

ENHANCING PROGRAMS AND SERVICES FOR NEW JERSEYANS BY IMPROVING GOVERNMENT/NON-PROFIT CONTRACTING

2015 Statement and Recommendations to the

Red Tape Review Commission

The Honorable Kim Guadagno, Chairperson

The Honorable Steven V. Oroho
The Honorable Jeff Van Drew
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The Honorable Scott T. Rumana

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Endorsed by:

Alliance for the Betterment of Citizens with Disabilities
Center for Non-Profits
Council of New Jersey Grantmakers*
Hispanic Family Center of Southern New Jersey, Inc.
Hyacinth AIDS Foundation
New Jersey Alliance for Children, Youth & Families
New Jersey Association of Community Providers
New Jersey Association of Mental Health and Addiction Agencies, Inc.
New Jersey State Association of Jewish Federations
Pro Bono Partnership

** in its capacity as an individual New Jersey non-profit organization and member of the
Center for Non-Profits*

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Enhancing Programs and Services for New Jerseyans by Improving Government/Non-Profit Contracting: Recommendations to the Red Tape Review Commission

The recommendations in this paper represent an update of previous reports provided to the Red Tape Review Commission in 2011, 2012 and 2014, and are the result of extensive discussions among a working group of New Jersey non-profit organizations, as well as outreach and feedback from the broader community of non-profits and service providers.

We thank the Governor, the Lieutenant Governor, and the members and staff of the Red Tape Review Commission for the opportunity to present our comments and recommendations, and for focusing on non-profit and social concerns as part of the Commission's work.

Background

Non-profit and provider organizations are a vital part of New Jersey's social and economic fabric, contributing tangibly and intangibly, to a strong quality of life in our state.

- New Jersey is home to **30,000 charitable organizations**, which collectively **employ over 314,000 workers**¹ – nearly 10% of the state's private work force – and hold combined assets of over \$84 billion.
- New Jersey public charities **spend \$38 billion each year**² combined, making them a powerful contributor to our state's economy.
- Non-profits also leverage the time and talents of **more than 1.5 million volunteers** who contribute **services worth an estimated \$3.4 billion annually**.
- New Jersey non-profits **employ more people than the construction, transportation or public utilities industries, and more than finance and insurance combined** – providing jobs to individual taxpayers and pumping payroll taxes into government coffers.
- Non-profits **save taxpayers untold dollars** by providing vital programs and services that make our communities better places to live, work and visit. Government relies heavily on non-profits and other service providers to do things that it can't or won't do on its own.

In short, **non-profits and service providers are an integral part of what makes New Jersey more affordable, more vibrant, and more livable.**

Unfortunately, non-profits and service providers are struggling under the weight of the prolonged economic downturn, rising demand for services and shrinking funding. Although circumstances have improved somewhat since the worst of the recession, significant challenges remain. According to a March 2015 survey report by the Center for Non-Profits:

- **Four-fifths (78%)** of responding organizations reported that **demand for services had increased** during the past year, and a similar percentage **(80%) expected demand to continue rising in 2015**.
- Half (50%) reported receiving more total funding in 2014 vs. 2013, but **64% reported that their expenses were higher than in the previous year, and 26% reported that expenses had exceeded support and revenue** during their most recently completed fiscal year.

¹ U.S. Bureau of Labor Statistics, *Quarterly Census of Employment Wages*, non-profit analysis, http://www.bls.gov/bdm/nonprofits/tables/qcew_nonprofits_2012_3_digit.xlsx.

² NCCS Core File (Public Charities, circa 2012), Urban Institute, National Center for Charitable Statistics.

- **Seventy-two percent expected their total expenses to increase** in 2015, but **only 57% expected total 2015 funding to increase.**

This environment, along with the other issues identified in this report, poses significant implications for the ability of non-profit organizations to provide the vital programs and services that our communities need and that help make New Jersey strong.

Red Tape Climate in New Jersey

We are grateful to the Lieutenant Governor, members of the Red Tape Review Commission, commission staff, and the Legislature for prioritizing the reduction of meaningless bureaucracy that stifles innovation and hampers program and service delivery. Under this leadership, progress has been made over the past year in the NJSTART system and the beginnings of a document vault; streamlining some of the raffle door prize requirements for charities; and implementing electronic solutions to speed up applications.

Unfortunately, as important as these improvements have been, there are many other significant, longstanding problems plaguing the contracting system are getting worse, and are threatening the ability of non-profit organizations to deliver the programs and services that our communities need.

The problems with the government contracting system, in New Jersey and across the nation, have been well documented by the Urban Institute,³ the National Council of Nonprofits,⁴ the U.S. Government Accountability Office,⁵ and others. The Center for Non-Profits' own surveys and outreach have consistently confirmed and reinforced these findings.

With New Jersey non-profits providing an estimated \$6.7 billion⁶ in services for the government, there is an extraordinary financial stake in finding solutions to these problems. We believe that the recommendations we propose are reasonable, attainable, and offer significant benefits to the State of New Jersey, to taxpayers, to non-profit and provider organizations and those they serve. Many of these have been shared with the Commission previously; however, given the fiscal challenges facing our state and the steadily growing need for the programs provided by non-profits, we believe they have taken on an added urgency.

The recommendations that follow reiterate and update our previous submissions to the Commission, with particular emphasis on government contracting issues. We again thank you for your interest in and attention to the concerns of non-profits in the state.

³ Urban Institute, *Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey*, December 5, 2013. Available at <http://www.urban.org/research/publication/nonprofit-government-contracts-and-grants-findings-2013-national-survey>.

⁴ National Council of Nonprofits, *Toward Common Sense Contracting: What Taxpayers Deserve*, May 2014. Available at <https://www.councilofnonprofits.org/sites/default/files/documents/toward-common-sense-contracting-what-taxpayers-deserve.pdf>.

⁵ Government Accountability Office, *Nonprofit Sector: Treatment and Reimbursement of Indirect Costs Vary among Grants, and Depend Significantly on Federal, State, and Local Government Practices*, Report GAO-10-477, May 2010. Available at <http://www.gao.gov/new.items/d10477.pdf>.

⁶ Urban Institute, *National Study of Nonprofit-Government Contracts and Grants 2013: State Profiles*, May 15, 2014. Available at http://www.urban.org/research/publication/national-study-nonprofit-government-contracts-and-grants-2013-state-profiles/view/full_report.

CREATE A CLIMATE FOR IMPROVED COMMUNICATION AND POLICYMAKING

Rules and regulations that affect non-profits and service providers are scattered across numerous departments, divisions and agencies, and are often enacted piecemeal or in isolation. We believe that policymaking and program delivery would be significantly enhanced with better coordination and more opportunities for communication and the exchange of ideas across all interested parties.

Recommendation

- Establish a mandatory system of **information sharing and coordination** within government, **across departments and divisions**, in partnership with and reflecting strong input from regulated and contract entities, grantees and other outside experts, in order to reduce conflict and duplication in the development and implementation of policies and procedures. Benefits of such a system could include identification of emerging trends; greater reciprocity between departments and agencies; and development of new, creative solutions to community needs. This system of information sharing and coordination should include a mechanism to report back to the Lieutenant Governor's office on the impact of the reduction of conflict and duplication.

BOOST EFFICIENCIES AND QUALITY THROUGH IMPROVED CONTRACTING

The State of New Jersey relies on non-profit organizations and community service providers to fulfill a broad array of essential health, social service, educational, artistic, cultural, vocational and other needs for our state's residents. Generally speaking, we believe that the relationship works best on both sides when the focus is on the big picture:

- *What are the outcomes that we seek to achieve?*
- *What service or program is being paid for?*
- *Are the agreed-upon services being provided safely and in a high-quality fashion, and are they having an impact?*

As we have reported previously to the Red Tape Review Commission, in New Jersey and throughout the country, the contracting system is fraught with problems that have widespread significant social and economic implications across sectors. In 2013, the Urban Institute conducted an updated national study⁷ of non-profit organizations, in which New Jersey organizations participated, highlighting a series of pervasive problems with the contracting system. Although contracting problems were prevalent across the country, state-specific data released in 2014 show that New Jersey's situation, especially compared with other states, is particularly troubling.

The following were the most commonly reported problems by non-profit respondents in the 2013 Urban Institute survey, and the percentage of each identified by New Jersey organizations:

- **Contracts that don't cover the full costs of providing services** – identified as a problem by 76% of New Jersey respondents, **the worst in the nation in a state-by-state comparison.** The problem can take the form of match requirements – some as high as 50%; high costs of compliance; limits on reimbursable overhead or indirect costs under the contract; or limits on allowable overhead costs for the organization overall.

⁷ Urban Institute, *Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey*, December 5, 2013. Available at <http://www.urban.org/research/publication/nonprofit-government-contracts-and-grants-findings-2013-national-survey>.

- **Complex or time consuming application requirements/procedures** that increase costs and discourage some worthy organizations from applying altogether – identified as a problem by 81% of organizations, placing New Jersey **fifth among the worst states** according to this criterion.
- **Late payments to providers**, and delays in processing contract paperwork, wreaking havoc on non-profit cash flows and credit ratings. Late payments were identified as a problem by 53% of New Jersey respondents, ranking New Jersey **ninth worst** in the country.
- **Complex or time consuming reporting requirements** that drive up costs and divert scarce resources – identified as a problem by 75% of New Jersey respondents, ranking New Jersey **twelfth worst** in the country.
- **Governments that change the terms of the contract in mid-stream**, such as imposing additional program requirements or expectations without providing additional resources – identified as a problem by 45% of New Jersey respondents. New Jersey ranked **22nd worst** in the nation.

In addition, organizations continue to struggle under the burdens of **duplicative or contradictory** government **monitoring and auditing** procedures and compliance requirements, as well as **outdated, incompatible or nonexistent technologies** that encourage inefficiency and siphon scarce resources away from mission and program.

The Center for Non-Profits conducted a short follow-up survey in late August/early September 2015 to see the extent to which these problems had improved or worsened for organizations in New Jersey over the past year (since July of 2014). The lack of improvement, and indeed, the degree to which respondents report that these problems are worsening, is alarming.

Common Contracting Problems and Changes in New Jersey Non-Profits' Experiences since 7/1/14 compared with previous 12 months				
	Better	About the same	Worse	N/A
State dollars not covering full cost to provide services under contract	2%	41%	51%	6%
Complexity and time required for preparing contract applications	2%	46%	48%	3%
Late payments	8%	55%	26%	11%
Complexity and time required for contract reporting	1%	51%	47%	1%
Changes made by state contract terms after execution	1%	44%	30%	25%
Timely contract processing or renewal	6%	56%	34%	4%
Duplication/overlap of monitoring or reporting requirements (for organizations with multiple state contracts)	2%	42%	36%	19%
<i>N = 127</i>				
Source: Rapid Response Survey conducted August 28-September 3, 2015 (currently unpublished)				

Non-profits' frustration with the contracting climate was expressed repeatedly in the survey comments, exemplified by the following:

- *It seems like it takes longer and longer (even for established grant programs) to get through the review and award process. We no longer expect to have an actual contract in place prior to project start date. We just hope to have it within 3 months of start date (which is typically 6 months from the time the application was submitted).*
- *Waited 18 months to get paid for services rendered in 2013.*
- *There have been a lot of changes in the administrators at the State and in those working with the contracts. New staff are re-interpreting the reporting requirements. Certain divisions are making changes which seem in conflict with the reporting guidelines.*
- *Less administrative cost coverage, slow contract processing increasing complexity and detail, greater complexity of grant reports and applications; lack of trust; perception that they are trying to "catch us" in errors (and not acknowledging their own errors).*
- *Increasing examination of business decisions unrelated to contracts, poor communication about changes to future contract issues, delays in contract review that delay new contract awards, demands to travel to Trenton for meetings that could be handled at the regional offices....*
- *Annual State funding doesn't increase enough or at all and is not adequate to cover provider costs. The complexity and/or consistent requirement of the reporting changes from quarter to quarter which can contribute to higher general and administrative costs for which the State "caps" into an unrealistic reimbursement. Without the proper support & infrastructure, social programs fail.*
- *NJDMHS is in the process of changing their funding practices that will combine grant and Medicaid funding. This will eliminate the fixed grant contract payment and the combined Medicaid & grant funds will be used to reimburse providers on a fee-for-service basis. The new reimbursement model has been under development for the past 3-4 years and has been delayed numerous times. Providers have had minimal input and have been kept at a distance as to the new rates and requirements to obtain reimbursements.*
- *Slow payments [have] always been an issue at the beginning of contracting cycle. We're expected to cash flow hundreds of thousands of dollars for two months before receiving new fiscal year funding.*
- *Difficult to get resolution to emergent issues quickly. One specific point of contact identified; advised not to call others. Difficult to reach the designated point of contact. Once point of contact can finally be reached, he/she either lacks knowledge/expertise and cannot answer questions or lacks authority to make decisions. Conflicting guidance in electronic vs. paper formats. Proposal preparation time is shrinking - sometimes 2-3 weeks rather than typical 30 days.*
- *The various Departments of the State, especially Human Services middle managers tell the County of changes in what contracts will cover, and the "middle managers" are not [given] written documentation of the changes. Secondly, the agencies are not getting admin dollars, the County is taking the admin dollars for execution of contracts.*
- *[I]n one Division the system prevents the filling of vacancies and in another Division the limitations of who we can serve are unrealistic and prevent people in need from receiving services while vacancies exist.*
- *Another year without a contract increase. Continued use of draconian Contract Amendments instituted 5 years ago.*
- *They keep demanding more from us programmatically but won't give extra funding to cover it. They won't even let us apply underspendings from one area to another or to a capital reserve for large purchases (like electronic health records).*
- *Our 1/1/15 contract was not approved until 4/8/15. The Division constantly drags its feet, is unavailable for timely meetings, asks the same questions numerous times and attempts to control our business though they have no practical experience.*
- *Frustration with increasing application documentation requirements that literally expose grant applicants to application rejection on the basis of 'one' missing document.*

These failures are forcing non-profits and providers to make difficult decisions with significant ramifications for their ability to deliver the programs and services that our communities need:

- 53% of rapid response survey respondents froze or reduced employee salaries in response to their government grant or contracting situation
- 48% reduced services or entire programs
- 41% reduced staff
- 32% were forced to borrow funds from a bank or against a line of credit

Clearly, the current situation is unsustainable, and does a gross disservice to the people of our state. Reforms are urgently needed and would reap significant and enduring benefits for the State, non-profits and the communities we serve.

Recommendations

- As a matter of good practice:
 - **Purchase of service contracts should fully cover the actual cost** of services to be provided, including reasonable levels for indirect costs that are standardized across departments or negotiated to a mutually acceptable level between the government and the service provider. Contracts should also build in automatic adjustments so that increases in benefits costs, insurance premiums, minimum wage, government mandates (e.g., audits, licensing/certification, etc), or other cost increases do not erode the value of the contract over time and compromise service delivery.
 - **Contracts and grants should focus primarily on the outcomes, quality of service and community impact**, while allowing organizations to retain flexibility and autonomy regarding their internal operations.
 - **Organizations should be allowed to invest in continuing quality improvement and sustainability**, via staff development, investment in appropriate technology/infrastructure and other program-relevant means.
 - **The grant and contracting process should avoid excessive focus on administrative details** or information that duplicates what organizations already provide to satisfy existing legal, compliance or grant requirements and/or which are tangential to the performance of the contract.
- Many contracts include requirements that organizations provide continuing education and training to all levels of professional and para professional staff, including doctors, nurses, clinicians including social workers, addictions counselors, licensed professional counselors, and the like. Unfortunately, third-party contract amendments adopted in 2010 by the Department of Human Services and the Department of Children and Families have placed a \$5,000 cap on the amount that organizations can use from contracted dollars toward this purpose and overall staff development, including the pursuit of degrees and licensure. The cap is \$5,000 **per organization**, regardless of the number of employees. This limitation on professional education and training is not only contradictory to the contract requirement, but has tremendous implications for staff retention and long-term effectiveness.
- The same 2010 contract modifications also placed significant restrictions on the circumstances under which agencies can replace fleet vehicles or even provide basic refreshments at organization functions. These changes result in no improvement to program quality and effectiveness, and instead divert oversight attention and resources that could be better served focusing on outcomes for clients.

- **Create a centralized contracting unit to cut down on redundancies and duplicative monitoring and reporting. Ensure that the new “document vault” within the Department of Treasury’s NJSTART.gov e-procurement system and centralized vendor database is accessible and used by government contracting agencies** to allow for one-time filing – or reductions in duplicative filing – of basic information, such as address, tax ID numbers, CEO and members of boards of trustees, IRS determination letters, registration numbers, good standing certificates, tax clearance certificates, corporate annual reports, IRS Form 990 information returns and other standardized information. It is also essential that this unit be staffed by programmatic experts to define and recognize appropriate program costs across disciplines.

The current gaps in electronic filing or a centralized information system mean that organizations waste time, paper and expense, often to provide the same basic information over and over. Although the new NJSTART document vault is equipped to accept these documents, systems and procedures to allow for retrieval by the government contracting entities are not yet in place. Providing access to the database (with appropriate security safeguards in place) for government contracting agencies would eliminate the need for duplicative resubmissions by non-profits.

- **Repeal arbitrary limits on indirect costs** in contracts, and instead encourage payment of reasonable and legitimate indirect costs as a standard contracting procedure. As noted previously, New Jersey is identified as among the “worst” in the nation for contracts that fail to cover the full cost of providing services. The causes are multifaceted, but one reason lies in the strict caps, or sometimes outright prohibition on allowable indirect costs – insurance, rent, utilities, technology, audits and similar items that are integral to effective operations but might not be directly tied to a particular grant or program. **Although numerous studies have shown that, like successful for-profit entities, it is normal for effective non-profits to have indirect costs of 25-35% of total expenses,⁸ many governments arbitrarily set caps that are far less – and some allow no indirect costs at all.** In New Jersey, more than half (55%) of non-profit respondents to the Urban Institute’s 2013 study reported that their contracts either imposed limits or completely prohibited indirect costs for the *specific programs* being funded, while 61% reported that *organization-wide* indirect costs were either capped or prohibited. Among those organizations reporting limits, one-fifth said their contracts did not allow any organization overhead at all.
- **Ensure education and proper implementation of new federal grant and contract regulations issued by the U.S. Office of Management and Budget (OMB).** In December 2014, OMB issued comprehensive uniform guidelines⁹ for federal awards (including those passed through state and local governments) that, among many other provisions, **require the allowance of reasonable indirect costs.** OMB’s action is significant because it recognizes that indirect costs are valid and important, and stipulates that contracts using federal funds cannot disallow such costs as some have in the past.

Among the important policy changes in the OMB Uniform Guidance:

⁸ See, for example, National Council of Nonprofits, *Investing for Impact: Indirect Costs are Essential for Success*, September 2013. Available at <https://www.councilofnonprofits.org/sites/default/files/documents/investing-for-impact.pdf>.

⁹ U.S. Office of Management and Budget, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. 2 C.F.R. 200 (12/26/2014). Available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=94d704978327cf918a40f8a923a29418&node=pt2.1.200&rgn=div5>.

- State and local governments using federal grant funds, as well as non-profits that use federal funds to grant subawards to other non-profits, are now **required** to reimburse non-profit contractors and grantees for reasonable indirect costs (sometimes inaccurately called administrative or overhead expenses). The minimum indirect cost threshold is 10% of a non-profit's modified total direct costs, and can be negotiated higher based on actual costs.
- In some cases, administrative expenses associated with a particular project can be reported as direct, rather than indirect, costs.
- The guidance will allow non-profits to focus more on delivering services in their communities, and spend less money on wasteful paperwork by raising the Single Audit threshold from \$500,000 to \$750,000, as well as eliminating duplicative and unnecessary application and reporting requirements, while clarifying cost allocation rules.

The guidelines are an important first step in easing the stranglehold imposed by previous policies. But the new rules are extremely complicated, and there is a great deal of confusion and inconsistent information among state and local government officials and non-profits alike regarding their implementation.

We urge this Commission and the Governor's office to issue guidance to the various state departments that would **ensure that OMB's indirect cost directive is implemented in accordance with its intent**. We would welcome the opportunity to work with you to **make educational opportunities available** to governments and non-profits to help expedite implementation of the OMB rules.

However, we also urge the State to carry the spirit of this directive to its logical extension to other levels of government and **require non-federal governmental awards in New Jersey to also allow reasonable and legitimate indirect costs**, without cutting into the amount that would normally be allocated for direct costs.

- **Establish a contracting boilerplate** for certain information that would be applicable across departments and divisions to save time and duplication in submitting repetitive organizational information.
- **Conduct an outside efficiency review of the purchasing process**, including review and establishment or revision of timelines for contract execution, modifications, documentation review and approval.
- **Establish a mandatory prompt contracting process** to cut down on delays in executing paperwork needed to process payment.
- **Review and revise the current prompt payment requirements** to prevent cash flow problems and ensure continuity of service.
- **Review county and local purchasing processes and procedures** in order to reduce duplication and needless bureaucracy in funding, contracting and purchasing practices, and ensure prompt processing of grant and contract paperwork and payments.

We are grateful to the Lieutenant Governor, the Commission members and staff for your ongoing responsiveness to non-profit concerns. We look forward to continuing to work with you on these important issues in the months ahead.

RESOURCES/REFERENCES

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