City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER

FINANCIAL AUDIT

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Audit Report on the Financial and Operating Practices of the 34th Street Partnership, Inc.

FN16-058A

June 30, 2016

http://comptroller.nyc.gov

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
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June 30, 2016

To the Residents of the City of New York:

My office has audited the 34th Street Partnership, Inc. (the Partnership) to determine whether the Partnership used its resources to promote and support the 34th Street Business Improvement District (34th Street BID) and complied with the terms of its Department of Small Business Services (DSBS) contract. We audit not-for-profit organizations, such as the 34th Street Partnership, as a means of ensuring that they effectively manage City assets entrusted to them and do so in accordance with applicable rules and regulations.

This audit found the Partnership was generally in compliance with its DSBS contract and the terms of its other City agency license agreements. However, the audit found some areas of non-compliance and internal control deficiencies that may affect the Partnership's operations and accuracy of its financial reporting. Specifically, the Partnership did not implement adequate timekeeping procedures and did not maintain sufficient documents to support its cost allocation of joint salary expenses. The Partnership also did not execute purchase orders prior to billing for goods and services, adhere to its own procurement procedures and the subcontracting procedures required by the DSBS contract, and obtain the required conflict-of-interest disclosures for its key employees and the majority of its Board members. Furthermore, the Partnership did not consistently ensure that its subcontractors maintained the proper insurance, retain essential documents in its personnel files, and follow its own procedures for employee education reimbursements.

The audit makes six recommendations to the Board of the 34th Street BID, including that the Board strengthen the Partnership's internal controls by implementing a timekeeping system with features to account for each employee's time-in/time-out and total hours worked; implement an appropriate methodology for allocating shared payroll expenses; execute written contracts for all independent contractors and vendors conducting business with the BIDs; ensure that the insurance coverage of all outside entities is in compliance with the City agreements; obtain the necessary conflict of interest disclosure forms from its key employees; and establish written policies and procedures to ensure the security and confidentiality of bid information prior to the submission deadline. The audit also recommends that DSBS officials ensure that the Partnership implements the recommendations of this report and conduct periodic review of the Partnership's operations to ensure compliance with its City agreements.

The results of our audit have been discussed with the Partnership and DSBS officials and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY **1**
Audit Findings and Conclusions 1
Audit Recommendations 2
Agency Responses 3
AUDIT REPORT **4**
Background 4
Objectives 5
Scope and Methodology Statement 5
Discussion of Audit Results 5
FINDINGS **7**
Internal Control Deficiencies over the BID's Fiscal Operations 7
Inadequate Timekeeping Procedures 8
Cost Allocation of Joint Salary Expenses Was Not Sufficiently Supported 10
Inconsistent Enforcement of Fiscal Policies and Procedures 11
The Partnership Failed to Consistently Execute Written Contracts for Independent Contractors and Event Sponsors 13
The Partnership's Procurement Policies Did Not Adhere to Contract Requirements 14
The Partnership Failed to Obtain Insurance Documentation from the Concessions or Event Sponsors 15
The Partnership Did Not Consistently Execute Purchase Orders Prior to the Billing for Goods and Services 16
Inadequate Controls Implemented over the BID's Administrative Operations 17
The Partnership Failed to Comply with Conflict-of Interest Disclosure Requirement 17
The Partnership Did Not Maintain Documentation within Personnel Files 17
The Partnership Failed to Establish Procedures to Safeguard Competitive Bids 19
RECOMMENDATIONS **21**
DETAILED SCOPE AND METHODOLOGY **24**
APPENDIX I **27**
ADDENDUM I – PARTNERSHIP RESPONSE
ADDENDUM II – DSBS RESPONSE

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the 34th Street Partnership, Inc.

FN16-058A

EXECUTIVE SUMMARY

The 34th Street Partnership, Inc. (the Partnership) is a not-for-profit corporation that provides supplemental services to the 34th Street Business Improvement District (34th Street BID) in Manhattan pursuant to a contract (the DSBS Contract) with the Department of Small Business Services (DSBS). The objectives of this audit were to determine whether the Partnership used its resources to promote and support the 34th Street BID and complied with certain major terms of the DSBS Contract. The DSBS Contract stipulates that the revenue of the 34th Street BID must be used for capital improvements, maintenance, public safety, community services and other specified services to improve business conditions and activities within the 34th Street BID.

In connection with the DSBS Contract, the Partnership also entered into two license agreements: one with the Department of Parks and Recreation (Parks) to manage the two parks within the 34th Street BID, and one with the Department of Transportation to operate, manage, and maintain the pedestrian plazas. The Partnership's operations are overseen by a Board of Directors (the Board) who are elected by the members of the district.

In Fiscal Years 2013 and 2014, the Partnership received assessments and other revenue of $11,205,122 and $11,510,278, respectively. The Partnership reported expenses of $11,180,529 and $11,400,945 for those two years.

Audit Findings and Conclusions

Our audit found that the Partnership was generally in compliance with its DSBS Contract and the terms of its other City agency license agreements. However, we found internal control deficiencies which may affect the Partnership's oversight over its operations and the accuracy of its financial reporting. Specifically, our audit found internal control weaknesses related to the Partnership's timekeeping practices, as well as its cost allocation of joint salary expenses in connection with the shared managerial and administrative staff with the Bryant Park Corporation (BPC).

The Partnership also failed to consistently execute purchase orders prior to the billing of goods and services. In addition, the Partnership failed to maintain written contracts with independent contractors, did not secure competitive bids received for contracts before the bid submission deadline, and did not adhere to the subcontracting procedures stipulated in its DSBS Contract. The Partnership also did not retain essential documents in its personnel files, did not enforce its own policies and procedures, nor did it require conflict-of-interest disclosures. Finally, the Partnership did not ensure that its subcontractors carried the proper insurance.

Audit Recommendations

To address these issues, we make six recommendations to the Board of the 34th Street BID and two recommendations to DSBS.

We recommend that the Board of the 34th Street BID should:

1. Strengthen the Partnership's internal controls, including but not limited to:
    - Implement a timekeeping system with features to account for each employee's time-in/time-out, total hours worked, and a secure interface for data entry, review and approval processes;
    - Implement an appropriate methodology for allocating payroll expenses for employees who are shared by the Partnership and other entities;
    - Execute written contracts for all independent contractors and vendors conducting business with the BIDs;
    - Revise its procurement policies and procedures to adhere to the subcontracting requirements stated in the DSBS Contract. Specifically, the Partnership should obtain at least three competitive bids for its contracts and select the lowest responsible bidder unless it can justify an alternate selection and obtain the required approval from the Board and DSBS; and
    - Implement monitoring procedures to ensure all Partnership employees adhere to the policies and procedures, such as educational assistance reimbursement procedures and solicitation procedures, governing the BID's operations;
2. Ensure insurance coverage of all outside entities conducting business with the BID is in compliance with the insurance requirements of the City agreements;
3. Ensure the Partnership officials execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained, sufficient funds are available for potential expenses, and an appropriate receiving report is utilized;
4. Ensure Partnership obtains the necessary conflict-of-interest disclosure forms from its key employees;
5. Ensure sufficient documentation is maintained in personnel files to appropriately reflect the BID's hiring, salary increases and termination practices; and
6. Establish written policies and procedures to ensure the security and confidentiality of bid information prior to the submission deadline.

We also recommend that DSBS officials should:

7. Ensure the Partnership implement the recommendations of this report; and
8. Conduct periodic review of the Partnership's operations to ensure compliance with the City agreements.

Agency Responses

In its response, the Partnership stated that, "[t]he organization has well established internal controls, more than adequate for its size and complexity, that have, as demonstrated by the unmodified audit opinions and 'no material weakness' reports, issued by KPMG LLP, resulted in financial information being accurately recorded in its books and records."

In addition, the Partnership stated that it "is a $11 million company with 170 employees who are all closely supervised. The definition of 'adequate timekeeping procedures,' and what those procedures require, for an entity of our size versus the City of New York, a $82 billion enterprise with 260,000 employees, is very different. The auditors do not acknowledge this distinction."

The Partnership's response to the audit reflects that it does not fully understand the importance of internal controls necessary to ensure accountability and transparency within its operations—two key areas of concern where an entity is performing tasks for and on behalf of the government and the public. Further, every organization, regardless of size, should implement an adequate internal control structure to mitigate the risk of misstatement, misappropriation and other undesirable effects of poor internal controls. The Partnership itself acknowledges that this audit has identified several internal control deficiencies that may affect the organization's ability to manage the 34th Street BID.

Further, while we are pleased that the Partnership has had external audits, we note that the external auditor's opinion and the engagement upon which that opinion was based expressly did not involve an assessment of the entity's internal controls. Within its assessment of the risk of material misstatement, the external auditor's opinion clearly states that "the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design auditor procedures that are appropriate in the circumstances, *but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion*." (Emphasis added.)

Our findings and related recommendations are based on an examination and assessment of the effectiveness of the Partnership's internal controls. Notwithstanding its objections, the Partnership officials stated that they "agree with some of the auditors' findings and related recommendations for improvements." Of the report's six recommendations addressed to the Partnership, it agreed to implement four recommendations, and partially agreed to implement two related to the execution of written contracts and maintaining evaluations in personnel files.

DSBS generally agreed with the remaining recommendations directed to it.

AUDIT REPORT

Background

In 1981, New York State enacted legislation which authorized local municipalities throughout the state to establish Business Improvement Districts (BIDs). BIDs are public-private sector partnerships in which property and business owners agree to fund approved activities of the BIDs through contributions, known as assessments, levied against real properties located within the BID areas and collected by the City. BIDs promote and enhance the area by providing supplemental services such as maintenance, sanitation and public safety. Each BID is managed by a District Management Association (DMA) and is overseen by a Board who is elected by the members of the district. Boards are required to exercise fiduciary responsibility over the finances, provide general oversight of the operations, and implement adequate policies and procedures.

In 1992, the City through DSBS entered into the DSBS Contract with the Partnership, a not-for-profit corporation created pursuant to Section 201 of the New York State Not-For-Profit Corporation Law.[1] Through the DSBS Contract, the Partnership became the designated DMA for the area surrounding 34th Street (known as the 34th Street BID) which today, stretches from 10th Avenue to Park Avenue and encompasses several streets across. (See Appendix I for a map of the area covered by the 34th Street BID.) The DSBS Contract stipulates that the revenue of the 34th Street BID must be used for capital improvements, maintenance, public safety, community services and other specified services to improve business conditions and activities within the BID.

In connection with its DSBS Contract, the Partnership also entered into two license agreements: one with Parks to manage the two parks (Herald and Greeley Squares) within the 34th Street BID, and one with the Department of Transportation to operate, manage and maintain the pedestrian plazas located on Broadway and 6th Avenue between West 33rd and West 36th Streets.

Although the Partnership maintains its own dedicated staff to provide certain supplemental services just to the Partnership,[2] it shares managerial and administrative staff with BPC, another not-for-profit corporation that operates Bryant Park and the Bryant Park BID.[3] The joint operational costs and salaries are allocated between the Partnership and BPC.

In 2014, the salaries for key management staff reported in Tax Form 990 totaled $1,123,068, which represents approximately 10 percent of the total annual expenditures of $11,400,945. In exchange for these salaries, the jointly paid management staff were supposed to devote 10 to 76 percent of their average work time to the Partnership. The Partnership maintains three office locations in Manhattan that it shares with BPC; its administrative office is located at 1065 Avenue of the Americas, and two operating offices are located in Greeley Square and West 35th Street.

According to the DSBS Contract, the Partnership's books and records should be maintained in accordance with Generally Accepted Accounting Principles and the standards issued by the Office of the City Comptroller. In Fiscal Years 2013 and 2014, the Partnership received assessments

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[1] The DSBS Contract with the City is renewed on a periodic basis. The last renewal extends the DSBS Contract from July 1, 2012 to June 30, 2017.

[2] Some supplemental services such as horticulture and capital improvements are contracted out with third parties.

[3] Until January 2014, the Partnership also managed and shared staff with the Chelsea Improvement Company, Inc.

and other revenue of $11,205,122 and $11,510,278, respectively. The Partnership reported expenses of $11,180,529 and $11,400,945 for those two years.

Objectives

The objectives of this audit were to determine whether the Partnership used its resources to promote and support the 34th Street BID and complied with the terms of the DSBS Contract.

Scope and Methodology Statement

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards with the exception of organizational independence as noted in the subsequent paragraph. 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 the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The Comptroller sits as one of the four Class D Board members of the 34th Street BID, by virtue of his office.[4] The Class D Board members, in conjunction with the other Board members, comprise the Board of 34th Street BID. The Comptroller has designated a representative to represent him on the Board and neither the Comptroller nor his Board representative were involved in the audit process.

The scope of this audit was from July 1, 2012 to June 30, 2014 (Fiscal Years 2013 and 2014). Please refer to the Detailed Scope and Methodology section at the end of this report for the specific audit procedures and detailed tests conducted during the course of this audit.

Discussion of Audit Results

The matters covered in this report were discussed with Partnership and DSBS officials during and at the conclusion of this audit. A preliminary draft report was sent to the Partnership and DSBS on May 24, 2016 and was discussed at an exit conference held on June 8, 2016. On June 14, 2016, we submitted a draft report to the Partnership and DSBS with a request for comments. We received a written response from the Partnership and DSBS on June 27, 2016 and June 28, 2016, respectively.

In its response, the Partnership stated that, "[t]he organization has well established internal controls, more than adequate for its size and complexity, that have, as demonstrated by the unmodified audit opinions and 'no material weakness' reports, issued by KPMG LLP, resulted in financial information being accurately recorded in its books and records"

In addition, the Partnership stated that it "is a $11 million company with 170 employees who are all closely supervised. The definition of 'adequate timekeeping procedures,' and what those

[4] The 34th Street BID has five different classes of Board of Directors: Class A – property owners within the District; Class B – commercial tenants within the District; Class C – residential tenants within the District; Class D – representatives from the Mayor's Office, Borough President, Comptroller's Office, and Speaker of the City Council; and Class E – any interested party who is not eligible for Class A, B, C, or D membership, such as community boards within the District.

procedures require, for an entity of our size versus the City of New York, a $82 billion enterprise with 260,000 employees, is very different. The auditors do not acknowledge this distinction."

The Partnership's response to the audit reflects that it does not fully understand the importance of internal controls necessary to ensure accountability and transparency within its operations—two key areas of concern where an entity is performing tasks for and on behalf of the government and the public. Further, every organization, regardless of size, should implement an adequate internal control structure to mitigate the risk of misstatement, misappropriation and other undesirable effects of poor internal controls. The Partnership itself acknowledges that this audit has identified several internal control deficiencies that may affect the organization's ability to manage the 34th Street BID.

Further, while we are pleased that the Partnership has had external audits, we note that the external auditor's opinion and the engagement upon which that opinion was based expressly did not involve an assessment of the entity's internal controls. Within its assessment of the risk of material misstatement, the external auditor's opinion clearly states that "the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design auditor procedures that are appropriate in the circumstances, *but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion*." (Emphasis added.)

Our findings and related recommendations are based on an examination and assessment of the effectiveness of the Partnership's internal controls. Notwithstanding its objections, the Partnership officials stated that they "agree with some of the auditors' findings and related recommendations for improvements." Of the report's six recommendations addressed to the Partnership, it agreed to implement four recommendations, and partially agreed to implement two related to the execution of written contracts and maintaining evaluations in personnel files.

DSBS generally agreed with the remaining recommendations directed to it.

The full text of the Partnership's and DSBS' responses are included as addenda to this report.

FINDINGS

Our audit found that the Partnership is generally in compliance with the DSBS Contract and its two license agreements with other City agencies. However, our audit found internal control deficiencies that may affect the Partnership's oversight over its operations and the accuracy of its financial reporting. Specifically, we found weaknesses in the Partnership's timekeeping practices, as well as its cost allocation of salary expenses of staff shared with BPC and the Bryant Park BID. In addition, we found that the Partnership:

- did not consistently execute purchase orders prior to the billing of goods and services;
- did not maintain written contracts with independent contractors;
- did not secure competitive bids received for contracts before the bid submission deadline; and
- did not adhere to the subcontracting procedures stipulated in its DSBS Contract.

The Partnership also did not retain essential documents in its personnel files, did not enforce its own policies and procedures, nor did it require conflict-of-interest disclosures. Finally, the Partnership did not ensure that its subcontractors carried the proper insurance.

Internal Control Deficiencies over the BID's Fiscal Operations

The Partnership did not establish adequate procedures governing its operations to ensure the BID's expenditures were accurately recorded. The DSBS Contract states that the Partnership shall keep "up-to-date books and records in accordance with generally accepted accounting principles and in accordance with any standards issued by the Comptroller of the City." Such standards include Comptroller's Directive #1, which states that effective internal controls "must be an integral part of an agency's planning, implementing, review and accountability for stewardship of its resources."

> ***Partnership Response:*** "The organization has well established internal controls, more than adequate for its size and complexity, that have, as demonstrated by the unmodified audit opinions and 'no material weakness' reports, issued by KPMG LLP, resulted in financial information being accurately recorded in its books and records. While we do agree with some of the auditors' findings and related recommendations for improvement, we believe that this report demonstrates that the auditors, despite conducting a nearly nine-month examination, failed to gain a full understanding of our organization and the business environment in which it operates, and the services that it provides."

> ***Auditor Comment:*** Contrary to the Partnership's assertion, every organization, regardless of size, should implement an adequate internal control structure to mitigate the risk of misstatement, misappropriation and other undesirable effects of poor internal controls. Although the Partnership may feel that its internal control structure is sufficient for its operations, the audit team identified several internal control deficiencies in the 34th Street BID. Furthermore, the Partnership has misinterpreted the scope of its external auditor's past opinions, which clearly stated that "the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design auditor procedures that are appropriate in the circumstances, *but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion*." (Emphasis

added.) We believe based on the deficiencies identified in this report, the Partnership's internal controls were inadequate, as illustrated in the following sections of this report.

Inadequate Timekeeping Procedures

The Partnership was unable to provide sufficient timekeeping documents to track each employee's work hours. Adequate timekeeping procedures require that an entity be able to record, document and track each employee's arrival and departure times as established and on a consistent basis, particularly where the staff is paid by multiple funding sources and work on multiple contracts and projects. Since payroll and payroll-related expenses represent the majority of the Partnership's expenses, it is crucial that the Partnership implements sufficient controls over its timekeeping processes.[5]

We found that the Partnership used several different methods to record its employees' attendance and/or work hours, depending on their roles, departments, and even work locations. Timekeeping practices included the following:

- Line staff such as sanitation and security workers reporting to the operation offices, were required to document their arrival and departure times manually on a daily "Sign in/Sign out" sheet.[6]
- Supervisors and managers working at the operation offices were not required to document their arrival and departure times, only the total number of hours worked per day, which they were supposed to record manually.
- Executive and other employees who worked at the administrative office were only monitored for attendance for the day with manual entries in an Excel spreadsheet, with no record of arrival and departure times, or daily total work hours. Furthermore, the Excel spreadsheet was stored on a shared drive which could be accessed and altered by any employee at the administrative office.
- The Capital Projects Department included six employees who generally worked out of an underground field office near Greeley Square and theoretically used an electronic timekeeping system to track its employees' time. However, out of the six department employees, three employees (two hourly and one salaried) used the electronic system to log in and out, and the remaining three did not account for their time under any of the Partnership's timekeeping systems/records. The three unaccounted for employees were the Senior Maintenance Technician, Electrician, and Project Director.

According to the Partnership's Employee Handbook, the Partnership's work week runs from Monday to Friday, 9:00 a.m. to 5:30 p.m. for all regular salaried employees.[7] However, as noted above, many salaried employees' hours were not actually tracked. Thus, there is no documentation to support whether any staff, other than line staff who reported daily work hours, were appropriately paid for working the required hours. Based on our review of the payroll records

[5] The Partnership's reported payroll and payroll-related expenses were $6,449,085 and $6,356,088 for Fiscal Years 2013 and 2014, respectively.

[6] The Partnership maintains an operation office on West 35th Street where the staff working in sanitation, security, visitor services and taxi management report. The executive and managerial staff report to the administrative office located at 5 Bryant Park on Avenue of Americas.

[7] Regular salaried employees include all full time employees whose compensation is based on a weekly rate schedule.

for a sampled period of one week, we could not determine whether the expenses for salaried employees were appropriate.

Moreover, our review of the line staff time records for the week found that the Partnership could not account for one employee's time in/out when that employee arrived at the worksite earlier than their superior. We were informed that this was because the supervisor had the timesheet in his/her possession and so it was not available when the employee arrived. Additionally, there were 25 instances where the times logged on the sign in/sign out sheets were illegible. Given these issues as well as the control deficiencies identified above, we could not determine whether the appropriate hours were captured and the correct payroll expense was incurred.

Without an adequate timekeeping system for its management and administrative staff, the Partnership cannot determine whether these employees worked the required number of hours. According to Partnership officials, the existing Excel spreadsheet used to track attendance is sufficient to track employees' time worked. However, the Partnership's model for recording employees' attendance does not provide reasonable assurance that all time is properly accounted for. The Partnership should implement stringent timekeeping procedures to ensure accurate tracking and reporting of each employee's work hours. By not keeping proper and accurate records, the Partnership may not be able to provide the necessary documentation to support the Partnership's allocation of joint payroll expenditures, as discussed below.

> ***Partnership Response:*** "Hourly employees' time is recorded on manual time sheets, prepared from daily, manual sign-in sheets. All salaried employees' daily attendance is monitored and recorded, but actual hours are not. We believe that our timekeeping procedures are more than adequate for an organization of our size and the level of oversight of supervisors and managers.
>
> Salaried employees are, by definition, not paid an hourly wage. They are adult professionals, hired to perform a job function, under the supervision of trusted, competent department directors and officers of the company. Their compensation is established as part of our budget process, and paid in equal weekly installments, and not based on a set number of hours.
>
> 34th Street Partnership is a $11 million company with 170 employees who are all closely supervised. The definition of 'adequate timekeeping procedures,' and what those procedures require, for an entity of our size versus the City of New York, a $82 billion enterprise with 260,000 employees, is very different. The auditors do not acknowledge this distinction."
>
> ***Auditor Comment:*** The Partnership's assertion that all its salaried employees' daily attendance is monitored and recorded is not consistent with the evidence we received during the course of the audit. As we mention in our report, three of the Capital Project staff, all salaried employees, were not recorded in any of the timekeeping/attendance documents. Moreover, the fact that certain employees are not paid hourly wages does not relieve the Partnership of its responsibility to properly account for the hours worked. The Partnership is a multi-million dollar organization that is primarily funded through local property and business owners' contributions, as prescribed by law, and is charged with fulfilling a public mission. Accordingly, the Partnership should implement sufficient timekeeping procedures to ensure that its funds are transparently utilized for the full benefit of the public.

Cost Allocation of Joint Salary Expenses Was Not Sufficiently Supported

The Partnership did not maintain sufficient documentation necessary to support the salary expense allocations it has made in connection with the salaries it pays jointly with BPC. In accordance with the DSBS Contract, the Partnership and related entities may "share their administrative staff." Currently, the Partnership shares its President, Controller, Design Department, Capital Projects Department, and various other administrative staff with BPC.[8] BPC is responsible for managing Bryant Park and the Bryant Park BID. Prior to January of 2014, many of the shared administrative staff also handled the operations of the Chelsea Improvement Company, Inc.[9] Although the President's compensation from each entity was contingent upon separate employment contracts, most of the remaining shared employees' salaries were allocated based on the estimated time they worked for each company.

According to the Partnership's Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, Section 3.1.1 b, salaried employees (that is, those who are not paid an hourly wage) "are charged to the budget of each entity based on estimates made by department managers regarding volume of work/time per employee attributed to each entity, with periodic review as appropriate by each entity's President, Controller, and independent accountant." However, with the exception of the Design Department, BPC was unable to provide any data or email correspondence to support the estimates.

Moreover, with respect to the Design Department, we found that its cost allocation methodology was inappropriate for the shared expenses based on the records it provided. The Design Department works on multiple projects within a given timeframe. Each project is led by a single employee of the Design Department who provides the design team with general guidance. In Fiscal Year 2014, the Partnership implemented a revised allocation of payroll expenses for its Design Department employees, basing the percentage allocated to each BID on the amount of that BID's projects being led by each employee. Under this new methodology, the more projects being led by each employee for a respective BID, the higher percentage of that employee's salary is allocated to that BID. However, upon analysis of the data used to compute these percentages, we found that the calculation failed to consider the various lengths of time each respective project may take. Instead, the derived percentages considered each project as a single unit within the calculation.

We also determined that the Design Department allocated time and resources toward the formation of a new BID and that time was inappropriately charged to the Partnership. The formation of a new BID is not consistent with the Partnership's mission and thus any staff expenses incurred should not have been charged to the Partnership.[10] We also found the Partnership incurred additional costs outside of payroll for the new BID's formation. The Partnership provided documentation confirming that the related costs were charged to the Partnership and were not reimbursed. As with the salary expenditures for work related to the creation of a new BID, the allocation of these additional costs for that purpose was also improper.

[8] Each of these shared staff members receives separate checks from the 34th Street BID and BPC.

[9] Chelsea Improvement Company, Inc. is a not-for-profit merchant association. Although it is not organized as a BID and does not receive City assessments, its mission is to improve and enhance the neighborhood within the Chelsea district of New York City.

[10] We were not able to determine the amount of salary expense allocated in connection with this BID because we did not have sufficient information.

Due to the lack of supporting documentation and inappropriate methodology implemented by the Partnership, we were unable to obtain reasonable assurance regarding the accuracy of the allocation of joint salary expenses.

> ***Partnership Response:*** "It is a mischaracterization to say that The Partnership pays salaries jointly with Bryant Park Corporation (BPC). The Partnership shares certain employees with Bryant Park Corporation, but each company has its own payroll, independent of the other. Shared employee salaries are split between the companies, based on the estimated efforts to be expended on each entity. Estimates are developed through conversations with the employees and their managers, presented to, and approved by, the Boards of Directors of each entity in their respective annual budgets.
>
> The allocations of Design Department salaries between companies are, as described above, estimates. An analysis of design projects was used, as a completely appropriate basis, for estimating employee effort expended on behalf of 34th Street and BPC.
>
> The management of 34th Street and BPC did explore with property owners, most of whom have seats on one of our boards, the possibility of creating a new BID on Sixth Avenue. The Design Department spent some time in support of that effort. The new BID would have been commonly managed with 34th Street and BPC, and each of the entities would have benefited from a reduction in overhead costs. These plans were discussed with the Boards of both 34th Street and BPC, with the Comptroller's representative present at the meetings. Further, this is a practice that has been embraced by our Boards since 1985. By any measure, the time spent in this effort was immaterial. Likewise, the total out of pocket cost of the effort, other than staff time, of $768.94 was not material."
>
> ***Auditor Comment:*** Despite the Partnership's claim that the estimates were appropriate, the Partnership could not provide relevant, reliable and sufficient data to support its management estimates. Such estimates should be based on and supported by a combination of documentation, inquiries, and management judgment and should be reflected in the Partnership's records. Absent that documentation that supports the estimated apportionment of costs, the audit team was unable to determine the reasonableness of these estimations.
>
> With regard to the proposed creation of the Sixth Avenue BID, the associated expenses were considered inappropriate because the creation of another BID conflicts with the purpose and mission of the Partnership. Thus, any related costs should not have been incurred and paid for by the 34th Street BID. Furthermore, the amount recited by the Partnership as the amount spent by the Partnership related to the proposed creation of another BID reflects out of pocket costs only. It does not include the cost of the staff time of each Partnership employee who worked on the potential creation of a Sixth Avenue BID.

Inconsistent Enforcement of Fiscal Policies and Procedures

While the Partnership has established operating policies and procedures, it did not consistently adhere to those governing sole source contracts or regarding professional education assistance provided to employees. Pursuant to Section 5.5.1 of the Partnership's Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, the solicitation of professional services should adhere to the Partnership's sole source procurement policies, which require the

Partnership to obtain approval from DSBS. When we requested copies of notices to DSBS concerning these contracts, we found that the Partnership did not submit any notices to DSBS during Fiscal Years 2012 to 2014 for sole source contract approvals and thus did not obtain the required approvals. Based on our review of five capital projects, we also determined that three of the capital projects were awarded through sole source. However, the Partnership did not submit any notices to DSBS during our period of review.

The Partnership also failed to adhere to its reimbursement policies for the professional education of staff. According to the Partnership's Employee Handbook, in order to receive matching funds for continuing education, an employee must submit: a) a receipt for payment of fees from the educational institution; b) evidence of regular attendance at the course or seminar; and c) evidence of acceptable grades (if any) or a certificate of completion from the course or seminar. However, our review of the Partnership's documentation relating to tuition expenses found that the Partnership paid tuition fees of $12,000 for two employees prior to course completion and without first obtaining the required documentation.

When we inquired about the lack of documentation for these expenditures, the Controller conceded that the organization did not comply with its own tuition policies. Instead of following those policies, the Controller stated that the President determined the amount and timing of educational expense reimbursements. Further, the President also determined what documentation was considered acceptable. Due to the lack of required documentation, the Partnership did not have a sufficient basis to evaluate whether the incurred tuition expense was valid. As a result, $12,000 in tuition expenses was incurred by the Partnership without first establishing that the employees successfully completed the course or even attended a class.

> ***Partnership Response:*** "Sole source justifications were generally prepared when required; however, they were not sent to DSBS for their approval.
>
> With regard to the assistance in paying a portion of graduate school tuition for two employees, there is no policy that precludes the organization's president from approving a transaction that he believes is in the best interest of the company and its employees. The employees for whom tuition assistance was provided were long-tenured employees who regularly represented the Partnership in business transactions, and ultimately earned their executive MBA degrees. We believe that the awarding of an MBA degree is sufficient proof of attendance."
>
> ***Auditor Comment:*** As stated in the report, the Partnership's policies require that written notice be sent to DSBS for the selection of a contractor from a sole source. In addition, the Partnership's failure to inform DSBS of its sole source selection is also a violation of its contract with DSBS. The Partnership's failure to provide DSBS with this procurement information prevents DSBS from performing its essential oversight duties over the 34th Street BID. The Partnership should ensure that proper notifications are sent to DSBS for approval or disapproval of its procurement practices.
>
> Additionally, the Partnership's written policies and procedures did not exempt any employee from adhering to its Professional Education policy. According to the policy, course-completion documents must be submitted in advance of the reimbursement of tuition expenses. These control procedures are in place to protect the Partnership from unnecessary expenses. By allowing the President to circumvent the Partnership's internal control procedures, the Partnership is exposed to an increased risk of misappropriation of assets, misstatement and waste.

The Partnership Failed to Consistently Execute Written Contracts for Independent Contractors and Event Sponsors

The Partnership failed to consistently execute written contracts with its independent contractors and/or event sponsors. According to Section 9.16 of the DSBS Contract, "[a]ll DMA contracts and/or agreements for the purchase or provision of goods or services, regardless of amount, shall be in writing and said documents shall be maintained by the DMA."

However, the Partnership was unable to provide contracts for three sampled independent contractors who received a total of $139,931 in compensation during Calendar Year 2014. Specifically, the Partnership was unable to furnish the current contracts for two of the independent contractors. Thus, it was impossible to determine the scope of services, nature of relationship, and expected deliverables. For the third independent contractor, the Partnership provided an expired contract and could not locate the contract for services performed during Calendar Years 2013 and 2014. The Partnership also did not have a contract for one of the nine sampled revenue agreements[11] for the sponsorship of a BID event; therefore, we could not determine whether a total of $115,402 in revenue recorded in the general ledger reflected the agreed-upon contract terms.

The Partnership's failure to consistently execute contracts for goods and services is a direct violation of its DSBS Contract and represents a significant weakness in internal controls. The absence of contracts hinders the Partnership's ability to enforce the agreed-upon terms with its contractors and similarly would make it more difficult to defend against a contract with a supplier or independent contractor. Further, it may cause the Partnership to overlook potential financial obligations or revenue in its budgeting.

In addition, the Partnership may be exposed to increased risk related to the services provided by its independent contractors that operate without a contract since the scope of their work as well as the parties' respective rights, responsibilities and liabilities were not clearly set forth in writing. This is particularly significant because, in the event that a contractor is found negligent, the Partnership or even the City could be held liable. It should be noted that the Comptroller's previous 2004 report on the Partnership also cited the lack of written contracts.[12]

> ***Partnership Response:*** "The Partnership, during the audited period retained three independent contractors/consultants: 1) a horticultural consultant who directs a horticultural program that includes three seasonal plantings at over 800 locations throughout the district, 2) a restaurant consultant who supports our efforts to attract high quality restauranteurs to the district, as well as, the concession buildings in Herald and Greeley Square parks, and 3) a writer to produce the weekly MidCity News newsletter, which is distributed to constituents of the Partnership. Each of these consultants has worked on behalf of the Partnership for many years.
>
> The single instance, cited by the auditors, where the Partnership did not have a written contract with an event sponsor is related to the City's take-over of the pedestrian plazas along Broadway to create Super Bowl Boulevard. The Partnership received $115,402 from NYC & Company; however, the Partnership did not nor could

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[11] Revenue agreements are those involving concession and special events activities within the BID.

[12] The previous audit report, "Audit Report on the Financial and Operating Practices of the 34th Street Business Improvement District" (MH03-171A), was issued on February 24, 2004.

have had a contractual relationship with NYC & Company, the NFL or any of the sponsors of the activations along Broadway during that week."

Auditor Comment: The DSBS Contract requires that all contracts and/or agreements for the purchase or provision of goods or services be in writing. Accordingly, the Partnership's agreement with NYC & Company, which required the use of Partnership employees to facilitate the event, should have been in writing. Due to the lack of a written contract, the Partnership could not substantiate exactly what was required by each party. As a result, among other things, the Partnership failed to ensure that insurance was procured in connection with the event. It is incumbent on the Partnership to ensure all that relationships are sufficiently documented in written agreements and all related parties are protected.

The Partnership's Procurement Policies Did Not Adhere to Contract Requirements

The Partnership did not adhere to procurement policies and procedures required by the DSBS Contract. When contracting with vendors for the performance of supplemental services, the DSBS Contract states that it must:

- Select the lowest responsible bidder from at least three responsible and competitive bidders, unless it can justify an alternative approach to the satisfaction of its Board or a Board designated committee, pursuant to guidelines approved by the Commissioner of DSBS.
- Obtain approval from its Board and provide written notice to the Commissioner of DSBS for all contracts over $20,000 that did not go to the lowest bidder, were from a single source, or were awarded by a process where less than three bidders were considered.
- Submit contractors' information to DSBS for a VENDEX background check required when the aggregated contract value is over $100,000 within a 12-month period.[13]

However, our review of the Partnership's procurement policies found that it did not appropriately reflect these DSBS Contract requirements. Specifically, the Partnership did not require the solicitation of professional services from at least three bidders nor establish proper procedures requiring approval from its Board of Directors if the Partnership sought an alternative approach to the contract. Instead, its procurement guidelines allow the Partnership to solicit professional services through sole source procurement. In addition, the Partnership did not require its staff to obtain approval from the Board or provide written notice to DSBS when selecting a bidder other than the lowest bidder or from less than three bidders. The policy only requires staff to submit information to DSBS for contracts in excess of $20,000 that were solicited through competitive bids. Further, the Partnership did not have requirements for submitting sole source or professional service contractor information to DSBS for a VENDEX background check if contracts exceeded $100,000. Rather, the Partnership only submits contractors' information for full background investigation when solicited through competitive bids.

Moreover, our review found that the Partnership's practices appear to be inconsistent with the expressed terms of the DSBS Contract. Using procedures at a variance with the DSBS Contract

[13] VENDEX is New York City's Vendor Information Exchange System, which is used by the Mayor's Office of Contract Services to determine the responsibility of the entities that have contracts with the City. Contractors with a contract value exceeding $100,000 within a 12-month period are required to fill out VENDEX questionnaires.

inhibit the City's and Board's ability to properly oversee the Partnership's solicitation process and ensure that the selection of the vendors is fair and appropriate.

Partnership Response: "We disagree with this statement, and discussed the issue with the auditors during the audit exit conference. Since the auditors decided to maintain this as a finding, we have presented a side-by-side comparison of the Partnership's policies with regard to purchases and the relevant Section 2A.05 of the BID contract with DSBS, attached as Exhibit A, so that the reader is able to decide for his or herself."

Auditor Comment: The comparison in Exhibit A clearly demonstrates that the Partnership's procurement policies do not provide sufficient instructions to the Partnership staff with regard to the subcontracting requirements set forth in the DSBS Contract. For example, the DSBS Contract requires that when the Partnership selects a vendor that is not the lowest bidder, it is required to provide justification to the satisfaction of the Board. However, the Partnership's policies and procedures do not clearly include this requirement with regard to <u>all</u> vendors that are not the low bidders. In addition, the DSBS Contract requires <u>all</u> subcontractors with contracts over $100,000 within a 12-month period to undergo VENDEX clearance. However, the Partnership's procedures do not reflect this requirement for its sole source procurement.

The Partnership Failed to Obtain Insurance Documentation from the Concessions or Event Sponsors

The Partnership did not have sufficient documentation to demonstrate that adequate insurance coverage for its subcontractors was obtained. According to the DSBS Contract, all insurance policies shall be in a form and substance satisfactory to the Commissioner of DSBS, including amounts and scope of coverage relative to the Partnership's direct operations and relative to the operations of any of its contractors, subcontractors, and Permittees. Similar requirements for insurance are contained in the Parks and Department of Transportation license agreements with the Partnership. However, our review of the Partnership's records identified 10 occurrences where the concessionaires or event sponsors' insurance policies either were not adequate per the City agreements or unavailable altogether. Specifically, we found that many of these vendor insurance documents lacked essential policies such as workers compensation or general liability insurance as required under the City agreements.

Further, we found that the Partnership lacked written policies and procedures for the procurement and maintenance of vendor insurance documents. Although the DSBS Contract details the required acceptable coverage, the Partnership should establish written standards to provide guidance to Partnership employees on what documentation is required to ensure such coverage is obtained. In the absence of such clear standards, we found that the Partnership failed to verify its vendors' insurance on multiple occasions.

The DSBS Contract specifically includes insurance requirements to ensure that the Partnership, the City, and all other related parties are sufficiently protected against any claims or potential litigations that may arise. Due to the lack of compliance with the DSBS Contract, the Partnership failed to mitigate the risk of potential damages and legal actions which may occur as a result of its operations.

Partnership Response: "We have reviewed the ten instances identified by the auditors where evidence of proper insurance coverage was missing, and we generally agree with their findings, except in the case of the Super Bowl Boulevard activations

[sic] in the Broadway pedestrian plazas. We did not have any contractual relationship with any of the parties involved in that particular instance."

Auditor Comment: When insurance coverage is required for all parties conducting business with the Partnership, that coverage should be verified. With regard to Super Bowl Boulevard, the usage of the Partnership's employees for an event established a relationship with all active parties and could have resulted in Partnership liability. Accordingly, the Partnership should have verified the insurance coverage of all relevant parties to mitigate the risk of potential liabilities.

The Partnership Did Not Consistently Execute Purchase Orders Prior to the Billing for Goods and Services

Our review found that the Partnership allowed employees to generate purchase orders after goods and services were billed in connection with purchases totaling $15,067 for goods and services. Section 5.3.3(c) of the Partnership's Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel states that, "[a]ll purchase orders with price quotes will be submitted to the Controller for review and initialed to indicate approval and that funds are available." However, generating purchase orders after the Partnership is billed for goods or services prevent the Controller from adequately reviewing and approving potential expenditures, and also increase the risk that the Partnership might become liable for unwanted products or services.

In addition, Section 5.6.0 of the Partnership's Policies and Procedures states that purchase orders should function as a receiving report when goods or services are delivered. Given that purchase orders were generated subsequent to the receipt of invoices, the Partnership did not have an appropriate documentation to verify that what had been delivered matched what had been requested**.**

Partnership Response: "Over the two-year period examined by the auditors, the Partnership made OTPS procurements in excess of $4.5 million. The auditors claim to have found purchases, totaling $15,067 (0.33% of total procurements), where purchase orders were issued after the invoice date. We do not believe that this rises to the level of an audit finding, particularly since there are reasonable business reasons for the timing of most of the seventeen instances cited, and none of those instances would, under any circumstance, be considered an unauthorized transaction. Also, the auditors' claim that the purchase order for the upgrade of our accounting software was dated after receipt of goods or services is incorrect – the evidence collected by the auditors does not support this claim."[14]

Auditor Comment: The amounts cited in the audit report reflects the review of a limited sample of the Partnership's expenses, which totaled $32,247. Consequently, the Partnership did not execute purchase orders prior to the billing of goods and services for $15,067 (46.72%) of the total OTPS expenses reviewed. Purchase orders act as a control document to ensure that the appropriate approval is obtained and adequate funds are available for the potential expense. By circumventing this control process, the Partnership could not substantiate whether adequate approval was obtained prior to the expense being incurred. Furthermore, as stated in this report, the untimely execution of purchase

[14] The upgrade of the accounting software was cited in our preliminary draft report. However, based on our review of the additional documents provided by the Partnership after the exit conference, we excluded this exception from our calculation as reflected in our presentation in the final report.

orders causes the Partnership to receive purchased goods and services without an appropriate receiving report. Thus, the Partnership could not verify whether the received goods and services were consistent with its order.

Inadequate Controls Implemented over the BID's Administrative Operations

The Partnership Failed to Comply with Conflict-of Interest Disclosure Requirement

The Partnership failed to adhere to its own conflict-of-interest policy which requires that, "each Responsible Person . . . annually complete a disclosure form identifying any relationships, positions, or circumstances in which the Responsible Person is involved that he or she believes could contribute to a Conflict of Interest arising."[15] Our audit found that although the Partnership may have required Board members to complete the conflict-of-interest disclosure form annually, none of the upper management, which included the President, the Controller, and the Vice Presidents of the Partnership, completed conflict-of-interest disclosure forms.

Further, although in its IRS Form 990 filing[16] the Partnership acknowledged, in writing, that its officers, directors, and key employees have reviewed the policy, agreed to abide by it, and disclosed any interests which could create a conflict, as defined in the policy, we found no evidence that such forms were completed by the Partnership's officers, directors, and key employees. In fact, the Partnership could not provide more than half of the Board members' conflict-of-interest disclosure forms . Because of the Partnership's staff involvement in other not-for-profit organizations, these disclosure forms are necessary to communicate any conflicting businesses or practices which may affect the BID's operations.

> ***Partnership Response:*** "Written acknowledgements of the company's conflict of interest policy and disclosure of any conflicts, as defined by the policy, were not collected from every board member nor from senior managers."

The Partnership Did Not Maintain Documentation within Personnel Files

The Partnership did not maintain essential documentation within its personnel files. Specifically, hiring approval forms and/or terminations letters were not maintained in 3 of the 20 personnel files reviewed. According to the Partnership's Employee Handbook, one of the "methods" used by the Partnership to achieve its mission is "to make all decisions based on merit, especially in hiring only the best people at all levels of our staff."

However, our review found that 9 out of the 10 sampled personnel files of the managerial staff did not include a resume or other documents to support the qualifications of the employees. These documents provide reasonable assurance that the Partnership is prudent within its hiring process

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[15] According to the Partnership's conflict-of-interest policy, a "Responsible Person" is any person serving as an officer, employee or member of the Board of Directors of the Partnership.

[16] Schedule O of the Form 990 provides the IRS with narrative information required for responses to specific questions on Form 990. Covered areas include significant changes in program services, unrelated business income, governance, management and disclosure, compensation of officers, directors, trustees, key employees, highest compensated employees and independent contractors, and other financial disclosure.

and employs only qualified individuals. Due to the lack of essential personnel information, we could not determine whether the Partnership's recruitment process was reasonable.

For the period under review, we also determined that the Partnership did not maintain performance evaluations to support the salary increases issued to 8 out of 10 of the sampled managerial staff. The Employee Handbook for the Partnership stipulates that "[w]ritten employment performance reviews will generally be conducted once a year upon the anniversary of an employee's date of employment, with other conferences to be held if necessary." Due to the lack of assessment documentation, the Partnership's personnel files do not adequately document whether the performance of the staff was up to the BID's established performance standard and a performance-based reason for any salary increases.

Our review of the personnel files further revealed that the records did not appropriately reflect the employees' responsibilities and salary allocations. In accordance with the DSBS Contract, the Partnership and related entities may "share their administrative staff, but have different line staffs." However, our review of payroll documentation revealed that one specific line staff member was inappropriately shared between the Partnership and its related entities with their salaries allocated between parties. Furthermore, the shared responsibilities were not reflected in the employee's corresponding personnel file with the latest personnel form listing the employee as 100 percent dedicated to the Partnership.

Given the Partnership's failure to maintain adequate documentation regarding its human resources activities, we could not assess the sufficiency of the Partnership's hiring process. Furthermore, since the information listed in the personnel files was inconsistent with the actual allocation percentages of shared employees, we could not determine the appropriateness of such allocations and whether adequate approval was obtained. The Partnership incurred approximately $7.3 million in salaries and benefits for each of Fiscal Years 2013 and 2014. Given the large amount of funds dedicated to the personnel activities of the BID, the Partnership should maintain adequate books and records to appropriately reflect its human resources activities.

> ***Partnership Response:*** "Auditors noted that out of 20 personnel files reviewed they did not find a hiring approval form for two employees, the vice president of security and a long-tenured sweeper, and that there was no termination letter in the personnel file of the former vice president of business affairs. The vice president of security was originally hired by Grand Central Partnership, Inc., another BID which, from 1991 to 1999, shared common management with the Partnership and BPC, on July 11, 1988. The Salary Inception/Adjustment Chart, dated 9/18/91 and located at the front of the personnel file is, in fact, the hiring authorization for employment with the Partnership. The sweeper was hired on March 7, 1992. Although there is no hiring approval form, we will allow his 24-year work history with us to speak for itself. The former vice president of business affairs was employed by the Partnership from August 1998 through July 2014. There is no formal termination letter in the file, and there is no policy or procedure that requires it.
>
> Auditors reviewed the personnel files of 10 management employees of the Partnership, and found that only one file included a resume, and that there were no written performance evaluations in eight of the ten files. All of the management employees whose files were reviewed have been employed by the Partnership for a minimum of eight years, and a majority of them have served the Partnership for more than fifteen years.

Auditors state that the personnel files do not reflect employee salary allocations. However, every Employee Payroll Information and Authorization, which is included for every payroll related change for every employee, shows the weekly pay amount for each company.

The auditor also states that 'one specific line staff member was inappropriately shared between the Partnership and its related entities.' There is no prohibition against line or hourly employees working for both companies, as long as each entity pays for the proper number of hours."

Auditor Comment: It is a prudent management practice to ensure that personnel activities are sufficiently reflected in the Partnership's personnel files. The longevity and retention of each employee does not eliminate the Partnership's obligations to ensure the appropriate documentation is maintained. Due to the lack of documentation, the audit team could not assess the reasonableness of hiring, termination and salary increases. Furthermore, performance evaluations should be conducted to provide the necessary support for the Partnership's related salary increases. In regards to the line staff shared between the BIDs, the Partnership did not maintain sufficient documentation to reflect the responsibilities of the employee.

The Partnership Failed to Establish Procedures to Safeguard Competitive Bids

The Partnership's Capital Projects Department did not establish adequate procedures for the receipt and storage of capital project bids prior to the submission deadline. In Fiscal Year 2014, the Partnership incurred approximately $285,000 in Other Than Personal Services (OTPS) expenditures for its capital projects.[17]

Upon review of the Partnership's bidding policies and observations of the related procedures, we found that hardcopy bids were received directly by the Vice President of Capital Projects and stored within an unsecured office space prior to the submission deadline. Electronic bids received as an email attachment before the submission deadline were opened and saved. Our observation of the electronic bids' location on the computer system confirmed that the bids were accessible by all personnel at the administrative office.

According to the City's Procurement Policy Board (PPB) Rules, Section 3-02(l)(1) for Competitive Sealed Bids,

> upon its receipt, each bid and modification shall be time and date-stamped, but not opened, and stored in a secure place until the time and date set for bid opening. Before bid opening the agency may not disclose the identity of any bidder.

Although the PPB Rules may not expressly govern the Partnership's bidding practices, establishing proper procedures to secure the bids information will reduce the risk of unethical procurement practices such as collusion and bid alterations. However, we found that the Partnership did not establish any procedures to reasonably ensure the security and confidentiality of sensitive bid information prior to the submission deadline. This leaves the bidding process

[17] The computed OTPS total does not include $1,630,042 in expenses which were not directly related to capital project bid solicitations. Excluded expenses are as follows: accounting and legal, liability and related insurance, rent, interest, and depreciation and amortization.

open to collusion and bid rigging. Given the aforementioned control deficiencies, the Partnership was unable to mitigate the risk of unethical procurement practices.

> ***Partnership Response:*** "Although not in line with City's Procurement Policy Board Rules, Section 3-02(I)(1), we believe that the Partnership's current procedures for receipt and storage of capital project bids prior to the submission deadline is reasonable and adequate given the size and nature of our capital project procurements."

> ***Auditor Comment:*** Although the Partnership may feel its procedures are adequate, the audit team identified multiple internal control deficiencies within the capital project operations. Comprehensive and secure procedures should be implemented for the receipt of capital project bids. As described in this report, the existing procedures fail to mitigate the risk of unethical procurement practices such as bid rigging and collusion. Hence, it is highly recommended that the Partnership implement sufficient procedures to ensure the security and confidentiality of bid information.

RECOMMENDATIONS

The Board of the 34th Street BID should:

1. Strengthen the Partnership's internal controls, including but not limited to:

   - Implement a timekeeping system with features to account for each employee's time-in/time-out, total hours worked, and a secure interface for data entry, review and approval processes;

     Partnership Response: "As discussed during the audit, the staff of the Partnership has been working on implementing an electronic time keeping system. Effective with the first payroll of fiscal 2017, the time for all hourly employees will be tracked, and entered into payroll, using such a system. However, except for the purpose of complying with the Department of Labor overtime rules, we see no reason to impose time clocks on our highly productive, responsible, salaried employees, whose work is closely monitored."

     Auditor Comment: As discussed in this report, salaried employees constitute a substantial portion of the Partnership's payroll expenses. Hence, it is important that the Partnership be able to transparently account for its salaried employees' time and related payroll expenses. Furthermore, the lack of timekeeping documents paired with the Partnership's inability to furnish documentation to support its cost allocations causes the audit team to question the related payroll expenses in its entirety. Adequate timekeeping procedures should be implemented on every level of an organization without exception.

   - Implement an appropriate methodology for allocating payroll expenses for employees who are shared by the Partnership and other entities;

     Partnership Response: "The current methodology for the allocation of shared employee salaries is wholly appropriate. Unique among New York City's business improvement districts, the financial statements of 34th Street and Bryant Park are audited by a big four accounting firm. KPMG identifies the allocation of expenses among the companies as a key significant area of their audits. They have reported to our audit committee, for two decades, that our management estimates are reasonable, appropriate and consistently applied, and updated annually. We do however believe that the judgments made in the allocation of expenses, particularly salaries, need to be better documented through the use of job descriptions and key elements considered in establishing allocation estimates."

     Auditor Comment: The allocations of shared employee salaries represent a significant and critical responsibility of the Partnership. Allocations have the potential to inappropriately skew expenses toward one entity over another. Hence, it is a prudent business practice to ensure such allocations are fully supported and appropriate. Further, as an entity that performs governmental functions, it is imperative that the basis for its expenditures be clear and transparent. However, based on the Partnership's existing practices, we could not determine the reasonableness and accuracy of such allocations due to the lack of documentation. Therefore, the Partnership should implement policies and procedures to ensure it maintains sufficient documentation to support its allocation practices, especially for shared staff.

- Execute written contracts for all independent contractors and vendors conducting business with the BIDs;

  Partnership Response: "We believe that the auditors' concerns about the absence of written contracts for consultants are overstated; however, we will commit our agreements with these individuals to writing."

  Auditor Comment: The DSBS Contract requires that contracts and/or agreements for the purchase or provision of goods or services, regardless of amount, shall be in writing. This requirement is designed to ensure the effective operations of the Partnership and that all parties are held to reasonable standards.

- Revise its procurement policies and procedures to adhere to the subcontracting requirements stated in the DSBS Contract. Specifically, the Partnership should obtain at least three competitive bids for its contracts and select the lowest responsible bidder unless it can justify an alternate selection and obtain the required approval from the Board and DSBS;

  Partnership Response: "We believe that the Partnership's procurement policies and procedures, included in its Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, and attached as part of Exhibit A, adheres to the subcontracting requirements stated in the DSBS contract."

  Auditor Comment: The comparison in Exhibit A clearly demonstrates that the Partnership's procurement policies do not provide sufficient instructions to the Partnership staff with regard to the subcontracting requirements set forth in the DSBS Contract. For example, the DSBS Contract requires that when the Partnership selects a vendor that is not the lowest bidder, it is required to provide justification to the satisfaction of the Board. However, the Partnership's policies and procedures do not clearly include this requirement with regard to <u>all</u> vendors that are not the low bidders. In addition, the DSBS Contract requires <u>all</u> subcontractors with contracts over $100,000 within a 12-month period to undergo VENDEX clearance. However, the Partnership's procedures do not reflect this requirement for its sole source procurement.

- Implement monitoring procedures to ensure all Partnership employees adhere to the policies and procedures, such as educational assistance reimbursement procedures, and solicitation procedures, governing the BID's operations;

  Partnership Response: "The procedures necessary to ensure adherence to policies and procedures already exist. Sole source justifications are prepared, and presented to the Board's Construction Committee for approval; however, the requisite notices to DSBS were not sent. A newly instituted purchase order form has a check box for each of the required steps in the procurement process on its face, eliminating any confusion about what is required."

  Auditor Comment: The control procedures are in place to protect the Partnership from unnecessary expenses. By not adhering to the Partnership's internal control procedures, the Partnership is exposed to the enhanced risk of misappropriation of assets, misstatement and waste.

2. Ensure insurance coverage of all outside entities conducting business with the BID is in compliance with the insurance requirements of the City agreements;

   Partnership Response: "The Partnership will institute written procedures to ensure that all contractual insurance requirements are met and properly documented."

3. Ensure Partnership officials execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained, sufficient funds are available for potential expenses, and an appropriate receiving report is utilized;

   Partnership Response: "The Partnership's management will use its best efforts to enforce its written policies regarding procurement."

4. Ensure the Partnership obtain the necessary conflict of interest disclosure forms from its key employees;

   Partnership Response: "Conflict of interest disclosure forms have been secured for all key employees. Conflict of interest disclosure forms will be secured from all directors and board officers prior to the annual meeting in the fall of 2016."

5. Ensure sufficient documentation is maintained in personnel files to appropriately reflect the BID's hiring, salary increase and termination practices; and

   Partnership Response: "The Partnership, several years ago, adopted a standard written performance evaluation form. During this past year, the form is now being used consistently to document employee performance and related salary increases for all employees, including management employees."

6. Establish written policies and procedures to ensure the security and confidentiality of bid information prior to the submission deadline.

   Partnership Response: The Partnership will establish written policies regarding the receipt and storage of capital project bids.

DSBS officials should:

7. Ensure the Partnership implement the recommendations of this report; and

   DSBS Response: "SBS will discuss the recommendations in this Report with the 34th Street Partnership and where appropriate, work with them to implement recommended improvements, or otherwise address the concerns raised by the Report."

8. Conduct periodic review of the Partnership's operations to ensure compliance with the City agreements.

   DSBS Response: "SBS will continue reviewing the 34th Street Partnership's operations through regular communication, attendacne at Board and committee meetings, and analysis of annual reporting data and other information provided to SBS pursuant to the contract, including budgets and financial statements, certified audited financials, impact data and other periodic reports. We will also consider other relevant matters that may arise that we feel are important for SBS review, based on potential impacts to the district and the City."

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards with the exception of organizational independence as noted in the subsequent paragraph. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The Comptroller sits as one of the four Class D Board members of the 34th Street BID, by virtue of his office. The Class D Board members, in conjunction with the other Board members, comprise the Board of 34th Street BID. The Comptroller has designated a representative to represent him on the Board and neither the Comptroller nor his Board representative were involved in the audit process.

The scope of this audit was Fiscal Years 2013 and 2014. To assess the overall condition of the BID, we performed multiple observations of the BID area and taxi lines. To gain an understanding of the oversight responsibilities of DSBS and Parks, we met with officials from each City agency.

To gain a general understanding of the Partnership's operations, we reviewed the agreements between the Partnership and various City agencies (i.e., DSBS, Parks, and Department of Transportation), the Partnership's certification of incorporation, by-laws, Board minutes, policies and procedures, federal tax forms 990, certified financial statements, district plan, annual reports submitted to DSBS, and all other relevant financial information. From the Board minutes, we identified any significant or unusual events which may require additional inquiry or testing. We prepared several abstracts on agreements as necessary. We also conducted a trend analysis of the Partnership's financial information to identify any unusual trends and outliers. To determine whether the actual operational revenues and expenditures were within reason, we compared the projected budgetary information to the financial statements.

We conducted walk-throughs of the overall operations, security, sanitation, accounting, horticulture, capital improvements, front desk procedures, and events planning to understand each department/person's roles and responsibilities and gain a better understanding of the Partnership's operations. We flowcharted the capital improvement procedures regarding the competitive bid solicitation process to assess whether appropriate segregation of duties were implemented. We then conducted follow-up observations of the Accounting and Capital Projects departments to obtain corroborating evidence to the statements made during our walk-throughs. We also reviewed the internal control policies and procedures to assess the control risk, determine whether appropriate segregation of duties were implemented in the Partnership's existing policies and procedures.

We obtained and analyzed the Partnership's general ledgers, Balance Sheets, Statements of Activities, and Statement of Functional Expenses. We summarized the general ledger accounts and identified the periods with the highest expenses to facilitate future substantive testing. To determine whether the Partnership accurately reported its financial position in the financial statements, we traced the expense account balances, as of June 30, 2014, from the general ledger to the Statement of Functional Expenses.

We obtained and reviewed the security command log to determine whether the appropriate corrective action was taken by security officials and proper approvals were obtained for the 13 incidents occurring on June 10, 2014. We also obtained the Partnership's insurance policies to determine whether the Partnership maintained the appropriate insurance coverage as required by its City agreements.

To determine whether the Partnership properly recorded the revenue generated within the District, we obtained a list of sponsorship contracts/vendors which generated more than $10,000 of revenue for the Partnership. We traced these contracts to the general ledger to assess the reliability of the information and identify any inconsistencies. Based on the contract list and the variances identified, we judgmentally selected 10 out of 30 revenue contracts for review. We then obtained and reviewed the contracts and traced the revenue to the general ledger. We also determined whether these vendors remitted the correct payments and maintained sufficient insurances as required by the contract terms.

To determine whether the Partnership accurately recorded and reported its payroll expenditures in the general ledger, we judgmentally selected the payroll registers for the month of June 2014. We then traced the payroll expenses from the register to the general ledger accounts to ensure consistency and accuracy. To determine whether the payroll expenditures as listed on the register were properly supported and approved, we obtained and reviewed the supporting timesheets. For the Capital Projects Department, we requested all individuals utilizing its facial recognition timekeeping system. We then cross-checked this list against the employee roster to determine which employees were not effectively monitored for their time worked. We also cross-checked the personal and sick leave accruals and usages against the timesheets to determine whether the leave accruals and usages were accurately recorded.

Additionally, we judgmentally sampled 10 out of the 45 managerial employees and randomly selected 10 out of 100 line staff that appear on the week 24 payroll register. From the sampled employees, we obtained and reviewed the personnel files to determine whether the employees were qualified and/or certified (when applicable) for their respective positions. We also determined whether salary increases were properly authorized and documented and all necessary personnel information was maintained.

To determine whether the President's compensation was reasonable, we reviewed the President's employment contracts and analyzed the financial data that the Partnership presented to the Board to formulate the President's salary. From this information, we determined whether the information used by the Partnership and the Board to justify the President's compensation was appropriate.

To determine how the upper management's salaries and fringe benefits are allocated, we reviewed the payroll register expenses for joint employees and computed the actual allocation amounts. We also requested all supporting documentation for the computation of the allocated percentages. To determine whether the allocation of the Design Department employees was accurate, we traced the pivot chart information to its source data and isolated any project that was not supported.

We extracted all reimbursement expenses between the Partnership and related entities for hourly line staff from the general ledger to determine whether any line staff was being shared. We reviewed the payroll register and all relevant supporting documents to determine whether the Partnership maintained separate line staff from related entities. We then cross-checked the shared employee's information to the payroll register and the personnel file to determine whether the personnel information correctly reflects the employee's duties.

We reviewed the general ledger to quantify the amount of tuition reimbursement expenses incurred by the Partnership. For these expenses, we requested and obtained all supporting documents and approvals to determine whether the Partnership complied with the tuition reimbursement requirements as specified in its employee handbook.

To determine whether the Partnership's Other Than Personal Services (OTPS) expenditures had adequate supporting documentation, we reviewed the general ledger expense accounts and selected a judgmental sample of nine accounts based on risk and materiality. From the selected accounts, we then selected a sample with both judgmental and random methodologies used and determined whether the expenses were reasonable, appropriate, supported and compliant with the BID's operating agreements by tracing the expenses from the general ledger to the checks, invoices, and receipts. We also determined whether approval was obtained through signed purchase orders and the vendors maintained adequate insurance coverage, if applicable.

To determine whether the Partnership executed and maintained the appropriate written contracts with its independent contractors, we judgmentally selected three contractors who received a 1099 tax form over $15,000 for Calendar Year 2014 and obtained the relevant contracts for review.[18]

To determine which individuals listed on the organizational chart were employees versus independent contractors, we traced all information from the organization chart to the employee roster and 1099 summary reports.

To determine whether the Partnership complied with Section 5.3.0 of the policies and procedures governing capital projects, we obtained a list of capital project requisitions detailing the Partnership's capital projects. We stratified this list and randomly selected a sample of five capital project invoices/vendors from the top tier expenses. Based on our sample, we requested and reviewed all procurement and account documentation to determine whether the Partnership complied with its procurement policies and procedures.

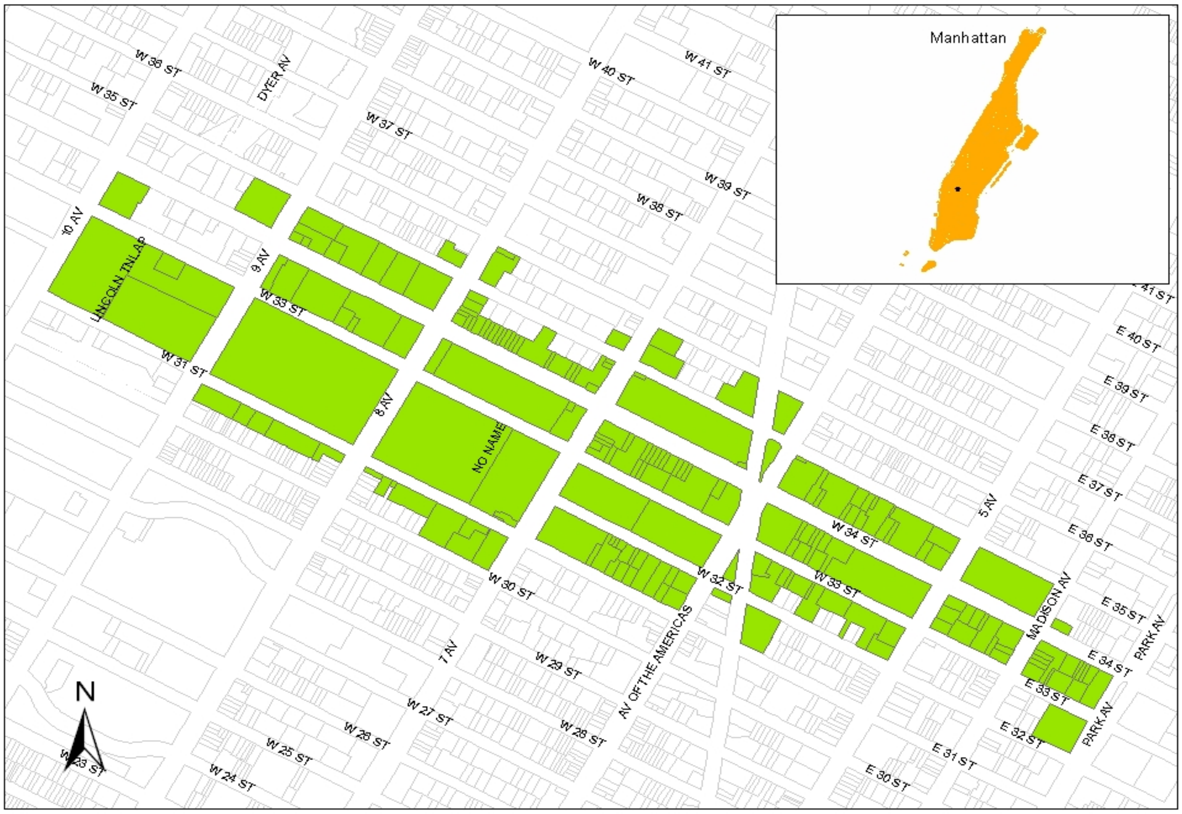
To assess the effectiveness and efficiency of the Partnership's horticulture operations, we requested all documents relative to the maintenance of the forestry within the BID area. We then reviewed all significant services (such as pruning, tree removals, etc.) conducted to the trees within the BID. From the services performed, we determine whether the Horticulture Department conducted periodic safety inspections and maintenance of the trees to identify any hazardous conditions which may exist.

To determine whether the Partnership's line staff received the appropriate fringe benefits and health coverage, we traced specific line staff receiving coverage to the employee roster. From this procedure, we identified all employees not receiving coverage.

Finally, we determined whether the Partnership complied with its conflict-of-interest policy by obtaining and reviewing the signed conflict-of-interest disclosure forms that were completed by the Board members and the Partnership's employees.

[18] Form 1099-MISC is used to "report payments made in the course of a trade or business to a person who is not an employee or to an unincorporated business."

34th Street Partnership



34th Street Partnership

June 27, 2016

Ms. Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Management response to the Audit Report
on the Financial and Operating Practices of
34th Street Partnership, Inc. (FN16-058A)

Dear Ms. Landa:

Please find attached the response of the management of 34th Street Partnership, Inc. to the audit report dated June 14, 2016. We have responded to each of the audit findings, in the order in which they appear in the report, and then, directly below, the audit recommendations related to each finding.

Please feel free to contact me if you require any additional information.

Very truly yours,

Peter Ciriello, CPA
Controller & CFO

Attachment
cc: Amy Man, Audit Manager

34th Street Partnership, Inc. Executive Offices: 1065 Avenue of the Americas • Suite 2400 • New York, NY 10018 • Tel 212.719.3434 Fax 212.719.3499
34st@urbanmgt.com Operations Office: 212 West 35th St. • 3rd Floor • New York, NY 10001 • Tel 212.967.3433 Fax 212.279.4970

Management response to the findings and recommendations of the Audit Report on the Financial and Operating Practices of 34th Street Partnership, Inc.

Regarding the auditors' finding of internal control deficiencies which may affect its oversite of operations and the accuracy of its financial reporting:

Response: The organization has well established internal controls, more than adequate for its size and complexity, that have, as demonstrated by the unmodified audit opinions and "no material weakness" reports, issued by KPMG LLP, resulted in financial information being accurately recorded in its books and records. While we do agree with some of the auditors' findings and related recommendations for improvement, we believe that this report demonstrates that the auditors, despite conducting a nearly nine-month examination, did not gain a full understanding of our organization and the business environment in which it operates, and the services that it provides.

Specific audit findings and recommendations:

The Partnership was unable to provide sufficient timekeeping documents to keep track of each employee's work hours.

Response: Hourly employees' time is recorded on manual time sheets, prepared from daily, manual sign-in sheets. All salaried employees' daily attendance is monitored and recorded, but actual hours are not. We believe that our timekeeping procedures are more than adequate for an organization of our size and the level of oversight of supervisors and managers.

Salaried employees are, by definition, not paid an hourly wage. They are adult professionals, hired to perform a job function, under the supervision of trusted, competent department directors and officers of the company. Their compensation is established as part of our budget process, and paid in equal weekly installments, and not based on a set number of hours.

34th Street Partnership is a $11 million company with 170 employees who are all closely supervised. The definition of "adequate timekeeping procedures," and what those procedures require, for an entity of our size versus the City of New York, a $82 billion enterprise with 260,000 employees, is very different. The auditors do not acknowledge this distinction.

> **Recommendation 1a:** Implement a timekeeping system with features to account for each employee's time-in/time-out, total hours worked, and a secure interface for data entry, reviewer and approver processes.
>
> **Response:** As discussed during the audit, the staff of the Partnership has been working on implementing an electronic time keeping system. Effective with the first payroll of fiscal 2017, the time for all hourly employees will be tracked, and entered into payroll, using such a system. However, except for the purpose of complying with the Department of Labor overtime rules, we see no reason to impose time clocks on our highly productive, responsible, salaried employees, whose work is closely monitored.

The Partnership did not maintain sufficient documentation necessary to support its salary expense allocations it has made in connection with the salaries it pays jointly with Bryant Park Corporation.

Response: It is a mischaracterization to say that The Partnership pays salaries jointly with Bryant Park Corporation (BPC). The Partnership shares certain employees with Bryant Park Corporation, but each company has its own payroll, independent of the other. Shared employee salaries are split between the companies, based on the estimated efforts to be expended on each entity. Estimates are developed through conversations with the employees and their managers, presented to, and approved by, the Boards of Directors of each entity in their respective annual budgets.

The allocations of Design Department salaries between companies are, as described above, estimates. An analysis of design projects was used, as a completely appropriate basis, for estimating employee effort expended on behalf of 34th Street and BPC.

The management of 34th Street and BPC did explore with property owners, most of whom have seats on one of our boards, the possibility of creating a new BID on Sixth Avenue. The Design Department spent some time in support of that effort. The new BID would have been commonly managed with 34th Street and BPC, and each of the entities would have benefited from a reduction in overhead costs. These plans were discussed with the Boards of both 34th Street and BPC, with the Comptroller's representative present at the meetings. Further, this is a practice that has been embraced by our Boards since 1985. By any measure, the time spent in this effort was immaterial. Likewise, the total out of pocket cost of the effort, other than staff time, of $768.94 was not material.

> **Recommendation 1b:** Implement an appropriate methodology for allocating payroll expenses for employees which are shared by the Partnership and other entities.
>
> **Response:** The current methodology for the allocation of shared employee salaries is wholly appropriate. Unique among New York City's business improvement districts, the financial statements of 34th Street and Bryant Park are audited by a big four accounting firm. KPMG identifies the allocation of expenses among the companies as a key significant area of their audits. They have reported to our audit committee, for two decades, that our management estimates are reasonable, appropriate and consistently applied, and updated annually. We do however believe that the judgements made in the allocation of expenses, particularly salaries, need to be better documented through the use of job descriptions and key elements considered in establishing allocation estimates.

The Partnership did not consistently adhere to policies and procedures governing sole source contracts or regarding professional education assistance provided to employees.

Response: Sole source justifications were generally prepared when required; however, they were not sent to DSBS for their approval.

With regard to the assistance in paying a portion of graduate school tuition for two employees, there is no policy that precludes the organization's president from approving a transaction that he believes is in the best interest of the company and its employees. The employees for whom tuition assistance was provided were long-tenured employees who regularly represented the Partnership in business transactions, and ultimately earned their executive MBA degrees. We believe that the awarding of an MBA degree is sufficient proof of attendance.

Recommendation 1e: Implement monitoring procedures to ensure all Partnership employees adhere to the policies and procedures.

Response: The procedures necessary to ensure adherence to policies and procedures already exist. Sole source justifications are prepared, and presented to the Board's Construction Committee for approval; however, the requisite notices to DSBS were not sent. A newly instituted purchase order form has a check box for each of the required steps in the procurement process on its face, eliminating any confusion about what is required.

The Partnership failed to consistently execute written contracts with its independent contractors and/or event sponsors.

Response: The Partnership, during the audited period retained three independent contractors/consultants: 1) a horticultural consultant who directs a horticultural program that includes three seasonal plantings at over 800 locations throughout the district, 2) a restaurant consultant who supports our efforts to attract high quality restauranteurs to the district, as well as, the concession buildings in Herald and Greeley Square parks, and 3) a writer to produce the weekly MidCity News newsletter, which is distributed to constituents of the Partnership. Each of these consultants has worked on behalf of the Partnership for many years.

The single instance, cited by the auditors, where the Partnership did not have a written contract with an event sponsor is related to the City's take-over of the pedestrian plazas along Broadway to create Super Bowl Boulevard. The Partnership received $115,402 from NYC & Company; however, the Partnership did not nor could have had a contractual relationship with NYC & Company, the NFL or any of the sponsors of the activations along Broadway during that week.

Recommendation 1c: Execute written contracts for all independent contractors and vendors conducting business with the BID.

Response: We believe that the auditors' concerns about the absence of written contracts for consultants are overstated; however, we will commit our agreements with these individuals to writing.

The Partnership's procurement policies did not adhere to the Contract with DSBS.

Response: We disagree with this statement, and discussed the issue with the auditors during the audit exit conference. Since the auditors decided to maintain this as a finding, we have presented a side-by-side comparison of the Partnership's policies with regard to purchases and the relevant Section 2A.05 of the BID contract with DSBS, attached as Exhibit A, so that the reader is able to decide for his or herself.

Recommendation 1d: Revise its procurement policies and procedures to adhere to the subcontracting requirements stated in the DSBS contract.

Response: We believe that the Partnership's procurement policies and procedures, included in its Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, and attached as part of Exhibit A, adheres to the subcontracting requirements stated in the DSBS contract.

The Partnership did not have sufficient documentation to demonstrate that adequate insurance coverage for its subcontractors was obtained.

Response: We have reviewed the ten instances identified by the auditors where evidence of proper insurance coverage was missing, and we generally agree with their findings, except in the case of the Super Bowl Boulevard activations in the Broadway pedestrian plazas. We did not have any contractual relationship with any of the parties involved in that particular instance.

> **Recommendation 2:** Ensure insurance coverage of all outside entities conducting business with the BID is in compliance with the insurance requirements of the City agreements.
>
> **Response:** The Partnership will institute written procedures to ensure that all contractual insurance requirements are met and properly documented.

The Partnership allowed employees to generate purchase orders after goods and services were billed.

Response: Over the two-year period examined by the auditors, the Partnership made OTPS procurements in excess of $4.5 million. The auditors claim to have found purchases, totaling $15,067 (0.33% of total procurements), where purchase orders were issued after the invoice date. We do not believe that this rises to the level of an audit finding, particularly since there are reasonable business reasons for the timing of most of the seventeen instances cited, and none of those instances would, under any circumstance, be considered an unauthorized transaction. Also, the auditors' claim that the purchase order for the upgrade of our accounting software was dated after receipt of goods or services is incorrect – the evidence collected by the auditors does not support this claim.

> **Recommendation 3:** Ensure the Partnership officials execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained.
>
> **Response:** The Partnership's management will use its best efforts to enforce its written policies regarding procurement.

The Partnership failed to adhere to its own conflict of interest policy.

Response: Written acknowledgements of the company's conflict of interest policy and disclosure of any conflicts, as defined by the policy, were not collected from every board member nor from senior managers.

> **Recommendation 4:** Ensure the Partnership obtain the necessary conflict of interest disclosure forms form its key employees.
>
> **Response:** Conflict of interest disclosure forms have been secured for all key employees. Conflict of interest disclosure forms will be secured from all directors and board officers prior to the annual meeting in the fall of 2016.

The Partnership failed to maintain essential documentation within its personnel files.

Response: Auditors noted that out of 20 personnel files reviewed they did not find a hiring approval form for two employees, the vice president of security and a long-tenured sweeper, and that there was no termination letter in the personnel file of the former vice president of business affairs. The vice president of security was originally hired by Grand Central Partnership, Inc., another BID which, from 1991 to 1999, shared common management with the Partnership and BPC, on July 11, 1988. The Salary Inception/Adjustment Chart, dated 9/18/91 and located at the front of the personnel file is, in fact, the hiring authorization for employment with the Partnership. The sweeper was hired on March 7, 1992. Although there is no hiring approval form, we will allow his 24-year work history with us to speak for itself. The former vice president of business affairs was employed by the Partnership from August 1998 through July 2014. There is no formal termination letter in the file, and there is no policy or procedure that requires it.

Auditors reviewed the personnel files of 10 management employees of the Partnership, and found that only one file included a resume, and that there were no written performance evaluations in eight of the ten files. All of the management employees whose files were reviewed have been employed by the Partnership for a minimum of eight years, and a majority of them have served the Partnership for more than fifteen years.

Auditors state that the personnel files do not reflect employee salary allocations. However, every Employee Payroll Information and Authorization, which is included for every payroll related change for every employee, shows the weekly pay amount for each company.

The auditor also states that "one specific line staff member was inappropriately shared between the Partnership and its related entities." There is no prohibition against line or hourly employees working for both companies, as long as each entity pays for the proper number of hours.

> **Recommendation 5:** Ensure sufficient documentation is maintained in personnel files to appropriately reflect the BID's hiring, salary increase, and termination practices.
>
> **Response:** The Partnership, several years ago, adopted a standard written performance evaluation form. During this past year, the form is now being used consistently to document employee performance and related salary increases for all employees, including management employees.

The Partnership's Capital Projects Department did not establish adequate procedures for the receipt and storage of capital project bids prior to the submission deadline.

Response: Although not in line with City's Procurement Policy Board Rules, Section 3-02(l)(1), we believe that the Partnership's current procedures for receipt and storage of capital project bids prior to the submission deadline is reasonable and adequate given the size and nature of our capital project procurements.

> **Recommendation 6:** Establish written policies and procedures to ensure the security and confidentiality of bid information prior to the submission deadline.

Response: The Partnership will establish written policies regarding the receipt and storage of capital project bids.

Exhibit A

34th Street Partnership / Bryant Park Corporation Procurement Policies	DSBS Contract Procurement Requirements
PURCHASE, AUTHORIZATION, LIMITATIONS, AND COMMITMENT OF FUNDS AS EVIDENCED BY BUDGETS, PURCHASE ORDERS AND CONTRACTS	Section 2A.05 Subcontracts for the Performance of Supplemental Services
5.1.0. WHO MAY COMMIT FUNDS AND TO WHAT EXTENT?	
5.1.1 Only managers with units that have a formal budget are authorized to contract the purchase of services or goods to the level of their budget. When it can be reasonably determined that the aggregate amount of purchases of an item during the fiscal year will exceed the limits in any category under 5.3, the bidding procedures prescribed for the maximum estimated amount for the year will be used.	
5.2.0. PROCEDURE FOR COMMITMENT OF FUNDS AND RESOURCES AND REVIEW	Subject to the applicable provisions of this Contract, the DMA may contract for the performance of the Supplemental Services.
5.2.1. All purchase orders and invoices must be presented to the Controller for certification that funds are available and, when in excess of $1,000 per section 5.3.3.d), to the President for initialing to indicate approval.	
5.3.0. PURCHASES OF GOODS AND SERVICES	
5.3.1. Purchase via Petty Cash Purchases of goods or services via Petty Cash ($100 or less) must be supported by receipt evidencing proof of purchase.	
5.3.2. Purchases up to $1,000 a) Purchases of goods or services, other than Petty Cash, will be paid by check. b) Purchase orders are required for all purchases other than for Petty Cash, regardless of amount. c) A purchase order shall record the agreed upon price, quantity, and terms of the purchase.	

34th Street Partnership / Bryant Park Corporation
Procurement Policies

DSBS Contract Procurement Requirements

d) Purchases under $1,000 need only the approval of the department manager and controller as evidenced by signatures on the purchase order.

5.3.3. Purchases over $1,000 but less than $20,000

a) At least three bids or price quotations must be obtained for purchases within this range.

b) Purchases will generally be made from the lowest bidder who meets the specifications or qualifications. When a bidder who is not the lowest bidder is selected, written justification must accompany the P.O.

c) All purchase orders with price quotes will be submitted to the Controller for review and initialed to indicate approval and that funds are available.

d) The President or Treasurer, or other individual designated by the Treasurer, will review and approve all purchases within this range before funds are committed by way of mailing purchase order or purchases called in to vendor.

No such subcontract shall be awarded unless the DMA has (i) selected the lowest responsible bidder from at least three (3) responsible and competitive bidders, unless the DMA can justify, to the satisfaction of its Board of Directors or a committee thereof, pursuant to guidelines approved by the Commissioner of SBS, selection of a contractor from a single source without competition or the selection of a contractor from less than three (3) bidders, (ii) complied with the insurance requirements of Article 4 hereof, and

5.3.4. Purchases over $20,000

a) At least three bids or price quotations with appropriate documentation must be formally obtained for purchases over $20,000. Amendments or modifications of contracts will follow the same procedure based on dollar value.

b) Purchases may be made from the lowest bidder who meets the specifications or qualifications.

c) Approval of the Board of Directors, or a committee thereof, must be obtained prior to any purchase over $20,000.

d) Other than bids, the approval procedure will be the same as for purchases between $1,000 and $20,000.

(iii) for contracts in the amount of $20,000 or more, obtained the approval of its Board of Directors, or a committee thereof; provided, however, that, notwithstanding the foregoing, all subcontracts of the DMA shall be subject to all applicable provisions of law relating to the letting of contracts by the City. Notwithstanding the foregoing, the DMA shall provide written notice to the Commissioner of SBS of the selection of a contractor (1) other than the lowest responsible bidder, (2) from a single source without competition, or (3) from less than three (3) bidders, and the Commissioner shall have the right to disapprove such selection within five (5) business days of receipt of said notice. (Requirements for contracts in the amount of $20,000 are repeated below for sole source procurement.)

5.3.5. Purchases over $100,000

a) The procedures in 5.3.4. (a), (b), (c) and (d) above must be followed.

b) Each subcontractor must submit all information needed to conduct a full background investigation in accordance

If the DMA awards a subcontract in the amount of one hundred thousand dollars ($100,000.00) or more or, if the DMA awards a subcontract that when aggregated with the value of all other subcontracts awarded to the same subcontractor during the immediately preceding with the procedures concerning the City's Vendor Information Exchange System ("VENDEX").

5.3.6. All written contractual relationships with third parties must be signed only by the Chairman or President before an accompanying purchase order may be issued.

5.4.0. SOLE SOURCE PROCUREMENT

5.4.1. Certain occasions necessitate the purchase of goods and services without entering into a competitive price analysis. In the event that any one of the following apply, a sole source procurement may be warranted:

a) the good or service to be procured is available from less than three sources;

b) specifications cannot be made sufficiently definite and certain to permit selection based on price alone;

c) judgment is required in evaluating competing proposals, and it is in the best interest of the 34th Street Partnership or BPC to require a balancing of price, quality and other factors;

d) an emergency procurement is required and is not due to non-compliance with the normal competitive procurement process.

5.4.2. If a department manager determines that a sole source procurement is warranted, the following process must be followed:

a) A memo shall be submitted to the Controller identifying the steps that have been taken in concluding that a sole source procurement is necessary. Such memo shall include the identification of other possible bidders for the goods or service, and the specific justification for the selection of the sole source provider;

b) A sole source letter shall be drafted and submitted to the Commissioner of the Department of Small Business Services, outlining the justification for the sole source procurement and requesting approval to proceed with such procurement.

c) No payment for the sole source procurement may be made until the entity receives the approval of the Commissioner

twelve (12) month period, is valued at one hundred thousand dollars ($100,000.00) or more, the DMA shall require such subcontractor to submit to the Commissioner of SBS any and all information that he or she deems necessary to conduct a full background investigation in accordance with the procedures established by SBS pursuant to Mayoral Directive 90-1 concerning the City's Vendor Information Exchange System ("VENDEX").

Repeated from above:

(iii) for contracts in the amount of $20,000 or more, obtained the approval of its Board of Directors, or a committee thereof; provided, however, that, notwithstanding the foregoing, all subcontracts of the DMA shall be subject to all applicable provisions of law relating to the letting of contracts by the City. Notwithstanding the foregoing, the DMA shall provide written notice to the Commissioner of SBS of the selection of a contractor (1) other than the lowest responsible bidder, (2) from a single source without competition, or (3) from less than three (3) bidders, and the Commissioner shall have the right to disapprove such selection within five (5) business days of receipt of said notice.

of SBS or no response is received from SBS within fivè (5) business days of the submission of the sole source letter.

5.5.0. PROCUREMENT OF TECHNICAL, CONSULTANT OR PERSONAL SERVICE

5.5.1. The decision to procure specialized professional services such as technical, consultant or personal services shall not require competitive procurement based on price alone. Such services may include, but shall not be limited to, legal services, design services, architectural services, business consulting, technical consulting, engineering services, etc. Such procurement shall follow the procedures for sole source procurement, as set forth in Section 5.4.2. above.

5.6.0. COMPARING RECEIPT OF GOODS, PER RECEIVING REPORT, VERSUS PURCHASE ORDER

5.6.1. A copy of the purchase order will be used as a receiving report and must be filled out by person receiving goods or services.

a) Goods and services

Quantity and condition of goods and services received is to be recorded and evidenced by receiving person's signature on the copy of the Purchase Order (receiving report).

b) Change Orders

Modifications of original proposal (charge orders) must follow same approval procedure based on dollar amount.

Small Business Services
careers
businesses
neighborhoods

Gregg Bishop
Commissioner

June 28, 2016

Hon. Marjorie Landa
Deputy Comptroller for Audit
City of New York Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Audit Report of the Financial and Operating Practices of the 34th Street Partnership; FN16-058A

Dear Deputy Comptroller Landa:

The New York City Department of Small Business Services (SBS) submits this response to the findings and recommendations contained in the New York City Comptroller's Draft Audit Report ("Report"), dated June 14, 2016. SBS is pleased that the audit found the 34th Street Partnership to be generally in compliance with its contract with Small Business Services, as well as its License Agreements with the Department of Parks and Recreation. The 34th Street Partnership – the District Management Association of the 34th Street Business Improvement District (BID) – has been the catalyst for the revitalization of the commercial corridor of 34th Street, Herald Square and Greeley Square Park for over 25 years. Through streetscape improvements, supplemental maintenance and security services, transformative capital improvements and numerous free public events every year, the BID has made 34th Street and the surrounding area a vibrant destination for shoppers, tourists, local employees and residents alike.

With all partnerships, opportunities for improvement exist. We recognize that this report highlights areas where the 34th Street Partnership can improve upon their existing internal control mechanisms.

The Report includes six recommendations to the 34th Street Partnership and two recommendations to SBS. In reference to recommendations directed to SBS:

Recommendation 7 – Ensure the Partnership implements the recommendations of this report.
SBS will discuss the recommendations in this Report with the 34th Street Partnership and where appropriate, work with them to implement recommended improvements, or otherwise address the concerns raised by the Report.

Recommendation 8 – Conduct periodic review of the Partnership's operations to ensure compliance with City agreements.

SBS will continue reviewing the 34th Street Partnership's operations through regular communication, attendance at Board and committee meetings, and analysis of annual reporting data and other information provided to SBS pursuant to the contract, including budgets and financial statements, certified audited financials, impact data and other periodic reports. We will also consider other relevant matters that may arise that we feel are important for SBS review, based on potential impacts to the district and the City.

We appreciate the courtesy of you and your staff during this audit.

Sincerely,

Andrew Schwartz
Deputy Commissioner & General Counsel

CC: Daniel Biederman
President, 34th Street Partnership

Peter Ciriello
Controller & CFO, 34th Street Partnership

George Davis III
Director of Audit Services, Office of the Mayor

Shaazad Ali
Assistant Commissioner, Finance, Dept. of Small Business Services

Blaise Backer
Deputy Commissioner, Neighborhood Development, Dept. of Small Business Services

James Mettham
Assistant Commissioner, Neighborhood Development, Dept. of Small Business Services

Kris Goddard
Executive Director, Neighborhood Development, Dept. of Small Business Services