



**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

Division of State Government Accountability

## **Public Housing Modernization Program: Administration of Selected Projects Outside of New York City**

**Homes and Community Renewal  
Division of Housing and Community Renewal**



Report 2015-S-5

May 2016

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# Executive Summary

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## Purpose

To assess the effectiveness of the Division of Housing and Community Renewal's administration of Public Housing Modernization Program (Program) funds awarded to selected public housing authorities located outside of New York City. Our audit scope covered the period December 1, 2007 through January 4, 2016.

## Background

The Division of Housing and Community Renewal (DHCR) is responsible for the supervision, maintenance, and development of affordable low- and moderate-income housing in New York State. The Housing Trust Fund Corporation (HTFC), a public benefit corporation, provides loans and grants to finance the construction, development, revitalization, and preservation of affordable housing for low-income individuals and families. The Public Housing Modernization Program (Program), administered by DHCR in conjunction with HTFC, provides grants to public housing authorities (authorities) to be used for major repairs, such as replacing or repairing roofs; improving heating systems, plumbing, and ventilation systems; renovating elevators; and modernizing bathrooms and kitchens. DHCR is responsible for awarding Program funds to authorities and providing general Program oversight, while HTFC disburses the Program funds pursuant to "funding contracts" between DHCR and the recipient authority.

Between fiscal 2007 and 2013, 35 funding contracts, totaling \$44 million, were awarded to authorities located outside of New York City. For Program purposes, funded projects are classified into two categories: restructured (where the authority has already partnered up with a consultant to oversee the funded project, as well as a construction contractor, and will be receiving funding from multiple sources); and non-restructured (where DHCR officials oversee the authorities' selection of consultants and construction contractors). For both project categories, DHCR officials are responsible for ensuring the specified work was performed in a quality manner before approving the final payment on its various funding contracts.

## Key Findings

We identified several significant deficiencies regarding the expenditure of Program monies. These deficiencies include:

- Long delays in the award of construction contracts, resulting in corresponding delays in project completion. For example, funding for a project in Kingston was approved in August 2002 for \$300,000. However, the first construction contract (\$16,500 for electrical work) was not awarded until February 2011 - eight and a half years after funding was first made available;
- Questionable contractor selection practices at a non-restructured project (Greenburgh) and undocumented DHCR evaluations of the consultants and contractors chosen for three restructured projects;
- Questionable change orders for items that should have been competitively procured, could have been avoided with better planning, or were not adequately justified by available documentation; and

- Two projects for which final payments of \$136,538 were made without the required Certificates of Completion or independent DHCR final inspections.

### **Key Recommendations**

- Ensure that housing authorities award consultant and construction contracts on a timely basis, once funding contracts are executed. Establish time frames to award these contracts, specific to the nature and scope of the work to be performed.
- Review the questionable bidding practices observed at Greenburgh and determine whether appropriate procedures were used in the contractor selection process. Enhance and document DHCR oversight of the consultants and construction contractors chosen by housing authorities for restructured projects.
- 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.
- Ensure that housing authorities submit Certificates of Completion and that DHCR staff inspect projects prior to authorizing final project payments.

### **Agency Response to Audit**

In their response to the draft audit report, DHCR officials disagreed with our observations and conclusions and appeared to question the need for our recommendations. In general, their response is dismissive and argumentative. We are disappointed that DHCR officials did not perceive the report as an opportunity to improve Public Housing Modernization Program administration, including better project management.

### **Other Related Audit/Report of Interest**

[Division of Housing and Community Renewal: Oversight and Monitoring of the Public Housing Modernization Program at the New York City Housing Authority \(2014-S-21\)](#)

**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

May 12, 2016

Mr. James S. Rubin  
Commissioner/Chief Executive Officer  
NYS Homes and Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207

Dear Mr. Rubin:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Division of Housing and Community Renewal entitled *Public Housing Modernization Program: Administration of Selected Projects Outside of New York City*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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New York State Homes and Community Renewal (HCR) is an umbrella entity consisting of all the State's major housing and community renewal agencies and authorities, including the Division of Housing and Community Renewal (DHCR) and the Housing Trust Fund Corporation (HTFC). DHCR is responsible for the supervision, maintenance, and development of affordable low- and moderate-income housing in New York State. HTFC provides loans and grants to finance the construction, development, revitalization, and preservation of affordable housing for low-income individuals and families.

The Public Housing Modernization Program (Program), funded by a State budget appropriation, is administered by DHCR in conjunction with HTFC. According to DHCR's Program description, the Program provides grants to public housing authorities to be used for major repairs, such as replacing or repairing roofs; improving heating, plumbing, and ventilation systems; renovating elevators; modernizing bathrooms and kitchens; and replacing existing windows. Improvements to a housing development can also include masonry re-pointing and repair, upgrading of electrical systems, landscaping, lead testing, and asbestos abatement. DHCR is responsible for awarding Program funds to public housing authorities and providing general Program oversight, while HTFC disburses the Program funds. Program funds are disbursed pursuant to "funding contracts" between DHCR and the recipient public housing authority.

Since the Program's inception in 1980, approximately \$308 million in State funding has been awarded to 31 public housing authorities (authorities) to upgrade 57 housing developments with nearly 19,918 qualifying apartments. Approximately \$142.4 million of Program funding was for work on New York City-based housing and was addressed in audit report 2014-S-21. The remaining \$165.3 million was awarded for improvements at authorities located throughout the rest of the State. Between fiscal years 2007 and 2013, 35 funding contracts, totaling \$44 million, were awarded to these authorities. In order to receive Program funding, authorities must apply to DHCR and describe the specific work to be performed.

Funded projects are classified into two categories: restructured and non-restructured. A restructured project is one where the authority has already partnered with a consultant, usually an architect, and a construction contractor, and will be receiving funding from multiple sources. In these cases, DHCR has a limited role in approving the consultant or construction contractor. However, DHCR officials are responsible for ensuring the specified work was performed in a quality manner before approving the final payment on its various funding contracts.

For non-restructured projects, DHCR officials oversee the authorities' selection of consultants and construction contractors in addition to providing general project oversight. Under non-restructured projects, DHCR officials are better positioned to ensure the hiring of qualified and reputable consultants and contractors, and secure reasonable contract prices by requiring authorities to use competitive award processes.

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## Audit Findings and Recommendations

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We identified several significant deficiencies in the administration of Program funds. These deficiencies included unsupported delays in the award of construction contracts after funding contracts were executed. Consequently, the completion of certain projects was likely delayed for years. We also identified questionable contractor selection practices at one of the non-restructured projects and undocumented DHCR evaluations of the consultants and contractors employed by authorities for three restructured projects. Further, significant amounts of contractor payments resulted from questionable change orders, including one for the construction of a new community center (costing \$1.1 million) that should have been competitively procured. Lastly, authorities made \$136,538 in final payments for two projects, without the required Certificates of Completion and independent DHCR final inspections.

### Time Lapses Between Funding and Construction Contracts

Program-funded projects are often health and safety related, including the installation of handrails, sidewalk replacements, and asbestos abatement. In addition, material and labor costs can increase significantly, particularly over multi-year periods of time. As such, it is important that the construction work on approved projects commence as soon as possible after funding contracts are approved. Generally, since the consultants and construction contractors have already been secured, it should not be a problem to commence restructured projects in a timely manner. However, in the case of non-restructured projects, the time between the issuance of funding contracts and the commencement of work could take somewhat longer because the consultants and construction contractors have yet to be selected.

According to DHCR's funding contracts, authorities are allowed 10 years from the date the funding contract was executed to complete the associated project. DHCR officials informed us that the 10-year provision is boilerplate language in their contracts, and they did not provide specific reasons for it. Although a 10-year period may be necessary for certain projects, depending on the amount of funding and construction contracts necessary to complete all project phases, it is unclear why 10 years should be the standard applied to all projects. Moreover, the routine use of the 10-year standard may have contributed to several projects, including comparatively smaller ones, taking several more years to complete than otherwise necessary.

We selected a judgmental sample of five projects (Middletown, North Hempstead, Kingston, Rome, and Greenburgh) to determine the amount of time it took to complete each project after its funding was approved. At Middletown and North Hempstead, the funded work was completed within three and five years, respectively, of funding contract execution. However, it took several years for the work to even begin on the other three sampled projects, as follows:

- The Phase 1 funding contract at Kingston was approved in August 2002 for \$300,000. However, the first construction contract issued for this project (\$16,500 for electrical work) was awarded in February 2011 - eight and a half years after funding was first made available. According to DHCR officials, they were unable to award construction contracts

sooner because the amount of available funding was insufficient. However, not only was the original funding contract more than enough to cover the first construction contract, but by May 2005, about \$2.27 million in project funding was available. Consequently, there was more than sufficient funding to award the project's first construction contract well before February 2011. Based on the amount of the first construction contract and the funding available, work could have commenced as much as nine years earlier.

- Rome's Phase I funding contract for \$1 million was dated November 2003, and by November 2005 approximately \$4.67 million in funding was available. However, the earliest construction contract, for \$177,000, was awarded in April 2010, more than six years after sufficient funds were available. According to DHCR officials, work on this project was delayed because Rome officials contracted with a consultant in August 2005 to scope out the desired work and specifications, and construction could not begin until the consultant's evaluation was completed. Based on the consultant's work, Rome officials concluded that the available Program funding was not sufficient. Nonetheless, this was a "restructured" project, in which project plans should be in place before receiving Program funds. Moreover, based on the funding originally approved (\$1 million in 2003) and the amount (\$177,000) of the project's earliest construction contract, we concluded that work could have started several years earlier than 2010.
- Greenburgh's Phase I funding contract for \$550,000 was dated October 2000, and an additional \$1 million in funding became available in January 2002. However, the project's initial three construction contracts were not awarded until July 2006, one of which was for electrical work in the amount of \$500,000. As such, sufficient funding for the electrical work was available more than four years prior to the award of the contract. The project was completed in December 2009, more than nine years after funding was first made available.

During our audit field work, we identified another project (for sidewalk replacement in Rockville Centre) that, in January 2015, DHCR officials noted was in process for more than three years after the original funding contract was issued in May 2011. In this case, DHCR officials determined that little action had been taken on the project, and they notified the housing authority that project funding would be withdrawn unless the project progressed in a timely manner. Consequently, requests for bids were issued in August 2015, with contractor bid submissions due in September 2015. Without DHCR's intervention, this project would likely have been delayed further. Moreover, this demonstrates why DHCR officials should closely monitor project progress and the positive results that can be derived through effective monitoring.

## Contractor Selection Practices

We reviewed the same five sampled projects (Middletown, North Hempstead, Kingston, Rome, and Greenburgh) to determine whether their respective contractors were selected in compliance with governing regulations and procedures. For each selected project, we reviewed a funding contract between DHCR and the housing authority, the associated consultant contract, and a construction contract.

For the non-restructured project at Kingston, both the consultant and construction contracts



were awarded via a competitive process, and thus, complied with governing Regulations (9 NYCRR 1628) and policies. However, for the remaining four authorities, there were no formal justifications for the consultants or construction contractors selected.

For the non-restructured project in Greenburgh, 11 bids were received for the consultant contract, ranging from \$126,100 to \$332,450. The consultant contract was awarded to the sixth-lowest bidder for \$288,400, although DHCR rated the consultant with the lowest bid (\$126,100) as comparable to the consultant who was selected. DHCR officials explained that, although they have oversight of the overall selection process, the final selection was made by Greenburgh officials. They also noted that factors not included in the rating, such as negotiations and interviews, impacted the final selection. However, officials provided no documentation to support this assertion. Thus, there was limited assurance that Greenburgh obtained the most reasonable price for the consultant services.

Although the authorities for the three restructured projects (Middletown, North Hempstead, and Rome) were not required to obtain competitive bids, authority officials were obligated to document their reasons for contractor selection. In turn, DHCR was responsible for ensuring that authority officials adequately documented their selection justifications. However, DHCR could not provide evidence of any efforts to verify the propriety of the contractor selection process for these projects, which cost \$16.4 million, \$18.9 million, and \$35.8 million, respectively.

According to DHCR officials, the authorities evaluate their consultants, and authority officials are often familiar with their consultants and contractors. However, neither DHCR nor the authorities provided us with support for this assertion. Further, we believe the questionable bidding practices at Greenburgh and the lack of independent oversight of the contractor selection process at the restructured projects likely contributed to some questionable change orders, as detailed subsequently in this report. These change orders significantly increased Program costs above their original projected amounts.

## Change Orders

A change order is a formal modification of a contract, agreed upon by both parties, to facilitate changes in the nature and/or amount of work to be performed by the contractor. Change orders often result in adjustments (frequently increases) to project costs and can extend project completion time frames. Although some change orders are unavoidable because of unanticipated site conditions, concerted efforts should be taken to minimize the need for change orders through proper planning and contract monitoring. As such, it is the responsibility of DHCR, the housing authorities, and the authorities' consultants to ensure that change orders are necessary and justified by supporting documentation.

For the five sampled projects, a total of 51 change orders (totaling \$6.7 million) were approved by DHCR and the respective housing authorities. Based on the available records and other evidence, we concluded that the change orders were funded primarily through the Program. The change orders increased the aggregate amount of the five contracts from \$69.8 million to \$76.5 million. Further, the \$6.7 million in change orders consumed about 36 percent of the total Program

funding (\$18.5 million) allocated to the five projects.

We reviewed 23 (of the 51) change orders, focusing on the larger dollar amounts and the nature of the requested work. We questioned the propriety of several of the more expensive change orders at Rome and Greenburgh, as follows:

- **Rome Housing Authority** – There were 16 change orders totaling \$2.52 million for this project. The largest of these change orders (for \$1.1 million) was for the construction of a new “community building.” Although the construction of a new community building was included in one of this project’s funding contracts, it was not included in the scope of the original construction contract. Therefore, the use of a change order to construct the new building was inappropriate. Given the nature and cost (\$1.1 million) of the project, it should have been subject to a separate bid solicitation process. In addition, new construction was not among the types of projects listed in Program guidelines as eligible for Program funding. As noted previously, Program funding was generally intended for the improvement or modernization of existing systems (e.g., electrical, plumbing, HVAC) or building parts (e.g., roofing, windows). DHCR officials told us that the change order was appropriate because new construction was an allowable use of Program funds. However, DHCR officials could not provide us with formal regulations and/or policies pertaining specifically to new construction. In this instance, the only documentation available was a memo from a former assistant commissioner approving the project.

We also identified two other change orders (for items costing \$216,600) that resulted from poorly written contract design specifications. DHCR requires that copper pipe be used in its projects. However, the two change orders were needed to correct a specification for PVC pipe with copper pipe. Both Rome officials and the consultant for this project should have known prior to contract award that copper pipe was required. Therefore, with better planning, much of the cost of these change order items (\$216,600) could have been avoided. In addition, these change order items included labor costs of \$93,133 for pipe installation (although the PVC pipe had not been installed). However, labor costs were already included in the original contract, and thus, were duplicative in the change order.

- **Greenburgh Housing Authority** - Seven change orders, totaling \$422,000, were approved for asbestos-related work that DHCR officials stated was “unforeseen.” Officials further explained that the construction crew identified asbestos in the joint compound used for sheetrock taping, a circumstance that DHCR had not encountered previously with the Program. We note, however, that a prior asbestos survey performed at this project site had in fact identified this condition, and therefore, we question if the work identified in these change orders was genuinely unforeseen.

Further, construction delays associated with the asbestos work resulted in two more change orders, totaling \$279,770, for a 14.5 percent increase in labor and material costs on the remainder of the contract work. DHCR officials explained that the two change orders were due to the two-year delay. However, neither DHCR nor Greenburgh officials could provide any written support for how the 14.5 percent increase was calculated.

They further indicated that collective bargaining agreements and prevailing wage rates might have influenced the negotiated rate. Nevertheless, industry cost indices (such as the Turner Building Cost Index) report a net decrease in construction costs of 1.9 percent during the time period in which the change orders were executed (2008 and 2009).

Also, 10 percent of the total change order amounts (\$27,977) compensated the contractor for the early completion of work. However, the work was not completed until December 1, 2009, or four months after the modified completion date (August 1, 2009), which accounted for the asbestos delays. DHCR officials said that the contractor was entitled to the early-completion payment because the delays were outside of the contractor's control. However, the modifications to the completion date should have provided adequate additional time to compensate for the delays, and the contractor did not complete the work until four months after the modified date, as previously noted. Thus, we continue to question the propriety of this payment.

## Compliance With Protocol For Final Payment

Program funding contracts state: "Final payments to the contractor shall not become due until the contractor has completed to the satisfaction of the Authority and the Division, all of the work required by the contract..." To evidence the authority's satisfaction with project completion, authority officials are to issue a "Final Certificate of Completion" (Certificate) for that project. Also, to confirm whether final payments should be made to the authority, DHCR sends inspectors to perform a "final inspection."

We selected a judgmental sample of 25 funding contracts relating to 16 projects to determine whether they were completed and received final payment. DHCR records indicated that 9 of the 16 selected projects were completed, and final payments had been made for 8 of the 9 completed projects. However, Certificates were not issued by the housing authorities for any of these eight projects, and the final payments for these projects totaled \$1,445,582.

We noted, however, that DHCR officials performed final site inspections for 6 of the 8 projects before final payment was made. Thus, final inspections were not performed for the other two projects, whose final payments totaled \$136,538. Without the Certificates and final inspections, officials had limited assurance that the final payments should have been made.

DHCR officials explained that housing authorities' practices are consistent with industry standards, and any architect who knowingly or negligently makes a false or misleading statement on an application for final payment is subject to fine, suspension, or loss of certifying privileges. We acknowledge this. However, the possibilities of fines, suspensions, or loss of certifying privileges does not obviate DHCR officials from effectively monitoring the activities of housing authorities to ensure that limited public housing funding is spent appropriately.

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## Recommendations

1. Ensure that housing authorities award consultant and construction contracts on a timely basis, once funding contracts are executed. Establish time frames to award these contracts, specific to the nature and scope of the work to be performed.
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.
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.
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.
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.
6. Ensure that housing authorities submit Certificates of Completion and that DHCR staff inspect projects prior to authorizing final project payments.
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.

## Audit Scope and Methodology

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The objective of this audit was to assess the effectiveness of DHCR's administration of Public Housing Modernization Program funds awarded to selected public housing authorities for the period December 1, 2007 through January 4, 2016. Our audit included an assessment of whether Program funds were used in compliance with DHCR's Program description and funded projects were completed as planned.

To accomplish our objective and assess related internal controls, we interviewed officials and staff from DHCR, HTFC, and selected housing authorities and reviewed relevant Program policies and the "unspent balance report" maintained by HTFC to determine whether Program funds were awarded and utilized in a timely manner.

We also selected a judgmental sample of five funding contracts, issued to five housing authorities, covering the various geographic areas of the state. We focused on the payments from HCR to

the contractors, contractor change orders and completion reports, and DHCR site inspection reports. For change orders, we selected one construction contract from each of the sampled funding contracts based on dollar value. For final payments, we selected the 25 funding contracts awarded during the period December 2007 through September 2012.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

## Authority

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The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

## Reporting Requirements

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We provided a draft copy of this report to DHCR officials for their review and formal comment. Their comments were considered in preparing this report and are attached in their entirety at the end of the report. In their response, DHCR officials disagreed with our observations and conclusions and appeared to question the need for our recommendations. In general, their response is dismissive and argumentative. We are disappointed that DHCR officials did not perceive the report as an opportunity to improve Public Housing Modernization Program administration, including better project management. Our rejoinders to certain DHCR comments are embedded within DHCR's response as State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of New York State Homes and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

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## Contributors to This Report

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### Vision

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## Agency Comments and State Comptroller's Comments

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**ANDREW M. CUOMO**  
Governor

### Homes and Community Renewal

**JAMES S. RUBIN**  
Commissioner/CEO

March 30, 2016

Mr. Frank Patone, CPA  
Audit Director  
Office of the State Comptroller  
Division of State Accountability  
59 Maiden Lane, 21<sup>st</sup> Floor  
New York, New York 10038

Dear Mr. Patone:

Thank you for the opportunity to review draft 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,

**Mark Colón**  
President/Deputy Commissioner  
Office of Housing Preservation

cc: James S. Rubin, Commissioner

Betsy R. C. Mallow, Executive Deputy Commissioner and COO

The Division of Housing and Community Renewal ("DHCR") has reviewed the Office of State Comptroller's ("OSC") report 2015-S-5, entitled "Public Housing Modernization Program: Administration of Selected Projects Outside of New York City." OSC's report addresses DHCR'S monitoring and oversight of the State's Public Housing Modernization program at selected New York State housing authorities located outside New York City, during a sample period of 2007 to 2012.

DHCR strongly objects to OSC's findings regarding the PHM program. First, OSC's findings are based on a fundamental misunderstanding of how the PHM program works, and the relevant regulations, practices, and procedures that govern the program's implementation. This is supported by the voluminous documentation that contradicts the inaccuracy of many of OSC's conclusions. DHCR also made staff available to answer any questions or provide additional explanation.

**State Comptroller's Comment:** Contrary to DHCR's assertions, the auditors carefully reviewed and developed a sufficient understanding of all pertinent rules and regulations governing the Program. Further, our findings and recommendations are based on detailed reviews of relevant Program documents and records, as well as multiple discussions with the appropriate DHCR officials and staff. Thus, we affirm the observations and conclusions as presented in the report.

Second, OSC audit includes sample awards going back several years. This is problematic because DHR has undergone significant process changes since 2012, the demonstrable results of which are not included in OSC's report. Instead, DHCR has made numerous process changes that have reaped significant rewards over the past three years.

**State Comptroller's Comment:** Because the objective of our audit was to assess PHM Program project management from project start to finish, it would have been illogical to limit our sampled projects to those initiated in the past three years, and as such, more likely than older projects to be incomplete. Further, as our report shows (and as DHCR officials acknowledge), it can take years for projects to be completed after funding is approved. Also, to the extent DHCR officials have made project management process improvements in recent years, we laud them.

Third, DHCR addresses each of OSC's findings regarding the program and provides specific point by point rebuttals. DHCR has operated the program consistent with existing policies and procedures and with a focus on efficiently and effectively managing the State's resources.

**State Comptroller's Comment:** DHCR's "point by point rebuttals" of the audit's findings are largely recitals of standard administrative activities, which officials use ostensibly as excuses for the lack of timeliness in project completion. Further, DHCR provides little perspective on the relevance of these activities to its overall inability to complete projects timely. As detailed in our report, we do not concur that DHCR officials consistently managed State resources effectively, particularly with regard to the projects we reviewed.

In light of the foregoing information, DHCR therefore requests that OSC correct its findings and recommendations. This is even more necessary considering OSC informed DHCR that its audit was departing from OSC's standard audit process by accelerating the release of Preliminary Findings that would not necessarily contain explicit conclusions and/or recommendations. DHCR raised concerns that this change could diminish DHCR's ability to review and comment on OSC's final draft report, and unsurprisingly, this in fact has been the consequence.



**State Comptroller's Comment:** DHCR's assertion is illogical and incorrect. The issuance of preliminary findings early in the audit process did not hinder DHCR's ability to respond to either the preliminary findings or the draft report. In fact, to the contrary, it provided DHCR officials with more time and opportunity to respond to issues as presented in the preliminary findings and the draft audit report. Further, DHCR's response overlooks the fact that we granted DHCR additional time to respond to the draft report.

### **BACKGROUND**

The State's Public Housing Modernization ("PHM") Program was established in 1980 to provide grants to public housing developments where rental income is insufficient and funds are unavailable from other sources for needed repairs and improvements. Only State-aided developments not receiving federal operating subsidies are eligible for grants. Funds are appropriated on an annual basis. The PHM program is an important source of funding for the State's portfolio of public housing.

DHCR has encouraged housing authorities to consider "restructuring" initiatives as a means to upgrade and modernize existing residential facilities well beyond what the PHM program can achieve alone. Restructurings combine private sector investment and public resources to redevelop public housing properties and thereby preserving affordable housing for low income families. To date, successful restructurings have been occurred 17 Housing Authorities encompassing 26 housing developments.

### **FINDINGS**

#### **1 - Time Lapses Between Funding and Construction Contracts:**

*OSC contended that there were "long delays in the award of construction contracts, resulting in corresponding delays in project completion." They cited projects in Kingston, Rome and Greenburgh as evidence of such delays. OSC also raised questions regarding a 10-year completion window for projects.*

#### **DHCR Response:**

OSC's criticisms and characterizations in this area are inaccurate, overlook or misinterpret the evidence DHCR has provided and do not reflect the reality of how construction contracts are actually administered.

First, OSC did not adequately account for the scale of many of the housing authorities' capital projects, nor the fact that it may take several annual PHM funding allocations before a housing authority can reasonably and responsibly move forward with soliciting bids and awarding contracts for a project (and not just components of a project).

**State Comptroller's Comment:** We acknowledge that the scale of projects can vary, and therefore, dissimilar projects will likely take different amounts of time to complete. Thus, as noted in Recommendation #1 of the report, DHCR should establish project time frames based on the specific nature and scope of the work to be performed. Further, neither during the audit fieldwork, nor in its response to the draft report, did DHCR officials explain why they use a period of 10 years as a standard time limit for project completion.

Second, OSC's critique neglects the interim steps that housing authorities must take after a project is fully funded before it can award a construction contract. For instance, plans and specifications for the

contemplated work must be submitted, reviewed and approved by DHCR's Architecture & Engineering Bureau ("A&E"). In addition, non-restructured housing authority construction contracts are subject to procurement requirements, including public bidding, public advertising, project walk-through by contractors, housing authority approval of the selected bid, and DHCR review and approval of the selected bid. DHCR reviews PHM funding contracts carefully to ensure that the contract terms match the scope of work.

**State Comptroller's Comment:** Contrary to DHCR's assertion, we were fully aware of and understood the various standard steps local authority and DHCR officials must take before construction contracts can be awarded. However, neither during the audit fieldwork, nor in its response to the draft report did DHCR officials detail why these standard steps contributed to the lengthy periods of time (as much as eight and one-half years) to award construction contracts.

Third, OSC has failed to account for a number of material factors that either fully explained, or largely mitigated the effect of, any such delay. For example, OSC contends that the Rome Housing Authority Phase I project was a "restructured" project, in which project plans should have been in place before receiving Program funds. This characterization is inaccurate. The project was only "restructured" after the original consultant completed his analysis of their capital needs, an analysis which was enabled by the initial PHM Program funds.

**State Comptroller's Comment:** The fact remains that the project in question was a restructured project. Moreover, notwithstanding when the project was classified as restructured, DHCR officials provided no sufficiently detailed rationale why it took more than six years from funding approval to award the project's first contract, as detailed on page 7 of the report.

Only at this point would it be feasible for an architect to commence preparing project plans, since the full scope of work was not known at the time of award of Program funds. Requiring substantially complete project plans to be in place at the time of Program funding would also impose a significant cost burden on Housing Authorities prior to any assurance that their proposed projects would be funded.

Moreover, DHCR initially awarded PHM Program funds to the Rome Housing Authority based upon a proposed scope of work consisting of repairs and in-kind replacements of building systems and components. Following standard DHCR and industry practice, the Housing Authority then retained the services of a consultant, who performed a comprehensive evaluation of the development's physical needs, developed detailed budgets and prioritized those needs.

Based upon this assessment, the Housing Authority, consistent with its institutional industry knowledge, concluded that PHM funds alone were insufficient to address the long-range needs of the development, and determined that a restructuring was in the best interests of the housing authority and the tenants.

## **2 - Contractor Selection Practices:**

*OSC claims to have found undocumented DHCR evaluations of the consultants and contractors chosen for three restructured projects and questionable contractor selection practices at a non-restructured project {Greenburgh}.*

### **DHCR Response:**

OSC does not adequately consider the safeguards involved in DHCR's review and approval of LIHC and HTF

awards.

All Housing Authorities with restructured projects submit applications to DHCR for Low-Income Housing credits ("LHC") and Housing Trust Fund ("HTF") awards. The applicant is required to specify 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 then reviews the applications for project feasibility and scored according to criteria specified in the annual Multi-family Programs Request for Proposals. This includes an assessment of the development team's relevant experience and performance in meeting or exceeding program goals and requirements.

DHCR also requires an applicant to complete an Omnibus Certification. The applicant is required to report their past performance in all affordable housing projects, as well as any disqualifications, suspensions, convictions and any other prior determinations which might raise concerns regarding their role in the proposed project. In addition, since 2014, the Omnibus Certification has been supplemented by a background check performed by trained DHCR staff.

As an example of this process, the scoring and feasibility review documents used in the LHC funding award of the North Hempstead and Rome redevelopments have been made available to OSC.

Non-restructured housing authority projects such as Greenburgh are subject to long established and well defined procurement requirements for consultants and contractors, which have also been provided to OSC. It is unclear to DHCR whether OSC has overlooked or simply failed to incorporate these materials that were provided by DHCR.

**State Comptroller's Comment:** Contrary to DHCR's assertion, DHCR did not provide the audit staff with the documents cited for the North Hempstead and Rome projects. Further, the documents received for the Greenburgh project did not detail the justification for the particular consultant selected. Moreover, we did not overlook or disregard any materials provided by DHCR officials.

DHCR's criteria for architect/engineer selection is outlined in our standard Guidelines for Consultant Contracts, which includes a Request for Proposal ("RFP") template. These guidelines specify the technical merits which are to be given the most weight in the selection of an architect or engineer.

As previously explained to OSC at length, DHCR specifies that consultant selection not be based upon "lowest bid" but in accordance with a detailed selection matrix and rigorous multi-discipline review. Consultant's fee usually represents only 4% to 10% of the construction contract and are therefore not a good indication of total project cost. A low fee A/E could drive construction costs well in excess of available funds as easily as a an A/E with a higher fee which could produce better quality construction documents, resulting in savings in project costs and fewer change orders.

**State Comptroller's Comment:** We acknowledge that contractors should be selected based on a range of pertinent factors, and not solely upon the "lowest bid." However, as detailed in the report, DHCR could not document certain assertions pertaining to the selection of the Greenburgh project consultant, and the documentation provided to us did not support the propriety of the contractor selection process for three other projects we reviewed.

After DHCR and an authority separately reviews all proposals, interviews are then arranged with short listed respondents. Whenever possible, DHCR technical staff attend these interviews to answer respondents' questions concerning program requirements. The final award is based on a consensus

between DHCR and the authority. In the rare situation where a consensus is not reached, a final selection is withheld. This is in keeping with DHCR policy that selection of consultants not be based upon lowest price but best qualified applicants, a widely accepted standard in the construction industry.

Construction contracts at non-restructured housing authorities are subject to the public bidding requirements of 9 NYCRR Section 1600 and bids are evaluated by the A&E Bureau. Compliance with procurement requirements at Greenburgh was documented via the DHCR contract checklist, which was provided to OSC.

**State Comptroller's Comment:** The documentation cited by DHCR officials was neither provided to the audit staff during the audit fieldwork, nor did it accompany their response to the draft audit report.

### **3 – Questionable Change Orders:**

*OSC questioned the propriety of several change orders at the Rome and Greenburgh Housing Authorities.*

**DHCR Response:** The housing authorities followed standard construction industry practices in awarding change orders, the total value of which were less than 10% of the original contract amounts which is well within industry standards.

It is not clear that engaging in a competitive bidding process would result in any cost savings and it is difficult to reconcile OSC's various views in light of OSC's criticism of the length of time it took to complete PHM projects. Starting a new bid process, with several unknown bidders and a new set of construction documents, would add significantly to the completion time of a project, which itself would be a potentially damaging result.

**State Comptroller's Comment:** We acknowledge that competitive procurement does not guarantee costs savings. Nevertheless, competitive procurement is generally recognized (and often required) to help ensure that public funds are used efficiently and economically for capital projects. Further, we disagree with any implication that public officials should forgo competitive bidding simply because it could lengthen the time it takes to complete a project. Rather, officials should properly plan for competitive bidding, when required, and ensure that other necessary actions are taken timely for effective overall project management.

In addition, OSC's conclusion that "change orders were funded primarily through the Program" and "resulted in a (36%) increase in the amount of allocated Program funds" is inaccurate and misleading. The funds used for these purposes at restructured housing authorities come from DHCR-required contingency reserves which are included in the original award. If the contingency reserve is exhausted, any further cost overruns must be paid out-of-pocket, by the developer. So while PHM funds may go to pay for change orders, these are not additional funds, but were included in the original project budget. In this respect, OSC's conclusion signifies a material lack of industry understanding.

**State Comptroller's Comment:** The fact remains that \$6.7 million (or 36 percent) of the total PHM funds spent (\$18.5 million) on the five projects in question was for change orders. Further, we maintain that material amounts of these change orders, as detailed in the report, were used for unnecessary, inappropriate, and/or questionable purposes. Also, we revised the pertinent language in our report to improve its technical accuracy.

The largest of the \$6.7 million of change orders (for \$1.1 million) was for the construction of a new "community building" at the Rome HA's Liberty Gardens project. OSC believes that given the "nature and cost" of the community building project, it should have been subject to a separate bid solicitation process. We disagree with OSC's conclusion concerning this matter since new construction is an allowable use of PHM funds and the funding for this building was specifically reviewed and approved by DHCR. DHCR's A&E Bureau supplied OSC with this information, along with all supporting documentation.

**State Comptroller's Comment:** DHCR's justification for using change orders to build the new community center (costing about \$1.1 million) is simply wrong. Although the community center was approved by DHCR, the approval did not justify the use of change orders to build it. In fact, as noted by DHCR in its response, the community center "was shown from the start on the overall site plan." Thus, the center was not the result of unforeseen site conditions. Because the center was planned from the project's outset, we maintain that the center's construction contract should have been competitively bid. Also, on multiple occasions, we asked for (but never received) written policies or regulations stating that new construction is an allowable use of Program funds.

Moreover, the community building site was shown from the start on the overall site plan for the three phases of this redevelopment. Funding constraints as well as the need to maintain a safe and functional site for the tenants remaining in residence during phase 1 led to the shift of this structure to the second phase. PHM funds, which had previously been awarded to Rome HA, were reallocated for this work. Because of the timing of the completion of the design and the availability of this discreet funding source, the work was treated as a change order to phase 2 for administrative purposes.

**State Comptroller's Comment:** We reiterate our conclusion that the project in question was an inappropriate use of change orders. A change order should not be used simply because it is administratively expedient to do so. Further, as previously detailed, the community center was not the result of unforeseen building site conditions.

OSC also questions seven change orders, totaling \$422,000, of asbestos-related work at the Greenburgh Housing Authority. The asbestos-related work became necessary only after construction crews had discovered asbestos in the joint compound used for sheetrock taping, which was unprecedented in DHCR's experience at that time. Subsequently, DHCR has directed all housing authorities planning interior rehabilitation work to undertake a testing regime for asbestos in interior walls, in order to avoid the added costs and delays experienced at Greenburgh. It is difficult to understand how the OSC could find fault with work conducted specifically with the aim of addressing serious potential public health hazards.

**State Comptroller's Comment:** DHCR's assertion is misleading. Our report, in fact, does not question the need to remove asbestos or address other forms of public health hazards. However, as detailed in the report, we questioned the use of change orders to address concerns that were identified by an asbestos survey that was performed before the construction work crew encountered the "unprecedented" condition.

#### **4 - Compliance with Protocol for Final Payment:**

*OSC chose a random sample of 25 Funding Contracts related to 16 projects. OSC contended that Certificates of completion were not issued by the housing authorities for 8 of the 16 that DHCR indicated*

*had been completed and for which final payment had been made. OSC also contended that final inspections were not performed by DHCR for two of the eight projects.*

**DHCR Response:** DHCR strongly disputes the notion that its certificates of completion and inspections are inadequate. OSC fails to account for other required PHM documents which are widely accepted in the construction industry. DHCR utilizes the American Institute of Architects' ("AIA") G700 series documents, in place of "Final Certificate of Completion" referenced in the funding contracts. All payments are submitted with said corresponding AIA documents and have been forwarded to OSC. Specifically, documents are the AIA G702 Application and Certification for Payment and AIA G704 Certificate of Substantial Completion.

As evidence of DHCR's compliance with long standing policy requiring technical staff to inspect PHM-funded projects prior to final payment, the agency provided OSC with documentation of DHCR staff inspecting all PHM projects under review, with the sole exception of the Wilna HA roof replacement contract. The Wilna/Brady Acres roof replacement was a PHM Housing Authority project where DHCR relied on the consultant's certification for final payment.

The overhead utilities final payment approval was based upon the inspection of a since retired employee and DHCR was unable to locate its documentation of his site visit. Nevertheless, we provided OSC with the utility company's acceptance of the final work, as well as the consultant's certification, the two items that any private owner would seek in order to confirm that the work had been adequately completed.

**State Comptroller's Comment:** We acknowledge that DHCR staff site visit PHM Program projects at various times during project progression. However, as detailed in the report, there was no record of final site inspection for two of the eight projects we reviewed for which final payments were made. Also, we acknowledge that consultants and affected businesses approve or certify projects, in total or in relation to specific project components (such as overhead utilities). Nevertheless, the fact remains that the required Final Certificates of Completion were not issued for eight of nine completed projects, also as detailed in the report. The purpose of the Certificates of Completion and final DHCR inspections is to ensure that taxpayer funds are used appropriately. If DHCR officials want to substitute other documents and/or actions for the currently required documents, they should review their formal PHM Program guidance and revise it as appropriate.

## **RECOMMENDATIONS**

### **OSCR 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 Response:**

Though DHCR rejects the notion that the awarding of authorities' contracts are delayed, the agency is constantly striving to improve its own performance. In that spirit and in order to more closely monitor the status of the various PHM contracts, DHCR's IT department has enhanced the previous Grant Unit contract computerized application to better track each funding and construction related contract. The new system is currently in the beta phase of testing with staff with training to follow shortly thereafter. The Grants Unit also intends to increase the frequency of an independently requested IT

report that lists all PHM funding histories to reinforce tracking of unspent funds and potentially negligent or stalled contracts.

**State Comptroller's Comment:** Although DHCR officials dispute the need for this recommendation, we are pleased that officials are taking actions to better ensure that contracts are awarded in a timely manner.

#### **OSC 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.*

**DHCR Response:** The reference to "bidding practices" at Greenburgh suggests confusion concerning the distinct procurement processes leading to consultant and construction contracts. Refer to our response to finding #2, above, explaining that appropriate procedures were in fact used in both selection processes.

**State Comptroller's Comment:** DHCR did not provide the audit staff with the documents cited for the North Hempstead and Rome projects, and the documents received for the Greenburgh project did not detail the justification for the consultant selected. The documentation cited by DHCR officials in its response to finding #2 was neither provided to the audit staff during the audit fieldwork, nor did it accompany their response to the draft audit report. We acknowledge that contractors should be selected based on a range of pertinent factors, and not solely upon the "lowest bid." However, DHCR could not document certain assertions pertaining to the selection of the Greenburgh project consultant, and the documentation provided to us did not support the propriety of the contractor selection process for three other projects we reviewed.

#### **OSC 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.*

**DHCR Response:** DHCR's current oversight system is comprehensive and robust. As noted in our response to finding #2, above, restructured housing authorities proposing to use PHM funds submit separate applications to DHCR for federal and state LIHC and HTF awards. Those awards specify 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. This application is reviewed for project feasibility and scored according to criteria specified in the annual Request for Proposals. DHCR conducts these reviews which include an assessment of the development team's relevant experience and performance in meeting or exceeding program goals and requirements.

Also as noted above, since 2014 this evaluation process has been expanded to include a background check process.

#### **OSC 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 Response:** OSC has not identified any instances in which PHM change orders were used "...to circumvent competitive procurement processes." DHCR already has an existing requirement mandating adequate supporting documentation for change orders, and requires housing authorities to use standard construction industry practices in awarding change orders. Additionally, DHCR's Architecture & Engineering Unit reviews labor and material price estimates when reviewing change order and evaluates the likely time added to a project completion by undertaking new bid solicitations.

Finally, OSC dramatically underestimates the additional time and cost and oversimplifies the process that engaging in a new competitive bidding process, with several unknown bidders and a new set of construction documents, would add to a housing authority's construction project.

**State Comptroller's Comment:** We reiterate that a change order should not be used simply because it is administratively expedient to do so. Again, officials should properly plan for competitive bidding, when required, and ensure that other necessary actions are taken timely for effective overall project management.

#### **OSC 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.*

**DHCR Response:** DHCR's materials provide ample guidance on change orders to ensure compliance and minimize the need for changes orders. For restructured housing authority projects, DHCR's Capital Programs Manual ("CPM") Construction Processing Requirements (~~PP~~ 6.07.01 & 6.07.02) contain extensive descriptions of the use of change orders, required documentation and the review process undertaken by DHCR. The CPM has been previously provided to OSC.

For non-restructured public housing projects receiving PHM funding housing authorities are subject to DHCR regulation and the rules outlined in DHCR's standard short form of contract (HM-31). Section J of the HM-31 requires the housing authority to authorize/memorialize any changes in cost, extension of time, scope for work or any additional work in DHCR's Form 31-b change order and requires prior, written DHCR approval of PHM construction change orders.

**State Comptroller's Comment:** Based on our audit observations and conclusions, it is unclear that DHCR's guidance for using change orders and its oversight and monitoring of change order activity are sufficient.

#### **OSC Recommendation #6**

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

**DHCR Response:** DHCR has addressed this question at length with OSC and above. As noted in our response to Key Finding #4 above, DHCR utilizes the AIA G700 series documents in place of "Final Certificate of Completion" referenced in the funding contracts. These AIA documents are widely accepted in the construction industry.



As also noted above, it is longstanding DHCR policy that technical staff inspect PHM-funded projects prior to final payment. DHCR already provided an explanation for the one exception OSC found. Moreover, DHCR's A&E Bureau has expanded its construction monitoring staff in all of DHCR's regions, enhancing A&E's capacity to perform both ongoing and final inspections in a timely manner.

**State Comptroller's Comment:** Although DHCR officials appear to question the need for this recommendation, we are pleased that officials have taken actions to better ensure that required project inspections are performed and done so in a timely manner.

**OSC 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.*

**DHCR Response:** As noted in our response to Recommendation #6, above, DHCR's longstanding policy requires that project completion be verified and documented by technical staff. In furtherance of our ability to carry out this policy we have prioritized the hiring of construction monitoring staff.

**Conclusion**

For all the reasons described above, DHCR strongly rejects OSC's report and requests that OSC correct its findings and recommendations. DHCR also objects to OSC's report insofar as it fails to incorporate documentation and information provided by DHCR throughout the audit process, and fails to reflect a basic level of industry understanding. DHCR looks forward to discussing this matter further.

**State Comptroller's Comment:** Contrary to DHCR's assertions, the auditors carefully reviewed and developed a sufficient understanding of all pertinent rules and regulations governing the Program. Further, our findings and recommendations are based on detailed reviews of relevant Program documents and records, as well as multiple discussions with the appropriate DHCR officials and staff. Thus, we affirm the observations and conclusions as presented in the report.