



Homes and Community Renewal

Division of Housing
and Community
Renewal

ANDREW M. CUOMO
Governor

JAMES S. RUBIN
Commissioner/CEO

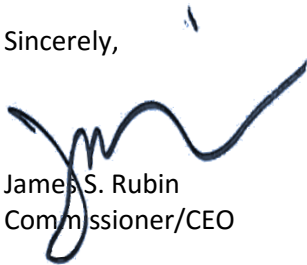
August 10, 2016

The Honorable Andrew M. Cuomo
Governor of the State of New York
The Capitol, Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Pursuant to Section 170 of the Executive Law, I am submitting this response to the Office of the State Comptroller's Report 2015-S-5, Public Housing Modernization Program: Administration of Selected Projects Outside of New York City. We have responded to all of the recommendations contained in the report and offer our detailed responses below.

Sincerely,



James S. Rubin
Commissioner/CEO

cc: Honorable Thomas P. DiNapoli, NYS Comptroller
Honorable John J. Flanagan, NYS Senate Temporary President and Majority Leader
Honorable Andrea Stewart-Cousins, NYS Senate Minority Leader
Honorable Catherine Young, NYS Senate Chair, Finance Committee
Honorable Liz Krueger, NYS Senate Ranking Minority Member of the Senate Finance Committee
Honorable Carl E. Heastie, NYS Assembly Speaker
Honorable Joseph D. Morelle, NYS Assembly Majority Leader
Honorable Brian M. Kolb, NYS Assembly Minority Leader
Honorable Herman D. Farrell, Jr., NYS Assembly Chair, Ways and Means

90 Day Status Report Pursuant to Section 170 of the Executive Law

Recommendation #1: *Ensure that housing authorities award consultant and construction contracts on a timely basis, once funding contracts are executed. Establish timeframes to award these contracts, specific to the nature and scope of the work to be performed.*

DHCR's IT department is in the final test stage of an improved Public Housing Modernization ("PHM") grant contract tracking program, with completion anticipated by end of September 2016. Based on the initial prototype reports, the new program incorporates an automatic progress calculator as a percentage of contract expended. In addition, DHCR's Grants Unit staff will enter projected contract completion dates as construction contracts are approved as an overlay to percentage of completion.

However, it is important to reiterate our disagreement with OSC's findings and their frequently inaccurate and overly simplified methods of calculation. For example, OSC's auditors failed to adequately account for the scale of many of the Housing Authority's capital projects, as well as the impact of various interim steps that Housing Authorities must take before construction contracts can be awarded. In addition, as DHCR attempted to explain numerous times, PHM funds are limited and it may take several annual PHM funding allocations before a Housing Authority can responsibly and reasonably progress to the bid solicitation and award phases for the complete project (and not just components of projects).

Finally, the PHM awards examined by OSC included those made prior to 2012 and thus did not reflect DHCR-imposed procedural changes that have improved our contract oversight in the interim.

Recommendation #2: *Formally review the questionable bidding practices we observed at the Greenburgh Housing Authority and determine whether appropriate procedures were used in the contractor selection process. If not, take appropriate action.*

As noted and detailed in our response to the draft report, non-restructured Housing Authority projects (such as Greenburgh's) are subject to long established and well-defined DHCR procurement requirements for consultant and contractors. As such, after further review, we determined that Greenburgh housing authority had used appropriate bidding and evaluation procedures.

Specific to the recommendation, DHCR utilizes a rigorous consultant selection matrix to offer a recommended short list of potential candidates to each Housing Authority. Going forward, DHCR will record the minutes of the interviews of the higher ranked firms to document the Authority and the Agency's considerations used in reaching a logical consensus on the final selection.

Recommendation #3: *Enhance and document DHCR oversight of the consultants and construction contractors chosen by housing authorities for restructured projects. Oversight should include an assessment of the quality and reputation of the contractors.*

As stated in our response to the draft report, DHCR's oversight system for restructured projects is comprehensive and robust. Applications submitted to the Agency identify key members of the development team including the Owner (the Housing Authority), the Developer/Owner, the Architect, and (typically) the builder and/or construction manager. DHCR's review of the applications includes an assessment of the

development team's relevant experience and performance in meeting or exceeding program goals and requirements.

Applicants are required to complete an Omnibus Certification, which requires reporting of past performance in all affordable housing projects, and any disqualifications, suspensions, convictions, or other determinations to be used in assessments of quality and reputation. Since 2014, the process has been enhanced by adding a background review of companies and their key members as a means to verify correctness of applicant disclosures.

Recommendation #4: *Ensure that Program funding recipients use change orders appropriately. In particular, ensure that change orders are used only for work within the scope of projects and not to circumvent competitive procurement processes.*

DHCR limits its approval of change order requests only to allow contractors to incorporate or address unforeseen/necessary scopes of work, avoid construction disruption/delays and minimize cost overruns. There were no instances identified by OSC where change orders were used to circumvent the procurement process and DHCR is not aware of any instances of the change order process being used "...because it is administratively expedient..." DHCR will continue its diligent review of change orders and continue to approve only those required for successful completion of a given project.

Recommendation #5: *Provide Program funding recipients with formal guidance regarding the use of change orders and sufficiently monitor recipients' administration of funding to ensure compliance with the prescribed guidance and to minimize the need for change orders.*

As noted in DHCR's original response, recipients of Program funding are provided with formal and ample guidance regarding change orders in the Capital Programs Manual (for restructured projects) and HM-31 Standard Short Form of Contract (for non-restructured projects.) Consistent with this guidance, proposed change orders are reviewed by the redevelopment teams' or Housing Authorities' professional design consultants and then by DHCR's Architecture and Engineering Bureau. OSC's conclusion that this oversight is insufficient is predicated upon their misunderstanding of the nature of change orders, particularly in projects rehabilitating existing structures. In addition OSC's insistence that any added scope should be bid separately indicates unfamiliarity with widely accepted and practically sound construction industry standards and contracting practices.

Recommendation #6: *Ensure that housing authorities submit Certificates of Completion and that DHCR staff inspect projects prior to authorizing final project payments.*

It is longstanding DHCR policy that Housing Authorities submit Certificates of Completion and that DHCR's technical staff inspects PHM-funded projects prior to authorization of final payment. As an alternative to Certificates of Completion, DHCR accepts widely-recognized industry documents, such as the American Institute of Architects, AIA G700 series.

As noted in DHCR's original response, the A&E Bureau's construction monitoring capacity has been expanded through additional staff.

Recommendation #7: *Ensure that the two projects for which there were no Certificates of Completion nor independent DHCR inspections prior to final payments were, in fact, properly completed. If not, take appropriate actions.*

As noted in DHCR's original response, we provided OSC with alternate, widely-recognized documentation for these two projects, which DHCR accepts as a matter of policy (see our response to Recommendation #6 above). However, since we couldn't locate documentation confirming our final inspections during OSC's audit, DHCR's Housing Management Bureau subsequently performed a field visit, in which we re-confirmed that the projects were properly completed. We also contacted the Housing Authority's Executive Director, who confirmed, in writing, that they've had no issues with the work and the replacements were performing well.