
Prompt Contracting Annual Report Calendar Year 2016



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

May 2017

Message from State Comptroller Thomas P. DiNapoli



May 2017

New York State has long relied on not-for-profit organizations (NFPs) to provide vital services to the public in diverse areas ranging from health care to arts education. 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. New York State's Prompt Contracting Law, first enacted more than 25 years ago, 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 continuing to see 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 is one important and attainable step the State can take to help NFPs maintain 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.

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Introduction

Not-for-profit (NFP) organizations provide a variety of services to New Yorkers in a wide range of areas including child care, health care, education, social service, the arts and more. New York State has recognized the critical contributions NFPs make, particularly with respect to our most vulnerable citizens.

In a report released by the Office of the State Comptroller (OSC) in December 2016, *Profile of Nonprofit Organizations in New York State*, OSC highlighted the significant economic role NFPs play in our State. The report found that NFPs across New York provided nearly 1.3 million jobs representing more than 18 percent of private employment in the State as of 2012 (the latest data available). With wages for these workers totaling nearly \$62 billion, New York leads the nation in both the number of people employed and the total wages paid by not-for-profit organizations. In addition, the report showed that New York also ranked first in the nation with over 31,000 NFP establishments.¹ Despite the importance of these organizations to the State's economy and the communities they serve, contract processing delays continue to plague the sector.

In 2016, the Human Services Council (HSC) published a report, "Call to Action," which addressed issues of underfunding and lack of investment in the NFP sector. HSC represents New York City's NFPs, and its report outlined major problems while identifying tools and recommendations designed to address these. In 2017, HSC will implement two such tools, a procurement rater and a contract management scorecard, to help expose the operational challenges of the current human services delivery system. The procurement rater will highlight the risks and opportunities associated with bids for human service contracts and the contract management scorecard will offer HSC members the opportunity to provide anonymous feedback and ratings on key dimensions of City and State government contract management. These new resources may assist with the current efforts to improve the contracting process as late contracting remains a significant and persistent problem.

The State, having long recognized the problems caused by late contracting, enacted the Prompt Contracting Law (Law) in 1991 to address such delays. The Law instituted reforms intended to expedite contracts and the resulting payments to reduce the risk to NFP providers and those they serve. The Law also provided for interest payments to NFPs on certain late contracts, which were intended to mitigate the fiscal impact of late contracting.

Since 2007, the Law has required 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 continued signs of progress, as reflected in the following self-reported State agency data for 2016:

- A total of 4,430 new and renewal contracts were subject to the Prompt Contracting Law, an increase of 598 from the prior year. About 78 percent of State agency procurements submitted to OSC for auditing were established with multiyear contracts, reducing the number of annual renewal contracts needed to support NFP activities.

¹ Office of the New York State Comptroller, *Profile of Nonprofit Organizations in New York State*, 2016.

- State agencies reported that 2,603 (59 percent) of contracts were processed late, after their start or renewal dates, continuing a three-year decline in the percentage of late contracts from 77 percent late in 2014.
- State agencies reported that 1,163 contracts were eligible for interest for late payments, down from 1,379 in 2015. However, interest was paid on only 19 percent (223 contracts), totaling \$65,104, while interest of \$129,824 was paid on 22 percent of interest-eligible contracts in 2015.

While the annual results continue 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; the majority of all agencies reported contracts as late as 90 to 100 percent of the time in 2016 (see Appendix A). The nearly 50 percent decline in interest paid this year highlights the need to prioritize efforts to calculate and pay these amounts timely, as interest can help offset the financial burden of late contracting.

State agencies have begun to establish program implementation goals to execute contracts on time and to take advantage of the new electronic Grants Gateway to streamline processing. However, in 2016, only 16 percent of the total grant contracts approved by OSC were processed entirely through the Gateway, despite its potential to reduce delays. The State needs to increase its use of this important tool.

In addition, State agencies appear to be prioritizing the increased use of multiyear contracts, as recommended by OSC. As noted above, 78 percent of State agency procurements submitted to OSC for auditing during the reporting period were established with multiyear contracts. Moving forward, this continued State agency effort will contribute to a reduction in the number of needed renewal contracts.

Whether agencies can sustain these positive trends remains to be determined. The continued commitment of State agencies to make prompt contracting a priority is imperative.

The Office of the State Comptroller is encouraged by the efforts made by State agencies to decrease the percentage of late contracts, which has reached its lowest level in the last decade. While OSC acknowledges this improvement, contracting delays continue to cause fiscal distress to the NFP sector. Accordingly, the Office of the State Comptroller recommends:

1. All 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 remain critical.
2. All grant-making State agencies should utilize the Master Contract for Grants, as directed by the Executive in 2013, in order to streamline State business processes.
3. The Executive should develop a process to assist NFPs in recognizing when interest is due and obtaining agency compliance with payment of interest owed.
4. Agencies 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. In 2012, the Comptroller first proposed legislation to require interest be paid with the first payment due on a contract. The Legislature has made similar proposals in following years.

5. Agencies should use the integration of the Statewide Financial System (SFS) and the Grants Gateway to guarantee that prompt contracting interest is being paid both timely and accurately.
6. State agencies should continue to evaluate their internal grant-making processes and use available streamlining tools, such as lean principles, to maximize operational efficiencies.

Review of 2016 OSC Prompt Contracting Recommendations

- 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 NFPs. Adequate resources and the attention and accountability of State agency leadership are needed.
 - Although State agency data shows that late contracting has consistently declined since 2014, 59 percent of grant contracts were executed after the start date in 2016. The NFP community cannot be asked to continue sustaining this financial burden.
- 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.
 - The Not-for-Profit Contracting Advisory Committee reconvened this past year and continued to explore critical issues impacting prompt contracting.
- The Executive should develop a process to review regulatory audit requirements and explore the coordination or consolidation of mandatory audits for NFPs.
 - To reduce the burden on NFPs and streamline agency efforts where programs overlap, better coordination among agencies and NFPs can result in efficiencies and cost savings for all. No process has been developed as of this report.
- 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.
 - In 2016, State agencies submitted 16 percent of grant contracts reviewed by OSC electronically through the Grants Gateway. State agencies need to increase their utilization of the Gateway and other electronic contracting technologies, including electronic payments through SFS.
- 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.
 - OSC continues to encourage State agencies and NFP providers to access the Grants Gateway and maximize their use of its management features.
- 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).

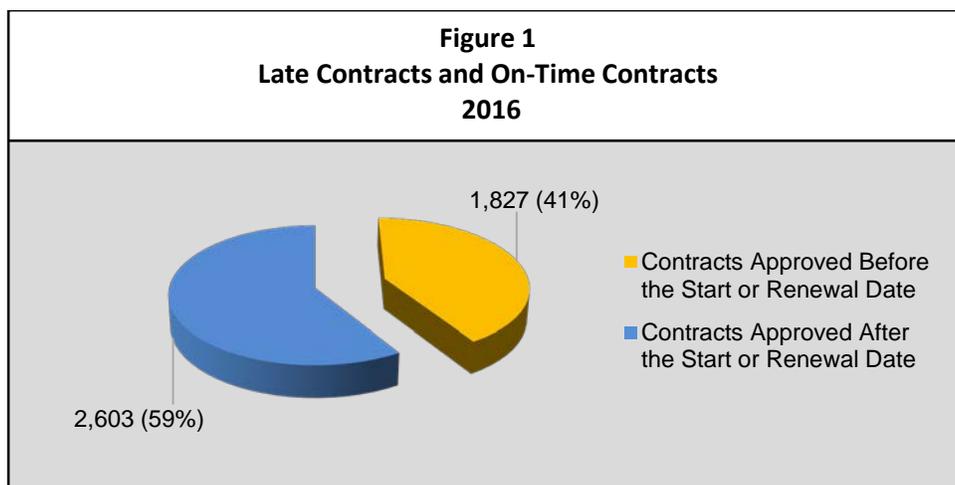
- No action has been taken by the Executive to ensure that interest on late contracts is paid timely. This year, State agencies reported paying prompt contracting interest on only 19 percent of contracts. This is less than in 2015, when State agencies paid interest on 22 percent of late contracts potentially eligible for interest payments. The dollar amount of interest paid also decreased by 50 percent from the prior year.
- 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.
 - No effort has been made to automate prompt contracting interest similar to what is calculated for prompt payment interest.

Summary of Data Reported by State Agencies

Late Contracts

Reports were submitted to OSC from all 31 State agencies contracting with NFPs from January 2, 2016 through January 1, 2017 (see Appendix A).

- State agencies reported that 4,430 new and renewal contracts with NFP providers associated with 153 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 1,827 contracts (41 percent), including 1,415 new and 412 renewal contracts.
- State agency contracts were not approved before the start or renewal date for 2,603 contracts (59 percent), including 2,103 new and 500 renewal contracts (see Figure 1).

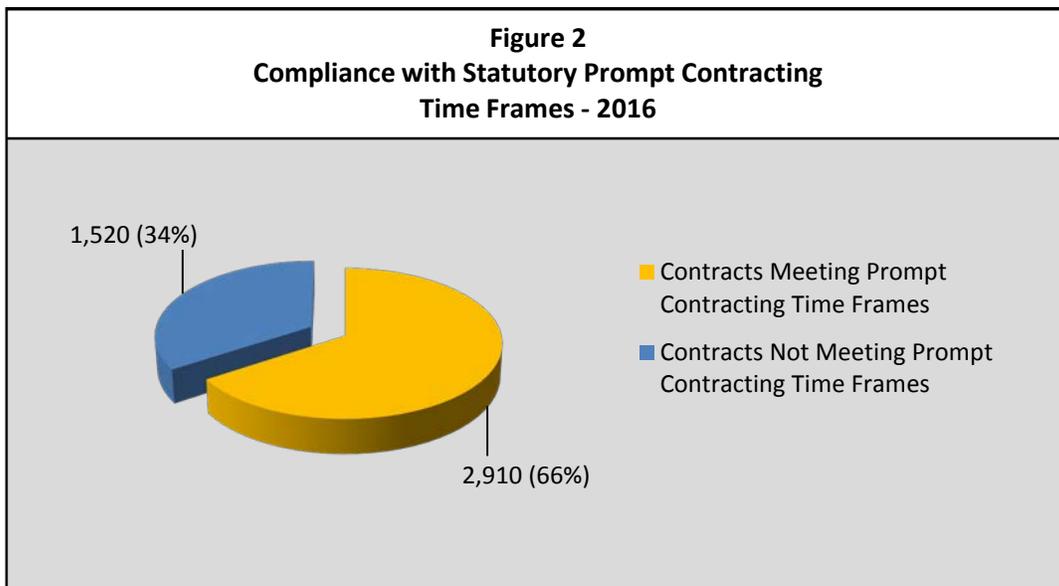


Contract Time Frames

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 2,910 contracts (66 percent).
- State agencies did not meet prompt contracting time frames for 1,520 contracts (34 percent).

The statutory prompt contracting time frames provide 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).



Interest Payments

Of the 2,603 late contracts reported by State agencies, 1,440 (55 percent) were reported as not eligible for interest payments. Of the remaining late contracts, 940 were reported as potentially interest-eligible with no interest paid, while 223 contracts were paid late contracting interest.

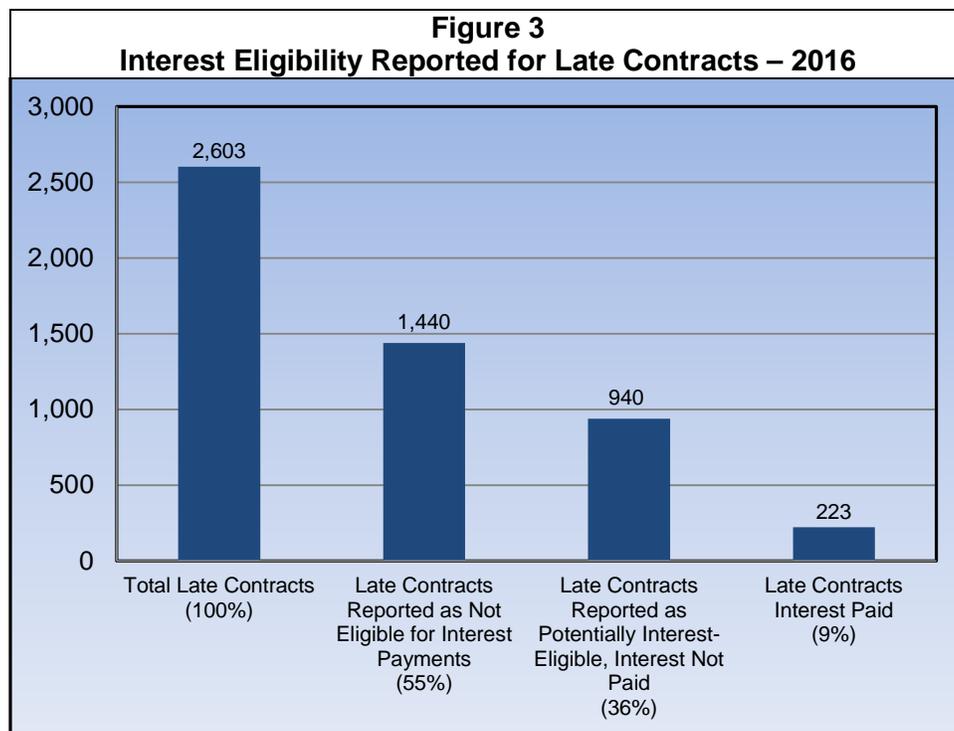
Six State agencies paid interest totaling \$65,104 on 223 contracts eligible for interest, a decrease of nearly \$65,000 from the prior year. In addition, of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid decreased from 22 percent in 2015 to 19 percent in 2016. Two State agencies paid the majority of prompt contracting interest:

- The Department of Health (DOH) paid \$36,756 (56 percent); and
- The Office of Children and Family Services (OCFS) paid \$9,170 (14 percent).

Four other State agencies together paid a total of \$19,178. No interest payments were made for the remaining 940 (81 percent) of the 1,163 late contracts reported as potentially eligible for interest.

For contracts with start dates in 2016 that are not executed until 2017, State agencies did not calculate or make interest payments within the reporting period (1/2/16 – 1/1/17), 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 2016.



State agencies reported various reasons why program contracts were approved after the start or renewal dates. This year, due to an OSC redesign of the prompt contracting data collection tool utilized for the report, agencies had an expanded opportunity to clarify their explanations for late contracts.

The three most frequent explanations – “Other”, “Contract documents not returned by NFPs in a timely manner”, and “Delays due to the timeliness of Legislative Initiative notification” – accounted for 93 percent of the total responses. Eight State agencies reported that the untimely notification of Legislative Initiatives was the cause of 557 late contracts this year, which represents 21 percent of the total of late contracts reported.

This year, as OSC expanded its data collection efforts, six State agencies documented that they had made prompt contracting interest payments outside of the report time frame. This evidence confirms that some prompt contracting interest is not reported due to delayed contract processing.

Figure 4 summarizes the explanations for late contracting reported by State agencies in 2016.

Figure 4 Explanations for Late Contracts Reported by State Agencies 2016	
38%	Other. Various explanations provided.
30%	Contract documents not returned by NFPs in a timely manner.
25%	Delays due to timeliness of Legislative Initiative notification (includes time for funding approved by the Executive).
7%	State agency experienced system issues.

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

Figure 5 Five-Year Comparison of Prompt Contracting Data as Reported by State Agencies January 2, 2012 – January 1, 2017						
			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
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
2016	4,430	1,827 (41%)	2,603 (59%)	1,163	223	\$65,104

The annual variation in the total number of grant contracts depends on factors including the anticipated renewal of multiyear contracts and agency budgets. This year, OSC data shows the number of grant renewal contracts increased by 49 percent. With 78 percent of the 2016 State agency grant contract procurement records submitted to OSC as multiyear contracts, the number of renewal transactions in the coming years should trend down. The execution of multiyear grant contracts creates greater contract security for NFPs and minimizes the interest liability for State agencies.

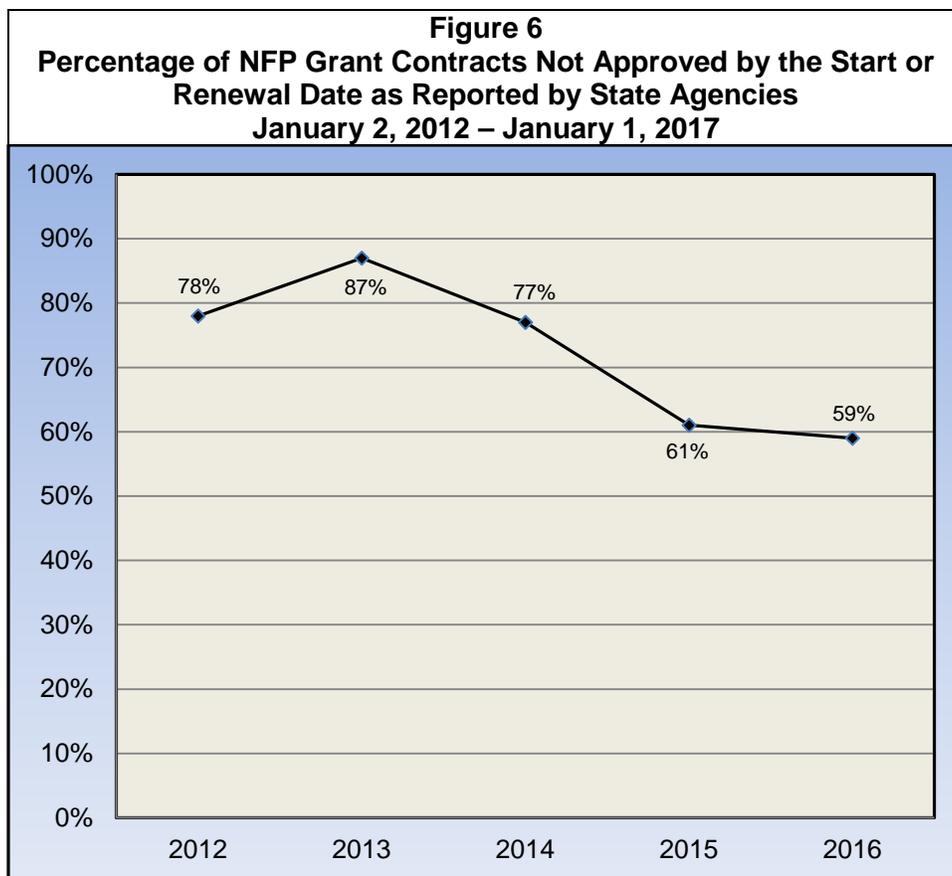
Prompt Contracting Law: Effectiveness and Implementation

The following analysis is based on data provided by State agencies for 2016.

Late Contracting

Although overall results have improved, State agencies continue to have difficulty meeting established time frames. In 2016, State agencies reported that 59 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 61 percent as reported in 2015.

Figure 6 shows the trend over the last five years.

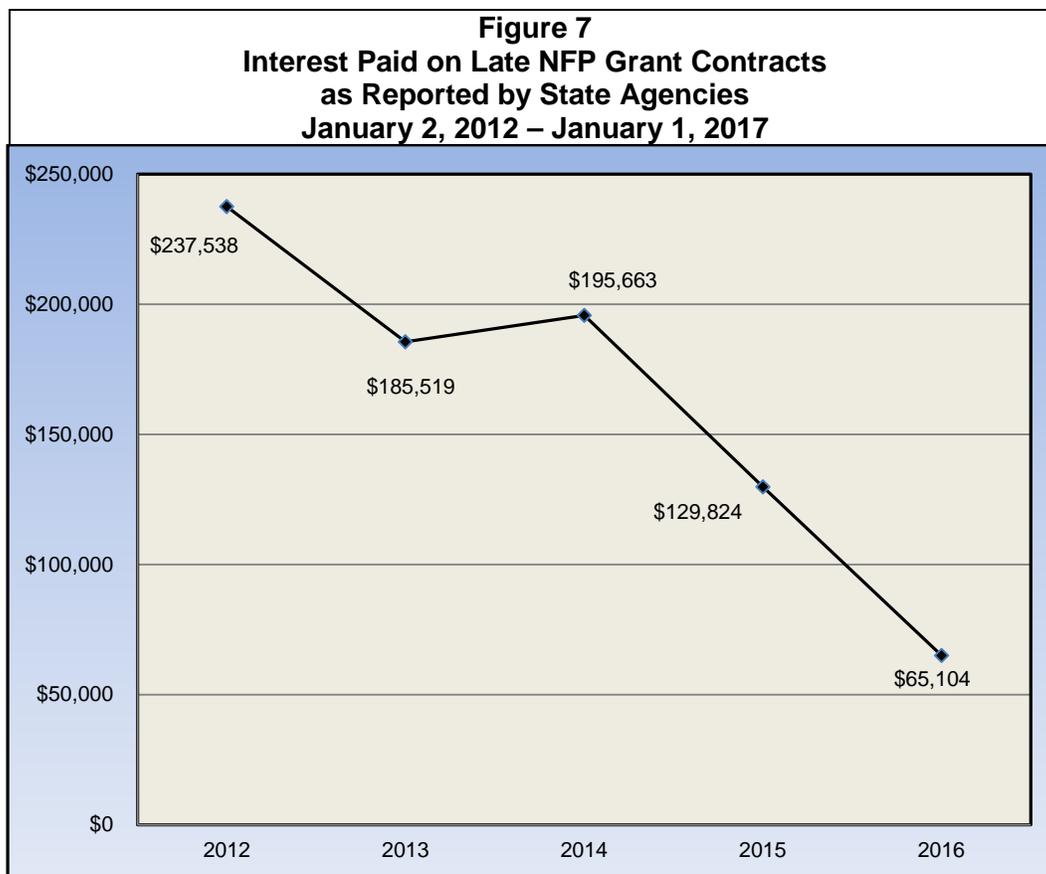


Interest Payments

While the percentage of late contracts went down slightly from the prior year, the number of contracts on which interest was paid in 2016 decreased significantly from 2015, and the amount of interest paid decreased by 50 percent. Even when 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, and the delay in receiving interest causes further financial hardship. 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 or do not pay the required interest. In addition, a method of calculating interest through a centralized means, such as SFS, is needed to expedite the payments.

Figure 7 summarizes the amount of interest paid on late NFP grant contracts. Over the five-year period (see Figure 7), the amount of interest paid on late contracts declined from nearly \$238,000 to approximately \$65,100. In 2016, State agencies paid prompt contracting interest on only 19 percent of the late contracts identified as potentially eligible for interest.



This year OSC redesigned the prompt contracting worksheets used to collect State agency data to include specific questions designed to capture the reasons that State agencies do not pay prompt contracting interest when they identify that interest is due to an NFP.

State agencies documented that 43 percent of the late contracts that were eligible for prompt contracting interest were not paid interest as the late contract did not result in a missed contract payment. They also provided a variety of other explanations regarding why prompt contracting interest was not paid, including that no vouchers had been submitted by the vendor for payment and that the agency had suspended the time frames pursuant to the law.

Figure 8 summarizes the reasons that prompt contracting interest was not paid.

Figure 8	
State Agency Explanations for not Paying Prompt Contracting Interest 2016	
43%	Late contract did not result in a missed payment.
37%	Other. Various explanations provided.
20%	Interest payment made outside of report time frame.

OSC Actions and Initiatives

State Finance Law (Section 112) charges OSC with approving most State contracts valued over \$50,000 before the contracts are legally binding. OSC's independent review of NFP contracts helps establish a level playing field for all organizations competing for State funds.

OSC ensures grant applicants' rights are upheld by conducting an independent review of any bid protests of NFP award determinations. In addition, OSC's review helps reduce exposure and potential State liability through the 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 2016, OSC processed NFP contract transactions, on average, within 8 days.

OSC has long believed that, once contracts are in place, overlapping audits by State contracting agencies are not only inefficient but create significant administrative and operational costs as agencies and NFPs struggle to comply. NFPs contracting with multiple State agencies can be subject to multiple audits due to mandatory funding or program requirements. Coordination and consolidation of such mandatory reviews and audits must be actively pursued.

Monitoring Waivers of Interest

Under certain circumstances, a State agency and a NFP contractor may agree to waive interest due to the NFP as a result of late contracting. 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. Historically, waivers have been sought on only a tiny fraction of late contracts eligible for interest

During the 2016 report period, OSC reviewed waivers to determine whether each waiver of interest submitted by a State agency was warranted. The data reflects a slight increase in the number of waivers of interest issued by State agencies and submitted to OSC for review as compared to 2015. Of the 16 waivers of interest submitted in 2016, 11 waivers (69 percent) were determined by OSC to be warranted with no interest due. The remaining 5 waivers (31 percent) were determined to be unwarranted. By comparison, 44 percent of the 9 waivers submitted were found to be warranted in the 2015 period.

Figure 10 Waivers of Interest January 2, 2016 – January 1, 2017	
Total NFP grant contracts received with waivers	16
Unwarranted waivers	5
Warranted waivers	11

Outreach to the Not-for-Profit Community

Comptroller DiNapoli and the Office of the State Comptroller have long recognized the important work and the tremendous influence of the NFP sector in New York State.

In 2009 and 2010, Comptroller DiNapoli conducted a series of discussions with NFP leaders in various regions of the 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 economic impact NFPs have on our State and local economies. (www.osc.state.ny.us/reports/economic/nfp2010.pdf)

OSC subsequently released a follow-up report 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.

In December 2016, Comptroller DiNapoli issued a report entitled *Profile of Nonprofit Organizations in New York State*. The report, compiled by OSC's Division of Budget and Policy Analysis, showed that nonprofits across New York provided nearly 1.3 million jobs comprising more than 18 percent of private employment in the State as of 2012 (the latest data available). The wages for these workers totaled nearly \$62 billion, with an annual average of \$47,700 per employee. New York State led the nation in both the number of people employed by NFPs and the total wages paid by these organizations. http://www.osc.state.ny.us/reports/economic/nonprofits_in_nys.pdf

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 twenty-five forums covering every region of the State. To date, more than 5,500 NFP leaders and accountants have taken advantage of the training, and additional sessions are planned for 2017-2018. 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 Services Council, UJA-Federation of New York and the Collaborative of the Finger Lakes. Other organizations such as the Brooklyn delegation to the New York City Council, the New York State Society of Certified Public Accountants and a number of Chambers of Commerce have sponsored sessions as well. 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 NFPs 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 reconnect NFPs with accounts that have gone unclaimed so that organizations can put this money to good use serving their clients.

The NFP Contracts Liaison and the NFP Community Liaison at OSC continue to assist with issues, problems and inquiries. They field numerous calls, emails, and inquiries, and have assisted hundreds of NFP organizations.

Assistance for State Agencies

OSC provides technical assistance and other help 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 such assistance include:

- OSC provided outreach and technical assistance, including informal training sessions, conference calls and correspondence about specific issues. In 2016, OSC partnered with the Office of Information Technology Services (ITS) to provide formal training at the OSC Office of Operations Fall Conference for over 205 grant-making State agency staff on grant procurement functionality in the Grants Gateway.
- OSC continued to collaborate with ITS to coordinate system protocols for processing electronic contracts and to expand utilization. The Grants Gateway, an online grant management system maintained by ITS, and OSC's e-Docs, an electronic document management system, work together to streamline the grants process by allowing grant applications to be accepted, reviewed and approved electronically. State agencies are beginning to use these systems, with 16 percent of contracts submitted electronically in 2016.
- OSC has continued its efforts to develop and implement a system to support the electronic submission of procurement records, and enhanced system capabilities are expected in 2017. In 2016, 22 percent of all grant procurement records,(the supporting documentation needed for each contract,) were submitted electronically to OSC by State agencies. Currently, approximately 30 percent of State agencies are submitting procurements electronically.
- OSC assisted State agencies in evaluating the appropriate determination of NFP contract start dates. When agencies proposed to establish the effective NFP contract start date as the date that an NFP contract is approved, OSC rejected this plan. OSC determined a start date of that nature was not consistent with the intent of the Prompt Contracting Law because no NFP contract would ever be processed late and NFPs would no longer be eligible for prompt contracting interest.
- OSC continued to work with State agencies to establish comprehensive and auditable budget details and work plans in their contracts, as well as facilitating the appropriate use of advances and clearly defined payment terms. These budget contract details are designed to streamline contract processing and approval, and to align contracts with best practices and auditing standards.

- OSC staff continue to assist with NFP inquiries and help address contract and payment issues such as: identifying contract approval and voucher payment status; expediting contract processing for NFPs in need; and educating about various OSC transparency tools, including Open Book New York, the VendRep System and the Guide to Financial Operations.

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 by OSC, DOB, OAG and the State Education Department, 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; OCFS; and DOH. 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 the Prompt Contracting Report annually; 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 met in 2016 and discussed topics including prompt contracting, prompt payment, the Grants Gateway, the financial stability of the NFP community, auditing NFPs and master contracting.

2017 OSC Prompt Contracting Recommendations

1. All 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 remain critical.
2. All grant-making State agencies should utilize the Master Contract for Grants, as directed by the Executive in 2013, in order to streamline State business processes.
3. The Executive should develop a process to assist NFPs in recognizing when interest is due and obtaining agency compliance with payment of interest owed.
4. Agencies 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. In 2012, the Comptroller first proposed legislation to require interest be paid with the first payment due on a contract. The Legislature has made similar proposals in following years.
5. Agencies should use the integration of the Statewide Financial System (SFS) and the Grants Gateway to guarantee that prompt contracting interest is being paid both timely and accurately.
6. State agencies should continue to evaluate their internal grant-making processes and use available streamlining tools, such as lean principles, to maximize operational efficiencies.

Appendix A: Table 1
State Agency Provided Contracting Information
(Alphabetical by Agency, Calendar Year 2016)

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	46	46	0	42	(91%)
Agriculture & Markets, Department of	56	44	12	56	(100%)
Alcoholism & Substance Abuse Services, Office of	32	32	0	21	(66%)
Arts, Council on the	1,218	1,218	0	234	(19%)
Attorney General	83	55	28	0	(0%)
Children & Family Services, Office of	661	530	131	569	(86%)
City University of New York	0	0	0	0	(0%)
Corrections and Community Supervision, Department of	5	3	2	5	(100%)
Criminal Justice Services, Division of	323	150	173	243	(75%)
Developmental Disabilities Planning Council	10	7	3	10	(100%)
Economic Development, Department of	41	41	0	41	(100%)
Education, Department of	59	59	0	59	(100%)
Environmental Conservation, Department of	8	8	0	8	(100%)
General Services, Office of**	27	27	0	27	(100%)
Health, Department of	832	550	282	672	(81%)
Higher Education Services Corporation	11	2	9	3	(27%)
Homeland Security and Emergency Services, Office of	70	70	0	70	(100%)
Housing & Community Renewal, Division of	2	2	0	2	(100%)
Interest on Lawyer Account Fund	40	40	0	40	(100%)
Justice Center for the Protection of People with Special Needs	0	0	0	0	(0%)
Labor, Department of	111	111	0	106	(95%)
Mental Health, Office of	265	61	204	130	(49%)
Motor Vehicles, Department of	85	85	0	34	(40%)
Parks, Recreation and Historic Preservation, Office of	62	62	0	56	(90%)
People With Developmental Disabilities, Office for	37	30	7	10	(27%)
Prevention of Domestic Violence, Office for the	5	5	0	5	(100%)
State, Department of	89	58	31	41	(46%)
State University of New York Administration	6	5	1	5	(83%)
Temporary & Disability Assistance, Office of	114	114	0	114	(100%)
Transportation, Department of	132	103	29	0	(0%)
Victim Services, Office of	0	0	0	0	(0%)
TOTALS:	4,430	3,518	912	2603	(59%)

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

** The Office of General Services reported on behalf of the Division of Veterans' Affairs, the Hudson River Valley Greenway and the Office of Indigent Legal Services.

Appendix A: Table 2
State Agency Provided Contracting Information
(by Percentage of Late Contracts, Calendar Year 2016)

Agency Name	Number of NFP Contracts (Total)	Number of NFP Contracts (New)	Number of NFP Contracts (Renewals)	Number of NFP Late Contracts* (Total)	
Temporary & Disability Assistance, Office of	114	114	0	114	(100%)
Homeland Security and Emergency Services, Office of	70	70	0	70	(100%)
Education, Department of	59	59	0	59	(100%)
Agriculture & Markets, Department of	56	44	12	56	(100%)
Economic Development, Department of	41	41	0	41	(100%)
Interest on Lawyer Account Fund	40	40	0	40	(100%)
General Services, Office of**	27	27	0	27	(100%)
Developmental Disabilities Planning Council	10	7	3	10	(100%)
Environmental Conservation, Department of	8	8	0	8	(100%)
Corrections and Community Supervision, Department of	5	3	2	5	(100%)
Prevention of Domestic Violence, Office for the	5	5	0	5	(100%)
Housing & Community Renewal, Division of	2	2	0	2	(100%)
Labor, Department of	111	111	0	106	(95%)
Aging, Office for the	46	46	0	42	(91%)
Parks, Recreation and Historic Preservation, Office of	62	62	0	56	(90%)
Children & Family Services, Office of	661	530	131	569	(86%)
State University of New York Administration	6	5	1	5	(83%)
Health, Department of	832	550	282	672	(81%)
Criminal Justice Services, Division of	323	150	173	243	(75%)
Alcoholism & Substance Abuse Services, Office of	32	32	0	21	(66%)
Mental Health, Office of	265	61	204	130	(49%)
State, Department of	89	58	31	41	(46%)
Motor Vehicles, Department of	85	85	0	34	(40%)
People With Developmental Disabilities, Office for	37	30	7	10	(27%)
Higher Education Services Corporation	11	2	9	3	(27%)
Arts, Council on the	1,218	1,218	0	234	(19%)
Transportation, Department of	132	103	29	0	(0%)
Attorney General	83	55	28	0	(0%)
City University of New York	0	0	0	0	(0%)
Justice Center for the Protection of People with Special Needs	0	0	0	0	(0%)
Victim Services, Office of	0	0	0	0	(0%)
TOTALS:	4,430	3,518	912	2603	(59%)

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

** The Office of General Services reports on behalf of the Division of Veterans' Affairs, the Hudson River Valley Greenway and the Office of Indigent Legal Services.

Appendix B: Reporting Methodology

Using information gathered from SFS, OSC's Bureau of Contracts was able to identify 31 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, 2017 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 Instructions for Reporting Agency Specific Data on Not-For-Profit (NFP) Grant Program Contracts with Start Dates of January 2, 2016 through January 1, 2017

Due Date: March 31, 2017

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 (e.g., 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, 2016 through January 1, 2017, 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 from the date that the State agency receives the notice of federal grant award for 100 percent federally funded contracts and 180 days for competitive program contracts).²
- 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.
- Column 6** Choose 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 organization in a timely manner.
 - NFP ineligible for State contract (e.g., vendor issues, prequalification issues).
 - State agency experienced system issues.
 - State agency experienced MWBE issues.
 - Procurement protest.
 - Delay due to timeliness of Legislative Initiative notification (specific to LI work sheet).
 - Other, please see Column 8.

² 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).

- 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, the number of potentially interest-eligible (Column 9) NFP contracts for which interest was actually paid.
- Column 11** Enter by Grant Program, the total dollar amount of paid interest for NFP contracts noted in Column 10.
- Column 12** Choose the primary reason why prompt contracting interest was not paid. Choose from below the most prevalent reason why interest was not paid.
- Late contract did not result in a missed payment.
 - Interest payment made outside of report time frame.
 - Capital appropriation not subject to Prompt Contracting Law.
 - Administrative funds unavailable for payment.
 - Prompt contracting calculation difficulties.
 - Other, please see Column 13.
- Column 13** Enter (when “Other” was selected in Column 12) the specific reason why prompt contracting interest was not paid.

OFFICE OF THE STATE COMPTROLLER

Prompt Contracting Worksheet for Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/16 - 1/1/17

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, 2017

AGENCY:

1	CONTRACT DATA								LATE CONTRACTING REASONS & DATA			INTEREST DATA				
	2		3		4		5		6	7	8	9	10	11	12	13
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	Primary Reason Why Prompt Contracting Interest Was Not Paid	If "Other" Was Selected as the Primary Reason Prompt Contracting Interest Was Not Paid, Fill in the "Other" Reason
	New	Renewal	New	Renewal	New	Renewal	New	Renewal								
Totals	0	0	0	0	0	0	0	0		0		0	0	\$0.00		

Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP) Legislative Initiative Contracts with Start Dates of January 2, 2016 through January 1, 2017

Due Date: March 31, 2017

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, 2016 through January 1, 2017 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.³
- 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 Initiative 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 organization in a timely manner.
 - NFP ineligible for State contract (e.g., vendor issues, prequalification issues).
 - State agency experienced system issues.
 - State agency experienced MWBE issues.
 - Procurement protest.
 - Delay due to timeliness of Legislative Initiative notification (specific to LI worksheet).
 - Other, please see Column 7.
- Column 6** Enter the number of NFP Legislative Initiative Grant contracts that were represented by the primary reason in Column 5.
- Column 7** Enter (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).

³ 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).

- 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.
- Column 11** Choose the primary reason why prompt contracting interest was not paid. Choose from below the most prevalent reason why interest was not paid.
- Late contract did not result in a missed payment.
 - Interest payment made outside of report time frame.
 - Capital appropriation not subject to Prompt Contracting Law.
 - Administrative funds unavailable for payment.
 - Prompt contracting calculation difficulties.
 - Other, please see Column 12.
- Column 12** Enter (when “Other” was selected in Column 11) the specific reason why prompt contracting interest was not paid.

OFFICE OF THE STATE COMPTROLLER

Prompt Contracting Worksheet for Legislative Initiative Grant Contracts With Not-For-Profits (NFPs) With Start Dates Within 1/2/16 - 1/1/17 *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, 2017

AGENCY:

CONTRACT DATA				LATE CONTRACTING REASONS & DATA			INTEREST DATA				
1	2	3	4	5	6	7	8	9	10	11	12
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	Primary Reason Why Prompt Contracting Interest Was Not Paid	If "Other" Was Selected as the Primary Reason Prompt Contracting Interest Was Not Paid, Fill in the "Other" Reason
0	0	0	0		0		0	0	\$0.00		

Appendix C: Background of the Prompt Contracting Law

The Prompt Contracting Law

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

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 reports containing the following information to OSC by March 31st 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 31st 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 the Minority Leader of the Senate, the Speaker and the 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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