

AUDIT REPORT

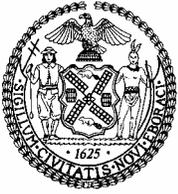


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Brooklyn Navy Yard Development Corporation's Leasing and Rent Collection Practices

FM05-114A

December 4, 2006



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 responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has audited the adequacy of the Brooklyn Navy Yard Development Corporation's leasing and rent-collection practices.

The Brooklyn Navy Yard Development Corporation (Corporation) generates most of its operating revenue from leasing portions of the Navy Yard to commercial and industrial businesses. Under its lease agreement with the City, the Corporation is required to pay the City an annual base rent. We audit private concerns such as this to ensure that they comply with the terms of their City agreements, properly report revenues and expenditures, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with Corporation and Department of Small Business Services officials, and their comments have been considered in preparing this report. The complete written response is attached to this report.

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 212-669-3747.

Very truly yours,

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

William C. Thompson, Jr.
WCT/fh

Report: FM05-114A
Filed: December 4, 2006

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

**Audit Report on the Brooklyn Navy Yard
Development Corporation's
Leasing and Rent Collection Practices**

FM05-114A

AUDIT REPORT IN BRIEF

This audit determined whether the Brooklyn Navy Yard Development Corporation (Corporation) had adequate leasing and rent-collection practices.

The City of New York purchased the Brooklyn Navy Yard (Navy Yard) from the federal government in 1970 to create a modern industrial complex that could increase employment opportunities and provide job training for residents of the surrounding communities. The City subsequently leased the property to the Commerce and Labor Industry Council of Kings County (CLICK), which was to develop the Navy Yard. Until its dissolution in 1981, CLICK operated and managed the Navy Yard. After CLICK's dissolution, the Corporation assumed the lease.

Under the lease agreement, the Corporation is required to pay the City an annual base rent equal to its net operating income. The Corporation generates most of its operating revenue from leasing portions of the Navy Yard to commercial and industrial businesses. However, under a separate contract agreement dated January 9, 2003, the Corporation is not required to pay Fiscal Year 2004 base rent if it deposits net operating income for Fiscal Years 2002 and 2003 in a reserve fund and uses the reserves for capital improvements.

In Fiscal Year 2004, the Corporation generated approximately \$18 million in operating revenue and received approximately \$15 million for capital improvements from the City. The City's Department of Small Business Services (DSBS) is responsible for overseeing the Corporation's activities.

Audit Findings and Conclusions

In general, the Corporation has adequate rent-collection controls to ensure that all billings were collected or appropriately pursued. However, our review disclosed serious weaknesses in the way that the Corporation issues and renews leases and maintains records. Specifically, the Corporation has no written policies or procedures on leasing, no master list of Navy Yard properties, no list of occupied properties, and no list of spaces available for rent. Although the

Corporation maintained some underlying documentation, such as, leases, applications, memorandums of understanding to support occupancy terms, most of the documentation was incomplete, inaccurate, or obsolete. Consequently, because the Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income, we believe that the Corporation's stewardship over its leasing activities of the Navy Yard is seriously flawed.

We also found that the Corporation failed to impose required late fees for 17 of 71 tenants; does not segregate accounting duties; and cannot effectively monitor leasing activities because its computer databases, maintained in Maconomy and FileMaker Pro, are not effective. Finally, the Corporation did not calculate its net operating income in accordance with the lease agreement, nor did it deposit net operating income for Fiscal Years 2002 and 2003 in a reserve fund for capital improvements. Therefore, the Corporation owes the City \$2,208,351 in annual base rent for Fiscal Year 2004.

Audit Recommendations

The audit recommended that the Corporation should:

- Prepare and adopt formal written policies and procedures for an effective leasing system that will generate the rental income required by the agreement. An effective leasing system would include:
 - submitting appropriate tenant information to DSBS to perform background investigations.
 - maintaining lease applications and current leases in Corporation files.
 - renewing leases prior to their expiration.
 - requiring that the Corporation's Internal Leasing Committee review all lease applications and that the Board of Directors approve all leases.
 - requiring that the Corporation's Board of Directors approve revisions to major lease terms (e.g., change of location, term, and rent amount).
 - maintaining a central database of occupied and available properties.
- Immediately commence the lease preparation, review, and execution process for all tenants who do not hold leases.
- Impose late fees as required for all tenants whose balance is greater than \$1,000 and who do not pay rent on time.
- Ensure that accounting functions are properly segregated.

- Determine the feasibility of either upgrading its current systems or seek to acquire a new system that will interface and reconcile its leasing and financial activities. Once the Corporation makes its decision, it should ensure that all required information regarding tenant leases are inputted accurately into its electronic system.
- Submit an annual report to the City detailing a separate calculation of net operating income as prescribed by the lease agreement.
- Either remit \$2,208,351 to the City for Fiscal Year 2004 annual base rent, or establish a reserve fund account for capital improvements and deposit an amount equal to the net operating income for Fiscal Years 2002 and 2003.

DSBS should:

- Require the Corporation to submit information about prospective tenants so that background checks can be performed.
- Ensure that the Corporation complies with the recommendations in this report.

Discussion of Audit Results

Corporation officials generally agreed with certain aspects of our findings and recommendations; however, they did not agree with the audit's conclusion that the Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income. DSBS officials sent an e-mail stating that they "will not be responding to the comptroller's audit of the Brooklyn Navy Yard Development Corporation."

The full text of the Corporation's comments is included as an addendum to this report.

INTRODUCTION

Background

The City of New York purchased the Brooklyn Navy Yard (Navy Yard) from the federal government in 1970 to create a modern industrial complex that could increase employment opportunities and provide job training for residents of the surrounding communities. The City subsequently leased the property to the Commerce and Labor Industry Council of Kings County (CLICK), which was to develop the Navy Yard. Until its dissolution in 1981, CLICK operated and managed the Navy Yard. After CLICK's dissolution, the Brooklyn Navy Yard Development Corporation (Corporation), a not-for-profit local development corporation, assumed the lease, which will expire in June 2069.¹

Under the lease agreement, as amended June 6, 1996, the Corporation is required to pay the City an annual base rent equal to its net operating income. The Corporation generates most of its operating revenue from leasing portions of the Navy Yard to commercial and industrial businesses. However, under a separate contract agreement dated January 9, 2003, the Corporation is not required to pay Fiscal Year 2004 base rent if it deposits net operating income for Fiscal Years 2002 and 2003 in a reserve fund and uses the reserves for capital improvements. The Corporation, however, has not established a reserve fund. Capital improvements are also underwritten with City funds.

In Fiscal Year 2004, the Corporation generated approximately \$18 million in operating revenue and received approximately \$15 million for capital improvements from the City. The City's Department of Small Business Services (DSBS) is responsible for overseeing the Corporation's activities.

Objective

The objective of this audit was to determine whether the Corporation had adequate leasing and rent-collection practices.

Scope and Methodology

The scope of the audit was Fiscal Year 2004 (July 1, 2003–June 30, 2004). To achieve our audit objective, we reviewed and abstracted the lease agreement as amended on June 6, 1996 and the contract agreement of January 9, 2003; and interviewed DSBS officials to understand their roles in monitoring compliance with the terms of the agreements.

¹ The Corporation has up to 33 members consisting of: (i) up to 29 members appointed by the Mayor of the City of New York (three of which are nominated by the Council Members representing the three City Council Districts surrounding the Brooklyn Navy Yard and one nominated by the Brooklyn Borough President), and (ii) four other individuals who were members on July 1, 1992, as "Founding Members."

To obtain an understanding of the Corporation's operations and internal controls over its leasing and rent collection practices, we:

- interviewed the Chief Financial Officer, Controller, Vice President of Leasing, and Senior Vice President of Technology;
- reviewed the Corporation's accounting procedures, and conducted a walk-through of its leasing and rent collection operation;
- observed the processing of transactions through the Corporation's billing and accounting system (Maconomy) and its database system (FileMaker Pro) used by the Leasing Department to monitor tenant lease information; and
- documented our understanding of the operations through written narratives and flow charts.

To ensure that the Corporation properly reported its revenues and expenses, we traced the amount of each revenue and expense account from the general ledger to the certified financial statements and also reviewed the Allowance for Bad Debt account to determine whether the estimated bad debt expense was reasonable, and that the amount of the write-off was supported by documentation.

In addition, February 2004, the month with the highest rental income (including utility and other charges) totaling \$1.58 million, was selected for audit testing. The rent roll and billing invoices for February were examined to ensure that each invoice was consecutively numbered and accounted for. Any miscellaneous charges (i.e., utilities, water and sewer costs, insurance premiums, and parking fees) that were added to an invoice were compared with the supporting documentation for accuracy. The invoiced amounts were traced to the general ledger to determine whether all revenue was properly recorded; and the check log was traced to the deposit slips and bank statements to determine whether all rent payments were deposited.

To determine whether the Corporation properly applied late charges, we calculated late charges in accordance with the Corporation's policy and compared the late charge amount to the tenant's March 2004 billing invoice.

To evaluate the Corporation's leasing practices, we attempted to review all lease records for the 270 occupied properties leased during Fiscal Year 2004.² However, the Corporation did not have valid leases for 29 of the 96 leased properties for which we initially requested leasing records. (Eight properties lacked leases altogether, and leases for 21 properties had expired.) Based on the high exception rate and unavailability of records, we determined that the Corporation had insufficient controls over its leasing operation. Therefore, we discontinued our review of the remaining 174 records and concentrated our review on the records for the 96 leased properties. For the 96 properties, we traced the rent amounts billed during Fiscal Year 2004 to

² Based on the rent rolls and lease agreements for Fiscal Year 2004, we determined that 270 properties were leased. Our review was limited to those leasing records for suites, buildings, piers, and dry docks. We excluded 20 leasing records associated with secondary space (i.e., outdoor storage and reserved parking).

the lease agreements or leasing department memos to determine whether the Corporation billed its tenants for the correct rent amounts.

We also reviewed 33 new tenant application packages processed during Fiscal Year 2004 to determine whether the Corporation processed new tenant applications in accordance with Corporation procedures. Each application was examined to ascertain whether tenants completed applications properly, whether the Corporation conducted background checks on applicants, and whether lease applications were reviewed by the Corporation's Internal Leasing Committee, and whether leases were approved by the Board of Directors. To determine whether the properties were leased at reasonable rates, the per-square-foot amounts were compared to those in other new tenant leases.

To obtain reasonable assurance that all tenants were being billed, we visited a judgmental sample of 29 of the Navy Yard's physical assets; the sample included 18 buildings, 5 piers, and 6 dry docks. We interviewed the tenants, obtained their companies' names, and the length of their tenancy. We then determined whether the Corporation maintained valid leases on file and billed each tenant, and also analyzed the data in Maconomy and FileMaker Pro for any unusual tenancies.

The results of these audit tests were not projected to all tenant leases; nevertheless, in conjunction with the Scope Limitation noted below, they provided a reasonable basis for our conclusions regarding the Corporation's leasing and rent collection practices.

This 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.

Scope Limitation

To conduct this audit, we requested specific data and detailed documentation to determine whether the Corporation's commercial and industrial leasing practices are effective in generating rental income, a portion of which is used to fund capital improvements at the Navy Yard. These requests included, but were not limited to, written policies and procedures pertaining to leasing, a master list of Navy Yard properties, a list of occupied properties, a list of spaces available for rent, the underlying documentation (i.e., leases, applications, memorandums of understanding) to support occupancy terms, and documentation to support the total amount of rental income in the Corporation's general ledger for Fiscal Year 2004.

As stated previously, the Corporation provided incomplete records of leases and new tenant applications. The Corporation had no have valid leases for 29 of the 96 (30 percent) leased properties for which we initially requested leasing records. (Eight properties lacked leases altogether, and 21 properties had expired leases.) Similarly, 13 of the 33 (39 percent) new tenant applications contained deficiencies. The incompleteness of the records that were provided

indicates that the Corporation does not maintain accurate leasing records. Such a lack of records violates §8.1 of the contract between the City and the Corporation, which states, in part:

“The Corporation shall *maintain complete and accurate records on all its activities* under this Contract. . . . The Corporation shall maintain all records relating to this contract for a period ending upon the later of (i) six (6) years from the termination of this Contract, or (ii) the resolution of any dispute to which such records may pertain.” [Emphasis added.]

Our review of the records made available and Corporation’s leasing practices disclosed significant weakness in the issuance and renewal of leases and in record maintenance. As a result, the Corporation has inadequate controls to ensure that it obtains the most reliable and remunerative tenant possible for each available space. A focus on such tenants should be a key objective since lease income directly affects the Corporation’s capacity to make capital improvements and develop the Navy Yard. However, because of the significant weaknesses revealed, we believe that the Corporation’s stewardship over its leasing activities of the Navy Yard is seriously flawed.

Discussion of Audit Results

The matters covered in this report were discussed with Corporation and DSBS officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference held on June 1, 2006. On June 23, 2006, we submitted a draft report to Corporation and DSBS officials with a request for comments. On July 17, 2006, we received a written response from Corporation officials; on July 25, 2006, DSBS officials sent an e-mail stating that they “will not be responding to the comptroller’s audit of the Brooklyn Navy Yard Development Corporation.”

In their response, Corporation officials generally agreed with certain aspects of our findings and recommendations; however, they did not agree with the audit’s conclusion that the Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income. Corporation officials stated, “BNYDC [Brooklyn Navy Yard Development Corporation] appreciates and will implement a number of the Comptroller’s recommendations regarding the BNYDC’s leasing process and record keeping. However, the Audit ignores the fact that BNYDC is an extraordinarily positive economic development success story for the City of New York, while a number of the recommendations reflect a fundamental lack of understanding of our business.”

The Corporation response further stated,

“BNYDC’s stewardship over its leasing activities has been remarkably successful. **In the last five years, BNYDC has increased rent revenue from \$10.06 million to \$16.66 million, or 66%. In that same period, net operating income before depreciation and amortization increased from \$673,000 to \$5.05 million or**

650%. These figures resounding demonstrate the effectiveness of BNYDC's leasing activities. [Emphasis in original.]

“This success has put the Corporation in the position to add over 400,000 square feet of new industrial space in the next three years playing a critical role in the City's ability to attract and retain manufacturing jobs.”

The Corporation's response attempts to cloud the serious issues raised in the report by asserting that its stewardship over leasing activities has been successful simply because rental income increased. Significantly, the response does not address the most important conclusion of this audit report, namely, that the Corporation does not have an adequate leasing system in place to determine whether the Corporation's commercial and industrial leasing practices are effective in generating rental income, a portion of which is used to fund capital improvements at the Navy Yard. The Corporation obviously cannot disagree that if it had had such controls in place, it could have increased income even more. A focus on the quality of tenants should be a key Corporation objective since lease income directly affects the Corporation's capacity to make capital improvements and develop the Navy Yard. Because of the significant weaknesses revealed by the audit, we believe that the Corporation's management of the leasing activities at the Navy Yard is inadequate.

Since DSBS did not provide a response to the audit's findings and recommendations, we are concerned that the issues raised in this report will not be addressed. DSBS's failure to provide a response points to a serious deficiency in its oversight of the Corporation's activities and contradicts its responsibilities as stated in the City's agreement with the Corporation. We believe that it is incumbent upon DSBS to ensure that all issues discussed in this audit are addressed and not left solely to the discretion of the Corporation.

The full text of the Corporation's comments is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The Corporation has adequate rent-collection controls to ensure that all billings were collected or appropriately pursued, notwithstanding certain problems discussed below. However, our review disclosed serious weaknesses in the way that the Corporation issues and renews leases, and maintains records. Specifically, the Corporation has no written policies or procedures on leasing, no master list of Navy Yard properties, no list of occupied properties, and no list of spaces available for rent. Although the Corporation maintained some underlying documentation, such as, leases, applications, memorandums of understanding to support occupancy terms, most of the documentation was incomplete, inaccurate, or obsolete. Consequently, because the Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income required by its lease agreement with the City, we believe that the Corporation's stewardship over its leasing activities of the Navy Yard is seriously flawed.

We also found that the Corporation failed to impose required late fees for 17 of 71 tenants; does not segregate accounting duties; and cannot effectively monitor leasing activities because its computer databases are not effective.

Finally, the Corporation did not calculate its net operating income in accordance with the lease agreement, nor did it deposit net operating income for Fiscal Years 2002 and 2003 in a reserve fund for capital improvements. Therefore, the Corporation owes the City \$2,208,351 in annual base rent for Fiscal Year 2004, as required by the agreement.

These issues are discussed in greater detail in the following sections of this report.

Inadequate Leasing Practices

The Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income as required by the agreement. Specifically, the Corporation has no written policies or procedures on leasing, no master list of Navy Yard properties, no list of occupied properties, and no list of spaces available for rent. Although the Corporation maintained some underlying documentation (i.e., leases, applications, memorandums of understanding) to support occupancy terms, most of the documentation was incomplete, inaccurate, or obsolete. As a result, the Corporation has inadequate controls over its leasing operations and cannot ensure that it obtains the most reliable and remunerative tenant possible for each available space.

The City's agreement with the Corporation requires that it use income to fund operations and capital improvements at the Navy Yard. An adequate leasing process would include:

- Written policies and procedures.
- Requiring new tenants to complete lease applications.

- Conducting background checks of prospective tenants.
- Maintaining current leases in Corporation files.
- Renewing leases prior to their expiration.
- Requiring that the Corporation's Internal Leasing Committee review all lease applications and that the Board of Directors approve all leases.
- Requiring that the Corporation's Board of Directors approve revisions to major lease terms (e.g., change of site, term, and rent amount).
- Maintaining a central database of occupied and available properties.

However, interviews with Corporation officials and a review of records indicates that the Corporation takes none of these steps to ensure that leases are effective in generating operating revenue. Specifically, files for 29 (30 percent) of 96 leased properties did not contain a current lease— 8 files lacked leases and 21 files contained expired leases.

Similarly, 13 of the 33 (39 percent) new tenant applications contained deficiencies. Specifically, files for two tenants did not contain lease applications. Six files did not contain any documentation indicating that lease applications were reviewed by the Internal Leasing Committee. Lease terms for three tenants were changed without Board of Directors authorization.³ In one of these cases, the Board finally approved the change retroactively—26 months after the lease's commencement date. Further, files for three prospective tenants contained no documentation indicating that the Corporation had submitted appropriate information to DSBS to perform background investigations.

Lastly, the Corporation lacks a central database of occupied and available properties.

As far as the expired leases were concerned, the Corporation's Chief Financial Officer told us that certain tenants did not want to sign lease renewals. For most of these cases, the Chief Financial Officer contended that the Corporation raised rents after negotiations with the tenants. Nevertheless, during the course of our audit review, the Corporation did renew 13 of the 21 expired leases. One of those 13 leases expired October 31, 1994, and was renewed on August 9, 2005, 10 years and 9 months later; another lease expired September 30, 1996, and was renewed on October 3, 2005, 9 years later.

On another matter, Corporation officials informed us that prospective rent increases for holdover and month-to-month tenants were not submitted for Board of Directors approval until April 2005. Once again, the approval process was initiated during the course of our audit review.

³ One of these three tenants was also cited for a missing lease application.

Recommendations

1. The Corporation should prepare and adopt formal written policies and procedures for an effective leasing system that will generate the rental income required by the agreement. An effective leasing system would include:
 - submitting appropriate tenant information to DSBS to perform background investigations.
 - maintaining lease applications and current leases in Corporation files.
 - renewing leases prior to their expiration.
 - requiring that the Corporation's Internal Leasing Committee review all lease applications and that the Board of Directors approve all leases.
 - requiring that the Corporation's Board of Directors approve revisions to major lease terms (e.g., change of location, term, and rent amount).
 - maintaining a central database of occupied and available properties.

Corporation Response: “We agree with most of this recommendation. We have adopted formal written policies and procedures for the Leasing Department. A copy of those policies is attached. Two years ago, we began the process of assembling a central database of occupied and available properties, linked to a database of tenants and leases. This database will, in turn, be linked to the new accounting system we are implementing. See response to Recommendation 6.

“We do, however, take strong exception to the recommendation that the ‘Corporation’s Internal Leasing Committee review all lease applications.’ Notwithstanding that we explained to the Comptroller’s staff on several occasions that there is no such committee at BNYDC, the Comptroller’s staff continued to believe that such a committee exists and repeatedly questioned us as to why only some of the prospective leases are presented to that committee.

“BNYDC explained to the Comptroller’s staff that, prior to most board meetings, the Leasing Department informally meets with staff from other departments to review upcoming proposed leases so that the various departments will have a ‘heads up’ regarding new tenants, i.e., the facilities department will know what spaces it should make ready for occupancy, the legal department will know what leases it will need to create, etc. This is an internal housekeeping meeting, not a formal committee and certainly not a step in the lease approval process.

“The lease approval process is as follows: prospective tenants are reviewed by the staff of the Leasing Department, then by the Vice President for Leasing, then by the Executive Vice President /CFO, and then by the President. After that internal review, prospective leases are presented to the Board of Directors for approval.

“Given the several levels of review to which each lease application is subject, creating another committee for that purpose would add time-consuming bureaucracy with no discernable value.”

Auditor Comment: Contrary to the Corporation’s response, an internal leasing committee does exist. In fact, the Corporation’s Director of Leasing provided us with a list of 12 Real Estate Committee members that include the Vice President for Leasing, the Executive Vice President /CFO, the Senior Vice President/General Counsel and the President of the Corporation. In addition, the Director of Leasing provided several Real Estate Committee Agendas detailing those specific proposed leases and renewals that were to be discussed at scheduled Committee meetings. Moreover, our review of the Committee Agendas found that 6 of 33 (18 percent) new tenant applications had not been included on the Committee Agendas for discussion before the leases were presented to the Board of Directors for their approval. Therefore, we could not be assured that all leases are being reviewed by the Corporation’s executive management before being presented to the Board of Directors.

Despite the Corporation’s concern of time-keeping bureaucracy, it would be a sound business practice for the Corporation to establish formal procedures to ensure that its previously mentioned officials review each prospective tenant application, discuss the advantages and disadvantages of each application, and document its decision within that new applicant’s file before seeking Board of Director approval. Thus, we hope that the Corporation reconsiders its position.

2. The Corporation should immediately commence the lease preparation, review, and execution process for all tenants who do not hold leases.

Corporation Response: “This recommendation has been fully implemented. As of June 30, 2006, there were approximately 220 tenants in the Yard. All but nine of these have current leases. Of the nine without current leases, five are being evicted. Thus, there are only four active continuing tenants who do not have current, active leases and these are each long-term, valuable tenants. Any commercial landlord will confirm that it will always have a few tenants with whom it has been unable to finalize renewal terms before an old lease expires, and, if those are good and valuable tenants, the landlord continues them as tenants even if the lease has expired and a new lease has not yet been agreed to.”

3. DSBS should require the Corporation to submit information about prospective tenants so that background checks can be performed.

DSBS Response: DSBS officials did not respond to the report's recommendations.

Corporation Response: "We agree with this recommendation and have codified this in the new Leasing Policies and Procedures."

Problems with Rent Collection Procedures

Our analysis of the March 2004 rent roll found that the Corporation failed to impose required late fees (one-half of one percent of the outstanding balance) for 17 of 71 (24 percent) tenants with outstanding rent as of February 2004. The Corporation's billing policy requires such fees for tenants with a balance exceeding \$1,000 who do not pay their rent by the 15th of each month. Interviews with Corporation officials indicated that late fees are imposed arbitrarily by the Chief Financial Officer and the Vice President of Leasing. However, the failure to apply late charges on a consistent basis leaves the Corporation's billing policy susceptible to fraud and abuse.

On a related rent-collection matter, the Corporation's Comprehensive Accounting Manual clearly spells out the different responsibilities of various staff members. The Account Receivable Accountant is responsible for billing tenants and recording the amounts received in the general ledger. However, our review indicated that the Accountant additionally carried out tasks that should have been performed by another staff member, the Accounting Aide. These other tasks include: copying checks, preparing deposit slips, depositing checks; and reconciling deposited checks to the check log. The lack of segregating duties between different staff members increases the risk of potential errors or fraud.

A fundamental concept of internal control is that no one individual should perform more than one of the functions of authorizing transactions, recording transactions, and maintaining custody over assets. One important goal for the Corporation should be to reduce the opportunities for any one person to be in a position to both perpetrate and conceal errors or irregularities in the normal course of his or her duties.

Recommendations

The Corporation should:

4. Impose late fees as required for all tenants whose balance is greater than \$1,000 and who do not pay rent on time.

Corporation Response: "We do not agree with this recommendation. The recommendation demonstrates a lack of understanding of the realities of rent collection. The imposition of late fees is a tool to encourage tenants to pay their rent

timely. The effectiveness of late fees as a collection aid has been debated internally at BNYDC for a long time. In 2001, after having abandoned the use of this device for several years, BNYDC re-instituted late fees. The experience was not good. The issue of late fees frequently got in the way of settlement of rent disputes. Waiving these fees became necessary to obtaining a good settlement. In the summer of 2005, BNYDC concluded that charging late fees was not effective in encouraging timely payment, that the difficulties in collecting late fees outweigh any benefits, and that the eviction process was a more efficient way to deal with delinquent tenants. Accordingly, BNYDC stopped imposing late fees. That BNYDC collects over 98 cents on every dollar billed testifies to the effectiveness of BNYDC's rent collection practices."

Auditor Comment: We commend the Corporation for ending its inconsistent practice in assessing late charges. However, we disagree with its decision to stop imposing late fees all together. The ability to assess late fees is a practical tool afforded to organizations as a way of encouraging tenants to pay their rent in a timely manner. In addition, late fees can be a very effective tool in negotiating more favorable settlements in rent disputes or to offset the costs associated with evictions. Therefore, the Corporation should reassess its decision and develop formal procedures for the consistent application of late charges against tenants who do not pay rent in a timely manner.

5. Ensure that accounting functions are properly segregated.

Corporation Response: "While we agree that accounting functions should be properly segregated, we do not believe that there is a problem here. BNYDC's system of receiving, logging and depositing checks provides sufficient internal controls.

"Checks are received and logged by staff of the Leasing Department. Staff of the Leasing Department carries the checks to the Finance Department. The Accounts Receivable Accountant prepares the bank deposit slip, makes a photocopy of each check, photocopies the Leasing Department's check log, reconciles the bank deposit ticket to the Leasing Department check log, and takes the deposit to the bank. After depositing the checks, the Accounts Receivable Accountant enters each check into the accounting system, posts and prints a cash receipts journal. He then compares the cash receipts journal to the deposit slip and the Leasing Department check log. All three of these documents must agree. The Assistant Controller then reviews and approves the reconciliation of the Leasing Department check log with the bank deposit ticket, and the reconciliation is filed in the Finance Department. Additionally, every week, the Vice President for Leasing and the CFO review the Accounts Receivable balances and the staff of the Leasing Department call tenants with overdue balances."

Auditor Comment: We disagree. We believe the existing internal controls are not effective in preventing a potential error or fraud because many functions are being

performed by the same individual. Even though checks are received and logged by staff at the Leasing Department, the Accounts Receivable Accountant maintains custody of the checks and control over the records (i.e., cash receipts journal and deposit slips). Although a reconciliation is being performed between the cash receipts journal, deposit slips, and the check log, this procedure is also performed by the Accounts Receivable Accountant.

It should also be noted that our review of February 2004 rent collection records found that five checks were deposited to the Corporation's bank account but were not recorded in the check log. To illustrate our point, had the Accounts Receivable Accountant simply withheld the deposit of these checks, the Assistant Controller would not have been aware that these checks were received because the reconciliation he reviews is also performed by the Accounts Receivable Accountant. Moreover, the Account Receivable Accountant has the ability to change the receivable balance since he also handles the billing records. The Corporation needs to reevaluate its segregation of responsibilities to ensure that no one individual performs more than one of the functions of authorizing transactions, recording transactions, and maintaining custody over assets.

Problems with Lease Databases

The Corporation uses two computer systems: the "FileMaker Pro" database to maintain lease information; and the "Maconomy" billing and accounting system to track financial activities. Our analysis indicates that FileMaker Pro database is inadequate because it lacks information about all tenant leases (i.e., certain leases are not included in the database). Similarly, Maconomy is inadequate because it does not contain necessary information to effectively track rental periods, expiration dates, and other lease terms. In addition, the two systems cannot share information because they are not linked. As a result of these deficiencies, the Corporation cannot rely on these two systems to effectively monitor leasing activities. Maintaining suitable and complete computer systems that can accommodate all necessary information is an important internal control to ensure that the Corporation's leasing system is effective.

The Corporation's Chief Financial Officer told us that the Corporation maintains manual files that contain necessary information about tenant leases. However, our review indicated that even the manual files lacked copies of leases and other pertinent lease information.

Recommendation

6. The Corporation should determine the feasibility of either upgrading its current systems or seek to acquire a new system that will interface and reconcile its leasing and financial activities. Once the Corporation makes its decision, it should ensure that all required information regarding tenant leases are inputted accurately into its electronic system.

Corporation Response: “We agree with this recommendation, and had recognized the need for this ourselves. In September 2004, we began evaluating alternative accounting systems that will allow us to integrate leasing and financial activities. We intend to have a new system in place by December 31, 2006. In the meantime, we are continually adding validation protocols and constraints to our existing databases to improve the accuracy of data entered.”

The Corporation Owes the City
\$2,208,351 in Annual Base Rent

The Corporation did not calculate its net operating income in accordance with the January 9, 2003 lease agreement, nor did it deposit its net operating income for Fiscal Years 2002 and 2003 into a reserve fund for capital improvements. Therefore, the Corporation owes the City \$2,208,351 in annual base rent for Fiscal Year 2004.

According to §5.01(a) of the lease agreement, “Annual Base rent under the Lease for fiscal year 2004 will be zero provided that the Corporation deposits in its Reserve Fund (as defined in the Lease) all Net Operating Income (as defined in the Lease) for fiscal years 2002 and 2003 up to the amount of \$5,000,000.”

Since the Corporation did not calculate its net operating income, as prescribed in its lease agreement, we recalculated its net operating income by using the figures reported in its Fiscal Year 2004 certified financial statements and adjusted the reported net operating income by excluding depreciation and amortization expense since these deductions are not allowed under the lease agreement.

For Fiscal Year 2004, the Corporation posted net operating income as a deficit of \$3,169,780. However, in terms of paying annual base rent, the lease agreement specifically states that depreciation and amortization (amounting to \$5,696,864) may not be used to reduce operating income when calculating annual base rent.⁴ Therefore, our adjusted calculation found that the Corporation’s net operating income for that year was actually a surplus of \$2,208,351. Thus, the Corporation should have either paid the City \$2,208,351 in annual base rent for Fiscal Year 2004 or deposited an equal amount into a reserve fund for capital improvements.

Recommendations

The Corporation should:

7. Submit an annual report to the City detailing a separate calculation of net operating income as prescribed by the lease agreement.

Corporation Response: “BNYDC is certainly willing to prepare an additional report to the City that shows our net operating income before depreciation and amortization.

⁴ We did allow the Corporation a \$318,733 deduction for equipment purchases.

“BNYDC prepares annual financial statements in accordance with GAAP (generally accepted accounting practice). An outside auditing firm audits those financial statements. BNYDC can easily back out depreciation and amortization and submit such report.”

Auditor Comment: We commend the Corporation for deciding to prepare an additional annual report detailing its calculation of net operating income as prescribed by the lease agreement. By doing so, the Corporation will provide a more transparent picture of its net operating income.

8. Either remit \$2,208,351 to the City for Fiscal Year 2004 annual base rent, or establish a reserve fund account for capital improvements and deposit an amount equal to the net operating income for Fiscal Years 2002 and 2003.

Corporation Response: We believe this recommendation reflects a fundamental misunderstanding of the relation between BNYDC and the City, and that the recommendation, if implemented, would significantly impair BNYDC’s ability to carry out the construction activities that both BNYDC and the City believe are crucial to the success of the Yard. BNYDC has handled the City’s funds in a way that fully protects the City and furthers the City’s interests in the Yard’s development. Creation of a separate reserve fund would merely elevate form over function and not add any conceivable benefit or protection for the City, but it would significantly retard rebuilding the Yard.

“In 1996, the City and BNYDC entered into an amended lease that replaced the previous fixed dollar rent due the City from BNYDC with an amount equal to 100% of the net operating income less depreciation and amortization. The City was to be paid unless the parties agreed otherwise. In addition, BNYDC was allowed to keep \$5 million in accumulated net operating income in a reserve fund to be available for ‘unanticipated extraordinary expenses.’

“Circumstances changed almost immediately after this amended lease went into effect. In recognition of the deterioration of the Yard due to decades of deferred maintenance (which culminated in a report to the City warning that, if there were not an immediate program to begin rebuilding the Yard’s infrastructure, the Navy Yard would have to close), the City and BNYDC decided it was necessary to embark on a massive infrastructure-rebuilding program. The City provided significant capital funds, which BNYDC accessed pursuant to a management contract that was renewed annually.

“In order to do the required work in the most efficient manner, it was also decided that BNYDC would use its net operating income to pay vendors and then obtain reimbursement from the City, rather than wait for the City to make funds available before beginning construction.

“The \$5 million that would have otherwise gone into the reserve fund was used to float the City-mandated infrastructure-rebuilding program. BNYDC did the work, paid the vendors and then billed the City. Thereafter, the City would re-imburse BNYDC.

“Using the \$5 million in this manner was as protective of the City’s interest as placing the funds in a reserve fund, since the money became a receivable with the City.

“Since July 1, 2000, BNYDC has maintained a receivable with the City for reimbursable capital infrastructure work that, while it fluctuated, frequently exceeds \$5 million. Without the availability of the \$5 million to serve as a float, BNYDC would not have been able to begin the process of rebuilding the infrastructure of the Yard in a timely manner, and the jobs of several thousand New Yorkers might have been lost.

“BNYDC does recognize, however, that it would be a good idea to amend the lease and the management contract with the City to explicitly eliminate the requirement of a reserve fund and will propose such amendment in the near future.”

Auditor Comment: The Corporation asserts that in 1996, the City and Corporation entered into an amended lease that replaced the previous fixed-dollar rent due the City from the Corporation if it kept \$5 million in accumulated net operating income in a reserve fund to be available for unanticipated extraordinary expenses. The Corporation further asserts that almost immediately after this amended lease went into effect, it was unable to establish a reserve because it was forced to undertake a massive infrastructure-rebuilding program and to use the \$5 million that would have otherwise gone into the reserve fund to cover costs until it received capital funds from the City.

Contrary to the response’s statements, the lease agreement does not provide the Corporation the discretion to decide whether or not it will pay rent to the City. Under the terms of the agreement, the Corporation is required to pay annual base rent (equal to 100 percent of net operating income) *or* to deposit an equal amount into a reserve fund. Although the Corporation claims that it was unable to establish a reserve because of the infrastructure-rebuilding program, the agreement in fact allows reserve funds to be used for the situation facing the Corporation.

According to the agreement, the Corporation “shall use the Reserve Fund together with any interest thereon solely for (i) unanticipated extraordinary expenses . . . or (ii) for other expenses, operating or capital, with the prior written approval of Administrator [DSBS] and OMB.” Moreover, if the Corporation were to incur cash flow problems caused by the City’s delayed payment of capital funds, the lease agreement would allow the Corporation to use the reserves as a float until it received

the capital funds from the City. However, once City capital funds were received, the Corporation would then be required to replenish the reserve fund.

Therefore, the parties involved in amending the agreement had the foresight to afford the Corporation the flexibility of *either* paying the City annual base rent *or* establishing a reserve fund. However, the Corporation took it upon itself to use funds due the City for its general operating costs without the prior written approval of DSBS and the Office of Management and Budget. Consequently, the Corporation did not pay any rent to the City, did not establish a reserve fund, and used the commingled funds for any expense whatsoever (i.e., non-capital) without approval from the City. Therefore, the Corporation should immediately remit \$2,208,351 to the City for Fiscal Year 2004 annual base rent, or establish a reserve fund account for capital improvements and deposit an amount equal to the net operating income for Fiscal Years 2002 and 2003.

Further, the Corporation is being somewhat disingenuous when it contends that its ability to carry out construction activities would have significantly impaired had it remitted \$2,208,351 in annual base rent to the City for Fiscal Year 2004 or had it deposited an equal amount into a reserve fund. We fail to see how either action would have affected its ability to improve the Navy Yard since the Corporation cites an increase in rent revenue from \$10.06 million to \$16.66 million, or 66 percent, and an increase in net operating income from \$673,000 to \$5.05 million, or 650 percent (before depreciation and amortization) during the previous five years. In Fiscal Year 2005 alone, the Corporation's net operating income, before depreciation and amortization, increased from \$2.5 million to \$5 million. Clearly the increase in rental income that the Corporation cites as proof of excellent stewardship should in any case obviate the need for a protective float.

Lastly, the Corporation should abide by the terms of the agreement and should not have the ability to decide arbitrarily which terms to follow and which to ignore.

DSBS should:

9. Ensure that the Corporation complies with the recommendations in this report.

DSBS Response: DSBS officials did not respond to the report's recommendations.

Auditor Comment: DSBS should be involved in monitoring the Corporation's activities since the contract between the Corporation and the City states, "the Corporation's services hereunder shall at all times be subject to the review, direction and control of the [DSBS] Commissioner, whose decision shall be final and binding upon the Corporation as to all matters arising in connection with or relating to the performance of the Program." DSBS, however, has chosen not to respond to the audit's findings and recommendations.

The failure to provide a written response points to a serious deficiency in DSBS's oversight of the Corporation's activities. Consequently, we cannot be assured whether the findings and recommendations mentioned in the audit will be effectively addressed.



July 17, 2006

John Graham, Deputy Comptroller – Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Re: Draft Audit Report on the Brooklyn Navy Yard Development Corporation's
Leasing and Rent Collection Practices.

Dear Mr. Graham:

Attached is the written response of the Brooklyn Navy Yard Development Corporation
(BNYDC) to the above-referenced Draft Report.

Feel free to call me or Bernard J. Dushman, General Counsel, if you wish to further discuss
either the Draft Report or our response.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kimball', written over the word 'Sincerely,'.

Andrew H. Kimball
President & CEO

Response of the Brooklyn Navy Yard Development Corporation to the Draft Audit Report from the Office of the Comptroller, dated June 23, 2006

Introduction

BNYDC acknowledges the energy, hard work and dedication exhibited by all of the staff of the Comptroller's Office who worked on this Audit. BNYDC appreciates and will implement a number of the Comptroller's recommendations regarding the BNYDC's leasing process and record keeping. However, the Audit ignores the fact that BNYDC is an extraordinarily positive economic development success story for the City of New York, while a number of the recommendations reflect a fundamental lack of understanding of our business.

The objective of this audit was to determine whether the Corporation had adequate leasing and rent-collection practices (p4) in order to "... determine whether the Corporation's commercial and industrial leasing practices are effective in generating rental income... ." (p6)

The Report finds that the "... Corporation does not have an adequate leasing system in place to determine whether its process for leasing commercial and industrial space is effective in generating rental income... ." (p7)

We respectfully disagree. BNYDC's stewardship over its leasing activities has been remarkably successful. **In the last five years, BNYDC has increased rent revenue from \$10.06 million to \$16.66 million, or 66%. In that same period, net operating income before depreciation and amortization increased from \$673,000 to \$5.05 million or 650%. These figures resounding demonstrate the effectiveness of BNYDC's leasing activities.**

This success has put the Corporation in the position to add over 400,000 square feet of new industrial space in the next three years playing a critical role in the City's ability to attract and retain manufacturing jobs.

Response to Specific Recommendations

Recommendation 1:

The Corporation should prepare and adopt formal written policies and procedures for an effective leasing system that will generate the rental income required by agreement. An effective leasing system would include:

- *submitting appropriate tenant information to DSBS to perform background investigations.*
- *maintaining lease applications and current leases in Corporation files.*

- *renewing leases prior to their expiration.*
- *requiring that the Corporation's Internal Leasing Committee review all lease applications and that the Board of Directors approve all leases.*
- *requiring that the Corporation's Board of Directors approve revisions to major lease terms (e.g., change of location, term, and rent amount).*
- *maintaining a central database of occupied and available properties.*

Response:

We agree with most of this recommendation. We have adopted formal written policies and procedures for the Leasing Department. A copy of those policies is attached. Two years ago, we began the process of assembling a central database of occupied and available properties, linked to a database of tenants and leases. This database will, in turn, be linked to the new accounting system we are implementing. See response to Recommendation 6.

We do, however, take strong exception to the recommendation that the "Corporation's Internal Leasing Committee review all lease applications." Notwithstanding that we explained to the Comptroller's staff on several occasions that there is no such committee at BNYDC, the Comptroller's staff continued to believe that such a committee exists and repeatedly questioned us as to why only some of the prospective leases are presented to that committee.

BNYDC explained to the Comptroller's staff that, prior to most board meetings, the Leasing Department informally meets with staff from other departments to review upcoming proposed leases so that the various departments will have a "heads up" regarding new tenants, i.e., the facilities department will know what spaces it should make ready for occupancy, the legal department will know what leases it will need to create, etc. This is an internal housekeeping meeting, not a formal committee and certainly not a step in the lease approval process.

The lease approval process is as follows: prospective tenants are reviewed by the staff of the Leasing Department, then by the Vice President for Leasing, then by the Executive Vice President /CFO, and then by the President. After that internal review, prospective leases are presented to the Board of Directors for approval.

Given the several levels of review to which each lease application is subject, creating another committee for that purpose would add time-consuming bureaucracy with no discernable value.

Recommendation 2:

The Corporation should immediately commence the lease preparation, review and execution process for all tenants who do not hold leases.

Response:

This recommendation has been fully implemented. As of June 30, 2006, there were approximately 220 tenants in the Yard. All but nine of these have current leases. Of the nine without current leases, five are being evicted. Thus, there are only four active continuing tenants who do not have current, active leases and these are each long-term, valuable tenants. Any commercial landlord will confirm that it will always have a few tenants with whom it has been unable to finalize renewal terms before an old lease expires, and, if those are good and valuable tenants, the landlord continues them as tenants even if the lease has expired and a new lease has not yet been agreed to.

Recommendation 3:

DSBS should require the Corporation to submit information about prospective tenants so that background checks can be performed.

Response:

We agree with this recommendation and have codified this in the new Leasing Policies and Procedures. See Response to Recommendation 1.

Recommendation 4:

The Corporation should impose late fees as required for all tenants whose balance is greater than \$1,000 and who do not pay rent on time.

Response:

We do not agree with this recommendation. The recommendation demonstrates a lack of understanding of the realities of rent collection. The imposition of late fees is a tool to encourage tenants to pay their rent timely. The effectiveness of late fees as a collection aid has been debated internally at BNYDC for a long time. In 2001, after having abandoned the use of this device for several years, BNYDC re-instituted late fees. The experience was not good. The issue of late fees frequently got in the way of settlement of rent disputes. Waiving these fees became necessary to obtaining a good settlement. In the summer of 2005, BNYDC concluded that charging late fees was not effective in encouraging timely payment, that the difficulties in collecting late fees outweigh any benefits, and that the eviction process was a more efficient way to deal with delinquent tenants. Accordingly, BNYDC stopped imposing late fees. That BNYDC collects over 98 cents on every dollar billed testifies to the effectiveness of BNYDC's rent collection practices.

Recommendation 5:

The Corporation should ensure that accounting functions are properly segregated.

Response:

While we agree that accounting functions should be properly segregated, we do not believe that there is a problem here. BNYDC's system of receiving, logging and depositing checks provides sufficient internal controls.

Checks are received and logged by staff of the Leasing Department. Staff of the Leasing Department carries the checks to the Finance Department. The Accounts Receivable Accountant prepares the bank deposit slip, makes a photocopy of each check, photocopies the Leasing Department's check log, reconciles the bank deposit ticket to the Leasing Department check log, and takes the deposit to the bank. After depositing the checks, the Accounts Receivable Accountant enters each check into the accounting system, posts and prints a cash receipts journal. He then compares the cash receipts journal to the deposit slip and the Leasing Department check log. All three of these documents must agree. The Assistant Controller then reviews and approves the reconciliation of the Leasing Department check log with the bank deposit ticket, and the reconciliation is filed in the Finance Department. Additionally, every week, the Vice President for Leasing and the CFO review the Accounts Receivable balances and the staff of the Leasing Department call tenants with overdue balances.

Recommendation 6:

The Corporation should determined the feasibility of either upgrading its current systems or seek to acquire a new system that will interface and reconcile its leasing and financial activities. Once the Corporation makes its decision, it should ensure that all required information regarding tenant leases are inputted accurately into its electronic system.

Response:

We agree with this recommendation, and had recognized the need for this ourselves. In September 2004, we began evaluating alternative accounting systems that will allow us to integrate leasing and financial activities. We intend to have a new system in place by December 31, 2006. In the meantime, we are continually adding validation protocols and constraints to our existing databases to improve the accuracy of data entered.

Recommendation 7:

The Corporation should submit an annual report to the City detailing a separate calculation of net operating income as prescribed by the lease agreement.

Response:

BNYDC is certainly willing to prepare an additional report to the City that shows our net operating income before depreciation and amortization.

BNYDC prepares annual financial statements in accordance with GAAP (generally accepted accounting practice). An outside auditing firm audits those financial statements. BNYDC can easily back out depreciation and amortization and submit such report.

Recommendation 8:

The Corporation should either remit \$2,208,351 to the City for Fiscal Year 2004 annual base rent, or establish a reserve fund account for capital improvements and deposit net operating income for Fiscal Years 2002 and 2003.

Response:

We believe this recommendation reflects a fundamental misunderstanding of the relation between BNYDC and the City, and that the recommendation, if implemented, would significantly impair BNYDC's ability to carry out the construction activities that both BNYDC and the City believe are crucial to the success of the Yard. BNYDC has handled the City's funds in a way that fully protects the City and furthers the City's interests in the Yard's development. Creation of a separate reserve fund would merely elevate form over function and not add any conceivable benefit or protection for the City, but it would significantly retard rebuilding the Yard.

In 1996, the City and BNYDC entered into an amended lease that replaced the previous fixed dollar rent due the City from BNYDC with an amount equal to 100% of the net operating income less depreciation and amortization. The City was to be paid unless the parties agreed otherwise. In addition, BNYDC was allowed to keep \$5 million in accumulated net operating income in a reserve fund to be available for "unanticipated extraordinary expenses".

Circumstances changed almost immediately after this amended lease went into effect. In recognition of the deterioration of the Yard due to decades of deferred maintenance (which culminated in a report to the City warning that, if there were not an immediate program to begin rebuilding the Yard's infrastructure, the Navy Yard would have to close), the City and BNYDC decided it was necessary to embark on a massive infrastructure-rebuilding program. The City provided significant capital funds, which BNYDC accessed pursuant to a management contract that was renewed annually.

In order to do the required work in the most efficient manner, it was also decided that BNYDC would use its net operating income to pay vendors and then obtain reimbursement from the City, rather than wait for the City to make funds available before beginning construction.

The \$5 million that would have otherwise gone into the reserve fund was used to float the City-mandated infrastructure-rebuilding program. BNYDC did the work, paid the vendors and then billed the City. Thereafter, the City would re-imburse BNYDC.

Using the \$5 million in this manner was as protective of the City's interest as placing the funds in a reserve fund, since the money became a receivable with the City.

Since July 1, 2000, BNYDC has maintained a receivable with the City for reimbursable capital infrastructure work that, while it fluctuated, frequently exceeds \$5 million. Without the availability of the \$5 million to serve as a float, BNYDC would not have been able to begin the process of rebuilding the infrastructure of the Yard in a timely manner, and the jobs of several thousand New Yorkers might have been lost.

BNYDC does recognize, however, that it would be a good idea to amend the lease and the management contract with the City to explicitly eliminate the requirement of a reserve fund and will propose such amendment in the near future.

Leasing Policies & Procedures

NEW TENANTS:

Once a space has been selected, the lease terms will be negotiated and the transaction will be taken to the Board of Directors for approval. The deal will also be brought to an internal committee for informational purposes.

All new tenants must complete the following forms:

1. Tenant lease application
2. VENDEX form
3. Emergency contact information
4. IRS W-9 form
5. Electric service request form

All new deals must be done in accordance with the attached "Checklist".

EXISTING TENANTS /RENEWALS:

Within six months of a tenant's lease expiration, BNYDC will contact the tenant regarding their interest in renewing their lease. This will be in the form of a draft offer letter with a copy to be kept in the file. If the tenant does not respond to the draft offer letter, a letter (as well as follow-up phone calls) will be sent to remind the tenant about their lease expiration and that they will become a "holdover" if no renewal can be negotiated. If the tenant indicates that they wish to leave the Navy Yard, a surrender agreement will be executed with an appropriate move-out date.

If it is determined that a new lease can't be agreed upon and the tenant does not sign a surrender agreement, a holdover eviction proceeding will be initiated.

If the tenant wishes to remain, a new lease will be negotiated. If a new lease cannot be negotiated prior to the lease expiration date and there is every reason to believe that negotiations will be successful, the tenant may remain past the expiration date as a "holdover". During the "holdover" period, BNYDC reserves the right to increase the rent. If so, the rent increase will be brought to the Board for their approval.

Once a new lease is negotiated, it will be taken to the Board of Directors for approval. Regardless of when the deal is finalized, any rent increase will be retroactive to the expiration of the prior lease unless otherwise agreed upon.

If, for various potential reasons, it is decided that BNYDC does not wish to enter into a new lease with an existing tenant or wishes to consider other options, the rent may be increased and the new increased rent amount will be taken to the Board of Directors for approval.

Leasing Steps/Checklist

- Intake form completed/Assess requirement
- Show appropriate available space (if any)
- Negotiate terms of deal
- Complete tenant application package (ALL forms)
- Draft board memo/offer letter
- Distribute copies of various forms from application package to appropriate departments, e.g. VENDEX to Legal, Emergency contact information to Security, etc.
- Apprise Operations and assess suitability of space for particular tenant
- Bring deal to Real Estate Committee for their information
- Bring deal to Board of Directors for approval
- Prepare lease for signature
- Execute lease, collect security deposit, get insurance certificates, assure that ALL documents, forms & paperwork have been submitted
- Hand over keys, get tenant I.D.'s, parking stickers, mailbox key, property passes/stamp, bathroom keys
- Complete Electric "turn-on" notice for Utilities Dept.
- Confirm Finance has been notified by Legal to enter tenant into system