

# City of Batavia

## Business Improvement District

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**APRIL 2018**

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
**Thomas P. DiNapoli, State Comptroller**

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# Report Highlights

## City of Batavia

### Audit Objective

Determine whether City officials properly accounted for and monitored the Business Improvement District's (BID) financial operations.

### Key Findings

- The Council did not enter into a written agreement with the district management association (DMA) or monitor the manner in which the DMA used BID funds.
- City officials did not maintain adequate records to properly account for BID funds.
- BID charges exceeded the statutory limit for 11 of the past 13 years by a total of approximately \$464,000 or an average of \$42,000 each year.

### Key Recommendations

- Enter into a written agreement with the DMA.
- Monitor BID financial operations especially the manner in which the DMA uses BID funds.
- Levy BID charges in compliance with the statutory limit.

City officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix B includes our comment on an issue raised in the City's response letter.

### Background

The City of Batavia (City) is located in Genesee County. The City is governed by its charter, New York State laws and local laws and ordinances.

The City's nine-member elected City Council (Council) appoints a City Manager responsible for managing operations and finances. The City's Clerk-Treasurer is responsible for the City's financial records.

The Council created the BID in 1997. The BID is a geographic area in which a charge is imposed upon benefited properties for improvements, operation and maintenance costs and other services such as advertising and promoting BID activities.

The DMA is a not-for-profit entity governed by its own board of directors, which performs many BID day-to-day management functions.

#### Quick Facts

2017-18 General Fund Appropriations	\$16.5 million
2017-18 BID Charge	\$55,742
Benefited Properties	175
City Population	15,465

### Audit Period

April 1, 2015 – September 14, 2017. We extended our audit period back to April 1, 2005 to review BID charges.

# Business Improvement District

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New York State General Municipal Law (GML) requires that the governing board of the local government which established a BID adopt a written BID Plan (Plan). The original Plan adopted in 1997 in connection with the establishment of the BID, described planned capital improvements, their estimated total cost and the proposed financing sources. The Plan was amended in December 2004 when the BID boundaries were extended, to provide for additional improvements. The Plan was amended again in 2016 and in 2017.

## How Should BID Operations Be Monitored and Overseen?

City officials are responsible for managing and controlling the BID's finances and safeguarding BID resources. The Plan serves as the framework for establishing, managing and overseeing the BID and must include, among other things, the total amount proposed to be expended for improvements, maintenance and operation and the proposed sources of funding.

Although the DMA carries out many functions in connection with the BID's day-to-day management, City officials are ultimately responsible for ensuring BID activities are consistent with the Plan and GML and that BID funds are used appropriately in compliance with the Plan and GML.

A written agreement between the City and DMA should be in place before City officials make lump-sum disbursements of BID funds to the DMA. Such an agreement is essential for defining the exact nature of activities to be carried out by the DMA, the manner in which BID funds may be used by the DMA, the timeframe for completing activities and the records or reports the DMA must submit to the City to demonstrate compliance. A written agreement should also specify or provide a way to measure and evaluate performance.

The BID's primary sources of revenue are derived from charges levied on benefited properties located within the BID. City officials are ultimately responsible for safeguarding these funds and should closely monitor the manner in which the DMA uses them. BID charges are City funds and must be held by the Clerk-Treasurer and disbursed in accordance with the same cash disbursement procedures prescribed for all other City expenditures. Those procedures would include an appropriate claims audit and compliance with competitive bidding requirements established for the purchase of goods and services.<sup>1</sup>

In addition, GML requires that the charge on benefitted properties be imposed as provided in the Plan and that the annual BID charge, exclusive of debt service may not exceed 20 percent of the total general municipal taxes levied in that year against the taxable real property in the BID. Further, BID charges can only be used for the purposes prescribed in the Plan and in accordance with GML.

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<sup>1</sup> GML §980-I

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## **Adequate Oversight of BID Operations Was Not Provided**

City officials did not properly monitor BID financial operations. The Council did not enter into a written agreement with the DMA and the Plan did not provide sufficient detail to allow City officials to adequately monitor the DMA's use of BID funds.

Although the Plan provides a general description of the activities the DMA will carry out on the City's behalf, the Plan itself does not constitute a contractual agreement and did not provide City officials with a way to adequately monitor the DMA's use of funds.

The original Plan, subsequent amendments and current Plan do not include any expectations or goals for DMA performance, with the exception of the 2016 and 2017 amendments, which state that the DMA board should comply with New York State Open Meetings Law<sup>2</sup> and publish information on the DMA website. The Plan and amendments indicate that the DMA shall operate and manage the BID and provide marketing and other BID related services. However, the Plan does not describe the services the DMA would provide in sufficient detail or require the DMA to provide the Council with periodic reports to show how the DMA was achieving BID's operational goals.

To ensure that public money is used to meet the BID's missions and goals, the City Manager, along with the Council, should design performance measures and specify these measures in the Plan and written agreement with the DMA. These measures would allow City officials to monitor progress and effectively detail outcomes generated by each project or event. Reported outcomes could then be compared to projections. If such comparisons indicate that results have not met expectations, corrective action needs to be considered.

Without clear performance measures, City officials cannot evaluate how well the DMA is carrying out its obligations to the City or ensure BID funds are being appropriately used.

## **The Use of BID Funds Were Not Properly Monitored**

City officials allowed the DMA to use BID funds at its own discretion with little oversight. In addition, officials did not maintain adequate records to properly account for BID funds.

BID funds were not disbursed in accordance with the same cash disbursement procedures prescribed for all other City funds and the Plan does not establish specific procedures for the disbursement of BID funds by the DMA on the City's behalf. From 2005-06 through 2016-17, City officials remitted BID charges to the

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<sup>2</sup> New York State Public Officers Law, Article 7

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DMA totaling almost \$1.5 million or an average \$111,000<sup>3</sup> each year. City officials allowed the DMA to expend these funds as it deemed necessary to carry out the services described in the Plan and operate the BID without appropriate City oversight and control. However, the Plan was not sufficiently detailed to indicate how the DMA was to use the funds it was provided. Further, BID charges are City funds that should not have been given to the DMA without a written agreement (in addition to the Plan), which clearly describes the services to be provided by the DMA in the operation of the BID.

The Clerk-Treasurer, who is responsible for ensuring the City's financial records properly reflected BID activity, did not maintain detailed accounting records to adequately account for the collection of BID charges or use of BID funds. Although the DMA<sup>4</sup> maintained accounting records and a ledger, and provided the Council with annual financial statements, interim financial reports and detailed cash disbursement reports were not provided to show how BID funds were used.

We reviewed all disbursements totaling \$411,000 made by the DMA from May 1, 2015 through August 15, 2017 to determine whether they complied with the Plan. We also reviewed 20 disbursements totaling \$43,500 to determine whether they were made for legitimate purposes. Although we did not identify any improper payments, the Council would not have been aware of any discrepancies because it was not provided with adequate reports and did not review the disbursements.

As an alternative to lump-sum payments, the DMA could submit claim vouchers to the City requesting payment to vendors for goods and services consistent with the Plan on the BID's behalf. These vouchers would be subject to the City's disbursement procedures including a claims audit thereby providing City officials with an opportunity to ensure funds were being used appropriately.

Because the City has turned over BID charges to the DMA without a written agreement and sufficiently detailed Plan, BID funds are at risk of mismanagement and the transparency of BID operations is compromised.

### **BID Charges Were Not Properly Monitored**

The BID charge exceeded the statutory limit each year for more than a decade and BID charges were not used in a transparent manner.

We reviewed the charges levied on BID benefited properties over a 13-year period beginning with the City's 2005-06 fiscal year (the first year the Plan was amended and the boundaries extended) and ending with 2017-18.

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3 The BID charge was \$120,000 annually from 2006-07 through 2016-17, approximately \$77,000 in 2005-06 and \$56,000 in 2017-18.

4 The DMA board is composed of business owners, tenants and three individuals appointed by City officials.

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City officials increased the BID charge from \$76,940 in 2005-06 (\$46,940 to be used to repay bonds and \$30,000 for operations) to \$120,000 in 2006-07 (\$102,727 for debt service and \$17,273 for operations). A significant portion of this increase was to be used to repay bonds that were expected to be issued to make capital improvements to benefited properties within the extended boundaries.

However, City officials did not issue bonds as planned, because grant funding was received to pay for the expansion project. Officials did not update their Plan and the annual charge was not reduced until 2017-18. As a result, the annual charge exceeded the statutory limit in 11 of the 13 years by a total of approximately \$464,000 or, an average of \$42,000 each year.

City officials remitted the entire \$120,000 each year to the DMA. However, the DMA did not expend the entire amount each year and is currently holding \$228,000 for future unspecified capital improvements. City officials withheld approximately \$50,000 from the 2016-17 charge.<sup>5</sup>

These funds were assessed to pay for debt service. However, because there is currently no debt outstanding, it is unclear whether the City or DMA can use these funds for their intended purpose. The current Plan does not include plans for any additional improvements or issuance of debt. As a result, City officials have decided to leave these funds in the DMA's custody.

City officials should have custody of these excess funds instead of the DMA, because the City would be responsible for the payment of debt service on BID-related debt issued by the City. Further, if officials do not expect to issue debt for BID purposes in the foreseeable future, the Council and City officials should consider applying these excess funds to reduce future BID charges.

## **What Do We Recommend?**

The Council should:

1. With respect to lump-sum payments of BID charges to the DMA, enter into a written agreement with the DMA clearly describing the services to be provided by the DMA in the operation of the BID.
2. Review periodic financial reports and monitor fiscal operations to ensure BID funds are properly used in accordance with the Plan and GML.
3. Levy BID charges in compliance with the statutory limit.
4. Amend the Plan, in consultation with the City Attorney, to include a description of the services the DMA provides to the BID or require the DMA to provide it with periodic reports to show how it is achieving BID's

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<sup>5</sup> The DMA used the remaining \$186,000 for BID operations.

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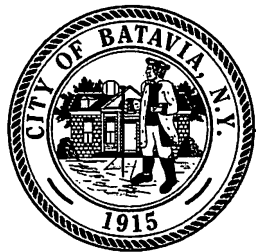
operational goals and to prescribe a lawful use for BID charges levied in excess of the statutory limit.

City officials should:

5. Ensure the Clerk-Treasurer maintains adequate financial records to properly account for the receipt and disbursement of BID charges.
6. Retain custody of all BID funds and disburse funds only in accordance with City policies and procedures by claim voucher after a proper claims audit.
7. Take custody of the BID charges levied in excess of the statutory limit and, in consultation with the City Attorney, maintain these funds in a City account until the Council amends the Plan to prescribe a lawful use for these funds.



# Appendix A: Response From City Officials



## City of Batavia

March 9, 2018

Mr. Jeffrey Mazula  
Chief Examiner of Local Government  
and School Accountability  
NYS Comptroller's Office, Buffalo Region  
295 Main Street, Suite 1032  
Buffalo, NY 14203-2510

Dear Mr. Mazula:

The City has received the NYS Comptroller's Office draft audit report on the City of Batavia for the period April 1, 2005 – September 14, 2017. We appreciate the time and effort of the Comptroller's Office and staff in reviewing the City's operations and making recommendations to improve operations. We also appreciate the opportunity to have met with your staff at the exit conference on February 21, 2018 which afforded us the opportunity to address findings and further clarify certain items noted in your preliminary report. The City views the audit and the report as an opportunity to improve upon our practices and procedures as well as developing any needed policies.

The City generally agrees with your findings and, even prior to your audit, has tightened this specific area with which the City is responsible for monitoring. We recognize the City's responsibility as to oversight required, and responsibility of the BID's financial operations as they are public funds. The City also understands that it must ensure the BID meets performance measures and goals as they relate to the public money they receive from the City.

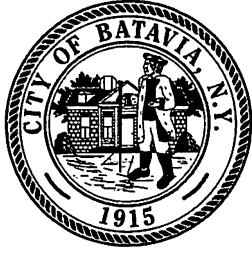
Two items of clarification that we would like to offer as they relate to your "Key Findings." The City has entered into a written agreement with the BID, a copy of which was provided at our exit meeting. The City understands that the written agreement in its current form is not fully compliant and a new agreement will be drafted. It appears that this agreement was not reviewed during the initial audit

See  
Note 1  
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## City of Batavia

investigation period. In addition, while the BID charges exceeded the statutory limit during the years reviewed, the City identified this previously and is currently compliant.

The City thanks the Office of the State Comptroller and staff for their time and effort to review the City's operations and provide recommendations to improve our internal controls and public trust. While acknowledging that there are areas for improvement, we are pleased to note that there were no instances of misappropriation of funds, fraudulence, or corruption. We continue to monitor the City's policies and procedures for improvement.

Sincerely,

Matt Worth,  
Interim City Manager

Lisa Neary  
Deputy Director of Finance

cc Honorable City Council

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## Appendix B: OSC Comment on the City's Response

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### Note 1

We did not review the agreement during the audit, because City officials told us that there was no written agreement between the City and the DMA. The contract provided to us at the exit discussion was dated June 30, 2008 and did not describe the services to be provided by the DMA. In addition, the contract appeared to become invalid once the BID Plan was amended in 2016.

## Appendix C: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included:

- We reviewed the City's and DMA's financial policies and procedures to assess their adequacy.
- We reviewed the BID Plan and amendments to assess whether they included the elements required by GML.
- We reviewed Council minutes and supporting documentation to assess whether the Plan and amendments were approved by the Council after public hearings.
- We reviewed the DMA's expenditures to evaluate whether they were in compliance with the Plan and amendments. We reviewed the supporting documentation for a sample of 20 disbursements made by the DMA to evaluate whether they were for appropriate BID purposes. We judgmentally selected payments to individuals or unusual vendors and payments of large dollar amounts.
- We reviewed the BID charge levy, bond amortization schedules, and City tax rolls to assess whether the BID levy was within the amount allowed by GML.

We conducted this performance audit in accordance with GAGAS (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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or relevant population size and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make the CAP available for public review in the Clerk-Treasurer's office.

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf](http://www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

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