

Government-Contract Reform for Nonprofits: What's Next?

10.09.24 | Linda J. Rosenthal, JD



For many decades, “all levels of government have been entering written agreements with charitable nonprofits to deliver a broad array of services to the public.” It can be a win-win arrangement. Governments have legal obligations or have adopted public-policy goals that are well-served by teaming up with the nonprofit sector. These organizations are “... good partners: mission-driven rather than profit-focused, and more efficient and effective than unwieldy government bureaucracies.”

But government money invariably comes wrapped up in rules and regulations, restrictions and rigamarole: Many are unnecessary; others are unduly burdensome or counterproductive. The nonprofit community has long worked to alert lawmakers and officials about how deeply the federal as well as state contracting “systems” are in need of major changes.

There has been major movement on these urgent wish lists, particularly in the past two years, both federally and in states including California. For the latest developments, the date October 1, 2024, was significant.

Mixed Results

First, at the federal level, there was great news, following many years’ hard work and tenacious advocacy spearheaded by the National Council of Nonprofits (NCN). OMB officials had drafted and approved comprehensive changes to the nationwide contracts/grants policies and procedures applicable to nonprofits. Published last spring with a new title but a slightly delayed effective date, these critical reforms are in full force and effect as of October 1st. See *Major Overhaul of Federal Grantmaking Practices* (April 24, 2024), *FPLG Blog*; *OMB Uniform Guidance* (October 1, 2024) *National Council of Nonprofits*.

But late on the weekend before October 1st, there was bad news from Sacramento on the fate of the California Nonprofit Equity Initiative. Early in 2023, at the start of the (two-year) 2023-24 Legislative Session, several trusted legislative allies of the nonprofit sector introduced this seven-bill package for much-needed reform of the state's policies and procedures for contracts/grants with nonprofit organizations. The driving force since 2022 behind this legislative push has been the California Association of Nonprofits (CalNonprofits) with enthusiastic support from its membership and the nonprofit community at large. See [Major Legislative Push in CA To Reform Grantmaking](#) (February 27, 2023), *FPLG Blog*.

However, in that first year, just one of the seven items became law. See [Upfront Grant Money to Start Soon](#) (October 16, 2023), *FPLG Blog*. A second bill, although handily approved by lawmakers, was rejected on narrow grounds by California's governor. See [Prompt Payment Act for Nonprofit Grantees: Newsom's Narrow Veto](#) (October 20, 2023), *FPLG Blog*.

There were high hopes for better success in 2024 on the Initiative package. See [Gov't Contract Reform in CA, Revisited](#) (February 28, 2024), *FPLG Blog*; and [Urgent Action Item on Nonprofit Legislation Pending in CA](#) (July 17, 2024), *FPLG Blog*.

By August 31, 2024, the last day for legislators to cast votes, two more of the Initiative's key bills had sailed through the Legislature unanimously. See [On Gov. Newsom's Desk: Two New Nonprofit Bills](#) (September 5, 2024), *FPLG Blog*. (Notably, one of the two successful items was that rejected measure from 2023 as reformulated and redrafted to [take into account Governor Newsom's concerns](#) in his "narrow" veto message.)

But a month later, in the final hours of the "sign or veto" window on the weekend before October 1st, the governor rejected both of these California Nonprofit Equity Initiative measures. See [It's a "No" on Two Key Nonprofit Bills, Says Newsom](#) (October 1, 2024), *FPLG Blog*. On October 3rd, we updated our 10/1/24 post to include a link to the written reaction of CalNonprofits to these vetoes. See [Governor Newsom Vetoes Priority Nonprofit Legislation](#) (October 3, 2024), *California Association of Nonprofits*.

The Good News

For that big success on federal-level reform, "[t]he [story starts in 2010](#)"

The National Council of Nonprofits has "work[ed] ... through its network of state associations of nonprofits and with governments at the local, state, and federal levels to [help repair the broken contracting 'system](#), by building relationships, identifying solutions and promising practices that can be replicated in multiple jurisdictions, and advocating for their implementation."

The Office of Management and Budget published a revision of the rules in 2013. But despite best intentions, this effort did not solve the many complex problems of the cumbersome grants/contracts system for nonprofit recipients.

In recent years, the federal reform momentum picked up again, culminating in spring 2024 with OMB's issuance of a brand new edition of what previously was called the "OMB Uniform Guidance." (That name was short for "OMB Guidance for Grants and Agreements.") See [OMB Uniform Guidance](#)

Final Rule: Significant Improvements to Federal Grants Rules for Charitable Nonprofits (April 4, 2024) *National Council of Nonprofits* [NCN applauds the result that “... address[es] longstanding problems in recovering actual costs, advance[s] equity by removing bureaucratic barriers, and make[s] other significant reforms that will reduce burdens and costs of seeking, performing, and reporting on federal grants.”]

See also: NCN’s latest comments on the federal reforms – *OMB Uniform Guidance* (October 2024) – explaining “these major changes and their significance.” The revised OMB Uniform Guidance, effective October 1, 2024, “... is the common set of rules governing most federal grantmaking to charitable nonprofits, state, local, and Tribal governments, and others....”

It “matters” because it “...corrects longstanding challenges in the government grants process that have limited nonprofit effectiveness, discouraged qualified organizations from seeking and performing under federal grants, and wasted billions of dollars and countless hours in needlessly complex reporting requirements.”

Now – “[g]overnments at all levels – local, state, and federal – that hire nonprofits to deliver services are required to reimburse nonprofits for the reasonable indirect costs (sometimes called ‘overhead’ or ‘administrative’ costs) they incur on behalf of governments when federal dollars are part of the funding stream....”

See, as well, *A New Era in Government Grantmaking Starts Today!*, *Nonprofit Champion Special Edition*, (October 1, 2024), *NCN*. The newsletter authors wrote: “Did you feel it? The seismic shift? No, it is not the leaves changing color letting us know fall is in full effect. The other shift? **We’re talking about the change from federal grantmaking business-as-usual to potentially revolutionary nonprofit-friendly experiences.**” (*emph in orig.*)

They add: “Today, October 1, 2024, is the day that a long-sought overhaul of the federal grantmaking rules goes into effect. The changes, if followed by governments and availed upon by nonprofits, will be transformative in communities. The more nonprofits know about this the more prepared they will be to participate in, and advance their missions through, the federal grantmaking process.... “

There’s more work to be done,” they caution, on the federal system of funding nonprofits through contracts and grants, but this years’-long effort represents an impressive display of nonprofit advocacy.

The Bad News

Shortly after we published our October 1, 2024, post on the vetoes of SB 336 and 1246, CalNonprofits issued its official reaction to the Governor’s decisions. See *Governor Newsom Vetoes Priority Nonprofit Legislation* (October 3, 2024), Geoff Green, CEO, *California Association of Nonprofits*.

Mr. Green pulled no punches: “CalNonprofits is very disappointed that the Newsom Administration has chosen not to be a willing partner in collaborating on solutions. We remain undeterred in our commitment to securing fairer state contracting practices for California’s nonprofits.”

Continuing, he added: “The Governor’s veto messages emphasized cost pressures during a strained budget period for the state; however, these bills cut waste and streamline contracts. It is unfortunate that the Administration frames the bills as a tradeoff between fair treatment of nonprofits and cost savings when in reality the legislation advances both. “

Geoff Green concluded his remarks: “... Senate Bill 1246 (Limon) and Senate Bill 336 (Umberg) were passed unanimously in each chamber. They were the product of a long and careful collaboration including input from the Newsom Administration.... If enacted, SB 1246 would have deleted a long-standing exemption in the state’s Prompt Payment Act and require timely payments for services rendered by nonprofits. This is the second year in a row that Gov. Newsom has vetoed legislation to address the prompt payment issue, despite support from hundreds of nonprofits across the state. SB 336 would have streamlined coverage of nonprofits’ indirect costs, *consistent with the federal government’s approach*. (emph added).”

Conclusion

What’s next – if anything – for the ill-fated California Senate bills 336 and 1246?

Both items have been returned back to the Senate chambers. A move to override one or both vetoes is both constitutionally allowable and at least theoretically possible: The votes were unanimous for these popular measures.

But no one’s done it in California since 1979. Is there any appetite in or around Sacramento to change that statistic? Perhaps. See, for example, [Legislators could override nearly every Newsom veto. Why don't they?](#) (October 3, 2024) Sameea Kamal, *CalMatters*.

More likely, it won’t happen. There are several good reasons including “party loyalty, and self-protection,” according to UC Berkeley politics professor Dan Schnur. “A governor who’s been overridden is generally not a happy governor — and unhappy governors tend to issue more vetoes, especially against the members who voted to override.”

But the main reason for not stirring the pot is the sheer number of 2024 vetoes in the California Legislature, including many on important and popular issues. See [The 2024 California bills Gavin Newsom signed into law, and the ones he vetoed](#) (September 23, 2024, updated October 1, 2024), *CalMatters*. Of the 1,100+ bills passed by the Legislature this year, there were over 180 vetoes.

In such a high-volume scenario, most Assembly members and Senators are juggling multiple bills in each legislative session. They need the governor’s goodwill to speed along at least some of these priorities. A case in point: CA State Senator Monique Limon, a valued ally of the nonprofit sector and sponsor of a key bill in the California Nonprofit Equity Initiative package, had successes this year but also a few losses. One of her losing measures had already been through several rounds of vetoes. Her press release, though, includes an expression of willingness to keep trying.

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