

June 2010

Impact of State Budget Stalemate on New York Nonprofits

With the New York State's budget three months late and weekly extender bills being passed to keep State government operating, New York nonprofits that contract with the State of New York wonder whether or not they are going to get paid on their contracts. It is anticipated that a budget will be adopted before June 30th but nonprofits need to be vocal advocates for critical government programs. Organizations need to monitor State budget developments since continued funding for human service programs is still in doubt.

Questions:

1. **Is the State of New York required to reimburse contractors for expenses incurred on contracts after April 1, 2010?**
2. **Is the State required to make timely payments on its contracts?**
3. **If an organization takes a loan to cover expenses while it awaits reimbursement can those interest expenses be reimbursed as an expense of the State contract?**
4. **If a contractor continues to perform and ultimately the funds are not appropriated by the State or the terms of the contract are modified will the contractor be able recoup their expenses?**
5. **Can the State require a contractor to provide the same level of programming while reducing funding?**
6. **If an organization temporarily ceases programs funded by the State while it awaits payment can the State terminate the contract?**
7. **How can nonprofits participate in advocacy efforts to ensure timely payment?**

Answers:

1. **Is the State of New York required to reimburse contractors for expenses incurred on contracts after April 1, 2010?**

In order for the State of New York to be bound by a contract, that contract must be a "fully executed contract" meaning that is signed by both the state agency and the nonprofit and approved by State Comptroller. State Finance Law §179q. If an organization has been awarded a contract that is to take effect on April 1, 2010 but it is not yet registered or if an organization has been awarded a contract that is subject to annual renewal and the renewal provisions have not been triggered by the State then that agreement is not yet binding on the State. If an organization has a multiyear contract that is validly registered then that agreement continues in effect. The State's obligation to pay is further limited to those funds which have been appropriated. State Finance Law §40.

2. Is the State required to make timely payment on its contracts?

There is a State law requiring timely payment on contracts. However, this provision does not apply when funds for payment have not been appropriated. State Finance Law §179f(2)(v). If funds have been appropriated and the State is delayed in making timely contractual payments contractors are entitled to interest payments. State Finance Law §179(a). While a state agency can request that a contractor waive its right to receive an interest payment the contractor is under no obligation to honor that request.

3. If an organization takes a loan to cover expenses while it awaits reimbursement can those interest expenses be reimbursed as an expense of the State contract?

There are circumstances under which interest payments can be reimbursed by the State. In order for the interest payments to be reimbursable, the loan must be taken to cover expenses under a State contract and the State Agency awarding the contract must authorize the interest payments. §179.

4. If a contractor continues to perform and ultimately the funds are not appropriated by the State or the terms of the contract are modified will the contractor be able recoup their expenses?

Whether or not the organization operating under a multiyear contract will be able to recoup costs incurred under a contract after April 1, 2010, to the date that the organization receives notice of the contract modification will depend on the terms of the individual contract and whether the funds to pay the expenses have been appropriated. Organizations that continue to operate according to contractual terms during this period of uncertainty run a risk that some of the expenses will not ultimately be reimbursed.

5. Can the State require a contractor to provide the same level of programming while reducing funding?

The ability of a contractor to modify contract deliverables will turn in part on the status of the contract (ie whether or not it is fully executed) and the nature of the services to be delivered. Certainly to the extent that a contractor receives a budget cut they should engage in negotiation with the State agency regarding modifications to budget deliverables.

6. If an organization temporarily ceases programs funded by the State while it awaits payment can the State terminate the contract?

New York State contracts typically contain provisions that enable the State to terminate the agreement in the event that the contractor is not performing contracted services. They do not typically contain a provision that excuses performance by the contractor in the event that the State fails to make payments due under the contract. Therefore, an organization that temporarily ceases programs while it awaits payment from the State runs the risk that the State will terminate the contract.

7. How can nonprofits participate in advocacy efforts to ensure timely payment?

The Human Services Council of NYC (HSC) is coordinating advocacy efforts around the issue of late payments. You can assist in these efforts by providing them with information about the problems you are facing because of late payments. To participate in HSC's advocacy efforts, organizations must be members of HSC. If you are not yet a member, you can find membership information on their website –www.humanservicescouncil.org.

To successfully advocate for solutions, HSC needs information from providers. Please provide the following:

- specific examples of services in jeopardy with details on where they are located and what the status and timeframe of your contract is
- detailed information on how late payments have been and how much funding you should be receiving monthly
- examples of actions you are considering or have taken to deal with cash flow problems – laying off staff, taking out loans, etc.
- State agency responses to your inquiries regarding payments
- suggestions for solutions that would be helpful to you in the short or long term
- information on whether or not you may be willing to participate in a lawsuit

Please provide this information to Michelle Jackson, Policy Analyst at (212) 836-1588 / jacksonm@humanservicescouncil.org.