



# **PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2013**

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

**Thomas P. DiNapoli  
State Comptroller**

**Prepared by the Bureau of Contracts  
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# Introduction

Not-for-profit service providers (NFPs) deliver critical public services throughout New York State. Utilizing community-based organizations and networks, NFPs provide expert insight into complex issues and address a wide range of human needs with skill, compassion and efficiency. For more than two decades, New York has recognized the value added by NFPs through the State's Prompt Contracting Law, which was created to facilitate the contracting process and prevent payment delays that could impair services to some of our most vulnerable citizens.

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

The Office of the State Comptroller (OSC) is committed to streamlining administrative processes for NFPs and to making State contracting more efficient. Comptroller Thomas P. DiNapoli has also created a strong partnership with the NFP community. Since 2012, OSC has delivered training to more than 2,000 NFP staff members and managers to help prevent fraud and improve operations.

OSC has also worked with the Executive to implement on many of the recommendations of earlier reports and to incorporate input from NFPs, including: the development of a Master Grant Contract and the increased use of multiyear agreements to streamline contracting; the creation of a central repository or data vault to allow NFPs to submit information that is needed by multiple agencies only once; online information and access to grant opportunities; and web-based electronic contracting, which is currently under development.

The 2014 Prompt Contracting Annual Report for Calendar Year 2013 highlights these successes, as well as the need to continue efforts to improve the contracting process. For 2013, agencies reported:

- A total of 5,946 new and renewal contracts were subject to the Prompt Contracting Law, an increase of 1,812 from the prior year.
- State agencies reported 5,162 (87 percent) of total contracts late, after the start or renewal dates. This is an increase from 2012, when approximately 78 percent of the total contracts were reported late. There are likely several reasons for the increase, including a significant increase in the overall number of contracts during a time of transformation, as the State converts from entirely manual processes to more streamlined electronic contracting. The improvements are still underway, and are expected to enhance contracting in the future.
- State agencies reported that 3,409 contracts were eligible for interest, but interest was paid on only 21 percent (716 contracts), totaling \$185,519 in interest payments.

During 2013, OSC continued to support State agency efforts to meet prompt contracting requirements and to assist the Executive with the development and implementation of a centralized, web-based grant management system that promises to help streamline the contract process and reduce administrative burdens on NFPs and State agencies. Specifically:

- The Executive initiated efforts to streamline the grant process using updated, standard contract documents and electronic applications, filing, signatures and contract management. These measures hold significant promise to improve contract processing time frames. Additionally, a web-based portal (the Grants Gateway) has been created to facilitate the centralized notification of vendors regarding grant opportunities and to serve as a repository for standard documents required from all contracting State agencies. OSC, the Office of the Attorney General (OAG) and numerous NFPs have assisted in these efforts, which are ongoing this year and represent a significant step forward.

This year, the Executive implemented the data vault and prequalification components. Together, these enable NFPs to provide information in one secure location for all agencies to use and, in return, receive confirmation of their ability to compete for and receive State moneys when grants are available. These are important first steps in reducing the duplication of effort that often occurs when NFPs are working with multiple State agencies at the same time to apply for and receive grants.

Work continues on the Grants Gateway to improve functionality and enable grant contracts to be created, approved and managed electronically through this online system. In collaboration with the Division of the Budget (DOB), OSC developed an interface with the Grants Gateway to accept grant contracts from State agencies electronically through an interface with the system. OSC's new "e-Documents" solution will seamlessly accept electronic grant contracts, e-Signatures and related documents.

- The increased use of multiyear contracts (20 percent since 2012) has helped NFPs improve cash flow and predictability in contracting. As more multiyear contracts are employed, the contract processing workload is staggered, saving agencies and NFPs time and money.
- In 2012, OSC worked with individual agencies to help improve the use of interest waivers and to reduce the number of unwarranted waivers. In 2013, the number of unwarranted waivers remained low.

While significant work is ongoing, efforts to realize the promise of the Master Grant Contract and the electronic contracting system, and to increase responsiveness among all parties involved in the grant contract process must continue in order to achieve more timely contracts.

At the same time, NFPs across the country have experienced a reduction in government and other funding at all levels as a result of a weak economy. As reported by the Urban Institute:

"More than 40 percent respondents turned to their reserves to make ends meet and about 25 percent of nonprofits reduced the number of employees on their payroll. About 14 percent of organizations reduced the number of clients served and almost 11 percent cut programs."<sup>1</sup>

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<sup>1</sup> Sarah L. Pettijohn, et al., *Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey* (The Urban Institute, 2013), 2.

As reported in the Urban Institute's expanded survey based on the above study, New York State nonprofit data showed:

62% identified late government contract payments as a problem.<sup>2</sup>

43% drew on their reserves.<sup>3</sup>

49% froze or reduced employee salaries.<sup>4</sup>

Combined with clearer and more efficient contracting and payment processes at every step, OSC strongly recommends that:

1. State agencies make prompt contracting a priority.
2. State agencies pay prompt contracting interest with the first payment when interest is due.
3. State agencies streamline internal grant program planning and development processes, especially the alignment of contract start dates with the time required for the procurement process.
4. Decision makers use the data from the Grants Gateway to assess potential improvements to grant processing.
5. Decision makers consider requiring NFPs to be prequalified only prior to grant contract execution (not prior to application) in order to ensure the broadest pool of applicants possible.

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<sup>2</sup> Sarah L. Pettijohn, et al., *National Study of Nonprofit-Government Contracts and Grants 2013: State Profiles* (The Urban Institute, 2014), 77.

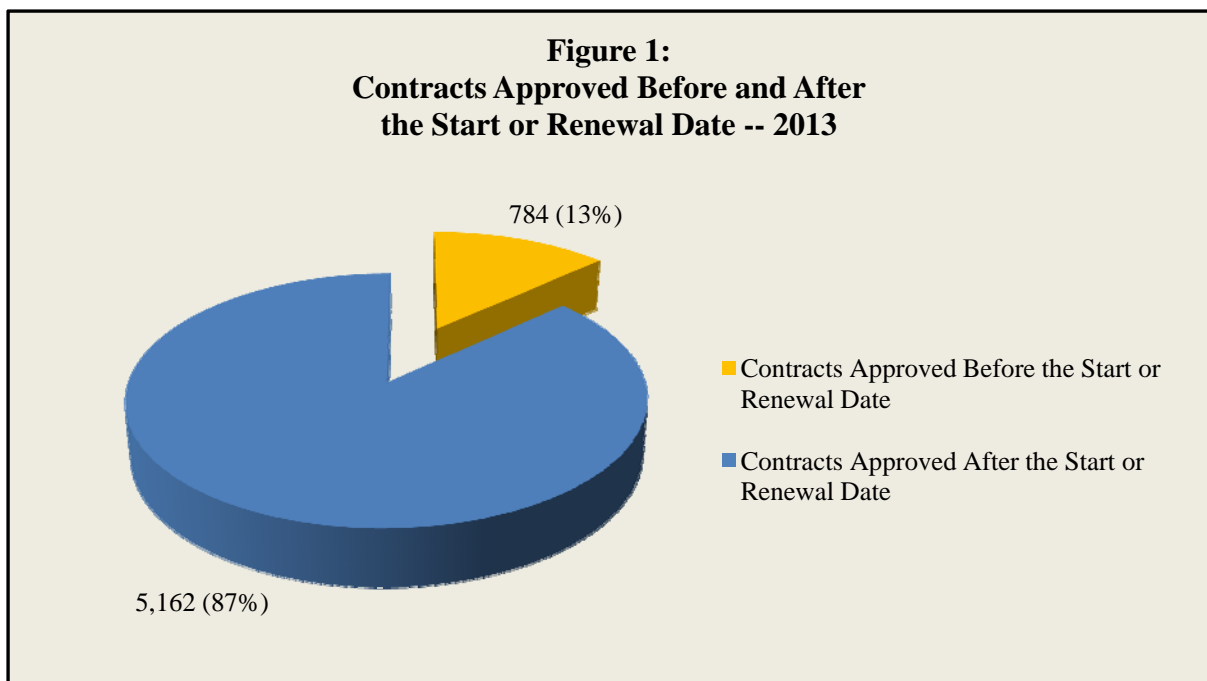
<sup>3</sup> *Ibid.*, 78.

<sup>4</sup> *Ibid.*

## I. Summary of Data Reported by State Agencies

Reports were submitted to OSC from all 30 State agencies contracting with NFPs during 2013 (refer to Appendix A).

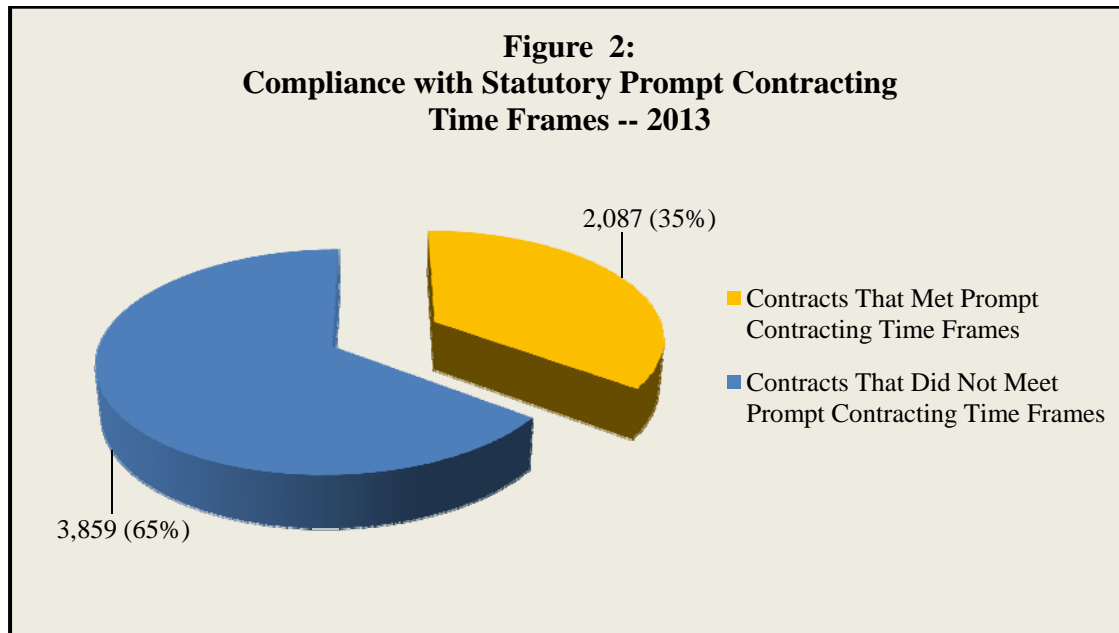
- State agencies reported that 5,946 new and renewal contracts with NFP providers, associated with 197 programs, were subject to Article XI-B of the State Finance Law.
- State agency contracts were approved before the start or renewal date for 784 contracts (13 percent), including 450 new and 334 renewal contracts.
- State agency contracts were not approved before the start or renewal date for 5,162 contracts (87 percent), including 3,914 new and 1,248 renewal contracts. (see Figure 1)



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

- State agencies met prompt contracting time frames for 2,087 contracts (35 percent).
- State agencies did not meet prompt contracting time frames for 3,859 contracts (65 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 OAG and OSC. (see Figure 2).



Of the 5,162 late contracts reported by State agencies, 1,753 (34 percent) were reported as not eligible for interest payments. The remaining 3,409 contracts were reported as potentially eligible for interest.

Seven State agencies paid interest totaling \$185,519 on 716 contracts eligible for interest—a decrease of over \$52,000 from the prior year. In addition, of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid declined from 38 percent in 2012 to just 21 percent in 2013. Just four State agencies account for nearly the entire amount, and two of these represent nearly three-quarters of the total:

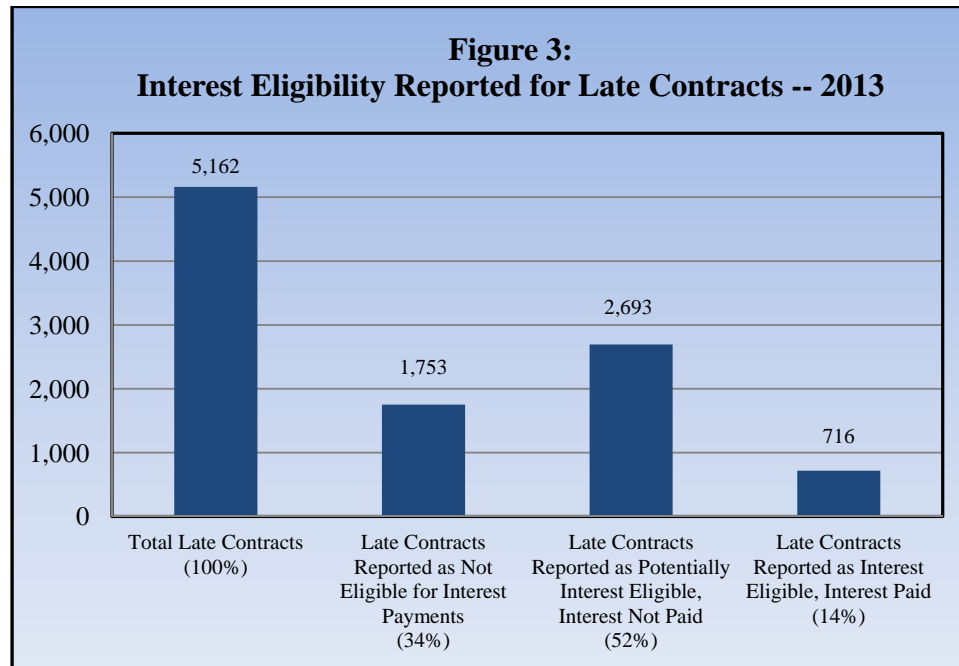
- The Department of Health (DOH) accounted for \$79,573 of the interest paid (43 percent);
- The Division of Criminal Justice Services (DCJS) accounted for \$56,487 (30 percent);
- The Office of Children and Family Services (OCFS) accounted for \$24,969 (13 percent); and
- The State Education Department (SED) accounted for \$24,155 (13 percent).

Three other State agencies together paid a total of \$335. No interest payments were made for the remaining 2,693 (79 percent) late contracts reported as potentially eligible for interest.

For contracts with start dates in 2013 that are not executed until 2014, State agencies would not calculate or make interest payments within the reporting period (1/2/13 – 1/1/14), thus these interest payments will go unreported.



Figure 3 below summarizes interest eligibility as reported on contracts approved after the start or renewal date (late contracts) in 2013.



State agencies reported various reasons why program contracts were approved after the start or renewal dates. The three most frequent – “Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process,” “Other” and “Agency processing delays due to internal or external circumstances” – accounted for 93 percent of the total responses. The “Other” category included: prequalification requirements; the “B-1184 Agency Spending Controls”; and delays in notice of federal award.

Table 1 below summarizes the explanations for late contracting reported by State agencies in 2013.

| <b>Table 1: Explanations for Late Contracts<br/>Reported by State Agencies -- 2013</b> |   |
|--|---|
| 46%  | Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process. |
| 28%  | Other. Various explanations provided.   |
| 19%  | Agency processing delays due to internal or external circumstances.   |
| 7%   | Contract documents not returned by NFPs in a timely manner.   |

Table 2 provides a three-year comparison of prompt contracting data.

| <b>Table 2</b><br><b>Three-Year Comparison of Prompt Contracting Data as Reported by State Agencies</b><br><b>January 2, 2011 – January 1, 2014</b> |                       |   |  |                             |                                     |                        |
|---|-----------------------|---|--|-----------------------------|-------------------------------------|------------------------|
|   |                       |   | Contracts Not Approved<br>by the Start or Renewal Date |                             |                                     |                        |
| Reporting Period  | Total Grant Contracts | Contracts Approved by the Start or Renewal Date | Total Not Approved Timely                              | Total Eligible for Interest | Total Contracts Where Interest Paid | Value of Interest Paid |
| 2011  | 3,815                 | 755   | 3,060<br>(80%)   | 1,996                       | 736                                 | \$195,136              |
| 2012  | 4,134                 | 928   | 3,206<br>(78%)   | 1,953                       | 735                                 | \$237,538              |
| 2013  | 5,946                 | 784   | 5,162<br>(87%)   | 3,409                       | 716                                 | \$185,519              |

Over the past three years, the number of grant contracts has increased by nearly 56 percent. Annual variation in the total numbers 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 has remained relatively stable.

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

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

OSC ensures that grant applicants’ rights are upheld by affording an independent review of any bid protests of NFP award determinations. In addition, OSC review helps reduce exposure and potential State liability through its examination of contract terms and conditions, building trust in the process and protecting New York State residents and taxpayers.

### ➤ Comparison of State Agency Reported Data 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 pre-audited by the OSC Bureau of Contracts for the period from January 2, 2013 to January 1, 2014. 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 (*refer to Tables 3 and 4 for this data*).

There are differences between the data reported by State agencies and other data available to OSC. State agencies are required to report on *all* contracts and renewals *with start dates in 2013*, regardless of the dollar amount. Consequently, the agency-reported number of contracts and renewals includes contracts valued at less than \$50,000 which are not subject to OSC pre-audit. In addition, OSC reports data on all contracts *received* during 2013; however, the contract start dates may not fall within 2013. For 2013, OSC approved 2,726 grant contracts, while State agencies reported a total of 5,946 NFP contracts.

| <b>Table 3</b><br><b>Number of Contracts Approved by OSC Bureau of Contracts</b><br><b>Subject to the Prompt Contracting Law</b><br><b>January 2, 2013 – January 1, 2014</b> |                 |               |                   |
|--|-----------------|---------------|-------------------|
|  | Total Contracts | New Contracts | Renewal Contracts |
| Total Approved   | 2,726           | 1,183         | 1,543             |
| Approved Before Start Date   | 380             | 21            | 359               |
| Approved After Start Date  | 2,346           | 1,162         | 1,184             |

Of the 2,726 NFP grant contracts submitted to OSC for approval, 2,346 or 86 percent were approved after their start or renewal date and were consequently late. This compares with 87 percent late for the 5,946 contracts reported by State agencies.

➤ **OSC Monitors State Agency Compliance with Waiver of Interest Requirements**

A State agency must submit each waiver of interest to OSC to determine whether the waiver is warranted. OSC reviews determine whether: (1) all time frames required by the Prompt Contracting Law have been met; (2) the State agency and the NFP have mutually agreed in writing to waive any interest due; and (3) the waiver is properly justified. If the Comptroller determines that these criteria have not been met, OSC will inform the State agency, the NFP and the 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.

OSC has made special efforts to ensure State agencies do not propose unwarranted waivers, including outreach to those State agencies with excessive waivers. In 2013, OSC received the fewest number of waivers for review since 2007.

| <b>Table 4<br/>Waivers of Interest<br/>January 2, 2013 – January 1, 2014</b> |           |
|--|-----------|
| Total NFP grant contracts received with waivers                              | <b>23</b> |
| Unwarranted waivers  | <b>2</b>  |
| Warranted waivers  | <b>21</b> |

➤ **OSC Outreach to the Not-for-Profit Community**

Throughout his administration, Comptroller DiNapoli has helped raise awareness of the critical role of NFPs as partners in the delivery of critical services to those in need across New York. He has also regularly called on State agencies to improve the timeliness of contracting and payments to reduce stress on NFPs and ensure continuity of programs for our children, the disabled, the elderly and others.

In 2008, Comptroller DiNapoli issued the first Prompt Contracting Annual Report which covered Calendar Year 2007. His initial recommendations included the use of a standard grant contract, simplified contract submission for NFPs, and greater use of electronic contracting to assist in the timely execution of grant contracts. Today, OSC is working collaboratively with the Executive to implement these and other improvements in the grant-making process.

Along with preparing the Annual Reports and recommendations, the Comptroller also met personally with NFP leaders throughout New York State in 2009 and 2010. Discussions addressed the challenges faced by NFP organizations during 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))

In 2011, OSC issued a follow-up report, *Delayed State Contracts and Payments Hurt Service Providers*, which highlighted ongoing problems with the State's contracting and payment process. The report recommended a series of 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 members of NFPs. The *Don't Get Burned* program has been presented at forums in every region of the State. To date, nearly 2,000 NFP leaders and accountants have taken advantage of the training, and additional sessions are planned for 2014. The three-hour course is designed to give NFPs the tools and resources they need to better detect and prevent fraud in their organizations. OSC partnered with regional United Way organizations and other NFP umbrella organizations such as the Human Services Council, UJA-Federation of New York and the Collaborative of the Finger Lakes to reach a wider audience. Other organizations such as the New York City Council Delegation from Brooklyn and the New York State Society of Certified Public Accountants have sponsored sessions as well. Several State agencies have encouraged their contracting providers to participate.

OSC has 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 Office of Unclaimed Funds to reconnect NFPs with accounts that have gone unclaimed so that organizations can put the 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 have fielded numerous calls, emails and inquiries and assisted hundreds of NFP organizations. In addition, OSC staff recently presented information to the Financial Management Association conference about how to avoid pitfalls in grant contracting in order to help accelerate the process.

### ➤ **OSC Technical and Other 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, including:

- Outreach and technical assistance, which includes informal training sessions, conference calls, correspondence and a grants newsletter, *The Procurement Record*, containing current topical information regarding the grant contract process for State agencies. During the past year, OSC assisted State agencies in their efforts to convert their current payment terms into the Master Grant Contract and made technical recommendations on the Master Grant Contract language. OSC also worked with DOB to assist State agencies in applying prequalification standards correctly and consistently.
- Redesigned Prompt Contracting data collection tools. OSC simplified the data collection template that was previously used by State agency personnel to comply with the mandatory reporting requirements. OSC analyzed the reporting problems experienced by State agencies in prior years and modified the form to capture State agency performance in meeting statutory time frames and timely execution of contracts, as well as reducing mathematical calculations, and streamlining explanations for late contracting.

- Collaborated with DOB to accept grant contracts from State agencies electronically. This effort included the development and implementation of an interface between the Grants Gateway and OSC, which allows for the electronic transmittal of contract documents for OSC review and approval, a repository for the electronic contract file, and an application for OSC contract auditors to search and access the electronic contract document. OSC's new "e-Documents" solution is ready to seamlessly accept electronic grant contracts, e-Signatures and related documents. OSC anticipates receiving grant contracts electronically when the Grants Gateway is fully functional.

### ➤ **Not-for-Profit Contracting Advisory Committee**

OSC has continued to work actively as a member of the Not-for-Profit Contracting Advisory Committee, which includes eight appointed members, four who represent NFP organizations providing services in the State who are appointed by the Governor and two each to be appointed by the Governor upon recommendation of the majority coalition leaders of the Senate and the Speaker of the Assembly, and eight ex officio members of the committee, which include one each designated from DOB, OAG, OSC, and the SED. The Governor also designates four members from among the following agencies: the Department of State, the Office of Temporary and Disability Assistance, the Office of Mental Health, the Office of 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 meets at least quarterly, and upon its own initiative may: comment and report on the implementation and operation of the NFP short-term revolving loan fund; advise the Governor, the Comptroller and State agencies on the implementation and operation of the Prompt Contracting Law; 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 propose any legislation the Committee finds necessary to improve the revolving loan fund and the Prompt Contracting Law. The Committee will report to the Governor and the Legislature with recommendations on improving the procedures for contracting with NFP organizations.

During 2013 the Committee discussed the following: NFP executive compensation; the OAG's Non-Profit Reform Legislation, which has since been enacted; cost-of-living allowances for NFPs, and the grants reform.

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

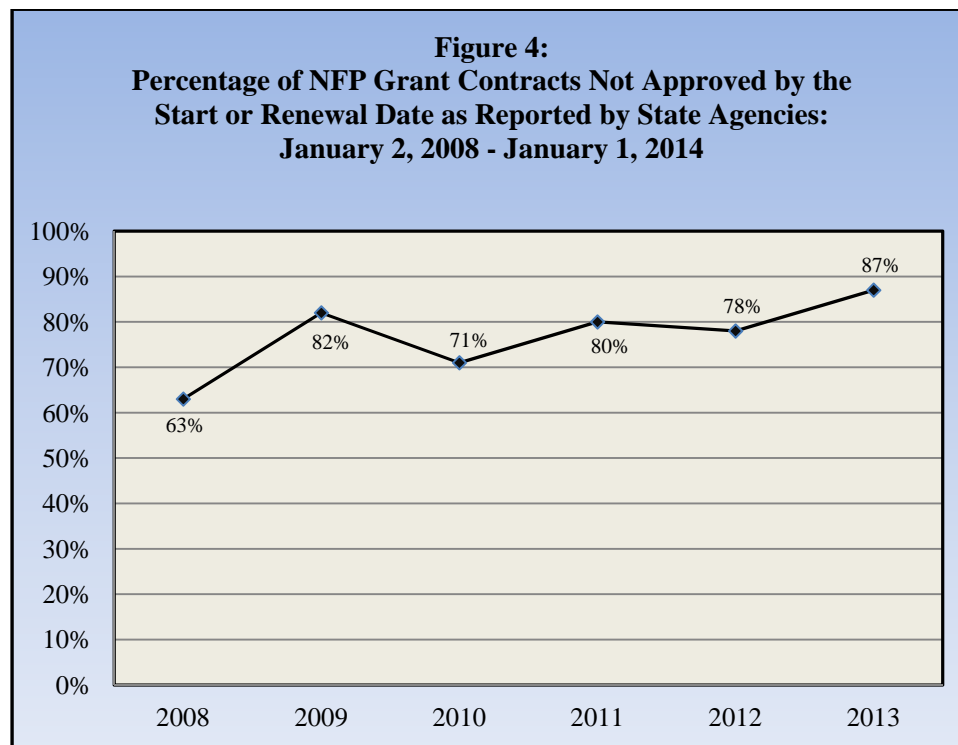
The following analysis is based on the data provided by State agencies for 2013.

#### ➤ Late Contracting

State agencies continue to have difficulty meeting the established time frames. In 2013, State agencies reported that 87 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 78 percent as reported in 2012.

Reasons cited by State agencies for late contracting in 2013 include: time frame requirements in the Prompt Contracting Law do not provide adequate time for the agency procurement process; agency processing delays due to internal or external circumstances; and others, such as prequalification, conversion to the Master Grant Contract process, DOB approval of the “B-1184 Agency Spending Controls” and other delays.

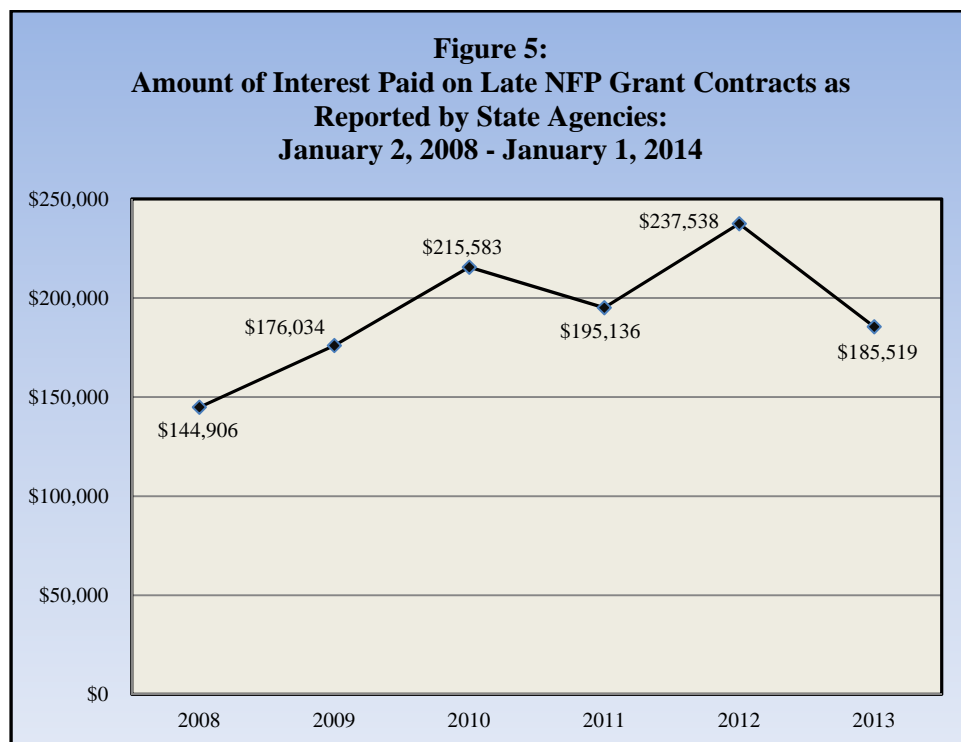
As illustrated in *Figure 4*, the percentage of late contracts has increased since 2008.



## ➤ Interest Payments

The number of contracts on which interest was paid in 2013 remained essentially the same as in 2012 (716 versus 735), but the amount paid decreased by 22 percent. Even if State agencies 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 new Statewide Financial System (SFS).

*Figure 5* summarizes the amount of interest paid on late NFP grant contracts. Over the six-year period (2008-2013), the amount of interest paid on late contracts ranged from approximately \$145,000 to nearly \$238,000. The 2013 amount of \$185,519 is the lowest in the most recent three-year period.





## ➤ **Waivers of Interest**

Waivers are only deemed warranted if the time frames for the execution of a contract as set forth in the Prompt Contracting Law have been met. Prior to the 2007 amendments to the Law, waivers of interest were not subject to OSC oversight. As a result, State agencies often asked for waivers of interest, even though in many cases the agencies did not meet the statutory contracting time frames, and agencies did not pay interest on late contracts when waivers of interest were signed.

During the 2013 report period, OSC reviewed waivers to determine whether each waiver of interest submitted by a State agency was warranted. The data reflects a significant decrease in the number of waivers of interest issued by State agencies and submitted to OSC for review as compared to 2012. Of the 23 waivers of interest submitted in 2013, 21 waivers (91 percent) were determined by OSC to be warranted with no interest due. OSC's review, along with targeted outreach, has succeeded in helping State agencies understand the appropriate use of waivers.

## **IV. Review of Recommendations Made in the Prompt Contracting Annual Report for Calendar Year 2012 (Issued in May 2013)**

1. State agencies should make prompt contracting a priority. This remains the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention of State agency leadership are needed. Timely review and allocation of funding for contracts are imperative.

*OSC data shows that for all grant contracts executed in 2013 that were subject to OSC review, 86 percent were executed past the start date. Approximately 87 percent of all State agency-reported contracts were late. Although efforts are ongoing to streamline grant processing, there has not yet been an impact on processing times.*

2. Priority must be given to finalizing the development and implementation of the new grants management system so as to take full advantage of the opportunities to streamline administration through the new SFS. Close attention is needed to ensure effective interfacing with review and oversight by other agencies to gain the greatest advantage from the new system.

*Application development and implementation is underway, as well as creation of the required business processes to integrate the Grants Gateway with the Statewide Financial System and OSC's new e-Documents system. Together these will enable electronic development and review of grant contracts. The Master Grant Contract boilerplate was implemented during 2013 and is being used by the majority of State grant-making agencies. Over 3,000 NFPs have submitted information to the Document Vault and are now prequalified to apply for funding and to contract with New York State. Information on grant opportunities is also available on the Grants Opportunity Portal, providing access to solicitation documents.*

3. State agencies should pay prompt contracting interest with the first payment due after the start of a late contract.

*In 2013, the Legislature passed S.5189 (DeFrancisco) and A.7471 (Englebright) to require State agencies to pay prompt contracting interest with the first payment due after the start of a late contract. The bill was vetoed, pending the anticipated improvements associated with the reform and streamlining of the grant application, monitoring and payment processes which are still under development.*

4. Every State agency should streamline its own internal grant program planning and development process.

*Based on self-reported data, State agencies have not made significant progress in reducing the amount of time it takes to complete the procurement process.*

5. The Executive should ensure that sufficient training is available to NFP providers on the new web-based portal and the data vault.

*The Executive made considerable efforts to engage the NFP community in preparation for the go-live of the Grants Gateway throughout 2013. This included direct and web-based training, informational mailings to thousands of NFPs on the Grants Gateway and prequalification process, and direct email instruction for NFPs with upcoming contracts to assist them with the new processes.*

6. State agencies should realign contract start dates to reflect the time required for the procurement process. In many cases, dates which have been used historically fail to provide for timely execution of contracts.

*OSC continues to encourage State agencies to establish realistic grant contract start dates based on their procurement schedules, which include internal and external review and approval processes, the State budget cycle and certification of funding authority. Late contracts increase the financial vulnerability of NFPs by:*

- a. *causing NFPs to work at risk without a contract in order to avoid gaps in service for families and individuals; and*
  - b. *creating a deficit cash flow.*
7. State agencies should expand the use of multiyear contracts to reduce the number of contracts and make contracting more predictable for NFPs and agencies.

*In 2013, OSC approved 160 grant procurement records, of which 68 percent were established as multiyear contracts with terms of three to five years. This represents a 20 percent increase over the number of multiyear grant procurements reviewed in 2012.*

8. State agencies should use advance payments more effectively to alleviate cash flow issues for NFPs waiting for contracts.

*OSC continues to encourage State agencies to take advantage of advance payments as an option to mitigate potential interest liability and to help relieve grantee cash flow issues created by late contracting.*

## **V. Prompt Contracting Annual Report Recommendations for 2014**

1. State agencies should make prompt contracting a priority. This remains the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention of State agency leadership are needed. Timely review and allocation of funding for contracts are imperative.
2. State agencies should pay prompt contracting interest with the first payment when interest is due.
3. Every State agency should streamline its own internal grant program planning and development process. An important component of this streamlining is the realignment of contract start dates to reflect the time required for the procurement process.
4. New York State should utilize the data from the Grants Gateway to assess potential improvements to grant processing and enhancements to the Prompt Contracting Law, such as simplifying the calculation of interest payments.
5. New York State should consider requiring NFPs to be prequalified only prior to grant contract execution (not prior to application) in order to ensure the broadest pool of applicants possible.

# Appendix A

## Table 1

State Agencies Provided Information for the Prompt Contracting Annual Report  
Calendar Year 2013 - Data in Alphabetical Order by Agency Name

| Agency Name   | Number of NFP Contracts (Total) | Number of NFP Contracts (New) | Number of NFP Contracts (Renewals) | Number of NFP Late Contracts* (Total) |
|---|---------------------------------|-------------------------------|------------------------------------|---------------------------------------|
| Aging, Office for the   | 264                             | 264                           | 0                                  | 238                                   |
| Agriculture & Markets, Department of                                      | 37                              | 30                            | 7                                  | 37                                    |
| Alcoholism & Substance Abuse Services, Office of                          | 36                              | 36                            | 0                                  | 35                                    |
| Arts, Council on the  | 1848                            | 1848                          | 0                                  | 1848                                  |
| Children & Family Services, Office of                                     | 537                             | 267                           | 270                                | 244                                   |
| City University of New York   | 20                              | 20                            | 0                                  | 2                                     |
| Corrections and Community Supervision, Department of                      | 8                               | 7                             | 1                                  | 8                                     |
| Criminal Justice Services, Division of                                    | 344                             | 268                           | 76                                 | 325                                   |
| Economic Development, Department of                                       | 43                              | 33                            | 10                                 | 43                                    |
| Education, Department of  | 247                             | 179                           | 68                                 | 247                                   |
| Environmental Conservation, Department of                                 | 34                              | 34                            | 0                                  | 34                                    |
| General Services, Office of**   | 229                             | 229                           | 0                                  | 229                                   |
| Health, Department of   | 613                             | 235                           | 378                                | 607                                   |
| Higher Education Services Corporation                                     | 42                              | 42                            | 0                                  | 13                                    |
| Homeland Security and Emergency Services, Office of                       | 59                              | 59                            | 0                                  | 59                                    |
| Housing & Community Renewal, Division of                                  | 2                               | 2                             | 0                                  | 2                                     |
| Interest on Lawyer Account Fund   | 71                              | 71                            | 0                                  | 71                                    |
| Labor, Department of  | 98                              | 91                            | 7                                  | 62                                    |
| Mental Health, Office of  | 412                             | 36                            | 376                                | 363                                   |
| Motor Vehicles, Department of   | 97                              | 97                            | 0                                  | 63                                    |
| Parks, Recreation and Historic Preservation, Office of                    | 50                              | 50                            | 0                                  | 50                                    |
| People With Developmental Disabilities, Office of                         | 452                             | 276                           | 176                                | 444                                   |
| Prevention of Domestic Violence, Office for the                           | 7                               | 3                             | 4                                  | 4                                     |
| Public Service, Department of   | 3                               | 3                             | 0                                  | 0                                     |
| Quality of Care and Advocacy for Persons with Disabilities, Commission on | 1                               | 1                             | 0                                  | 1                                     |
| State, Department of  | 91                              | 51                            | 40                                 | 9                                     |
| State University of New York Administration                               | 6                               | 5                             | 1                                  | 5                                     |
| Temporary & Disability Assistance, Office of                              | 45                              | 45                            | 0                                  | 45                                    |
| Transportation, Department of   | 111                             | 82                            | 29                                 | 0                                     |
| Victim Services, Office of  | 139                             | 0                             | 139                                | 74                                    |
| <b>TOTALS:</b>  | <b>5,946</b>                    | <b>4,364</b>                  | <b>1,582</b>                       | <b>5,162</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, the Office of Indigent Legal Services, the Office of Veterans Affairs and a portion of the Council on the Arts.

# Appendix A

## Table 2

State Agencies Provided Information for the Prompt Contracting Annual Report  
Calendar Year 2013 - Data in Order by Number of Late Contracts

| Agency Name   | Number of NFP Contracts (Total) | Number of NFP Contracts (New) | Number of NFP Contracts (Renewals) | Number of NFP Late Contracts* and Percentage (Total) |
|---|---------------------------------|-------------------------------|------------------------------------|--|
| Arts, Council on the  | 1848                            | 1848                          | 0                                  | 1848 (100%)  |
| Health, Department of   | 613                             | 235                           | 378                                | 607 (99%)  |
| People With Developmental Disabilities, Office of                         | 452                             | 276                           | 176                                | 444 (98%)  |
| Mental Health, Office of  | 412                             | 36                            | 376                                | 363 (88%)  |
| Criminal Justice Services, Division of                                    | 344                             | 268                           | 76                                 | 325 (94%)  |
| Education, Department of  | 247                             | 179                           | 68                                 | 247 (100%)   |
| Children & Family Services, Office of                                     | 537                             | 267                           | 270                                | 244 (45%)  |
| Aging, Office for the   | 264                             | 264                           | 0                                  | 238 (90%)  |
| General Services, Office of **  | 229                             | 229                           | 0                                  | 229 (100%)   |
| Victim Services, Office of  | 139                             | 0                             | 139                                | 74 (53%)   |
| Interest on Lawyer Account Fund   | 71                              | 71                            | 0                                  | 71 (100%)  |
| Motor Vehicles, Department of   | 97                              | 97                            | 0                                  | 63 (65%)   |
| Labor, Department of  | 98                              | 91                            | 7                                  | 62 (63%)   |
| Homeland Security and Emergency Services, Office of                       | 59                              | 59                            | 0                                  | 59 (100%)  |
| Parks, Recreation and Historic Preservation, Office of                    | 50                              | 50                            | 0                                  | 50 (100%)  |
| Temporary & Disability Assistance, Office of                              | 45                              | 45                            | 0                                  | 45 (100%)  |
| Economic Development, Department of                                       | 43                              | 33                            | 10                                 | 43 (100%)  |
| Agriculture & Markets, Department of                                      | 37                              | 30                            | 7                                  | 37 (100%)  |
| Alcoholism & Substance Abuse Services, Office of                          | 36                              | 36                            | 0                                  | 35 (97%)   |
| Environmental Conservation, Department of                                 | 34                              | 34                            | 0                                  | 34 (100%)  |
| Higher Education Services Corporation                                     | 42                              | 42                            | 0                                  | 13 (31%)   |
| State, Department of  | 91                              | 51                            | 40                                 | 9 (10%)  |
| Corrections and Community Supervision, Department of                      | 8                               | 7                             | 1                                  | 8 (100%)   |
| State University of New York Administration                               | 6                               | 5                             | 1                                  | 5 (83%)  |
| Prevention of Domestic Violence, Office for the                           | 7                               | 3                             | 4                                  | 4 (57%)  |
| City University of New York   | 20                              | 20                            | 0                                  | 2 (10%)  |
| Housing & Community Renewal, Division of                                  | 2                               | 2                             | 0                                  | 2 (100%)   |
| Quality of Care and Advocacy for Persons with Disabilities, Commission on | 1                               | 1                             | 0                                  | 1 (100%)   |
| Public Service, Department of   | 3                               | 3                             | 0                                  | 0 (0%)   |
| Transportation, Department of   | 111                             | 82                            | 29                                 | 0 (0%)   |
| <b>TOTALS:</b>  | <b>5,946</b>                    | <b>4,364</b>                  | <b>1,582</b>                       | <b>5,162 (87%)</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, the Office of Indigent Legal Services, the Office of Veterans Affairs and a portion of the Council on the Arts.

# 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, 2014, 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, 2013 through January 1, 2014**

**Due Date: March 31, 2014**

**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, 2013 through January 1, 2014, 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 non-competitive contracts, 150 days for 100% 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>5</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.
- 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

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<sup>5</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).



- 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 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.



**Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP)  
Legislative Initiative Contracts with Start Dates of  
January 2, 2013 through January 1, 2014**

**Due Date: March 31, 2014**

**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, 2013 through January 1, 2014 and are subject to the Prompt Contracting Law. **Note: NFP Legislative Initiative Grant contracts are not renewed.**
- 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>6</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
- Column 6** Enter the number of NFP Legislative Initiative Grant contracts that were represented by the primary reason in Column 5.
- Column 7** Enter the number of NFP Legislative Initiative Grant contracts (when “Other” was selected in Column 5) the specific reason why NFP contracts were not approved by the start date.

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<sup>6</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).

- Column 8** Enter the number of NFP Legislative Initiative Grant contracts 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 eligible NFP Legislative Initiative Grant contracts (Column 8) for which interest **was** paid.
- Column 10** Enter the total dollar amount of paid interest for NFP Legislative Initiative Grant contracts noted in Column 9.

OFFICE OF THE STATE COMPTROLLER

Prompt Contracting Worksheet for Legislative Initiative Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/13 - 1/1/14 \*\*\*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, 2014

**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 <u>Did Not Meet</u> Legislated Time Frames | Total NFP Legislative Initiative Contracts That <u>Met Legislated</u> Time Frames And <u>Were Not Approved by the Contract Start Dates</u> | Total NFP Legislative Initiative Contracts That <u>Did Not Meet</u> Legislated Time Frames And <u>Were Not Approved by the Contract Start Dates</u> | 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                        |

# 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 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.