2020 Calendar Year

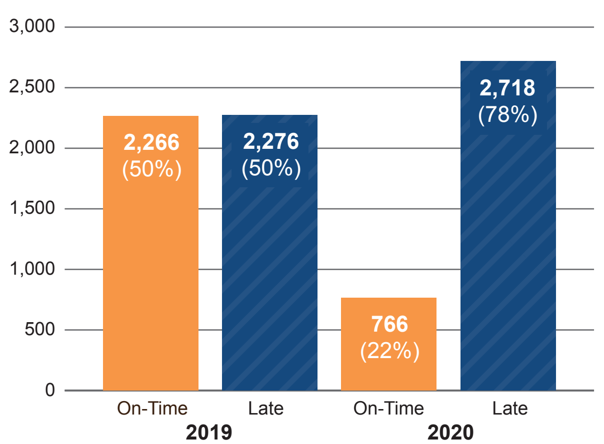
Not-For-Profit Prompt Contracting Annual Report

Message from the Comptroller

New York's nonprofit sector has long been a critical component of our State's economic and social fabric. As New York grappled with the extraordinary health, social and economic effects of the COVID-19 pandemic, we counted on the support of our Not-for-Profit (NFP) community more than ever. New York's NFP sector provides a broad range of assistance, including essential services such as health care, care for the disabled, education and homeless services — programs that could not be put on hold because of the pandemic.

New York's NFPs are not only key to the delivery of essential services, they also support our State and local economies by providing jobs in communities across the State and by enabling others to work because of the availability of services they provide. A July 2019 report on nonprofit employment by my office found that NFPs designated as 501(c)(3) organizations provided over 1.4 million jobs and accounted for nearly 18 percent of private employment in New York as of 2017 (the latest data available). Unfortunately, this sector was one that has been hit especially hard during the pandemic.

Late Contracts and On-Time Contracts
2019 & 2020



Many of our NFP organizations who were struggling before the pandemic saw their hardships intensified over this past year as they experienced financial setbacks, with a surge in demand for services while shouldering significant unexpected expenses just to keep their doors open. At the same time, they faced tremendous uncertainty about the level of funding that could be expected from the State.

Progress under New York's Prompt Contracting Law, which was enacted to help expedite contracts and reduce the fiscal stress on NFPs, also continues to fall far short of success. In 2019, after several years of decline, we saw the overall percentage of late State agency contracts with NFPs increase. This troubling development pre-COVID-19 was further exacerbated by the pandemic. In 2020, the percentage of reported late contracts spiked sharply, with 78 percent of contracts late compared with 50 percent in 2019 (agency-specific data and other information supporting this annual report can be found at the links contained in the Additional Information box at the end of this report). One factor that may partially explain this dramatic rise is the issuance of a gubernatorial executive order (EO 202) in 2020 that, among other things, suspended or modified the provisions of the Prompt Contracting Law to the extent necessary to respond to the direct and indirect economic, financial and social effects of the COVID-19 pandemic.

State agencies have also faced unprecedented fiscal, logistical and technical challenges over the past year, some of which may persist as the State continues to recover. The NFP community must be a priority so that all New Yorkers can recover from these challenging times and thrive. As we work to restart our State and regional economies, New York must do everything it can to continue to support and stabilize our NFP community.

Background and Summary of Findings

The Prompt Contracting Law was enacted in 1991 (State Finance Law, Article 11-B) to help expedite contracts and reduce the fiscal stress on NFPs. The law was strengthened in 2007 to further address contracting delays, including by requiring this annual report on State agency performance. Findings in this report include:

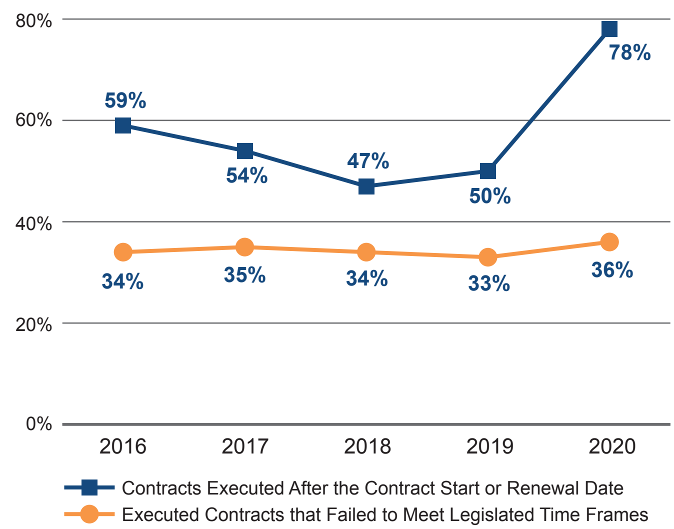
- **Late Contracts:** Of the total contracts reported by State agencies in 2020, 78 percent were processed after their start or renewal dates, the highest percentage since 2013 when the figure was 87 percent.
  - For the second year in a row, the overall number and percentage of late contracts increased and over a third of all reporting agencies processed 87 percent or more of their NFP contracts after the start or due date.
- **Legislated Time Frames:** State agencies are required to execute grant contracts with NFPs and to obtain the Office of the Attorney General (OAG) and OSC approval, if required, within specific time frames. State agencies met legislated time frames for 64 percent of reported contracts, a decline from 67 percent in 2019.
- **Interest Paid:** Interest payments are required to be made to NFPs in certain instances when contract payments are missed due to a late contract. For a variety of factors, trends in reported interest paid are difficult to assess. Further, a decline in reported interest paid does not necessarily indicate an improvement in timely contract payments being made. In 2020, 74 percent of late contracts were reported as potentially interest-eligible yet only one State agency paid interest totaling $73 on two contracts eligible for interest. This is a decrease in interest paid from 2019 when 53 percent of late contracts were potentially interest-eligible and six State agencies paid over $48,700.

Late State Agency Grant Contracts

Reports submitted by 27 State agencies showed that 3,484 new and renewal contracts with NFP providers, associated with 144 programs, were subject to the Prompt Contracting Law in 2020.

Of the total contracts, 2,718 (78 percent) were processed after their start or renewal dates. This puts NFPs in the untenable position of having to decide whether to continue providing essential services at-risk — with no assurances that they will be paid — or to disrupt the provision of services to those in need. These figures reflect a significant increase from 2019, when 50 percent were reported late, and are also the highest percentage since 2013, when 87 percent of contracts were late (see the Prompt Contracting Ten-Year Trending Chart at the link in Additional Information).

Percentage of Late NFP Grant Contracts
2016–2020



Of the 766 State agency contracts approved on time, 670 were new contracts and 96 were renewals. Of the 2,718 not approved before their start or renewal date, 2,415 were new and 303 were renewals.

State agencies reported that 69 percent of their late contracts in 2020 were the result of COVID-19 or EO 202. Going forward, as the State continues to recover from the effects of the pandemic, it is incumbent upon State agencies to do what is needed to achieve significant improvement in prompt contracting results.

The law outlines other required prompt contracting time frames: 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 by the OAG and OSC.

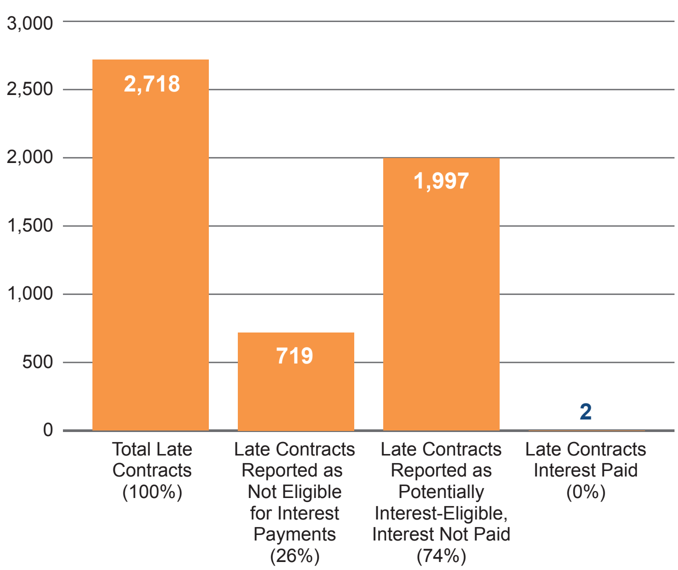
In 2020, State agencies reported that they met these legislated time frames for 2,216 contracts (64 percent), including 2,144 new and 72 renewal contracts. The remaining 1,268 contracts (36 percent), including 941 new and 327 renewals, failed to meet the legislated time frames. These results worsened slightly when compared to those in 2018 and 2019, when State agencies met the legislated time frames for 66 percent and 67 percent of the contracts reported.

Interest-Eligible Contracts

State agencies reported that 1,999 contracts were potentially eligible for interest for late payments in 2020, an increase from last year, when 1,387 were eligible for interest.

Of late contracts in 2020, 1,997 were reported as potentially interest-eligible with no interest paid, while two were paid prompt contracting interest. The remaining 719 were reported as not eligible for interest payment.

Interest Eligibility Reported for Late Contracts
2020



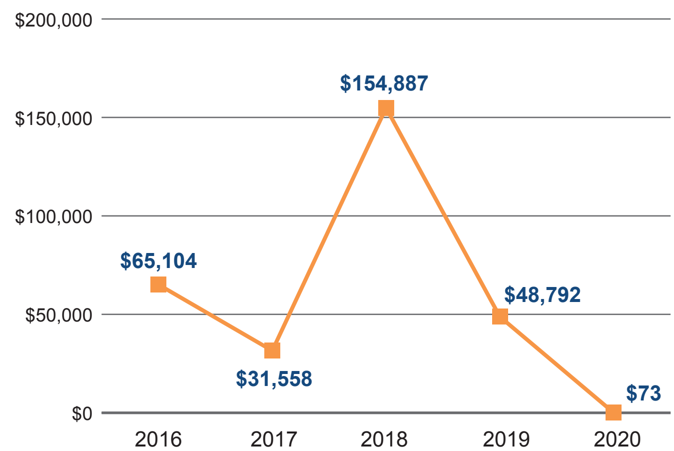
Percentage amounts are rounded to the nearest percent. The actual percentage for Late Contracts Interest Paid is less than .001 percent.

Interest Paid

The Prompt Contracting Law requires interest payments to NFPs in certain instances when contract payments are late due to untimely processing of contracts. Such payments are designed to offset additional costs incurred by NFPs due to untimely processing of contracts.

In 2020, while 74 percent of late contracts were potentially eligible for interest, only one State agency paid interest totaling $73 on two contracts eligible for interest. This is a decrease in interest paid from 2019 when 53 percent of contracts were potentially interest-eligible and six State agencies paid over $48,700.

Interest Paid on Late NFP Grant Contracts
2016–2020



No interest was paid during the reporting period for the remaining 1,997 late contracts reported as potentially eligible for interest. State agencies reported that COVID-19 or EO 202 accounted for 39 percent of the contracts where interest was not paid.

For contracts with start dates in 2020 that were not executed until 2021, State agencies did not calculate or make any interest payments within the reporting period, so any interest paid on these contracts would go unreported until 2021.

As we work to restart our State and regional economies, New York must do everything it can to continue to support and stabilize our NFP community.

Prompt Contracting Trends

The significant increase in late NFP contracts is clearly a concerning development. Yet prompt contracting interest trends remain difficult to assess, especially in this pandemic-impacted year. Over the five-year period from 2016 to 2020, the amount of interest paid on late contracts has ranged from a high of $154,887 in 2018 to a low of $73 in 2020. These interest figures, however, are not all-inclusive as they do not include interest paid after the annual report date, since agencies generally pay interest at the end of the State's fiscal year. In addition, certain provisions of EO 202 enabled agencies to suspend paying prompt contracting interest.

NFPs may need to borrow money while awaiting payments delayed due to late contracting, so any delay in receiving interest can cause financial hardship. The cost of having to borrow to maintain services or to keep the doors open is a direct hit to the borrowers' finances.

OSC Initiatives

In addition to promoting prompt contracting, OSC supports the NFP sector in a variety of ways. Since 2012, OSC has provided a fraud detection and prevention training program for accountants, directors, board members and staff of NFPs. More than 30 ***Don't Get Burned*** sessions have trained over 6,300 NFP leaders. Designed and taught by OSC auditors, the course gives NFPs the tools needed to better detect and prevent fraud, develop more effective internal controls and analyze risks. Returning unclaimed funds to NFPs is also a high priority, and outreach by OSC's NFP Community Liaison and other OSC staff to reconnect NFPs with accounts that have gone unclaimed lets organizations put this money to use serving their clients.

In response to the COVID-19 pandemic, OSC developed a "Financial Survival Toolkit" page on its website. The page provides trusted links and resources to assist New York residents, businesses and NFPs with a variety of issues— from unemployment to special government stimulus programs to financial and food assistance programs. OSC's NFP Contracts Liaison and the NFP Community Liaison are ready to assist with issues and inquiries and have helped hundreds of NFPs to date.

State Agency Efforts

In 2020, the Not-for-Profit Contracting Advisory Committee, established pursuant to Article 11-B of the State Finance Law, met only once and no progress was made in addressing late contracting. For the second year in a row, the overall number and percentage of late contracts increased, and over a third of all agencies processed 87 percent or more of their NFP contracts after the start or due date.

In June 2020, a new provision was added to gubernatorial EO 202 which suspended or modified the provisions of the Prompt Contracting Law (Article 11-B of the State Finance Law) to the extent necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic. This provision enabled State agencies to shift focus away from prompt contracting requirements and concentrate on addressing the immediate impacts stemming from COVID-19. This provision continues to be extended. As the State moves toward recovery and reopening, we shouldn't lose sight of the financial hardships endured by the NFP community during the past year. Allowing provisions of EO 202 referenced above to lapse could improve prompt contracting results.

2021 Prompt Contracting Recommendations

In order to improve prompt contracting results, OSC recommends:

- Allowing provisions of gubernatorial EO 2020 setting aside provisions of the Prompt Contracting Law creating a barrier to improving prompt contracting results and hindering State agencies' ability to make prompt contracting a priority, to lapse.
- Going forward, State agencies taking responsibility for their critical role and making prompt contracting a priority. This remains one of the most important actions in achieving on-time contracts. We have previously seen the benefits of this when certain State agencies made deliberate efforts to improve contracting time frames.
- The Not-for-Profit Contracting Advisory Committee meet regularly to hear from stakeholders and identify potential solutions to address new and continuing barriers to prompt contracting success.
- State agencies and NFPs increase their use of the State's grant management system and use tracking tools available to identify and address processing delays.
- State agencies pay any interest due with the first payment under a contract to help NFPs alleviate cash flow problems.

NFP Community

NFP organizations provide essential services across New York State. Many face financial challenges beyond contracting delays, such as tight cash flow, which have been further exacerbated by the impacts of the COVID-19 crisis. NFPs seeking relief are looking to the federal, State and local governments for support to help them deliver essential services. Sustained efforts are needed to improve the cash flow to New York's NFPs. Ensuring on-time contracts is critical to the success of the sector, and to maintaining the vital services NFPs provide to State residents.

Additional Information

Additional information and data supporting the 2020 Prompt Contracting Report is available at the following links:

- Contracting Information Provided by State Agencies (Alphabetical by Agency)
- Contracting Information Provided by State Agencies (Percentage of Late Contracts)
- Reporting Methodology (Worksheet) (Instructions)
- Background of the Prompt Contracting Law
- Prompt Contracting Ten-Year Trending Chart
- Nonprofit Organizations in New York State: Profile of Employment and Wages

As New York grappled with the extraordinary health, social and economic effects of the COVID-19 pandemic, we counted on the support of our Not-for-Profit (NFP) community more than ever.

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