



# 2021 Calendar Year Not-For-Profit Prompt Contracting Annual Report

## Message from the Comptroller

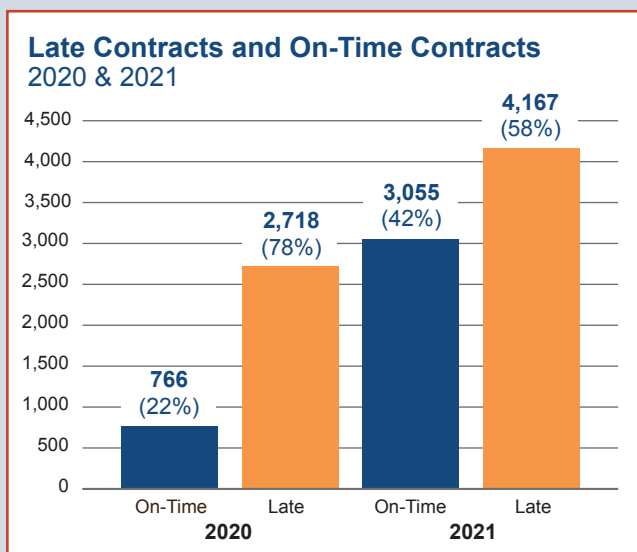
Not-for-profit (NFP) service providers have long been a critical component of New York’s economic and social fabric. Not only do NFPs deliver important services—such as education for children with disabilities, medical services and elder care—throughout the State, but they also support the economy statewide by providing jobs and by enabling others to work through the 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).

The NFP community was hit especially hard during the pandemic, even as New Yorkers depended upon this sector more than ever. As we work to strengthen our State and regional economies, NFP organizations should be a priority. New York must do everything it can to continue to support and stabilize this vital sector.

New York’s Prompt Contracting Law was enacted to help expedite contracts and reduce the fiscal stress on NFPs. However, the State’s progress continues to fall far short of success. While there were several years of improvement with respect to reducing late State agency contracts with NFPs, this trend reversed in 2019 and then further deteriorated in 2020, when the percentage of late contracts spiked to 78 percent, a level that we haven’t seen since 2013.

In 2021, some progress was made as the percentage of late contracts decreased to 58 percent; however, this remains higher than 2019’s pre-pandemic level of 50 percent. One factor that may partially explain the dramatic rise in percentage of late contracts in 2020 and the elevated levels in 2021 is the issuance of a gubernatorial executive order (EO 202) at the onset of the pandemic. EO 202 remained in effect until late June of last year, and among other measures, 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 faced numerous challenges over the past year as New York continued to recover from the pandemic. Compliance with the Prompt Contracting Law represents an essential step for the State to support and stabilize its NFP partners. State agency renewed commitment to prompt contracting can enable NFPs to continue helping New Yorkers in challenging times.



## 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; the legislation also required this annual report on State agency performance. 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. Findings in this report include:

- **Late Contracts:** Of the total contracts reported by State agencies in 2021, 58 percent were processed after their start or renewal dates, a decrease from 78 percent in 2020.
  - While this represents an improvement from 2020, the percentage of late contracts is still higher than the pre-pandemic levels in 2019, when 50 percent of contracts reported by State agencies were processed after their start or renewal dates.
- **Statutory Time Frames:** State agencies are required by law to execute grant contracts with NFPs and to obtain the approval of the Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC), if required, within specific time frames. State agencies met legislated time frames for 70 percent of reported contracts, an increase from 64 percent in 2020.
- **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. In 2021, four State agencies paid interest totaling \$39,485, an increase from 2020 when only one State agency paid interest totaling \$73 on two contracts.

## Late State Agency Grant Contracts

Reports submitted by 29 State agencies showed that 7,222 new and renewal contracts with NFP providers, associated with 181 programs, were subject to the Prompt Contracting Law in 2021.

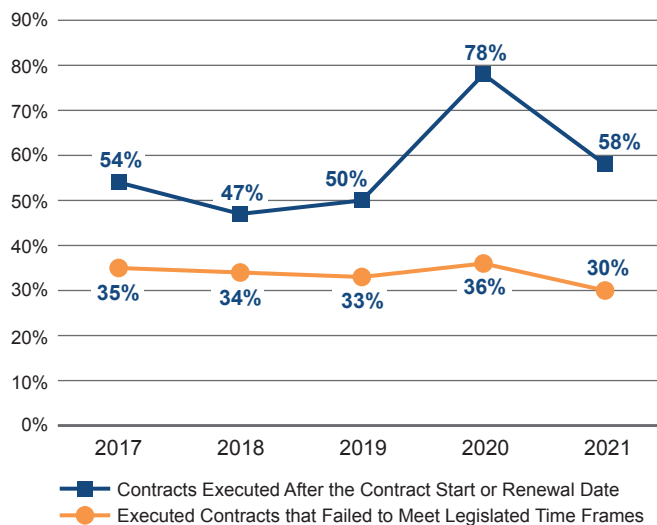
Of the total contracts, 4,167 (58 percent) were processed after their start or renewal dates. This late contracting puts NFPs in the untenable position of having to decide whether to continue providing essential services at-risk—with no assurances that they will be paid—or to disrupt the provision of services to those in need. This figure reflects a decrease from 2020, when 78 percent were reported late.

Of the 3,055 State agency contracts approved on time, 2,825 were new contracts and 230 were renewals. Of the 4,167 not approved before their start or renewal date, 3,893 were new and 274 were renewals.

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 approval by OAG and OSC.

In 2021, State agencies reported that they met these statutory time frames for 5,036 contracts (70 percent), including 4,668 new and 368 renewal contracts. The remaining 2,186 contracts (30 percent), including 2,050 new and 136 renewals, failed to meet the legislated time frames. These results not only show improvement in comparison to 2020, when State agencies met the legislated time frames for 64 percent of the contracts reported, but also reflect the highest level of compliance in at least eight years.

Percentage of Late NFP Grant Contracts 2017–2021



*Not-for-profit (NFP) providers have long been a critical foundation of New York’s economic and social fabric.*

**Interest-Eligible Contracts and Interest Paid**

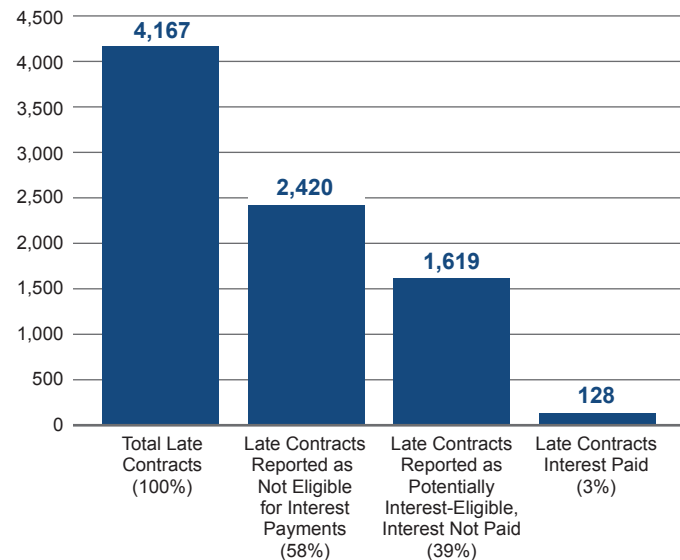
The Prompt Contracting Law requires interest payments to NFPs in certain instances when contract payments are late due to untimely processing of contracts. Such payments are designed to offset additional costs incurred by NFPs in such cases.

State agencies reported that 1,747 contracts (42 percent) were potentially eligible for interest due to late payments in 2021, a decrease from last year, when 1,999 (74 percent) were eligible for interest.

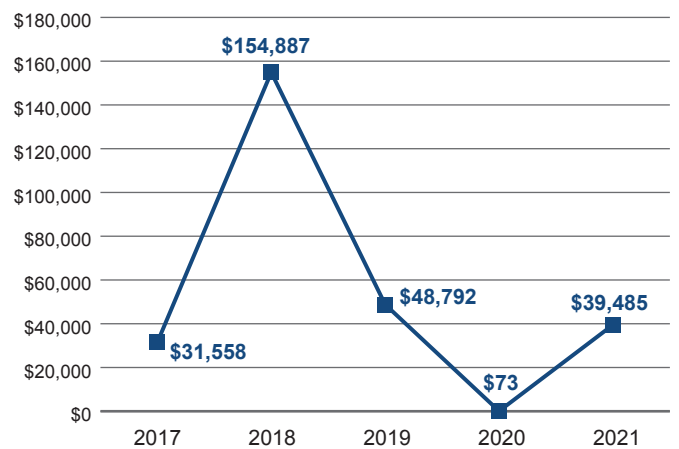
Of late contracts in 2021, 1,619 were reported as potentially interest-eligible with no interest paid, while 128 were paid prompt contracting interest. The remaining 2,420 were reported as not eligible for interest payment.

In 2021, 42 percent of late contracts were potentially eligible for interest and four State agencies paid interest totaling \$39,485 on 128 of those contracts. This is an increase from 2020, when 74 percent of late contracts were potentially interest-eligible, and one State agency paid interest totaling \$73 on two contracts.

**Interest Eligibility Reported for Late Contracts 2021**



**Interest Paid on Late NFP Grant Contracts 2017–2021**



No interest was paid during the reporting period for the remaining 1,619 late contracts reported as potentially eligible for interest. State agencies reported that the late contracts that did not result in a missed payment accounted for 54 percent of the contracts where interest was not paid.

For contracts with start dates in 2021 that were not executed until 2022, State agencies did not calculate or make any interest payments within the reporting period, so any interest paid on these contracts would be reported in 2022.

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## Prompt Contracting Trends

While the 58 percent of contracts that were processed after their start or renewal dates in 2021 represent an improvement from 2020, when 78 percent of contracts were processed late, it continues to be high (see the Prompt Contracting Ten-Year Trending Chart contained in the links at the end of the report). Prompt contracting interest trends remain difficult to assess. Over the five-year period from 2017 to 2021, 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, 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 during a portion of this time period. The EO was in effect for nearly 16 months from March 7, 2020 to June 25, 2021.

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 NFP 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 staffs 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 helps organizations put this money to use serving their clients.

OSC offers a financial toolkit on its website which 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

Although the percentage of contracts that were processed after their start or renewal date in 2021 dropped significantly compared to 2020, and is more closely aligned with the 2019 pre-pandemic percentage of 50 percent, the fact remains that over half of all NFP contracts are executed after the contract start or renewal date. The important work and the vital influence of the NFP sector in New York State should be recognized by continued State agency efforts to make prompt contracting a priority and achieve progress toward improving the number and percentage of on-time contracts.

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

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## 2022 Prompt Contracting Recommendations

In order to improve prompt contracting results, OSC recommends that:

- State agencies take responsibility for their critical role and make 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 approach when certain State agencies made deliberate efforts to improve contracting time frames.
- State agencies and NFPs should increase their use of the State's grant management system and use tracking tools available to identify and address processing delays.
- Efforts to establish a single statewide grants management system in the Statewide Financial System should be supported by grant-making State agencies.
- The Not-for-Profit Contracting Advisory Committee should remain on track to meet four times per year as required by law or more frequently, as needed, to hear from stakeholders and work to identify potential solutions to address barriers to prompt contracting success.
- State agencies should pay any interest due with the first payment under a contract to help NFPs alleviate cash flow problems.

### Additional Information

Additional information and data supporting the 2021 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](#)

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