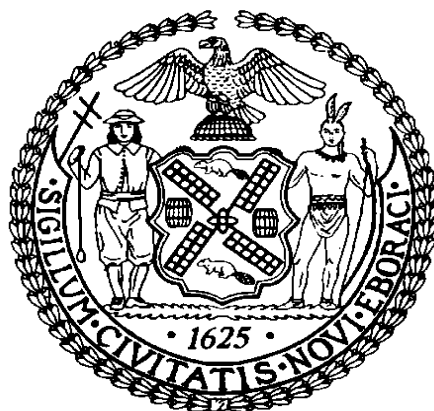


**CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER**

**John C. Liu  
COMPTROLLER**

**FINANCIAL AUDIT**

**H. Tina Kim  
Deputy Comptroller for Audit**



**Audit Report on the  
Economic Development Corporation's  
Oversight of Turner Construction Company's  
Contract for Facility and Construction  
Management Services**

*FR10-075A*

**February 9, 2011**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

John C. Liu  
COMPTROLLER

February 9, 2011

**To the Residents of the City of New York:**

My office has audited the effectiveness of the New York City Economic Development Corporation (EDC) in monitoring Turner Construction Company's \$7,500,000 contract for facility and construction management services. We audit entities such as EDC as a means of ensuring that they are providing the necessary oversight of private concerns that conduct business on City property.

The audit found that EDC is not effectively monitoring the contract. There were significant weaknesses in EDC's oversight of work performed under the contract. These deficiencies resulted in inappropriate and questionable payments totaling \$3,344,961 to Turner and its subcontractors. Some of the costs would not have been incurred had the work been effectively monitored. Furthermore, EDC's lack of oversight may have jeopardized public safety and placed the City at financial risk through its inability to ensure that repairs to EDC facilities were carried out in a timely manner.

The audit recommends that EDC should: establish a management system to monitor the work of facility management and construction management services contracts such as Turner's; review the work deficiencies and questionable payments cited in the report and recoup any payments for work that was not properly carried out; maintain adequate documentation and ensure that vendor proposals are consistent with work scopes; develop procedures to identify and remediate environmental hazards; require project and property managers to perform frequent inspections of work and to maintain inspection reports and logs; ensure that the cost of change orders is based on appropriate labor and material rates; review all payment requests to ensure that payroll expenses comply with contract provisions and the staff and fee schedule; and ensure that hazardous conditions are identified and promptly addressed, and that facility repairs are carried out in a timely manner.

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](mailto:audit@comptroller.nyc.gov).

Sincerely,

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

John C. Liu

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*The City of New York  
Office of the Comptroller  
Financial Audit*

**Audit Report on the  
Economic Development Corporation's Oversight of  
Turner Construction Company's Contract for  
Facility and Construction Management Services**

**FR10-075A**

**AUDIT REPORT IN BRIEF**

We performed an audit on the New York City Economic Development Corporation's (Corporation) oversight of Turner Construction Company's contract for facility and construction management services. The Corporation is a local development corporation responsible for carrying out economic development services for the City. Services are provided under two contractual agreements with the City known as the Master and Maritime contracts. Under the auspices of the Master and Maritime contracts, the Corporation awarded a \$7,500,000 contract (No. 16850005) to Turner Construction Company (Turner) on July 1, 2008, to provide facility management and construction management services for various properties in New York City.

The contract requires Turner to perform three types of services, which must be authorized by the Corporation in written "approval" letters: 1) General Services (site evaluation; maintenance and repair; capital improvements emergency services; and site operations assessment); 2) Administrative Services (prepare and distribute reports, and administer and oversee subcontracts); and 3) Construction Management Services (competitively procure contracts; monitor, inspect, and approve work; and prepare overall progress schedules and budgets).

Contract services are carried out in connection with specific projects (e.g., Bush Terminal Capital Improvements, Essex Street Market Building C Rehabilitation), which are initiated by the Corporation and whose work scopes and budgets are prepared by Turner and approved by the Corporation. Turner is required to solicit and procure engineering consultants and subcontractors to carry out the actual design and construction work. After a project is substantially complete, Turner prepares a "punch list" of outstanding work items that is reviewed and approved by the Corporation.

**Audit Findings and Conclusions**

The Corporation is not effectively monitoring Turner Construction Company contract No. 16850005. Although much of the contract work was apparently complete and satisfactory,

there were significant weaknesses in the Corporation's oversight of work performed under the contract (and certain work that was carried over from a previous Turner contract.) Consequently, of ten sampled projects we examined with expenditures totaling \$16,972,757, we identified \$2,700,800 in inappropriate and questionable payments to Turner and its subcontractors. Moreover, we identified an additional \$664,161 in questionable payments that pertained to work that was carried over from the prior contract. The total of the dubious payments was \$3,344,961. Some of the costs would not have been incurred had the work been effectively monitored.

Furthermore, the Corporation's lack of oversight may have jeopardized public safety and placed the City at financial risk through its inability to ensure that repairs to Corporation facilities were carried out in a timely manner.

Overall, our review indicated that the Corporation's utter reliance on Turner to carry out construction and associated management tasks has contributed to the Corporation's lax oversight of the contract's management. Although Turner is clearly responsible for undertaking the management of the Corporation's construction projects, it is our conclusion that the Corporation has granted Turner far too much leeway in this regard. As the Corporation is ultimately responsible for ensuring that work is performed appropriately and payments are substantiated, the Corporation must strengthen its own management system to provide a greater degree of oversight over Turner and all similar facility management and construction management services contracts.

### **Audit Recommendations**

This report makes a total of 31 recommendations. The major recommendations are that the Corporation should:

- Establish a management system to monitor the work of facility management and construction management services contracts such as Turner's.
- Review the work deficiencies and questionable payments cited in this report and recoup any payments for work that was not properly carried out. Additionally, ensure that payments that cannot be adequately substantiated are readjusted and then recoup any overpayments from Turner.
- Maintain adequate documentation to substantiate the development and authorization of appropriate work scopes, and ensure that vendor proposals are consistent with work scopes.
- Develop procedures to identify and remediate environmental hazards before commencing project work.
- Require project and property managers to perform frequent inspections of work and to maintain inspection reports and logs and ensure that project and property managers participate in final work inspections and the development of punch-lists.

- Develop procedures for ensuring that required project documentation, including schedules and meeting minutes, are submitted and approved in a timely manner.
- Ensure that the cost of change orders is based on appropriate labor and material rates, and that the cost reasonableness of subcontractor proposals is reviewed. Furthermore, audit change orders before authorizing payment if required, and ensure that all payments for change orders are substantiated with supporting documentation such as time and material tickets.
- Cease its practice of shifting contract funds to pay for change order work.
- Require that facility management and construction management service contractors, including Turner, produce evidence to substantiate the reasonableness of work hours expended by its personnel.
- Ensure that facility management and construction management services contractors, including Turner, provide the Corporation with an estimate-- before commencing work-- of the number of hours its personnel are expected to be employed on that project.
- Review all payment requests to ensure that payroll expenses comply with contract provisions and the staff and fee schedule and ensure that payments for overhead personnel are contained in the overhead and profit “multiplier.”
- Ensure that hazardous conditions are identified and promptly addressed, and that facility repairs are carried out in a timely manner.

### **Corporation Response**

Corporation officials contended that it was already complying with 19 recommendations. The Corporation disagreed with seven other recommendations, agreed with three recommendations, and partially agreed with two recommendations. The Corporation also disagreed with many of our findings.

The Corporation’s specific comments regarding the audit recommendations and our rebuttals are contained in the relevant sections of this report. The Corporation’s specific comments regarding the audit findings and our rebuttals are contained in Appendix III. The Corporation’s full response is included as an addendum to this report.

Due to the extent of disagreement and amount of opposing detail now included in this report, we wish to conclude by repeating our overall point. The Corporation is responsible for millions of dollars of development projects on the public’s behalf. While it has the right to contractually delegate some of this responsibility to, in this case, Turner, it cannot absolve itself from its overall responsibility. The Corporation therefore needs to be more actively involved in overseeing Turner and in documenting this oversight.

## INTRODUCTION

### Background

The New York City Economic Development Corporation (Corporation) is a local development corporation organized under Section 1411 of the Not-For-Profit Corporation Law of the State of New York. The Corporation was established in 1991 by the merger of two not-for-profit corporations (the New York City Public Development Corporation and the Financial Services Corporation of New York City), both of which carried out economic development services for the City. The Corporation's mission is to attract, promote, and expand private investment and employment opportunity; rehabilitate and improve commercial and industrial areas; and provide financial assistance and grants to qualifying businesses.

The Corporation provides services under two contractual agreements with the City known as the Master and Maritime contracts. Under the Master contract, the Corporation is required to provide various services relating to retaining and expanding industrial and commercial development within the City, including: (1) overseeing commercial and industrial development, (2) stabilizing and improving industrial areas, (3) administering public loan, federal, state, and other grants for the City, and (4) managing and maintaining City-owned properties. Under the Maritime contract, the Corporation is responsible for the operations of the City's maritime business and waterfront properties.

Under the auspices of the Master and Maritime contracts, the Corporation awarded a \$7,500,000 contract (No. 16850005) to Turner Construction Company (Turner) on July 1, 2008, to provide facility management and construction management services for various properties in New York City.<sup>1</sup> The contract's term is from July 1, 2008, to July 1, 2011, and can be extended for two additional one-year terms. There have been 21 contract amendments that have increased the contract amount to \$73,578,706.<sup>2</sup>

The contract requires Turner to perform three types of services, which must be authorized by the Corporation in written "approval" letters: 1) General Services (site evaluation; maintenance and repair; capital improvements emergency services; and site operations assessment); 2) Administrative Services (prepare and distribute reports, and administer and oversee subcontracts); and 3) Construction Management Services (competitively procure contracts; monitor, inspect, and approve work; and prepare overall progress schedules and budgets).

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<sup>1</sup> The Corporation awarded two other contracts for facility management and construction management services to Hudson Meridian and Hunter Roberts.

<sup>2</sup> The Corporation had previously awarded a facilities and construction management services contract to Turner (No. 16850001) on August 10, 2003. When the Corporation awarded contract No. 16850005, many projects from the previous contract were still uncompleted. The budget and work scopes for the incomplete projects were transferred to contract No. 16850005 as Amendment 1.

Contract services are carried out in connection with specific projects (e.g., Bush Terminal Capital Improvements, Essex Street Market Building C Rehabilitation), which are initiated by the Corporation and whose work scopes and budgets are prepared by Turner and approved by the Corporation. Turner is required to solicit and procure engineering consultants and subcontractors to carry out the actual design and construction work. After a project is substantially complete, Turner prepares a “punch list” of outstanding work items that is reviewed and approved by the Corporation.

Turner submits a monthly payment requisition to the Corporation for review and approval. The requisition generally consists of lump sum payments to the subcontractors who carry out the actual work and time and material payments to Turner personnel in accordance with hourly rates specified in the contract.

The Corporation’s Division of Asset Management is responsible for administering the contract. Project managers of the Division review project work scopes and budgets, review and evaluate Turner subcontractors, ensure that subcontractor bids are within budget, conduct work inspections, review payment requisitions submitted by Turner, and participate in the closing out phase of project work. Division property managers, who are mainly responsible for dealing with the Corporation’s tenants, participate in scope development and review, field coordination and verification, and quality control.

The Corporation maintains information about contract No. 16850005 (meeting minutes, schedules, subcontractors, etc.) in a construction management software known as PROLOG. Payment information about the contract is contained in Microsoft Dynamics Great Plains.

### **Objective**

The objectives of this audit were to determine whether the Corporation is effectively monitoring Turner Construction Company to ensure that all work being performed is at its direction, that the work is completed and of good quality, and that payments requested by and made to Turner comply with the payment provisions of the contract.

### **Scope and Methodology**

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

The scope of this audit covered Turner contract expenditures through January 2010.



We reviewed the contract between the Corporation and Turner and the amendments to the contract. To understand the internal controls that are relevant to our audit, we interviewed Corporation personnel including the senior vice president, project and property managers of the Division of Asset Management, and officials of the internal audit, accounting, budget, and contracts departments.<sup>3</sup> We also interviewed Turner’s vice president for management and consulting, who is the project executive responsible for overseeing the contract with the Corporation.

We obtained from the Corporation a list of 47 projects that Turner is carrying out under contract No. 16850005 as of January 25, 2010. We obtained from the Corporation data about the 47 projects, including the amendments by which each project was funded and the amount of funding, associated approval letters and their dollar amounts, and costs to date (which totaled \$34,089,778 through January 25, 2010). Of these, 11 projects were in construction, 20 projects were completed and were being “closed-out,” and 16 projects were in the pre-construction phase. (Two additional projects that were to be carried out under the contract were terminated by the Corporation.) Our population consisted of all 31 projects in the construction and close-out phases with expenditures totaling \$22,024,509 as of January 25, 2010. We excluded from our population projects in the pre-construction phase because construction work had not yet started.

Subsequently, we stratified the population according to project phase and sorted each stratum by the total dollar amount of each project. We then chose a judgmental sample of 10 projects consisting of the five largest dollar-value projects in construction and the five largest dollar-value projects in the close-out phase. (See Appendix I for a list of the sampled projects.) We used “costs to date” as shown in reports generated by the Corporation’s PROLOG system for identifying a project’s dollar value. As of January 25, 2010, expenditures for the 10 sampled projects totaled \$16,972,757 (77%) of \$22,024,509 that was expended by that date for the 31 projects in our audit population.

As of March 2010, we obtained from the Corporation 14 Turner payments (each of which consisted of multiple payment request vouchers) for the 47 projects. We sampled all 20 voucher requests that were contained in payment #14. Our review consisted of an examination of payments totaling \$260,761 that were for Turner subcontractor liability insurance premiums, staff costs, and additional allowable expenses. We subsequently obtained from the Corporation six additional payments (#15 to #20). From all 20 payments, we randomly selected an additional sample of 32 voucher requests to do an additional review of Turner expenses that totaled \$515,519. Thus, in total we sampled 52 payment voucher requests.

To determine whether Turner is performing all work at the direction of the Corporation, we reviewed project files for evidence to substantiate whether the Corporation authorized approval letters. We also examined the methods by which the Corporation reviews, authorizes, and approves change orders.

To determine whether the Corporation is effectively monitoring Turner, we determined whether the Corporation obtained contractually required “deliverables” (*i.e.*, overall progress

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<sup>3</sup>The internal audit department includes two engineering auditors, who are licensed engineers.

schedule, overall project budget, and minutes of meetings) from Turner, and whether the deliverables were accurate, complete, and promptly submitted. We also examined meeting minutes to ascertain work progress, milestones, and critical activities. We also reviewed approval letters associated with each project to determine project scopes.

To determine whether work was completed satisfactorily and in accordance with their associated approval letters and change orders, we inspected the sampled facilities. Our inspections were limited to visual observations of completed work because we were unable to inspect underground, underwater, in-wall, or other construction work that was covered by finishing materials. We conducted field inspections of the projects between April 19 and April 28, 2010, and determined the status and quality of the completed work.

To determine whether payments requested by and made to Turner complied with the payment provisions of the contract, we checked the Corporation files for the required supporting documentation to substantiate the payments. We ascertained whether payments were made to authorized Turner personnel for verified time worked, whether the payments complied with hourly rates stipulated in the contract, and whether personnel substitutions and changes in hourly rates were approved by the Corporation. Additionally, we verified the accuracy of the overhead and profit multiplier.<sup>4</sup> Finally, we examined the amount of construction management payments to Turner for each specific project to ascertain their reasonableness in relation to engineering cost standards.

We reviewed all 24 construction change orders that were associated with the 10 sampled projects. Nineteen change orders were for additional work totaling \$2,634,468 and five change orders were credits for deleted work totaling \$892,549.

For each sampled project, we reviewed approval letters, project documentation, payment requests, and supporting documentation, including timesheets, project schedules, and other Corporation records. We reviewed Corporation reports including actual cost summaries, project budget status, projects payments lists, and construction status, and compiled the information in a comprehensive projects summary schedule. In addition, we visited Turner's field office at the Brooklyn Army Terminal, where we interviewed Turner engineering and accounting officials about timekeeping and payroll procedures for Turner staff.

As our sample was not selected randomly, the results of our tests cannot be projected to the other 21 projects in our entire population. However, the results provide sufficient, appropriate evidence to satisfy our audit objectives.

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<sup>4</sup> A multiplier is a factor by which a consultant or construction manager's direct salary costs are multiplied to compensate for overhead and profit. Overhead is costs not directly attributable to a specific project, including all support staff costs.

## **Discussion of Audit Results**

The matters covered in this report were discussed with Corporation officials during and at the conclusion of this audit. A preliminary draft report was sent to Corporation officials on September 14, 2010, and discussed at an exit conference held on October 6, 2010. On November 17, 2010, we submitted a draft report to Corporation officials with a request for comments. We received written comments from the Corporation on December 2, 2010.

In its response, the Corporation stated that it “disagrees with the Comptroller’s assertion that its management system is not effective,” and that “By claiming that NYCEDC is not effectively managing the Turner contract, the Comptroller is (1) displaying an unfortunate misunderstanding of the contractual role and obligations of Turner and (2) discounting a track record of successful project completion by NYCEDC that would have been impossible to achieve if the Comptroller’s claims through the audit report were true.”

The Corporation’s specific comments and our rebuttals are contained in the relevant sections of this report. However, the nature of the Corporation’s response calls for the following general comments.

We recognize that monitoring the work of a facility and construction management contractor such as Turner is complex, and that the Corporation “has contracted with Turner to provide oversight and management of the construction projects,” but doing so without adhering to adequate procedures to safeguard the City’s financial interests is unacceptable for the management of any government program. Delegating many direct oversight functions to Turner does not absolve the Corporation of its overall oversight responsibilities, particularly since it is acting on the public’s behalf. Turner must provide facility management and construction management services for a complex series of projects. Accordingly, comprehensive records, work scopes, and cost estimates are particularly important in providing transparency to the process by which the Corporation oversees the expenditure of City funds. Delegating these responsibilities to Turner without maintaining appropriate involvement and subsequent documentation of the Corporation’s involvement, in its own files, are the issues that our report raises.

Corporation officials contended that it was already complying with 19 recommendations. The Corporation disagreed with seven other recommendations, agreed with three recommendations, and partially agreed with two recommendations.

The Corporation’s specific comments regarding the audit recommendations and our rebuttals are contained in the relevant sections of this report. The Corporation’s specific comments regarding the audit findings and our rebuttals are contained in Appendix III. The Corporation’s full response is included as an addendum to this report.

Due to the extent of disagreement and amount of opposing detail now included in this report, we wish to conclude by repeating our overall point. The Corporation is responsible for millions of dollars of development projects on the public's behalf. While it has the right to contractually delegate some of this responsibility to, in this case, Turner, it cannot absolve itself from its overall responsibility. The Corporation therefore needs to be more actively involved in overseeing Turner and in documenting this oversight.

## **FINDINGS AND RECOMMENDATIONS**

The Corporation is not effectively monitoring Turner Construction Company contract No. 16850005. Although much of the contract work was apparently complete and satisfactory, there were significant weaknesses in the Corporation's oversight of work performed under the contract. Additionally, we found that payments requested by and made to Turner did not fully comply with the payment provisions of the contract. These deficiencies resulted in inappropriate and questionable payments to Turner and its subcontractors totaling \$3,344,961.<sup>5</sup> Some of the costs would not have been incurred had the work been effectively monitored.

Furthermore, the Corporation's lack of oversight may have jeopardized public safety and placed the City at financial risk through its inability to ensure that repairs to Corporation facilities were carried out in a timely manner.

Overall, our review indicated that the Corporation's utter reliance on Turner to carry out construction and associated management tasks has contributed to the Corporation's lax oversight. Although Turner is clearly responsible for undertaking the management of the Corporation's construction projects, it is our conclusion that the Corporation has granted Turner far too much leeway in this regard. Specifically, the Corporation lacks written policies or guidelines for managing facility management and construction management service contracts, adequate procedures to ensure that required project documentation is submitted and approved, and documentation to substantiate the Corporation's participation in developing work scopes and closing out project work. Furthermore, the Corporation has not ensured that it carries out inspections that are adequately conducted and documented.

As the Corporation is ultimately responsible for ensuring that work is performed appropriately and payments are substantiated, the Corporation must strengthen its own management system to provide a greater degree of oversight over Turner and all similar facility management and construction management services contracts.

These matters are discussed in detail in the following sections of the report.

### **The Corporation Does Not Effectively Monitor the Turner Contract**

The Corporation is not effectively monitoring the Turner Construction Company to ensure that contract work is being properly performed and that payments requested by and made to Turner comply with the payment provisions of the contract. As a result of the Corporation's failure to adequately monitor contract work, the Corporation made questionable and inappropriate payments to Turner and its subcontractors totaling \$3,344,961. (See Table 1 on page 11.)

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<sup>5</sup> A portion of the questionable payments (\$2,700,800) pertained to approval letters issued under Turner contract no. 16850005. This amount represents 12% of the \$22,024,509 expended under this contract for the 31 projects in our audit population. The remaining portion of the questionable payments (\$644,161) pertained to approval letters that were originally issued under prior Turner contract no. 16850001 for work that carried over into contract no. 16850005.

**Table 1**  
**Inappropriate and Questionable Payments to Turner**

<b>Overpayments to be Recouped</b>			
<b>Project</b>	<b>Item</b>	<b>Description</b>	<b>Amount</b>
Bush Terminal Capital Improvements	Lighting	Incorrect quantities emergency exit and stairwell lights	\$ 17,975
Essex Street Market Building C Rehabilitation	Roofing	Poor quality work	\$ 13,750
Harlem River Bulkhead & Esplanade Rehab	Change Order	Incorrect labor rate	\$ 2,760
Pier 42 Substructure Rehab	Change Order	Incorrect labor rate	\$ 180
Multiple Projects	Turner Payroll	Miscellaneous overpayments	\$ 22,384
	<b>Total</b>		<b>\$ 57,049</b>

<b>Funds Lost due to Poor Oversight</b>			
<b>Project</b>	<b>Item</b>	<b>Description</b>	<b>Amount</b>
BAT Pier 1 Bulkhead Rehab *	Excavated Material	Unnecessary costs for material loading, storage, and transportation.	\$ 708,364
Bush Terminal Capital	Roofing	Temporary roof installed on unit B	\$ 70,342
Bush Terminal Capital Improvements	Roofing	Bonds and Insurance paid prior to work cancellation	\$ 18,000
Hunts Point Roof Rehab/Bush Terminal Strategic Plan	Turner Costs	Excessive construction management costs	\$ 695,099

\* The amount of funds lost for BAT Pier 1 may have been as high as \$961,504

	<b>Total</b>		<b>\$1,491,805</b>
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<b>Questionable Payments</b>			
<b>Project</b>	<b>Item</b>	<b>Description</b>	<b>Amount</b>
BAT Pier 1 Bulkhead Rehab	Dispose contaminated material	No pre-payment audit	\$1,067,005
Multiple Projects	Turner Reimbursable Expenses	Improper reimbursement for unsubstantiated expenses	\$ 20,006
East River Bulkhead and Esplanade	Settlement Repairs	No documentation to substantiate a \$0 change order	\$ 45,327
Hunts Point Roof Rehabilitation	Air Conditioning	Improper use of allowance	\$ 19,608
Bush Terminal Strategic Plan **	Elevators	No change order issued, no documentation to substantiate \$ amounts	\$ 141,475
BAT Pier 1 Bulkhead Rehab **	Material excavation	No documentation to substantiate quantity	\$ 502,686

\*\* These items totaling \$644,161 pertained to approval letters that were originally issued under prior Turner contract no. 16850001 for work that carried over into contract no. 16850005.

	<b>Total</b>		<b>\$1,796,107</b>
	<b>Grand Total</b>		<b>\$3,344,961</b>

The amounts in Table 1 consisted of:

- \$57,049 for overpayments to be recouped.
- \$1,491,805 for funds expended as a result of poor oversight.
- \$1,796,107 for payments that were questionable or unsubstantiated.

An effective system to monitor the Turner contract would include:

- Ensuring that work scopes are properly developed and authorized.
- Adequate procedures to ensure that required project documentation including schedules, budgets, and drawings are submitted and approved.
- Reviewing and approving hourly rates, personnel, and payment invoices.
- Tracking the progress of start and completion dates for projects.
- Tracking the cost of projects.
- Conducting and documenting adequate inspections.
- Reviewing the accuracy of monthly status meeting minutes.
- Participating in developing a project “punch-list.”

However, interviews with Corporation officials and a review of records indicate that the Corporation does not effectively carry out these measures to ensure that work is done in accordance with the contract. We partially attribute these problems to the lack of written policies and guidelines that spell out the administrative and oversight responsibilities of Corporation personnel. Overall, however, the Corporation has not carried out these measures because of its total reliance on Turner to fulfill the terms of the contract. However, as the Corporation is ultimately responsible for ensuring that work is performed appropriately and payments are substantiated, the Corporation must strengthen its own management system to provide appropriate oversight. The Corporation’s failure to do so has, as discussed in the following sections of this report, resulted in questionable and inappropriate payments to Turner and its subcontractors totaling more than \$3.3 million.

### **Recommendations**

The Corporation should:

1. Establish a management system to monitor the work of facility management and construction management services contracts such as Turner. In that regard, the Corporation should:

- Ensure that work scopes are properly developed and authorized.
- Establish procedures to ensure that required project documentation including schedules, budgets, and drawings are submitted and approved.
- Review and approve hourly rates, personnel, and payment invoices.
- Track the progress of start and completion dates for projects.
- Track the cost of projects.
- Conduct and document adequate inspections.
- Review the accuracy of monthly status meeting minutes.
- Participate in developing project “punch-lists.”

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that work scopes are not properly developed and authorized. In fact, NYCEDC has an established process already in place . . .”

“NYCEDC disagrees with the Comptroller's assertion that project documentation is improperly managed. In fact, NYCEDC has an established process already in place . . .”

“NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not reviewing and approving hourly rates, personnel and payment invoices. In fact, NYCEDC reviews and approves hourly rates, personnel and payment invoices . . .”

“NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not tracking the progress of start and completion dates for its projects. In fact, NYCEDC tracks the progress of start and completion dates for projects in its monthly contract meetings . . .”

“NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not tracking the cost of its projects. In fact, NYCEDC implemented an industry-standard contract management database that contains project financial information back to 2003 and that tracks the cost of all projects . . .”

“NYCEDC disagrees with the Comptroller's assertion that NYCEDC IS not conducting adequate inspections. In fact, NYCEDC has been conducting routine inspections of its property and projects . . .”

“NYCEDC disagrees with the Comptroller's assertion that NYCEDC's monthly meeting minutes are inaccurate. In fact, NYCEDC has convened and managed monthly contract



meetings with all of its facility and construction management consultants for many years . . .”

“NYCEDC disagrees with the Comptroller's assertion that project punchlists are not properly developed. In fact, NYCEDC participates, when appropriate, in developing project punchlists to identify remaining work to be completed before final payment is made . . .”

**Auditor Comment:** We welcome the Corporation’s acknowledgment of its responsibilities in establishing management processes to monitor the work of facility management and construction management services contracts such as Turner. We note, however, that during the course of the audit, evidence that the Corporation was effectively carrying out these measures was lacking. Consequently, we attributed over \$3.34 million in inappropriate and questionable payments to Turner and its subcontractors to problems with the Corporation’s management system for overseeing the contract.

2. Review the work deficiencies and questionable payments cited in this report and recoup any payments for work that was not properly carried out. Additionally, ensure that payments that cannot be adequately substantiated are adjusted and recoup any overpayments from Turner.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion in Table I regarding the magnitude of payments to be recouped.

NYCEDC agrees to recoup the costs in the three instances that the Comptroller accurately identified to be legitimate overpayments, including 1) \$2,760 for an incorrect labor rate at Harlem River, (2) \$180 for incorrect labor rate at Pier 42 and (3) \$18,000 for a bond overpayment at Bush Terminal - for a grand total of \$20,940. In fact, NYCEDC has already recouped those costs.

Although NYCEDC is committed to eliminating these types of errors, it is important to recognize that these findings represent a negligible percentage (.028%) relative to the value of Turner's contract.”

**Auditor Comment:** We found \$2.7 million of questionable payments pertaining to approval letters issued under Turner contract no. 16850005. This represents 12 percent of the \$22,024,509 expended under this contract for the 31 projects in our audit population and 16 percent of the \$16,752,757 expended for the 10 sampled projects. The questionable and inappropriate payments involved problems such as work scopes not reconciled, missing itemized labor and material costs, the lack of a pre-payment audit, and excessive construction management costs. The extent of these problems casts doubt on the effectiveness of the Corporation’s oversight of the Turner contract.

## **Lack of Corporation Oversight**

### **Problems with Work Scopes**

The Corporation did not adequately participate in developing work scopes for the various projects that describe required activities, material quantities, and unit prices. Developing a comprehensive and accurate scope of work before soliciting and awarding subcontracts is a critical activity for carrying out work successfully, on time, and within budget.

Corporation project and property managers are responsible for collaborating with Turner officials to review and develop work scopes and for reviewing and granting final approval of required work scopes that are described in the approval letters. However, there was no documentation to affirm that Corporation officials were involved in developing project work scopes. As a result, we identified cases in which improperly developed work scopes led to the expenditure of additional and unnecessary costs after work had commenced.

The Corporation's work scope for the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation lacked provisions for testing material for contamination prior to its excavation. The necessity for testing was recognized only during the excavation when evidence of potential contamination became evident. Corporation officials authorized the disposal of the hazardous material at the Fresh Kills landfill in Staten Island, a step that was subsequently recognized as erroneous by the Corporation as that particular material should have been disposed of at another landfill. As a result, unnecessary costs were incurred for loading the material in barges for shipment to Fresh Kills, storing the material, unloading it from barges, and re-stockpiling the material on land. The cost of these extra activities—which would not have been required had the material testing been performed during the scoping phase—totaled \$708,364.<sup>6</sup> In addition, the work was delayed for more than six months.

In another case, when the Corporation authorized a roofing work scope for the Bush Terminal Capital Improvements, it omitted portions of roofing that needed to be replaced. Furthermore, the Corporation neglected to perform preliminary tests of the existing roof for moisture content and asbestos, tests essential to compiling a proper scope for roof work. Consequently, the Corporation cancelled the original approval letter and revised the scope of work. In the meantime, the Corporation directed Turner to install a temporary roof on the lower level of Unit B, whose cost totaled \$70,343. The temporary roof would not have been necessary if the work scope had been properly developed. Moreover, the Corporation paid \$18,000 to Turner for the cost of bonds and insurance that had already been expended by Turner's roofing subcontractor before the original approval letter was cancelled.

Corporation officials informed us that it has now established procedures to require material testing. We cannot, however, attest to the efficacy of these procedures, which consist of

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<sup>6</sup> Our review indicated, however, that the material could have been disposed of at the Fresh Kills landfill if certain measures had been taken to splinter the material into smaller pieces. As the Corporation chose not to carry out this scenario, we estimate the additional unnecessary costs to be as high as \$961,504 instead of \$708,364.

a July 29, 2010, e-mail to Turner stating “NYCEDC would like to reiterate its policy of proactively identifying all appropriate environmental conditions in the preconstruction phase.”

The Corporation also failed to adequately reconcile work scopes for the installation of emergency exit and stairwell lights at Bush Terminal Capital Improvements. The original work scope for which subcontractors were to submit bid proposals was based on a specified quantity of 61 light fixtures. A subsequent revised work scope reduced the quantity of light fixtures to 27. However, the Corporation failed to properly review vendor proposals to ensure that bid prices complied with the revised quantities. Consequently, the Corporation paid Turner and its subcontractor for the higher quantities in the original work scope, thereby overpaying \$17,975.

### **Recommendations**

The Corporation should:

3. Maintain adequate documentation to substantiate the development and authorization of appropriate work scopes.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that work scopes are not properly developed and authorized.

In fact, NYCEDC has an established process already in place whereby each project is scoped (1) before the funds are added to the budget, (2) before a CP is requested from OMB, (3) before receiving NYCEDC board approval and (4) before an approval letter is signed by NYCEDC authorizing the work to be completed. This multi-layered process ensures that the work scope that is purchased is the work scope that is anticipated and required.

NYCEDC does not believe that it would be wise to duplicate any of these efforts or the efforts of its facilities/construction management contract staff. NYCEDC believes that the cost-benefit of duplicating this effort is not justified by the findings of the report . . . ”

**Auditor Comment:** The Corporation’s policy states that “NYCEDC has contracted with Turner to provide oversight and management of the construction project.” Given this guiding principle, our concern is that the Corporation has relinquished far too much control and supervision in reviewing and overseeing the work carried out by Turner. When we reviewed file documentation, we found a lack of involvement by Corporation officials in developing project work scopes. Accordingly, while we do not advocate the “duplication” of efforts in developing work scopes, we contend that the Corporation needs to be more fully involved in the oversight process.

4. Develop procedures to identify and remediate environmental hazards before commencing project work.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that procedures are not in place to identify and remediate environmental hazards before commencing project work.

In fact, after learning a valuable lesson on the BAT project two years before the Comptroller issued these findings, NYCEDC has previously directed all of its FM/CM consultants to identify and mitigate the impacts of environmental hazards during the work scope development process, in cooperation with NYCEDC. All projects commenced under this Turner contract have complied with that mandate. That direction was again provided to all FM/CM consultants during the course of this audit, as acknowledged by the Comptroller. No similar incidents have occurred since the BAT project, despite several projects with similar soil conditions . . . ”

**Auditor Comment:** While we acknowledge the Corporation’s commitment to identifying and mitigating the impacts of environmental hazards, the “procedures” that were provided to us during the audit consisted solely of a July 29, 2010, e-mail to Turner stating “NYCEDC would like to reiterate its policy of proactively identifying all appropriate environmental conditions in the preconstruction phase.” Accordingly, we affirm our recommendation about compiling procedures to identify and remediate environmental hazards.

5. Ensure that vendor proposals are consistent with work scopes.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that vendor proposals are not analyzed.

In fact, NYCEDC already has an established procedure for ensuring that vendor proposals are consistent with work scopes. Turner conducts walkthroughs and pre-proposal meetings with the vendors and provides ample time during the procurement process for Q&A, ensuring that the vendors are able to clarify any questions that they may have. NYCEDC participates in this procurement, as appropriate, but Turner has the contractual obligation to manage this process . . . ”

**Auditor Comment:** We agree that Turner has the contractual obligation to manage the process of reviewing vendor proposals. But the Corporation has misunderstood our audit finding by choosing to focus on Turner’s performance in this regard, rather than on its own lack of oversight over the work carried out by Turner.

6. Recoup \$17,975 from Turner for overpayments for lighting for the Bush Terminal Capital Improvements.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion. There were no overpayments made and therefore no funds to recoup.”

**Auditor Comment:** Our analysis of project documentation showed that the price authorized by the Corporation for each lighting fixture provided by Turner’s

subcontractor averaged \$1,130. We consider this amount excessive given that the subcontractor's price for additional work averaged \$463 for each fixture, including overhead and profit. Further analysis showed that when the \$463 price is applied to the higher quantity of lighting fixtures listed in the original request for proposals (61), the dollar amount computed is consistent with the price paid by the Corporation. Clearly, the cost of this work was overpriced by \$17,975.

### **Problems with Inspecting and Overseeing Project Completion**

There was no evidence (such as log books or reports) to indicate that Corporation project managers conducted sufficient and appropriate inspections of project work and were cognizant of work scopes by reviewing Turner's design drawings. Corporation officials informed us that inspection reports or logs are not required or routinely prepared. Although we were able to obtain photographic evidence from the project managers showing that they visited seven of 10 sampled projects, there was no other documentation by which to assess the usefulness of these visits. Furthermore, the Corporation's ability to conduct appropriate work inspections was hampered because design drawings are maintained solely at Turner's site office at the Brooklyn Army Terminal.

With regard to the concluding phases of projects, there was no evidence to indicate that the Corporation participated in preparing or approving "punch-lists," which are lists of work items to be completed or corrected by a contractor after work has been deemed substantially completed. Furthermore, for five sampled projects in the close-out phase, there was no evidence to show that Corporation officials were present during final inspections between Turner and its subcontractors to ascertain that all work was satisfactorily completed.<sup>7</sup>

According to Corporation officials, Corporation managers are responsible for collaborating with Turner officials to review and develop punch-lists and close-out project work. Contract Appendix N, II.A.2, states that "the Corporation shall retain at least 5% of each payment . . . to ensure that Subcontractor complies with all its obligations." Appendix N, II.A.3, states "that payment upon substantial completion of the work shall include the amount of the retainage, minus twice the value of any uncompleted work." However, there was no documentation to affirm that Corporation officials were involved in final work inspections, in developing punch-lists, or in closing out project work—important steps that would enable the Corporation to authenticate that work is substantially complete and to ensure that payments to Turner for uncompleted work are withheld.

In the case of one sampled project (Essex Street Market Building C Rehabilitation), we observed problems with the quality of the roofing installation that included ponding and membrane bubbling (see photographs in Appendix II). However, there was no evidence to indicate whether this deficiency was cited in a punch-list. The Corporation should have compelled Turner and its subcontractor to remedy the problem and should have withheld

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<sup>7</sup> At the time of our inspections, two sampled projects (Essex Street Market Rehabilitation and East River Bulkhead and Esplanade Rehabilitation) that were previously in construction had been completed and were in the "close-out" phase.

retainage funds to do so; however, the Corporation had already paid Turner for the work. Accordingly, the Corporation must recoup from Turner \$13,750, which is the estimated cost to make the necessary repairs.

### **Recommendations**

The Corporation should:

7. Require project and property managers to perform frequent inspections of work and to maintain inspection reports and logs.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that appropriate inspections are not conducted.

In fact, NYCEDC has an established process in place to ensure that projects are completed successfully. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. NYCEDC provides an appropriate level of inspection and oversight to ensure that projects stay on track relative to budget and schedule, but NYCEDC does not duplicate the work of Turner . . . ”

**Auditor Comment:** Documenting the results of inspections in reports or log books is a critical activity for ensuring that inspections are meaningful and serve as effective management tools for overseeing contract work. However, the Corporation does not require that its project and property managers do so. The failure to document inspections does not provide the Corporation with sufficient evidence to support its contention that it provides an “appropriate level of inspection and oversight.” This is evident by the fact that we were unable to ascertain whether three of the 10 sampled projects had ever been inspected by Corporation personnel. Our own inspections and interviews with Corporation managers indicate that managers lack appropriate records, reports, and logs to document inspections of work.

8. Ensure that project and property managers participate in final work inspections and the development of punch-lists.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that punchlists are not properly developed.

In fact, NYCEDC participates when appropriate in developing project punchlists to identify remaining work to be completed before final payment is made. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Projects that are conducted in difficult locations (i.e., underwater) require the use of qualified outside consultants to identify punchlists that are then reviewed by Turner and NYCEDC.”

**Auditor Comment:** Our audit found that that the Corporation failed to provide documentation to substantiate its participation in preparing or approving punch-lists. In fact, the project documentation provided to us by the Corporation lacked any copies of punch-lists. While we understand that certain work entails the use of consultants to identify punch-list items, this does not absolve the Corporation staff of its responsibility to be available at a project’s final inspection. Accordingly, the Corporation should maintain evidence in its files that it participated in final work inspections and punch-list development.

9. Compel Turner to remedy or recoup funds for roofing problems discussed in this report that pertain to the Essex Street Market Building C Rehabilitation.

**Corporation Response:** “As stated in the response to Recommendation 7, NYCEDC disagrees with the Comptroller's assertion. There are no roofing problems that would require NYCEDC to recoup funds. All of the leaks were fixed at no cost to NYCEDC or the City through the warranty that was provided by the manufacturer.”

**Auditor Comment:** The Corporation’s assertion that there are ‘no roofing problems’ is belied by the photographs of deficient roofing conditions in Appendix II. Moreover, the Corporation’s response erroneously focuses on a problem not cited in the report—that of leaks, and not the ponding and membrane problems we observed.

### **Lack of Critical Contract Information**

The contract requires Turner to provide to the Corporation certain documents and information, including meeting minutes and progress schedules, whose receipt and review is an important means for overseeing and administering the contract. Contract Appendix B-11 B.2 requires Turner to prepare, coordinate, and distribute all reports, meeting minutes, correspondence, and related materials to the Corporation. However, Corporation files lacked evidence to show that appropriate minutes of meetings between Turner and its subcontractors and design consultants were submitted on a regular basis. In fact, there were no records of meeting minutes in the Corporation’s PROLOG system until October 21, 2009—almost 16 months after the contract commenced on July 1, 2008.<sup>8</sup> For six sampled projects, work apparently commenced between seven and 27 months before the date of the first documented meeting minutes for those projects. Furthermore, the dates of meeting minutes for the sampled projects recorded in the documentation and in PROLOG contained wide gaps that ranged from one to eight months. In addition, the minutes that were submitted lacked important project information needed to ascertain the percentage of work complete for the five sampled projects that were in construction and the legitimacy and status of associated Turner payment invoices.

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<sup>8</sup> Corporation officials informed us that some of the previous minutes were contained in PROLOG under other Turner contracts, including prior contract No. 16850001 and a contract for waterfront work.

There was no evidence that Turner prepared and the Corporation reviewed overall progress schedules for nine of 10 sampled properties as required by contract Appendix B-13 II.C.8.<sup>9</sup> For three projects (Hunts Point Roof Rehabilitation, Bush Terminal Capital Improvements, and Bush Terminal Strategic Plan), “master project schedules” were contained in monthly progress reports prepared by Turner. However, we consider the master schedules inadequate as work cannot be properly monitored because the schedules lack milestone dates and start and substantial completion dates. In fact, we found that dates in the master schedules did not match construction start dates shown in the approval letters and in subcontracts between Turner and its subcontractors.

The lack of work schedules hinders the effective tracking of work progress and the ability to monitor commencement, milestones, and completion dates. Corporation officials consider the signature date of approval letters to be a project’s commencement date; however, actual start dates do not necessarily coincide with the date of an approval letter.

The availability of regular meeting minutes and schedules provides a method for informing the Corporation about the status of construction progress and any problems that may need to be addressed. However, the lack of such information and the lack of evidence to indicate that attempts were made to obtain the information are additional signs of the Corporation’s lackluster approach to overseeing the contract.

### **Recommendations**

The Corporation should:

10. Develop procedures for ensuring that required project documentation, including schedules and meeting minutes, are submitted and approved in a timely manner.

**Corporation Response:** “NYCEDC disagrees with the Comptroller’s assertion that project documentation is not properly managed.

In fact, NYCEDC has an established procedure for ensuring that project documentation is submitted and approved in a timely manner. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Turner submits monthly reports to NYCEDC that include schedules for all projects and meeting minutes for the monthly contract meetings between Turner and NYCEDC. These monthly reports also include a monthly project summary and project budget information. The Comptroller had copies of these reports throughout the audit period . . . ”

**Auditor Comment:** The Corporation contends that the submission of monthly reports by Turner is the means for ensuring that project documentation is submitted and approved in a timely manner. However, we note that the first report was not submitted to the

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<sup>9</sup> An overall progress schedule was prepared for the Bush Terminal Capital Improvements.



Corporation until October 2009—one year and three months after the contract commenced on July 1, 2008.

11. Require that facility management and construction management services contractors, including Turner, submit project schedules that show milestone dates and planned and actual start and substantial completion dates. Likewise, ensure that project documentation provides accurate information about the status of work and major milestones.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that project schedules are not properly managed.

In fact, NYCEDC regularly reviews project schedules as part of its monthly contract meetings. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. In addition to this, NYCEDC has already undertaken a pilot project on another contract to utilize Prolog for the management of schedules. This will be expanded to this Turner contract shortly.

It is worth noting that there is no evidence presented by the Comptroller in this audit report that any deficiency in documenting schedules, however minor, resulted in missed completion dates or increased costs. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.”

**Auditor Comment:** The Corporation did not address our finding and recommendation about the lack of work schedules. As schedules in Corporation files lacked basic information (e.g., planned project start and completion dates, milestones), we could not undertake delay analyses to ascertain whether projects were completed on time. Therefore, we cannot attest to the accuracy of the Corporation's claim that there were no missed completion dates or critical milestones. Hopefully, the Corporation's PROLOG pilot project will be successful and provide a valuable means for the Corporation to properly oversee project schedules.

### **Problems with Change Orders**

The Corporation authorized the approval of change orders without adequately determining whether the prices and work scopes of change orders requested by Turner and its subcontractors were reasonable and necessary.<sup>10</sup> Our review concluded that for 17 of 24 sampled change orders, there was no evidence to indicate that Turner reviewed subcontractor price proposals and negotiated change order prices with subcontractors as required by Contract Article 4.2.1. Moreover, 12 of the 24 change orders lacked itemized labor and material costs as

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<sup>10</sup> The Corporation can grant Turner an approval letter that spells out the cost and terms of any authorized change order.

required by Turner’s typical contract with its subcontractors. Yet in all these cases, the Corporation authorized approval of the change orders without ensuring that the cost of the change order work was substantiated.

We also found problems with three change orders that contained itemized breakdowns of labor.<sup>11</sup> In these cases, the change orders were approved by the Corporation although the hourly rates for mechanics upon which the change orders were based exceeded those stipulated in subcontracts between Turner and its subcontractors. For the Harlem River Bulkhead and Esplanade Rehabilitation project, change orders (approval letters 4065 and 4095) were based on a rate of \$108 per hour; the stipulated subcontract rate was \$85 per hour, thereby resulting in an overcharge of \$2,760. When we brought this matter to the Corporation’s attention, Corporation officials informed us that it “will work . . . to get reimbursed . . . for the difference in the overcharged rate.” For the Pier 42 Substructure Rehabilitation, a change order (approval letter 4070) was based on a rate of \$103.79 per hour; the stipulated subcontract rate was \$85 per hour, resulting in an overcharge of \$180.

### **Recommendations**

The Corporation should:

12. Ensure that the cost of change orders is based on appropriate labor and material rates, and that the cost reasonableness of subcontractor proposals is reviewed.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that change orders are not properly reviewed.

In fact, NYCEDC and Turner both check labor rates against the base contract approved rates for that subcontractor, and this ensures the reasonableness of a subcontractor's proposed costs. While three errors have been cited by the Comptroller, NYCEDC interprets the Comptroller's findings as an affirmation of NYCEDC's effective management. More specifically, we see the Comptroller's total findings in this regard, \$2,940 or .003% of Turner's total contract value, as immaterial and a resounding affirmation of NYCEDC's diligence and effectiveness . . .”

**Auditor Comment:** Over 71 percent of the 24 sampled changes orders reviewed showed a lack of evidence that Turner reviewed subcontractor price proposals and negotiated change order prices. The Corporation did not provide any substantiating documentation to refute this problem.

13. Readjust the cost of the change orders identified in this report and recoup any overpayments that were made to Turner.

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<sup>11</sup> One of the three change orders (approval letter 4070) contained itemized breakdowns of labor and material.

**Corporation Response:** “As described immediately above, NYCEDC agrees to recoup the appropriate amounts from Turner. In fact, for the three change orders cited, NYCEDC has already recouped the funds from the contractors, for a recovery of \$2,940.”

### **Questionable Payments**

The Corporation’s Internal Audit Division did not conduct a required audit before approving a \$1,067,005 partial payment for a change order (approval letter 4109) to dispose of contaminated material for the Brooklyn Army Terminal Pier 1 Rehabilitation.<sup>12</sup> Payment of the change order amount, which was to be substantiated by a review of time and material work tickets, cannot be validated as files lacked this documentation. After bringing the matter to their attention, Corporation officials acknowledged that a pre-payment audit was not conducted and told us a post audit will be done at the conclusion of the project work.

Another approval letter (3630, task 4), totaling \$997,500 for work at the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation, was issued to remove and dispose of 10,500 cubic yards of soil and debris. Our review of waste manifest tickets indicated that only 2,900 cubic yards were removed. However, the Corporation paid Turner for removing 10,500 cubic yards despite the lack of documentation to validate the removal of the entire quantity. Corporation officials contended that the waste manifest tickets “have been disposed of and are no longer available,” despite the provision in contract Article 10, 10.4, which requires Turner to maintain for six years records with supporting documentation to substantiate the services performed by it and its subcontractors. Accordingly, without appropriate evidence to substantiate the removal of the additional material, the Corporation should not have paid Turner the cost to do so, which we calculate to be \$502,686.

We found two further cases of questionable payments in which the Corporation authorized change order work by shifting funds that had been set aside for contract work. In the first case, the Corporation approved a change order (approval letter 4150) to investigate and perform repairs of differential settlement in the vicinity of Market Street for the East River Bulkhead and Esplanade project.<sup>13</sup> The cost of the change order was funded by reducing by \$45,328 a portion of contract work for seawall grouting, a dubious procedure that resulted in an apparent “\$0” cost change order. There was no documentation to indicate the basis for reducing the contract work by \$45,328 or for establishing that amount as the cost of the new work. Additionally, there were no authorized time and material tickets—required documentation that should have been used as the basis for making payment to Turner.

In the second case, the Corporation improperly used a \$35,000 contract “allowance” to pay for the installation of a rooftop air conditioner for the Hunts Point Roof Rehabilitation

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<sup>12</sup> Information from PROLOG indicates that an additional \$61,670 payment may have been approved without proper authorization.

<sup>13</sup> Differential settlement refers to a situation in which a foundation slab does not settle uniformly; when differential settlement occurs, some portions of the foundation settle more than other portions.

project.<sup>14</sup> Instead of issuing a change order for the work itself, the Corporation reduced the allowance by \$19,608 (the purported cost of the air conditioning work) and authorized a \$15,392 credit change order (approval letter 4262). There was no evidence that the cost of the air conditioning work was properly negotiated and approved.

In another example of questionable payments, the Corporation authorized an approval letter (3503) totaling \$1,414,766 to refurbish 11 elevators at the Bush Terminal Strategic Plan project. The Corporation subsequently revised the work scope by deleting the refurbishment of five elevators and increasing the work scope for the remaining six elevators. However, the Corporation did not issue a change order by which to reconcile the differences in the cost of the original and revised work scopes. In fact, our analysis indicates that the cost of the revised work should have been at least \$141,475 less than the original cost. Consequently, the Corporation should provide evidence that the costs of the revisions were legitimate and recoup any payments for work items that cannot be substantiated.

### **Recommendations**

The Corporation should:

14. Audit change orders before authorizing payment if required.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that change orders are improperly paid.

NYCEDC reviews all change orders in thorough detail. Of 134 approved change orders issued to date totaling \$6,302,003 (net of all increases and deducts), there have been errors totaling less than \$3,000, or less than .048% of the change orders. While no error is tolerable, this level of error does not support the Comptroller's assertions . . . ”

**Auditor Comment:** We found lacking in our sample of 17 of 24 change orders important financial safeguards to ensure that change order prices were appropriately reviewed (e.g., subcontractor price proposals scrutinized, itemized labor and material costs provided). This level of error is equivalent to 71 percent.

15. Review the payments discussed in this report and recoup from Turner any unsubstantiated or inappropriate payments.

**Corporation Response:** “As discussed in the response to Recommendation 13, NYCEDC agrees to recoup the appropriate amounts from Turner. In fact, for the three change orders cited, NYCEDC has already recouped \$2,940 from Turner. And for the

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<sup>14</sup> An allowance is used to allocate funds to portions of contract work that cannot be sufficiently quantified or specified before a contract is awarded. In the case of the Hunts Point project, using an allowance to pay for a rooftop air conditioner was inappropriate because the item could have been adequately specified beforehand. Moreover, the work was unrelated to the scope of the contract to rehabilitate the roof.

overpayment of the Bush Terminal bond, NYCEDC has already recouped \$18,000 from Turner.”

**Auditor Comment:** In addition, the Corporation should seek to recoup the additional overpayments that we identified and any other questionable payments that may be recouped.

16. Ensure that all payments for change orders are substantiated with supporting documentation, such as time and material tickets. In that regard, ensure that facility management and construction management service contractors maintain all required documentation to substantiate the payment of change orders.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that change orders are improperly reviewed.

In fact, all change orders are reviewed and challenged to ensure compliance with the contract terms before any change orders are approved by NYCEDC. Supporting documentation is included with the approval letter as required to explain and substantiate the change order. In addition, all FM/CM change orders over \$100,000 are reviewed by NYCEDC's internal audit division . . . ”

**Auditor Comment:** Notwithstanding the Corporation’s statement, appropriate documentation (e.g., evidence of negotiation, itemized cost breakdowns, labor rates) to substantiate the cost of change orders was lacking for many of the sampled change orders we reviewed. This omission was particularly egregious in the case of change order work that should have been—but was not-- supported by legitimate time and material work tickets, a critical control for ensuring that the payment process is not subject to abuse.

17. Cease its practice of shifting contract funds to pay for change order work.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that it acted improperly in any way in its response to the cited examples.

. . . This differential settlement work [i.e., for the East River Bulkhead and Esplanade project] was time critical [sic] could have caused significant and costly damage if not addressed promptly . . .

[For the Hunts Point Roof Rehabilitation project] . . . “NYCEDC approved the use of an allowance in the subcontractor's contract precisely to cover the costs of certain items related to the roof rehabilitation that could not be ascertained in advance, but were known to be potential costs. During the job, NYCEDC and Turner received a proposal from the contractor for this anticipated work to be performed. This proposal was reviewed by a third-party consultant (Hughes Environmental), a third-party contractor (Prime Mechanical) and Turner Construction, all of which certified that they believed the contractor's proposed price was fair and reasonable for the work to be performed . . . ”

**Auditor Comment:** Regarding the differential settlement work, the necessity and justification for performing this critical work is irrelevant to our audit finding. Our concern is that the Corporation did not have any documentation to affirm the cost of the work or the basis for reducing the contract work by \$45,328.

Regarding the roof top air conditioner, notwithstanding the Corporation's assertion that third-party consultant or contractors certified that the price of the air conditioner was "fair and reasonable," there was no file documentation to indicate that the cost of the work was properly negotiated and approved, or was reviewed by Corporation officials.

### **Excessive Construction Management Costs**

According to Corporation records, the cost for Turner to provide construction management services for the 10 sampled projects ranged from \$46,682 to \$597,142. Industry standards provide guidelines about the magnitude of construction management costs. Thus, the New York City Department of Design and Construction Project Construction Management Staffing Plan Guide states that "CM [construction management] staff costs including multipliers and/or basic fee as a percentage of construction costs should be between 8-12% depending on the size of the project."

However, for two of the 10 projects, construction management costs as a percentage of total construction costs far exceeded these guidelines.<sup>15</sup> For the Hunts Point Roof Rehabilitation, construction management costs totaling \$353,034 were 47 percent of construction cost. For the Bush Terminal Strategic Plan, construction management costs totaling \$597,142 were 43 percent of construction cost.

There was no documentation to justify the excessive costs for construction management. In that regard, we note that there was no documentation (such as log books or memos) by which to justify whether the hours expended by Turner personnel were reasonable and appropriate. We calculate that if construction management costs were in line with the industry guidelines, thereby not exceeding 12 percent of total construction cost, the Corporation would have paid Turner \$695,099 less for the two projects.

Prior to commencing a project, contract Appendix C.2 requires Turner to provide the Corporation with an estimate of the number of hours its personnel are expected to be employed on that project. However, there was no file documentation to indicate that Turner had complied with this stipulation or that the Corporation had compelled submission of estimated personnel hours. Had the Corporation done so, it would have been able to ascertain whether the number of personnel and their associated cost was appropriate and conformed to industry standards. As the

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<sup>15</sup> The costs to provide construction management services for seven projects, which ranged from 5.37 percent to 12.29 percent, were within the industry guideline. For one project (BAT Pier 1 Bulkhead Rehabilitation), we could not calculate the cost to provide construction management services because information about Turner salary costs was not available.

Corporation neglected to conduct this review, it forfeited an important safeguard in oversight of the contract.

**Recommendations:**

The Corporation should:

18. Require that facility management and construction management service contractors, including Turner, produce evidence to substantiate the reasonableness of work hours expended by its personnel.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that Turner's work hours are unreasonable.

In fact, NYCEDC has an established process to ensure this. The FM/CM staffing is reviewed at several points in the project development process. (1) The estimated FM/CM staffing is included in the original project budget as detailed in the CP request. (2) A staffing approval letter is submitted and approved by NYCEDC prior to the project commencement. (3) FM/CM staffing is reviewed monthly with each invoice. All expenditures under this contract are approved in advance by NYCEDC in its approval letters and are in conformance with the contract term and applicable industry standards . . .”

**Auditor Comment:** The three items mentioned in the Corporation’s response are not substantiating evidence of the reasonableness of work hours expended by Turner personnel for the following reasons: (1) the CP request is prepared by Turner, and estimated CM staffing is merely a line item in the overall tentative project cost estimate; (2) staffing approval letters are submitted for personnel who are not listed in the staffing table included in the contract, and do not specify the number of hours that an individual will be anticipated to work on a specific project; and (3) the invoices provide only a snapshot of hours worked during the particular time period—they do not provide an overall picture of project staffing.

We also note that we were informed during our visit to Turner’s field office at the Brooklyn Army Terminal that Turner managers develop “sub-job” breakdowns for Turner accountants who then adjust the invoice billings and produce the timesheets submitted to the Corporation. The timesheets that Turner submits to the Corporation are signed electronically rather than signed by individual employees.

Given the excessive construction management costs expended for Turner personnel on the two projects, we affirm our recommendation that the Corporation needs to implement greater controls over the reasonableness of Turner’s work hours.

19. Review the reasonableness of expenditures for Turner personnel for the two projects discussed in this report. Recoup any payments that have not been adequately substantiated and that are deemed excessive.

**Corporation Response:** “NYCEDC disagrees that any of the approved costs relating to the two projects discussed above are excessive or require NYCEDC to recoup funds from Turner.”

**Auditor Comment:** As the Corporation did not provide any compelling evidence to support its claim that the costs related to the two projects are not excessive, we reiterate our recommendation that the Corporation review Turner personnel costs for these two projects.

20. Ensure that facility management and construction management services contractors, including Turner, provide the Corporation with an estimate before commencing work of the number of hours its personnel are expected to be employed on that project, and use this information to ascertain whether the number of personnel and their associated cost is appropriate.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that Turner's costs are not reviewed by NYCEDC before commencing work.

Turner has been required to submit General Conditions (GC) approval letters to NYCEDC since July 2009. These approval letters include the estimated number of hours each member of Turner's staff is anticipated to spend on any given project. These General Conditions approval letters are reviewed and approved by NYCEDC and are subsequently submitted to the Comptroller for contract registration. This process commenced several months after the contract started, accounting for any missing GC Approval Letter, but this process was in place before the Comptroller's audit commenced . . . ”

**Auditor Comment:** The documentation provided to us lacked any Turner General Conditions approval letters that were issued for our sampled projects between July 2009, when the Corporation claims to have instituted the requirement, and January 2010, the date to which our audit scope covered contract expenditures. Therefore, we are unable to attest to the efficacy of this process. (The only approval letters issued during this period were for change order work.) Properly submitted and reviewed General Conditions approval letters as described in the Corporation’s response should comply with our audit recommendation.

### **Problems with Payments to Turner**

#### **More Than \$20,000 in Unsubstantiated Expenses**

The Corporation inappropriately approved payments to reimburse Turner for unsubstantiated expenses incurred during construction. These expenses include payments for toll charges, refreshments, auto insurance, and other miscellaneous items. Of five sampled payment request vouchers that included \$63,641 in reimbursable expenses, \$20,006 (31 percent) of the reimbursements should not have been approved.



The improper payments included the following: \$6,412 in premiums for auto insurance that lacked invoices and policy information about the insurance costs, and \$1,042 for toll charges that lacked information to substantiate that the trips were warranted and the vehicle was covered under contract guidelines. In other cases, the Corporation reimbursed Turner for items that did not qualify as allowable additional costs, such as the purchase of popcorn, tea bags, creamer, paper plates, and plastic forks.

Contract Appendix B, Section IB, permits Turner to be reimbursed for “Allowable Additional Costs,” which are “costs incurred by the Consultant [i.e., Turner] demonstrably due directly to particular Services or a specific Task . . . for which the Consultant may be reimbursed . . .” Contract Article 2, 2.1.2, requires that “Requisition shall be in a form reasonably acceptable to the Corporation . . . including, but not limited to invoices, receipts, vouchers . . .”

### **Recommendations**

The Corporation should:

21. Review the information in this report about the \$20,006 in unsubstantiated payments and recoup from Turner any payments for reimbursable expenses that are not permitted or cannot be substantiated. In that regard, the Corporation should also ensure that all other reimbursements that have already been made to Turner comply with contract provisions for allowable additional costs.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that these payments are unsubstantiated or prohibited under Turner's contract.

NYCEDC has confirmed that all reimbursable expenses that have been paid are in conformance with the contract terms. The Comptroller has provided no credible evidence to the contrary throughout the course of this audit.”

**Auditor Comment:** Our audit findings were based on evidence that was gathered during our review of Corporation documents. When available substantiating documentation to support Corporation payments to Turner was lacking, we asked Corporation officials to provide the missing documentation. When Corporation officials subsequently referred us to other file documentation, our further review of those documents showed a lack of evidence to validate the charges. Accordingly, the Corporation should recoup any unsubstantiated payments that were made to Turner.

22. Ensure that all required supporting documentation is obtained and reviewed before approving payments.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that these payments are unsubstantiated or prohibited under Turner's contract.

In fact, all payment requests are reviewed to ensure compliance with the contract terms. NYCEDC regularly cuts unallowable expenses and many payments contain adjustment letters documenting these reductions which only serve to prove NYCEDC's position . . . ”

*Auditor Comment:* See our comments for Recommendation 21.

### **\$22,384 in Payroll Expense Overpayments**

The Corporation improperly approved payments to Turner for payroll expenses for employees such as project managers and engineers. Of the 52 sampled payment request vouchers, 41 included payroll expenses totaling \$664,314. Our review indicated that \$22,384 should not have been paid to Turner. Contract Appendix C and Exhibit 1 (Staff and Fee Schedule) and subsequent amendments and supplements stipulate the personnel hourly rates that are to be paid to specific Turner employees.

The improper payments included \$19,120 in salary costs paid to employees who were not identified or authorized in the staff and fee schedule or its supplements; \$1,226 in payroll expenses that were based on hourly rates greater than the maximum allowable rates stipulated in the contract; and \$2,038 in payments to an intern performing clerical work whose fees should have been subsumed in overhead costs.

We attribute the problem of overpayment to the Corporation's failure to update the staff assignments and the rates for Turner's employees. Moreover, the Corporation did not verify the approved rates for each member of Turner's staff.

### **Recommendations**

The Corporation should:

23. Recoup from Turner \$22,384 in payroll expenses.

*Corporation Response:* “. . . As stated above, all payroll payments made were previously approved by NYCEDC in compliance with the contract terms. There is no overpayment to recoup . . . ”

*Auditor Comment:* See our comments for Recommendation 21.

24. Review all payment requests to ensure that payroll expenses comply with contract provisions and the staff and fee schedule. In that regard, periodically update and maintain the staff and fee schedule.

*Corporation Response:* “NYCEDC disagrees with the Comptroller's assertion that payroll expenses do not comply with the contract terms.

In fact, the contract contains a mechanism, explained in the response to Recommendation 23, for replacing project personnel. NYCEDC has followed that mechanism and

maintains a log of the current approved staff and salary approval rates that shows that Turner's current salary expenditures are lower than the contract expectation for the positions named in the contract. The Comptroller's suggestion in the exit conference that the contract be amended with every personnel change is simply not necessary considering the contract mechanism for replacing personnel.

Again, all personnel working on this contract have been approved as stated above. Such approval documentation is kept as part of the contract files and NYCEDC offered to supply these records at the exit conference but was rebuffed.

Additionally, all payment requests are reviewed to ensure compliance with the contract terms.”

**Auditor Comment:** The Corporation has erroneously concluded that the auditors suggested that the contract should be amended with every personnel change. In fact, we deemed a contract amendment necessary in only one specific case. Moreover, this case was not a simple personnel change, but required increasing the maximum salary specified in the contract for an entire job title.

25. Ensure that payments for overhead personnel are contained in the overhead and profit “multiplier.”

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that overhead costs are not subsumed in Turner's multiplier.

In fact, NYCEDC regularly causes Turner to pay for overhead functions within its multiplier. As stated above, all payroll payments made were previously approved by NYCEDC. In several instances, NYCEDC approved, through a salary approval letter, the use of interns doing project work to be charged as technical staff. Such interns were doing project-related technical work, such as an investigation of the electric metering system at the Brooklyn Army Terminal, not overhead-related work. It was good value to the City to not have to staff that role with a highly-paid project engineer. No other information was provided by the Comptroller to substantiate a different conclusion.”

**Auditor Comment:** We are aware that certain interns were doing project-related technical work as the Corporation asserted. However, Turner officials also informed us that some interns carry out basic office and administrative tasks. The intern whose payroll expenses we disallowed was based on this information and our observation of Turner personnel at its field office. Accordingly, payroll expenses for the intern should have been subsumed in overhead costs.

## **Hazardous Conditions Not Promptly Addressed**

The Corporation's lack of oversight may have jeopardized public safety and placed the City at financial risk by its inability to ensure that repairs to City facilities were carried out in a timely manner.

The Corporation failed to make timely repairs to Pier 1 at the Brooklyn Army Terminal after its partial collapse on June 12, 2001. On June 28, 2001, the Army Corp of Engineers directed the Corporation to remove collapsed pier sections from the waterway and to undertake all measures to correct the deteriorated condition of the pier. Although the Corporation's tentative design was received by the Army Corp in March 2002, portions of the design were not consistent with the Army Corp's requirements. There is no evidence that the Corporation pursued this matter further until March 2006 when it instructed Turner to provide design services to rehabilitate the pier. Construction began in March 2008—nearly seven years after the initial collapse.

In another case, the Corporation failed to promptly instruct Turner to proceed with repairs to the façade of the Bush Terminal. On June 21, 2005, the Corporation's executive committee ascertained that the façade of the Terminal should be inspected and rehabilitated. Almost one year later, on May 8, 2006, Turner cautioned the Corporation that the Terminal façade had deteriorated, falling debris was common, and noted that previous inspections had recommended immediate repairs to protect the safety of pedestrians. But despite these warnings, the Corporation did not instruct Turner to perform emergency repairs until May 4, 2007.<sup>16</sup>

In a third case that was previously reported in Comptroller's audit No. FM08-094A, the Corporation failed to carry out in a timely manner the recommendations of a May 2006 inspection that was conducted at a parking garage over the East River between East 18<sup>th</sup> and East 23<sup>rd</sup> Streets in Manhattan. Although the inspection uncovered serious deficiencies in the structure's condition, the Corporation did not instruct Turner to undertake emergency repairs by installing temporary steel shoring until November 2007—18 months later.

In these cases, the Corporation's belated approach for compelling Turner to undertake critical and timely repairs of City facilities indicates the Corporation's lackluster approach in providing effective oversight and monitoring.

### **Recommendation**

The Corporation should:

26. Ensure that hazardous conditions are identified and promptly addressed and that facility repairs are carried out in a timely manner.

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<sup>16</sup> A second round of emergency repairs was carried out in June 2008, leading us to question the effectiveness of the original repair work or the adequacy of the scope of work.

**Corporation Response:** “NYCEDC strongly disagrees with the Comptroller's assertion that NYCEDC's actions endangered public safety.

The Comptroller's claims that ‘the Corporation’s lack of oversight may have jeopardized public safety and placed the City at financial risk’ and that ‘the Corporation's belated approach to compelling Turner to undertake critical and timely repairs of City facilities indicates the Corporation's lackluster approach in providing effective oversight and monitoring’ are irresponsible considering NYCEDC's track record and recognition as a leader in providing proactive management of its assets to ensure public safety. The claims made by the Comptroller are false and misleading and the facts support NYCEDC's position . . .”

**Auditor Comment:** Although the Corporation states that “the facts” support its position, we found that the documentation provided to us does not. The documentation clearly shows lengthy amounts of time between the identification of hazardous conditions and their remedy. During the interim, public safety could have been jeopardized.

### **Lack of Central Files**

The Corporation does not have a central location in which major documentation pertaining to each project is readily accessible. Project documents are scattered in various places, including the personal files of project and property managers.<sup>17</sup> The Corporation lacks copies of project drawings and specifications, which are solely maintained by Turner at its site office in the Brooklyn Army Terminal—another indication of the Corporation’s lack of control over the contract’s administration.

### **Recommendation**

27. The Corporation should maintain in a central and accessible location the files that contain all major documentation pertaining to each project.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that appropriate project files are not maintained.

In fact, the Comptroller was fully aware during the course of this audit that NYCEDC maintains a file room at the Brooklyn Army Terminal of all of NYCEDC's project documents. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Under its contract with NYCEDC, Turner is required to ensure that all project relevant project

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<sup>17</sup> Maintaining file documentation in personal files is a particular problem. In the case of our request for documentation for the Hunts Point Roof Rehabilitation project, Corporation officials told us that the files were unavailable because the property manager for that project was no longer employed by the Corporation.

documentation is filed in the appropriate project file in NYCEDC's file room. NYCEDC maintains control over and access to the file room at all times through its Records Management department, which regularly reconciles any additions to the files and coordinates off-site archival processes of the records.

While it is true that individuals at NYCEDC maintain certain records, as appropriate, relating to the contract or the projects for which they are ultimately responsible, the Comptroller cannot point to any specific failure that derives from this system . . . ”

**Auditor Comment:** The Corporation’s response attempts to obscure the distinction between the files and documentation maintained by Turner at the Brooklyn Army Terminal and the files and documentation that should have been maintained by the Corporation’s project managers at its offices. As stated previously, the audit sought to determine whether the Corporation is effectively monitoring Turner Construction Company; without an adequate level of documentation in the hands of the Corporation staff that is assigned this responsibility, we question how the Corporation could exercise effective oversight and control over the contract.

### **Problems with Omitted and Inconsistent Data**

We identified numerous instances in which data was either omitted from or inconsistent with other information that was provided to us by the Corporation. Specifically, the requested information included lists, spreadsheets, and reports about approval letters, funding amendments, and payments associated with projects initiated under the Turner contract. Data errors and inconsistencies can stymie effective contract management, which is reliant on accurate and consistent data. Moreover, problems with payments could occur, especially in cases of inconsistencies between the data in PROLOG and Microsoft GP payment listings.

After we brought this matter to their attention, Corporation officials acknowledged the errors and agreed to make required corrections. Corporation officials attributed the omissions and inconsistencies to typographical errors in entering data; problems with transferring project information from the prior Turner contract No. 16850001 to the current one; and a time lag in adding projects to the PROLOG database. We also contend that these problems can be attributed to the Corporation’s use of dissimilar, non-integrated systems (*e.g.*, PROLOG, Microsoft GP), to which data is entered separately, thereby increasing the likelihood of inconsistencies and errors.

### **Recommendations**

The Corporation should:

28. Correct existing typographical errors and data entry oversights and notate existing database(s) and lists, as required, if corrections cannot be made. Revise the database entry system so that data must be approved before it is accepted in the database.

**Corporation Response:** “NYCEDC agrees that typographical errors are not acceptable and will immediately correct all typographical errors.”

29. Should future facilities management and construction management services contracts be awarded to current contractors, do not carry projects over. Projects should be completed within the framework of the original contract. In that regard, use new contracts for new projects only.

**Corporation Response:** “NYCEDC agrees that recent contract carryovers have become too onerous. If certain procedures and processes cannot be streamlined and improved, then NYCEDC will not attempt a contract carryover in the future.”

30. Decrease the time lag in data entry by entering projects into all database(s) in a timely manner.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that data entry contributed to any inappropriate payments.

In fact, NYCEDC has an established process for reconciling project budget and payment information in separate systems before every monthly invoice is paid. At no time did a lack of timely data entry cause an inappropriate payment to Turner.”

**Auditor Comment:** Contrary to the Corporation’s claim, we did not assert that “data entry contributed to any inappropriate payments.” Our concern is that problems with data errors and inconsistencies that were acknowledged by the Corporation could lead to problems with payments. We do recognize that the Corporation has agreed to make the required corrections.

31. Regularly cross-check and reconcile data among the payment system, the PROLOG database, and the list of approval letters. Consider electronic integration of the PROLOG and payment databases.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion that regular data reconciliations are not performed.

In fact, NYCEDC has an established process for reconciling project budget and payment information in separate systems before every monthly invoice is paid.”

**Auditor Comment:** If regular data reconciliations had been consistently performed, it is unlikely that we would have identified numerous instances in which data was either omitted from or inconsistent with other information that was provided to us by the Corporation. Accordingly, the Corporation should ensure that its reconciliation process is adequate for precluding these types of errors.

**Appendix I**

**List of Sampled Projects**

Project					Costs Expended As of 1/25/10
Name	Phase	Number	Start Date	Location	
New York Cruise Terminal Dredging	Closeout	1W-2369-03	9/17/2008	Manhattan Cruise Terminal Piers 88-92	\$ 2,918,281
Harlem River Bulkhead & Esplanade Rehab	Closeout	1W-1729-02	7/17/2007	Harlem River Drive between 142nd and 145th Streets	\$ 2,851,545
BAT Pier 1 Bulkhead Rehab	Closeout	3W-0207-01	3/18/2008	Brooklyn Army Terminal - Pier 1	\$ 2,076,561
Pier 42 Substructure Rehab	Closeout	1W-0175-03	6/22/2007	Pier 42 - East River between Williamsburg & Manhattan Bridge	\$ 2,041,398
Pier 13 & 14 Demolition and Bulkhead	Closeout	1W-0496-02	8/27/2007	Piers 13 & 14 south of South Street Seaport along the East River	\$ 1,752,089
East River Bulkhead & Esplanade Rehab	Construction	1W-2126-03	4/3/2008	East River Esplanade/ BMB to Pier 42	\$ 513,657
Essex Street Market Building C Rehab	Construction	1U-0462-05	2/20/2008	120 Essex Street	\$ 1,119,414
Hunts Point Roof Rehab (600 FCD)	Construction	2U-2893-02	12/3/2008	600 Food Center Drive	\$ 1,098,099
Bush Terminal Capital Improvements	Construction	3U-0438-01	11/20/2006	Brooklyn Water Front (between 41st & 52nd Streets, West of First Ave.)	\$ 623,993
Bush Terminal Strategic Plan	Construction	3U-3266-02	9/12/2007	Bush Terminal Brooklyn	\$ 1,977,721
<b>Total Value of Expended Costs for Sampled Projects =</b>					<b>\$ 16,972,757</b>



Photographs of Roofing Deficiencies at the Essex Street Market



**ADDITIONAL AUDITOR COMMENTS TO ADDRESS  
CORPORATION'S WRITTEN RESPONSE TO THE AUDIT FINDINGS**

***Audit Finding:*** When the Corporation authorized a roofing work scope for the Bush Terminal Capital Improvements, it omitted portions of roofing that needed to be replaced.

***Corporation Response:*** “NYCEDC partially agrees with this assertion and has recouped \$18,000 from Turner for the unused portion of the bonds and insurance related to the canceled portions of project work. However, the Comptroller is incorrect in its statement of facts on this finding.

The low-level roof on Unit B was installed as part of the Bush Terminal Capital Improvements project while the overpayment for bonds and insurance was part of the Bush Terminal Strategic Plan project, a completely different project to install new roofs on completely separate buildings (buildings 57 and 58).

. . . Since the full tear-off and replacement of the low roof, including asbestos abatement, was not possible within the Bush Terminal Capital Improvements budget, NYCEDC instead opted to apply the new roof over the existing roof, eliminating the need for asbestos abatement at this time, with the full knowledge that NYCEDC would be unable to secure a 10-year warranty. By doing so, NYCEDC was able to obtain a waterproof roof anticipated to last for a minimum of 5 years at a cost of \$70,343 instead of 10-year roof at an approximate cost of \$332,000, resulting in a savings of approximately \$261,657.

. . . For the Bush Terminal Strategic Plan project, the original scope of work included the full tear-down and replacement of the high and low roofs at Buildings 57 and 58. It should be noted that a full tear-down was chosen because preliminary surveys were performed, contrary to the Comptroller's claim, and such surveys indicated the presence of moisture under the existing roof. Again, it was not anticipated that the roofing material contained asbestos due to the age of the existing roof. However, since not all of the previous roofing material had been removed prior to the installation of the existing roof, there was still asbestos containing material that needed to be removed before installing the new roof.

In reviewing the contractor's (Thesaurus Contracting Corp.) proposal for removal of the asbestos roofing material, Turner and NYCEDC believed that a better value could be obtained by re-procuring the entire roofing project to include the asbestos remediation. Indeed, the new procurement yielded a price of \$684,325 while the anticipated cost under the Thesaurus contract was \$791,121. As such, NYCEDC directed Turner to close the Thesaurus contract. NYCEDC acknowledges that the deduct approval letter that was issued for this contract omitted \$18,000 in bonds and insurance that had already been paid by the contractor. NYCEDC has subsequently already recouped this \$18,000 from Turner. The Comptroller should be equally forthcoming in acknowledging that NYCEDC's diligent management of this project resulted in a savings of approximately \$106,800.”

**Auditor Comment:** Notwithstanding the Corporation's version of events, documentation shows that the installation of a temporary roof on the low level of Unit B was necessitated by planning deficiencies. The approval letter (#4201 dated March 22, 2010, totaling \$70,343) for this work states:

“Due to delays required to perform the required testing and abatement of the ACM, it was determined that the opportunity to install the permanent spray foam roofing before winter had passed. Installation of a temporary spray foam roof will provide a water tight condition for the duration of the winter season, and will allow a proper and thorough removal of the old roof and installation of the permanent roof in the Spring of 2010.”

We dispute the Corporation's claims of having “saved” monies as a result of the procurement of the temporary roof. Any cost savings would be short-lived since the Corporation obtained a “waterproof roof anticipated to last for a minimum of 5 years” instead of a roof with an actual 10- year warranty. (Additionally, we question whether the roofing we observed on April 28, 2010, actually complies with the specifications in the approval letter and seriously doubt that it will provide even a five-year life.)

In another apparent attempt to validate a misstep as a planned decision, the Corporation's contention regarding Buildings 57 and 58 that “it was not anticipated that the roofing material contained asbestos due to the age of the existing roof,” is not supported by any reference to the age of the roofs in the documentation. The lack of asbestos testing resulted in the issuance of Approval Letter #4248 in February 2010, 16 months after the initial approval letter, which deleted the entire work scope as a result of the discovery of asbestos.

We cannot acknowledge the Corporation's claim that \$106,800 was “saved” by re-procuring the work. Approval Letter #4248 dated February 2010 noted that change order prices submitted by the original contractor included the cost to install a temporary roof (the new contractor's price would not have to include this work), thereby accounting for the \$106,800 in “savings.” We should point out that it will be forever unknown what the successful bid price would have been had the work been properly procured in the first place. The Corporation's poor management and inattentiveness to scoping the project work resulted only in delays, not cost savings.

Between September 2008 and January 2010, the Corporation issued seven separate Approval Letters for roofing work at Unit B and Buildings 57 and 58. Work scopes are continually being augmented and modified; however, the work has yet to be completed. In fact, at the conclusion of our audit fieldwork, the work for Buildings 57 and 58 has yet to be solicited.

**Audit Finding:** The Corporation also failed to adequately reconcile work scopes for the installation of emergency exit and stairwell lights at Bush Terminal Capital Improvements.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion.

The Comptroller is incorrect in stating that NYCEDC failed to reconcile work scopes for the installation of emergency exit and stairwell lights. During the procurement process, NYCEDC identified an inconsistency in numbers (i.e., NYCEDC did reconcile the work) and issued an addendum with the revised drawings which included the following instruction: ‘The exit lights will be installed as per the new revised drawings that are included in this Addendum. Please fill out the Proposal Form accordingly.’ As such, the number of lights to be installed was clear to the proposers as 31 light fixtures in the original scope of work (not 61 as the Comptroller claims) and 27 light fixtures in the revised scope of work. In this case, the proposal form could have been written more clearly to document the changes on the drawings, but the underlying facts cannot be denied and NYCEDC clearly received and paid for what was expected to be installed . . .”

**Auditor Comment:** According to our review of documentation, the subcontractor’s price of the light fixtures does not reflect the revised quantities of fixtures. We attribute this problem to the Corporation’s inadequate review of the proposed work scope. While the Corporation may indeed have identified an inconsistency in “numbers,” the cost of the work was apparently not reconciled with the addendum that was issued after the original proposal solicitation.

**Audit Finding:** The Corporation’s work scope for the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation lacked provisions for testing material for contamination prior to its excavation.

**Corporation Response:** “NYCEDC partially agrees with the Comptroller's assertion.

. . . From the outset of the project, there were no indicators nor was there any site history to indicate that the soil was contaminated by federally-regulated hazardous waste. While in-situ analytical testing of all soil to be disturbed could have been conducted, it is hardly industry standard to assume that soil is regulated hazardous waste and to test as such prior to work, when no previous indicators had existed to support such a conclusion . . . To clarify, the overruns of this project had nothing to do with NYCEDC's prior approach to environmental testing . . .

After the material was loaded and transported to a processing facility en route to Fresh Kills, NYCEDC directed Turner staff to oversee the transportation and handling of the dredge material. It was this continued supervision, and NYCEDC's constant interface with the processing contractors on the Fresh Kills end that revealed that Fresh Kills was not permitted to handle this type of hazardous material - contrary to the written approval given by the Fresh Kills administrator . . .

Indeed, NYCEDC's active management of this issue kept this overrun from being much higher. Additionally, it is important to note that the Comptroller is absolutely wrong in its assertion in footnote 6 that the material could have been disposed at Fresh Kills if only it was splintered into smaller pieces. There are simply no facts to support this assertion. Fresh Kills was simply not permitted to accept this type of hazardous material . . .”

**Auditor Comment:** Regarding the Corporation's response that "it is hardly industry standard to assume that soil is regulated hazardous waste and to test as such prior to work,"

- State and federal regulations require testing of soil removed from United States waters. According to the Corporation's New York State Department of Environmental Conservation (DEC) application dated May 15, 2007, the Brooklyn Army Terminal Pier 1 project involved the removal of approximately 3,556 cubic yards of debris and fill material from United States waters . . ." According to §9.5 of the DEC permit that was issued to the Corporation, the applicant is required to submit "Results of chemical testing of the proposed dredge material."

Regarding the Corporation's response that "The overruns of this project had nothing to do with the Corporation's prior approach to environmental testing:"

- As stated in the Corporation response "...after heavy excavation began in the summer of 2008, discolored soil was exposed and all work was halted by Turner and NYCEDC management, pending environmental review..." Had all required chemical testing been conducted before excavation, there would have been no need to halt the work, retrieve the material from the Fresh Kills processing facility, and re-handle and process the material for disposal elsewhere for an unnecessary cost of \$708,364.

Regarding the Corporation's response that "the Comptroller is absolutely wrong in its assertion that the material could have been disposed at Fresh Kills if only it was splintered into smaller pieces:"

- Our review of documentation and e-mails among the Corporation, Turner, and the disposal subcontractor suggests that the material could have been delivered to Fresh Kills under certain conditions including segregating the material into smaller pieces. We should note that the Corporation was unable to provide us, when requested, with corroboration for its position about material deliveries to the landfill; according to the Corporation, discussions about this matter were dealt with in "phone conversations." We consider this another indication of problems with the Corporation's management and oversight of the Turner contract.

**Audit Finding:** Corporation files lacked evidence to show that appropriate minutes of meetings between Turner and its subcontractors and design consultants were submitted on a regular basis.

**Corporation Response:** "NYCEDC disagrees with the Comptroller's assertion.

NYCEDC's FM/CM contract with Turner does not require Turner to submit minutes of meetings between Turner and its subcontractors and subconsultants. Additionally, the Comptroller's reference to the meeting minutes recorded in Prolog, an industry standard contract management database, in this regard demonstrates a clear lack of understanding of NYCEDC's processes and

procedures. The meeting minutes recorded in Prolog are meetings between Turner and NYCEDC, and it should be noted that the Comptroller was provided with minutes of meetings between Turner and NYCEDC dating back to September 4<sup>th</sup>, 2008, documentation the Comptroller has either overlooked or chosen to ignore. (Meetings prior to September 2008 were recorded under Turner's prior FM/CM contract and were not requested as part of this audit.)”

**Auditor Comment:** Contract Appendix B-11 B.2 requires Turner to “prepare, coordinate approval of and distribute all reports, minutes of meetings, correspondence, and related materials.”

The Corporation’s statement that we overlooked or ignored documentation is gainsaid by our analysis of that documentation. Although the Corporation provided us with meeting minutes commencing September 4, 2008, the minutes were not available for all sampled projects on a consistent basis.

**Audit Finding:** The Corporation’s Internal Audit Division did not conduct a required audit before approving a \$1,067,005 partial payment for a change order.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion.

The classification of this payment as ‘questionable’ is misleading. While NYCEDC acknowledges that its Internal Audit Division did not perform a pre-payment audit, NYCEDC's Internal Audit Division did perform a post-payment review and agreed with the amount that was paid. This information was provided to the Comptroller during the audit exit conference.

In addition, controls will be established to ensure that all qualified change orders receive a pre-payment audit in the future.”

**Auditor Comment:** As another indication of lackluster oversight, Corporation officials were unaware that a required pre-payment audit had not been performed until we advised them of this situation on July 20, 2010—16 months after the payment was made. While the Corporation has properly recognized its audit obligation and agreed to undertake a post-audit, we cannot attest to the results of any post-audit that might have been conducted after the conclusion of our own audit.

**Audit Finding:** The Corporation paid Turner for removing 10,500 cubic yards of material for work at the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation despite the lack of documentation to validate the removal of the entire quantity.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion and finds the Comptroller's mischaracterization of this event to be disappointing.

The Comptroller's report implies negligence on the part of NYCEDC, when in fact NYCEDC and Turner employed lump sum contract language to protect NYCEDC and the City by providing cost certainty when existing conditions prevented accurate quantification of disposals prior to construction.

. . . This work was captured under "LUMP SUM" items in Turner's subcontractor procurement. The lump sum approach was utilized for these disposal items because exact quantities were not quantifiable prior to construction. This included large quantities of removal of the collapsed pier 1 (predominantly timber and concrete).

Turner, with the aid of the design consultant, assumed a total quantity of 10,500 cubic yards of removals, but this was presented only as an assumption to assist the contractors and did not affect the nature of the lump sum item. Turner included language in the Proposal Form of the RFP on page 3 of 6 of the proposal form that clearly put the onus of final computations on the contractor, requiring the contractors to account for all removals on a lump sum basis.

It was only after the hazardous conditions presented themselves that it became necessary to back out of the lump sum item those incremental excess costs related to the disposal of 2,900 cubic yards of hazardous material, a clear change order that was approved by NYCEDC and was well documented in the change order approval letters that followed and that were provided to the Comptroller. Detailed manifests and tickets for those 2,900 cubic yards of hazardous material disposal were also provided to the Comptroller and no discrepancies were found, in what was the area of highest risk to NYCEDC and the City.”

***Auditor Comment:*** Our audit confirmed that work tickets substantiated the removal and payment of 2,900 cubic yards of soil and debris. In this instance, payment was appropriately made on the basis of a unit price totaling \$95 for each cubic yard of soil removed. Our concern, however, was that the Corporation paid Turner a “lump-sum” price totaling \$997,500 for the removal of an additional 7,600 cubic yards (thus yielding a total of 10,500 cubic yards), despite the lack of substantiating work tickets.

Our review of project documentation leads us to conclude that the removal of the soil and debris should have been paid on the basis of an established unit price—instead of as a lump-sum price—for each cubic yard of material whose removal could be authenticated by properly approved work tickets. The proposal form that was submitted by Turner’s subcontractor showed an estimated quantity of material to be removed (i.e., 10,500 cubic yards). The subcontractor stipulated a corresponding unit price for payment of each cubic yard of material removed. The proposal form also states, “Unit price shall be firm for the duration of the project and will apply to net increase or decrease in the scope of the work for any given change.” Clearly, the unit price should have only been used to pay for work that was actually done.

In contrast to the Corporation’s response, unit price payments—rather than lump-sum payments—are particularly appropriate in situations where accurate material quantities cannot

be pre-determined. The decision by the Corporation to pay for the entire quantity of material without substantiating work tickets is particularly troubling given that the Corporation acknowledged that the work tickets were no longer available.

**Audit Finding:** Our analysis indicates that the cost of the revised elevator work at the Bush Terminal Strategic Plan project should have been at least \$141,475 less than the original cost.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion.

. . . NYCEDC has already provided evidence to the Comptroller that the costs of the modifications were legitimate. Turner Construction and a third-party elevator consultant (J. Martin Associates - as a subconsultant to Turner) have both performed analyses of the work scope changes and the revised pricing, and have found the revised pricing to be fair and reasonable . . .

**Auditor Comment:** While Turner and a third party consultant may have “certified” the reasonableness of the revised pricing, our review indicated that the cost of the work might have been at least \$141, 475 less. Our review indicated that costs for contractor “mobilization” were previously included in the original contract price proposal. Thus, additional mobilization costs should not have been warranted. Although we recognize that the work scope was expanded to include additional work, the work was carried out in the original location and was of a similar nature (i.e., elevator modifications.) Accordingly, the questionable payment of \$141,475 should be reviewed by the Corporation for possible recoupment.

**Audit Finding:** For the Hunts Point Roof Rehabilitation, construction management costs totaling \$353,034 were 47 percent of construction cost. For the Bush Terminal Strategic Plan, construction management costs totaling \$597,142 were 43 percent of construction cost.

**Corporation Response:** “Regarding Hunts Point Roof Rehabilitation: NYCEDC disagrees with the Comptroller's assertion.

On the Hunt's Point Roof Rehabilitation, Turner's total costs equaled approximately \$392,390 dollars or 22.4% of a total project budget of \$1,750,000. NYCEDC would point out that this is the highest Turner participation of any project through Contract 16850005. That participation is a function of the complexity and nature of the work and runs higher when the project budget is smaller than the average project.

It should also be noted that this roof project was completed under budget to such a degree that the excess funds were approved by OMB to be shifted into other critical life-safety work. At the time of the audit, the roof work was complete, but the new life-safety work was only in design, skewing the Comptroller's calculation of Turner's percentage of the total.

Regarding Bush Terminal Strategic Plan: NYCEDC disagrees with the Comptroller's assertion.



The Comptroller is misleading in its statement of facts for this project. As the Comptroller is well aware, several portions of this project were in the design stage during the audit period. As such, Turner's costs were being incurred to oversee a complicated design process, while many of the construction costs had not yet been spent, skewing the construction management percentage higher. NYCEDC is currently in the process of awarding over \$5 million of construction contracts as part of the Bush Terminal Strategic Plan project, which will significantly reduce the percentage of the total project costs attributable to construction management.

Furthermore, the capital projects taking place at Bush Terminal are not within a discrete construction site. The Bush Terminal Strategic Plan project includes work on the roofs at Buildings 57 & 58, the elevators at Buildings 57 & 58, the basements at Buildings 57 & 58, the electrical substation at 43<sup>rd</sup> Street and 1<sup>st</sup> Avenue, the bulkhead at the foot of 43<sup>rd</sup> Street, the utility infrastructure at the southern end of the campus and the rail tracks within the 1<sup>st</sup> Avenue Railyard. All of this work requires multiple subcontracts and coordination with other construction projects, the site operations staff and the many tenants occupying space at Bush Terminal.”

**Auditor Comment:** Corporation records indicate that the budget for the Hunt's Point Roof Rehabilitation project was reduced from \$1,750,000 to \$860,000. In this case, construction management costs as a percentage of the project's budgeted amount would be 41 percent—not 22.4 percent as the Corporation asserted. In any case, we based our calculations of construction management cost on the percentage of the actual cost of construction, which totaled \$745,065 as of the conclusion of our audit work. This methodology, which we contend is more realistic, yielded a construction management cost of 47 percent.

The Corporation erroneously assumes that our calculation was skewed because it included the costs of new life-safety work. But our calculations excluded any design costs associated with that work in order to avoid such a “skewing” effect.

According to the Corporation's May 20, 2009, “CP” for the Bush Terminal Strategic Plan, the total cost for construction management was projected to be \$800,000 (or 14.5 percent) for a project whose estimated cost was \$5.5 million. Given the logistics of the project, we consider that percentage of construction management costs reasonable (although slightly higher than the 12 percent threshold we cited). But the Corporation has already paid almost \$600,000 in construction management costs to Turner (or 43 percent), although the construction costs to date were only \$1.4 million. Accordingly, the Corporation's hope that it may attain more reasonable construction management costs after it awards “over \$5 million of construction contracts” does not appear credible.

**Corporation Response:** “Table 1, Item 9, Hunts Point Roof Rehab/Bush Terminal Strategic Plan. Description: Excessive construction management costs.

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

More generally, the Comptroller continues to reference a 'rule of thumb' of between 8% and 12% for the cost of construction management services as a percentage of the total project cost. In this context, that 'rule of thumb' is not appropriate. The Comptroller is comparing the range of costs for a design-bid-build construction project for new construction in a discrete construction site. NYCEDC does not believe that facilities management and construction management contracts are comparable to large development projects in terms of intensity of CM oversight required, number of sites managed and participation of CM's as a percentage of dollar volume. NYCEDC would contest that these are very different contract types by nature and should be evaluated separately.

Facilities and construction management contracts, such as the contract between NYCEDC and Turner, carries higher management demands. Particular on smaller projects, such as roof rehabilitation, a myriad of issues exist (including extensive coordination with existing tenants), requiring the same level of oversight, management and procurement integrity as on larger projects, which have much larger hard cost budgets compared to similar staffing and soft costs.

Furthermore, NYCEDC would point out that on contract 16850005 as a whole, Turner's costs total 14.6% of the \$44,510.505 [sic] paid to date for 50 projects. This is on a contract with comprehensive on-call services and a myriad of small projects, all of which require the same levels of coordination as higher dollar volume projects.

As was pointed out to the Comptroller in the audit exit conference, NYCEDC's effective management of another Turner contract that is more in line with the larger projects cited by the Comptroller's 'rule of thumb'. On contract 23960001, in an apples-to-apples comparison with the Comptroller's 'rule of thumb,' Turner's overall costs have been 7.84% of \$26,932,652 paid to date for 10 projects. This highlights the fact that NYCEDC is very efficient in managing CM contracts, particularly when compared to 'rules of thumb' that suggest an acceptable participation rate for CM contracts should comprise 8%-12% of project volume.

Lastly, NYCEDC believes there should also be a 'rule of thumb' for in-house management costs of managing construction management contracts. It is NYCEDC's contention, given that NYCEDC's staff costs generally equal less than one-half of one percent of a project's total budget compared to other public agencies that add upwards of an additional 10% to the cost of a job that also employs a CM, that the combined costs of CM and NYCEDC management costs (just a bit higher than 15%) are an exceptional value, principally because NYCEDC has established roles and responsibilities that maximize the value of both CM and in-house management staff, which do not result in needlessly duplicating work, but which have procedures and controls that protect NYCEDC and the City. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million."

**Auditor Comment:** We are confounded by the Corporation's statement that the cited reference of eight to 12 percent for the cost of construction management services is not appropriate, when

in fact, the percentage of construction management costs for seven of 10 sampled projects—between five and 12 percent—fell within this level of tolerance. Furthermore, although we cannot attest to its figures, the Corporation itself acknowledged that “on contract 16850005 as a whole, Turner's costs total 14.6%.” Accordingly, our concern was with the two sampled projects for which construction management costs totaled an unusually high 43 to 47 percent.

Notwithstanding the Corporation’s explanations about project and contract complexity and its effect on the cost of providing construction management services, the Corporation has not provided specific evidence to substantiate the excessive construction management costs for the two projects. While we recognize that the cost to provide construction management services may vary considerably among different project and contract types, the high unexplained cost to provide these services for the two projects points to problems with the Corporation’s control over the reasonableness of Turner’s work hours.

***Audit Finding:*** The improper payments included \$6,412 in premiums for auto insurance that lacked invoices and policy information about the cost to insure each vehicle and \$1,042 for toll charges.

***Corporation Response:*** “NYCEDC disagrees with the Comptroller's assertion.

Part II Article 6.3.8.3 of the contract (Automobile Liability Insurance) states that the ‘Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.’

Insurance Premiums are paid on an annual basis for the Site Vehicles. This cost is then expensed on a monthly basis and billed to NYCEDC. These numbers are provided to NYCEDC at the time the Premiums are paid for reference.

‘Allowable Additional Costs’ as defined in Appendix B of the Contract also allows for ‘travel by Site Office Staff ... and the Principal to and from Properties ... where Services are being performed.’

Turner has an EZ Pass account that covers the nine tags for the 10 vehicles designated as Site Office vehicles. All the toll charges are related to work performed at one or more Properties. In the event that Turner Staff uses their private vehicle for transportation, they are allowed reimbursement of such expense upon submission of proper receipts.

‘Allowable Additional Costs’ as defined in Appendix B to the Contract also allows for ‘site office supplies’ and ‘any other out-of-pocket expenses related to the Site Office, approved in advance by the Director, on a direct cost basis.’

Part I 5.6 Allowable Purchases: Consultant may purchase supplies, materials and services in amounts less than \$25,000 without Director's prior approval if such purchase is routine and necessary in connection with the Services, unless and until NYCEDC otherwise directs.

NYCEDC deems it reasonable for items such as tea bags, creamer, paper plates and plastic forks to be purchased to supply the Site Office. Independent of this audit, NYCEDC has already directed Turner to cease the purchase of snacks such as popcorn for the Site Office . . . ”

**Auditor Comment:** We have no quarrel with the Corporation’s practice of paying annual insurance premiums for site vehicles, expensing them on a monthly basis, and billing the cost to the Corporation. However, Corporation files lacked any insurance policies or invoices from the insurance carrier to substantiate the actual cost of insurance premiums.

The unsubstantiated toll charges we identified lacked evidence, such as trip sheets, to indicate that the charges were work-related. Furthermore, we identified an additional EZ Pass account that was not one of the nine Corporation account tags. If this tag, in fact, belonged to a Turner employee who was using a private vehicle for transportation to a project site, reimbursement would have been appropriate if the employee were able to substantiate that the toll charges were related to “work performed at one or more properties.” However, there was no such documentation in Corporation files.

We are perplexed about the Corporation’s logic concerning allowable purchases. Although the Corporation deems the purchases of tea bags, creamer, paper plates, and plastic forks as “routine and necessary in connection with the Services,” it has apparently agreed that snacks such as popcorn are not routine. Given this inconsistency, the Corporation should provide clear and consistent instructions to Turner and other facility management and construction management contractors as to the types of items considered permissible under allowable purchases.

**Audit Finding:** The Corporation improperly approved payments to Turner for payroll expenses for employees such as project managers and engineers.

**Corporation Response:** “NYEDC disagrees with the Comptroller's assertion that these payments are unsubstantiated or prohibited under Turner's contract.

Article 4.1.2 states that ‘If the Consultant proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution.’

All Turner personnel working on this contract have been approved in advance as stated above. Such approval documentation is kept as part of the contract files. The Comptroller never asked for these files before making this claim. This issue was discussed at the audit exit conference,

yet the Comptroller was not interested in seeing these files at that time. NYCEDC would have readily provided these documents to satisfy their inquiry.

Additionally, all payment requests are reviewed to ensure compliance with the contract terms . . . ”

**Auditor Comment:** The Corporation believes that we never requested appropriate substantiating documentation, when in fact, we requested and obtained the approval documentation for the pay rates of all Turner personnel working under the contract. Consequently, our findings about payroll expense disallowances were based on: 1) verification of Turner’s personnel with the Staff and Fee Schedule and the approval documentation, and 2) the calculated payroll expenses using the approved billable rates obtained from the Corporation.

**Audit Finding:** The Corporation failed to make timely repairs to Pier 1 at the Brooklyn Army Terminal after its partial collapse on June 12, 2001.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

There is no evidence that supports this claim and, in fact, the thousands of pages of records NYCEDC provided to the Comptroller's Office contradict it repeatedly.

In brief:

- Pier 1, an unused pier at the Brooklyn Army Terminal, collapsed in June 2001. NYCEDC immediately responded and performed emergency slope stabilization to arrest any potential erosion at the site. This emergency slope stabilization was permitted under authorization from State DEC and the Army Corps.
- Subsequent to the emergency slope stabilization, NYCEDC secured funds and advanced a design to replace Pier 1, but several factors intervened to prevent construction: (1) The regulators (State DEC and the Army Corps) were giving NYCEDC conflicting information on allowable construction standards and mitigation requirements; and (2) Construction funds were cut from the City's capital budget in the Fall of 2001.
- NYCEDC did not lose sight of the need to perform more permanent slope stabilization at Pier 1 and was again able to submit in November 2004 a request that secured a new capital allocation from the City in the FY06 and FY07 capital budgets. By March 2006, NYCEDC had begun new conversations with State DEC and the Army Corps that would ultimately bridge the regulatory gap and allow the project to proceed.

Throughout this entire episode, the site remained fenced off from the public and posed no danger to anyone. A reasonable reading of this episode actually reflects well on NYCEDC's efforts and persistence in accomplishing the project, despite funding and regulatory hurdles.

It should be noted that the review of these files was outside of the scope of this audit as the emergency slope stabilization was implemented under a prior contract between NYCEDC and Turner; however, in the spirit of full disclosure, NYCEDC provided these documents to the Comptroller for review upon request.”

**Auditor Comment:** The Corporation’s chronology is consistent with our finding about the lengthy timeframe that occurred before all the deteriorated pier conditions were corrected. While we acknowledge the Corporation’s measures to undertake immediate stabilization after the June 2001 pier collapse, we note that overall rehabilitative measures were not accomplished until 2008. This was acknowledged in a December 28, 2008, letter by the United States Army Corps of Engineers to the Corporation:

“This office notes that, after the collapse of a section Pier 1, this office directed the New York City Economic Development Corporation, in a letter dated June 28, 2001, to carry out the removal operation in a manner which would not allow material to enter the waterway, to remove all floating debris, which may enter the waterway at the subject site, and to maintain the site in a manner so as to avoid further discharges into waters of the United States. It appears that proposed work would substantially address the enforcement concerns of this office as set out in that letter, if carried out in the manner indicated in the submitted material. Accordingly (pursuant to Title 33 of the Code of Federal Regulations, Section 326.3 (d.1), no further authorization from this office is required for this work, as it is considered as a corrective measure.”

Clearly, the corrective measures were not completely addressed until 2008—seven years after the 2001 collapse of the pier.

**Audit Finding:** The Corporation failed to promptly instruct Turner to proceed with repairs to the façade of the Bush Terminal.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

The façade inspection authorized by NYCEDC's executive committee in June 2005 was awarded by Turner in December 2005 to a consulting engineer, RAF Services. The resulting inspection report issued by RAF Services, a certified façade inspector, in December 2006 noted that ‘there are currently no unsafe conditions.’ The same inspection report contained a number of recommendations to ensure that unsafe conditions do not develop. The recommended timeframe for implementation of these repairs was 12 months. As such, NYCEDC instructed Turner to

implement the recommended repairs. NYCEDC executed approval letter 3458 authorizing this repair work on May 4<sup>th</sup>, 2007. The implementation of these repairs again reflects well on NYCEDC's systems and emphasis on protecting public safety.

Again, it should be noted that the review of these files was outside of the scope of this audit as the inspection and repairs were implemented under a prior contract between NYCEDC and Turner; however, in the spirit of full disclosure, NYCEDC provided these documents to the Comptroller for review upon request.”

**Auditor Comment:** We cannot comment on information about an inspection report by RAF Services as this report was not contained in file documentation and was not provided to us at the exit conference. In any case, we note that Turner reported on May 8, 2006, that:

“Previous inspection reports performed and the façades of these buildings have recommended immediate rehabilitation to be performed to protect the life safety of the pedestrians below. The façade has deteriorated to a point where falling debris is common. The Rehabilitation will include the spalled, broken, and falling concrete from façade of building and repointing of masonry elements.”

The emergency repairs were carried out in May 2007 and June 2008.

**Audit Finding:** The Corporation failed to carry out in a timely manner the recommendations of a May 2006 inspection that was conducted at a parking garage over the East River between East 18th and East 23rd Streets in Manhattan.

**Corporation Response:** “NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

The Comptroller is relying on the September 2006 inspection report that was submitted to NYCEDC following the May 2006 inspection. This proactive inspection was conducted at the parking garage by OCC, a consulting engineering firm under contract with Turner, at the direction of NYCEDC. The inspection report that was submitted to NYCEDC in September 2006 did indeed identify areas of deficiencies to be monitored as part of a routine maintenance program, but the Recommendation section of the report clearly stated that:

‘There are no immediate repair recommendations for the garage structure.’

The Comptroller's assertions that serious deficiencies were uncovered or ignored simply do not stand up to scrutiny.

It was only after NYCEDC and Turner personnel conducted a routine property walkthrough of the parking garage in November 2007 that an emergency repair of the level 1 expansion joint

was found to be required. NYCEDC responded immediately by (1) installing structural steel shoring to protect public safety, an action that the Comptroller inexplicably criticized in its previous audit, and by (2) issuing a notice-to-cure to the tenant responsible for maintaining the structure, directing them to pay for the structural steel shoring and to perform other corrective maintenance identified in a subsequent inspection report, as required in the lease.

These actions stand in contrast to the Comptroller's assertions and reflect well on NYCEDC's proactive management and emphasis on protecting public safety.”

**Auditor Comment:** The previous audit by the Comptroller (no. FM08-094A) that we cited found that:

“EDC’s insufficient oversight of the Skyports lease may have jeopardized public safety, placed the City at financial risk, and may have cost the City upwards of \$5.5 million or more to rectify conditions dangerous to the public. EDC’s inability to sufficiently ensure the maintenance of the facility and to fully act on conditions brought to its attention may have contributed to deterioration of the parking garage. For example, EDC did not follow up an inspection performed on the parking garage by Ocean and Coastal Consultants Engineering P.C. in May 2006.”

Coincidentally, we also note that the November 2007 “routine property walkthrough” occurred after the Comptroller commenced its audit of the parking garage.





New York City  
Economic Development  
Corporation

ADDENDUM  
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December 1, 2010

Ms. Tina Kim  
Deputy Comptroller for Audits  
The City of New York  
Office of the Comptroller  
1 Centre Street  
New York, New York 10007-2341

Re: Response to Audit Report on the Economic Development  
Corporation's Oversight of Turner Construction Company's Contract  
For Facility and Construction Management Services  
FR10-075A

Dear Ms. Kim:

Thank you for the opportunity to respond to the above referenced Draft Audit Report.

The New York City Economic Development Corporation ("NYCEDC") granted the audit team unfettered access to our records and staff throughout the entire 16 months it took to complete this audit. During this time and at the exit conference held on October 6, 2010, we gave detailed explanations and provided copies of all requested documentation.

Attached is a copy of NYCEDC's responses to your recommendations. If you or members of your staff have any questions please feel free to contact Becky Ta, NYCEDC's Head of Finance at (212) 312-3688.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jason A. Wright', written over a printed name.

Jason A. Wright

cc: Seth Pinsky  
Dan Zarrilli  
Becky Ta  
Hope Mallari

**Recommendation 1: Establish a management system to monitor the work of facility management and construction management services contracts such as Turner.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that its management system is not effective.

In fact, the New York City Economic Development Corporation ("NYCEDC") already has an established management system to monitor the work of facility management and construction management consultants. The results speak for themselves. NYCEDC, through Turner Construction Company ("Turner"), has already completed 21 of 50 projects in this current contract. NYCEDC's proactive management of the Turner contract, coupled with Turner's success in performing its contractual duties, resulted in a net aggregate savings of \$2,760,105 across those 21 projects.

By claiming that NYCEDC is not effectively managing the Turner contract, the Comptroller is (1) displaying an unfortunate misunderstanding of the contractual role and obligations of Turner and (2) discounting a track record of successful project completion by NYCEDC that would have been impossible to achieve if the Comptroller's claims throughout the audit report were true.

Before discussing the Comptroller's claims in detail, NYCEDC would like to correct the findings in the table (Table 1) presented in the audit report. That table lists 15 projects involving "Inappropriate and Questionable Payments to Turner". Of the 15 lines:

- Five projects, totaling \$57,049, are titled, "Overpayments to be Recouped." NYCEDC rejects \$54,109 of these findings.

In fact, NYCEDC has already recouped the balance of \$2,940 from Turner.

- Four projects, totaling \$1,491,805 are titled, "Funds lost due to Poor Oversight." NYCEDC rejects \$765,441 of these findings.

In fact, NYCEDC has already recouped \$18,000 from Turner related to the Bush Terminal bond. The remaining \$708,364 is related to the cost of soil disposal at the Brooklyn Army Terminal and will not be recouped.

- Six projects, totaling \$1,796,106 are characterized as "Questionable Payments. NYCEDC rejects \$1,796,106 of these findings.

In sum, NYCEDC disagrees with and has supplied explanations and documentation to refute \$2,615,656 of the \$3,344,961 that the Comptroller alleges are inappropriate and questionable payments. NYCEDC does accept the validity of 3 findings, totaling \$20,940, a negligible fraction (.028%) of Turner's contract value and has already recouped those funds from Turner. A fourth finding related to the soil disposal at the Brooklyn Army Terminal should not be deemed a "finding" of this audit as it was resolved successfully more than two years before the finding was discovered by the Comptroller. This will be explained in detail in the response to Recommendation 4.

Unfortunately, these 15 alleged findings are then used by the Comptroller to offer 31 recommendations to NYCEDC. As will become clear in this response, the overwhelming majority of the findings are

inaccurate and do not support the recommendations or conclusions that have been drawn in this audit report.

### MISUNDERSTANDING OF THE FM/CM CONTRACTUAL RELATIONSHIP

The Introduction to the Comptroller's Audit Report states the following:

“Under the auspices of the Master and Maritime contracts, the Corporation awarded a \$7,500,000 million [sic] contract (No. 16850005) to Turner Construction Company (Turner) on July 1, 2008, to provide facility management and construction management services for various properties in New York City. The contract's term is from July 1, 2008 to June 30, 2011, and can be extended for two additional one-year terms. There have been 21 contract amendments that have increased the contract amount to \$73,578,706.”

The Comptroller seems to be implying that any amendments to the contract are (1) the equivalent of change orders to a construction contractor and (2) consequently, Turner is the recipient of the \$73,578,706. This is one of many mischaracterizations by the Comptroller of how the FM/CM contract is structured.

Of the total contract amount of \$73,578,706, it is anticipated that \$62,836,215 or approximately 85.4%, will be paid to construction and consulting subcontractors to perform the required work. The remaining 14.6% that is anticipated to be paid to Turner for its construction management services must cover its full cost of staff, benefits, overhead and profit and is in line with acceptable standards for this type of work, particularly on a FM/CM contract in which Turner is required to carry the risk of holding all subcontracts, and with no additional fee on hard costs as is standard in many other construction management contracts.

During the period covered by this audit, Turner's total for staffing, benefits, overhead and profit totaled \$6,508,408 or 14.6% of total project costs to date. NYCEDC's personnel costs associated with managing the Turner contract 16850005 have been approximately \$400,000 during the period covered by this audit, or approximately 0.5% of the total project budget, compared to other agencies that add up to an additional 10% for their internal costs of project management. Hence, the total cost of construction project management is just over 15%, a ratio that is well within industry standards, despite NYCEDC's unique portfolio of properties and their unusual project constraints. It is this streamlined organizational structure, and its highly effective style of management, combined with the use of contracted construction managers, which has allowed NYCEDC to remain responsive and highly cost-effective in its service to the City of New York. Additionally, as will be demonstrated in the response to Recommendation 18, the Comptroller has unfortunately mischaracterized Turner's costs as excessive when, in fact, their costs are very competitive and, when compared on an apples-to-apples basis, are lower than the Comptroller's 'rules of thumb.'

As further evidence of NYCEDC's active and aggressive management role, NYCEDC has recently reacted to current market conditions and has concluded negotiations with Turner to reduce Turner's staff multiplier from 2.3 to 1.8 beginning September 1, 2010, and lasting for the remainder of contract 16850005. This is anticipated to reduce Turner's costs from 14.6% to 11.9% of the total project contract going forward. NYCEDC has concluded similar negotiations with all of its facilities and construction management consultants, proving that NYCEDC's management structure provides an excellent value to the City considering the successful record of project implementation by NYCEDC.

### DISCOUNTING NYCEDC'S TRACK RECORD OF SUCCESSFUL PROJECT COMPLETION

NYCEDC believes that the results of its management efforts speak for themselves. A record of successful projects (characterized by budget savings, impeccable safety records and on-time delivery) and a reputation for excellence regarding hazard avoidance (characterized by a robust inspection program that leads to the implementation of successful long-term preventative maintenance and capital plans) could not be achieved if NYCEDC were not effectively managing this Turner contract.

It is also enlightening to note what the Comptroller did not find in the course of this audit.

- This audit report, despite reviewing dozens if not hundreds of subcontracts, found no instances of flawed procurements performed by Turner or approved by NYCEDC.
- This audit report did not identify any credible instances of flawed construction or design work performed by Turner or its subcontractors or approved by NYCEDC. In fact, the Comptroller acknowledges on page 2 of the audit report that “much of the contract work was apparently complete and satisfactory.”
- This audit report did not identify any evidence of a subcontractor being paid more than the value of their contract, indicating that financial and project controls are fully in place to protect NYCEDC and the City.

NYCEDC welcomes constructive criticism, is eager to adopt improved practices as they are identified and, as reported below, acknowledges mistakes when they are made. But it is disappointing, particularly given the time and cost associated with supplying the information requested, that the Comptroller has chosen to discount such evidence. NYCEDC stands by its record and is proud of the fact that 20 of 21 projects completed in Turner’s contract were under budget, providing an aggregate net savings to the City of over \$2.7 million.

**Recommendation 1a: Ensure that work scopes are properly developed and authorized.**

*NYCEDC’s Response:*

NYCEDC disagrees with the Comptroller’s assertion that work scopes are not properly developed and authorized.

In fact, NYCEDC has an established process already in place whereby each project is scoped (1) before the funds are added to the budget, (2) before a CP is requested from OMB, (3) before receiving NYCEDC board approval and (4) before an approval letter is signed by NYCEDC authorizing the work to be completed by Turner and its subcontractors. This multi-layered process ensures that the work scope that is purchased is the work scope that is anticipated and required.

NYCEDC does not believe that it should hire additional personnel to duplicate the efforts of its facilities/construction management contract staff. NYCEDC believes that the cost-benefit ratio of duplicating such efforts would not make fiscal sense for the City.

**Recommendation 1b: Establish procedures to ensure that required project documentation including schedules, budgets, and drawings are submitted and approved.**

*NYCEDC’s Response:*

NYCEDC disagrees with the Comptroller's assertion that project documentation is improperly managed.

In fact, NYCEDC has an established process already in place to ensure that all critical project information is submitted as part of its approval letter process and as part of its regular monthly contract meetings and monthly contract reports.

**Recommendation 1c: Review and approve hourly rates, personnel, and payment invoices.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not reviewing and approving hourly rates, personnel and payment invoices.

In fact, NYCEDC reviews and approves hourly rates, personnel and payment invoices, both as part of an approval letter process and as part of the monthly invoice review process, and believes ample evidence, as discussed above, has been submitted to the Comptroller to substantiate this.

**Recommendation 1d: Track the progress of start and completion dates for projects.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not tracking the progress of start and completion dates for its projects.

In fact, NYCEDC tracks the progress of start and completion dates for projects in its monthly contract meetings and has recently upgraded its contract management database to more easily handle direct importation of project schedules. That new functionality is being implemented shortly.

**Recommendation 1e: Track the cost of projects.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not tracking the cost of its projects.

In fact, NYCEDC implemented an industry-standard contract management database that contains project financial information back to 2003 and that tracks the cost of all projects in all of NYCEDC's facility and construction management contracts. The Comptroller had access to, and was given training for, this system during the course of the audit.

Again, the results speak for themselves. No contractor was found during the course of this audit to be paid more than its approved contract value, proving that project costs are tracked. NYCEDC has easy access at all times to the current financial status of its projects, as repeatedly demonstrated to the Comptroller during the course of this audit.

**Recommendation 1f: Conduct and document adequate inspections.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that NYCEDC is not conducting adequate inspections.

In fact, NYCEDC has been conducting routine inspections of its property and projects, both upland and underwater, for many years. NYCEDC maintains an extensive inspection program for its properties, in which inspections are identified, prioritized, funded and executed. Waterfront properties in particular are the subject of an intensive three to five year inspection cycle according to the NYCEDC Waterfront Inspections Guidelines Manual. NYCEDC also conducts regular inspections, as appropriate, of its projects to track work progress and identify any deficiencies, which are relayed directly to Turner for correction.

More importantly, Turner is contractually responsible to conduct inspections and to correct any work deficiencies under their contract with NYCEDC and regularly reports on the outcomes of those inspections at the monthly contract meetings. NYCEDC does not believe that the Comptroller's finding supports an expansion of NYCEDC staff which would increase the cost of its projects.

**Recommendation 1g: Review the accuracy of monthly status meeting minutes.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that NYCEDC's monthly meeting minutes are inaccurate.

In fact, NYCEDC has convened and managed monthly contract meetings with all of its facility and construction management consultants for many years. At these meetings, NYCEDC meets with Turner staff to review a variety of information related to Turner's contract performance, including inspections, schedules, project progress, milestones and prior meeting minutes. This information is verified by NYCEDC's operations managers, construction project managers, preventative maintenance manager and contract directors on a constant and recurring basis. All of the monthly status meeting minutes (previously kept in Excel and now kept in the contract management database) were provided to the Comptroller for the full duration of the audit period and no discrepancies were noted during the course of the audit.

**Recommendation 1h: Participate in developing project "punch-lists."**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that project punchlists are not properly developed.

In fact, NYCEDC participates, when appropriate, in developing project punchlists to identify remaining work to be completed before final payment is made. Projects that are conducted in difficult locations (i.e., underwater) require the use of qualified outside consultants to identify punchlists that are then reviewed by NYCEDC either in the field or at the monthly contract meetings with Turner.

**Recommendation 2: Review the work deficiencies and questionable payments cited in this report and recoup any payments for work that was not properly carried out. Additionally, ensure that payments that cannot be adequately substantiated are adjusted and recoup any overpayments from Turner.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion in Table 1 regarding the magnitude of payments to be recouped.

NYCEDC agrees to recoup the costs in the three instances that the Comptroller accurately identified to be legitimate overpayments, including (1) \$2,760 for an incorrect labor rate at Harlem River, (2) \$180 for an incorrect labor rate at Pier 42 and (3) \$18,000 for a bond overpayment at Bush Terminal – for a grand total of \$20,940. In fact, NYCEDC has already recouped those costs.

Although NYCEDC is committed to eliminating these types of errors, it is important to recognize that these findings represent a negligible percentage (.028%) relative to the value of Turner's contract.

**Recommendation 3: Maintain adequate documentation to substantiate the development and authorization of appropriate work scopes.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that work scopes are not properly developed and authorized.

In fact, NYCEDC has an established process already in place whereby each project is scoped (1) before the funds are added to the budget, (2) before a CP is requested from OMB, (3) before receiving NYCEDC board approval and (4) before an approval letter is signed by NYCEDC authorizing the work to be completed. This multi-layered process ensures that the work scope that is purchased is the work scope that is anticipated and required.

NYCEDC does not believe that it would be wise to duplicate any of these efforts or the efforts of its facilities/construction management contract staff. NYCEDC believes that the cost-benefit of duplicating this effort is not justified by the findings of the report.

In addition, the Comptroller has identified several related items in the report narrative and in Table 1 that will be addressed individually below.

**REPORTED FINDING:** *"In another case, when the Corporation authorized a roofing work scope for the Bush Terminal Capital Improvements, it omitted portions of roofing that needed to be replaced. Furthermore, the Corporation neglected to perform preliminary tests of the existing roof for moisture content and asbestos, tests essential to compiling a proper scope for roof work. Consequently, the Corporation cancelled the original approval letter and revised the scope of work. But in the meantime, the Corporation directed Turner to install a temporary roof on the lower level of Unit B, whose cost totaled \$70,343. The temporary roof would not have been necessary if the work scope had been properly developed. Moreover, the Corporation paid \$18,000 to Turner for the cost of bonds and insurance that had already been expended by Turner's roofing subcontractor before the original approval letter was cancelled."*

NYCEDC partially agrees with this assertion and has recouped \$18,000 from Turner for the unused portion of the bonds and insurance related to the canceled portions of project work. However, the Comptroller is incorrect in its statement of facts on this finding.

The low-level roof on Unit B was installed as part of the Bush Terminal Capital Improvements project while the overpayment for bonds and insurance was part of the Bush Terminal Strategic Plan project, a completely different project to install new roofs on completely separate buildings (buildings 57 and 58).

The original scope of work for the Unit B roofing project under Bush Terminal Capital Improvements was for replacement of the high roof on Unit B. The low roof was not originally included since it had been recently replaced. Replacement of the low roof became necessary in the course of the project due to damage that was caused by debris falling from the adjacent, privately-owned building. NYCEDC is actively pursuing a lawsuit against the owner of this building to recover costs incurred in replacing the low roof. The litigation is currently in the discovery phase and is proceeding.

Since the full tear-off and replacement of the low roof, including asbestos abatement, was not possible within the Bush Terminal Capital Improvements budget, NYCEDC instead opted to apply the new roof over the existing roof, eliminating the need for asbestos abatement at this time, with the full knowledge that NYCEDC would be unable to secure a 10-year warranty. By doing so, NYCEDC was able to obtain a waterproof roof anticipated to last for a minimum of 5 years at a cost of \$70,343 instead of 10-year roof at an approximate cost of \$332,000, resulting in a savings of approximately \$261,657.

On its roofs, NYCEDC typically installs a spray foam roofing system with a 10-year warranty provided by the contractor and backed by the manufacturer. Often, this can be done as an application of the spray foam over the existing roof. Unfortunately, due to the saturation of the existing roof resulting from the damage caused by the adjacent building, the contractor would not provide a warranty for the new roof unless the existing roof was removed prior to the application of the new roofing system. Since the roof had been recently replaced, it was not believed that the roofing material contained asbestos. However, since the recent replacement had not removed all of the prior roofing material, the replacement of the low roof would have required asbestos abatement.

For the Bush Terminal Strategic Plan project, the original scope of work included the full tear-down and replacement of the high and low roofs at Buildings 57 and 58. It should be noted that a full tear-down was chosen because preliminary surveys were performed, contrary to the Comptroller's claim, and such surveys indicated the presence of moisture under the existing roof. Again, it was not anticipated that the roofing material contained asbestos due to the age of the existing roof. However, since not all of the previous roofing material had been removed prior to the installation of the existing roof, there was still asbestos containing material that needed to be removed before installing the new roof.

In reviewing the contractor's (Thesaurus Contracting Corp.) proposal for removal of the asbestos roofing material, Turner and NYCEDC believed that a better value could be obtained by re-procuring the entire roofing project to include the asbestos remediation. Indeed, the new procurement yielded a price of \$684,325 while the anticipated cost under the Thesaurus contract was \$791,121. As such, NYCEDC directed Turner to close the Thesaurus contract. NYCEDC acknowledges that the deduct approval letter that was issued for this contract omitted \$18,000 in bonds and insurance that had already been paid by the contractor. NYCEDC has subsequently already recouped this \$18,000 from Turner. The Comptroller should be equally forthcoming in acknowledging that NYCEDC's diligent management of this project resulted in a savings of approximately \$106,800.

Table 1, Item 7, Bush Terminal Capital Improvements. Description: Temporary roof installed on Unit B

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

Table 1, Item 8, Bush Terminal Capital Improvements. Description: Bonds and insurance paid prior to work cancellation

As described immediately above, this finding should be directed towards the Bush Terminal Strategic Plan project, not the Bush Terminal Capital Improvements project. NYCEDC agrees with the



Comptroller's assertion and has already recouped \$18,000 from Turner for the value of the unneeded bonds and insurance.

**REPORTED FINDING:** *"The Corporation also failed to adequately reconcile work scopes for the installation of emergency exit and stairwell lights at Bush Terminal Capital Improvements...the Corporation failed to properly review vendor proposals to ensure that bid prices complied with the revised quantities. Consequently the Corporation paid Turner and its subcontractor for the higher quantities in the original work scope, thereby overpaying \$17,975."*

NYCEDC disagrees with the Comptroller's assertion.

The Comptroller is incorrect in stating that NYCEDC failed to reconcile work scopes for the installation of emergency exit and stairwell lights. During the procurement process, NYCEDC identified an inconsistency in numbers (i.e., NYCEDC did reconcile the work) and issued an addendum with the revised drawings which included the following instruction: "The exit lights will be installed as per the new revised drawings that are included in this Addendum. Please fill out the Proposal Form accordingly." As such, the number of lights to be installed was clear to the proposers as 31 light fixtures in the original scope of work (not 61 as the Comptroller claims) and 27 light fixtures in the revised scope of work. In this case, the proposal form could have been written more clearly to document the changes on the drawings, but the underlying facts cannot be denied and NYCEDC clearly received and paid for what was expected to be installed.

NYCEDC also refutes the claim that it failed to properly review vendor proposals. All of the proposers signed the Addendum cover sheet when submitting their proposals, indicating that they had reviewed and understood the revisions. Additionally, Turner conducted scope reviews with all of the proposers and all proposers indicated that they understood the revised scope of work. These scope reviews were clearly identified in the approval letter (AL 4131) that was provided to the Comptroller.

Table 1, Item 1, Bush Terminal Capital Improvements. Description: Incorrect quantities emergency exit and stairwell lights

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

**Recommendation 4: Develop procedures to identify and remediate environmental hazards before commencing project work.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that procedures are not in place to identify and remediate environmental hazards before commencing project work.

In fact, after learning a valuable lesson on the BAT project two years before the Comptroller issued these findings, NYCEDC has previously directed all of its FM/CM consultants to identify and mitigate the impacts of environmental hazards during the work scope development process, in cooperation with NYCEDC. All projects commenced under this Turner contract have complied with that mandate. That direction was again provided to all FM/CM consultants during the course of this audit, as acknowledged by the Comptroller. No similar incidents have occurred since the BAT project, despite several projects with similar soil conditions.

In addition, the Comptroller has identified several related items in the report narrative and in Table 1 that will be addressed individually below.

**REPORTED FINDING:** *“The Corporation’s work scope for the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation lacked provisions for testing material for contamination prior to its excavation...Corporation officials authorized the disposal of hazardous material at Fresh Kills landfill in Staten Island, a step that was subsequently recognized as erroneous by the Corporation as that particular material should have been disposed at another landfill. As a result, unnecessary costs were incurred for loading the material in barges for shipment to Fresh Kills, storing the material, unloading it from barges, and re-stockpiling the material on land...”*

NYCEDC partially agrees with the Comptroller’s assertion.

This project involved the removal of a collapsed pier and a dilapidated timber sheetpile bulkhead, and the construction of new shoreline protection in the form of a rip-rap revetment. From the outset of the project, there were no indicators, nor was there any site history, to indicate that the soil was contaminated by federally-regulated hazardous waste. While in-situ analytical testing of all soil to be disturbed could have been conducted, it is hardly industry standard to assume that soil is regulated hazardous waste and to test as such prior to work, when no previous indicators had existed to support such a conclusion. However, after heavy excavation began in the summer of 2008, discolored soil was exposed, and all work was halted by Turner and NYCEDC management, pending environmental review. Conducting these tests after evidence of contamination was discovered (as opposed to a battery of tests prior to any construction) did not add any unnecessary costs to the project. To clarify, the overruns of this project had nothing to do with NYCEDC’s prior approach to environmental testing.

Environmental testing ultimately revealed that lead and PCBs existed at federally-regulated hazardous levels. NYCEDC rapidly investigated options for disposal and vetted all possible disposal options. The least expensive of those options at that time appeared to be Fresh Kills. The NYCEDC staff member who administered the Fresh Kills disposal site was apprised of all relevant soil contaminant characteristics and that staff person gave approval (improperly as it turned out) for using Fresh Kills as a disposal site for the spoils removed from BAT Pier 1. This was the error that caused the cost overrun.

After the material was loaded and transported to a processing facility en route to Fresh Kills, NYCEDC directed Turner staff to oversee the transportation and handling of the dredge material. It was this continued supervision, and NYCEDC’s constant interface with the processing contractors on the Fresh Kills end that revealed that Fresh Kills was not permitted to handle this type of hazardous material – contrary to the written approval given by the Fresh Kills administrator.

Upon learning of the inability to use Fresh Kills as a disposal site, NYCEDC immediately implemented a new plan to dispose of the material at another, proper disposal site. All material was subsequently disposed of at a properly permitted site. However, the retrieval of the material from the Fresh Kills processing facility, and re-handling and processing of the material for disposal elsewhere cost approximately \$708,364. These changes and overruns were properly managed and resolved long before the Comptroller’s audit.

The causes for the cost overrun of \$708,364 at Brooklyn Army Terminal Pier 1 are hardly a “finding” of the Comptroller. The causes for the cost overruns on this project were identified by NYCEDC’s management during the course of the project, and were corrected at the explicit and immediate direction of the NYCEDC Contract Director, with new procedures in place to ensure this type of event does not occur in the future, including more proactive testing of any soil to be disposed during a project prior to selecting a contractor. Furthermore, the overruns and the causes of those overruns were communicated

to NYCEDC's senior management, and made transparent to OMB, two years prior to the Comptroller's "finding".

Indeed, NYCEDC's active management of this issue kept this overrun from being much higher. Additionally, it is important to note that the Comptroller is absolutely wrong in its assertion in footnote 6 that the material could have been disposed at Fresh Kills if only it was splintered into smaller pieces. There are simply no facts to support this assertion. Fresh Kills was simply not permitted to accept this type of hazardous material.

To address the issue of \$708,364 of funds lost:

Fresh Kills was an experimental and unique project, administered by NYCEDC, using processed dredge material for beneficial reuse in the creation of a park in Staten Island. This experimental and ultimately successful project saved the city over \$21 million (on top of other savings by state and federal projects). While a cost overrun of \$708,364 did exist, this number only represents 3.3% of the total savings provided to the City by the benefits of the Fresh Kills Project.

Additionally, of the 21 projects completed to date in this contract, this is the only one with cost overruns. Even with the overruns of the BAT Pier 1 project, NYCEDC had still demonstrated significant savings on completed projects as a whole, saving over \$2.7 million on all of the projects completed to date through Turner's contract 16850005.

Table 1, Item 6, BAT Pier 1 Bulkhead Rehab. Description: Unnecessary costs for material loading, and transportation

As described immediately above, NYCEDC partially agrees with the Comptroller's assertion. However, the unnecessary costs were discovered and resolved by NYCEDC two years prior to the Comptroller's "finding".

**Recommendation 5: Ensure that vendor proposals are consistent with work scopes.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that vendor proposals are not analyzed.

In fact, NYCEDC already has an established procedure for ensuring that vendor proposals are consistent with work scopes. Turner conducts walkthroughs and pre-proposal meetings with the vendors and provides ample time during the procurement process for Q&A, ensuring that the vendors are able to clarify any questions that they may have. NYCEDC participates in this procurement, as appropriate, but Turner has the contractual obligation to manage this process.

Additionally, Turner meets with the vendors individually following submission of proposals to review the vendors' understanding of the project and to ensure that the vendors have accounted for all aspects of the project's scope.

This entire procurement is presented for approval by NYCEDC before the commencement of any work.

**Recommendation 6: Recoup \$17,975 from Turner for overpayments for lighting for the Bush Terminal Capital Improvements.**

***NYCEDC's Response:***

As stated in the response to Recommendation 3, NYCEDC disagrees with the Comptroller's assertion. There were no overpayments made and therefore no funds to recoup.

**Recommendation 7: Require project and property managers to perform frequent inspections of work and to maintain inspection reports and logs.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that appropriate inspections are not conducted.

In fact, NYCEDC has an established process in place to ensure that projects are completed successfully. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. NYCEDC provides an appropriate level of inspection and oversight to ensure that projects stay on track relative to budget and schedule, but NYCEDC does not duplicate the work of Turner. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.

NYCEDC will continue to conduct appropriate inspections of the project work and will continue to directly relay any concerns to Turner for corrective action. Project and property managers will continue to participate in regular monthly contract meetings held with Turner, at which time concerns are aired and action items are recorded in the meeting minutes. NYCEDC cannot add needless duplication of the Turner's inspection reports and logs without increasing headcount at substantial cost to the projects and NYCEDC, and does not believe that the Comptroller has demonstrated that the absence of Project and Property Manager inspection reports has had any meaningful deleterious effect on the outcome of the work.

In particular, the Comptroller has identified several items in the report narrative that will be addressed individually below.

**REPORTED FINDING:** *"There was no evidence...to indicate that Corporation project managers conducted sufficient and appropriate inspections of project work and were cognizant of work scopes by reviewing Turner's design drawings."*

NYCEDC disagrees with the Comptroller's assertion.

There was no evidence that NYCEDC project managers did not conduct sufficient and appropriate inspections of project work or were not cognizant of work scopes. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.

**REPORTED FINDING:** *"In the case of one sampled project (Essex Street Market Building C Rehabilitation), we observed problems with the quality of the roofing installation that included ponding and leaking....However, there was no evidence to indicate whether this deficiency was cited in a punch list. The Corporation should have compelled Turner and its subcontractor to remedy the problem and should have withheld retainage funds to do so; however, the Corporation had already paid Turner for the work. Accordingly, the Corporation must recoup from Turner \$13,750, which is the estimated cost to make the necessary repairs."*

NYCEDC disagrees with the Comptroller's assertion.

Turner oversaw a roof rehabilitation which was performed by Hygrade Insulations via a subcontract held by Turner for \$175,280, and approved via AL 3559. The work was performed in the spring of 2009 and was inspected by the manufacturer, Bay Systems North America. At the time the work was completed, no apparent deficiencies existed, and Bay Systems issued the proper 10-year warranty. However, subsequent to several rain storms, a few minor leaks were discovered. These areas were promptly repaired by Hygrade Insulations via the 10-year roof warranty. The Comptroller's assertion that "The Corporation should have compelled Turner and its subcontractor to remedy the problem...", implies that the problem was never remedied. This is simply not true.

The Comptroller's statement also implies that the deficiency existed at the time of project completion "...and [the Corporation] should have withheld retainage funds to do so; however, the Corporation had already paid Turner for the work." This implies that NYCEDC knowingly paid for deficient work. In fact, NYCEDC paid for work which had been cleared by the manufacturer with no punchlist items. Upon discovery of a minor leak, NYCEDC did effectively enforce the warranty, correcting roof deficiencies in a timely manner and at no cost to NYCEDC or the City. This is the very nature of roofing and waterproofing work, and is the reason why NYCEDC wisely chose to purchase a warranty for this project.

Table 1, Item 2, Essex Street Market Building C Rehabilitation. Description: Poor quality work

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

**Recommendation 8: Ensure that project and property managers participate in final work inspections and the development of punch-lists.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that punchlists are not properly developed.

In fact, NYCEDC participates when appropriate in developing project punchlists to identify remaining work to be completed before final payment is made. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Projects that are conducted in difficult locations (i.e., underwater) require the use of qualified outside consultants to identify punchlists that are then reviewed by Turner and NYCEDC.

**Recommendation 9: Compel Turner to remedy or recoup funds for roofing problems discussed in this report that pertain to the Essex Street Market Building C Rehabilitation.**

***NYCEDC's Response:***

As stated in the response to Recommendation 7, NYCEDC disagrees with the Comptroller's assertion. There are no roofing problems that would require NYCEDC to recoup funds. All of the leaks were fixed at no cost to NYCEDC or the City through the warranty that was provided by the manufacturer.

**Recommendation 10: Develop procedures for ensuring that required project documentation, including schedules and meeting minutes, are submitted and approved in a timely manner.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that project documentation is not properly managed.

In fact, NYCEDC has an established procedure for ensuring that project documentation is submitted and approved in a timely manner. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Turner submits monthly reports to NYCEDC that include schedules for all projects and meeting minutes for the monthly contract meetings between Turner and NYCEDC. These monthly reports also include a monthly project summary and project budget information. The Comptroller had copies of these reports throughout the audit period.

In addition, the Comptroller has identified several related items in the report narrative that will be addressed individually below.

**REPORTED FINDING:** *"...Corporation files lacked evidence to show that appropriate minutes of meetings between Turner and its subcontractors and design consultants were submitted on a regular basis. In fact, there were no records of meeting minutes in the Corporation's PROLOG until October 21, 2009 – almost 16 months after the contract commence on July 1, 2008."*

NYCEDC disagrees with the Comptroller's assertion.

NYCEDC's FM/CM contract with Turner does not require Turner to submit minutes of meetings between Turner and its subcontractors and subconsultants. Additionally, the Comptroller's reference to the meeting minutes recorded in Prolog, an industry standard contract management database, in this regard demonstrates a clear lack of understanding of NYCEDC's processes and procedures. The meeting minutes recorded in Prolog are meetings between Turner and NYCEDC, and it should be noted that the Comptroller was provided with minutes of meetings between Turner and NYCEDC dating back to September 4<sup>th</sup>, 2008, documentation the Comptroller has either overlooked or chosen to ignore. (Meetings prior to September 2008 were recorded under Turner's prior FM/CM contract and were not requested as part of this audit.)

**Recommendation 11: Require that facility management and construction management services contractors, including Turner, submit project schedules that show milestone dates, and planned and actual start and substantial completion dates. Likewise, ensure that project documentation provides accurate information about the status of work and major milestones.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that project schedules are not properly managed.

In fact, NYCEDC regularly reviews project schedules as part of its monthly contract meetings. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. In addition to this, NYCEDC has already undertaken a pilot project on another contract to utilize Prolog for the management of schedules. This will be expanded to this Turner contract shortly.

It is worth noting that there is no evidence presented by the Comptroller in this audit report that any deficiency in documenting schedules, however minor, resulted in missed completion dates or increased costs. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.

**Recommendation 12: Ensure that the cost of change orders is based on appropriate labor and material rates, and that the cost reasonableness of subcontractor proposals is reviewed.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that change orders are not properly reviewed.

In fact, NYCEDC and Turner both check labor rates against the base contract approved rates for that subcontractor, and this ensures the reasonableness of a subcontractor's proposed costs. While three errors have been cited by the Comptroller, NYCEDC interprets the Comptroller's findings as an affirmation of NYCEDC's effective management. More specifically, we see the Comptroller's total findings in this regard, \$2,940 or .003% of Turner's total contract value, as immaterial and a resounding affirmation of NYCEDC's diligence and effectiveness.

In addition, the Comptroller has identified several related items in the report that will be addressed individually below.

**REPORTED FINDING:** *"The Corporation authorized the approval of change orders without adequately determining whether the prices and work scopes of change orders requested by Turner and its subcontractors were reasonable and necessary."*

NYCEDC disagrees with the Comptroller's assertion.

The Comptroller is basing this claim on the findings from two change orders totaling \$2,940. The Comptroller's assertions are not material. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.

**REPORTED FINDING:** *"For the Harlem River Bulkhead and Esplanade Rehabilitation project, change orders ...were based on a rate of \$108 per hour; the stipulated subcontract rate is \$85 per hour, thereby resulting in an overcharge of \$2,760."*

NYCEDC agrees with this finding and has already obtained a credit from Turner for \$2,760. It should be noted, however, that this project, which had an approved budget of \$7,500,000, was completed for a net savings of \$189,429, or 2.5% of the project budget. NYCEDC acknowledges the \$2,760 error and has already recouped it from Turner. In fact, the project has been completed under budget.

Table 1, Item 3, Harlem River Bulkhead & Esplanade Rehab. Description: Incorrect labor rate

As described immediately above, NYCEDC agrees with the Comptroller's assertion and has already recouped \$2,760 from Turner.

**REPORTED FINDING:** *"For the Pier 42 Substructure Rehabilitation, a change order ... was based on a rate of \$103.79 per hour; the stipulated subcontract rate is \$85 per hour, thereby resulting in an overcharge of \$180."*

NYCEDC agrees with this finding and has already obtained a credit from Turner for \$180. It should be noted, however, that this project, which had an approved budget of \$5,500,000, was completed for a net savings of \$134,217, or 2.4% of the project budget. NYCEDC acknowledges the \$180 error and has already corrected it. In fact, the project has been completed under budget.

Table 1, Item 4, Pier 42 Substructure Rehab. Description: Incorrect labor rate

As described immediately above, NYCEDC agrees with the Comptroller's assertion and has already recouped \$180 from Turner.

**Recommendation 13: Readjust the cost of the change orders identified in this report and recoup any overpayments that were made to Turner.**

*NYCEDC's Response:*

As described immediately above, NYCEDC agrees to recoup the appropriate amounts from Turner. In fact, for the three change orders cited, NYCEDC has already recouped the funds from the contractors, for a recovery of \$2,940.

**Recommendation 14: Audit change orders before authorizing payment if required.**

*NYCEDC's Response:*

NYCEDC disagrees with the Comptroller's assertion that change orders are improperly paid.

NYCEDC reviews all change orders in thorough detail. Of 134 approved change orders issued to date totaling \$6,302,003 (net of all increases and deducts), there have been errors totaling less than \$3,000, or less than .048% of the change orders. While no error is tolerable, this level of error does not support the Comptroller's assertions.

In particular, the Comptroller has identified several items in the report narrative and in Table 1 that will be addressed individually below.

**REPORTED FINDING:** *"The Corporation's Internal Audit Division did not conduct a required audit before approving a \$1,067,004 partial payment for a change order...to dispose of contaminated material for the Brooklyn Army Terminal Pier 1 Rehabilitation."*

NYCEDC disagrees with the Comptroller's assertion.

The classification of this payment as "questionable" is misleading. While NYCEDC acknowledges that its Internal Audit Division did not perform a pre-payment audit, NYCEDC's Internal Audit Division did perform a post-payment review and agreed with the amount that was paid. This information was provided to the Comptroller during the audit exit conference.

In addition, controls will be established to ensure that all qualified change orders receive a pre-payment audit in the future.

Table 1, Item 10, BAT Pier 1 Bulkhead Rehab. Description: No pre-payment audit

As stated immediately above, NYCEDC disagrees with the Comptroller's assertion.

**REPORTED FINDING:** *"Another approval letter...totaling \$997,500 for work at the Brooklyn Army Terminal Pier 1 Bulkhead Rehabilitation, was issued to remove and dispose of 10,500 cubic yards of soil and debris. Our review of waste manifest tickets indicated that only 2,900 cubic yards were removed. However, the*



*Corporation paid Turner for removing 10,500 cubic yards, despite the lack of documentation to validate the removal of the entire quantity.”*

NYCEDC disagrees with the Comptroller’s assertion and finds the Comptroller’s mischaracterization of this event to be disappointing.

The Comptroller’s report implies negligence on the part of NYCEDC, when in fact NYCEDC and Turner employed lump sum contract language to protect NYCEDC and the City by providing cost certainty when existing conditions prevented accurate quantification of disposals prior to construction.

The initial approach to the work included removal of crushed concrete and construction debris from the area behind the old seawall; removal of the timber bulkhead, as listed on the proposal form under Item #5; and removal of the Pier 1 remnants forward of the bulkhead. This material was removed via containers for disposal. After the timber and other debris was removed, Turner’s subcontractor proceeded with the excavation of the dirt, which included some remaining timber and concrete construction debris as well.

This work was captured under “LUMP SUM” items in Turner’s subcontractor procurement. The lump sum approach was utilized for these disposal items because exact quantities were not quantifiable prior to construction. This included large quantities of removal of the collapsed pier 1 (predominantly timber and concrete).

Turner, with the aid of the design consultant, assumed a total quantity of 10,500 cubic yards of removals, but this was presented only as an assumption to assist the contractors and did not affect the nature of the lump sum item. Turner included language in the Proposal Form of the RFP on page 3 of 6 of the proposal form that clearly put the onus of final computations on the contractor, requiring the contractors to account for all removals on a lump sum basis.

It was only after the hazardous conditions presented themselves that it became necessary to back out of the lump sum item those incremental excess costs related to the disposal of 2,900 cubic yards of hazardous material, a clear change order that was approved by NYCEDC and was well documented in the change order approval letters that followed and that were provided to the Comptroller. Detailed manifests and tickets for those 2,900 cubic yards of hazardous material disposal were also provided to the Comptroller and no discrepancies were found, in what was the area of highest risk to NYCEDC and the City.

Table 1, Item 15, BAT Pier 1 Bulkhead Rehab. Description: No documentation to substantiate quantity

As described immediately above, NYCEDC disagrees with the Comptroller’s assertion.

**Recommendation 15: Review the payments discussed in this report and recoup from Turner any unsubstantiated or inappropriate payments.**

***NYCEDC’s Response:***

As discussed in the response to Recommendation 13, NYCEDC agrees to recoup the appropriate amounts from Turner. In fact, for the three change orders cited, NYCEDC has already recouped \$2,940 from Turner. And for the overpayment of the Bush Terminal bond, NYCEDC has already recouped \$18,000 from Turner.

**Recommendation 16: Ensure that all payments for changes orders are substantiated with supporting documentation, such as time and material tickets. In that regard, ensure that facility management and construction management service contractors maintain all required documentation to substantiate the payment of change orders.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that change orders are improperly reviewed.

In fact, all change orders are reviewed and challenged to ensure compliance with the contract terms before any change orders are approved by NYCEDC. Supporting documentation is included with the approval letter as required to explain and substantiate the change order. In addition, all FM/CM change orders over \$100,000 are reviewed by NYCEDC's internal audit division.

In addition, the Comptroller has identified several items in Table 1 that will be addressed individually below.

**Recommendation 17: Cease practice of shifting contract funds to pay for change order work.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that it acted improperly in any way in its response to the cited examples.

In particular, the Comptroller has identified several items in the report narrative and in Table 1 that will be addressed individually below.

*REPORTED FINDING: "...the Corporation approved a change order...to investigate and perform repairs of differential settlement in the vicinity of Market Street for the East River Bulkhead and Esplanade project...There was no documentation to indicate the basis for reducing the contract work by \$45,328, or for establishing that amount as the cost of the new work. Additionally, there were no authorized time and material tickets – required documentation that should have been used as the basis for making payment to Turner."*

NYCEDC disagrees with the Comptroller's assertion.

As is clearly documented in Turner Approval Letter 4150, Prima Paving Corporation was directed to perform unforeseen work to address differential settlement on the esplanade; such settlement developed subsequent to Prima's base contract award (AL-4061) and could have caused significant and costly damage if not addressed promptly. Prima proceeded on a time and material basis, under the supervision of Turner, and the design consultant, Halcrow, and completed seawall rehabilitation work which was not captured in the contract drawings for a value of \$45,327.76.

This differential settlement work was time critical could have caused significant and costly damage if not addressed promptly. Since after Prima's base award there were no additional funds in the project budget, \$45,327.76 of routine rehabilitation was deferred and deleted from the scope in an effort to make sure the higher priority repairs were completed first. These deferred routine repairs included the contract drawing repairs between stations 28+85 and 31+50. Again, this change of scope, and the specific reasoning for it are outlined in AL 4150. NYCEDC believes the facts reflect well on NYCEDC's proactive management.

Table 1, Item 12, East River Bulkhead and Esplanade. Description: No documentation to substantiate a \$0 change order

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

REPORTED FINDING: "... the Corporation improperly used a \$35,000 contract "allowance" to pay for the installation of a rooftop air conditioner for the Hunts Point Roof Rehabilitation project. Instead of issuing a change order for the work itself, the Corporation reduced the allowance by \$19,608 ... and authorized a \$15,392 credit change order... There was no evidence that the air conditioning work was properly negotiated and approved."

NYCEDC disagrees with the Comptroller's assertion.

NYCEDC approved the use of an allowance in the subcontractor's contract precisely to cover the costs of certain items related to the roof rehabilitation that could not be ascertained in advance, but were known to be potential costs. During the job, NYCEDC and Turner received a proposal from the contractor for this anticipated work to be performed. This proposal was reviewed by a third-party consultant (Hughes Environmental), a third-party contractor (Prime Mechanical) and Turner Construction, all of which certified that they believed the contractor's proposed price was fair and reasonable for the work to be performed. In fact, NYCEDC deducted the subcontractor's contract at the end of the roof job for the amount remaining in the allowance, resulting in a savings of \$15,392, and was able to reprogram those savings into other critical work at the same building with the approval of OMB.

Table 1, Item 13, Hunts Point Roof Rehabilitation. Description: Improper use of allowance

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

REPORTED FINDING: "In another example of questionable payments, the Corporation authorized an [AL] (3503) totaling \$1,414,766 to refurbish 11 elevators at Bush Terminal... The Corporation subsequently revised the work scope by deleting the refurbishment of five elevators and increasing the work scope for the remaining six elevators. However, the Corporation did not issue a change order by which to reconcile the differences... our analysis indicates that the cost of the revised work should have been at least \$141,475 less than the original cost. Consequently, the Corporation should provide evidence that the costs of the revisions were legitimate and, and recoup any payments for work items that cannot be substantiated."

NYCEDC disagrees with the Comptroller's assertion.

NYCEDC received a CP from OMB to perform elevator rehabilitation at buildings B, C, D, G, 57 and 58 on the Bush Terminal campus. Subsequent to that CP approval, NYCEDC made plans to sell buildings B, C, D and to close down the upper floors of building G. OMB then made clear to NYCEDC that no capital funds should be spent on B, C, D or G if they were to be sold or closed. NYCEDC reacted quickly to ensure that the just-completed procurement and CP for campus-wide elevator rehabilitation would be modified to ensure that critical elevator work in buildings 57 and 58 could be expanded with the funds that would not be spent on B, C, D or G. NYCEDC, through Turner, was then able to perform, through the original contractor, all of the additional work on the elevators of buildings 57 and 58, including a full modernization and replacement of cabs and equipment.

NYCEDC has already provided evidence to the Comptroller that the costs of the modifications were legitimate. Turner Construction and a third-party elevator consultant (J. Martin Associates – as a subconsultant to Turner) have both performed analyses of the work scope changes and the revised

pricing, and have found the revised pricing to be fair and reasonable. Turner and J. Martin Associates have both provided NYCEDC with letters stating that the revised pricing is fair and reasonable and these letters were provided to the Comptroller during the course of the audit. In this one case, the approval letter could have been written more clearly to document this change, but the underlying facts cannot be denied and reflect well on NYCEDC's proactive management.

Table 1, Item 14, Bush Terminal Strategic Plan. Description: No change order issued, no documentation to substantiate \$ amounts

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

**Recommendation 18: Require that facility management and construction management service contractors, including Turner, produce evidence to substantiate the reasonableness of work hours expended by its personnel.**

*NYCEDC's Response:*

NYCEDC disagrees with the Comptroller's assertion that Turner's work hours are unreasonable.

In fact, NYCEDC has an established process to ensure this. The FM/CM staffing is reviewed at several points in the project development process. (1) The estimated FM/CM staffing is included in the original project budget as detailed in the CP request. (2) A staffing approval letter is submitted and approved by NYCEDC prior to the project commencement. (3) FM/CM staffing is reviewed monthly with each invoice. All expenditures under this contract are approved in advance by NYCEDC in its approval letters and are in conformance with the contract terms and applicable industry standards.

As will be shown below, Turner's costs are reasonable across the entire contract, and when compared on an apples-to-apples basis, are an excellent value to the City and NYCEDC, especially considering their record of successful project management.

In particular, the Comptroller has identified several items in the report narrative and in Table 1 that will be addressed individually below.

*REPORTED FINDING: "However, for 2 of the 10 projects, construction management costs as a percentage of total construction costs far exceeded these guidelines [of being between 8-12%]. For the Hunts Point Roof Rehabilitation, construction management costs totaling \$353,034 were 47 percent of construction cost. For the Bush Terminal Strategic Plan, construction management costs totaling \$597,142 were 43 percent of construction cost."*

Regarding Hunts Point Roof Rehabilitation:

NYCEDC disagrees with the Comptroller's assertion.

On the Hunt's Point Roof Rehabilitation, Turner's total costs equaled approximately \$392,390 dollars, or 22.4% of a total project budget of \$1,750,000. NYCEDC would point out that this is the highest Turner participation of any project through Contract 16850005. That participation is a function of the complexity and nature of the work and runs higher when the project budget is smaller than the average project.

It should also be noted that this roof project was completed under budget to such a degree that the excess funds were approved by OMB to be shifted into other critical life-safety work. At the time of the audit, the roof work was complete, but the new life-safety work was only in design, skewing the Comptroller's calculation of Turner's percentage of the total.

Regarding Bush Terminal Strategic Plan:

NYCEDC disagrees with the Comptroller's assertion.

The Comptroller is misleading in its statement of facts for this project. As the Comptroller is well aware, several portions of this project were in the design stage during the audit period. As such, Turner's costs were being incurred to oversee a complicated design process, while many of the construction costs had not yet been spent, skewing the construction management percentage higher. NYCEDC is currently in the process of awarding over \$5 million of construction contracts as part of the Bush Terminal Strategic Plan project, which will significantly reduce the percentage of the total project costs attributable to construction management.

Furthermore, the capital projects taking place at Bush Terminal are not within a discrete construction site. The Bush Terminal Strategic Plan project includes work on the roofs at Buildings 57 & 58, the elevators at Buildings 57 & 58, the basements at Buildings 57 & 58, the electrical substation at 43<sup>rd</sup> Street and 1<sup>st</sup> Avenue, the bulkhead at the foot of 43<sup>rd</sup> Street, the utility infrastructure at the southern end of the campus and the rail tracks within the 1<sup>st</sup> Avenue Railyard. All of this work requires multiple subcontracts and coordination with other construction projects, the site operations staff and the many tenants occupying space at Bush Terminal.

Table 1, Item 9, Hunts Point Roof Rehab/Bush Terminal Strategic Plan. Description: Excessive construction management costs

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

More generally, the Comptroller continues to reference a 'rule of thumb' of between 8% and 12% for the cost of construction management services as a percentage of the total project cost. In this context, that 'rule of thumb' is not appropriate. The Comptroller is comparing the range of costs for a design-bid-build construction project for new construction in a discrete construction site. NYCEDC does not believe that facilities management and construction management contracts are comparable to large development projects in terms of intensity of CM oversight required, number of sites managed and participation of CM's as a percentage of dollar volume. NYCEDC would contest that these are very different contract types by nature and should be evaluated separately.

Facilities and construction management contracts, such as the contract between NYCEDC and Turner, carries higher management demands. Particular on smaller projects, such as roof rehabilitation, a myriad of issues exist (including extensive coordination with existing tenants), requiring the same level of oversight, management and procurement integrity as on larger projects, which have much larger hard cost budgets compared to similar staffing and soft costs.

Furthermore, NYCEDC would point out that on contract 16850005 as a whole, Turner's costs total 14.6% of the \$44,510,505 paid to date for 50 projects. This is on a contract with comprehensive on-call services and a myriad of small projects, all of which require the same levels of coordination as higher dollar volume projects.

As was pointed out to the Comptroller in the audit exit conference, NYCEDC's effective management of another Turner contract that is more in line with the larger projects cited by the Comptroller's 'rule of thumb'. On contract 23960001, in an apples-to-apples comparison with the Comptroller's 'rule of thumb,' Turner's overall costs have been 7.84% of \$26,932,652 paid to date for 10 projects. This highlights the fact that NYCEDC is very efficient in managing CM contracts, particularly when compared to 'rules of thumb' that suggest an acceptable participation rate for CM contracts should comprise 8%-12% of project volume.

Lastly, NYCEDC believes there should also be a 'rule of thumb' for in-house management costs of managing construction management contracts. It is NYCEDC's contention, given that NYCEDC's staff costs generally equal less than one-half of one percent of a project's total budget compared to other public agencies that add upwards of an additional 10% to the cost of a job that also employs a CM, that the combined costs of CM and NYCEDC management costs (just a bit higher than 15%) are an exceptional value, principally because NYCEDC has established roles and responsibilities that maximize the value of both CM and in-house management staff, which do not result in needlessly duplicating work, but which have procedures and controls that protect NYCEDC and the City. Again, the results speak for themselves. 20 of 21 projects were completed under budget and the cumulative net savings on those 21 projects was over \$2.7 million.

**Recommendation 19: Review the reasonableness of expenditures for Turner personnel for the two projects discussed in this report. Recoup any payments that have not been adequately substantiated and that are deemed excessive.**

*NYCEDC's Response:*

NYCEDC disagrees that any of the approved costs relating to the two projects discussed above are excessive or require NYCEDC to recoup funds from Turner.

**Recommendation 20: Ensure that facility management and construction management services contractors, including Turner, provide the Corporation, with an estimate before commencing work, of the number of hours its personnel are expected to be employed on that project, and use this information to ascertain whether the number of personnel and their associated cost is appropriate.**

*NYCEDC's Response:*

NYCEDC disagrees with the Comptroller's assertion that Turner's costs are not reviewed by NYCEDC before commencing work.

Turner has been required to submit General Conditions (GC) approval letters to NYCEDC since July 2009. These approval letters include the estimated number of hours each member of Turner's staff is anticipated to spend on any given project. These General Conditions approval letters are reviewed and approved by NYCEDC and are subsequently submitted to the Comptroller for contract registration. This process commenced several months after the contract started, accounting for any missing GC Approval Letters, but this process was in place before the Comptroller's audit commenced.

In particular, the Comptroller has identified several items in the report narrative and in Table 1 that will be addressed individually below.

REPORTED FINDING: "...there was no file documentation to indicate that Turner had complied with this stipulation or that the Corporation had compelled submission of estimated personnel hours. Had the

*Corporation done so it would have been able to ascertain whether the number of personnel and their associated costs was appropriate and conformed to industry standards.”*

As described immediately above, NYCEDC disagrees with the Comptroller’s assertion.

**Recommendation 21: Review the information in this report about the \$20,006 in unsubstantiated payments and recoup from Turner any payments for reimbursable expenses that are not permitted or cannot be substantiated. In that regard, the Corporation should also ensure that all other reimbursements that have already been made to Turner comply with contract provisions for allowable additional costs.**

***NYCEDC’s Response:***

NYCEDC disagrees with the Comptroller’s assertion that these payments are unsubstantiated or prohibited under Turner’s contract.

NYCEDC has confirmed that all reimbursable expenses that have been paid are in conformance with the contract terms. The Comptroller has provided no credible evidence to the contrary throughout the course of this audit.

**Recommendation 22: Ensure that all required supporting documentation is obtained and reviewed before approving payments.**

***NYCEDC’s Response:***

NYCEDC disagrees with the Comptroller’s assertion that these payments are unsubstantiated or prohibited under Turner’s contract.

In fact, all payment requests are reviewed to ensure compliance with the contract terms. NYCEDC regularly cuts unallowable expenses and many payments contain adjustment letters documenting these reductions which only serve to prove NYCEDC’s position.

In particular, the Comptroller has identified several items in the report narrative and in Table I that will be addressed individually below.

**REPORTED FINDING:** *“The improper payments included \$6,412 in premiums for auto insurance that lacked invoices and policy information about the cost to insure each vehicle and \$1,042 for toll charges that lacked information to substantiate that the trips were warranted under contract guidelines, and that covered a vehicle not approved by the Corporation. In other cases, the Corporation reimbursed Turner for items that did not qualify as allowable additional costs, such as the purchase of popcorn, tea bags, creamer, paper plates, and plastic forks”*

NYCEDC disagrees with the Comptroller’s assertion.

Part II Article 6.3.8.3 of the contract (Automobile Liability Insurance) states that the “Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.”

Insurance Premiums are paid on an annual basis for the Site Vehicles. This cost is then expensed on a monthly basis and billed to NYCEDC. These numbers are provided to NYCEDC at the time the Premiums are paid for reference.

“Allowable Additional Costs” as defined in Appendix B to the Contract also allows for “travel by Site Office Staff ... and the Principal to and from Properties ... where Services are being performed”.

Turner has an EZ Pass account that covers the nine tags for the 10 vehicles designated as Site Office vehicles. All the toll charges are related to work performed at one or more Properties. In the event that Turner Staff uses their private vehicle for transportation, they are allowed reimbursement of such expense upon submission of proper receipts.

“Allowable Additional Costs” as defined in Appendix B to the Contract also allows for “site office supplies” and “any other out-of-pocket expenses related to the Site Office, approved in advance by the Director, on a direct cost basis”.

Part I 5.6 Allowable Purchases: Consultant may purchase supplies, materials and services in amounts less than \$25,000 without Director’s prior approval if such purchase is routine and necessary in connection with the Services, unless and until NYCEDC otherwise directs.

NYCEDC deems it reasonable for items such as tea bags, creamer, paper plates and plastic forks to be purchased to supply the Site Office. Independent of this audit, NYCEDC has already directed Turner to cease the purchase of snacks such as popcorn for the Site Office.

Table 1, Item 11, Multiple Projects. Description: Improper reimbursement for unsubstantiated expenses

As explained immediately above, NYCEDC disagrees with the Comptroller’s assertion.

**Recommendation 23: Recoup from Turner \$22,384 in payroll expenses.**

***NYCEDC’s Response:***

NYCEDC disagrees with the Comptroller’s assertion that these payments are unsubstantiated or prohibited under Turner’s contract.

As stated above, all payroll payments made were previously approved by NYCEDC in compliance with the contract terms. There is no overpayment to recoup.

In particular, the Comptroller has identified several items in the report narrative that will be addressed individually below.

**REPORTED FINDING:** *“The Corporation improperly approved payments to Turner for payroll expenses for employees such as project managers and engineers... Our review indicated that \$22,384 should not have been paid to Turner... The improper payments included \$19,120 in salary costs paid to employees that were not identified or authorized in the staff and fee schedule or its supplements; \$1,226 in payroll expenses that were based on hourly rates greater than the maximum allowable rates stipulated in the contract; and \$2,038 in payments for interns performing clerical work whose fees should have been subsumed in overhead costs... We attribute the problem of overpayment to the Corporation’s failure to update the staff assignments and the rates for Turner’s employees. Moreover, the Corporation did not verify the approved rates for each member of Turner’s staff.”*



NYCEDC disagrees with the Comptroller's assertion that these payments are unsubstantiated or prohibited under Turner's contract.

Article 4.1.2 states that "If the Consultant proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution."

All Turner personnel working on this contract have been approved in advance as stated above. Such approval documentation is kept as part of the contract files. The Comptroller never asked for these files before making this claim. This issue was discussed at the audit exit conference, yet the Comptroller was not interested in seeing these files at that time. NYCEDC would have readily provided these documents to satisfy their inquiry.

Additionally, all payment requests are reviewed to ensure compliance with the contract terms.

Table 1, Item 5, Multiple Projects. Description: Miscellaneous overpayments.

As described immediately above, NYCEDC disagrees with the Comptroller's assertion.

**Recommendation 24: Review all payment requests to ensure that payroll expenses comply with contract provisions and the staff and fee schedule. In that regard, periodically update and maintain the staff and fee schedule.**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that payroll expenses do not comply with the contract terms.

In fact, the contract contains a mechanism, explained in the response to Recommendation 23, for replacing project personnel. NYCEDC has followed that mechanism and maintains a log of the current approved staff and salary approval rates that shows that Turner's current salary expenditures are lower than the contract expectation for the positions named in the contract. The Comptroller's suggestion in the exit conference that the contract be amended with every personnel change is simply not necessary considering the contract mechanism for replacing personnel.

Again, all personnel working on this contract have been approved as stated above. Such approval documentation is kept as part of the contract files and NYCEDC offered to supply these records at the exit conference but was rebuffed.

Additionally, all payment requests are reviewed to ensure compliance with the contract terms.

**Recommendation 25: Ensure that payments for overhead personnel are contained in the overhead and profit "multiplier."**

***NYCEDC's Response:***

NYCEDC disagrees with the Comptroller's assertion that overhead costs are not subsumed in Turner's multiplier.

In fact, NYCEDC regularly causes Turner to pay for overhead functions within its multiplier. As stated above, all payroll payments made were previously approved by NYCEDC. In several instances, NYCEDC approved, through a salary approval letter, the use of interns doing project work to be charged as technical staff. Such interns were doing project-related technical work, such as an investigation of the electric metering system at the Brooklyn Army Terminal, not overhead-related work. It was good value to the City to not have to staff that role with a highly-paid project engineer. No other information was provided by the Comptroller to substantiate a different conclusion.

**Recommendation 26: Ensure that hazardous conditions are identified and promptly addressed and that facility repairs are carried out in a timely manner.**

***NYCEDC's Response:***

NYCEDC strongly disagrees with the Comptroller's assertion that NYCEDC's actions endangered public safety.

The Comptroller's claims that

“the Corporations's lack of oversight may have jeopardized public safety and placed the City at financial risk”

and that

“the Corporation's belated approach to compelling Turner to undertake critical and timely repairs of City facilities indicates the Corporation's lackluster approach in providing effective oversight and monitoring”

are irresponsible considering NYCEDC's track record and recognition as a leader in providing proactive management of its assets to ensure public safety. The claims made by the Comptroller are false and misleading and the facts support NYCEDC's position.

First, as will be shown in the following pages, the Comptroller's evidence to support these claims do not withstand scrutiny, and are particularly misleading considering NYCEDC's reputation and experience in protecting the City's interests. NYCEDC is the acknowledged leader in proactively identifying and mitigating potential hazards to public safety and property, particularly on its vast portfolio of waterfront property. NYCEDC has the City's only comparable routine underwater inspection program for its piers and other waterfront structures and has proven itself to be a diligent steward of the City's assets by, for example, providing other City agencies with NYCEDC's expertise and resources on many occasions and urging them to implement their own inspection and maintenance procedures.

Third, because the Comptroller asserts that NYCEDC's management of its FM/CM contract has implications for the management of risk and public safety at its properties, NYCEDC would like to cite what it believes to be a more objective metric of the management of its property portfolio. Unlike City agencies, NYCEDC secures liability insurance and selected property insurance to protect NYCEDC and the City. Between 2004 and the current 2011 fiscal year:

1. NYCEDC's liability premium has decreased 23%
2. NYCEDC's \$100,000,000 umbrella liability premium has decreased by nearly 48%

3. NYCEDC's property premium has decreased 29%, while simultaneously reducing the property deductible from \$100,000 to \$50,000 and adding coverage for piers, wharves and docks to the property policy.

Our insurance carriers' risk management units have conducted extensive inspections of NYCEDC's properties and have worked closely with NYCEDC property managers to identify and rectify any issues or concerns. They have also reviewed NYCEDC's construction management and construction contracts, as well as its leases and permits, and were impressed with the means and methods by which NYCEDC manages risk and transfers exposure and responsibility to third parties. Because the carriers have been impressed with NYCEDC's management approach to these properties, and because NYCEDC's experience rating has been favorable as a result of these actions, NYCEDC's premiums are at an all-time low and are well below the average comparable NYC insurance premiums. NYCEDC's insurance broker, Cool Insuring Agency, Inc., has even sent a letter to NYCEDC on July 14, 2010 praising NYCEDC for its proactive risk management policies and explaining how NYCEDC's proactive actions are causing the premiums to drop. These facts stand in stark contrast to the Comptroller's assertions.

In addition, the Comptroller has identified several items in the report narrative that will be addressed individually below.

**REPORTED FINDING:** *"The Corporation failed to make timely repairs to Pier 1 at the Brooklyn Army Terminal after its partial collapse on June 12, 2001. Although a tentative design was developed in February 2002, portions of the design were not consistent with the Army Corp's requirements. There is no evidence that the Corporation pursued this matter further until March 2006..."*

NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

There is no evidence that supports this claim and, in fact, the thousands of pages of records NYCEDC provided to the Comptroller's Office contradict it repeatedly.

In brief:

- Pier 1, an unused pier at the Brooklyn Army Terminal, collapsed in June 2001. NYCEDC immediately responded and performed emergency slope stabilization to arrest any potential erosion at the site. This emergency slope stabilization was permitted under authorization from State DEC and the Army Corps.
- Subsequent to the emergency slope stabilization, NYCEDC secured funds and advanced a design to replace Pier 1, but several factors intervened to prevent construction: (1) The regulators (State DEC and the Army Corps) were giving NYCEDC conflicting information on allowable construction standards and mitigation requirements; and (2) Construction funds were cut from the City's capital budget in the Fall of 2001.
- NYCEDC did not lose sight of the need to perform more permanent slope stabilization at Pier 1 and was again able to submit in November 2004 a request that secured a new capital allocation from the City in the FY06 and FY07 capital budgets. By March 2006, NYCEDC had begun new conversations with State DEC and the Army Corps that would ultimately bridge the regulatory gap and allow the project to proceed.

Throughout this entire episode, the site remained fenced off from the public and posed no danger to anyone. A reasonable reading of this episode actually reflects well on NYCEDC's efforts and persistence in accomplishing the project, despite funding and regulatory hurdles.

It should be noted that the review of these files was outside of the scope of this audit as the emergency slope stabilization was implemented under a prior contract between NYCEDC and Turner; however, in the spirit of full disclosure, NYCEDC provided these documents to the Comptroller for review upon request.

REPORTED FINDING: *"In another case, the Corporation failed to promptly instruct Turner to proceed with repairs to the façade of the Bush Terminal. On June 21, 2005, the Corporation's executive committee ascertained that the façade of the Terminal should be inspected and rehabilitated. Almost one year later, Turner cautioned the Corporation on May 8, 2006, that the Terminal façade had deteriorated, falling debris was common, and noted that previous inspections had recommended immediate repairs to protect the safety of pedestrians. But despite these warnings, the Corporation did not instruct Turner to perform emergency repairs until May 4, 2007."*

NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

The façade inspection authorized by NYCEDC's executive committee in June 2005 was awarded by Turner in December 2005 to a consulting engineer, RAF Services. The resulting inspection report issued by RAF Services, a certified façade inspector, in December 2006 noted that "there are currently no unsafe conditions". The same inspection report contained a number of recommendations to ensure that unsafe conditions do not develop. The recommended timeframe for implementation of these repairs was 12 months. As such, NYCEDC instructed Turner to implement the recommended repairs. NYCEDC executed approval letter 3458 authorizing this repair work on May 4<sup>th</sup>, 2007. The implementation of these repairs again reflects well on NYCEDC's systems and emphasis on protecting public safety.

Again, it should be noted that the review of these files was outside of the scope of this audit as the inspection and repairs were implemented under a prior contract between NYCEDC and Turner; however, in the spirit of full disclosure, NYCEDC provided these documents to the Comptroller for review upon request.

REPORTED FINDING: *"In a third case, ... the Corporation failed to carry out in a timely manner the recommendations of a May 2006 inspection that was conducted at a parking garage over the East River...Although the inspection uncovered serious deficiencies in the structure's condition, the Corporation did not instruct Turner to undertake emergency repairs by installing temporary steel shoring until November 2007 - 18 months later."*

NYCEDC disagrees with the Comptroller's assertion and would like to stress that the public was never in danger during this entire episode, contrary to the claims of the Comptroller.

The Comptroller is relying on the September 2006 inspection report that was submitted to NYCEDC following the May 2006 inspection. This proactive inspection was conducted at the parking garage by OCC, a consulting engineering firm under contract with Turner, at the direction of NYCEDC. The inspection report that was submitted to NYCEDC in September 2006 did indeed identify areas of deficiencies to be monitored as part of a routine maintenance program, but the Recommendation section of the report clearly stated that:

“There are no immediate repair recommendations for the garage structure.”

The Comptroller’s assertions that serious deficiencies were uncovered or ignored simply do not stand up to scrutiny.

It was only after NYCEDC and Turner personnel conducted a routine property walkthrough of the parking garage in November 2007 that an emergency repair of the level 1 expansion joint was found to be required. NYCEDC responded immediately by (1) installing structural steel shoring to protect public safety, an action that the Comptroller inexplicably criticized in its previous audit, and by (2) issuing a notice-to-cure to the tenant responsible for maintaining the structure, directing them to pay for the structural steel shoring and to perform other corrective maintenance identified in a subsequent inspection report, as required in the lease.

These actions stand in contrast to the Comptroller’s assertions and reflect well on NYCEDC’s proactive management and emphasis on protecting public safety.

**Recommendation 27: The Corporation should maintain, in a central and accessible location, the files that contain all major documentation pertaining to each project.**

***NYCEDC’s Response:***

NYCEDC disagrees with the Comptroller’s assertion that appropriate project files are not maintained.

In fact, the Comptroller was fully aware during the course of this audit that NYCEDC maintains a file room at the Brooklyn Army Terminal of all of NYCEDC’s project documents. It is again important to remember that NYCEDC has contracted with Turner to provide oversight and management of the construction projects. Under its contract with NYCEDC, Turner is required to ensure that all project relevant project documentation is filed in the appropriate project file in NYCEDC’s file room. NYCEDC maintains control over and access to the file room at all times through its Records Management department, which regularly reconciles any additions to the files and coordinates off-site archival processes of the records.

While it is true that individuals at NYCEDC maintain certain records, as appropriate, relating to the contract or the projects for which they are ultimately responsible, the Comptroller cannot point to any specific failure that derives from this system.

In addition, the Comptroller has identified a related item in the report narrative that will be addressed individually below.

**REPORTED FINDING:** *“The Corporation lacks copies of project drawings and specifications, which are solely maintained by Turner at its site office in the Brooklyn Army Terminal – another indication of the Corporation’s lack of control over the contract’s administration.”*

NYCEDC disagrees with the Comptroller’s assertion.

The Comptroller is again displaying a lack of understanding of NYCEDC’s processes and procedures. The files maintained at the Brooklyn Army Terminal are NYCEDC’s files and are stored in NYCEDC’s file room. Under its contract with NYCEDC, Turner is required to ensure that all relevant project documentation, including drawings and specifications, is filed in the appropriate project file in

NYCEDC's file room. NYCEDC maintains control over and access to the file room at all times through its Records Management department, which regularly reconciles any additions to the files and coordinates off-site archival processes of the records.

**Recommendation 28: Correct existing typographical errors and data entry oversights, and notate existing database(s) and lists, as required, if corrections cannot be made. Revise the database entry system so that data must be approved before it is accepted in the database.**

*NYCEDC's Response:*

NYCEDC agrees that typographical errors are not acceptable and will immediately correct all typographical errors.

**Recommendation 29: Should future facilities management and construction management services contracts be awarded to current contractors, do not carry projects over. Projects should be completed within the framework of the original contract. In that regard, use new contracts for new projects only.**

*NYCEDC's Response:*

NYCEDC agrees that recent contract carryovers have become too onerous. If certain procedures and processes can not be streamlined and improved, then NYCEDC will not attempt a contract carryover in the future.

**Recommendation 30: Decrease the time lag in data entry by entering projects into all database(s) in a timely manner.**

*NYCEDC's Response:*

NYCEDC disagrees with the Comptroller's assertion that data entry contributed to any inappropriate payments.

In fact, NYCEDC has an established process for reconciling project budget and payment information in separate systems before every monthly invoice is paid. At no time did a lack of timely data entry cause an inappropriate payment to Turner.

**Recommendation 31: Regularly cross-check and reconcile data among the payment system, the PROLOG database, and the list of approval letters. Consider electronic integration of the PROLOG and payment databases.**

*NYCEDC's Response:*

NYCEDC disagrees with the Comptroller's assertion that regular data reconciliations are not performed.

In fact, NYCEDC has an established process for reconciling project budget and payment information in separate systems before every monthly invoice is paid.