



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

Division of State Government Accountability

Oversight and Monitoring of the Public Housing Modernization Program at the New York City Housing Authority

Homes and Community Renewal
Division of Housing and Community
Renewal



Report 2014-S-21

August 2015

Executive Summary

Purpose

To determine the adequacy of the Division of Housing and Community Renewal's oversight and monitoring of certain New York City Housing Authority projects funded through the Public Housing Modernization Program (Program). In addition, the audit determined whether Program-funded projects were completed as planned, and whether selected Program expenditures were justified and adequately supported. Our audit period was January 1, 2010 through February 25, 2015.

Background

New York State Homes and Community Renewal (HCR) is an umbrella entity consisting of all the State's major housing and community renewal agencies, 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. DHCR's Public Housing Modernization 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; and renovating elevators. DHCR is responsible for overseeing the Program, while HTFC disburses the Program funds. Since inception in 1980, about \$308 million in state funding has been awarded to 31 public housing authorities through the Program. Of that amount, \$142.4 million was allocated for projects managed by the New York City Housing Authority (NYCHA).

In February 2010, DHCR and NYCHA entered into an agreement, called the "Omnibus Amendment to the Public Housing Modernization Contracts" (Omnibus Amendment). The Omnibus Amendment committed \$42 million of NYCHA's Program monies to NYCHA's Marlboro Houses project (Marlboro) for roof replacement, masonry, brickwork, and facade and balcony repairs. Further, an additional \$8.2 million was intended for certain non-Marlboro capital projects. At the time of the Omnibus Amendment, DHCR had approved Program funding for 77 NYCHA projects.

Key Findings

- DHCR's monitoring of NYCHA's Program-funded projects was weak. At the outset of our audit, DHCR officials did not have accurate and up-to-date management information regarding the status of NYCHA's projects. The information officials provided was dated February 2010. Specifically, five projects (totaling about \$4.6 million) were not yet finished, although DHCR officials indicated that they were complete. In addition, eight of the ten projects officials listed as incomplete were, in fact, finished.
- DHCR officials paid \$6.8 million for a change order for Marlboro that was not adequately supported. Neither DHCR nor NYCHA officials could provide details of the change order charges. Further, the change order brought the total funding allocation for the project (\$45.2 million) to \$3.2 million more than its original approved amount. As a result, funds designated for other projects had to be re-allocated to this project. NYCHA approved another change order (for \$977,500) for work not within the scope of the original contract, which should have been competitively procured.

- DHCR did not have formal timeframes for awarding a contract once funding was approved. For most of the projects we reviewed, NYCHA took between 1 year and 9 months to 4 years and 7 months (and in one case 9 years and 9 months) just to award the contracts. This likely precluded project completion in the timeliest manner.

Key Recommendations

- Improve project monitoring of State-funded NYCHA housing programs. In particular, ensure that project status information is up-to-date and accurate.
- Work with NYCHA officials to develop action plans to help ensure unfinished projects are completed on time.
- Instruct NYCHA to require contractors to sufficiently detail and justify the basis for all change orders, including the related costs.
- Establish timeframes for NYCHA and other funding recipients to award project contracts.

Other Related Audits/ Reports of Interest

[New York City Department of Housing Preservation and Development: Administration of the Article 8-A Loan Program \(2013-N-4\)](#)

[Division of Housing and Community Renewal: Housing Preference for Disabled Veterans \(2010-S-42\)](#)

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

Division of State Government Accountability

August 26, 2015

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 *Oversight and Monitoring of the Public Housing Modernization Program at the New York City Housing Authority*. 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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Background

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), administered by DHCR in conjunction with HTFC, 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 overseeing the Program, while HTFC disburses the Program funds.

Since the Program's inception in 1980, approximately \$308 million in state funding has been awarded to 31 public housing authorities to upgrade 57 housing developments with nearly 19,918 qualifying apartments. Almost half of the Program funding (\$142.4 million) was dedicated for improvements to be managed by the New York City Housing Authority (NYCHA), the subject of this audit, which administers 334 public housing developments throughout the five boroughs of New York City.

In March 2010, when NYCHA became part of the federal housing program, DHCR stopped providing Program funds to NYCHA. At that time, about \$50.2 million in Program monies remained unused and represented almost eight years of Program funding for NYCHA. The funds were held in an interest-bearing account managed by HTFC. These unspent Program funds related to projects that had not begun, were still in progress, or were completed under budget.

In February 2010, DHCR and NYCHA entered into an agreement, called the "Omnibus Amendment to the Public Housing Modernization Contracts" (Omnibus Amendment). From the \$50.2 million in available Program funding, the Omnibus Amendment committed \$42 million to NYCHA's Marlboro Houses project (Marlboro) for roof replacement, masonry, brickwork, and facade and balcony repairs. The remaining \$8.2 million was intended for certain non-Marlboro capital projects. At the time of the Omnibus Amendment, DHCR had approved Program funding for 77 specific NYCHA projects. Per the Omnibus Amendment, NYCHA officials agreed to complete the 77 projects.

Audit Findings and Recommendations

DHCR's oversight and monitoring of NYCHA Program projects was weak. DHCR officials did not have accurate information regarding the status of NYCHA projects, particularly whether or not they were completed. Further, the Marlboro project received \$3.2 million more than its original allocation, thus reducing funding available for other projects. For that project, DHCR officials approved and paid multi-million-dollar change orders that: did not detail the work to be done; included work that appeared to be covered by the original contract; or was for non-contract work that should have been competitively bid. In addition, certain projects might have been completed in a more timely manner if not for the lengthy periods of time NYCHA took to award contracts.

Accuracy of Project Status Data

The Omnibus Amendment obligated NYCHA to complete the 77 original projects that were funded (but not completed as of February 2010) and the new projects at Marlboro. According to DHCR officials, as of February 2010, only 10 of the original 77 projects were not yet completed.

To test the accuracy of DHCR's project status data, we selected a sample of 25 projects (including 15 from the 67 projects reportedly completed at the time of the Omnibus Amendment and the 10 projects that DHCR officials told us were not completed). As of February 2015, DHCR officials were able to provide us with documentation that only 12 of the 15 "completed" projects were actually finished. Officials acknowledged that two of the projects, in fact, had not been completed. Officials maintained that the remaining project was complete, although they could not find the files (paperwork) demonstrating that it was finished. The three projects in question were:

- \$1.6 million for an electrical upgrade at the Chelsea Houses;
- \$820,000 for the replacement of wooden closet doors at the Drew Houses; and
- \$150,000 for play areas at Williams Plaza.

Also, while performing other audit work, we determined that two other projects (from the 67 purportedly completed as of March 2010) were not yet finished. Specifically, the two projects were:

- \$1.8 million for electrical upgrades at Baychester Houses; and
- \$250,000 for plumbing and related work at Independence Plaza.

Thus, we identified five projects (with funding allocations totaling \$4.62 million) that were not completed, contrary to what DHCR officials reported to us.

We also determined that the "incomplete" status of several projects was wrong. Of the 10 projects that DHCR officials considered incomplete, in fact, 8 were complete by the end of our audit field work (March 2015). Only two of the 10 were not complete by that date.

Without accurate status information, DHCR officials could not readily determine the extent to which certain NYCHA projects were complete (or incomplete), and they could not reliably project completion dates for projects that were not finished. Consequently, we concluded that DHCR officials had limited ability to monitor such projects and ensure they were completed properly and on time.

Further, several of the projects were and remain critical to residents' health and safety. For example, the projects included building access/egress for the disabled, asbestos removal, elevator upgrades, and replacements of stairwell and utility room doors. Consequently, it is important that DHCR officials develop and maintain accurate project status data to help them effectively monitor project progress.

Extra Allocation for Marlboro Project Change Orders

Pursuant to the Omnibus Amendment, no more than \$42 million of the \$50.2 million in unspent Program funds was to be allocated to NYCHA for work at Marlboro. However, the work at Marlboro actually totaled \$45.2 million – or \$3.2 million more than the amount originally allocated. Consequently, an additional \$3.2 million of Program funds were allocated to Marlboro. Further, the increased allocation for Marlboro resulted in commensurate funding reductions (totaling \$3.2 million) for other housing developments that also needed repairs.

Two vendors were awarded contracts for work at Marlboro. Navillus Contracting (Navillus) was awarded a \$33.5 million contract for masonry repairs, roof replacement, and exterior balcony restoration, and Abax Incorporated (Abax) was awarded a \$3.7 million contract to replace windows at five Marlboro buildings. These two awards totaled \$37.2 million, or \$4.8 million less than the \$42 million originally allocated for Marlboro. However, after the approval and payment of several change orders, Navillus and Abax were paid a total of \$45.2 million (including \$40.5 million for Navillus and \$4.7 million for Abax), thus exceeding the \$42 million originally allocated for Marlboro by \$3.2 million.

We reviewed a judgmental sample of 11 Navillus and four Abax change orders to determine whether the requested additional work and costs were justified and supported by the appropriate documentation. Based on payment requests from NYCHA to DHCR, we found that 10 of the 11 Navillus change orders were justified and supported with appropriate documentation (e.g., architectural drawings, square footage calculations, material quantities). However, the remaining (and final) change order requested payment of nearly \$6.8 million and brought the project's total cost well beyond its initial allocation of \$42 million.

Moreover, the final change order did not include the justification and supporting documentation that accompanied the prior change orders. According to the change order, it was "required to compensate Navillus for the aggressive work schedule, additional work, increased field and project costs, and labor and materials escalation costs." However, there were no details provided for these cited factors and how the amount (\$6.8 million) was calculated (See Exhibit). Further, the original Navillus contract held the contractor to the approved contract amount for materials, supplies, and labor (i.e., there were no provisions for escalation costs), and the project was not

completed before the prescribed completion date. Consequently, it was unclear why NYCHA owed Navillus the additional \$6.8 million.

We asked NYCHA officials why they approved the change order, and they provided a negotiated settlement between NYCHA and Navillus. According to the settlement, in October 2011, Navillus filed a “Notice of Claim” against NYCHA for \$15.9 million. The Notice of Claim related to various change orders wherein Navillus claimed it performed extra work for which NYCHA had not made payment. The claim was settled for \$6.8 million. We requested a copy of the Notice of Claim to determine the specific work in dispute; however, neither DHCR nor NYCHA could locate the requested document. Consequently, given the lack of detailed support for the \$6.8 million charge, we question the propriety of a payment of such magnitude.

The final change order from Abax (for \$977,500) was to replace 340 windows at Building #5, a building not included in the scope of the original contract work. Instead of soliciting competitive bids for this work, NYCHA paid Abax \$242,814 more than it paid for the window replacements in the other buildings covered by the contract, although the window replacements in Building #5 were similar (in terms of the type and the quantity) as the replacements in the other buildings. Given the lack of a competitive procurement process and the unexplained increase in cost, we question the propriety of the \$977,500 paid for the window work at Building #5.

Timeliness of Project Contract Awards

There was a wide range in the scope and complexity of the NYCHA projects funded under the Program. For example, one project was for an outdoor play area, while another was to replace hundreds of windows in a multi-building housing development. Many of the projects had health and safety implications, including elevator rehabilitations, electrical upgrades, and the installation of new hot water tanks. Thus, timely completion of such projects is very important. In addition, material and labor costs can increase significantly over time, potentially reducing the amount and/or quality of work that can be performed relative to static project funding allocations. In fact, the Consumer Price Index has risen over 20 percent in the last 10 years (or about 2 percent per year). Thus, the values of the allocations (which generally remain constant) could materially erode over time, potentially reducing the scope of work that can be performed.

Contracts between NYCHA and its vendors specified project completion dates (generally from one to three years), with which most NYCHA contractors complied. In contrast, the time frames in DHCR’s agreements with NYCHA were usually considerably longer, and generally allowed up to 10 years for project completion. Each of the 20 DHCR-funded NYCHA projects we reviewed was completed near or within the prescribed contract timeframes.

A further analysis of the 20 completed projects shows that, after project funding was approved, it generally took 2 to 6 years (and in one case 11 years) to complete projects. Further, in 13 of the 20 cases, NYCHA took between 1 year and 9 months to 4 years and 7 months (and in one case 9 years and 9 months) just to award the contracts. Thus, for many of the selected projects, a majority of the time to complete them was attributable to the contract award process, and once contracts were awarded, construction progressed in a timely manner. There was no information

in the project files to explain the amount of time it took to award the contracts, nor could NYCHA officials provide reasons for the time taken.

The funding contracts between DHCR and NYCHA do not prescribe timeframes for awarding contracts. We believe that the use of formal timeframes for contract awards could help reduce the time NYCHA takes to award contracts and thus complete projects. As noted previously, given the projects' importance to residents' health and safety, DHCR officials should strive to ensure that projects are completed in the timeliest manner.

Recommendations

1. Improve project monitoring of State-funded NYCHA housing programs. In particular, ensure that projects' status information is up-to-date and accurate.
2. Work with NYCHA officials to develop action plans to help ensure unfinished projects are completed on time. Place emphasis on projects that are significantly behind schedule.
3. Instruct NYCHA to require contractors to provide sufficient detail to justify change orders, including the related costs.
4. Instruct NYCHA to solicit bids when proposed change order work is outside of the scope of the original contract.
5. Establish timeframes for NYCHA and other funding recipients to award project contracts. When timeframes cannot be met, require recipients to document the reasons why.

Audit Scope and Methodology

The objective of this audit was to assess the DHCR's oversight and monitoring of certain NYCHA projects funded through the Modernization Program. In addition, the audit determined whether Program-funded projects were completed as planned, and whether selected Program expenditures were justified and adequately supported. Our audit period was January 1, 2010 through February 25, 2015.

To accomplish our objectives and assess related internal controls, we interviewed officials and staff from DHCR, HTFC, and NYCHA. We reviewed pertinent contracts and policies, including the Omnibus Amendment between DHCR and NYCHA. We obtained and reviewed the unspent balance reports from HTFC and the list of 77 NYCHA modernization projects that were allocated Program funds.

We reviewed the contracts between NYCHA and two vendors (Navillus and Abax) that performed work at Marlboro under the Omnibus Amendment. We also reviewed the payments from DHCR to NYCHA for those contracts, as well as payments to the contractors, change orders, completion reports, and final inspection reports. We reviewed the support for a sample of the larger

reimbursements DHCR made to NYCHA for change orders pertaining to work at Marlboro. In addition, we reviewed the completion status for a judgmental sample of projects funded by the Program. We performed site visits to a sample of the funded projects to observe the work that was done.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

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

We provided a draft copy of our 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 fundamentally concur with four of our report's five recommendations and indicate that certain actions have been and/or will be taken to address the recommendations they concur with. However, officials also disagree with several of our report's observations and conclusions. Our rejoinders to certain DHCR comments are included in the report's 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 Legislative and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

New York City Housing Authority

250 BROADWAY, 26TH FLOOR

Phone: 212 306 2860

NY, NY 10007

CHANGE ORDER

No. 22

TITLE: Globle Settlemnt
PROJECT: MARLBORO HOUSES
TO: Attn: [REDACTED]
 NAVILLUS TILE INC D/B/A NAVILLUS CO
 575 5th AVENUE, 29TH FLR
 NEW YORK, NY 10017
 Phone: 2127501808

DATE: 6/20/2013

JOB:
PROJECT NO: 5665
CONTRACT NO: 1004495
ORACLE ITEM NO:

RELEASE #: , **LINE #:** 16
APPROVAL DATE: 7/30/13
Number:

CO #22 RE: To: From:

Reason Code: FIELDCOND

AE Contract?: No

Description of Change

The change order was negotiated from \$15,991,206.52 to \$6,768,689.31, is required to compensate Navillus for the aggressive work schedule, additional work, increased field and project cost, and labor and materials escalation costs, and was approved by board on 06/19/2013. Authorized by Board Resolution 10-3/10-10.

Item	Description	Quantity	Units	Unit Price	Net Amount
00001	global Settlement	1		\$6,768,689.31	\$6,768,689.31

Unit Cost: \$6,768,689.31

Total: \$6,768,689.31

\$6,768,689.31

When Billing Against This Change order,
 Please Specify The Following
 Change Order No. 22
 Oracle Line No. #16

Subject to: A. The aforementioned change, and work affected thereby, is subject to all contract stipulation and covenants.
 B. The rights of the New York City Housing Authority are not prejudiced and
 C. All claims against the NYCHA which are incidental to or as a consequence of the aforementioned change(s) are satisfied.
 Now, THEREFORE, subject to the conditions hereinbefore set forth, and equitable adjustment of the contract price and time is established as follows:
ADJUSTMENTS OF CONTRACT TIME IS DEFERRED

The Contract Sum Will be Increased \$6,768,689.31

ACCEPTED:
 NAVILLUS TILE INC D/B/A NAVILLUS CO
 By: [REDACTED]

NYCHA-CPD Office of Design
 By: [REDACTED]
 Vice President / Executive Vice President

Date: 7-3-13

Date: 7/15/13

Copies: Contractor, Resource DPA, Disbursements, Finance, Budget, Record Storage, Capital Projects Administration, Development/Manager, Program Unit file Expedition®

Agency Comments



ANDREW M. CUOMO
Governor

Homes and Community Renewal

JAMES S. RUBIN
Commissioner/CEO

July ¹⁶ 10, 2015

Frank Patone,
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Dear Mr. Patone:

Thank you for the opportunity to review draft report 2014-S-21, Oversight and Monitoring of the Public Housing Modernization Program at the New York City Housing Authority. We have responded to all of the recommendations contained in the report and offer our detailed responses below.

Sincerely,


Ted Houghton
Executive Deputy Commissioner

cc: James S. Rubin, Commissioner

Response Summary

The Office of the State Comptroller's ("OSC") audit focuses on an assessment of the Division of Housing and Community Renewal's ("DHCR") monitoring and oversight of the Public Housing Modernization Program ("PHM") at the New York City Housing Authority ("NYCHA"). Recent audits by the New York City Comptroller's Office have raised some issues regarding NYCHA's monitoring and project management that DHCR is taking into consideration as it relates to any improvement opportunities in DHCR's PHM monitoring and oversight activities.

DHCR welcomed the opportunity to undertake this program review, as we are strongly committed to managing the agency's resources efficiently and effectively. We strive to improve the oversight of all our programs and we welcome OSC's observations and recommendations.

However, in this case, OSC's findings are largely inaccurate and grossly mischaracterize or ignore evidence of substantial oversight that DHCR provided to the auditors, frequently more than once. They also represent a basic misunderstanding of NYCHA's 2010 federalization of its remaining State-aided portfolio, as well as the Omnibus Amendment that memorialized DHCR and NYCHA's agreement regarding that federalization.

*
Comment
1

Under DHCR's stewardship of the PHM program, NYCHA was able to take full advantage of the 2009 American Recovery and Reinvestment Act ("ARRA") and receive substantial Federal funding, subsidies and tax credit equity investment for much needed rehabilitation work. Just as importantly, since the "Omnibus Amendment" was executed in 2010 (in connection with the ARRA-related federalization of NYCHA's remaining State-aided housing portfolio), nearly all of the previously outstanding NYCHA PHM work has been completed, including approximately \$40 million of essential roof replacements, masonry, brickwork façade and balcony repair work at Marlboro Houses. We believe that OSC's failure to mention the ARRA program in its report is misleading, at best.

*
Comment
2

In addition, the audit team informed us that this audit was departing from OSC's standard audit process by accelerating the release of Preliminary Findings that would not necessarily contain explicit conclusions. We raised concerns that this change could diminish DHCR's ability to review and comment on OSC's final draft report. A number of OSC's specific findings were first communicated to DHCR at a late February 2015 closing conference. At that meeting, we were advised that a third preliminary finding document would not be issued and that release of a formal Draft Report would be the next step. We believe this change in procedure resulted in increased comments to this report.

*
Comment
3

Our below summary and responses seek to correct a number of inaccuracies and oversights in OSC's draft audit report and provide you with a clearer understanding of the PHM program and DHCR's post-federalization monitoring of NYCHA's PHM projects.

The Transaction: ARRA Federalization and the Omnibus Amendment

In late 2009, DHCR agreed to consider NYCHA's request to re-allocate PHM funding, from ten previously approved NYCHA PHM projects (the "Original Projects") to Marlboro Houses, in order to meet HUD'S Housing Quality Standard requirements ("HQS") and qualify for ARRA federalization and funding streams for much-needed capital repairs and operating funds. The terms and conditions of the reallocation would be memorialized in an "Omnibus Amendment" to NYCHA's PHM contracts for the Original Projects.

Under the Omnibus Amendment, where previously awarded PHM funds were re-allocated to Marlboro House, both NYCHA and their private sector, investor partners remained jointly and severally liable for securing full replacement funding from other sources and for completing the same scope of work in the same general time frame as the Original Projects (*See*, DHCR Jan. 21 Response, Projects Completed section, 3d paragraph; *See also*, Omnibus Amendment, §

2(a)). Because some PHM funding remained after the Marlboro reallocation, some Original projects (the “Remainder Projects”) would receive the balance of the PHM funding.

As a pre-condition to DHCR signing the Omnibus Amendment, NYCHA provided DHCR with written financing commitments for alternative funding for the Original PHM projects. And, despite the fact that the Original Projects (other than the Remainder Projects) would no longer receive PHM funds, the Omnibus Amendment required that NYCHA and its partners provide DHCR with satisfactory completion documentation for these Original projects. The Omnibus Amendment also allowed for DHCR’s “claw back” of the Marlboro PHM funds, if NYCHA and its partners failed to complete the Original Project work scopes in the same general time frame.

Below are comments on the report text, as well as our specific responses to the recommendations.

Finding 1 – Issue of monitoring efforts and accuracy

OSC’s first key finding contends that “DHCR’s monitoring of NYCHA’s Program-funded projects was weak” and that, at the outset of OSC’s audit, “... DHCR officials did not have accurate and up-to-date information regarding the status of NYCHA’s projects.”

As noted above, DHCR welcomes OSC’s observations and recommendations for improving our oversight of New York’s PHM funds. However, these particular criticisms are inaccurate and mischaracterize the substantial evidence of oversight that we’ve provided OSC. In addition, OSC’s findings fail to take into account information that we’ve provided to the auditors, directly related to DHCR’s PHM monitoring.

*
Comment
4

For example, we provided OSC with copies of our comprehensive written policies, procedures and requirements for monitoring PHM work. DHCR’s Architectural and Engineering Unit (“A & E”), in accordance with these policies, procedures and requirements, vigorously monitored the NYCHA PHM projects by conducting field visits, reviewing all pertinent construction documents and communicating with all interested parties including NYCHA. PHM payments, which are made on a reimbursable basis, were not released until all DHCR concerns were addressed. As we explained in our response to OSC’s Preliminary Findings of October 18, 2014, our A&E Bureau conducted up to ten field inspections on each NYCHA PHM project (depending on the nature of the work and the status of the project). In addition to A&E’s inspection reports documenting these filed inspections, DHCR also provided OSC with photographs that A&E used to memorialize the completed work.

*
Comment
5

In addition, we provided OSC with a series of letters between DHCR’s Legal and Housing Management departments and NYCHA, starting in March 2012, in which DHCR requested status reports on the Omnibus Amendment’s “Completion Plan,” and NYCHA detailed the work that was scheduled or had been completed. This culminated in our letter of last December, in which we approved the allocation of all still-outstanding “Remainder PHM Funds” at four NYCHA PHM projects. We also provided OSC with both interim and final DHCR inspection reports, NYCHA’s disbursement requests and the supporting documentation for those requests.

*
Comment
5

OSC’s first key finding also specifically contended that “...[o]f the 10 projects that DHCR officials considered incomplete, in fact, 8 were complete by the end of our audit field work (March 2015). Only two of the 10 were not complete by that date.” This is not accurate and, in fact, seems to represent a basic misunderstanding of NYCHA’s 2010 federalization of its remaining State-aided portfolio and the Omnibus Amendment that memorialized DHCR and NYCHA’s agreement regarding that federalization.

*
Comment
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As explained above, NYCHA sought a re-allocation PHM funding from ten previously approved NYCHA PHM projects (the “Remainder Projects”), in order to expedite the work at Marlboro Houses, to meet HUD’s “HQS” requirements and qualify for much needed grants, loans, equity investment and subsidies for necessary capital repairs and operating funds.

In our response to OSC’s Preliminary Findings of October 18, 2014, we informed the auditors that ten projects were incomplete as of February 2010, the date of the Omnibus Amendment. We subsequently informed OSC that 8 of 10 projects had been completed by March 2015, consistent with the basic intent of the Omnibus Amendment. In fact, this was the Omnibus Amendment’s main purpose -- to allow NYCHA to satisfy HUD’s “HQS” federalization standards by expediting Marlboro Houses PHM work, while committing NYCHA and its private sector investment partners to jointly ensure that they secured alternative financing and completed the original scope of work for the Remainder Projects in the same general time frame as promised in their pre-Omnibus Amendment PHM contracts. Therefore, under the Omnibus Amendment and consistent with HUD’s federalization terms, it was understood that these Remainder projects weren’t supposed to be completed until after the Marlboro House work was completed.

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Comment
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Finding 2 – Issue of Supporting Documentation

This finding indicates that “DHCR officials paid \$6.7 million for a change order for Marlboro that was unsupported” and that “Neither DHCR nor NYCHA officials could provide details of the change order charges.”

As we noted in our response to your second Preliminary Findings, dated December 18, “...prior to approving NYCHA’s Change Order requests, DHCR received and reviewed a significant amount of detailed documentation containing...the authorization and/or certification of various NYCHA and independent, third party officials.” In support of this statement, we provided your auditors the following supporting documentation on February 25th and again on March 25th:

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- Change Order/Delay Claim Settlement and Release Agreement (between NYCHA and Navillus);
- Unconditional Waiver of Lien and Release (from Navillus to NYCHA);
- Change Order #22;
- Change in Scope of Work;
- Change Order Validity and Justification;
- NYCHA Board Resolution; and
- NYCHA Scope of Work and Justification.

Therefore, your above statement that DHCR paid for a \$6.7 million “unsupported” Change Order is demonstrably incorrect.

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Comment
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Furthermore, as we previously explained, Change Order #22 resulted from NYCHA’s settlement of a \$15 million legal claim by Navillus, their largest sub-contractor at Marlboro Houses. In 2011, Navillus filed a notice of claim with NYCHA, seeking damages in the amount of \$15,991,206 (*See, Claim Settlement and Release Agr.*, pg 1, para. 5). However, after several negotiation meetings, NYCHA and Navillus agreed to settle the \$15.9 million claim for a final amount of \$6,768,689.31 (*See Change Order No. 22*, Description of Change section; *Change Order Validity and Justification*, Justification section; *Claim Settlement and Release Agr. passim*). In addition, this Change Order settlement was approved by NYCHA’s Board of Directors (*See, NYCHA Board Resolution*) as well as by IVI International, the construction consultant to Citi Community Capital, NYCHA’s private sector, investor partner in the federalization (*See, Scope of Work and Justification*).

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Comment
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As we also explained, the circumstances of this change order (a PHM grant recipient facing a substantial legal claim with potential damages far in excess of the outstanding contract balance) was unprecedented in our program experience.

Furthermore, our review of the Settlement Agreement, NYCHA's Board Resolution and the other supporting documents indicated that NYCHA had reasonably considered and prudently negotiated the settlement amount. Finally, the consequence of DHCR not accepting this as proof, and instead insisting on receiving and reviewing the standard "details of the change order charges," would likely have resulted in drawn-out litigation with mounting expenses and a potential judgement far in excess of the final settlement amount.

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Comment
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Therefore, we strongly believe that our decision to consider the above documentation, including the documented conclusions of NYCHA's board and their private sector investment partner, was a prudent, responsible and diligent approach to resolving this issue.

In a related matter, we also believe that your Recommendation 3 ("Instruct NYCHA to require contractors to provide sufficient detail to justify change orders, including related costs") is unwarranted, as this was a one-time occurrence and no systemic deficiency related to supporting documentation was identified. OSC's draft report notes that 10 of the 11 sampled Navillus change orders were found to be "...justified and supported with appropriate documentation (e.g., architectural drawings, square footage calculations, material quantities). Nonetheless, we will reexamine our review process for this particular and unique Notice of Claim issue, in order to develop guidance on how to better prepare for, and identify mitigating actions for any future recurrence.

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Finding 2 – Issue of Funding

Your second Finding also concluded that change order #22 "...brought the total funding allocation for the project (\$45.2 million) to \$3.2 million more than its original approved amount" and "[a]s a result, funds designated for other projects had to be re-allocated to this project." Later, you elaborate that "the increased allocation for Marlboro resulted in commensurate funding reductions (totaling \$3.2 million) for other housing developments that also needed repairs."

However, this is true only to the extent that the Marlboro reallocation reduced PHM funding (but not overall funding) for the other projects. As a practical matter, the re-allocation to Marlboro had no net effect on the other projects, as that funding was replaced and the project work completed in the same, general time frame. In fact, this was DHCR's primary intent in entering the Omnibus Amendment.

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As we've previously explained, under the Omnibus Amendment, where previously awarded PHM funds were re-allocated to Marlboro House, both NYCHA and their private sector, investor partners remained jointly and severally liable for securing full replacement funding from other sources and for completing the same scope of work in the same general time frame as the Original Projects (*See*, DHCR Jan. 21 Response, Projects Completed section, 3d paragraph; *See also*, Omnibus Amendment, § 2(a)). Because some PHM funding remained, after the Marlboro reallocation, some projects (Remainder Projects) would receive the balance of the PHM funding.

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As a pre-condition to DHCR signing the Omnibus Amendment, NYCHA provided DHCR with written financing commitments for alternative funding for all the original PHM projects. And, despite the fact that the original projects would no longer receive PHM funds, the Omnibus Amendment required that NYCHA and its partners provide DHCR with

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satisfactory completion documentation for these Original projects.¹ Therefore, the increased re-allocation of PHM funds to Marlboro had no actual effect on the other projects.

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Finding 2 – Issue of Change Order – Window Replacements at Building 5 Marlboro

OSC’s second finding also points out that NYCHA “...paid (the window contractor) Abax \$242,814 more than it paid for window replacements for the other buildings.although the window replacements in Building #5 were similar in terms of the type and quantity)”. OSC concludes that NYCHA should have been required to conduct a new procurement process to solicit competitive bids for window replacement work at building 5, rather than rely on the pricing established in NYCHA’s existing, procured contract (for similar window work at different buildings in the same NYCHA development).

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We respectfully disagree with OSC’s conclusions concerning this matter. Building 5’s additional costs were due to the removal and reinstallation of the existing windows, to perform asbestos abatement. The Building 5 windows were not originally scheduled for replacement (though a decision was made to later replace those windows). Additionally, the higher price paid to Abax for Building #5 stemmed from the asbestos abatement work performed prior to the decision to replace the windows. Once the decision to replace the existing windows with new windows, the new window installation was billed at the same, pre-established unit cost as for the window replacement at the other building. Thus, Building 5’s additional costs are attributable to conditions which did not exist on the previous buildings. DHCR’s Architectural and Engineering (A&E) Bureau supplied OSC with this information, along with extensive supporting documentation, on March 3, 2015.

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NYCHA used standard construction industry practice in awarding a change order based on established unit prices vs. re-bidding the project. The original window bid package had a section for bidders to submit pricing. Once the established pricing was approved by NYCHA (and authorized by DHCR), each periodic invoice was approved based on the percentage of window installation completed and submitted to NYCHA. The change order process extended the scope of the window replacement contract using the original established unit prices.

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The unit prices for windows had been established when the original contract was awarded and later approved by DHCR’s A&E Bureau on Jun 28, 2011. The Change order for Building 5 was approved by A&E on December 20, 2012. The costs for replacement windows, labor and materials, would have most likely increased in the 18 month period between award of contract for the original group of buildings and Building 5, so it’s not clear that engaging in a competitive bidding process would have resulted in any cost savings, despite the likely delay needed to engage in such a process.

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The draft report is frequently critical of the length of time it took to complete PHM projects that would benefit NYCHA residents. However, starting a new bid process, with several unknown bidders and a new set of construction documents, would certainly have delayed the project by at least three to six months.

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Finding 3 – Issue of Timing to Award Construction Contracts

OSC’s third key finding notes that, for the majority of the NYCHA PHM projects that OSC analyzed “...NYCHA took between 1 yr. 9mo’s and...9 yrs 9 mo’s just to award the contracts,” which meant that “a majority of the time to complete them was attributable to the contract award process.”

¹ Importantly, the Omnibus Amendment also allowed for DHCR’s “claw back” of the Marlboro PHM funds, where NYCHA and its partners failed to complete the Original Project work scopes in the same general time frame.

OSC further noted that “[t]he funding contracts between DHCR and NYCHA do not prescribe timeframes for awarding contracts....” and suggested that “.....the use of formal timeframes for contract awards could help reduce the time NYCHA takes to award contracts and thus complete projects” and that “DHCR officials should strive to ensure that projects are completed in the timeliest manner.”

DHCR agrees with OSC that PHM repairs should be done as expeditiously as possible, particularly those repairs which concern the health and/or safety of NYCHA’s residents. We believe that OSC’s suggestion that DHCR impose time frames for NYCHA’s award of contract could provide some relief in this area (although, in the case that NYCHA failed to meet any such time frame deadline, it’s unclear whether any potential remedy would improve or worsen the situation).

However, many of OSC’s particular criticisms or characterizations of these matters are inaccurate and seem to overlook or misinterpret the evidence that we’ve provided. In addition, OSC failed to account for a number of material factors that either fully explained, or largely mitigated the effect of, any such delay.

For instance, it seems that OSC didn’t account for the scale of many of NYCHA’s capital projects, and the fact that it may take NYCHA several annual PHM funding allocations before they can reasonably and responsibly move forward with soliciting bids and awarding contracts. (It should be noted that DHCR’s reallocation of PHM funds to the Marlboro project allowed that essential work to start immediately obviating the need to wait until additional funds were secured.)

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As we’ve previously explained, up until 2010, NYCHA received an annual, aggregate allocation of \$6.4MM in PHM funding. Because of the large number of NYCHA projects with substantial capital repair needs, many NYCHA/PHM projects take several, annual PHM funding cycles to fully fund. Therefore, while OSC’s report did not specifically identify those projects where NYCHA took a significantly long time to award construction contracts, if OSC is measuring from the first funding cycle, this isn’t an accurate characterization of the time that NYCHA actually should and could solicit bids and seek to enter into PHM construction contracts.

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In addition, as we’ve also explained, once a project is fully funded, there are a number of interim steps that NYCHA must take before awarding or entering into a construction contract. For instance, plans and specifications for the contemplated work must be submitted, reviewed and approved by DHCR’s A&E Bureau. In addition, NYCHA’s 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.

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Comment
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Finally, OSC’s claim that “[t]here was no information in the project files to explain the amounts of time it took to award the contracts, nor could NYCHA officials provide reasons for the time taken” is unfounded.

OSC seems to have overlooked our prior explanation (and the written correspondence documenting this that we provided) that NYCHA often asks DHCR to defer certain already awarded PHM projects, in order to reallocate those PHM funds elsewhere, usually to more urgent, previously unidentified projects. We provided OSC with just such a request for reallocation, along with substantiating documents, which included the reason for the request and a statement from NYCHA’s construction engineers that the delay in starting the first project would have no effect on the health and/or safety of the residents of the project.

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In addition, in response to OSC’s question regarding why the last five "Remainder Projects" from the Omnibus Amendment took so long to get started, we provided OSC with a fairly detailed explanation from NYCHA, which was entirely consistent with the Omnibus Amendment.

Recommendations

NOTE: Given the federalization of NYCHA's remaining State-aided public housing portfolio, as described in this report, DHCR do not foresee awarding NYCHA any new PHM funding in the near future. However, we are taking OSC's recommendations into account in the rest of the State-aided public housing portfolio.

We understand that NYCHA has received an allocation of new capital funding from New York State which will be administered and overseen by another State agency and there will be no nexus to DHCR's PHM program.

1. "Improve project monitoring of State-funded NYCHA housing programs. In particular, ensure that projects' status information is up-to-date and accurate."

DHCR Response: We agree with the recommendation. We will review existing monitoring procedures for improvement opportunities.

2. "Work with NYCHA officials to develop actions plans to help ensure unfinished projects are completed on time. Place emphasis on projects that are significantly behind schedule."

DHCR Response: We agree with the recommendation and action has already been taken. For new Public Housing Modernization funds for NYCHA, the project management will be handled by the Dormitory Authority of NY.

3. "Instruct NYCHA to require contractors to provide sufficient detail to justify change orders, including related costs."

DHCR Response: DHCR already has an existing requirement related to adequate supporting documentation for change orders. The issue cited in the report was for one change order for one extraordinary event rather than a systemic problem. The other 10 Navillus change orders that were sampled were found to have been justified and supported with appropriate documentation. For the 4 Abax change orders sampled by the auditors, the draft report only comments on one change order in the context of it being for work (window replacement) not in the scope of the original contract. DHCR will reexamine its review process for the Notice of Claim change order issue, and develop guidance on how to best prepare for and address any like situations should they re-occur.

4. "Instruct NYCHA to solicit bids when proposed change order work is outside of the scope of the original contract"

DHCR Response:

We disagree with the recommendation as written as all change orders are for work either not covered or outside the scope of the original contract, and DHCR's Architectural and Engineering Unit reviews labor and material price estimates and determines if it impacts any critical path. Another concern with the recommendation is that such an instruction would have to be weighed against likely time added to the project life by undertaking new bid solicitations.

5. "Establish timeframes for NYCHA and other funding recipients to award project contracts. When timeframes cannot be met, require recipients to document reasons why."

DHCR Response: We agree with the recommendation and action has already been taken. For new Public Housing Modernization funds for NYCHA, the project management will be handled by the Dormitory Authority of NY.

State Comptroller's Comments

1. As noted in the report, we performed our audit in accordance with generally accepted government auditing standards, which require a review of sufficient appropriate evidence to formulate a basis for our findings and conclusions. Consequently, we did not ignore or mischaracterize any evidence provided to us during the audit. In addition, we developed a sufficient knowledge and understanding of NYCHA's 2010 federalization as well as the Omnibus Agreement to perform our audit.
2. NYCHA's use of ARRA (federal) funding was not within the scope of this audit, and therefore, we did not comment on it. The ARRA program had unique requirements, and our audit was limited to the State-funded PHM program. Moreover, it is unclear why the exclusion of ARRA funding from our audit was "misleading" with respect to our audit of the State-funded PHM program.
3. We did not depart from our standard reporting protocols or diminish DHCR's ability to review and respond to the draft audit report. In fact, consistent with OSC's standard procedures, we discussed our audit observations with DHCR officials. We then provided DHCR officials with written preliminary audit findings (or "Exception Reports") and requested officials to comment on them. Further, we held an exit conference with DHCR to finalize any open issues and provide additional opportunity for comment or supporting evidence. Finally, we granted DHCR an additional week to formally respond to the draft audit report. In addition, the "third preliminary" finding cited by DHCR did not pertain to this audit.
4. We did not mischaracterize or discount evidence provided by DHCR. Also, see Comment #1.
5. We do not dispute the existence of DHCR's written policies and procedures for monitoring PHM work, nor do we question the benefits of field visits and interim inspections by architects and engineers. However, unless they are adequately documented, such visits and inspections are of limited value, and further, there are questions as to the extent to which they actually occurred.
6. We maintain that our report accurately details deficiencies in the project management status data (from February 2010) that DHCR officials provided to OSC audit staff. Moreover, DHCR does not explain how Federal project funding impacted the categorization (status) of State-funded projects as either complete or incomplete.
7. DHCR's comments illustrate our audit's concerns. If DHCR had more current and accurate project status data as of October 2014, we question why such data was not provided to us at that time. Moreover, there is considerable risk that the revised project status data provided in March 2015 (noting that 8 of the 10 selected projects were complete) was in response to our preliminary findings issued in 2014 (which noted that 8 of the same 10 projects were incomplete).
8. We acknowledge that DHCR officials provided the referenced documents to us, and we reviewed and considered those documents in making our observations and conclusions. Based on our review of those documents (particularly the change order itself), we concluded that the documentation lacked specific details of how the \$6.8 million was calculated, as stated in the report. Further, as also stated in the report, DHCR officials were

unable to provide auditors with the original Notice of Claim, which might have detailed the amount NYCHA owed the vendor. Moreover, as acknowledged subsequently by DHCR in its response to the draft report, officials did not insist on receiving and reviewing the standard details of the change order in question.

9. We revised pertinent language in our report to note that the \$6.8 million change order for Marlboro was not adequately supported.
10. Given the magnitude (\$6.8 million) of the payment in question, we maintain that DHCR should have received and carefully reviewed the standard details of the change order. Further, it is speculative to suggest that a review of such details would likely result in a drawn-out litigation. The details would have clarified the issue and helped ensure the propriety of the amount paid.
11. Given the magnitude (\$6.8 million) of the payment in question and DHCR's acknowledgment that officials did not receive and review standard change order details, we maintain that the recommendation is appropriate. Further, we commend DHCR for examining its review process to better prepare for and identify mitigating actions for any similar future occurrence.
12. Nevertheless, PHM funding had to be re-directed from other projects, leaving them with less PHM funding than otherwise would have been available without the additional \$3.2 million allocation to Marlboro. Further, the replacement funds could have been used for other purposes if not required to supplant the PHM funding re-directed to Marlboro.
13. If conditions (i.e., asbestos) at Building #5 did not exist at the other buildings that were previously worked on, then the nature and scope of the work at Building #5 was significantly different from the work performed at the other buildings. Thus, we maintain the work at Building #5 (which initially did not include window replacement, the work at the other buildings) should have been competitively bid. Further, the fact that PHM funds were used to reinstall the original windows and then replace them shortly thereafter is indicative of rather questionable project planning. Hence, there is considerable risk that a material portion of the additional \$242,814 required for the work at Building #5 was wasted.
14. The inability to award contracts timely should not be used as a justification to forgo competitive bidding where and when it is otherwise appropriate or required.
15. DHCR provided no formal analysis to demonstrate that the contract delays noted in our report were often attributable to the passage of multiple funding allocation cycles, necessary to obtain sufficient levels of funding for specific projects. We acknowledge that an additional funding allocation of \$3.2 million was made to the Marlboro project, as noted in the report. However, it is unclear that the remaining PHM projects (which were generally much smaller in scale and cost than Marlboro) often required multiple allocation cycles to obtain sufficient funding.
16. We did not overlook any documentation provided to us by DHCR or NYCHA officials during the audit. Moreover, officials provided no formal analysis or other evidence to indicate that contract awards were consistently delayed due to the routine need for the reallocation of project funds.