



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Financial and
Operating Practices of the Garment
District Alliance Business Improvement
District

FK18-088A

August 14, 2019

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

August 14, 2019

To the Residents of the City of New York:

My office has audited the Garment District Alliance Business Improvement District (GDA) to determine whether GDA provided supplemental services, exercised adequate oversight over its fiscal affairs, maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized as required by its contract with the Department of Small Business Services (DSBS). We audit not-for-profit entities such as GDA to increase accountability, ensure that services are provided, and that funds are used appropriately.

The audit found that GDA did not provide supplemental services in accordance with its annual budget and did not explain budget variances to its members and DSBS, as required by its contract. GDA property owners and tenants expressed dissatisfaction with some of the services where actual expenditures were less than the amounts budgeted and approved by the Board. In addition, GDA lacked adequate controls over its other than personal services expenses. Specifically, GDA: (1) did not document that it competitively procured goods and services or justified non-competitive procurements to the GDA Board; (2) leased office space from a related party—the GDA Board Secretary—and did not determine and document that lease terms were fair, reasonable, and in GDA's best interest; (3) did not enter into contracts detailing the scope of services, payment terms, and approvals; and (4) did not document how catering and special event expenses related to BID business. GDA also lacked adequate controls over its personal services expenses. Specifically, GDA: (1) did not conduct research to determine whether top management compensation was reasonable and did not obtain Board Committee approval for the top managers' salaries; (2) did not present central staff's salary increases to the Board for its approval; and (3) did not require supervisory personnel to review and approve central staff's timesheets or require central staff to certify that they accurately reported their attendance and time.

The audit makes 15 recommendations to GDA and 2 recommendations to DSBS, including that GDA should monitor budgeted and actual expenditures; competitively procure goods and services; consider alternatives to related-party transactions; maintain copies of vendor contracts; ensure that the Board researches, reviews, and documents comparability data to determine whether top management compensation is reasonable; obtain Board approval for top management compensation and central staff salary increases and bonuses.

The results of the audit have been discussed with GDA officials, and their comments have been considered in preparing this report. GDA's and DSBS' complete written responses are attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Audit Findings and Conclusion	2
Audit Recommendations.....	3
Agency Response.....	4
AUDIT REPORT	5
Background	5
Objectives.....	6
Scope and Methodology Statement.....	6
Discussion of Audit Results	6
FINDINGS and Recommendations.....	8
GDA Did Not Provide Supplemental Services in Accordance with Its Board Approved Budget	9
Recommendations	12
GDA Members Were Not Satisfied with Homeless Outreach and Referral, Sanitation, and Security Services	12
Recommendations	16
GDA Did Not Ensure That OTPS Expenditures Were Reasonable, Adequately Supported, and Properly Authorized.....	17
GDA Expenditures Were Not Reasonably Priced	17
<i>GDA Did Not Comply with Its Own Competitive Purchasing Rules</i>	17
<i>GDA Did Not Comply with Related-Party Transaction Requirements</i>	19
GDA Expenditures Were Not Adequately Supported and Properly Authorized.....	22
Recommendations	23
GDA Did Not Ensure That Personal Services Expenditures Were Reasonable, Adequately Supported, and Properly Authorized.....	24
GDA Did Not Document Its Process for Determining Top Management Compensation and Board Review and Approval.....	24
GDA Did Not Present Central Staff Salary Increases to the Board for Its Approval.....	26
GDA Lacked Adequate Controls over Central Staff Attendance and Time	27
Recommendations	27
Other Matters.....	28
DSBS Did Not Ensure That GDA Included Required Budgetary Information in Its Annual Report.....	28

Recommendation 28

DETAILED SCOPE AND METHODOLOGY 30

APPENDIX I

APPENDIX II

ADDENDUM I

ADDENDUM II

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the Garment District Alliance Business Improvement District

FK18-088A

EXECUTIVE SUMMARY

In 1981, New York City and State passed legislation permitting property owners to define and self-fund commercial districts known as Business Improvement Districts (BIDs). A BID is a public-private partnership through which property and business owners elect to contribute to the maintenance, development, and promotion of their district. Special assessments paid by benefiting property owners fund BID operations.

When BIDs are initially proposed, the prospective BID provides a district plan (the Plan) to the Department of Small Business Services (DSBS), which describes the formula used to calculate the special assessment and proposed services and operating budget. BIDs provide services that supplement municipal services (supplemental services) including security, sanitation, and marketing, and capital improvements.

In 1993 the City, through DSBS, entered into a contract with the entity currently known as the Garment District Alliance (GDA), a BID and a not-for-profit corporation created pursuant to § 201 of the New York State Not-For-Profit Corporation Law. The GDA was formerly known as the Fashion Center District Management Association, Inc. (the DMA). Under the terms of the contract, the City collects and pays to GDA the assessments that are levied on real property within the district. In return, GDA agrees to provide certain supplemental services, and capital improvements within the district. The GDA BID is located in western Midtown, bounded by Fifth Avenue on the east, Ninth Avenue on the west, 41st Street on the north, and 35th Street on the south. The GDA contract states that GDA “shall” provide security, sanitation, social services, and administration. In addition, the contract states that GDA “may” provide marketing and promotion, economic development, special projects, capital improvements, and other services.

In its Financial Statements for Fiscal Year 2017, GDA reported revenues of \$8,010,378 and expenditures of \$7,739,825, which included \$6,454,580 in program expenses and \$1,285,245 in management and general expenses.

Audit Findings and Conclusion

GDA provided supplemental services in accordance with its contract, in that it:

- Employed security officers to patrol the district and provide assistance to the public;
- Employed sanitation workers to sweep sidewalks, empty trash and recycling bins, paint street furniture, remove graffiti, posters, and stickers, and power-wash sidewalks;
- Contracted with Urban Pathways to provide and report on homeless outreach and referral services;
- Provided marketing and promotion services including special events, a social media presence, an information kiosk, and a website that included business directories, maps, newsletters, and guides;
- Provided economic development services by conducting pedestrian counts, publishing reports including an Economic Quarterly Report, offering seminars, and advocating for projects to promote or improve economic and real estate conditions; and
- Employed a full-time staff to administer its operations.

However, GDA did not provide supplemental services in accordance with its annual budget, and GDA did not explain the budget variances to its members and DSBS, as its contract with DSBS required. Specifically, for Fiscal Year 2017, the GDA Board approved a budget with program expenses totaling \$8,061,136, but GDA spent only \$7,744,417, and carried forward the balance of \$316,719 to Fiscal Year 2018. In addition, GDA's budgeted and actual line item expenditures for four programs had variances of greater than 10 percent each. Specifically, GDA spent \$123,829 *more* than was budgeted on beautification and horticulture, and \$288,407 *less* than what was budgeted and approved by the Board on homeless outreach and referral; marketing, special events, and holiday lighting; and security services.

GDA members expressed dissatisfaction with some of those same services where actual expenditures were less than the amounts budgeted and approved by the Board by more than 10 percent. We surveyed GDA property owners and tenants to assess their satisfaction with GDA's supplemental services. Based on the results of our survey, 40 of 183 respondents (21.9 percent) were dissatisfied or very dissatisfied with GDA's overall supplemental services. In their responses and comments, GDA property owners and tenants particularly expressed dissatisfaction with homeless outreach and referral, sanitation, and security services. (Appendices I and II to this report contain a summary of survey results and narrative comments related to homeless outreach and referral services, sanitation, and security.)

In addition, GDA lacked adequate controls over its other than personal services (OTPS) expenses to ensure that they were reasonable, appropriate, adequately supported, and authorized. Based on our review of GDA's procurement documentation, GDA did not document that it either solicited bids from at least three responsible and competitive bidders and selected the lowest bid or justified non-competitive procurements to the GDA Board as required. GDA also did not enter into contracts detailing the scope of services, payment terms, and approvals and did not document how catering and special event expenses related to BID business.

Moreover, GDA leased office space from a related party—the Board Secretary—and based on the GDA Board minutes, the Board did not determine and document in writing that the lease terms were fair, reasonable, and in GDA's best interest, and the basis for its decision as required by law. On April 14, 2016, GDA and its landlord amended the terms of their initial lease dated May

16, 2006. The amended lease deleted the initial lease renewal option and provided for a new lease extension term and annual rent. Under the terms of the amended lease, GDA will pay, for the five-year period starting on December 1, 2016, \$1,054,130 (78 percent) more in base rent than GDA would have paid had it exercised the initial lease's five-year renewal option.

GDA also lacked adequate controls over its personal services (PS) expenses to ensure that such expenses were reasonable, appropriate, adequately supported, and authorized. Specifically, GDA lacked controls in that during the audit scope period it: (1) did not conduct research to determine whether top management compensation was reasonable and did not obtain the Board Officers Committee's or the Finance and Audit Committee's approval for their salaries; (2) did not present central staff's salary increases to the Board for its approval, and (3) did not, and does not currently, require supervisory personnel to review and approve central staff's timesheets or require central staff to certify that they accurately reported their attendance and time.

Audit Recommendations

Based on our findings, we made 15 recommendations to GDA and 2 recommendations to DSBS, including the following:

- GDA should monitor budgeted and actual expenditures to identify variances.
- GDA should ensure that the GDA President notifies the Board of budget increases, decreases, or carryovers and that the Board documents its review and approval.
- GDA should conduct annual surveys of property owners and tenants to determine the current level of support for the Plan, current level of satisfaction with GDA's performance, and recommendations for possible changes.
- GDA should competitively procure goods and services whenever possible and maintain procurement documentation.
- GDA should consider alternatives to related-party transactions before entering into them and ensure that a majority of Board members present at the meeting approve related-party transactions and contemporaneously document in writing the Board's consideration of possible alternative transactions and its basis for determining that related party transactions are fair, reasonable, and in GDA's best interest.
- GDA should maintain copies of vendor contracts and other agreements documenting the scope of services, payment terms, and authorized approvals.
- GDA should ensure that the GDA board researches, reviews, and documents comparability data to determine whether top management compensation is reasonable.
- GDA should obtain Board approval for top management compensation and central staff salary increases, bonuses, or other adjustments.
- GDA should require central staff to certify that they accurately reported their attendance and time.
- GDA should require supervisory personnel to review and approve central staff timesheets.
- DSBS 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.

Agency Response

In its response, GDA generally disagreed with the report's findings and stated that 11 recommendations made to GDA should be removed since it was either already performing activities or was not contractually required to perform activities. Nevertheless, with regard to its OTPS expenses, GDA stated that it "has already taken steps to provide more accurate documentation of these activities, ratify prior actions, and ensure the proper policies, procedures and practices are in place going forward."

For the remaining four recommendations made to GDA regarding its PS expenses, GDA stated that it conducted a comprehensive review of its practices and policies and "has amended its practices to provide additional documentation of compensation reviews. When reasonable and appropriate, the GDA will provide information on compensation practices by similar organizations to the Officers and Board to inform their review process. Additionally, [t]he GDA is currently reviewing payroll and time management systems to determine if another system will be more effective."

DSBS officials stated that "DSBS is the oversight and support agency for [BIDs]" and that it "regularly acts as a liaison for [BIDs] regarding many interagency issues" and "already extensively reviews and [analyzes] submitted annual reports for budgetary, program, and service impact information."

AUDIT REPORT

Background

In 1981, New York City and State passed legislation permitting property owners to define and self-fund commercial districts known as BIDs. A BID is a public-private partnership in which property and business owners elect to contribute to the maintenance, development, and promotion of their district. Special assessments paid by benefiting property owners fund BID operations.¹

When BIDs are initially proposed, the prospective BID provides a Plan to DSBS, which describes the formula used to calculate the special assessment and proposed services and operating budget. BIDs provide supplemental services including security, sanitation, and marketing, and capital improvements.

Each BID is governed by a board of directors who are elected by members of their respective classes or who are appointed by public officials. Members are divided into five classes that include: commercial property owners (Class A); commercial tenants (Class B); residential tenants (Class C); public official appointees (Class D²); and other interested parties (Class E³).

In 1993 the City, through DSBS, entered into a contract with the entity currently known as GDA, a BID and a not-for-profit corporation created pursuant to § 201 of the New York State Not-For-Profit Corporation Law. The GDA was formerly known as the Fashion Center DMA, Inc. The contract between DSBS and the GDA is renewable every five years.⁴

Under the terms of the contract, the City collects and pays to GDA the assessments that are levied on real property within the district. In return, GDA agrees to provide certain supplemental services, and capital improvements within the district. The GDA BID is located in western Midtown, bounded by Fifth Avenue on the east, Ninth Avenue on the west, 41st Street on the north, and 35th Street on the south. The GDA contract states that GDA “shall” provide security, sanitation, social services, and administration. In addition, the contract states that GDA “may” provide marketing and promotion, economic development, special projects, capital improvements, and other services.

In its Financial Statements for Fiscal Year 2017, GDA reported revenues of \$8,010,378 and expenditures of \$7,739,825, which included \$6,454,580 in program expenses and \$1,285,245 in management and general expenses.

¹ The City of New York collects assessments from property owners and then disburses them to the BID.

² NYC Administrative Code § 25-414 states that the Board shall include “one member appointed by each of the following: the mayor, the comptroller, the borough president of the borough in which the district is located and the council member representing the council district in which the proposed district is located, or if the proposed district is located in more than one council district, by the speaker of the city council after consultation with the council members representing the council districts in which the proposed district is located.”

³ Class E members are non-voting board members.

⁴ The contract term for our scope period was from July 1, 2012 to June 30, 2017. The latest renewal commenced on July 1, 2017 and is valid through June 30, 2022.

Objectives

The objectives of the audit were to determine whether GDA, pursuant to its contracts and legal authority: (1) provided supplemental services; (2) exercised adequate oversight over its fiscal affairs; (3) maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized; and (4) complied with the terms of its contract with DSBS.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The Comptroller is one of the five Class D GDA Board members by virtue of his office. The Class D Board members, in conjunction with the other Board members, constitute the GDA Board. In accordance with the New York City Administrative Code Title 25, Chapter 4, §25-414(b), the Comptroller sits on the GDA Board through a designated representative. Neither the Comptroller nor his representative on the GDA Board was involved in the audit process.

The scope of this audit covered Fiscal Year 2017 (July 1, 2016 through June 30, 2017). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with GDA officials during and at the conclusion of this audit. A preliminary draft report was sent to GDA and DSBS and was discussed at an exit conference on May 23, 2019. After the exit conference, GDA officials provided additional information regarding certain issues discussed in the report, which was considered in connection with the preparation of the draft report. On June 18, 2019, we submitted a draft report to GDA and DSBS with a request for written comments. We received written responses from GDA and DSBS on June 26, 2019, and August 8, 2019, respectively.

In its response, GDA generally disagreed with the report's findings and stated that certain recommendations should be removed since it was either already performing activities or was not contractually required to perform activities. GDA maintained that it notified the Board and obtained Board Committee approval for line item budget variances and carryovers and that it explained budget variances to its members and the DSBS Commissioner. However, GDA did not provide us with documentation to support this assertion. As detailed in the report, GDA did not document in its Board minutes or other correspondence that it notified the Board and obtained Board Committee approval for line item budget variances and carryovers. Further, in its Annual Report, GDA did not explain budget variances to its members and the DSBS Commissioner, as required. With regard to Member satisfaction with supplemental services, GDA stated that our survey was flawed. Moreover, GDA stated that it was aware of and took steps to address

homeless, sanitation, and security issues and that the City was primarily responsible for those issues.

However, our survey results were consistent with comments made in response to GDA's survey and with the results of the auditors' unannounced observations of GDA security and sanitation workers, and of Urban Pathways homeless outreach and referral workers. While GDA stated that it addressed individual tenants' issues, GDA stated that it did not have documentation to support this claim. The report acknowledges that the City is primarily responsible for homeless, sanitation, and security services and recommended that DSBS should facilitate GDA's communication with the responsible City agencies and, as needed, advocate on GDA's behalf to help ensure that the responsible City agencies take actions to address the problems identified.

With regard to its OTPS and PS expenses, GDA generally disagreed with the report's findings. Nevertheless, GDA stated that it conducted a comprehensive review of its practices and policies and created a new system to "track steps taken in the procurement process, including bid solicitations, responses, rationale for selection and non-competitive procurement justification and approvals." GDA also stated that "[c]opies of contracts and expenditures will be maintained in a centralized location." In addition, GDA stated that it "amended its practices to provide additional documentation of compensation reviews. . . . Additionally, [t]he GDA is currently reviewing payroll and time management systems to determine if another system will be more effective."

DSBS officials stated that "DSBS is the oversight and support agency for [BIDs]" and that it "regularly acts as a liaison for [BIDs] regarding many interagency issues" and "already extensively reviews and [analyzes] submitted annual reports for budgetary, program, and service impact information."

FINDINGS AND RECOMMENDATIONS

GDA provided supplemental services in accordance with its contract, in that it:

- Employed security officers to patrol the district and provide assistance to the public;
- Employed sanitation workers to sweep sidewalks, empty trash and recycling bins, paint street furniture, remove graffiti, posters, and stickers, and power-wash sidewalks;
- Contracted with Urban Pathways to provide and report on homeless outreach and referral services;
- Provided marketing and promotion services including special events, a social media presence, an information kiosk, and a website that included business directories, maps, newsletters, and guides;
- Provided economic development services by conducting pedestrian counts, publishing reports including an Economic Quarterly Report, offering seminars, and advocating for projects to promote or improve economic and real estate conditions; and
- Employed a full-time staff to administer its operations.

However, GDA did not provide supplemental services in accordance with its annual budget, and GDA did not explain the budget variances to its members and DSBS, as its contract with DSBS required. Specifically, for Fiscal Year 2017, the GDA Board approved a budget with program expenses totaling \$8,061,136, but GDA spent only \$7,744,417, and carried forward the balance of \$316,719 to Fiscal Year 2018. In addition, GDA's budgeted and actual line item expenditures for four programs had variances of greater than 10 percent each. Specifically, GDA spent \$123,829 *more* than was budgeted on beautification and horticulture, and \$288,407 *less* than what was budgeted and approved by the Board on homeless outreach and referral; marketing, special events, and holiday lighting; and security services.

GDA members expressed dissatisfaction with some of those same services where actual expenditures were less than the amounts budgeted and approved by the Board by more than 10 percent. We surveyed GDA property owners and tenants to assess their satisfaction with GDA's supplemental services. Based on the results of our survey, 40 of 183 respondents (21.9 percent) were dissatisfied or very dissatisfied with GDA's overall supplemental services. In their responses and comments, GDA property owners and tenants particularly expressed dissatisfaction with homeless outreach and referral, sanitation, and security services. Further, many more respondents who did not expressly indicate that they were dissatisfied or very dissatisfied nevertheless wrote comments citing potentially illegal, unsafe, and unsanitary conditions. Some of those conditions included: robberies; drug dealing and use; public defecation and urination; panhandling; loitering; and accumulation of trash. In addition, some respondents noted that they were unaware that GDA provided services or stated that there was a lack of a presence or an effective presence of homeless outreach and referral, sanitation, and security personnel. (Appendices I and II to this report contain a summary of survey results and narrative comments related to security, sanitation, and homeless outreach and referral services.)

In addition, GDA lacked adequate controls over its other than personal services (OTPS) expenses to ensure that they were reasonable, appropriate, adequately supported, and authorized. Based on our review of GDA's procurement documentation, GDA did not document that it solicited bids from at least three responsible and competitive bidders and selected the lowest bid or did not document that it justified non-competitive procurements to the GDA Board as required. GDA also

did not enter into contracts detailing the scope of services, payment terms, and approvals and did not document how catering and special event expenses related to BID business.

Moreover, GDA leased office space from a related party—the GDA Board Secretary. Based on the GDA Board minutes, the Board did not determine and document in writing that the lease terms were fair, reasonable, and in GDA's best interest, and the basis for its decision as required by law. On April 14, 2016, GDA and its landlord amended the terms of their initial lease dated May 16, 2006. The amended lease deleted the initial lease renewal option and provided for a new lease extension term and annual rent. Under the terms of the amended lease, GDA will pay, for the five-year period starting on December 1, 2016, \$1,054,130 (78 percent) more in base rent than GDA would have paid had it exercised the initial lease's five-year renewal option.

GDA also lacked adequate controls over its PS expenses to ensure that such expenses were reasonable, appropriate, adequately supported, and authorized. Specifically, GDA lacked controls in that during the audit scope period it: (1) did not conduct research to determine whether top management compensation was reasonable and did not obtain the Board Officers Committee's or the Finance and Audit Committee's approval for their salaries; (2) did not present central staff's salary increases to the Board for its approval; and (3) did not, and does not currently require supervisory personnel to review and approve central staff's timesheets or require central staff to certify that they accurately reported their attendance and time.

These findings are discussed in the following sections of the report.

GDA Did Not Provide Supplemental Services in Accordance with Its Board Approved Budget

Section 2A.02 of the contract between GDA and DSBS states that the "Supplemental Services provided in each year of the Contract shall be in accordance with the annual budget submitted in such year pursuant to Section 5.04 (b) (ii) of the Contract." Further, § 5.04(b) states that each year GDA shall "submit to or make available to its 'Members' . . . and to the Commissioner of SBS an annual report. . . . The annual report shall include: (ii) a budget submission for its following fiscal year, projecting Supplemental Services, including Administration and expenditures required therefor"⁵

However, based on our review, GDA did not provide supplemental services in accordance with its annual budget. Overall, the GDA Board approved a Fiscal Year 2017 budget with program expenses totaling \$8,061,136, but GDA spent only \$7,744,417 of that amount and carried forward the balance—\$316,719—to Fiscal Year 2018. With respect to line item expenditures for individual types of supplemental services, GDA's budgeted and actual expenses for four programs in Fiscal Year 2017 had variances greater than 10 percent. Specifically, GDA spent significantly more money on one supplemental service—beautification and horticulture—and spent less money on three other supplemental services: homeless outreach and referral; marketing, special events, and holiday lighting; and security, than was called for in its approved Fiscal Year 2017 budget. Table I below details GDA budgeted and actual program expenses for Fiscal Year 2017.

⁵ The GDA contract defines members as "all property owners and commercial and residential tenants within the District and any other persons who are 'members' pursuant to the certificate of incorporation, bylaws or the Plan."

Table I

GDA Budgeted and Actual Program
Expenses for Fiscal Year 2017

Program Expenses	Board Approved [\$]	Actual Expenses [\$]	Budget Variance [\$]	Budget Variance [%]
Beautification and Horticulture	370,000	493,829	123,829	33.47
Homeless Referral and Outreach Services	86,000	64,282	(21,718)	(25.25)
Marketing, Special Events, Holiday Lighting	557,794	482,161	(75,633)	(13.56)
Security	1,720,091	1,529,035	(191,056)	(11.11)
Sanitation	2,642,255	2,452,459	(189,796)	(7.18)
Streetscape and Repairs	503,000	518,434	15,434	3.07
Administration	2,181,996	2,204,217	22,221	1.02
Total Program Expenses	8,061,136	7,744,417	(316,719)	(3.93)

The GDA Financial Operating Guidelines, § II(B) state that

budgeted amounts of line items may be increased or decreased upon the recommendation of the President, approval of the Officers Committee and with notice to the Board of Directors. Amounts budgeted and not spent within the current fiscal year may be carried forward with approval of the Finance and Audit Committee or Officers Committee and notification to the Board of Directors.

However, based on our review of GDA Board Committee meeting minutes and correspondence, GDA did not obtain required Board Committee approval and notify the Board of line item budget variances and carryovers. The GDA Board meeting minutes for June 21, 2017 state only that GDA redirected funds between program lines and “[a]s a result, our year end numbers on specific lines will not adhere to the budget but overall, we will be within our annual budget.” When presenting budget variances to the Board, GDA did not provide the Board with detailed information on which specific line item program expenses were increased or decreased and by how much. Further, GDA did not notify the Board of budget carryovers.

In addition, § 5.04(b)(i) of the contract between GDA and DSBS states that the annual report shall include “a complete review of the previous year’s budget . . . comparing line item by line item the budgeted amounts versus the actual amounts (any budget variance greater than 10% must be accompanied by a narrative explanation).” However, in its Annual Report, GDA did not explain the above-mentioned budget variances greater than 10 percent to its members and the DSBS Commissioner.

Since GDA did not obtain required Committee approval for and notify the Board of specific line item budget variances and carryovers, and did not explain budget variances to its members and DSBS, GDA spending may not be reflective of GDA member and Board priorities.

We asked GDA for any narratives it provided to DSBS explaining the variances between the GDA Board approved budget and actual expenses. In response, GDA stated that “information relating to budgeting variances is presented at meetings of the [B]oard of directors, of which DSBS is a member, receiving board notes and meeting minutes.” However, as noted above, based on our review of the GDA Board meeting minutes for Fiscal Year 2017 that GDA initially provided to us, GDA did not provide evidence showing that information relating to budget variances had been presented to the Board.

Furthermore, GDA stated that its contract empowers DSBS to “request additional information regarding the GDA budget, review financial information, or request additional information on specific expenditures.” Nevertheless, GDA is affirmatively required to provide its members and DSBS with narrative explanations for any budget variances greater than 10 percent and did not do so for Fiscal Year 2017.

After we presented our findings to GDA, GDA stated that each month it reported and explained budget variances to Board Officers and the Board and that they agreed to budget changes. On May 24, 2019, we requested documentation of budget information presented to and approved by the Board, including monthly reports provided to Board and Committee members that illustrate and explain budget variances.

In response, GDA provided us with Officers Committee meeting minutes for October 2016, December 2016, January 2017, February 2017, and April 2017 which were generally accompanied by Statements of Activities that compared budgeted and actual year to date expenses. Although the Board’s Officers Committee could have identified budget variances from those documents, GDA did not provide us with documentation to show that the Officers Committee approved budget variances.

GDA also did not provide us with documentation to show that the Finance and Audit Committee or the Officers Committee approved the budget carryover of \$316,719, or that the Board was notified of this budget carryover.

GDA Response: In its response, GDA reiterated that each month it reported and explained budget variances to Board Officers and the Board and that they agreed to budget changes. In addition, GDA stated that “[i]n regard to the auditors’ assertion that GDA did not report variances to DSBS, the GDA complies not only by the quarterly reports presented at the Board meeting, but by filing the mandated annual form provided by DSBS. This report includes a spreadsheet list of budget items and includes a column requiring explanation of any variances over 10%. This report was supplied to the Comptroller’s audit team.”

Auditor Comment: As previously stated, GDA did not provide us with documentation to show that the Officers Committee approved budget variances and that GDA explained budget variances greater than 10 percent to its members and the DSBS Commissioner. On April 24, 2018, DSBS provided us with GDA’s Annual Report for Fiscal Year 2017 which included the above-referenced “spreadsheet . . . requiring explanation of any variances over 10%.” However, while the variances of more than 10 percent were identified, nowhere in the spreadsheet or in the entire Annual Report did GDA explain budget variances greater than 10 percent. Subsequently, we asked GDA for any

narratives it provided to DSBS explaining the variances between the GDA Board approved budget and actual expenses. In response, on January 30, 2019, GDA provided us with an Annual Report which included only minimal explanations for budget variances. For example, in its Annual Report, GDA reported that it spent \$123,829 (33.5 percent) more than was budgeted on beautification and horticultural expenses and in explanation stated only that “summer plaza closing extra costs.” In addition, GDA provided this report only to the Comptroller’s audit team and not to GDA members and the DSBS Commissioner, as required.

Recommendations

GDA should:

1. Ensure that Committee approval of budget variances and carryovers is documented.

GDA Response: “This activity is already being performed and as such this recommendation item should be removed from the report.”

Auditor Comment: As detailed above, GDA did not document Committee approval of budget variances and carryovers. Therefore, we urge GDA to implement this recommendation.

2. Ensure that the GDA President notifies the Board of line item budget increases or decreases, and budget carryovers.

GDA Response: “This activity is already being performed and as such this recommendation item should be removed from the report.”

Auditor Comment: As detailed above, GDA did not document that it notified the Board of line item budget increases or decreases, and budget carryovers. Therefore, we urge GDA to implement this recommendation.

GDA Members Were Not Satisfied with Homeless Outreach and Referral, Sanitation, and Security Services

As previously noted, the GDA contract states that GDA shall provide supplemental services including security, sanitation, social services, and administration. In addition, the contract states that GDA may provide marketing and promotion, economic development, special projects, capital improvements, and other services. Further, § 5.06 of the GDA contract states that “at the request of SBS, the [BID] shall conduct a survey of its Members to determine the current level of support for the Plan, current level of satisfaction with the performance of the [BID] and recommendations for possible changes to the Program. Notwithstanding the above, the [BID] is encouraged to conduct regular surveys of its Members.”

The GDA President stated that “every year since the BID was founded in 1993 we have conducted a door-to-door tenant survey.” However, the GDA President also stated that GDA did not conduct surveys in 2016 and 2017 because the “company that conducts [the] survey was on hiatus.” GDA provided us with BID Tenant Surveys for 2014, 2015, and 2018. However, those surveys were not sent to property owners—a category of members as defined in the contract—and did not ask tenants to rate their support for the Plan and satisfaction with supplemental services and solicit recommendations for improvement. The GDA survey instead asked tenants to provide or update their contact, social media, and business information and stated that “[t]he information provided

will be used to promote the Fashion Center as a district and your company will be made known to buyers seeking your products or services.” The GDA survey also allowed tenants to provide “[c]omments or any other information that you would like us to be aware of.”

We surveyed GDA property owners and tenants to assess their current level of support for the Plan and satisfaction with supplemental services. Based on the results of our survey, 40 of 183 respondents (21.9 percent) were dissatisfied or very dissatisfied with GDA’s overall supplemental services. In their responses and comments, GDA property owners and tenants particularly expressed dissatisfaction with:

- Homeless outreach and referral services (47.4 percent were dissatisfied or very dissatisfied);
- Sanitation services (17.0 percent were dissatisfied or very dissatisfied); and
- Security services (15.0 percent were dissatisfied or very dissatisfied).

The above-cited percentages relate only to respondents who expressly indicated that they were dissatisfied or very dissatisfied. There were many more respondents who did not expressly indicate that they were dissatisfied or very dissatisfied with GDA supplemental services but included negative comments concerning conditions related to those services. Some of the comments cited potentially illegal, unsafe, and unsanitary conditions including: robberies; drug-dealing and use; public defecation and urination; panhandling; loitering; and accumulation of trash. In addition, some respondents stated that they were unaware that GDA provided services or stated that there was a lack of a presence of, or a lack of effective service by, homeless outreach and referral, sanitation, and security personnel. (Please refer to Appendices I and II for a summary of survey results and narrative comments related to security, sanitation, and homeless outreach and referral services.)

Our survey results were consistent with GDA survey comments and with the results of unannounced observations we conducted on three weekdays in August and September 2018. We observed fewer sanitation workers and security officers than were reported as working on each of the three days. For example, on August 16, 2018, GDA timekeeping and payroll records indicated that between 11 and 17 security officers were working during the times that we conducted observations. However, we observed only between seven and eight security officers at those times.

Although GDA contracts with Urban Pathways to provide two homeless outreach and referral workers every weekday and on two weekends per month, we did not observe any homeless outreach and referral workers on any of the three weekdays when we conducted our observations.

After we presented our findings to GDA, GDA stated it provided each of the contractually required supplemental services. In addition, GDA stated that the organization was aware of the issues raised by property owners and tenants, and GDA conducts a door to door survey of tenants which affords them the opportunity to give input. Further, GDA stated that 65 percent of tenants responded to its survey and that the GDA addressed each and every issue. On May 24, 2019, we requested documentation to substantiate that GDA addressed tenants’ issues. However, GDA stated that it “does not have documentation of responses to the BID’s tenant survey for July 2016 to June 2017 [the audit scope period].” In addition, GDA did not address discrepancies between the number of sanitation, security, and homeless outreach and referral workers that were reported as working and the number of workers that were observed by auditors.

Moreover, GDA stated that the City is primarily responsible for homeless, sanitation, and security issues. Further, GDA contended that it took steps, within the scope of its authority, to address

homeless, sanitation, and security issues by meeting and working with City agencies, local officials, including but not limited to City Council Members and Community Boards, homeless services providers, other BIDs, BID association, and GDA property owners and tenants. To support its assertions, GDA provided us with correspondence and documentation of meetings, presentations, and walking tours. GDA also stated that it could not address certain issues at all or effectively because of a lack of cooperation or action by City agencies responsible for:

- Addressing homelessness (Human Resources Administration and Department of Homeless Services);
- Enforcing laws and prosecuting criminal activity including robberies, drug-dealing and use, public defecation and urination, panhandling, and loitering (Police Department and Manhattan District Attorney’s Office);
- Addressing the increased volume of trash (Department of Sanitation);
- Removing telephone booths and determining the number and location of Link NYC kiosks, (Department of Information Technology and Telecommunications); and
- Establishing rules for street plazas (Department of Parks and Recreation and Department of Transportation).

In the Fiscal Year 2017 Annual Report questionnaire form which GDA is required to file with DSBS, DSBS asked BIDs “[w]hat else can [DSBS] do to help your organization be more successful and effective? What challenges has your BID experienced related to working with other City agencies?” In its Annual Report response, GDA stated,

[DSBS] can advocate for GDA on initiatives with other agencies and departments. GDA has found other agencies generally to be unreliable in communications and in keeping to deadlines for projects. We have found there is little accountability, changes in plans without notice and delays without notice or explanation which significantly hamper planning and budgeting.

GDA Response: In its audit response, GDA reiterated that “every year since the GDA was founded we have conducted tenant surveys with the exception of three years when there was no supplier for the service” and that the City is primarily responsible for homeless, sanitation, and security issues.

In addition, GDA stated that “[t]he auditors’ survey results are questionable and should not be included in the report for the following reasons: The auditors would not provide a list of who was surveyed. . . . The auditors surveyed owners and tenants in 2018 for activities conducted by the GDA in 2016-17. . . . Auditors would not provide GDA with a full set of responses but they only included summary excerpts in the appendix of their report. . . . The GDA is not required to conduct a satisfaction survey. . . .

Regarding the auditor survey results, it is no surprise that the top complaints are related to homeless outreach and referral services, sanitation, and security. The auditors’ report does not indicate if any contextual information was provided to the respondents relating to the City’s inability or unwillingness to address these interrelated city-wide issues, especially the spiraling homeless and drug addicted panhandler epidemic.”

Auditor Comment: On May 13, 2019, we informed GDA that “we surveyed all GDA property owners and tenants and asked them to rate their level of support for the Plan and

their satisfaction with GDA services. We used the list of GDA property owners and tenants that [GDA] provided us on September 14, 2018. We assured property owners and tenants that all responses would be kept confidential. Therefore, all responses were submitted anonymously and cannot be shared.” As stated in the report, Appendix II includes—in their entirety—narrative comments related to security, sanitation, and homeless outreach and referral services.

Further, we provided GDA property owners and tenants with narrative descriptions of each of GDA’s supplemental services and asked them to rate their current level of satisfaction with those services. For security, sanitation, and homeless outreach and referral services, we provided GDA property owners and tenants with descriptions of GDA supplemental services as follows:

- The BID employs uniformed public safety officers who patrol and provide assistance to the public seven days a week.
- The BID employs uniformed sanitation workers who sweep sidewalks, empty trash and recycling bins, paint street furniture, remove graffiti, posters, and stickers, and power-wash sidewalks. Sanitation staff work seven days a week.
- The BID provides homeless outreach and referral services every weekday and on two weekends per month.

GDA Response: “Regarding the auditor’s statement relating to their field observations..., it is inexplicable to us why the audit team did not observe the full complement of security officers and sanitation workers during three weekday visits. Full staffing occurred those days, as supported by GDA timesheets and recordkeeping. It is likely that the auditors did not take into account that all workers are frequently in motion during their shifts, patrolling, cleaning or responding to conditions, and that they are allowed to take meal and bathroom breaks.

Regarding the auditor’s statement relating to their field observations..., it is inexplicable to us why the audit team did not observe Urban Pathways during three weekday visits. The auditors did not provide information as to their locations and corresponding times. UP workers do not have fixed posts but patrol the district, respond to site specific incidents, and are allowed to take meal or bathroom breaks. UP workers do not wear uniforms.”

Auditor Comment: When conducting our observations, we took into account that GDA security and sanitation personnel and Urban Pathways homeless outreach and referral workers may move around during their shifts and take meal or bathroom breaks. As stated in the report, we conducted unannounced observations of security, sanitation, and homeless outreach and referral workers on three days in August and September 2018. On each of the three observation days, eight auditors canvassed the entire BID between 10:00 a.m. and 3:30 p.m. We split the BID into four sections and assigned two auditors to each section. Auditors walked around their assigned sections at least one time in the morning and at least one time in the afternoon.

In addition, Urban Pathways homeless outreach and referral workers do in fact wear uniforms. The contract between GDA and Urban Pathways states that the annual fee for services includes costs for uniforms.

Recommendations

GDA should:

3. Conduct annual surveys of property owners and tenants to determine the current level of support for the Plan, current level of satisfaction with GDA's performance, and recommendations for possible changes.

GDA Response: "This recommendation should be removed as it creates a misleading inference that the GDA is not performing in accordance with its goals and contractual obligations. The GDA performs significant outreach to its constituents and is not required to perform surveys."

Auditor Comment: GDA is correct in stating that it is not *required* to perform satisfaction surveys. However, as previously stated, § 5.06 of the contract between GDA and DSBS states that "the [BID] is *encouraged* to conduct regular surveys of its Members." [Emphasis added.] Therefore, we urge GDA to conduct annual surveys of property owners and tenant to determine the current level of support for the Plan, current level of satisfaction with GDA's performance, and recommendations for possible changes.

In addition, while GDA maintained that it performed significant outreach to its constituents, GDA did not conduct surveys in 2016 and 2017, and GDA did not provide us with documentation of other types of outreach.

4. Consider property owners' and tenants' feedback when making programming and budgeting decisions.

GDA Response: "This recommendation should be deleted since the GDA already does respond to owners and tenants when making programming and budgeting decisions. Additionally, the GDA has a Board of Directors of over 40 owners, tenants, residents, government representatives and other interested parties who provide guidance to the GDA and approve all activities on behalf of the constituency."

Auditor Comment: Based on the results of our survey, GDA may not be appropriately considering property owners' and tenants' feedback when making programming and budgeting decisions. As previously stated, 21.9 percent of respondents were dissatisfied or very dissatisfied with GDA's overall supplemental services. Further, there were many more respondents who included negative comments concerning homeless outreach and referral, sanitation, and security services.

Therefore, we urge GDA to conduct annual surveys and consider property owners and tenants' feedback when making programming and budgeting decisions.

DSBS should:

5. Look into the above-mentioned homeless, sanitation, and security issues and facilitate GDA's communication with the responsible City agencies and, as needed, advocate on GDA's behalf to help ensure that the responsible City agencies take actions to address the problems identified.

DSBS Response: “DSBS is the oversight and support agency for [BIDs]. The agency regularly acts as a liaison for [BIDs] regarding many interagency issues. We coordinate interagency communications and, where necessary, elevate issues that [BIDS] face with relevant and appropriate City Agencies. A major focus of this work involves facilitating collaboration and partnership between all BIDs and City Agencies, in service to working together to solve many of the City’s most pressing issues. Further, when requested, DSBS coordinates with councilmembers and borough presidents to address [BIDs’] concerns.”

Auditor Comment: Based on GDA’s response to the Fiscal Year 2017 Annual Report questionnaire and to this audit, GDA had and continues to face challenges working with City agencies on issues and in particular, on homeless, sanitation, and security issues. Therefore, we urge DSBS to look into the above-mentioned homeless, sanitation, and security issues and see if it can further facilitate GDA’s communication with the responsible City agencies and, as needed, advocate on GDA’s behalf to help ensure that the responsible City agencies take actions to address the problems identified.

GDA Did Not Ensure That OTPS Expenditures Were Reasonable, Adequately Supported, and Properly Authorized

The GDA Financial Operating Guidelines state that GDA “will procure goods and services and conduct financial activities in accordance with the GDA contract with the New York City Department of Small Business Services (DSBS) and the rules set forth herein as approved by the GDA Board of Directors.”

We sampled 60 OTPS expenditures made during Fiscal Year 2017, totaling \$924,108, to determine whether they were reasonable, appropriate, adequately supported, and properly authorized.

GDA Expenditures Were Not Reasonably Priced

GDA Did Not Comply with Its Own Competitive Purchasing Rules

Based on our review, 31 of the 60 sampled expenditures were subject to GDA’s competitive purchasing rules. The GDA Financial Operating Guidelines state that for contracts of \$20,000 or more:

Written bids must be solicited from at least three responsible and competitive bidders provided such bidders are reasonably available. The GDA should accept the lowest responsible bid unless quality or other significant programmatic imperatives provide compelling reasons that another bid would better serve the GDA’s needs. . . . Management will keep a copy of the solicitation and a record of responses. . . . A procurement form, which shall include the rationale for making the award, shall be kept on file with the contract or agreement.

The GDA Financial Operating Guidelines provide that “GDA may select a contractor other than the lowest responsible bidder or from a sole source or from less than three (3) bidders provided management can justify the selection to the Board, the Officers Committee or Finance and Audit

Committee. . . . A written memorandum on the justification will be included in the contractor's file."

However, for all 31 expenditures, totaling \$834,715 (90.3 percent), GDA did not document that it solicited bids from at least three responsible and competitive bidders and selected the lowest responsible bid or that it justified non-competitive procurements to the GDA Board as its own guidelines required.⁶ In the absence of required procurement documentation, we could not be assured that GDA goods and services were reasonably priced.

After we presented our findings to GDA, GDA stated it solicits bids each year for certain goods and services, such as healthcare, and that it solicits bids for other goods and services every five years, such as accounting services. During the course of the audit and on March 15, 2019 and May 24, 2019, we requested that GDA provide us with documentation of competitive bidding. In response, GDA provided us with documentation of competitive bidding for only 3 expenditures totaling \$179,848 out of the 31 above-mentioned expenditures totaling \$834,715.

GDA Response: "The GDA is compliant with its own competitive purchasing rules and the auditor's report inexplicably inflates the list with redundant items. . . . The 31 item list is erroneous and creates a negative impression inexplicably repeating ongoing contracts, such as the lease payments, as unique items. As such, the 31 expenditures only represent 16 contracts. Also, of the 31, 14 were compliant because they were under \$20,000 and did not need to be competitively bid. Also, of the 31, documentation was provided which showed that 11 were competitively bid, 7 were based upon ongoing agreements, and 4 were sole source. During the audit the GDA responded with an explanation and documentation for every item on the list. The auditors have reiterated this matter in the final report without acknowledging or responding to the GDA's explanations.

[GDA] will be creating a spreadsheet system that will track all contract expenditures and will centralize the documentation and approval process it otherwise undertakes in monthly reports to the Officers and quarterly reports to the Board. The new tracking system will track steps taken in the procurement process, including bid solicitations, responses, rationale for selection and non-competitive procurement justification and approvals. Copies of contracts and expenditures will be maintained in a centralized location."

Auditor Comment: The report acknowledges that the 31 expenditures related to goods and services (such as office space, insurance, electrical work, and advertising) that were provided by 17 vendors. During Fiscal Year 2017, the 17 vendors were each paid for goods and services that were similar in nature and cost between \$24,500 and \$520,843, and therefore, the purchases were all subject to competitive bidding. While some sampled payments were individually less than \$20,000, the aggregate annual amount of the procurements for each sampled vendor exceeded \$20,000, the competitive bidding threshold. For example, GDA made nine payments to a sampled vendor for custom parking signage maintenance. While each of the nine individual payments was for less than \$20,000, the aggregate payments made to this vendor totaled \$72,470 which exceeded the competitive procurement threshold.

However, contrary to GDA's assertion, GDA did not maintain documentation of competitive bidding for all of the sampled vendors and thus that the purchases associated with those vendors were reasonably priced. For 28 expenditures, totaling \$654,867, GDA did not

⁶ The 31 expenditures related to goods and services (such as office space, insurance, electrical work, and advertising) that were provided by 17 vendors.

keep copies of solicitations, records of responses, or procurement forms to document that it solicited bids from at least three responsible and competitive bidders and selected the lowest responsible bid or did not document that it justified non-competitive procurements to the GDA Board as its own guidelines required. In the absence of required procurement documentation, we could not be assured that GDA goods and services were reasonably priced.

GDA Did Not Comply with Related-Party Transaction Requirements

Four of the above-mentioned 31 expenditures, totaling \$161,106, were for GDA office space leased from a related party—the GDA Board Secretary. Based on the GDA Board minutes, the Board did not determine and document in writing that the lease terms were fair, reasonable, and in GDA's best interest and the basis for its decision as required by New York State Not-For-Profit Corporation Law (NPCL) §715.

NPCL §715(a) states that “[n]o corporation shall enter into any related party transaction unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation's best interest at the time of such determination.” In addition, NPCL § 715(b) states that

With respect to any related party transaction . . . the board . . . or an authorized committee thereof, shall:

- (1) Prior to entering into the transaction, consider alternative transactions to the extent available;
- (2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and
- (3) Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions.

Finally, NPCL § 715(h) states that “[n]o related party may participate in deliberations or voting relating to a related party transaction in which he or she has an interest.”⁷

On April 14, 2016, GDA and its landlord amended the terms of their initial lease dated May 16, 2006. The amended lease deleted the initial lease five-year renewal option and provided for a new 10-year lease extension term and annual rent. Under the terms of the amended lease, GDA will pay \$1,054,130 (78 percent) more in base rent than GDA would have paid had it exercised the initial lease five-year renewal option as detailed in Table II below.

⁷ “Related party” means (i) any director, officer or key person of the corporation or any affiliate of the corporation; (ii) any relative of any individual described in clause (i) of this subparagraph; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

“Relative” of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren. NPCL § 102 (23),(22).

Table II

Comparison of Initial and Amended
Lease Annual Base Rent Terms for
the Period December 1, 2016 to
November 30, 2021

Term	Initial Lease Renewal Option Annual Base Rent	Amended Lease Annual Base Rent	Difference in Base Rent
December 1, 2016 - November 30, 2017	257,105.08	457,650.00	200,544.92
December 1, 2017 - November 30, 2018	263,532.71	469,091.25	205,558.54
December 1, 2018 - November 30, 2019	270,121.03	480,818.53	210,697.50
December 1, 2019 - November 30, 2020	276,874.05	492,838.99	215,964.94
December 1, 2020 - November 30, 2021	283,795.90	505,159.97	221,364.07
Total	\$1,351,428.78	\$2,405,558.74	\$1,054,129.96

Prior to entering into the amended lease, the GDA Board did not consider leasing alternative space and did not determine and contemporaneously document in writing (1) whether the amended lease terms were fair, reasonable and in the corporation's best interest; and (2) the basis for the GDA Officers Committee's approval of the amended lease. The GDA Board Officer's Committee approved the lease at a meeting held on January 20, 2016. The minutes for this meeting state only that "[o]ur lease is up this May, 2016. [The landlord] has offered us a ten year lease at \$30/sq. ft. The current rent is \$19.00/sq. foot. Upon motion of [a Committee member] and second of [a second Committee member], the motion to renew the lease at the presented terms was accepted unanimously with one abstention."⁸

After we presented our findings to GDA, GDA stated that it discussed the amended lease terms at two Board Officers Committee meetings. GDA stated that: (1) the landlord would not have renewed the lease; (2) the average rent on a district side street, such as the one where GDA's office is located, is between \$45 and \$55 per square foot and that the amended rate of \$30 per square foot is an exceptional value; and (3) by agreeing to amend the lease terms GDA avoided moving costs it would have incurred had it relocated. Further, GDA stated that the lease was, "voted on by the officers committee and it was specifically called out as a potential conflict of interest inasmuch as the property owner is also on our officers committee" and that the potential conflict has been "disclosed every year that we have held this lease."

⁸ The GDA Board Secretary, who is the landlord's Co-CEO and Principal, abstained from the vote as required by NPCL § 715(h).

However, the initial lease provided that GDA, the tenant, could renew the lease so long as it was not in default. Section 77.01 of the initial lease stated,

so long as Tenant shall not be in material or monetary default. . . . Tenant may elect to extend the term of the Lease for an additional five (5) year period (the "Extended Term"), by giving Landlord at least six (6) months prior written notice of its intention to do so, which extension shall be upon all of the same terms, covenants, conditions and provisions of this Lease except the fixed annual rent payable hereunder for the extended term shall be the fixed annual rent payable by Tenant during the last lease year of the term of this Lease, increased by 2.5% for the first year of the Extended Term and shall increase by 2.5% each year thereafter during the Extended Term.

Consequently, the claim that the landlord would not have renewed the lease was not supported by the express terms of the lease. GDA could have exercised its renewal option and paid less base rent for the five year term.

Furthermore, GDA Board members did not properly disclose possible conflicts of interest. On March 15, 2019, we requested that GDA provide us with annual written conflict of interest disclosures (COI disclosures) for our audit scope period. However, none was provided for the GDA Board Secretary.

In addition, with regard to mandated COI disclosures, Article 6 of the GDA Conflict of Interest Policy states,

on an annual basis, all Directors, Officers, and Key Employees shall disclose in writing to the Secretary of the Corporation:

- (i) Any entity of which such person or a Relative of such person is an officer, director, trustee, member, owner, or employee and with which the Corporation has a relationship,
- (ii) Any Financial Interest such person may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to Corporation for a fee or other compensation, and
- (iii) Any position or other material relationship such Director, Officer, Key Employee, or Relative of such person, may have with any not-for-profit corporation with which the Corporation has a business relationship.

A copy of each disclosure statement shall be kept in the Corporation's files and made available to any Director, Officer, or Key Employee upon request.

However, GDA did not provide us with COI disclosures for two of the GDA Officer Committee members who voted to approve the lease. Further, for the remaining four Officer Committee members who voted to approve the lease, GDA did not provide us with COI disclosures that asked Officers to disclose all financial and other interests required by its own Conflict of Interest Policy. Therefore, GDA may not have identified other conflicts or potential conflicts of interest, as explained below.

In addition, Article 8 of the GDA Conflict of Interest Policy defines a Relative as "a spouse, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse of a child (whether natural or adopted), grandchild, great grandchild or

sibling (whether whole or half blood), or a domestic partner as defined in section 2994-A of the New York Public Health Law.”⁹

However, GDA’s COI disclosures for its officers asked only “[a]re you or is any member of your **immediate family employed** (including as a consultant) by any organization which to your knowledge does, or is seeking to do business with the Garment District Alliance (GDA)?” [Emphasis added.] The GDA’s COI disclosures did not ask the officers to disclose whether they or their Relatives were an officer, director, trustee, member, or owner of an entity with which GDA has a relationship, as required by its own policy. Further, GDA’s COI disclosures did not ask the officers to disclose whether they or their Relatives hold a position or have other material relationships with not-for-profit corporations with which GDA has a business relationship.

GDA Response: In its response, GDA reiterated that the Board was aware of and approved the related-party transaction, and that the amended terms “represented good value and would provide a long term stability for the organization in an area with rapidly increasing rents.”

In addition, GDA stated “[r]egarding the issue of whether the GDA considered alternative lease options. . . . While there were undocumented discussions of possibly relocating, it was agreed by the officers, based on their deep knowledge of real estate prices in the district, that the cost of moving and building out a new space would not be justified. These matters were discussed in Officer and Board meetings but not recorded.

In March 2019, GDA adopted an updated Conflict of Interest Policy and Disclosure Statement in compliance with the New York Nonprofit Revitalization Act (NPRA). All directors, officers and key employees are in the process of completing and submitting Disclosure Statements to GDA, and all Related Party Transactions will be reviewed, approved and documented in accordance therewith. GDA intends to present the lease to its Board of Directors at its next Board of Directors meeting to ratify it in accordance with the procedures set forth in GDA’s new Conflict of Interest Policy and the NPRA (i.e., with the conflicted Director recused, reviewing alternative options, etc.)”

GDA Expenditures Were Not Adequately Supported and Properly Authorized

GDA expenditures were generally supported by invoices or receipts. However, GDA did not always enter into written contracts or agreements for goods and services, as required. The GDA contract with DSBS provides that all GDA “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 GDA Financial Operating Guidelines state that contracts greater than \$20,000, “must be signed by the President or Vice President and at least one authorized Officer. . . . All official copies of contracts, invoices and other supporting documentation will be kept on file by Finance Director.” Further, the GDA Financial Operating Guidelines state that “all checks must be substantiated by a backup voucher or purchase agreement, invoice or contract with signature or initials of authorizing staff members.”

Of the 60 expenditures we sampled, 10 expenditures involved purchases of office and maintenance supplies, employee memberships in professional organizations, employee expense reimbursements, gifts or bonuses, or utilities. Of the remaining 50 expenditures totaling \$917,112,

⁹ The GDA Conflict of Interest Policy definition of Relative generally parallels the NPCL’s definition of relative, quoted above in footnote number six.

22 expenditures, totaling \$300,659, (32.8 percent)—for services such as insurance, electrical work, and accounting and legal services—were not supported by contracts detailing the scope of services, payment terms, and approvals.

In addition, GDA did not maintain adequate documentation to support catering and special event expenses. Section 5.01 of the GDA contract with DSBS states that the BID shall keep books and records in accordance with Comptroller’s standards. Comptroller’s Directive #6 governs, among other things, expenses for meals and refreshments, and states that the relationship to City business must be documented for such expenses. Eight of the 60 sampled expenditures totaling \$15,758 were for catering and special events. However, seven of the eight expenditures totaling \$9,008 were not supported by written descriptions documenting the relationship to BID business.

In the absence of signed contracts and expense descriptions, we consider the 29 expenditures totaling \$309,667 (33.8 percent of the sample by dollar value) to be not adequately supported and not properly approved.

After we presented our findings to GDA, we again requested that GDA provide us with contracts or agreements detailing the scope of services, payment terms, and contract approvals. In response, GDA stated that “in each of the cases that you identified there was back-up documentation and check approvals of invoices presented to [the Director of Finance and Budget]. Proper protocols for procurement were followed.” However, as detailed above, GDA did not always maintain required documentation to support expenses including approved contracts and written descriptions documenting the relationship to BID business. After we presented our findings to GDA, GDA provided us with only one additional agreement to support an expenditure totaling \$5,271.

Recommendations

GDA should:

6. Competitively procure goods and services whenever possible.
7. 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 GDA Board.
8. Consider alternatives to related-party transactions before entering into them.
9. Ensure that a majority of Board members present at the meeting approve related-party transactions and contemporaneously document in writing the Board’s consideration of possible alternative transactions and its basis for determining that related party transactions are fair, reasonable, and in GDA’s best interest.
10. Obtain annually and maintain COI disclosures for all Directors, Officers, and Key Employees in accordance with its Conflict of Interest Policy.
11. Maintain copies of vendor contracts and other agreements documenting the scope of services, payment terms, and authorized approvals.
12. Provide written descriptions documenting the relationship to BID business for catering and special events.

GDA Response: “Regarding **Recommendations #6-12**..., [t]he GDA already undertakes these activities and as such these items should be removed. Notwithstanding this request to remove recommendation, as noted above the GDA has already taken steps to provide more accurate documentation of these activities, ratify prior actions, and ensure the proper policies, procedures and practices are in place going forward.

To further clarify in response to Recommendation #9, the [Nonprofit Revitalization Act (NPRA)]” no longer requires that only ‘independent directors’ (as defined by the NPRA, as amended) approve related party transactions. Rather the NPRA, as amended, simply requires the conflicted party be recused.”

Auditor Comment: As detailed above in the report, and as belied by GDA’s response that it “has already taken steps to...ensure the proper policies, procedures and practices are in place *going forward*,” GDA does not already undertake the activities detailed in recommendations # 6 - 12. [Emphasis added.]

GDA Did Not Ensure That Personal Services Expenditures Were Reasonable, Adequately Supported, and Properly Authorized

GDA Did Not Document Its Process for Determining Top Management Compensation and Board Review and Approval

During Fiscal Year 2017, GDA approved both percentage and merit increases for top management and reported annual salaries, totaling \$603,052.¹⁰ The Internal Revenue Service (IRS) presumes non-profit compensation to be reasonable if the following three requirements are met:

- The compensation arrangement must be approved in advance by an authorized body of the applicable tax-exempt organization, which is composed of individuals who do not have a conflict of interest concerning the transaction,
- Prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability, and
- The authorized body adequately and timely documented the basis for its determination concurrently with making that determination.

Further, the IRS states that the documentation should include “the terms of the transaction and the date of its approval, the members of the authorized body present during the debate and vote on the transaction, the comparability data obtained and relied upon, the actions of any members of the authorized body having a conflict of interest, and documentation of the basis for the determination.”

On its IRS Form 990, Part VI, Section B Policies, GDA reported that the process for determining top management compensation included a review and approval by independent persons,

¹⁰ In its Form 990, GDA identified its top management officials as its President, Vice President, and Director of Planning and Marketing. During Fiscal Year 2017, GDA paid them \$280,000, \$188,668, and \$134,384, respectively.

comparability data, and contemporaneous substantiation of the deliberation and decision. Further, in its IRS Form 990, Schedules J and O, GDA reported that its review included researching Guidestar,¹¹ other organizations' Form 990s, the NY Non-profit Network Annual Salary Review, and phone calls to other organizations. In addition, the GDA Personnel Manual for Central Staff states that "[t]he granting of salary increases, bonuses, or other adjustments shall be at the discretion of the President, who shall present them to either the Officers Committee or Finance and Audit Committee for final approval."¹² During the course of the audit, GDA did not provide us with any documentation to indicate that it conducted or obtained compensation research and Board review and approval for our audit scope period.

After we presented our findings to GDA, GDA provided us with documentation related to compensation research and approval for two salary increases for the GDA President effective July 1, 2016 and January 1, 2017.

On August 3, 2018, we initially requested that GDA provide us with "compensation study or survey and documentation to show Board review and approval of the President and other applicable key employees' salaries (as described in the BID's 990s)." However, GDA did not provide us with such documentation for the GDA President until May 31, 2019, after our exit conference and approximately 10 months after our initial request. Therefore, we can place only limited reliance on this documentation.

With regard to the GDA President's salary increase effective January 1, 2017, GDA informed us, through an email sent on May 31, 2019, that its process for determining her compensation was as follows:

[The President] held a meeting with the officers of the organization wherein she made a request with supporting documentation of what other Executive Directors/Presidents of similar Manhattan BIDs were earning. . . . The supporting documentation was an excel spread sheet dated December 13, 2016. The information was gathered by [the President] in conversations with the BID directors included in the comparison. . . . After the information gathering a meeting was held wherein the officers unanimously approved the request. . . . [The President] only receives increases with the written approval of the Chairman or a Co-Chair of the Board.

In support of its May 31, 2019 email, GDA provided us with the above-referenced excel spreadsheet and a payroll authorization form signed by the Board Co-Chair. However, GDA did not provide documentation showing who was present and voted at the Officers Committee meeting where the GDA President's raise was discussed and approved, and did not adequately and timely document the basis for the Board's decision in accordance with the previously cited IRS standards. Further, it appears from the May 31, 2019 email that the GDA Board, in approving the GDA President's salary increase, may have relied solely on unsupported statements made by the GDA President—an interested party—about the salaries of similarly sized BIDs. Under the circumstances that GDA described, the GDA did not satisfy the IRS standards.

In addition, the GDA Board did not research comparability data and approve salary increases for the GDA Vice President and the Director of Planning and Marketing. In the absence of such

¹¹ GuideStar gathers, organizes, and distributes program, financial, and governance information about non-profit organizations.

¹² The GDA Personnel Manual for Central Staff states that it is "a general set of rules, regulations and guidelines for the employment of the central staff (regular, salaried employees) with the Garment District Alliance ('GDA')."

documentation and approval, we could not be assured that top management compensation was reasonable.

GDA Response: “Following a recent review of practices and policies which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews and approvals. When reasonable and appropriate, the GDA will provide information on compensation practices by similar organizations to the Officers to inform their review process. Note that this procedure was adopted for corporate governance purposes and to bring GDA within the ‘safe harbor’ requirements under the IRS intermediate sanctions rules. However, it should be noted that compliance with the IRS ‘safe harbor’ requirements is not a legal requirement for tax-exempt organizations.”

GDA Did Not Present Central Staff Salary Increases to the Board for Its Approval

On June 16, 2016, the GDA President approved annual salary increases for central staff totaling \$44,843. As previously stated, the GDA Personnel Manual for Central Staff states that “[t]he granting of salary increases, bonuses, or other adjustments shall be at the discretion of the President, who shall present them to either the Officers Committee or Finance and Audit Committee for final approval.” However, the GDA President did not present proposed salary increases to either of the above-mentioned committees for their approval.

After we presented our findings, GDA stated that the above-mentioned salary increases were incorporated in the annual budget for Fiscal Year 2017, which the Board approved on June 15, 2016. However, the annual budget does not provide detailed salary information, or mention proposed increases, for each central staff member. The GDA President has not provided such information to the Board since 2014. However, since 2014, GDA subsequently increased staff salaries again to the level in effect during our audit scope period.

GDA provided us with an email dated July 8, 2014, from the GDA President to the GDA Board Vice Chairman stating,

This year I awarded 4% increases to all our staff with the exception of [Director of Planning and Marketing] who I brought up to more accurately reflect her contribution and senior role in the organization. As I do every five years or so, I like to ensure that our officers are aware of the salary levels of the staff so that you are not in a vacuum despite have approved the increases in the budget. Below is list of our salaries. I invite you to share this information with the officers of the organization.

However, compliance with GDA’s above-cited Personnel Manual requires that the GDA President present all central staff salary increases to either the Officers Committee or Finance and Audit Committee for final approval, which implies a detailed presentation and approval before increases take effect. In the absence of a timely and detailed presentation of proposed increases to one of the Board committees specified in the GDA’s Personnel Manual, GDA central staff salary increases totaling \$44,843 were not approved as the manual requires.

GDA Response: “Following a recent review of practices and policies which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews and salary increases. When reasonable and appropriate, the GDA will provide, as it has in the past, information on compensation

practices and salary increase by similar organizations to the Board to inform their review process.”

GDA Lacked Adequate Controls over Central Staff Attendance and Time

Section 5.01 of the contract between the GDA and DSBS states that “[t]he [BID] shall keep, in an orderly fashion, up-to-date books and records in accordance with generally accepted accounting principles and in accordance with any standards issued by the Comptroller of the City (the ‘Comptroller’) showing all its receipts and assets...and all disbursements and liabilities, including contingent liabilities.” Comptroller’s Directive #13, *Payroll Procedures*, sets forth basic internal controls and procedures for personnel, timekeeping, and payroll functions which include, among other things that timesheets must be signed by the employee’s supervisor.

GDA central staff generally accounted for their work time on weekly timesheets. However, GDA does not require supervisory personnel to review and approve central staff’s timesheets or in the alternative, does not require central staff to certify that they accurately report their time and attendance. In the absence of supervisory review, GDA central staff may incorrectly record or misstate their time and attendance that could result in their being paid for days and time they did not work.

GDA Response: “The GDA is currently reviewing payroll and time management systems to determine if another system will be more effective. In the meantime, while the time sheets already require a signature by the employee when submitting, GDA will add a note stating, to the effect, that by signing the time sheet the employee certifies that the information they submit is accurate.”

Recommendations

GDA should:

13. Ensure that the GDA Board researches, reviews, and documents comparability data to determine whether top management compensation is reasonable.
14. Obtain Board approval for top management compensation and central staff salary increases, bonuses, or other adjustments.
15. Require supervisory personnel to review and approve central staff timesheets.
16. Require central staff to certify that they accurately reported their attendance and time.

GDA Response: “Regarding **Recommendations #13-16**..., [f]ollowing a comprehensive review of practices and policies by an outside attorney, which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews. When reasonable and appropriate, the GDA will provide information on compensation practices by similar organizations to the Officers and Board to inform their review process. Additionally, [t]he GDA is currently reviewing payroll and time management systems to determine if another system will be more effective. To the best of GDA’s knowledge, however, its compensation and payroll practices are legally compliant.”

Other Matters

DSBS Did Not Ensure That GDA Included Required Budgetary Information in Its Annual Report

As previously stated, § 5.04(b) of the contract between GDA and DSBS requires GDA to submit to or make available to its members and to the Commissioner of SBS an annual report. Further, the contract states that:

The annual report shall be in a format prescribed by the Commissioner of SBS. The annual report shall include: (i) a complete review of the previous year's budget, including Supplemental Services, Administration and Capital Improvements actually provided during the fiscal year, comparing line item by line item the budgeted amounts versus the actual amounts (any budget variance greater than 10% must be accompanied by a narrative explanation).

In its Annual Report for Fiscal Year 2017, GDA reported that expenses for 4 programs had budget variances greater than 10 percent. However, GDA did not provide narrative explanations for those variances, as required.

We asked DSBS to provide us with GDA's explanations for budget variances. In response, DSBS stated that it "does not request an accounting or explanation of variances as part of our annual reporting process. This is the management's responsibility at Finance Committee meetings." Based on its response, it appears that DSBS may have been unaware that GDA was contractually required to include narrative explanations for budget variances greater than 10 percent in its annual report and therefore, DSBS did not enforce that contract requirement.

DSBS Response: "As part of a program-wide initiative at the beginning of the current administration, DSBS developed and issued a new, standardized BID contract for all [BIDs], and put it into place as existing contracts expired. DSBS entered into the new contract with the GDA [BID] as of July 1, 2018. New contract language regarding annual reports does not require a description of budget variances greater than 10%. The new contract requires the DMA to notify its Board of Directors and the Board's Finance Committee of any budget or budget allocation changes of over 10%. At the time of this audit, DSBS was migrating [BIDs] onto the new standardized contract and faced challenges monitoring all aspects of contract compliance with those [BIDs] that remained on unique contracts. As we migrate the remaining [BIDs] with unique contracts onto the standardized contract in 2019, we do not expect this to be an issue going forward."

Recommendation

DSBS should:

17. 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.

DSBS Response: "Every year, as part of the contract with the City, BIDs must submit an annual report to DSBS. The report includes a 70-question survey, and requires the submission of the annual budget, Board of Directors roster, and information on any contracts over \$10,000. The annual report's survey

portion collects extensive program and service data about sanitation, security, marketing, and streetscape impacts. The annual report's budget portion shows BID spending in their various program areas. Thus, DSBS already extensively reviews and [analyzes] submitted annual reports for budgetary, program, and service impact information."

Auditor Comment: As detailed above in the report, DSBS did not review annual reports to ensure that they contained required budgetary information. GDA's budgeted and actual expenses for four programs in Fiscal Year 2017 had variances greater than 10 percent. However, in its Annual Report, GDA did not explain budget variances to its members and the DSBS Commissioner, as required.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers the period from July 1, 2016, through June 30, 2017. When we initiated the audit, this was the most recent period for which audited financial statements were available.

To obtain an understanding of the financial and operating procedures with which the GDA must comply, we reviewed the GDA contract, Board By-Laws, Financial Operation Guidelines, Conflict of Interest Policy, Personnel Manual for Central Staff, the Personnel Manual for Hourly Employees, and IRS 990 Forms, all of which also formed our audit criteria. We also met with the GDA President, Vice President, Director of Finance and Budget, Director of Planning and Development, Manager of Streetscape Planning, Directors and Supervisors of Sanitation and Security. We documented these interviews in memoranda. In addition, we requested and reviewed prior audits, including prior Comptroller's Office audit reports. We noted findings and conditions in those audits that addressed matters relevant to this current audit.

To determine whether GDA provided supplemental services, we conducted unannounced observations of security, sanitation, and homeless outreach and referral workers on three days in August and September 2018. On each of the three observation days, eight auditors canvassed the entire BID between 10:00 a.m. and 3:30 p.m. We split the BID into four sections and assigned two auditors to each section. Auditors walked around their assigned sections at least one time in the morning and at least one time in the afternoon.

For the three observation days, we requested timekeeping and payroll records for security and sanitation personnel and Urban Pathways monthly reports. We compared the number of security, sanitation, and homeless outreach and referral workers observed to the number that were reported as working.

To determine whether property owners and tenants were satisfied with supplemental services, we sent a survey to all GDA property owners and tenants and asked them to rate their level of support for the Plan and their satisfaction with GDA services.

To determine whether GDA complied with its payroll procedures and that payments were reasonable, appropriate, adequately supported, and authorized, we reviewed timekeeping, personnel, and payroll documentation for all 79 GDA employees who were paid on June 30, 2017. We reviewed employees' timesheets and leave records to determine whether they were paid for the correct number of hours and we reviewed salary authorization forms to determine whether they were paid appropriate pay rates. For top management, we also requested and reviewed documentation of compensation research and Board review and approval of salaries.

To determine the accuracy and validity of the computer-processed information from the GDA general ledger, we randomly selected 50 of the 839 transactions in Fiscal Year 2017 general ledger and traced them to GDA bank statements. We also randomly selected a total of 60

transactions (five from each month) from the Fiscal Year 2017 bank statements. We traced the transaction date, amount, and payee from bank statements and canceled checks to the general ledger.

The GDA General Ledger for Fiscal Year 2017 reported 972 OTPS expenditures, totaling \$2,609,253, among 17 expense categories. Ten of the 17 expense categories accounted for approximately 95 percent of all expenditures. Therefore, we decided to sample from those 10 expense categories. Further, we deemed expenditures of less than \$100 to be immaterial (there were 103 expenditures that totaled \$3,483). We selected a sample from a population of 618 OTPS expenditures, totaling \$2,469,312, across 10 expense categories.

We sampled 60 OTPS expenditures, totaling \$924,108. To determine whether GDA complied with GDA Financial Operating Guidelines and whether its OTPS expenditures were reasonable, appropriate, adequately supported, and authorized, we requested and reviewed procurement forms, bids, receipts, invoices, contracts, justification memos, and payment documentation.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for us to evaluate GDA's controls over its PS and OTPS expenditures.

Summary of GDA Property Owner and Tenant Satisfaction Survey Responses

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
How would you rate your level of satisfaction with the BID's security services?	15.5%	30%	39.5%	6.5%	8.5%
How would you rate your level of satisfaction with the BID's sanitation services?	23.2%	43.3%	16.5%	10.3%	6.7%
How would you rate your level of satisfaction with the BID's homeless outreach and referral services?	6.3%	13%	33.3%	21.9%	25.5%
How would you rate your level of satisfaction with the BID's marketing and promotion services?	17.3%	33%	37.2%	7.3%	5.2%
How would you rate your level of satisfaction with the BID's economic development services? ¹³	11.4%	33.5%	43.2%	6.0%	6.0%
How would you rate your level of satisfaction with the BID's management?	11.7%	32.4%	41%	9%	5.9%
How would you rate your overall satisfaction with the BID's supplemental services?	12%	39.3%	26.8%	14.2%	7.7%

¹³ The satisfaction percentages for the BID's economic development services do not total 100 percent due to rounding.

GDA Property Owners and Tenants' Survey Comments Related to Security, Sanitation, and Homeless Outreach and Referral Services

Question 1 - How would you rate your level of satisfaction with the BID's security services?
They [are] never around.
There is nothing safety offices can do when it comes to the homeless. They are allowed to do whatever they want.
Not a visible presence.
The homeless situation is especially bad in this area. NYPD does not want to help. This should be an initiative for BID security.
See police/security (not sure) often checking their phones rather than remaining alert. Not sure if they are on a break though.
Never saw them - inside Port Authority.
I have never noticed a BID officer in my area.
Didn't realize they provided this!
Yes. I could see the safety officers, but the front of our businesses has located a kind of city drug addicts treatment office. There are lots drug addicts are gathering at the front of my business bld makes a mess. Please control that guys. (37th street between 8th + 9th Ave)
Many illegal transactions on 8th Ave between W 38th + W 39th. I smell marijuana almost every time I leave my building on W 39th. Many people asking for money.
They are always around. I never had a reason to use them to see their effectiveness.
I haven't really seen any of them around as they aren't prevalent in our area (36th + 8th).
I barely see them.
Not aware of their presence.
Too many homeless around.
There are too many homeless people loitering.
Personnel not really visible or have presence away from Bway.
No need for them.
Do not see their presence on our block.
I do not reside at the address on file, I rent it out.
Not sure I have seen security services in the area.

APPENDIX II

Page 2 of 10

Honestly speaking, they don't do much of anything but provide presence and provide directions to the tourists. When we ask them to ask the street bums and drug addicts [to] leave and not hang around my business, they don't do anything or say anything.
Don't see them very often.
Overall, I do not notice any services BID provides.
They are there but they can't do anything. We are basically paying for something that can't help us.
Where are they? I have issues with numerous individuals who crowd my sidewalk from the methadone clinic.
Ok
Never see security do anything. Just walk around.
I've never seen them.
The BID does a great job for the area. The workers are efficient and pleasant. The administration for the BID are to be applauded.
Plenty of homeless and drug deals going on.
I never knew anything about this service.
I actually don't ever see any officers on my block.
Haven't really been aware of BID security services.
I believe there can be additional assistance and responsiveness on the workers part. Like connecting people in the community who might need services and care.
More and more homeless people roaming/sleeping on the street than ever.
Do nothing never see them. I'm 25 years in gmt ctr.
I can't say that I have noticed them but that could be a good thing. I feel safe in our area.
Prefer NYPD be responsible for security.
Never seen anyone.
Have not seen them.
At times, the security has been proactive but at other times, we have called for their services several times to help deal with the homeless population around our building. The response is not immediate.
They cannot do anything about the homeless camped out against the mailboxes, subway corners or keep us safe from anything - but they are nice to see on our streets.

APPENDIX II

Page 3 of 10

<p>In Herald Square there is a homeless man in a wheelchair who rides around with a blanket over his lap and you can see from the side view his pants are pulled far down. The area is pretty but there are resident vagrants and perverts in plain view and no one does anything about them.</p>
<p>There are passed out drugged and homeless people on my block every day (39th St between 8th and 9th Aves.). No one is checking to see if they need medical help, or if they pose danger to local workers, residents, or to the many tourists that stay at the hotels on this block.</p>
<p>I feel that the BID's security is visible and available but hamstrung by the City lack of a policy to manage homelessness and vagrancy in the district.</p>
<p>Have been the CEO...for almost two years now. The security personnel do a satisfactory job, but the homeless situation is always a safety concern. It's evident that drug use and sales in the area are rampant.</p>
<p>They're not very visible.</p>
<p>Strangely, I have never seen any security personnel around. I don't think this area is very safe.</p>
<p>The corner of 35th Street and 8th Avenue is a fairly unsafe corner. There are always rowdy and harassing characters on the corners of Starbucks and Staples. Every day when I get off the train station, I have encounter[ed] drunken people or people smoking pot on these corners. I have NEVER seen any police or patrol in this corner. Not even after the shooting at McDonald's in 2015. I have never seen any security in this neighborhood. I did not ever realize that BID had security.</p>
<p>Not enough surveillance of homeless, drug addicts who see to congregate around fast-food places and free photo hook-ups for their iPhones.</p>
<p>There should be more. As there should be more Police. The area is still bad. My office was on 8th and 38-39 and now on 35. I see many people just standing around (loitering). I think it would be best to have signs (warnings) and for your guards and the Police have them keep moving.</p>
<p>Too many homeless in the same location every day.</p>
<p>I haven't noticed them.</p>
<p>Did not know they existed.</p>

Question 2 - How would you rate your level of satisfaction with the BID's sanitation services?
Cleaning crew is very good.
Sidewalks are very dirty, garbage accumulate overnight, especially over the weekend. Litter is all over the block - 35th st.
Garbage is everywhere.
Sometimes garbage cans are beyond capacity but it may be difficult to keep up with the volume.
Not sure what they look like. I have seen men with Red jumpsuits that say "Times Square" on the back. Is that the BID workers?
Not enough to make a dent in the mess.
There are often mess with urinate and left wastes after sleeping. I found them in the morning sometimes.
After garbage is placed on corner waiting for sanitation pickup, many rats come out. They do keep sidewalks clean. But many rats on W 39th + 8th Ave.
The streets are definitely cleaner!
Same reason as above [I haven't really seen any of them around as they aren't prevalent in our area (36th + 8th).]
They clean less and less.
Never know what they did.
Despite the problem mentioned above [there are too many homeless/ people loitering], trash is largely under control.
Where they work, they do a great job. But hardly ever see them in the area just west of 5th Ave.
Broadway is nice.
Difficult for them to do this on our block because of all construction, so they have quite cleaning.
I see them working all the time.
They do great job keeping the streets clean. I see them all the time sweeping up trash.
I do see them.
They have been maintaining the areas within the vicinity of our buildings.
Where? I never see them? Scam!
Good
I've never seen them on 35th Street.

There is a major amount of garbage and human waste smell on the side streets all the time. Especially around scaffolding.
I do not see a lot of painting, removal of graffiti, or power washing sidewalks.
Never saw them working on the streets, maybe in the avenues only.
It's just ok. You do see them during the week but never on weekends.
I see these hardworking people all over but it's hard for them to keep up with sloppy NY'ers.
Not for the garment center, done only for hotels.
Staff always very courteous.
Prefer DSNY be responsible for sanitation services.
Never seen anyone.
Have not seen them.
The trash not collected by the garbage trucks is left, then scattered down the sidewalk and into the street.
There are good days and bad days. Not consistent.
It is constantly FILTHY!
Trash cans are ALWAYS overflowing everywhere especially around the Bryant Park perimeter. Inside Bryant Park is well maintained. There is far too much vomit on sidewalks everywhere, 7th Ave around Penn Station being particularly bad. Sanitation workers are CONSTANTLY leering at females walking by, looks, stares, and unwelcome comments. There are A LOT of homeless in the area.
Please take a walk down any block in the BID. I see a few workers here and there sometimes. But most often, I see piles of litter everywhere. Either these workers are not doing their jobs, or there are not enough of them.
I feel that the BID's sanitation services are good despite being hamstrung the City's inability to manage debris belonging to the homeless population. Why doesn't the City have a plan to move vagrants and homeless toward services where they can be off of our streets?
Given the current influx of unfortunate folks without homes using building doorways and store fronts as a place to live/sleep, I think the BID sanitation team does a good job in maintain the area clean.
This neighborhood is filthy.
Too much garbage piling up in the garbage cans.
Hardly ever see these services being provided.
Considering the number of people that pass through here every day and their complete disregard of manners and cleanliness coupled with the poor, unfortunate homeless and the heroin addicts, I think

APPENDIX II

Page 6 of 10

the guys sweeping and cleaning are doing a great job. It's like Sisyphus pushing the boulder up the hill.

Streets are not clean and area is filthy. Trash needs to be taken away more frequently and the street should be HOSED DOWN. There is huge amount of filth and homeless are urinating and defecating on the streets, as well as leaving trash and food scraps.

I see them on the street. It is NYC and people are sloppy so any additional cleanup is good. Always more people would be better.

Still too much trash on the ground constantly.

You might need a bigger crew.

Question 3 - How would you rate your level of satisfaction with the BID's homeless outreach and referral services?
Too much homeless in front of store - 7 day's a week.
Too many beggars and homeless people! Get them out of Penn Station area, it is disgusting and very poor quality of life!! It is illegal to pan handle in NYC!!
The homeless situation especially in front of 1430 is terrible + unsafe.
Homeless is the worst, I've ever seen in the garment center ever. Thanks to our Awful Mayor.
The homeless are all over the sidewalks in front of businesses with their garbage and their odors.
Situation is bad!!
No way of knowing. Plenty of homeless people still on the street.
Never seen outreach. Plenty of homeless.
Now weather is cold so they, homeless people are not stay overnight but I worry about when the temperature [goes] up.
On my way to work from subway station, I see many homeless people sleeping in doorways. Especially W 39th between 7th + 8th Ave.
Personally, I have not seen any outreach workers.
There are a bunch of homeless people always in front of the McDonalds on 8th Avenue between 34th + 35th St. So they are needed there.
See lots of homeless on streets around Penn Station - I don't know if this is N.Y.C. responsibility or not.
There are more homeless now than ever before!
There are homeless on almost every block; several ave "regulars", as in present for months.
Problem worsen.
Not sure how much impact [is] being made.
See more and more homeless.
Along 7th Ave bet. 35-38th always too many homeless.
Too many homeless on sidewalks + subway stations.
Homeless is rampant and has been for the past 4+ years on our block and surrounding area.
They (the homeless) hang out and sleep in front of my door all the time. Sometimes we have to wake them up and ask them to leave so we can open the gates to our business.

There are a lot of homeless hanging-out in front by McDonalds.
Lots of homeless sleeping under lots of scaffolding.
City issue and until the city puts some good strong policies as how to handle this issue I don't think there is much the BID can do.
This is a city issue and until the city puts some good strong policies as how to handle this issue I don't think there is much the BID can do.
The homeless population has increased dramatically, I have been in this community since 2001.
I don't know BID did this. Around our offices there can be a lot of homeless.
Not enough enforcement.
It's not working. The homelessness in the area has gotten out of control. The homeless have more rights than the building owners.
? More homeless than ever on the street.
Need work!
Bologona! Scam.
Good
I've never seen them on 35th Street.
Seems to be a homeless haven.
Too many homeless in the plazas.
Unable to comment on this as I have no knowledge or information about it.
The number of homeless taking refuge in the area has definitely increased over the last few years; it would seem to be a much bigger problem than the BID would be equipped to deal with as it is a nightly occurrence.
There are more and more people sleeping on the streets. There are many on 37th street where I work. Many are just drugged out.
There are homeless who have set up encampments on 38th street between 5th and 6th and have been here for months. There are also regulars who sit along 5th and 6th begging every day.
Homeless people are roaming/sleeping on the streets.
Not sure how much they are able to actually do.
DOING NOTHING IN THIS AREA.
Unaware of it. I see a lot of homeless especially in the summer. I don't know what kind of outreach is going on but we need to help these people get off the streets.

Have you ever walked down the streets?
I see a lot of homeless people on the streets.
Homeless all over this area - I see them when I walk home to Penn Station from 39 to 34 on 7 Ave at 3pm.
I have not witnessed these services, however there are indeed a lot of homeless individuals on the streets.
Neighborhood must have one of the highest concentration of homeless in the city.
Too many homeless.
Homeless sleep on mattresses and lay on the sidewalks around the charging stations.
There are homeless people practically on every corner. The man on 38 th and 6 th (by Pret) has been there about a year. It really tarnishes the area. There has got to be a better solution!
I do not think I have ever seen homeless outreach. I pass between 5-10 homeless people on my way to work.
With the luxury hotels opened for business on 8th avenue, they have brought up all the homeless to 6th/7th Avenue. In an ideal world, there should be a place where they could all go and not get in the way on congested streets.
The homeless issue in the Midtown South area is a daily problem that should be combatted more often. We understand it's an uphill battle and challenging dealing with individuals with mental illness and drug dependencies but NYC must throw more resources at the issue than what they currently have in place.
No direct knowledge of the program.
There is no apparent homeless outreach happening in the BID. There are homeless people passed out on any block or avenue in the BID.
I see the same homeless beggars every day. If there is an outreach program it is not working.
We have not seen any outreach or the effects of this service for the homeless in the area.
Too many homeless sleeping on the streets between 34 & 40th on 6th avenue. I pass them every day. Not sure what reach out program is involved but they do not move.
TOO MANY HOMELESS ON THE STREETS.
There is no evidence of improvement.
I was not aware the BID provided these services and the outreach services are not obvious.
Not sure. Haven't seen anyone around and this area is overrun by homeless people.
The homeless are everywhere!

APPENDIX II

Page 10 of 10

Again a tough job, more needs to be done.

Entrances to and platforms of area subways often have junkies sprawling in the stairwells and nodding out, urinating, defecating, puking in the area. Disgusting. 8th ave and the sidewalks and side streets from port authority down are full of tourists, junkies, homeless people panhandling and the sidewalks are particularly narrow and congested. There are four major transit hubs, plus bolt bus operations, a methadone clinic, parole building and a large number of hi rise tourist hotels and bewildered people wandering around with suitcases looking up and a variety of rolling garment carts, delivery people and idling UPS and other delivery trucks. It's kind of a madhouse.

It is a City and State problem and until the powers that be get on line with this worsening situation. I am a Manhattan native and it is akin to the mid-1970's when we had the big M.A.C. crisis.

We still have a significant number of homeless people around the neighborhood.

I often see homeless people on the sidewalks, either sleeping or asking for handouts. It's unfortunate, but perhaps more can be done in this area?

The business district here...has become a homeless encampment. There are people sleeping all over the streets camped out. It is filthy and there is trash and generally dirty looking.

I see the same people every day. I have no idea what services, if any, are being provided.

There are still a bunch of junkies on 8th Ave.

There is too many people sleeping on the street in this areas. It goes to my first point. Keep them moving. It is a larger issues but your goal should be to keep this area clean, safe and hospitable to customers. Your motivation to help is great but my suggestion would be to make it inhospitably for them to sleep in this area.



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June 26, 2019

Ms. Marjorie Landa
Deputy Comptroller for Audit
City of New York
Office of the Comptroller, Scott M. Stringer
1 Centre Street, Room 1100
New York, New York 10001

RE: Audit Report FK18-088A

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Thomas Block - Vice Chair
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Refinery Hotel
Ryan Garson
Savitt Partners LLC
Shorenstein Properties LLC
Stan Herman Company
Stitch Bar & Lounge
The Doneger Group

EMERITI

George S. Kaufman
Peter L. Malkin

Dear Ms. Landa,

I am in receipt of the Audit Report on the Financial and Operations Practices of the Garment District Alliance that the Office of the Comptroller performed over the last 20 months (FK18-088A). The audit process provided an opportunity for the Garment District Alliance (GDA) to reevaluate our operations and we will give due consideration to those of your findings and recommendations which may be relevant and substantiated.

Following is the GDA response to the findings of that report. In general we felt that the report did not accurately or appropriately portray GDA activities, did not have a valid methodology for some matters, and created negative inferences by including activities which were not contractually required.

Our response follows, section by section, the Findings and Recommendations portion of the report.

GDA Did Not Provide Supplemental Services in Accordance with Its Board Approved Budget

The Comptroller's audit presents a mischaracterization of the GDA's performance in providing supplemental services based upon the Comptroller's interpretation of Article 2A of the GDA contract DSBS. The GDA's activities are conducted in accordance with the projected budget amounts, not directed by the budget lines in the manner that city agencies operate. The budget amounts are projections based upon anticipated costs of goods and services based upon previous years' costs or other estimates. The actual expenditures inevitably vary except for contracted, set costs, and this is a common and appropriate financial procedure for nonprofit organizations and business improvement districts. The auditors' analysis does not recognize that these variances occur for a number of reasons. Prices for goods and services may rise in the marketplace during the course of year. Savings may be realized in the bidding process by vendor competition. The organization may have to take on special projects or conditions at the request of the City or because of other unforeseen circumstances. Also subject to unanticipated change are capital projects which may be changed in design or otherwise affected by

approval processes that extend the timeline of implementation beyond a particular fiscal year, thereby leaving allocated costs unspent.

Any such variances are reported to, and approved by, the GDA Officers Committee and Board. While not all Officers and Board discussions are documented in the minutes, the Officers Committee and/or the Board are presented with an updated budget at each meeting, which reflects variances, shifts between budget lines, budget line overruns and underspent budget lines. In this manner the Board and Officers can track the organization's spending in relation to the projected budget, and discuss any adjustments that should be made. Again, this is a common and appropriate financial procedure for nonprofit organizations and business improvement districts, and it is necessary for the organization to be able to adjust expenditures as priorities and programs shift throughout the year. However, although there are reported and approved variances, the GDA never changes the approved budget in any fiscal year. As such, the assertion of the auditors that the activities of the GDA are not in accordance with its Board approved budget is incorrect.

To address specific items listed by the auditors (Table I, p.7):

- The increased Beautification and Horticulture expenditures were the result of the DOT – enacted seasonal closure which the GDA agreed to maintain mid-year. The Board was informed of and approved expenditures for these items related to this unanticipated activity.
- Homeless Services was budgeted for \$86,000 while the Urban Pathways contract was for \$69,906. When preparing the budget six months prior to the start of the fiscal year, GDA considered increasing outreach efforts to address an escalating city problem. However, after approval of the budget and start of the year, based on our research, experience, and meeting with city agencies who indicated that they were not able to address the homeless issue, we decided not to increase our efforts because it was hopeless, fruitless and unproductive. During the audit process ample documentation was provided that clearly demonstrated that the BID took assertive measures to address this problem in ways beyond the contracted outreach. This included meeting with Commissioner Stephen Banks of DHS, forming a social services committee of BIDs, meeting with agencies and every outreach entity that services midtown Manhattan in an effort to find a solution. We also hired an intern to prepare a report on the full scope of services provided to the homeless in the City. Additionally the GDA participates on the Midtown South Community Council, an NYPD organization which addresses this issue. In FY2018 we lowered our budget to \$75,000 because we no longer believed that we could positively impact this issue without the support of additional City measures and new legislation that specifically addressed the condition. In the absence of a political will for the City to enact stronger measures or propose legislation we endeavored to continue with outreach as a matter of principal and obligation despite recognizing the futility of our action without additional measures by the City.
- Marketing and Special events had a variance of \$75,633 that included:
 - \$32,000 on advertising out of a \$161,074 budget
 - \$15,000 on arts festival out of a \$55,000 budget
 - \$35,262 on broker's events out of a \$95,000 budgetWhen the GDA creates budgets for Marketing and Special Events, we plan for specific expenditures but retain the right to use reasonable business judgement and request approval for changes based upon opportunity or other circumstances. For example, we had planned to hold three brokers' receptions but due to lack of positive response in the first event, we cancelled the remaining two and, with approval, utilized the funds for

more viable marketing opportunities. It is a mischaracterization to say that the GDA did not provide its services in accordance with its budget when variances in programming arise from the exercise of reasonably prudent business judgement approved by the Officers Committee.

- The Security variance was based primarily upon personnel changes. Replacement of security guards sometimes requires more extended periods of time because of background checks, state certifications, etc. These occasional gaps reduce the budgeted expenditures. Personnel turnover also reduces expenses as in most cases the rate of pay of the outgoing guard is higher than the starting wages of a new hire. Such turnover also reduces the payment of benefits because new hires have a three month probation period before receiving benefits. Additionally, a senior supervisor unexpectedly resigned just prior to the start of FY17. His salary was included in the approved budget. While the Officers were informed of this matter, the security budget line was not adjusted to reflect this decrease. To characterize this as "not providing supplemental services in accordance with Board approved budget" is a misleading description.
- The sanitation, streetscape and administration variances are minor (less than 10%) and all such variances are reported to the Officers in the monthly reports. Including them in this report creates a mischaracterization that the GDA was not providing supplemental services in accordance with its budget. The GDA provided the services in accordance with the plan and at the level intended during budget preparation but some of the actual costs varied marginally. These items should be deleted from the table and report.

The auditors erroneously characterize the GDA's protocol for handling budget variances by stating the GDA "...did not provide the Board with detailed information on which specific line item program expenses were increased or decreased and by how much." (p.8). This statement is incorrect. Each month, since the BID's inception, the staff reports actual versus budgeted costs to the Officers Committee. The same information is reported quarterly to the Board, which includes representatives from the Comptroller's Office and DSBS. The budget variances are also included in the annual report to membership, distributed at our annual meeting and posted on the GDA website. All items are presented for discussion and are approved by the Officers or the Board. All actions taken by the Officers are reported to the Board at the next occurring meeting. The GDA, as a matter of practice, distributes detailed budget reports at every meeting but does not report "detailed variance information" in the meeting minutes. Because the GDA utilizes the generally accepted practice of not providing transcripts of meetings, the auditors make the erroneous conclusion that the budget-related items were not discussed. This is not only unsubstantiated, but creates a negative impression about the GDA's activities and practices.

In regard to the auditors' assertion that GDA did not report variances to DSBS, the GDA complies not only by the quarterly reports presented at the Board meeting, but by filing the mandated annual form provided by DSBS. This report includes a spreadsheet list of budget items and includes a column requiring explanation of any variances over 10%. This report was supplied to the Comptroller's audit team.

Regarding **Recommendations** (p.9)

1. This activity is already being performed and as such this recommendation item should be removed from the report.
2. This activity is already being performed and as such this recommendation item should be removed from the report.

GDA Members Were Not Satisfied with Homeless Outreach and Referral, Sanitation and Security Services (p.9)

The auditors' survey results are questionable and should not be included in the report for the following reasons:

- The auditors would not provide a list of who was surveyed. GDA members, except for residents, are not individuals but companies. Auditor should specify if they spoke with a principal, how long the surveyed person has worked in the area, and if they had a familiarity with GDA programs and services.
- The auditors surveyed owners and tenants in 2018 for activities conducted by the GDA in 2016-17. This is misleading because the homeless problem, which cannot be reasonably addressed by the GDA without City action and legislative changes, has exacerbated since 2016-17.
- Auditors would not provide GDA with a full set of responses but they only included summary excerpts in the appendix of their report. Presenting excerpted statements may be misleading and may create inaccurate inferences about the GDA's performance of services.
- The GDA is not required to conduct a satisfaction survey. It is inappropriate to cite as a deficiency the GDA's failure to perform an activity it is not required to do. The GDA utilizes other methods to communicate with its constituency. Additionally, membership elects a board of directors whose duties include acting on behalf of the membership by more closely monitoring and providing feedback on GDA activities.

As stated in the report, every year since the GDA was founded we have conducted tenant surveys with the exception of three years when there was no supplier for the service. In these surveys, the GDA requests comments from tenancy on district conditions and services and typically receives over one hundred comments per year.

In the first few years, the surveys were conducted asking respondents to rate services. That survey format was discontinued because in practice we found the "rating" survey method did not yield useful information. Since the GDA is more focused on results and addressing conditions directly raised by constituents, we switched to more general "comment" method which provided very specific issues which we could address.

Information from property owners is collected in a different manner. Property owners are sent database forms to update information and provided the opportunity to contact the GDA with any issues.

The GDA provides regular communications with its constituents with newsletters, bulletins, regular website updates and special communications. Special communications range from hand-delivered leaflets to direct mailings, e-mailings, or telephone calls. These are communications, which are generally time sensitive or directed to a particular subset of the constituency based upon the type of issue being communicated. For example, a special communication may be directed to property owners or businesses on a particular street where construction is to occur, notification of a new city program, an event that affects one business sector, or information pertaining to assessment, zoning and homelessness situation. All communications provide GDA contact information and encourage the recipients to contact our office with questions or comments. Every inquiry is responded to personally by a staff member in person, or if that cannot be arranged, then by telephone or, as a last resort, email.

It should be noted that GDA is not mandated to conduct surveys. GDA's contract with DSBS states: "*At the request of SBS, the DMA shall conduct a survey of its Members to determine the current level of support for the Plan, current level of satisfaction with the performance of the DMA and recommendations for possible changes to the Program. Notwithstanding the above, the DMA is encouraged to conduct regular surveys of its Members.*" At no point did DSBS request GDA to provide any such surveys. Nevertheless, GDA conducts significant and varied methods of outreach to its constituents, which are designed specifically to ensure sufficient communication and opportunity for its constituents to share any issues with GDA. These methods go far beyond a typical annual survey, by providing constituents with the opportunity to provide meaningful feedback to GDA.

Regarding the auditor survey results, it is no surprise that the top complaints are related to homeless outreach and referral services, sanitation and security. The auditors' report does not indicate if any contextual information was provided to the respondents relating to the City's inability or unwillingness to address these interrelated city-wide issues, especially the spiraling homeless and drug addicted panhandler epidemic. Moreover, it should be noted in the auditor's report that GDA, as a business improvement district, is only authorized to provide *supplemental services*, i.e., services that *supplement* the services provided by the City. At no time has GDA been obligated, or even authorized, to usurp the City's responsibility and obligations under the City Charter to provide sanitation, security and homeless services.

Homelessness is at an all-time high in NYC and the USA. As was explained to the audit team, GDA has no legal authority for removing individuals, who may be homeless, have drug dependencies, or have other mental or social issues from our streets. The amount of these people on the streets of midtown Manhattan is at an epidemic level and will, soon, have an economic impact on the city. Regardless of surveys, it is a significant problem for the GDA, generates numerous calls from the constituency, has precipitated increased levels of service and hours of operation, and is also our greatest source of frustration. This is not a situation that is under the control of the GDA. It is the City's responsibility, and particularly the Department of Homeless Services and the Department of Social Services, to address and resolve the City's homelessness problems. No increase in GDA's expenditure, even doubling or tripling the amount spent, would have an impact. The auditor's report fails to acknowledge the reality of this situation and creates a gross mischaracterization of the GDA's role in addressing homelessness. The auditors' efforts to call out owner dissatisfaction on this issue do not provide an appropriate context for the problem by acknowledging that it is the City's responsibility, not GDA's, to resolve the homelessness situation, and it is the City's inability or unwillingness to respond to the situation that has allowed it to continue at such magnitude.

Regarding the auditor's statement relating to their field observations (p.10), it is inexplicable to us why the audit team did not observe the full complement of security officers and sanitation workers during three weekday visits. Full staffing occurred those days, as supported by GDA timesheets and recordkeeping. It is likely that the auditors did not take into account that all workers are frequently in motion during their shifts, patrolling, cleaning or responding to conditions, and that they are allowed to take meal and bathroom breaks.

Regarding the auditor's statement relating to their field observations (p.11), it is inexplicable to us why the audit team did not observe Urban Pathways during three weekday visits. The auditors did not provide information as to their locations and corresponding times. UP workers do not have fixed posts but patrol the district, respond to site specific incidents, and are allowed to take meal or bathroom breaks. UP workers do not wear uniforms.

Auditors do not note whether they met with supervisors or visited the GDA base to verify their observations but prefer to raise a non-validated negative inference regarding the GDA's performance. Our signed records are in direct conflict with these observations. The auditors were provided time sheets and supervisor records. This section should be deleted from the report, amended to include the additional steps the auditors took to verify their observations, or acknowledge that no attempts were made at the time of the site visits to verify the assumptions based upon the observations.

Regarding the auditor's statement about the GDA's failure to provide documentation of responses to tenants' comments from the 2016 or 2017 tenant survey (p.11), this is because there were no tenant surveys, a non-mandatory action, taken that year. This was reiterated to the auditors on numerous occasions. This comment should be deleted from the report.

Regarding **Recommendations** (p.12),

3. This recommendation should be removed as it creates a misleading inference that the GDA is not performing in accordance with its goals and contractual obligations. The GDA performs significant outreach to its constituents and is not required to perform surveys.
4. This recommendation should be deleted since the GDA already does respond to owners and tenants when making programming and budgeting decisions. Additionally, the GDA has a Board of Directors of over 40 owners, tenants, residents, government representatives and other interested parties who provide guidance to the GDA and approve all activities on behalf of the constituency.
5. Agreed.

GDA Expenditures Were Not Reasonably Priced (p.12)

GDA Did Not Comply With Its Own Competitive Purchasing Rules

The GDA is compliant with its own competitive purchasing rules and the auditor's report inexplicably inflates the list with redundant items. The GDA responded to the auditor's list of 31 sampled expenditures (p.12) out of 60 which allegedly were not in conformance with GDA financial operating policies. The 31 item list is erroneous and creates a negative impression inexplicably repeating ongoing contracts, such as the lease payments, as unique items. As such, the 31 expenditures only represent 16 contracts. Also, of the 31, 14 were compliant because they were under \$20,000 and did not need to be competitively bid. Also, of the 31, documentation was provided which showed that 11 were competitively bid, 7 were based upon ongoing agreements, and 4 were sole source. During the audit the GDA responded with an explanation and documentation for every item on the list. The auditors have reiterated this matter in the final report without acknowledging or responding to the GDA's explanations.

In March 2019 the GDA updated its procurement policy to comply with the new procurement requirements established in DSBS's new contract. Additionally, it will be creating a spreadsheet system that will track all contract expenditures and will centralize the documentation and approval process it otherwise undertakes in monthly reports to the Officers and quarterly reports to the Board. The new tracking system will track steps taken in the procurement process, including bid solicitations, responses, rationale for selection and non-competitive procurement justification and approvals. Copies of contracts and expenditures will be maintained in a centralized location.

GDA did not comply with Related-Party Transaction Requirements (p.13)

The officers of the organization and the board members of the organization approved our leasing property from Board Member and Secretary, Eric Gural. As stated in your report, the Officers approved the lease at our January 20, 2016 meeting. The rent went from \$19/sq. ft. to \$30/sq. ft. The committee, all familiar with rents in the district understood and agreed that \$30/sq. ft. was well under market (market at the time was \$35 – 45/sq. ft.) and that the new rent represented good value and would provide a long term stability for the organization in an area with rapidly increasing rents.

This relationship was first disclosed to the Board when the GDA relocated offices and the Board approved the lease in 2007. The disclosure was repeated in the City VENDEX system filings and reiterated to the Board when the lease was renewed. The disclosure was recently made again when the Mayor's Office of Contracts switched to the PASSport system from VENDEX. GDA Board members are required to file conflict of interest statements. Mr. Gural's COI statement for the year in question was not located for the audit although his relationship to the lease transaction was disclosed orally to the Board.

Regarding the issue of whether the GDA considered alternative lease options (p.15), it should be noted that the type of space required by a BID which provides sanitation and security services operating in-house, is unusual and availability can be difficult when there is the additional geographic limitation of locating only in the BID area. Many of the GDA's directors and officers are property owners in the District, who work in the real estate industry and are well versed in the real estate rental prices in the district. While there were undocumented discussions of possibly relocating, it was agreed by the officers, based on their deep knowledge of real estate prices in the district, that the cost of moving and building out a new space would not be justified. These matters were discussed in Officer and Board meetings but not recorded.

In March 2019, GDA adopted an updated Conflict of Interest Policy and Disclosure Statement in compliance with the New York Nonprofit Revitalization Act (NPRA). All directors, officers and key employees are in the process of completing and submitting Disclosure Statements to GDA, and all Related Party Transactions will be reviewed, approved and documented in accordance therewith. GDA intends to present the lease to its Board of Directors at its next Board of Directors meeting to ratify it in accordance with the procedures set forth in GDA's new Conflict of Interest Policy and the NPRA (i.e., with the conflicted Director recused, reviewing alternative options, etc.).

GDA Expenditures Were Not Adequately Supported and Properly Authorized (p.16)

Regarding the auditor's statement that "Expenditures for services were not supported by contracts detailing the scope of services, payment terms and approvals (paragraph 2) it should be noted that procurements cited – insurance, electrical, accounting, and legal services – were all based upon ongoing, unexpired agreements and as such the bills paid were based upon invoices related to the original contractual agreements.

Regarding the auditor's statement "Did not maintain adequate documentation to support catering and special event expenses" (paragraph 3), these expenditures were either categorically or directly approved by the Officers Committee as activities undertaken in furtherance of the budget line to which they were charged.

In March 2019 the GDA updated its procurement policy to comply with the new procurement requirements established in DSBS's new contract. Additionally, it will be creating a spreadsheet system that will track all contract expenditures and will centralize the documentation and tracking of the approval process it otherwise undertakes in monthly reports to the Officers and quarterly reports to the Board. The new tracking system will track steps taken in the procurement process, including bid solicitations, responses, rationale for selection and non-competitive procurement justification and approvals. Copies of contracts and expenditures will be maintained in a centralized location.

Regarding **Recommendations #6 – 12** (p. 16),

The GDA already undertakes these activities and as such these items should be removed. Notwithstanding this request to remove recommendation, as noted above the GDA has already taken steps to provide more accurate documentation of these activities, ratify prior actions, and ensure the proper policies, procedures and practices are in place going forward.

To further clarify in response to Recommendation #9, the NPRA no longer requires that only "independent directors" (as defined by the NPRA, as amended) approve related party transactions. Rather the NPRA, as amended, simply requires the conflicted party be recused.

GDA Did Not Ensure That Personal Service Expenditures Were Reasonable, Adequately Supported, and Properly Authorized (p.17)

As stated during the audit process, the Officers Committee approved both the president's salary and other senior staff salaries. These salaries were reviewed and the officers were briefed on the senior level salaries at other BIDs. This was handled verbally, to which the officers can attest, in order to assure confidentiality. Once the officers agreed to the salaries, a memo was signed by the Chairman of the Board which authorized the president's salary. After discussion with the officers, the president then authorized other senior staff salaries. This same procedure takes place annually.

Following a recent review of practices and policies which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews and approvals. When reasonable and appropriate, the GDA will provide information on compensation practices by similar organizations to the Officers to inform their review process. Note that this procedure was adopted for corporate governance purposes and to bring GDA within the "safe harbor" requirements under the IRS intermediate sanctions rules. However, it should be noted that compliance with the IRS "safe harbor" requirements is not a legal requirement for tax-exempt organizations.

GDA Did Not Present Central Staff Salary Increases to the Board for its Approval (p.19)

GDA presents central staff salary increases to the Board in the budget, which is approved annually by GDA's Board. All expenditures in the budget are presented for discussion. As previously noted, the GDA provides board notes and distributes printed budgets to the Board, but it does not transcribe discussions from meetings for the minutes.

Following a recent review of practices and policies which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews and salary increases. When reasonable and appropriate, the GDA will provide, as it has in the past, information on compensation practices and salary increase by similar organizations to the Board to inform their review process.

GDA Lacked Adequate Controls Over Central Staff Attendance and Time (p. 20)

Biweekly, the central staff employees are required to submit signed time sheets noting days off and the category (sick/personal/vacation/other) to which the days off applied. These are self-certifying but also reviewed by the Director of Finance. If there are any apparent discrepancies the issue is brought to the attention of the President.

The GDA is currently reviewing payroll and time management systems to determine if another system will be more effective. In the meantime, while the time sheets already require a signature by the employee when submitting, GDA will add a note stating, to the effect, that by signing the time sheet the employee certifies that the information they submit is accurate.

Regarding Recommendations, #13-16 (p.20)

Following a comprehensive review of practices and policies by an outside attorney, which were adopted by the Board in March 2019, the GDA has amended its practices to provide additional documentation of compensation reviews. When reasonable and appropriate, the GDA will provide information on compensation practices by similar organizations to the Officers and Board to inform their review process. Additionally, The GDA is currently reviewing payroll and time management systems to determine if another system will be more effective. To the best of GDA's knowledge, however, its compensation and payroll practices are legally compliant.

DSBS did not ensure that GDA included required budgetary information in its annual report.

GDA provides DSBS with all requested information.

See DSBS for response.

Regarding Recommendation #17, (p.21)

This item is not for GDA comment.

Scope and Methodology Statement (p.22)

In regard to the disclosure of Comptroller's association to GDA, it is also important to state that the Comptroller's representative to the Board receives all reports, minutes, Board meeting notes and other materials and documentation relating to the GDA's activities. Similarly it should be noted that the Department of Small Business Services (DSBS), with whom the GDA entered into the subject contract, also sits on the Board, receives all reports, minutes, Board meeting notes and other materials and documentation relating to the GDA's activities. Both the Comptroller's office and DSBS have the ongoing ability to request information or explanation from GDA regarding practices, services and any other activity.

Sincerely,



Barbara A. Blair
President

Cc: Gregg Bishop, Commissioner, NYC Department of Small Business Services



GREGG BISHOP
COMMISSIONER

DATE: June 28, 2019

TO: Hon. Marjorie Landa, Deputy Comptroller for Audit
Maryanne Mullany, Assistant Director

CC: Gregg Bishop, Commissioner
Ismail Mohammed, Executive Director, Fiscal & Audit

FROM: Michael Blaise Backer, Deputy Commissioner

RE: **Audit Report on the Financial and Operating Practices of the
Garment District Alliance Business Improvement District
FK18-088A**

Dear Deputy Comptroller Landa,

We are in receipt of the Audit Report on the Financial and Operations Practices of the Garment District Alliance (FK18-088A). In response to the draft financial audit of the Garment District Alliance Business Improvement District (GDA) dated June 18, 2019, please find below the Department of Small Business Services responses to the Office of the Comptroller's recommendations:

Recommendation 5: DSBS should investigate the ...homeless, sanitation, and security issues and facilitate GDA's communication with the responsible City agencies, and, as needed, advocate on GDA's behalf to help ensure that the responsible City agencies take actions to address the problems identified.

SBS Response: DSBS is the oversight and support agency for DMAs. The agency regularly acts as a liaison for DMAs regarding many interagency issues. We coordinate interagency communications and, where necessary, elevate issues that DMAs face with relevant and appropriate City Agencies. A major focus of this work involves facilitating collaboration and partnership between all BIDs and City Agencies, in service to working together to solve many of the City's most pressing issues. Further, when requested, DSBS coordinates with councilmembers and borough presidents to address DMAs' concerns.

Recommendation 17: DSBS 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.

SBS Response: Every year, as part of the contract with the City, BIDs must submit an annual report to DSBS. The report includes a 70-question survey, and requires the submission of the annual budget, Board of Directors roster, and information on any contracts over \$10,000. The annual report's survey portion collects extensive program and service data about sanitation, security, marketing, and streetscape impacts. The annual report's budget portion shows BID spending in their various program areas. Thus, DSBS already extensively reviews and analyses submitted annual reports for budgetary, program, and service impact information.



careers
businesses
neighborhoods

GREGG BISHOP
COMMISSIONER

Additional SBS Response: Page 21 of the Comptroller’s draft audit report states that, “DSBS does not request an accounting or explanation of variances as part of [their] annual reporting process ... it appears DSBS may have been unaware that GDA was contractually required to include narrative explanations for budget variances greater than 10 percent in its annual report and therefore, DSBS did not enforce that contract requirement.”

As part of a program-wide initiative at the beginning of the current administration, DSBS developed and issued a new, standardized BID contract for all DMAs, and put it into place as existing contracts expired. DSBS entered into the new contract with the GDA DMA as of July 1, 2018. New contract language regarding annual reports does not require a description of budget variances greater than 10%. The new contract requires the DMA to notify its Board of Directors and the Board’s Finance Committee of any budget or budget allocation changes of over 10%. At the time of this audit, DSBS was migrating DMAs onto the new standardized contract and faced challenges monitoring all aspects of contract compliance with those DMAs that remained on unique contracts. As we migrate the remaining DMAs with unique contracts onto the standardized contract in 2019, we do not expect this to be an issue going forward.

Please advise if you have any questions about incorporating these comments into your report.

A handwritten signature in blue ink, appearing to read 'Michael Blaise Backer', written over a horizontal line.

Michael Blaise Backer
Deputy Commissioner