Office of Operations
2010 Fall Conference

State Agency Compliance with Prompt Contracting Regulations

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OBJECTIVE

- Familiarize State agency personnel with Prompt Contracting Regulations
TOPICS TO BE DISCUSSED

- Background
- Written Directives
- Interest Payments and Calculations
- Advance Payments
- Waivers of Interest
- Notification Requirements
November 18, 2009

- A revised Part 22 of 2 NYCRR became effective.

- Regulations were updated 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 (NFP) Organizations.”
Guidance is provided on:

- Use of written directives for both new and renewal contracts.
- Determining when prompt contracting interest is due and the manner in which to calculate the interest.
A State agency authorizes a NFP through a written directive to either begin providing services during the negotiation of a contract or to continue to provide services during the negotiation of a renewal contract.
Written Directives

A written directive is considered issued if a State agency provides the NFP with a notification letter stating its intent to renew the NFP contract; or, in the case of a new contract, the State agency has provided the NFP with a proposed contract containing a start date.
A NFP organization receiving a written directive to perform services under a **new** contract that has not been fully executed by the start date may be eligible for interest payments, if the first payment date is missed.
Written Directives

- A written directive is needed in order for an agency to provide payment on an advance.
Advance Payment for Renewal Contracts

- Upon notification of a NFP organization of the State agency's intention to renew the contract, the State agency may authorize an advance payment to the NFP pending execution of the renewal contract, if such contract is not fully executed by the commencement date of the renewal contract.
Advance Payment for Renewal Contracts

- An advance payment should not exceed 25% of the contract value.
- Any State agency that wishes to provide an advance payment must submit to the Comptroller a written directive and a voucher.
Suspension of a Written Directive

- If substantive and significant differences exist between the State agency and the NFP in the negotiation of the contract or the NFP is not negotiating the renewal in good faith, the written directive shall be suspended and the NFP will not be eligible for an advance payment.
Example #1
New Contract with an Advance

- A State agency entered into negotiations on a new contract with a NFP.

- A contract document with an April 1st start date was provided to the NFP on January 1st.

- The NFP began providing services on April 1st.
Example #1

New Contract with an Advance

- The terms and conditions of the contract call for an advance payment in the amount of $100,000 to be paid on the first day of the contract term.
Example #1
New Contract with Advance

- Due to delays, the contract is not approved until April 16th. The payment to the NFP is made on May 14th.

- Is interest potentially due to the NFP? If so, why?
Example #1
New Contract with Advance

- How many days late is the contract?

The payment is 43 days late.
Example #1
New Contract with Advance

- Formula for Interest Determination

Interest Factor (@ 3% for 43 days)
\[ \times \] Payment Amount

Amount of Interest Due

\[ 0.003540354 \times \$100,000 = \$354.04 \]
Example #2
Renewal Contract

- A state agency notifies a NFP of its intent to renew a contract 90 days prior to the end of the term of the contract by forwarding the proposed renewal contract.
Example #2
Renewal Contract

- The NFP began providing services on July 1\textsuperscript{st}, the start of the renewal period.

- The terms and conditions of the contract call for monthly reimbursement of actual expenses incurred.

- The renewal contract is approved on November 30\textsuperscript{th}.
Example #2
Renewal Contract

- The NFP submits vouchers for the months of July, August in the amount of $20,000 each on December 15th.

- The vouchers are paid on December 30th.
Example #2
Renewal Contract

- The NFP then submits vouchers for the months of September and October in the amount of $20,000 each on January 15th.
- The vouchers are paid on February 1st.
- Interest would be calculated for each monthly reimbursement separately.
### Example #2
#### Renewal Contract

<table>
<thead>
<tr>
<th>Billing Month</th>
<th>Payment Due Date</th>
<th>Payment Date</th>
<th>Number of Days Late</th>
</tr>
</thead>
<tbody>
<tr>
<td>JULY</td>
<td>8/30</td>
<td>12/30</td>
<td>122</td>
</tr>
<tr>
<td>AUGUST</td>
<td>9/30</td>
<td>12/30</td>
<td>91</td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>10/30</td>
<td>2/01</td>
<td>61</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>11/30</td>
<td>2/01</td>
<td>30</td>
</tr>
</tbody>
</table>
Example #2
Renewal Contract

- **July**
  
  $20,000 \times 0.010077424 \text{ (interest factor @ 3\% for 122 days)} =  
  $201.55$

- **August**
  
  $20,000 \times 0.007507183 \text{ (interest factor @ 3\% for 91 days)} =  
  $150.14$
Example #2
Renewal Contract

- **September**
  
  \[ \$20,000 \times 0.005026081 \text{(interest factor @ 3\% for 61 days)} = \$100.52 \]

- **October**
  
  \[ \$20,000 \times 0.002468694 \text{ interest factor @ 3\% for 30 days)} = \$49.37 \]
Example #2
Renewal Contract

$201.55  July
$150.14  August
$100.52  September
$ 49.37  October
$501.58  Total interest due
Example #3
Waiver of Interest

- The appropriation was enacted April 1st.
- A state agency entered into a new agreement with a NFP. Due to the seasonal nature of the services required, both parties agreed that the services must commence by July 1st.
Example #3
Waiver of Interest

- A written directive was issued April 1\textsuperscript{st} directing the NFP to begin services on July 1\textsuperscript{st}.

- The NFP began providing services on July 1\textsuperscript{st}.

- The contract was approved on August 15\textsuperscript{th}. 
Example #3
Waiver of Interest

- The terms of the contract call for the initial payment 30 days after commencement of services.

- The contract start date occurred within 150 days of the enactment of the appropriation.

- The parties chose to sign an agreement to waive any potential interest obligations that may be due.
Example #3
Waiver of Interest

- Is the waiver of interest warranted?
  YES

- Why?
  1. The State agency met the time frames found in Article XI-B of the State Finance Law (execution of the contract within 150 days of the enactment of the appropriation.)
Example #3
Waiver of Interest

2. Documentation explaining that due to the nature of the seasonal work, the services needed to begin before the contract start date; and

3. The waiver was signed by a person authorized to sign a binding contract on behalf of the NFP.

No interest is due.
Example #4
Suspended Written Directive

- A state agency intends to enter into a new contract with a NFP.
- A written directive is issued on January 1st requesting the NFP to begin services on April 1st.
- The NFP began providing services on April 1st.
Example #4
Suspended Written Directive

- Before the contract is approved, the State agency determines that the NFP did not negotiate in good faith.

- On June 1\textsuperscript{st} the State agency notifies the NFP, in writing, that the written directive is suspended.
Example #4
Suspended Written Directive

- No late contract interest is due, however, the State agency owes the NFP for the services that were provided from April 1\textsuperscript{st} to June 1\textsuperscript{st}. 
State Agency Notification with Respect to Renewal Contracts

- Failure by a State agency to provide notice of its intent to renew or terminate a NFP grant contract by the required date, will result in the existing contract being extended until 90 days after the date that the State agency provides the required notice.
State Agency Notification with Respect to Renewal Contracts

- In the event that the contract term is extended, the NFP is entitled to payment based on the existing contract terms.

- The NFP may submit vouchers to the State agency on the prescribed billing cycles.
The new regulations may be accessed on the Department of State website at: http://www.dos.state.ny.us/info/registry/2009/nov18/pdfs/rules.pdf

The amended Bulletin A-316 “Not-For-Profit (NFP) Prompt Contracting” may be accessed on the OSC website at: http://www.osc.state.ny.us/agencies/bulls/a316.htm