



NEW YORK CITY COMPTROLLER  
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**Follow-Up Audit of the  
Financial and Operating  
Practices of the 47th Street  
Business Improvement District**

**FK23-080F | April 1, 2024**





THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BRAD LANDER

April 1, 2024

To the Residents of the City of New York,

My office has conducted a follow-up audit of the 47th Street Business Improvement District (BID) to assess the implementation of recommendations made in the Audit Report on the Financial and Operating Practices of the 47th Street BID (Audit # FK18-089A), which was issued on December 19, 2019.

The purpose of this audit was to assess the status of recommendations made in 2019. We found that the 47th Street BID partially implemented nine recommendations and did not implement the remaining 14 recommendations. Additionally, the Department of Small Business Services (SBS) implemented two recommendations, partially implemented one recommendation, and did not implement the remaining recommendation.

The audit also identified new governance and compliance issues that were not present when the first audit was conducted. These issues relate to committee member appointments, Board control and voting, BID membership drives, private use of City streets, inappropriate payments made to the Executive Director for time not worked, and subcontractor reporting issues.

The audit recommends that SBS instruct the Department of Finance to place the 47th Street BID's assessments in escrow until the BID changes its by-laws and leadership and agrees to implement the report's recommendations. The audit also recommends that SBS oversee the BID's membership drive and elections, determine whether SBS is authorized to amend the BID's by-laws, and ensure that the BID's security subcontractor submits required information.

The audit recommends that the 47th Street BID consult with SBS and legal counsel and amend its by-laws, undertake an annual membership drive, recoup inappropriate payments made to the Executive Director for time not worked, review time and attendance records and monitor leave usage, and require subcontractors to submit background information to SBS. These are all necessary for effective governance of the 47<sup>th</sup> Street BID.

The results of the audit have been discussed with the 47th Street BID and SBS officials and their comments have been considered in preparing this report. The BID's and SBS' complete written responses are attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander  
New York City Comptroller

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# Audit Impact

## Summary of Findings

This follow-up audit found that the 47th Street Business Improvement District (BID) partially implemented nine recommendations and did not implement the remaining 14 recommendations. The audit also identified new governance and compliance issues that were not present when the first audit was conducted related to committee member appointments, Board control and voting, BID membership drives, private use of City streets, payments made to the Executive Director for time not worked, and subcontractor reporting issues.

Additionally, the Department of Small Business Services (SBS) implemented two recommendations, partially implemented one recommendation, and did not implement the remaining recommendation.

## Intended Benefits

This follow-up audit will ensure that BID resources are used efficiently and effectively to provide supplemental services to the District.

# Introduction

## Background

This follow-up audit assesses the implementation of recommendations made in the Audit Report on the Financial and Operating Practices of the 47th Street BID (Audit # FK18-089A), issued on December 19, 2019, which was conducted to determine whether the 47th Street BID: (1) provided supplemental services; (2) exercised adequate oversight over its fiscal affairs and maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized; and (3) complied with the terms of its SBS contract.

The 47th Street BID is a not-for-profit corporation formed in 1997 that covers the portion of West 47th Street between 5th Avenue and the Avenue of the Americas (6th Avenue) in Midtown Manhattan, known as the Diamond District. Its stated goal is “to make the Diamond District safer, cleaner and more beautiful for merchants and consumers.” The BID’s supplemental services include public safety, marketing and public events, and sanitation.

According to the 47th Street BID’s audited financial statements for Fiscal Year 2022, the BID reported assessments and other revenue of \$1,395,715 and expenses of \$1,255,714, resulting in a surplus of \$140,001.

The prior audit found that the 47th Street BID improperly spent \$210,835 on security services, did not provide supplemental services in accordance with its annual budget, and did not explain budget variances to its members and SBS, as required.

The 47th Street BID also failed to maintain adequate controls over its expenses. As a result, the former Executive Director: (1) was paid significantly more than the Executive Directors and Presidents of other similarly sized BIDs; (2) was able to improperly process unauthorized payments totaling \$68,318 for himself and the BID’s only other employee; and (3) charged unauthorized personal expenditures totaling at least \$18,686. In addition, the 47th Street BID failed to: (1) document that it competitively procured goods and services or justified and obtained Board approval for non-competitive procurements; and (2) enter into written contracts or obtain invoices detailing the scope of the services, payment terms, and internal approvals. Consequently, the auditors could not determine whether BID expenditures were reasonably priced, properly approved, legitimate, and related to BID business.

With respect to corporate governance, the 47th Street BID Board failed to implement a conflict of interest policy and comply with its by-laws regarding board composition and meeting minutes. Finally, the 47th Street BID did not report required information on its website.

Based on the prior report’s findings, the auditors made 23 recommendations to the 47th Street BID and four recommendations to SBS.



The 47th Street BID did not agree with or address the report's findings that it failed to provide supplemental services in accordance with the contract and spent funds on supplemental security services that did not principally benefit property within the District or with the associated recommendations. While the 47th Street BID did not expressly agree with the report's remaining findings and recommendations, the BID maintained that it took actions related to many of them, including that it revised its by-laws and financial and administrative procedures, implemented a conflict of interest policy, and took other corrective actions to strengthen controls over its expenses and comply with its contract with SBS and applicable standards and regulations.

In its response, SBS stated that it would consider requiring BIDs to obtain fidelity bonds or insurance and adding additional provisions to the 47th Street BID's contract related to membership requirements, meeting minutes, financial and timekeeping records, and regulatory filings. In addition, SBS stated that it would consider the report's findings and determine whether the 47th Street BID was in breach of its new contract. Finally, SBS stated that it extensively reviews and analyzes annual reports.

## Objectives

The objectives of this follow-up audit were to determine whether the 47th Street BID implemented the 23 recommendations and SBS implemented the four recommendations made in the Audit Report on the Financial and Operating Practices of the 47th Street Business Improvement District (Audit # FK18-089A), issued on December 19, 2019.

## Discussion of Audit Results with the 47th Street BID and SBS

An Exit Conference Summary was sent to the 47th Street BID and SBS and discussed with BID and SBS officials at an exit conference held on January 23, 2024. On February 20, 2024, we submitted a Draft Report to the 47th Street BID and SBS with a request for written comments.

We received a written response from the 47th Street BID and SBS on March 5, 2024. In its response, the BID agreed with six of the new recommendations from this follow-up audit and disagreed with two recommendations. In its response, SBS agreed with all six new recommendations from this follow-up audit.

The 47th Street BID's and SBS' written responses have been fully considered and, where relevant, changes and comments have been added to the report.

The full text of both responses are included as addenda to this report.

# Detailed Findings

The audit found that the 47th Street BID partially implemented nine recommendations and did not implement the remaining 14 recommendations. The audit also identified new governance and compliance issues that were not present when the first audit was conducted.

Additionally, SBS implemented two recommendations, partially implemented one recommendation, and did not implement the remaining recommendation.

## 47th Street BID

### Recommendation #1

*The 47th Street BID should cease providing supplemental security services that do not principally benefit property within the District as required by § 2A.02 of its contract with DSBS.*

The prior audit found that the 47th Street BID spent \$210,835 on supplemental security services that did not principally benefit property within the BID. The Board Chair assigned police officers to fixed posts inside and in front of a particular building (Building 1) which is located outside of the District.<sup>1</sup> At the same time that the Board Chair assigned police officers to work at Building 1, he and other members of the Board were engaged in financial relationships with the building's owner; specifically, the Board Chair, who controlled all aspects of the BID's security program, and two other Board Directors owned and operated businesses in Building 1. Further, the BID rented space in Building 1 for its administrative office, for which it paid rent of only \$1 for Fiscal Year 2017.

The 47th Street BID disagreed with this recommendation and has not implemented it. The BID's Financial, Administrative, and Employment Procedures Handbook states that security services "may be performed proximate to the district or for BID-related events, whether within or outside the district, whenever deemed by the BID leadership to principally benefit the district." BID officials stated that the BID is still providing Building 1 with supplemental security services. They further claimed that Building 1 is part of the geography of the District, and that they have engaged in discussions to formally bring it into the BID.

However, as stated above, Building 1 is located outside of the District. BID monies should be used only to provide services within the District and, if performed proximate to the District, must principally benefit property within the District. The 47th Street BID Plan expressly excludes Building 1 stating that the "District will be defined as 47th Street between 5th and 6th Avenues

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<sup>1</sup> We are not disclosing the location of police officers at the request of the 47th Street BID.

only, **excluding the corner properties on Fifth Avenue**. The two Fifth Avenue corner parcels are currently part of the Fifth Avenue BID. The 47th Street BID will work with the Fifth Avenue BID to make sure that the corner buildings are served appropriately without any conflict or overlap of services.” [Emphasis added.]

Security services provided in the lobby of a building located outside the 47th Street BID do not principally benefit the BID, but rather Building 1’s owner and tenants which include the Board Chair. The New York State Not-For-Profit Law (NPCL) Section 715(a) states that no corporation shall enter into a related party transaction unless the Board determines that the transaction is fair, reasonable, and in the corporation’s best interest.<sup>2</sup> However, the BID did not provide the audit team with documentation to show that Board made such a determination.

In response to the prior audit, the BID stated, “This security arrangement was voted on and approved by the full Board on at least two occasions.” However, the BID did not provide Board minutes or any other contemporaneous record to show that the Board approved the “security arrangement” between the 47th Street BID and Building 1. In August 2019, the BID provided only statements from eight Board members affirming that “in May 2016, the Board voted to allow people within the confines of and proximate to 47th Street to use the services of NYPD Paid Detail through the 47th Street BID, with the understanding that we would be reimbursed.”

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that the “current SBS contract collectively bargained contract with all 76 NYC BIDs, permits such arrangements provided they [...] will ‘*principally benefit property within the District.*’” [Emphasis added in original.] Further the BID stated that “the arrangement primarily benefits property within the BID, as lobby Paid Detail Police Officers regularly assist with issues occurring within the district.”

The Paid Detail Police Officers assigned to Building 1 are stationed in the building’s lobby, 24 hours per day, seven days a week. Contrary to the BID’s assertion, the security services provided inside of Building 1 principally benefit Building 1’s owner and tenants which include the Board Chair. Although Police Officers stationed inside of Building 1 may occasionally assist on matters within the district, they do not principally benefit the BID. They only benefit the BID to a limited extent. Furthermore, the BID refused to sign the above referenced contract with SBS which stated that “Supplemental Services shall be delivered in the manner set forth in the Plan and if performed proximate to the District, must principally benefit property within the District.” The BID requested that SBS modify the contract language to state that “supplemental security provided through the NYPD Paid Detail Unit may be performed proximate to the district or for BID-related events, *whether within or outside the confines of the district, whenever deemed by the BID leadership to*

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<sup>2</sup> NPCL Section 102(a)(23) states that a related party includes “any director, officer or key person of the corporation” and Section 102(a)(24) defines a related party transaction as “any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation [ . . . ] is a participant.”

*principally benefit the district.*” [Emphasis added.] SBS did not agree to add this language to the contract and the 47th Street BID refused to sign the standard BID contract and continues to operate without a contract.

## Recommendation #2

*The 47th Street BID should immediately seek reimbursement for security services that were incurred for Building 1 but were not paid by the property owner, including but not limited to the \$210,835 cited for Fiscal Year 2017.*

The 47th Street BID disagreed with this recommendation and stated that the BID was fully reimbursed for security services incurred for Building 1 during Fiscal Year 2017. However, the prior audit found that the BID recorded payments from the owner of Building 1 totaling \$105,048 as donations and payments totaling \$37,884 as advertising revenue in its financial records and regulatory filings. Therefore, the auditors were not reasonably assured that those payments represented reimbursements for security expenses the BID incurred for Building 1.

During Fiscal Year 2022, the 47th Street BID spent \$810,433 on security services—\$581,258 on NYPD Paid Detail services and \$229,175 on private security services. The BID stated that one Police Officer was assigned to Building 1, 24 hours per day, seven days a week. The BID provided the auditors with documentation to show that it received \$390,968 for NYPD Paid Detail services provided to Building 1, which accounts for 67.3% of NYPD Paid Detail service costs. The BID maintained that it was fully reimbursed.

After the prior audit, the BID stopped keeping a record of security personnel assignment locations. Therefore, the auditors could not independently calculate the cost of security services provided outside of the District, nor could they determine whether the BID was fully reimbursed for security services. Additionally, the BID did not provide documentation to show that it billed Building 1 and was reimbursed for additional insurance costs associated with the NYPD Paid Detail program. On November 28, 2023, the auditors requested insurance certificates for general liability and excess liability coverage for 2022 and 2023. To date, the BID has not provided requested documentation. Therefore, the auditors could not determine whether the BID maintained insurance and quantify costs associated with the NYPD Paid Detail program.

This recommendation is PARTIALLY IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that “all Paid Detail services provided for ‘BUILDING 1’ have been and continue to be fully reimbursed by ‘BUILDING 1’.” Additionally, the BID stated that “there are no location assignment sheets for Paid Detail Police Officers and never have been.” However, security personnel assignment locations were provided during the initial audit. The auditors were initially informed during this follow-up audit that these records were shredded and subsequently informed that records do not exist. Therefore, as stated

above, the auditors could not determine the cost of security services provided outside of the district and whether the BID has been fully reimbursed.

### **Recommendation #3**

*The 47th Street BID should separate the duties for administering the security program or implement compensating controls and update its policies and procedures.*

In its response, the 47th Street BID did not address whether it would separate security program administrative duties and stated only that its by-laws and policies and procedures had been updated accordingly. However, the BID's updated by-laws and procedures do not separate the duties for administering the security program or implement compensating controls.

Although the BID employs an Executive Director who is responsible for directing day-to-day business, a single Board Officer—the Board Chair—is still individually responsible for administering all aspects of the BID's security program. This includes requesting security personnel, assigning them to posts, reviewing and approving attendance and time records, calculating and making payments to NYPD and a private firm for security services, and billing, collecting, and depositing payments from Building 1.

In its status report concerning recommendations of the prior audit, the 47th Street BID stated that “Supplemental Security Services have always been and continue to be administered in accordance with ‘Best Practices’ formulated through ongoing consultation and direct guidance from Local, State and Federal law enforcement” and that “it is neither practicable nor prudent to reconfigure how the 47th Street BID's implements its security services.” Additionally, the BID stated that it “has implemented compensating controls and updated its policies and procedures to include more conscientious record keeping.”

However, the prior audit's findings related to the administrative duties stated above, not law enforcement best practices, and should be separated. Additionally, the 47th Street BID did not implement compensating controls or update its policies and procedures to require more conscientious record keeping. As previously stated, the BID stopped keeping a record of security personnel assignment locations after the prior audit.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that “compensating controls are in place for every aspect of the BID's finances, which includes supplemental security.” However, as detailed above, the BID did not separate duties for security program administrative duties and did not implement compensating controls.

### **Recommendation #4**

*The 47th Street BID should monitor budgeted and actual expenditures to identify variances.*

In its response, the 47th Street BID stated that the Executive Director's duties and responsibilities under his current contract include tracking variances between budgeted and actual expenditures and reporting such variances to the Board.

However, the Executive Director's contract does not specify his duties and responsibilities. Further, the BID's Financial, Administrative, and Employment Procedures Handbook does not include procedures for tracking budget variances and reporting them to the Board.

The auditors requested documentation to show that the Executive Director monitored budgeted and actual expenditures throughout the year. However, the BID provided only documentation to show that the Executive Director reported variances at the end of the year.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that it would review its handbook to include procedures for tracking budget variances and reporting them to the Board.

## **Recommendation #5**

*The 47th Street BID should ensure that the 47th Street BID Executive Director obtains the Board's approval for budget modifications.*

In its response, the 47th Street BID stated that the current Executive Director has been instructed and is fully aware that all budget modifications require Board approval. However, as previously stated, the Executive Director's contract does not specify his duties and responsibilities. Further, the BID's Financial, Administrative, and Employment Procedures Handbook does not include procedures for seeking and obtaining approval for budget modifications.

For Fiscal Year 2022, the 47th Street BID budgeted \$30,000 for Streetscape and Repairs and \$30,000 for Capital Improvements. However, only \$4,365 was spent on Streetscape and Repairs and no money was spent on Capital Improvements. The 47th Street BID reported that planned upgrades were deferred due to COVID.

The BID budgeted \$15,000 for Beautification and Horticulture but spent \$23,725 (58.2%) more than budgeted and reported that the added expenses were for "post-covid recovery decorations." Based on the auditors' review of the Board and committee meeting minutes, the Executive Director did not seek or obtain approval to modify the budget and allocate these funds elsewhere.

During the audit, the 47th Street BID maintained that the current Executive Director has been instructed and is fully aware that all budget modifications require Board approval. However, as stated above, the Executive Director did not seek or obtain approval to modify the budget.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that it would review its handbook.

## Recommendation #6

*The 47th Street BID should ensure that its Annual Report includes narrative explanations for budget variances greater than 10 percent.*

In its response, the 47th Street BID disagreed with this recommendation and stated that the narrative explanation requirement for budget variances had been eliminated from their current contract with SBS.

The BID's previous contract with SBS expired on June 30, 2018, and was extended for one year to June 30, 2019, under the same terms. Since then, the BID has not signed a new contract with SBS. Additionally, in its Annual Reports submitted to SBS, the BID is required to provide an explanation for significant differences (10% or more) between budgeted and actual amounts.

In its Annual Report for 2022, the BID provided explanations for certain significant differences between budgeted and actual amounts but did not include an explanation for a significant difference between budgeted and actual "Contributions." The BID budgeted \$395,076 for "Contributions" but reported actual contributions of \$499,612. The difference of \$104,536 (26.5%) was for revenue received from Netflix Productions, LLC (Netflix) for "use of the property located at the Diamond District on West 47th Street." This included a "donation" for three days of filming within the BID and fees for added security, flowers on light poles, and street cleaning. The agreement further provided that if the hours in the BID were expanded, "the cost for security, cleaning, and other related expenses [would] be expanded accordingly." However, the BID did not report the nature and source of this additional revenue.

The BID's unauthorized use of City streets and reporting of associated revenue is discussed further in the New Findings section of this report.

This recommendation is PARTIALLY IMPLEMENTED because the BID provided explanations for some but not all significant differences between budgeted and actual amounts in its Annual Report for 2022.

In its response to this follow-up audit, the 47th Street BID stated all budget variances are explained at the annual meeting. However, the BID is required to provide a written explanation for variances in the Annual Report submitted to SBS.

## Recommendation #7

*The 47th Street BID should determine and document employee compensation in accordance with Internal Revenue Service (IRS) regulations.*

In its response, the 47th Street BID disagreed with this recommendation and stated the process for determining the compensation for the current Executive Director was in full compliance with IRS regulations. Specifically, the BID stated the process included a review and approval in

advance by an “executive committee authorized by the board.” According to the BID, this committee reviewed and relied upon appropriate comparability data regarding compensation of executive directors of other New York City BIDs and documented the basis for its determination.

During this audit, the 47th Street BID continued to maintain that it is in full compliance with IRS regulations for employee compensation. However, during both the prior and follow-up audits, the 47th Street BID failed to provide Board minutes to show that the current Executive Director’s compensation was reviewed and approved in advance by a Board-authorized committee or the compensation analysis that the committee purportedly relied upon. On July 28, 2023, the auditors requested documentation of the BID’s review and determination and comparability data, but the BID did not provide requested documentation. Instead, the BID stated only that “discussions were led by SBS members of the hiring committee who provided guidance and oversight concerning compensation.”

This recommendation is NOT IMPLEMENTED.

In its response to this follow-up audit, the 47th Street BID stated that it followed guidance from SBS and used IRS guidelines to determine reasonable compensation. However, as stated above, the BID did not provide documentation to support this review and determination.

## **Recommendation #8**

*The 47th Street BID should maintain records of employee attendance and time.*

In its response, the 47th Street BID stated it was working with SBS to establish a mutually acceptable method to monitor the time of the Executive Director.

The Executive Director reported that he began maintaining records of his daily attendance and time in a physical journal in March 2020 and began maintaining his attendance and time in a Microsoft Excel spreadsheet in August 2022. However, the 47th Street BID Board did not require the Executive Director to submit such attendance and time records for review and approval and did not require a Board Officer or Director to verify time worked.

The BID’s failure to monitor the Executive Director’s attendance is discussed further in the New Findings section of this report.

This recommendation is PARTIALLY IMPLEMENTED.

## **Recommendation #9**

*The 47th Street BID should maintain records to show that personnel actions, such as hiring new employees, enrolling employees in benefit plans, and changing employees’ compensation, are properly approved.*



In its response, the 47th Street BID stated its by-laws have been revised to require that all hiring, payroll, benefit, and financial transactions be authorized only by duly named officers after approval by vote of the Executive Committee.

However, the BID's by-laws and Financial, Administrative, and Employment Procedures Handbook do not include procedures for approving and documenting all personnel actions. The Handbook provides only that the Executive Committee may approve incremental salary increases for the Executive Director and bonuses or other emoluments for staff. The Handbook does not include procedures for approving and maintaining records of other personnel actions such as hiring new employees and enrolling employees in benefit plans.

The 47th Street BID stated that there were no personnel actions since the prior audit. However, based on the auditors' review, the BID paid the Executive Director approximately \$4,000 more than his contract stipulated in Fiscal Year 2022.<sup>3</sup> On August 25, 2023, the auditors requested that the BID explain the discrepancy between the Executive Director's compensation stipulated in his employment agreement and the actual compensation reported in the BID's IRS Form 990. BID officials stated that they forwarded this request to the BID's independent auditor and would share his explanation when received. However, to date, the BID has not provided an explanation or records to show that the Executive Director's salary increase was properly approved.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that the Executive Director received an unauthorized \$4,000 raise because of a "discrepancy by the BID's payroll vendor" and the Board retroactively voted to approve it on September 12, 2023 – after the auditors requested that BID explain the discrepancy. However, during the course of the audit, the BID did not provide the auditors with an explanation or documentation of the Board's retroactive approval.

## Recommendation #10

*The 47th Street BID should monitor payroll transactions, such as salaries and bonuses, to ensure that they have been properly approved.*

In its response, the 47th Street BID stated that its procedures have been updated to require authorization of all payroll transactions, salaries, and bonuses by duly named officers after approval by vote of the Executive Board. Additionally, the BID stated that its independent bookkeeper and accountant review payroll transactions.

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<sup>3</sup> The Executive Director's contract states he will receive a base salary equal to \$100,000, additional compensation of \$3,000 per month that he authors and writes the Diamond District Monthly newsletter, and a monthly reimbursement up to a maximum of \$1,000 for the actual cost of health insurance. This compensation totals a maximum of \$148,000; however, the Executive Director was paid \$152,000 in Fiscal Year 2022.

However, the BID's Financial, Administrative, and Employment Procedures Handbook does not address the monitoring of payroll transactions. As previously discussed, the BID did not monitor payroll transactions to ensure that changes in the Executive Director's compensation were properly approved and did not verify the Executive Director's hours or approve his wages prior to issuing payments.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that it would modify its policy and procedures to include approving wage payments prior to issuing payroll payments.

## **Recommendation #11**

*The 47th Street BID should obtain a fidelity bond or insurance to protect the organization from embezzlement and other fraudulent acts.*

In its response, the BID stated that it was exploring options for the purchase of a fidelity bond or policy to protect against fraudulent acts. During the follow-up audit, the BID stated that it ultimately decided against doing so.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated it has always maintained Directors and Officers insurance policy and noted that "SBS determined that Directors and Officers Insurance provides sufficient coverage." Since the BID did not provide the policy, the auditors could not determine whether insurance was maintained and whether coverage was sufficient.

## **Recommendation #13**

*The 47th Street BID should independently review and monitor purchase and payment documentation.*

In its response, the BID stated that its updated by-laws require review and monitoring of the payment of goods and services in compliance with their current contract with SBS.

However, the BID's revised by-laws do not address independent review and monitoring of purchase and payment documentation. The Financial, Administrative, and Employment Procedures Handbook states that all invoices will be scanned and emailed to the Board Chair, President, Secretary, and Treasurer for them to approve the expense and authorize payment. Further, the Handbook states that at least two of the Board Officers must approve payments and document their approval via email.

The auditors requested Board Officer approvals for 16 sampled payments totaling \$118,231. However, the BID did not provide documentation to show that any invoices were sent to Board Officers or that payments were authorized as required. The BID provided emails sent by the Board

Chair to the Board President, Treasurer, and Secretary. In each of those emails, the Board Chair stated that he approved the bill as correct. However, those emails did not include attachments of scanned invoices. Additionally, the BID did not provide reply emails showing the email sender, recipients, date, and the full contents of the email. The BID provided only partial documents with the word “approved” and either a Board Officer’s name or email signature.

Additionally, the Handbook states that an independent bookkeeper reviews “all billing, payments, balances, and all other transactions.” The BID stated that, after vendors are paid, the Board Chair emails invoices to the bookkeeper, who is responsible for comparing invoiced amounts to payment amounts on bank records and entering transactions into the BID’s accounting software. However, the bookkeeper does not review vendor contract pricing and terms or Board approvals to ensure that payment amounts are accurate and authorized.

This recommendation was NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that a copy of every invoice is emailed to Officers for approval. The BID was first informed of the auditors’ findings on January 5, 2024, and findings were discussed at an Exit Conference on January 23, 2024. On January 5 and 23, 2024, the BID was informed that documents presented at and immediately following the Exit Conference would be considered before issuing the Draft Report. However, the BID did not provide documentation to show that invoices were sent to Board Officers and that BID Officers approved them.

## **Recommendation #14**

*The 47th Street BID should competitively procure goods and services whenever possible.*

In its response, the BID stated its by-laws were updated to require a competitive process for procurement and payments of goods and services.

However, the BID’s by-laws do not address the procurement process. The BID’s Financial, Administrative, and Employment Procedures Handbook states that procurements exceeding \$20,000 in a fiscal year must be awarded on a competitive basis, unless they meet certain exceptions. In Fiscal Year 2022, the 47th Street BID had six procurements exceeding \$20,000, which totaled \$438,962. For 5 of those 6 procurements, the BID did not document that it competitively procured those goods and services, nor did it document that procurements met authorized exceptions to competitive selection procedures. The BID also did not document that the Board and SBS were notified of non-competitive procurements prior to award, as required.

For 3 of the 6 procurements, BID officials stated that the BID solicited and received multiple proposals for maintenance, lobbying, and insurance services but did not provide documentation to evidence this. Additionally, for two procurements, BID officials stated only that it procured printing services on an as needed basis and plantings on a “season-by-season basis.” However,

as previously stated, those procurements exceeded \$20,000 and should have been awarded on a competitive basis.

For the remaining procurement, the BID provided four proposals for armed security services and Board minutes stating that the Board voted to approve this contract because the “services and rates provided by [the current vendor] remained superior to other prospective security vendors.” However, the proposed hourly rate for this vendor under the new contract (\$59.00 per hour) was 30.8% higher than the rate paid to the NYPD Paid Detail for uniformed police officers (\$45.10 per hour). This vendor employed a retired Police Officer who previously worked for the 47th Street BID through the NYPD Paid Detail program and the BID did not require this vendor to submit required background disclosures to SBS. This is discussed further in the New Findings section of this report.

Additionally, the 47th Street BID’s Handbook provides for broad exceptions to competitive selection procedures which are not permitted by its contract. These include, among other things, exceptions for employee benefits, insurance, legal services, banking services, and “specialized services for which a certain person or firm’s expertise is unique.”

The 47th Street BID officials stated that the BID competitively procures goods and services as required by the BID’s contract and policies and procedures and maintains procurement documentation “to the best of our ability.” However, as previously stated, the BID did not maintain procurement documentation for five of the six procurements which exceeded \$20,000.

BID officials also stated that the BID is not “obligated by its SBS contract to continually solicit new quotes from vendors over and over again, whether or not we have a contract with a specific vendor, [and] whether or not the specific vendor is ably providing the service they were hired to provide.” However, both the BID’s contract and Financial, Administrative, and Employment Procedures Handbook state that for procurements exceeding \$20,000 in a fiscal year, proposals should be solicited from at least three vendors.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that the correct NYPD Paid Detail rate is \$53.90 per hour. During the course of the audit, the auditors requested NYPD Paid Detail invoice and payment documentation for the first billing period of the 2023 contract. However, the BID failed to provide this documentation and therefore the auditors cannot determine whether the NYPD rate is in fact \$53.90 per hour.

Furthermore, the 47th Street BID did not address why the BID engaged a private security vendor, with whom they had a prior working relationship, and paid them a rate higher than the NYPD Paid Detail rate.

## Recommendation #15

*The 47th Street BID should maintain procurement documentation, including but not limited to, bid solicitations, responses, procurement forms documenting the rationale for making the award, and non-competitive procurement justification memos to the 47th Street BID Board.*

In its response, the 47th Street BID stated that its by-laws and procedures require the Executive Director to retain all procurement documents for solicitations, responses, and justifications for non-competitive procurements. However, the BID's by-laws and Financial, Administrative, and Employment Procedures Handbook do not require the Executive Director to maintain procurement documentation.

As stated above, the BID did not document whether it competitively procured goods and services, nor did it document whether procurements met authorized exceptions. It also did not document whether the Board and SBS were notified of non-competitive procurements prior to award as required.

This recommendation is NOT IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that it will modify its handbook and record keeping will be improved.

## Recommendation #16

*The 47th Street BID should maintain copies of vendor contracts and invoices documenting the scope of services, payment terms, and authorized approvals.*

In its response, the 47th Street BID stated that its by-laws and procedures require the Executive Director to maintain copies of vendor contracts, scope of services provided, and payment terms.

However, the BID's by-laws and Financial, Administrative, and Employment Procedures Handbook do not require the Executive Director to maintain vendor contracts, invoices, and payment approvals.

The 47th Street BID's contract with SBS provides that all BID "contracts and/or agreements for the purchase or provision of goods and services, regardless of amount, shall be in writing and said documents shall be maintained by the [BID]." In addition, the BID's Procurement Procedures state that "[t]he Executive Director shall ensure all contracts are in accordance with the BID's agreement with the SBS and all applicable laws and regulations."

However, based on the auditors' review of the procurements that exceeded \$5,000 in Fiscal Year 2022, the BID did not maintain vendor contracts or written agreements for seven of nine vendors. These vendors received payments totaling \$151,293.

For five of those seven vendors, the BID stated that they did not have written contracts because services were provided on an as needed basis (four vendors) or because "time [was] of the

essence” (one vendor). The BID did not state why it did not have contracts for the remaining two vendors. However, as stated above, the BID’s contract with SBS requires contracts or agreements in writing for all purchases.

Additionally, based on the auditors’ review of 18 sampled payments, the BID maintained invoices documenting the scope of services and payment terms for all 18 payments. However, as previously stated, the BID did not maintain authorized payment approvals as required.

This recommendation is PARTIALLY IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that it will improve record keeping.

## **Recommendation #17**

*The 47th Street BID should immediately adopt and oversee the implementation of a conflict of interest policy that includes, at minimum, the provisions set forth in NPCL 715-a(b).*

In its response, the 47th Street BID stated that it adopted a conflict of interest (COI) policy in September 2019. Additionally, the BID stated that it revised the policy in February 2020.

The New York State Not-For-Profit Law (NPCL) Section 715-a states that the board shall adopt and oversee the implementation of and compliance with a COI policy to ensure that its directors, officers, and key persons act in the corporation’s best interests and define the circumstances that constitute a conflict.

NPCL states that the COI policy must include procedures for disclosing conflicts or potential conflicts to the board. Prior to their initial election and annually thereafter, Directors must complete and submit to the Board Secretary (or a designated compliance officer) written statements identifying interests that could give rise to conflicts. Directors must identify any entity of which they are “an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the corporation has a relationship, and any transaction in which the corporation is a participant and in which the director might have a conflicting interest.”

The Board Secretary or the designated compliance officer must provide a copy of all completed statements to the Audit Committee Chair or, if there is no Audit Committee, to the Board Chair. Further, the New York State Attorney General Conflicts of Interest Policies under the Not-for-Profit Corporation Law guidance states that conflict disclosures are required from directors, officers, and key persons.

The NPCL also states that the COI policy must include procedures for the board to determine and document whether a conflict exists, as well as how conflicts, if identified, were resolved. The COI policy must also prohibit the person with the conflict from being present at, participating in, or improperly influencing board or committee deliberations, or voting on related matters.

On its IRS Form 990 for 2022, the 47th Street BID reported that it had a written COI policy and required its officers, directors, or trustees, and key employees to annually disclose interests that could give rise to conflicts. However, the BID did not require the Executive Director to complete annual COI Disclosure Forms. Additionally, the BID's COI Policy did not require the Board Secretary to submit completed COI Disclosure Forms to the Audit Committee Chair as required. Instead, the BID's COI Policy required the Board Secretary to deliver COI Disclosure Forms to the Board Chair.

This recommendation is PARTIALLY IMPLEMENTED.

In its written response to this follow-up audit, the BID stated that the audit report "makes specific reference to information in the BID's IRS Form 990 for 2022. When in fact, this document was never available to the comptroller's office or offered to the auditors." The auditors requested but did not receive the BID's IRS Form 990. Therefore, the auditors obtained publicly available copies of this form from the NYS Charities Bureau and the IRS websites.

## Recommendation #18

*The 47th Street BID should obtain annually and maintain conflict of interest disclosures for all directors, officers, and employees.*

In its response, the 47th Street BID stated that it agreed to distribute annual conflict of interest questionnaires to the Board.

However, based on the auditors' review of COI Disclosure Forms for Fiscal Year 2022, the BID did not collect completed forms from 9 of the 27 BID Directors and the Executive Director. This group included:

- Seven Board Directors and the Executive Director for whom the BID did not collect forms; and
- One Board Director for whom the BID did not collect a complete form.

This recommendation is PARTIALLY IMPLEMENTED.

In its written response to this follow-up audit, the 47th Street BID stated that "greater effort will be made going forward to ensure all Conflict of Interest policies are completed, signed and returned by all Directors."

## Recommendation #19

*The 47th Street BID should ensure that its directors, officers, and employees comply with the conflict of interest policy.*

In its response, the 47th Street BID stated that the Board approved a conflict of interest policy, members have read and agreed to comply with the policy, and that an annual conflict of interest questionnaire has been distributed to the board.

On its IRS Form 990 for 2022, the 47th Street BID reported that it did not regularly and consistently monitor and enforce compliance with the COI Policy. During the follow-up audit, the BID stated, “The board does not review other Board members’ signed COIs to decide if a conflict exists. Rather the Executive Director reviews the returned policies and would inform the Executive Board in the event of an existing conflict.” However, as previously stated, the BID did not collect completed COI Disclosure Forms from nine Board Directors or the Executive Director.

Of the 19 completed submissions, six Board Directors reported potential conflicts. However, the Executive Director did not provide the COI forms to the Audit Committee Chair, Board Chair, or any other Board member or committee for their review.

Additionally, the Board Chair did not disclose his interest in a related party transaction on his COI form. NPCL Section 715(a) states, “Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.” As previously stated, the Board Chair controlled all aspects of the BID’s security program which included assigning police officers to a fixed post in the lobby of Building 1 which is located outside of the District. At the same time that the Board Chair assigned police officers to work inside of Building 1, the Board Chair owned and operated a business in Building 1. However, the Board Chair indicated on his COI form that he was not “aware of any relationship or transaction [...] not otherwise disclosed that constitutes or could constitute an actual or apparent conflict of interest between you and BID.”

Since the BID did not collect and review COI forms, the Board did not determine and document whether conflicts exist and resolve them, as necessary. The Board did not ensure that people with conflicts were prohibited from being present at, participating in, or improperly influencing board or committee deliberations, or voting on related matters.

This recommendation is NOT IMPLEMENTED.

In its response to this follow-up audit, the 47th Street BID stated the returned policy for the Board Chair states “Landlord/tenant” and “business to business” relationships. As stated above, the Board Chair does not disclose his conflict related to the BID’s security program. The Chair’s COI form only states “there is a landlord tenant relationship as well as B2B relationships with other board members.” The Chair does not identify the parties or transactions which may give rise to potential conflicts.

## **Recommendation #20**

*The 47th Street BID should review member information to ensure that individuals are qualified for membership in each of their respective classes.*

The prior audit found that the 47th Street BID Board may have included individuals who did not own or lease and occupy space in the District. This included the Board Chair.



In its response, the 47th Street BID stated that all Class A and Class B Board members own or lease and occupy space within the District. The 47th Street BID stated that it does its due diligence on members of the Board of Directors and maintains the names and affiliated business addresses of owners of both Class A and Class B members.

During the follow-up audit, the auditors requested the procedure the 47th Street BID uses to determine qualifications of its members, as well as the documentation maintained. However, the BID did not describe or provide a copy of the procedure or documentation used to ensure that individuals were qualified for membership.

This recommendation is NOT IMPLEMENTED.

In its response to this follow-up audit, the 47th Street BID stated that it “implemented a new membership policy to verify eligibility and class designation using publicly available databases to check members' business names and addresses. The aim is to ensure they fall within the 47th Street Business Improvement District boundaries.”

## Recommendation #21

*The 47th Street BID should ensure that property owners who pay assessments comprise the majority of the Board.*

In its response, the 47th Street BID stated that of the 39 Board members, a clear majority of 22 are Class A members.

The New York City Administrative Code § 25-414(b) states that BID boards will be composed of representatives of property owners and tenants within the District and that “not less than a majority [...] shall represent owners.” The 47th Street BID’s by-laws state that the number of voting Directors shall be between 17 and 34, and the number shall be set by a resolution adopted by a majority of the entire Board. On November 8, 2023, the auditors requested the Board resolution setting the number of Directors. However, to date, the BID has not provided the resolution.

NPCL Section 102(a)(6-a) states that if the by-laws provide that the board may consist of a range of directors and a set number has not been fixed, then the entire board shall consist of the number of directors that were elected or appointed at the most recently held election of directors.

Based on the 47th Street BID’s Annual Report, IRS Form 990, and meeting minutes, there were 24 voting Directors that were elected or appointed in January 2022. However, only 12 of the 24 (50%) voting Directors were Class A members, which did not constitute a majority (more than 50%).

This recommendation is NOT IMPLEMENTED.

In its written response to the follow-up audit, the BID stated that concerns about Class A members not constituting a majority of the board were due to duplicate entries for Class D members on the

BID's IRS Form 990. However, the auditors calculated the number of board members based on the BID's IRS Form 990, Annual Report submitted to SBS, and the BID's minutes and did not include duplicate entries for Class D members. The 24 voting members included only four Class D members—one each for the Mayor, the Comptroller, the Borough President, and the City Council.

## Recommendation #22

*The 47th Street BID should immediately hold elections to fill the Board Vice Chairman and Vice President positions or, in the alternative, take required action to eliminate the positions.*

In its response, the BID stated the Vice President and Vice Chairman positions were removed from the BID's by-laws which were ratified in December 2019.

Since the prior audit, the 47th Street BID amended its by-laws two times. The BID's amended and restated by-laws dated August 26, 2019, eliminated the Vice Chairman and Vice President positions. However, the BID's amended and restated by-laws dated December 15, 2020, state that, at minimum, the BID's Officers shall include a Chairperson, President, Treasurer, and Secretary and "may include such other officers as the Board from time to time shall find appropriate" but do not specify the titles other officers may hold or their powers and duties. The by-laws further state that Officer elections shall take place at the Annual Board Meeting.

Based on the BID's Nominating Committee, Annual Board Meeting, and Executive Committee meeting minutes for 2021, two other Officers were added to the Board and served on the Executive Committee. However, the Board's Directors did not elect the two Officers. Rather, it appears that the Nominating Committee appointed them to serve during 2021.

In 2022, the Nominating Committee included the Board Chair, President, Treasurer, and Secretary, as well as the two other Officers in the slate of nominees for Officers and the Board voted to approve the slate. However, the role of the two Officers and their powers and duties remain unclear.

This recommendation is PARTIALLY IMPLEMENTED.

In its written response to the follow-up audit, the 47th Street BID stated that it further defined duties of two non-officers on the Executive Committee at a Board meeting held on March 1, 2024 and provided meeting minutes. However, based on those meeting minutes, the Board did not discuss or define duties.

## Recommendation #23

*The 47th Street BID should maintain complete and accurate records of all Board and Board committee meetings. Such records should be in written form and include attendees, discussions, and actions taken at meetings.*

In its response, the 47th Street BID stated that its by-laws require that the Executive Director should keep minutes of meetings when practicable and otherwise, the committee chair or designee should keep minutes. Additionally, the BID stated the Documentation Retention and Destruction Policy requires Board and Committee agendas and minutes be retained permanently.

NPCL 621(a) states that every corporation must keep “correct and complete books and records of account and minutes of the proceedings of its members, board and executive committee.” Further, the 47th Street BID’s contract states that the BID must keep complete and accurate records of its activities which shall include all Board and committee meeting minutes. Based on the auditors’ review of Fiscal Year 2022 Board and committee meeting minutes, the 47th Street BID did not maintain minutes which included attendees, discussions, and actions taken for certain Board and committee meetings.

The minutes for the Annual Meeting of Members held on January 18, 2022, did not include a list of attendees, did not state that a quorum was present, and did not include a copy or an abstract of the Annual Report of Directors as required by NPCL Section 519. The Board is required to present to the membership a verified or certified report which shows in appropriate detail the BID’s assets and liabilities, principal changes in assets and liabilities, and revenue and expenses. The report must also include information on the number of BID members and changes in BID membership during the year. However, the meeting minutes state only that the Treasurer “reported on the BID’s Finances and discussed all items in the FY21/22 budget, including a detailed narrative to explain all variances in spending.”

Since the minutes for the Annual Meeting of Members did not include a list of attendees and the number of BID members, the auditors could not determine whether the quorum requirement was met for the transaction of business. At this meeting, the members voted to approve the budget and slate of nominees for the 2022 Board and voted for Board Directors.

Additionally, the BID did not provide Website Committee meeting minutes for Fiscal Year 2022. This committee was responsible for the 47th Street BID’s website upgrade including determining the structure of the website, selecting a vendor, and overseeing, managing, and approving content. The BID provided only minutes for a meeting held on July 20, 2021, which stated that the Executive Director welcomed members to the first meeting and thanked them “for their contribution of time and experience to this very important project.” The first meeting was actually held May 6, 2021.

Based on the minutes for Board meetings held on November 3, 2021, November 22, 2021, and June 21, 2022, it appears the Website Committee met and took several actions—related to issuing a Request for Proposals, evaluating proposals, and selecting a vendor during Fiscal Year 2022—that were not documented in minutes taken by the Website Committee. Specifically, Board meeting minutes reflect that the Website Committee evaluated proposals submitted by three vendors and “determined during a committee meeting [...] that [a vendor’s] proposal was superior in comparison to two other bids.” After recommending this vendor, the contract did not go forward

"due to timing conflicts and other matters associated with billing." Subsequently, the committee reached out to several new prospective vendors, reviewed proposals, and made a determination to select a different vendor.

This recommendation is PARTIALLY IMPLEMENTED.

## Recommendation #26

*The 47th Street BID should immediately post on its website current information required by its contract including: the Executive Director's contact information, a list of Board members, District boundaries, a list of businesses within the District, a brief summary of programs and services, Annual Report, audited financial statements, and detailed District map.*

In its response, the BID stated it is impractical to list all 2,600 businesses within the District and creates potential security risks. Additionally, the BID stated that some postings would violate non-disclosure agreements and some business owners do not want to publicly disclose their locations.

Based on the auditors' review, the BID did not post the following information on its website:

- Executive Director's email address;
- List of businesses within the District; and
- An Annual Report for the preceding fiscal year which includes a review of past accomplishments and the goals for the current fiscal year.

This recommendation is PARTIALLY IMPLEMENTED.

## Department of Small Business Services

### Recommendation #12

*SBS should consider requiring BIDs to obtain fidelity bonds or insurance to protect them from embezzlement and other fraudulent acts.*

In its response, SBS stated that it would take this recommendation under advisement. At that time, SBS stated that it recommended that BIDs carry Directors and Officers Insurance to cover losses or defense costs resulting from a legal action brought for alleged wrongful acts by directors and officers. Further, SBS stated that fidelity bonds would cover losses incurred because of fraudulent acts by specified individuals or employees, which may not be necessary for most BIDs.

During the follow-up audit, SBS officials stated that SBS consulted its Legal Division regarding the necessity of fidelity bonds and determined that Directors and Officers Insurance provides sufficient coverage.

This recommendation was IMPLEMENTED.

## Recommendation #24

*SBS should consider the findings of this report when evaluating the 47th Street BID's past performance and making future contracting decisions.*

In its response, SBS stated that it would consult with the City's Law Department and consider adding provisions to the 47th Street BID contract in light of the report's findings. Further, SBS stated that those provisions may include annual submission of documentation related to BID membership, meetings, timekeeping, payroll, and financial records, and surveys.

In January 2020, SBS met with the BID to discuss the contents of the prior audit, progress on addressing findings and recommendations, and offer that a corrective action plan be established. SBS sent the BID a letter stating that, going forward, the new contract would include enhanced oversight provisions, including requirements that the BID:

- Submit to SBS all documentation related to the BID's security program, including services provided to areas outside the District;
- Submit to SBS all records for procurements which exceed \$10,000, including RFPs and selection memos;
- Retain and submit yearly to SBS documentation showing each registered member's status as a property owner or commercial/residential tenant within the District's boundaries; and
- Conduct a yearly satisfaction survey of the membership and a full registration drive of BID members.

SBS also stated that the BID would be required to create an ad hoc Governance Committee to revise, approve, and submit to the Board and membership for approval by-laws that are compliant with NPCL and the standard BID contract. The BID would also be required to adhere to best practices. Further, SBS stated that the revised by-laws should include a clear explanation of Officer roles and term limits for Directors and Officers, among other things.

Additionally, SBS stated that it "believes a change in board leadership would be in the best interest of the DMA, the membership, and the district."

In June 2020, SBS sent the 47th Street BID a new contract. In January 2021, SBS sent a letter to the BID stating that the BID "has still not signed its new contract after reviewing it for five months, its third-party consultant is currently engaged in discussions to remove these new conditions, and the Bylaws committee has declined to follow any of SBS' recommended changes that we believe would help to ensure improved governance and board member engagement."

To date, the BID has refused to sign the contract and has been operating without a contract since 2019. During the course of the current audit, auditors asked SBS if there have been any updates related to the contract. SBS stated that it was on hold until the Comptroller's audit finishes.

This recommendation is IMPLEMENTED.

## Recommendation #25

*SBS should give written notice to the 47th Street BID of its breach of contract and ensure that it cures issues cited in this report within a reasonable period of time.*

In its response, SBS stated that the 47th Street BID's current contract had expired and that the BID would be signing a new contract. Additionally, SBS stated that it would consider the issues cited in the report and determine whether the BID breached its new contract.

SBS did not give formal written notice to the 47th Street BID of its breach of contract or ensure that the BID cured issues cited in the prior report. As previously stated, SBS instead met with the BID and sent a letter stating that the new contract would include enhanced oversight provisions, and that the BID would be required to create an ad hoc Governance Committee to revise the by-laws. Further, SBS stated that it "retains the right not to renew its contract [...] unless a corrective action plan which addresses the findings of the Audit to the satisfaction of [SBS] can be mutually agreed upon" and that it "anticipates that future contracts will include additional reporting for the duration of the cure period." Additionally, SBS advised the BID to change its board leadership.

However, as previously stated, the 47th Street BID refused to sign a new contract, did not revise its by-laws, and did not change board leadership. Consequently, the 47th Street BID's prior financial, operational, and governance issues persist, and new issues have been identified.

Since the prior audit, the Board Chair continues to control most aspects of the BID's operations and has further perpetuated and consolidated his control over BID operations. During this time, BID engagement and membership was limited.

This recommendation is NOT IMPLEMENTED.

## Recommendation #27

*SBS should review annual reports to ensure that BIDs include required budgetary and other requested information including but not limited to a survey collecting program and service impact data.*

In the status update to the prior audit, SBS reported that it implemented this recommendation on September 30, 2019, with a new practice to review budget variances when collecting BID Annual Reports.

However, based on the findings of this report, SBS did not review Annual Reports to ensure that BIDs include all required information. As previously stated, the 47th Street BID did not provide explanations for all significant differences between budgeted and actual amounts.

This recommendation is PARTIALLY IMPLEMENTED.

After auditors discussed the findings with SBS, agency officials stated that SBS reviews Annual Reports for the 76 BIDs, flags budgetary issues and directs BIDs to resources, and considers how SBS can ramp up support for BIDs.

## New Findings

### The BID's Committee Member Appointments Violate State Law

NPCL Section 712(a) states that the certificate of incorporation, by-laws, or the board may create committees of the board and generally provides that *the board shall appoint members* to serve on committees.<sup>4</sup> [Emphasis added.] Section 712(a) also specifies that appointments to the Executive Committee must be made by a majority of the entire board and in the case of a board of 30 or more Directors, the appointment shall be made by at least three-quarters of the Directors present at the time of the vote, if a quorum is present.<sup>5</sup>

As permitted by the NPCL, the 47th Street BID's by-laws state the Board may have: (1) an Executive Committee which shall be composed of all of the Board's Officers and which may exercise all of the powers of the Board when the Board is not in session; (2) a Nominating Committee which is responsible for preparing a slate of candidates for the Board; (3) a Finance Committee which is responsible for formulating the BID's annual budget and compliance with the BID's financial and administrative procedures; (4) an Audit Committee which is responsible for selecting an independent auditor, reviewing and discussing audit issues and findings, reviewing financial controls, and receiving and making recommendations on reported conflicts of interest; and (5) other committees.

The audit found that the Executive Committee's and several other committees' member appointments violated NPCL Section 712(a).

#### Executive Committee

During Calendar Year 2022, the 47th Street BID's Executive Committee was composed of the Board's Officers which included the Board Chair, President, Treasurer, Secretary, and two other

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<sup>4</sup> In addition, NPCL Section 712(a) states that the by-laws may provide that Directors who hold certain positions "shall be ex-officio members of specific committees."

<sup>5</sup> NPCL Section 102(a)(6-a) defines the "entire board" as the total number of directors entitled to vote if there were no vacancies on the board. Further, NPCL provides that in the case of a board which may consist of a range of directors (between a minimum and a maximum number) and which has not fixed the number of directors, the "entire board" shall consist of the number of directors that were elected or appointed at the most recent election of directors. The BID's by-laws state that the Board shall have between 17 and 34 voting Directors. On November 8, 2023, the audit team requested the Board resolution fixing the number of Directors. To date, the Board did not provide the resolution. Based on the BID's Fiscal Year 2022 Annual Report, the Board was composed of 24 voting directors.



Officers. However, the BID's Executive Committee was not approved by a majority of the entire Board as required by NPCL.

On January 21, 2022, the Board voted "to approve the slate of nominees for the Executive Committee and officer positions." Eight of the Board's 24 voting Directors (33.3%) voted to approve the slate, which does not constitute a majority of the entire Board. This vote was not proper because it did not meet the threshold required by NPCL for Executive Committee appointments.

## Audit Committee

Based on the 47th Street BID By-laws Committee meeting minutes dated October 27, 2020, the BID's legal counsel updated the BID's by-laws based on a template provided by SBS and made changes to ensure that the by-laws were "consistent with current New York State and New York City laws and requirements for non-profits." However, the BID's amended and restated by-laws contravene NPCL Section 712(a) because they allow the Chairperson to appoint Audit Committee members; the amended by-laws state that the Audit Committee will be composed of at least three Directors *appointed by the Chairperson* and the Director appointed by the Mayor. The members appointed to the Audit Committee by the Chairperson were improperly seated.

## Nominating & Finance Committees

The BID's by-laws state that the Nominating and Finance Committees will be composed of those Board Officers who elect to be members and "at the discretion of the Chairperson, no less than two (2) Directors appointed by the Chairperson, *subject to the approval of the Board.*" [Emphasis added.] The Directors appointed by the Mayor and the Comptroller are also members of the Finance Committee.

During Fiscal Year 2022, the Nominating Committee was composed of four of the Board's six Officers and one newly appointed Director. Based on the BID's meeting minutes, the Board did not approve the appointment of this Director.

During Fiscal Year 2022, the Finance Committee was composed of three ex-officio members and two Directors. One of those two Directors was newly appointed and based on the BID's meeting minutes, the Board did not approve the appointment of this Director.

## Website Committee

The BID's by-laws state, "The Chairperson shall designate *subject to the approval of the Board*, from among the members of the Board, other Committees of the Board, each consisting of three (3) or more Directors, as the Chairperson may deem appropriate." [Emphasis added.] During Fiscal Year 2022, the BID had a Website Committee which was composed of two Board Officers

and three Directors. Based on the BID's meeting minutes, the Board did not approve committee member appointments.

In its written response to this follow-up audit, the 47th Street BID stated the Board convened on March 1, 2024 to, among other things, ratify the standing of committees.

## **The 47th Street BID's Amended By-Laws Enhance Board Chair Control**

The 47th Street's by-laws previously provided that the Board "by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other standing committees." In December 2020, the BID amended and restated its by-laws. Those revisions allowed Board Officers to elect to serve on committees and for the Board Chair to appoint Directors to serve on committees. These revisions allow the Board's Officers and, in particular, the Board Chair to control all aspects of the BID's operations. This reduces accountability. Additionally, the revisions allow the Board's Officers to control who may serve on the Board and vote to elect BID Officers and vote on other BID business and transactions. This serves to keep the current BID Officers in power.

In its written response to this follow-up audit, the 47th Street BID stated the by-laws were approved by membership and no such control was expanded. However, as stated above, the revisions made to the by-laws allow the Board Chair to appoint Directors to committees which violates NPCL and does in fact expand the Chair's control.

## **The 47th Street BID Allowed Non-Voting Directors to Vote to Elect Officers and Conduct Business**

The New York City Administrative Code Section 25-414 states that the BID shall have one or more classes of membership and that the Board shall include representatives of property owners and tenants as well as representatives of the Mayor, Comptroller, Borough President of the borough in which the District is located, and City Council. The 47th Street BID's by-laws state that the BID shall have four classes of voting members—Class A, property owners; Class B, commercial tenants; Class C, residential tenants; and Class D, public representatives. The by-laws also provide for one class of non-voting members—Class E, persons or entities with an interest in the District who are not eligible for Class A, B, C, or D membership.

Based on a review of the 47th Street BID's Board minutes for meetings held during Fiscal Year 2022, the BID allowed Class E members to vote for Board Officers and may have allowed Class E members to vote on other BID business including approving the budget and contract awards. The Class E members' participation in those Board votes did not change the outcome. However, Class E members are not entitled to vote.

## Fewer Than 3% of Businesses Within the Area Participate in the 47th Street BID

All property owners, commercial tenants, and residential tenants within the District are BID members but must register with the BID to vote on Board directors and other matters such as amendments to the by-laws. The SBS BID Oversight Framework states that “BIDs should specifically undertake an annual membership drive to distribute information to all local property owners, and commercial and residential tenants, in order to inform them of their right to register as a member of the BID and to be eligible to vote and/or serve on the Board of Directors.”

Further, as previously stated, SBS met with the BID in January 2020 to discuss the contents of the prior audit and progress on addressing findings and recommendations, and to suggest that a corrective action plan be established. SBS sent the BID a letter stating that, going forward, the new contract would include requirements that the BID conduct a full registration drive of BID members. Nevertheless, the 47th Street BID did not conduct a registration drive to inform all property owners and commercial and residential tenants of their right to register as members and vote.

The auditors requested a description and documentation of membership drives to register new members, including event dates. The 47th Street BID stated that the BID’s “efforts to attract new members is an ongoing effort” and included posting a membership form on its website, inserting printed forms in the BID’s Diamond District Monthly publication which is distributed via news boxes and emails sent to approximately 800 subscribers, and verbally informing merchants when they distribute this publication.

In its Fiscal Year 2022 Annual Report to SBS, the 47th Street BID reported that it did not track the total number of BID members (both registered and unregistered) but estimated that there are 3,000 businesses located within the District. However, the BID reported that it had only 88 registered members composed of 64 property owners, 23 commercial tenants, and 1 residential tenant. This represents only 2.9% of the estimated number of businesses in the District. Therefore, it appears that the BID’s registration efforts were inadequate.

Since the vast majority of the 47th Street BID’s members did not have the opportunity to vote for directors to represent their interests and vote on other BID actions, the BID may not be aware of the issues members are facing, how challenging those issues are, and the support and services that members are seeking from the BID and the City, and ultimately, the BID may not add value to the District.

## The 47th Street BID Did Not Obtain Approval to Charge Fees for Filming on City Streets or Pay Consideration to the City

The New York City Administrative Code Section 25-414(d) states that “[f]or such consideration as it may deem appropriate [...], the city council may license or grant to the [BID] the right to undertake or permit commercial activities or other private uses of the streets or other parts of the district in which the city has any real property interest.” The 47th Street BID’s contract grants the BID the right to undertake or permit such activities or uses—subject to SBS’ prior written approval. Further, the contract provides that such activities or uses must be authorized by the appropriate City agency and conform to the agency’s requirements, among other things.

As previously stated, the 47th Street BID entered into an agreement with Netflix for the “use of the property located at the Diamond District on West 47th Street.” This agreement required Netflix to pay \$104,536 to the BID. This amount included a “donation” for three days of filming within the BID and fees for added security, flowers on light poles, and street cleaning. The agreement further provided that if the hours in the BID were expanded, “the cost for security, cleaning, and other related expenses [would] be expanded accordingly.”

However, the 47th Street BID did not inform or obtain approval from the City Council, SBS, or the Mayor’s Office of Media and Entertainment (MOME) to allow commercial activities or private uses of City streets, nor did the BID ensure that those activities or uses complied with MOME requirements. Those requirements may include whether and how the BID may permit commercial activities or private uses of City streets, charges the BID may impose, and consideration to be paid to the City.

Additionally, the auditors could not determine whether the 47th Street BID reported all revenue associated with the Netflix agreement. The auditors requested all correspondence regarding Netflix’s use of property within the 47th Street BID, including correspondence between the BID and Netflix, SBS, and other City offices. Additionally, the auditors requested the name, title, and contact information for the Netflix signatory. The BID stated that there was no correspondence and the Board Chair stated that he did not know who signed the contract on behalf of Netflix.

However, the 47th Street BID’s contract states that the BID must keep complete and accurate records of its activities which shall include all relevant correspondence and documentation relating to all financial accounts and transactions. Additionally, the 47th Street BID was required by the IRS to report the names and addresses of the BID’s contributors on its IRS Form 990, Schedule B, and to keep this information in its books and records. On November 28, 2023, the auditors requested the BID’s IRS Form 990 for 2022, including all schedules. To date, the BID has not provided the requested IRS Form 990.

In its written response to this follow-up audit, the 47th Street BID stated Netflix dealt directly with the City and that MOME had reached out to the BID to coordinate with Netflix. However, as stated above, the auditors requested any and all correspondence between the BID and Netflix, SBS,

and other City offices regarding the use of property with the Diamond District. During the course of this follow-up audit, the BID stated that “there was no contact with SBS or the City of New York,” which contradicts their written response.

Additionally, the 47th Street BID stated that the IRS Form 990 for 2022 “was not available to be provided” because the BID had requested an extension to file. However, the BID filed its Form 990, and it was available to be provided during the course of the audit. As previously stated, the auditors obtained public copies of these records from the IRS and Charities Bureaus websites. Since IRS Form 990, Schedule B, is not publicly posted, the auditors requested this schedule from the BID, but the BID failed to provide it. Therefore, the auditors could not determine whether the BID reported all revenue associated with the Netflix agreement.

## **The 47th Street BID Failed to Monitor the Executive Director’s Attendance and Paid Him \$32,846 for Time Not Worked**

The *New York State Attorney General Internal Controls and Financial Accountability for Not-for-Profit Boards* guidance document states that internal controls help organizations ensure accountability and protect their assets and that internal controls should include implementing personnel policies. *Comptroller’s Directive #13: Payroll Procedures* states that fundamental timekeeping principles include employees recording daily attendance and signing attendance reports, and supervisors approving them.<sup>6</sup>

Additionally, *Comptroller’s Directive #1: Principles of Internal Control* states that good payroll and personnel controls “ensure that only those persons entitled to compensation are paid; and such compensation represents the correct amount of money that each person is entitled to.” To that end, *Comptroller’s Directive #1* states that a reliable and effective system of internal controls should include: (1) periodic checks to verify that employees are accumulating and using sick and annual leave in accordance with relevant rules, (2) establishing procedures to ensure that employees arriving late or leaving early are charged leave, (3) periodically checking leave balances, and (4) properly investigating negative leave balances and taking appropriate action.

The 47th Street BID did not implement any of the above-listed internal controls to ensure that the Executive Director received only the compensation to which he was entitled. As previously mentioned, the Executive Director maintained records of his daily attendance and time. However, the 47th Street BID Board did not require the Executive Director to submit those attendance and time records for review and approval and did not require a Board Officer or Director to verify time worked.

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<sup>6</sup> The Comptroller’s Office issues Internal Control and Accountancy Directives to ensure the efficient and effective operations and appropriate use of funds.

BID officials stated that the Board Chair and President requested that the Executive Director keep a record of his time, and since March 2020, the Executive Director has consistently maintained those records. They further stated, “While [the Board Chair and President] haven't yet requested these documents, it's understood that [the Executive Director] will promptly provide them [...] upon request.”

The Executive Director's employment agreement and the 47th Street BID's Financial, Administrative, and Employment Procedures Handbook state that the Executive Director is entitled to a maximum of 19 paid holidays, 10 vacation days, and six sick days per calendar year. They further state that vacation and sick days must be taken during the calendar year and are not subject to carry over to the next calendar year.

Based on the auditors' review of the Executive Director's attendance and time records for Calendar Year 2022, the Executive Director took 62 days of leave to which he was not entitled—49 days of sick leave and approximately 13 days of personal leave—and was paid \$32,846 for time not worked.<sup>7</sup>

On November 8, 2023, the auditors requested that the BID provide documentation of Board, Executive Committee, or other approval of the Executive Director's sick and vacation leave used during Calendar Year 2022. In response, the BID stated only that the “[p]rovisions concerning the Executive Director's sick leave is specified in November 2018 employment offer letter” and provided a copy of his employment agreement.

When the auditors discussed this finding with the BID, the BID's counsel acknowledged that the BID did not contemporaneously document the Board's approval. Further, the BID's counsel stated that the Executive Director's leave was duly and fully authorized by the Board and would provide documentation in support of this. To date, the BID has not provided documentation.

In its written response to this follow-up audit, the 47th Street BID stated “the Board of Directors authorized for the Executive director, an extended, fully-paid medical leave” and “the extended leave was fully documented and approved in line with the organization's policies.” However, the BID's meeting minutes do not document contemporaneous discussion or approval of the Executive Director's fully-paid medical leave.

Further, the BID did not address the Executive Director's excess use of personal time which also exceeded his employment offer letter, and to date, has not been acknowledged or approved by the Board.

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<sup>7</sup> The Executive Director was paid \$23,846 for base salary and \$9,000 for the Diamond District Monthly newsletter.

## The 47th Street BID Did Not Require a Subcontractor to Submit Required Background Information to SBS

The 47th Street BID's contract and its Financial, Administrative, and Employment Procedures Handbook state that vendors for all contracts exceeding \$100,000 must submit questionnaires so that SBS can conduct background checks and determine whether proposed vendors are responsible. The contract states that the BID must require the vendor to submit to the SBS Commissioner "any and all information that he or she deems necessary to conduct a full back investigation." The BID agrees that "no payments shall be made under any such subcontract unless and until [questionnaires have] been completed and the [BID] has been notified by the Commissioner of SBS that no derogatory information has been uncovered."

The BID began subcontracting security services to a private firm in June 2020 and paid the firm more than \$100,000 in both Fiscal Year 2021 and 2022 through a non-competitive contract. However, the BID did not require this subcontractor to submit background information to SBS, including information on the principal owners and officers, as well as the employment of individuals affiliated with the City.

Since the BID did not require this subcontractor to submit required background information to SBS, the subcontractor did not disclose that it employed an individual who served as a full-time City employee within the past five years. Further, the subcontractor did not disclose the name of the employee, where they previously worked, and the nature of their current role—information used to identify potential violations of the City's conflict of interest laws.

# Recommendations

The auditors recommend that SBS:

1. Instruct the Department of Finance to place the 47th Street BID's assessments in escrow until the BID signs a new contract, changes its by-laws and leadership, and agrees to a schedule to implement the audit's recommendations by March 31, 2025.

**SBS' Response:** SBS agreed with this recommendation by stating it would take this recommendation into consideration in consultation with the City's Law Department and Department of Finance.

2. Ensure that the 47th Street BID immediately appoints an Executive Committee in accordance with NPCL 712(a).

**SBS' Response:** SBS agreed with this recommendation stating it would inform and work with the Board to hold a new election of Officers and vote for the Executive Committee membership by a majority of the Board.

3. Oversee the 47th Street BID's membership drive and elections of Directors and Officers.

**SBS' Response:** SBS agreed with this recommendation stating it will inform the BID that they should conduct a membership drive as soon as possible, will provide guidance and resources to the BID, and will hold regular check-ins with the BID's Executive Director to assist with the process. Regarding elections, SBS stated it would help oversee the election of Directors and will work with the Board to hold a new election of Officers.

4. Consult with legal counsel to determine whether SBS, as an oversight body, is authorized under NPCL Section 602 to amend the 47th Street BID's by-laws to ensure they comply with NPCL and best practices to include term limits for Officers and Directors if the Board does not vote to amend by-laws.

**SBS' Response:** SBS agreed with this recommendation by stating it would consult with the City's Law Department to determine if this provision applies to the BID.

5. Determine the total revenue associated with the Netflix agreement, coordinate with MOME to determine the consideration to be paid to the City, and deduct this amount from the 47th Street BID's assessments.

**SBS' Response:** SBS agreed with this recommendation stating that it would work with MOME to determine if the BID collected money due to the City.

6. Ensure that the 47th Street BID's security subcontractor submits required questionnaires and conducts background checks and determine whether proposed vendors are responsible.

**SBS' Response:** SBS agreed with this recommendation stating it would provide the BID with guidance on how to assist the vendor with its submissions, and once submitted, will check the responsibility of the vendor.



The auditors recommend that the 47th Street BID:

7. Consult with SBS and legal counsel and amend the by-laws to comply with NPCL and best practices.

**BID's Response:** The BID agreed with this recommendation stating it would consult "with SBS and the BID's legal counsel and amend bylaws to comply with NPCL as needed."

8. Cease its practice of allowing non-voting Directors to vote to elect Officers and conduct business.

**BID's Response:** The BID agreed with this recommendation stating it would be "exercising greater vigilance to ensure only voting Directors vote to elect officers and conduct business."

9. Undertake an annual membership drive to distribute information to all local property owners, and commercial and residential tenants, to inform them of their right to register as a member of the BID and to be eligible to vote for Board Directors and other BID matters.

**BID's Response:** The BID disagreed with this recommendation stating that it will continue "present efforts to recruit new members" and "seek out guidance from SBS on the methods they share with other BIDs endeavoring to increase membership rolls."

**Auditor Comment:** As stated above, fewer than 3% of businesses within the area participate in the 47th Street BID. Furthermore, in its written response the BID acknowledged that its present efforts result in only "a few new members every month or so." Therefore, we reiterate that the BID should conduct an annual membership drive to distribute information to all property owners and tenants.

10. Recoup inappropriate payments, totaling \$32,846, made to the Executive Director for time not worked during Calendar Year 2022.

**BID's Response:** The BID disagreed with this recommendation stating that "no claw back is necessary as this leave was fully authorized by the board of director and reaffirmed once again at the March 1, 2024, Board meeting."

**Auditor Comment:** As stated above, the 47th Street BID's meeting minutes do not document contemporaneous discussion or approval of the Executive Director's fully-paid medical leave. Further, the BID did not address the Executive Director's excess use of personal time which also exceeded his employment offer letter, and to date, has not been acknowledged or approved by the Board.

11. Review the Executive Director's time and attendance records for Calendar Year 2023, determine whether the Executive Director took leave he was not entitled to, and if so, recoup additional payments for time not worked.

**BID's Response:** The BID agreed with this recommendation and stated that the Board Chair and President have implemented it by reviewing time and attendance records for Calendar Year 2023, and determined that the Executive Director did not take any unentitled leave during the Calendar Year 2023.

12. Monitor leave usage to ensure that employees do not exceed vacation and sick day allowances.

**BID's Response:** The BID agreed with this recommendation stating that the Board Chair, President, and Executive Director established a protocol that the Executive Director will submit his bi-weekly time sheets and attendance records, which now include a running tabulation of any vacation or sick days taken during the pay period, and a tally of total vacation and sick days taken so far that year and days still remaining.

13. Review time and attendance records to verify employees' time worked and approve wages prior to issuing payment.

**BID's Response:** The BID agreed with this recommendation stating the Board Chair and President instructed the Executive Director to submit time and attendance records for their review prior to payment authorization.

14. Immediately require subcontractors who are paid more than \$100,000 to submit background information to SBS.

**BID's Response:** The BID agreed with this recommendation stating it would request guidance from SBS as to what background information they are required to provide for subcontractors that are paid more than \$100,000.

## Recommendations Follow-up

Follow-up will be conducted periodically to determine the implementation status of each recommendation contained in this report. Agency reported status updates are included in the Audit Recommendations Tracker available here: <https://comptroller.nyc.gov/services/for-the-public/audit/audit-recommendations-tracker/>

# Scope and Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). GAGAS requires 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 within the context of our audit objective(s). 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 47th Street BID Board members by virtue of his office. The Class D Board members, in conjunction with the other Board members constitutes the BID Board. In accordance with the New York City Administrative Code Title 25, Chapter 4, §25-414(b), the Comptroller sits on the BID Board through a designated representative. Neither the Comptroller nor his representative on the BID Board was involved in the audit process.

The scope of this audit was July 1, 2021 through June 30, 2022. The audit was to determine implementation of the recommendations provided by the Office of the Comptroller's prior audit issued on December 19, 2019.

To obtain an understanding of the 47th Street BID's financial and operating practices and applicable federal, State, and local laws, rules, and regulations, auditors requested and reviewed:

- The contract between the 47th Street BID and the City;
- The 47th Street BID Board By-Laws, policies, and procedures including its: Financial, Administrative, and Employment Procedures Handbook, Document Retention and Destruction Policy, employment contracts of the BID and Community Outreach Strategy;
- IRS and New York State laws applicable to non-profits including the Non-Profit Corporation Law (NPCL);
- IRS Compliance Guide for 501(c)(3) Public Charities;
- New York State Attorney General Guidance for non-profits including Right from the Start: Responsibilities of Directors of Non-for-Profit Corporations, Internal Controls and Financial Accountability for Non-for-Profit Boards, and Conflicts of Interest Policies Under the Not-for-Profit Corporation Law;
- New York City Procurement Policy Board Rules;
- Comptroller's Directive #13 and Comptroller's Memorandum #01-1; and
- NYC Office of the Comptroller's prior audit of the 47th Street BID.

Auditors also requested and reviewed the 47th Street BID's audited financial statements, IRS 990 Forms, and prior audits and reviews, including prior Comptroller's Office audit reports. In addition, auditors met with the 47th Street BID Board Chair, Board President, and the Executive Director and documented those interviews in memoranda. Auditors also reviewed the BID's prior audit response and status update on recommendation implementations to identify policy and procedural changes.

To determine the changes to the BID's security program, auditors reviewed the payments made to NYPD police officers and the BID's contracted security firm for the sample time period. Auditors reviewed the pay rates in accordance with the contract and determined if calculations were accurate. Auditors reviewed the contracts with NYPD and the security firm, NYPD Paid Detail Cards, the security firm's work schedules, NYPD and security firm invoices, and the electronic payments made in the BID's bank statements.

To evaluate the BID's oversight over budget and actual expenditures, auditors reviewed the BID's contract requirements, Executive Director's employment contract, and the BID's financial procedures. Auditors also reviewed the BID's annual report submitted to SBS, board minutes, and the BID's correspondence to identify expense approvals and narrative explanations for variances above 10%.

To determine whether 47th Street BID personnel services expenses were reasonable, appropriate, adequately supported, auditors compared the compensation for the BID's sole employee against other similarly-sized BIDs, reviewed the BID's timekeeping records including leave approvals and compared them to the employee contract, and identified all vacation, holiday, and sick leave. Additionally, auditors identified any increase in compensation for the Executive Director and reviewed its approval. Auditors reviewed the payroll reports to determine whether they reflected the BID's timekeeping records. Auditors also reviewed any personnel actions taken during the scope period.

To test Other Than Personal Services (OTPS) expenses, auditors selected the two highest payments per vendor above \$5,000 threshold, other than security expenses, aggregating to \$119,284 of the total \$298,707 or 40% of OTPS expenses excluding security. Auditors sampled 18 total transactions from 10 vendors. To test if the BID appropriately procured goods and services, auditors reviewed the procurement documentation for the sampled vendors and tested against the procurement procedure and exceptions outlined in the BID's contract. To test if the sample was accurately supported, auditors reviewed vendor contract terms, transaction invoices, and proof of payments. To test appropriateness, auditors reviewed the purpose of the transactions and whether they aligned with supplemental services of the BID. Auditors reviewed all authorized board member approvals to test proper authorization.

To determine if the BID's conflict of interest (COI) policy was in compliance with Non-Profit Corporation Law (NPCL) Section 715-a(b), auditors compared the requirements across NPCL, the 47th Street BID's COI Policy, and the COI questionnaire as provided to and submitted by all

board directors, officers, and key persons. Auditors reviewed the COI questionnaires submitted by the required board members and reviewed board membership against class to identify qualifications in the BID.

To test if property owners comprise the majority of the board, auditors tested board membership qualifications and reviewed the structure of the board to determine class majority.

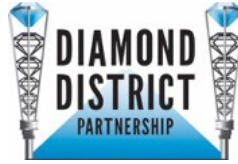
To determine if fidelity bonds were considered and implemented, auditors reviewed the correspondence from the BID and SBS and reviewed their evaluations necessitating fidelity bonds and their current insurance policies.

To determine the actions taken to address the vacant positions Vice Chair and Vice President, auditors reviewed the updated BID's by-laws, Diamond District Monthly Newsletter, and list of Board members to identify all positions within the BID's Board.

To test the 47th Street website, auditors reviewed the minimum requirements as set in the BID's contract and determined if the elements were present on the website.

To determine if SBS considered the findings in the previous audit, auditors reviewed SBS' communications with the 47th Street BID, their new contract proposal, and the changes outlined in their contract to address the previous audit findings. Auditors also reviewed SBS' actions towards curing issues of the BID's breach of contract.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for auditors to evaluate whether the 47th Street BID's expenses were reasonable, appropriate, adequately supported, and authorized.



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Please find below a formal written response to the draft audit entitled: Follow-Up Audit of the Financial and Operating Practices of the 47th Street Business Improvement District dated February 20, 2024.

### **RESPONSES TO RECOMMENDATIONS**

- 1) The audit states that, “[T]he BID did not provide Board minutes or any other contemporaneous record to show that the Board approved the “security arrangement” between the 47th Street BID and Building 1.”

On the advice of BID legal counsel, the Board of Directors of the 47th Street BID reaffirmed their previous approval of the security services arrangement with “*BUILDING 1*” during a Board meeting held on March 1, 2024. With 19 voting directors present, the Board unanimously resolved to continue the current security arrangement with “*BUILDING 1*”, with no votes against (Nays) and no abstentions.

**Background:** Section 3.3. (Proximate Supplemental Services) of the BID’s Financial, Administrative, and Employment Procedures Handbook (“Handbook”), stipulates that: “supplemental security provided through the NYPD Paid Detail Unit may be performed proximate to the district or for BID-related events, whether within or outside the district, whenever deemed by the BID to principally benefit the district. The BID must require full reimbursement of all hourly fees and New York City management fees in all such instances.”

Section 2A.01 of the current SBS contract collectively bargained contract with all 76 NYC BIDs, permits such arrangements provided they are “*performed proximate to the District,*” are fully reimbursed, and will “*principally benefit property within the District.*”

This arrangement satisfies all required provisions: (1) “*BUILDING 1*” extends contiguously for 200 feet onto West 47th Street between 5th and 6th Avenues, the definition of “proximate to the district;” (2) “*BUILDING 1*” management fully reimburses the BID each month for all paid detail expenses incurred from arranging the lobby Paid Detail police officer; and (3) the arrangement primarily benefits property within the BID, as lobby Paid Detail Police Officers regularly assist with issues occurring within the district.

Examples include alerting the FDNY about a building fire, reporting an arsonist who set three large fires in the district, reporting an underground utility explosion, requesting additional NYPD emergency response during crimes in progress, most notably, during the terrorist attack in the district in May 2021.

**Audit Draft Report Responses • MARCH 5, 2024: Follow-Up Audit of the Financial and Operating Practices of the 47th Street Business Improvement District (FK23-080F)**

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- 2) All Paid Detail services provided for “*BUILDING 1*” have been and continue to be fully reimbursed by “*BUILDING 1*”.
- 3) Compensating controls are in place for every aspect of the BID’s finances, which includes supplemental security. Specifically, the BID’s bookkeeper reviews all billing associated with administering supplemental security and all other financial transactions, in accordance with “Handbook” Section 1.5 (Payment Controls), as does the BID’s independent auditor during its annual financial audits submitted each year by December 31<sup>st</sup> to the NYC Comptroller office and Department of Small Business Services.

It should be noted there are no location assignment sheets for Paid Detail Police Officers and never have been. The auditors were referring to a list of card numbers issued daily to track the building access cards given to each respective Police Officer on duty, not their respective posts. There was never any information on post assignments in this document past or present. Concerning “keeping a record of security personnel assignment locations,” it's important to understand that these locations can often change throughout the day, based on the district's current needs.

- 4) The BID’s Financial, Administrative, and Employment Procedures Handbook will be reviewed and modified accordingly to include procedures for tracking budget variances and reporting them to the Board.
- 5) The BID’s Financial, Administrative, and Employment Procedures Handbook will be reviewed to make sure that it complies with the current collectively barged contract with NYC Department of Small Business Services.
- 6) All narratives are explained at the annual meeting with a review of all budget variances. The Netflix issue will be discussed further down in the responses.
- 7) The BID fully agrees with this recommendation, which is why the BID, following guidance from the Department of Small Business Services (“SBS”) representative on the Hiring Committee, used the IRS guidelines for Non for Profits as a basis for determining the Executive director’s salary to ensure it was not excessive and was consistent with the Executive Director salaries of similar-sized BIDs. Accordingly, the IRS states that “**Reasonable** compensation is the value that would ordinarily be paid for like services by like enterprises under like circumstances. Reasonableness is determined based on all the facts and circumstances.” These methods were used to determine the compensation.
- 8) The Executive Director, who is the BID’s sole paid employee, began maintaining daily attendance and time in a physical journal in March 2020 (NOTE: The audit report mistakenly states that recordkeeping began in June 2021.) The Executive Director consistently maintains daily time and attendance records, which he now submits bi-weekly to the Board Chairman and President prior to the end of every payroll period to verify time worked. This new protocol is being added to the BID’s Financial, Administrative, and Employment Procedures Handbook.

**Audit Draft Report Responses • MARCH 5, 2024: Follow-Up Audit of the Financial and Operating Practices of the 47th Street Business Improvement District (FK23-080F)**

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- 9) The BID's Financial, Administrative, and Employment Procedures Handbook will be modified accordingly to show these changes. In August 2023, city auditors determined that a discrepancy by the BID's payroll vendor resulted in a \$4,000 a year overpayment in our Executive Director's annual compensation. At a Board meeting on September 12, 2023, the board voted to retroactively approve the increase and maintain it at this level. As per guidance from the BID legal counsel, a majority of the Board met on March 1, 2024, to vote to reaffirm the prior decision to retroactively authorize the Executive Director's salary increase. This vote reaffirmed the said action unanimously, with no votes against (Nays) and no abstentions.
- 10) The BID's Financial, Administrative, and Employment Procedures Handbook will be modified accordingly to include the above- and below-mentioned policy updates mentioned in the recommendations section related to verifying the Executive Director's hours worked at the close of every bi-weekly pay period in order to approve wage payments prior to issuing payroll payments.
- 11) In accordance with Section 4.1(d) of Article IV (Indemnification) in the BID's Financial, Administrative, and Employment Procedures Handbook, the BID has always maintained a Directors and Officers insurance policy. It should be noted that in response to Recommendation #12, SBS stated that it has "consulted its Legal Division regarding the necessity of fidelity bonds and determined that Directors and Officers Insurance provides sufficient coverage."
- 12) SBS
- 13) Purchase and payment oversight is addressed extensively in Sections 1.4 (Payments), 1.5 (Payment Controls), 1.6 (Reimbursement for Expenses), 1.7 (Paper checks), 1.8 (Electronic checks), and 1.9 (Payroll and Benefits) in ARTICLE I: FINANCIAL REPORTING AND OVERSIGHT of the BID's Financial, Administrative, and Employment Procedures Handbook. There is no need to amend the by-laws.

Before bills are paid, a pdf copy of every invoice is emailed to officers for approval. Officers must then review the invoice and respond to indicate their respective approval of said invoice. While the request for approval is sent with an attached invoice, as per the nature of how email generally works, the response does not include the original attached file.

The auditors specifically requested copies of emailed payment approvals. These were duly provided. Had the auditors requested emails requesting approvals, the BID would have duly provided these along with the attached invoice. When it became apparent to the auditors that they did not receive what they wanted, they could have added that to their request. Instead, as the audit report factually states, the BID provided exactly what the auditors requested.

Going forward, the bookkeeper will be given copies of vendor contracts, pricing and Board approvals to ensure that payment amounts are accurate and authorized. These same instruments will be verified once again by our independent auditor during the BID's annual financial audit.



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- 14) The by-laws do not need to be amended as this is covered in the BID's Financial, Administrative, and Employment Procedures Handbook. We agree to implement such procedures and improve record keeping. It should be noted that the \$45.10 hourly rate stated in the audit report on which the auditors base their calculation for percentages is incorrect. The correct NYPD Paid Detail rate is \$53.90 per hour, which reduces the percentage referenced in the report down to a considerably lower 8.65% instead of 30.8%. The New York City Paid Detail Unit changed their hourly rate in February 2023 over a year ago.
- 15) The BID's Financial, Administrative, and Employment Procedures Handbook will be modified and record keeping will be improved.
- 16) BID will improve record keeping and review contracts approximately every three years depending upon the service.
- 17) BID has consulted legal counsel for guidance on modifying language in the present Conflict of interest policy in a manner consistent with NPCL 715-a(b). The Executive Director will submit a signed Conflict of Interest policy going forward. Past non-submissions are the result of a misunderstanding about policy. It should be noted that the audit report for Recommendation #17 makes specific reference to information in the BID's IRS Form 990 for 2022. When in fact, this document was never available to the comptroller's office or offered to the auditors as the BID had requested and was automatically granted an extension for our 2022 filing from the IRS.
- 18) While the BID does expend great effort to collect annually updated Conflict of Interest forms from its Directors, there are inevitably holdouts despite the best efforts of the Executive Director. It should be noted that Class D Directors (some, not all) are typically among those who consistently fail to return a completed and signed Conflict of Interest policy. Greater effort will be made going forward to ensure all Conflict of Interest policies are completed, signed and returned by all Directors.
- 19) Recommendation #19 makes specific reference to statements contained within the BID's IRS Form 990 for 2022. In fact, this document was never available nor offered to the auditors as the BID had requested and was granted an automatic extension for our 2022 filing. Statements in the audit report about the Board Chair's Conflict of Interest disclosures are baffling as his returned policy explicitly specifies "Landlord/tenant" and "business to business relationships." So, any conflict is fully disclosed in his respective Conflict of Interest policy.
- 20) The BID has implemented a new membership policy to verify eligibility and class designation using publicly available databases to check members' business names and addresses. The aim is to ensure they fall within the 47th Street Business Improvement District boundaries. The policy was unanimously ratified by a majority of voting directors at the Board meeting on March 1, 2024, with no votes against or abstentions, and will be incorporated into the BID's Financial, Administrative, and Employment Procedures Handbook.
- 21) The BID did not have 39 Board members at any point within the time frame of the audit. Our Board is comprised of 27 directors, including 3 nonvoting members. Concerns about the Class A are due to a mistaken duplicate entry in our IRS Form 990 for 2021 which lists the Mayor of New York City and

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his SBS representative as two distinct Directors; only the Mayor should have been included. Consequently, property owners remain the majority on the board. A resolution to officially set the Board size at 27 members was unanimously approved by the Board, with no dissenting votes or abstentions, during the meeting on March 1, 2024.

- 22) Duties of two non-officers on the Executive Committee were further defined at the Board meeting on March 1, 2024 (please see attached minutes). Our counsel is unaware of any requirement that only officers be permitted to sit on the Executive Committee. In general, non-officers seated on the BID's Executive Committee serve as advisors to the Executive Committee.
- 23) The BID does produce and maintain detailed minutes and will now further endeavor to improve the quality and specificity of meeting discussions and attendees for all future minutes.
- 24) SBS
- 25) SBS
- 26) There are no requirements pertaining to website content in the current SBS collectively bargained contract with all 76 NYC BIDs. The 47th Street BID's website is nevertheless designed to provide access and transparency to our stakeholders and visitors alike. This includes displaying a email address thought a connect us button that users can directly correspond with the Executive Director via email.

The BID also posts its annual financial reports and annual budget. The BID maintains that due to security concerns and the prevailing interests of district business owners, we will not list business names and addresses on the website. This is simply prudent due to realistic security concerns that are well known to people who actually work in the diamond and jewelry industry. And once again not a requirement of the collectively bargained contract with all 76 NYC BID's and SBS.

### **RESPONSES TO NEW FINDINGS**

- **The BID's Committee Member Appointments Violate State Law**
  - **Board Officers:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the election of Board officers, a Board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which included a vote by a majority of Directors to elect four Board Officers: Chairman, President, Treasurer, Secretary. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously elected four Board Officers: Chairman, President, Treasurer, and Secretary, with no votes against (Nays) and no abstentions.
  - **Executive Committee:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the creation of our committees, a board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which

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included a vote by a majority of Directors to ratify the standing of the Executive Committee. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously ratified the appointment of our Executive Committee members with no votes against (Nays) and no abstentions.

- **Audit Committee:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the creation of our committees, a board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which included a vote by a majority of Directors to ratify the standing of the Audit Committee. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously ratified the appointment of our Audit Committee members with no votes against (Nays) and no abstentions.
- **Nominating & Finance Committees:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the creation of our committees, a board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which included a vote by a majority of Directors to ratify the standing of the Nominating and Finance Committees. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously ratified the appointment of our Nominating and Finance Committee members with no votes against (Nays) and no abstentions.
- **Website Committee:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the creation of our committees, a board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which included a vote by a majority of Directors to ratify the standing of the Website Committee. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously ratified the appointment of our Website Committee members with no votes against (Nays) and no abstentions.
- **Bylaws Committee:** Following guidance from our legal counsel with respect to the directives enumerated in the audit report concerning the creation of our committees, a board meeting convened on March 1, 2024, to reaffirm prior Board approval for several key items, which included a vote by a majority of Directors to ratify the standing of the Bylaws Committees. This vote was conducted by the Board of Directors, at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors unanimously ratified the appointment of our Bylaws Committee members with no votes against (Nays) and no abstentions..
- ***The 47th Street BID's Amended By-Laws Enhance Board Chair Control***  
The by-laws were approved by the membership and no such control was expanded.
- ***The 47th Street BID Allowed Non-Voting Directors to Vote to Elect Officers and Conduct Business***  
BID will make sure non-voting directors do not vote.

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- **Fewer Than 3% of Businesses Within the Area Participate in the 47th Street BID**

BID is constantly seeking membership through full page ads inside or on the back cover of our monthly publication, which is distributed to a list of over 600 industry members via email and another 600 to 1000 which are distributed by hand within the Diamond District each month. The Executive Director speaks to hundreds of property and business owners each month about becoming BID members. The website also has a robust membership sign up form. Despite these efforts, we only sign up a few new members every month or so. Our BID is open to further guidance and assistance from SBS on the most effective ways to drive further membership.

- **The 47th Street BID Did Not Obtain Approval to Charge Fees for Filming on City Streets or Pay Consideration to the City**

Netflix dealt directly with the City of New York to obtain permits. Applicants such as Netflix pay fees directly to the City of New York for use of New York City Property. The donation to the BID was not connected to any approval process. The Mayor's Office of Media and Entertainment ("MOME") reached out to the BID to request that the BID coordinate with Netflix. Thus, no funds were due to the City of New York from the BID. The BID did not authorize the use of New York City Streets.

Once again, it should be noted that as the IRS granted the BID an automatic extension to file the Form 990 for 2022, the 990 was not available to be provided to the comptroller office.

- **The 47th Street BID Failed to Monitor the Executive Director's Attendance and Paid Him \$32,846 for Time Not Worked**

In 2022, the Executive Director underwent a complicated, medically necessary surgery, necessitating an extended period of recovery. Recognizing the need, the Board of Directors authorized for the Executive director, an extended, fully-paid medical leave.

Unfortunately, this situation was misrepresented in the audit report, which inaccurately implies the Executive Director exceeded without authorization his contractually allotted sick days by a large margin. This overlooks the fact that this extended medical leave was fully authorized and time out was recorded, a fact that could have been verified through a simple inquiry or review of the Executive Director's timesheets.

It's important to clarify that the extended leave was fully documented and approved in line with the organization's policies. The inclusion of a claim in the audit report demanding repayment for this period, without acknowledging the Board's approval, raises concerns about the fairness and accuracy of the audit process.

Following guidance from our legal counsel with respect to the false suggestion that this medical leave was not authorized, a Board meeting convened on March 1, 2024, to affirm prior Board approval for fully-paid extended medical leave for the Executive Director. This vote was conducted by the Board of Directors at the Board Meeting on March 1, 2024, where a majority of the entire Board of Directors voted reaffirmed the said action with no votes against (Nays) and one abstention (Nina Saxon).

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- ***The 47th Street BID Did Not Require a Subcontractor to Submit Required Background Information to SBS***

BID will provide the required documentation once SBS provides guidance on what is needed.

### **RESPONSES TO NEW RECOMMENDATIONS**

7) The 47<sup>th</sup> Street BID will certainly follow this recommendation by consulting with SBS and the BID's legal counsel and amend bylaws to comply with NPCL as needed and agrees to review the Comptroller's best practices with the board of directors and legal counsel.

8) The 47<sup>th</sup> Street BID will certainly follow this recommendation by exercising greater vigilance to ensure only voting Directors vote to elect officers and conduct business.

9) The 47<sup>th</sup> Street BID will certainly follow this recommendation by continuing our present efforts to recruit new members and to seek out guidance from SBS on the methods they share with other BIDs endeavoring to increase membership rolls.

10) The Board voted to reaffirm prior approval for the Executive Director's fully-paid extended medical leave he was approved to take in March 2022. No claw back is necessary as this leave was fully authorized by the board of director and reaffirmed once again at the March 1, 2024, Board meeting.

11) At the request of the Board Chair and President, the Executive Director has submitted his time and attendance records for Calendar Year 2023. By reviewing these records, the Board Chair and President were able to conclusively determine that the Executive Director did not take any unentitled leave during the Calendar Year 2023, and conclusively determined that there was no need to recoup any payments for time not worked.

12) Following the directive enumerated in the audit report pertaining to monitoring vacation and sick days, the Board Chair, President, and Executive Director established a protocol that the Executive Director would submit his bi-weekly time sheets and attendance records at the end of every pay period prior to authorization of payroll for said period. In addition to dates and times worked, the Executive Director now also includes a running tabulation of any vacation or sick days taken during that pay period, along with a tally of total vacation and sick days taken so far that year and days still remaining.

13) Following the directive enumerated in the audit report pertaining to verifying employees' time worked to approve wages prior to issuing payment, the Board Chair and President have directed the Executive Director to submit time and attendance records at the end of each bi-weekly pay period for their review prior to payment authorization through the payroll company.

14) The 47<sup>th</sup> Street BID will certainly follow this recommendation by requesting guidance from SBS as exactly what background information that they require us to provide about subcontractors paid more than \$100,000.

--END--



KEVIN D. KIM  
COMMISSIONER

DATE: March 5, 2024

TO: Maura Hayes-Chaffe, Deputy Comptroller for Audit  
Kolbein Netland, Audit Manager

CC: Kevin D. Kim, Commissioner, NYC Department of Small Business Services ("SBS")  
Calvin T. Brown, PhD, Deputy Commissioner, SBS

FROM: Ismail Mohammed, Assistant Commissioner, Fiscal & Audit, SBS

RE: **Follow-up Audit Report on the Financial and Operating Practices of the  
47th Street Business Improvement District ("BID")  
FK23-080F**

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Dear Deputy Comptroller Hayes-Chaffe:

We are in receipt of the Follow-up Audit Report on the Financial and Operations Practices of the 47<sup>th</sup> Street Business Improvement District (FK23-080F). In response to the draft follow-up financial audit of the 47th Street Business Improvement District (47BID) dated February 20, 2024, please find below the NYC Department of Small Business Services' (SBS) responses to the Office of the Comptroller's recommendations:

**Recommendation 1:** *Instruct the Department of Finance to place the 47th Street BID's assessments in escrow until the BID signs a new contract, changes its by-laws and leadership, and agrees to a schedule to implement the audit's recommendations by March 31, 2025.*

**SBS Response:** SBS is the oversight and support agency for District Management Associations ("DMAs") in New York City and tasked with overseeing contracts with DMAs on behalf of the City for the management of business improvement districts (BIDs). SBS will take the suggested recommendations into consideration with respect to placing the BID's assessment in escrow in consultation with the City's Law Department and Department of Finance.

**Recommendation 2:** *Ensure that the 47th Street BID immediately appoints an Executive Committee in accordance with NPCL 712(a).*

**SBS Response:** SBS will inform the DMA that the current Executive Committee was not appointed in compliance with New York State Not-for-Profit Corporation Law (NPCL). SBS will work with the Board to hold a new election of Officers and vote for the Executive Committee membership by a majority of the entire Board as required by NPCL 712(a).



KEVIN D. KIM  
COMMISSIONER

**Recommendation 3:** *Oversee the 47th Street BID’s membership drive and elections of Directors and Officers.*

**SBS Response:** SBS board representatives attend DMA annual meetings to ensure they are conducted in accordance with the requirements of Article 6 of the NPCL. The 47<sup>th</sup> Street DMA recently held an annual meeting of the membership on January 17, 2024. At the next annual meeting of the membership, SBS will help oversee the election of Directors.

SBS staff also attend all Board meetings where Officers should be elected. Per Recommendation 2, SBS will work with the Board to hold a new election of Officers.

SBS will inform the DMA that they should conduct a membership drive as soon as possible. SBS will assist the DMA by providing guidance regarding the type of information they need to collect and equip the DMA’s staff with available technology platforms to help with data-gathering.

As with all BIDs, SBS will also share existing SBS resources with the DMA’s Executive Director, such as LiveXYZ and Property Shark. These resources can help with verifying membership class eligibility. Finally, SBS will also hold regular check-ins with the DMA’s Executive Director to provide continuous guidance on this process.

**Recommendation 4:** *Consult with legal counsel to determine whether SBS, as an oversight body, is authorized under NPCL Section 602 to amend the 47th Street BID’s by-laws to ensure they comply with NPCL and best practices to include term limits for Officers and Directors if the Board does not vote to amend by-laws.*

**SBS Response:** NPCL Section 602(d) states: “In the case of a corporation which is subject, under any other law of this state, to regulation or control by a governmental body or officer, such body or officer may, to the extent provided in such other law, in furtherance of its or his authority to regulate or control: (1) Adopt, amend or repeal by-laws; (2) Amend or repeal any by-law adopted by the members or the board.”

SBS will consult with the City’s Law Department to determine whether this provision applies to DMAs in New York City.

**Recommendation 5:** *Determine the total revenue associated with the Netflix agreement, coordinate with MOME to determine the consideration to be paid to the city, and deduct this amount from the 47th Street BID’s assessments.*

**SBS Response:** SBS does not enforce filming permits in NYC, and DMAs are allowed to receive donations or other forms of remuneration for services from production companies who film in their districts.



KEVIN D. KIM  
COMMISSIONER

SBS will report this finding and recommendation to the Mayor’s Office of Media and Entertainment (MOME) and work with them to determine if the DMA collected money due to the City for “the right to undertake or permit commercial activities or other private uses of the streets or other parts of the district in which the city has any real property interest.”

**Recommendation 6:** *Ensure that the 47th Street BID’s security subcontractor submits required questionnaires and conducts background checks and determine whether proposed vendors are responsible.*

**SBS Response:** SBS will work with the DMA to ensure that its security subcontractor’s required questionnaire and disclosure information are properly submitted into the City’s PASSPort verification system within a reasonable amount of time.

SBS will provide the DMA with guidance on how to assist the vendor in making these submissions. Once submitted, SBS will request a Vendor Name Check (VNC) to check the responsibility of the vendor.

We look forward to continuing our partnership with the Comptroller’s office to support BIDs across the five boroughs. Please advise if you have any questions about incorporating these comments into your report.

*Ismail Mohamed*

Ismail Mohammed  
Assistant Commissioner  
Fiscal & Audit, SBS







NEW YORK CITY COMPTROLLER  
**BRAD LANDER**

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