



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Financial and
Operating Practices of the Bryant Park
Corporation and Bryant Park
Management Corporation

FN15-129A

June 30, 2016

<http://comptroller.nyc.gov>



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

SCOTT M. STRINGER
COMPTROLLER

June 30, 2016

To the Residents of the City of New York:

My office has audited the Bryant Park Corporation (BPC) to determine whether BPC is in compliance with its City agreements. BPC is a not-for-profit organization responsible for managing and maintaining Bryant Park under an exclusive management agreement with New York City Department of Parks and Recreation (Parks), and for overseeing the operations of the Bryant Park Management Corporation (BPMC), an entity created to manage the Bryant Park Business Improvement District (Bryant Park BID), under a contract with the New York City Department of Small Business Services (DSBS). We audit not-for-profit organizations, such as BPC, as a means of ensuring that they effectively manage City assets entrusted to them and do so in accordance with applicable rules and regulations.

The audit found that BPC was generally in compliance with its Parks agreement and with its DSBS contract. However, the audit found some areas of contract non-compliance and internal control deficiencies that may affect BPC's oversight over its operations and the accuracy of its financial reporting. Specifically, BPC did not implement adequate timekeeping procedures and did not provide sufficient documents to support its cost allocation of joint salary expenses. The audit also found other internal control weaknesses, including that BPC did not execute purchase orders prior to billing for goods or services, did not maintain written contracts, failed to obtain the required conflict-of-interest disclosures, and did not consistently ensure that its concessionaires, subcontractors, and event operators maintained the proper insurance. Finally, Parks has not revised its agreement with BPC since it was entered into in 1985. As a result, the terms of the agreement do not necessarily reflect current conditions in and around Bryant Park and in the City as a whole.

The audit makes 12 recommendations to BPC, Parks, and DSBS, including that BPC review and revise its written policies and procedures in specific areas of operations to strengthen its internal controls, obtain the necessary conflict-of-interest disclosure forms from its employees and Board members, and ensure all outside entities conducting business with the BID maintain insurance coverage that is required by the license agreements. The audit also recommends that Parks consider amending the terms of the management agreement to include the types of internal controls that BPC should establish for its operation and to better optimize the benefits for the City.

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

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

Sincerely,

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the Bryant Park Corporation and Bryant Park Management Corporation

FN15-129A

EXECUTIVE SUMMARY

Bryant Park Corporation (BPC) is a not-for-profit organization created to manage and maintain Bryant Park under an exclusive management agreement with the New York City (the City) Department of Parks and Recreation (Parks). The management agreement with Parks (the Parks Management Agreement) allows BPC to provide public events and use of facilities within Bryant Park, including restaurant and other food services, through concession and other agreements with third parties, and to retain the revenue therefrom to support its work. BPC's operations are overseen by a Board of Directors (the Board), which consists of 14 members.

BPC is also responsible for overseeing the operations of the Bryant Park Management Corporation (BPMC), an entity created to manage the Bryant Park Business Improvement District (Bryant Park BID). While BPMC has its own Board of Directors, some of whom also sit on the BPC Board, BPMC relies entirely on BPC's staff and management to conduct its operations and maintains common bank accounts with BPC. BPMC (and so in effect BPC) functions as the District Management Association (DMA) of the Bryant Park BID. In this capacity, BPC is responsible for ensuring that supplemental services are being provided in accordance with the district plan approved by the Department of Small Business Services (DSBS). Bryant Park BID operations are funded by property assessments imposed on area property owners and are governed by the requirements of the DSBS contract (the DSBS Contract). Based on the DSBS Contract, the revenue of the Bryant Park BID may be used for capital improvements, maintenance, public safety, community services and other specified services to improve business conditions and activities within the BID.

The objectives of this audit were to determine whether: (1) BPC accurately reported revenue and expenses and complied with major requirements of the Bryant Park management agreement with Parks; and (2) BPMC used its resources appropriately to promote and support the Bryant Park BID and complied with major requirements of its contract with DSBS.

Although BPC and BPMC are two separate legal entities, their financial statements are consolidated because of their close financial and organizational relationship. BPC and BPMC do

not maintain separate books and records. In Fiscal Years 2013 and 2014, BPC and BPMC reported combined revenue of \$8,841,243 and \$14,549,213, respectively. The majority of this revenue was derived from BPC's sponsorships and park usage fees. \$1,100,000 of this revenue for each of the Fiscal Years 2013 and 2014 was derived from assessments charged to property owners. In Fiscal Years 2013 and 2014, BPC and BPMC reported combined expenses of \$9,994,253 and \$12,881,529, respectively.

Pursuant to a 34th Street BID contract between 34th Street Partnership, Inc., (the designated DMA for the 34th Street BID) and DSBS, BPC also shares certain management and support staff and office space with the 34th Street BID. Expenses shared by BPC and the 34th Street BID include office space and salaries of the President, Controller/CFO, and other senior management. The allocation of these common expenses between BPC and the 34th Street BID is based on the amount of time each staff member worked for each entity and the office space is allocated based on use.

Audit Findings and Conclusions

Our audit found that BPC was generally in compliance with the Parks Management Agreement and with the DSBS Contract, which together govern the operations of Bryant Park and the Bryant Park BID. However, our audit found internal control deficiencies that may affect BPC's oversight over its operations and the accuracy of its financial reporting.

Specifically, we found that BPC did not implement adequate timekeeping procedures and did not provide sufficient documents to support its cost allocation of joint salary expenses. In addition, we found deficiencies in BPC's procurement practices, including that it did not consistently execute purchase orders prior to billing for goods and services; adhere to its own procurement procedures; maintain written contracts; and adhere to the subcontracting procedures required by the DSBS Contract. Further, BPC did not establish procedures to secure competitive bids received for contracts prior to the submission deadlines. In addition, BPC failed to obtain the required conflict-of-interest disclosures from its key employees and a majority of the Board members. BPC also failed to consistently ensure that its concessionaires, subcontractors, and event operators maintained the proper insurance, did not retain essential documents in its personnel files, and failed to follow its own procedures for employee education reimbursements.

Finally, we noted that Parks has not revised its agreement with BPC since it was entered into in 1985. As a result, the terms of the agreement do not necessarily reflect current conditions in and around Bryant Park and in the City as a whole and so potentially do not maximize benefits to the City.

Audit Recommendations

To address these issues, we make 12 recommendations to BPC, Parks, and DSBS.

Specifically, we recommend that the BPC officials should:

1. Review and revise its written policies and procedures in specific areas of operations to strengthen its internal controls as follows:
 - Implement a central timekeeping system with features to account for each employee's time-in/time-out, total hours worked, and a secure interface for data entry, review and approval processes;

- Implement an appropriate methodology for allocating payroll expenses for employees who are shared by the BPC and other entities;
 - Execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained, sufficient funds are available for potential expenses, and an appropriate receiving report is utilized;
 - Maintain all supporting documents relating to BPC's procurement processes, including bids, required approvals from the Board and City agencies, and signed contracts;
 - Ensure that VENDEX background checks are on file for contractors who have contracts exceeding \$100,000 within a 12-month period;
 - Obtain all required approvals from the construction committee and DSBS and/or Parks, if applicable, for purchases over \$20,000;
 - Execute written contracts for all independent contractors and vendors conducting business with BPC;
 - Establish monitoring procedures to ensure all BPC employees adhere to the policies and procedures, including the employee education reimbursements, governing BPC's operations;
2. Obtain Board and DSBS approvals when less than three bids are obtained;
 3. Revise its written policies and procedures over the subcontracting of supplemental services to ensure that BPC's written policies are consistent with the DSBS Contract;
 4. Establish policies to properly safeguard submitted bids;
 5. Obtain the necessary conflict-of-interest disclosure forms from its employees and Board members;
 6. Ensure sufficient documentation is maintained in personnel files to appropriately reflect BPC's hiring and staff performance evaluation practices;
 7. Ensure all outside entities conducting business with the BID maintain insurance coverage that is required by the license agreements.

Parks officials should:

8. Ensure BPC implement the recommendations of this report;
9. Conduct periodic review of BPC's operations to ensure compliance with the Parks Management Agreement;
10. Consider amending the terms in the management agreement to include the types of internal controls that BPC should establish for its operation and to better optimize the benefits for the City.

DSBS officials should:

11. Ensure BPC implement the recommendations of this report;
12. Conduct periodic review of BPC's operations to ensure compliance with the DSBS Contract.

Agency Responses

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

In addition, BPC responded that it “is a \$13 million company with 130 employees who are all closely supervised. The definition of ‘adequate timekeeping procedures,’ and what those procedures require, for an entity of our size versus the City of New York, a \$82 billion enterprise with 260,000 employees, is very different. The auditors failed to recognize this distinction.”

BPC’s response does not, however, reflect a complete understanding of the importance of internal controls that govern the accountability and transparency of its operations—two key areas of concern where an entity is performing tasks for and on behalf of the government and the public. Further, every organization, regardless of size, should implement adequate internal controls that mitigate the risks of misstatements, misappropriation, and other undesirable effects of poor internal controls. BPC itself acknowledges this audit has identified several internal control deficiencies. We believe these may affect the organization’s ability to properly oversee its operations.

Further, while we are pleased that BPC has had external audits, we note that the external auditor’s opinion and the engagement upon which that opinion is rendered, does not involve an assessment of the entity’s internal controls. As the external auditor’s opinion clearly states, in assessing risk of material misstatements, “the auditor considers internal control relevant to the entity’s preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. *Accordingly, we express no such opinion.*” (Emphasis added.)

Our findings and related recommendations are based on an examination and assessment of the effectiveness of BPC’s internal controls taken as a whole. Notwithstanding its objections, BPC stated that they “agree with some of the auditors’ findings and related recommendations for improvements.” Of the report’s seven recommendations addressed to BPC, it agreed to implement five recommendations, partially agreed to implement one related to strengthening its internal controls and disagreed with one recommendation related to revising procurement policies to comply with the DSBS subcontracting requirements.

Both Parks and DSBS generally agreed with the remaining recommendations directed at them.

AUDIT REPORT

Background

In 1985, Parks entered into an exclusive management agreement with Bryant Park Restoration Corporation pursuant to which Bryant Park Restoration Corporation assumed the responsibility for restoring, maintaining, and utilizing Bryant Park. In November 2006, Bryant Park Restoration Corporation changed its name to Bryant Park Corporation, also referred to as BPC, and as such, continues to operate under this exclusive management agreement (the Parks Management Agreement).¹ BPC's operations are overseen by a Board of Directors which consists of 14 members.² The Board's oversight responsibilities are governed by, among other things, the Not-for-Profit Corporation Law. Accordingly, the Board is required to exercise fiduciary responsibilities in managing the affairs of BPC including undertaking reasonable efforts to ensure that BPC is operating in compliance with applicable rules and regulations.

In addition to improving Bryant Park, the Parks Management Agreement authorizes BPC to enter into license agreements with concessionaires to operate the restaurants and kiosks within the park and to retain the concession fees. Further, BPC is authorized to organize various cultural and social activities, including educational programs, free entertainment, and special events, such as Broadway in Bryant Park and summer film festival. BPC engages in other income generating activities, including the operation of an ice skating rink in the winter, a holiday market that includes over 125 vendors, and a two-story glass-enclosed restaurant, lounge and bar during the holiday season. Funds to support the BPC's activities come from income it receives in connection with the Parks Management Agreement from concessions, events, and corporate sponsorships.

BPC is also responsible for overseeing the BPMC, an entity created to manage the Bryant Park BID. While BPMC has its own Board of Directors, some members are also members of the BPC Board. In addition, BPMC relies entirely on BPC's staff and management to conduct its operations and maintains common bank accounts with BPC. BPMC (and so in effect BPC) functions as the DMA of the Bryant Park BID. In this capacity, BPC is responsible for ensuring that supplemental services are being provided in accordance with the district plan approved by DSBS. It supports the operations of the Bryant Park BID through property assessments imposed on area property owners which are governed by the requirements of the DSBS Contract. Based on the DSBS Contract, the revenue of the Bryant Park BID may be used for capital improvements, maintenance, public safety, community services and other specified services to improve business conditions and activities within the BID.

BPC has four office locations in Manhattan; its administrative office is located at 1065 Avenue of the Americas and it maintains operating offices in Bryant Park, Greeley Square, and West 35th Street.

¹ Bryant Park Restoration Corporation was organized in 1980 with the purpose of promoting and restoring, maintaining and utilizing Bryant Park in association with other entities, such as the New York Public Library (NYPL) and Parks. The initial term of the management agreement was 15 years. On June 28, 2012, Parks extended the management agreement for five years, from July 1, 2013 to June 30, 2018.

² Seven of the Board members are elected from a list of candidates provided by the NYPL and one member is elected from a list of candidates provided by the Mayor of New York City. The remaining six members are chosen by the Board during annual Board meetings and selected by a majority of the directors then in office. Each Director shall continue in office until the annual meeting of the Board held next after the election.

According to the DSBS Contract, the Bryant Park BID is required to maintain books and records in accordance with Generally Accepted Accounting Principles and the standards issued by the Office of the City Comptroller. BPC and BPMC reported combined revenue of \$8,841,243 and \$14,549,213 in Fiscal Years 2013 and 2014, respectively. The majority of this revenue was derived from BPC's sponsorships and park usage fees. \$1,100,000 of this revenue for each of the Fiscal Years 2013 and 2014 was derived from assessments charged to property owners. The BPC and BPMC reported combined expenses of \$9,994,253 and \$12,881,529 in Fiscal Years 2013 and 2014, respectively.

In addition to its work in Bryant Park and on behalf of the Bryant Park BID, BPC also shares common management and office space with the 34th Street BID pursuant to the 34th Street BID's contract with DSBS. BPC shares expenses for its shared office space, managerial and administrative staff with the 34th Street BID, including the salaries of the President, Controller/CFO and other senior management. However, BPC has its own line staff to provide supplemental services for Bryant Park and the Bryant Park BID. The allocation of funds between BPC and the 34th Street BID is based on the amount of time each shared staff member works for each entity. Similarly, the office space is allocated based on use. For Fiscal Year 2014, the salaries for key management staff reported in BPC's Form 990 totaled \$1,271,959 which represents approximately 10 percent of the total expenditures of \$12,881,529. In exchange for these salaries, the jointly paid management staff are supposed to devote between 24 and 90 percent of their average work time, depending on who the management staff member is.

Objectives

The objectives of this audit were to determine whether:

- BPC accurately reported revenue and expenses and complied with major requirements of the Bryant Park management agreement with Parks, and
- BPMC used its resources to promote and support the Bryant Park BID and complied with its contract with DSBS.

Scope and Methodology Statement

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

The Comptroller is one of the four Class D Board members of the Bryant Park BID.³ The Class D Board members, in conjunction with the other Board members, comprise the Board of Bryant

³ Bryant Park BID has five different classes of Board of Directors: Class A – property owners within the District, Class B – commercial tenants within the District, Class C – residential tenants within the District, Class D – representatives from the Mayor's Office, Borough President, and Comptroller's Office, and Class E – any interested party who is not eligible for Class A, B, C, or D membership, which party has applied for membership shall be a Class E member of the Corporation.

Park BID. The Comptroller sits on the Board through a representative. Neither the Comptroller nor his representative on the Board was involved in the audit process.

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

Discussion of Audit Results

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

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

In addition, BPC responded that it “is a \$13 million company with 130 employees who are all closely supervised. The definition of ‘adequate timekeeping procedures,’ and what those procedures require, for an entity of our size versus the City of New York, a \$82 billion enterprise with 260,000 employees, is very different. The auditors failed to recognize this distinction.”

BPC’s response does not, however, reflect a complete understanding of the importance of internal controls that govern the accountability and transparency of its operations—two key areas of concern where an entity is performing tasks for and on behalf of the government and the public. Further, every organization, regardless of size, should implement adequate internal controls that mitigate the risks of misstatements, misappropriation, and other undesirable effects of poor internal controls. BPC itself acknowledges, this audit has identified several internal control deficiencies. We believe these may affect the organization’s ability to properly oversee its operations.

Further, while we are pleased that BPC has had external audits, we note that the external auditor’s opinion, and the engagement upon which that opinion is rendered, does not involve an assessment of the entity’s internal controls. As the external auditor’s opinion clearly states, in assessing risk of material misstatements, “the auditor considers internal control relevant to the entity’s preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. *Accordingly, we express no such opinion.*” (Emphasis added.)

Our findings and related recommendations are based on an examination and assessment of the effectiveness of BPC’s internal controls taken as a whole. Notwithstanding its objections, BPC stated that they “agree with some of the auditors’ findings and related recommendations for improvements.” Of the report’s seven recommendations addressed to BPC, it agreed to implement five recommendations, partially agreed to implement one related to strengthening the internal controls and disagreed with one recommendation related to revising procurement policies to comply with the DSBS subcontracting requirements. Both Parks and DSBS generally agreed with the remaining recommendations directed at them.

FINDINGS

Our audit found that BPC is generally in compliance with the Parks Management Agreement and with the DSBS Contract which govern the operations of Bryant Park and the Bryant Park BID. However, we found internal control deficiencies that may affect BPC's oversight over its operations and the accuracy of its financial reporting. Specifically, BPC did not implement adequate timekeeping procedures and did not provide sufficient documents to support its cost allocation of joint salary expenses. Based on our review of the payroll records for a sampled period of one week, we could not determine whether the allocation of expenses between Bryant Park and the 34th Street BID for salaried employees was appropriate. In addition, we found deficiencies in BPC's procurement practices. For example, BPC did not consistently execute purchase orders prior to the billing of goods and services, did not adhere to its own procurement procedures, did not maintain written contracts, and did not adhere to the subcontracting procedures stipulated in its DSBS Contract. Further, BPC did not establish procedures to secure competitive bids received for contracts before the bids' submission deadline.

In addition, BPC failed to obtain the required conflict-of-interest disclosures from its key employees and the majority of the Board members. BPC also failed to ensure that its concessionaires, subcontractors, and event operators carried the proper insurance, did not retain essential documents in its personnel files, and failed to follow its own procedures for employee education reimbursements.

Finally, we noted that Parks has not revised its agreement with BPC since it was entered into in 1985. As a result, the terms of the agreement do not necessarily reflect current conditions in and around Bryant Park and in the City as a whole and so potentially do not maximize benefits to the City.

Internal Control Deficiencies

Due to the complexity of BPC's operations, which involve the interaction and coordination of staff and finances between multiple entities, it is essential that BPC maintains an internal control structure that allows it to accurately identify, record, and allocate all of its expenses. Absent that, it is difficult for the City to ascertain whether BPC is in full compliance with its multiple agreements and properly accounting for its receipts and disbursements. As a not-for-profit corporation, BPC's Board is responsible for exercising fiduciary duties, including undertaking efforts to ensure there are effective internal controls.

However, BPC did not establish sufficient policies and procedures to ensure the accountability and transparency of its administrative operating expenses and, in particular, those related to office space and employees it shares with the 34th Street BID. Further, BPC failed to comply with conflict-of-interest disclosure requirements. Specifically, BPC failed to ensure that its key employees and Board members complete their conflict-of-interest disclosure forms and did not monitor its key employees' activities to determine whether a potential conflict existed. This is of particular concern because some of the individuals working at BPC's administrative office are also engaged in similar activities with outside private entities.

These control weaknesses are discussed in more detail in the following sections of this report:

BPC Response: "The organization has well established internal controls, more than adequate for its size and complexity, that have, as demonstrated by the unmodified audit

opinions and ‘no material weakness’ reports, issued by KPMG LLP, resulted in financial information being accurately recorded in its books and records. While we do agree with some of the auditors’ findings and related recommendations for improvement, we believe that this report demonstrates that the auditors, despite conducting a nearly nine-month examination, failed to gain a full understanding of our organization and the business environment in which it operates, and the services that it provides.”

Auditor Comment: Our review of BPC’s operations as a whole identified several deficiencies and made constructive recommendations to improve its operations. The external auditor’s opinion clearly stated that their engagement was “not for the purpose of expressing an opinion on the effectiveness of [BPC’s] internal control.” We believe based on the deficiencies identified in this report, BPC’s internal controls were inadequate as we discuss in the following sections of this report.

Inadequate Timekeeping Procedures

BPC could not provide sufficient timekeeping documents to support and track each employee’s work hours. Adequate timekeeping procedures require an entity to record, document, and track each employee’s arrival and departure times on a consistent basis, particularly where the staff is paid by multiple funding sources and work on multiple contracts and projects. According to the BPC’s Employee Handbook, the work week shall be from Monday to Friday, 9:00 a.m. to 5:30 p.m. for regular salaried employees.⁴ However, BPC’s timekeeping procedures only require the line staff (i.e., hourly employees) and the sanitation supervisors at the operation offices to document the arrival and departure times based on the assigned shifts.⁵ BPC does not require the remaining employees to record their arrival and departure times. Specifically, we found:

- Security supervisors and all managers at the operation offices are not required to document their arrival and departure times, only the total number of hours worked per day.
- Executives and other employees at the administrative office are only monitored for attendance with manual entries made by the Receptionist in an Excel spreadsheet that notes only each person’s attendance or absence for the day.⁶ No record is maintained of the arrival and departure times or of the total number of hours worked each day. Furthermore, the Excel spreadsheet is stored on a shared drive which can be accessed by any employee at the administrative office.
- Six of eight employees of the Capital Projects Department are supposed to use an electronic timekeeping system that was installed in an underground field office near Greeley Square to track their time. However, only three (two hourly and one salaried employees) use the electronic system to log in and out, and the remaining three, the Senior Maintenance Technician, Electrician, and Project Director, did not account for their time under any of the BPC’s timekeeping systems/records.

Based on our review of the payroll records for a sampled period of one week, we could not determine whether the allocation of expenses between Bryant Park and the 34th Street BID for salaried employees was appropriate. Without an adequate timekeeping system for its

⁴ Regular salaried employees include all full time employees whose compensation is based on a weekly rate schedule.

⁵ BPC shares an operation office with 34th Street Partnership, which is located on West 35th Street. The security staff report to the 35th Street operation office. The sanitation staff, sanitation supervisors, park management workers, and horticulture staff report to an office in Bryant Park. The executive and managerial staff report to the administrative office located at 5 Bryant Park on Avenue of Americas.

⁶ These executive employees include the Vice President and Project Director of the Capital Projects Department.

management and administrative staff, BPC cannot determine whether these employees worked the required number of hours or were paid correctly in each pay period. According to BPC officials, the existing Excel spreadsheet they maintain is sufficient to track shared managerial and support staff's time. However, BPC's methodology (i.e., its use of an Excel spreadsheet) for recording shared employees' attendance does not provide reasonable assurance that all time is properly accounted for. The Excel spreadsheet does not provide adequate accountability of employees' work hours because it does not record work hours systematically and does not have sufficient controls to prevent manipulation. By not keeping proper and accurate records BPC may not be able to provide the necessary documentation to support BPC's allocation of joint payroll expenditures, as discussed below.

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

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

BPC is a \$13 million company with 130 employees who are all closely supervised. The definition of 'adequate timekeeping procedures,' and what those procedures require, for an entity of our size versus the City of New York, a \$82 billion enterprise with 260,000 employees, is very different. The auditors failed to recognize this distinction."

Auditor Comment: BPC's assertion that all its salaried employees' daily attendance is monitored and recorded is not consistent with the evidence we received from BCP. As described in our report, three of the Capital Projects staff, all salaried employees, did not have their time/attendance recorded in any of the timekeeping/attendance documents. Moreover, the fact that certain employees are not paid hourly wages does not relieve BPC from its responsibility to properly account for hours worked. In addition, regardless of the size of BPC's operations, it is still its responsibility to implement adequate internal controls.

Cost Allocation of Joint Salary Expenses Was Not Sufficiently Supported

BPC did not have sufficient documentation to support its allocations of salary expenses for the shared staff. Since BPC has assumed responsibility for management of the Bryant Park BID, and for sharing management and administrative staff with the 34th Street BID, it should have maintained sufficient documentation to substantiate the allocation of the joint salary expenses. Payroll expenses represented the majority of the BID's total expenditures (40.0 and 33.6 percent of the total expenditures in Fiscal Year 2013 and 2014, respectively). It is important that BPC ensure that sufficient documentation is maintained to support the allocation of joint salary expenses.

According to BPC's Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, Section 3.1.1 (b), salaried employees (that is, those who are not paid an hourly wage)

are “charged to the budget of each entity based on estimates made by department managers regarding volume of work/time per employee attributed to each entity, with periodic review as appropriate by each entity’s President, Controller, and independent accountant.” However, with the exception of the Design Department, BPC was unable to provide any data to support the estimates. In addition, when we reviewed BPC’s payroll register for the period ended June 10, 2014, which should document each employee’s gross pay and the number of hours worked for BPC, we found that BPC simply prorated the gross pay amount, instead of reporting the actual number of hours that each shared employee worked for BPC.

Moreover, with respect to the Design Department, we found that BPC’s cost allocation methodology was inappropriate for the shared expenses based on the records it provided. The Design Department works on multiple projects within a given timeframe. Each project is led by a single employee of the Design Department who provides the design team with general guidance. In Fiscal Year 2014, BPC implemented a revised allocation of payroll expenses for its Design Department employees, and based the percentage allocated to each company on the number of that company’s projects being led by each employee. Under this new methodology, the greater the number of projects an employee is responsible for, the higher the percentage of that employee’s salary allocated to that company. However, upon analysis of the data BPC used to compute these percentages, we found that the calculation failed to consider the length of time each employee actually spent on each project. Instead, the analysis was based on the number of projects regardless of how long each project takes.

Due to the lack of supporting documentation and inappropriate methodology implemented by BPC, we were unable to obtain reasonable assurance of the accuracy of the allocation of joint salary expenses for both staff and management.

BPC Response: “BPC shares certain employees with 34th Street Partnership, but each company has its own payroll, independent of the other. Shared employee salaries are split between the companies, based on the estimated efforts to be expended on each entity. Estimates are developed through conversations with the employees and their managers, presented to, and approved by, the Boards of Directors of each entity in their respective annual budgets.

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

Auditor Comment: Despite BPC’s claim that the estimates were appropriate, BPC could not provide any relevant, reliable, and sufficient data to support management estimates. Absence of any such data, we are unable to determine the reasonableness of the allocated cost.

Deficiencies in BPC’s Procurement Practices

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

BPC inappropriately generated 19 purchase orders subsequent to billing of \$1,270,548 in goods and services. Section 5.3.3(c) of the BPC’s Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel states that

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

However, our review found that BPC allowed employees to generate purchase orders after goods and services were billed. This practice allowed the BPC Controller's review to be circumvented. Further, the apparent lack of formal approval of potential expenditures, increased the risk that BPC might become liable for unwanted products or services.

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

BPC Response: "After reviewing the specific purchase orders identified by the auditors, as having been issued subsequent to the invoice date, we note that there are several instances where business conditions and urgency resulted in purchase orders being created while work was underway or completed. In no instance was there an unauthorized purchase."

Auditor Comment: Based on the documents provided, there were no indications these purchases were for emergency situations.

BPC Did Not Obtain Required Bids or Approvals

BPC did not obtain bids or approvals as required by its policies and procedures. Specifically, our review of 25 purchases that were over \$20,000, totaling \$2,548,885, found that:

- 10 purchases, totaling \$393,518, did not have at least three bids.
- 9 purchases, totaling \$471,267, were retroactively approved by the Construction Committee after the goods were delivered and/or the services were rendered.
- 8 purchases, totaling \$648,023, were not approved by the Construction Committee prior to the issuance of purchase orders.
- 3 purchases, totaling \$534,110, did not have evidence of VENDEX clearance when purchase orders exceeded \$100,000.⁷
- 3 sole source purchases, totaling \$489,778, were made without the requisite approval from DSBS.

According to BPC's Policies and Procedures Manual for Budgeting, Procurement, Finance and Personnel, Section 5.3.4, for purchases over \$20,000, BPC should: a) obtain at least three bids or price quotations with appropriate documentation; b) purchase from the lowest bidder who meets the specifications or qualification; and obtain prior approval from the Board or a committee thereof. Further, Section 5.3.5, for purchases over \$100,000, each subcontractor must submit all information needed to conduct a full background investigation in accordance with the procedures concerning the City's VENDEX. Lastly, Section 5.4.2 for sole source procurement, BPC is

⁷ VENDEX is New York City's Vendor Information Exchange System, which is used by the Mayor's Office of Contract Services to determine the responsibility of the entities that have contracts with the City. Contractors with a contract value exceeding \$100,000 within a 12-month period are required to fill out VENDEX questionnaires.

required to provide a letter to DSBS that outlines the justification for the sole source procurement and obtain approval from the Commissioner of DSBS.

BPC's failure to follow its requirement for competitive bidding reduces its ability to expend its resources effectively and ensure that it gets the best value for the best price. In addition, by not obtaining the required approvals or clearances, the Board and the City could not provide adequate oversight of BPC's procurement process.

BPC Response: "Although we agree, in principal [sic], that certain transactions were entered into, and processed, without following the company's procurement policies, we find the auditors' presentation of their findings to be disorganized and confusing. For instance, the auditors state that 9 purchases were retroactively approved by the Construction Committee, and that 8 purchases were not approved by the Construction Committee prior to the issuance of purchase orders - there is significant duplication in this finding. Also, purchase orders are prepared prior to the Construction Committee meetings, in all instances, and included in the meeting packet for their approval. Another misleading finding is that there were three purchases without evidence of VENDEX clearance; however, those three purchases involved just two vendors. The confusing and often duplicated presentation of the auditors' findings create the appearance of more significant findings than are supported by the facts."

Auditor Comment: The apparent confusion BPC claims is the result of its inconsistent procedures. We cited the same vendor twice for not having the VENDEX clearance because the VENDEX clearance was not obtained from the first purchase and BPC continued to use the same vendor without obtaining the VENDEX clearance for the second purchase. Also some of these purchase orders were cited more than once because these purchases had multiple non-compliance issues.

BPC Did Not Consistently Execute Written Contracts

BPC did not consistently execute or maintain written contracts. According to Section 9.16 of the DSBS Contract, "[a]ll DMA contracts and/or agreements for the purchase or provision of goods or services, regardless of amount, shall be in writing and said documents shall be maintained by the DMA." However, of the 10 contractors whose payments from BPC we sampled for review, BPC only has written contracts with three of them. As a result, BPC expended \$778,538 (69 percent) of the \$1,122,688 on goods and services without written contracts. BPC did not consistently execute contracts for goods and services in direct violation of its contract with DSBS and represents a significant weakness in internal controls. Among other things, the absence of contracts may cause BPC to overlook potential financial obligations.

Further, the lack of written contracts hinders BPC's ability to enforce the agreed-upon terms with its contractors, such as requirements for insurance, the use of specific materials, and deadlines for completion and payment. This poses significant risks to BPC. Among other things, absent written contracts with contractors, BPC has an increased risk of receiving substandard goods or services since there is no clear written statement of what is required from the contractor. In addition, there are inadequate controls to ensure that contractors have the necessary insurance to protect the contractors, BPC and the City. Thus, in the event a contractor were found to be negligent in the performance of work for BPC, the contractor, BPC and the City could ultimately be held liable and absent insurance from the contractor, might not be adequately indemnified.

The risks noted from a lack of written contracts raise particular concerns with individuals who perform services as independent contractors, such as BPC's Director of Horticulture, both as to

ensuring adequate performance of a required scope of services and the maintenance of sufficient insurance. During the audit scope period, the Director of Horticulture worked as an independent contractor without a written contract detailing the expected deliverables, the service period, insurance requirements and detailed responsibilities regarding park maintenance. Nonetheless, payments were made in the amount of \$82,731 during Calendar Year 2014 based only on monthly invoices submitted without basic details describing the services provided.

BPC Response: “BPC retains certain independent contractors including: 1) a horticultural consultant who directs a much respected and award winning horticultural program in Bryant Park, 2) a restaurant consultant who supports our efforts to attract and evaluate high quality operators for the Park's restaurants and concessions, and 3) a writer to produce the weekly MidCity News newsletter, which is distributed to constituents of BPC and the 34th Street Partnership. Each of these consultants, among others, has worked on behalf of BPC for many years, without a formal contract. Again, the auditor's conclusions in this area are overstated.”

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

BPC's Procurement Policies Did Not Adhere to Contract Requirements

BPC did not adhere to procurement policies and procedures as required by the DSBS Contract. When contracting with vendors for the performance of supplemental services, among other things, the DSBS Contract requires BPC to:

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

However, our review of BPC's procurement policies found that they did not appropriately reflect adherence to these DSBS Contract requirements, as follows.

BPC did not require the solicitation of professional services from at least three bidders nor establish proper procedures requiring approval from its Board of Directors if BPC sought an alternative approach to the contract. Instead, its procurement guidelines allow BPC to solicit professional services through sole source procurement. In addition, BPC did not require its staff to obtain approval from the Board or provide written notice to DSBS when selecting a bidder other than the lowest bidder or from less than three bidders. The policy only requires staff to submit information to DSBS for contracts in excess of \$20,000 that were solicited through competitive bids. Finally, BPC did not have requirements for submitting sole source or professional service contractor information to DSBS for a VENDEX background check if contracts exceeded \$100,000.

BPC only submits contractors' information for full background investigation when solicited through competitive bids.

BPC's practices appear to be inconsistent with the express terms of the DSBS Contract. Moreover, they inhibit the City's and Board's ability to properly oversee BPC's solicitation process and ensure that the selection of the vendors is fair and appropriate.

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

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

BPC Failed to Establish Procedures to Safeguard Competitive Bids

BPC's Capital Projects Department maintained inadequate procedures for the receipt and storage of capital project bids prior to the submission deadline. In Fiscal Year 2014, BPC made \$895,754 in Other Than Personal Services (OTPS) expenditures for its capital projects.⁸

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

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

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

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

⁸ The computed OTPS total does not include \$708,763 in expenses that have no direct relation to the capital projects bid solicitations. Excluded expenses are as follows: depreciation and amortization, interest, telephone, occupancy, insurance, and accounting and legal.

to the submission deadline. Thus, BPC was unable to mitigate the risk of unethical procurement practices.

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

Auditor Comment: Despite BPC’s expressed disagreement with our findings, we are pleased that BPC agreed to implement our recommendation to establish procedures to safeguard the bids submitted.

BPC Failed to Comply with Conflict of Interest Disclosure Requirement

BPC failed to adhere to its own conflict-of-interest policy which requires “each Responsible Person [to] . . . annually complete a disclosure form identifying any relationships, positions, or circumstances in which the Responsible Person is involved that he or she believes could contribute to a Conflict of Interest arising.”⁹ Our audit found that although some BPC Board members completed the conflict-of-interest disclosure form annually, we were not provided with copies of signed forms from all of the Board members. Further, we found that none of the upper management, which included the President, the Controller, and the Vice Presidents, completed conflict-of-interest forms.

Further, although in its IRS Form 990 filing¹⁰ BPC acknowledged, in writing, that its officers, directors, and key employees have reviewed BPC’s conflict-of-interest policy, agreed to abide by it, and disclosed any interests which could create a conflict, as defined in the policy, we found no evidence that such forms were completed by BPC’s officers, directors, and key employees. In fact, BPC could not provide more than half of the BPMC and BPC Board members’ conflict-of-interest disclosure forms. Because of BPC’s staff involvement in other not-for-profit organizations and outside private entities, these disclosure forms are necessary to communicate any conflicting businesses or practices which may affect BPC’s operations.

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

Auditor Comment: We are glad that BPC recognizes that it was not in compliance with the conflict-of-interest policy requirements and is willing to address this issue.

BPC Failed to Obtain Insurance Documentation from the Concessionaires, Subcontractors, and Event Operators

We found that BPC did not maintain insurance documents for six contractors who provided services to Bryant Park or to the BID. According to the DSBS Contract, all subcontractors should

⁹ A “Responsible Person” is any person serving as an officer, employee, or member of the Board of Directors of BPC.

¹⁰ Schedule O of the Form 990 provides the IRS with narrative information required for responses to specific questions on Form 990. Covered areas include significant changes in program services, unrelated business income, governance, management and disclosure, compensation of officers, directors, trustees, key employees, highest compensated employees and independent contractors, and other financial disclosure.

maintain the required minimum insurance. We also found three instances where BPC failed to ensure concessionaires or event operators had appropriate insurance coverage as is required by their license agreements with BPC.

Specifically, our review of two of the BPC agreements with the concessionaires Ark Bryant Park Corporation (Ark) and Wichcraft Operating, LLC (Wichcraft) did not include insurance coverage that named the City of New York as additional insured as required by the concessionaires' agreements. According to the Ark's license agreement, Article 4, "[a]t all times during the term of this Lease Tenant shall keep the Buildings insured for the mutual benefit of the Landlord, the City, the Library and Tenant." Section 29 of the license agreement with Wichcraft similarly requires Wichcraft to obtain and keep in full force and effect through the entire term a policy of comprehensive commercial liability insurance and property damage insurance that includes the City, Parks, and DSBS as additional insured. We also found that BPC could not provide proof of the insurance for the license agreement with Capstar Radio Operating Company, a sponsorship agreement, as required in Section 9 of that agreement.

Insurance requirements are in place as a control to ensure that BPC, the City, and all other related parties are sufficiently protected against any claims or potential litigation that may arise. Due to the lack of compliance, the BPC failed to mitigate the risk of potential damages and legal actions which may occur as a result of its operations.

BPC Response: "We have reviewed the instances identified by the auditors where evidence of proper insurance coverage was missing or incomplete, and we generally agree with their findings.

BPC Did Not Consistently Maintain Personnel Documents

BPC did not maintain essential personnel documents. In 9 out of the 10 personnel files we sampled of managerial staff, we found that BPC did not maintain a resume or other documents to support the basis for employment and required qualifications of the employees. These documents provide reasonable assurance that BPC is following prudent hiring practices and employs qualified individuals.

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

Given BPC's failure to maintain adequate documentation regarding its human resources activities, we could not assess the sufficiency of BPC's hiring process, employee performance, and salary allocation practices. BPC incurred approximately \$5.1 million and \$5.5 million in salaries and benefits for Fiscal Years 2013 and 2014, respectively. Given the large amount of funds dedicated to the personnel activities of BPC, it should maintain adequate books and records to appropriately reflect its human resources activities.

BPC Response: "Auditors reviewed the personnel files of 10 management employees of BPC, and found that only one file included a resume, and that there were no written performance evaluations in eight of the ten files. All of the management employees whose

files were reviewed have been employed by BPC for a minimum of eight years, and a majority of them have served BPC for more than fifteen years.”

Auditor Comment: Despite of the length of employment, BPC should still maintain the essential documents in the employee’s personnel file.

Lack of Enforcement of Employee Education Reimbursement Policy

While BPC has established operating policies and procedures for employee education reimbursements, it failed to consistently adhere to those procedures. According to BPC’s Employee Handbook, in order to receive matching funds for continuing education, the employee must submit: a) a receipt for payment of fees from the educational institution, b) evidence of regular attendance at the course or seminar, and c) evidence of acceptable grades (if any) or a certificate of completion from the course or seminar. However, our review of BPC’s documentation relating to an employee’s tuition expense found that BPC paid for two employees’ \$18,000 tuition expenses prior to course completion and without first obtaining the required documentation.

When we inquired about the lack of documentation, the Controller agreed that the organization did not comply with its own tuition policy. He stated that the President determines the amount and timing of educational expense reimbursements and also determined what documentation was considered acceptable. Due to the lack of required documentation, BPC could not readily determine whether either of the incurred tuition expenses was valid. As a result, \$18,000 in tuition expenses were incurred by BPC without first determining whether the employees successfully completed the course or even attended a class.

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

Auditor Comment: BPC’s written policies and procedures did not exempt any employee from adhering to its Professional Education policy. According to the policy, course-completion documents must be submitted in advance of the reimbursement of tuition expenses. These control procedures are in place to protect BPC from unnecessary expenses. By allowing the President to circumvent BPC’s internal control procedures, BPC is exposed to the enhanced risk of misappropriation of assets, misstatement and waste.

OTHER ISSUE

Parks Should Consider Revisions to the Management Agreement

Finally, we noted that Parks has not revised the management agreement with BPC since it was entered into in 1985. As a result, the terms of the agreement do not necessarily reflect current conditions in and around Bryant Park and in the City as a whole and as a result may not adequately maximize benefits to the City and protect its interests. The existing management agreement was executed in 1985, when the City and the area surrounding Bryant Park suffered from a higher crime rate, far lower real estate values, and overall was in a very different condition than it is today. Bryant Park was particularly under-utilized by the general public and physically in poor condition.

The basic terms of the original 1985 agreement have not been modified since it was originally entered into. Based on the considerable improvements made throughout Bryant Park and on the increased revenue streams presently available, Parks should consider whether the management agreement adequately furthers and protects the City's interests and ensures sufficient accountability and transparency of BPC's operations, and consider renegotiating its terms at the next opportunity.

Further, given the weaknesses in the financial and operational controls found in this audit, Parks should ensure that the management agreement has provisions that require BPC to establish enhanced internal controls to better monitor its operations and ensure better accountability and transparency. These might include controls related to maintenance of books and records that can accurately reflect BPC's revenue and expense activities and allocation of shared salaries and other expenses. In addition, Parks should consider requiring periodic financial reporting on the foregoing. Parks should also consider increasing the scope of required park maintenance described in the management agreement to ensure BPC's proper care and inspection of the trees and the retention of adequate insurance coverage by contractors and subcontractors.

Parks Response: "With the current management agreement expiring in 2018, Parks and BPC have already begun discussions on the drafting of a new agreement. The recommendations in this Report will be considered as we collaboratively work on the new agreement."

RECOMMENDATIONS

BPC officials should:

1. Review and revise its written policies and procedures in specific areas of operation as follows:

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

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

Auditor Comment: BPC does not present a clear rationale for refusing to document the arrival and departure times of the salaried staff given that it is already implementing an electronic timekeeping system for its hourly staff. Besides supplementing the close management structure that BPC states that it has, such a system could be used by BPC to support the allocation of joint salary expenses.

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

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

Auditor Comment: Despite BPC's claim that the estimates were appropriate, BPC could not provide any relevant, reliable, and sufficient data to support management estimates. Absence of any such data we are unable to have the same conclusion as KPMG and determine the reasonableness of the allocated cost. Documenting job descriptions and key elements used to determine the basis of the allocation is an essential step that BPC management should do.

- Execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained, sufficient funds are available for potential expenses, and an appropriate receiving report is utilized;

BPC Response: "The management of BPC will use its best efforts to enforce its written policies regarding procurement."

- Maintain all supporting documents relating to BPC's procurement processes, including bids, required approvals from the Board and City agencies, and signed contracts;
- Ensure that VENDEX background checks are on file for contractors who have contracts exceeding \$100,000 within a 12-month period;
- Obtain all required approvals from the construction committee and DSBS and/or Parks, if applicable, for purchases over \$20,000;

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

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

BPC Response: "We believe that the auditors are over-reaching in their stated concerns about the absence of written contracts for consultants and certain other vendors. However, we will carefully consider these concerns, and commit all agreements and purchases to an appropriate writing."

Auditor Comment: BPC's response is insufficient. Section 9.16 of the DSBS Contract clearly states that "[a]ll DMA contracts and/or agreements for the purchase or provision of goods or services, regardless of amount, shall be in writing and said documents shall be maintained by the DMA." The requirement for written contracts is designed to ensure the effective operations of BPC and that all parties are held to reasonable standards.

- Establish monitoring procedures to ensure all BPC employees adhere to the policies and procedures, including the employee education reimbursements, governing BPC's operations;

BPC Response: "BPC's management will use its best efforts to enforce its written policies and procedures. However, the auditors have over-reached in their recommendation related to this finding, and it is a restatement of other findings and recommendations."

Auditor Comment: The control procedures are in place to protect BPC from unnecessary expenses. By overriding BPC's internal control procedures, BPC is exposed to the enhanced risk of misappropriation of assets, misstatement and even waste.

2. Obtain Board and DSBS approval when less than three bids are obtained;

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

3. Revise its written policies and procedures over the subcontracting of supplemental services to ensure that BPC's written policies are consistent with the DSBS Contract;

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

Auditor Comment: The comparison in Exhibit A clearly demonstrates that BPC's procurement policies do not provide sufficient instructions to BPC staff with regard to the subcontracting requirements set forth in the DSBS Contract. For example, the

DSBS Contract requires that when BPC selects a vendor who is not the lowest bidder, it is required to provide justification to the satisfaction of the Board. However, BPC's policies and procedures do not clearly include this requirement with regard to all vendors who are not the low bidders. In addition, the DSBS Contract requires all subcontractors with contracts over \$100,000 within a 12-month period to undergo VENDEX clearance. However, BPC's procedures do not reflect this requirement for its sole source procurements.

4. Establish policies to properly safeguard submitted bids;

BPC Response: "Although any risk of unethical procurement practices with regard to someone tampering with capital project bids is, at best, highly unlikely, BPC will establish written policies regarding the receipt and storage of capital project bids."

Auditor Comment: Despite BPC's high level of confidence regarding the risk of unethical procurement practices in its environment, proper procedures should be implemented for the receipt of capital project bids. As described in this report, the existing procedures fail to mitigate the risk of unethical procurement practices such as bid rigging and collusion. Hence, it is highly recommended that the BPC implement sufficient procedures to ensure the security and confidentiality of bid information.

5. Obtain the necessary conflict-of-interest disclosure forms from its employees and Board members;

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

6. Ensure sufficient documentation is maintained in personnel files to appropriately reflect BPC's hiring and staff performance evaluation practices;

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

7. Ensure all outside entities conducting business with the BID maintain insurance coverage that is required by the license agreements;

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

Parks officials should:

8. Ensure BPC implement the recommendations of this report;

Parks Response: "Parks will discuss the recommendations in this Report with BPC and, where appropriate, work with BPC to implement recommended improvements, or otherwise address the concerns raise by the Report."

9. Conduct periodic review of BPC's operations to ensure compliance with the Parks Management Agreement;

Parks Response: "Parks will continue reviewing BPC's operations through regular communication and analysis of data required to be provided pursuant to the management agreement, including budget and operation plans, financial statements, and monthly and other periodic reports. We will also consider any matters that may

arise that we feel is important for the City and for Parks to review, based on potential impacts to the Bryant Park and the City.”

10. Consider amending the terms in the management agreement to include the types of internal controls that BPC should establish for its operation and to better optimize the benefits for the City;

Parks Response: “With the current management agreement expiring in 2018, Parks and BPC have already begun discussions on the drafting of a new agreement. The recommendations in this Report will be considered as we collaboratively work on the new agreement.”

DSBS officials should:

11. Ensure BPC implement the recommendations of this report;

DSBS Response: “SBS will discuss the recommendations in this Report with BPC and where appropriate, work with BPC to implement recommended improvements, or otherwise address the concerns raised by the Report.”

12. Conduct periodic review of the BPC’s operations to ensure compliance with the DSBS Contract.

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

DETAILED SCOPE AND METHODOLOGY

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

The Comptroller is one of the four Class D Board members of the Bryant Park BID. The Class D Board members, in conjunction with the other Board members, comprise the Board of Bryant Park BID. The Comptroller sits on the Board through a representative. Neither the Comptroller nor his representative on the Board was involved in the audit process.

The scope of this audit was Fiscal Years 2013 and 2014. To assess the overall condition of the BID, we performed multiple observations of the BID area and concentrated on the security and safety of parkgoers, the overall cleanliness of the park, and identified various revenue streams that are abundant in the park. To determine whether periodic maintenance of the trees, shrubs and the overall landscape of Bryant Park area were conducted, we reviewed the maintenance records including inspection reports for the London plane trees within Bryant Park. We also reviewed invoices for landscaping and tree maintenance. To determine whether corrective actions were taken pertaining to the tree falling incident that took place on September 4, 2015, we reviewed BPC and Parks inspections and incident documents. We also performed a follow-up observation on September 9, 2015, to determine the physical condition of the trees surrounding Bryant Park and took pictures of any trees that appeared to have some tree rot and may pose potential danger to public park goers.

To gain an understanding of the oversight responsibilities of DSBS and Parks, we met with officials from each City agency.

To gain a general understanding of BPC's operations, we reviewed the Bryant Park management agreement between BPC and Parks, and the BID management agreement between BPMC and DSBS, the BPC and BPMC's certification of incorporation, by-laws, Board minutes, policies and procedures, federal tax forms 990, certified financial statements, district plan, annual reports submitted to DSBS, and all other relevant financial information. From the Board minutes, we identified any significant or unusual events that might require additional inquiry or testing. We also conducted a trend analysis of BPC and BPMC's financial information to identify any unusual trends and outliers.

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

We obtained and analyzed the BPC's general ledgers, balance sheets, statements of activities, and statement of functional expenses. We summarized the general ledger accounts and identified the periods with the highest expenses to facilitate future substantive testing. To determine whether BPC and BPMC accurately reported its financial position in the financial statements, we traced the expense account balances, as of June 30, 2014, from the general ledger to the statement of functional expenses.

To determine whether BPC properly recorded the revenue generated within the District, we obtained a list of sponsorship contracts which generated more than \$10,000 of revenue for the BPC. We traced these contracts to the general ledger to assess the reliability of the information and identify any inconsistencies. Based on the contract list and the variances identified, we judgmentally selected 7 out of 29 revenue contracts for review. We then obtained and reviewed the contracts and traced the revenue to the general ledger and the bank statements. We also determined whether these entities remitted the correct payments and maintained sufficient insurances as required by the contract terms.

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

Additionally, we judgmentally sampled 10 out of the 55 managerial employees and randomly selected 11 out of 80 line staff that appear on the week ending June 10, 2014, payroll register. From the sampled employees, we obtained and reviewed the personnel files to determine whether the employees were qualified and/or certified (when applicable) for their respective positions. We also determined whether authorizations to hire and salary increases were properly authorized, documented, and maintained.

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

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

We extracted all reimbursement expenses between BPC and related entities for hourly line staff from the general ledger to determine whether any line staff was being shared. We reviewed the payroll register and all relevant supporting documents to determine whether BPC maintained separate line staff from related entities. We then cross-checked the shared employees' information to the payroll register and the personnel file to determine whether the personnel information correctly reflects the employees' duties. We also examined the operations concerning its internal controls, reporting requirements, and compliance with agreements with the City. We

also obtained BPC's insurance policies to determine whether BPC maintained the appropriate insurance coverage as required by its DSBS Contract and the management agreement with Parks.

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

To determine whether BPC had proper supporting documentation for the OTPS expenditures, we judgmentally selected 20 of the highest OTPS expenses from the general ledger from 10 different expense account categories totaling \$1,488,773. The selected sample included expenses from various categories including signs and plaques, uniforms, professional and performance fees, accounting fees, maintenance and repairs, entertainment, and books and supplies. From the selected accounts, we reviewed the supporting documents and determined whether the expenses were reasonable, appropriate, supported and compliant with the BID's operating agreements.

To determine whether BPC executed and maintained the appropriate written contracts with its independent contractors, we judgmentally selected five contractors who received a 1099 tax form over \$15,000 for Calendar Year 2014 and obtained the relevant contracts for review.¹¹

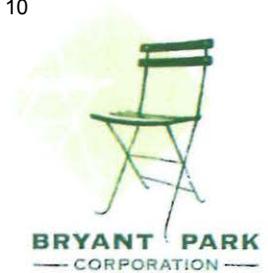
To determine whether BPC complied with Section 5.3.0 of the procurement policies and procedures and the requirements stated in the City agreements, we obtained a list of BPC capital and maintenance projects for Fiscal Year 2014. The list provided included five projects with an expected cost totaling \$1,446,234. We selected a judgmental sample of the three largest projects totaling \$1,337,864 from the top tier projects. Based on our sample, we requested all solicitation and contract documents including vendor bids and proposals, rating sheets, insurance documents, and executed contracts to determine whether BPC complied with its procurement policies and procedures and City agreements.

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

¹¹ Form 1099-MISC is used to "report payments made in the course of a trade or business to a person who is not an employee or to an unincorporated business."

Bryant Park BID





BOARD OF DIRECTORS

- Michael Fuchs
Chairman
- Daniel A. Biederman
Executive Director
- Evan Chelser
- Douglas Durst
- Stan Herman
- Robert L. Ierman
- Anthony Marx
- Abby Milstein
- Robert Morelli
- D. Kenneth Patton
- Clyde E. Rankin, III
- Katharine J. Rayner
- Marshall Rose
- Iris Weinshall
Founding Director
- Frederic S. Papert
Ex Officio
- Mitchell Silver
- Vikki Barbero

June 27, 2016

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

Re: Management response to the Audit Report
 on the Financial and Operating Practices of
 Bryant Park Corporation and Bryant Park
 Management Corporation (FN15-129A)

BOARD OF DIRECTORS

- I. Robert Lieb
- Clyde E. Rankin, III
Co-Chairman
- Daniel A. Biederman
President
- Robert H. Arnow
- Laura Belt
- Dennis Brady
- Galina Breslav
- Eric Burl
- Melissa Coley
- Eben Dorros
- Eli Eklant
- Zachary Freeman
- Preston Henske
- A. Eugene Kohn
- Steve Lokowitz
- Robert Morelli
- William H. Nickerson
- Marc Saeherman
- Christopher Shehadeh
- Greg Sutherland
- Scott Wachenfeld
- Iris Weinshall
- Ex Officio*
- Bill de Blasio
- Scott Stringer
- Gale Brewer
- Dan Garodnick
- Vikki Barbero

Dear Ms. Landa:

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

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

Very truly yours,

Peter Ciriello, CPA
 Controller & CFO

Attachment

cc: [Redacted] ✓

**Management response to the findings and recommendations of the Audit Report
on the Financial and Operating Practices of Bryant Park Corporation
and Bryant Park Management Corporation**

Regarding the auditors' finding of internal control deficiencies and that BPC did not establish sufficient policies and procedures to ensure the accountability and transparency of its administrative expenses.

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

BPC could not provide sufficient time keeping documents to support and keep track of employees' work hours.

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

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

BPC is a \$13 million company with 130 employees who are all closely supervised. The definition of "adequate timekeeping procedures," and what those procedures require, for an entity of our size versus the City of New York, a \$82 billion enterprise with 260,000 employees, is very different. The auditors failed to recognize this distinction.

Recommendation 1a: Implement a timekeeping system with features to account for each employee's time-in/time-out, total hours worked, and a secure interface for data entry, reviewer and approver processes.

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

BPC did not have sufficient documents to support its allocations of salary expenses for the shared staff.

Response: BPC shares certain employees with 34th Street Partnership, but each company has its own payroll, independent of the other. Shared employee salaries are split between the companies, based on the estimated efforts to be expended on each entity. Estimates are developed through conversations with the employees and their managers, presented to, and approved by, the Boards of Directors of each entity in their respective annual budgets.

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

Recommendation 1b: Implement an appropriate methodology for allocating payroll expenses for employees which are shared by BPC and other entities.

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

BPC inappropriately generated 19 purchase orders subsequent to billing of \$1,270,548 in goods and services.

Response: After reviewing the specific purchase orders identified by the auditors, as having been issued subsequent to the invoice date, we note that there are several instances where business conditions and urgency resulted in purchase orders being created while work was underway or completed. In no instance was there an unauthorized purchase.

Recommendation 1c: Execute purchase orders prior to the billing of goods and services to ensure that adequate approval is obtained.

Response: The management of BPC will use its best efforts to enforce its written policies regarding procurement.

BPC did not obtain bids or approvals as required by its policies and procedures.

Response: Although we agree, in principal, that certain transactions were entered into, and processed, without following the company's procurement policies, we find the auditors' presentation of their findings to be disorganized and confusing. For instance, the auditors state that 9 purchases were retroactively approved by the Construction Committee, and that 8 purchases were not approved by the Construction Committee prior to the issuance of purchase orders – there is significant duplication in this

finding. Also, purchase orders are prepared prior to the Construction Committee meetings, in all instances, and included in the meeting packet for their approval. Another misleading finding is that there were three purchases without evidence of VENDEX clearance; however, those three purchases involved just two vendors. The confusing and often duplicated presentation of the auditors' findings create the appearance of more significant findings than are supported by the facts.

Recommendations 1c-e and 2: 1c) Maintain all supporting documents relating to BPC's procurement process, including bids, required approvals and signed contract. 1d) Ensure that VENDEX checks are on file for contracts exceeding \$100,000. 1e) Obtain all required approvals for purchases over \$20,000. 2) Obtain Board and DSBS approval when less than three bids are obtained.

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

BPC failed to consistently execute or maintain written contracts.

Response: BPC retains certain independent contractors including: 1) a horticultural consultant who directs a much respected and award winning horticultural program in Bryant Park, 2) a restaurant consultant who supports our efforts to attract and evaluate high quality operators for the Park's restaurants and concessions, and 3) a writer to produce the weekly MidCity News newsletter, which is distributed to constituents of BPC and the 34th Street Partnership. Each of these consultants, among others, has worked on behalf of BPC for many years, without a formal contract. Again, the auditor's conclusions in this area are overstated.

Recommendation 1f: Execute written contracts for all independent contractors and vendors conducting business with BPC.

Response: We believe that the auditors are over-reaching in their stated concerns about the absence of written contracts for consultants and certain other vendors. However, we will carefully consider these concerns, and commit all agreements and purchases to an appropriate writing.

BPC's procurement policies did not adhere to [DSBS] contract requirements.

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

Recommendation 3: Revise its written policies and procedures over the subcontracting of supplemental services to ensure that they are consistent with the DSBS contract.

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

BPC's Capital Projects Department maintained inadequate procedures for the receipt and storage of capital project bids prior to the submission deadline.

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

Recommendation 4: Establish written policies to properly safeguard submitted bids.

Response: Although any risk of unethical procurement practices with regard to someone tampering with capital project bids is, at best, highly unlikely, BPC will establish written policies regarding the receipt and storage of capital project bids.

BPC failed to adhere to its own conflict of interest policy.

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

Recommendation 5: Obtain the necessary conflict-of-interest disclosure forms from its employees and Board members.

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

BPC failed to obtain insurance documentation from concessionaires, subcontractors and event operators.

Response: We have reviewed the instances identified by the auditors where evidence of proper insurance coverage was missing or incomplete, and we generally agree with their findings.

Recommendation 7: Ensure all outside entities conducting business with the BID maintain insurance that is required by the license agreements.

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

BPC did not maintain essential personnel documents.

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

Recommendation 6: Ensure sufficient documentation is maintained in personnel files to appropriately reflect BPC's hiring and staff performance evaluation practices.

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

BPC did not adhere to policies and procedures for employee education reimbursements.

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

Recommendation 1h: Establish monitoring procedures to ensure all BPC employees adhere to the policies and procedures, including the employee education reimbursements, governing BPC's operations.

Response: BPC's management will use its best efforts to enforce its written policies and procedures. However, the auditors have over-reached in their recommendation related to this finding, and it is a restatement of other findings and recommendations.

Other issue: Parks should consider revisions to the Bryant Park management agreement.

Response: The current management agreement does not expire until June 2018. Discussions about, and work on, the drafting of a revised agreement to reflect current conditions and practices began in mid-September 2015. We are disappointed that the auditors failed to recognize and acknowledge the tremendous benefit derived by the City through the existing agreement, the value of which has been recognized by three successive five year extensions by the Commissioner of Parks.

Bryant Park is widely recognized as the best small urban park in the world, a model for hundreds of other park revitalizations worldwide. The tangible benefits to the City include \$20 million of park improvements, the annual presentation of over 800 free events and activities for the public to enjoy year-round, and over \$2 billion of increased value in surrounding real estate and corresponding increases in real estate taxes collected. Park improvements include an underground power facility, a restaurant, five concession kiosks, improved lighting and a world-class restroom, to name a few – all provided, since 1997, with no money at all from the City of New York.

Exhibit A

34th Street Partnership / Bryant Park Corporation Procurement Policies

DSBS Contract Procurement Requirements

PURCHASE, AUTHORIZATION, LIMITATIONS, AND COMMITMENT OF FUNDS AS EVIDENCED BY BUDGETS, PURCHASE ORDERS AND CONTRACTS

Section 2A.05 Subcontracts for the Performance of Supplemental Services

5.1.0. WHO MAY COMMIT FUNDS AND TO WHAT EXTENT?

5.1.1 Only managers with units that have a formal budget are authorized to contract the purchase of services or goods to the level of their budget. When it can be reasonably determined that the aggregate amount of purchases of an item during the fiscal year will exceed the limits in any category under 5.3, the bidding procedures prescribed for the maximum estimated amount for the year will be used.

5.2.0. PROCEDURE FOR COMMITMENT OF FUNDS AND RESOURCES AND REVIEW

Subject to the applicable provisions of this Contract, the DMA may contract for the performance of the Supplemental Services.

5.2.1. All purchase orders and invoices must be presented to the Controller for certification that funds are available and, when in excess of \$1,000 per section 5.3.3.d), to the President for initialing to indicate approval.

5.3.0. PURCHASES OF GOODS AND SERVICES

5.3.1. Purchase via Petty Cash

Purchases of goods or services via Petty Cash (\$100 or less) must be supported by receipt evidencing proof of purchase.

5.3.2. Purchases up to \$1,000

- a) Purchases of goods or services, other than Petty Cash, will be paid by check.
- b) Purchase orders are required for all purchases other than for Petty Cash, regardless of amount.
- c) A purchase order shall record the agreed upon price, quantity, and terms of the purchase.

34th Street Partnership / Bryant Park Corporation
Procurement Policies

DSBS Contract Procurement Requirements

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

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

- a) At least three bids or price quotations must be obtained for purchases within this range.
- b) Purchases will generally be made from the lowest bidder who meets the specifications or qualifications. When a bidder who is not the lowest bidder is selected, written justification must accompany the P.O.
- c) All purchase orders with price quotes will be submitted to the Controller for review and initialed to indicate approval and that funds are available.
- d) The President or Treasurer, or other individual designated by the Treasurer, will review and approve all purchases within this range before funds are committed by way of mailing purchase order or purchases called in to vendor.

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

5.3.4. Purchases over \$20,000

- a) At least three bids or price quotations with appropriate documentation must be formally obtained for purchases over \$20,000. Amendments or modifications of contracts will follow the same procedure based on dollar value.
- b) Purchases may be made from the lowest bidder who meets the specifications or qualifications.
- c) Approval of the Board of Directors, or a committee thereof, must be obtained prior to any purchase over \$20,000.
- d) Other than bids, the approval procedure will be the same as for purchases between \$1,000 and \$20,000.

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

5.3.5. Purchases over \$100,000

- a) The procedures in 5.3.4. (a), (b), (c) and (d) above must be followed.
- b) Each subcontractor must submit all information needed to conduct a full background investigation in accordance

If the DMA awards a subcontract in the amount of one hundred thousand dollars (\$100,000.00) or more or, if the DMA awards a subcontract that when aggregated with the value of all other subcontracts awarded to the same subcontractor during the immediately preceding

34th Street Partnership / Bryant Park Corporation
Procurement Policies

DSBS Contract Procurement Requirements

with the procedures concerning the City's Vendor Information Exchange System ("VENDEX").

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

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

5.4.0. SOLE SOURCE PROCUREMENT

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

- a) the good or service to be procured is available from less than three sources;
- b) specifications cannot be made sufficiently definite and certain to permit selection based on price alone;
- c) judgment is required in evaluating competing proposals, and it is in the best interest of the 34th Street Partnership or BPC to require a balancing of price, quality and other factors;
- d) an emergency procurement is required and is not due to non-compliance with the normal competitive procurement process.

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

- a) A memo shall be submitted to the Controller identifying the steps that have been taken in concluding that a sole source procurement is necessary. Such memo shall include the identification of other possible bidders for the goods or service, and the specific justification for the selection of the sole source provider;
- b) A sole source letter shall be drafted and submitted to the Commissioner of the Department of Small Business Services, outlining the justification for the sole source procurement and requesting approval to proceed with such procurement.
- c) No payment for the sole source procurement may be made until the entity receives the approval of the Commissioner

Repeated from above:

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

34th Street Partnership / Bryant Park Corporation
Procurement Policies

DSBS Contract Procurement Requirements

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

5.5.0. PROCUREMENT OF TECHNICAL, CONSULTANT OR PERSONAL SERVICE

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

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

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

a) Goods and services

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

b) Change Orders

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



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345

E mitchell.silver@parks.nyc.gov

ADDENDUM II

Page 1 of 2

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

June 28, 2016

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

Re: Audit Report of the Financial and Operating Practices of the Bryant Park Corporation and Bryant Park Management Corporation; FN15-129A

Dear Deputy Comptroller Landa:

This letter addresses the findings and recommendations contained in the New York City Comptroller's Draft Audit Report ("Report"), dated June 14, 2016, on the above subject matter.

The Bryant Park Corporation (BPC) is a model of a successful public-private partnership and, under its stewardship over the past 30 years, has transformed Bryant Park into a jewel of an urban oasis. With no financial contribution from the City of New York, BPC provides all maintenance and security services, funds its capital projects, and hosts high-quality events, activities and concessions for all New Yorkers. We are pleased that this Report found that BPC was generally in compliance with the Parks Management Agreement and with the Department of Small Business Services (DSBS) Contract, which together govern the operations of Bryant Park. We also acknowledge that this Report found room for BPC to improve certain internal controls that may affect the oversight over its operations and accuracy of its financial reporting. With the Parks Management Agreement dating to 1985, and expiring in 2018, Parks will discuss the recommendations in this Report with BPC as we work to develop a new agreement.

This Report includes seven recommendations to BPC, three recommendations to Parks, and two recommendations to SBS. In reference to the Report's recommendations directed to Parks:

Recommendation 8 – Ensure BPC implement the recommendations of this report.

Parks will discuss the recommendations in this Report with BPC and, where appropriate, work with BPC to implement recommended improvements, or otherwise address the concerns raised by the Report.

Recommendation 9 – Conduct periodic review of BPC's operations to ensure compliance with the Parks management agreement.

Parks will continue reviewing BPC's operations through regular communication and analysis of data required to be provided pursuant to the management agreement, including budget and operation plans, financial statements, and monthly and other periodic reports. We will also consider any matters that may arise that we feel is important for the City and for Parks to review, based on potential impacts to the Bryant Park and the City.

Recommendation 10 – Consider amending the terms in the management agreement to include the types of internal controls that BPC should establish for its operation and to better optimize the benefits for the City.

With the current management agreement expiring in 2018, Parks and BPC have already begun discussions on the drafting of a new agreement. The recommendations in this Report will be considered as we collaboratively work on the new agreement.

Finally, Parks wishes to thank you and your audit staff for the time and effort devoted to completing this report.

Sincerely,



Liam Kavanagh
First Deputy Commissioner

CC: Daniel Biederman
President, Bryant Park Corporation

Peter Ciriello
Controller & CFO, Bryant Park Corporation

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

Alyssa Cobb Konon
Assistant Commissioner of Planning and Development, NYC Parks

David Cerron
Chief of Revenue, Concessions and Controls Oversight, NYC Parks

Brittney Mascarella
Director of Partnership Development, NYC Parks

Phil Abramson
Director of Revenue Communications, NYC Parks



careers
businesses
neighborhoods

Gregg Bishop
Commissioner

June 28, 2016

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

Re: Audit Report of the Financial and Operating Practices of the Bryant Park Corporation and Bryant Park Management Corporation; FN15-129A

Dear Deputy Comptroller Landa:

The New York City Department of Small Business Services (SBS) submits this response to the findings and recommendations contained in the New York City Comptroller's Draft Audit Report ("Report"), dated June 14, 2016. SBS is pleased that the audit found the Bryant Park Corporation (BPC) and Bryant Park Management Corporation (BPMC) to be generally in compliance with its contract with Small Business Services, as well as its Management Agreement with the Department of Parks and Recreation. BPMC – the District Management Association of the Bryant Park Business Improvement District (BID) – has been the engine behind the revitalization of Bryant Park for over 30 years. Through vital supplemental maintenance and security services, transformative capital improvements and hundreds of free public events every year, the BID has made Bryant Park an unmistakable destination for all New Yorkers and one of the most frequently cited examples of a successful public-private partnership in the world.

With all partnerships, opportunities for improvement exist. We recognize that this report highlights areas where BPC and BPMC can improve upon their existing internal control mechanisms.

The Report includes seven recommendations to BPC, three recommendations to Parks, and two recommendations to SBS. In reference to recommendations directed to SBS:

Recommendation 11 – Ensure BPC implement the recommendations of this report.

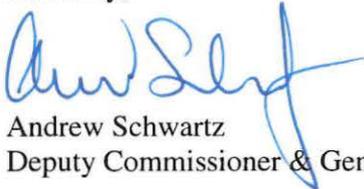
SBS will discuss the recommendations in this Report with BPC and where appropriate, work with BPC to implement recommended improvements, or otherwise address the concerns raised by the Report.

Recommendation 12 – Conduct periodic review of BPC's operations to ensure compliance with the DSBS Contract.

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

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

Sincerely,



Andrew Schwartz
Deputy Commissioner & General Counsel

- CC: Daniel Biederman
President, Bryant Park Corporation
- Peter Ciriello
Controller & CFO, Bryant Park Corporation
- George Davis III
Director of Audit Services, Office of the Mayor
- Shaazad Ali
Assistant Commissioner, Finance, Dept. of Small Business Services
- Blaise Backer
Deputy Commissioner, Department of Small Business Services
- Kris Goddard
Executive Director, Department of Small Business Services