State of New York, Governor's Office of Storm Recovery

Community Development Block Grant Disaster Recovery Assistance
New York Rising Enhanced Buyout Program

Office of Audit, Region 2
New York - New Jersey

Audit Report Number: 2015-NY-1010
September 17, 2015

To: Marion Mollegan McFadden
Deputy Assistant Secretary for Grant Programs, DG

//SIGNED//
From: Kimberly Greene
Regional Inspector General for Audit, 2AGA

Subject: New York State Did Not Always Administer Its Rising Home Enhanced Buyout Program in Accordance With Federal and State Regulations

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the New York State Governor's Office of Storm Recovery's administration of its New York Rising Home Enhanced Buyout Program

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at 212-264-4174.

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New York State Did Not Always Administer Its Rising Home Enhanced Buyout Program in Accordance With Federal and State Regulations

Highlights

What We Audited and Why

We audited the New York Rising Home Enhanced Buyout Program to address the requirement that the U.S. Department of Housing and Urban Development, Office of Inspector General, monitor the expenditure of Community Development Block Grant Disaster Recovery (CDBG-DR) funds made available by the Disaster Relief Appropriations Act. Our audit objective was to determine whether New York State officials established adequate controls to ensure that funds were used for eligible activities and reasonable expenses and procurement actions complied with Federal regulations.

What We Found

State officials did not always administer the program in accordance with program procedures and their partial action plan, ensure that property eligibility and the purchase price were adequately supported, maintain documentation to support that procurement actions complied with Federal and State requirements, and post required information to a Web site. We attributed this condition to the State's failure to follow published State procedures, weaknesses in maintaining file documentation, and officials' unfamiliarity with Federal procurement regulations. As a result, officials disbursed $6.6 million for properties that did not conform to published requirements and $672,000 and $598,300 for ineligible incentives and purchase prices in excess of authorized limits, respectively, and documentation was inadequate to support that $1.7 million was disbursed for eligible purchases and that $8.7 million spent for contracts complied with Federal or State requirements. State officials had taken some corrective actions, thus ensuring that an additional $16.5 million would be put to its intended use.

What We Recommend

We recommend that the Deputy Assistant Secretary for Grant Programs require State officials to (1) provide documentation to support that 19 properties, for which more than $6.6 million was disbursed, complied with the State's partial action plan and the intent of its board resolution authorizing the buyout program; (2) repay ineligible incentives and purchase prices of $672,000 and $598,300, respectively; (3) provide support for more than $1.7 million in unsupported expenditures and that $8.7 million was disbursed for contracts procured in accordance with requirements; and (4) ensure that contracts and subrecipient agreements are executed in accordance with Federal and State regulations.

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Background and Objective

Congress made available $16 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds via the Disaster Relief Appropriations Act of 2013[1] for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in areas most impacted by a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 in calendar years 2011 through 2013. Before receiving funds under this appropriation, grantees had to certify to the U.S. Department of Housing and Urban Development (HUD) that they had proficient financial controls and procurement processes and procedures for ensuring that any duplication of benefits was identified; funds were spent in a timely manner; Web sites were maintained to inform the public of all disaster recovery activities; and waste, fraud, and abuse of funds were prevented and detected. In addition, grantees were required to develop an action plan for public comment and HUD approval, which described (1) how the proposed use of the CDBG-DR funds would address long-term recovery needs; (2) activities for which funds could be used; (3) the citizen participation process used to develop, implement, and access the action plan, and (4) grant administration standards.

On April 3, 2013, New York State prepared its certification of proficient controls, processes, and procedures to be submitted to HUD, and on April 25, 2013, HUD approved the State's partial action plan. On May 14, 2013, HUD executed a grant agreement with the New York State Homes and Community Renewal under which its Office of Community Renewal and Housing Trust Fund Corporation (HTFC)[2] would administer the initial award of $1.7 billion in CDBG-DR funds. In June 2013, the governor established the Governor's Office of Storm Recovery under the auspices of HTFC to administer the CDBG-DR funds. HUD has since approved eight amendments to the partial action plan.

State officials established the Recreate NY Home Buyout Program,[3] one of six housing assistance programs approved in the initial action plan, to purchase one- and two-unit homes on a voluntary basis, either as an enhanced buyout or a standard buyout. Enhanced buyouts, to occur in predefined targeted areas determined in consultation with county and local governments, provided for the purchase of properties at the pre-storm fair market value, with incentives of up to 15 percent of the fair market value. Standard buyouts provided for the purchase of properties that were substantially damaged and within the highest risk area along the water (referred to as the "V" zone) on Federal Emergency Management Agency (FEMA) flood maps at their pre-storm value and at 100 percent of the post-storm fair market value for properties inside the 500-

[1] Public Law 113-2
[2] HTFC is a subsidiary public benefit corporation of the New York State Housing Finance Agency.
[3] Later renamed the New York Rising Buyout Program

year flood plain but outside the "V" zone. Properties purchased as an enhanced buyout would have to remain forever undeveloped, while properties purchased as a standard buyout could be redeveloped to be more resilient.

The State allocated more than $328 million to the buyout program. In February 2013, State officials announced the first enhanced buyout area and began accepting and processing applications from residents of Oakwood Beach, Staten Island,[4] in April 2013. The first enhanced buyouts in Oakwood Beach occurred in October 2013, and an additional 12 areas have been identified as enhanced buyout communities. State officials had mailed invitations to participate in the enhanced buyout program to 1,356 homeowners, of whom 697 had responded, and 320 properties had been purchased. The program had drawn more than $301 million[5] as of March 31, 2015.

The audit objective was to determine whether State officials established adequate controls to ensure that funds were used for eligible activities and reasonable expenses, procurements were executed in accordance with Federal regulations, and required information was posted to the State's Web site.

[4] Staten Island, a borough of New York City, had its own CDBG-DR appropriation; however, State officials opted to fund buyouts in Staten Island with funds approved under the State's action plan.

[5] This amount provides funds for enhanced buyouts and acquisitions, as well as program administration, legal, and demolition costs.

Results of Audit

Finding 1: State Officials Did Not Always Administer the Enhanced Buyout Program in Accordance With the State's Partial Action Plan and Published Policy

State officials did not always administer the enhanced buyout program in accordance with the State's HUD-approved partial action plan, its buyout program policy and procedure manuals, and information disseminated to the public. While these documents specified that properties purchased should be owner-occupied at the time of Superstorm Sandy and substantially damaged, properties were purchased that did not always meet these requirements. We attributed this condition to the State's failure to follow its written program policies and procedures. As a result, $6.6 million was disbursed to purchase properties that were either vacant or rented at the time of the storm and lacked documentation showing that they were substantially damaged or located in the highest risk area contrary to published information, and the public was not always fully aware of how the program was implemented. Once State officials complete the citizen participation process and obtain HUD approval to make program policy consistent with the program's implementation, they can be assured that the $13 million allocated but not disbursed as of March 31, 2015, will be put to its intended use.

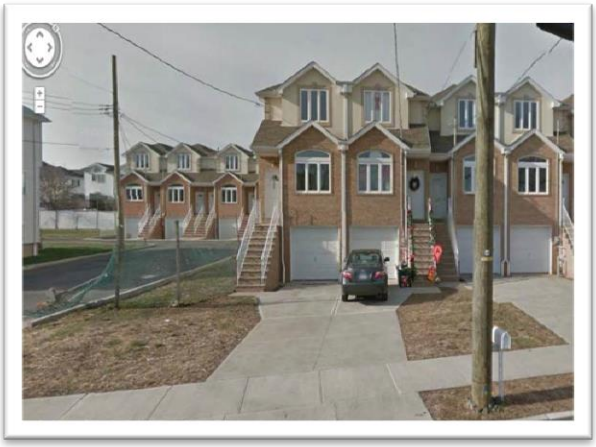
Properties Purchased Did Not Always Comply with HUD's Approved Partial Action Plan and the State's Published Guidance

State officials' implementation of the enhanced buyout program resulted in the purchase of properties that were less restrictive than those published in the State's HUD-approved partial action plan, provided for in the State's policies, and advertised to the public. Public Law 113-2 requires grantees to administer funds in accordance with all applicable laws and regulations, and 78 FR 14347 (March 5, 2013) requires grantees to certify that activities will be administered consistent with their partial action plan. The State's partial action plan, approved by HUD on April 25, 2013, provided for an enhanced buyout program under which one- and two-unit residential properties would be acquired and demolished as well as vacant or undeveloped land, all of which would remain as a coastal buffer zone or used for other nonresidential or non-commercial purposes. However, partial action plan amendment 6 and program guidance and published information imposed other, more restrictive requirements for properties that were to be purchased.

Amendment 6 to the partial action plan, which HUD approved on May 27, 2014, clarified that damaged properties purchased under the buyout program must have been substantially damaged and the applicants' primary residence at the time of the qualifying disasters. Similarly, State officials published a "Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds" on August 2 and November 7, 2013, which provided that the New

York State Homes and Community Renewal, Office of Community Renewal and the HTFC were awarded Federal grant resources to financially assist homeowners whose primary residences were substantially damaged by Superstorm Sandy, and on August 13, 2013, the HTFC board passed a resolution making grants available for the buyout of owner-occupied properties. Further, the State's Buyout and Acquisition Policy Manual, New York Rising Buyout Program, dated January 23, 2014, provided that enhanced buyouts would include the purchase of eligible, substantially damaged[6] properties inside the highest risk area[7] within the FEMA 100-year flood plain, and program information posted on the State's Web site provided for similar purchases under Frequently Asked Questions, dated January 23, 2014.

A review of 100 enhanced buyout files and a site visit to a targeted enhanced buyout area in March 2014 disclosed that, while all properties purchased were located within the 100-year flood plain[8], they were not always owner-occupied, substantially damaged, or in the highest risk area as specified in the partial action plan and program guidance. State officials purchased 12 properties, owned by a corporation, which were vacant or rented at the time of the storm (see photo) or lacked documentation showing that they were substantially damaged or located in the highest risk area, and an additional 7 properties that were non-owner-occupied rental properties. We attributed this condition to the State's failure to follow its written policies. As a result, more than $6.6 million was disbursed for properties that did not comply with the requirements of the State's partial action plan and program guidelines and was considered unsupported. Further, review of 156 properties purchased as of November 2014 disclosed that 9 additional individuals or entities received more than $8 million for the purchase of 18 properties. This indicated that some of the 18 properties may not have been owner-occupied.



January 2013 picture of corporate-owned properties that were bought out in the Oakwood Beach section of Staten Island while either vacant or having a history of being rented.

After being informed in March 2014 of the apparent discrepancy between the program's implementation and the State's partial action plan amendment 6 and published program information, State officials said that the intent of the program was not to limit purchases to owner-occupied homes and that

[6] Substantially damaged was defined in the State's Policy Manual as damage of 50 percent or more of a home's pre-storm value.

[7] The highest risk area was identified by compiling data from various sources accurate enough to differentiate areas with a likelihood of flooding, erosion, waves and storm surge and assigning extreme, high and moderate risk based upon the areas' vulnerability.

[8] These properties would be eligible for buyout under HUD CDBG-DR regulations, which allow for the purchase of owner-occupied and rental homes, as well as vacant property within a floodplain.

all properties were automatically categorized as substantially damaged as a result of their location in a buyout-designated area. Consequently, on April 7, 2014, State officials revised the program policy manual and Web-based information to ensure that they were consistent with the program's implementation. However, the partial action plan had not been revised, and the updated policy manual, dated April 7, 2014, as well as some Web-based information still referenced the requirement that properties be owner-occupied and substantially damaged. State officials said in March 2014 that they would make necessary updates to amendment 6 and the most recent policy manual to bring the language in line with actual implementation of the buyout program. 78 FR 14338 (March 5, 2013) provides that any change in program eligibility criteria constitutes the creation of a substantial amendment, which is subject to the citizen participation process and HUD approval. In early January 2015, State officials began the citizen participation process to further clarify amendment 6 that properties to be purchased need to have been owned at the time of the storm, which HUD approved on April 13, 2015 as part of amendment 8. Once assurance is provided that published program information is consistent with the approved partial action plan and program implementation, State officials can be assured that the more than $12 million, allocated but not disbursed as of March 31, 2015, will be put to its intended use.

Conclusion

State officials did not consistently administer the enhanced buyout program in accordance with the HUD-approved partial action plan, its buyout program policy and procedure manuals, and information disseminated to the public. We attributed this condition to the State's failure to follow its written policies and procedures. As a result, more than $6.6 million was disbursed to purchase properties that were neither owner-occupied nor substantially damaged as required by the State's published policy, and the public was not always accurately informed of how the program was implemented. In addition, an allocated but not disbursed amount of more than $12 million as of March 31, 2015, for the enhanced buyout program can be put to its intended use once assurance is provided that published program information is consistent with program implementation.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs instruct State officials to

1A. Provide documentation to support that the 19 properties, purchased with more than $6,606,359 in program funds, complied with the intent of HTFC's resolution authorizing the buyout program and the provisions of the partial action plan. If these properties are determined to not have complied, the funds should be reimbursed from non-Federal funds to the State's line of credit, and funds disbursed for any additional properties purchased that did not comply should be identified and reimbursed.

1B. Obtain HTFC board approval for the changes in the buyout program to provide greater assurance that the more than $12,984,427 allocated but not disbursed as of March 31, 2015, will be put to its intended use.

1C. Strengthen controls to ensure that the enhanced buyout program partial action plan description, Program Policy Manual and publicly disseminated program information align with resolutions affecting the program and how the program is implemented, and that the public is adequately informed of how the program is implemented.

Finding 2: File Documentation Was Not Always Adequate To Support the Eligibility of Disbursements

Documentation in grantee files did not always adequately support that CDBG-DR funds were disbursed in accordance with program requirements. Specifically, some incentive awards were disbursed contrary to regulations and the State's partial action plan, buyout awards exceeded State-authorized limits, and documentation was not always adequate to support property eligibility. We attributed this condition to officials' unfamiliarity with Federal regulations and not following prescribed award calculation limits and weaknesses in obtaining and maintaining documentation, which lessened assurance that disbursements related to eligible property purchases and awards were properly calculated. As a result, State officials disbursed $672,000 and $598,300 for ineligible incentives and purchases that exceeded authorized limits, respectively, and $1.7 million that was inadequately supported.

Incentive Awards Were Disbursed Contrary to Regulations and the State's Partial Action Plan

A review of 100 purchased properties disclosed that enhanced buyout incentives of $672,000 were awarded to 7 owners of 19 properties who were not residents of the targeted buyout area as required. 78 FR 14345 (March 5, 2013) provided for incentive payments to households[9] that volunteered to relocate from a floodplain or to a lower risk area and required that incentives comply with the grantees' approved partial action plan and published program design. The State's partial action plan authorized a 10 percent enhanced buyout incentive in an effort to relocate homeowners from a high-risk area to protect as many as possible from future disasters, and as noted in finding 1, the State's program policies provided for incentive payments to the owner-occupant of the property. We attributed this condition to officials' failure to follow the State's written policies and unfamiliarity with Federal regulations. However, State officials said they did not believe that occupancy of the property was required for the 10 percent incentive. Since these incentives were paid to owners who did not occupy the properties, we considered the $672,000 disbursed to be ineligible.

The Buyout Award Exceeded State-Authorized Limits

A review of 100 property buyouts disclosed that awards for 3 properties exceeded the 2013 Federal Housing Administration (FHA) mortgage loan limits established by the State. The August 13, 2013, HTFC board resolution authorizing the buyout program provided that grants to each property owner for the buyout of owner-occupied properties would be limited to a property's pre-storm fair market value plus any incentives agreed upon but not to exceed the 2013 FHA mortgage loan limits. However, the State's partial action plan established the 2013 FHA mortgage loan limit as the ceiling for a property's purchase price. Further, the State's procedure manual provided that duplicate benefits would be subtracted from the lower of a

[9] Regulations as 24 CFR (Code of Federal Regulations) 570.3 define households as all persons occupying a housing unit and state that the occupants may be a family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

property's pre-storm fair market value or the 2013 FHA mortgage loan limit. However, as shown in the table below, duplicate benefits for three properties were subtracted from the properties' pre-storm fair market value, which was greater than the 2013 FHA loan limit.

Excess buyout award

Calculated line item	Property 1	Property 2	Property 3
Pre-storm fair market value	$820,000	$975,000	$925,000
Buyout incentive	82,000	97,500	92,500
Total fair market value and incentive	902,000	1,072,500	1,017,500
Lower of fair market value and incentive or FHA mortgage limit	729,750	934,200	729,750
Subtract: duplication of benefits *	(13,969)	(230,743)	(260,731)
Add: closing costs	5,168	5,121	4,170
OIG-calculated award**	720,949	708,578	473,189
GOSR*-calculated award**	893,199	846,878	760,939
Award overpayment	**172,250**	**138,300**	**287,750**
Total overpayment for the three properties: $598,300			

* FEMA, Small Business Administration, and other Federal or insurance payment
** OIG = Office of Inspector General
*** GOSR = Governor's Office of Storm Recovery

State officials said that the buyout awards complied with the State's partial action plan, which provided that the 2013 FHA mortgage loan limits would serve as the ceiling for the purchase price for buyout properties and that duplication of benefits should be subtracted from the pre-storm fair market value to derive the purchase price of the property. We attributed this condition to the State's failure to follow its established policies. As a result, there was a $598,300 incentive overpayment.

Documentation for Property Eligibility and Assistance Calculations Was Not Always Adequate

The files reviewed did not always contain adequate documentation to provide assurance that properties were not second homes and thus eligible for a buyout and that assistance was calculated correctly. 78 FR 14345 (March 5, 2013) provides that a second home, as defined by Internal Revenue Service Publication 936,[10] is not eligible for rehabilitation assistance,

[10] Internal Revenue Service Publication 936 defines a main home as a home where one ordinarily lives a majority of the time and a second home as a home that one chooses to treat as a second home. IRS Publication 936 further

residential incentives, or the buyout program. While State officials ensured that documentation supported that applicants owned properties that were bought out, there were weaknesses in controls over documentation to ensure that properties were not an applicant's second home and that awards were calculated correctly.

In addition to a deed to document ownership of the property, buyout applicants were required to provide the following when applicable:

- Proof of a 2012 School Tax Relief exemption;
- 2012-13 Federal income tax returns showing the home address as the damaged property address;
- 2012-13 State income tax returns showing the permanent home address as the damaged property address; and
- Verification in the form of bills or a letter from the provider that water, electricity, gas, sewer services, or other utilities were provided to the owner for 6 months immediately before the storm.

However, public records searches of 100 buyout properties disclosed that 5 applicants for whom $1.7 million was disbursed were associated with another address at the time of the storm, which raised a question about which address was the applicant's residence at the time of the storm. For instance, a file for one property bought out for $161,225 contained the reported owner's pay stubs showing an address that was different from those of both the purchased property and the property that was reported as the address at the time of application, and the file did not contain an explanation for the reported address discrepancy. In addition, the file did not contain the reported owner's tax return as required but, rather, that of the owner's daughter and son-in-law. However, a review of LexisNexis[11] disclosed that the applicant had owned the property noted on the pay stubs since 1994. Another file for a property bought out for $253,836 contained the applicant's driver's license issued in 2011, which reported an address that was different from that of the buyout property, and a review of LexisNexis disclosed that the applicant was associated with another property since 1983 and was listed as an owner-occupant. The files lacked documentation as to how these potential conflicts were addressed.

The State's partial action plan limited assistance to primary residences that were damaged as a result of one of the eligible storms and to applicants' unmet need calculated after accounting for any duplication of benefits as required by Section 312 of the Stafford Act, which prohibits the payment of CDBG-DR funds for any loss for which financial assistance was paid under any other program or from insurance or any other source. However, in 4 of 10 cases reviewed, file

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defines a second home as a second home not rented out at any time during the year, regardless if it is used by the household or not, and a home that is rented out part of the year and used by the owner more than 14 days or more than 10 percent of the number of days during the year that the home is rented.

[11] LexisNexis is a Web-based provider of legal, government, business, and high-tech information sources by subscription only.

documentation was not always adequate to support that assistance of $85,309 was properly computed as follows:

- While the file documented that the applicant received a $14,000 Small Business Administration loan, the amount of the loan was not included as a duplicate benefit. In addition, $952 in unsupported rental assistance was not included as a duplicate benefit. 76 FR 71062 (November 16, 2011) requires grantees to identify and reduce an award for all assistance received from insurance, FEMA, Small Business Administration loans, other Federal or State programs, and private or nonprofit organizations.

- While the file documented that the applicant was approved for a $25,600 Small Business Administration loan, the amount was not included as a duplicate benefit as required. In addition, the award received was overstated by an additional $11,657 because other duplicate benefit amounts were deducted only from the value of the home rather than from the combined value of the home and land. The file also did not include the applicant's 2012 Federal tax return as required.

- While the file documented that the applicant was approved for a $24,600 Small Business Administration loan, the amount was not included as a duplicate benefit as required by 76 FR 71062 (November 16, 2011) that states grantees should identify reasonably anticipated assistance, which includes assistance that has been awarded, but has not yet been received.

- One file included a work order in the amount of $5,000, which was not considered a duplicate benefit; however, the work order did not include the name of the person for whom the work was done, the property address, and a detailed description of the work. In addition, the file contained a notarized letter stating that the applicant had paid $3,500 in rent; however, additional documentation showed that the funds were withdrawn from the applicant's account almost 2 months later and did not indicate the nature of the withdrawal.

Conclusion

Documentation in grantee files did not always adequately support property eligibility and that assistance amounts were reasonable and accurately calculated. We attributed this condition to State officials' unfamiliarity with Federal regulations and not following the State's prescribed award calculation limits, and weaknesses in obtaining and maintaining documentation, which lessened assurance that disbursements were related to eligible property purchases and properly calculated awards. As a result, $672,000 and $598,300 were disbursed for ineligible incentives in 19 cases and exceeding authorized limits in 3 cases, respectively, and documentation was inadequate to support that more than $1.7 million disbursed was adequately supported.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs instruct State officials to

2A Repay to the State's line of credit from non-Federal funds the $672,000 in incentives disbursed to ineligible households.

2B. Repay to the State's line of credit from non-Federal funds the $598,300 paid in excess of the FHA loan limits approved by the board resolution.

2C. Review the five properties with indications that they may be second homes and if they are, reimburse the State's line of credit from non-Federal funds for the $1,664,658 disbursed for these purchases.

2D. Establish controls to provide greater assurance that funds are not disbursed for the purchase of second homes, including obtaining leases to document the rental status of properties.

2E. Provide documentation to support that the $85,309 disbursed for four applicants was calculated correctly. If adequate support cannot be provided, the amount should be repaid to the State's line of credit from non-Federal funds.

2F. Strengthen controls to ensure that buyout awards are calculated in accordance with Federal regulations.

2G. Strengthen controls to ensure that enhanced buyout incentives are paid in accordance with the State's partial action plan and Federal regulations.

Finding 3: Procurement Actions Did Not Always Comply With Federal and State Requirements

Procurement actions did not always comply with Federal regulations and the State's own policies. Specifically, officials did not (1) execute subrecipient agreements with two State agencies through which services were procured, (2) adequately support contractor selection in two cases, and (3) always document that independent cost estimates and analyses were performed. In addition, contracts did not always include all required Federal provisions, and some procurement information was not posted to the State's Web site as required. We attributed these conditions to the fact that HTFC's procurement procedures[12] were not equivalent to 24 CFR (Code of Federal Regulations) 85.36(b) and officials were not familiar with Federal procurement regulations. As a result, officials disbursed more than $8.7 million and may pay an additional $2.3 million without adequate support that the services were procured in compliance with applicable regulations. However, State officials had taken and planned to take corrective actions to ensure that an additional $3.5 million to be disbursed would be put to its intended use.

Services Were Procured Without Executed Subrecipient Agreements

State officials procured services from two contractors, which had previously been procured by other State agencies, without executing subrecipient agreements or some similar instrument detailing expected services and outcomes with those agencies. Regulations at 24 CFR 85.36(b)(5) provide that to foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. Further, 78 FR 14339 (March 5, 2013) requires that eligible activities be carried out, subject to State law, by the State through its employees, procurement contracts, or assistance provided under agreements with subrecipients.

However, from April 2013 through April 2014, State officials paid $5.9 million directly to a contractor for management consulting services, which were competitively procured by another State agency in June 2012, before the execution of the CDBG-DR grant, without executing a subrecipient agreement or similar instrument with that agency. After we informed officials that a subrecipient agreement would be needed for the services for which payment had already been made, rather than executing a subrecipient agreement, on February 10, 2015, they retroactively amended the other agency's contract to include HTFC as a party to the contract. While regulations at 24 CFR 85.36(b)(5) allow the use of a State contract competed for a different State or local government entity when the services are for the same scope of work, the regulations encourage the use of State and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency. The use of a subrecipient agreement, intergovernmental agreement or similar instrument would ensure that expected

[12] 78 FR 14336 required that grantees either adopt procurement standards identified at 24 CFR 85.36 or standards that were equivalent. In its certification checklist submitted before HUD executed the grant, State officials certified that they would use HTFC procurement procedures and that these were equivalent to regulations at 24 CFR 86.36(b).

performance was documented thus protecting the State's interest. State officials said that the "intent of regulations at 24 CFR 85.36(b)(5) to encourage grantees and subgrantees to foster greater economy and efficiency is furthered by the use of other State competed vehicles in the same way that subrecipient agreements foster that economy and efficiency… and that nothing in HUD's procurement regulations require that a competitive procurement be based solely on competition issued after the disaster occurred if the services that the procurement is based on are included in the needed scope of work." However, it was questionable whether these services were comparable in scope to those in the other agency's contract. The scope of work contracted for by the other State agency was for advice on an as-needed basis in short-term consulting engagements (for example, for projects with durations of a few weeks up to several months) that would focus on the review of management and fiscal issues relating to State programs, practices, and initiatives, whereas task orders under this contract were primarily for ongoing integrity monitoring lasting at least 13 months. We noted that while the management consultant services were to be received through August 2015, officials stopped paying the contractor for services rendered as of April 2014 and sought to execute a contract directly with the same contractor.

Officials also obtained property appraisal services from a contractor procured by another State agency without executing a subrecipient agreement or other similar instrument with the agency. When informed of the need for a subrecipient agreement, State officials said that they would make no payments to this agency for the work already performed until they executed an agreement. On February 12, 2015, they executed a memorandum of understanding with the subject State agency, effective April 12, 2013.

We attributed the conditions described above to the fact that HTFC's regulations did not align with Federal requirements and officials were not familiar with Federal procurement regulations. Without a subrecipient agreement, State officials could not be assured that they would receive the services intended and lacked the ability to establish and monitor performance goals. Therefore, we considered the $5.9 million disbursed for management and consulting services to be an unsupported cost and the more than $2.4 million[13] not yet paid for appraisal services to be funds put to their intended use as a result of the recently executed memorandum of understanding, which will ensure that State officials receive the services intended and are able to establish and monitor performance goals.

Procurement Files Lacked Adequate Documentation for Contractor Selection

Procurement files lacked documentation to support that professional services were always procured in compliance with both Federal regulations and State procedures for two contracts. Officials stated that they would no longer pay for management and consultant services via the other State agency's contract but would contract directly with the same management consultant. Consequently, on April 1, 2014, State officials executed a $5 million contract with that consultant. State officials said that this contract was procured in accordance with HTFC

[13] An additional nearly $1.1 million had been incurred for appraisal services on Staten Island; however, this amount was questioned as funds to be put to better use in recommendation 3E.

procurement regulations, article 4, subparagraph b, which allowed it to enter into contracts with contractors that had already been engaged by a State agency through a competitive process, provided the terms were comparable and the procurement contract officer determined that the procurement was appropriate.

State officials further noted that the HTFC regulations were equivalent to regulations at 24 CFR 85.36(b)(5), which encourage grantees and subgrantees to enter into State and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency. However, while HTFC regulations permitted such a procurement action under the conditions noted, the approval of the procurement contract officer was not obtained until January 26, 2015, and the scope of services was more comprehensive than in the other State agency's contract. Further, while Federal regulations allow the use of an intergovernmental agreement with another state agency to obtain similar services, State officials executed a new contract for expanded services directly with the same contractor. We attributed this condition to the fact that HTFC's procurement procedures were not always aligned with regulations at 24 CFR 85.36 and State officials failed to secure a proper determination of whether the procurement was appropriate per State procurement guidelines. Therefore, the $2.7 million paid on this contract is regarded as unsupported, and the additional $2.3 million obligated is considered potential funds to be put to better use if the contract is supported as eligible. Ensuring that HTFC procurement guidelines are equivalent and aligned to regulations at 24 CFR 85.36 would ensure that the State has a proficient procurement process in place.

Further, as previously noted, officials procured appraisal services based upon another agency's procurement. Based on a May 2009 competitive bidding process, the other agency approved the five highest bidders as eligible to conduct appraisal services in Staten Island.[14] However, State officials selected a contractor ranked ninth and was not designated as eligible to conduct appraisals in Staten Island. While State officials said this appraiser was selected because the five highest ranked appraisers did not have the capacity to perform the services needed on an emergency basis, the procurement file did not document a basis for the selection of this appraiser or for not using more than one of the approved appraisers. Regulations at 24 CFR 85.36(b)(9) require grantees to maintain sufficient records to document the significant history of a procurement, including the rationale for selecting or rejecting contractors. We attributed this condition to officials' unfamiliarity with Federal procurement regulations. As a result, we considered the $1.1 million to be an unsupported cost because the procurement files did not adequately document the basis for the selection of the appraiser. Selecting contractors that are the most advantageous for the State during the selection process will ensure that grantees receive the best available value with regard to contract price and the quality of service.

Cost Analyses were not Always Completed

Procurement files for 10 contracts for professional and consulting services that were procured via the sole-source or competitive proposal method lacked documentation showing that a cost

[14] Other appraisers were ranked and authorized to conduct appraisals in other specific geographic areas of the State.

analysis, which includes completion of an independent cost estimate and profit negotiation, was completed. Regulations at 24 CFR 85.36(f)(1) require grantees to perform a cost or price analysis in connection with every procurement action, including contract modifications, and require that a cost analysis[15] be performed for all competitive proposal procurements requiring professional and consulting services and all sole-source procurements. These regulations further provide that as a starting point, grantees must make an independent cost estimate before receiving bids and proposals and a price analysis should be used in all other instances when comparing lump-sum prices from contractors in a competitive pricing situation. Further, HUD regulations at 24 CFR 85.36(f)(2) provide that grantees should negotiate profit as a separate element of the price for each contract in which a cost analysis was performed.

State officials disagreed that HUD regulations require a cost analysis for every competed contract and believed their interpretation of the regulations was reasonable and should be accorded maximum deference. Further, the officials said that by controlling the contracts' scope through closely reviewing invoices, they were able to control the contract's total cost. In addition, they stated that the method and degree of analysis depended on the facts surrounding the particular procurement situation and that they chose to perform a price analysis instead of a cost analysis since it would provide a more objective measure than an inherently subjective cost analysis and a price analysis was the default and preferred method of analysis. However, without documenting a costs analysis, State officials did not develop a measure for evaluating the reasonableness of contractors' proposed costs or prices and evaluate the separate elements that made up the contractor's total costs. For example, a cost analysis was not prepared to assist in determining the projected future cost for a contract for administrative services that was initially authorized for $13.4 million and after two amendments, had increased to $119.4 million. The two amendments were required to authorize payment for invoiced services that had already exceeded the contract price authorized at the time. We attributed this condition to officials' unfamiliarity with Federal procurement regulations. Preparing independent cost estimates before receiving bids is critical in determining the basis and reasonableness of the total contract price as stated in 24 CFR 85.36(b)(9), and a cost analysis, which includes negotiating profit as a separate element of the price, decreases the risk that contracts and corresponding amendment costs will be inflated.

State Procurement Regulations and Contracts Did Not Always Include Required Provisions

After we informed State officials in April 2014 that the HTFC procurement regulations did not incorporate all provisions required by 24 CFR 85.36, such as contract dispute procedures and time and material contract requirements, they developed procurement procedures specific to CDBG-DR-funded procurement actions, which were approved on July 9, 2014, by the HTFC board. However, these procedures did not incorporate the following 24 CFR 85.36 provisions:

[15] Regulations at 24 CFR 85.36(d)(4)(ii) provide that a cost analysis includes verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profits.

- Section 85.36(b)(5) encourages grantees and subgrantees to foster greater economy and efficiency by entering into State and local intergovernmental agreements for the procurement or use of common goods and services.
- Section 85.36(b)(11) requires any violation of law to be referred to the local, State, or Federal authority having property jurisdiction.

In addition, contracts did not contain provisions required by Federal regulations. Regulations at 24 CFR 570.489(g) require States to ensure that all purchase orders and contracts include any clauses required by Federal statute, executive order, and implementing regulation. Further, 78 FR 14344 (March 5, 2013) requires that grantees incorporate performance requirements and penalties into each procured contract or agreement. However, during its August 2013 monitoring review HUD noted that none of three contracts it reviewed contained the latter requirement and one contract lacked the language required by 24 CFR 570.489(g). In response, officials took action to retroactively include the required provisions in previously executed contracts; however, one contract still did not include all required Federal language. Upon being informed of this deficiency, State officials executed an amendment to the contract in November 2014 and a memorandum of understanding in February 2015, which included the missing provisions.

We attributed the conditions described above to the fact that HTFC's procurement guidelines, although certified by HUD as being equivalent to 24 CFR 85.36(b),[16] were not in all respects and State officials were not familiar with Federal procurement regulations. As a result, State officials lacked assurance that their procurement actions always complied with regulations at 24 CFR 85.36(b).

State officials said that they should be provided maximum deference in their interpretation of the Federal procurement regulations, provided that their interpretation was not plainly inconsistent with the Disaster Relief Appropriations Act and the HUD Secretary's obligation to enforce compliance with the intent of Congress. However, they further stated that in an effort to accommodate our view and to be 100 percent transparent, they intended to amend their procurement policies to include intergovernmental agreements and the referral of violations of law to local, State, and Federal authorities having proper jurisdiction.

Required Information Was Not Posted on the State's Web Site

State officials had not disclosed on their Web site quarterly performance reports detailing cumulative expenditures for each of the State's contractors as required by 78 FR 14344 (March 5, 2013), which required grantees to maintain on a public Web site information accounting for how all grant funds were used, including details of all contracts and ongoing procurement

[16] Before executing the grant agreement with HUD, State officials submitted a certification checklist, which HUD certified in April 2013, noting that they had adopted the procurement standards at 24 CFR 85.36 and that the State's procurement standards were equivalent to the standards at 24 CFR 85.36.

processes. However, HUD waived the requirement that "grantees identify contracts above $25,000 in HUD's Disaster Recovery Reporting System because grantees are already reporting this information in the Federal Subaward Reporting System through usaspending.gov" in 79 FR 40134 (July 11, 2014). Consequently, HUD has developed a template for grantees to report procurement and contract related information, but not contractor expenditures. We attributed this condition to officials' unfamiliarity with Federal regulations. Disclosing required disbursement information would allow taxpayers and policy makers to track Federal spending more effectively.

Conclusion

Procurement actions did not always comply with regulations at 24 CFR 85.36 and the State's own policies. In addition, some contracts lacked required provisions, and contractor information was not posted to the State's Web site as required. We attributed these conditions to the fact that HTFC's procurement procedures were not equivalent to regulations at 24 CFR 85.36 and officials were not familiar with Federal procurement regulations. As a result, officials disbursed more than $8.7 million and could pay an additional $2.3 million without adequate support showing that the services were procured in compliance with applicable regulations. However, State officials had begun to take corrective action, thus ensuring that an additional $3.5 million to be disbursed would be funds put to their intended use, and taxpayers and policy makers would be able to track Federal spending more effectively.

Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs instruct State officials to

3A. Provide documentation to support that the $5,926,104 paid for management and consulting services was similar in scope to the services procured by the other state agency, thus ensuring that the amount paid was procured in a manner consistent with regulations at 24 CFR 85.36 and used for its intended purpose. If the amount is deemed unsupported after allowing maximum feasible deference to State contracting procedures, it should be repaid from non-Federal funds.

3B. Submit to HUD for its review for compliance with Federal regulations the subrecipient agreement, executed at our request, that obligates $2,422,835 for appraisal services provided in Long Island, NY, thus ensuring that these funds will be put to better use.

3C. Strengthen controls over procurement actions to ensure that services funded with CDBG-DR funds are procured via a direct contract, a subrecipient agreement, a memorandum of understanding, or some similar document to provide greater assurance that State officials receive the services intended and have the ability to establish and monitor performance goals.

3D. Provide support that the procurement for management and consultant services, for which $2,736,658 was disbursed, is equivalent to contract methods allowable under regulations at 24 CFR 85.36 and was executed in accordance with State

procedures, thus ensuring that the $2,263,342 to be disbursed will be put to better use. If the procurement is deemed not equivalent after allowing maximum feasible deference to State contracting procedures or not compliant with State procedures, the $2,736,658 should be repaid from non-Federal funds, and the remaining $2,263,342 should be deobligated, thus putting the funds to better use.

3E. Provide documentation that the selection of the appraiser in Staten Island was consistent with the other State agency's contract provisions. If such documentation cannot be provided, the $1,093,290 budgeted should be deobligated, thus ensuring that the funds will be put to better use.

3F. Strengthen controls over maintenance of procurement files to provide greater assurance that the files contain all information required by regulations at 24 CFR 85.36b(9) and that a cost analysis and independent cost estimate are completed in accordance with regulations at 24 CFR 85.36.

3G. Strengthen controls over procurement actions to ensure that contracts paid with CDBG-DR funds contain provisions required by regulations at 24 CFR 85.36(i).

3H. Request a HUD review of the State's procurement regulations to ensure that they are equivalent to regulations at 24 CFR 85.36(b).

3I. Seek additional guidance from HUD as to what contractor-related information should be reported on its Web site to comply with the requirement of Public law 113-2 that grantees maintain on a public Web site information accounting for how all grant funds are used if contractor expenditure data is not reported on usaspending.gov as understood by HUD when it issued a reporting waiver.

Scope and Methodology

We performed our onsite audit work at the Governor's Office of Storm Recovery located at 25 Beaver Street, New York, NY, from January to December 2014. Our audit generally covered the period October 29, 2012, through December 31, 2013, and was extended as necessary. We used computer-processed data and verified the data by reviewing hardcopy supporting documentation or other data from a different source. We found the data to be adequate for our purposes.

To accomplish our objective, we

- Reviewed the Disaster Relief Appropriations Act of 2013, implementing regulations announced through Federal Register notices, and HUD guidance pertaining to the use of CDBG-DR funds.

- Reviewed the HUD-approved April 2013 State certification and the May 2013 grant agreement executed between HUD and the State and HUD monitoring reports.

- Analyzed the HUD-approved State partial action plan and amendments, HTFC board minutes and resolutions relating to CDBG-DR funds, the initial and revised New York Rising Buyout Program policy and procedure manual, flood risk assessment maps, and information related to the New York Rising Buyout Program announced to the public and posted on the State's Web site.

- Conducted a site visit to two neighborhoods in which buyouts were conducted.

- Obtained an understanding of the State's financial and procurement processes and evaluated controls to identify potential weaknesses related to our audit objective.

- Interviewed key personnel from the Governor's Office of Storm Recovery and HUD's Office of Community Planning and Development staff.

- Reviewed files in the 100-property universe as of January 2014 to test compliance specifically related to owner occupancy, buyout incentives, FHA loan limits, and secondary homes.

- Selected a nonstatistical sample of 10 of 100 executed home buyout files located in Oakwood Beach, NY, to assess compliance with published policy, such as type of property, proper treatment of duplication of benefits, and calculation of purchase price and any incentives. Our assessment of the reliability of data included in the State's lists was limited to the data sampled, which were reconciled to hardcopy documents.

- Analyzed a list of 156 properties in addition to the property universe that were purchased in the Oakwood Beach section of Staten Island as of November 2014 to determine owner occupancy.

- Reviewed 10 contracts for services paid for with CDBG-DR funds to assess compliance with 24 CFR 85.36 and State procedures.

We conducted the audit in accordance with generally accepted government auditing standards. Those 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(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that programs meet their objectives.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that the use of funds is consistent with laws and regulations.
- Safeguarding resources – Policies and procedures that management has implemented to reasonably ensure that funds are safeguarded against waste, loss, and misuse.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- State officials did not have adequate controls over compliance with laws and regulations when they did not ensure that property buyouts were conducted in accordance with the State's published policies (see finding 1).

- State officials did not have adequate controls over program operations when they could not support homeowner eligibility and that assistance amounts were reasonable and accurately calculated (see finding 2).

- State officials did not have adequate controls over safeguarding resources to ensure that funds were not disbursed for the purchase of second homes (see finding 2).

- State officials did not have adequate controls over compliance with laws and regulations when they did not implement procurement policies that complied with Federal regulations (see finding 3).

Appendixes

Appendix A

Schedule of Questioned Costs and Funds To Be Put to Better Use

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A		$6,606,359	
1B			$12,984,427
2A	$672,000		
2B	598,300		
2C		1,664,658	
2E		85,309	
3A		5,926,104	
3B			2,422,835
3D		2,736,658	2,263,342
3E			1,093,290
Totals	**$1,270,300**	**$17,019,088**	**$18,763,894**

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

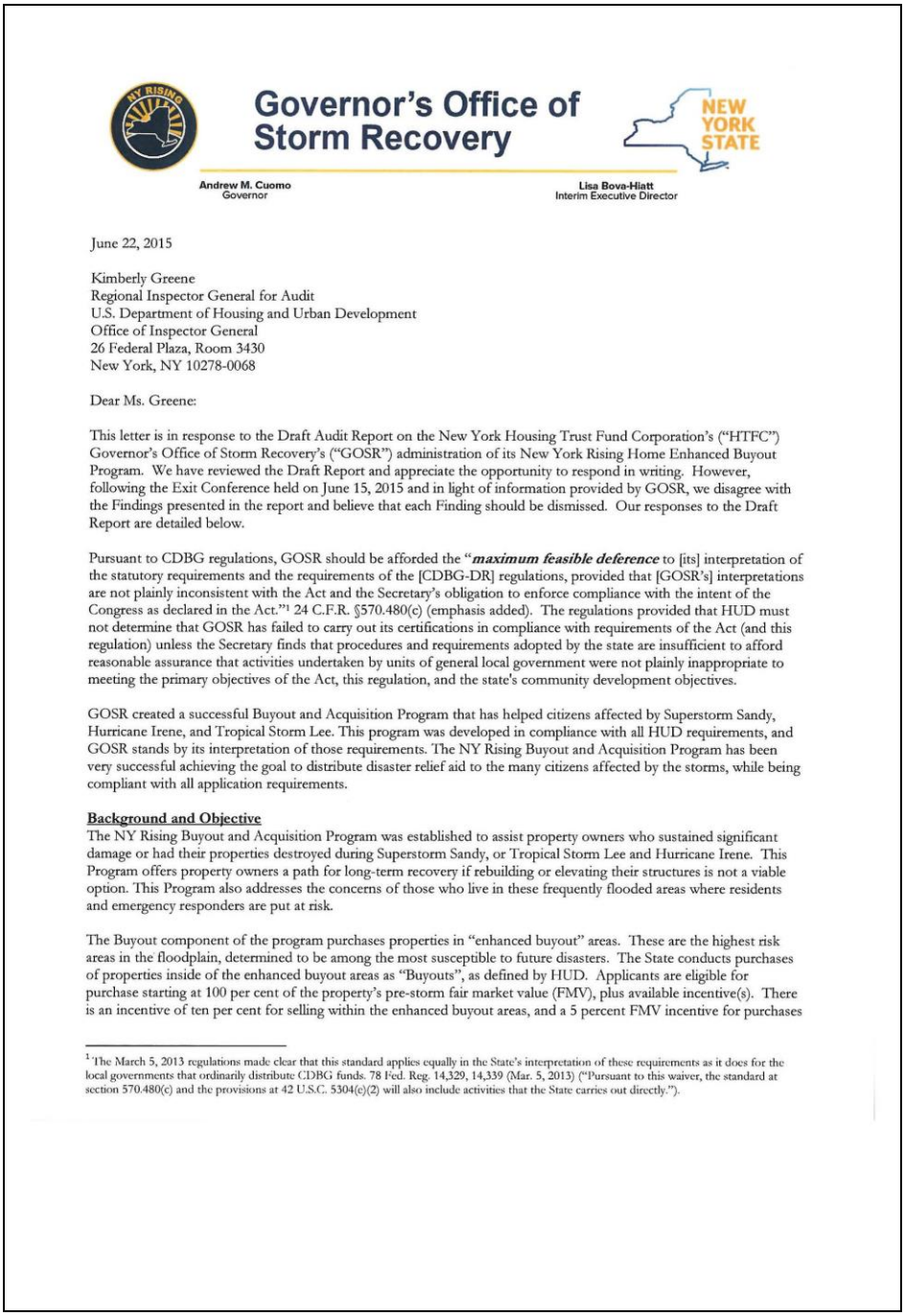
2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds,

withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in pre-award reviews, and any other savings that are specifically identified. In this instance, if State officials implement our recommendations to fully inform the public of the program's implementation, ensure that all eligible applicants receive the 5 percent relocation incentive, and ensure that all contracts and subrecipient agreements fully comply with Federal and State regulations, HUD can be assured that $18,763,894 million will be put to its intended use.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation	Auditee Comments
Comment 1 Comment 2	

Governor's Office of Storm Recovery

NEW YORK STATE

Andrew M. Cuomo
Governor

Lisa Bova-Hiatt
Interim Executive Director

June 22, 2015

Kimberly Greene
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza, Room 3430
New York, NY 10278-0068

Dear Ms. Greene:

This letter is in response to the Draft Audit Report on the New York Housing Trust Fund Corporation's ("HTFC") Governor's Office of Storm Recovery's ("GOSR") administration of its New York Rising Home Enhanced Buyout Program. We have reviewed the Draft Report and appreciate the opportunity to respond in writing. However, following the Exit Conference held on June 15, 2015 and in light of information provided by GOSR, we disagree with the Findings presented in the report and believe that each Finding should be dismissed. Our responses to the Draft Report are detailed below.

Pursuant to CDBG regulations, GOSR should be afforded the "***maximum feasible deference*** to [its] interpretation of the statutory requirements and the requirements of the [CDBG-DR] regulations, provided that [GOSR's] interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act."[1] 24 C.F.R. §570.480(c) (emphasis added). The regulations provided that HUD must not determine that GOSR has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

GOSR created a successful Buyout and Acquisition Program that has helped citizens affected by Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee. This program was developed in compliance with all HUD requirements, and GOSR stands by its interpretation of those requirements. The NY Rising Buyout and Acquisition Program has been very successful achieving the goal to distribute disaster relief aid to the many citizens affected by the storms, while being compliant with all application requirements.

Background and Objective

The NY Rising Buyout and Acquisition Program was established to assist property owners who sustained significant damage or had their properties destroyed during Superstorm Sandy, or Tropical Storm Lee and Hurricane Irene. This Program offers property owners a path for long-term recovery if rebuilding or elevating their structures is not a viable option. This Program also addresses the concerns of those who live in these frequently flooded areas where residents and emergency responders are put at risk.

The Buyout component of the program purchases properties in "enhanced buyout" areas. These are the highest risk areas in the floodplain, determined to be among the most susceptible to future disasters. The State conducts purchases of properties inside of the enhanced buyout areas as "Buyouts", as defined by HUD. Applicants are eligible for purchase starting at 100 per cent of the property's pre-storm fair market value (FMV), plus available incentive(s). There is an incentive of ten per cent for selling within the enhanced buyout areas, and a 5 percent FMV incentive for purchases

[1] The March 5, 2013 regulations made clear that this standard applies equally in the State's interpretation of these requirements as it does for the local governments that ordinarily distribute CDBG funds. 78 Fed. Reg. 14,329, 14,339 (Mar. 5, 2013) ("Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly.").

Ref to OIG Evaluation

Auditee Comments

of new properties out of the highest risk areas, or 100 year floodplain. The State has utilized Department of State (DOS) analysis where available and the thresholds defined for Extreme and High Risk Zones to determine what areas are most susceptible to significant impact caused by future flood events. Location in a defined risk zone alone is insufficient for defining "enhanced buyout areas." There must an interest in the voluntary sale by the majority of property owners in the impacted areas. The following selection criteria are used to evaluate potential buyout areas:

- Areas will have a history of flooding and/or damage caused by extreme weather events;
- Areas will have multiple contiguous parcels in the flood plain that can evidence similar damage and where property owners have collectively voiced interest in relocation from the floodplain;
  - This interest must be documented in some way that will allow the State to identify the individual parcels, and perform an analysis of the number and location of the parcels;
- The State and the areas respective municipal officials (local/county) will have a mutual understanding of the benefit of permanently removing residents/homes from the floodplain permanently, and converting the site to a coastal buffer zone.

The State conducts purchases outside of the enhanced buyout areas as "Acquisitions", as defined by HUD, whereby purchase offers must begin with the post-storm FMV of the property. In these instances, however, the State supplements this post-storm FMV with added property owner's incentives. Such an incentive is necessary to address the needs of property owners inside flood-prone areas that have sustained damage, and are otherwise unable or unwilling to repair their property and abide by stringent elevation requirements. The incentive payment structure also offers a motivation for homeowners to participate in the Acquisition program, which would enable the homeowner to purchase a new home and allow the acquired property to be quickly redeveloped in a code-compliant, resilient manner. All properties purchased via Acquisition are required to have a substantial damage determination from the local floodplain administrator.

In accordance with the notices governing the use of these funds (Public Law 113-2: January 29, 2013; FR-5696-N-01: March 5, 2013; FR-5696-N-06: November 18, 2013; FR-5696-N-11: October 16, 2014), Buyout properties will be maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices, while Acquisition properties will be eligible for redevelopment in a resilient manner to protect future occupants of the properties. While the "enhanced buyout areas" are focused on large scale restoration, acquisitions are suitable for areas where there is no restoration plan, but impacted property owners can show substantial damage and repetitive loss.

Comment 3

Assistance is provided after accounting for all Federal, State, local and/or private sources of disaster-related assistance. This includes, but is not limited to, homeowners and/or flood insurance proceeds. For the Buyout program, the State will purchase either owner-occupied or rental one- and two-unit residential properties. Second homes are not eligible to receive assistance in the Buyout program.

(1) HUD OIG FINDING 1: State Officials Did Not Always Administer the Enhanced Buyout Program in Accordance with the State's Partial Action Plan and Published Policy

a. HUD OIG COMMENT: Properties Purchased Did Not Always Comply with HUD's Approved Partial Action Plan and the State's Published Guidance

Comment 4

GOSR RESPONSE: The State disagrees with this finding. The State has been purchasing property based on the Buyout and Acquisition parameters described above since October of 2013. Both components have been successfully providing relief to owners of storm damaged property. The intent of the program has always been that properties do not have to be owner-occupied in order to be eligible for assistance. As described below, all current relevant documents, including Action Plan Amendments (APA), the HTFC Board resolutions, and all program materials reflect this practice. Further, any changes in written materials have been conveyed to potential applicants and where required, posted on GOSR's website.

The original Action Plan and any substantial Action Plan Amendments were posted for public review and comment prior to finalizing and submitting to HUD for approval. The original Action Plan (dated April 2013) did not include a primary residency requirement, in keeping with the intent of the Program. APA 6

2

Ref to OIG Evaluation	Auditee Comments

Comment 5

Comment 6

Comment 7

Comment 8

Comment 9

Comment 10

(dated May 27, 2014) stated that "[a]ll applicants' damaged property must have been their primary residence at the time of the storms." However, this was not consistent with program practice, which was the owner-occupied and rental properties are eligible for the Buyout program. The edit in APA6 was made in an effort to make language consistent across the Action Plan document but it was never the intent of GOSR to limit eligibility to this program and program practice did not change. Accordingly, under APA 8 (dated April 13, 2015), the Action Plan was amended to align yet again with program practice. APA 8 states "[e]ligible applicants to the buyout component are owners of one-family or two- family homes and/or vacant land located in an Enhanced Buyout Area who owned the property at the time of Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy. Eligible applicants to the acquisition component are owners of substantially damaged one-family or two- family homes and/or vacant land located within the 500-year floodplain in a disaster-declared county who owned the property at the time of one of the above storms" APA 8 does not include a primary residency requirement.

HUD only prohibits the buyout of second homes. In developing a program that does not further limit eligibility, GOSR is able to assist a larger population of those affected by the storms. The purpose and intent of the program is to help as many homeowners with storm damage and an unmet need as allowable per federal requirements. GOSR has implemented a program which has done that.

Program's current Policy Manual also accurately reflects program practice. Although the January 24, 2014 version of the Program's Policy Manual included references to an owner-occupied requirement, this was updated on April 7, 2014 to reflect the true intent of the program since its inception. Remaining references to owner-occupied requirements were removed from the Policy Manual version 2 in August of 2014. Further, any web-based references to owner-occupied requirements, including those in the Program's "Frequently Asked Questions" page (http://stormrecovery.ny.gov/ny-rising-buyout-and-acquisition-programs)were also removed.

Additionally, on May 14, 2015, the HTFC Board voted to approve a retroactive amendment to the August 13, 2013 resolution requiring that properties purchased by the buyout component be owner-occupied. This amendment is retroactive to August 13, 2013. Under the amendment, rental properties are eligible for the buyout component, in addition to owner-occupied properties. A draft copy of this amendment was made available to the HUD OIG on June 1, 2015.

Since April of 2013, program has sent over 1,000 letters and made over 1,000 phone calls to property owners notifying them of the process to apply to the program, in person or online, and offering contract information for questions. In the Buyout component, owners were sent notification that they were located in the enhanced buyout area and were eligible for the program. In the Acquisition component, owners who were referred from the Repair Program or who inquired about eligibility requirements online were called and invited to come to an intake center.

Additionally, program staff attended public meetings hosted by the Community Reconstruction team, as well as hosted several meetings just for Buyout constituents. For example, program staff attended a meeting at Oakwood Beach on April 18, 2013 and held an open house at Bay Street (in Staten Island) on October 2, 2014. Information provided to potential applicants in mailed letters, online materials, and public meetings was consistent with Program's practice of purchasing both owner-occupied and rental properties. Further, no applications were denied on the basis that the property was a rental property.

As described above, all relevant materials, including APA 8, the most recent version of the Program Policy Manual, web-based materials, and the amendment to the August 13, 2013 HTFC Board resolution reflect what the intent and practice of the Program has been since its inception: both owner-occupied and rental properties are eligible for the Buyout component. In addition, the public was well informed of program eligibility. As such, "published program information is consistent with the approved program implementation," Recommendations 1A, 1B, and 1C have been addressed and no further action is necessary.

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Ref to OIG Evaluation	Auditee Comments

Comment 11

Comment 12

Comment 13

(2) HUD OIG FINDING 2: File Documentation Was Not Always Adequate to Support the Eligibility of Disbursements

a. HUD OIG COMMENT: Incentive Awards Were Disbursed Contrary to Regulations and the State's Partial Action Plan

GOSR RESPONSE: The State disagrees with this finding. As explained above, all program materials currently reflect eligibility of both owner-occupied and rental properties for the Buyout component. The operations of the State have consistently been in keeping with this practice. Owner-occupied and rental properties are also eligible for ten percent relocation incentive in order to encourage sale and relocation from high risk areas. The applicants referred to in the draft report were eligible for the ten percent relocation incentive, as all properties receiving the incentive were either owner-occupied or rental properties. Therefore, repayment of $671,500 as suggested in recommendation 2A, as well as the additional controls referred to in recommendation 2G, are unfounded.

b. HUD OIG COMMENT: The Buyout Award Exceeded State-Authorized Limits

GOSR RESPONSE: The State disagrees with this finding and with the explanation of award calculations set forth in the draft report. For buyout properties, the total award amount may exceed the Federal Housing Administration (FHA) mortgage loan limit once incentives are added. This has consistently been program's method of calculating buyout awards. The three properties referenced in the draft report are all Buyouts that followed these award calculations.

APA 8 and the April 2015 Program Policy Manual clarified that for Buyout properties the State uses the 2013 FHA loan limits as the ceiling for the purchase price for the properties, not inclusive of incentives, which is allowable per HUD regulations. In the Acquisition program, the FHA ceiling is placed on the entire offer including the incentives.

The May 14, 2015 HTFC Board resolution amended the program caps retroactively (to August 13, 2013, the date of the original Board resolution) so that Buyout awards may exceed the FHA loan limit once incentives have been added. As such, recommendations 2B and 2F have been addressed and repayment of $598,300 is unnecessary.

c. HUD OIG COMMENT: Documentation for Property Eligibility and Assistance Calculations Was Not Always Adequate

GOSR RESPONSE: The State disagrees with this finding. For the Buyout program, , HUD only prohibits assistance to second homes as defined by Internal Revenue Service Publication 936, and second homes remain ineligible for the buyout component. This prohibition does not limit eligibility to only properties that are the applicants' primary residence. Rental properties are also eligible for assistance, and as noted above the program implementation and current program documents include all properties that are eligible.

In order to ensure that second homes do not receive assistance, program checks each applicant's eligibility. This includes a Verification of Benefits by a Case Manager, which consists of: (a) confirming that the property owner is a U.S. citizen or in the U.S. lawfully according to the criteria in the NY Rising Buyout and Acquisition Policy Manual; and (b) confirming that the owner's property is not a second home, which includes having the homeowner sign an Eligibility Affidavit. An Association with Damaged Property Check is also done. During this check, the applicant's self-disclosed address is compared against the applicant's associated address history as identified through searches of a syndicated public records database in the Social Security Number check. If the match fails, the property is most likely a rental or second home. Further checks are conducted to verify the type of property, including but not limited to:

- Check address where mail is delivered;
- If rental, a check for the address on a lease agreement or other lease documents;

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Comment 14

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- Check for property address on Schedule E of IRS Form 1040, 1040NR or 1041; and/or
- Check with FEMA's citizenship determination database.

For each of the five properties referred to in the draft report, eligibility checks were performed and documentation was obtained to ensure that properties were not second homes. These five applications included properties that were:

- In two instances, the primary residence of the owner's daughter;
- In two instances, the primary residence of the owner, based on statements from the owner and the owner's Program application; and
- The primary residence of the owner, based on statements from the owner, the owner's program application, and the owner's 2012 tax return.

As such, these properties do not fall under the definition of second homes, and the repayment of $1,664,658 referred to in recommendation 2C, as well as the additional controls referred to in recommendation 2D, are unfounded.

Further, as previously stated in prior responses provided to the HUD OIG, Small Business Administration (SBA) loans are not duplicate benefits, as SBA loans are not for the same purpose of the program. "Any funds provided for a different purpose, or a general, non-specific purpose" (FR-5582-N-01: November 16, 2011) are not considered duplicative and therefore are not included in the duplication of benefits calculation. Rather, SBA loans fund repair and rehabilitation by homeowners which are not the same purpose as funds for buyouts. Drawn funds from the SBA must be satisfied at closing if an outstanding balance exists. Further, once a property is sold to the State, the property owners becomes unable to draw from the SBA funds, meaning that those funds will never be disbursed. Per SBA policy, loan amounts under $14,000 are unsecured. If necessary, the program can provide proof of a payment plan from the SBA. However, the loan does not tie to the property and therefore would not be included on the HUD-1 form. SBA loans only appear on the HUD-1 form as a lien satisfaction for amounts over $14,000.

Additionally, the State previous provided responses regarding the following amounts referenced in the draft report:

- $952 "unsupported rental assistance": The $952.00 in question was not a rental assistance award. The FEMA Rental Assistance award was $2,948.00 and the homeowner submitted $3,900.00 in rental receipts. The rental receipts are eligible to be added to the additional offsetting receipts once they have exceed the FEMA Rental Assistance Award, in this case $952.00 was the unmet need, not the award from FEMA.
- $11,657 "duplication of benefits": The purpose of the duplicative benefits paid are for the structure, not the land value, thus pre-storm FMV is a base award that cannot be encroached on by duplicate benefits. 2012 taxes were unavailable due to the homeowner having requested an extension. The case manager had reached out to the homeowner on several occasions after closing to obtain the document but the homeowner was non responsive. This information is in the contact log for this file.
- $5,000 "work order": The $5,000 work order was the work that was actually completed from the estimate from the same company on the preceding document in the receipt review. The estimate was made ineligible and the invoice for actions completed was made eligible. The notarized letter from the landlord attesting to proof of payment is sufficient. The estimate for $18,250 was not eligible due to not having proof of purchase (POP) and proof the work was actually completed. The actual invoice of $5,000 (work included in the estimate) is eligible due to the itemization and supporting POP (paid in full by contractor and cash disbursement).
- $3,500 rent: The letter in the file for this applicant is notarized by the landlord and cash disbursement matches the amount of $3,500. October and November are certified and credit was given for these months only. Accordingly, Recommendation 2E, repayment of $85,309 is unnecessary.

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Ref to OIG Evaluation	Auditee Comments

(3) HUD OIG FINDING 3: Procurement Actions Did Not Always Comply with Federal and State Requirements

GOSR RESPONSE:

a. HUD OIG COMMENT: Services Were Procured Without Executed Subrecipient Agreements

GOSR RESPONSE: GOSR disagrees with any concerns expressed by the HUD OIG regarding the services sought from two contractors through two state agencies. The HUD OIG supports these concerns by reading language into the regulations that does not exist. Moreover, while recognizing it in the recommendations, the HUD OIG fails to extend the deference required under HUD regulations to GOSR's differing, yet reasoned, interpretation of the same regulations.[2]

Comment 21

For example, concerning the first contract cited by the HUD OIG in its report, the HUD OIG concedes that the regulations afford GOSR the ability to utilize contracts competed by other state agencies, however, it then asserts an unsupported argument that for this contract for services, "the regulations require that a subrecipient agreement be executed." Upon examination of the regulation cited by the HUD OIG as supporting its position, 24 CFR 85.36(b)(5), no such language is found. In fact, the regulation simply provides that GOSR is "encouraged" to enter into State and local intergovernmental agreements. The HUD OIG apparently narrowly construes the encouragement of "intergovernmental agreements" to mean only subrecipient agreements and no other types of agreements, such as a three-party contract. However, had this been the case, the regulation would have been drafted to state such or explicitly defined "intergovernmental agreement" as synonymous with subrecipient agreement. Neither is the case. Alternatively, GOSR reasonably interpreted "intergovernmental" to mean an agreement of any kind among state agencies, which is exactly what GOSR did when it added itself as a party to an existing contract. Indeed, GOSR's approach, which was not plainly inconsistent with the regulation and thereby should have been afforded deference, likely saved the federal taxpayer as it fostered economy (not creating needless agreements) and reduced administrative expenses that would have been incurred had GOSR gone through another state agency to obtain the services needed rather than establishing a direct contractual relationship with the contractor.

Comment 22

With respect to the second contract, the HUD OIG's concern is similarly baseless. As the HUD OIG asserts throughout its report, the purpose of a subrecipient agreement is to ensure that federal funds are used for their intended purpose and that the State has the ability to monitor performance. As explained repeatedly to the HUD OIG, GOSR had not paid any funds to the state agency that had procured the contractor, until it executed a subrecipient agreement with that agency. Accordingly, GOSR had all of the contractual assurances and monitoring rights required prior to the disbursement of any federal funds. Again, GOSR's conduct was not plainly inconsistent with any regulation and therefore should have been afforded maximum deference.

b. HUD OIG COMMENT: Procurement Files Lacked Adequate Documentation for Contractor Selection

GOSR RESPONSE: Again, the HUD OIG asserts that two contracts lacked adequate documentation for contractor selection. GOSR disagrees in both cases.

Comment 23

Regarding the first contract cited by the HUD OIG, HTFC/GOSR entered into this agreement based on a provision in GOSR's procurement policies that allowed it to "enter into Contracts with eligible Vendors where the State has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate." While the HUD OIG concedes GOSR's

[2] 24 CFR § 570.480(c) provides that HUD must give the "maximum feasible deference to the state's interpretation of statutory requirements and the requirements of the [CDBG-DR] regulations, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act"

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right to take such action, it bases its finding on the failure of GOSR to: 1) contemporaneously satisfy an administrative step, which it has since been accomplished and documented; and 2) an argument that the procured services, albeit within the scope of the contract, "was more comprehensive than in the other State agency's contract." This latter argument is nonsensical since the HUD OIG admits that GOSR's work was within scope, but more "comprehensive," as it is unlikely that any contract for services would require precisely the degree of effort. Rather, a more appropriate reading, and that which GOSR should receive deference, is that the same contractual terms (i.e., contract clauses), including the competed labor rates, be comparable, as they were. Accordingly, the HUD OIG's purported finding regarding this contract is without foundation.

Regarding the second contract, the HUD OIG asserts that GOSR failed to adequately document the use of one appraiser over others. Admittedly, in the midst of responding to the exigent circumstances and the needs of homeowners and citizens, GOSR did not fully document its rationale for selecting the only appraiser that could meet GOSR's requirements, that is to timely appraise nearly 200 properties for the buyout program, an effort that would have taken most appraisers several months. However, since that time, GOSR has collected all of the procurement documents and prepared a comprehensive memorandum that it provided to the HUD OIG, and included in the procurement file, to complete this record. As such, GOSR disagrees with this finding.

c. **HUD OIG COMMENT: Cost Analyses were not Always Completed**

GOSR RESPONSE: The HUD OIG's report identifies ten contracts for which it asserts that GOSR did not perform a proper cost analysis; and that GOSR did not perform an independent cost estimate. GOSR respectfully disagrees with the HUD OIG's interpretation that HUD regulations require a cost analysis for every competed contract. The HUD OIG's finding is based on its interpretation of 24 CFR § 85.36(f)(1), which provides that a cost analysis is required when "the offeror is required to submit the elements of his estimated costs, e.g., under professional, consulting, and architectural engineering services contracts." *Id.* This carve out states that when a grantee requires elements of cost to be submitted, then the grantee should also conduct a cost analysis. It lists, as examples, situations in which a Federal awarding agency *may* require cost elements. Importantly, however, these are examples and not actual requirements. Further, the rule carves out an exception for the circumstances in which price competition is lacking. This requirement can be read in harmony with the rest of § 85.36, which requires a cost analysis in sole-source situations, including "after solicitation of a number of sources, competition is determined inadequate." 24 CFR § 85.36(d)(4)(i)(D). Finally, the regulation also clearly states that "a price analysis will be used in all other circumstances to determine the reasonableness of the proposed price." *Id.* at § 85.36(f)(1). Thus, the regulations contemplate that a cost analysis is the exception, not the rule. Nevertheless, the HUD OIG's interpretation limits the use of a price analysis only to the procurement of goods, but not professional services. Such a reading is overly broad and out-of-step with parts of the same regulation that makes price competition the norm and not the exception. As stated above, GOSR's interpretation of § 85.36(f)(1), which is not plainly inconsistent with its terms, should be accorded maximum deference by the HUD OIG. Therefore, the regulations specifically prohibit the HUD OIG from issuing a finding when GOSR has reasonably interpreted the provisions, irrespective of whether the HUD OIG would have interpreted the provision differently.

The second assertion made by the HUD OIG under this finding contends that GOSR did not perform an independent cost estimate prior to receiving proposals. Again, the HUD OIG's concern is misplaced. HUD's standards do not require states to adopt § 85.36 in its entirety, but, under the HUD OIG's interpretation of the law, afford states the opportunity to use their own procurement procedures so long as those procedures are "equivalent to" § 85.36. However, these independent estimates are not generally required for states to comply with Federal grant law, including HUD's standard regulations, to safeguard the Federal interest, and thus, should not be required to ensure a state's contracts are "equivalent to" the Federal standards. The problem with the HUD OIG's interpretation of what standards are required in order to be "equivalent to" the federal system is that it is not discriminating, essentially requiring states to adopt procurement regulations that are "identical to," not "equivalent to," § 85.36. The HUD OIG acknowledges that this is not the law, as states are specifically given the option to apply standards that vary

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from § 85.36, so long as federal dollars are equivalently protected. Thus, the HUD OIG's purported finding is inconsistent with its own statements, therefore rendering this finding without a valid basis.

Notwithstanding the HUD OIG's inconsistencies, the issue should have been rendered moot because GOSR, as a responsible fiscal steward of federal funds, has provided certain analyses that under these circumstances should be considered sufficient to satisfy this requirement. GOSR has always worked diligently in a variety of ways to ensure that its proposed costs are in-line with the market rates, including taking advantage of competitively procured contracts, comparing current proposed rates to those in previous contracts that were similar in scope, and even at times relying on state studies that demonstrate the reasonableness of a particular cost. GOSR has provided information on all these various forms of analyses to the HUD OIG and it is GOSR's contention that these analyses serve to provide an independent estimate by which GOSR can determine whether the competed prices are fair and reasonable.

Again, GOSR should be afforded maximum deference in interpreting these regulations. 24 CFR § 570.480(c). For this reason, GOSR respectfully disagrees with this finding.

d. **HUD OIG COMMENT: State Procurement Regulations and Contracts Did Not Always Include Required Provisions**

GOSR RESPONSE: Under this finding, the HUD OIG asserts two concerns: 1) that the GOSR procurement policies did not include all of the required provisions of 24 CFR 85.36, in particular two provisions were lacking; and 2) that three contracts did not include a single term. While GOSR does not agree with the HUD OIG's findings, which, as explained below are moot, it is important to note that GOSR has gone to great lengths to respond to the needs of the citizens of the State of New York and has also expended tremendous resources to ensure complete compliance with the myriad of federal regulations. Regardless, perfection is difficult to attain and even when all requirements are believed to have been met, differing interpretations, such as that of the HUD OIG, can find otherwise.

Here, the HUD OIG asserts that GOSR's procurement policies failed to address two provisions. GOSR respectfully asserts that neither term was omitted but simply not cut and pasted into the procurement policies in the verbatim text of the HUD regulations. Nevertheless, in an effort to accommodate the HUD OIG's view and to be 100% transparent, GOSR has amended its procurement policies to include nearly identical text from the HUD regulation. As a result, this finding has been rendered moot.

With regard to the procurements findings, and in particular this one, as required by the March 5, 2013 Federal Register Notice, HUD has certified that GOSR's has a proficient procurement process in place and there have not been any material changes to GOSR's procurement procedures that required re-certification.

Regarding the three contracts that did not include a specific provision, GOSR has amended such contracts, rendering this finding moot.

e. **HUD OIG COMMENT: Required Information Was Not Posted on the State's Website**

GOSR RESPONSE: GOSR disagrees with the HUD OIG's finding.

HUD's March 5, 2013 notice required posting, among other things, of "each QPR (as created using the DRGR system) detailing expenditures for each contractor." 78 Fed. Reg. 14329, 14344 (March 5, 2013). However, HUD's July 11, 2014 notice replaced the previously quoted language with "each QPR (as created using the DRGR system)." 79 Fed. Reg. 40133, 40134 (July 11, 2014). Notably, the July 11 notice deletes the language "detailing expenditures for each contractor" with respect to the posting of the QPRs. The July 11 notice further provides that HUD was removing the requirement from the March 5 notice that grantees report contract information in DRGR, "because grantees are already reporting this information in the Federal Subaward Reporting System (FSRS) through USA Spending [usaspending.gov]." *Id.* at 40134.

The requirement to report and upload information to USA Spending is pursuant to the Federal Funding

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Accountability and Transparency Act's ("FFATA"). However, FFATA does not require reporting contract expenditures, only subawards (i.e., subgrants to subrecipients). The FFATA regulations are at 2 CFR Part 170, and per Appendix A to that part, grantees "must report each action that obligates $25,000 or more in Federal funds . . . for a subaward to an entity (see definitions in paragraph e. of this award term)." Paragraph e.3. defines the term "subaward" to mean "a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient." It further states, "The term does not include your procurement of property and services needed to carry out the project or program . . . ." Thus, the reporting obligation under FFATA is only with respect to subawards (not contracts) of $25,000 or more. Notably, after reviewing USA Spending website, it is also clear that it is not equipped to receiving contractor information from grant recipients such as GOSR.

Nevertheless, as the HUD OIG has been informed, GOSR is not required to report certain information on contracts above $25,000 in DRGR. GOSR has begun using the FFATA Subaward Reporting System (i.e., usaspending.gov), thereby meeting its regulatory obligation and rendering this finding moot.

Should you require further information, please feel free to contact me via email at Lisa.BovaHiatt@stormrecovery.ny.gov or by phone at (212) 480-4694.

Sincerely,

Lisa Bova-Hiatt
Interim Executive Director

Cc: Colette Rodgers, Chief Operations Officer, GOSR
Daniel Greene, Interim General Counsel, GOSR
Jane Brogan, Policy Director, GOSR
Jonnel Doris, Interim Director of Monitoring and Compliance, GOSR
Cassie Ward, Audit Manager, GOSR

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OIG Evaluation of Auditee Comments

Comment 1 The report reflects the status of the State's administration of the CDBG-DR grant during the period of the audit scope, and as such, is a snapshot in time. Any information provided concerning corrective action taken subsequent to the completion of the audit fieldwork that we could verify has been reflected in the report; otherwise verification will have to occur during the audit resolution process with HUD.

Comment 2 The report does not conclude that the enhanced buyout program was not developed in compliance with all HUD requirements. Rather, it notes that the implementation was not always consistent with the State's partial action plan and published policy. Further, it notes that the program's policies and procedures were continually clarified to reconcile with its implementation and some controls need to be strengthened.

Comment 3 The initial State resolution authorizing the enhanced buyout program, as well as the program's policy and procedure manuals, and information publicly disseminated during the audit period provided that properties to be purchased had to, among other criteria, be owner-occupied. Further, GOSR officials submitted, and HUD approved partial action plan amendment 6 to clarify the requirements for an enhanced buyout. However, amendment 6 dated May 27, 2014 still required that properties needed to be the owner's primary residence at the time of the storm. Subsequently, GOSR officials stated that the HTFC board retroactively amended the resolution authorizing the program, the partial action plan description, program policy manual, and publicly disseminated information to reflect their intent for the program. However, as noted in comment 7, the retroactive board resolution dated May 14, 2015 is in draft and citations in the program policy and procedure manuals, as well as Web-based information still contain inaccurate information.

Comment 4 State officials disagreed that properties purchased did not always comply with HUD's approved partial action plan and the State's published guidance, and stated that the intent of the program has always been that properties did not have to be owner-occupied to be eligible for assistance. While GOSR officials maintain that this was the intent of the program, the resolution authorizing the program, partial action plan amendment 6, as well as program policy and procedure manuals and publicly disseminated information documented that properties purchased must have been the applicants' primary residence at the time of the qualifying disasters. Further, all but the resolution documented that properties purchased must be substantially damaged (greater than 50 percent of the pre-storm fair market value of the property).

Comment 5 Partial action plan amendment 6 was submitted to HUD for approval to, among other purposes, clarify the requirements noted in the initial April 2013 partial action plan for the enhanced buyout program eligibility. While GOSR officials maintain that the intent was not to limit eligibility, that is in effect what amendment 6 did, and consequently, the program's implementation was not consistent with amendment 6. As noted in the report, it was not until partial action plan amendment 8, approved in April 2015, that the program's eligibility requirements and its implementation became consistent.

Comment 6 While it is true that HUD prohibits the buyout of second homes, the State can impose stricter eligibility requirements for its program, which as the report described state officials did, whether that was their intent or not. 78 FR 14347 (March 5, 2013) requires grantees to certify that activities will be administered consistent with their partial action plan; however, as noted in comments 4 and 5, the program was not always administered in accordance with the partial action plan.

Comment 7 GOSR officials stated that the program policy manual was revised several times to delete all references to owner-occupancy as being an eligibility requirement and that similar corrections were made to Web-based information. However, while our review of the April and July 2014 policy manuals disclosed that revisions had been made to the program policy manual, some citations to owner occupancy and 50 percent substantially damaged requirements still remained. In addition, our review of the Web-based information on June 29, 2015 revealed citations requiring applicants to be owner occupants and properties to be substantially damaged. Consequently, verification that all published materials are consistent with program implementation will need to be made during the audit resolution process with HUD.

Comment 8 GOSR officials stated that the HTFC board voted on May 14, 2015 to approve an amendment retroactive to August 13, 2013 to allow rental properties to be purchased, and provided OIG a copy of the draft amendment. As such, confirmation that the final resolution has passed will need to be provided to HUD during the audit resolution process. In addition, if rental properties will be approved for buyout, documentation of leases should be required to demonstrate the rental status of properties. Accordingly, recommendation 2D was amended to include the requirement that leases be obtained to document the rental status of properties.

Comment 9 Invitation letters sent to potential Program participants informed that the buyout program was designed to acquire the applicant's current residential property and assist them in relocating to an area that was more safe and secure. However, as previously stated, information disseminated to the public via Web-based information during the audit scope period required that properties be owner-occupied. While it is true that no applicants were denied on the basis that their

property was a rental, that confirms that properties were bought out contrary to partial action plan amendment 6, the program policy manual and publicly disseminated information.

Comment 10 As previously stated in comments 7 and 8, evidence that all references in the policy manuals and publicly disseminated information are consistent with a final amended HTFC board resolution will need to be provided to HUD during the audit resolution process. In addition, GOSR officials reported that public comments received to partial action plan amendment 8 indicated that citizens were concerned with sudden program changes and felt that they did not have a sufficient understanding of specific policies governing the program. As such, we have amended recommendation 1C to state that controls be strengthened to ensure that the enhanced buyout program partial action plan description, program policy manual and publicly disseminated program information align with resolutions affecting the program and how the program is implemented, and that the public is adequately informed of how the program is implemented.

Comment 11 GOSR officials contend that the applicants were eligible for the ten percent relocation incentive since all the properties were either owner-occupied or rental properties. However, 78 FR 14345 (March 5, 2013) provided that incentive payments may be made to households that volunteered to relocate from a floodplain or to a lower risk area. As such, the incentives were intended to encourage displaced "households" to relocate to an area promoted by the comprehensive recovery plan. These incentives are not meant for commercial entities or businesses. For example, pre-disaster owners of vacant lots, commercial and rental properties are also not eligible to receive a related replacement housing award as they did not occupy the structure at the time of the disaster. In short, a "housing" incentive to owners of rental non-occupied and held for rental or sale properties would not be within the scope of 78 FR 14345. Further, 78 FR 14345 required that incentives comply with the grantee's approved partial action plan and published program design, which during the audit scope period provided that the ten percent incentive was limited to owner-occupied properties.

Comment 12 GOSR officials stated that their method of calculating buyout awards has consistently been that the total award may exceed the FHA mortgage loan limit once incentives were added. However, this method did not comply with the initial HTFC board resolution for the program nor the February 2014 procedure manual, which was in effect during our audit scope period. While GOSR officials said that the HTFC Board passed an amendment, dated May 14 2015, to retroactively approve what had been done in practice, and that the April 2015 policy manual had been appropriately updated, they will need to demonstrate such to HUD during the audit resolution process.

Comment 13 GOSR officials agree that second homes as defined by Internal Revenue Service Publication 936 are ineligible for the buyout program, but stated that eligibility is

not limited to only an applicant's primary residence and that all properties purchased were eligible. GOSR officials further stated that there are various checks to prevent purchasing second homes, including confirming that the homeowner was a U.S. citizen and having the homeowner sign an Eligibility Affidavit and performing an Association with Damaged Property Check during which the homeowners' self-disclosed address is compared against the associated address history as identified through searches of a syndicated public records database in the Social Security Number Check. However, we believe that these checks were not always adequate and we did not see the Association with Damaged Property Check documented in the files we reviewed. Further, to determine whether a home is a secondary home, the owner's main home (primary residence) must be determined, as well as providing adequate documentation to support whether the buyout property is a rental property. While we recommended to GOSR officials in July 2014 that leases be documented for properties that were classified as rental properties, they did not believe that was necessary. However, a revision to the program policy manual, dated April 2015, requires providing leases to document rental properties. Accordingly, during the audit resolution process Association with Damaged Property Checks and leases should be provided for the questioned properties to provide greater assurance that second homes were not assisted.

Comment 14 GOSR stated that the five properties questioned in the draft report were eligible based upon documentation previously obtained and with eligibility checks being performed. We believe the responses provided do not ensure that the five properties cited in the draft report were not secondary homes. Specifically, while GOSR officials documented that two properties were the primary residences of the owners' children, and therefore were not secondary homes, the properties were owned by the applicant and it was not demonstrated that the properties were rental properties. IRS Publication 936 provides that you can only have one main home and that is where you live most of the time, and a second home is one that you choose to treat as such. Therefore, a property owner's main home must be determined before a second home can be designated. For the remaining three properties, GOSR officials stated that the properties were not considered secondary homes based upon the completed applications and statements from the owners. However, the owners had a history of residing at another property. We believe such contradictory information in the files needs to be reconciled to ensure that assistance is not provided to second homes.

Comment 15 GOSR officials stated that loans from SBA are for repair and rehabilitation by homeowners and are not duplicative benefits since they are not for the same purpose as the enhanced buyout program. However, 76 FR 71062 (November 16, 2011) provides that if award amounts are related to a property's value or estimated cost of repair/reconstruction, then HUD will consider the award to be for the purpose of rehabilitation or replacement housing, and therefore should be regarded as a possible duplication of benefit. In addition, GOSR's policy manual

in effect during the audit period listed insurance, FEMA, and SBA as the most common sources of duplicate assistance and private and flood insurance payments received and not spent for repairs and rehabilitation were classified as a duplication of benefit in the files we reviewed. As a result, we maintain that funds approved but not expended from SBA are duplicative.

Comment 16 GOSR officials stated that drawn funds from SBA must be satisfied at closing if an outstanding balance exists. They further stated that, if necessary, proof of a payment plan from SBA can be provided. Therefore, such proof should be provided during the audit resolution process with HUD.

Comment 17 GOSR officials stated that the $952 was an unmet need and not rental assistance. We agree that rental receipts exceeding any FEMA rental assistance can be considered an unmet need. However, $1,300 of the $3,900 in rental receipts provided by the homeowner was inadequately supported and remains questioned. As a result of $1,300 being unsupported, any unmet need above the $2,948 FEMA rental assistance (which equates to $952) is unsupported.

Comment 18 GOSR officials stated that the duplicative benefits paid were for the structure, not the land value. Therefore the pre-storm fair market value cannot be encroached on by duplication of benefits. GOSR's policy manual in effect for the buyouts reviewed stated that flood insurance payments, home repair assistance, temporary housing assistance, and other Storm-damaged benefits must be subtracted from the total amount that an owner is eligible to receive under the program. The manual does not distinguish between the structure value and the land value when considering duplication of benefits. Consequently, we view this amount as unsupported since we have not received any documentation from the State supporting their assertion.

Comment 19 GOSR officials stated that the $5,000 supported by an invoice was for work actually completed as part of a work order estimate of $18,250, and that a notarized letter from the landlord attesting to proof of payment is sufficient. However, the invoice for the $5,000, as well as the $18,250 estimate did not include the name of the property owner, the property address for which the work was done, or a detailed description of the work completed. Further, the notarized letter from the landlord provided support only for rental payments received from the buyout participant. Therefore, the $5,000 remains unsupported.

Comment 20 GOSR officials stated that a notarized letter from the landlord matched the $3,500 disbursement. However, we view the $3,500 as unsupported since the funds were withdrawn from the applicant's account almost two months after the notarized letter and the nature of the withdrawal was not indicated.

Comment 21 GOSR officials stated that they reasonably interpreted "intergovernmental" to mean an agreement of any kind and therefore, were compliant when they added GOSR as a party to an existing contract, which they did in February 2015. GOSR officials stated this was not plainly inconsistent with the regulation and should be

afforded deference. We revised the report to note that federal regulations encourage, not require, that an intergovernmental agreement be executed. However, we maintain the position that the State's interest would have been protected had GOSR officials executed an intergovernmental agreement, contract or similar instrument to ensure expected performance prior to disbursing $5.9 million over a 13 month period from April 2013 through April 2014 for management consulting services.

Comment 22 GOSR officials stated that they had not disbursed any funds for services until they executed a subrecipient agreement with the other state agency which had procured the contract, and therefore they had all the contractual assurances and monitoring rights required prior to disbursing funds. We acknowledged in the report that no funds had been disbursed and that an agreement was executed as we had suggested. However, appraisal services were provided for over 22 months before such agreement was executed. We believe that allowing a contractor to perform services without a contract or similar document being executed puts GOSR at risk of future conflicts with the contractor if services provided were not as expected.

Comment 23 GOSR officials stated that it entered into an agreement based upon a provision in their procurement policies that the services rendered had to be upon comparable terms and deemed appropriate by a procurement contract officer. GOSR officials agree that the procurement contract officer decision had not been obtained but maintain that the scope of services were comparable in scope However, as noted in the report, the scope of work contracted for by the other State agency was for short-term consulting engagements (for example, for projects with durations of a few weeks up to several months) on an as-needed basis that would focus on the review of management and fiscal issues relating to State programs, practices, and initiatives. On the other hand, the scope of work for the questioned contract was for ongoing integrity monitoring lasting at least 13 months, and which is currently on-going.

Comment 24 GOSR officials stated that the rationale for contractor selection for a second contract was not available upon our review but that the procurement file presently includes procurement documents and a comprehensive memorandum to support the contractor's selection. Accordingly, GOSR officials will have to provide adequate documentation to HUD during the audit resolution process to support that the contractor selected was in accordance with federal regulations.

Comment 25 GOSR officials disagreed that HUD regulations require that a cost analysis be done for every competed contract. For this disaster grant, HUD required grantees to either adopt the specific procurement standards identified in 24 CFR 85.36 or have a procurement process and standards that were equivalent. In its initial certification to HUD in April 2013, State officials indicated that the state would both adopt 85.36 procurement standards and implement its own equivalent procurement requirements. They further noted the procurement policies and procedures of the Housing Trust Fund Corporation would govern the State

CDBG-DR procurement and provided examples of those policies and procedures which align with Part 85.36 and additionally indicated that Part 85.36 requirements were adopted for its subrecipients. For the ten contracts analyzed during the audit, OIG maintains the position that 24 CFR 85.36(f) requires grantees to perform an independent cost estimate before receiving bids and a cost analysis before awarding a contract.

Comment 26 GOSR officials disagreed that independent cost estimates had to be performed prior to receiving proposals. They rely on the contention that "HUD's standards do not require states to adopt CFR 85.36 in its entirety, but under the HUD OIG's interpretation of the law, afford states the opportunity to use their own procurement procedures so long as those procedures are 'equivalent' to CFR 85.36". They further stated that independent cost estimates are not generally required for states to comply with Federal grant law, including HUD's standard regulations, to safeguard the Federal interest, and thus, should not be required to ensure a state's contracts are "equivalent" to the Federal standards. OIG maintains the position that 24 CFR 85.36(f) requires grantees to perform an independent cost estimate before receiving bids and a cost analysis before awarding a contract.

Comment 27 GOSR officials have stated that it has always worked diligently in a variety of ways to ensure that its proposed costs are in line with the market rates, including taking advantage of competitively procured contracts, comparing proposed rates to those in previous contracts that were similar in scope, and even at times relying on state studies that demonstrate the reasonableness of a particular cost. However, documentation was not provided for a state study to justify the total contract price of any of the ten contracts-as required by 24 CFR 85.36(f). In addition, some of the proposed rates used in the contract comparison did not seem to be similar in scope. HUD had a similar concern after its August 2013 monitoring review when it noted that comparisons of vendor rates were not for similar services. Further, OIG maintains that 24 CFR 85.36(f) requires grantees to perform an independent cost estimate before receiving bids and a cost or price analysis before awarding a contract to justify the reasonableness of the total contract.

Comment 28 GOSR officials stated that two procurement policy provisions were not cut and pasted into their procurement policies, but the policies have been amended to include nearly identical text from HUD regulations. Although the report only notes one contract that lacked a required provision, GOSR officials stated that they have amended the three contracts that did not include a specific provision. These issues will need to be reviewed by HUD during the audit resolution process.

Comment 29 GOSR officials stated HUD waived the requirement to post each quarterly performance report (QPR) as created using the Disaster Recovery Grant Reporting System (DRGR) detailing expenditures for each contractor as required by 78 FR 14329, 14344 (March 5, 2013) when it issued 79 FR 40133, 40134 (July

11, 2014). They further note that HUD removed this QPR reporting requirement because grantees were already reporting detailed expenditures for each contractor in the Federal Subaward Reporting System on the usaspending.gov Web site as required by the Federal Funding Accountability and Transparency Act. However, GOSR officials were not reporting the required information prior to HUD's waiver. In addition, while HUD removed the reporting requirement to eliminate duplicative reporting because "grantees are already reporting this information in the Federal Subaward Reporting System through usaspending.gov," usaspending.gov is not equipped to report this information. However, among the information HUD required in its amended Web site reporting requirement was "…information accounting for all grant funds are used, and managed/administered, including details of all contracts and ongoing procurement policies." Therefore, we have amended recommendation 3I as follows "Seek additional guidance from HUD as to what contractor-related information should be reported on its Web site to comply with the requirement of Public Law 113-2 that grantees maintain on a public Web site information accounting for how all grant funds are used if contractor expenditure data is not reported on usaspending.gov as understood by HUD when it issued a reporting waiver."