

TOWARD COMMON SENSE CONTRACTING: WHAT TAXPAYERS DESERVE

Executive Summary

The latest data from the Urban Institute and the experiences highlighted in this report confirm that the government-nonprofit contracting problems first documented in the Urban Institute's 2010 landmark study were not an anomaly of the Great Recession. The serious problems persist nationwide. Nonprofits performing work on behalf of governments still confront policies, laws, and attitudes that deny reimbursement for the full costs of providing those services. Nonprofits continue to encounter wasteful application processes and costly reporting regimes that defy logic, consistency, or fairness. Once contracts are signed and work is commenced, governments often unilaterally change contract terms and conditions mid-stream, regardless of written commitments or the added costs those changes impose on nonprofits. And governments often pay nonprofits late – sometimes more than a year after the nonprofit incurred the cost on behalf of government. All five of these problems add billions of dollars in unnecessary costs to nonprofits and taxpayers alike.

Toward Common Sense Contracting: What Taxpayers Deserve explores the five categories of problems in detail, identifying various causes and consequences using the voices of nonprofits in the field. It goes farther than most studies by laying out numerous proven and often readily available solutions to these problems for the benefit of taxpayers, individuals needing services, governments, nonprofits, and foundations and private funders who are called on to fill the gaps and subsidize the broken government-nonprofit contracting and grants system.

Common Problems

Common Problems Before Contracts/Grants Entered

Even before governments enter into contracts/grants with nonprofits, two sets of problems commonly arise: (1) governments do not pay nonprofits the full costs of providing the services, and (2) governments routinely utilize wasteful contracting application processes.

More than half (54 percent) of all nonprofits surveyed by the Urban Institute reported problems with governments **not paying nonprofits the full costs of the services** the governments contracted to be performed. Often, this is due to artificial limits being set in advance, without regard to the true costs required. One of the most problematic ways this occurs is through the imposition of **arbitrary caps on reimbursement of indirect costs** (sometimes called overhead costs or administrative costs). Among nonprofits reporting that governments cap indirect cost reimbursement, the Urban Institute's latest survey reveals that three out of four nonprofits (76 percent) were unable to recover an indirect cost rate of more than 10 percent; a quarter (24 percent) are paid zero.

Studies reveal that the usual range of overhead rates for for-profit companies and nonprofit organizations alike is approximately 25 percent to 35 percent. Yet, governments have historically treated nonprofit organizations differently, imposing arbitrary restrictions on reimbursement rates that undercut the ability of their partners to succeed on behalf of taxpayers. Unrealistic limits on reimbursement of a nonprofit's legitimate costs undermine its efficiency, effectiveness, and ability to perform vital services on behalf of the governments.

Regarding **complexification of contracting application processes**, nonprofits on the front lines see daily the needless waste of taxpayer and donor dollars when government red-tape and costly protocols prevent them from delivering

services efficiently and effectively. The problems experienced by nonprofits range from unduly complex applications and dysfunctional electronic submission processes to needless duplication and redundancy, and excessive formatting requirements.

Common Problems During Government Contracts/Grants

Once nonprofits commence work pursuant to government contracts/grants, problems commonly arise in three general categories: (1) governments changing the terms mid-stream, (2) governments routinely failing to pay on a timely basis, and (3) governments imposing complex and time-consuming reporting requirements.

Mid-stream changes to written agreements that governments previously signed and agreed to honor is most vexing, in part because it often increases the costs for nonprofits that are then not paid. These mid-stream changes, reported by almost half (44%) of nonprofits surveyed, take many forms, including cuts to agreed-upon payments, redefined eligibility for payments, nonprofits instructed to perform additional or increased levels of service, and new reporting and compliance requirements with no additional reimbursement for these added costs.

Late payments by governments is a problem that is both frequent (45 percent of nonprofits responding) and debilitating, given the significant dollar amounts reported by nonprofits that said they were paid late: on average state governments owed each nonprofit the past due amount of \$200,458, the federal government owed \$108,500, and local governments owed \$84,899. The substantial sizes of those late payments present serious challenges for nonprofits struggling to deliver reliable services. A subset of the problem is “**late contracting**,” when a government does not complete all of its own contracting procedures prior to demanding that the nonprofit begin performing services.

The **complexification of reporting requirements** – a problem reported by almost three-quarters (72 percent) of those surveyed – takes several forms, including duplicative audits, overlapping and inconsistent compliance procedures, retroactive imposition of reporting requirements, incompatible and inconsistent data collection, and a lack of standardization that inject vagaries into an already complex process. Rarely is it clear to nonprofits if and how the government even uses the information that often is expensive to collect and report.

Common Sense Solutions

Governments and nonprofits are natural partners, serving the same constituents in the same communities. It is in everyone’s best interest to work collaboratively to identify and implement meaningful solutions to common problems. This section of the report shares a sampling of common sense contracting and grantmaking solutions that meet the test of helping taxpayers, those needing services, and governments just as much as they help nonprofits.

Collaborative Problem Solving

1. **Government-Nonprofit Task Forces:** Policymakers seeking to reduce government costs, improve services, and protect taxpayers should create joint government-nonprofit task forces to identify and analyze challenges in contracting practices and procedures, and then develop and implement targeted solutions.
2. **Nonprofit Liaisons:** Governors, Mayors, and other executive branch officials should appoint and empower high-level Nonprofit Liaisons to oversee and promote contract and grant efficiencies and nonprofit sustainability.

Accountability for Full and Prompt Payments

3. **Payment of Indirect Costs Incurred:** Using the new OMB Uniform Guidance as a start, governments at all levels must reimburse nonprofit organizations for the full indirect costs that the nonprofits legitimately incur in delivering contracted services for government.
4. **Joint Training Programs:** Governments and their nonprofit contractors and grantees should conduct joint training programs designed to promote common understandings, collective problem solving, and mutual respect.

5. **Clear and Consistent Definitions**: Governments should provide and apply clear and consistent definitions of administrative costs, indirect costs, and overhead.
6. **Repeal of Arbitrary Caps on Indirect Costs**: Legislatures should repeal existing statutory caps on legitimate indirect costs that serve to undermine nonprofit effectiveness.
7. **Public Accountability through Disclosure of Indirect Cost Reimbursements**: Governments at all levels should publicly disclose for each program how much they pay in indirect costs.
8. **Prompt Payment Laws**: Governors and legislatures should ensure that state and local governments pay their bills on time by enacting and enforcing prompt payment laws.
9. **Prompt Contracting Laws**: Governors and legislatures should enact and enforce laws that ensure state and local governments complete the contracting process prior to commencement of work by nonprofits.
10. **Public Disclosure of Government Accountability**: Governments at all levels should inform the public on the timeliness of payments by government agencies to contractors.

Elimination of Unilateral Mid-stream Contract Changes

11. **Independent Government Office to Protect Charities from Contracting Abuses**: States should create an independent office, or Attorneys General should take actions, to ensure accountability so state and local governments honor the terms of their written agreements and stop unilaterally changing them mid-stream.
12. **Standardized Language for Contracts and Grants**: State and local governments should standardize contract and grant language, as well as reporting requirements, across multiple agencies to secure the savings attainable through reduced negotiating costs and standardized attachments and forms.
13. **Ongoing Provider Input**: Governments should institutionalize methods to regularly obtain input from nonprofits on how to improve contracting and grant processes, program design, and implementation.

Simplifying Complex Application and Reporting Requirements

14. **Document Vaults**: States and local governments should reduce redundancy in the application process by creating an electronic repository or “document vault” to house all commonly required documents from nonprofits relevant to bids for government contracts and grants.
15. **Standardized Monitoring and Reporting**: Governments should reduce redundant monitoring by standardizing and integrating reporting procedures across multiple government agencies.
16. **Standardization and Consolidation of Audits**: Government agencies should standardize and consolidate audit requirements to avoid repeated and unnecessary audits, reduce interruptions in nonprofit program services, and reduce taxpayer burdens of paying for multiple audit teams to review the same books and records.

Conclusion

The problems in the current government-nonprofit contracting “systems” across the country are profound, thoroughly documented, and, most importantly, solvable. The solutions presented in this report are tested, free or relatively inexpensive, and readily available. All that is needed are a commitment to identifying the solutions most appropriate to the jurisdiction and the motivation to take action. By way of this paper, the network of the National Council of Nonprofits extends an open invitation to all interested people – officials within government, frontline nonprofit employees and volunteers, individuals relying on services, taxpayers, and politicians – to help identify the problems that need solving immediately, craft the appropriate solutions, and take action to get them implemented.