Background of the Prompt Contracting Law

The Prompt Contracting Law

Chapter 166 of the Laws of 1991 added Article XI-B (the Prompt Contracting Law) to the State Finance Law to promote prompt contracting with not-for-profit organizations (NFPs). A central objective of the Prompt Contracting Law is to expedite the contract process and corresponding payments to NFPs so that service interruptions and financial hardships for these organizations are avoided. More specifically, the Prompt Contracting Law: sets specific time frames for the execution of grant contracts and related documents; provides for written directives to authorize contractors to begin or to continue to provide services; allows State agencies to waive interest payments under certain conditions and provides for advance and loan payments to NFPs when applicable time frames cannot be met; and requires interest payments to NFPs when contract payments are late due to untimely processing of contracts when no advance or loan payment was provided.

Chapter 648 of the Laws of 1992 made several changes to Article XI-B. The 1992 revisions: provided more reasonable time frames for processing legislative initiative contracts and other contracts with NFPs which have been identified for a State agency without the use of a Request for Proposals (RFP); eliminated interest penalties for contracts executed and funded in whole or in part for services rendered in a prior fiscal year; and limited the total amount of time a State agency may suspend time frames to no more than four and one-half months in any fiscal year.

Chapter 292 of the Laws of 2007 added further amendments to Article XI-B. The 2007 amendments: prohibit State agencies from requiring NFPs, as a prerequisite for the execution of a contract, to waive claims for interest that would otherwise be due; provide that a contract is automatically deemed to continue and remain in effect when a State agency does not timely notify an NFP of its intent to terminate the contract; subject any waiver of interest to the Office of the State Comptroller (OSC) approval, and provide for the calculation and payment of interest to NFPs when OSC deems a waiver of interest to be unwarranted; require State agencies to report prompt contracting information to OSC for inclusion in annual reports; and expand the Not-for-Profit Contracting Advisory Committee to 16 members, requiring meetings at least quarterly, while enlarging the scope of the Committee's responsibility.

Chapter 232 of the Laws of 2009 made permanent two important provisions added in the 2007 amendments to the Prompt Contracting Law. Both provisions offer added protection to NFP contractors by requiring OSC to approve an agency's assertion that unusual circumstances prevented timely notification from being provided to an NFP and to determine that all waivers of interest are warranted.

In November 2009, a revised Part 22 of 2 the New York Codes, Rules & Regulations (NYCRR) entitled "Prompt Contracting and Interest Payments for Not-For-Profit Organizations" became effective. These regulations were updated by the Office of the State Comptroller in order to provide clear guidance to State agencies regarding Article XI-B of the State Finance Law: Prompt Contracting and Interest Payments for Not-for-Profit Organizations. In particular, the revised regulations were intended to provide clear guidance to agencies with respect to determining when prompt contracting interest is due, the manner in which to calculate that interest, and the use of written directives and agency notifications for both new and renewal contracts.

Prompt Contracting Law Time Frame Requirements

The Prompt Contracting Law requires State agencies to execute grant contracts with NFPs and to obtain the Office of the Attorney General (OAG) and OSC approval, if required, within specific time frames.

- The time frame for execution of new competitive grant contracts is 150 days from the latest State appropriation of funds date (usually the date the State budget is enacted), with 30 additional days for approval by OAG and OSC. A State agency has a total of 180 days to fully execute an NFP grant contract resulting from a competitive process.

- The time frame for execution of new noncompetitive grant contracts (such as legislative initiatives) and federally funded grant contracts is 120 days from the date the NFP is identified to the State agency or from the receipt date of the federal grant notification award, with an additional 30 days for approval by OAG and OSC. Thus, a State agency has a total of 150 days to fully execute a noncompetitive NFP grant contract.

- Renewal grant contracts must be fully executed by the beginning of the new contract period.

Reporting Requirement

In accordance with the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 2 - Audit and Control, Chapter 1, Section 22.9(d), and in accordance with Article XI-B of the State Finance Law as amended by Chapter 292 of the Laws of 2007, State agencies are required to report on programs affected by the provisions of the Prompt Contracting Law for the preceding twelve-month period. State agencies are required to submit reports containing the following information to OSC by March 31st 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 31st 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 the Minority Leader of the Senate, the Speaker and the Minority Leader of the Assembly, the Director of the Division of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.