New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Mission Statement and Performance Measures

Dormitory Authority of the State of New York

Report 2013-S-13

June 2014

Executive Summary

Purpose

To determine whether the Dormitory Authority of the State of New York is achieving its performance measures and properly reporting on the results. The audit covers from January 1, 2010 through June 28, 2013.

Background

The Dormitory Authority of the State of New York (Authority) has two primary lines of business: construction management and debt issuance. It assists a variety of public and private institutions with various projects that involve financing, designing, constructing, and/or rehabilitating buildings, including the acquisition of equipment. The 2009 Public Authorities Reform Act (Act) included requirements to increase the transparency of operations of public authorities. The Act requires public authorities to develop a mission statement and performance measures for evaluating their operations. For the fiscal year ended March 31, 2013 the Authority reported on 13 performance measures that it has established to show how well it is accomplishing its mission. These measures are organized around three major goals: on-time and on-budget construction projects, timely and fairly priced debt issuances, and customer satisfaction. To measure customer satisfaction, the Authority asks many of its clients to complete a customer satisfaction survey.

Key Findings

- The Authority did not meet its targeted performance level for customer satisfaction for 20 percent of its customers, particularly in the areas of project design and construction. Also, construction clients expressed concerns about the timeliness and cost of projects.
- With respect to debt issuances, 43 percent of survey respondents indicated they were less than satisfied with the cost of debt issuance, and 12 percent rated timeliness less than acceptable.
- Debt issuances appear to be priced fairly, based on the Authority's method of reviewing secondary market trading data. Debt issuances appear to be issued in a timely manner after accounting for factors such as market conditions.
- The Authority collects data on change orders, including the reason for the change and the impact on the project schedule and/or budget. However, it needs to analyze this information better to identify common problems and to develop corrective action plans that could eliminate, or at least minimize, recurrence of such issues.
- Reports to the Authority's management and the Board compare the actual project end date and cost with the latest formal projections, not the baseline figures established when projects are initiated. This type of analysis can make projects that are significantly delayed appear to be on time. For example, for one of the five completed projects we examined, the schedule went from 21 months late when compared to the original baseline end date, to seven months early when compared to the latest projection.

Key Recommendations

- Identify the causes in cases where customer satisfaction did not meet expectations, especially in areas of cost and timeliness, and take appropriate actions to address them.
- Analyze change order data to identify patterns and prepare an action plan that includes

appropriate steps to address common problems that result in change orders.
- Revise reports to Authority management and the Board to include the baseline end date and budget, as well as the latest projected end date and budget.

State of New York
Office of the State Comptroller

Division of State Government Accountability

Mr. Alfonso L. Carney, Jr.
Chair
Dormitory Authority of New York State
515 Broadway
Albany, NY 12207-2964

Dear Mr. Carney:

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

Following is a report of our audit entitled *Mission Statement and Performance Measures*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law.

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

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The Dormitory Authority of the State of New York (Authority) is a public benefit corporation established in 1944. The Authority is governed by an 11-member Board, and has approximately 550 employees located at three offices (Albany, New York City, and Buffalo) and approximately 57 field sites across the State. During Calendar Year 2012, the Authority had 323 construction projects in progress, of which 148 were completed by the end of 2012. Between January 1, 2010 and March 31, 2013, the Authority completed 107 bond issuances totaling $17.8 billion.

The Authority has two primary lines of business: managing construction projects and assisting with financing. Some clients contract with the Authority for both types of services. For construction projects, the Authority acts to protect the client's interest during both the design and construction phases. For financing services, the Authority issues tax-exempt and/or taxable bonds for both financing and refinancing of construction, rehabilitation, renovation and other projects. The Authority acts as a conduit financing entity, issuing bonds on behalf of its clients. Clients are responsible for providing the funds necessary to pay the debt service on the bonds. In acting as a conduit debt issuer, the Authority's role is to ensure that the bond issuance is done timely and cost-effectively.

The 2009 Public Authorities Reform Act (Act) included requirements to increase the transparency of operations of public authorities. The Act requires public authorities to develop a mission statement and performance measures for evaluating their operations, and to submit both to the Authorities Budget Office (ABO). The Act also requires each authority to review its mission statement and performance measures each year, and to publish a measurement report on its website. Annually, each public authority should also provide the ABO, the Office of the State Comptroller, and other State leaders with the measurement report and an operations and accomplishments report.

The Authority's mission is to "deliver exceptional service and professional expertise on every financing and construction project for our clients and the public, in a cost-effective manner, while advancing the policy goals of New York State." To accomplish this mission, the Authority's Board has established three goals:

- Deliver high-quality projects and services on-time and on-budget;
- Employ a highly effective, professional and expert workforce; and
- Seek to advance the public policy of New York State.

For each goal, the Board has established performance measures and, for some performance measures, defined what would be acceptable performance. In September 2011, the Board approved a formal list of these goals and performance measures. (See Appendix)

In April 2013, Authority officials identified the primary performance measures for each of its two primary lines of business. The measures identified for construction projects were that projects remain on time and within budget. For debt issuance, performance measures were days to market and bond pricing for debt issuance. Customer satisfaction was identified as a measure for both lines of business. To measure customer satisfaction, the Authority asks many of its clients to complete a customer satisfaction survey. For the purposes of this audit, we reviewed only these performance measures, which also relate to the first of the three goals established by the Authority's Board.

Audit Findings and Recommendations

Measuring Accomplishments

To measure whether it is accomplishing the goal of completing projects on time and within budget, the Authority monitors the current status of each project, as well as any changes to the original project contract. The Authority uses change orders to document significant changes to the budget or the schedule after the project begins, as well as approval of those changes by the client. Although it collects information about change orders, the Authority does not have any Board-approved performance measures related to change orders.

The data the Authority tracks on change orders includes the amount of the change order and the reason, such as client request, design error or omission, unexpected site condition or substitution of materials. We judgmentally selected five projects from the 114 that were completed in 2012 and reviewed all 335 change orders related to the construction contracts. These five projects had a total original construction contract amount of $246.7 million, and the change orders added $12 million.

According to Authority officials, industry standards for cost escalations indicate that change orders should be expected to increase the cost of new construction projects by between 3 and 5 percent. The cost of renovation and rehabilitation projects can be expected to rise slightly more, between 5 and 8 percent. The following table shows the impact of change orders on the budget for each project, both including and excluding program changes requested by the client.

Table 1: Budget Increases Due to Change Orders

Project	Original Contract Amount	Including All Change Orders		Excluding Client-Requested Program Changes	
		Amount	*Percentage*	*Amount*	*Percentage*
New Construction Projects: Industry Standard as provided by the Authority = 3% to 5%					
1	$225,796,700	$10,103,128	4.5%	$8,729,753	3.9%
3	$3,942,085	$1,072,243	27.2%	$483,993	12.3%
5	$699,143	$158,908	22.7%	$153,891	22.0%
Renovation and Rehabilitation Projects: Industry Standard as provided by the Authority = 5% to 8%					
2	$13,352,177	$355,068	2.7%	$374,868	2.8%
4	$2,873,000	$350,870	12.2%	$202,976	7.1%

As the highlighted areas in the table shows, even after excluding client-requested changes, increases due to change orders for two of the three new construction projects significantly exceeded the industry standards cited by Authority officials. Similar increases also placed one of the two renovation and rehabilitation projects very near the high end of the industry standard. The largest single reason for these change orders was cited as field conditions (100 changes totaling $6,456,420), followed by design omissions (85 totaling $2,539,486), changes requested by the client (76 totaling $2,094,736) and design errors (27 totaling $339,184). Together, these four categories accounted for 288 of the 335 change orders (86 percent) and $11,429,826 of the $12,040,216 (95 percent).

We concluded the Authority needs to do more to control the number and cost of change orders, particularly those due to field conditions and to design errors and omissions. The Authority already codes the reason for each change order and analysis of this information could be useful in identifying problems that have repeatedly occurred in the field. Management may be able to use this information to identify proactive steps that could be taken to avoid future problems before they occur. From the design standpoint, Authority officials stated they already work with the clients and construction contractors on many phases of each project, but stress that the ultimate responsibility for the design lies with the architect and the engineer, not the Authority. While this may be the case, the Authority could still provide additional value to its clients if it could help to identify design errors and omissions prior to the start of construction.

In addition, routine analysis of the causes for change orders could assist the Authority in determining when it would be appropriate to pursue damages from contractors, a decision that is currently made on a case-by-case basis. Since 2004, the Authority has taken legal action against seven contractors. As of August 2013, the Authority has recovered $3.15 million from one of these contractors and has a summary judgment of $3 million against another, although that summary judgment is currently being appealed. The other five cases are in various stages of litigation and their outcome is uncertain.

Recommendation

1. Analyze change order data to identify patterns and prepare an action plan that includes appropriate steps to address common problems that result in change orders.

   (The Authority replied to our draft audit report that it will continue to perform and refine its design development and review junction.)

   Auditor's Comments: The Authority codes each change order for the reason. However, it should exclude program changes requested by the customer, and use the remaining data to reduce other problems, such as commonly overlooked site conditions or errors and omissions in construction designs.

Achieving Performance Measures

On Time and Within Budget

Because the complexity of construction projects can vary significantly, the Authority has no set standards for the expected cost and length of a typical project. Instead, it measures performance for each project against its own schedule and budget. The baseline budget and schedule is established for each project at its inception. The Authority then monitors the progress of each project, including tracking changes to both the budget and the schedule due to change orders.

The Authority provides its clients with various reports so they can also monitor progress. The Authority has not set any targets of how many projects it expects to complete on time and on budget. Instead, it calculates these measures for all projects with budgets over $1 million, and selectively for projects below that level.

For its performance reports, the Authority only compares the actual completion date and cost with the latest projected figures, which include dates and costs that have already been amended to reflect all change orders during the project. As a result, a project that is significantly behind its baseline schedule can easily be reported as on time or even early. The same holds true for project costs, which can easily show up as within or near budget even though the project may be significantly more expensive than originally planned. We recognize that these interim changes have been approved by both the client and the Authority, and that tracking progress against the most recent plans and estimates may be useful. Still, we believe the project status reports would have more value for Authority management and the Board if they were to also reflect each project's baseline budget and end date.

As shown in the following table, we calculated the difference (in months) between the actual project completion date and both the latest projected and baseline end dates on file for each of the five projects we sampled. When compared only to the latest projected end date, two of the projects appear early, while two are only three months behind schedule and the other is almost two years late. In contrast, when compared to the baseline expectations, only one project was early, one was a year late, and the other three almost two years late.

Table 2: Comparison of Baseline, Latest Projected and Actual End Dates for Five Projects

	Project Completion Dates			Months Actual Delivery Late (Early) Compared to	
Project	*Baseline*	*Latest Projected*	*Actual*	*Baseline*	*Latest Projected*
1	12/4/2010	8/30/2012	12/12/2012	24	3
2	5/5/2011	2/20/2012	5/31/2012	12	3
3	8/30/2010	1/24/2013	5/30/2012	21	(7)
4	10/15/2010	10/15/2010	8/30/2012	22	22
5	7/31/2012	7/31/2012	5/22/2012	(2)	(2)

We also noted there were gaps between the latest projected and actual end dates that were not accounted for by the approved change orders. For example, the projected end date for project #2 was extended over nine months from May 5, 2011 to February 20, 2012 even though there were no contract change orders that added days to the schedule. Authority officials informed us that, in this case, the contractor failed to provide project submittals timely during the entire project and that some masonry pieces had been incorrectly measured and had to be replaced. No change orders were issued for these delays, in part to ensure that the contractor would not be absolved of its responsibility.

According to Authority officials, there are other events that might affect completion date where a change order would not be appropriate. These include accidents on the construction site, weather conditions, lack of funding, or a contractor going out of business. These events are documented in the daily log of work maintained for each project, but their cumulative effects are not summarized anywhere and the projected end date on Authority reports are not modified to account for these delays. Once again, we believe the Authority's project reporting would be more useful to stakeholders if the latest projected end dates were to account for all events that impact the schedule, regardless of whether a formal change order is processed.

Days to Market and Pricing

The Authority tracks the number of days it takes to prepare and market its bond issuances. This is the time between when the Board approves the debt issuance and the closing date. Other than debt issued on behalf of the State (where the timing is controlled by the New York State Division of the Budget), the Authority sets target dates based on the type of client it is serving.

The Authority's 2012-13 Measurement Report indicates 7 of 29 (24 percent) bond issuances measured in this manner exceeded their target. We reviewed 86 bond issuances that occurred between January 1, 2010 and March 31, 2013 and for which the Authority tracked the Days to Market, and similarly found 26 percent took longer than expected.

When a debt issuance exceeds its targeted Days to Market, the Authority identifies the reasons for delay, which may include factors such as unstable market conditions, tax and due diligence issues, credit enhancement issues, and mortgage issues. The Authority provided us with explanations for a sample of eight debt issuances that exceeded their target Days to Market. In each case, it appears that the Authority was justified in delaying due, at least in part, to the market conditions at the time the debt issuance was approved by the Authority's Board and during the period leading up to actual pricing and closing.

The Authority has not adopted any formal goals related to bond Pricing, as it has for the time to market. According to Authority officials, each debt issuance and client is different, so uniform goals for Pricing would be very difficult to establish. Instead, since its Fiscal Year 2012-13, the Authority has examined trades in the secondary market, during the first three business days after the debt issuance is available for resale, to monitor whether debt issuances conducted through a negotiated sale process are priced fairly. The Authority uses this information to measure whether an investor is willing to pay more for the debt issuance than the price the Authority obtained.

In its 2012-13 Measurement Report, the Authority reported that all 29 of its debt issuances conducted through negotiated sales were fairly priced. We reviewed the secondary market trading data for a sample of five of these debt issuances, and concurred with the Authority's analysis based solely on this method of review. Authority officials advised us that they do carry out certain activities regarding pricing, but they do not maintain written documentation of these communications. The Authority could document its activities to better illustrate fair pricing. Such a step would provide additional evidence as to whether clients receive fair pricing.

Although the Measurement Report provides data on many measures, we noted that neither the Annual Bond Sale Report nor the monthly Public Finance Reports that are provided to the Board compare actual Days to Market to the goals, making it more difficult for the Board to monitor performance in this area. Similarly, while the Public Finance Reports include information on the true interest cost of each bond issuance, they do not indicate whether the review has shown the bond was fairly priced. Providing performance data such as this to the Board on a monthly basis would better position it to monitor more performance measures throughout the year, rather than only at year end.

Customer Satisfaction

To measure customer satisfaction, the Authority asks many of its clients to complete an optional customer satisfaction survey. The Authority surveys all clients with construction projects over $5 million, selected clients with projects under $5 million, and all debt issuance clients. Clients rate the Authority on a 6-point scale in five categories: customer support; cost which includes design consultant fees, construction management fees, cost of issuance and related fees; quality/process; communication; and timeliness. The Authority then calculates average scores to determine an overall rating on the same 6-point scale. The Authority defines customer satisfaction as a rating of 4 or better and strives for 100 percent customer satisfaction.

Between January 2010 and March 2013, the Authority sent out 142 customer satisfaction surveys, and received 107 responses (22 from design phase clients, 34 from construction phase clients and 51 from debt issuance clients). We reviewed the ratings for the performance areas related to the delivery of a project on time and within budget. Our review of the survey results shows that the Authority fell short of meeting its overall customer satisfaction goal 20 percent of the time. The following table shows how satisfaction levels often differed depending on the type of client served.

Table 3: Percentage of Surveys with Rating Below 4, by Type of Client

	Type of Client			
Category	***Design***	***Construction***	***Debt Issuance***	**Total**
Overall	45%	21%	8%	20%
Cost	36%	18%	43%	34%
Timeliness	27%	21%	12%	18%

On an overall basis, design phase clients expressed the least satisfaction, with 45 percent returning ratings of less than 4. In contrast, only 8 percent of debt issuance clients returned a rating of less than 4 on an overall basis, even though as a group they returned the highest number of ratings below 4 for the cost of the services they received. The Authority needs to identify ways to determine why clients have rated them below target levels. This information would be useful in developing a plan of action to address perceived problems and further improve client services.

(In response to our draft report, Authority officials expressed their concern that we did not disclose every detail in the responses from the client surveys. They provided some of the details which are included in this report as Agency Comments.)

Auditor's Comments: We reviewed the client survey responses that were used by the Authority to assess customer satisfaction. These responses indicate that several customers were not satisfied with the Authority's performance, and we recommend the Authority identify the causes and take appropriate action to address them. In its response, the Authority detailed what it has done regarding the cost of debt issuance and delays in getting a bond issue to market. We acknowledge that the Authority has taken some action in response to the customer satisfaction surveys.

Recommendations

2. Revise reports to Authority management and the Board to include the baseline end date and budget, as well as the latest projected end date and budget.

   (The Authority replied to our draft report that it will discuss this matter with its Board after the release of OSC's final report.)

3. Revise project end dates to reflect all events that impact the schedule, not just those that result from approved change orders.

   (Authority officials replied to our draft audit report that a change order is not the appropriate transaction to record increases in a project's cost or schedule due to project issues that are not related to the construction contractors' working on the project. They added that it would not be practical to implement a formal tracking system for every daily event that impacts the schedule of a construction project.)

   Auditor's Comments: We are not recommending the Authority track every daily event that impacts a project or that a change order is needed. However, when the project end date is delayed nine months from May 5, 2011 to February 20, 2012 there should be a record documenting the reasons. Thus, the Authority should revisit its position regarding delays which are not related to change orders.

4. Maintain written documentation of the pre-pricing communications.

   (The Authority replied to our draft report that it could maintain written documentation, but this could not be done contemporaneously with the pricing and, more importantly would not have an effect on the pricing of the bonds.)

5. Report Days to Market and Pricing data to the Board throughout the year, rather than annually.

   (The Authority replied to our draft report that it will discuss this matter with its Board after the release of OSC's final report.)

6. Identify the causes where customer satisfaction did not meet expectations, especially in areas of cost and timeliness, and take appropriate actions to address them.

   (In response to our draft report, the Authority indicated it believes it has been and will continue to be diligent in addressing its clients concerns.)

Reporting Measures and Accomplishments

Although the Authority started developing its current mission statement and performance measures in Fiscal Year 2010-11, the Board did not review the mission statement and performance measures annually, as required by the Act. The Authority's Board adopted both the mission statement and the performance measures in September 2011, but did not review either again until March 2013, 18 months later. Regularly reviewing its mission statement and performance measures helps the Authority ensure that everyone understands what it should be accomplishing and how to measure the success of its operations. According to Authority officials, no action was taken in 2012 because the ABO did not approve the mission statement and performance measures until May 2012. However, we found no evidence that the Authority took any steps to obtain a waiver from the requirement to perform an annual review. We do note that, when the Board reviewed the mission statement and performance measures in March 2013, it did not make any changes.

Authority officials also indicated that, because the ABO did not approve performance measures until May 2012, they decided not to prepare a formal performance measurements report for FY 2011-12. However, the Authority already had performance measures in place prior to March 2010, as evidenced by the fact they were posted on the Authority's website. Therefore, it should have been able to measure its accomplishment against those measures and report the results despite not having formal approval from the ABO.

In June 2013, the Authority did submit a performance measurements report for Fiscal Year 2012-13. This report identifies the construction management and debt issuance metrics currently used by the Authority to determine how well and to what extent it accomplished its goals.

The Authority's Board receives annual reports on the performance measures it has established. In addition, as previously discussed, the Board receives other monthly reports on selected construction projects and debt issuances. According to Authority officials, these monthly reports are status reports designed to provide information on changes that occurred during the month, and do not include all the data necessary for the Board to monitor performance. More complete data could assist the Board in monitoring how well the Authority is progressing towards accomplishing its goals throughout the year.

Recommendations

7. Review the Authority's mission statement and performance measures annually as required by Law.

8. Submit a performance measurement report each year, in accordance with the Law.

   (The Authority replied to Recommendations 8 and 9 that it is currently in compliance with all requirements.)

9. Provide monthly performance reports to the Board.

   (The Authority replied it will discuss this with the Board after OSC issues the final report.)

Audit Scope and Methodology

Our audit determined whether the Authority is achieving its performance measures and properly reporting on the results. The audit covered January 1, 2010 through June 28, 2013.

To accomplish our audit objective, we interviewed Authority officials and reviewed Authority Board and Committee meeting minutes, related management reports and memorandum, Authority policies and procedures, and laws. For a judgmental sample of five construction projects, we reviewed project construction contracts, change orders, and other project reports. Our sample was selected using a two-tiered approach. We initially selected a judgmental sample of 24 projects from the 114 construction projects that were completed in calendar 2012, to get a mix of projects that were either ahead of or behind schedule and over or under budget. From these 24 projects, we then selected five that had a significant number of change orders: three new construction projects and two renovation and rehabilitation projects. For these five projects, we reviewed all 335 change orders related to construction contracts (but not those related to project design or other ancillary contracts). We also compared the baseline, revised and actual end dates for these five projects to determine the impact of change orders on the project schedules. We judgmentally selected eight debt issuances completed between January 1, 2010 and March 31, 2013 for review. Seven of the eight debt issuances selected had as the reason for the delay poor or unstable market conditions. The remaining debt issuance was selected because the reason for delay was downgrade of credit enhancers. We also reviewed the secondary market trading data for a sample of five of the 29 negotiated sales (excludes reofferings) in 2012-13.

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

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

Authority

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law.

Reporting Requirements

A draft copy of this report was provided to Authority officials for their review and comments. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report. Our rejoinders to certain Authority comments are included in this report's State Comptroller's Comments.

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

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Vision

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

Mission

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

Appendix - Metrics to Quantify Performance Goals

Dormitory Authority of the State of New York (DASNY)

Goal 1: Deliver projects/services of high quality on-time and on-budget.

Construction Metrics:

- **Customer Satisfaction Initiative (CSI)** – Strive for 100% customer satisfaction. *
- **Actual completion date compared to baseline schedule.**
- **Actual cost compared to authorized budget.**

Public Finance Metrics:

- **Customer Satisfaction Initiative (CSI)** – Strive for 100% customer satisfaction. *
- **Days to Market** – Goal is to achieve 100 % success in meeting these expected timeframe ranges.
  - **Existing clients:** (Resolution to Proceed to closing): 90 – 120 days.
  - **New clients:** (Resolution to Proceed to closing): 150 – 180 days.
  - **Pooled financings:** (Resolution to Proceed to closing): 150 – 180 days.
  - **State-supported debt financings:** Did the Authority meet the DOB calendar/ timeline for pricing and closing? Yes/No.
- **Pricing** – Compare bond price/yield at initial sale to bond price/yield in secondary market trading (taking into consideration any market moves).

* DASNY's benchmark measure is to achieve a rating of 4 or better on a scale of 6. A rating of 4 represents a satisfied customer with DASNY performance exceeding customer expectations. At the top end of the scale, a 6 indicates DASNY has exceeded all customer expectations with an extreme level of customer satisfaction.

Goal 2: Employ a highly-effective, professional and expert workforce.

- **Education/Licenses** – Track number of employees with:
  - undergraduate degrees;
  - graduate degrees;
  - licenses/certifications (architects, engineers, LEED professionals, accountants, internal audit and attorneys).
- **Board/Employee Development/Training** – Identify number of hours devoted to Board/ employee development training and type of training in broad categories, i.e. construction-related, finance-related, administration-related, etc.
- **Ethics Training** – Board and staff training annually (measure number of Board members and staff trained, hours, refresher courses, etc. 100% compliance).

Goal 3: Seek to advance the public policy of New York State.

- **Meet or exceed MWBE Utilization Goals.**
  (20% Current Construction Goal: 13% MBE; 7% WBE)
- **Establish DASNY as a leading sustainability public builder.**
  - Track number of LEED-silver, gold, platinum registered projects and number that achieved status.
  - 100% compliance with all executive orders related to sustainability:
    E.O. #111 (reduce energy usage in state-owned buildings /increase energy efficiency), E.O. #4 (sustainability planning and waste and paper use reduction), E.O. #18 (reduction/elimination of water bottles), E.O. #24 (reduction of greenhouse gas emissions, 80% by 2050)
- **Initiate new programs in support of DASNY's Mission.**
  - Track number of new programs implemented.
    - New Bond Programs
    - New OEI Programs
    - New Procurement Initiatives
- **Provide support to other public agencies and the legislature in the interest of New York State.**
  - On an annual basis, track number of employee hours spent on programs that support New York State programs and initiatives ancillary to DASNY's core financing and construction programs.
    - Grants Administration
    - NYS Fire Code Task Force
    - Governor Cuomo's MWBE Task Force
    - Support to the Moynihan Station Development Corporation (MSDC)

Agency Comments

DASNY | WE FINANCE, BUILD AND DELIVER
DORMITORY AUTHORITY STATE OF NEW YORK

Alfonso L. Carney, Jr., Chair
Paul T. Williams, Jr., President

February 26, 2014

Ms. Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

The Dormitory Authority of the State of New York (DASNY) received the draft report on Mission Statement and Performance Measures (Report 2013-S-13) from the Office of the State Comptroller (OSC) on January 27, 2014 and by way of this correspondence has taken the opportunity to respond to the findings set forth in the report.

In May 2013, OSC began site work on an audit of DASNY's performance measures. OSC audit team concluded site work and left DASNY on October 1, 2013. The audit focused on three major areas:

- DASNY's compliance with Public Authorities Law
- DASNY debt issuance performance
- DASNY construction management performance

OSC shared their preliminary results for debt issuance on September 4, 2013 and for construction on September 27, 2013. DASNY provided several written responses to preliminary audit findings and this information was reiterated during the exit meeting on November 26th. Subsequently the draft audit report was issued and based on our review of the draft audit report, it appears that OSC chose not to alter its report based upon the additional information that DASNY offered, both in writing and during the exit meeting.

* Comment 1

During the audit of DASNY's construction management performance, OSC was provided with an initial list of 328 DASNY construction projects that were in the construction phase during the 2012-13 fiscal year. From the list of 328 projects provided, OSC selected a judgmental sample of 25 projects. Using the most recent Board report, this sample of 25 projects represents roughly 3% of all of DASNY's construction projects. OSC subsequently requested a list of all construction contracts for the judgmental sample of 25 projects. DASNY provided a list of 113 contracts associated with the 25 projects and OSC selected 25 contracts to review. OSC ultimately selected, through exception reporting, just five (5) projects on which to evaluate contract change orders. While DASNY understands that OSC had to narrow down the projects/contracts that it was auditing, it is important to offer context as to the percentage of the overall DASNY project portfolio that was reviewed, as percentages are referenced in several findings in this area.

* Comment 2

* Comment 3

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* See State Comptroller's Comments, Page 26.

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OSC Key Finding # 1:

* *The Authority did not meet its targeted performance level for customer satisfaction, particularly in the areas of project design and construction. Responding to a customer survey, construction clients expressed concerns about the timeliness and cost of projects.*

* Comment 2

  - OSC chose to make this general statement despite the fact that DASNY on average exceeded its customer satisfaction target (4.00) for design and construction each in each of the years they examined. **Average overall ratings for each of the three years were 4.37 for design and 4.44 for construction with the average for every year exceeding the DASNY performance target of 4.00.**
  - **For the three year period that OSC examined, 93.5% (design) and 93.4% (construction) clients stated in their customer survey that they would use DASNY again and recommend DASNY to others.**
  - DASNY recognizes every satisfaction survey is important and remains sensitive to the individual overall or category level responses that fall below the targets and takes action to address any specific concerns that clients express or the surveys indicate.

OSC Key Finding #2:

* *With respect to debt issuances 43 percent of clients replied to the survey they were less than satisfied with the cost of debt issuance and 12 percent rated timeliness less than acceptable.*

* Comment 2

  - OSC chose to highlight the responses to two specific survey questions rather than acknowledge that **the DASNY average, 4.61, exceeded its customer satisfaction target (4.00) for financings in the years they examined.** Average overall ratings for each of the three years in the audit were; 4.28, 4.89 and 4.78.
  - **For the three year period that OSC examined, 100% of clients stated in their customer survey that they would use DASNY again and recommend DASNY to others.**
  - **OSC did not disclose that the details within the client surveys indicated that the costs that the clients were less than satisfied with were not DASNY fees or costs.** With regard to the cost of debt issuance, the majority of the costs are outside of DASNY's control (NYS Bond Issuance Charge, Department of Health fees, Bond Counsel, etc.). In recent years, DASNY has put significant effort toward lowering the cost of debt issuance for its financing clients by advocating for waivers, legislation or changes to regulations to reduce/remove certain fees that DASNY is required, by New York State, to charge its clients.
  - **OSC did not highlight that DASNY made significant reductions to help lower the cost of debt issuance and administration by lowering its own fees several times during the period which they audited.**

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- The reasons for delays in getting a bond issue to market are transaction specific and almost always due to factors that are outside of DASNY's control (real estate issues, tax diligence, availability of client's audits, timing of ratings, delays in approvals at other agencies, etc.). DASNY is aware of the common problems, which result in delays and DASNY advises the clients on strategies to avoid issues that might lengthen the process. For example, to avoid delays associated with tax diligence, DASNY directs Bond Counsel to provide a tax questionnaire to the client at the earliest possible juncture and encourages the client to get a head start on this part of the process. As noted in the Customer Satisfaction Surveys, the clients are aware of any delays in getting to market and, in the vast majority of cases, are very pleased with the service provided by DASNY as they recognize that often the reason for delay is outside of DASNY's control.

- DASNY has analyzed critical path internal processes and procedures of which DASNY is in control and implemented a number of affirmative steps to reduce or completely avoid delay to the extent practicable and reduce time to market thereby increasing quality of service. DASNY has gone so far as to revise its Board meeting schedule to better align with the meetings of the Public Authorities Control Board (PACB) (whose approval is required for each bond issuance) thereby minimizing delays associated with the time lag that previously existed between the DASNY Board meeting and the Public Authorities Control Board meeting. DASNY has also established a single approval procedure for certain recurring clients, which reduces the number of required DASNY Board approvals and the time it takes to get bond issues to market. In extreme cases, DASNY has even called special Board meetings to get the necessary approvals for a bond financing that was time sensitive.

OSC Key Finding #3:

No response required.

OSC Key Finding #4:

- *The Authority collects data on change orders, including the reason for the change and the impact on the project schedule and/or budget. However, it does not analyze this information to identify common problems and to develop corrective action plans that could eliminate, or at least minimize, recurrence of such issues.*

  - **DASNY is constantly analyzing the extensive change order data that is collected for all construction projects. Common problems are identified and taken into account on similar reviews in the future.** As an example, our Code Compliance Department maintains a "Typical Deficiencies Noted during Code Compliance Inspections" listing, and updates such regularly. The listing is referred to both during design and construction of a project.

* Comment 4

- DASNY can't control field conditions at its project sites, and therefore can't necessarily and globally "do more" to control the number of change orders that come about as a result. For example, if a customer agency has limited funding for subsurface exploration that allows for soil borings at the four corners of a proposed building project only, the actual condition at the center of the building will not be known until after the project is bid and awarded, and construction has started. Using this example further, the actual subsurface condition will never be known (pre-construction) unless a boring was taken at each and every square foot of the building footprint, and some distance beyond the footprint. The same could be said for any existing conditions survey that involves the building envelope, existing building systems, a building framing system, etc. **There are practical and financial considerations that must be undertaken when determining the extent of a geotechnical investigation or existing conditions survey that must be employed.**

- DASNY's Downstate and Upstate Planning, Design and Quality Assurance architects and engineers and Code Compliance staff have performed thousands of design reviews for multiple building types. Design reviews are performed by discipline (i.e., general construction, mechanical, electrical, plumbing, structural, etc.), as DASNY employs architects and engineers with specific training, expertise and experience in each. These individuals know exactly what to look for when performing their design review function, just as the design professional should when designing and crafting the documents. Lists of specific review items and issues exist by discipline; however, the reviewer's expertise and past experience is also a valuable resource when performing the review function

- DASNY performs extensive design reviews for all projects to help limit change orders that result from design omissions and errors. However, DASNY is neither the architect nor engineer of record for the building projects it manages. That responsibility falls to the professional services provider. As such, the professional services provider must deliver a design that meets industry standards from an error and omissions standpoint, and is within the communicated project budget. Failing to do so will result in a redesign (at the expense of the service provider), or in DASNY seeking damages due to excessive errors and omissions. Our design review process does provide a third-party review of the project design, which is valuable from the perspective of early issue identification.

OSC Key Finding #5:

- *Reports to the Authority's management and the Board compare the actual project end date and cost with the latest formal projections, not the baseline figures established when projects are initiated. This type of analysis can make projects that are significantly delayed appear to be on time. For example, for one of the five completed projects we examined, the schedule went from 21 months late when compared to the original baseline end date, to seven months early when compared to the latest projection.*

    - The purpose of this monthly report to the Board is to provide information on changes to the budget and schedule that occurred during the monthly reporting period not to track performance goals. A report which tracks performance goals is provided to the Board annually.

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- Changes to project schedules and budgets for DASNY's major construction projects are reported to the Board in the monthly construction reports. As a project progresses, the schedule and budget can change for various reasons. Comparing the original end date and original budget to the actual completion date and actual budget wouldn't properly account for these approved changes and wouldn't provide accurate information on the actual timeline of the project. For example, if a customer agency asked that DASNY increase the scope of their project, the cost and time to complete would also increase. Comparing the budget and schedule to complete at the time of the bid and award phase would automatically lead one to believe the project was over budget and late. Certain change types increase the cost and the time it takes to complete the project. If deemed appropriate, a comparison of cost and schedule at the conclusion of the bid and award phase could be added to the current budget and schedule and actual cost and completion date reporting.

* Comment 5

OSC Recommendation #1:

- *Analyze change order data to identify patterns and prepare an action plan that includes appropriate steps to address common problems that result in change orders.*
  - DASNY will continue to perform and refine its design development and review function.

OSC Recommendation #2:

- *Revise reports to Authority management and the Board to include the baseline end date and budget, as well as the latest projected end date and budget.*
  - After release of the OSC final report, DASNY management will discuss with the Board any changes the Board would like to see to the monthly reports.

OSC Recommendation #3:

- *Revise project end dates to reflect all events that impact the schedule, not just those that result from approved change orders.*
  - As outlined in earlier correspondence and discussions, a change order is not the appropriate transaction to record, for audit purposes, increases in a project's cost or schedule due to project issues that are not contractually related to the construction contractors working on the project. For example, DASNY construction contracts include a "no damage for delay" clause, and as such, providing contractors change orders for accidents, weather conditions, lack of funding or contractor default, etc. would not be appropriate. In addition, customer agencies are not always receptive to their project's completion dates extending for the above noted examples. Additionally, it would not be practical to implement a formal tracking system for every daily event that impacts the schedule of a construction project.

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OSC Recommendation #4:

- *Maintain written documentation of the pre-pricing communication.*
  - The majority of pre-pricing communications is done over the phone to allow for all the parties to communicate at the same time in anticipation of and during the time when the bonds are being priced. It should be noted that during these pricing calls a number of issues are discussed including market conditions; financings that are comparable with respect to sector, rating, and size; and the number of deals and par amount of bonds in the market during the same week as the subject financing. Price views are solicited from co-managers to help determine at which levels the bonds will be offered to investors. A pricing wire is distributed for review and pricing strategy is discussed. The number and amount of the orders placed by investors determine how the bonds are actually priced. All of these issues are discussed on the pricing calls. Bonds are priced in a very fast paced environment. The clients participate on these pricing calls and receive all of the same information. DASNY could maintain written documentation of pre-pricing communication, but this could not be done contemporaneously with the pricings and, more importantly, would not have an effect on the pricing of the bonds. DASNY monitors how the bonds trade in the secondary market after initial pricing to determine whether the bonds are fairly priced.

OSC Recommendation #5:

- *Report Days to Market and Pricing data to the Board throughout the year, rather than annually.*
  - After release of the OSC final report, DASNY management will discuss with the Board any changes the Board would like to see to the monthly reports.

OSC Recommendation #6:

- *Identify the causes where customer satisfaction did not meet expectations, especially in areas of cost and timeliness, and take appropriate actions to address them.*
  - DASNY believes it has been and will continue to be, diligent in addressing our clients concerns.

OSC Recommendation #7:

- *Review the Authority's mission statement and performance measures annually as required by Law.*
  - DASNY is currently in compliance with all requirements of Public Authorities Law related to performance measures and related reporting.

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OSC Recommendation #8:

- *Submit a performance measurement report each year, in accordance with the Law.*
    - DASNY is currently in compliance with all requirements of Public Authorities Law related to performance measures and related reporting.

OSC Recommendation #9:

- *Provide monthly performance reports to the Board.*
    - After release of the OSC final report, DASNY management will discuss with the Board any changes the Board would like to see to the monthly reports.

Should you have any questions or need any additional information, please contact:

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Very truly yours,

Paul T. Williams

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State Comptroller's Comments

1. We made significant changes between the three preliminaries shared with Authority officials during the course of this audit and the draft report. Among those changes were three recommendations dropped because of the additional information provided by Authority officials. For example, we had originally recommended setting a formal goal for pricing of bonds. Authority officials explained why it would be too difficult to set such a goal so we dropped that recommendation and included the information provided by Authority officials on page 10 of our report.
2. We revised the report based on the Authority's response to the draft report. This includes clarifying in the key findings that the Authority did not meet its targeted performance for only a percentage of its customers and that the Authority does review the change orders, but needs to do more.
3. It is important to note that reviewing additional documents/projects would not have changed the audit results because the Authority's 2012-13 Measurement Report shows that 75 percent of the 44 completed projects were not on time based on the actual completion date compared to baseline schedule. Regarding the actual cost compared to the baseline, the Authority changes the costs during the project so it does not report on the original baseline cost with actual costs.
4. As stated in our report, even after excluding client-requested changes, increases due to change orders for two of the three new construction projects significantly exceeded the industry standards cited by Authority officials. We concluded the Authority needs to do more to control the number and cost of change orders, particularly those due to field conditions and to design errors and omissions. The Authority already codes the reason for each change order and analysis of this information could be useful in identifying problems that have repeatedly occurred in the field. However, we were not provided with any information to show that the Authority identified proactive steps that could be taken to avoid future problems before they occur. In addition, routine analysis of the causes for change orders could assist the Authority in determining when it would be appropriate to pursue damages from contractors, a decision that is currently made on a case-by-case basis.
5. We disagree with the Authority's response that reporting information about the original date and budget with actual completion and cost would not be an accurate reflection of the project. It is only by providing such information in a clear and concise manner that stakeholders such as the Board are provided the information they need to evaluate performance. This would include understanding which change orders are within the Authority's control and those which are not.