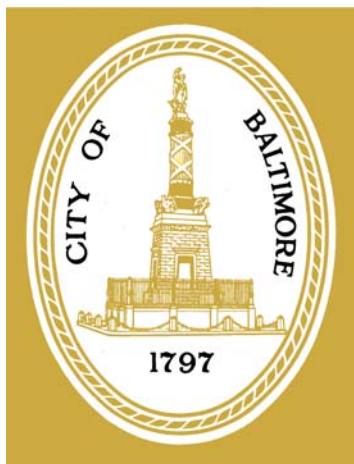

CITY OF BALTIMORE
DEPARTMENT OF TRANSPORTATION
CONDUIT DIVISION

REVENUES GENERATED THROUGH
THE RENTAL OF CONDUIT DUCT SPACE

FOLLOW-UP REVIEW

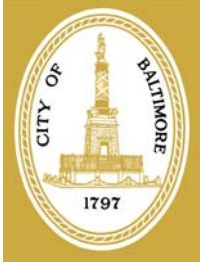
JULY 2004



City of Baltimore
Department of Audits

CITY OF BALTIMORE

MARTIN O'MALLEY, Mayor



DEPARTMENT OF AUDITS

YOVONDA D. BROOKS, CPA
City Auditor

Room 321, City Hall
Baltimore, Maryland 21202
Telephone: (410) 396-4783
Telefax: (410) 545-3961

July 15, 2004

Honorable Joan M. Pratt, Comptroller
And Other Members of the
Board of Estimates
City of Baltimore

We previously conducted an audit of the revenue generated through the rental of conduit duct space managed by the Baltimore City Department of Transportation – Conduit Division. We focused on the revenue generated during the calendar year ending December 31, 2000, and specifically, on the revenue generated through the rental of duct space footage occupied at June 30, 2000. The results of our audit were presented in our audit report dated January 9, 2002.

The purpose of our follow-up review was to determine whether the City has adequately addressed the audit finding issues and related recommendations in our audit report. The Conduit Division is responsible for constructing, maintaining and operating the underground conduits system for the City. The Department of Public Works – Right-of-Way Section is responsible for the preparation and execution of conduit lease agreements. The Bureau of Accounting and Payroll Services has the responsibility for billing the conduit users and for monitoring the timeliness of payments. Our follow-up review disclosed that these agencies have made only limited progress in addressing our audit report issues. Of the six findings identified in our report, only one has been fully resolved. The Department of Transportation and the Department of Public Works are working toward resolution of the remaining five findings.

This report includes a restatement of the audit findings and recommendations, and the agency's response, which was contained in our audit report, and the results of our follow-up review. The agencies' responses to our follow-up review are also included in APPENDIX I of this report.

Respectfully submitted,

Yovonda D. Brooks, CPA

City Auditor

Background Information

Historical and Operational

In December 2000, a City of Baltimore (City) ordinance was passed removing the cost recovery restriction from the City Code. The ordinance was amended to state, “The Board of Estimates may set and, from time to time, modify the annual charges imposed for the use of the conduits that are constructed under this article.”

Despite removing the cost recovery section of the ordinance, the development of the \$.58 per foot rate was still based on the City’s conduit system costs. The total rental rate was determined by the City to be \$1.16 per foot of conduit space. However, in order to mitigate the financial impact on the users of increasing the rate more than five times the previous rate of \$.209, the City decided to phase in the new rate. Initially, fifty percent, or \$.58, of the calculated rate of \$1.16 was implemented as of July 1, 2000. The balance of the rate was to be in place effective July 1, 2001 with Board of Estimates approval.

Follow-up Results

The balance of the recommended rate increase has not been implemented. The Conduit Division stated that its goal is to phase in a fee schedule that will increase the current rate to reflect industry standards to minimize the financial impact on the conduit users. As of June 7, 2004, the fee schedule has not been developed. The potential revenue lost by not increasing the rental rate to \$1.16 per foot of conduit space effective July 1, 2001 is approximately \$3,500,000.

Follow-up Results

Accounting and Administrative Control Environment

Finding #1

The Department of Transportation did not have written policies and procedures that defined the Conduit Division's objectives and operational responsibilities regarding rental of conduit space.

We recommended that the Department of Transportation (DOT) establish written policies and procedures that identify its specific operational responsibilities for conduit rental functions, including monitoring of user billings and collections. We also recommended that overall conduit program responsibility be established within DOT.

DOT responded that it anticipated that it would take approximately six months to secure the necessary personnel, develop the written policies and procedures, and gain any needed administrative or legislative procedures.

Follow-up Results

The Conduit Division (Conduits) has not established written policies and procedures that identify specific operational responsibilities for conduit rental functions, including monitoring of user billings and collections. Conduits is in the process of developing a Standard Operation Procedures Manual that will include a description of the operational responsibilities and policies and procedures regarding rental of conduit space.

Conduits has established a written organizational chart, which outlines operational responsibility. Conduits is responsible for constructing, maintaining and operating the underground conduits system for the City. Conduits provides all aspects of the underground duct and manhole system to support power distribution, signal control, communications, street light connections, and other applications for the City. Conduits consists of Engineering, Maintenance and Inspection Sections. The Engineering Section is responsible for functions related to conduit design and approvals. Maintenance is responsible for conduit and manhole repairs. The Inspection Section determines and records amounts of fiber and cable installations by renters in the conduit system. Maintenance personnel verify, compile and submit monthly reports that document billable cable and fiber installations. Prior to forwarding the information to the Bureau of Accounting and Payroll Services (BAPS) for billing purposes, the Conduits Chief reviews and signs these monthly reports.

DOT expects the written policies and procedures to be completed in the second quarter of fiscal year 2005.

Finding #2

DOT did not maintain an automated database of conduit rentals including data on user names, status of leases, changes in space occupied and footage amounts billed, rental rates applied, rental periods and status of billings and payments.

We recommended that DOT account for all conduit users and footage occupied through the creation and maintenance of a comprehensive automated database. We also recommended that the database include pertinent information such as user names, status of leases, footage occupied, changes in space occupied and billable footage, rental rates and periods, and the status of billings and payments.

DOT concurred with the need for an automated database and would ask the Mayor's Office of Information Technology (MOIT) for assistance in identifying or developing a computer program to accomplish this. DOT obtained a copy of the Department of Audits' listing of occupants of the conduit system to use as a starting point. The completion of the database system was expected to be within three months in order to facilitate the implementation of the other recommendations in our report.

Follow-up Results

Conduits has established a computer database to account for all conduit users. The Conduit Maintenance Section maintains the database. The Conduit Inspection Section records all cable and fiber monthly footages that each renter has installed in the City's system. The database is used to track monthly increases and decreases to the system. However, all lease information is not included in the database, and the Department of Public Works (DPW) does not have access to the database. DPW is responsible for the preparation and execution of the lease agreements.

Conduits stated that it is in the process of networking its Maintenance Section to allow for expansion of the database and access by other City agencies. These improvements are scheduled to be implemented by the second quarter of fiscal year 2005.

Finding #3

Substantial conduit rental billings were not collected timely. Additionally, DOT did not enforce the Baltimore City Code policy regarding delinquent payments from conduit users.

We recommended that DOT periodically monitor lease billings to ensure that conduit revenues are collected in a timely manner. We also recommended that DOT enforce the provisions of the Baltimore City Code and lease agreements regarding collection of conduit rentals within 30 days of billing dates. Additionally, conduit leases should be amended to include provisions for the assessment of penalties on lease payments that are made beyond the 30-day grace period. We also recommended that the City develop a policy to address the time period allowed before the City will remove the cabling of delinquent users from the conduit system.

DOT agreed with the recommendation and each of its provisions, and stated that it expected BAPS to continue to bill the conduit users based on the information provided by DOT and collect the appropriate fees or penalties for late payment that may be developed.

Follow-up Results

BAPS has established procedures to monitor the timeliness of conduit lease payments. BAPS maintains a monthly “Outstanding Billing Report” as part of the City’s Miscellaneous Billing system. After 45 days without receiving payment from the conduit user, BAPS sends a delinquent notice. After 60 additional days without payment, a notice is sent threatening legal action. The final notice is sent after another 30 days. After this final notice, the conduit user’s information is referred to the Bureau of Collections to initiate legal action.

Lease agreements have not been revised to include provisions for penalties and interest on late payments. Conduits, the Law Department and DPW are developing a revised lease agreement that includes the assessment of penalties on lease payments that are made beyond the 30-day grace period. As previously stated, DPW is primarily responsible for executing the leases. For past conduit users who are no longer in business, Conduits stated that it is working with the Law Department to initiate abatements for their outstanding bills.

There is currently no policy to address the time period allowed before the City will remove the cabling of delinquent users from the conduit system. Conduits stated that it is working with the Law Department to prohibit delinquent users from remaining in the system and to include provisions allowing the City to remove cabling.

DPW stated that as soon as it receives the final revised lease agreement, duct sheets, and a correct address and contact for each user, it would execute new leases with every lessee. DPW has not provided an anticipated completion date for this process.

Finding #4

DOT did not provide written lease agreements for all conduit users.

We recommended that DOT prepare written lease agreements for all current and future conduit users to ensure that the lessees are informed of the terms, conditions and specifications required by the City, and that the City’s interests are protected. The approved leases should be forwarded to BAPS in a timely manner.

DOT agreed that it must have a current written lease agreement with each conduit user. DOT said it would require the assistance of the City’s Law Department for the review of existing leases and the development and review of any new leases that must be prepared. This would include the review for legal sufficiency and for the inclusion of any new provisions such as penalties for nonpayment or untimely payment. This assistance would be required until a suitable person could be hired in DOT.

Follow-up Results

Written lease agreements were not on file for all users of the City's conduit system. We determined that there are currently 49 conduit users and only 21 lease agreements were on file with Conduits. The remaining 28 are being researched or are in the process of being obtained from the users. Conduits is working with DPW and the Law Department to obtain copies of lease agreements for all current conduit users. DPW plans to reissue the revised lease agreements to all users, excluding Verizon and Baltimore Gas and Electric Company (BGE), and to maintain copies at pertinent locations.

DPW stated that as soon as it receives the final revised lease agreement, duct sheets, and a correct address and contact for each user, it would execute new leases with every lessee. DPW has not provided an anticipated completion date for this process.

Compliance with the Baltimore City Code

Finding #5

Conduit users were not billed in advance as required by the Baltimore City Code for the period covering July 1 through December 31, 2000.

We recommended that BAPS continue to bill semi-annually in accordance with the Baltimore City Code. Billings should be prepared in a timely manner based on approved rates in effect at January 1 and July 1. If necessary, supplemental billings should be issued for any retroactive, approved rate changes.

DOT concurred with this recommendation.

Follow-up Results

BAPS has adequately addressed this audit finding. Conduit users are billed semi-annually on January 1 and July 1 of each year. The January bill is for January through June and the July bill is for July through December of the same year. Billings are made in a timely manner and reflect approved rental rates.

Equity in Billing Rates

Finding #6

Billing rates charged by the City for the period of July 1 through December 31, 2000 to Baltimore Gas and Electric Company and Verizon were not consistent with those of other conduit users.

We recommended that the City review its agreements with these two major conduit users and the appropriate sections of the City Code and determine whether these rates are equitable to the City and other conduit users. As required by the City Code, the Board of Estimates should approve rental rates for all conduit users.

DOT agreed that the City must review its agreements with the two major conduit users and would locate and review, along with the Law Department, those agreements to assure that all were consistent and complied with all applicable City Codes.

Follow-up Results

Conduits stated that it has reviewed its agreements with the two major conduit users. Conduits stated that Verizon is not a part of the conduit billing system since Verizon has a franchise agreement and maintains its own system. Therefore, the City does not intend to renegotiate the rates charged to Verizon.

Conduits stated that it is in the process of finalizing several operational issues with Baltimore Gas and Electric Company (BGE). These operational issues will be the basis for a Memorandum of Understanding with BGE regarding the new rate discussions and negotiation. DOT expects the Memorandum of Understanding (MOU) and rate adjustment to be completed in August 2004. The MOU will then be submitted to the Board of Estimates for approval.

APPENDIX I

THE MAYOR'S OFFICE OF TRANSPORTATION'S RESPONSE

AND THE DEPARTMENT OF PUBLIC WORK'S RESPONSE

TO THE


FOLLOW-UP REVIEW

REVENUES GENERATED THROUGH THE

RENTAL OF CONDUIT DUCT SPACE

AND

AUDITOR'S COMMENTS ON AGENCY RESPONSES

FROM	NAME & TITLE	George L. Winfield, Director	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Public Works 600 Abel Wolman Municipal Building		
	SUBJECT	Follow-up on Performance Audit of the Mayor's Office Of Transportation, Conduit Division, Revenues Generated Through the Rental of Conduit Duct Space		

DATE: June 23, 2004

TO


Yovonda Brooks
City Auditor
Baltimore City Department of Audits
City Hall, Room 321

The Department of Public Works has reviewed the draft of the follow-up to your audit, Performance Audit of the Mayor's Office of Transportation, Conduit Division, Revenues Generated Through the Rental of Conduit Duct Space. The Department's only additional comment is our concurrence with your recommendation that overall conduit program responsibility be established within DOT. The preparation and execution of conduit leases, which is currently the responsibility of DPW, should be transferred to DOT as soon as possible.

GEORGE L. WINFIELD
DIRECTOR

GLW/JK:lpl

cc: Mr. J. Keith Scroggins
Mr. Robert Powers
Mr. Joseph Kostow
Ms. Betty Lutz
Mr. Tom Reese
Ms. Delores Stokes
Mr. David Lamantia
Mr. Robert McCarty
File

FROM	Name & Title	Alfred H. Foxx, Director	CITY OF BALTIMORE MEMO 
	Agency Name & Address	Department of Transportation Room 527, Benton Building	
	Subject	Follow-up on <i>Performance Audit of the Mayor's Office of Transportation, Conduit Division, Revenues Generated Through the Rental of Conduit Duct Space</i>	

Date: July 8, 2004

To: Ms. Yovonda Brooks, City Auditor
Baltimore City Department of Audits
City Hall, Room 321

Enclosed is the requested "point by point" response from the Department of Transportation, Conduit Division to your audit, *Performance Audit of the Mayor's Office of Transportation, Conduit Division, Revenues Generated Through the Rental of Conduit Duct Space*.

Please include the following under the appropriate Audit Section:

Background Information - Historical and Operational:

- Conduit Division has developed a preliminary fee schedule for Non-City Users other than Public Utility Delivering Electricity.
- The preliminary fee schedule is attached.

Finding #1

- DOT agrees with the conclusion.

Finding #2

- "Conduit System Manual" for an automated database for Conduit users. (Appendix)

Finding #3

- Issue addressed by DPW.

Finding #4

- Issue addressed by DPW.

Finding # 5

- Issue addressed by BAPS.

Finding # 6

- DOT agrees with the conclusion.

BALTIMORE BELIEVE

1-866-BELIEVE • www.baltimorebelieve.com

Ms. Yovonda Brooks
July 8, 2004
Page 2

If you have any questions or need additional information, please call Mr. Robert Powers, Division Chief, Conduit Division on 410-396-6812.

Respectfully,

ALFRED H. FOXX
DIRECTOR

Attachments

AHF/RMP:bt

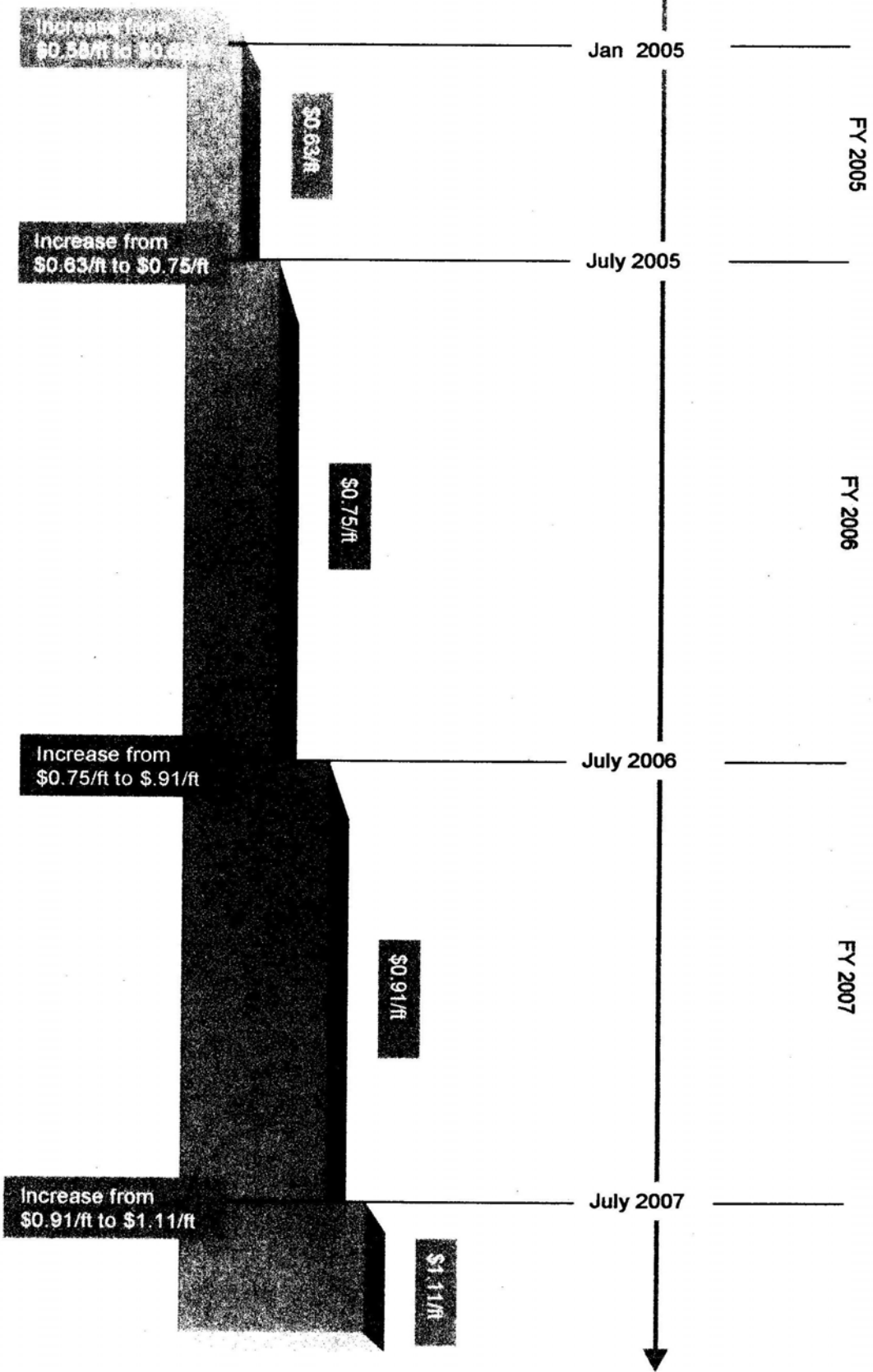
cc: Mr. George Winfield
Mr. Keith Scroggins
Mr. Joe Kostow
Mr. Tom Reese
Mr. David Lamantia

Mr. Robert Powers
Mr. Richard L. Baker
Ms. Betty Lutz
Ms. Delores Stokes
Mr. Robert McCarty

BALTIMORE BELIEVE

1-866-BELIEVE • www.baltimorebelieve.com

Delivered
for
Delivered



**Auditor's Comments on
The Department of Transportations' Response
To the Follow-up Review of Revenues Generated
Through the Rental of Conduit Duct Space**

In its response to our follow-up review, the Department of Transportation (DOT) stated that the Conduit Division has developed a preliminary fee schedule for non-City users other than public utility delivering electricity. The DOT included the fee schedule in its response, which proposes a phase-in of rate increases, starting with \$0.63 per foot of conduit space effective January 1, 2005 and ending with a rate of \$1.11 per foot of conduit space on July 1, 2007. However, the Board of Estimates was advised on December 6, 2000 that the full cost recovery rate of \$1.16 per foot of conduit space should be put in place effective July 1, 2001.

DOT's response to Finding Numbers 3 and 4 stated that the issues were addressed by the Department of Public Works (DPW). While these findings are currently DPW's responsibility, the Director of Public Works stated in DPW's response that these responsibilities should be transferred to DOT as soon as possible. A date for this transfer was not provided and needs to be established. Neither DOT nor DPW provided an anticipated completion date for the resolution of Finding Numbers 3 and 4 in their responses. Anticipated completion dates should be established by DOT for the abatement of outstanding bills and for the execution of new lease agreements which will include: 1) penalties and interest for delinquent users; 2) prohibitions for delinquent users from remaining in the system; and 3) allowances for the removal of cabling for delinquent users.

In Finding Number 6, we disclosed that the Verizon franchise conduit rental rate has not changed since it was first established with the City on July 5, 1889. In this regard, the City has decided not to pursue further discussions with Verizon to adjust the original rental rate. We have requested that the Law Department provide us with the legal reasons why the Verizon franchise conduit rental rate cannot be adjusted.