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OFFICE OF THE STATE COMPTROLLER

January 5, 2022

Betty A. Rosa
Commissioner
State Education Department
89 Washington Avenue
Albany, NY 12234

Re: Facility Planning Bureau Project
Review
Report 2021-F-25

Dear Dr. Rosa:

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, we have followed up on the actions taken by officials of the State Education Department to implement the recommendations contained in our audit report, *Facilities Planning Bureau Project Review* (Report [2018-S-2](#)).

Background, Scope, and Objectives

The State Education Department (Department) is responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Code) for all school district construction projects, exclusive of New York City. The Code applies to every facility owned or operated by districts or Boards of Cooperative Educational Services (collectively referred to in this report as Districts). These facilities include, but are not limited to, school and administration buildings, bus/maintenance garages, public school libraries, storage buildings/sheds, press boxes, and concession stands. The Department ensures all planned projects comply with the Code and the Commissioner of Education's Regulations by reviewing and approving plans and specifications for all capital construction projects involving these facilities, based on procedures established by the Department's Facilities Planning Bureau (Bureau), and, upon completion of review, issues building permits. Per the State Education Law, Districts must obtain final approval from the Department for a project before commencing construction.

Project reviews can include an architectural review, an engineering review, and a project management review. However, based on the type of work being done, not all projects require all three types of reviews. The Bureau uses a project management system to track architects, engineers, and project costs; issue building permits; create reports; and capture other information about Districts. Between July 2018 and October 2021, Districts submitted 6,649 capital projects for review, of which 5,510 were estimated to cost almost \$8.9 billion. The remaining 1,139 projects did not have associated estimated costs for a variety of reasons (e.g., project was canceled or did not require an estimated cost).

During the COVID-19 pandemic, the Department worked on the development of technical guidance for reopening schools safely. An influx of projects followed as schools developed needs for additional space to provide social distancing through leases and temporary structures. Further, the Bureau is expecting an additional influx of projects due to federal stimulus programs, which have provided funds to Districts for construction associated with COVID-19 mitigation.

Our initial audit report, covering the period July 1, 2013 to October 18, 2018, was issued on February 4, 2019. The audit objectives were to determine if the Bureau completed its review of projects in a timely manner and, if not, what the impacts on Districts were. We also sought to determine whether Districts were commencing project construction prior to obtaining final project approval. We found that the Bureau did not perform project plan reviews timely, as it took the Bureau 6 months or longer to finalize its approval for 2,764 (43.8%) of the 6,315 projects analyzed. The Bureau also lacked guidelines that define a reasonable time period to review a project. Further, as of August 2018, the Bureau estimated a lag time to begin its architectural and engineering reviews as 2–4 weeks and 38–40 weeks, respectively. According to District officials, those delays impacted their ability to complete projects in a reasonable and timely fashion, and caused them to reduce the scope of their projects or increase expected costs (due to inflation and fluctuations in the price of building materials during the delay). The Bureau cited decreased staffing levels as one of the reasons for the backlog. The Bureau, however, had been trying to address the problem with a third-party review option for Districts to use and instituting a process of prescreening project submissions to help alleviate wait times.

The audit also found that the Bureau did not monitor project construction, including whether Districts began construction before receiving final approval from the Department. Districts that begin capital construction projects prior to receiving final approval risk losing State aid. Although our review did not identify any instances of Districts starting projects prior to receiving final project approval, because the Bureau does not require Districts to track construction start dates, we could not always find documentation of project start dates. Further, due to staffing constraints, the Bureau did not perform routine site visits to District construction sites. Instead, the Bureau relied on design consultants and construction contractors to oversee project construction. While the Bureau is allowed to defer this responsibility, absent more direct oversight such as conducting site visits during construction, it cannot be reasonably assured that project construction does not start until project approval is obtained or that it is being completed in accordance with approved plans and specifications.

In addition, the audit found that the systems the Bureau uses to capture and monitor project status are antiquated and are not designed to allow staff to perform data analyses of projects, limiting the Bureau's ability to monitor and improve its oversight performance. Bureau officials recognized that the systems are outdated and in need of replacement.

The objective of our follow-up was to assess the extent of implementation, as of December 2021, of the three recommendations included in our initial audit report.

Summary Conclusion and Status of Audit Recommendations

The Department has made progress in addressing the problems we identified in the initial audit report. However, additional improvements are still needed. Of the initial report's three audit recommendations, one was implemented and two were partially implemented.

Follow-Up Observations

Recommendation 1

Take steps to develop clear criteria and goals for project review timeliness.

Status – Partially Implemented

Agency Action – The Department has not developed clear criteria and goals for project review timeliness, but has taken steps in an effort to reduce its backlog and improve the timeliness of project reviews.

In 2017, the Bureau instituted a prescreening process in which Bureau architects and engineers assess whether project submissions are complete. This reduces the number of non-ready submissions sitting in the review queue and allows Bureau staff to focus on reviewing only complete, bid-ready submissions. Effective February 1, 2018, the Department also allowed Districts to use third-party reviewers, for a fee, as an alternative review option, and therefore eased the workload burden on Bureau staff. Third-party reviewers are required to complete their review and issue comments in 15 business days. While the Bureau has established annual quantity goals for staff reviewers, goals for the timeliness of project reviews have not been established for Bureau staff. Although the prescreening and the third-party review processes began prior to the completion of our initial audit, both initiatives were in the early stages, and it was premature to assess the effect on project review timeliness. The Bureau has also established an informal 30-day time frame for Districts to respond if additional information is needed, which contributes toward improving the overall review timeliness.

Further, the Department is making efforts to increase the number of Bureau staff conducting project reviews. In 2019, the Bureau had 16 positions to conduct project reviews, eight of which were vacant. The Bureau now has 20 positions for the reviews, which includes three temporary staff to review federal stimulus-funded projects, although 11 are vacant. The Department is currently in the process of filling the vacancies.

As of August 2018, the Bureau estimated a lag time to begin its architectural and engineering reviews as 2–4 weeks and 38–40 weeks, respectively. We reviewed processing times for 5,091 reviews the Bureau conducted since July 2018. The Bureau's lag time for engineering reviews has improved, falling to about 6 weeks, while architectural review lag time has risen to about 6 weeks. The Bureau's overall review time has also improved, with less than 10% of the 5,091 projects in our sample taking 6 months or longer for approval. Third-party reviewers were involved in at least 30% (1,515) of those reviews, which has helped ease the workload burden for Bureau staff.

Recommendation 2

Develop a risk-based approach for conducting site visits of projects under construction to gain reasonable assurance that consultants and contractors are not beginning construction before receiving final project approval and that projects are being constructed in accordance with approved plans and specifications.

Status – Partially Implemented

Agency Action – While the Department has not developed a formal risk-based approach for conducting site visits, it has taken steps in an effort to gain reasonable assurance that consultants and contractors are not beginning construction before receiving final project approval and that projects are constructed in accordance with approved plans and specifications. Since our initial audit, the Department updated the performance evaluations for the architectural and engineering positions to include an expectation that each staff conduct at least two site visits each year. Despite a number of staff vacancies, as well as a pause on conducting site visits during the COVID-19 pandemic, between May 2019 and September 2021, the Department completed eight site visits to Districts. Beginning in March 2020, the COVID-19 pandemic impacted the Bureau's ability to conduct site visits. The Bureau was temporarily closed, most staff were telecommuting for over a year, and the Bureau shifted its focus toward the development of technical guidance on reopening schools safely. According to Department officials, they will resume conducting site visits once staff vacancies are filled and an end to the COVID-19 pandemic is declared.

Recommendation 3

Take steps to improve the information technology systems used to track and monitor capital construction projects. At a minimum, this should include the development of a reliable web-based portal and the ability to generate management reports on relevant capital construction project information for all Districts.

Status – Implemented

Agency Action – The Department has made substantial progress toward improving the information technology (IT) systems it uses to track and monitor capital construction projects. The Department's IT system upgrade is in the last phase of implementation. This phase consists of migrating data from the antiquated IT system the Department is currently using into the new IT system, which is anticipated to take about 1 year. In May 2021, the Department contracted with a vendor to complete this last phase of the upgrade. However, the contractor attempted to reduce the scope of work and, as a result, the Department terminated the contract effective September 2021 and subsequently issued a new request for proposal. The Department anticipates the term of the new award to be from March 2022 through February 2023, at which time the new IT system will become operational. The new system will include a web-based portal for applications and the ability to generate management reports for the Bureau's use.

Major contributors to this report were Christopher Herald, Kathleen Garceau, and Zachary Barach.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Cynthia A. Herubin, CIA, CGAP
Audit Manager

cc: Jeanne Day