# New York State's Not-for-Profit Sector

## Delayed State Contracts and Late Payments Hurt Service Providers

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**New York State Comptroller**

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## Executive Summary

New York's not-for-profit (NFP) community is a vital partner to State government and an important economic engine across the State. Currently, New York State has nearly 27,000 registered nonprofits, which account for almost $148 billion in annual revenue, according to the National Center for Charitable Statistics. In 2010, the Johns Hopkins Center for Civil Society Studies found that NFPs in the State employed 1.25 million people – 14 percent of the workforce – providing important services to a vast cross-section of New Yorkers. New York relies heavily on NFPs to provide a broad range of basic services from health care clinics to workforce development programs, with more than 22,000 active contracts totaling $16.8 billion as of October 2011.

The Prompt Contracting Law of 1991 requires State agencies to contract timely with NFP providers. Under that law, the Office of the State Comptroller (OSC) is required to issue an annual report on the status of prompt contracting in New York State. Two decades after the passage of this legislation, a majority of State agencies still fail to contract timely most of the time. OSC's 2010 Prompt Contracting Report issued in May showed that 71 percent of grant contracts with NFPs were not approved by the start or renewal date, according to State agency reports. NFPs suffer when they provide services before contracts are approved or renewed and incur operational costs that are not reimbursed timely. While the 2010 results are an improvement over the 82 percent of contracts approved late in 2009, the pattern of late contracting has gone on for far too long and reform is clearly needed.

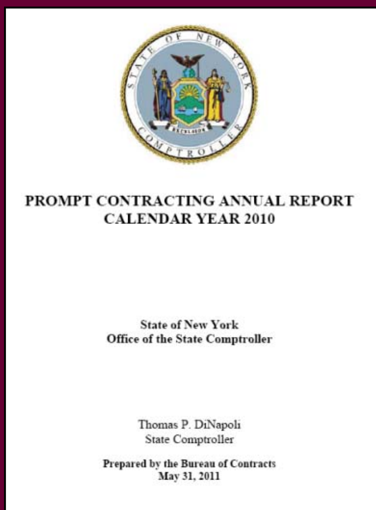
Over the past several years, Comptroller DiNapoli has travelled throughout New York meeting with NFP leaders in an effort to gain a better understanding of their challenges – especially in light of the severe national recession. Many NFPs now have heavier caseloads due to higher unemployment and resulting increases in people in need of services. At the same time, many NFPs have also experienced cuts in government funding as well as significant decreases in private donations, as benefactors have also been negatively impacted by the economy. On top of the economic challenges of dealing with late contracts and the resulting payment delays, NFPs have reported facing burdensome and ineffective administrative and monitoring requirements which continue to affect their operations negatively. The New York City Mayor's office has been working on a series of activities to address these concerns at the City level. Now is clearly the time to resolve these issues on the State level by working to streamline the contracting process, as well as making other reforms to bring about greater efficiency and accountability in New York's partnership with the not-for-profit sector.

This report makes recommendations for reform and offers a number of policy and procedural suggestions to improve the way New York State does business with the thousands of NFP agencies that provide critical services.

Comptroller DiNapoli addresses the attendees of his June 2010 Not-for-Profit Forum in Albany

## Prompt Contracting

NFP leaders across the State have indicated that late approvals of their contracts by State agencies and late payments for services rendered are creating increasing risks that critical services cannot be provided.



PROMPT CONTRACTING ANNUAL REPORT
CALENDAR YEAR 2010

State of New York
Office of the State Comptroller

Thomas P. DiNapoli
State Comptroller

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Since 1991, State agencies have been required to contract timely with NFPs to help avoid service interruption for consumers and financial hardship for NFPs. OSC annually reports on contracting results reported by State agencies and makes recommendations to advance the goal of prompt contracting.

The 2010 report can be viewed at:
http://www.osc.state.ny.us/agencies/pcl_reports/pcl_2010.pdf

OSC's 2010 Prompt Contracting Report found that 71 percent of contracts with NFPs were not approved by the start or renewal date, as reported by State agencies. In addition, OSC also compared its own data on NFP contracts that are required, by law, to be pre-approved by OSC within 15 days of submission. This data includes only contracts valued at $50,000 or more, and the report found that nine out of ten of these contracts were approved an average of six months after their start date. These delays create financial difficulties for NFPs, as payments for services cannot be received until contracts have been approved.

New York relies heavily on NFPs to provide a broad range of basic services from health care clinics to workforce development programs, with more than 22,000 active contracts totaling $16.8 billion as of October 2011. NFPs face financial hardships when they provide services before contracts are approved or renewed and incur operational costs that are not reimbursed timely. When payments for their services are delayed, many NFPs borrow or dip into reserve accounts to cover the shortfall – incurring interest expenses that are not reimbursable. Smaller NFPs often lack reserves or a credit line and must delay payments to their own vendors.

Late contracts also trigger State-mandated interest payments. Interest costs associated with payments delayed from late approval of contracts by State agencies in 2010 are estimated to have been as high as $2.6 million. However, according to OSC's 2010 Prompt Contracting Report, only four agencies actually made interest payments, which totaled just $215,583. Explanations by State agency staff as to why interest was not paid indicated that agencies either do not fully understand the statutory requirement or that they circumvent requirements through contract language that postpones payments well into the contract term. OSC is continuing its efforts to increase agencies' compliance with the legal requirements for paying interest on late payments.

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## Challenges

In addition to prompt contracting issues, New York State's NFP sector has been seriously challenged over the past few years in other ways. According to the Nonprofit Finance Fund's *2011 State of the Sector Survey*, 60 percent of respondents providing health and safety-related services indicated an increased number of clients served in 2010. However, 57 percent of respondents reported they were unable to keep up with demand for services.

NFPs are being called upon to provide more services while also experiencing substantial losses in funding and charitable donations. A September survey by the Nonprofit Research Collaborative reported that 40 percent of respondents indicated a decline in contributions for the first six months of 2010 compared to the prior year. For the first six months of 2011, NFP finances continued to be negatively affected by the economy, with 30 percent of respondents reporting a contribution decline compared to the same period in 2010.

In 2009 and 2010, Comptroller DiNapoli hosted a series of forums in communities across the State with not-for-profit leaders. Among the common concerns cited were: late contracting; delayed payments; burdensome administrative and monitoring requirements for the NFPs that contract with multiple State agencies for related programs; and low reimbursement of administrative overhead. OSC's reports have also focused on the economic and employment significance of the sector. According to the National Center for Charitable Statistics, New York has nearly 27,000 registered nonprofits, accounting for almost $148 billion in annual revenue. In 2010, New York NFPs employed 1.25 million people, about 14 percent of the State's workforce. (*U.S. Nonprofit Employment: The Impact of Recession*, L. Salamon, et al., Johns Hopkins Center for Civil Society Studies, forthcoming in 2011, available at http://ccss.jhu.edu/publications-findings?did=270)

Comptroller DiNapoli hosted forums for NFP leaders in the following communities: the Capital Region, Chautauqua, Corning, Long Island, New York City, Plattsburgh, Rochester, Syracuse, Western New York, and White Plains.

### What Not-for-Profit Leaders Are Saying…

*"There is widespread frustration with the State's inability to meet the deadlines in the law. Legally required contract actions and payments continue to be late. The result? Delays stretching to months in being paid for services performed for the State, and severe challenges to the business continuity of not-for-profits. Yet the voluntary sector continues to serve an ever-increasing number of New Yorkers who rely on us for help. It is time for real reform."*

Susan K. Hager, President and CEO, United Way of New York State

*"It is disappointing that 20 years after prompt contracting legislation was first enacted, so many State contracts are still not processed in a timely fashion. Late State contracts mean many New York residents are not assured of having their needs met in a consistent and timely manner."*

Ron Soloway, Managing Director of Government and External Relations, UJA-Federation of New York

*"The time for reforming the way New York State does business with the not-for-profit sector is now. It is our hope that New York State's leaders will work together to bring about these much-needed changes."*

Michael Stoller, Executive Director, Human Services Council

## Recommendations

Solutions for many of the issues facing NFPs can only be achieved through Executive and legislative action. OSC is taking steps, where possible, that can provide improvement. The New York City Mayor's Office has been working collaboratively with the NFP sector on prompt contracting reforms, access to financial support, and training of agency contracting officials and NFP staff. The City's work to establish a central document vault and standard contract language should reduce redundancy in document submissions by NFPs. The City's efforts – as well as a recent proposal by the Governor for a one-stop funding shop for organizations seeking economic development funds – may provide models to simplify and reform NFP contracting in the State.

Comptroller DiNapoli has submitted legislation to improve the grant contracting process and require agencies to pay interest on late contracts earlier to ease the financial burdens on not-for-profits (http://www.osc.state.ny.us/legislation/2011-12/oscb9.htm). In addition to the mandated Prompt Contracting Annual Report, OSC will conduct an annual assessment of major issues impacting the NFP sector and report on progress being made on any reform efforts. Comptroller DiNapoli has also proposed the following actions to help address challenges experienced by the NFP sector. New York State should:

- Provide adequate resources to ensure timely review and achieve compliance with the Prompt Contracting Law.
- Work to standardize contract terms and consider master contracts for NFPs that work with multiple contracting agencies.
- Ensure agencies collaborate to centralize the monitoring and audit of NFPs.
- Share significant findings from the monitoring of NFPs funded by multiple State agencies to ensure that decisions suspending payment by one agency for problematic or fraudulent activity are known to all funders.
- Develop longer term multiyear contracts to ensure smooth year-to-year funding transitions.
- Establish performance-based contracts using performance expectations developed collaboratively with NFPs. The resulting data will enable policy makers to fund programs more strategically.
- Look for cost savings by eliminating or reducing funding for programs that are inefficient or not cost-effective, based on performance history. Avoiding an across-the-board approach to funding cuts can ensure ongoing support for effective programs and services.
- Provide effective interim financial support for NFPs facing contract delays. While late contracts may be unavoidable, especially if budgets are delayed, NFPs providing services should be supported when this occurs. To mitigate the financial burden, an easily accessed, affordable source of capital is needed, such as a revolving loan fund repayable from the executed contract.
- Ensure the Statewide Financial System (SFS) works with grant-making State agencies to include a grant award and monitoring process to facilitate the timely execution of contracts.
- Encourage the Spending and Government Efficiency (SAGE) Commission, which has been charged with improving the delivery of government services and increasing government efficiency and accountability, to consider the prompt contracting recommendations provided by the Not-for-Profit Contracting Advisory Committee.