



CITY OF HOUSTON

Housing & Community Development Department

Sylvester Turner

Mayor

Keith W. Bynam
Director
2100 Travis, 9th Floor
Houston, Texas 77002

T. (832) 394-6200
F. (832) 395-9662
www.houstontx.gov/housing

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Mark Havens
Deputy Land Commissioner and Chief Clerk
Texas General Land Office
1700 N. Congress Ave.
P.O. Box 12873
Austin, Texas 78711-2873

Via email and CM/RRR

Re: City of Houston Hurricane Harvey CDBG-DR Recovery Benchmark Status

Dear Mr. Havens:

I am in receipt of your July 1, 2022 letter (the "Letter") concerning the City of Houston's Hurricane Harvey CDBG-DR Recovery Benchmark Status regarding Texas General Land Office ("GLO") Contract No. 21-134-000-C788 ("Contract"). The City of Houston (the "City") is extremely proud of its work over the past three years to assist Houstonians in their recovery from Hurricane Harvey, as well as its extensive efforts to support the needs of the City's low-income population and those who require supportive services. The City's Housing & Community Development Department invested a tremendous amount of time and energy into administering these programs for the betterment of our entire community, including those affected by Harvey facing social and economic disadvantages, despite facing difficult economic and societal challenges stemming from the COVID-19 pandemic. Despite GLO's continuous efforts to hinder our success, since January 2019, when the parties signed the original GLO Contract (No. 19-14-147-001-B489), the City has accomplished numerous goals, including but not limited to:

MULTIFAMILY

- Funded 25 multifamily developments, totaling \$280,000,000.
- Of the 25 multifamily projects planned, 12 have been substantially completed and the other 13 are scheduled for completion within the next two years.
- These multifamily development projects will provide over 2,900 new or refurbished homes to Houstonians, and 2,500 are reserved specifically for low-to-moderate income residents at 80% or below of the Area Median Income, thereby exceeding the goal stated in the performance statement by almost 1,100 units.
- Additionally, over the next six weeks, the City expects to issue funding commitments for another eight projects totaling more than \$75,000,000.

- The City acquired four apartment complexes that were flooded during Hurricane Harvey and other disasters located within 100-year flood plain while actively working to relocate 800+ households to safer areas.

PUBLIC SERVICES

- The City successfully spent nearly \$15,000,000 to serve 7,061 Houstonians experiencing homelessness and near-homelessness, 1,137 survivors of domestic violence, 3,666 participants seeking job training, and 1,500 participants in need of housing services.

SMALL BUSINESSES

- The City provided over \$12,400,000 to aid 104 small businesses in Houston.

SINGLE FAMILY

- The City completed reconstruction of 210 homes and rehabilitation of 72 homes, and provided over \$6,500,000 in reimbursements to homeowners, for losses sustained due to Hurricane Harvey.
- The City assisted 401 homebuyers by providing over \$12,000,000 in down payment and closing cost assistance to residents impacted by Hurricane Harvey.

Despite the significant impact of the global COVID-19 pandemic, stifled progress due to adjusted protocols and business practices, and the GLO's multiprogram audits, the City made significant progress in rebuilding Houston and helping Houstonians in need since Hurricane Harvey, as evidenced from the City's documented accomplishments. Most importantly, the City's numerous achievements demonstrate that the City has the capacity and capability to effectively deliver programs.

Before turning to responses pertaining to specific programs, it is important to note one of many half-truths in the Letter. Contrary to the GLO's allegation in the Letter, the Contract benchmarks were not "proposed" by the City. The benchmarks were negotiated by both parties at the time the Contract was drafted. Notably, the contractual benchmarks are based on the amount of funds reimbursed back to the City, not the City's expenditures. That reimbursement is beyond the City's control. The GLO's failure to timely approve reimbursement requests and benchmark extensions when the GLO was the direct cause of the City's failure to meet the applicable benchmarks was not done in good faith and is not indicative of a proper and effective working relationship.

Moreover, the City strenuously disagrees with the GLO's implication in the Letter that the City has failed to properly implement these programs as required by the Contract and takes issue with several specific points made in the Letter, including, but not limited to the following:

Multifamily Rental Program: It is wholly disingenuous of the GLO to fail to acknowledge that the reason the City was unable to meet its second quarter 2022 benchmark for the Multifamily Rental Program was that the GLO refused to approve spending for transactions that were already in negotiations and getting ready to close. These pending deals – eight separate transactions totaling over \$75,000,000 – were properly selected under Notice of Funding Availability ("NOFA") rounds 1 and 2. In fact, the City's rescoring of both NOFAs 1 and 2 revealed the same results as the City's original selection process. The GLO's multifamily audit effectively removed over eight months from the time period in which the City could work to fulfill its benchmarks.

GLO acted hypocritically and illogically and created a standard that was literally impossible to meet when GLO refused to approve any expenditures whatsoever for almost eight months while simultaneously holding the City to its second quarter 2022 Multifamily Rental Program benchmarks. The GLO arbitrarily withheld eligibility approvals for more than 20% of the total Multifamily budget for almost 8 months, despite the vast amount of information the City submitted regarding the selection which

justified allocation of the 2017 CDBG-DR funds. The GLO now criticizes the City for failure to meet the benchmark—a failure caused by the GLO. As a result of these delays and the impacts of COVID-19, the City requested a one-year extension to release NOFA 4 and spend the remaining funds. However, GLO denied this request despite being granted a two-year extension to fulfill its obligations to the Department of Housing and Urban Development (“HUD”). The GLO’s failure to act directly resulted in months-long delays for multiple transactions, the impact of which was to prevent the start of construction and keep hundreds of affordable rental homes off the market. The GLO’s chosen course of action inhibited the development of affordable housing in Houston.

Small Rental Program: The City’s ability to meet its second quarter 2022 benchmark for the Small Rental Program suffered from a similar fate as the Multifamily Rental Program. The Small Rental Program completed project selection in August 2020; however, the program was delayed by the GLO due to the renegotiation of the Contract and GLO’s multifamily audit. The postponement of program start-up and increased construction costs due to inflation required many developers to rebid projects and adjust funding requests. Our non-profit partners in the Small Rental Program cannot raise capital like private developers. Therefore, it was imperative the City seek additional funding from GLO to help these non-profits shoulder the increased costs arising from the delays caused by GLO. This, in turn, caused the City to submit requests for budget increases to GLO for approval. While the City continued internal processing, most activities were stalled due to time limits on environmental reporting, construction bids, surveys, and other due diligence requirements. Furthermore, the GLO requested significantly more information about the projects involved in this program than for Multifamily projects.

The fact that the GLO noted the missed benchmark while declining to acknowledge that it refused to approve Small Rental Program expenditures for almost eight months while conducting its multifamily audit is once again disingenuous. This eight-month delay prevented the City from moving forward with City Council approval and closing the transactions, which ultimately impacts our ability to achieve the benchmarks as quickly as we otherwise could. The GLO’s description of this program in the Letter declines to recognize that the GLO’s actions were once again the reason for the missed benchmark. Disregarding its own culpability, the GLO has decided to remove more than \$12,000,000 of funding from this program, a decision that will hurt the Houstonians who would have benefitted from the Small Rental Program.

Homeowner Assistance Program: The Letter’s description of the City’s Homeowner Assistance Program (“HOAP”) is inaccurate and misleading. For example, the statement that “the City has only completed 102 units” lacks appropriate context. GLO only approved 102 of the 283 homes for completion, which stopped the City from completing the additional 181 homes. Additionally, GLO refused to approve another 340 homes that were ready for contract execution. The City was prepared to proceed with these projects but for the GLO’s decision to stop the program for more than six months prior to execution of the Contract.

GLO failed to acknowledge all of the due diligence the City conducted to prepare the HOAP files for execution and now GLO attempts to take credit for the City’s work. In particular, while the GLO boasts building 469 homes in Houston, 340 of those homes had already been reviewed and completed the eligibility process pursuant to the City’s program. Of those 340 homes, 186 affected homeowners were ready for contract signing based on the due diligence work the City had already completed.

Contrary to GLO’s assertions, the City attempted to submit timely reimbursement requests for the remaining projects pursuant to the terms of GLO Contract No. 19-147-001 (“Original Contract”) via a combination of TIGR and email submissions after receiving express guidance to do so from the GLO. However, the GLO then retroactively informed the City that of the submitted requests, only those submitted via TIGR would be accepted. As a result, GLO refused to review approximately \$26,600,000 in eligible expenses.

In addition, the GLO asserts in the Letter that “the City [failed to] consistently apply program guidelines, which has required the GLO to overturn many City eligibility decisions from applicant appeal requests.” The Letter failed to mention that only 9 of 424 files were overturned by the GLO during the tier 3 appeal review process. This represents an overturn rate of a mere 2.1%. GLO’s reliance on such an inconsequential overturn rate further demonstrates how the GLO has acted unreasonably and has not been a true partner to the City.

Homebuyer Assistance Program: GLO’s description of the City’s Homebuyer Assistance Program similarly lacks appropriate context. The GLO conveniently neglected to mention that the City exceeded its second quarter 2021 benchmark by approximately \$1,700,000 and fell just \$174,000 short of its fourth quarter 2021 benchmark despite extremely negative market conditions that were beyond the City’s control. Market conditions, such as rising interest rates, skyrocketing real property values and construction costs, and record low inventory, greatly limited the purchasing power of potential program participants. These market conditions also inhibited the City’s ability to meet the second quarter 2022 contractual benchmark. No programmatic changes would have improved program efficiency to the point at which it was possible for the City to overcome the nationwide market problems over the past two years. It was for this reason that the City requested an extension of time to achieve its benchmark in this program and others, which GLO unjustifiably refused.

Public Services: Once again, the GLO’s assertions regarding the missed second quarter 2022 program benchmark needs to be put into proper context. The City had subrecipient agreement amendments sufficient to meet the benchmark requirements prepared and ready for implementation. The GLO failed to approve these amendments for several months and requested vast amounts of new documentation not previously required. Consequently, GLO prevented the funds from being allocated and inhibited the subrecipient charitable organizations from being able to serve their target populations. GLO’s decision to withdraw the funds for this program will significantly impair the City’s ability to improve the lives of the most vulnerable citizens of Houston. Specifically, the removal of these funds will prevent the City from issuing a new NOFA for \$30,000,000 to be distributed to as many as 20 separate agencies, which would in turn help over 21,000 Houstonians.

Economic Development Program: The City expended significant time and resources creating and implementing the Houston Economic Development Program (“HEDP”), which did not exist prior to 2018. Since the program launch in the summer of 2021, spending applicable to the contractual benchmarks has risen dramatically as a result of increased application reviews and submissions, especially in the first two quarters of 2022. For example, application submissions to the GLO have increased 182% and application approvals have increased 205% in the first two quarters of 2022. Importantly, 60% of HEDP grants have been awarded to women-owned businesses, over 85% to minority-owned businesses, and over 95% to microenterprises. Given these dramatic increases, the City is absolutely confident that the program’s current scale is sufficient to meet the Contract’s final benchmark for this program. The GLO’s removal of funds from the Economic Development Program will eliminate the City’s ability to serve its established pipeline of small businesses, mostly minority and women-owned, that have already applied to the program.

Planning: The City underwent seven separate, full procurement processes to get contracts in place with vendors for multiple critical studies planned by the City. These studies are intended to create and improve resiliency and minimize projected damage resulting from future weather events. This effort took nearly an entire year, with significant and unavoidable delays in the process. All of these studies have now been approved by the GLO. Five have now been approved by City Council and the City has executed contracts with the selected vendors. Another two projects are in the works which would result in a total of seven contracts. The City is confident that expenditures and reimbursement requests will rapidly rise in the coming months; however, since the Contract requires 70% of reimbursements to occur at the time each

individual study is completed, the City will be contractually prohibited from submitting all of the vendors' expense requests within 90 days of receipt by the City.

In past Planning technical assistance meetings with GLO staff, the City verbally requested approval to modify the percentage available to draw for planning projects to more accurately reflect how vendors are expected to charge the City. Under current benchmarks, most of the budgeted amount for each planning study is not available for draw until after the study is completed. This approach ignores the thousands of dollars in monthly invoices the vendors will submit as they produce deliverables that will culminate in the final study. Because it can take up to 24 months to produce a planning study, the City will be unable to submit these invoices to GLO during the months leading up to the production of the final study. The City requested modification of benchmarks to better reflect this reality in the City's most recent request to amend to the Contract.

Single Family Development Program: GLO's Letter glosses over the City's success in achieving the second quarter 2022 benchmark for the Single Family Development Program, a benchmark the City achieved six months early in December 2021. Instead, the Letter purports to take the City to task for seeking to provide additional services to the communities both the City and GLO are supposed to serve. After careful consideration and analysis by local City staff, who are in the best position to understand the needs of Houstonians, the City asked GLO to modify expenditure limits under the Single Family New Development Program to enable the City to serve a greater number of urgent need clients. While the City will abide by GLO's refusal to grant this request, the GLO's decision is yet another in a string of unfortunate decisions that detrimentally impact the served populations.

Buyout Program: While the GLO acknowledges that the City met its benchmark for the Buyout Program, the GLO alleges that it discovered "noncompliance by the City's application with the Uniform Relocation Act (URA)." This discovery is, in actuality, based on a difference in opinion between the City and GLO on how to interpret the URA provisions regarding the calculation of comparable rental units used in the financial expenditure calculations. This is not, as alleged, a situation in which the GLO "discovered noncompliance" by the City, but where GLO as the pass-through entity gets to make the determination when multiple reasonable interpretations of the law exist. There is no question that the City's remaining funds can meet URA requirements and allow the City to meet the goals of the program.

GLO'S MISGUIDED ACTIONS DETRIMENTALLY IMPACT HOUSTON

The GLO's actions described above are based on half-truths intended to serve its own interests, and not to better serve Houstonians. For instance, the GLO has declined to take into account the impact of the COVID-19 pandemic on multiple facets of the real estate market, a shortage of employment opportunities, and the City's operational capabilities. This refusal to do so is unconscionable, particularly when HUD granted the GLO two separate one-year extensions on its contract because of the impact of the COVID-19 pandemic. Despite the dispensation HUD granted to GLO and the well-known impacts of the pandemic on employers/employees, the economy and the real estate market, the GLO's rejection of the City's COVID-19 extension request further reveals GLO's biased and unfair treatment of the City and its complete disregard for Houstonians.

The City is proud of the work it has done to help Houstonians recover from the damage caused by Hurricane Harvey and is confident that it can continue to make the process and program improvements necessary to timely expend the contracted funds. That having been said, the GLO's failure to timely approve expenditures and act on requests, and its inability to provide accurate guidance consistent with the governing contracts and regulations, has been a major impediment to the City's ability to meet its benchmarks.

Sadly, this has become a pattern. Earlier this year, HUD determined that GLO's design and

operation of the Hurricane Harvey State Mitigation Competition (the “Competition”) discriminated on the basis of race and national origin. HUD found that “GLO utilized two scoring criteria that substantially and predictably disadvantaged minority residents, with particularly disparate outcomes for Black residents.” (footnote omitted). GLO’s unlawful program design resulted in the City of Houston, a jurisdiction with one of the largest numbers of residents who suffered harm from Hurricane Harvey and an area GLO estimates has a high future disaster risk, receiving no funds from the Competition. HUD’s recent findings that the GLO’s administration of its programs was discriminatory against Houstonians of color are concerning and call into question the GLO’s ability to effectively operate in the City.

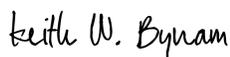
Given GLO’s unfair treatment of the City and Houstonians during the Competition and over the life of the Contract, as evidenced by GLO’s most recent attempt to redirect funds away from the City, the City has grave concerns that GLO will continue to make the administration of the CDBG-DR 2017 grant allocation prohibitively burdensome because of duplicative, inefficient, inaccurate, and expensive processes and requirements. As a result of GLO’s continuous overreaching, to the detriment of the people the City is committed to serve, the City has no choice but to review its available legal options and remedies with regard to this matter under the Contract and applicable law.

The parties and Houstonians will be far better served if GLO comports itself in accordance with 2 C.F.R. Section 200.331 by focusing its efforts as a pass-through entity and partner with the City to accomplish the objectives of the federal award, rather than assuming the responsibilities of a subrecipient and treating the City like a contractor. Despite the differences in opinion as to the status and governance of these programs, the City would be pleased to have the opportunity to continue to work with the GLO to fully fund and operate these programs for the benefit of the people of Houston. It is the City’s considered opinion that each of these programs is best served in the hands of the City, but the City welcomes the guidance and assistance from the GLO and HUD.

In summary, the City stands by its work to improve this community and to lead Houstonians to a full recovery from Hurricane Harvey. The Housing and Community Development Department is supremely qualified to lead each of these programs to successful completion, and we look forward to resolving all of our mutual concerns.

Please feel free to contact me in writing at any time.

Sincerely,



Keith W. Bynam
Director, Housing & Community Development

Attachments

Cc:

Deputy Secretary of the U.S. Department of Housing and Urban Development
The Honorable Adrienne Todman
451 7th Street S.W.
Washington, DC 20410

Joseph Gaeta
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001