

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Financial and Operating Practices of the 34th Street Business Improvement District

MH03-171A

FEBRUARY 24, 2004



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has examined the financial and operating practices of the 34th Street Business Improvement District.

The results of our audit, which are presented in this report, have been discussed with BID officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that BIDs are providing the services they are required to deliver to their districts and that they have adequate internal controls over their funds.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-8945.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

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***The City of New York
Office of the Comptroller
Bureau of Management Audit***

**Audit Report on the
Financial and Operating Practices of the
34th Street Business Improvement District**

MH03-171A

AUDIT REPORT IN BRIEF

This audit of the 34th Street Business Improvement District (34th Street BID) covered the organization's provision of services, compliance with its City contract, and adequacy of internal controls over funds and operations. The 34th Street BID is funded by special assessments levied against district property owners and uses these moneys to enhance and promote the district. The Department of Small Business Services (DSBS) supervises and oversees the 34th Street BID.

The 34th Street BID shares its President, Controller, management and administrative staff, sanitation and security supervisors, outside consultants, and office facilities with the Bryant Park Restoration Corporation (Bryant Park BID). Shared employees are paid separately by both BIDs and shared office expenses are allocated between the BIDs.

Audit Findings and Conclusions

The 34th Street BID generally provided the services required in its District Plan. However, reliance on verbal agreements and a lack of written documentation throughout the BID led to noncompliance with certain elements of the BID's contract with DSBS and contributed to the weaknesses found in its internal controls.

The BID complied with most terms of its DSBS contract: it provided the prescribed supplemental services; it maintained complete financial records; it submitted annual reports to DSBS; and it had its annual financial statements certified by an independent certified public accountant. However, it did not comply with the contract in regard to two important areas: (1) subcontracting services, including the lack of written contracts; and (2) establishing a \$500,000 short-term credit line without the required approvals.

The BID's internal controls appear to be adequate in that it maintained adequate segregation of duties, and the transactions we reviewed appeared to be ordinary and reasonable. Nevertheless, there were weaknesses relating to allocations between BIDs and timekeeping.

Audit Recommendations

To address these issues, we make 10 recommendations, namely, that the 34th Street BID should:

- Ensure that it complies with the DSBS contract and enforce its procurement policies.
- Enter written contracts for all purchases of goods and services, including consultants, amounting to \$20,000 or more.
- Ensure that either three bids are solicited or a “sole source letter” is obtained from DSBS, when required.
- Create a management report to track total dollars paid to each vendor and ensure that VENDEX investigations are performed when required (when payments exceed \$100,000).
- Require subcontractors and consultants to include services provided and hours worked when submitting invoices to the BID.
- Report \$500,000 line of credit with Atlantic Bank in the BID’s Fiscal Year 2003 financial statements.
- Ensure that management complies with its contract with DSBS and its bylaws by obtaining written approval from the Commissioner of DSBS and its Board of Directors prior to incurring any indebtedness.
- Annually advise the Board of Directors of each BID (34th Street and Bryant Park) how the services of each shared employee is allocated between the BIDs and maintain written justification for these allocations.
- Maintain written records of leave balances for management and administrative staff.
- Document shared employee contributions to each BID.

34th Street BID Response

The matters covered in this report were discussed with 34th Street BID officials during and at the conclusion of this audit. A preliminary draft report was sent to 34th Street BID officials on December 17, 2003, and was discussed at an exit conference on January 7, 2004. We submitted a draft report to 34th Street BID officials with a request for comments on January 27, 2004. We received a written response from BID officials on February 10, 2004. The BID generally agreed with our findings and recommendations, although it did not specifically address the recommendations in its response.

The full text of the 34th Street BID response is included as an addendum to this report.

INTRODUCTION

Background

In 1981, the New York State Legislature passed legislation allowing cities to independently establish Business Improvement Districts (BIDs). BIDs are geographic areas in which property owners and tenants band together to use a municipality's tax collection powers to assess themselves to create a fund used for improvements within the geographic area (the district). In 1982, New York City passed Local Law 2, which authorized the creation of BIDs in the City.

BIDs are funded by special assessments levied against properties within the district. BID assessments are collected by the City and returned to the BID. These moneys are used to enhance and promote the district by purchasing services and improvements supplemental to the services already provided by the City. By law, these services and improvements can include the following:

- Capital improvements, such as lighting, sidewalk paving, pedestrian malls and walkways, tree plantings, signs, bus stop shelters, and landscaping;
- Enhanced sanitation services;
- Enhanced security services for people and property within the district;
- Promotional services to advertise activities within the district; and
- Seasonal and holiday decorations and lighting.

The Mayor's Office and the City Council approve the formation of all BIDs, and the Department of Small Business Services (DSBS) supervises and oversees the BIDs. The BIDs must sign a contract with DSBS¹ and submit to DSBS budgets and audited financial reports each year.

BIDs have become increasingly important for raising funds for capital improvements and service enhancements. According to DSBS, in Fiscal Year 2003, there were 44 BIDs operating in the City, with combined assessments totaling \$61 million. Only 12 districts (27%) received more than \$1,000,000 annually.

The 34th Street BID,² the subject of this audit, entered into its first contract with DSBS in 1992. Its contract was most recently renewed in January 2003. The BID, managed by a not-for-profit corporation, the 34th Street Partnership, Inc., provides services in the area of 31st Street to 35th Street from Park Avenue to Tenth Avenue. As required of all City BIDs, when it was established, the 34th Street BID presented to the City Council and the Office of the Mayor a District Plan detailing: the proposed improvements for the district; how the improvements would be implemented; and the total anticipated annual expenditures.

¹ BID contracts with DSBS are renewable every two to five years, depending on the performance of the BID.

² The 34th Street BID is also known in various documents as the 34th Street Business Improvement District, the 34th Street Partnership, Inc., the Corporation, and the District Management Association.

As required by the BID legislation, the majority of the 34th Street BID Board of Directors consists of property owners and commercial and residential tenants within the district. The Board also includes representatives from Manhattan Community Boards 4, 5, and 6, and three members appointed by the Mayor, the Comptroller, and the Manhattan Borough President, respectively.

In Fiscal Year 2003, the 34th Street BID was the fourth largest district in New York City with assessments of \$7,994,000. In its Fiscal Year 2003 financial statements, the 34th Street BID reported revenues of \$9,093,368 and expenditures of \$9,083,497.

The 34th Street BID currently shares its President, Controller, management and administrative staff, sanitation and security supervisors, outside consultants, and office facilities with the Bryant Park Restoration Corporation (Bryant Park BID). The President's compensation is set by separate contracts with each BID. Payroll expenses for all other shared employees are allocated based upon estimates of how much time each person spends working for each BID. Employees then receive two checks each week, one from 34th Street and one from Bryant Park, based upon these allocations.

Shared office expenses, which are generally paid by the 34th Street BID, are allocated between the BIDs and are reimbursed by each BID. During Fiscal Year 2003, the Bryant Park BID's payments to the 34th Street BID totaled more than \$430,000, including a balance due of \$108,165 at year-end, and the 34th Street BID's payments to the Bryant Park BID totaled \$22,000.

Since its inception in 1992, the 34th Street BID has expended approximately \$21.9 million for the design and construction of a variety of capital improvements to enhance the streetscape within the district. In Fiscal Year 2003, Series 2003 Bonds were issued by the BID to refund its outstanding 1993 Capital Improvement Bonds, the proceeds of which were used for the construction of capital improvements by the BID for the district.

Objectives

The objectives of this audit were to:

- determine whether the 34th Street BID has provided the services called for in its District Plan;
- assess the 34th Street BID's compliance with key terms in its contract with the Department of Small Business Services; and
- evaluate the adequacy of the 34th Street BID's internal controls over its funds and operations.

Scope and Methodology

The scope of our audit was Fiscal Year 2003. To gain an understanding of the BID's activities, we interviewed the BID President and its senior managers (Finance, Capital Projects, Horticulture, Retail, Security, and Sanitation), and attended streetscape and construction committee meetings. For Fiscal Years 2001 through 2003, we reviewed the BID's certified financial statements, its annual reports to DSBS and its weekly "MidCity News" newsletters. We interviewed members of the Board of Directors, including the Chairman, Treasurer, and committee chairs for Construction and Audit. In addition, we interviewed the BID representatives from DSBS and the New York City Comptroller's Office. We also met with the BID's external auditors.

To determine whether the 34th Street BID has provided the services called for in its District Plan, we reviewed the Plan for its declared objectives and the services and programs it proposed to accomplish those objectives. We looked at crime statistics from the Midtown South Precinct and at Sanitation Project Scorecards³ for calendar years 2000 through the first half of 2003. We reviewed a survey of the district members conducted by the BID in March 2001. Then, on a number of walkthroughs of the district, we observed sanitation personnel, security personnel, taxi dispatchers and inspectors, as well as streetscape items such as planters, light poles, and trashcans.

We assessed the 34th Street BID's compliance with key terms of its current contract with DSBS, including whether the BID provided the required supplemental services either directly or through subcontracting services,⁴ maintained accurate records, submitted annual reports to DSBS, and had its annual financial statements certified by an independent accountant. We made observations in the District and reviewed the general ledger, the annual reports, the certified financial statements and other pertinent financial documents including those related to the BID's Series 2003 Bonds and a \$500,000 line of credit. Lastly, we reviewed the minutes for the BID's Annual Meeting and Board of Directors and committee meetings.

To test contract compliance with the procurement of subcontracting services, we calculated total payments to each vendor using the BID's Accounts Payable Document History Report since the 34th Street BID had no report that totaled payments by vendor. After excluding payments related to office rent, employee payroll and benefits-related items, we identified 37 vendors who were each paid more than \$20,000 in Fiscal Year 2003, a spending level at which bidding is required by the DSBS contract. Using a random number table, we chose a sample of 10 of these vendors to review backup documentation, including proposals, purchase orders, bidding documents, and contracts.

To evaluate the adequacy of the 34th Street BID's internal controls over its funds and operations, we looked at the BID's bylaws, employee handbook, and written procurement procedures along with internal control standards set forth in the New York City Comptroller's Directives and the BID's contract with DSBS. Using a random number table, we randomly selected the month of September 2002 and reviewed assessment receipts, cash disbursements, interest income, cash receipts, payroll transactions, bank statements, and the general ledger. In addition, we reviewed the certified financial statements for Fiscal Years 2000 through 2003.

³ Sanitation Project Scorecard is a quarterly report issued by the Mayor's Office of Operations that rates the level of cleanliness of most City streets.

⁴ Purchases of goods and services, including capital improvements, technical, consultant, and personal services.

We traced the assessment payments received by the BID from DSBS, for September 2002, to the cash receipts journal and the bank statements to ensure that all payments were recorded and deposited. In addition, we reviewed the other cash receipts and interest income received by the BID for this period.

We examined all of the 199 cash disbursements for the month of September 2002, including related receipts, invoices, and other supporting documents. We traced the cash disbursements from requisition, to purchase order, to invoice, to check, to general ledger, to bank statement. This test included a review of all expenses that were allocated between the 34th Street and Bryant Park BIDs. We attempted to evaluate the allocations between BIDs, but were unable to in the absence of written documentation of the allocation procedures.

We reviewed the payroll transactions for the month of September 2002, which included weekly paychecks issued to 145 employees. Using a random number table, we randomly chose 15 of these employees (three management, six sanitation, and six security) to test timekeeping and leave balance records. We were unable to perform tests on the timekeeping for the three management employees in the sample, since time sheets and leave balances were not maintained for the management and administrative staff. In addition, three of these employees (two management and one security) worked for both BIDs and did not keep track of time spent in each BID.

Our audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

Independence Disclosure

The Comptroller is a member of the Board of Directors of the 34th Street BID. The Comptroller maintains this position pursuant to New York State General Municipal Law §980-m, which requires that the Comptroller, as the City's chief fiscal officer, be a member of the board of directors of any City BID. Accordingly, the bylaws of the 34th Street BID specify that the Comptroller be a member of the Board. The Comptroller participates on the Board of the 34th Street BID through a designee. The Comptroller's designee was not involved in planning or conducting this audit, or in writing or reviewing the audit report.

Discussion of Audit Results

The matters covered in this report were discussed with 34th Street BID officials during and at the conclusion of this audit. A preliminary draft report was sent to 34th Street BID officials on December 17, 2003, and was discussed at an exit conference on January 7, 2004. We submitted a draft report to 34th Street BID officials with a request for comments on January 27, 2004. We received a written response from BID officials on February 10, 2004. The BID generally agreed with our findings and recommendations, although it did not specifically address the recommendations in its response.

The full text of the 34th Street BID response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The 34th Street BID generally provided the services required in its District Plan. However, a reliance on verbal agreements and a lack of written documentation throughout the BID led to noncompliance with certain elements of the BID's contract with DSBS and contributed to the weaknesses found in its internal controls.

The BID complied with most terms of its DSBS contract: it provided the prescribed supplemental services; it maintained complete financial records; it submitted annual reports to DSBS; and it had its annual financial statements certified by an independent certified public accountant. However, it did not comply with the contract in regard to two important areas: (1) subcontracting services, including the lack of written contracts; and (2) establishing a \$500,000 short-term credit line without the required approvals.

The BID's internal controls appear to be adequate in that it maintained adequate segregation of duties, and the transactions we reviewed appeared to be ordinary and reasonable. Nevertheless, there were weaknesses relating to allocations between BIDs and timekeeping.

The following sections of this report discuss our findings in more detail.

The BID Provided the Services Called For in Its District Plan

The 34th Street BID provided the services called for in its District Plan. In Fiscal Year 2003, the BID spent \$7.8 million⁵ (86% of its total spending), on the following services aimed at improving the business environment of the district, namely:

- Capital Improvements including lighting, park development, sidewalk treatments, traffic and directional signs, and street furniture (streetscape);
- A sanitation force to supplement the Sanitation Department's services to improve sidewalk and street cleanliness;
- A security force to deter crime, to work with local police and to provide useful information and a sense of security for visitors;
- Horticulture, including floral and holiday decorations; and
- Parks operations for Herald and Greeley Squares, retail improvements, taxi stands, and visitor services.

⁵ All Fiscal Year 2003 dollar amounts reported herein are taken from a draft of the Financial Statements (June 30, 2003) for the 34th Street Partnership, Inc. that were certified by independent auditor KPMG LLP.

The 34th Street BID conducted a survey in March 2001 to assess district members' opinions regarding BID services and activities. The BID distributed 766 surveys and received 311 responses, for a response rate of 41 percent. Of the 297 respondents who answered the question, "Have conditions overall in the 34th Street district changed in the past 9 years?" 285 (96%) responded that the district had improved. Of the 240 respondents who answered the question, "What role the BID has played in improving the conditions in the District?" 238 (99%) responded that the BID is largely or somewhat responsible.

Capital Improvements

The BID worked on new designs for streetscape items including planters, litter receptacles, tree pits, and illuminated street signs. These items had been manufactured and installed throughout the BID district:

- Planters – new, less-expensive planters replaced concrete planters
- Litter receptacles – new custom designed litter receptacles
- Tree pits – new breakaway laser-cut pit fences
- Illuminated street name signs – larger and more visible street signs

In addition, the BID installed rooftop floodlights on 32nd and 33rd streets to provide additional sidewalk and facade lighting on major pedestrian thoroughfares to and from Penn Station. In Fiscal Year 2003, the BID spent \$2,506,226—28 percent of its total expenditures—on capital improvements.

Seventy-three percent of the BID survey respondents (215 of 293) rated their satisfaction with the streetscape improvements as either excellent or very good. In addition, 83 percent (214 of 257) responded that the streetscape appearance of the district had significantly improved. On our observations in the district, we saw many new 34th Street Partnership planters, trash cans, grates around tree pits, and traffic signs.

Sanitation Services

The 34th Street BID supplemented City sanitation services with 63 sanitation workers and three supervisors. The sanitation workers are scheduled to clean the district Monday through Friday 24 hours a day and on Saturday and Sundays from 9:00 a.m. to 7:00 p.m. In Fiscal Year 2003, the BID spent \$2,022,919—22 percent of its total expenditure—to provide sanitation services.

The duties of the sanitation personnel included sweeping sidewalks and gutters, bagging litter, and emptying trash receptacles. The BID also worked closely with the New York City Department of Sanitation for special cleanup operations, such as for parades and outdoor events staged by Macy's.

BID efforts to improve cleanliness in the district through supplemental street sweeping and litter pick-up operations have had a positive effect on the area, according to Project Scorecard. For the quarter ending March 2003, 93 percent of the district's streets and 100 percent of its sidewalks were rated "acceptably clean." Our review of the district's scorecard for each quarter since January 1999 found that overall the ratings have been positive, ranging from a low in the third quarter of Fiscal Year 2000 of 70 percent of the district's streets and 87 percent of its sidewalk's to its current high levels, while fluctuating from quarter to quarter.

Seventy-seven percent of the BID survey respondents (233 of 304) rated their satisfaction with the sanitation services as either excellent or very good. In addition, 91 percent (252 of 278) responded that the cleanliness of the district had significantly improved. Furthermore, on our unannounced spot checks, we observed sanitation personnel working throughout the district and found that the streets and sidewalks appeared clean.

Security Services

The 34th Street BID supplemented City police service with 34 security officers and seven security supervisors. The security officers operated on two tours of duty, which allowed for security coverage of the district from 8:00 a.m. to 11:00 p.m. The security officers address public safety and quality of life issues that affect the character of the neighborhood, such as illegal peddling and aggressive panhandling as well as give directions and information to tourists and shoppers. In Fiscal Year 2003, the 34th Street BID spent \$1,633,761—18 percent of its total expenditures—to provide security services.

According to the BID's Fiscal Year 2003 Annual Report, crime was down over the last 10 years: robbery by 83 percent, assaults by 55 percent, burglary by 72 percent, and grand larceny by 67 percent. Crime statistics from the Midtown South Precinct (through June 8, 2003) confirm that crimes in the area were down. According to the BID member survey, 214 (81%) of 263 respondents said they believed that the security of the district had significantly improved and, 228 (98%) of 231 considered this very important to the overall improvement of the district. During our observations, we saw a number of security personnel out in the district, especially around Penn Station, the taxi stands, Greeley and Herald Squares, and 6th Avenue.

Horticulture

The BID reported that it managed 847 sites for trees and flowers, including 572 planters, 156 elevated baskets, and 119 tree pits. The planters and elevated baskets were decorated for the holidays and winter months with a combination of pine garland, ribbon, and junipers. In the spring, tulips, hyacinths, and daffodils were planted in the tree pits and sidewalk planters; in May, annual flowering plants were introduced and maintained in all sites. In Fiscal Year 2003, the BID spent \$633,537—seven percent of its total expenditures—on horticulture.

During our observations of the district, we noticed that there were many planters with flowers. In addition, one night we observed that Greeley Park was closed and that there was a truck and workers watering and fertilizing the trees.

Parks Operations, Retail Improvements, Taxi Stands, and Visitor Services

In Fiscal Year 2003, the BID spent another \$1 million—11 percent of its total expenditures—to provide the following services to the district: parks operations (\$328,252), retail improvements (\$263,086), taxi stands (\$235,574), and visitor services (\$188,769).

The BID managed Greeley and Herald Square Parks under a 1997 agreement with the New York City Department of Parks. Services provided in the parks include sanitation, security, seasonal plantings, holiday lighting, automatic toilets, parks concessions and public events. The BID provided free design services to retail stores in the district and reached out to existing and new district merchants to upgrade storefronts, signs and building facades, and actively promoted retail opportunities in the district. The BID managed four taxi stands that operate seven days a week: three adjacent to Penn Station and one at the front door of Macy's.⁶ The BID has a visitor services department that operates from 9:00 a.m. to 4:30 p.m. at Penn Station and the Empire State building, where a multilingual staff assist visitors with information about City landmarks and attractions.

The BID Complied with DSBS Contract, Except in Two Important Areas

The BID provided the supplemental services, such as capital improvements, sanitation, security, horticulture, and other services, detailed in its contract with DSBS, as described previously. The BID also maintained accurate records, submitted annual reports to DSBS, and had its annual financial statements certified by an independent accountant. However, the BID did not comply with the DSBS contract in two important areas: subcontracting services and establishing short-term credit.

Noncompliance: Subcontracting Services

The BID did not follow the DSBS contract nor its own written procurement procedures in the subcontracting of services, including executing written contracts, getting bids from at least three bidders or obtaining sole-source approvals, and conducting VENDEX investigations.⁷ The DSBS contract and the BID's procurement procedures each require specific action at precise spending levels, as detailed in the Appendix.

We calculated that in Fiscal Year 2003, the BID paid more than \$20,000 to each of 37 vendors for a total of \$3.3 million, according to the BID's Accounts Payable Document History report. We tested controls over subcontracting services for 10 of the 37 vendors, representing 29 percent of the value of goods and services purchased, as summarized in Table I on the following page.

⁶ This stand is operated through sponsorship provided by Macy's.

⁷ A VENDEX investigation is required if the BID awards a subcontract of \$100,000 or more, or if, when aggregated with all other subcontracts awarded to the same vendor during the preceding 12-month period, spending adds up to \$100,000 or more.

Specifically, the BID could not provide written contracts for eight (80%) of the vendors. In addition, the BID gave us no bidding documents or “sole source letters” from DSBS for seven (70 %) of the vendors. Lastly, at least four vendors had purchase orders valued at more than \$100,000 or had received more than \$100,000 in payments during Fiscal Year 2003, yet no VENDEX investigations had been conducted.

Table I
Subcontracting Services: Summary of Sample Vendors
(Fiscal Year 2003)

| Description of Goods and Services Provided by 10 Sample Vendors | Total Dollars Paid | Missing Actions Required for Subcontracting Services |
|---|--------------------|---|
| Retail consultant | \$ 47,141 | No contract, no bidding or sole-source approval |
| Newsbox maintenance | \$ 34,737 | No contract, no bidding or sole-source approval |
| Information kiosks | \$ 52,140 | No VENDEX investigation* |
| Graphic and Web site design | \$ 37,109 | No contract, no bidding or sole-source approval |
| Tree pit fences | \$ 122,879 | No contract, No VENDEX investigation |
| Insurance | \$ 363,548 | No VENDEX investigation |
| Events consultant | \$ 28,798 | No contract, no bidding or sole-source approval |
| Electrical engineer | \$ 31,576 | No contract, no bidding or sole-source approval |
| Light poles | \$ 66,350 | No contract, no bidding or sole-source approval |
| Streetscape Maintenance and Tree pit fence installation | \$ 203,127 | No contract, no bidding or sole-source approval **, No VENDEX investigation |

Total \$ 987,405

* The payment was part of a purchase order valued at \$195,000, so a VENDEX investigation was required.

** Except for the Tree pit fence installation project (\$94,600 paid in Fiscal Year 2003), there was no bidding or sole-source approvals for the remaining \$108,527 paid to this vendor for ongoing streetscape maintenance.

For example, the Events consultant in the table above, who works in the headquarters office, was paid a set fee every two weeks of \$1,500 by the 34th Street BID and \$1,500 by the Bryant Park BID. The 34th Street BID had no written contract or agreement with the consultant. In addition, we could not determine whether the BID paid for work actually performed because the consultant submitted invoices that gave no details of hours worked or services provided.

We conclude that the BID did not comply with the DSBS contract or its own procurement policies because written contracts were not executed; bidding did not occur and in the absence, sole-source approvals were not requested from DSBS; and VENDEX investigations were not completed. Without written contracts and agreements, the BID was unable to ensure that required DSBS provisions were enforced, such as requiring vendors to provide payment and performance bonds and maintaining comprehensive liability insurance. Without bidding, the BID may not have gotten the best prices or terms for goods and services purchased. By using sole-source vendors, the BID may have excluded eligible vendors from consideration.

In addition, since the BID did not track total spending by vendor, management was not aware when a VENDEX investigation was required. By not performing VENDEX investigations, the BID might have done business with, and paid, vendors not qualified by the City.

Recommendations

The 34th Street BID should:

1. Ensure that it complies with the DSBS contract and enforce its procurement policies.
2. Enter written contracts for all purchases of goods and services, including consultants, amounting to \$20,000 or more.
3. Ensure that either three bids are solicited or a “sole source letter” is obtained from DSBS, when required.
4. Create a management report to track total dollars paid to each vendor and ensure that VENDEX investigations are performed when required (when payments exceed \$100,000).
5. Require subcontractors and consultants to include services provided and hours worked when submitting invoices to the BID.

BID Response: The BID did not specifically address the recommendations in its response, but generally agreed stating: “The BID has taken immediate action to close the gaps in compliance with its procurement procedures for subcontracting services. Compliance with those procedures will ensure compliance with its DSBS contract.”

Noncompliance: Establishing Short-Term Credit

A Director of the 34th Street BID advised the auditors that the BID had a line of credit, though we had found no mention of it in our review of the Fiscal Year 2002 financial statements or in the minutes of Board or committee meetings. Upon request, BID officials provided us documents pertaining to a \$500,000 line of credit with Atlantic Bank of New York.

The BID is required to obtain written approval from the Commissioner of DSBS and the BID’s Board of Directors prior to incurring any indebtedness. The BID’s own bylaws assert that “no loan shall be contracted on behalf of the Corporation and no negotiable paper shall be issued on its behalf unless authorized by the vote of the Board.”

We spoke with the Controller and the President regarding this line of credit. According to the Controller, the line of credit was never discussed or approved by the Board of Directors (at any Board or committee meeting) before it was established in February 2002, nor when it was renewed in February 2003. He stated that the line of credit had never been used.

In addition, we spoke with the BID’s auditors, who were unaware that the line of credit existed until we brought it to their attention. They advised us that the line of credit should be disclosed in the financial statement footnotes, even if the BID did not utilize it.

In conclusion, we are concerned by the 34th Street BID's lack of full disclosure and the absence of a documented vote by the Board approving the line of credit. Currently unused, the full amount of the line of credit is still available for borrowing, so that the BID would be liable if or when any moneys are drawn.

Recommendations

The 34th Street BID should:

6. Report this line of credit in the BID's Fiscal Year 2003 financial statements.
7. Ensure that management complies with its contract with DSBS and its bylaws by obtaining written approval from the Commissioner of DSBS and its Board of Directors prior to incurring any indebtedness.

BID Response: The BID did not specifically address the recommendations in its response, but generally agreed stating: "Although the establishment of a line of credit in February 2002 created a vehicle for incurring indebtedness, that line has never been drawn on. Nevertheless, the BID, as a result of this finding, has requested written approval of its \$500,000 line of credit from the Commissioner of DSBS. Furthermore, at a meeting of the BID's Board of Directors, held on December 1, 2003, management requested and received ratification of the establishment of its \$500,000 line of credit. Finally, the line of credit will be disclosed in the June 30, 2003 financial statements of the BID."

The BID Had Adequate Internal Controls Over Its Funds and Operations, With Exceptions

Our audit evaluated the adequacy and effectiveness of the BID's internal controls and accountability over the expenditures of its funds. The objectives of an internal control system are to provide reasonable, but not absolute, assurance to management that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management authorization and are properly recorded.

The transactions that we reviewed appeared to be ordinary and reasonable. The BID maintained adequate accountability over its receipts and disbursements, had an adequate segregation of duties, and properly recorded and authorized transactions. However, we found weaknesses in the BID's internal control system concerning the allocation process between BIDs and timekeeping.

Inadequate Documentation of the Allocation Process Between BIDs

The 34th Street BID currently shares its President, Controller, management and administrative staff, sanitation and security supervisors, outside consultants, and office facilities with the Bryant Park BID. Except for the President, who has contracts with both BIDs that set compensation, payroll expenses for each shared employee are allocated based upon estimates of how much time each person spends working for each BID. The President and Controller finalize

salary allocations between BIDs for the shared employees. The allocations are entered into the accounting system shared by the BIDs. Forty-four employees then receive two paychecks each week reflecting the allocations, one from the 34th Street BID and one from the Bryant Park BID.

The 34th Street BID provided us with documents that showed how the salary of each employee working for the 34th Street BID was allocated across departments within the BID for Fiscal Year 2003. The President and Controller assured us that the Board of Directors annually approved the salaries and allocations presented in this analysis. However, the analysis did not document how shared employees were allocated between the 34th Street and Bryant Park BIDs. For instance, when the Board of Directors approves a salary for a shared employee, they know how much of the employee's time is allocated to different departments within the BID, but they do not know how much of the employee's time is allocated to the other BID.

It is important to know how salary allocations between BIDs are determined because these salary allocations are also used to determine the allocation for shared office expenses. In Fiscal Year 2003, the shared office expense allocation was 68 percent for the 34th Street BID and 32 percent for the Bryant Park BID. This allocation was used to split shared office expenses when actual use of the goods or services could not be determined, according to the Controller. For example, the 34th Street BID paid the landlord's monthly rent invoice for its shared headquarter office and the following month, the Bryant Park BID included reimbursement for 32 percent of the rent expense in its monthly reimbursement check.

While the BID gave us a listing of the salary allocations for its shared employees within the BID, we could not evaluate if the allocations of salaries and shared expenses between BIDs are correct because the BID maintains no written justification for the allocations between the BIDs. For example, one BID paid approximately \$14,000 more to a manager when his salary allocation between the BIDs was changed from 75 percent/25 percent to 65 percent/35 percent without any written documentation. In addition, due to inadequate time keeping procedures discussed in the next section, there is currently no way to corroborate that the estimates of time spent working in each BID are accurate.

Recommendation

8. Management should annually advise the Board of Directors of each BID (34th Street and Bryant Park) how the services of each shared employee is allocated between the BIDs and it should maintain written justification for these allocations.

BID Response: The BID did not specifically address the recommendations in its response, but generally agreed stating: "In response to this audit finding, management will better document the rationale used in allocating the salary of each shared employee between the BIDs. As recommended in the audit report, each shared employee's areas of responsibility and their contributions to each BID will be documented."

Inadequate Timekeeping

The BID did not maintain adequate time records for the 23 managers and administrative staff in their headquarters office at 500 Fifth Avenue. These employees did not fill out timesheets; rather, the receptionist keeps a daily record of who is in the office each day. However, the BID does not keep track of the amount of annual and sick leave these employees are entitled to or use.

The Employee Handbook for the 34th Street BID states, “Each department will maintain records of attendance and punctuality for all its employees.” The DSBS contract requires that the BID, “keep . . . up-to-date books and records . . . in accordance with any standards issued by the Comptroller of the City.” Comptroller’s Directive #13 states, “Timekeeping is an important internal control structure for the payroll process. A fundamental timekeeping principle is that attendance, absence and tardiness be recorded promptly on a daily basis.”

When we brought the lack of leave-balance-tracking to the attention of the BID’s President, he stated that he kept track informally, and if an employee took too much leave, he spoke with the employee directly. However, since the President is not always in the office, and since there were no written records, abuse of this system is possible.

In addition, the salaries of these employees were allocated between the 34th Street and the Bryant Park BIDs. While the total sum budgeted by each BID is approved by its respective board, the allocation percentage between BIDs is not. According to the 34th Street BID’s written procurement policies, “Annual rate employees 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.” These estimates are arrived at through discussion and verbal agreement and are not based on reports, timekeeping records, or other documentation of staff time and activity. Since there is no timekeeping documentation or project lists to corroborate the time these employees actually spent working for each BID, we were unable to determine whether the estimated allocations of time and salary reflected actual time spent. Therefore, one BID may be paying more than its share of the salaries and expenses.

Recommendations

The 34th Street BID should:

9. Maintain written records of leave balances for management and administrative staff.
10. Document shared employee contributions to each BID.

BID Response: The BID did not specifically address the recommendations in its response, but generally agreed stating: “As noted in the audit report, daily attendance of employees in the BID’s administrative office is recorded by the receptionist. In response to this audit finding, the BID will reconcile absences recorded in the receptionist’s attendance log to its policy manual, and document any actions taken by management.”

Actions Required by 34th Street BID for Purchasing Goods and Services

| Spending Levels* | DSBS Contract | BID Procurement Policies |
|--|--|---|
| All Levels | Written Contract or Agreement | Purchase Orders (POs) that record price, quantity, and terms are required for all purchases regardless of amount. |
| Less than \$1,000 (except petty cash) | As above | As above, plus - Written approvals on PO from Manager and Controller |
| More than \$1,000 but Less than \$10,000 | As above | As above, plus - Obtain <u>three</u> bids or quotations - Written justification (if not lowest) - Approvals from President or Treasurer before goods or services are ordered. |
| More than \$10,000 but Less than \$20,000 | As above | As above, plus - “Formally” obtain 3 bids or quotations - Approval: Board of Directors or committee |
| More than \$20,000 but Less than \$100,000 | As above, plus - At least 3 competitive bids or “sole source letter” from DSBS - Maximize bidding from minorities and women - Comply with insurance requirements - Approval: Board of Directors or committee | Same as \$10,000 - \$20,000 level, above |
| More than \$100,000 | As above, plus - VENDEX investigation | As above, plus - VENDEX investigation - Before PO may be issued, a written contract reviewed by General Counsel and signed by Chairman or President |

* Spending levels are defined by the BID as spending per purchase order, except for the VENDEX investigation requirement for which spending levels are defined in the DSBS contract as \$100,000 or more, or if, when aggregated with all other subcontracts awarded to the same vendor during the preceding 12-month period, spending adds up to \$100,000 or more.



34th Street Partnership

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Chairman

Daniel A. Biederman
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MAX Capital Management Corp.

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Christine Quinn

Walter Mankoff

Timothy McGinn

Kyle Merker

February 10, 2004

Ms. Vera Lavin
Audit Manager
Office of the Comptroller
1 Centre Street, Room 1100 North
New York, NY 10007-2341

Re: Management response to Audit Report on the Financial
and Operating Practices of the 34th Street Business
Improvement District

Dear Ms. Lavin:

Please find attached, the response of the management of 34th Street
Partnership, Inc. (34th Street BID) to the audit report dated January 27,
2004. These responses relate to the audit findings and recommendations
on pages 10 through 15 of the draft report.

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

Very truly yours,

Peter Ciriello, CPA
Controller & CFO

attachment

**Management Response to the findings and recommendations of the
Audit Report on the Financial and Operating Practices of the
34th Street Business Improvement District**

The BID Complied with DSBS Contract, Except in Two Important Areas:

Noncompliance: Subcontracting Services:

The BID has taken immediate action to close the gaps in compliance with its procurement procedures for subcontracting services. Compliance with those procedures will ensure compliance with its DSBS contract.

The actions required for purchasing goods and services, as summarized in the appendix of the audit report, have been distributed to, and discussed with, all individuals authorized to commit BID funds. The BID has developed a checklist to be used when purchase orders are prepared and approved. Written contracts and bid documents or sole source approval, when required for purchases of goods and services, will be reviewed prior to the approval of purchase orders. Finally, the BID will track funds paid and/or committed to every vendor and ensure that VENDEX investigations are timely submitted, when required.

Noncompliance: Establishing Short-Term Credit

Although the establishment of a line of credit in February 2002 created a vehicle for incurring indebtedness, that line has never been drawn on. Nevertheless, the BID, as a result of this finding, has requested written approval of its \$500,000 line of credit from the Commissioner of DSBS. Furthermore, at a meeting of the BID's Board of Directors, held on December 1, 2003, management requested and received ratification of the establishment of its \$500,000 line of credit. Finally, the line of credit will be disclosed in the June 30, 2003 financial statements of the BID.

The BID Had Adequate Internal Controls Over Its Funds and Operations, With Exceptions:

Inadequate Documentation of the Allocation Process Between BIDs (34th Street and Bryant Park):

The allocation of the salaries of shared employees and of shared expenses is determined annually as part of the budget process. Allocations are determined through interviews of the employees, as well as observations of employee activity by the senior staff.

The Boards of Directors of the 34th Street BID and the Bryant Park BID each approve a budget for their respective entities. The amount of salary to be paid to each shared employee, as well as the amount to be paid for shared expenses, such as office rent, is clearly documented in each entity's budget.

However, in response to this audit finding, management will better document the rationale used in allocating the salary of each shared employee between the BIDs. As recommended in the audit report, each shared employee's areas of responsibility and their contributions to each BID will be documented.

Inadequate Timekeeping:

The 34th Street BID is a \$9 million privately funded and managed entity, and would rather not install the formal timekeeping rules of the City of New York, a \$45 billion public entity. The salaried employees of the BID include members of its senior management and the departmental directors or supervisors who report directly to them. Senior management meets regularly to discuss the performance of the staff, including attendance issues. The BID, because of the close supervision of senior management, is assured that there have been no abuses of its vacation policy.

As noted in the audit report, daily attendance of employees in the BID's administrative office is recorded by the receptionist. In response to this audit finding, the BID will reconcile absences recorded in the receptionist's attendance log to its policy manual, and document any actions taken by management.