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# **Prompt Contracting Annual Report**

## **Calendar Year 2015**



**OFFICE OF THE NEW YORK STATE COMPTROLLER**  
Thomas P. DiNapoli, State Comptroller

**May 2016**



# Message from the Comptroller

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May 2016

New York State has long relied on not-for-profit organizations to provide vital services to the public. Through grant contracts, State agencies partner with NFPs to help our citizens with vocational training, homeless shelters, food pantries, elder care, afterschool programs, mental health care, disaster relief and countless other community services.



Unfortunately, despite the importance of these services, delays in the contracting process have contributed to uncertainty and financial hardship in the NFP sector. The Prompt Contracting Law, enacted in 1991 and amended in 2007, represents an effort to streamline the process and expedite contracting for the benefit of NFPs and the people they serve. As this report shows, we are at last seeing signs of improvement in NFP contracting, but much work remains to be done. Even now, six out of every ten contracts are still executed late.

New York's NFP organizations face a number of serious challenges in the current environment. Getting contracts signed and in place on time right is one important and attainable step the State can take to help NFPs achieve financial stability. The recommendations in this report outline a path to make good on the State's longstanding commitment to prompt contracting, and enable our NFP partners to continue to serve millions of New Yorkers in need.

Thomas P. DiNapoli  
State Comptroller



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# Overview

The Prompt Contracting Law was enacted in 1991 to address serious delays in contracting by New York State with its not-for-profit (NFP) service providers. Chronic delays created financial hardship for organizations serving some of the State's most vulnerable citizens, including children and senior citizens, the poor and the homeless, and people with disabilities. The Law instituted reforms intended to expedite contracts and the resulting payments in order to reduce the risk to providers and those they serve.

The Law also provides for interest payments to NFPs on certain late contracts to help mitigate fiscal impacts. Interest payments may be waived in some instances, but only if the Office of the State Comptroller finds that it is warranted. Fully realizing the objectives of the Prompt Contracting Law would represent a significant step toward helping New York NFPs achieve financial stability.

More than two decades later, New York and its partner providers continue to struggle with late contracting and the financial strains it entails. A recent study by the Human Services Council found that human service NFPs, in particular, have a higher rate of insolvency than other types of NFPs with 60 percent of the sector considered financially distressed, having no more than three months of cash reserves. The report also highlighted the financial burden to human service providers of multiple and redundant audits. The Comptroller's Office has long supported the consolidation of audits where possible to mitigate the burden on agencies and NFPs.<sup>1</sup>

Since 2007, the law has required the Office of the State Comptroller (OSC) to report annually to the public on whether State agencies have met statutory time frames and made progress in achieving more timely contracts, and to recommend actions to achieve prompt contracting.

There are signs of progress. For the second consecutive year, the percentage of grant contracts executed after the start date has declined. The following self-reported State agency data for 2015 reflects improvements over last year:

- A total of 3,832 new and renewal contracts were subject to the Prompt Contracting Law, a decrease of 798 from the prior year.
- State agencies reported that 2,332 (61 percent) of their contracts were processed late, i.e. after the start or renewal dates. This is a decrease from 2014, when 77 percent of the total contracts were processed late.
- State agencies reported that 1,379 contracts were eligible for interest for late payments, down from 2,108 in 2014. However, interest was paid on only 22 percent (303 contracts), totaling \$129,824, while interest of \$195,663 was paid on 32 percent of interest-eligible contracts in 2014.

While the annual results are beginning to show a trend in the right direction, much more needs to be done as the majority of contracts—six out of every ten—are still late. Moreover, improvements are not being accomplished across the board; half of all agencies reported contracts as late 90 to 100 percent of

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<sup>1</sup> Human Services Council. *New York Nonprofits in the Aftermath of FECS: A Call to Action*. New York. 2016. FECS refers to the Federation Employment and Guidance Service; a large New York nonprofit which announced it would be closing in March 2015.

the time in 2015 (see Appendix A). And the decline in interest paid this year signals a need to re-double efforts to calculate and pay these amounts timely.

State agencies have begun to establish program implementation goals to execute timely contracts and to take advantage of the new electronic Grants Gateway to streamline processing. However, in 2015, only a fraction of total grant contracts were processed completely through the Gateway, despite its potential to reduce delays. The State needs to realize a greater return on this substantial investment.

Finally, State agencies are seeing promising results from the increased use of multiyear contracts as recommended by OSC. This contributed to a decrease of 47 percent in the number of renewal contracts from 2014.

Whether agencies can sustain this trend or whether the recent data represents a more immediate response to enhanced technology, standardized forms and the increased use of multiyear contracting remains to be determined. The continued commitment of State agencies to make prompt contracting a priority is imperative.

The Not-for-Profit Contracting Advisory Committee, which was expanded in 2007, is now reconvening after a year's hiatus with new members and the promise of strong leadership. The momentum within State agencies and elsewhere to examine timeframes and causes of late contracting, combined with new tools and strategies to reduce delays, is encouraging. New York cannot afford to rest at this stage. Accordingly, the Office of the State Comptroller recommends:

1. State agencies need to continue efforts to make prompt contracting a priority.
2. The Not-for-Profit Contracting Advisory Committee must meet regularly and adopt a scorecard to monitor compliance with the law.
3. The Executive should review and coordinate or consolidate regulatory audit requirements.
4. State agencies should expand their use of the Grants Gateway.
5. State agencies should use the workload management tools in the Grants Gateway to increase agency-wide oversight of grant contracts.
6. The Executive must make sure that prompt contracting interest is paid timely. The Legislature and the Executive should enact the Comptroller's recommendation that interest be paid with the first payment due on a contract (bill vetoed by the Executive in 2014).
7. The Executive should use a centralized means to assist agencies in calculating and paying contracting interest promptly.

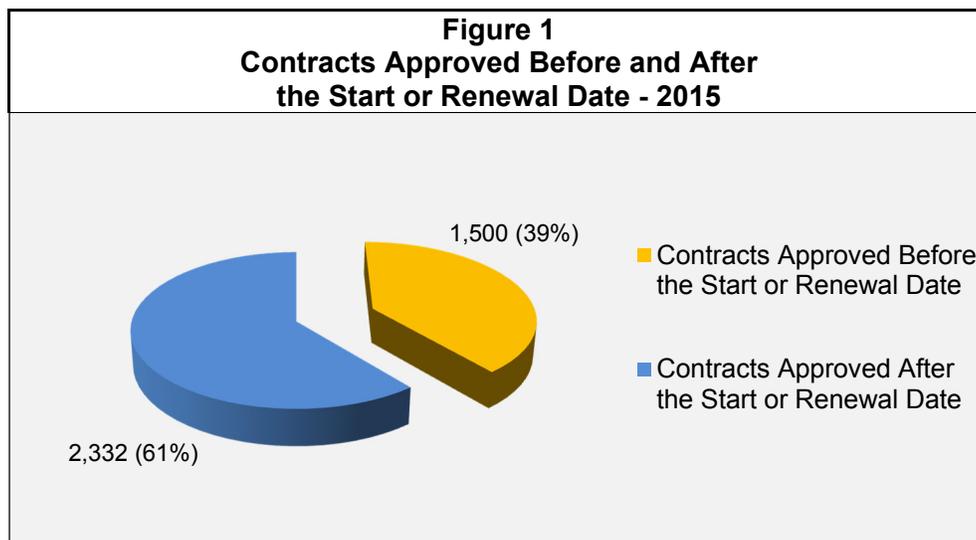
# 2015 OSC Prompt Contracting Recommendations

- State agencies need to 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 and accountability of State agency leadership are needed.
  - Approximately 61 percent of all State agency reported contracts were late in 2015. This compares favorably to the 77 percent reported late in 2014. Although efforts to streamline grant contract processing are ongoing, additional work needs to be done to continue the trend towards processing grant contracts on a timely basis.
- Once fully operational, the Grants Gateway should report quarterly on timeliness of prompt contracting and the amount of interest paid on late contracts.
  - Although the Grants Gateway use and functionality continue to expand, OSC data shows that only six percent of all grant contracts submitted to OSC for approval were fully executed through the Grants Gateway in 2015. Data on use and results, reported regularly, can assist agencies, the Not-for-Profit Contracting Advisory Committee, and others to improve results and track progress.
- Prompt contracting interest should be automatically calculated and assessed to ensure that the NFPs receive what is required by law.
  - In 2015, prompt contracting interest was paid on only 22 percent of contracts reported by State agencies as being potentially eligible for interest. If prompt contracting interest payments were automatically calculated and assessed, all NFPs would receive the prompt contracting interest that is owed.
- The State should develop a mechanism to provide bridge funding when moneys have been appropriated and allocated for new contracts while the contracts are still pending. Similar to a written directive used with contract renewals, this would be an abbreviated agreement approved by the State agency and OSC. It would provide partial advance funding for services to begin. In the event a contract is not finalized, the grantee would repay any unused funds. The 1991 Law anticipated the need for such a mechanism.
  - To date, potential bridge funding has not been explored for new grant contracts.
- Universal standards should be developed across State agencies for grant procurement and contracting. Although the intent of the document vault is to provide a centralized repository and the Master Grant Contract is intended to provide consistent language, there are indications that some State agencies continue to add their own unique requirements. These inconsistencies further encourage delays in contract processing.
  - Although the Master Grant Contract is being used by the majority of grant-making State agencies, they must further standardize processes to reduce the time and expenses for NFPs contracting with the State.

# Summary of Data Reported by State Agencies

Reports were submitted to OSC from all 30 State agencies contracting with NFPs from January 2, 2015 through January 1, 2016 (see *Appendix A*).

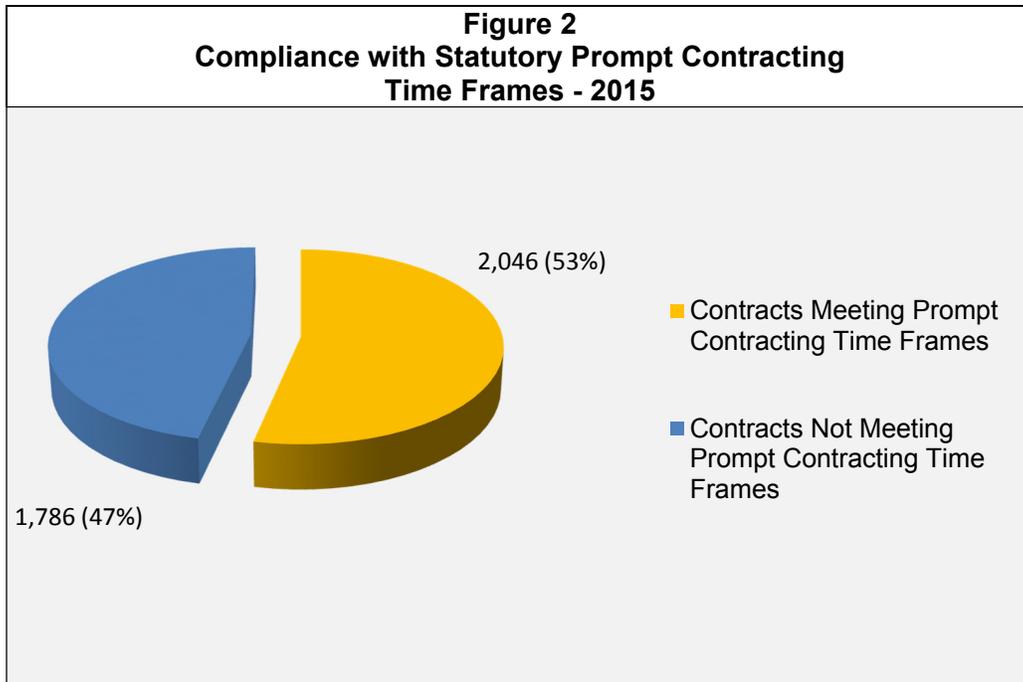
- State agencies reported that 3,832 new and renewal contracts with NFP providers associated with 150 programs were subject to the Prompt Contracting Law (Article XI-B of the State Finance Law).
- State agency contracts were approved before the start or renewal date for 1,500 contracts (39 percent), including 1,283 new and 217 renewal contracts.
- State agency contracts were not approved before the start or renewal date for 2,332 contracts (61 percent), including 1,937 new and 395 renewal contracts (see *Figure 1*).



In addition to promoting timely contracting and payments to NFPs, the Prompt Contracting Law contains additional provisions to ensure funding is readily available for new and existing programs. As a result, the time frames for contracting have been associated with the appropriation of funds to avoid administrative delays.

- State agencies met prompt contracting time frames for 2,046 contracts (53 percent).
- State agencies did not meet prompt contracting time frames for 1,786 contracts (47 percent).

The statutory prompt contracting time frames are 180 days from the State appropriation of funds for fully executed new competitive grant contracts and 150 days for fully executed new noncompetitive or federally funded grant contracts. These time frames include the approval of the Office of the Attorney General (OAG) and OSC (see Figure 2).



Of the 2,332 late contracts reported by State agencies, 953 (41 percent) were reported as not eligible for interest payments. Of the remaining late contracts, 1,076 were reported as potentially interest eligible with no interest paid, while 303 contracts were paid late contracting interest.

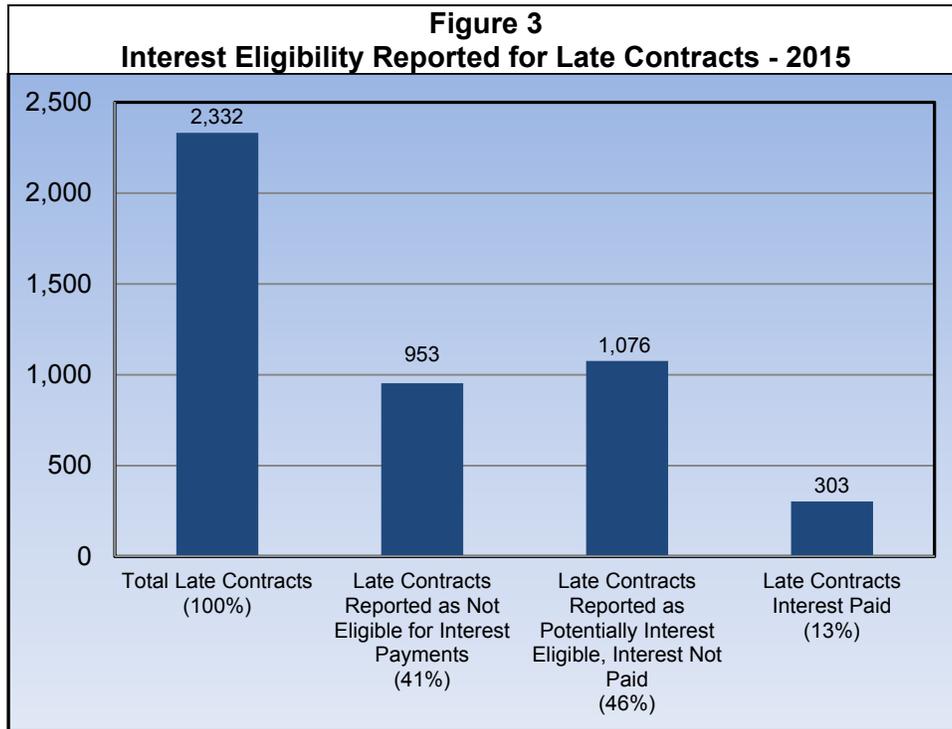
Seven State agencies paid interest totaling \$129,824 on 303 contracts eligible for interest, a decrease of nearly \$66,000 from the prior year. In addition, of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid decreased from 32 percent in 2014 to 22 percent in 2015. Two State agencies account for nearly the entire amount:

- The Department of Health (DOH) accounted for \$95,225 of the interest paid (73 percent); and
- The State Education Department (SED) accounted for \$19,947 (15 percent).

Five other State agencies together paid a total of \$14,652. No interest payments were made for the remaining 1,076 (78 percent) of the 1,379 late contracts reported as potentially eligible for interest.

For contracts with start dates in 2015 that are not executed until 2016, State agencies did not calculate or make interest payments within the reporting period (1/2/15 – 1/1/16), so these interest payments could go unreported.

Figure 3 summarizes interest eligibility as reported on contracts approved after the start or renewal date (late contracts) in 2015.



State agencies reported various reasons why program contracts were approved after the start or renewal dates. The three most frequent – “Agency processing delays due to internal or external circumstances,” “Contract documents not returned by NFPs in a timely manner,” and “Other” – accounted for 99 percent of the total responses. Interestingly, only one percent responded that time frames were not adequate.

Figure 4 summarizes the explanations for late contracting reported by State agencies in 2015.

Percentage	Explanation
43%	Agency processing delays due to internal or external circumstances.
31%	Contract documents not returned by NFPs in a timely manner.
25%	Other. Various explanations provided.
1%	Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.

Figure 5 provides a six-year comparison of prompt contracting data.

<b>Figure 5</b> <b>Six-Year Comparison of Prompt Contracting Data as Reported by State Agencies</b> <b>January 2, 2010 – January 1, 2016</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 Interest Paid	Value of Interest Paid
2010	5,578	1,617 (29%)	3,961 (71%)	2,719	780	\$215,583
2011	3,815	755 (20%)	3,060 (80%)	1,996	736	\$195,136
2012	4,134	928 (22%)	3,206 (78%)	1,953	735	\$237,538
2013	5,946	784 (13%)	5,162 (87%)	3,409	716	\$185,519
2014	4,630	1,062 (23%)	3,568 (77%)	2,108	676	\$195,663
2015	3,832	1,500 (39%)	2,332 (61%)	1,379	303	\$129,824

Annual variation in the total number of grant contracts depends on factors including the anticipated renewal of multiyear contracts and agency budgets. However, the number of contracts where interest was paid decreased by 55 percent from the prior year while the number of late contracts was reduced by 35 percent.

This year, OSC data shows the number of grant renewal contracts decreased by 47 percent from 2014, which indicates that State agencies have embraced the OSC recommendation to use multiyear contracts. The execution of multiyear grant contracts creates greater contract security for NFPs and minimizes the interest liability for State agencies when contracts are late.

# Prompt Contracting Law: Effectiveness and Implementation

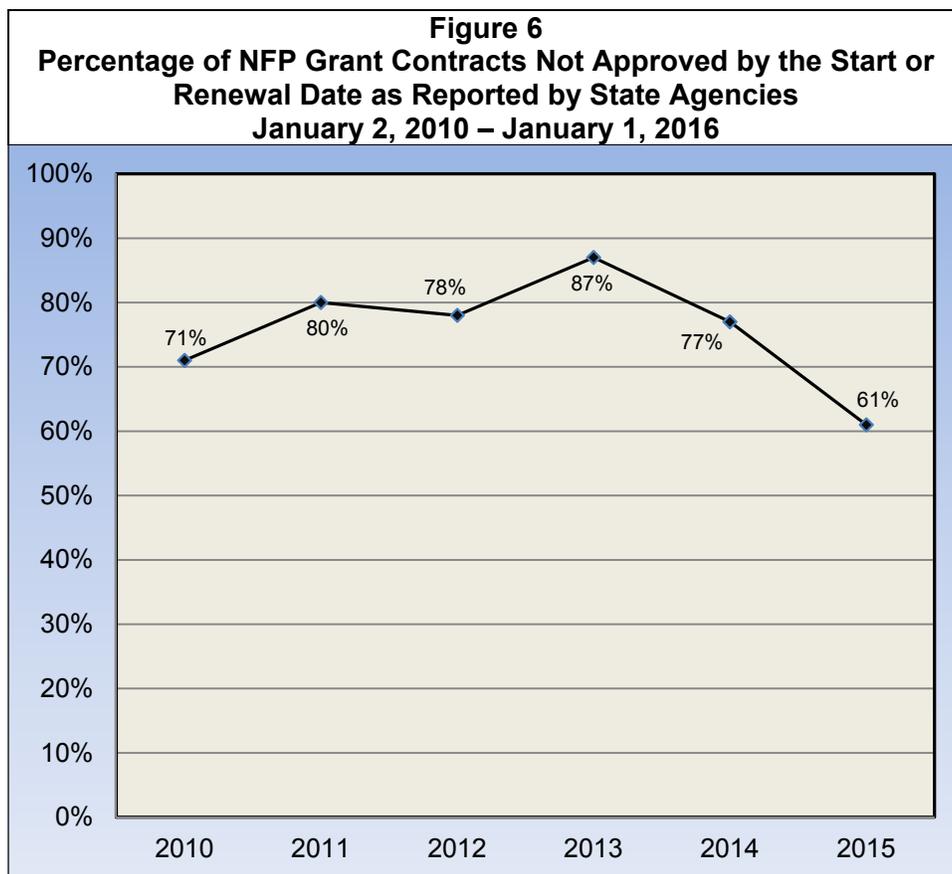
The following analysis is based on data provided by State agencies for 2015.

## Late Contracting

Although overall results have improved, State agencies continue to have difficulty meeting established time frames. In 2015, State agencies reported that 61 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 77 percent as reported in 2014.

The primary reasons cited by State agencies for late contracting in 2015 include agency processing delays due to internal or external circumstances and contract documents not returned by NFPs in a timely manner.

Figure 6 shows the most recent trend.

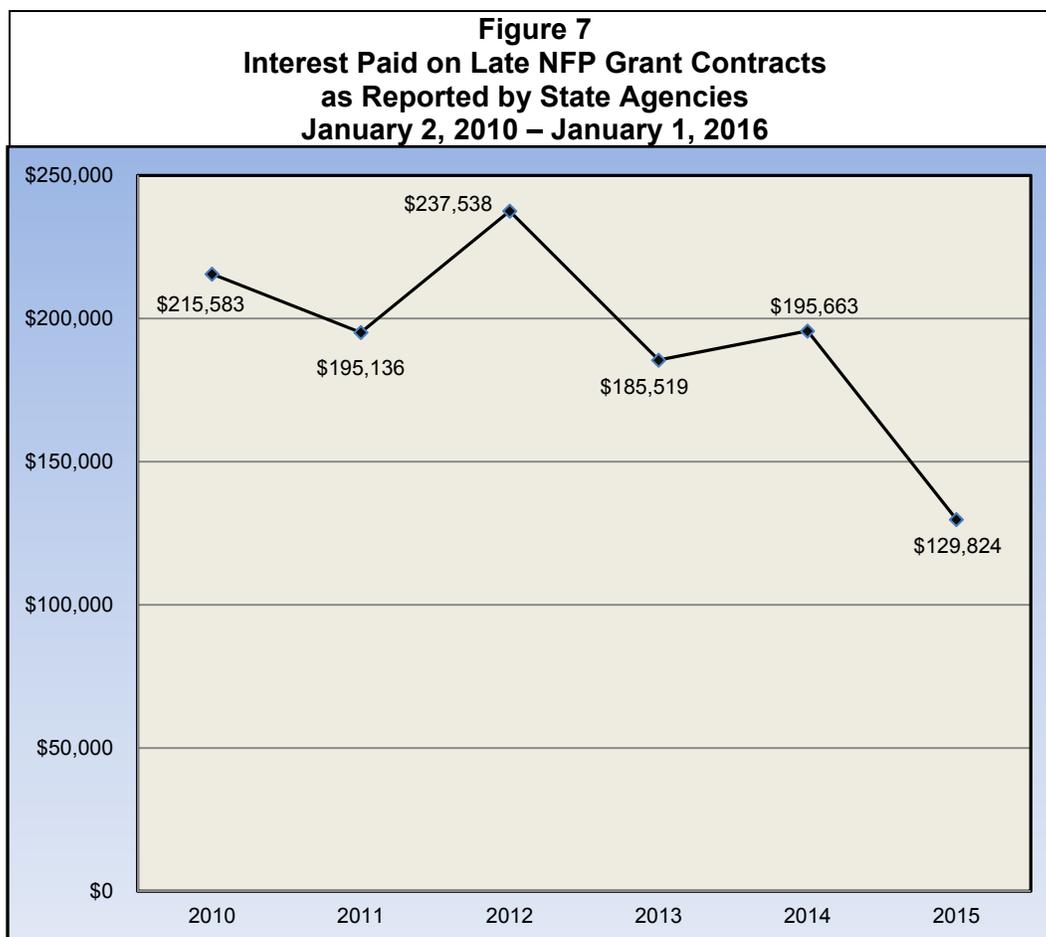


## Interest Payments

The number of contracts on which interest was paid in 2015 decreased significantly from 2014, and the amount paid decreased by 34 percent. Even if State agencies eventually pay prompt contracting interest outside of the reporting period, NFPs will often face the need to finance the costs of late contracting. State agencies should ensure they are properly accounting for all interest paid in the Statewide Financial System (SFS).

Moreover, to ensure interest is paid timely, OSC has proposed that interest be paid with the first payment due on a contract. At present, agencies often wait months to make payments. In addition, a method of calculating interest through a centralized means, such as the Statewide Financial System, is needed to expedite the payments.

Figure 7 summarizes the amount of interest paid on late NFP grant contracts. Over the six year period (2010 – 2015), the amount of interest paid on late contracts ranged from approximately \$129,800 to nearly \$238,000. In 2015, State agencies paid prompt contracting interest on only 22 percent of the late contracts identified as potentially eligible for interest.



# OSC Actions and Initiatives

State Finance Law (Section 112) charges OSC with the responsibility to approve most State contracts generally valued over \$50,000 before the contracts are legally binding. OSC’s review of NFP contracts provides an independent review to ensure a level playing field for all organizations competing for State funds.

OSC ensures 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, building trust in the process and protecting New York State residents and taxpayers.

OSC continues to prioritize contracts with NFPs. In 2015, OSC processed contract transactions with NFP contractors, on average, 8 days from their receipt.

OSC has long believed that overlapping audits by State agencies and others are not only inefficient but create significant administrative and operational costs as agencies and NFPs struggle to comply. This year, the Human Services Council also recognized this critical problem. Accordingly, the coordination and consolidation of such mandatory reviews and audits must be actively pursued.

## 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 independently collected data on the number of grant contracts reviewed by the OSC Bureau of Contracts for the period from January 2, 2015 to January 1, 2016. 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 as to whether waivers were warranted or unwarranted (see Figures 8 and 9).

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 2015*, 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 review. In addition, OSC reports data on all contracts *received* during 2015; however, the contract start dates may not fall within 2015. For 2015, OSC approved 2,182 grant contracts, while State agencies reported a total of 3,832 grant contracts.

<b>Figure 8</b> <b>Number of Contracts Approved by OSC Bureau of Contracts</b> <b>Subject to the Prompt Contracting Law</b> <b>January 2, 2015 – January 1, 2016</b>			
	Total Contracts	New Contracts	Renewal Contracts
Total Approved	2,182	1,447	735
Approved Before Start Date	419	210	209
Approved After Start Date	1,763	1,237	526

Of the 2,182 NFP grant contracts submitted to OSC for approval, 1,763 or 81 percent were approved after their start or renewal date and were consequently late. This compares with 61 percent late for the 3,832 contracts reported by State agencies.

## OSC Monitors Waiver of Interest Compliance

A State agency must submit each waiver of interest to OSC to determine whether the waiver is warranted. OSC reviews determine whether:

- all time frames required by the Prompt Contracting Law have been met;
- the State agency and the NFP have mutually agreed in writing to waive any interest due; and
- the waiver is properly justified.

If the Comptroller determines that these criteria have not been met, OSC will inform the State agency, the NFP and the Division of the Budget (DOB) that the waiver is unwarranted. 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.

During the 2015 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 2014. Of the 9 waivers of interest submitted in 2015, 4 waivers (44 percent) were determined by OSC to be warranted with no interest due. The remaining 5 waivers (56 percent) were determined to be unwarranted. By comparison, 33 percent of the 57 waivers submitted were found to be warranted in the 2014 period.

In 2015, OSC received an 87 percent decrease in the number of unwarranted waivers. OSC has been working with agencies to help them better understand when waivers may be warranted.

Total NFP grant contracts received with waivers	9
Unwarranted waivers	5
Warranted waivers	4

## 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 has been presented at more than 20 forums throughout the State. To date, more than 5,000 NFP leaders and accountants have taken advantage of the training, and additional sessions are planned for 2016-2017. Developed and taught by OSC auditors from the Division of State Government Accountability, the training course is designed to give NFPs the tools and resources they need to better detect and prevent fraud in their organizations. The program also helps organizations develop better internal controls, analyze risks and develop procedures to deter fraud. 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, the UJA Federation of New York and the Collaborative of the Finger Lakes. Other organizations have sponsored sessions including the NYC Council Brooklyn Delegation, the New York State Society of Certified Public Accountants and a number of Chambers of Commerce. Additionally, *Don't Get Burned* has been embraced by several State agencies that have encouraged their contracting providers to participate.

OSC has also made a priority of returning Unclaimed Funds to NFP's through a vigorous outreach program. The NFP Community Liaison regularly works with staff from OSC's Division of Intergovernmental and Community Affairs and the Office of Unclaimed Funds to re-connect NFPs with accounts that have gone unclaimed so that organizations can put this money to use serving their clients.

## OSC Assistance for State Agencies

OSC provides technical and other formal assistance to State agencies regarding a variety of financial management practices through formal training sessions, the issuance of guidance in the Guide to Financial Operations (GFO) and other means. Examples of other assistance include:

- OSC provided outreach and technical assistance activities including informal training sessions, conference calls and ongoing correspondence. In 2015, OSC provided formal training at the OSC Office of Operations Fall Conference for over 115 grant-making State agency staff.
- OSC partnered with the Office of Information Technology Services (ITS) to enhance systems for processing electronic contracts. The Grants Gateway, an online grant management system, and OSC's e-Docs, an electronic document management system, are designed to streamline the grants process by allowing grant applications to be accepted, reviewed and approved electronically. State agencies are beginning to use these systems and use is expected to expand in the coming year.
- OSC collaborated with DOH to establish a pilot project to support the DOH submission of electronic procurement records for OSC review and approval. This partnership included the development and implementation of protocols and procedures and the expansion of OSC system capabilities. The system is expected to be operational in 2016.

- OSC helps State agencies assign and transfer contract work from NFPs that cease operations to other providers, ensuring the most vulnerable citizens continue to receive services in spite of the administrative transition.
- OSC facilitated the rapid transition of contracts from one State agency to another in response to an agency merger, provided expedited contract review and assisted State agencies with pilot program planning and implementation.
- OSC staff continue to assist with NFP inquiries and help address contract and payment issues.

## Not-for-Profit Contracting Advisory Committee

The Not-for-Profit Contracting Advisory Committee includes eight appointed members and eight ex officio members. Of the appointed members, four representing NFP organizations providing services in the State, are appointed by the Governor, and two each are appointed by the Governor upon the recommendations of the Majority Leader of the Senate and the Speaker of the Assembly. The eight ex officio members of the committee include one each designated from the OSC, DOB, OAG and SED, as well as four designated by the Governor from among the following agencies: the Department of State; the Office of Temporary and Disability Assistance; the Office of Mental Health; the Office for People with Developmental Disabilities; the Department of Labor; the Office for Children and Family Services; and the Department of Health. The Governor designates an appointee to serve as Chair of the Committee. The Advisory Committee is to meet at least quarterly and may:

- Advise the Governor, the State Comptroller and State agencies on the implementation and operation of the Prompt Contracting Law;
- Propose legislation the Committee finds necessary to improve prompt contracting;
- Evaluate the benefits of requiring all State agencies to use standard contract language and the extent to which standard language may be effectively included in contracts with NFP organizations;
- Review annually the Prompt Contracting Report; and
- Comment and report on the implementation and operation of the NFP short-term revolving loan fund.

The Committee reports to the Governor and the Legislature with recommendations on improving the procedures for contracting with NFP organizations.

The Not-for-Profit Contracting Advisory Committee did not meet in 2015.

# 2016 OSC Prompt Contracting Recommendations

1. State agencies need to continue efforts to 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 and accountability of State agency leadership are needed.
2. The Not-for-Profit Contracting Advisory Committee must meet regularly to address new and continuing barriers to prompt contracting. The Committee should adopt a scorecard to monitor compliance.
3. The Executive should develop a process to review regulatory audit requirements and explore the coordination or consolidation of mandatory audits for NFPs.
4. State agencies should expand their use of the Grants Gateway to take advantage of grant contracting efficiencies, including NFP prequalification, online applications, automatically generated contracts and electronic signatures.
5. State agencies should use the workload management tools in the Grants Gateway to increase agency-wide oversight of timely program implementation so grant contracts are executed prior to the start date.
6. The Executive must make sure that prompt contracting interest is paid timely. The effects on NFPs of payment delays can, in part, be mitigated by these funds. The Legislature and the Executive should enact the Comptroller's recommendation that interest be paid with the first payment due on a contract (bill vetoed by the Executive in 2014).
7. The Executive should use a centralized means (such as the Statewide Financial System or SFS) to assist agencies in calculating and paying contracting interest promptly to NFPs, similar to what is currently done for for-profit vendors.

# Appendices

**Appendix A: Table 1  
State Agency Provided Contracting Information  
(Alphabetical by Agency, Calendar Year 2015)**

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	56	56	0	41 (73%)
Agriculture & Markets, Department of	31	16	15	30 (97%)
Alcoholism & Substance Abuse Services, Office of	10	10	0	10 (100%)
Arts, Council on the	1036	1036	0	169 (16%)
Children & Family Services, Office of	640	534	106	493 (77%)
City University of New York	2	2	0	2 (100%)
Corrections and Community Supervision, Department of	13	7	6	13 (100%)
Criminal Justice Services, Division of	214	214	0	137 (64%)
Economic Development, Department of	50	29	21	50 (100%)
Education, Department of	175	175	0	175 (100%)
Environmental Conservation, Department of	18	18	0	18 (100%)
General Services, Office of**	7	7	0	1 (14%)
Health, Department of	457	297	160	319 (70%)
Higher Education Services Corporation	36	19	17	15 (42%)
Homeland Security and Emergency Services, Office of	114	114	0	114 (100%)
Housing & Community Renewal, Division of	0	0	0	0
Interest on Lawyer Account Fund	71	71	0	71 (100%)
Justice Center for the Protection of People with Special Needs	18	18	0	18 (100%)
Labor, Department of	101	100	1	94 (93%)
Mental Health, Office of	290	76	214	157 (54%)
Motor Vehicles, Department of	78	78	0	33 (42%)
Parks, Recreation and Historic Preservation, Office of	20	20	0	18 (90%)
People With Developmental Disabilities, Office for	99	66	33	99 (100%)
Prevention of Domestic Violence, Office for the	5	5	0	4 (80%)
Public Service, Department of	0	0	0	0
State, Department of	42	36	6	41 (98%)
State University of New York Administration	9	5	4	5 (56%)
Temporary & Disability Assistance, Office of	207	207	0	205 (99%)
Transportation, Department of	33	4	29	0
Victim Services, Office of	0	0	0	0
<b>TOTALS:</b>	<b>3,832</b>	<b>3,220</b>	<b>612</b>	<b>2,332 (61%)</b>

\*Late contracts are identified as contracts approved after the start or renewal date.

\*\* The Office of General Services reports on behalf of the Board of Elections, the Hudson River Valley Greenway and the Office of Indigent Legal Services.

# Appendices

**Appendix A: Table 2**  
**State Agency Provided Contracting Information**  
**(by Number of Late Contracts, Calendar Year 2015)**

Agency Name	Number of NFP Contracts (Total)	Number of NFP Contracts (New)	Number of NFP Contracts (Renewals)	Number of NFP Late Contracts* (Total)
Children & Family Services, Office of	640	534	106	493 (77%)
Health, Department of	457	297	160	319 (70%)
Temporary & Disability Assistance, Office of	207	207	0	205 (99%)
Education, Department of	175	175	0	175 (100%)
Arts, Council on the	1036	1036	0	169 (16%)
Mental Health, Office of	290	76	214	157 (54%)
Criminal Justice Services, Division of	214	214	0	137 (64%)
Homeland Security and Emergency Services, Office of	114	114	0	114 (100%)
People with Developmental Disabilities, Office of	99	66	33	99 (100%)
Labor, Department of	101	100	1	94 (93%)
Interest on Lawyer Account Fund	71	71	0	71 (100%)
Economic Development, Department for	50	29	21	50 (100%)
Aging, Office for the	56	56	0	41 (73%)
State, Department of	42	36	6	41 (98%)
Motor Vehicles, Department of	78	78	0	33 (42%)
Agriculture & Markets, Department of	31	16	15	30 (97%)
Parks, Recreation and Historic Preservation, Office of	20	20	0	18 (90%)
Environmental Conservation, Department of	18	18	0	18 (100%)
Justice Center for the Protection of People with Special Needs	18	18	0	18 (100%)
Higher Education Services Corporation	36	19	17	15 (42%)
Corrections and Community Supervision, Department of	13	7	6	13 (100%)
Alcoholism & Substance Abuse Services, Office of	10	10	0	10 (100%)
State University of New York Administration	9	5	4	5 (56%)
Prevention of Domestic Violence, Office for the	5	5	0	4 (80%)
City University of New York	2	2	0	2 (100%)
General Services, Office of **	7	7	0	1 (14%)
Housing & Community Renewal, Division of	0	0	0	0
Public Service, Department of	0	0	0	0
Transportation, Department of	33	4	29	0
Victim Services, Office of	0	0	0	0
<b>TOTALS:</b>	<b>3,832</b>	<b>3,220</b>	<b>612</b>	<b>2,332 (61%)</b>

\*Late contracts are identified as contracts approved after the start or renewal date.

\*\* The Office of General Services reports on behalf of the Board of Elections, the Hudson River Valley Greenway and the Office of Indigent Legal Services.

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## **Appendix B: Reporting Methodology**

Using information gathered from the Statewide Financial System (SFS), OSC's Bureau of Contracts was able to identify 30 State agencies as having grant contracts with not-for-profit organizations (*refer to Appendix A*). An electronic reminder requesting that the State agency's prompt contracting information be submitted to OSC by March 31, 2016 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.

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## Appendix B: Reporting Methodology

### Prompt Contracting Instructions for Reporting Agency Specific Data on Not-For-Profit (NFP) Grant Program Contracts with Start Dates of January 2, 2015 through January 1, 2016

Due Date: March 31, 2016

#### 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. Do not use this worksheet to report on 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, 2015 through January 1, 2016, and are subject to the Prompt Contracting Law which excludes capital funded projects and contracts executed through the use of a single or sole source (see SFL, Article XI-B, Section 179-q).
- Column 3** Enter by Grant Program, the total number of new and renewal NFP contracts that did not meet legislated time frames (150 days from the enacted appropriation for noncompetitive contracts, 150 days for 100 percent federally funded contracts from the date that the State agency receives the notice of federal grant award and 180 days for competitive program contracts).<sup>2</sup>
- Column 4** Enter by Grant Program the total number of new and renewal NFP contracts that met the legislated time frames and were not approved by the contract start or renewal dates.
- Column 5** Enter by Grant Program the total number of new and renewal NFP contracts that did not meet the legislated time frames and were not approved by the contract start or renewal dates.

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<sup>2</sup> Refer to the Guide to Financial Operations (GFO) for detailed information on time frames for new and renewal NFP contracts (GFO Chapter XI, Section 4A).

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- Column 6** Choose by Grant Program the primary reason why NFP contracts were not approved by the start or renewal dates. Choose from below the most prevalent reason contracts were late.
- Contract documents not returned by NFP organizations in a timely manner.
  - Agency processing delays due to internal or external circumstances.
  - Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.
  - Other, please see Column 8.
- Column 7** Enter by Grant Program, the number of NFP contracts associated with the primary reason in Column 6.
- Column 8** Enter by Grant Program (when “Other” was selected in Column 6) the specific reason why NFP contracts were not approved by the start or renewal dates.
- Column 9** Enter by Grant Program the number of NFP contracts that are potentially interest-eligible (contracts that were not executed before the start date and any missed payment was made more than 30 days after it was due).
- Column 10** Enter by Grant Program, only the number of potentially interest-eligible (Column 9) NFP contracts for which interest was paid.
- Column 11** Enter by Grant Program, the total dollar amount of paid interest for NFP contracts noted in Column 10.

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## Appendix B: Reporting Methodology

OFFICE OF THE STATE COMPTROLLER														
Prompt Contracting Worksheet for Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/15 - 1/1/16 ***Do Not Modify This Form – OSC will be Analyzing this Form via an Automated Program - Modified Forms will not be Accepted***														
Due Date: March 31, 2016														
AGENCY:														
1	CONTRACT DATA								LATE CONTRACTING REASONS & DATA			INTEREST DATA		
	2		3		4		5		6	7	8	9	10	11
Grant Program	Total NFP Grant Contracts		Total NFP Grant Contracts That Did Not Meet Legislated Time frames		Total NFP Grant Contracts That Met Legislated Time frames And Were Not Approved by the Contract Start or Renewal Dates		Total NFP Grant Contracts That Did Not Meet Legislated Time frames And Were Not Approved by the Contract Start or Renewal Dates		Primary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates	Number of Late Contracts Associated With Primary 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	Number of NFP Grant Contracts Potentially Interest Eligible	Number of NFP Grant Contracts Where Interest Was Paid	Total Amount of Interest Paid
	New	Renewal	New	Renewal	New	Renewal	New	Renewal						

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## Appendix B: Reporting Methodology

### Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP) Legislative Initiative Contracts with Start Dates of January 2, 2015 through January 1, 2016

**Due Date: March 31, 2016**

#### Instructions for Completion

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

- Column 1** Enter the total number of NFP Legislative Initiative Grant contracts that had start dates of January 2, 2015 through January 1, 2016 and are subject to the Prompt Contracting Law. **Note: NFP Legislative Initiative Grant contracts are not renewable.**
- Column 2** Enter the total number of NFP Legislative Initiative Grant contracts that did not meet the legislated time frame, 150 days from the date the State agency received legislative notification of award.<sup>3</sup>
- Column 3** Enter the total number of NFP Legislative Initiative Grant contracts that met the legislated time frame and were not approved by the contract start date.
- Column 4** Enter the total number of NFP Legislative Initiative Grant contracts that did not meet the legislated time frame and were not approved by the contract start date.
- Column 5** Choose the primary reason why NFP Legislative Grant contracts were not approved by the start date. Choose from below the most prevalent reason contracts were late.
- Contract documents not returned by NFP organizations in a timely manner.
  - Agency processing delays due to internal or external circumstances.
  - Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.
  - Other, please see Column 7.

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<sup>3</sup> Refer to the Guide to Financial Operations (GFO) for detailed information on time frames for NFP Legislative Initiative Grant contracts (GFO Chapter XI, Section 4A).

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- Column 6** Enter the number of NFP Legislative Initiative Grant contracts that were represented by the primary reason in Column 5.
- Column 7** Enter by Grant contracts (when “Other” was selected in Column 5) the specific reason why NFP contracts were not approved by the start date.
- Column 8** Enter the number of NFP Legislative Initiative Grant contracts that are potentially interest-eligible (contracts that were not executed before the start date and any missed payment was made more than 30 days after it was due).
- Column 9** Enter the number of potentially interest-eligible NFP Legislative Initiative Grant contracts (Column 8) for which interest was paid.
- Column 10** Enter the total dollar amount of paid interest for the NFP Legislative Initiative Grant contracts noted in Column 9.

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## Appendix B: Reporting Methodology

OFFICE OF THE STATE COMPTROLLER									
Prompt Contracting Worksheet for Legislative Initiative Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/15 - 1/1/16									
***Do Not Modify This Form – OSC will be Analyzing this Form via an Automated Program - Modified Forms will not be Accepted***									
Due Date: March 31, 2016									
AGENCY:									
CONTRACT DATA				LATE CONTRACTING REASONS & DATA			INTEREST DATA		
1	2	3	4	5	6	7	8	9	10
Total NFP Legislative Initiative Grant Contracts (Note: Legislative Initiative NFP Grant Contracts do not get Renewed)	Total NFP Legislative Initiative Contracts That Did Not Meet Legislated Time frames	Total NFP Legislative Initiative Contracts That Met Legislated Time frames And Were Not Approved by the Contract Start Dates	Total NFP Legislative Initiative Contracts That Did Not Meet Legislated Time frames And Were Not Approved by the Contract Start Dates	Primary Reason Why NFP Legislative Initiative Contracts Were Not Approved by the Contract Start Dates	Number of Late Contracts Associated With Primary Reason	If "Other" was Selected as the Primary Reason Why NFP Legislative Initiative Contracts Were Not Approved by the Contract Start Dates, Fill in the "Other" Reason	Number of NFP Legislative Initiative Contracts Potentially Interest Eligible	Number of NFP Legislative Initiative Contracts Where Interest Was Paid	Total Amount of Interest Paid
0	0	0	0		0		0	0	\$0.00

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## Appendix C: Background of the Prompt Contracting Law

### The Prompt Contracting Law

Chapter 166 of the Laws of 1991 added Article XI-B (the Prompt Contracting Law) to the State Finance Law to promote prompt contracting with not-for-profit organizations (NFPs). A central objective of the Prompt Contracting Law is to expedite the contract process and corresponding payments to NFPs so that service interruptions and financial hardships for these organizations are avoided. More specifically, the Prompt Contracting Law: sets specific time frames for the execution of grant contracts and related documents; provides for written directives to authorize contractors to begin or to continue to provide services; allows State agencies to waive interest payments under certain conditions and provides for advance and loan payments to NFPs when 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; subject any waiver of interest 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, requiring 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 with respect to 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.

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## **Prompt Contracting Law Time Frame Requirements**

The Prompt Contracting Law requires State agencies to execute grant contracts with NFPs and to obtain OAG and OSC approval, if required, within specific time frames.

- 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 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 subject to 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 time frames under the law;
- 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 annually report by May 31<sup>st</sup> of each year the aggregate 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. This report is made public and 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.



## Contact

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