



# **PROMPT CONTRACTING ANNUAL REPORT CALENDAR YEAR 2014**

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

Thomas P. DiNapoli  
State Comptroller

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# INTRODUCTION

State agencies often contract with not-for-profit organizations (NFPs) to deliver critical public services throughout New York State. Utilizing community-based organizations and networks, NFPs support a wide range of human needs. For more than two decades, New York has worked to streamline contracting with NFPs through the State's Prompt Contracting Law, which was created to facilitate the contracting process and prevent payment delays that create financial hardship for NFPs and could impair service delivery to some of our most vulnerable citizens. Since 2007, the Law has required the Office of the State Comptroller (OSC) to report annually to the public on whether agencies have met statutory time frames and made progress in achieving more timely contracts, and to recommend actions to improve contracting timeliness.

As a part of this year's report, OSC reviewed the history of the Prompt Contracting Law and found that progress in reducing the incidents of late contracting has not been significant in the past quarter-century, despite periodic efforts to make improvements. The solutions identified in the Prompt Contracting Law and elsewhere, such as written directives, required interest payments to NFPs for late contracts, suspension letters, use of a revolving loan fund, multiyear contracts, and fifth quarter transition payments are not consistently used. The latest improvements – the implementation of the new Grants Gateway to enable more efficient development, management and processing of contracts, and the mandate of a standardized “master contract” for grants – both show promise for significant future improvement. The State will need to ensure that these initiatives are used effectively and the benefits of these advances are not lost.

It is too early to determine trends; however, results for 2014 show improvement over 2013 as evidenced by the following self-reported State agency data for 2014:

- A total of 4,630 new and renewal contracts were subject to the Prompt Contracting Law, a decrease of 1,316 from the prior year.
- State agencies reported that 3,568 (77 percent) of total contracts were processed late, after the start or renewal dates. This is a decrease from 2013, when approximately 87 percent of the total contracts were processed late. While many factors impact contracting time frames, we note that there was a significant decrease in the overall number of contracts as well as the use of purchase orders for grants valued at \$10,000 or less during the reported time frame.
- State agencies reported that 2,108 contracts were eligible for interest, but interest was paid on only 32 percent (676 contracts), totaling \$195,663 in interest payments.

Moving forward, there is reason to be optimistic. The new Grants Gateway employs workload management tools, electronic contract document transmission, a repository for electronic files, and e-signatures. These will allow all parties involved in the procurement process to better monitor compliance with the statutory time frames, manage workloads, communicate faster and identify when bridge funding should be considered.

But beyond better technology and standardized forms, State agencies must embrace their critical role in the overall process and make prompt contracting a priority. In addition, OSC recommends the Executive consider the following steps:

1. Require quarterly reports using the new Grants Gateway data on the timeliness of prompt contracting and the amount of interest paid on late contracts.

2. Automatically calculate and assess prompt contracting interest.
3. Facilitate timely contracts under the Prompt Contracting Law through the broader use of multiyear contracting time frames, early renewal of existing contracts where appropriate, and the early release of grant information and solicitation documents to potential providers.
4. Develop a mechanism to provide bridge funding for new contracts that provides minimal administrative requirements and immediate access to funds already allocated for the contract.
5. Enforce consistent standards and best practices across State agencies for grant procurement and contracting, particularly for timely renewals.

# I. RETROSPECTIVE

The movement that led to the 1991 Prompt Contracting Law began over a quarter of a century ago when NFPs began to voice their concerns that delayed contracts were contributing to poor cash flow and jeopardizing their ability to maintain services for those citizens of New York most in need of help. A host of individuals and organizations from the NFP community, as well as State agencies, the Governor's Office, OSC, the State Legislature, and the Office of the Attorney General (OAG), came together in an effort to address the issues. While we remain optimistic that recent efforts to streamline the process and harness technology will make the workload more efficient and result in timelier contracting, it is remarkable that some of the same challenges remain today.

## BACKGROUND

While the Prompt Payment Law (1984) reduced the time frames for contractors, including NFPs, to receive payment, it became evident as early as 1985 that there were additional factors affecting the cash flow to the NFPs. The NFP community expressed concerns to government leaders over late grant contract execution which delayed payments and was causing significant financial problems and high-interest borrowing. Specifically, NFPs frequently provide the same service for many years and, when new or renewal contracts were delayed, NFPs continued to provide critical services by borrowing or dipping into reserve accounts to cover the cash shortfall. The very same situation exists today.

In response to NFP concerns, subsequent studies of the core reasons for the financial problems were conducted at the time by OSC, the Office of Management and Productivity (OMAP) and the Council on Children and Families (Council). OSC found that the delays in contract development and processing were continuing to cause problems. In a sample of three major State agencies, OSC found that over half of the contracts were not approved until at least three months after service was delivered.<sup>1</sup>

In 1987, OMAP and the Council looked at the interaction between residential child care providers and the various State agencies operating child care programs. Key findings included service duplication and a general lack of coordination among the State agencies as they interacted with NFPs. These issues also resulted in cash flow problems, and an excessive amount of administrative expenditure on the part of both the providers and the State, which the report's authors concluded could be better used in providing client services.

During the same year, Comptroller Edward V. Regan wrote to Governor Mario M. Cuomo and proposed a joint effort to respond to the issue of delayed contracts and payments. OMAP was directed to work with OSC staff to study the problem and recommend remedial action.<sup>2</sup> Over the next couple of years, The Task Force on Contracting with the Nonprofit Sector, which was born of this collaboration, developed and implemented tools still in place today, including: standardized contract language; simplified renewal of contracts; multiyear contracts; and bridge financing.

Conferences on State government contracting with the NFP sector, sponsored by the Governor and the Comptroller, and in cooperation with umbrella NFP organizations, were held statewide to determine ways to streamline the State contract process, assess the progress made towards the goal, and obtain NFP

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<sup>1</sup> *Cash Flow Problems of Not-For-Profit-Organizations*, Bureau of Management Audit, Office of the State Comptroller, October 1986.

<sup>2</sup> David A. Grossman, *Paying Nonprofits: Streamlining the New York State System* (The Nelson A. Rockefeller Institute of Government, 1992), 14.

feedback. These activities helped lead to the enactment of the 1991 Prompt Contracting Law. Many of the same efforts have been revitalized over the years, including the current Executive Grants Reform initiative, and testify to the significance of the problem for the State and the NFPs.

## **THE PROMPT CONTRACTING LAW**

The Prompt Contracting statute was enacted with this charge:

“To effect these goals and purposes, the legislature intends by this declaration of findings that *all state agencies* shall comply not only with the letter and specifics of this act but also with its broad intent and undertake an affirmative responsibility *to assure that all contracts are executed promptly, remedied in the event of problems, and that payments for services be rendered timely* with full and complete attention to the implications of derelictions to the provider community and to the persons in need of such services,” (emphasis added).

Comptroller Edward V. Regan wrote in a letter to the editor of *New York Newsday* on July 16, 1991:

“Why do we need a Prompt Contracting Law? Because for years, State agencies have taken advantage of the good intentions of the nonprofits, promising them contracts while asking them to continue delivering foster care, day care, meals for the elderly and other services. But without a contract, no State money flows. As a result, many nonprofits have had terrible cash flow shortfalls, missed payrolls and been forced to borrow at high interest rates. Now this dreadful situation will change.”

Over the years, changes have been made to refine the law and address specific challenges. Key provisions and amendments to the statute are summarized below.

### 1991 Prompt Contracting Law Enacted - Chapter 166 of the Laws of 1991

- Established time frames to ensure funds are made available for new and existing grant contracts soon after the appropriation of program funding.
- Required interest payments for late contracts to offset NFP costs to continue service delivery.
- Enabled agencies to authorize grantees to provide services prior to contract execution and protect them from working at risk (“written directives”).
- Allowed State agencies to suspend time frames to avoid interest payments due to unavoidable delays.
- Created cash flow advances and a revolving loan fund for NFPs.

### 1992 Amendment - Chapter 648 of the Laws of 1992

- Provided more reasonable time frames for processing certain local grant awards and federally funded contracts due to a delay in identifying the recipients or in receiving funds.
- Enabled State agencies and NFPs to agree under certain circumstances to waive interest payments.
- Limited the amount of time any one agency may suspend the legal time frames to prevent needless delays.

### 2007 Amendment - Chapter 292 of the Laws of 2007

- To protect NFPs, required OSC to approve State agency interest waivers and prohibited mandatory interest waivers. Provided that contracts continue, unless an NFP is timely notified of termination.
- Required OSC to prepare an annual report of prompt contracting performance.

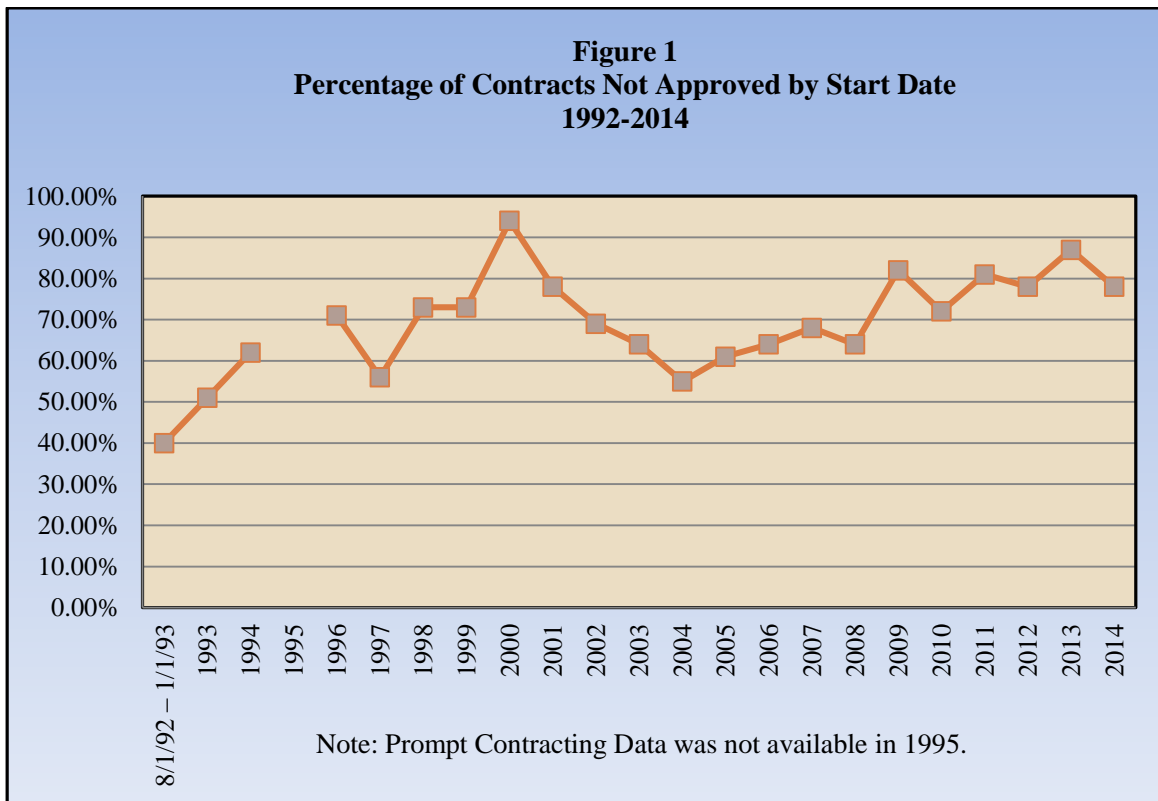


2009 Amendment - Chapter 232 of the Laws of 2009

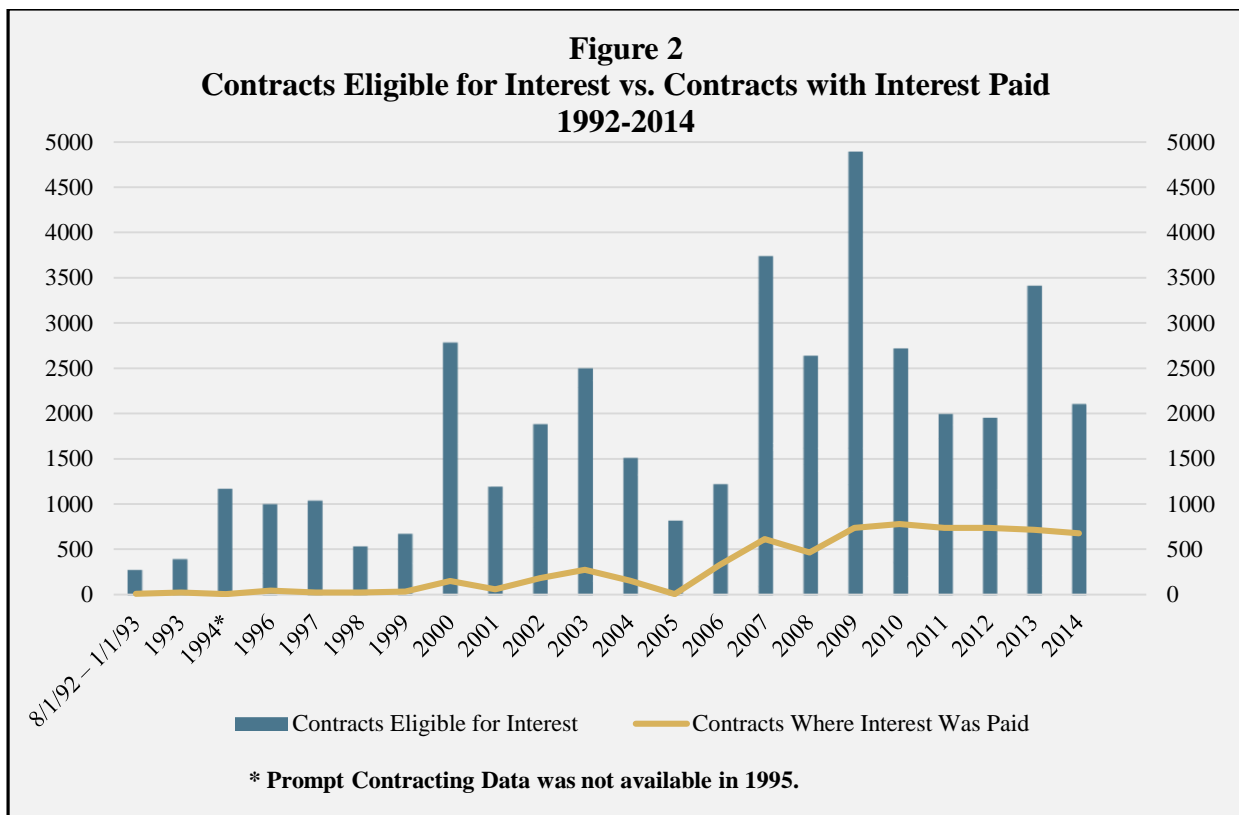
- Provisions of the law that would have expired in 2009 were made permanent (OSC determination that waivers are warranted and that “unusual circumstances” prevented a State agency from providing timely notifications to NFPs).

**HISTORICAL IMPACT OF THE LAW**

The Prompt Contracting Law and subsequent actions were intended to improve timeliness of contracting and reduce the financial burden on NFPs. However, a review of all grant contracts approved between the law’s implementation and the latest reporting period (1992-2014) reveals that nearly 70 percent of the grant contracts were executed late, as reported by State agencies. Out of 144,095 grant contracts executed between 1992 and 2014, 99,453 grant contracts were executed after the start date. (See Figure 1.)



Additionally, during the same period, State agencies reported that interest was paid on approximately 13 percent of contracts that were identified as potentially eligible for interest. Of the 31,008 grant contracts that State agencies designated as potentially interest-eligible during this period, interest was only paid on 3,892. (See Figure 2.)



## IMPACT OF THE LAW AS OF 2015

Recent discussions with NFP leaders in the Human Services and Environmental sectors indicate that despite the implementation of prompt contracting legislation, the circumstances have not changed significantly in more than two decades. NFPs advise that they frequently receive an executed agreement after the contract start date, and contract processes vary from State agency to State agency despite efforts to standardize approaches. The lack of standardization continues to make it difficult for NFPs that contract with more than one State agency. NFPs also advise that to continue services without a contract, they must either pay for costs from reserves or from existing lines of credit. None have used the revolving loan fund, citing among other barriers the difficult application process for amounts that are not significant and which are limited to a small portion of an annual budget.

In addition to problems directly related to prompt contracting, NFPs also noted there is a greater administrative cost and burden to manage multiple State agency agreements, including differing processes, different reimbursement practices, varying audit requirements, dissimilar ways of constructing budgets, and diverse ways of managing cost-of-living adjustments.

The law was formulated through a partnership among a wide range of stakeholders who understood the intricacies of the procurement process and the needs of both the government and the NFP community. The approaches and tools to manage late contracts and payments that were developed and implemented more than two decades ago remain as relevant today as they were then – master contracts, advance payments,

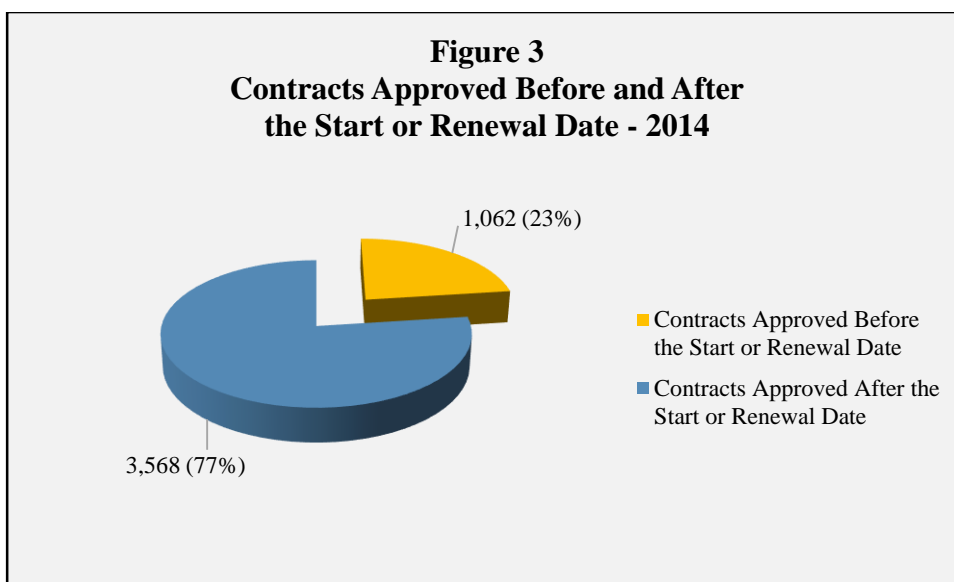
written directives, and others. Partner NFPs remain committed to providing continuous critical services, yet they face the same financial challenges of supporting costs while waiting for contracts to be finalized. It is important for both the State and the NFP community to use the tools available to improve contracting and support sustainable cash flow for service providers. The data indicate that, despite the availability of tools to remedy late contracting and significant efforts to raise concerns about the impact on NFPs, chronic lateness continues to be tolerated.

Recent efforts to reform the process through better use of standardized contracts and procedures, as well as a technological platform for communication and contract processing, are significant and positive. Moving forward, there is reason to be optimistic. The Grants Gateway employs workload management tools, electronic contract document transmission, a repository for electronic files, and e-signatures. These will allow all parties involved in the procurement process to better monitor compliance with the statutory time frames, manage workloads, communicate faster and identify when bridge funding should be considered. But technology alone is not the entire answer; the sustained commitment of every contracting State agency is needed to ensure timely contracting and prevent another false start in process improvement.

## II. Summary of Data Reported by State Agencies

Reports were submitted to OSC from all 30 State agencies contracting with NFPs during January 2, 2014 and January 1, 2015 (*refer to Appendix A*).

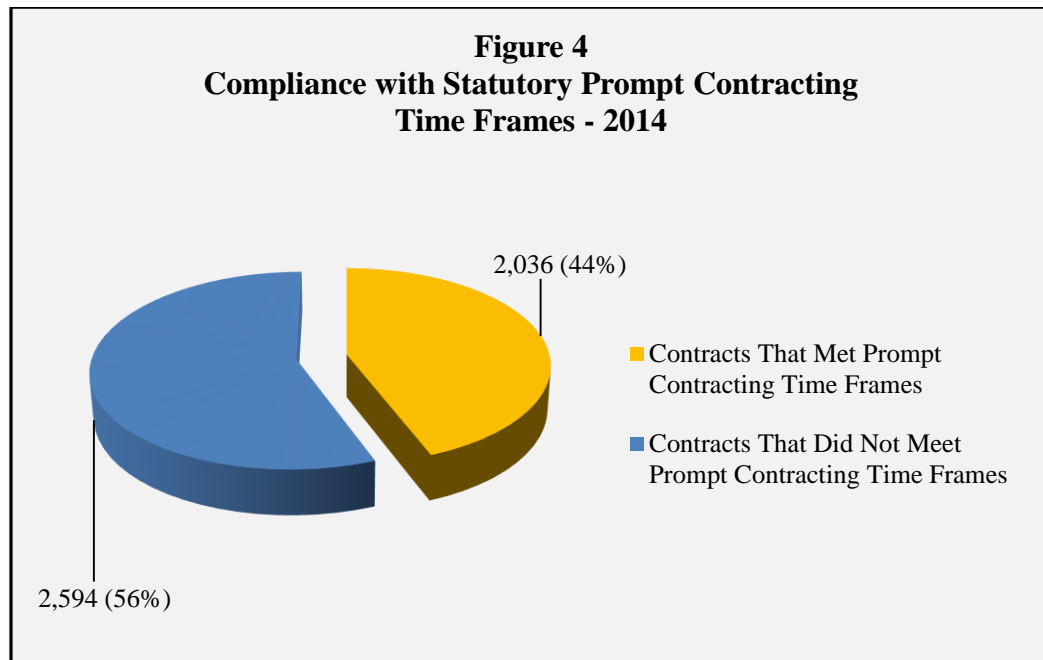
- State agencies reported that 4,630 new and renewal contracts with NFP providers, associated with 181 programs, were subject to the Prompt Contracting Law - Article XI-B of the State Finance Law.
- State agency contracts were approved before the start or renewal date for 1,062 contracts (23 percent), including 762 new and 300 renewal contracts.
- State agency contracts were not approved before the start or renewal date for 3,568 contracts (77 percent), including 2,707 new and 861 renewal contracts. (*See Figure 3.*)



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 2,036 contracts (44 percent).
- State agencies did not meet prompt contracting time frames for 2,594 contracts (56 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 4.)



Of the 3,568 late contracts reported by State agencies, 1,460 (41 percent) were reported as not eligible for interest payments. The remaining 2,108 contracts were reported as potentially eligible with 676 found to be eligible for interest.

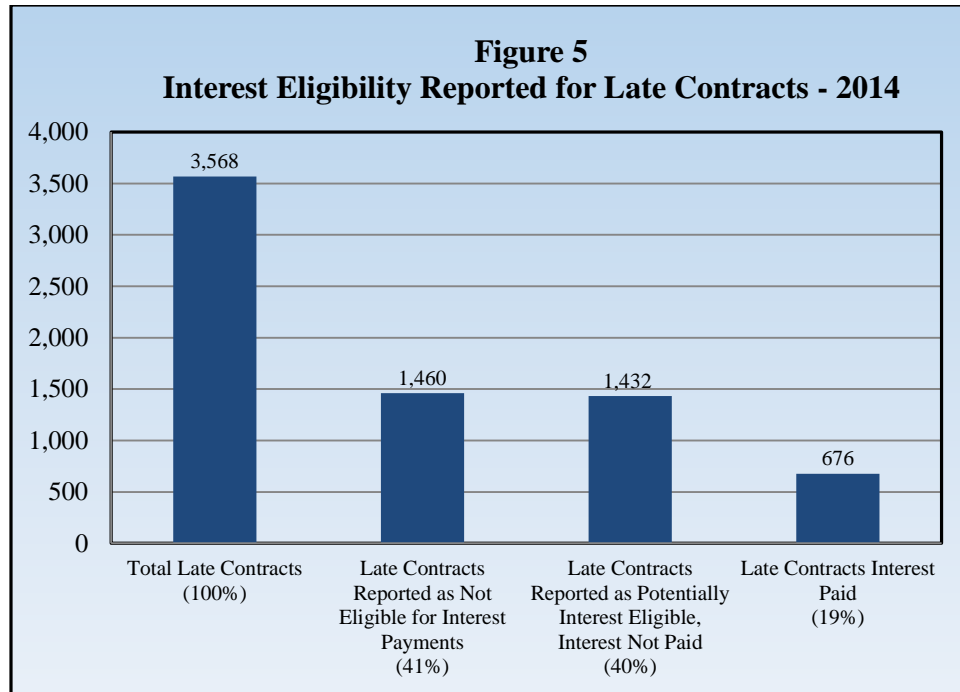
Seven State agencies paid interest totaling \$195,663 on 676 contracts eligible for interest—an increase of over \$10,000 from the prior year. In addition, of the total grant contracts eligible for interest, the percentage of contracts for which interest was paid increased from 21 percent in 2013 to 32 percent in 2014. Three State agencies account for nearly the entire amount:

- The Department of Health (DOH) accounted for \$136,076 of the interest paid (70 percent);
- The Office of Children and Family Services (OCFS) accounted for \$30,648 (16 percent); and
- The State Education Department (SED) accounted for \$23,746 (12 percent).

Four other State agencies together paid a total of \$5,193. No interest payments were made for the remaining 1,432 (68 percent) of the 2,108 late contracts reported as potentially eligible for interest.

For contracts with start dates in 2014 that are not executed until 2015, State agencies would not calculate or make interest payments within the reporting period (1/2/14 –1/1/15), thus these interest payments could go unreported.

Figure 5 below summarizes interest eligibility as reported on contracts approved after the start or renewal date (late contracts) in 2014.



State agencies reported various reasons why program contracts were approved after the start or renewal dates. The three most frequent – “Agency processing delays due to internal or external circumstances,” “Contract documents not returned by NFPs in a timely manner,” and “Other” – accounted for 94 percent of the total responses. The “Other” category included: Delays caused by first time use of Grants Gateway application submission and evaluation, and delays in notice of federal award.

Figure 6 below summarizes the explanations for late contracting reported by State agencies in 2014.

Percentage	Explanation
59%	Agency processing delays due to internal or external circumstances.
21%	Contract documents not returned by NFPs in a timely manner.
14%	Other. Various explanations provided.
6%	Prompt Contracting Law time frame requirements do not provide adequate time for agency procurement process.

Figure 7 provides a six -year comparison of prompt contracting data.

<p align="center"><b>Figure 7</b>  <b>Six -Year Comparison of Prompt Contracting Data as Reported by State Agencies</b>                      January 2, 2009 – January 1, 2015</p>						
			<p align="center">Contracts Not Approved by the Start or Renewal Date</p>			
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
2009	9,413	1,665 (18%)	7,685 (82%)	4,882	736	\$176,034
2010	5,578	1,617 (29%)	3,961 (71%)	2,719	780	\$215,583
2011	3,815	755 (20%)	3,060 (80%)	1,996	736	\$195,136
2012	4,134	928 (22%)	3,206 (78%)	1,953	735	\$237,538
2013	5,946	784 (13%)	5,162 (87%)	3,409	716	\$185,519
2014	4,630	1,062 (23%)	3,568 (77%)	2,108	676	\$195,663

Annual variation in the total number of grant contracts depends on factors including the anticipated renewal of multiyear contracts and agency budgets. However, the number of contracts where interest was paid has remained relatively stable.

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

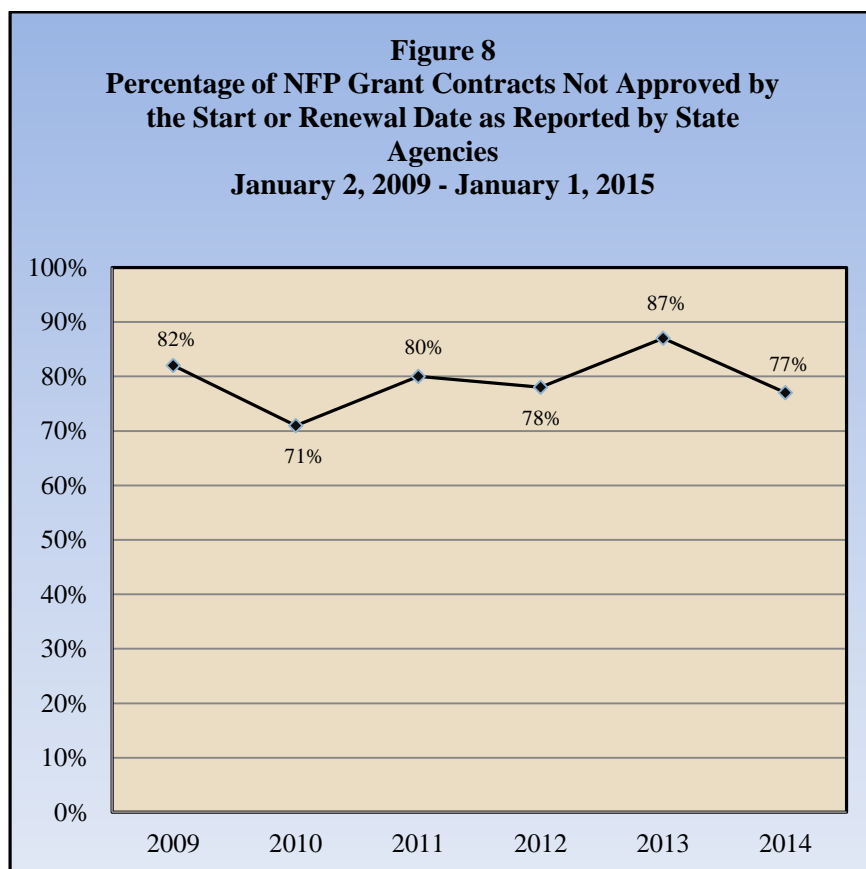
The following analysis is based on the data provided by State agencies for 2014.

## ➤ Late Contracting

Although the overall results have improved, State agencies continue to have difficulty meeting the established time frames. In 2014, State agencies reported that 77 percent of grant contracts with NFPs were not approved by the start or renewal date. This compares with 87 percent as reported in 2013.

Reasons cited by State agencies for late contracting in 2014 include: agency processing delays due to internal or external circumstances; contract documents not returned by NFPs in a timely manner; and others, such as delays caused by the first time use of Grants Gateway application submission and evaluation; and delays in notice of federal award.

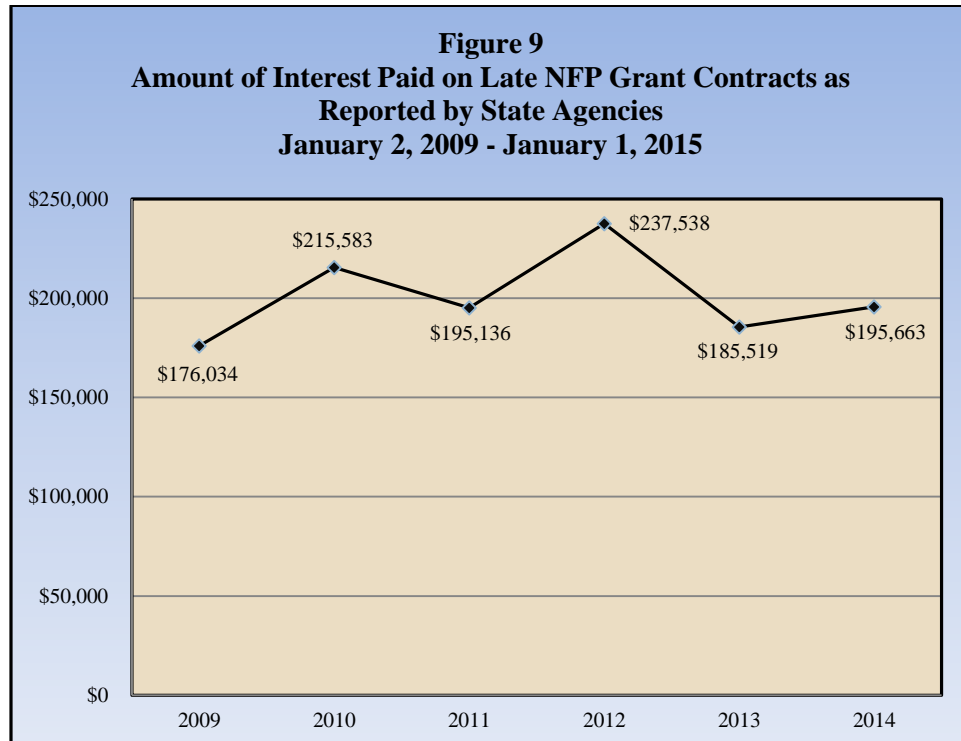
As illustrated in *Figure 8*, the percentage of late contracts since 2009 has remained relatively stable.



## ➤ Interest Payments

The number of contracts on which interest was paid in 2014 decreased slightly from 2013, but the amount paid increased by 5 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 Statewide Financial System (SFS).

Figure 9 summarizes the amount of interest paid on late NFP grant contracts. Over the six-year period (2009-2014), the amount of interest paid on late contracts ranged from approximately \$176,000 to nearly \$238,000. In 2014, State agencies paid prompt contracting interest on 32 percent of the late contracts identified as potentially eligible for interest.



➤ **Waivers of Interest**

State agencies may be allowed to waive interest with OSC approval, 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.

During the 2014 report period, OSC reviewed waivers to determine whether each waiver of interest submitted by a State agency was warranted. The data reflects an increase in the number of waivers of interest issued by State agencies and submitted to OSC for review as compared to 2013. Of the 57 waivers of interest submitted in 2014, only 19 waivers (33 percent) were determined by OSC to be warranted with no interest due. The remaining 38 waivers (67 percent) were determined to be unwarranted. By comparison, 91 percent of the 23 waivers submitted were found to be warranted in the 2013 period.

OSC will continue to educate State agencies on the requirements for justifying a waiver of interest.



## IV. 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 Data Reported by State Agencies to OSC Data

Although not required to do so under Article XI-B of the State Finance Law, OSC independently collected data on the number of grant contracts pre-audited by the OSC Bureau of Contracts for the period from January 2, 2014 to January 1, 2015. 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 Figures 10 and 11 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 2014*, 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 2014; however, the contract start dates may not fall within 2014. For 2014, OSC approved 3,250 grant contracts, while State agencies reported a total of 4,630 grant contracts.

<b>Figure 10</b> <b>Number of Contracts Approved by OSC Bureau of Contracts</b> <b>Subject to the Prompt Contracting Law</b> <b>January 2, 2014 – January 1, 2015</b>			
	Total Contracts	New Contracts	Renewal Contracts
Total Approved	3,250	1,861	1,389
Approved Before Start Date	268	22	246
Approved After Start Date	2,982	1,839	1,143

Of the 3,250 NFP grant contracts submitted to OSC for approval, 2,982 or 92 percent were approved after their start or renewal date and were consequently late. This compares with 77 percent late for the 4,630 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 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.

In 2014, OSC received an 18 percent increase in the number of unwarranted waivers.

<b>Figure 11 Waivers of Interest January 2, 2014 – January 1, 2015</b>	
Total NFP grant contracts received with waivers	57
Unwarranted waivers	38
Warranted waivers	19

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

Throughout his administration, Comptroller DiNapoli has helped raise awareness of the important role of NFPs as partners in the delivery of critical services to those in need across New York. The Comptroller 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 2009 and 2010, Comptroller DiNapoli conducted a series of discussions with NFP leaders throughout New York State. These discussions focused on the challenges faced by NFP organizations in the context of the national recession, including increased demand for services, government funding cutbacks, and declines in charitable donations.

As a result of these meetings, OSC released a report in 2010 entitled, *New York State's Not-for-Profit Sector*, which analyzed the tremendous economic impact NFPs have on our State and local economies. ([www.osc.state.ny.us/reports/economic/nfp2010.pdf](http://www.osc.state.ny.us/reports/economic/nfp2010.pdf))

OSC subsequently released a follow-up report in 2011, *Delayed State Contracts and Payments Hurt Service Providers*, which highlighted ongoing problems with the State's contracting and payments process. The report contained a series of recommended reforms to the way in which New York State does business with its NFP partners. ([www.osc.state.ny.us/press/releases/nov11/111411.htm](http://www.osc.state.ny.us/press/releases/nov11/111411.htm))

In 2012, OSC implemented a fraud detection and prevention training program designed for accountants, directors, board members, and staff of NFPs. The *Don't Get Burned* program has been presented at forums in every region of the State. To date, more than 3,000 NFP leaders

and accountants have taken advantage of the training, and additional sessions are planned for 2015. 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 and 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 New York City Council Delegation from Brooklyn and the New York State Society of Certified Public Accountants, 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 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 these organizations can put the money to good use serving their clients. Currently 54 NFPs have claims in progress with OSC.

The OSC NFP Contracts Liaison and the NFP Community Liaison continue to assist with issues, problems, and inquiries. To date, they have fielded numerous calls, emails, and inquiries and assisted hundreds of NFP organizations.

### ➤ **OSC Technical and Other Assistance for State Agencies**

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

- OSC's outreach and technical assistance activities include informal training sessions, conference calls, correspondence and a grants newsletter, *The Procurement Record*, which contains current information regarding the grant contract process for State agencies.
- During the past year, OSC partnered with DOB to assist State agencies in resolving initial prequalification and application issues associated with the Grants Gateway. The Gateway streamlined the grants process by allowing grant applications to be accepted electronically and implementing an electronic evaluation and award process.
- OSC also collaborated with DOB to accept grant contracts from State agencies electronically through the Gateway. 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. OSC received the first electronic grant contract on March 13, 2015.
- OSC assisted State agencies in applying strategies to reduce delays in contract execution, such as adjusting contract start and end dates to align with internal business processes or to move away from the beginning of the State fiscal year. For example, the Council on the

Arts (Arts) consulted with OSC in order to realign the contract term for various programs to utilize multiyear contracting. This resulted in fewer contract transactions and less prompt contracting interest liability. In 2013, 100 percent of Arts 1,848 contracts were late. In 2014, of Arts 665 contracts, 140 (21 percent) were late.

### ➤ **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 and eight ex officio members. Of the appointed members, four who represent NFP organizations providing services in the State are appointed by the Governor, and two each are appointed by the Governor upon recommendation of the Majority Leader of the Senate and the Speaker of the Assembly. The eight ex officio members of the committee, include one each designated from DOB, OAG, OSC, and SED, as well as four designated by the Governor from among the following agencies: the Department of State (DOS); the Office of Temporary and Disability Assistance (OTDA); the Office of Mental Health; the Office of People with Developmental Disabilities; the Department of Labor (DOL); 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 reports to the Governor and the Legislature with recommendations on improving the procedures for contracting with NFP organizations.

During 2014, the Committee considered many matters, including Grants Gateway prequalification; Grants Reform; indirect costs; Executive Order 38 - NFP Executive Compensation; cross-agency assessment of program reviews and financial audits; and the Nonprofit Revitalization Act.

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

*OSC data shows that for all grant contracts executed in 2014 that were subject to OSC review, 92 percent were executed past the start date. Approximately 77 percent of all State agency-reported contracts were late. Although efforts are ongoing to streamline grant processing, we have not yet seen the impacts on processing times.*

2. State agencies should pay prompt contracting interest with the first payment when interest is due.

*In 2014, the Legislature passed a bill requiring State agencies to pay prompt contracting interest with the first payment due after the start of a late contract (A.8964 (Englebright) and S.6482 (DeFrancisco)). Although the payment of prompt contracting interest continues to be an issue, the bill was vetoed with the argument that resources would be better directed to streamlining the contract process. While there is no doubt that the process improvements will bring results, NFPs bear significant fiscal burdens as a consequence of late contracting.*

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.

*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. Additionally, NFP leaders continue to identify inefficiencies and duplication in grant procurement processes. Notably, despite the new Grants Gateway document vault, the web-based system for storing business documents, NFPs continue to be asked for duplicate copies as well as additional documents not contained in the vault. These requests contribute to contracting delays.*

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.

*The Grants Gateway provides significant workload management tools to manage State agency and NFP progress toward the goal of prompt contracting. At this time five State agencies are using this functionality, with that number expected to grow substantially over the coming year.*

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.

*The Executive implemented a new policy that allows NFPs that proactively update their document vaults with current information and reports prior to expiration to remain prequalified, while NFPs that allow their documentation to expire will continue to lose their prequalification status.*

## **VI. Prompt Contracting Annual Report Recommendations for 2015**

1. State agencies need to make prompt contracting a priority. This remains the single most important action to achieve prompt contracting and reduce costs to the State and to NFPs. Adequate resources and the attention and accountability of State agency leadership are needed.
2. Once fully operational, the Grants Gateway should report quarterly on timeliness of prompt contracting and the amount of interest paid on late contracts.

3. Prompt contracting interest should be automatically calculated and assessed to ensure that the NFPs receive what is required by law.
4. State agencies should ensure they are taking full advantage of the tools available pursuant to the Prompt Contracting Law, including written directives, suspension notifications, bridge funding to include advances, and fifth quarter funding facilitated by Grants Gateway functionality.
5. The State should develop a mechanism to provide bridge funding when moneys have been appropriated and allocated for new contracts but the contracts are still pending. Similar to a written directive used with contract renewals, this would be an abbreviated agreement approved by the State agency and OSC. It would provide partial advance funding for services to begin. In the event a contract is not finalized, the grantee would repay any unused funds. The 1991 Law anticipated the need for such a mechanism.
6. Universal standards should be developed across State agencies for grant procurement and contracting. Although the intent of the document vault is to provide a centralized repository and the Master Grant Contract is intended to provide consistent language, there are indications that some State agencies continue to add their own unique requirements. These inconsistencies further encourage delays in contract processing.

# Appendix A

## Table 1

Information Provided by State Agencies for the Prompt Contracting Annual Report  
Calendar Year 2014 - 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	113	113	0	110
Agriculture & Markets, Department of	39	38	1	39
Alcoholism & Substance Abuse Services, Office of	156	156	0	155
Arts, Council on the	665	665	0	140
Children & Family Services, Office of	1160	870	290	946
City University of New York	2	2	0	0
Corrections and Community Supervision, Department of	7	5	2	7
Criminal Justice Services, Division of	178	178	0	65
Economic Development, Department of	32	22	10	32
Education, Department of	190	103	87	112
Environmental Conservation, Department of	26	26	0	26
General Services, Office of**	24	24	0	24
Health, Department of	525	204	321	523
Higher Education Services Corporation	29	29	0	23
Homeland Security and Emergency Services, Office of	87	87	0	87
Housing & Community Renewal, Division of	59	59	0	59
Interest on Lawyer Account Fund	0	0	0	0
Justice Center for the Protection of People with Special Needs	0	0	0	0
Labor, Department of	104	104	0	82
Mental Health, Office of	415	57	358	349
Motor Vehicles, Department of	54	54	0	34
Parks, Recreation and Historic Preservation, Office of	89	89	0	89
People With Developmental Disabilities, Office for	272	222	50	268
Prevention of Domestic Violence, Office for the	1	1	0	1
Public Service, Department of	0	0	0	0
State, Department of	49	9	40	49
State University of New York Administration	10	9	1	9
Temporary & Disability Assistance, Office of	115	115	0	112
Transportation, Department of	49	48	1	49
Victim Services, Office of	180	180	0	178
<b>TOTALS:</b>	<b>4,630</b>	<b>3,469</b>	<b>1,161</b>	<b>3,568</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, and the Office of Veterans Affairs.

# Appendix A

## Table 2

Information Provided by State Agencies for the Prompt Contracting Annual Report  
Calendar Year 2014 - 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* (Total)
Children & Family Services, Office of	1160	870	290	946 (82%)
Health, Department of	525	204	321	523 (99%)
Mental Health, Office of	415	57	358	349 (84%)
People With Developmental Disabilities, Office for	272	222	50	268 (99%)
Victim Services, Office of	180	180	0	178 (99%)
Alcoholism & Substance Abuse Services, Office of	156	156	0	155 (99%)
Arts, Council on the	665	665	0	140 (21%)
Education, Department of	190	103	87	112 (59%)
Temporary & Disability Assistance, Office of	115	115	0	112 (97%)
Aging, Office for the	113	113	0	110 (97%)
Parks, Recreation and Historic Preservation, Office of	89	89	0	89 (100%)
Homeland Security and Emergency Services, Office of	87	87	0	87 (100%)
Labor, Department of	104	104	0	82 (79%)
Criminal Justice Services, Division of	178	178	0	65 (37%)
Housing & Community Renewal, Division of	59	59	0	59 (100%)
State, Department of	49	9	40	49 (100%)
Transportation, Department of	49	48	1	49 (100%)
Agriculture & Markets, Department of	39	38	1	39 (100%)
Motor Vehicles, Department of	54	54	0	34 (63%)
Economic Development, Department of	32	22	10	32 (100%)
Environmental Conservation, Department of	26	26	0	26 (100%)
General Services, Office of**	24	24	0	24 (100%)
Higher Education Services Corporation	29	29	0	23 (79%)
State University of New York Administration	10	9	1	9 (90%)
Corrections and Community Supervision, Department of	7	5	2	7 (100%)
Prevention of Domestic Violence, Office for the	1	1	0	1 (100%)
City University of New York	2	2	0	0
Justice Center for the Protection of People with Special Needs	0	0	0	0
Interest on Lawyer Account Fund	0	0	0	0
Public Service, Department of	0	0	0	0
<b>TOTALS:</b>	<b>4,630</b>	<b>3,469</b>	<b>1,161</b>	<b>3,568 (77%)</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, and the Office of Veterans Affairs.



## **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, 2015 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, 2014 through January 1, 2015**

**Due Date: March 31, 2015**

**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, 2014 through January 1, 2015, and are subject to the Prompt Contracting Law which excludes capital funded projects and contracts executed through the use of a single or sole source (see SFL, Article XI-B, Section 179-q).
- Column 3** Enter by Grant Program, the total number of new and renewal NFP contracts that did not meet legislated time frames (150 days from the enacted appropriation for noncompetitive contracts, 150 days for 100 percent federally funded contracts from the date that the State agency receives the notice of federal grant award and 180 days for competitive program contracts).<sup>3</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>3</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 that are potentially interest-eligible (contracts that were not executed before the start date and any missed payment was made more than 30 days after it was due).
- Column 10** Enter by Grant Program, only the number of potentially interest - eligible (Column 9) NFP contracts for which interest was paid.
- Column 11** Enter by Grant Program, the total dollar amount of paid interest for NFP contracts noted in Column 10.

**OFFICE OF THE STATE COMPTROLLER**

**Prompt Contracting Worksheet for Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/14 - 1/1/15**  
**\*\*\*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, 2015**

**AGENCY:**

1	CONTRACT DATA								LATE CONTRACTING REASONS & DATA			INTEREST DATA		
	2		3		4		5		6	7	8	9	10	11
Grant Program	Total NFP Grant Contracts		Total NFP Grant Contracts That <u>Did Not Meet</u> Legislated Time frames		Total NFP Grant Contracts That <u>Met Legislated</u> Time frames And <u>Were Not Approved by the Contract Start or Renewal Dates</u>		Total NFP Grant Contracts That <u>Did Not Meet</u> Legislated Time frames And <u>Were Not Approved by the Contract Start or Renewal Dates</u>		Primary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates	Number of Late Contracts Associated With Primary Reason	If "Other" was Selected as the Primary Reason Why NFP Grant Contracts Were Not Approved by the Contract Start or Renewal Dates, Fill in the "Other" Reason	Number of NFP Grant Contracts Potentially Interest Eligible	Number of NFP Grant Contracts Where Interest Was Paid	Total Amount of Interest Paid
	New	Renewal	New	Renewal	New	Renewal	New	Renewal						

**Prompt Contracting Reporting Instructions Covering Not-For-Profit (NFP)  
Legislative Initiative Contracts with Start Dates of  
January 2, 2014 through January 1, 2015**

**Due Date: March 31, 2015**

**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, 2014 through January 1, 2015 and are subject to the Prompt Contracting Law. **Note: NFP Legislative Initiative Grant contracts are not renewable.**
- Column 2** Enter the total number of NFP Legislative Initiative Grant contracts that did not meet the legislated time frame, 150 days from the date the State agency received legislative notification of award.<sup>4</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 by 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>4</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 that are potentially interest-eligible (contracts that were not executed before the start date and any missed payment was made more than 30 days after it was due).
- Column 9** Enter the number of potentially interest-eligible NFP Legislative Initiative Grant contracts (Column 8) for which interest *was* paid.
- Column 10** Enter the total dollar amount of paid interest for the NFP Legislative Initiative Grant contracts noted in Column 9.

**OFFICE OF THE STATE COMPTROLLER**

**Prompt Contracting Worksheet for Legislative Initiative Grant Contracts with Not-For-Profits (NFPs) With Start Dates Within 1/2/14 - 1/1/15  
 \*\*\*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, 2015**

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

## Prompt Contracting Law Time Frame and Reporting Requirements

### 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 12-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 DOB, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.