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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 10, 1999

Mr. Joseph Lynch
Acting Director
Division of Housing and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Re: Report 98-F-22

Dear Mr. Lynch:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Division of Housing and Community Renewal as of September 3, 1998 to implement the recommendations included in our prior audit *Administration of the Low Income Housing Tax Credit Program* (Report 95-S-70, issued June 14, 1996).

Background

The Division of Housing and Community Renewal (Division) is charged with supervising, maintaining and developing decent, affordable housing for low and moderate income individuals and families in New York State. To this end, the Division and the Housing Trust Fund Corporation approve and administer various loan and grant funds for the development of housing. Among the various housing programs administered by the Division are the Low Income Housing Trust Fund, Low Income Housing Tax Credit and Federal HOME Investment Partnership programs.

The Low Income Housing Tax Credit (LIHTC) program has emerged since 1986 as the primary national program for stimulating the production and rehabilitation of low-income housing. The LIHTC is a 10-year Federal tax credit awarded for private investment in low-income housing. Tax laws limit how much credit an individual taxpayer may claim on his or her tax return. Therefore, project developers often sell ownership interests in tax credit projects to investors. During 1998, the Division allocated more than $22 million in tax credits. According to Division officials, these tax credits will assist the construction or rehabilitation of more than 2,100 housing units for low income residents in New York State.

Summary Conclusions

In our prior audit, we determined that the Division had not established adequate procedures to ensure that all tax credit allocations were reasonable and appropriate. We also determined that the Division had not established cost guidelines for LIHTC projects and had not otherwise evaluate the reasonableness of LIHTC project costs. In addition, the Division had not always limited the tax credit allocation to the lesser of an established percentage of the project's costs or the amount needed to cover the project's funding deficit. Division officials also had not used proper competitive procedures for awarding a $5.5 million contract to a syndication group.

In our follow-up review, we found that Division officials have implemented procedures to evaluate and limit LIHTC project costs and tax credit amounts. We also found that Division officials are awarding LIHTCs based on the lower of the percentage of project costs or the amount of the project's funding deficit. The Division has stopped contracting with syndication groups to sell tax credits.

Summary of Status of Prior Audit Recommendations

Of the eight prior audit recommendations, two have been implemented and six are no longer applicable.

Follow-up Observations

Recommendation 1

Establish and use cost per unit guidelines for LIHTC projects.

Status - Implemented

Agency Action - The Division has taken several steps to implement this recommendation. In 1997, it implemented limits on the amount of the tax credit that any project could receive. During the 1998 funding period, annual tax credits were limited to $20,000 per housing unit but no more than $1.2 million for an entire project. In addition, Division staff determine whether project costs are reasonable based on published regional material costs. They also take into consideration the nature of projects. For example, historic preservation projects usually have higher costs than other types of projects. The Division also limits builders' profit, overhead, general requirements and developers' fees.

Recommendation 2

Award LIHTCs based on the lower of the percentage of project costs or the amount of the project's funding deficit, as required by the Internal Revenue Code and the State's Qualified Allocation Plan.

Status - Implemented

Agency Action - The procedures used by the Division to award LIHTCs are set forth in the State Qualified Allocation Plan as required by the Federal Tax Reform Act of 1986. These procedures require that tax credit awards be based on the lower of the percentage of project costs or the amount of the project's funding deficit. The Division evaluates each project considered for a tax credit allocation three times: at application; at allocation; and after the building is placed into service. The amount of the LIHTC that the Division calculates at each of these stages may vary depending on things such as the applicable Federal percentage, funding secured from other sources, and changes in project costs. The first two calculations are primarily to decide if the project is feasible and to reserve tax credits so that project owners can secure the necessary financing. The actual tax credit amount is determined when the project is placed into service. As stated previously, tax credits are also currently limited to a maximum of $20,000 per unit and no more than $1.2 million per project.

We reviewed the files for six projects, (one 1998 allocation, three 1997 allocations, and two 1996 allocations). Based on our review, the Division is allocating tax credits at the lower of the percentage of project costs or the amount of the project's funding deficit.

Recommendation 3

Follow proper procedures in soliciting contract proposals and awarding contracts to ensure that contracts are let in the most competitive manner possible.

Recommendation 4

Competitively bid any future round of TKTAC (Turnkey/Tax Credit) project syndication.

Recommendation 5

Obtain the Office of the State Comptroller's approval for any contract over $10,000 where DHCR is a signatory.

Recommendation 6

Monitor, assess, and document the quality and performance of the syndication group's work relating to the TKTAC contract.

Recommendation 7

Audit the syndication group's use of TKTAC proceeds.

Recommendation 8

Expedite corrections to the syndication contract and its amendments.

Status - Recommendations 3 to 8 are No Longer Applicable.

Agency Action - Recommendations 3 to 8 related specifically to issues we identified as a result of our review of a contract awarded to a syndication firm to sell TKTAC program tax credits. Since that audit, the Division has eliminated the TKTAC program and has not initiated any similar programs. Accordingly, Recommendations 3 to 8 are no longer applicable. However, should the Division award similar types of contracts in the future, it should take the necessary steps to meet the intent of these recommendations.

Major contributors to this report were Howard Feigenbaum, Jack Dougherty, Wayne Bolton and Kevin Connolly.

We would appreciate your response to this report within 30 days, indicating any action planned or taken to address any unresolved matters discussed in this report. We also thank Division management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

William P. Challice
Audit Director

cc: Robert L. King, DOB
Judith Calogero, DHCR
Jack Solodow, DHCR