City of New York

OFFICE OF THE COMPTROLLER

Brad Lander
COMPTROLLER

FINANCIAL AUDIT

Maura Hayes-Chaffe

Deputy Comptroller for Audit

Audit Report on the New York City Economic Development Corporation’s Administration of the NYC Ferry Operation

FM20-071A

June 30, 2022

http://comptroller.nyc.gov

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

June 30, 2022

To the Residents of the City of New York,

My office has audited the New York City Economic Development Corporation's (EDC's) administration of the NYC Ferry system to determine whether it: (1) properly documented and disclosed all costs of the ferry operation; (2) diligently administered the NYC Ferry system for and on behalf of the City; and (3) ensured that the Operator accurately reported the ferry ridership and ticket revenue and complied with the other terms of the Agreement.

The audit determined that EDC did not disclose over $224 million in expenditures as ferry-related in its audited financial statements and that the actual subsidy per ride is approximately double the originally projected cost. EDC understated the City's subsidy for the ferry operations by $2.08, $2.10, $3.98, and $4.29 for Fiscal Years 2018, 2019, 2020, and 2021, respectively. The auditors found that EDC did not plan for a smooth transition to a new operator by the end of the initial term and that its financial decisions resulted in over $66 million in unnecessary expenditures. The audit's many findings collectively indicate poor oversight and a general failure to hold the Operator accountable for fiscal terms and conditions of the Agreement.

The audit makes 11 recommendations aimed at increasing transparency, improving oversight over the ferry system, and protecting the fiscal integrity of New York City. These include a recommendation that EDC recoup approximately $12 million in overpayments or excessive payments to the Operator, a recommendation that EDC flatly refuses to consider.

The results of the audit have been discussed with EDC officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

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

Sincerely,

Brad Lander
New York City Comptroller

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EXECUTIVE SUMMARY

On February 12, 2016, the New York City Economic Development Corporation (EDC or the Corporation) entered into an Operating Agreement (Agreement) with HNY Ferry, LLC (the Operator) to operate the NYC Ferry system. The Agreement covers an initial term of six years from May 1, 2017 through April 30, 2023, and a renewal option for one additional five-year period at EDC's sole discretion. On December 17, 2021, EDC extended the initial term for five months from May 1, 2023 through September 30, 2023.

NYC Ferry provides city-wide ferry services to waterfront communities, parks, and recreation areas for residents, commuters, tourists, and leisure riders.[1] Services currently include six routes and one seasonal weekend shuttle with 38 ferries and 25 ferry landing stops. NYC Ferry also provides free shuttle bus services at the Rockaway and East 34th Street landings. Additionally, EDC directed the Operator to operate the East River ferry service from December 2016 through April 2017 pursuant to an Early Activation Agreement dated September 29, 2016.

For the period June 2015 through December 2021, EDC's Executive Committee approved approximately $829 million in expenditures related exclusively to NYC Ferry, including roughly $559 million approved for the Operator and a further $270 million approved for other vendors.[2] Per EDC's audited financial statements, the net losses of the ferry operations for Fiscal Years 2017, 2018, 2019, 2020, and 2021 were $30 million, $44 million, $53 million, $53 million, and $33 million, respectively.[3] In addition, EDC reported approximately $1 million, $7 million, and $9 million

[1] The NYC Ferry system is part of the services provided by EDC under the Maritime Contract with New York City (the City) in connection with the retention and expansion of waterfront, intermodal transportation, market, freight and aviation development of commerce.
[2] Besides the $559 million funded through EDC's Executive Committee, the Operator also retained $55 million in ticket revenue from May 2017 through December 2021. In addition, of the approved $829 million, EDC already paid approximately $637 million to the Operator and other vendors for the period up to December 2021, with a remaining balance of approximately $192 million.
[3] The calculation of operating losses excluded capital expenditures other than a component of depreciation.

in vessel depreciation for Fiscal Years 2019, 2020, and 2021, respectively, and $218 million as ferry operation related net capital assets as of June 30, 2021.

Audit Findings and Conclusion

This audit found that EDC did not disclose over $224 million in expenditures as ferry-related in its audited financial statements and that EDC understated the City's subsidy for the ferry operations by $2.08, $2.10, $3.98 and $4.29 for Fiscal Years 2018, 2019, 2020, and 2021, respectively. In addition, EDC did not timely plan for a smooth transition to a new operator by the end of the initial term. The audit also found that EDC's financial decisions resulted in over $66 million in unnecessary expenditures. Furthermore, EDC did not maximize shuttle bus services by fully utilizing the fees paid to the Operator and adopted an inefficient process for collecting landing fees from and reimbursing them to the Operator. EDC did not properly enforce agreement terms and conditions or review related documents to ensure that the Operator complied with certain insurance and reporting requirements, that payments made to the Operator were accurate, substantiated, and justified, and that ridership and ticket revenue was accurately reported by the Operator.

Audit Recommendations

The audit makes 11 recommendations presented in the body of this report.

Audit Response

In its response, EDC agreed with two of the 11 recommendations, disagreed with four, partially agreed with three, and stated that it is the current practice for two recommendations.

AUDIT REPORT

Background

Under the Agreement, the Operator is required, among other things, to provide all staffing, vessels, and associated equipment and services necessary for the ferry operation, and to comply with insurance and other requirements. EDC is required to pay the Operator for performance of the services: (1) monthly Cost of Operations; (2) Management Fee; (3) monthly reimbursement of fuel costs with a cap; (4) annual payment for any service hours exceeding the Annual Vessel Service Hours (AVSH) baseline set for each year;[4] and (5) Start-Up Costs and Start-Up Milestone payments.[5] The Cost of Operations payment includes five Component Fees—Vessel Usage Fee,[6] Fare Policy Fee,[7] Homeport Fee,[8] Shuttle Bus Fee,[9] and Ticketing Fee,[10] which EDC may remove at its sole discretion if it chooses to provide those services on its own or through other vendors. The Cost of Operations payment also covers the AVSH baseline set for the year.

Although the Operator is not responsible for the construction and maintenance of the landing sites, the Operator must obtain a Landing Slot License Agreement for each landing and comply with the license provisions, such as insurance requirements and payment of the landing fees charged, with full reimbursement from EDC.

In May 2019, the City Homeport at the Brooklyn Navy Yard began operations along with a new landing on site.[11] The Homeport Component Fee was removed from the Cost of Operations payment at the same time. To facilitate the City Homeport operation, the Operator entered into a two-year sublease for office and warehouse space and a license agreement for three trailers at the Brooklyn Navy Yard, with full reimbursement from EDC.

The Agreement stipulates that the Operator shall retain all control over revenues associated with advertising sales and concession sales. The Agreement also provides that the Operator receive, at a minimum, the Base Fare of $2.75 for each passenger, notwithstanding any reductions or discounts provided, for up to 4.6 million passengers per calendar year for $12,650,000. The Agreement also states that the Operator will keep all fare revenue for the first 5.5 million passengers and that EDC is only entitled to share 50% and 25% of the ferry ticket revenue collected if the ridership exceeds 5.5 million and 6.5 million, respectively. As of January 22, 2020, a *Discount Reimbursement and Revenue Sharing Agreement* modified the revenue sharing provisions when the ridership exceeds 5.5 million passengers and was applied retroactively to the calculation for 2019 and subsequent Fare Policy payments.

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[4] AVSH baseline is the total Vessel Service Hours (VSH) that was agreed upon between EDC and the Operator for each calendar year. VSH are the total hours of travel time and dwell time for scheduled revenue trips, excluding layover and deadheading.

[5] Appendix A, Exhibit 4, Scenario E and Section 3.01 of the Agreement set forth the compensation and the stipulations for payments for the initial term.

[6] The Vessel Usage Fee is the charge for the use of the Operator's vessels during operation.

[7] Per Section 3.01(C) of the Agreement, Fare Policy Fee is the cost of implementing the Fare Policy discounts detailed in Appendix A, Exhibit 6 (V): Fare Policy.

[8] A Homeport includes permanent vessel berthing, fueling, maintenance, repair office and crew facilities.

[9] The Operator subcontracted regular shuttle bus services for the Manhattan Midtown, Rockaway East and West routes.

[10] Annual cost of providing ticketing support services, exclusive of capital costs for ticket system.

[11] The Brooklyn Navy Yard Homeport docks 24-26 vessels. To supplement the dockage of the remaining vessels, the Operator extended its Dockage License Agreement with GMD Shipyard Corporation (GMD), until the completion of the second City Homeport with 19 berths being constructed at the Atlantic Basin in Red Hook.

On August 7, 2018, EDC issued a notice to purchase all 19 vessels then providing ferry services from the Operator, for a total purchase price of $84,476,552. The Vessel Usage Component Fee was removed from the Cost of Operations payment at the same time. On May 21, 2021, EDC finalized its purchase of an additional 19 new vessels from the Operator for a total cost of $150,739,778. For the additional 19 vessels, EDC is required to pay the Operator additional monthly Cost of Operations; Management Fee; reimbursement of fuel costs with an increased cap; and Vessel Holding Fee.[12] In total, EDC paid $235,216,330 for 38 vessels, including 23 150-passenger vessels (150-vessels) and 15 350-passenger vessels (350-vessels). EDC created a new entity - NYC Ferry Fleet, LLC - to take ownership of all 38 vessels.[13]

According to NYC Ferry's ridership reports, the ferries handled 21,997,620 passengers from May 2017 through December 2021, and the shuttle buses handled 556,915 passengers over the same period.[14]

For the period June 2015 through December 2021, EDC's Executive Committee approved approximately $829 million in expenditures related exclusively to NYC Ferry, including roughly $559 million approved for the Operator and a further $270 million approved for other vendors. Per EDC's audited financial statements, the net losses of the ferry operations for Fiscal Years 2017, 2018, 2019, 2020, and 2021 were $30 million, $44 million, $53 million, $53 million, and $33 million, respectively. In addition, EDC reported approximately $1 million, $7 million, and $9 million in vessel depreciation for Fiscal Years 2019, 2020, and 2021, respectively, and $218 million as ferry operation related net capital assets as of June 30, 2021. To fund the cost of operating the ferry system, the City allowed EDC to retain the annual payment of $16.7 million under the Maritime Contract as well as commercial rents received from the 42nd Street Development Project. Additionally, beginning in 2018, for a five-year period, EDC receives an annual operational subsidy of $500,000 from a private source.

Objectives

The objectives of this audit were to determine whether EDC: (1) properly documented and disclosed all costs of the ferry operation; (2) diligently administered the NYC Ferry system for and on behalf of the City; and (3) ensured that the Operator accurately reported the ferry ridership and ticket revenue and complied with the other terms of the Agreement.

Scope and Methodology Statement

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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.

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[12] The Vessel Holding Fee covers vessel insurance costs, security, utilities, regulatory inspection fees, daily maintenance inspections and dry docking.
[13] NYC Ferry Fleet, LLC has been reported as a "Blended Component Unit" in EDC's audited financial statements.
[14] The reported ferry ridership included the duplicative count of passengers who need to transfer from one route to another to complete their trips.

The scope of this audit covers the period from February 12, 2016 through December 31, 2021.[15] 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 EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to EDC on May 11, 2022 and discussed with EDC officials at an exit conference held on June 2, 2022. On June 9, 2022, we submitted a draft report to EDC with a request for written comments. We received a written response from EDC on June 27, 2022. In its response, EDC agreed with two of the 11 recommendations (#3 and #11), disagreed with four (#1, #5, #8, and #10), partially agreed with three (#2, #6, and #7) and stated that it is the current practice for two recommendations (#4 and #9). These are discussed in the body of the report.

In addition, EDC disagreed with most of the audit's findings or related facts cited in the report. After a careful review of the records, the auditors have concluded that changes to the findings are not warranted.

The full text of EDC's response is included as an addendum to this report.

[15] In addition, the audit review included the ferry operation related costs approved by EDC's Executive Committee on June 17, 2015.

FINDINGS AND RECOMMENDATIONS

This audit found that EDC did not disclose over $224 million in expenditures related to its ferry operations under NYC Ferry system in its Notes to Financial Statements. EDC's reporting on the operations and financials of the NYC Ferry system lacked transparency and did not reflect the NYC Ferry system's true cost to the City. At the onset of the program, EDC announced a City subsidy of $6.60 per rider. However, based on the auditors' review, the City subsidy per rider has been greater than $6.60 every year since the program began. For example, in Fiscal Year 2021, the City subsidy amounted to $12.88 per rider, and the cost of the NYC Ferry system as of December 31, 2021, totaled at least $758,517,560.

In addition, the audit found cause to question a number of decisions that added considerable cost to the City while mostly alleviating the Operator's costs and risk. Specifically, the audit questions EDC's decisions to purchase new vessels from the Operator at a higher cost, to terminate the East River ferry operator's contract early, not to enforce certain Agreement terms, and to change the terms of the Agreement through six amendments and numerous pieces of Official Correspondence.

Furthermore, EDC did not ensure that the Operator fully complied with certain insurance and reporting requirements of the Agreement.

These matters are discussed in detail in the following sections of the report. A chronology of major events also appears in the Appendix.

EDC Did Not Disclose Over $224 Million As Ferry-Related Expenditures in Its Audited Financial Statements

From the onset of the ferry program through December 31, 2021, EDC made ferry-related payments totaling $224,431,076 that were not disclosed in the Notes to its audited financial statements under the NYC Ferry system. In its audited financial statements covering Fiscal Years 2016 through 2021, as well as its general ledger and billing records for July 1, 2021 through December 31, 2021, EDC recognized $534,086,484 as ferry operation related expenditures. However, based on its other financial records, including payment lists provided for this audit, EDC actually incurred at least $758,517,560 in ferry-related expenditures: $367,510,563 in operating expenditures and $391,006,997 in capital expenditures.

Specifically, disbursements totaling $224,431,076 (capital and operating expenditures), which related exclusively to the ferry operation, were not disclosed. These are listed below:

Total Capital Expenditures of $180,960,344:

- $173,843,744 to other vendors for capital expenses from the onset of the ferry program through December 31, 2021;
- $6,000,000 to Billybey Ferry Company, LLC (Billybey), the previous operator of the City's East River ferry service, for the acquisition of the existing four vessels and for the early termination of Billybey's contract as part of EDC's integration of the East River ferry service into the NYC Ferry system;
- $936,600 to the Operator for a travel lift installed at the City Homeport; and

- $180,000 to the Operator in an expedited vessel design fee.

Total Operating Expenditures of $43,470,732:

- $33,193,967 to other vendors for operating expenses from February 12, 2016 through December 31, 2021;
- $6,429,491 for EDC's personnel costs, for its management and oversight of the NYC Ferry system for May 2017 through December 2021;
- $1,500,000 to Billybey for the acquisition of marketing assets (that were subsequently discarded) related to the early termination of Billybey's contract;
- $1,632,080 retained by the Operator from ticket revenue collected in Fiscal Year 2017;
- $585,000 to the Operator for Start-Up Costs paid in Fiscal Year 2016; and
- $130,194 to the Operator for landing fees, upland staffing payments, and signs.

These expenditures were for ferry operations and therefore should have been disclosed as NYC Ferry system expenditures, to transparently and accurately reflect its true costs and to allow the general public to assess the cost effectiveness of the ferry operation. Further, decision makers, including the Mayor and City Council, should be able to easily discern the complete cost of the NYC Ferry system from EDC's financial statements. According to EDC officials, these expenditures were recorded in its books and records or reported as a pass-through under the Department of Transportation, the Maritime Fund, or the Capital Fund without any indication that these costs were specifically for the NYC Ferry system. By not disclosing these expenditures as ferry operation related in its Notes to Financial Statements, EDC is obfuscating the actual cost of the NYC Ferry system.

At the exit conference held on June 2, 2022, EDC officials informed the auditors that they reported annually the ferry costs incurred and operating statistics to the Federal Transit Administration (FTA) and referenced the National Transit Database for the auditors' review. According to EDC officials, this data is inclusive of all operating costs except for depreciation of capital assets. However, the National Transit Database is compiled for the FTA and not for use by the general public or local stakeholders.

EDC, in its response, asserts that all costs were properly disclosed in its financial statements in accordance with Generally Accepted Accounting Principles (GAAP), and further noted that it reports detailed ferry-related costs (inclusive of operating, capital, and EDC-internal costs) consistently and completely to the FTA's National Transit Database each year.

NYCEDC officials interpreted this finding to be based only on a non-GAAP required schedule in its financial statements. In fact, this schedule summarized its general ledger and reflected the "ferry related expenses, net" amount reported under *Management's Discussion and Analysis* and *Statement of Revenues, Expenses, and Changes in Net Position* in its financial statements. As explained in the report and at multiple meetings with EDC officials, this finding is not based on the schedule provided in its financial statements, but rather on GAAP's Principle of Full Disclosure. GAAP requires that all information regarding an entity that would have a material impact on decision-making be shared in financial statements. Disclosing all material financial data and accompanying information pertaining to an entity's performance reduces the chance of stakeholders being misled.

Recommendation

EDC should:

1. In the interest of transparency, disclose all ferry related expenditures under the NYC Ferry and NYC Ferry Fleet, LLC in the Notes to NYCEDC's audited financial statements, regardless of the funding source and the recipient of the funds, to accurately reflect the total cost of the ferry operation.

   EDC Response: "NYCEDC will not change its audited financial statements but will provide alternative annual reporting to be made publicly available through NYCEDC's website which will include all costs paid to the operator, allocation of NYCEDC personnel, and landing maintenance costs. This enhanced reporting will be released annually following the issuance of NYCEDC's annual audited financial statements."

   Auditor Comment: The auditors note that the GAAP full disclosure requirement is not discretionary. The auditors reiterate the recommendation and request that EDC reconsider its position.

City Subsidy per Rider Higher Than Projected or Reported

The NYC Ferry system has been operating at a deficit, as its operating expenses exceeded its revenue, and the City subsidy is higher than the $6.60 per rider that was projected and announced in 2016.[16] It is also higher than EDC reported each year. EDC calculated the reported subsidy based solely on the operating expenses paid to the Operator and the revenue as reported in its audited financial statements. As noted above, these did not include all ferry related expenses. Therefore, the operating expenses of the NYC Ferry system were understated.

To determine the subsidy amount, the auditors calculated the total revenue for each year, then deducted all operating expenses including depreciation expenses to determine the net operating gain or loss (capital expenditures other than a component of depreciation were not considered to determine the subsidy amount). As reflected in Table I below, the auditors' calculated yearly operating loss was then divided by the total reported ridership for the year to determine the per rider subsidy.[17]

[16] The subsidy estimate in 2016 and subsequently reported estimates were based on operating expenses; they did not include capital expenditures.

[17] For Table I, the auditors calculated the revenue of $63,627,996 by deducting from the EDC's reported/recorded revenue the $3,297,429 in charter revenue that was meant to be applied as installment payments for the sale of the four Billybey vessels according to EDC's Executive Committee minutes for February 6, 2019, and adding the unreported ticket revenue of $1,632,080 for Fiscal Year 2017. In addition, the auditors calculated the operating expenses of $364,644,235 by deducting from the total operating expenses of $367,510,563 (as discussed in the previous finding) the $2,866,328 in net loss of the East River ferry early activation operation due to the unavailability of the related ridership data.

Table I

Auditors' City Subsidy

Per Rider Calculations

Description	2/12/2016 - 6/30/2017	FY 2018	FY 2019	FY 2020	FY 2021	7/1/2021 – 12/31/2021	Total
Auditors' Calculated Revenue (I)	$1,632,080	$11,799,506	$15,938,151	$13,444,430	$12,228,537	$8,585,292	$63,627,996
Auditors' Calculated Operating Expenses (II)	$33,023,714	$62,378,857	$80,790,140	$85,813,537	$60,981,865	$41,656,122	$364,644,235
Auditors' Calculated Net Operating Loss (III) = (I) - (II)	($31,391,634)	($50,579,351)	($64,851,989)	($72,369,107)	($48,753,328)	($33,070,830)	($301,016,239)
NYC Ferry's Reported Ferry Ridership (IV)		3,952,644	5,670,849	4,967,414	3,784,753		
Auditors' Calculated City Subsidy Per Rider (V) = (III) / (IV)		$12.80	$11.44	$14.57	$12.88		

The auditors did not calculate the City subsidy per rider from February 12, 2016 through June 30, 2017 and July 1, 2021 through December 31, 2021, because they were not complete service years. The auditors also excluded transfer passengers from NYC Ferry's reported ridership for FY 2018, the only year that the Operator provided the transfer passenger counts.

In comparison with EDC's reported City subsidy per rider, the auditors found EDC's subsidy amount was understated by $2.08, $2.10, $3.98 and $4.29 for Fiscal Years 2018, 2019, 2020 and 2021, respectively, as illustrated in Table II below.

Table II

Comparison of City Subsidy

Per Rider Calculations

Period	Reported	Actual	Understatement
FY 2018	$10.72	$12.80	$2.08
FY 2019	$9.34	$11.44	$2.10
FY 2020	$10.59	$14.57	$3.98
FY 2021	$8.59	$12.88	$4.29

In 2016 the published estimate was a $6.60 per rider subsidy. Yearly budgeted subsidy was not provided.

At the exit conference, EDC officials stated that it does not include depreciation expenses when calculating subsidy amounts for ferry services as per the FTA guidelines and requested that the depreciation be excluded from the auditors' subsidy calculation. However, the auditors do not believe that FTA guidelines are applicable in this instance. To promote transparency and communicate the true cost of NYC Ferry operation to the public, EDC should include all its ferry system expenditures.

The FTA's filings are based on its own reporting guidelines. EDC is a recipient of federal Urbanized Area Formula Grants (§5307). All recipients of federal Urbanized Area Formula Grants (§5307) or Formula Grants for Rural Areas (§5311) are required to report to the National Transit Database. Based on the grant awarding guidelines, the federal share is not to exceed 50% of the net project cost of operating assistance, which specifically disallows depreciation, interest expenses, leases and rentals or any other capital cost related allocations. Consequently, depreciation is not included in the National Transit Database operating costs reporting.

Moreover, it is important to note that the City incurred debt to finance the purchase of the 38 vessels and other capital expenditures. Servicing long-term debts adds substantial costs to the City. However, the auditors did not include the cost of the debt in the subsidy calculation since the City through its Office of Management and Budget (OMB) incurred the debt and not EDC.

EDC agreed in future to include certain additional costs, such as landing maintenance and personnel costs, in the calculation of the subsidy, but disagreed that it should include depreciation of assets on the basis that including depreciation would be inconsistent with national transit standards.

The auditors reiterate the validity of including depreciation expenses in calculating the subsidy, and note in this respect that until 2018 the definition of operating expenses used in the Mayor's Management Report included labor, material, capital and overhead. This original definition was used as far back as 2002. Capital was eliminated from the definition by the former mayor shortly after he announced a $300 million capital investment in the ferry system.

Recommendation

EDC should:

2. Promote transparency and full disclosure by calculating and reporting the dollar amount subsidized by the City per rider using the true total net operating losses of the ferry program.

   EDC Response: "NYCEDC will include non-Operator costs in the subsidy-per-rider calculation in new annual reporting discussed in Response 1, but will not include capital asset depreciation."

   Auditor Comment: In the interests of transparency, the auditors reiterate this recommendation.

EDC Did Not Plan for the Expiration of the Agreement

In its December 14, 2021 meeting, EDC's Executive Committee extended the term of the Agreement for an additional five months, from May 1, 2023 to September 30, 2023. The associated base cost of this extension is $11,999,432. This occurred a full 16 months before the scheduled end of the contract term, at a time when ridership had not yet returned to pre-pandemic levels, many vessels were still not in use, and the ferry service was incurring significant losses.

Ferry ridership dropped by 48% between 2019 and 2020, and still remained 29% lower in 2021. Vessel usage on weekdays and weekends remained substantially lower than the vessels available, as summarized in Table III below.[18]

During the summer of 2021, by which time NYC Ferry had purchased 38 new vessels, ridership remained limited and only 18 vessels were in use on weekdays and 24 vessels on weekends, even with the addition of the St. George route. The vessel usage on weekends dropped to 20 vessels in the fall and further down to 11 vessels in the winter. During the 4 month period from November 22, 2021 to April 3, 2022, only 29% of vessels were in use each weekend, leaving 27 vessels empty. During the fall of 2021, beginning September 13, 2021, the vessel usage for

[18] Prior to the fall of 2019, NYC Ferry chartered other vessels to augment its fleet. Therefore, the information prior to the fall of 2019 is not included in Table III.

weekdays and weekends was only 18 (47%) and 20 (53%) of the available 38 vessels. The minutes of the December Executive Committee meeting explain the decision to extend the term of the contract on operational grounds, asserting that "the current expiration date of the Operating Agreement [on April 30, 2023] would require a transition to the new agreement during the extremely busy summer season."

Table III

Summary of Seasonal Vessel Usage

Per Ferry Schedules	Weekday (I)	Weekend (II)	Vessels Available (III)	Spare % above Scheduled Weekday Service [(III) - (I)] / (I)	Spare % above Scheduled Weekend Service [(III) - (II)] / (II)
Fall of 2019	20	19	27	35%	42%
Winter of 2019	20	8	31	55%	288%
Summer of 2020	14	20	37	164%	85%
Fall of 2020	15	16	38	153%	138%
Winter of 2020	14	10	38	171%	280%
Summer of 2021	18	24	38	111%	58%
Fall of 2021	18	20	38	111%	90%
Winter of 2021	18	11	38	111%	245%

The December 2021 decision speaks to a lack of planning to procure a new operator in time to ensure a smooth transition, and further, represents a potential opportunity to stem operational losses through a competitive bid process. Had the Committee timely begun the bidding process, there would have been ample time for a smooth transition prior to the end of the initial term of the Agreement.

At the exit conference, EDC officials welcomed the Comptroller's recommendation to quickly begin a procurement process but objected to the audit's position that the decision represented poor planning. In its response, EDC indicated that the decision to delay was a strategic choice driven by concerns about anticipated demand in the summer of 2023. At the exit conference, the agency also indicated that the pending change in administration was a factor in its decision-making. The auditors reiterate their position with respect to planning, and note that had an RFP been issued in early 2022 a smooth transition could have been completed by the end of the contract. In this respect, the auditors note that as of the end of June 2022, a new RFP remains outstanding.

The auditors also note that ridership and the seasonal vessel usage were summarized in this report to reflect the status of the ferry services when the extension was approved in December 2021 and to highlight vessel usage trends historically. Although the summer schedule has a higher vessel usage, this typically lasts less than four months from late May through mid-September of each year. EDC emphasized that NYC Ferry needs "to operate with a spare ratio of no less than 25 percent above maximum scheduled service to account for planned and unplanned maintenance on the fleet." However, based on the auditors' calculation, EDC has regularly maintained a much higher spare ratio, as indicated in Table III above.

Recommendation

EDC should:

3. Expeditiously initiate an open competitive bidding process to procure and select a succeeding operator at the minimum reasonable cost, in the best interests of the City. EDC should use this opportunity to reduce operating losses to the extent possible.

   EDC Response: EDC agreed with this recommendation.

EDC's Financial Decisions Resulted in $66 Million in Unnecessary Expenditures

Several of EDC's decisions were not financially prudent. These include its decisions to purchase vessels at a high cost, to transfer the East River ferry operation without regard to early termination and early activation costs, and to change the terms of the Agreement through six amendments and numerous pieces of Official Correspondence. These decisions and their financial impact are discussed further below.

Over $34 Million in Questionable Vessel Acquisition Costs

EDC paid the Operator $235,216,330 to acquire a total of 38 vessels, including spare parts, based on the original Vessel Acquisition Plan (VAP 0) and three amendments (VAPs 1-3). This total was incurred between April 30, 2019 and May 21, 2021, and includes two sets of purchases set out in Table IV below.

Table IV

Summary of Vessel Purchases

Final Payment Date	VAP #	# of Vessels Purchased	Vessel Acquisition Costs
4/30/2019	0 & 2	19	$ 84,476,552
5/21/2021	1 & 3	19	$ 150,739,778
Total		38	$ 235,216,330

The auditors reviewed and compared all purchases made over this period and found that EDC failed to exercise due diligence for VAPs 1 and 3, by choosing not to follow an open competitive bid process; by purchasing some vessels at markedly higher rates than others; and by delegating construction almost entirely to the Operator from whom the purchases were made, without providing adequate oversight. As a result of this, the auditors estimate that EDC overspent at least $34 million in vessel acquisitions. EDC also misrepresented incurred costs when reporting the cost of one vessel purchased under VAP 1.

EDC Did Not Effectively Control Vessel Acquisition Costs

EDC did not procure the vessel builders through competitive bids and did not actively oversee the vessels' construction. Instead, EDC largely contracted out the vessel acquisition process to the Operator. As shown in Table IV above, EDC purchased 19 vessels for $84,476,552 from the

Operator on April 30, 2019. The purchase was based on (1) a price range as set in the Agreement and the Operator's reported book value for 16 150-vessels and (2) the second amendment to the Agreement—VAP 2 to upgrade three ferries from 150-vessel to 350-vessel at an agreed price of $7,100,000 each. For the subsequent 19 vessels, EDC contracted the Operator to construct and deliver the vessels for $150,739,778 through two other amendments to the Agreement (VAPs 1 and 3). EDC relied on the Operator to conduct the builder selection process and oversee construction. According to EDC and the VAP 0 Amendment letter, the Operator also sourced engines, transmissions, generators, seats, and other furnishings for the vessels.

To assess the reasonableness of the vessel construction costs for the first purchase of 19 vessels ordered in 2016 and 2017, the auditors requested information pertaining to builder selection, including bid solicitations and quotations from all potential builders. EDC was unable to provide this information. In response to the auditors' request for related payments from the Operator's accounting records to verify the reported vessel book value, EDC was likewise unable to provide such records.

For 18 vessels ordered in 2018 and 2019 under VAP 3 (count 21-38 in Table V below), EDC was unable to provide the actual build price paid by the Operator, the cost of vessel parts sourced by the Operator, or other payment information requested by the auditors to determine the cost of vessel components and to see if the higher costs were justified. In response, EDC stated that "[v]essel payment records are not available under VAP3 due to the fixed-price nature of those vessels. In those cases, the Operator is entitled only to the Build Fee as a fixed cost." However, Agreement Section 13.03 gives EDC, the City and the NYC Comptroller the *Right to Inspect and Audit*, which requires the Operator to produce the requested supporting documentation. It is not clear whether EDC did not request the documentation or the Operator refused to provide it, but without the supporting documentation the auditors were unable to review the costs underpinning the negotiated "Build Fee."

The vessel acquisitions and associated costs are detailed in the following sections.

BNY Vessel - EDC expended $8.5M for a vessel it later valued at $5.6M

According to the VAP 1 Amendment letter dated January 27, 2017, EDC agreed to pay up to a maximum amount of $8,527,477 for a Rockaway Class 150-vessel (BNY Vessel), to be exclusively employed in servicing the East River route.[19] EDC paid the Operator three payments totaling $1,408,784 and another payment of $5,599,000. In addition, EDC waived $1,403,826 of the Operator's Vessel Usage Fee Credit to be applied towards the purchase of this vessel. In total, this BNY Vessel cost EDC $8,411,610.

Although EDC ordered and paid $8,411,610 for the Rockaway Class BNY Vessel specified in VAP 1, what it actually received from the Operator was a River Class vessel that it later valued at $5.6 million in its financial statements. EDC did explain why it arranged for a River Class vessel instead of a Rockaway Class vessel, stating that a River Class vessel was "better suited for the overall program [and] was ultimately accepted as the BNY vessel," but this does not explain why EDC paid for a Rockaway Class vessel it did not receive.

In its audited financial statements, EDC reported the value of the BNY Vessel as $5,599,000, a variance to cost of $2,812,610. EDC informed the auditors that it reported the "fair market value"

[19] Per EDC officials, "A Rockaway-class, as opposed to a River-class Vessel, is a vessel with a higher freeboard [distance from the waterline to the upper deck] and larger engines that are better suited for open-water trips (such as those to the Rockaways)."

of $5.6 million for the River Class vessel it received, instead of the $8,411,610 that it actually paid. EDC stated, "From an accounting perspective, the agreed upon Purchase Price [for the BNY Vessel] was capitalized at $5,599,000 . . . All other payments . . . in connection with this agreement were recorded as expenses to [the Operator]." However, this is contrary to GAAP which requires that capital assets be recorded at cost and then depreciated over their useful lives, not the "fair market value" or an "agreed-upon" price with the rest recorded as an expense.

Compared with the average cost of $4,014,030 for the 13 River Class 150-vessels ordered on June 8, 2016 under VAP 0, just over 7 months earlier, the River Class BNY Vessel cost for the BNY route was $4,397,580 or 109.6% higher. Moreover, this River Class 150-passenger BNY Vessel cost $1,311,610 more than the average price of $7,100,000 for the three 350-vessels upgraded on October 23, 2017 under VAP 2. EDC's decision to acquire the BNY Vessel at an agreed price of $8,411,610—$4,397,580 higher than the average price of the River Class 150-vessels—cannot be justified.

Additional 18 Vessels under VAP 3 – Significantly Higher Acquisition Costs

The Operator subcontracted the same builder (who had previously constructed three 350-vessels and seven 150-vessels under VAPs 0 - 2) to construct seven 350-vessels and five 150-vessels under VAP 3, or 12 of the 18 vessels. The Operator charged vessel construction management fees totaling $12,345,745, at an average of $685,875 per vessel, for this acquisition.[20] This represents an increase of more than 10 times the $60,000 per vessel paid for "Program Management" for each of the 16 150-vessels acquired under VAP 0, just three years previously.

EDC also made the decision to pay the Operator a total of $1,919,216 in expedited delivery fees for 13 of the 18 VAP 3 vessels. The expedited delivery fee required the Operator to deliver the vessels within 14 months of issuing the final order. This additional incentive was written into VAP 3 even though the builder had already delivered three of the VAP 3 350-vessels between six to nine months from final order, in July 2018, and even though the initial 19 vessels purchased under VAP 0 were delivered on average 11.6 months from the final order date. The auditors question EDC's decision to provide an expedited delivery fee based on a 14 month delivery period, when most previously purchased vessels had been delivered in a shorter period, without any incentive payments.

Moreover, the total price for each of the 18 VAP 3 vessels was significantly higher than that of the initial 19 vessels ordered in June 2016 or upgraded in October 2017.[21] For example, the average price of $5,800,131 for the six VAP 3 River Class 150-vessels ordered in March 2019 represented an increase of 44.5% in less than three years when compared with the average price of $4,014,030 for the initial 13 River Class 150-vessels in June 2016. Similarly, the average price of $9,134,338 for the 12 VAP 3 350-vessels was also 28.7% higher than the average price of $7,100,000 for the initial three 350-vessels that were upgraded between 9 and 17 months earlier. EDC officials confirmed that "there were no major upgrades or changes to scope" to explain the

[20] The Operator received vessel management fees totaling $13,073,684, covering (i) management of construction and (ii) management of Vessel Holding Fees for all VAP 3 vessels through 2023. Calculated at 15% on the $80,000 annual Vessel Holding Fee approved for each of the 18 VAP 3 vessels through April 2023, the auditors estimated $727,939 as the fees for the management of Vessel Holding Fees and considered the balance of $12,345,745 as the fees for the management of vessel construction.
[21] The first two VAP 3 orders were placed on July 20, 2018, and the last two orders were placed on March 15, 2019.

higher cost of purchasing the second set of vessels. The cost of each vessel is shown below in Table V, along with the order date and builder.[22]

In its written comments provided on November 5, 2021, EDC conveyed the Operator's explanation for higher costs, attributing it to: "[i]nflation related cost of materials and labor over time . . . [t]he larger number of vessels being committed to at one time in the VAP0 vessel purchase, and the increase in complexity related to the three vessel types rather than one [and the] higher than expected costs of VAP0 [which] made it financially infeasible for the operator to replicate the pricing at the VAP0 level under VAP3." However, no documentary evidence was provided to support this statement. As noted above, the auditors requested but were not provided the quotations received from all potential builders during the Operator's vessel procurement process, the documentation related to price negotiation for the bulk order of 12 vessels contracted with one builder, or the payments made by the Operator to the builders.

Table V

Detailed Vessel Purchases

According to EDC Records

Count	VAP #	Date Ordered	Date Delivered	Vessel #	Type	Builder	Build Fee	Spare Parts	Construction Management Fee	Expedited Delivery Fee	Total Vessel Costs	Average Vessel Costs	Build Time (In Months)	Average Build Time (In Months)
1	0	6/8/2016	4/7/2017	H101	150 - River	Metal Shark Boats	$ 4,162,504	$ 139,010			$ 4,301,514		10.1	
2	0	6/8/2016	4/7/2017	H102	150 - River	Metal Shark Boats	$ 4,140,559	$ 139,010			$ 4,279,569		10.1	
3	0	6/8/2016	5/3/2017	H103	150 - River	Metal Shark Boats	$ 4,172,826	$ 139,010			$ 4,311,836		11.0	
4	0	6/8/2016	5/4/2017	H104	150 - River	Metal Shark Boats	$ 4,152,653	$ 139,010			$ 4,291,663		11.0	
5	0	6/8/2016	6/2/2017	H105	150 - River	Metal Shark Boats	$ 3,814,677	$ 139,010			$ 3,953,687		12.0	
6	0	6/8/2016	6/2/2017	H106	150 - River	Metal Shark Boats	$ 3,859,490	$ 139,010			$ 3,998,500		12.0	
7	0	6/8/2016	3/20/2017	H200	150 - River	Horizon Shipyard	$ 3,735,784	$ 139,010			$ 3,874,794	$ 4,014,030	9.5	
8	0	6/8/2016	4/6/2017	H201	150 - River	Horizon Shipyard	$ 3,686,181	$ 139,010			$ 3,825,191		10.1	
9	0	6/8/2016	4/19/2017	H202	150 - River	Horizon Shipyard	$ 3,696,689	$ 139,010			$ 3,835,699		10.5	
10	0	6/8/2016	7/31/2017	H206	150 - River	Horizon Shipyard	$ 3,838,185	$ 139,010			$ 3,977,195		13.9	11.6
11	0	6/8/2016	8/21/2017	H207	150 - River	Horizon Shipyard	$ 3,734,286	$ 139,010			$ 3,873,296		14.6	
12	0	6/8/2016	7/14/2017	H208	150 - River	Horizon Shipyard	$ 3,673,160	$ 139,010			$ 3,812,170		13.4	
13	0	6/8/2016	9/18/2017	H209	150 - River	Horizon Shipyard	$ 3,708,261	$ 139,010			$ 3,847,271		15.6	
14	0	6/8/2016	5/16/2017	H203	150 - Rockaway	Horizon Shipyard	$ 4,022,711	$ 139,010			$ 4,161,721		11.4	
15	0	6/8/2016	6/9/2017	H204	150 - Rockaway	Horizon Shipyard	$ 4,044,297	$ 139,010			$ 4,183,307	$ 4,178,966	12.2	
16	0	6/8/2016	6/30/2017	H205	150 - Rockaway	Horizon Shipyard	$ 4,052,861	$ 139,010			$ 4,191,871		12.9	
17	2	10/23/2017	7/3/2018	H108	350	Metal Shark Boats	$ 7,100,000				$ 7,100,000		8.4	
18	2	10/23/2017	8/10/2018	H109	350	Metal Shark Boats	$ 7,100,000				$ 7,100,000	$ 7,100,000	9.7	
19	2	10/23/2017	10/10/2018	H110	350	Metal Shark Boats	$ 7,100,000				$ 7,100,000		11.7	
20	1	1/27/2017	3/7/2018	H107	150 - River	Metal Shark Boats	$ 5,599,000				$ 5,599,000	$ 5,599,000	13.5	13.5
21	3	7/20/2018	2/1/2019	H111	350	Metal Shark Boats	$ 7,850,000		$ 752,245	$ 147,632	$ 8,749,877		6.5	
22	3	7/20/2018	2/27/2019	H112	350	Metal Shark Boats	$ 7,850,000		$ 753,174	$ 147,632	$ 8,750,806		7.4	
23	3	7/20/2018	4/10/2019	H113	350	Metal Shark Boats	$ 7,850,000		$ 754,545	$ 147,632	$ 8,752,177		8.8	
24	3	7/20/2018	5/23/2019	H114	350	Metal Shark Boats	$ 7,850,000		$ 755,955	$ 147,632	$ 8,753,587		10.2	
26	3	7/20/2018	7/2/2019	H115	350	Metal Shark Boats	$ 7,850,000		$ 757,277	$ 147,632	$ 8,754,909		11.6	
25	3	7/20/2018	6/13/2019	H214	350	Metal Shark Boats	$ 7,850,000		$ 756,645	$ 147,632	$ 8,754,277	$ 9,134,338	10.9	10.7
27	3	7/20/2018	8/5/2019	H90	350	St. Johns Shipbuilding	$ 7,950,000		$ 758,374	$ 147,632	$ 8,856,006		12.7	
29	3	3/15/2019	3/13/2020	H91	350	St. Johns Shipbuilding	$ 8,550,000		$ 765,632	$ 147,632	$ 9,463,264		12.1	
30	3	3/15/2019	5/12/2020	H92	350	St. Johns Shipbuilding	$ 8,550,000		$ 767,600	$ 147,632	$ 9,465,232		14.1	
28	3	3/15/2019	11/11/2019	H215	350	Metal Shark Boats	$ 8,550,000		$ 761,579	$ 147,632	$ 9,459,211		8.0	
31	3	3/15/2019	4/10/2020	H401	350	Halimar	$ 8,906,586		$ 872,017	$ 147,632	$ 9,926,235		13.1	
32	3	3/15/2019	4/17/2020	H301	350	Breaux Brothers	$ 8,906,586		$ 872,251	$ 147,632	$ 9,926,469		13.3	
33	3	3/15/2019	3/6/2020	H119	150 - River	Metal Shark Boats	$ 5,272,451		$ 500,196	$ 147,632	$ 5,920,279		11.9	
34	3	3/15/2019	3/19/2020	H120	150 - River	Metal Shark Boats	$ 5,272,451		$ 500,616		$ 5,773,067		12.3	
35	3	3/15/2019	4/30/2020	H121	150 - River	Metal Shark Boats	$ 5,272,451		$ 502,002		$ 5,774,453	$ 5,800,132	13.7	14.8
36	3	3/15/2019	7/22/2020	H122	150 - River	Metal Shark Boats	$ 5,272,451		$ 504,713		$ 5,777,164		16.5	
37	3	3/15/2019	10/13/2020	H123	150 - River	Metal Shark Boats	$ 5,272,451		$ 507,422		$ 5,779,873		19.3	
38	3	3/15/2019	6/15/2020	H501	150 - River	Gulf Craft	$ 5,272,451		$ 503,502		$ 5,775,953		15.3	
Total							$219,542,002	$ 2,224,160	$ 12,345,745	$ 1,919,216	$236,031,123			

[22] In Table V, the auditors included the Program Management Fee of $60,000 in the Build Fee for each of the 16 VAP 0 vessels and did not include the total depreciation of $1,542,733 that was deducted from the purchase price of the 19 vessels under VAPs 0 and 2. In addition, the auditors did not include the estimated management fee of $727,939 on Vessel Holding Fee for the 18 vessels under VAP 3.

The auditors found that the increased costs far exceeded the inflation rate. The auditors compared the average costs of the VAPs 0 and 2 vessels—adjusted for an inflation rate of 2.1% for 2017, 2.4% for 2018, and 1.8% for 2019—with the VAP 3 vessels, as shown below in Table VI. [23]

Table VI

Comparison of Average Vessel

Costs Adjusted for Inflation

Vessel Type	VAP 0 and VAP 2				VAP 3		% Increase in the Purchase of Vessels
	# of Vessels Purchased	Original Average Cost Per Vessel	Auditors' Calculated Inflation	Adjusted Average Cost Per Vessel	# of Vessels Purchased	Average Cost Per Vessel	
River Class 150-Vessel	13	$4,014,030	$258,194	$4,272,224	6	$5,800,131	35.8%
350-Vessel	3	$7,100,000	$301,267	$7,401,267	12	$9,134,338	23.4%

When adjusted for inflation, the City paid the Operator $29,964,282 more for the second set of vessel purchases than paid for the initial vessels.

At the exit conference, EDC officials presented the vessel acquisition cost per seat as the benchmark to measure the reasonableness of vessel costs. However, EDC did not give any indication that it performed a cost benefit analysis or used this benchmark to assess the reasonableness of the vessel costs during the acquisition process. In its response, EDC disagreed with the finding that several of its decisions were not financially prudent, and asserted that it has been an excellent steward of public funds. EDC did not provide any supporting information to demonstrate how the per seat cost of its fleet was calculated, or indeed to support its claim of superior purchasing compared to other ferry systems, but contrary to its explanation, the U.S. Department of Transportation notes in its public guidance that the cost of vessels varies significantly depending not only on passenger capacity, but also on the material, vessel speed, on-board amenities, hull type, vessel age, and other design features. The cost per seat calculation without considering supporting information offers no insight into the reasonableness of the expenditure. As noted above, the auditors attempted to assess actual reasonableness by reviewing the actual costs incurred by the operator and vessel builders in supplying the vessels, but this information was not made available for review.

Early Termination of Billybey Agreement Cost Nearly $24 Million

The East River route was originally operated by Billybey under a five-year agreement with EDC, dated December 2013. The five-year term ran from April 1, 2014 to June 12, 2019. EDC annulled the agreement with Billybey on March 15, 2016 through a Termination Agreement. This resulted in payment of $21,042,241 to Billybey and included $13,500,000 in termination fees, $1,500,000 for existing marketing assets, $6,000,000 for four vessels then providing services, and $42,241 for the removal of all existing ticket vending machines.[24] Billybey's operation of the East River route ultimately ended on December 16, 2016, less than three years after it began.

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[23] The auditors retrieved the inflation rates from a Federal Reserve Bank web site. For the three 350-vessels that were upgraded under VAP 2 on October 23, 2017, they did not calculate the inflation for 2017.

[24] When EDC acquired the four Billybey vessels for $6,000,000, it did not acquire the parts for future repairs and maintenance. Consequently, when the Billybey vessels became inoperable during the East River early activation period, EDC decided to charter those vessels to Port Imperial Ferry Corp. (PIFC), which owns Billybey, from June 2017

In addition to paying Billybey for early termination, EDC incurred costs associated with transitioning these services to the Operator. On September 29, 2016, EDC and the Operator entered into an Early Activation Agreement for the operation of the East River route during the transition period from September 26, 2016 through April 30, 2017. Under this agreement, EDC paid the Operator $2,827,417 in management fees and operating expenses, reimbursed the Operator $430,929 for repairs to the Billybey vessels (for which EDC had already paid $6 million), and paid $951,669 to charter vessels from other service providers.[25] Of the $951,669 paid for charter vessels, $395,538 was paid to Billybey for providing services from February 21, 2017 through April 30, 2017. Although EDC collected $1,343,687 in ticket revenue for the period, the early activation of the East River ferry resulted in a net operating loss of $2,866,328.

EDC's decision to terminate its agreement with Billybey and transfer the service to the Operator cost the City nearly $24 million. The only justification provided by EDC for the change was a desire to bring all services under one Operator's umbrella.

Inefficient Vessel Assignments Resulted in Over $3 Million in Additional Vessel Service Hours (VSH) Payments

The audit found that EDC paid the Operator $3,059,528 due to the inefficient allocation of AVSH baseline hours in Calendar Years 2019 and 2021.[26] This resulted in 3,742.31 unused AVSH in 2019 and 1,726.19 in 2021. It also resulted in additional charges on a per VSH basis.

According to EDC and the Official Correspondence (OC-CFS-HB-173) dated January 8, 2019, 73,223 AVSH were to be divided among vessels in three groups beginning in 2019,[27] with VSH above the AVSH to be charged at a rate of $650 per VSH for 3 VAP 2 vessels, $580 per VSH for 12 VAP 3 350-vessels and $328 per VSH for all 23 150-vessels (based on the AVSH Amendment letter dated July 19, 2018). The agreed allocation of AVSH was as follows:

- 57,789 AVSH was allocated to 20 150-vessels (Group 1);
- 9,000 AVSH was allocated to 15 350-vessels (Group 2); and
- the remaining 6,434 AVSH shall be available for use by 3 VAP 3 150-vessels (Group 3).

For Calendar Year 2019:

The auditors' review of the VSH payment records noted the following:

- Group 1 did not use 3,742.31 hours of the allocated 57,789 AVSH;
- Group 2 used 16,507.06 hours over the allocated 9,000 AVSH; and

for 84 months. In turn, PIFC chartered those vessels to the Operator for NYC Ferry at a discounted rate through September 2020. At the end of the term, PIFC will have the right to purchase all four vessels at $5,419,495.

[25] Per the agreement, EDC was required to compensate the Operator $3,021,705 for management fees and operating expenses. However, as a result of EDC's internal audit, the Operator reimbursed EDC $194,288 for improper expenditures submitted.

[26] AVSH baseline is the total VSH that was agreed upon between EDC and the Operator for each calendar year.

[27] Per Official Correspondence (OC-CFS-HB-173) dated January 8, 2019: "The cost of the 57,789 AVSH shall be paid to the Operator pursuant to the Cost of Operations schedule as set forth in the Ferry Agreement and the Cost of Operations schedule as set forth in the AVSH Agreement. . . . The cost of [the 9,000 AVSH] shall be paid to the Operator pursuant to the VAP 2 Cost of Operations table. . . . Payment to the Operator for the 6,434 AVSH shall be made pursuant to the BNY Cost of Operations table 4.1.1 starting January CY2020."

- Group 3 did not use any of the allocated 6,434 AVSH as EDC was only entitled to use this group starting January 2020.

The AVSH were under-used in Group 1 and over-used in Group 2, resulting in additional payments to the Operator at a minimum rate of $580 per VSH for Group 2 vessels. This resulted in a total additional payment of $2,170,540 that could have been avoided by using the 3,742.31 AVSH allocated to Group 1 vessels once the allocation for Group 2 vessels had been fully utilized.

In its written comments provided on November 5, 2021, EDC attributed their usage of mostly 350-vessels versus the 150-vessels for the last quarter of 2019 to two main reasons: "The first is that vessel service hours are counted and accrued when they are in use, and, at certain times, 350-passenger vessels were needed to meet passenger demand instead of 150-passenger vessels. As eight 350-passenger vessels were delivered mostly during summer months, they were immediately put into service and replaced the 150-passenger vessels. The second reason is that as the fleet grew, it began to provide relief to vessels that had been delivered in the first two years of service and originally saw higher-than-expected usage. The prudent scheduled use per vessel is approximately 3,000 VSH [per year]."

However, based on the auditors' review of the "On" and "Off" ridership data and the vessel usage for the period October through December 2019, of the total 23,698 trips, less than 1% (only 57 trips) needed 350-vessels. These 57 trips only used 46.35 VSH or 0.59 % of the 7,871.50 VSH charged for the 350-vessels during the period. While EDC indicated that certain vessels had "higher than-expected usage" in the first two years of service, EDC was unable to provide any records related to the VSH usage during Calendar Years 2017 and 2018 when requested.

For Calendar Year 2021:

For the period August through December 2021, EDC paid a total of $5,632,373 in additional VSH payments to the Operator. Specifically, EDC paid $4,743,385 for the 8,178.25 VSH that exceeded the baseline of 9,000 AVSH for Group 2 and $888,988 for the 1,726.19 VSH that exceeded the baseline of 6,434 AVSH for Group 3. Based on the auditors' review of the VSH assigned among all three groups, it was again apparent that Group 1 vessels were under-used by 9,904.44 AVSH as of December 31, 2021.

The AVSH were under-used in Group 1 and over-used in Group 3, resulting in additional payments to the Operator at $515 per VSH for Group 3 vessels. This resulted in a total additional payment of $888,988 that could have been avoided by using the 1,726.19 AVSH allocated to Group 1 vessels once the allocation for Group 3 vessels had been fully utilized.

In addition, as mentioned above, the ridership in 2021 was only 71% of the 2019 level and the need for the 350-vessels remained low. Based on a review of the "On" and "Off" ridership data and the vessel usage for the months of June and July 2021, of the total 15,843 trips, only 420 trips (2.65%) needed 350-vessels. These 420 trips only used 375.63 VSH or 6.01% of the 6,247.16 VSH charged for the 350-vessels during the period. The auditors question the assignment of 350-vessels that resulted in an overage of 8,178.25 VSH for Group 2. At the exit conference, EDC stated that Official Correspondence (OC-CFS-HB-169) dated January 8, 2019 requires it to pay for 12,000 additional VSH for 350-vessels whether it is utilized or not. Because of this set additional VSH, Group 2 350-vessels were used while 8,178.25 VSH for Group 1 vessels remained unused. The auditors also question the reasonableness of executing this Official Correspondence that requires EDC to pay for this 12,000 VSH when there is already a mechanism in place to pay for additional VSH over the AVSH baseline.

EDC disagreed with the finding that it made payments to the Operator that it was not entitled to under the terms of the Agreement, and further argued that the allocation of VSH was driven by operational need. EDC stated, for example, that the annual operating hours per vessel should not exceed 3,000 VSH. However, EDC assigned between 3,300 to 3,800 VSH to six of the 17 Group 1 150-vessels in 2019, which did not appear to be a concern at the time. It should also be noted that three of the remaining 11 vessels only used 2,500-2,700 VSH; these could have been assigned, and still remained below the 3,000 VSH level. During 2021, while all Group 1 vessels were well below the 3,000 VSH mark as indicated in EDC's response, it was unreasonable for EDC not to fully utilize the Group 1 baseline. It is also worth noting that the contract terms around VSH were set by agreement with the Operator. The fact that so many additional VSH were paid for on top of the thresholds, while so many included VSH hours went unused, is another example of poor planning on the part of the agency.

Inappropriate Fare Policy Payments of Over $4 Million

The Fare Policy Fee is one of the five Component Fees that are part of the Cost of Operations paid to compensate the Operator for performance of the ferry services. Per Section 3.01(C) of the Agreement, Fare Policy Fee is the "[c]ost of implementing the Fare Policy discounts detailed in Appendix A, Exhibit 6 (V): Fare Policy."

Per Appendix A, Exhibit 6 (V): Fare Policy of the Agreement, the Operator must implement the Base Fare, Monthly Passes, Children, Bicycle Fee, and Access policies as set by EDC. EDC shall ensure that the Operator receives at a minimum the Base Fare of $2.75 for each passenger notwithstanding any reductions or discounts provided to passengers for each passenger up to 4.6 million passengers, i.e., $12,650,000. The Fare Policy Component Fee is set to cover the difference between the $12,650,000 and the ticket fares collected by the Operator from the 4.6 million passengers (irrespective of whether such riders pay full, discounted or no fare). The monthly Cost of Operations payment made to the Operator already considers the difference and no additional payments need be made. Although the Agreement provision considered and included the difference due to the discounted fares, EDC paid an additional $4,301,579 to compensate the Operator the difference in fares collected for the ridership up to 4.6 million for Calendar Years 2017 through 2021.

In its written comments provided on October 21, 2021, EDC stated that "the Fare Policy that EDC implements . . . decreases the operator's ability [to] collect all agreed revenue for the first 4.6 million riders. EDC calculates and provides an annual discounting payment for all revenue not collected due to the Fare Policy up to 4.6 million riders; above that amount, the Corporation makes no further payments for fare policy. Although the Fare Policy Fee is identified in the Agreement table in Section 3.01(C) as a Component Fee, it functions differently than others in that it is an amount owed to the Operator (effectively a negative amount) which is variable based on ridership and the fare structure at the time." Moreover, at the exit conference, EDC stated that the component fee paid to the Operator for the cost of implementing the Fare Policy discounts is actually to pay for the administrative burden of implementing a vast discount program to track the validity of seniors and people with disabilities and that this fee was not intended to be the actual cost of fares not collected by virtue of a fare policy.

The auditors maintain that the Agreement indicates the Fare Policy Fee is the cost of implementing the Fare Policy discounts and is part of the Cost of Operations paid to the Operator and that $4,301,579 should not have been paid to the Operator. Moreover, EDC's explanation that the component fee is to pay for the administrative burden of implementing a vast discount program does not appear to have merit. At no time during the audit process did EDC give any indication that there was a vast discount program that had specific and separate administrative duties. In fact, the auditors' review of the number of participants of the discount program found very few individuals paid discounted fares. For example, for the months of June 2019 and December 2021, there were only 10 and 19 individuals who paid discounted fares, respectively.

A subsequent amendment to the *Discount Reimbursement and Revenue Sharing Agreement* resulted in EDC receiving a reduced share of revenue from fares, from $1,055,327 under the original terms to $793,912 after the amendment. The amendment was finalized after the Operator had completed the 2019 ridership count at above 5.5 million; the amendment came into effect in January 2020 but applied retroactively to 2019, once again to the Operator's benefit. Under the terms of the modification, EDC can only participate in revenue sharing on all fare-box revenue between $15.125 million (equivalent to 5.5 million passengers charged at full price) and $17.875 million (equivalent to 6.5 million passengers charged at full price) at a rate of 50% of such revenue. In addition, all fare-box revenue above $17.875 million can be shared at a rate of 25% of such revenue. The original Fare Policy provision in the Agreement allowed EDC to share 50% and 25% of the ferry ticket revenue collected when the ridership exceeded 5.5 million and 6.5 million, respectively. This modification resulted in a revenue loss of $261,415 to EDC.

EDC disagreed with this finding and argued that all fare policy payments made to the Operator were made in accordance with the Agreement. The auditors continue to disagree with EDC's position and question the representations made by the agency that it shared a mutual understanding of the meaning of this language with the Operator, from the outset. The Operator did not agree with the agency's initial interpretation of the Fare Policy language, and as a result, the Fare Policy Payment was reduced by $480,535 for Calendar Year 2017 and $473,369 for Calendar Year 2018.

Over $1 Million in Excessive Homeport Reimbursements

Section 2.01 (E) of the Agreement provides, "The Operator has represented to the Corporation that it has access to a Homeport that can be used for the CFS [city-wide ferry services] at no additional cost to the Corporation beyond the Compensation identified in Appendix A - Exhibit 4, and the Corporation has materially relied upon such representation in entering this Agreement." The Operator overclaimed and was reimbursed by EDC for additional Homeport costs, totaling $1,205,400, for the period from May 2017 through April 2019.[28] EDC claimed that the Operator experienced additional homeport costs "due to late move-into" the City Homeport and had to remain at GMD shipyard through April 2019, instead of the expected move-in date by December 2017. The auditors found that EDC's reimbursements to the Operator during the GMD original lease term, April 2017 through December 2017, already exceeded the Homeport Component Fee by $725,400.

There was no lease agreement in place that substantiated the excessive reimbursement of $480,000 in rent, ranging from $45,000 to $70,000 per month, charged by GMD from January 2018 through April 2019. In its written comments provided on November 5, 2021, EDC stated that "[g]iven the uncertainty about the duration of ongoing use of GMD for berthing and upon the expiration of the original lease between GMD and [the Operator], GMD was able to charge different amounts to the Operator for use of its wharfage."

[28] The $1,205,400 excluded a duplicative payment of $29,762 in utility charges for the GMD Homeport.

Did Not Maximize Shuttle Bus Services

As part of the Cost of Operations payment, EDC paid the Operator a Shuttle Bus Component Fee for the operation of the Rockaway East and West routes and the Manhattan Midtown route. The Agreement establishes service hours from 6:00 am to 10:30 pm for each route. As reflected in a spreadsheet provided by EDC on October 15, 2021, the "OA Original Shuttle Bus Idea" should have 231 hours of weekly Manhattan Midtown shuttle bus service, with two buses each serving 16.5 hours daily. However, EDC and the Operator reduced the level of service for the Manhattan Midtown route. As of November 4, 2019, both Rockaway routes were serviced between 4:30 am and 10:00 pm seven days a week, while the Manhattan Midtown route only provided service between 6:30 am - 10:30 am and 4:00 pm - 7:30 pm during weekdays. Based on a review of the shuttle bus related invoices for October 2017, 2018, and 2019, the auditors noted that the actual shuttle bus costs only amounted to $327,016, which was $87,680 lower than the Component Fee of $414,696 for those three months. According to EDC, the Operator was able to find a vendor to provide services at a lower cost than the Component Fee. EDC claimed that it could not withhold the payment unless it would take over the service. Consequently, instead of addressing this service disparity, EDC allowed the Operator to retain the surplus from the Shuttle Bus Component Fee. This excess amount could have been used to extend the weekend and evening services for the Manhattan Midtown route, to facilitate and promote ferry ridership.

Wasteful Resource Allocation

EDC billed, collected from, and then reimbursed the Operator on a monthly basis a total of $3,157,280 for over 1.2 million landing stops from May 2017 through December 2019. Based on the terms of the individual License Agreements that the Operator entered into with the landing holders, EDC is responsible for the billing and collection of landing fees from the Operator. Based on Section 2.01(D) of the Agreement, EDC agreed to reimburse all of the landing fees paid by the Operator.

EDC did not retain any of the landing fees it billed and collected. Instead, EDC has been expending substantial resources to calculate monthly landing fees, issue billings to the Operator, collect payments from the Operator, and process electronic fund transfers to reimburse the Operator. EDC has also been overseeing the related financial recording and reporting functions. The Operator has also expended resources engaging in the same processes on its end, the costs of which may ultimately be charged back to EDC. An EDC official stated that they will streamline this process in the future.

Recommendations

EDC should:

4. Perform and document cost/benefit analyses to determine whether proposed changes to the ferry operation and the Agreement are cost effective and in the best interests of the City, prior to implementing changes.

   EDC Response: "NYCEDC will continue to perform relevant analyses prior to any major change to ferry operations and the Agreement to ensure actions are cost effective and in the best interest of the City.

   Auditor Comment: EDC's response indicates that this is already its practice, however, EDC did not provide any evidence beyond this statement.

5. Revise Section 3.01(C) of the Agreement and to indicate what is paid for under the Fare Policy Fee, which is one of the five component fees. EDC should determine the true cost of implementing a discount program and revise the Agreement and the Component Fee accordingly.

   EDC Response: "NYCEDC will not change the Agreement or Component Fee costs as the mechanism for discount reimbursement is clear to the parties in the Agreement."

   Auditor Comment: The auditors continue to disagree with the agency and reiterate the related recommendation.

6. Discontinue the process of collecting and reimbursing landing fees.

   EDC Response: "NYCEDC will evaluate whether doing internal accounting transfers of landing fees is an acceptable practice that complies with all relevant local rules and regulations."

   Auditor Comment: To promote efficiency and economy, the auditors reiterate this recommendation.

EDC Did Not Properly Enforce Agreement Terms or Review Related Documents

The audit found certain weaknesses in EDC's oversight of the agreement terms. Ultimately, EDC's inability to adequately enforce the Operator's compliance with the terms of the agreement resulted in at least $3 million in unsubstantiated and/or questionable payments, as detailed below.

Over $3 Million in Unsubstantiated East River Early Activation Payments

The Operator did not comply with, and EDC did not enforce, Section 10 of the Early Activation Agreement which required the Operator to submit supporting documentation for an audit of the general operating expenses and fuel costs incurred by the Operator during the early activation period of the East River route. Without the required documentation, EDC could not ensure its payments of $3,021,705 to the Operator were properly substantiated.

In addition, EDC exercised its discretion to approve and pay a 10% mark-up on vessel repair costs, totaling $7,835, charged by HMS Ferries, Inc. (HMS), a subcontractor hired by the Operator to service the early activation of East River route. EDC explained in its written comments on October 21, 2021, that it "approved a 10% markup only on specific tasks that were outside the scope of the ERF Early Activation agreement." However, Exhibit 1, Section 6D of the Early Activation Agreement clearly indicates that vessel maintenance and repair is part of the Operator's duties and responsibilities. The Overview of the Vessel Management Agreement executed between the Operator and HMS, dated September 26, 2016, also explicitly dictates zero percent allowed for mark-up.

Questionable Calculation of Annual Management Incentive Fee of $337,228 for 2018 and 2019

As set forth in Section 3.01(D) of the Agreement, 20% of the annual Management Fee is considered a "Management Incentive," which "shall be adjusted to the lesser of the pay-out percentages" based upon an evaluation of On-Time Performance and Completed Trips to be calculated. Per Section 8.03(A) of the Agreement, "[t]he Operator must digitally collect data for all Traveler Information . . . using passive technology such as Global Positioning System . . . to track on-time performance."

However, according to EDC, certain technical limitations of the EDC-approved Connexionz Dispatch System precluded the systematic documentation of trips completed prior to 2020. As a result, the Operator and Corporation agreed that "Management Incentive payments prior to January 1, 2020, shall be calculated based on the Service Standard derived from the On-Time Percentage only, not the Completed Trip Percentage." Per HB-EDC-OC-266 dated December 14, 2020, the Connexionz Dispatch System received upgrades in August 2019, allowing for its reporting of trips completed.

For the evaluation of the On-Time Performance, Appendix C of the Agreement stipulates that "[a] trip shall be classified as 'On Time' when a Vessel arrives at all scheduled Landing Sites on that trip no more than five (5) minutes after its scheduled time, and departs all scheduled Landing Sites on that trip no more than one (1) minute before its scheduled time." Per Section 3.01(D)(6) of the Agreement, "[i]f the Operator, during any quarter, achieves Service Standards of less than 85% On-Time or (ii) achieved less than 90% Completed Trips, no Management Incentive shall be paid, such failure shall be deemed a default under this Agreement."

Calendar Year 2018:

While the On-Time Performance Percentage calculation requires both actual vessel arrival and departure times at each stop, Section 8.02(C) of the Agreement omitted the reporting requirements for the scheduled and actual arrival times. Consequently, EDC did not receive and therefore was unable to provide the 2018 actual arrival and departure times for the auditors' verification of the Operator's On-Time Percentage calculation. Without documentation verifying the arrival and departure times, EDC could not have conducted a proper review before approving the 98.1% On-Time Percentage. This nonetheless resulted in payment of the full Management Incentive amount of $337,228.

At the exit conference, EDC officials referred to an Excel file with the On-Time Performance data with actual arrival and departure times for the second quarter of 2018 to evidence its review of On-Time Percentage calculation. However, EDC stated back on November 18, 2020, that "the 2018 on-time performance summary is included as it was presented in the invoice" and further confirmed at a meeting on January 25, 2021, that the details provided for the 2019 On-Time Percentage calculation were not available for 2018. Therefore, there is no reasonable assurance that the data was indeed reviewed at that time to verify the Operator's calculation.

Calendar Year 2019:

In the Operator's calculation of the 94.2% On-Time Performance for 2019, the Operator considered as "on time" those stops on trips that had missing actual arrival or departure times. As stated in its NYC Ferry Quarterly Update: "When tracking devices are offline, the stops are excluded from the calculation." However, this exclusion is not explicitly allowed in the Agreement.

Had those trips with stops that did not have actual arrival or departure times not been considered as on time, the 2019 third quarter On-Time Performance would have been only 79.2%, and the Operator would not have been entitled to the $337,228 Management Incentive Fee provided for in Section 3.01(D)(6) of the Agreement.

In addition, when comparing the 2019 trips data used for the Operator's calculation with its Stop Times Data, the auditors noted that the data used for the On-Time Performance Percentage calculation excluded 21,184 trips, of which 14,527 trips had actual departure times later than the scheduled time, possibly resulting from late arrivals. These excluded late trips would result in an even lower On-Time Performance Percentage for 2019. In its written comments provided on October 15, 2021, EDC stated, "In March 2021, however, EDC worked with the Operator to agree to a revised methodology by which it could more reliably and consistently meet the reporting requirements of the Operating Agreement, memorialized in OC-CFS-HB-214. This agreement explicitly looks to resolve the data reporting issues for OTP [On-Time Performance] and sought to clarify with the operator how OTP measures should be calculated for the Management Incentive Fee in the future." However, the auditors' recalculation of the 2019 Management Incentive Fee using this new methodology did not yield a different result.

At the exit conference, EDC disagreed with the auditors' calculations of On-Time Performance for 2019. However, contrary to EDC's explanation that the calculation should not include those trips without actual arrival and departure times in the total trips, the auditors found that the Operator did include these trips and counted them as "on time" for determining the On-Time Performance Percentage.

$540,000 in Unjustified Start-Up Milestone Payments

According to Section 3.01(B) of the Agreement, Start-Up Costs are part of the compensation to the Operator during the pre-launch phase. The Agreement further stipulates that certain payments "shall only be paid in full for meeting the relevant milestone ('Milestone') deadlines" or "shall be reduced by the amounts indicated in Appendix B" of the Agreement for any Milestone deadlines not met. However, the auditors found that EDC issued Milestone payments in full to the Operator in instances where the Operator did not meet the Milestone deadline.

Per Appendix B of the Agreement, each major Milestone is assigned an ID number in the form "[M]-[D]-[#] where M = Month number, as measured from the effective date of contract being month 1. . . . D = day of the month on which milestone is due." According to EDC officials, however, EDC and the Operator mutually agreed that March 2016 was Month 1 despite the Agreement's effective date of February 12, 2016. Since the Agreement was effective on February 12, 2016, the auditors considered February 2016 as Month 1 and, as such, found that EDC issued payments for the Milestones listed below despite the Operator's inability to meet the deadlines.

- Milestone 08-01-#1, for a payment of $340,000, was related to the acquisition of ticketing physical and digital infrastructure that was due on September 1, 2016. Per the billing records, the Operator only acquired 9 Ticket Vending Machines (TVMs) prior to EDC's issuance of Official Correspondence (OC-CFS-HB-43) on January 25, 2017, which modified the requirement to purchase only 25 TVMs and 20 Mobile Point-of-Sales Units.
- Milestone 08-01-#2, for a payment of $55,000, was related to the acquisition of traveler informational displays and data collection systems that were due on September 1, 2016. The Operator only submitted its selection of Digital Information Display units and software on February 14, 2017 and obtained EDC's approval on March 1, 2017.

- Milestone 12-01-#1, for a payment of $100,000, was related to the launching of a marketing campaign that was due on January 1, 2017. Per the Operator's invoice dated April 13, 2017, an advertising agreement was entered into on February 10, 2017, an insertion order was placed on March 21, 2017, and a display advertising contract was signed on March 3, 2017.
- Milestone 14-01-#3, for a payment of $45,000, was related to obtaining EDC's approval of a customer survey that was due March 1, 2017. Per the Operator's invoice dated May 8, 2017, only a customer survey plan was attached for approval.

Moreover, as noted above, the Agreement provides that certain payments should only be paid in full for meeting the relevant Milestone deadlines and should be reduced by the amounts indicated in Appendix B of the Agreement. However, the auditors found that Appendix B does not include this information and were therefore unable to determine the amount to be recouped from the Operator.

Non-Compliance with Certain Insurance Requirements

The Operator did not comply with certain insurance requirements as stipulated in multiple agreements related to its ferry operations. Specifically, the Operator:

- Did not maintain the Property Insurance as required by the Agreement to cover a ticket vending machine at the Brooklyn Navy Yard landing and digital information displays at all landings;
- Did not specifically reference the agreed upon $50 million for terrorism in the Certificate of Insurance issued for the period prior to April 1, 2020, to ensure the adequacy of the coverage as required by the Agreement;
- Did not list certain entities as Additional Insureds, as required by the Docking License with the Trust for Governors Island;
- Did not maintain the insurance coverage as stipulated in the Brooklyn Navy Yard Pier C Occupancy Permit, including the coverage of $1 million per occurrence for Marine Protection and Indemnity, $5 million per loss for Vessel and Marine Operations Pollution Legal liability per vessel, and the replacement cost for All Risk Property Insurance from the onset of the City Homeport lease, beginning May 1, 2019. On October 22, 2021, EDC provided a supplemental Certificate of Liability Insurance dated January 22, 2021, which retroactively added several policies for the missing coverage. However, this Certificate did not reference the leased space at the Brooklyn Navy Yard and did not list all required additional insured parties; and
- Did not ensure the shuttle bus service provider maintained the remaining $40,000,000 umbrella coverage as required by the Shuttle Bus Agreement for the period November 1, 2019 through November 1, 2020. On October 22, 2021, EDC provided a Certificate of Liability Insurance dated January 26, 2021, covering the same period. This Certificate retroactively added several policies that would account for the difference in coverage.

The Operator's non-compliance with the insurance requirements is a serious lapse in EDC's oversight.

Non-Compliance with Ferry and Shuttle Bus Trip Summary Reporting Requirement

Section 8.02 (C) of the Agreement requires the Operator to provide a monthly report comprised of Trip Summaries for all scheduled vessel and shuttle bus trips in the prior week, including those that were delayed, cancelled, rescheduled, or otherwise disrupted. A Trip Summary should include the actual passenger "On" and "Off" counts at each stop, including the number of bicycles, strollers, and wheelchairs.

A review of the ferry ridership data for the trips serviced with chartered vessels in October 2018 found that the Operator did not properly record all required passenger counts at each stop. Specifically, the Operator recorded zero "On" and "Off" passenger counts at each stop for 101 trips serviced by chartered vessels for the month. EDC did not enforce the ridership reporting requirement for the chartered service provided in the Agreement.

In addition, based on a review of the shuttle bus ridership data for the period from May 2017 through December 2019, the auditors found that the Operator did not include the passenger "Off" counts or the counts at each stop during the period May 2017 through October 2017. Moreover, the Operator did not report in its ridership database the counts at each stop for all outbound Rockaway shuttle bus trips for the period May 2018 through December 2019. Without properly recording the "Off" counts at each stop, EDC cannot assess the impact the ferry system has on the local areas it was originally intended to serve.

Miscellaneous Overpayments to the Operator

The audit identified certain overpayments made by EDC to the Operator. The auditors brought these questionable payments to EDC's attention. As a result, the Operator refunded $80,438 to EDC for the following:

- Duplicate payments totaling $57,274 for GMD Homeport utility charges;
- Overpayment of $11,946 for Downtown Far Rockaway (DTFR) shuttle bus pilot program from October 2017 through January 2018;
- Overpayment of $8,745 for the purchase price of the initial 19 vessels;[29] and
- Unsubstantiated charge of $2,473 for emergency shuttle bus services.

In addition, EDC paid $4,565 in excess of the itemized expenditure limits set or not pre-approved per Official Correspondence (OC-CFS-HB-185) for the DTFR pilot program from May through September 2019. However, this overpayment remained outstanding.

Service Requests Not Authorized, Documented, or Reviewed

The audit found that EDC did not authorize, document, or review service requests in the following instances:

[29] According to the Agreement, the vessel purchase price should be calculated based on the book value as of the date of the Vessel Purchase Call Notice using a 25-year useful life and 50% salvage value for each vessel. As confirmed by EDC officials, the 25-year useful life of each vessel starts from the delivery date stated in the Certificate of Inspection issued by Sector New York. However, in its calculation, EDC applied an incorrect delivery date to determine the book value of certain vessels, which resulted in the overstated total purchase price.

- According to EDC officials, a Charter Bus Authorization Form documenting the request date, route, date, timeframe, and hourly costs of the shuttle bus services requested, should be approved by EDC in advance of the service. However, the auditors found multiple instances where a Charter Bus Authorization Form documenting the rate, location, date or timeframe for additional shuttle bus services requested was not prepared or properly signed. As per EDC email confirmation sent on January 22, 2021, EDC may have approved shuttle services verbally or via emails; however, neither EDC nor the Operator had records of the requested NYC Ferry Charter Bus Authorization.
- According to Official Correspondence (OC-CFS-HB-122), “The Operator shall provide reasonable proof of such personnel costs actually incurred, upon the request of the Corporation.” However, EDC did not request proof of personnel costs to verify the staffing costs charged by the Operator for employees who worked at the landings during the summer of 2018. For 2017, EDC did not verify the timeframes and the additional personnel costs being charged. Further, EDC did not always sign or specify shift times in its Additional Upland Staffing Request Form.

In the absence of documentation review and authorization, there is no reasonable assurance that the services charged were substantiated or authorized.

Recommendations

EDC should:

7. Enforce the agreement terms to:
    - require the Operator to submit the documentation regarding general operating expenses and fuel costs for review related to the early activation;
    - ensure the Operator complies with the insurance requirements;
    - ensure the Operator complies with the ferry and shuttle bus trip summary reporting requirements by reporting the counts at each stop for all ferry and outbound Rockaway shuttle bus trips; and
    - ensure the service requests to the Operator are properly authorized, documented, and reviewed prior to granting approval for payment.

    EDC Response: “NYCEDC will ensure the Operator complies with insurance requirements, trip summary reporting requirements, and service request approvals. NYCEDC will not revisit payments or documentation related to the Early Activation.”

    Auditor Comment: The auditors stress once again that EDC is administering this Agreement for and on behalf of the City and is expected to enforce contract terms and conditions, including ensuring that requests for payment are fully supported by documentation prior to making payment.

8. Recoup from the Operator:
    - the overpayment of $2,812,610 for the BNY Vessel;
    - the $3,059,528 in excessive VSH payments for 2019 and 2021;
    - the $4,301,579 in Fare Policy payments and preclude the Operator from charging any Fare Policy payments in the future;

- the $1,205,400 in excessive Homeport payments;
- the $87,680 in Shuttle Bus Component Fee that exceeded the cost of operating the shuttle bus service for October 2017, 2018, and 2019 (and for any other periods during which the Component Fee exceeded the actual cost of operating). EDC should also discontinue paying the Operator an excessive Shuttle Bus Component Fee or consider utilizing the surplus amount to expand the weekend and evening services of the Manhattan Midtown route to facilitate and promote ferry ridership;
- the overpayment of $12,400 for the 10% mark-up on vessel repair costs and for the DTFR pilot program costs that exceeded the itemized expenditure limits; and
- a percentage of the $540,000 in Milestone payments where Milestones were not met.

EDC Response: "NYCEDC will not pursue refunds from the Operator for these amounts; these were paid to the Operator for Services in accordance with the Agreement."

Auditor Comment: EDC is administering this Agreement for and on behalf of the City. Its reluctance to pursue recoupment from the Operator is not in the best interests of the City.

9. Conduct proper review of the Management Incentive Fee calculation and related data.

EDC Response: "NYCEDC previously and will continue to properly review the Management Incentive Fee calculation and related data."

Auditor Comment: EDC's response indicates that this is already its practice, however, EDC did not provide any evidence beyond this statement.

10. Consider replacing the current GPS device for more accurate tracking of arrival/departure times.

EDC Response: "GPS tracking was functional 95 percent of the time in 2019. NYCEDC has no concern with the accuracy of the existing vessel tracking devices and does not intend to replace these at this time."

Auditor Comment: In order to ensure accurate incentive fee calculation, it would be in the best interest of NYC Ferry system for EDC to consider replacing the existing GPS device.

Questionable Ridership and Revenue Reporting

The auditors' review of passenger counts and ticket sales for the sampled months identified inconsistent passenger counts and incomplete order numbers from the paper ticketing systems, as detailed below. These issues can potentially lead to inaccurate ridership reporting and may signal underreported ticket sales and ticket revenue.

Inconsistent Passenger "On" and "Off" Counts in the Wake System

The Wake system is the Operator's proprietary system for reporting ridership and has been in use since May 16, 2018.[30] According to information provided by the Operator at the auditors' walkthrough meeting on March 5, 2020, the Wake system is designed not to accept an entry if the "On" and "Off" counts do not match to ensure the total "On" passenger counts equal the total "Off" passenger counts entered for each trip.

The deckhands on each vessel and the shuttle bus drivers are responsible for recording the respective embarking and disembarking ferry and shuttle bus passenger counts at each stop on a daily count sheet by trip and by route. The staff members at the Homeport enter the counts from the count sheets into the Wake system and vet the data the next day.

However, the auditors identified the following discrepancies:

- Of the 159,965 ferry trips from June 2018 through December 2019, there were 15,778 instances where the "On" counts were larger than the "Off" counts and 11,034 instances where the "Off" counts were larger than the "On" counts, totaling 26,812 discrepancies. This total discrepancy in counts represents 17% of the 159,965 trips.
- A comparison of the Wake data and the ferry count sheets for the 305 trips recorded for October 2, 2019, identified discrepancies for 45 trips. Specifically, there were 32 instances with errors in count sheets and another 20 instances with errors in Wake data entries. These errors accounted for the discrepancies between the ferry passenger "On" and "Off" counts in the Wake system for that day.
- Of the 58,801 shuttle bus trips that have both the "On" and "Off" counts from June 2018 through December 2019, there were 2,360 instances where the "On" counts were larger than the "Off" counts and 1,124 instances where the "Off" counts were larger than the "On" counts, totaling 3,484 discrepancies. This total discrepancy in counts represents 6% of the 58,801 trips.
- A comparison of the Wake data and the shuttle bus count sheets for the 102 trips recorded for October 2, 2019, noted 12 discrepancies related to 5 trips. Specifically, there are three instances with errors in count sheets and another nine instances with errors in Wake data entry. These errors accounted for the discrepancies between the shuttle bus passenger "On" and "Off" counts in the Wake system for that day.

EDC indicates in its response to this finding that it abides by all United States Coast Guard-required ridership counting methodologies. While EDC acknowledges that there have been minor discrepancies in NYC Ferry passenger "On" and "Off" counting since system inception, it does not believe these are meaningful. The auditors disagree with this assessment and note that, as discussed above, several discrepancies in data were found, including, for example, a discrepancy of 8,227 passengers between the "On" and "Off" counts for a single Astoria trip (trip ID 4103) on October 29, 2019. The auditors also note that "On" and "Off" counts are important as they relate to payments due to the Operator from the City. Accuracy therefore matters.

[30] Prior to May 16, 2018, the Operator recorded ferry ridership data using Google Sheets. That data was subsequently transferred to Wake.

Issue with Mobile Ticketing System

Bytemark was the Operator's third-party mobile tickets service provider for the period from May 1, 2017 through May 22, 2020. The auditors' review found that all 572 30-day passes that were activated in the sampled month of September 2019 were improperly set to expire one day after the 30th day from the date of activation. This extended use for the 30-day passes may have resulted in a one-day loss in ticket revenue.

Issues with Paper Ticketing Systems

Paper ferry tickets can be purchased from Ticket Vending Machines (TVMs) at landings, from Mobile Point-of-Sales (MPOS) at the Wall Street and East 34th Street ticket booth windows, and at different landings during selected times of the year serviced by agents. Ventek has been the third-party paper tickets service provider since May 1, 2017. The Operator receives monthly ticket sales reports from Ventek.

To test the completeness of this computer-processed data, the auditors assessed whether there were any gaps and missing numbers from the "Trans ID" field in the Ventek ticket sales reports for the period from August 2019 through November 2019. The "Trans ID" field should contain a ticket sale transaction ID number. The auditors found 8,100 missing Trans IDs for the ticket sales processed by TVMs. In addition, there were 31 missing Trans IDs for the ticket sales processed by MPOS. The missing Trans IDs may represent underreported ticket sales and ticket revenue.

Recommendation

EDC should:

11. Ensure the Operator:

- establishes a protocol to confirm that the "On" and "Off" counts match and that the ferry and shuttle bus ridership is accurately reported;
- properly accounts for gaps and missing ticket order numbers; and
- conducts continuous reviews to ensure the accuracy and completeness of reported ticket revenue.

EDC Response: EDC agreed with this recommendation.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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 objective. 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 audit scope was February 12, 2016 through December 31, 2021. In addition, the auditors' review included the ferry operation related costs approved by EDC's Executive Committee on June 17, 2015.

To obtain an accurate understanding of the laws, policies and procedures that govern the NYC Ferry operation, the auditors reviewed and, where applicable, used as criteria, the following documents:

- Articles of Incorporation for EDC and NYC Ferry Fleet, LLC Articles of Organization;
- By-laws for EDC;
- Agreement between EDC and the Operator;
- VAP and subsequent amendments;
- AVSH related amendments;
- Discounting Reimbursement and Revenue Sharing Agreement;
- Various Official Correspondences that were used to modify the terms of the Agreement and add new service requests;
- East River Ferry Early Activation Agreement between EDC and the Operator; and
- Billybey related ERF Agreement and subsequent early termination agreement and letters.

To obtain an understanding of the policies, procedures and internal controls related to the ferry operation, the auditors conducted walkthrough meetings with the Operator and EDC officials including:

- Bytemark, Ventek, and Compass ferry ticketing systems;
- Recording and reporting of ridership using the Wake system;
- Operations and procedures related to ferry and shuttle bus passenger counts and boarding at landings; and
- Recording and reporting of ticket revenue and ferry operation related payments.

To determine the total cost, including capital and operating costs, of the ferry operation to the City, the auditors reviewed EDC's audited financial statements, general ledgers, payment lists, billing records and Executive Committee Minutes for the period June 2015, the first meeting to approve ferry operation related projects, through December 2021. Based on the ferry ridership reported by NYC Ferry, the auditors estimated the City's subsidy per passenger for the net operating loss (excluding East River ferry early activation related costs and charter revenue) for the period February 12, 2016 through June 30, 2021.

The auditors' review also included the payments for all 38 new vessels. The auditors reviewed the VAPs 0 – 3, related Executive Committee minutes, Official Correspondences related to the Vessel Purchase Call Notice and Final Orders, the Operator's audited financial statements for Fiscal Years 2017 through 2020, Certificate of Inspections, Protocol of Acceptance and Delivery, and other vessel acquisition related documents to ascertain the appropriateness of the reported vessel costs. To assess the reasonableness of the costs for the additional 19 vessels, the auditors calculated and compared the average cost of these vessels with that of the initial 19 vessels and took the cumulative inflation for the related period into consideration for their comparison.

To determine whether the ferry operation related payments made by EDC to the Operator were adequately documented and justified in accordance with the Agreement, subsequent amendments, and other approval documents, the auditors reviewed the sampled payments and related documentation from February 12, 2016 through December 2019, the last month covered by the Operator's Fiscal Year 2019, for the following expenses:

- Cost of Operations;
- Management Fees;
- Start-Up Costs and Start-Up Milestone payments;
- Additional Homeporting costs;
- Additional Shuttle Bus costs;
- Additional VSH costs;
- Vessel Holding costs;
- East River ferry early activation costs;
- Pilot Service Hours payments; and
- Upland staffing costs.

In addition, to determine whether the Management Incentive Fee was properly calculated, the auditors attempted to verify the Operator's On-Time Performance Percentage calculations for Calendar Years 2018 and 2019. However, the auditors were only able to verify the Operator's On-Time Performance Percentage calculations for Calendar Year 2019, the only year that the Operator provided the actual arrival and departure times for each stop at the time of sample selection. The auditors also compared the On-Time Performance data with the monthly Stop Times reports for Calendar Year 2019 to verify whether all of the trips were included in the Operator's calculation. In addition, the auditors reviewed the revised methodology outlined in OC-CFS-HB-214 dated March 28, 2021, for On-Time Performance Percentage calculations, and recalculated the 2019 On-Time Performance Percentage using this methodology to assess its impact on future calculations.

To assess the accuracy of the VSH billed, the auditors judgmentally selected Calendar Year 2019, the most recent year at the time of sample selection, to compare the VSH billed with the reported daily VSH by vessel. The auditors also judgmentally sampled January 6, 2019 and January 7, 2019, the first two days in the first full week of 2019, to compare the daily VSH data with their calculated travel and dwell times per ferry schedules to identify any discrepancies. In addition, to ascertain whether the Operator appropriately assigned the vessels and billed the related VSH charges, the auditors reviewed the ridership data along with the 350-vessels and Rockaway Class 150-vessels usage during October through December 2019, and expanded this review for Calendar Year 2021, except for December 2021, to assess the reasonableness of the additional VSH payments made.

For the Fare Policy payments, the auditors reviewed the related provisions in the Agreement and the *Discount Reimbursement and Revenue Sharing Agreement* dated as of January 22, 2020 to determine the propriety of the payments made for Calendar Years 2017 through 2020.

To determine whether the fuel costs were appropriate and properly substantiated, the auditors judgmentally selected July 2018 (the first month of Fiscal Year 2019 and the only period for which EDC retained the documentation on-site at the time), January 2019 (the month during which the transition of fuel supplier occurred), and October 2019 (the latest information received for the fuel pumped at the time of sample selection) to compare the billings with the related fuel contracts and the July 2018 delivery documents. The auditors also compared the fuel billed by vessel to the daily fuel tracking records for the sampled months of July 2018 and January 2019 to identify any discrepancies. To assess the reasonableness of the fuel disbursements reported for each vessel, the auditors compared the fuel disbursements with the VSH by vessel for 2019. In addition, the auditors conducted a walkthrough and reviewed NYC Ferry's Standard Operating Procedures for City Homeport's fueling system operation.

To determine whether the Shuttle Bus Component Fee as set forth in the Agreement was fully utilized, the auditors judgmentally selected October 2017, October 2018 and October 2019 (the month at the time of sample selection), the same month of each calendar year, to compare the Shuttle Bus Component Fee with the related payments to the third-party service provider. The auditors also compared the original shuttle bus service plan with the current service schedules to identify any discrepancies.

To determine whether the charter fees were appropriate and properly authorized, the auditors judgmentally selected September 2018, the month with the highest charter fees, to compare the billings with the related charter agreements. Additionally, the auditors reviewed and summarized the charter fee billings and vessel line up documents for October 2018 through May 2019 to ascertain the routes for which the charter services were rendered, and assessed whether the ridership counts were properly recorded for the vessels chartered for the month of October 2018.

The auditors conducted on-site observations from August 2019 through November 2019 and documented the embarkation and disembarkation of ferry and shuttle bus passengers, and then compared their documented passenger counts with the data from the Wake system to identify any discrepancies. In addition, the auditors observed and summarized the counts of TVMs and Digital Information Displays installed at all 21 landing sites in January 2020 to determine whether the required equipment were properly installed. Based on the ferry schedules posted on NYC Ferry's website, the auditors estimated the number of landing stops made from May 2017 through December 2019.

To ascertain the accuracy of the ridership reported by the Operator's Wake system, the auditors judgmentally selected to compare the Wake data with the ferry and shuttle bus ridership manually recorded for each stop on the count sheets for October 2, 2019, one day during the period when observations were conducted. In addition, the auditors judgmentally selected the period from June 2018 through December 2019, the month after the Wake system was first in use on May 16, 2018 to the last month covered by the Operator's Fiscal Year 2019, to compare the total "On" and total "Off" counts of each ferry and shuttle bus trip to identify any discrepancies.

To assess the change in ridership due to the COVID-19 pandemic, the auditors compared the ferry ridership of Calendar Years 2019, 2020, and 2021. To assess the change in vessel usage, the auditors compared the number of vessels employed in the fall and winter of 2019 and 2020, and assessed the vessel usage for the summer through winter of 2021.

To ascertain the accuracy and completeness of the reported ticket revenue, the auditors compared Bytemark's and Ventek's ticketing data with the reported revenue and traced the mobile and paper tickets purchased during their observations to the ticketing vendors' data for the months of August 2019 through November 2019. In addition, the auditors compared the reported ticket revenue with Compass' ticketing data from May 2020 through September 2020, the first five months of Compass' ticketing service, for consistency. To ascertain the completeness of the ticketing data, the auditors analyzed Ventek's data from August 2019 through November 2019; Bytemark's data from May 2017 through May 2020 for its entire service period; and Compass' data from May 2020 through September 2020 to identify any gaps and missing ticket numbers. The auditors also judgmentally sampled the month of September 2019, the second month of their observations, to assess whether the expiration for activated one-way and 30-day mobile tickets were properly set to expire within 90 minutes and 30 days, respectively, and whether unused tickets were properly set to expire within a year from the date of purchase in Bytemark's ticketing data. In addition, the auditors judgmentally sampled the month of August 2019, the first month of their observations, to compare Bytemark's and Ventek's credit card sales data with the deposits in the bank statement to identify any unreported ticket revenue.

The auditors reviewed the insurance certificates to determine whether the Operator complied with the insurance requirements as stipulated in the Agreement, landing site licenses, City Homeport leases, and other agreements. The auditors also sampled the incident reports filed and the claims processed during EDC's Fiscal Year 2020, the most recent fiscal year at the time of sample selection, to determine whether any claims resulted or would potentially result in any costs to the City.

To assess the adequacy of the Operator's efforts in promoting and advertising the ferry services, the auditors reviewed NYC Ferry Annual Reports for Calendar Years 2017 through 2020 and EDC's related expenses for Calendar Year 2019. In addition, the auditors reviewed the agreement pertaining to a private contribution to verify whether the revenue was properly recorded and reported.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for the auditors to evaluate and support their findings and conclusions regarding whether or not EDC properly administered the NYC Ferry operation for and on behalf of the City.

APPENDIX

NYC Ferry System

Chronology of Events

Date	Documents / Actions Effected	Events
December 2013	Agreement between EDC and Billybey Ferry Company, LLC (Billybey)	Billybey shall operate the East River ferry under a five year agreement from April 1, 2014 to June 12, 2019.
February 12, 2016	Operating Agreement between EDC and HNY Ferry, LLC (the Operator)	The Operator shall service the NYC Ferry system from May 1, 2017 to April 30, 2023.
March 15, 2016	Termination Agreement between EDC and Billybey Ferry Company, LLC	EDC shall terminate the agreement with Billybey.
June 8, 2016	Vessel Acquisition Plan (VAP 0)	EDC and the Operator agreed to the construction of 19 vessels, including 16 River Class 150-vessels and three Rockaway Class 150-vessels.
September 29, 2016	Early Activation Agreement between EDC and the Operator	The Operator shall service the East River route from December 2016 through April 2017.
January 27, 2017	VAP 1 Amendment	EDC and the Operator agreed to the construction of a Rockaway Class 150- vessel (BNY Vessel) to service the East River route.
March 29, 2017	GMD Dockage License Agreement	The Operator was licensed to occupy and use GMD Shipyard as homeport from April 1, 2017 through December 31, 2017.
October 23, 2017	VAP 2 Amendment	EDC and the Operator agreed to upgrade three River Class 150-vessels to 350-vessels.
July 3,2018	VAP 3 Amendment	EDC and the Operator agreed to the construction of an additional 18 vessels.
July 19, 2018	AVSH Amendment Letter	EDC and the Operator agreed to modify the AVSH baseline for Calendar Years 2017 through 2023.
July 20, 2018	Official Correspondence (OC-CFS-HB-131)	EDC placed the first two orders for seven 350-vessels under VAP 3.
August 7, 2018	Official Correspondence (OC-CFS-HB-134)	EDC delivered the purchase notice for all 19 vessels under VAPs 0 and 2 for $84,476,552.
January 8, 2019	Official Correspondence (OC-CFS-HB-173)	EDC and the Operator agreed to divide 73,223 AVSH among vessels in three groups: 57,789 AVSH allocated to 20 150-vessels, 9,000 AVSH allocated to 15 350-vessels, and the remaining 6,434 AVSH allocated to three VAP 3 150-vessels.
March 15, 2019	Official Correspondence (OC-CFS-HB-180 and OC-CFS-HB-181)	EDC placed the last two orders for five 350-passenger and six River Class 150-vessels under VAP 3.
May 1, 2019	Brooklyn Navy Yard Occupancy Permit to the Operator	Commencement of City Homeport operation at Brooklyn Navy Yard.
January 22, 2020	Discount Reimbursement and Revenue Sharing Agreement	EDC and the Operator agreed to modify the revenue sharing provisions when the ridership exceeds 5.5 million passengers and was applied to the calculation for 2019 and subsequent Fare Policy payments.
October 13, 2020	Protocol of Acceptance and Delivery	Delivery of the last VAP 3 vessel.
December 14, 2020	Official Correspondence (HB-EDC-OC-266)	The Connexionz Dispatch System was upgraded in August 2019. Beginning in Calendar Year 2020, the Operator has had the capability to record trips that would be classified as Completed Trips.
May 21, 2021	Last payment for VAP 3 vessels	EDC made the final payment for its purchase of the 18 vessels under VAP 3.
December 17, 2021	Amendment - Limited Term Extension of NYC Ferry Operating Agreement	The Agreement term was extended for an additional five months, from May 1, 2023 to September 30, 2023.

NYC / EDC

June 27, 2022

Maura Hayes-Chaffe
Deputy Comptroller for Audit
1 Centre Street #530
New York, NY 10007

Dear Deputy Comptroller Hayes-Chaffe,

NYCEDC is extremely proud of its work in launching and operating NYC Ferry. Throughout the course of this effort, NYCEDC has consistently sought to ensure careful stewardship of public funds and has demonstrated a strong commitment to getting the best deal for the City. NYCEDC believes that it has delivered on those responsibilities. While we welcome many of the ideas and recommendations for improvement, we disagree with others. In those cases where we believe that relevant data was misrepresented, key facts were misconstrued, or NYCEDC's contractual agreement with the operator of NYC Ferry was misunderstood, we detail our opinions in the pages that follow.

NYC Ferry is a system beloved by millions of New Yorkers, especially those who see their commute times greatly reduced and those who have new ways to access the city's waterfront. Whether connecting nurses and physicians to Manhattan's hospitals during a pandemic, providing Lower East Side residents access to Governors Island while their waterfront is rebuilt, or establishing a major transit option that helps both Rockaway residents and supports the local Rockaway businesses by providing more access to beachgoers, NYC Ferry has proven its worth.

Historical context of NYC Ferry's beginning, which is not well-documented in the audit, is important. In 2015, under Mayor de Blasio, NYCEDC was charged with implementing a massive and complex ferry system to offer millions of New Yorkers an affordable, safe, and dependable transit option to support commuting and access to waterfront communities across the five boroughs. We had under three years to do this and were told by experts that a system of this scale would be impossible to deliver in this timeframe. Yet, NYC Ferry launched on time with a fleet of purpose-built vessels and ridership that exceeded projections in its first months. At inception, NYCEDC delivered a fleet of 19 vessels, opened 15 new landings, and outpaced its ridership projections by 40 percent in its first year.

The initial launch of NYC Ferry was followed by rapid growth of the system to meet surging demand, which meant doubling the capacity of the fleet and expanding to new neighborhoods, cementing NYC Ferry as a five-borough system. The network now spans 70 nautical route miles and has 25 landings, connecting New Yorkers to jobs, open space, and recreation. Even though a pandemic decimated ridership on transit systems across the world, NYC Ferry proved its resilience by demonstrating the fastest return of ridership of any mode of public transportation in New York City. As of the date of this letter, NYC Ferry ridership has fully returned and has in several months exceeded pre-pandemic levels.

As NYC Ferry reaches maturity, we believe that now is the time for the Adams administration to implement its vision—driving improvements across the board that make the system more financially accessible to those who need it most, reducing the costs to the City, and increasing transparency and accountability so New Yorkers understand how the NYC Ferry system operates.

As the first operating agreement for NYC Ferry draws to a close, NYCEDC intends to issue a Request for Proposals (RFP) for a new operating agreement through a public, competitive procurement process. NYCEDC has learned much in its first years of service and is committed to using that knowledge to optimize NYC Ferry operations and improve the mechanisms by which we administer the system.

We believe having more transit options is better for New Yorkers, and the value of NYC Ferry is clear. As we increase transparency, reduce system costs, and achieve greater equity, NYCEDC looks forward to the next chapter of NYC Ferry's story. Please find NYCEDC's response to each of the Audit findings in the Comptroller's Ferry Audit report below.

Sincerely,

Fred D'Ascoli
Executive Vice President and Chief Financial Officer
NYC Economic Development Corporation

Enclosure: NYCEDC Response to Audit Report Findings and Recommendations

Audit Finding: NYCEDC Did Not Disclose Over $224 Million as Ferry-Related Expenditures in Its Audited Financial Statements

NYCEDC Response: NYCEDC properly disclosed all ferry-related expenditures in its audited financial statements as well as in numerous publicly accessible forums. To improve access to this information however, NYCEDC will provide new financial and operational reporting to be made available online.

NYCEDC properly disclosed all costs in its financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Since these statements have been audited each year by external auditors, there is no question as to the adequacy of NYCEDC's financial statements. Additionally, NYCEDC reports detailed ferry-related costs (inclusive of operating, capital, and NYCEDC-internal costs) consistently and completely to the Federal Transit Administration's National Transit Database each year. This data is freely available to the public (and used by organizations like the Citizens Budget Commission). Additionally, NYCEDC provides annual financial and operational data to City Council including capital and operational data.

GAAP standards dictate the financial reporting and disclosure requirements which NYCEDC strictly adheres to in preparing and presenting its financial statements. These standards exist to create consistency by defining what and how financial information is to be recorded. An external audit firm attests to the appropriateness and accuracy of NYCEDC financial statements every year.

NYCEDC does includes a schedule in its financial statements (not required by GAAP) which was designed to provide the reader with support for the breakout of the net asset categories on the face of NYCEDC's financial statement (unrestricted, restricted, invested in capital). The Comptroller Audit Report attempts to use this table as a comprehensive information source related to NYC Ferry for which it was never intended; as a result, it draws an incorrect conclusion about the completeness or disclosure in NYCEDC's financial statements.

While NYCEDC's financial statements are accurate and complete, there remain opportunities to improve public access to information about NYC Ferry-related costs. Therefore, NYCEDC agrees to the Audit Report's recommendation to better reflect the total cost of the ferry operation through public reporting outside of NYCEDC's financial statements.

> Audit Report Recommendation 1: In the interest of transparency, disclose all ferry-related expenditures under the NYC Ferry and NYC Ferry Fleet, LLC in the Notes to NYCEDC's audited financial statements, regardless of the funding source and the recipient of the funds, to accurately reflect the total cost of the ferry operation.
>
> Response 1: NYCEDC will not change its audited financial statements but will provide alternative annual reporting to be made publicly available through NYCEDC's website which will include all costs paid to the operator, allocation of NYCEDC personnel, and landing maintenance costs. This enhanced reporting will be released annually following the issuance of NYCEDC's annual audited financial statements.

Audit Finding: City Subsidy-Per-Rider Higher Than Projected or Reported

NYCEDC Response: The subsidy-per-rider has historically been calculated based on payments to the ferry operator; beginning with the issuance of NYCEDC audited financials for FY22, this calculation will also include other NYCEDC costs like landing maintenance and personnel costs. Consistent with other transit agencies, this figure will not include depreciation of assets.

The Audit Report is inconsistent with national transit standards, other ferry operators, and NYC Department of Transportation (NYCDOT) practice because it incorrectly assigns capital asset depreciation as an operating cost and suggests it should be reflected in the subsidy-per-rider. The Federal Transit Administration (FTA) excludes depreciation from operating expense and farebox recovery reporting.[1] Additionally, peer systems in San Francisco[2] and Boston[3] calculate operating expenses without depreciation. Finally, the City's Mayor's Management Report (MMR) defines the Staten Island Ferry's Average Cost Per Passenger Per Trip ($) as "Total Staten Island Ferry operating expenses, including labor, materials, and equipment, divided by the total number of passengers carried." NYCDOT staff confirmed that this figure does not include the cost of capital asset depreciation.

NYCEDC's treatment of capital depreciation on vessels is completely within national reporting standards and is in line with other public ferry operators.

> Audit Report Recommendation 2: Promote transparency and full disclosure by calculating and reporting the dollar amount subsidized by the City per rider using the true total net operating losses of the ferry program.
>
> NYCEDC Response 2: NYCEDC will include non-Operator costs in the subsidy-per-rider calculation in new annual reporting discussed in Response 1, but will not include capital asset depreciation.

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[1] "Transit agencies that provide mass transportation services (vehicle operations, vehicle and non-vehicle maintenance, and administration) incur operating expenses. Transit agencies have various Reconciling items expenses because of different accounting practices implemented by local ordinances. The NTST excludes depreciation, interest expenses, leases, and rentals when accounting for Reconciling items expenses."
[2] WETA - https://weta.sanfranciscobayferry.com/sites/weta/files/weta-public/currentmeeting/b060321aFULL.pdf
[3] MBTA - https://cdn.mbta.com/sites/default/files/2022-01/2022-01-13-itemized-budget-fy2022.pdf

NYCEDC Response to Audit Report Findings and Recommendations

Audit Finding: NYCEDC Did Not Plan for Expiration of the Agreement

NYCEDC Response: NYCEDC made a strategic choice to minimize the disruption to service by shifting the contract expiration from April 2023, when ridership tends to ramp up for the summer season, to September 2023, when ridership tends to ramp down again. NYCEDC also preserved the best chance for strong responses to a public procurement process. The five-month extension avoided the need for NYCEDC to initiate a public procurement amid transition between mayoral administrations when uncertainty in the market could negatively affect the number and quality of responses. NYCEDC intends to initiate an RFP process for ferry operations in summer 2022.

The Audit Report claims that NYCEDC's choice to extend the contract reflected a lack of preparation. The opposite is true. As NYCEDC staff explained to the Executive Committee of the NYCEDC Board when it obtained approval for the extension, the five-month extension shifted the contract expiration from April 2023, a time of year when ridership is ramping up and a transition would be most disruptive, to September 2023, a time of year when ridership is ramping down and a potential transition would be smoother.

In addition, by extending its operating contract by five months, NYCEDC was able to prevent a scenario in which a procurement was released by a mayoral administration during its last months in office, a situation that would have created significant uncertainty for potential operators and that may have jeopardized the quality, quantity, and cost efficiency of responses.

The Audit Report points out that in December of 2021, when NYCEDC extended the contract, ridership was low and vessel usage was limited, asserting that is why it was a poor decision to extend the contract. The report misconstrues these two, very separate things. Neither ridership nor vessel usage were the rationale for the extension. As has been the case every winter both before and since the pandemic, ridership is lowest during winter weekends. Vessel deployment on these days is lower to meet the more limited demand. For example, in 2019, NYC Ferry operated six routes and deployed 10 vessels on winter weekends; in 2021, NYC Ferry operated six routes and deployed 11 vessels on winter weekends. NYC Ferry's 38-vessel fleet was built to accommodate a mature NYC Ferry system, which projected a pre-pandemic need for 29 vessels during peak summer weekend service to meet passenger demand. Transit asset management practice is to operate with a spare ratio of no less than 25 percent above maximum scheduled service to account for planned and unplanned maintenance on the fleet.

> Recommendation 3: Expeditiously initiate an open competitive bidding process to procure and select a succeeding operator at the minimum reasonable cost, in the best interests of the City. NYCEDC should use this opportunity to reduce operating losses to the extent possible.
>
> NYCEDC Response 3: NYCEDC will expeditiously issue a public procurement for ferry operation services.

Audit Finding: NYCEDC's Financial Decisions Resulted in $66 Million in Unnecessary Expenditures

NYCEDC Response: NYCEDC disagrees with the Audit Report's finding that several of its decisions were not financially prudent. NYCEDC has been an excellent steward of public funds while delivering to New York City a transit system that has doubled in capacity and now serves all five boroughs. NYC Ferry vessels were delivered on time, on budget, and at a lower cost than nearly all other publicly funded ferry vessel acquisitions over the past 15 years. NYCEDC strongly believes that all payments it made to the Operator for both vessel acquisitions and operations were financially prudent and in accordance with its Agreement.

Guidelines referenced by Generally Accepted Government Auditing Standards[4] dictate that consideration must be given to prevailing market prices when determining the reasonableness of costs. This Audit Report does not consider prevailing vessel acquisition costs for peer operators. NYCEDC acquired its NYC Ferry fleet at an average cost of approximately $27,000 per seat compared to a peer average of $38,000 per seat for other public passenger-only ferry systems in the United States, according to the National Transit Database and other public records. NYCEDC's cost advantage is true for both its fleet of 150-passenger vessels and its fleet of 350-passenger vessels, as well as for both its initial and later rounds of vessel acquisitions. While the Audit Report correctly identifies that later rounds of NYC Ferry acquisitions came at higher cost than the initial round, it fails to acknowledge that those costs were still below market rate, because the initial round of vessel acquisitions were even further below market rate. Every vessel was delivered on time, for the agreed-upon price, and has proven suitable and reliable for NYC Ferry service.

Further, NYCEDC believes its decision to purchase its fleet was financially prudent given the upcoming competitive re-procurement of its operating contract. By owning the fleet, NYCEDC ensures that potential respondents are not disadvantaged versus the incumbent in their ability to obtain vessels for NYC Ferry service. Boston's Massachusetts Bay Transportation Authority (MBTA) publicly described that exact disadvantage as a primary explanation for the increase in costs associated with its most recently reprocured ferry operating contract.

Finally, NYCEDC disagrees with the Audit Report's finding that it made payments to the Operator that the Operator is not entitled to under the terms of the Agreement. All payments made to the Operator reflect the intent of the Agreement and any subsequent clarifications or modifications that were mutually agreed upon by both parties.

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[4] The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as referenced by Generally Accepted Government Auditing Standards, provides audit standards for determining the reasonableness of costs. Those standards dictate that "a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time." The standards further define that "in determining the reasonableness of a given cost, consideration must be given to…market prices for comparable goods and services."

In particular, the Audit Report's finding that NYCEDC overpaid the Operator $3,059,528 due to inefficient allocation of vessel service hours (VSH) is flawed and ignores the operational need to balance fleet usage to avoid mechanical over-usage of vessels. Prudent vessel usage for all vessels in the NYC Ferry fleet is not to exceed 3,000 operating hours annually, which is inclusive of both VSH and deadhead hours. In 2019, NYC Ferry's 150-passenger vessels consumed an average of 3,179 VSH per vessel; the 150-passenger fleet was over-utilized given the high vessel demand in early years before the larger, 350-passenger vessels had been delivered. The Audit Report's assertion that these vessels should have been used even more would have driven usage to over 4,000 VSH per vessel, increasing planned and unplanned maintenance and decreasing the useful life of half the fleet. In 2021, the Audit Report similarly claims that vessels in Group 1 were under-used while vessels in Group 3 were over-used. However, the basic facts show that Group 1 vessels consumed 2,394 VSH on average while Group 3 vessels consumed an average of 1,344 VSH, exclusive of deadhead hours.

Likewise, NYCEDC disagrees with the Audit Report's finding of inappropriate fare policy payments of over $4 million. As the Audit Report acknowledges, the Agreement states that NYCEDC shall ensure that the Operator receives at a minimum the Base Fare of $2.75 for each passenger notwithstanding any reductions or discounts provided to passengers for each passenger up to 4.6 million passengers, i.e., $12,650,000. All fare policy payments made to the Operator have been made in accordance with that requirement. The Fare Policy Fee as defined in Section 3.01 (C) of the Agreement is intended to cover the administrative cost of validating transfer and other discount tickets, and not the actual cost of lost fares that result from the fare policy.

> <u>Audit Report Recommendation 4:</u> Perform and document cost/benefit analyses to determine whether proposed changes to the ferry operation and the Agreement are cost effective and in the best interests of the City, prior to implementing changes.
>
> <u>NYCEDC Response 4:</u> NYCEDC will continue to perform relevant analyses prior to any major change to ferry operations and the Agreement to ensure actions are cost effective and in the best interest of the City.
>
> <u>Audit Report Recommendation 5:</u> Revise Section 3.01 (C) of the Agreement and indicate what is paid for under the Fare Policy Fee, which is one of the five component fees. NYCEDC should determine the true cost of implementing a discount program and revise the Agreement and the Component Fee accordingly.
>
> <u>NYCEDC Response 5:</u> NYCEDC will not change the Agreement or Component Fee costs as the mechanism for discount reimbursement is clear to the parties in the Agreement.
>
> <u>Audit Report Recommendation 6:</u> Recoup from the Operator:
>
> - The overpayment of $2,812,610 for the BNY Vessel;
> - The $3,059,528 in excessive VSH payments for 2019 and 2021;

- The $4,301,579 in Fare Policy payments and preclude the Operator from charging any Fare Policy payments in the future;
- The $1,205,400 in excessive Homeport payments;
- The $87,680 in Shuttle Bus Component Fees that exceed the cost of operating the shuttle bus service for October 2017, 2018, and 2019 (and for any other periods during which the Component Fee exceeded the actual cost of operating). NYCEDC should also discontinue paying the Operator an excessive Shuttle Bus Component Fee or consider utilizing the surplus amount to expand the weekend and evening services of the Manhattan Midtown route to facilitate and promote ferry ridership

NYCEDC Response 5: NYCEDC will not pursue refunds from the Operator for these amounts; payments were made to the Operator for Services in accordance with the Agreement.

Audit Report Recommendation 7: Discontinue the process of collecting and reimbursing landing fees.

NYCEDC Response 7: NYCEDC will evaluate whether doing internal accounting transfers of landing fees is an acceptable practice that complies with all relevant local rules and regulations.

Audit Finding: NYCEDC Did Not Properly Enforce Agreement Terms or Review Related Documents

NYCEDC Response: NYCEDC accurately and properly enforces the Operating Agreement, ensuring that the Operator delivers ferry service to the City safely, efficiently, and consistently with the requirements and costs described in the Agreement. As the NYC Ferry system matures, NYCEDC will continue to enhance protocols and ensure ongoing oversight of the Operator.

NYCEDC does not agree with the Audit Report's finding that the Annual Management Incentive Fee provided to the Operator is subject to "questionable calculations". All annual incentive payments made to the Operator have been provided consistent with methodologies mutually agreed upon by NYCEDC and the Operator.

The Audit Report claims NYCEDC did not have the data to produce reasonable, proper on-time performance (OTP) review. For calendar year 2018, NYCEDC furnished records to the Comptroller's office demonstrating access to scheduled and actual arrival times that NYCEDC used to calculate OTP for the incentive payment. For calendar year 2019, the Audit Report identifies more than 21,000 trips that were excluded from the OTP calculation due to issues beyond the Operator's control, for example marine traffic, landing site conditions, or connectivity issues with tracking devices. With limited exception, these trips were excluded from both the numerator and the denominator when calculating OTP, meaning that the Operator is neither advantaged nor disadvantaged for temporary connectivity issues or other excusable trip omissions

NYCEDC recognizes that its method for tracking OTP is an imperfect solution and will look toward its next contract procurement to address some of the issues raised in the Audit Report.

The Audit Report also asserts that NYCEDC made unjustified start-up milestone payments to the Operator. The intent of the milestone payment structure was to incentivize the Operator to accomplish the interim steps necessary to launch NYC Ferry by May 1, 2017. NYC Ferry successfully launched that day, and all subsequent route launches occurred according to schedule. While NYCEDC could have elected to penalize the Operator for delays on certain interim milestones, it mutually agreed to make milestone payments given that overall contract goals were being met. NYCEDC believes that it is unreasonable to claim that $540,000 in milestone payments are unjustified when the system launched successfully and all work was completed to NYCEDC's satisfaction. However, NYCEDC acknowledges that there are no time-based milestone penalties in its current Contract and intends to address that omission in any future operator contract.

NYCEDC also accepts the Audit Report's finding that certain chartered ferry vessel service and shuttle bus service for the audited period are missing ridership data. NYCEDC no longer relies on chartered vessel service to meet ridership demand, and now regularly monitors shuttle bus ridership data to ensure that the Operator provides all required reporting. While NYCEDC may disagree with certain findings in the Audit Report related to contract oversight, it accepts the need to further bolster its contract compliance efforts and has already implemented enhanced compliance efforts. Additionally, NYCEDC will include increased compliance and reporting requirements in its next operator contract.

Audit Report Recommendation 8: Enforce the Agreement terms to:

- Require the Operator to submit the documentation regarding general operating expenses and fuel costs for review related to the early activation
- Ensure the Operator complies with the insurance requirements;
- Ensure the Operator complies with the ferry and shuttle bus trip summary reporting requirements by reporting the counts at each stop for all ferry and outbound Rockaway shuttle bus trips; and
- Ensure the service requests to the Operator are properly authorized, documented, and reviewed prior to granting approval for payment

NYCEDC Response 8: NYCEDC will ensure the Operator complies with insurance requirements, trip summary reporting requirements, and service request approvals. NYCEDC will not revisit payments or documentation related to the Early Activation.

Audit Report Recommendation 9: Recoup from the Operator:
- The overpayment of $12,400 for the 10 percent mark-up on vessel repair costs and for the DTFR pilot program costs that exceeded the itemized expenditure limits, and
- A percentage of the $540,000 in Milestone payments where Milestones were not met.

NYCEDC Response 9: NYCEDC will not pursue refunds from the Operator for these amounts; these were paid to the Operator for Services in accordance with the Agreement.

Audit Report Recommendation 10: Conduct proper review of the Management Incentive Fee calculation and related data

NYCEDC Response 10: NYCEDC has previously and will continue to properly review the Management Incentive Fee calculation and related data.

Audit Report Recommendation 11: Consider replacing the current GPS device for more accurate tracking of arrival/departure times

NYCEDC Response 11: GPS tracking was functional 95 percent of the time in 2019. NYCEDC has no concern with the accuracy of the existing vessel tracking devices and does not intend to replace these at this time.

NYCEDC Response to Audit Report Findings and Recommendations

Audit Finding: Questionable Ridership and Revenue Reporting

NYCEDC Response: The Operator abides by all United States Coast Guard-required ridership counting methodologies and appropriately oversees its ticketing system. While NYCEDC acknowledges that there have been minor discrepancies in NYC Ferry passenger "on" and "off" counting since system inception, those discrepancies are less than industry-standard tolerances.

NYCEDC disagrees with the Audit Report's claim that NYC Ferry's passenger-counting system contains questionable passenger "on" and "off" reporting. While the Audit Report correctly identifies that 17 percent of reviewed trips had discrepancies in passenger count reporting, it does not acknowledge that 92 percent of those discrepancies were a difference of *only one passenger*. Tracking the boarding and alighting of passengers is an inherently challenging process in the broader context of maintaining safe, efficient ferry service. Industry standards dictate that under normal circumstances, transit providers can expect 85 percent of all boardings and alightings to be reported accurately.[5] Relative to those industry standards, the discrepancies in NYC Ferry's passenger counting system are minor.

Audit Report Recommendation 12: Ensure the Operator:

- Establishes a protocol to confirm that the "On" and "Off" counts match and that the ferry and shuttle bus ridership is accurately reported
- Properly accounts for gaps and missing ticket order numbers
- Conducts continuous reviews to ensure the accuracy and completeness of reported ticket revenue

NYCEDC Response 12: NYCEDC will notify the Operator and ensure its ridership and ticketing systems are accurate and reviewed for accuracy and completeness.

[5] See *Passenger Counting Technologies and Procedures: A Synthesis of Transit Practice* by Transportation Research Board, National Research Council. Page 20. https://onlinepubs.trb.org/onlinepubs/tcrp/tsyn29.pdf