



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 47th Street
Business Improvement District

FK18-089A

December 19, 2019

<http://comptroller.nyc.gov>



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

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To the Residents of the City of New York:

My office has audited the 47th Street Business Improvement District (the 47th Street BID) to determine whether it provided supplemental services; exercised adequate oversight over its fiscal affairs and maintained a sufficient system of internal controls; and complied with its contract with the Department of Small Business Services (DSBS). We audit not-for-profit entities such as the 47th Street BID to increase accountability and to help ensure that services are provided and that funds are appropriately used.

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

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

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

The audit makes 23 recommendations to the 47th Street BID and 4 recommendations to DSBS, including that the 47th Street BID should cease providing supplemental security services that do not principally benefit property within the District, monitor payroll transactions, and maintain procurement documentation and copies of vendor contracts and invoices documenting the scope of services, payment terms, and authorized approvals.

The results of the audit have been discussed with 47th Street BID and DSBS officials, and their comments have been considered in preparing this report. The 47th Street BID'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 that reads "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the 47th Street Business Improvement District

FK18-089A

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. BIDs provide services that supplement municipal services (supplemental services), such as security, sanitation, and marketing, as well as capital improvements.

In 1997, the City, through the Department of Small Business Services (DSBS), entered into a contract with the 47th Street Business Improvement District, Inc. (the 47th Street BID also known as the Diamond District BID). Under the terms of the contract, the City collects and pays to the 47th Street BID assessments that are levied on real property within the district. In return, the 47th Street BID agrees to provide certain supplemental services and capital improvements within the district. The 47th Street BID is located on 47th Street between 5th Avenue and 6th Avenue (the District). The 47th Street BID contract states that the BID “shall” provide security, promotion and marketing, maintenance of capital improvements, and administration.

In its Financial Statements for Fiscal Year 2017, the 47th Street BID reported revenues of \$1,172,244 and expenditures of \$1,355,458, which included \$750,231 in program expenses and \$605,227 in general and administrative expenses.

Audit Findings and Conclusions

During Fiscal Year 2017, the 47th Street BID provided supplemental services to the District including security, promotion and marketing, sanitation, seasonal decorations, and administration.

However, the 47th Street BID improperly spent \$210,835 on security services—approximately half of the total amount spent on security services—that did not principally benefit property within the District. In connection with both that improper use of BID funds and other expenditures, the 47th Street BID did not provide supplemental services in accordance with its annual budget and did not explain the budget variances to its members and DSBS, as its contract with DSBS required.

The 47th Street BID also failed to maintain adequate controls over its expenses. As a result, the former Executive Director: (1) was paid significantly more—between \$25,242 and \$38,664 more—than the Executive Directors and Presidents of other similarly sized BIDs; (2) was able to improperly process unauthorized raises, commissions, and benefit payments totaling \$68,318 for himself and the BID’s only other employee, the former Executive Assistant, during Fiscal Year 2017; and (3) charged unauthorized personal expenditures on the BID’s debit card totaling at least \$18,686 for personal expenses such as taxis (\$10,127), cell phones (\$6,390), and meals (\$2,169).

In addition, the 47th Street BID failed to: (1) document that it competitively procured goods and services or justified and obtained Board approval for non-competitive procurements; and (2) enter into written contracts or obtain invoices detailing the scope of the services to be provided, the payment terms, and internal approvals. In the absence of such documentation, we could not determine whether the BID’s expenditures were reasonably priced and properly approved, and moreover, whether they were legitimate and related to 47th Street BID business.

With respect to corporate governance issues, the 47th Street BID Board failed to implement a written conflict of interest policy and to comply with its By-Laws regarding board composition and the recording of meeting minutes.

Finally, the 47th Street BID did not report on its website required information about its Board of Directors and management, finances, programs, services, and businesses served.

Audit Recommendations

Based on our findings, we made 23 recommendations to the 47th Street BID and 4 recommendations to DSBS, including that the 47th Street BID should:

- Cease providing supplemental security services that do not principally benefit property within the District as required by § 2A.02 of its contract with DSBS.
- Immediately seek reimbursement for security services that were incurred for Building 1 but were not paid by the property owner including, but not limited to, the \$210,835 cited for Fiscal Year 2017.
- Ensure that its Annual Report includes narrative explanations for budget variances greater than 10 percent.
- Monitor payroll transactions, such as salaries and bonuses, to ensure that they have been properly approved.
- Independently review and monitor purchase and payment documentation.
- Maintain procurement documentation, including but not limited to, bid solicitations, responses, and procurement forms documenting the rationale for making the award, and non-competitive procurement justification memos to the 47th Street BID Board.
- Maintain copies of vendor contracts and invoices documenting the scope of services, payment terms, and authorized approvals.
- Immediately adopt and oversee the implementation of a conflict of interest policy that includes, at minimum, the provisions set forth in New York State Not-For-Profit Corporation Law (NPCL) 715-a (b).

- Review member information to ensure that individuals are qualified for membership in each of their respective classes.
- Immediately hold elections to fill the Board Vice Chairman and Vice President positions or, in the alternative, take required action to eliminate the positions.
- Maintain complete and accurate records of all Board and Board committee meetings. Such records should be in written form and include attendees, discussions, and actions taken at meetings.
- Immediately post on its website current information required by its contract including: the Executive Director's contact information; a list of Board members; District boundaries; a list of businesses within the District; a brief summary of programs and services; Annual Report; audited financial statements; and detailed District map.

Agency Response

The 47th Street BID did not agree with or address the report's findings that it failed to provide supplemental services in accordance with the contract and spent funds on supplemental security services that did not principally benefit property within the District as well as the associated recommendations. The 47th Street BID maintained that, operationally, it was necessary to provide security services outside of the District. However, the contract between the 47th Street BID and DSBS and the 47th Street BID Plan prohibit the 47th Street BID from using BID monies to pay for services outside of the district. The 47th Street BID also stated that the Board approved the security arrangement and that the BID was fully reimbursed. However, the 47th Street BID did not provide us with documentation to show that the Board approved the security arrangement. In addition, we cannot be assured that the 47th Street BID was reimbursed for security services since it recorded payments from the owner of Building 1 as donations and advertising revenue in its financial records and regulatory filings. Further, the 47th Street BID was not reimbursed for additional insurance costs associated with the NYPD Paid Detail program.

While the 47th Street BID did not expressly agree with the report's remaining findings and recommendations, the BID maintained that it took actions related to many of them, including that it revised its By-laws and Financial and Administrative Procedures, implemented a Conflict of Interest Policy, and took other corrective actions to strengthen controls over its expenses and comply with its contract with DSBS and applicable standards and regulations. However, based on our review of documents received at and after the exit conference, the 47th Street BID generally did not take appropriate corrective action.

DSBS stated that it would consider the report's findings and determine whether the 47th Street BID was in breach of its new contract. In addition, DSBS stated that it extensively reviews and analyzes annual reports.

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 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.¹

When BIDs are initially proposed, the proposing organization provides DSBS with a district plan (the Plan), which describes the formula used to calculate the special assessment, proposed services, and proposed operating budget. BIDs provide supplemental services, such as security, sanitation, and marketing, as well as 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 consisting of: commercial property owners (Class A); commercial tenants (Class B); residential tenants (Class C); public official appointees (Class D);² and other interested parties (Class E).³

In 1997, the City, through DSBS, entered into a contract with the 47th Street BID, a BID and a not-for-profit corporation created pursuant to § 201 of the New York State Not-For-Profit Corporation Law. The most recent contract between the 47th Street BID and DSBS was for the five-year period July 1, 2013 through June 30, 2018, and provided the City with an option to renew the contract for an additional five-year term. In September 2018, the City extended the contract under the same terms and conditions through June 30, 2019.

Under the terms of the contract, the City collects and pays to the 47th Street BID assessments that are levied on real property within the district. In return, the 47th Street BID agrees to provide certain supplemental services and capital improvements within the district. The 47th Street BID is located on 47th Street between 5th Avenue and 6th Avenue. The 47th Street BID contract states that the BID “shall” provide security, promotion and marketing, maintenance of capital improvements, and administration.

As with all BIDs, the 47th Street BID is governed by a board of directors. In addition, during the audit scope period, the 47th Street BID employed an Executive Director and an Executive Assistant to administer the BID. The Executive Director was responsible for the financial management of the 47th Street BID under the guidance of the Board Executive Committee. During the course of the audit, the Executive Director resigned and the Executive Assistant’s employment was terminated. Subsequently, the Board Chair informed us that the 47th Street BID hired a new Executive Director.

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 “four members, 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.

In its Financial Statements for Fiscal Year 2017, the 47th Street BID reported revenues of \$1,172,244 and expenditures of \$1,355,458, which included \$750,231 in program expenses and \$605,227 in general and administrative expenses.

Objectives

The objectives of the audit were to determine whether the 47th Street BID: (1) provided supplemental services; (2) exercised adequate oversight over its fiscal affairs and maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized; and (3) complied with the terms of its DSBS contract.

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 47th Street BID Board members by virtue of his office. The Class D Board members, in conjunction with the other Board members, constitute the 47th Street BID Board. In accordance with the New York City Administrative Code Title 25, Chapter 4, §25-414(b), the Comptroller sits on the 47th Street BID Board through a designated representative. Neither the Comptroller nor his representative on the 47th Street BID Board had any involvement in this audit.

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 the 47th Street BID and DSBS during and at the conclusion of this audit. A preliminary draft report was sent to the 47th Street BID and DSBS and was discussed at an exit conference on August 20, 2019. On September 9, 2019, we submitted a draft report to the 47th Street BID and DSBS with a request for written comments. We received written responses from the 47th Street BID and DSBS on September 23, 2019.

The 47th Street BID did not agree with or address the report's findings that the 47th Street BID failed to provide supplemental services in accordance with the contract and spent funds on supplemental security services that did not principally benefit property within the District as well as the associated recommendations. The 47th Street BID maintained that, operationally, it was necessary to provide security services outside of the District. However, the contract between the 47th Street BID and DSBS and the 47th Street BID Plan prohibit the 47th Street BID from using BID monies to pay for services outside of the district. The 47th Street BID also stated that the "security arrangement was voted on and approved by the full Board on at least two occasions and all funds expended by the 47th Street BID under this security arrangement have already been fully reimbursed." However, the 47th Street BID did not provide us with documentation to support the

claim that the security arrangement was voted on and approved by the full Board. In addition, we cannot be assured that the 47th Street BID was reimbursed for security services since it recorded payments from the owner of Building 1 totaling \$105,048 as donations and payments totaling \$37,884 as advertising revenue in its financial records and regulatory filings. Further, the 47th Street BID was not reimbursed for additional insurance costs associated with the NYPD Paid Detail program.

While the 47th Street BID did not expressly agree with the report's remaining findings and recommendations, the BID maintained that it took actions related to many of them, including that it revised its By-laws and Financial and Administrative Procedures, implemented a Conflict of Interest Policy, and took other corrective actions to strengthen controls over its expenses and comply with its contract with DSBS and applicable standards and regulations. However, based on our review of the documents we received at and after the exit conference, the 47th Street BID generally did not take appropriate corrective action to ensure that it fulfills its fiduciary duty of care, maintains adequate controls over expenses, and complies with its contract and applicable laws, regulations, and standards.

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

FINDINGS AND RECOMMENDATIONS

During Fiscal Year 2017, the 47th Street BID provided the following supplemental services to the District:

- Contracted with the New York City Police Department (NYPD) to provide additional police officers;⁴
- Provided promotion and marketing services including a monthly newsletter, a holiday lighting program, and special events;
- Contracted with a third-party vendor to provide sanitation services including sweeping streets, bagging trash, removing graffiti, and clearing snow from pedestrian crosswalks and catch basins;
- Provided seasonal decorations; and
- Employed a salaried staff to administer its operations.

We surveyed all 174 BID property owners to determine whether they were satisfied with each of the above-mentioned supplemental services. Based on the results of our survey, BID property owners generally responded that they were either neutral or were satisfied with supplemental services.

However, the 47th Street BID improperly spent \$210,835 on security services—approximately half of the total amount spent on security services—that did not principally benefit property within the District. The 47th Street BID allocated approximately half of the BID's security services to a privately owned building outside of the District where three Board members own and operate private businesses and where the BID maintains its administrative office. In connection with both that improper use of BID funds and other expenditures, the 47th Street BID did not provide supplemental services in accordance with its annual budget and did not explain the budget variances to its members and DSBS, as its contract with DSBS required.

The 47th Street BID also failed to maintain adequate controls over its expenses to ensure that they were reasonable, appropriate, adequately supported, and authorized. With regard to personal services expenditures, the 47th Street BID: (1) did not have a process to ensure that employee compensation was reasonable; (2) did not require employees to record their attendance and time; (3) did not maintain records to show that personnel and payroll actions were authorized; and (4) did not review, approve, or monitor personnel and payroll transactions to prevent or detect unauthorized transactions.

As a result of the BID's inadequate controls, the former Executive Director was paid significantly more—between \$25,242 and \$38,664 more—than the Executive Directors and Presidents of other similarly sized BIDs. Further, the former Executive Director was able to improperly process unauthorized raises, commissions, and benefit payments for himself and the BID's only other employee, the former Executive Assistant. During Fiscal Year 2017, the former Executive Director

⁴ The 47th Street BID obtained additional police officers through the NYPD Paid Detail Unit. The NYPD allows police officers to perform off-duty security work in uniform within New York City. Event planners, corporations, and other organizations can obtain police officers' services through the NYPD Paid Detail Unit. (Licensed premises, government and quasi-governmental entities, security companies, and personal protection/bodyguard situations cannot obtain police officers' services through the NYPD Paid Detail Unit.) Participating police officers report to the location designated by the contracting organization for check-in and assignment.

and the former Executive Assistant improperly received compensation and benefits totaling \$68,318.

In addition, the Board did not implement authorization, payment, and compliance controls for BID debit card expenditures. As a result, the former Executive Director charged unauthorized personal expenditures on the BID's debit card, and the Board did not detect those inappropriate charges in a timely manner. The former Executive Director used BID monies totaling at least \$18,686 for personal expenses such as taxis (\$10,127), cell phones (\$6,390), and meals (\$2,169).

Based on our review of the 47th Street BID's procurement documentation, the BID also failed to comply with its own procedures, in that for 99 sampled purchases totaling \$263,970, it did not document that it either solicited bids from at least three qualified firms and selected the lowest bidder or justified and obtained Board approval for non-competitive procurements. The BID also failed to comply with its City contract and its own procurement procedures with respect to 50 sampled expenditures totaling \$175,487, in that the BID did not enter into written contracts for any of them and in some cases failed to obtain invoices detailing the scope of the services to be provided, the payment terms, and internal approvals. In the absence of such procurement documentation, contracts, and invoices, we could not determine whether the BID's expenditures were reasonably priced and properly approved and moreover, whether they were legitimate and related to 47th Street BID business.

With respect to corporate governance issues, the 47th Street BID Board failed to implement a written conflict of interest policy, as required by the New York State Not-For-Profit Corporation Law, to ensure that its directors, officers, and key persons act in the corporation's best interest and comply with applicable legal requirements. As a result of that failure, 47th Street BID directors and employees may not have disclosed possible conflicts of interest to the Board.

The 47th Street BID Board also failed to comply with its By-Laws regarding board composition and the recording of minutes that should have documented that committee meetings were held, who attended, the discussion that occurred, and the actions taken at those meetings.

Finally, the 47th Street BID did not comply with its obligation under its City contract to report on its website required information about its Board of Directors and management, finances, programs, services, and businesses served.

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

The 47th Street BID Did Not Provide Supplemental Services in Accordance with Its Contract

Article 2A, § 2A.02 of the contract between the 47th Street BID and DSBS states that the BID will provide services which shall supplement basic services provided by the City and include security, promotion and marketing, maintenance of capital improvements, and administration. The contract also states,

The Supplemental Services provided in each year of this Contract shall be in accordance with the annual budget submitted in such year pursuant to Section 5.04 (b) (ii) of this Contract. The Supplemental Services shall be delivered in the manner set forth in the Plan and if performed proximate to the District, must **principally** benefit property within the District. [Emphasis added.]

Further, § 3.03 of the contract states that all monies of the BID derived from assessments or Street Use Revenues “shall be used only for the provision of Supplemental Services in accordance with the Plan and in accordance with the [BID’s] annual budget.”⁵

However, as detailed below, the 47th Street BID improperly used BID monies to provide security services outside of the District and did not provide supplemental services in accordance with its annual budget.

The 47th Street BID Spent \$210,835 on Supplemental Security Services That Did Not Principally Benefit Property within the District

Section 2A.02(a) of the contract between the 47th Street BID and DSBS states that “the security services provided for the District will assist the New York City Police Department in the area. The [BID] shall provide a security program in the District which may include, but shall not be limited to: a security force of approximately four (4) uniformed, unarmed foot patrol officers and supervisory personnel during business hours six days a week.” As noted previously, the 47th Street BID contracts with the NYPD to provide additional uniformed, police officers. During Fiscal Year 2017, the BID generally provided four additional police officers on weekdays and, at times, two additional police officers on weekends.

A single Board officer was individually responsible for administering all aspects of the 47th Street BID’s security program. The Board officer requested police officers from the NYPD, assigned them to fixed posts, and reviewed and approved their attendance and time records. Further, the Board officer calculated and made payments to police officers for security services and to the NYPD for administrative services, which he disbursed from a BID bank account.

However, based on our review of the relevant timekeeping and payroll records, the Board officer generally assigned half of the police officers to fixed posts inside and in front of a particular building—“Building 1”—that is located *outside* the District.⁶ We found that at the same time that the Board officer assigned the officers to work at Building 1, he and other members of the Board were engaged in financial relationships with Building 1’s owner, one involving the BID, and others involving their private businesses. Specifically, the Board officer, who controlled all aspects of the BID’s security program, and two other Board members owned and operated businesses in Building 1. (This issue is discussed in detail later in the report.) Further, the BID rented space in Building 1 for its administrative office, for which it paid rent of only \$1 for Fiscal Year 2017.

During Fiscal Year 2017, the BID spent \$452,707 on NYPD security services. Of that amount, the BID improperly spent at least \$210,835 (46.6 percent) on NYPD security services that were provided outside of the District. Those security services principally benefited Building 1 for which the property owner did not pay an assessment because, as noted, Building 1 is located outside the 47th Street BID. Accordingly, the BID should not have paid for those services and should be reimbursed by the responsible individuals.

After we presented our findings to the 47th Street BID, two representatives of the Board acknowledged that two NYPD police officers were assigned to posts inside and in front of a building—Building 1—that is not located within the 47th Street BID. With regard to the police

⁵ Section 2B.02 of the contract between the 47th Street BID and DSBS defines Street Use Revenues as revenues derived from commercial activities or other private uses in the district including information kiosks, newsstands, and newsboxes.

⁶ We are not disclosing the location of police officer posts at the request of the 47th Street BID.

officer who was assigned to a fixed post *inside* of Building 1, the two Board officers stated that the owner of Building 1 fully reimbursed the BID for those security costs and that the Board fully approved this arrangement.

On April 11, 2019, we requested that the 47th Street BID provide us with documentation to show: (1) that it was fully reimbursed for security services provided *inside* of Building 1; and (2) Board minutes or other documentation to show that the Board approved the above-described arrangement, *i.e.*, the BID providing security services to Building 1 and being reimbursed for associated costs.

In response, the 47th Street BID provided us with invoices it issued for “NYPD Donations” totaling \$105,048, invoices it issued for “NYPD Public Relations” totaling \$37,884, and checks from the owner of Building 1 totaling \$142,932. The two Board officers stated that the BID’s former accountant advised the former Executive Director to record the security expense reimbursements as donations.

The 47th Street BID recorded payments from the owner of Building 1 totaling \$105,048 as donations and payments totaling \$37,884 as advertising revenue in its general ledger, audited financial statements, and Form 990. Therefore, we cannot be assured that those payments represent reimbursements for security expenses the BID incurred for Building 1.

Further, if the payments in question were *not* donations to the BID or advertising revenue but were instead reimbursements for Building 1’s security expenses as the two Board officers now state, then the BID misstated its above-mentioned financial records and regulatory filings. In doing so, the BID: (1) overstated its security expenses by making it appear that the BID provided and paid for more security services *for the District* than it actually did; (2) overstated its donation revenue by \$105,048, and overstated its advertising revenue by \$37,884; (3) possibly enabled the owner of Building 1 to improperly claim a tax deduction for purported charitable donations; and (4) obscured that the BID’s resources were used to provide security services for private property outside the District.

In addition, the 47th Street BID did not provide us with Board minutes or any contemporaneous record to show that the Board approved the arrangement between the 47th Street BID and Building 1. Instead, on August 27, 2019 and August 28, 2019, the 47th Street BID provided us with statements from eight Board members affirming that “in May 2016, the Board voted to allow people within the confines of and proximate to 47th Street to use the services of NYPD Paid Detail through the 47th Street BID, with the understanding that we would be reimbursed.” However, those statements, provided and apparently prepared more than three years after the purported vote, do not constitute reliable evidence to show that the full Board voted and approved this arrangement, as required by the 47th Street BID’s By-Laws and the NPCL.

With regard to the police officer assigned to a fixed post *outside* of Building 1, the two Board officers claimed that the BID is responsible for providing security at BID entry points and that police officers’ posts change based on security needs. However, the BID could have assigned a police officer to a fixed post in front of a building *within* the District and, at the same time, provided security at BID entry points. Further, based on the 47th Street BID records and our observations, police officers’ posts were fixed and generally did not vary.

During Fiscal Year 2017, the Board officer generally assigned the remaining NYPD police officers to fixed posts in front of two other buildings—Building 2 and Building 3—that are located within the District. However, we note that seven Board members owned and operated businesses in Building 2, and another Board member owned and operated a business in Building 3.

The 47th Street BID stated that when events are hosted within the BID, jewels and other valuables are stored in vaults in Building 2's basement. However, as stated on the BID's website, "[m]ore than 2,600 independent businesses are located in the Diamond District, and nearly all of them are related to diamonds or fine jewelry." No explanation was provided as to what distinguishes Building 2 from other buildings in the District and warrants a dedicated police officer.

The 47th Street BID did not explain why it assigned a police officer to a fixed post outside of Building 3.

47th Street BID Response: "Recommendations suggested in the Comptroller's Audit Report are based upon observations of just three (3) days over a two (2) month period of time and then inferred for a yearlong period included in the Audit. Making these extrapolations after only three (3) days of observations does not provide a meaningful semblance of the actual security provided within the District."

Auditor Comment: The report's findings and recommendations were primarily based upon the 47th Street BID's own timekeeping and payroll records and were corroborated by our observations.

Recommendations

The 47th Street BID should:

1. Cease providing supplemental security services that do not principally benefit property within the District as required by § 2A.02 of its contract with DSBS;

47th Street BID Response: "The District is primarily responsible for two block faces on West 47th Street and two corners of 6th Avenue but it is often necessary to have security personnel in areas that allow them to best secure the District from a said vantage point. Static implementation of security based upon hard district boundaries would also compromise recommended security protocols from our Local, State, and Federal Law Enforcement Agencies. Our security needs are ever evolving based on Real-time Intelligence. Additionally, property as defined as outside the District by the Audit Report are principally within the BID's responsibilities to maintain as contracted with DSBS."

Auditor Comment: The contract between the 47th Street BID and DSBS and the 47th Street BID Plan prohibit the 47th Street BID from using BID monies to pay for services outside of the district. As previously stated, § 2A.02 of the contract between the 47th Street BID and DSBS states that the BID will provide services which shall supplement basic services provided by the City and shall be delivered in the manner set forth in the Plan and if performed proximate to the District, must principally benefit property within the District. Further, the 47th Street BID Plan states that the "District will be defined as 47th Street between 5th and 6th Avenues only, **excluding the corner properties on Fifth Avenue**. The two Fifth Avenue corner parcels are currently part of the Fifth Avenue BID. The 47th Street BID will work with the Fifth Avenue BID to make sure that the corner buildings are served appropriately without any conflict or overlap of services." [Emphasis added.]

Building 1 is located within the Fifth Avenue BID, and its property owner paid assessments for the 5th Avenue BID, not the 47th Street BID. Therefore, the

property owner and/or the 5th Avenue BID—the beneficiaries of security services provided inside and in front of Building 1—should pay for the security services provided by the 47th Street BID.

2. Immediately seek reimbursement for security services that were incurred for Building 1 but were not paid by the property owner, including but not limited to the \$210,835 cited for Fiscal Year 2017; and

47th Street BID Response: “The 47th Street BID has always been fully reimbursed for security provided to a specific building that is proximate to the District including over 100 feet within the confines of West 47th Street. This security arrangement was voted on and approved by the full Board on at least two occasions and all funds expended by the 47th Street BID under this security arrangement have already been fully reimbursed. Documentation regarding proof of reimbursement payments were requested and have been provided to the Comptroller’s Office.”

Auditor Comment: As previously stated, the 47th Street BID recorded payments from the owner of Building 1 totaling \$105,048 as donations and payments totaling \$37,884 as advertising revenue in its financial records and regulatory filings. Therefore, we cannot be assured that those payments represent reimbursements for security expenses the BID incurred for Building 1. Further, the 47th Street BID was not reimbursed for additional insurance costs associated with the NYPD Paid Detail program.

In addition, the 47th Street BID did not provide us with Board minutes or any *contemporaneous* record to show that the Board approved the “security arrangement” between the 47th Street BID and Building 1. The 47th Street BID also did not memorialize the security arrangement in writing. Instead, on August 27, 2019 and on August 28, 2019, the 47th Street BID provided us with statements from eight Board members affirming that “in May 2016, the Board voted to allow people within the confines of and proximate to 47th Street to use the services of NYPD Paid Detail through the 47th Street BID, with the understanding that we would be reimbursed.”

3. Separate the duties for administering the security program or implement compensating controls and update its policies and procedures.

47th Street BID Response: “The duties for security have been administered in accordance with ‘Best Practices’ and with oversight, diligence, and in consultation with Local, State and Federal Law Enforcement and through relationships of trust that have been built over many years and ongoing working relationships. Our By-law[s], policies and procedures have been updated accordingly.”

Auditor Comment: In its response, the 47th Street BID did not address whether it would separate security program administrative duties. Instead, the 47th Street BID seemingly addressed security program operations.

The 47th Street BID’s revised By-laws and Financial and Administrative Procedures do not separate the duties for administering the security program, nor do they implement compensating controls. Specifically, the procedures do not separate the duties for requesting police officers from NYPD, assigning officers to fixed posts, reviewing and approving officers’ attendance and time records, calculating and making payments to officers for security services and to the NYPD for administrative services, or performing bank reconciliations. Therefore, we urge the 47th Street BID to separate the duties for administering the security

program or implement compensating controls and update its policies and procedures.

The 47th Street BID Did Not Provide Supplemental Services in Accordance with Its Budget

As previously mentioned, Article 2A, § 2A.02 of the contract between the 47th Street BID and DSBS states that the “Supplemental Services provided in each year of this Contract shall be in accordance with the annual budget submitted in such year pursuant to Section 5.04 (b) (ii) of this Contract.” Further, § 5.04(b) states that each year the 47th Street BID shall “submit 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”⁷

However, based on our review of the Fiscal Year 2017 Annual Report, the 47th Street BID did not provide supplemental services in accordance with its annual budget. Overall, the 47th Street BID Board approved a Fiscal Year 2017 budget with program expenses totaling \$1,147,000 and spent \$1,281,337—resulting in an operating deficit of \$134,337. With respect to line-item expenditures for individual types of supplemental services, the 47th Street BID reported that its budgeted and actual expenses for six programs had variances greater than 10 percent. Table I below details the 47th Street BID budgeted and actual program expenses for Fiscal Year 2017.

⁷ The 47th Street BID 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, by-laws or the Plan.”

Table I

47th Street BID Budgeted and Actual
Program Expenses as Reported in
Its Fiscal Year 2017 Annual Report

Program Expenses	Board Approved Budgeted Expenses [\$]	Actual Expenses [\$]	Variance [\$]	Variance [%]
Security	330,000	512,607 ⁸	182,607	55.3
Sanitation	80,000	119,331	39,331	49.2
Beautification and Horticulture	10,000	31,400	21,400	214.0
Administration	429,000	440,958	11,958	2.8
Marketing, Special Events, Holiday Lighting	195,000	105,259	(89,741)	(46.0)
Streetscape and Repairs	50,000	23,744	(26,256)	(52.5)
Consultants	42,000	38,750	(3,250)	(7.7)
Light Pole Electricity	11,000	9,288	(1,712)	(15.6)
Total Program Expenses	1,147,000	1,281,337	134,337	11.7

The 47th Street BID Fiscal Management Policies and Procedures state,

Budget modifications from one service category to another (*i.e.* marketing to security) within a given fiscal year must be approved by a vote of the Board of Directors. Line item modifications (*i.e.* within the administration line, a change from equipment to personal) within a service category may be made on the recommendation of the Executive Director to the Executive Committee.

Budgets for all major service categories: Sanitation, Security, Marketing and Promotion, Customer Service and Administration may not be exceeded without action of the Board of Directors. Likewise, use of funds allocated to the Contingent category must be presented to and approved by the Board of Directors.

However, based on our review of 47th Street Board meeting minutes and correspondence, the 47th Street BID did not obtain required Board approval for budget modifications.

In addition, § 5.04(b)(i) of the contract between the 47th Street BID 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, the

⁸ In its Annual Report for Fiscal Year 2017, the 47th Street BID reported total security expenses of \$512,607. This amount included \$452,707 for NYPD security services and \$59,900 for other security expenses.

47th Street BID did not explain the above-mentioned budget variances greater than 10 percent to its members and the DSBS Commissioner.

Since the 47th Street BID did not obtain required Board approval for budget variances and did not explain budget variances to its members and DSBS, 47th Street BID spending may not be reflective of 47th Street BID member and Board priorities.

We asked the 47th Street BID for any narratives it provided to DSBS explaining the variances between the 47th Street BID Board approved budget and actual expenses. In response, the Board Chair stated that “approved budgets are a guideline and actual expenses are what is spent in any class on the budget line.” However, as previously mentioned, the 47th Street BID 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.

47th Street BID Response: “The 47th Street BID has always followed a practice to discuss the narrative of budget variances at our annual public meeting. It is important to note that the legal definition of “Narrative” is defined as either written or spoken, as per this legal guidance the BID has always given a verbal narrative at its annual public meeting which followed the requirements of its former contract with DSBS. In the past it has always been done in this manner so that members of the BID could ask questions and receive cogent answers to address any of their concerns. It is further important to note, as acknowledged by the Comptroller’s Audit Report that this requirement of a narrative explanation has been eliminated from its current contract with DSBS.”

Auditor Comment: As previously stated, the 47th Street BID Board minutes did not document that the Board discussed and voted to approve budget variances as required by its Fiscal Management Policies and Procedures. Further, the 47th Street BID did not include narrative explanations for budget variances in its Annual Report as required by its contract during our audit scope period.

Recommendations

The 47th Street BID should:

4. Monitor budgeted and actual expenditures to identify variances;

47th Street BID Response: “The Executive Director’s duties and responsibilities under his current contract include tracking variances between budgeted and actual expenditures and to report such variances to the Board.”

Auditor Comment: The current Executive Director’s contract does not specify his duties and responsibilities. Additionally, the 47th Street BID’s revised By-laws and Financial and Administrative Procedures do not include procedures for tracking budget variances and reporting them to the Board. Therefore, we urge the 47th Street BID to monitor budgeted and actual expenditures to identify variances.

5. Ensure that the 47th Street BID Executive Director obtains the Board’s approval for budget modifications; and

47th Street BID Response: “The current Executive Director has been instructed and is fully aware that all budget modifications require Board approval.”

Auditor Comment: As previously stated, the current Executive Director’s contract does not specify his duties and responsibilities. Additionally, the 47th

Street BID's revised By-laws and Financial and Administrative Procedures do not include procedures for obtaining Board approval for budget modifications. The 47th Street BID's previous Fiscal Management Policies and Procedures included such procedures stating,

Budget modification from one service category to another (i.e. marketing to security) within a given fiscal year must be approved by a vote of the Board of Directors. Line item modifications (i.e. within the administration line, a change from equipment to personal) within a service category may be made on the recommendation of the Executive Director to the Executive Committee.

Budgets for all major service categories: Sanitation, Security, Marketing and Promotion, Customer Service and Administration may not be exceeded without the action of the Board of Directors.

However, the 47th Street BID removed those procedures. Therefore, we urge the 47th Street BID to ensure that the Executive Director obtains the Board's approval for budget modifications.

6. Ensure that its Annual Report includes narrative explanations for budget variances greater than 10 percent.

47th Street BID Response: "As acknowledged by the Comptroller's Audit Report a narrative explanation requirement for budget variances has been eliminated from our current contract with DSBS."

Auditor Comment: The contract between the 47th Street BID and DSBS was extended—under the same terms and conditions—through June 30, 2019. Therefore, the 47th Street BID should ensure that its Annual Reports for the period that was covered by this contract, Fiscal Years 2018 and 2019, include narrative explanations for budget variances greater than 10 percent.

The 47th Street BID Did Not Maintain Adequate Controls over Its Expenses and Comply with Applicable Standards and Regulations

The 47th Street BID Fiscal Management Policies and Procedures state,

The 47th Street Business Improvement District (BID) endeavors to maintain sound fiscal and financial procedures consistent with not-for-profit corporations and in accordance with generally accepted accounting principles. The BID will comply with city, state and federal government reporting requirements and all applicable government regulations in accordance with its Contract with the City of New York.

However, the 47th Street BID did not implement or comply with basic internal controls in accordance with its own policies and procedures, contract, and federal, state, and City regulations. Consequently, 47th Street BID personal services (PS) and other than personal services (OTPS) expenses were not reasonable, appropriate, adequately supported, and authorized as detailed below.

The 47th Street BID Did Not Comply with Internal Revenue Service Non-Profit Compensation Standards

During Fiscal Year 2017, the 47th Street BID paid its former Executive Director compensation totaling \$162,266. 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.”

However, in its IRS Form 990, Part VI, Section B, the 47th Street BID reported that the process for determining the Executive Director’s compensation did *not* include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision.

For Fiscal Year 2017, we compared the former Executive Director’s reportable compensation—which totaled \$162,266—with that of other Executive Directors and Presidents of similarly sized BIDs.⁹ Based on our review, the former Executive Director’s compensation was not reasonable because he was paid between \$25,242 and \$38,664 (18.4 and 31.3 percent) more than the Executive Directors and Presidents of other similarly sized BIDs. Please see Table II below for a comparative analysis of similarly sized BID Executive Directors and Presidents’ compensation for Fiscal Year 2017.

⁹ We considered BIDs to be similarly sized if they had both revenues and expenses of between \$1 and \$1.5 million as reported on their IRS Form 990.

Table II

Comparative Analysis of Similarly
Sized BID Executive Directors and
Presidents' Compensation for Fiscal
Year 2017

BID Name	Did the BID Report that it had a Process For Determining Compensation in its Form 990?	Total Revenue Per Its Form 990 (\$)	Total Expenses Per Its Form 990 (\$)	Executive Director or President's Reportable Compensation Per Its Form 990 (\$)	Difference Between the 47 th Street BID Former Executive Director's Compensation and Other Similarly Sized BID Executive Directors or Presidents' Compensation	
					(\$)	(%)
47 th Street Business Improvement District Inc.	No	1,172,244	1,321,673	162,266	-	-
125 th Street District Management Association Inc.	Yes	1,136,855	1,152,414	137,024	25,242	18.4
Hudson Yards Hell's Kitchen BID	Yes	1,249,026	1,415,709	129,955	32,311	24.9
Chinatown DMA	No	1,402,816	1,320,223	123,602	38,664	31.3

After we presented our findings to the 47th Street BID, the Board Chair and the President stated that the former Executive Director was authorized to receive compensation totaling only \$143,600—which included an annual salary of \$135,600 and a bonus of \$8,000. (This issue is discussed in detail later in the report.) However, the former Executive Director's authorized compensation was still greater than that of other Executive Directors and Presidents of similarly sized BIDs.

Additionally, the Board Chair and the President stated that the process for determining the compensation for the current Executive Director included a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision. On April 11, 2019, we requested that the 47th Street BID provide us with documentation in support of that assertion.

On August 23, 2019, the 47th Street BID provided us with comparability data that it maintained was used to determine that the current Executive Director's salary was reasonable. However, the comparability data that the 47th Street BID relied on shows that the current Executive Director was generally paid more than other Executive Directors and Presidents of similarly sized BIDs. In addition, the 47th Street BID did not provide us with Board minutes documenting the approval of the current Executive Director's hiring and compensation.

47th Street BID Response: "In June of 2018 the Board opened an internal investigation into the practices of the former Executive Director and his Executive Assistant, during that investigation the former Executive Director resigned and his Executive Assistant was terminated. The Board disclosed all findings of maleficence as they became aware of them

to the New York City Comptroller's Office. In an effort to be fully transparent the New York City Comptroller's Office has been given unfettered access to all BID files and documents."

Recommendation

The 47th Street BID should:

7. Determine and document employee compensation in accordance with IRS regulations.

47th Street BID Response: "The process for determining the compensation for the current Executive Director was in full compliance with IRS regulations. It included a review and approval in advance by an executive committee authorized by the Board. This hiring committee reviewed and relied upon appropriate comparability data regarding compensation of executive directors of other New York City BID's. It also documented the basis for its determination. It is also important to note that the 47th Street BID is made up of two funding components, one related to tax revenue levies in the amount of \$900,000 which encompasses the BID activities and the other is our newsletter that is published each month and is supported by paid advertising. As such Table II of the Comptroller's Audit Report is misleading in that it only reports the total compensation of the 47th Street BID's Executive Director and does not breakdown city funded dollars and other sources of revenue. Part of our current Executive Director compensation is attributed to outside funding sources provided by our monthly newsletter revenue."

Auditor Comment: As previously stated, the 47th Street BID did not provide us with documentation, such as Board minutes, to show that the current Executive Director's compensation was reviewed and approved in advance by an executive committee authorized by the Board. In addition, the 47th Street BID did not rely on appropriate comparability data to show that the current Executive Director's salary was reasonable. The 47th Street BID compared the current Executive Director's salary to that of 10 other BIDs. Based on the 47th Street BID's comparative data, the current Executive Director is paid more than 9 of the 10 other Executive Directors and Presidents.

Additionally, when comparing the compensation of Executive Directors and Presidents of similarly sized BIDs with the compensation of the 47th Street BID's Executive Director, we used the same measures in each case: the total revenues and expenses of each BID and the total reportable compensation that each Executive Director received from his or her respective BID, regardless of the funding source. Further, the newsletter is among the supplemental services (part of Promotion and Marketing) provided to the BID under the contract between the 47th Street BID and DSBS. Therefore, when comparing the compensation of Executive Directors and Presidents of similarly sized BIDs with the compensation of the 47th Street BID's Executive Director his entire compensation should be taken into consideration.

The 47th Street BID Did Not Comply with Comptroller's Standards for Personnel, Timekeeping, and Payroll Functions

Section 5.01 of the contract between the 47th Street BID 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:

- Adequately segregating duties,
- Maintaining records of employee attendance and time,
- Maintaining records to show that personnel actions, such as hiring new employees, enrolling employees in benefit plans, and changing employees’ compensation are properly approved,
- Ensuring that payroll transactions have been properly approved, and
- Independent monitoring and review procedures.

However, the 47th Street BID did not require its two employees to record their attendance and time on a daily basis and did not maintain records to show that personnel actions were authorized. Furthermore, the 47th Street BID used a third-party payroll service provider and allowed the former Executive Director to instruct the provider to process payroll transactions including salary increases, bonuses, and commission payments with no independent review and approval, including for transactions involving his own compensation. The 47th Street BID also allowed the former Executive Director to enroll employees in health and retirement benefit programs. However, the 47th Street BID Board did not review, approve, or monitor payroll or personnel transactions to prevent or detect unauthorized transactions.

Since the 47th Street BID did not implement basic internal controls, the former Executive Director was able to improperly process unauthorized raises, commissions, and benefit payments for himself and the former Executive Assistant. During Fiscal Year 2017, the former Executive Director and the former Executive Assistant improperly received compensation and benefits totaling \$17,789 and \$50,529, respectively, as detailed below and summarized in Table III.

Unauthorized Raises for the Former Executive Director

The 47th Street BID and the former Executive Director were parties to an employment contract that expired on July 31, 2013. The contract stated that the former Executive Director’s “annual salary shall be \$125,200 for the period between August 1, 2010 and July 31, 2011. Commencing August 1, 2011, said salary shall be \$130,400 annually. Commencing August 1, 2012 said salary shall be \$135,600 annually.” The Board Chair and the President informed us that the BID: (1) did not enter into a new contract with the former Executive Director; (2) continued to operate under the terms of the expired contract; and (3) did not authorize any additional salary increases. However, based on our review of 47th Street BID payroll records, the former Executive Director received 4 unauthorized raises which collectively increased his base salary to \$153,388 and resulted in unauthorized salary payments totaling \$53,588 for the period September 26, 2013 to June 29, 2017, of which \$17,789 was received in Fiscal Year 2017.

Unauthorized Raises for the Former Executive Assistant

According to the 47th Street BID’s payroll records, the former Executive Assistant began working for the BID in 2009. During the former Executive Assistant’s employment, the 47th Street BID Board authorized only 1 salary increase for her—a \$5,200 raise effective January 2016. However, based on our review of available 47th Street BID payroll records, the former Executive Assistant

also received 2 unauthorized raises which resulted in unauthorized salary payments totaling \$34,270 for the period January 6, 2011 to June 29, 2017, of which \$7,800 was received in Fiscal Year 2017.

Unauthorized Commissions for the Former Executive Assistant

The 47th Street BID Administrative Personnel Guidelines state that “[s]taff may receive such bonuses or other emoluments as may be designated and approved by the Executive Committee.” During the course of the audit, the former Executive Director informed us that the former Executive Assistant was paid commissions for collecting advertising revenue for the 47th Street BID’s monthly newsletter. However, the Board Chair and the President informed us that the Board did not authorize the former Executive Assistant to receive commissions or any other emoluments. Based on our review of 47th Street BID payroll records, the former Executive Assistant received unauthorized commissions totaling \$45,046 for the period July 7, 2011 to June 29, 2017, of which \$7,397 was received in Fiscal Year 2017.

Unauthorized Health and Retirement Benefits for the Former Executive Assistant

The 47th Street BID Administrative Personnel Guidelines state that “[a]ll full time Administrative staff [are] eligible to receive the Association’s medical insurance for themselves, their spouse and their dependent children if applicable.” However, the guidelines also state that “[t]his Personnel Manual is not a cont[r]act for employment, and all personnel of the Association are hired and employed on an ‘at will’ basis. Accordingly the terms and conditions of employment may be altered at any time by the Executive Director or Board of Directors.” The Board Chair and the President informed us that the former Executive Assistant was not entitled to receive medical insurance for herself and her family or retirement benefits. However, based on our review of 47th Street BID benefits records, the former Executive Assistant received unauthorized benefits totaling \$35,332 during Fiscal Year 2017—\$32,536 for health benefits for the former Executive Assistant and her family and \$2,796 for retirement benefits.

Table III

Summary of Unauthorized
Compensation and Benefits for
Fiscal Year 2017

	Former Executive Director (\$)	Former Executive Assistant (\$)	Total
Salary	17,789	7,800	25,589
Commission Payments	0	7,397	7,397
Health Benefits	0	32,536	32,536
Retirement Benefits	0	2,796	2,796
Total	17,789	50,529	68,318

In addition, the 47th Street BID Board did not document its approval of bonuses as required. The former Executive Director and the former Executive Assistant received bonuses of \$8,000 and \$4,733, respectively. As previously stated, the 47th Street BID Administrative Personnel Guidelines state that “[s]taff may receive such bonuses or other emoluments as may be designated and approved by the Executive Committee.”

After we presented our findings to the 47th Street BID, the Board Chair and the President stated that in connection with its annual budget review and audit, the Board began questioning the former Executive Director about the BID’s expenses and familial and financial relationships between the former Executive Director, the former Executive Assistant, and a consultant. (This issue is discussed in greater detail below.) The Board Chair and the Board President informed us that in June 2018, the former Executive Director resigned and the former Executive Assistant’s employment was terminated.

Additionally, the Board Chair and the President stated that the BID has an employment contract with its current Executive Director, which documents the compensation and benefits that he is entitled to receive. Further, the Board Chair and the President informed us that the 47th Street BID now uses a different third-party payroll service provider and that the current Executive Director is not authorized to process payroll transactions.

On April 11, 2019, we asked the 47th Street BID to provide us with the current Executive Director’s employment contract, the third-party payroll service provider contract, documentation to show who is authorized to process payroll transactions, and documentation of its efforts, if any, to recoup unauthorized compensation and benefit payments.

At our exit conference on August 20, 2019, the 47th Street BID provided us with the current Executive Director’s employment contract documenting his compensation and benefits he is entitled to receive and documentation to show that only the Board Chair and Board President are authorized to process payroll transactions. However, the 47th Street BID did not provide us with documentation of its efforts, if any, to recoup unauthorized compensation and benefit payments.

In addition, on May 22, 2019, we asked the 47th Street BID whether it had a fidelity bond or insurance to protect the organization from embezzlement and other fraudulent acts. The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that “a responsible board of directors should, among other things. . . . Ensure that the organization has . . . considered an employees’, officers’ and directors’ fidelity bond to protect the organization from embezzlement.” The 47th Street BID informed us that it did not have a fidelity bond.

Recommendations

The 47th Street BID should:

8. Maintain records of employee attendance and time;

47th Street BID Response: “The 47th Street BID has one employee, the current Executive Director. He is a salaried employee, by definition as a salaried employee he is not paid an hourly wage. The current Executive Director is an adult professional, hired to perform a job function under the supervision of competent directors and officers of the 47th Street BID. . . . The 47th Street BID has just one employee, but it is working with the DSBS to establish a mutually

acceptable method to monitor the time of the Executive Director who is a salaried employee.”

Auditor Comment: Comptroller’s Directive #13, Section 4.1 states that a “fundamental timekeeping principle is that attendance, absence and tardiness be recorded promptly on a daily basis. Time and attendance must be recorded for all employees, **including managerial and non-managerial salaried staff**, and those who are paid on a daily or hourly basis.” [Emphasis added.] Given the issues that the BID encountered with its previous Executive Director, the 47th Street BID should require the current Executive Director to record his attendance and time daily.

9. Maintain records to show that personnel actions, such as hiring new employees, enrolling employees in benefit plans, and changing employees’ compensation, are properly approved;

47th Street BID Response: “Prior to the Comptroller’s Audit Report recommendations, the 47th Street BID changed its payroll provider on or about December of 2018 and revised its By-laws regarding personnel and financial transactions. The revised By-laws now require that all hiring, payroll, benefit, and financial transactions only be authorized by duly named officers after approval by vote of the Executive Committee.¹⁰”

Auditor Comment: The revised Financial and Administrative Procedures do not state that the 47th Street BID Board or any Board committee must approve hiring new employees. Further, the revised procedures do not require the BID to maintain records of personnel actions. Comptroller’s Directive #13, Section 8.1 states that the “personnel office must maintain records supporting and authorizing documentation for all personnel actions including hiring new employees, changes in compensation or title, salary deductions, terminations, resignations, retirements and all intervening events.” Therefore, we urge the 47th Street BID to maintain records to show that personnel actions are properly approved.

10. Monitor payroll transactions, such as salaries and bonuses, to ensure that they have been properly approved; and

47th Street BID Response: “The 47th Street BID’s revised By-laws now require that any and all payroll transactions can only be authorized by duly named officers after approval by vote of the Executive Committee. Additionally, all payroll transactions are now monitored by our independent bookkeeper and accountant who both have viewer access of all said transaction.”

Auditor Comment: In its response, the 47th Street BID addresses authorizing payroll transactions and does not address monitoring payroll transactions. The 47th Street BID’s revised By-laws do not address payroll transactions. Further, the 47th Street BID’s revised Financial and Administrative Procedures are inadequate in that they state only that the “BID shall maintain broad controls over financial transactions including but not limited to a consistently scheduled review by a qualified independent bookkeeper of all billing, payments, balances, and all other transactions related to the financial health and activity of the BID.” The

¹⁰ The 47th Street BID’s updated By-laws were most recently ratified by the Executive Committee and approved by the Board on August 26, 2019. A copy of the minutes of these two meetings has been provided [to] the Comptroller’s Office under separate cover.

procedures do not specify what those controls are or how they should be performed and documented.

11. Obtain a fidelity bond or insurance to protect the organization from embezzlement and other fraudulent acts.

47th Street BID Response: “As required by our contract with DSBS the 47th Street BID is currently in full compliance with all of insurance requirements set forth by DSBS. That said the 47th Street BID has inquired with its insurance providers regarding the insurance for fraudulent acts such as embezzlement. It will continue to seek further guidance from DSBS to address the Comptroller’s recommendation on this matter.”

Auditor Comment: As previously stated, during Fiscal Year 2017,

- The former Executive Director and the former Executive Assistant improperly received compensation and benefits totaling \$17,789 and \$50,529, respectively;
- The former Executive Director improperly used BID monies totaling at least \$18,686 for his personal expenses such as taxis (\$10,127), cell phones (\$6,390), and meals (\$2,169) among other expenses; and
- The former Executive Director made inadequately supported payments totaling \$70,500 to an outside consultant who was his son and married to the former Executive Assistant.

Therefore, the 47th Street BID should obtain a fidelity bond or insurance to protect itself in the future. The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that “a responsible board of directors should, among other things. . . . Ensure that the organization has . . . considered an employees’, officers’ and directors’ fidelity bond to protect the organization from embezzlement.”

DSBS should:

12. Consider requiring BIDs to obtain fidelity bonds or insurance to protect them from embezzlement and other fraudulent acts.

DSBS Response: “SBS will take this recommendation under advisement. Currently, SBS recommends as a best practice that DMAs carry Directors and Officers Insurance to cover the organization for losses or defense costs resulting from a legal action brought for alleged wrongful acts by directors and officers. Whereas fidelity bonds will cover losses incurred as a result of fraudulent acts by specified individuals or employees, this coverage may not be necessary for most activities of DMAs.”

The 47th Street BID Did Not Implement Controls over Debit Card Expenditures

According to the Board Chair and the President of the 47th Street BID, the former Executive Director was authorized to use the BID’s debit cards to make small purchases for items used in BID operations, such as postage and office supplies. Such use would have been consistent with the BID’s Financial Management Policies and Procedures, which state that the “Executive Director shall be allotted \$250.00 a month for petty cash expenditures. Such expenditures will be

used for non recurring purchases not appropriate for payment from an invoice [s]uch as *postage and office supplies*.” [Emphasis added.] Comptroller’s Memorandum #01-1, *Guidelines for Use of Procurement/Purchasing Cards*, provides internal controls to ensure that cards are used only for authorized purposes. The internal controls for procurement card usage fall into three primary categories—authorization, payment, and compliance controls—which Comptroller’s Memorandum #01-1 describes as follows:

- *Authorization controls* must include the following (1) “[c]ards are issued only to trustworthy employees who are adequately instructed in the security risks,” (2) employees are advised that procurement cards are for business use only, and (3) “[c]ards are deactivated immediately when employees change assignments, retire or are terminated.” Further, it is recommended that employees sign cardholder agreements which detail the terms and conditions of the card assignment.
- *Payment controls* must include that card issuer’s reports and statements are sent to individuals who are independent of those authorized to use the cards.
- *Compliance controls* must include independent monthly reviews of each card holder’s activity to ensure that the card is being used for business use only.

However, the 47th Street BID Board did not implement authorization, payment, or compliance controls for the proper use of its debit card. As a result, the former Executive Director charged unauthorized personal expenses on the BID’s debit cards, and the Board did not detect those inappropriate charges in a timely manner. The former Executive Director used BID monies totaling at least \$18,686 for his personal expenses such as taxis (\$10,127), cell phones (\$6,390), and meals (\$2,169).

After we presented our findings to the 47th Street BID, the Board Chair and the President stated that they canceled the debit cards and cell phone accounts and that the current Executive Director is not authorized to make purchases. On April 11, 2019, we requested that the 47th Street BID provide us with documentation to show that debit card and cell phone accounts were closed and its current policies and procedures to show that the current Executive Director is not authorized to make purchases. On May 17, 2019, the 47th Street BID provided us with a letter from a bank vice president, who is also the Board Treasurer, stating that the debit card account was closed. Additionally, on August 20, 2019, and August 26, 2019, the 47th Street BID provided us with documentation to show that it closed six of eight cell phone accounts and By-Laws and Financial and Administrative Procedures documenting that the current Executive Director is not authorized to make purchases.

47th Street BID Response: “On or about June 2018 the 47th Street BID canceled its debit cards and has provided the Comptroller’s Office with a letter from the Board Treasurer, who is also a Valley Bank officer that the debit card accounts are closed. . . . It should also be noted that the Executive Director is prohibited of having a BID Debit or Credit Card under our By-laws.”

The 47th Street BID Did Not Comply with Its Own Competitive Purchasing Procedures

The 47th Street BID Procurement Procedures state,

The 47th Street Business Improvement District will use various resources, including the services of the NYC Department of Small Business Services, to identify

potential vendors. Vendors will be required to respond with written bids on company stationery with costs itemized to some degree of specificity so the bid can be properly evaluated. Contracts will be awarded to the lowest responsive bidder as per New York City Department of Business Services specifications. . . .

For contracts up to \$5,000, Management will exercise its best judgment in seeking the best possible price within the circumstances. Where practical, price quotes will be obtained from at least three competitive vendors. . . .

Contracts in the amount above \$5,000 must be approved by the Executive Committee and must be awarded following solicitation from at least three qualified firms where possible. Copies of the proposed contract or summary describing materials terms of the contract will be provided to the Board of Review.

The 47th Street BID Procurement Procedures also provide that in “special situations, the BID may procure goods and services without competitive bidding.” Those situations include emergency, sole source, and individual consultant procurements. For emergency, sole source, and individual consultant procurements, the Executive Director is authorized to procure goods and services costing up to \$5,000. For sole source and individual consultant procurements greater than \$5,000, the Executive Director must provide compelling reasons for sole source procurements and must obtain Board Executive Committee approval for sole source and individual consultant procurements.

We sampled 171 OTPS expenditures made during Fiscal Year 2017, totaling \$292,821, to determine whether they were reasonable, adequately supported, and properly approved. Based on our review, 99 of the 171 sampled expenditures were subject to the 47th Street BID competitive purchasing procedures. The 99 expenditures pertained to 7 vendors who provided various types of services, including sanitation; printing, government relations; insurance; seasonal decorations; editorial, design, and production; and marketing and promotion services. However, for all 99 expenditures, totaling \$263,970, the 47th Street BID did not document that it either solicited bids from at least three qualified firms and selected the lowest bidder or justified non-competitive procurements and obtained Board Executive Committee approval as its own procedures required. In the absence of required procurement documentation, we could not be assured that 47th Street BID procured goods and services that were reasonably priced.

After we presented our findings to the 47th Street BID, we again requested that the BID provide us with procurement solicitations and responses, vendor selection, sole source justification memos, and approvals. However, the 47th Street BID did not provide us with such supporting documentation.

47th Street BID Expenditures Were Not Adequately Supported and Properly Authorized

The 47th Street BID’s contract with DSBS provides that all 47th Street BID “contracts and/or agreements for the purchase or provision of goods and services, regardless of amount, shall be in writing and said documents shall be maintained by the [BID].” In addition, the 47th Street BID’s Procurement Procedures state that “[t]he Executive Director of the Board shall ensure all contracts are in accordance with the Corporation’s agreement with the City of New York and all applicable laws and regulations. The contracts must be signed by [e]ither the President or Executive Director with the approval of the Executive committee.” Further, the 47th Street BID Procurement Procedures state that “[t]he Executive Director is responsible for the payment of

bills. No payments, other than the regular payroll, shall be made without an invoice approved by the Executive Director.”

However, the 47th Street BID generally did not enter into written contracts or agreements for goods and services, as required. Further, in some instances the 47th Street BID did not obtain *any* invoices or receipts to support such payments, or did not obtain invoices or receipts that adequately described the services that were provided.

Of the 171 expenditures we sampled, 107 expenditures involved purchases of office supplies, postage, memberships in professional organizations, and utilities. Of the remaining 64 expenditures totaling \$209,179, 62 expenditures, totaling \$175,487 (83.9 percent)—for services such as government relations, and editorial, design, and production services for the 47th Street BID monthly newsletter—were not supported by contracts or other agreements or invoices detailing the scope of services, payment terms, and approvals.

In the absence of signed contracts and invoices, we consider the expenditures to be not adequately supported and not properly approved. Moreover, in the absence of such documentation, we could not determine whether the 62 unsupported and inadequately supported expenditures were legitimate and related to 47th Street BID business.

After we presented our findings to the 47th Street BID, we again requested that the 47th Street BID provide us with contracts or agreements detailing the scope of services, payment terms, and contract approvals. On August 23, 2019, the 47th Street BID provided us with only 1 contract for government relations related to 11 expenditures totaling \$42,250.

Recommendations

The 47th Street BID should:

13. Independently review and monitor purchase and payment documentation;

47th Street BID Response: “The 47th Street BID’s updated By-laws require review and monitoring of the competitive process for the procurement and payment of goods and services in compliance with our current contract with DSBS.”

Auditor Comment: The 47th Street BID’s revised By-laws do not address independent review and monitoring of purchase and payment documentation. Further, as previously stated, the 47th Street BID’s revised Financial and Administrative Procedures are inadequate in that they state only that the “BID shall maintain broad controls over financial transactions including but not limited to a consistently scheduled review by a qualified independent bookkeeper of all billing, payments, balances, and all other transactions related to the financial health and activity of the BID.” The procedures do not specify who is responsible for independently reviewing and monitoring purchase and payment documentation, what should be reviewed and monitored, when or how this review should happen.

14. Competitively procure goods and services whenever possible;

47th Street BID Response: “The 47th Street BID’s updated By-laws require a competitive process for the procurement and payment of goods and services whenever possible in compliance with our current contract with DSBS.”

Auditor Comment: The 47th Street BID’s revised Financial and Administrative Procedures provide for exceptions to competitive selection procedures and do not require the BID to maintain written justifications for non-competitive procurements. Those exceptions include, among other things, procurements for payroll, employee benefits, insurance, legal services, and banking services.

15. Maintain procurement documentation, including but not limited to, bid solicitations, responses, procurement forms documenting the rationale for making the award, and non-competitive procurement justification memos to the 47th Street BID Board; and
16. Maintain copies of vendor contracts and invoices documenting the scope of services, payment terms, and authorized approvals.

47th Street BID Response to Recommendations 15 and 16: “Within the updated By-laws, procedures and protocols the Executive Director shall be responsible to keep procurement documents for solicitations, responses, and justifications for non-competitive procurements. The Executive Director shall also be responsible to maintain copies of vendor contracts, scope of services provided, payment terms, and the minutes of all Board approvals, as required.”

Auditor Comment: As previously stated, the current Executive Director’s contract does not outline his responsibilities. Further, the 47th Street BID’s revised By-laws and Financial and Administrative Procedures do not require the Executive Director to maintain any of the above-mentioned documentation. Therefore, we urge the 47th Street BID to maintain procurement documentation and copies of vendor contracts and invoices.

The 47th Street BID Board Did Not Comply with Conflict of Interest Requirements

NPCL §715-a(a) states that “the board shall adopt, and oversee the implementation of, and compliance with, a conflict of interest policy to ensure that its directors, officers and key persons act in the corporation's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in section seven hundred fifteen of this article.” Further, NPCL §715-a(b) states that the conflict of interest policy shall include, among other things,

- (1) a definition of the circumstances that constitute a conflict of interest;
- (2) procedures for disclosing a conflict of interest or possible conflict of interest to the board or to a committee of the board, and procedures for the board or committee to determine whether a conflict exists.

In addition, NPCL §715-a(c) states that the conflict of interest policy shall require that before the initial election of any director, and annually thereafter, the director complete and file a written statement disclosing certain prescribed positions, interests, and transactions in which the director “might have a conflicting interest.”

The 47th Street BID’s Administrative Personnel Guidelines also state that “[e]mployees shall not have direct or indirect financial interests in or relationship with, any firm, person or other entity that has a business, financial or other relationship with the BID.” However, the 47th Street BID did not implement a written conflict of interest policy to ensure that its directors, officers, and key

persons act in the corporation's best interest and comply with applicable legal requirements, including the completion and filing of written statements disclosing potential conflicts of interest.

As a result of the BID's failure to implement a conflict of interest policy as required by NPCL, 47th Street BID directors, officers, and employees, including a Board officer and former Executive Director, may not have disclosed possible conflicts of interest to the Board. As previously stated, the 47th Street BID rents space in Building 1 for its administrative office and provides security services to Building 1. A Board officer, who controls all aspects of the BID's security program, and two other Board members own and operate businesses in Building 1.

Additionally, during the course of our audit, the Board became aware of and informed us of the following possible conflicts of interest involving the former Executive Director, the former Executive Assistant, and a consultant:

- The former Executive Assistant is married to the former Executive Director's son—i.e., the former Executive Assistant is the former Executive Director's daughter-in-law.
- The former Executive Director's son, who is also the former Executive Assistant's husband, was paid \$70,500 for Fiscal Year 2017 for editorial work on the BID's monthly newsletter, distributing flyers and promotional materials, and setting up furniture for events.
- The former Executive Assistant and her husband, who is also the former Executive Director's son and a 47th Street BID consultant, live in the former Executive Director's rent-stabilized apartment for which they may receive a financial benefit of reduced rent.

The above-detailed familial and financial relationships were prohibited by the 47th Street BID's Administrative Personnel Guidelines and should have been disclosed. Further, the familial and financial relationships coincided with the former Executive Director issuing unauthorized and inadequately supported payments to the former Executive Assistant (his daughter-in-law) and consultant (his son). As previously mentioned, the former Executive Director improperly processed unauthorized payments for the former Executive Assistant totaling \$50,529 for Fiscal Year 2017, and made payments to the consultant totaling \$70,500 for Fiscal Year 2017 that were not supported by a contract detailing the scope of services, payment terms, and Board approvals as required by the BID's own procedures. Further, the payments were not supported by invoices that adequately detailed the services that were provided.

After we presented our findings to the 47th Street BID, the Board Chair and the President stated that the 47th Street BID implemented a conflict of interest policy after the period our audit covered and was drafting annual conflict of interest forms. On April 11, 2019, we requested that the 47th Street BID provide us with its conflict of interest policy and draft annual conflict of interest form. At the exit conference on August 20, 2019, the 47th Street BID provided us with its Conflict of Interest Policy and the Annual Disclosure Questionnaire. On August 21, 2019, we requested that the 47th Street BID provide us with documentation to show that: (1) the Board approved the Conflict of Interest Policy; (2) Board members affirmed that they read and agreed to comply with the Conflict of Interest Policy; and (3) the Board distributed annual Conflict of Interest questionnaires to Board members. However, the 47th Street BID did not provide us with those documents.

47th Street BID Response: "The former Executive Director and former Executive Assistant in violation of the 47th Street BID's policies and procedures failed to disclose that the individual known as the 'writer' in the Audit Report was the former Executive Director's adopted son, and married to his Executive Assistant. The Board was unaware of these familial relationships and only learned of them upon discovering adoption paperwork while

cleaning out the former Executive Director's office following his resignation. Immediately upon discovery of these adoption documents they were disclosed and shared with the New York City Comptroller's Office."

Recommendations

The 47th Street BID should:

17. Immediately adopt and oversee the implementation of a conflict of interest policy that includes, at minimum, the provisions set forth in NPCL 715-a(b);

47th Street BID Response: "The 47th Street Board has now implemented a conflict of interest policy in compliance with NPCL §715-a in that it has adopted and will oversee the implementation and compliance with, a conflict of interest policy to ensure that its directors, officers and employee(s) act in the corporation's best interests and comply with applicable legal requirements. It will maintain conflict of interest disclosures of all directors, officers and employee(s). It shall be the responsibility of all Board members, officers, directors, and employees to comply with the conflict of interest policies annually. Any Board member, director, or employee found to be non-compliant will be subject to termination."

Auditor Comment: The 47th Street BID's Conflict of Interest Policy does not include each of the required provisions cited in NPCL 715-a(b). Specifically, the BID's Conflict of Interest Policy does not include the following: (1) procedures for the board or committee to determine whether a conflict exists; (2) requirement that the resolution of the conflict be documented in the corporation's records; and (3) procedures for addressing and documenting related party transactions. Therefore, we urge the 47th Street BID to amend its conflict of interest policy to include the above-mentioned provisions.

18. Obtain annually and maintain conflict of interest disclosures for all directors, officers, and employees; and
19. Ensure that its directors, officers, and employees comply with the conflict of interest policy.

47th Street BID Response to Recommendations 18 and 19:

"At the exit conference on August 20, 2019 the 47th Street BID provided to the Comptroller's Office its Conflict of Interest Policy and its Annual Disclosure Questionnaire. The Board has provided the Comptroller's Office with board minutes that the Board has approved the Conflict of Interest Policy, that Board members have read and agreed to comply with the Conflict of Interest Policy, and that annually conflict of interest questionnaires have been distributed to the Board."

Auditor Comment: As previously stated, on August 21, 2019, we requested that the 47th Street BID provide us with documentation to show that: (1) the Board approved the Conflict of Interest Policy; (2) Board members affirmed that they read and agreed to comply with the Conflict of Interest Policy; and (3) the Board distributed annual Conflict of Interest questionnaires to Board members.

In response, the 47th Street BID provided us with only Board meeting minutes from August 26, 2019 which state that "the BID has produced a Conflict of Interest

policy that all Board members must sign and return annually, along with an Annual Disclosure survey.” The Board meeting minutes did not document that the Board voted to approve the Conflict of Interest Policy. In addition, the BID did not provide us with signed affirmations that Board members read and agreed to comply with the Conflict of Interest Policy and documentation to show that Conflict of Interest questionnaires were distributed to Board members.

The 47th Street BID Board May Include Members Who Do Not Own or Lease and Occupy Space in the District

As previously mentioned, the 47th Street BID Board has five classes of members: commercial property owners (Class A); commercial tenants (Class B); residential tenants (Class C); public official appointees (Class D); and other interested parties (Class E). Section 2.1 of the 47th Street BID By-Laws define Class A and B members as follows.

Class A Owners of record of real property in the District or such other persons as are registered with the City of New York to receive real property tax bills for property located in the District. . . **Class B** Tenants who are occupants pursuant to a lease of commercial space within the District.

Further, § 4.1 of the 47th Street BID By-Laws states that, “In no event, shall the number of directors elected from Class A constitute less than a majority of the entire Board.”

Based on the 47th Street BID Board Membership list included in the Fiscal Year 2017 Annual Meeting Minutes, the Board consisted of 39 Board members—22 Class A members, 10 Class B members, 1 Class C member, 4 Class D members, and 2 Class E members. We reviewed members’ business affiliations and researched business addresses and Department of Finance property records. Of the 10 Class B members, it appears that 2 members did not lease and occupy commercial space in the District. Those two members were affiliated with businesses that were located in Building 1, which as previously mentioned is not located in the District. In addition, of the 22 Class A members, we could not determine whether 7 members owned or were registered with the City to receive real property tax bills for real property in the District.

As a result, we could not be reasonably assured that only eligible members participated in matters relating to the 47th Street BID financial and operating practices and property owners who pay assessments constitute the majority of Board members, as required.

After we presented our findings to the 47th Street BID, the Board Chair and the Board President stated that they would provide us with documentation to show that Board members owned or leased and occupied space in the District. On April 11, 2019, we requested that the 47th Street BID provide us with such documentation. In response, the 47th Street BID provided us with a list of its current Board members and their class, business affiliation, and business address. However, the 47th Street BID did not provide us with documentation to show that Class A and B Board Members owned or leased and occupied space within the District, respectively.

After our exit conference on August 20, 2019, the 47th Street BID provided us with a memorandum from the current Executive Director stating, “Commercial titles and leases are generally transacted in the name of a corporation or LLC’s, not in the name of the individual. Even in the very unlikely event that members of our board would agree to share these sensitive documents, or related tax returns, the absence of their actual names means they would do little to verify anyone’s ownership or leaseholder status.”

The NYC Administrative Code §25-414(b) and the 47th Street BID By-Laws state that the Board shall be composed of representatives of owners and tenants within the district and that not less than a majority of its members shall represent owners. Therefore, the 47th Street BID should maintain documentation to show that Class A and B Board Members owned or leased and occupied space within the District, respectively.

Recommendations

The 47th Street BID should:

20. Review member information to ensure that individuals are qualified for membership in each of their respective classes; and
21. Ensure that property owners who pay assessments comprise the majority of the Board.

47th Street BID Response to Recommendations 20 and 21: “All class A and class B members of the Board own or lease and occupy space within the District.

The 47th Street BID has and does its due diligence on members of the Board of Directors and maintains as such the names and affiliated business addresses of owners of both class A and class B members. DSBS has also been involved in the process and understands that properties may be owned under corporate names or LLC’s where names of individuals are not disclosed or publicly available. There are also members of the Board including the Board Chair that maintain more than one address. Of the 39 Board members of the 47th Street BID, a clear majority of 22 are class A members which is in full compliance with the BID’s By-laws.”

Auditor Comment: As previously stated, the NYC Administrative Code §25-414(b) and the 47th Street BID By-Laws state that the Board shall be composed of representatives of owners and tenants within the district and that not less than a majority of its members shall represent owners. Therefore, the 47th Street BID should maintain documentation to show that Class A and B Board Members owned or leased and occupied space within the District, respectively. In the absence of such documentation, we, along with the 47th Street BID and DSBS, cannot be assured that Class A and B Board members do in fact own or lease and occupy space within the District and that owners constitute a majority of the Board.

Contrary to the 47th Street BID’s assertion, DSBS agreed to consider measures to ensure that individuals qualify for membership in each of their respective classes. In its response, DSBS stated that “[i]n consultation with the City’s Law Department, SBS will consider adding additional provisions to the 47th Street [BID] contract in light of the findings issued in this draft report. These additional provisions may include, for example: annual submissions of registered members; [and] verification documents of eligibility status of registered members.”

The 47th Street BID Board Did Not Fill Board Officer Vacancies

Section 5.1 of the 47th Street BID By-Laws states that

The Directors shall elect the officers of the corporation. Such officers shall be:

- a. Chairman
- b. Vice Chairman
- c. President
- d. Vice President
- e. Treasurer
- f. Secretary

And shall exercise the powers and perform the duties designated in the by-laws and such other duties that usually pertain to the respective officers or as are properly delegated or assigned to them from time to time by the Board of Directors. Each officer shall hold office for such term as shall be prescribed by the Board and until his or her successor has been elected.

However, the 47th Street BID Board does not have a Vice Chairman and Vice President. Based on the 47th Street BID's monthly newsletter, the Board Vice Chairman and Vice President resigned from the Board on July 2015 and March 2014, respectively. The Board did not elect successors before the Vice Chairman and Vice President resigned and have yet to hold elections to fill those positions.

After we presented our findings to the 47th Street BID, the Board Chair and President stated that Board Vice Chairman and Vice President positions were eliminated. On April 11, 2019, we requested that the 47th Street BID provide us with Board minutes or other documentation to show that the two positions were eliminated. On August 26, 2019, the 47th Street BID provided us with updated By-Laws to show that the two positions were eliminated. However, the 47th Street BID did not provide us with documentation to show that the Board approved the updated By-Laws.

Recommendation

The 47th Street BID should:

- 22. Immediately hold elections to fill the Board Vice Chairman and Vice President positions or, in the alternative, take required action to eliminate the positions.

47th Street BID Response: "The positions of Vice President and Vice Chair were eliminated in 2014 and 2015 respectively; the elimination of these two positions is noted in the 47th Street BID's updated By-laws and has been ratified by the Board.

On August 26, 2019 the 47th Street BID provided the Comptroller's Office with its updated By-laws which documents the elimination of the Vice President and Vice Chair positions."

The 47th Street BID Board Did Not Maintain Minutes of Board Committee Meetings

NPCL § 621(a) states,

Except as otherwise provided herein, every corporation shall keep, at the office of the corporation, correct and complete books and records of account and minutes of the proceedings of its members, board and executive committee, if any. . . . Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time.

Further, § 5.02 of the contract between the 47th Street BID and the City states that the “The [BID] shall maintain complete and accurate records in readily accessible files on all its activities in connection with this Contract. Such records shall include . . . minutes of all meetings of the [BID] and its committees.”

Section 4.4 of the 47th Street BID By-laws states that the Board “may designate from among its members an executive committee and other standing committees. . . . Each committee shall serve at the pleasure of and be responsible to the board. It shall keep minutes of its meetings and report the same to the Board.” The BID informed us that for Fiscal Year 2017 the Board had Executive, Audit, Finance, and Hiring Committees. Further, the BID Board minutes reference a Nominating Committee.

In its IRS Form 990, Part VI, Section A, the 47th Street BID reported that it contemporaneously documented the meetings held or written actions undertaken during the year by Board committees. However, the 47th Street BID did not provide us with any Board committee meeting minutes to document that meetings were held, and attendees, discussion, and actions taken at those meetings.

On April 11, 2019, we again requested that the 47th Street BID provide us with Board committee meeting minutes. However, the 47th Street BID did not provide us with requested documentation. Instead, the 47th Street BID provided us with documentation to show that it implemented policies to ensure that Board meeting minutes will be documented going forward. Specifically, the 47th Street BID provided us with a Document Retention and Destruction Policy and updated By-Laws on August 20, 2019 and August 26, 2019, respectively. The Document Retention and Destruction Policy states that Board and Committee meeting agendas and minutes must be retained permanently. In addition, the updated By-Laws, Section 4.6 states that “When practicable, the Executive Director shall keep minutes of members meetings, Board of Directors meetings, and committee meetings BID meetings. Should the Executive Director be unable to keep minutes, the task shall fall upon the committee Chair or whomever the committee Chair may designate.” However, the 47th Street BID did not provide us with documentation to show that the Board approved the Document Retention and Destruction Policy and updated By-Laws.

47th Street BID Response: “The former Executive Director was responsible to keep Board and Committee minutes and maintain copies of said minutes in the files located at the BID’s office. Following the Board’s discovery that the former Executive Director and former Executive Assistant failed to maintain the necessary documents the 47th Street BID updated its By-laws to include a document retention and document destruction policy that was Board approved on August 26, 2019.”

Auditor Comment: As previously stated, the 47th Street BID was affirmatively required to record and maintain Board meeting minutes. While the Board delegated that responsibility to the former Executive Director, the Board was ultimately responsible for ensuring that minutes were recorded and maintained.

Recommendation

The 47th Street BID should:

23. Maintain complete and accurate records of all Board and Board committee meetings. Such records should be in written form and include attendees, discussions, and actions taken at meetings.

47th Street BID Response: “On August 20, 2019 and August 26, 2019 the 47th Street BID provided the Comptroller’s Office with copies of its Document Retention and Destruction Policy and its updated By-laws. The Document Retention and Destruction Policy states that Board and Committee meetings agendas and minutes must be retained permanently. The updated By-laws also state that when practicable the Executive Director shall keep minutes of member meetings, Board of Director meetings, Committee meetings, and BID meetings. Additionally, should the Executive Director be unable to keep minutes the task shall fall upon the committee Chair or whomever the committee Chair may designate. Said minutes will be kept in both paper and electronic format and distributed electronically via email prior to each successive Board meeting for approval by the Board.”

The 47th Street BID Board Did Not Fulfill Its Fiduciary Duties

The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that “members of a board of directors must fulfill fiduciary duties to the organization and the public it serves. Those primary legal duties are commonly referred to as the duties of *care, loyalty and obedience*.” However, the 47th Street BID did not fulfill its fiduciary duties as detailed below.

The 47th Street Board Did Not Fulfill Its Duty of Care

Section 4.3 of the 47th Street BID By-Laws state that “[t]he business of the corporation shall be managed by its Board of Directors which shall provide, control and furnish general supervision of the corporation.” NPCL § 717(a) states that Board Directors “shall discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that in exercising the duty of care,

a responsible board of directors should, among other things,. . . .

√ Make sure there is a clear process for approval of major obligations such as fundraising, professional fees (including auditors), compensation arrangements and construction contracts. . . .

√ Make sure there is an ongoing actual to budget comparison with discrepancies explained. . . .

√ Ensure that the organization has addressed the sufficiency of its written internal financial controls and written policies that safeguard, promote and protect its

assets and that they are updated regularly, and has considered an employees', officers' and directors' fidelity bond to protect the organization from embezzlement.

However, as detailed above, the 47th Street BID Board did not have a clear process for approving compensation agreements, did not make sure that budget variances were explained, did not ensure that the 47th Street BID had effective internal controls to safeguard its assets, and did not obtain a fidelity bond to protect the organization from embezzlement and other fraudulent acts.

The 47th Street Board Did Not Fulfill Its Duty of Loyalty

The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that "Directors are charged with the duty to act in the interest of the corporation. This duty of loyalty requires that any conflict of interest, real or possible, be disclosed in advance of joining a board and when they arise. So that all members are aware of – and avoid - transactions in which the nonprofit's interests are not primary, New York law requires nonprofits to have a written 'conflicts of interest' policy."

As previously stated, the 47th Street BID rents space in Building 1 for its administrative office and provides security services to Building 1. A Board member, who controls all aspects of the BID's security program, and two other Board members own and operate businesses in Building 1. However, the 47th Street BID Board did not implement a written conflict of interest policy and did not document whether Board members disclosed and addressed possible conflicts of interest as required by NPCL §715-a.

The 47th Street Board Did Not Fulfill Its Duty of Obedience

The duty of obedience requires the Board to ensure that the organization complies with all applicable laws, rules, regulations, and standards and ultimately to ensure the organization's funds are used for their mission. The Office of the New York State Attorney General *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* states that a "board has a duty of obedience to ensure that the organization complies with applicable laws and regulations, its mission and its internal governance documents and policies. Further, § 7.04 of the contract between the 47th Street BID and DSBS states that "[t]he [BID] agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all applicable federal, state, and local laws, rules, regulations and orders, including the New York State Not-For-Profit Corporation Law. Failure to comply with these requirements may be determined by the Commissioner of SBS to constitute a breach of the material terms of the Contract under Article 8."

However, as detailed above, the 47th Street BID Board did not ensure that the BID complied with applicable laws, regulations, and standards and its own mission¹¹ and policies and procedures including:

- IRS standards regarding non-profit compensation,
- NPCL regarding oversight and conflict of interest,
- Comptrollers standards for personnel, timekeeping, payroll, and procurement cards,
- By-Laws regarding Board membership, vacancies, and minutes, and

¹¹ On its website, the 47th Street BID stated that its goal "is to make the Diamond District safer, cleaner and more beautiful for merchants and consumers who work and shop in the Diamond District."

- Its own Fiscal and Management and Procurement Procedures.

47th Street BID Response: “The 47th Street BID has updated its By-laws, policies and procedures to be contemporaneous with written financial controls and policies to safeguard, promote and protect the assets of the BID. The Board has implemented a conflict of interest policy in compliance with NPCL §715-a to ensure that its directors, officers and employee(s) act in the corporation’s best interests and comply with applicable legal requirements. The BID’s current Executive Director’s compensation was determined in full compliance with IRS non-profit compensation standards. Prior to the Comptroller’s Audit Report recommendations, the 47th Street BID changed its payroll provider and revised its By-laws regarding personnel and financial transactions. The revised By-laws now require that all hiring, payroll, benefit, and financial transactions only be authorized by duly named officers after approval by vote of the Executive Committee. The BID’s updated By-laws also require that any contract for the procurement of goods or services in excess of ten thousand dollars requires three competitive bids as per the guidelines of our current contract with DSBS.”

Auditor Comment: As detailed throughout the report, the 47th Street BID did not take appropriate corrective action to ensure that it fulfills its fiduciary duty of care and complies with applicable laws, regulations, and standards and its own mission and policies and procedures.

Recommendations

DSBS should:

24. Consider the findings of this report when evaluating the 47th Street BID’s past performance and making future contracting decisions.

DSBS’ Response: “In consultation with the City’s Law Department, SBS will consider adding additional provisions to the 47th Street DMA contract in light of the findings issued in this draft report. These additional provisions may include, for example: annual submissions of registered members; verification documents of eligibility status of registered members; minutes of all Board, Committee, and Membership meetings; copies of financial records and bank statements; district needs assessment or service satisfaction surveys; timekeeping and payroll reports; copies of IRS filings; among other provisions taken under advisement of DSBS Counsel.”

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

DSBS’ Response: “The DMA’s current contract expired on June 30, 2019. The new contract that the DMA will be signing has updated provisions in line with other DMAs. Further, SBS will consider the issues cited in this report and will determine if those issues are in breach of the new contract.”

The 47th Street BID Did Not Publicly Report Required Information on Its Website

Section 9.17 of the contract between the 47th Street BID and DSBS states that the BID “shall be required to create a website within one year of the execution of this Contract. Said website shall

be maintained and upgraded during the term of the Contract.” The contract also states, at minimum, what information the website shall contain. However, the 47th Street BID did not post on its website required information about its Board of Directors and management, finances, programs and services, and businesses served as detailed in the Table IV below.

Table IV

Comparison of Information Required
by the Contract and Information
Posted on the 47th Street BID’s
Website

Required Information	Posted on the 47 th Street BID’s Website
Contact information for BID office and manager	Partial - Office Number Only
Current list of the Board of Directors	No
Current boundaries of the District	Yes
Current list of the businesses within the District	No
Brief summary of the BID’s programs and services	Partial - States service type but does not provide service description or service levels
Annual report for the preceding fiscal year, including a review of past accomplishments and the goals and budget for current fiscal year	No
Audited financial statements from the preceding fiscal year	No
A list of current senior staff members of the BID	No
Detailed District map	No

As a result of the 47th Street BID’s failure to post required information, its members may not be aware of who is responsible for overseeing and managing the BID, who the BID is supposed to serve, and the BID’s annual goals, accomplishments, and budget. In addition, 47th Street BID members may not be aware of the BID’s financial condition, and programs and services.

After we presented our findings to the 47th Street BID, the 47th Street BID Board Chair and the President stated that the 47th Street BID is currently updating its website and prepared a draft request for proposals (RFP) for a new website designer. On April 11, 2019, we requested that the 47th Street BID provide us with the draft RFP and any other documents to show that the 47th Street BID is in the process of updating its website. On June 3, 2019, the 47th Street BID provided us with a RFP which stated that the BID’s goal is “for the redesigned website to go live [in] November 2019.” At the exit conference on August 20, 2019, the 47th Street BID provided us with a revised RFP which stated that the BID’s “expectation for the full redesigned website to go live is October 2019, with basic functionality and interface upgrade by September 2019.”

Recommendation

The 47th Street BID should:

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

47th Street BID Response: “[T]he specific recommendation of listing all 2600 businesses within the District is not practical and creates potential security risks. It is also important to note that the district is made up of both wholesale and retail businesses and some postings would be in violation of non-disclosure agreements (NDA’s) between building owners and some tenants who do not wish their respective locations or addresses be publicly disclosed.

In addition to its website the 47th Street BID publishes a monthly newsletter that contains the contact information for its Executive Director and a list of the BID's Board members. All monthly newsletters are also available in electronic format on the BID website including historical copies. The BID's website currently also contains a detailed map of the District and its boundaries. As discussed with the Comptroller's Office at its exit interview on August 20, 2019 the 47th Street BID has released a revised RFP to update its website. The Board is still in the initial stages of receiving responses. Due to the complexity of the RFP it is estimated it will take three to six months with Board approval to select the appropriate vendor or vendors. It will then take additional time to release the website publicly.”

Auditor Comment: As previously stated, Section 9.17 of the contract between the 47th Street BID and DSBS states that the BID shall be required to create a website and that the website shall contain, among other things, contact information for the BID office and manager, a list of Board members, and a list of the businesses within the District. Therefore, the 47th Street BID should comply with its contract and include such information directly on its website unless businesses owners request that their information not be disclosed.

Contrary to the 47th Street BID's assertion, its website does not contain a detailed map of the District and its boundaries.

DSBS Did Not Ensure That the 47th Street BID Included Required Budgetary Information in Its Annual Report

As previously stated, § 5.04(b) of the contract between the 47th Street BID and DSBS requires the 47th Street BID 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, the 47th Street BID reported that expenses for 6 programs had budget variances greater than 10 percent. However, the 47th Street BID did not provide narrative explanations for those variances, as required.

We asked DSBS to provide us with the 47th Street BID'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 the 47th Street BID 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.

At the exit conference on August 20, 2019, DSBS officials stated that they are responsible for overseeing 76 BIDs and that there are logistical challenges to reviewing annual reports and ensuring that budget variances are accompanied by narrative explanations. DSBS officials also informed us that the new contract with the 47th Street BID does not require that budget variances greater than 10 percent be accompanied by narrative explanations.

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 DMAs, and put it into place as existing contracts expired. New contract language regarding annual reports does not require a description of budget variances great 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."

Recommendation

DSBS should:

27. 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. The 47th Street BID's budgeted and actual expenses in Fiscal Year 2017 had variances greater than 10 percent. However, in its Annual Report, the 47th Street BID did

not explain budget variances to its members and the DSBS Commissioner, as required by the prior contract.

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 47th Street BID's financial and operating practices and applicable federal, state, and local laws, rules, and regulations, we requested and reviewed:

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

We also requested and reviewed the 47th Street BID's audited financial statements, IRS 990 Forms, and prior audits and reviews, including prior Comptroller's Office audit reports. In addition, we met with the 47th Street BID Board Chair, Board President, the former Executive Director, and the former Executive Assistant. We documented those interviews in memoranda.

To determine whether the 47th Street BID provided supplemental services, we conducted unannounced observations of security and sanitation workers on three days in August and October 2018. On each of the three observation days, two auditors canvassed the BID between 10:00 a.m. and 6:00 p.m.

To determine whether property owners were satisfied with supplemental services, we sent a survey to all 174 BID property owners and asked them to rate their level of support for the Plan and their satisfaction with 47th Street BID services— 31 (17.8 percent) responded.

To determine whether the 47th Street BID provided supplemental services in accordance with its budget, we reviewed the 47th Street BID Annual Report, requested explanations for variances

between budgeted and actual expenditures from the 47th Street BID and DSBS, and reviewed Board minutes.

In addition, we compared the former Executive Director's compensation to other similarly sized BID Executive Directors and Presidents' compensation. We considered BIDs to be similarly sized if they had both revenues and expenses of between \$1 and \$1.5 million as reported on their IRS Form 990.

To determine whether 47th Street BID PS expenses were reasonable, appropriate, adequately supported, and authorized, we reviewed the former Executive Director's employment contract and third-party payroll service provider reports detailing payments made to the former Executive Director and the former Executive Assistant. We also met with the 47th Street BID Board Chair and the President to discuss employee compensation and benefits and reviewed Board minutes and correspondence authorizing personnel actions including raises and bonuses.

To determine the accuracy and validity of the computer-processed information from the 47th Street BID general ledger, we randomly selected 50 of the 697 transactions in Fiscal Year 2017 from the operating account and 50 of the 259 transactions from the monthly newsletter account and traced them to the 47th Street BID bank statements. We also randomly selected a total of 120 transactions (5 from each month from each account) 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 47th Street BID General Ledger for Fiscal Year 2017 reported 777 OTPS expenditures, totaling \$1,015,421.

We selected the payments made to the highest paid vendor from each expense category other than security expenses, totaling \$452,707 which were tested separately. In total, we sampled 171 OTPS expenditures, totaling \$292,821.

To determine whether 47th Street BID complied with its Procurement Procedures and Fiscal Management Policies and Procedures, and whether its OTPS expenditures were reasonable, appropriate, adequately supported, and authorized, we requested and reviewed procurement solicitations and responses, vendor selection, sole source justification memos and approvals, receipts, invoices, contracts, and payment documentation.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for us to evaluate the 47th Street BID's controls over its PS and OTPS expenditures.

Additionally, we reviewed timekeeping and payroll records for all NYPD security services provided during Fiscal Year 2017. We determined whether payments made to the NYPD and police officers were correct (*i.e.*, that pay rates were in accordance with the contract and that the number of hours worked were calculated correctly) and adequately supported by sign-in sheets, NYPD Paid Detail Cards, NYPD invoices, 47th Street BID payroll calculations, and electronic check disbursements. We also determined whether police officers were assigned to locations within the District that is defined as 47th Street BID.

We requested and reviewed the 47th Street BID By-laws and membership records to determine whether the Board had the required number of members and officers and whether members were qualified to serve on the Board. We also requested and reviewed Board and Board committee minutes to determine whether the Board held and documented meetings as required.



47th Street Business Improvement District
580 Fifth Avenue
New York, New York 10036
Phone 212-302-5739

September 23, 2019

Via Email mlanda@comptroller.nyc.gov

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

Re: Management Response to the Audit Report of the
Financial and Operating Practices of the 47th Street
Business Improvement District (FK18-089A)

Dear Ms. Landa:

Please find the attached response of management of the 47th Street Business Improvement District to the Audit Report dated September 9, 2019. We have responded to each of the audit findings, in the order in which they appear in the report, and then, directly below to the audit recommendations related to each finding.

We would also like to thank you for your professionalism and courtesy throughout this process.

Should you require any additional information please do not hesitate to contact me.

Respectfully yours,



Avi Fertig
Executive Director

Management response to the findings and recommendations of the Audit Report on the Financial and Operating Practices of the 47th Street Business Improvement District

Specific audit findings and recommendations:

Regarding the auditors' finding that the 47th Street BID did not Provide Supplemental Services in Accordance with the Contract and Spent funds on Supplemental Security Services that did not principally Benefit Property within the District:

Response: The 47th Street BID continuously consults with Local, State, and Federal Law Enforcement Agencies along with professional security consultants to implement a multi-layered, multi-pronged security apparatus based upon the most current Threat Matrix available. Based upon this ever-changing Threat Matrix and real-time intelligence received from Local, State, and Federal Law Enforcement, the BID implements the District's "Security Plan". As is common practice in any security apparatus, and in keeping with security "Best Practices", methods, protocols or specific geographical lines should never be disclosed or discussed in a public forum to ensure the security plan and its implementation remain secure and effective as possible. It is important to note that the Diamond District has a business value to the City of New York in excess of \$24.2 billion dollars per year. In keeping with best practices, security procedures cannot be defined by hard geographic limitations as alluded to in this report. Recommendations suggested in the Comptroller's Audit Report are based upon observations of just three (3) days over a two (2) month period of time and then inferred for a yearlong period included in the Audit. Making these extrapolations after only three (3) days of observations does not provide a meaningful semblance of the actual security provided within the District.

Recommendation 1: The 47th Street BID should cease providing Supplemental Security Services that do not principally benefit property within the District.

Response: The District is primarily responsible for two block faces on West 47th Street and two corners of 6th Avenue but it is often necessary to have security personnel in areas that allow them to best secure the District from a said vantage point. Static implementation of security based upon hard district boundaries would also compromise recommended security protocols from our Local, State, and Federal Law Enforcement Agencies. Our security needs are ever evolving based on Real-time Intelligence. Additionally, property as defined as outside the District by the Audit Report are principally within the BID's responsibilities to maintain as contracted with DSBS. It is important to note that we are responsible to maintain the light poles in front of building 1 along with paying the electric and maintenance on these same light poles as well as cleaning and maintaining the areas in front of building 1 on West 47th Street.

Recommendation 2: Immediately seek reimbursement for security services that were incurred for Building 1 but were not paid by the property owner.

Response: The 47th Street BID is a unique BID in that the businesses that makeup the District are primarily in the diamond and jewelry business or directly or indirectly support the diamond and jewelry industry. Given the high financial value of the District tenants and property owners

the 47th Street BID has a unique responsibility when determining how we beneficially provide safety and security to district. The 47th Street BID has always been fully reimbursed for security provided to a specific building that is proximate to the District including over 100 feet within the confines of West 47th Street. This security arrangement was voted on and approved by the full Board on at least two occasions and all funds expended by the 47th Street BID under this security arrangement have already been fully reimbursed. Documentation regarding proof of reimbursement payments were requested and have been provided to the Comptroller's Office.

Recommendation 3: Separate the duties for administering the security program or implement compensating controls and update policies and procedures.

Response: The duties for security have been administered in accordance with "Best Practices" and with oversight, diligence, and in consultation with Local, State and Federal Law Enforcement and through relationships of trust that have been built over many years and ongoing working relationships. Our By-law, policies and procedures have been updated accordingly.

The 47th Street BID did not provide supplemental services in accordance with its budget.

Response: The 47th Street BID has always followed a practice to discuss the narrative of budget variances at our annual public meeting. It is important to note that the legal definition of "Narrative" is defined as either written or spoken, as per this legal guidance the BID has always given a verbal narrative at its annual public meeting which followed the requirements of its former contract with DSBS. In the past it has always been done in this manner so that members of the BID could ask questions and receive cogent answers to address any of their concerns. It is further important to note, as acknowledged by the Comptroller's Audit Report that this requirement of a narrative explanation has been eliminated from its current contract with DSBS.

Recommendation 4: Monitor budgeted and actual expenditures to identify variances.

Response: The Executive Director's duties and responsibilities under his current contract include tracking variances between budgeted and actual expenditures and to report such variances to the Board.

Recommendation 5: Ensure that the 47th Street BID Executive Director obtains the Board's approval for budget modifications; and

Recommendation 6: Ensure that its Annual Report includes narrative explanations for budget variances greater than ten percent.

Response: The current Executive Director has been instructed and is fully aware that all budget modifications require Board approval. As acknowledged by the Comptroller's Audit Report a narrative explanation requirement for budget variances has been eliminated from our current contract with DSBS.

The 47th Street BID did not maintain adequate controls over its expenses and comply with applicable standards and regulations, including IRS compensation Standards.

Response: In June of 2018 the Board opened an internal investigation into the practices of the former Executive Director and his Executive Assistant, during that investigation the former Executive Director resigned and his Executive Assistant was terminated. The Board disclosed all findings of maleficence as they became aware of them to the New York City Comptroller's Office. In an effort to be fully transparent the New York City Comptroller's Office has been given unfettered access to all BID files and documents. The current Executive Director's compensation was determined in full compliance with IRS non-profit compensation standards, and is in fact contemporaneous with the salaries of similarly sized BID executive directors published in Table II of the Audit Report.

Recommendation 7: Document employee compensation in accordance with IRS regulations.

Response: The process for determining the compensation for the current Executive Director was in full compliance with IRS regulations. It included a review and approval in advance by an executive committee authorized by the Board. This hiring committee reviewed and relied upon appropriate comparability data regarding compensation of executive directors of other New York City BID's. It also documented the basis for its determination. It is also important to note that the 47th Street BID is made up of two funding components, one related to tax revenue levies in the amount of \$900,000 which encompasses the BID activities and the other is our newsletter that is published each month and is supported by paid advertising. As such Table II of the Comptroller's Audit Report is misleading in that it only reports the total compensation of the 47th Street BID's Executive Director and does not breakdown city funded dollars and other sources of revenue. Part of our current Executive Director compensation is attributed to outside funding sources provided by our monthly newsletter revenue.

The 47th Street BID did not comply with Comptroller's standards for personnel, timekeeping, and payroll functions.

Response: The 47th Street BID has one employee, the current Executive Director. He is a salaried employee, by definition as a salaried employee he is not paid an hourly wage. The current Executive Director is an adult professional, hired to perform a job function under the supervision of competent directors and officers of the 47th Street BID. His compensation was established as part of the budget process and is paid in equal weekly installments, and not based upon a set number of hours worked. All payroll, benefit and financial transactions can only be authorized by duly named officers after approval by vote of the Executive Committee

Recommendation 8: Maintain records of employee attendance and time.

Response: The 47th Street BID has just one employee, but is working with the DSBS to establish a mutually acceptable method to monitor the time of the Executive Director who is a salaried employee.

Recommendation 9: Maintain records to show that personnel actions, such as hiring, new employees, enrolling employees in benefit plans, and changing employees' compensation, are properly approved.

Response: Prior to the Comptroller's Audit Report recommendations, the 47th Street BID changed its payroll provider on or about December of 2018 and revised its By-laws regarding personnel and financial transactions. The revised By-laws now require that all hiring, payroll, benefit, and financial transactions only be authorized by duly named officers after approval by vote of the Executive Committee¹.

Recommendation 10: Monitor payroll transactions, such as salaries and bonuses, to ensure that they have been properly approved.

Response: The 47th Street BID's revised By-laws now require that any and all payroll transactions can only be authorized by duly named officers after approval by vote of the Executive Committee. Additionally, all payroll transactions are now monitored by our independent bookkeeper and accountant who both have viewer access of all said transaction.

Recommendation 11: Obtain a fidelity bond or insurance to protect the organization from embezzlement and other fraudulent acts.

Response: As required by our contract with DSBS the 47th Street BID is currently in full compliance with all of insurance requirements set forth by DSBS. That said the 47th Street BID has inquired with its insurance providers regarding insurance for fraudulent acts such as embezzlement. It will continue to seek further guidance from DSBS to address the Comptroller's recommendation on this matter.

The 47th Street BID did not implement controls over debit card expenditures, did not comply with its own competitive purchasing requirements and its expenditures were not adequately supported or properly authorized.

Response: On or about June 2018 the 47th Street BID canceled its debit cards and has provided the Comptroller's Office with a letter from the Board Treasurer, who is also a Valley Bank officer that the debit card accounts are closed. The 47th Street BID has updated its By-laws to include procedures to reflect how purchases are made and for the retention of necessary documentation including the review and monitoring of said transactions. Within the updated By-laws, procedures and protocols the Executive Director will maintain copies of all vendor contracts, scope of services provided, payment terms, and the required Board approvals. It should also be noted that the Executive Director is prohibited of having a BID Debit or Credit Card under our By-laws.

Recommendation 13: Independently review and monitor purchase and payment documentation.

Response: The 47th Street BID's updated By-laws require review and monitoring of the competitive process for the procurement and payment of goods and services in compliance with our current contract with DSBS.

¹ The 47th Street BID's updated By-laws were most recently ratified by the Executive Committee and approved by the Board on August 26, 2019. A copy of the minutes of these two meetings has been provided the Comptroller's Office under separate cover.

Recommendation 14: Competitively procure goods and services whenever possible.

Response: The 47th Street BID's updated By-laws require a competitive process for the procurement and payment of goods and services whenever possible in compliance with our current contract with DSBS.

Recommendation 15: Maintain procurement documentation, including but not limited to bid solicitations, responses, procurement forms documenting the rationale for making the award, and non-competitive procurement justification memos to the 47th Street BID Board: and

Recommendation 16: Maintain copies of vendor contracts and invoices documenting the scope of services, payment term and authorized approvals.

Response: Within the updated By-laws, procedures and protocols the Executive Director shall be responsible to keep procurement documents for solicitations, responses, and justifications for non-competitive procurements. The Executive Director shall also be responsible to maintain copies of vendor contracts, scope of services provided, payment terms, and the minutes of all Board approvals, as required.

The 47th Street BID Board did not comply with Conflict of Interest Requirements

Response: The former Executive Director and former Executive Assistant in violation of the 47th Street BID's policies and procedures failed to disclose that the individual known as the 'writer' in the Audit Report was the former Executive Director's adopted son, and married to his Executive Assistant. The Board was unaware of these familial relationships and only learned of them upon discovering adoption paperwork while cleaning out the former Executive Director's office following his resignation. Immediately upon discovery of these adoption documents they were disclosed and shared with the New York City Comptroller's Office. The Board has now implemented a conflict of interest policy in compliance with NPCL §715-a in that it has implemented and will oversee the execution and compliance with a conflict of interest policy to ensure that its directors, officers and employee(s) act in the corporation's best interests and comply with applicable legal requirements.

Recommendation 17: Immediately adopt and oversee the implementation of a conflict of interest policy that includes, at a minimum, the provisions set forth in NPCL 715-a(b).

Response: The 47th Street Board has now implemented a conflict of interest policy in compliance with NPCL §715-a in that it has adopted and will oversee the implementation and compliance with, a conflict of interest policy to ensure that its directors, officers and employee(s) act in the corporation's best interests and comply with applicable legal requirements. It will maintain conflict of interest disclosures of all directors, officers and employee(s). It shall be the responsibility of all Board members, officers, directors, and employees to comply with the conflict of interest policies annually. Any Board member, director, or employee found to be non-compliant will be subject to termination.

Recommendation 18: Obtain annually and maintain conflict of interest disclosures for all directors, officers and employees; and

Recommendation 19: Ensure that its directors, officers, and employees comply with the conflict of interest policy.

Response: At the exit conference on August 20, 2019 the 47th Street BID provided to the Comptroller's Office its Conflict of Interest Policy and its Annual Disclosure Questionnaire. The Board has provided the Comptroller's Office with board minutes that the Board has approved the Conflict of Interest Policy, that Board members have read and agreed to comply with the Conflict of Interest Policy, and that annually conflict of interest questionnaires have been distributed to the Board.²

The 47th Street BID Board may include members who do not own or lease and occupy space in the District.

Response: All class A and class B members of the Board own or lease and occupy space within the District

Recommendation 20: Review membership information to ensure that individuals are qualified for membership in each of their respective classes; and

Recommendation 21: Ensure that property owners who pay assessments comprise the majority of the Board.

Response: The 47th Street BID has and does its due diligence on members of the Board of Directors and maintains as such the names and affiliated business addresses of owners of both class A and class B members. DSBS has also been involved in the process and understands that properties may be owned under corporate names or LLC's where names of individuals are not disclosed or publicly available. There are also members of the Board including the Board Chair that maintain more than one address. Of the 39 Board members of the 47th Street BID, a clear majority of 22 are class A members which is in full compliance with the BID's By-laws.

The 47th Street BID did not fill Board Officer Vacancies.

Response: The positions of Vice President and Vice Chair were eliminated in 2014 and 2015 respectively; the elimination of these two positions is noted in the 47th Street BID's updated By-laws and has been ratified by the Board.

Recommendation 22: Immediately hold elections to fill the Board Vice Chairman and Vice President positions or in the alternative, take required action to eliminate the positions

Response: On August 26, 2019 the 47th Street BID provided the Comptroller's Office with its updated By-laws which documents the elimination of the Vice President and Vice Chair

² The 47th Street BID's Conflict of Interest Policy and Annual Disclosure Questionnaire were approved by the Board on August 26, 2019.

positions. Additionally, as the Comptroller's Office is aware elections of Board members may only be done at our annual public meeting.

The 47th Street BID did not maintain minutes of Board Committee meetings

Response: The former Executive Director was responsible to keep Board and Committee minutes and maintain copies of said minutes in the files located at the BID's office. Following the Board's discovery that the former Executive Director and former Executive Assistant failed to maintain the necessary documents the 47th Street BID updated its By-laws to include a document retention and document destruction policy that was Board approved on August 26, 2019.

Recommendation 23: Maintain complete and accurate records of all Board and Board Committee meetings. Such records should be in written form and include attendees, discussions, and actions taken at meetings.

Response: On August 20, 2019 and August 26, 2019 the 47th Street BID provided the Comptroller's Office with copies of its Document Retention and Destruction Policy and its updated By-laws. The Document Retention and Destruction Policy states that Board and Committee meeting agendas and minutes must be retained permanently. The updated By-laws also state that when practicable the Executive Director shall keep minutes of member meetings, Board of Director meetings, Committee meetings, and BID meetings. Additionally, should the Executive Director be unable to keep minutes the task shall fall upon the committee Chair or whomever the committee Chair may designate. Said minutes will be kept in both paper and electronic format and distributed electronically via email prior to each successive Board meeting for approval by the Board.

The 47th Street BID did not fulfill its Fiduciary Duties.

Response: The 47th Street BID has updated its By-laws, policies and procedures to be contemporaneous with written financial controls and policies to safeguard, promote and protect the assets of the BID. The Board has implemented a conflict of interest policy in compliance with NPCL §715-a to ensure that its directors, officers and employee(s) act in the corporation's best interests and comply with applicable legal requirements. The BID's current Executive Director's compensation was determined in full compliance with IRS non-profit compensation standards. Prior to the Comptroller's Audit Report recommendations, the 47th Street BID changed its payroll provider and revised its By-laws regarding personnel and financial transactions. The revised By-laws now require that all hiring, payroll, benefit, and financial transactions only be authorized by duly named officers after approval by vote of the Executive Committee. The BID's updated By-laws also require that any contract for the procurement of goods or services in excess of ten thousand dollars requires three competitive bids as per the guidelines of our current contract with DSBS.

The 47th Street BID did not Publicly Report Required Information on its Website.

Response: The 47th Street BID has released an RFP to update its website to include most of the Comptroller's recommendations. However, the specific recommendation of listing all 2600 businesses within the District is not practical and creates potential security risks. It is also important to note that the district is made up of both wholesale and retail business and some postings would be in violation of non-disclosure agreements (NDA's) between building owners and some tenants who do not wish their respective locations or addresses be publicly disclosed.

Recommendation 26: Immediately post on its website current information required by its contract including: the Executive Directors contact information, a list of Board members, District boundaries, a list of businesses within the District, a brief summary of the programs and services, Annual Report, audited financial statements and a detailed District map.

Response: In addition to its website the 47th Street BID publishes a monthly newsletter that contains the contact information for its Executive Director and a list of the BID's Board members. All monthly newsletters are also available in electronic format on the BID website including historical copies. The BID's website currently also contains a detailed map of the District and its boundaries. As discussed with the Comptroller's Office at its exit interview on August 20, 2019 the 47th Street BID has released a revised RFP to update its website. The Board is still in the initial stages of receiving responses. Due to the complexity of the RFP it is estimated it will take three to six months with Board approval to select the appropriate vendor or vendors. It will then take additional time to release the website publicly.



GREGG BISHOP
COMMISSIONER

DATE: September 23, 2019

TO: Hon. Marjorie Landa, Deputy Comptroller for Audit

CC: Gregg Bishop, Commissioner
Ismail Mohammed, Executive Director, Fiscal & Audit
Jeff Thamkittikasem, Director, Mayor's Office of Operations
George Davis III, Deputy Director, Mayor's Office of Operations

FROM: Michael Blaise Backer, Deputy Commissioner

RE: **Audit Report on the Financial and Operating Practices of the
47th Street Business Improvement District
FK18-089A**

Dear Deputy Comptroller Landa,

We are in receipt of the Audit Report on the Financial and Operations Practices of the 47th Street Business Improvement District (FK18-089A). In response to the draft financial audit of the 47th Street Business Improvement District dated July 31, 2019, please find below the Department of Small Business Services responses to the Office of the Comptroller's recommendations:

Recommendation 12: DSBS should require that BIDs obtain fidelity bonds or insurance to protect them from embezzlement and other fraudulent acts.

SBS Response: SBS will take this recommendation under advisement. Currently, SBS recommends as a best practice that DMAs carry Directors and Officers Insurance to cover the organization for losses or defense costs resulting from a legal action brought for alleged wrongful acts by directors and officers. Whereas fidelity bonds will cover losses incurred as a result of fraudulent acts by specified individuals or employees, this coverage may not be necessary for most activities of DMAs.

Recommendation 24: DSBS should consider the findings of this report when evaluating the 47th Street BID's past performance and making future contracting decisions.

SBS Response: In consultation with the City's Law Department, SBS will consider adding additional provisions to the 47th Street DMA contract in light of the findings issued in this draft report. These additional provisions may include, for example: annual submissions of registered members; verification documents of eligibility status of registered members; minutes of all Board, Committee, and Membership meetings; copies of financial records and bank statements; district needs assessment or service satisfaction surveys; timekeeping and payroll reports; copies of IRS filings; among other provisions taken under advisement of DSBS Counsel.



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COMMISSIONER

Recommendation 25: DSBS should give written notice to the 47th Street BID of its breach of conduct and ensure it cures issues cited in this report within a reasonable period of time.

SBS Response: The DMA's current contract expired on June 30, 2019,. The new contract that the DMA will be signing has updated provisions in line with other DMAs. Further, SBS will consider the issues cited in this report and will determine if those issues are in breach of the new contract.

Recommendation 27: 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 analyzes submitted annual reports for budgetary, program, and service impact information.

Additional SBS Response: Page 29 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 47th Street 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. 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', with a long horizontal line extending to the right.

Michael Blaise Backer
Deputy Commissioner