs to the State but rather ensures that interest owed to NFPs is paid in a timely manner. The Legislature has re-introduced the bill as S.5189 (DeFrancisco) and A.7471 (Englebright).

- 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.*

Efforts are underway to implement a grant management system that is designed to streamline and expedite the grant contract approval process. The system should leverage the advantages of the new SFS.

- 4. State agencies need to streamline their internal program planning processes to alleviate redundancies and implement measures to reduce procurement timeframes.*

OSC continues to encourage State agencies to streamline internal processes.

- 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.*

OSC continues to encourage State agencies to realign contract start dates.

- 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.*

OSC's review and approval of grant procurement records has provided an opportunity to assist State agencies in developing better evaluation methodologies. OSC is beginning to see significant improvements in the quality of State agency evaluations of grant procurements. They include:

- The evaluation of cost;
- Greater specificity in the distribution of points within the evaluation;
- Clearer and more concrete requirements for a pass/fail preliminary review of applications;
- Increased use of consistent criteria in the evaluation of State agency recommendations by oversight boards and
- Increased use of normalization techniques when evaluators' scores diverge.

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.*

OSC's continued recommendation regarding the use of multiyear contracts has resulted in some efficiency in the grant contracting process. The Executive has adopted the Comptroller's recommendation for the use of multiyear contracts as a way of conserving resources and reducing the potential for late NFP grant contracting.

8. *State agencies should consider more effective use of advance payments to alleviate the late State contracting burden on NFPs.*

OSC continues to encourage State agencies to take advantage of advance payments as an option to mitigate potential interest liability.

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.*

The grant reform initiative is paving the way for more coordinated oversight, monitoring, and resource sharing among State agencies.

## **V. Prompt Contracting Annual Report Recommendations for 2013**

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. Priority must be given to finalizing the development and implementation of the new grant management system so as to take full advantage of the opportunities to streamline administration through the new SFS. Close attention is needed to ensure effective interfacing with review and oversight by other agencies to gain the greatest advantage from the new system.
3. State agencies should pay prompt contracting interest with the first payment due after the start of a late contract.
4. Every State agency should streamline its own internal grant program planning and development process.
5. The Executive should ensure that sufficient training is available to NFP providers on the new web-based portal and the data vault.
6. 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.
7. State agencies should expand the use of multiyear contracts to reduce the number of contracts and make the contracting more predictable for NFPs and agencies.
8. State agencies should use advance payments more effectively to alleviate cash flow issues for NFPs waiting for contracts.

# Appendix A

## Table 1

State Agencies Providing Information for the Prompt Contracting Annual Report  
Calendar Year 2012 - 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	49	49	0	49
Agriculture & Markets, Department of	84	83	1	84
Alcoholism & Substance Abuse Services, Office of	41	41	0	40
Arts, Council on the	465	465	0	465
Board of Elections	5	5	0	5
Children & Family Services, Office of	503	102	401	414
City University of New York	0	0	0	0
Corrections and Community Supervision, Department of	28	28	0	28
Criminal Justice Services, Division of	328	251	77	237
Economic Development, Department of	44	31	13	44
Education, Department of	55	55	0	33
Environmental Conservation, Department of	43	43	0	23
Health, Department of	877	124	753	846
Higher Education Services Corporation	62	51	11	11
Homeland Security and Emergency Services, Office of	43	43	0	0
Housing & Community Renewal, Division of	6	6	0	6
Hudson River Valley Greenway	3	3	0	3
Indigent Legal Services, Office of	38	38	0	38
Interest on Lawyer Account Fund	69	69	0	69
Labor, Department of	88	76	12	60
Mental Health, Office of	441	58	383	268
Motor Vehicles, Department of	89	89	0	7
Parks, Recreation and Historic Preservation, Office of	0	0	0	0
People with Developmental Disabilities, Office of	318	106	212	255
Prevention of Domestic Violence, Office for the	2	2	0	2
Public Service, Department of	0	0	0	0
Quality of Care and Advocacy for Persons with Disabilities, Commission on	23	23	0	23
State, Department of	42	42	0	42
State University of New York Administration	47	46	1	45
Temporary & Disability Assistance, Office of	83	83	0	83
Transportation, Department of	118	118	0	0
Veterans Affairs, Office of	1	1	0	1
Victim Services, Office of	139	0	139	25
<b>TOTALS:</b>	<b>4,134</b>	<b>2,131</b>	<b>2,003</b>	<b>3,206</b>

# Appendix A

## Table 2

State Agencies Providing Information for the Prompt Contracting Annual Report  
Calendar Year 2012 - 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	877	124	753	846 (96%)
Arts, Council on the	465	465	0	465 (100%)
Children & Family Services, Office of	503	102	401	414 (82%)
Mental Health, Office of	441	58	383	268 (61%)
People with Developmental Disabilities, Office of	318	106	212	255 (80%)
Criminal Justice Services, Division of	328	251	77	237 (72%)
Agriculture & Markets, Department of	84	83	1	84 (100%)
Temporary & Disability Assistance, Office of	83	83	0	83 (100%)
Interest on Lawyer Account Fund	69	69	0	69 (100%)
Labor, Department of	88	76	12	60 (68%)
Aging, Office for the	49	49	0	49 (100%)
Economic Development, Department of	44	31	13	44 (100%)
State University of New York Administration	47	46	1	45 (96%)
State, Department of	42	42	0	42 (100%)
Alcoholism & Substance Abuse Services, Office of	41	41	0	40 (98%)
Indigent Legal Services, Office of	38	38	0	38 (100%)
Education, Department of	55	55	0	33 (60%)
Corrections and Community Supervision, Department of	28	28	0	28 (100%)
Victim Services, Office of	139	0	139	25 (18%)
Quality of Care and Advocacy for Persons with Disabilities, Commission on	23	23	0	23 (100%)
Environmental Conservation, Department of	43	43	0	23 (53%)
Higher Education Services Corporation	62	51	11	11 (18%)
Motor Vehicles, Department of	89	89	0	7 (8%)
Housing & Community Renewal, Division of	6	6	0	6 (100%)
Board of Elections	5	5	0	5 (100%)
Hudson River Valley Greenway	3	3	0	3 (100%)
Prevention of Domestic Violence, Office for the	2	2	0	2 (100%)
Veterans Affairs, Office of	1	1	0	1 (100%)
Homeland Security and Emergency Services, Office of	43	43	0	0 (0%)
Transportation, Department of	118	118	0	0 (0%)
City University of New York	0	0	0	0 (0%)
Parks, Recreation and Historic Preservation, Office of	0	0	0	0 (0%)
Public Service, Department	0	0	0	0 (0%)
<b>TOTALS:</b>	<b>4,134</b>	<b>2,131</b>	<b>2,003</b>	<b>3,206 (78%)</b>

# Appendix B

## Reporting Methodology

Using information gathered from New York State's Central Accounting System (CAS) and the Statewide Financial System (SFS), OSC's Bureau of Contracts was able to identify 33 State agencies as having grant contracts with not-for-profit organizations (*Refer to Appendix A*). An electronic reminder requesting that the State agency's prompt contracting information be submitted to OSC by March 15, 2013, 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, 2012 through January 1, 2013**

**Due Date: March 15, 2013**

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, 2012 through January 1, 2013, 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 (NFPs) Approved 1/2/12 - 1/1/13 \*\*\*Do Not Modify This Form – OSC will be Analyzing this Form via an Automated Program - Modified Forms will not be Accepted\*\*\*

**Due Date: March 15, 2013**

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%														
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>								

**Prompt Contracting Reporting  
Instructions  
Covering Not-for-Profit (NFP) Legislative Initiative Contracts with Start Dates of  
January 2, 2012 through January 1, 2013**

**Due Date: March 15, 2013**

**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, 2012 through January 1, 2013 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

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<sup>1</sup> Refer to the Guide to Financial Operations (GFO) for information on time frames for new NFP contracts.

dates. You should choose the most prevalent reason for why most of the contracts were late.

**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 Legislative Initiative Grant Contracts with Not-For-Profits (NFPs) Approved 1/2/12 - 1/1/13 \*\*\*Do Not Modify This Form – OSC will be analyzing this form via an automated program - the format must not be altered in any way\*\*\***

**Due Date: March 15, 2013**

**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 Not 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%											
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>\$0.00</b>								

# 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, while enlarging the scope of the Committee's responsibility.

Chapter 232 of the Laws of 2009 made permanent two important provisions added in the 2007 amendments to the Prompt Contracting Law. Both provisions offer 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 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 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 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 requirements 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.