New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Riverbank State Park: Administration of the Concession Contract With Riverbank Restaurant Group

Office of Parks, Recreation and Historic Preservation

Report 2013-S-22

November 2014

Executive Summary

Purpose

We assessed the Office of Parks, Recreation and Historic Preservation's (Parks) administration of the concession services at Riverbank State Park operated by Riverbank Restaurant Group, LLC (RRG), for the period May 1, 2004 to December 31, 2013. The objectives of our audit were to determine whether Parks received all of the income it was entitled to, and RRG made all required capital investments, pursuant to contract terms.

Background

Riverbank State Park (Riverbank), a 28-acre rooftop park on the west side of Manhattan, is open 365 days a year and has a variety of indoor and outdoor athletic and cultural facilities. In March 2004, Parks entered into a 10-year contract with RRG to provide food concession services at Riverbank. The anticipated State revenues resulting from this contract were estimated at $160,000 annually. In addition to paying the monthly licensing fees, RRG was contractually required to invest a minimum of $622,000 in capital improvements and concession-related upgrades.

Key Findings

- RRG's reported monthly sales, and Parks' associated licensing fees, were significantly less than anticipated in the contract (a difference of about $11.6 million in sales and $580,000 in licensing fees from 2005 to 2009).
- Further, RRG did not submit the correct amount of licensing fees on the revenues it did report. At the time of our audit, RRG owed Parks $136,459 in licensing fees.
- Parks did not perform a thorough vendor responsibility check on RRG before the contract was awarded, and Parks did not adequately monitor RRG operations on a timely basis.

Key Recommendations

- Perform a thorough vendor responsibility check on all potential vendors before awarding contracts.
- Establish an effective contract monitoring system. Such monitoring should include (but not be limited to): periodic site visits to the location of the contracted services; an assessment of the contractor's internal controls; periodic reviews of contract-related books and records; and verification of sales and other major contract requirements.
- Work with the Attorney General's office to pursue collection of the $139,634 judgment against RRG.

Other Related Audits/Reports of Interest

Office of Parks, Recreation and Historic Preservation: Administration of Contract X00310 - Bethpage Associates, LLC (2001-R-4)

Office of Parks, Recreation and Historic Preservation: Food and Beverage Concession Contract - Jones Beach State Park (2006-R-2)

State of New York
Office of the State Comptroller

Division of State Government Accountability

November 24, 2014

Ms. Rose Harvey
Commissioner
Office of Parks, Recreation and Historic Preservation
625 Broadway
Albany, NY 12207

Dear Ms. Harvey:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Riverbank State Park: Administration of the Concession Contract With Riverbank Restaurant Group.* This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The New York State Office of Parks, Recreation and Historic Preservation (Parks) is responsible for the operation and stewardship of 178 parks and 35 historic sites throughout the state. Riverbank State Park (Riverbank), one of six state parks located in New York City, is a 28-acre rooftop park on the west side of Manhattan. Riverbank is open 365 days a year, and has a variety of indoor and outdoor athletic and cultural facilities. About 3 million people visit Riverbank annually.

In March 2004, Parks entered into a ten-year contract with the Riverbank Restaurant Group (RRG) to provide food concession services at Riverbank. The anticipated State revenues resulting from this contract were estimated at $160,000 annually, based on about $3.2 million in anticipated annual gross sales. Due to RRG's continuous noncompliance with contract requirements from the outset, Parks terminated the contract and instructed RRG to cease operations at Riverbank in December 2009.

Pursuant to the contract, RRG was authorized to operate a restaurant (known as the Café) and host private catering events on Riverbank premises. On behalf of Parks, RRG was also responsible for collecting fees from the various other concession operations (i.e., an ice cream wagon, snack bar, and carts) operating at Riverbank. In turn, the contract required RRG to pay Parks monthly licensing fees, based on 5 to 7 percent of gross receipts from the restaurant and 10 percent of all other concession sales. All sales were required to be documented by RRG, and such documentation was to be available for verification by Parks.

The monthly fees were to be paid to Parks by the 20th day of each month for the sales collected during the immediate prior month. To support the amount of its licensing fee remittances, RRG was required to submit monthly reports illustrating gross sales and the corresponding fee calculation. Also, in addition to paying monthly licensing fees, RRG was contractually required to invest a minimum of $622,000 for capital improvements and concession-related upgrades, with a proviso that the existing contract term could be extended by as much as ten years if total capital improvements exceeded $1,000,000.

RRG was to furnish Parks with annual certified financial statements on or before the 15th day of April of each calendar year.

Audit Findings and Recommendations

RRG's reported monthly sales and Parks' associated licensing fee revenues were significantly less than anticipated. Further, RRG did not submit the correct licensing fees on the revenues it did report. RRG owed Parks $136,459 in such fees. In addition, Parks officials did not perform vendor responsibility checks on RRG before awarding it the Riverbank contract, and Parks allowed RRG to operate in non-compliance for almost five years before terminating its services. With respect to capital investments, we concluded that RRG complied with the requirements prescribed in the contract with Parks.

Vendor Compliance With Contract Requirements

According to the contract, Parks' annual licensing fee revenues should have approximated $160,000. As such, we estimated that RRG's annual gross sales should have approximated $3.2 million. Based on annual Riverbank attendance of about 3 million visitors, the estimates of annual gross sales and licensing fee revenues appeared reasonable. However, we determined that RRG's revenue submissions to Parks were significantly less than the contract estimates. For example, for calendar years 2005 and 2006, RRG reported a total of only $75,890 in licensing fees, or $244,110 less than the estimated amounts. Further, RRG did not remit $36,920 of the $75,890 in fees it did report.

For the five calendar years 2005 through 2009 (when the contract was terminated), RRG reported adjusted gross sales of $4.4 million (or about $11.6 million less than anticipated), and license fees of $221,096 (or about $580,000 less than anticipated). Of the $221,096 in reported fees, RRG remitted only $84,637 to Parks (or $136,459 less than the amount owed). When we brought this issue to the attention of Parks officials, they informed us that they, too, had concerns regarding RRG's performance early in the contract period. Thus, in 2006, Parks hired an independent CPA firm to perform a review of RRG's books and records, as well as the required capital investment.

The independent auditor's report concluded that, based on the lack of effective internal controls and the deficiencies identified from a review of RRG's books and records, RRG's books could not be relied upon. The report also noted that not all RRG catering sales were posted to the monthly gross sales reports, resulting in the understatement of licensing fees. In addition, there is considerable risk that RRG retained permit fees it had agreed to collect from independent food and beverage cart operators. RRG should have remitted these fees to Parks as well.

In 2007, after issuance of the CPA's report, Parks entered into a "forbearance" agreement with RRG. The agreement required RRG to remit monthly payments to Parks that would include the accurate licensing fee for each month going forward, and an installment payment to satisfy the $42,905 licensing fee shortfall, as well as an additional $39,000 in unremitted fees for prior months. However, RRG continued its pattern of noncompliance, and by the end of calendar year 2009, RRG owed Parks the aforementioned $136,459, as summarized in the following table.

Summary of Underpaid License Fees Based on Reported Sales

Year	Adjusted Gross Sales	Amount Payable to Parks	Amount Actually Paid to Parks	Amount of Underpayment
2005	$242,200	$12,110	$12,110	$0
2006	$1,275,596	$63,780	$26,860	$36,920
2007	$1,159,949	$57,997	$45,667	$12,330
2008	$1,013,350	$50,668	$0	$50,668
2009	$730,820	$36,541	$0	$36,541
Totals	**$4,421,915**	**$221,096**	**$84,637**	**$136,459**

Based on RRG's non-compliance, Parks terminated its contract with RRG, and RRG vacated the Riverbank premises, effective December 31, 2009. Parks referred the outstanding license fees to the New York State Attorney General and obtained a judgment against RRG for $139,634. However, at the time of our audit fieldwork, RRG still had not paid Parks, and additional actions are needed.

Also, as previously noted, RRG was contractually required to invest a minimum of $622,000 for capital improvements and concession-related upgrades at Riverbank. We concluded that RRG made the capital improvements and upgrades as prescribed by the contract with Parks.

Parks Contract Monitoring

When awarding a contract to a private vendor, public agencies should ensure the vendor has a good reputation, the requisite experience to provide the services needed, and the financial capacity to do so. Once a contract is awarded, the agency should periodically check to verify that the vendor is, in fact, providing the contracted services in a satisfactory manner and maintaining proper documentation to support the provision of such services and the related financial activities. In the case of revenue contracts, Parks officials should ensure that they are receiving the proper amount of revenues based on contract terms. Revenues received by Parks' are remitted to the state treasury to provide financial support for Parks and other State priorities.

Common contractor monitoring techniques include making periodic visits to the contractor to observe its operations and reviewing selected internal controls and the books and records that support contract-related financial activities (e.g., sales and inventory records). However, there was no documentary evidence that background checks or vendor responsibility tests were performed for either RRG or its principals. In addition, Parks' monitoring of RRG's financial operations was limited during portions of the first two contract years (2005 and 2006), until more effective oversight was provided through the hiring of the independent CPA. If Parks officials provided better oversight of RRG upon the commencement of operations, they might have been able to identify RRG's non-compliance and take corrective action in a more timely manner.

When we discussed our observations with Parks officials, they explained that they did not have sufficient resources to perform adequate monitoring of RRG given the number of parks and contractors the agency is responsible for. An official further indicated that monitoring contractor operations was secondary to ensuring that concession services were available to patrons at state parks. This official also stated that Parks is not in the concession business, and he did not believe that Parks is required to generate revenue or make profits from these operations. Nonetheless, we maintain that Parks should develop and implement policies and practices to effectively monitor contractors and the revenues that should be derived from concession operations.

Recommendations

1. Perform a thorough vendor responsibility check on all potential vendors before awarding contracts and document the results.

2. Establish an effective contractor monitoring system that begins upon contract award. Such monitoring should include (but not be limited to): periodic site visits to the location of the contracted services; an assessment of the contractor's internal controls; periodic reviews of contract-related books and records; and verification of sales and other major contract requirements.

3. Work with the Attorney General's office to actively pursue the collection of the $139,634 judgment against RRG.

Audit Scope and Methodology

We assessed Parks' administration of the concession services at Riverbank State Park, operated by the Riverbank Restaurant Group (RRG), for the period May 1, 2004 to December 31, 2013. Our objectives were to determine whether Parks received all of the income it was entitled to, and RRG made all required capital investments, pursuant to contract terms.

To accomplish our objectives, we met with Parks and contractor officials and staff; reviewed the internal controls over RRG's revenue collection, recording, and reporting operations; and reviewed the contract-related records and documents, such as RRG's monthly sales reports and the associated licensing fees, bank statements, and tax returns. We also reviewed the report of the independent CPA hired by Parks to assess RRG operations.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 during the audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting right) to certain boards, commissions, and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of our report to Parks officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report. In their response to the draft audit report, Parks officials did not specifically agree or disagree with our recommendations. Officials asserted that they effectively monitored RRG throughout the contract term. Also, officials indicated that they will continue efforts to improve their operational efficiency, including contract monitoring. Our rejoinders to certain comments in Parks' response are included in this report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Parks, Recreation and Historic Preservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

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Agency Comments

NEW YORK STATE
OFFICE OF PARKS, RECREATION, HISTORIC PRESERVATION

New York State Office of Parks, Recreation and Historic Preservation

Albany, New York 12238
www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

October 22, 2014

Mr. Frank Patone
Office of the State Comptroller
123 William Street, 21st Floor
New York, New York 10038-3804

Dear Mr. Patone:

In accordance with Section 170 of the Executive Law that pertains to draft reports, we are providing our comments to the audit report entitled "Riverbank State Park: Administration of the Concession Contract with Riverbank Restaurant Group" (2013-S-22). Our specific comments to the findings and recommendations can be found below:

Capital Investment

Following the issuance of the draft report, Parks provided the OSC with additional documentation related to the capital investment and upgrades made by RRG. The OSC reviewed the documentation and found the capital improvement investments required to be made by RRG were in fact made and Parks maintained adequate documentation to support that.

*
Comment
1

Vendor Responsibility

The draft report states "Park officials did not perform any vendor responsibility checks on RRG before awarding it the Riverbank contract." In accordance with the established contract approval protocols in effect in 2004, Parks reviewed the background and experience of RRG prior to submitting the license to the Office of the State Comptroller for its review and approval. The OSC evidently found Parks' review satisfactory, as it approved the license on May 10, 2004. State Parks has consistently and rigorously complied with the vendor responsibility requirements established by the OSC, updating our techniques and methods as new resources become available. We also note that vendor responsibility reviews provide a retrospective snapshot of a vendor's history and past performance, but cannot be construed to be a guarantee of future performance.

*
Comment
2

Contract Monitoring

The draft report states "Parks did not adequately monitor RRG operations on a timely basis" and "RRG was allowed to operate unchecked during the first two contract years (2005 and 2006)." Parks disagrees with the conclusion reached by the OSC and firmly holds the position that the agency tried unsuccessfully to bring RRG into compliance and help build a successful business venture which would have had benefits for both parties. When that effort did not succeed, Parks took the necessary step of terminating the contract.

*
Comment
3

*See State Comptroller's Comments, Page 13.

A review of the timeline of events shows that the operating agreement between RRG and Parks was effective March 2004. Repairs to the facility were made throughout 2004 and 2005 until the opening of the café in November 2005. During that time, there was careful oversight by Parks of all construction activity. By January of 2006, Parks was seeking bids from certified public accounting firms for audit services related to contract compliance by RRG. By February 2006, a firm had been selected and a purchase order processed. The draft audit report cites the hiring of the independent CPA as an element of effective oversight. The timeline shows that the restaurant was operational for only three short months before a CPA was hired to perform an audit.

The files and records maintained by the agency fully document the fact that Parks rigorously monitored the RRG contract. Agency staff was aware that RRG was not compliant with the contract and was fully engaged in an effort to bring RRG into compliance. Agency management acted deliberately and with purpose when deciding to allow the contractor to temporarily continue operation while in default in order to provide an important service to the park and the local community. In this particular circumstance, lack of compliance is not proof of a failure to monitor. As further described in the next section, this was a new concession venue located in an area with several business challenges.

* Comment 3

Anticipated Contract Revenue

As described in the draft report, the audit found RRG's monthly sales were significantly less than Parks had anticipated in the contract. Since this was a new concession venue with no prior revenue history, Parks based its estimate of license fees on the pro forma submitted by RRG in its proposal. However, Riverbank proved to be a very challenging location for a restaurant. The park's location on top of a NYC waste treatment facility (the exhaust stacks tower over the restaurant's front door), the seasonal nature of park visitation, very limited on-site parking and the lack of a storefront street presence to attract diners all created a very difficult business environment. These challenges, absent any successful business history at this venue prior to the RRG contract, made projecting prospective revenues very difficult. The agency's initial estimates were simply that – estimates – and not a guaranteed revenue stream.

* Comment 4

Outstanding Judgment

The draft report includes a recommendation to "actively pursue collection of the $139,634 judgment against RRG." Parks actively, but unsuccessfully, pursued collection under the terms of the agreement for two years. The matter was then referred to the Civil Recoveries Bureau in 2009, which resulted in a 2013 default judgment. It is within the AG's statutory purview to collect on the judgment, which includes within it, collection fees to be paid to the AG.

* Comment 5

Management Environment

Concession management is an essential function within Parks. The primary goal of concessions is to provide a service to the public, which needs to be balanced against the opportunity to maximize profits. In this case, management decided to allow RRG to continue operations in order to provide an important service to the park and the local community. Importantly, this decision took into consideration the contractor's significant, upfront capital investment which made the state facility operationally viable as a full service restaurant – which was one of the primary goals of the RFP. Notwithstanding comments reportedly made by a former Parks' employee, the records show RRG's performance under the contract was rigorously monitored by Parks' staff at the regional, bureau and executive levels.

Audit Scope and Methodology

The Audit Scope and Methodology section of the report states "we [OSC] met with Parks and **contractor officials and staff**, and reviewed the contract-related records and documents, such as RRG's monthly sales reports and the associated licensing fees, **bank statements, and tax returns**." The OSC auditors mistakenly referenced contact with RRG officials and review of RRG documents. When this oversight was brought to their attention, they agreed to make the necessary corrections.

*
Comment
6

Recommendation to Establish an Effective Contract Monitoring System

Agency management will review the recommendation in the report and continue our efforts to improve operational efficiency and effectiveness where possible, including contract monitoring.

As the agency's liaison with external auditors, please feel free to contact me should you have any additional comments or concerns regarding the terminated contract with RRG or our response.

Sincerely,

Tracy Robbins

Tracy Robbins, CIA
Director of Internal Audit

cc: Rose Harvey, Commissioner

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State Comptroller's Comments

1. In their response to the draft report, Parks officials provided us with documentation supporting the capital project investments made by RRG pursuant to the contract. Based on this documentation, we revised our report as appropriate.
2. As noted in our report, Parks provided us with no evidence of its formal review and evaluation of RRG's reputation or ability to perform contract requirements. Further, OSC's contract review and approval focuses primarily on contract format and the propriety of its provisions. It should not be construed as an approval of an agency's efforts to evaluate a bidder's reputation and ability to perform. Also, we acknowledge that such a review is not a guarantee of future performance. However, it should help identify vendors with significant risk factors and/or questionable ability to fulfill contract deliverables.
3. We acknowledge that Parks increased monitoring efforts at certain points during the RRG contract period and that Parks eventually terminated the contract with RRG. However, better monitoring from the outset of RRG's concession operations could have prompted officials to take more substantive actions in a more timely manner. Further, although the CPA began to review RRG activities in 2006, those reviews did not adequately ensure that RRG accurately reported revenues and paid the correct amounts of licensing fees. As noted in the report, RRG owed Parks $136,459 in unpaid licensing fees.
4. We acknowledge that revenue estimates are not guarantees of actual revenue streams. Nonetheless, because RRG's reported revenues were considerably less than estimated revenues, Parks officials should have taken more substantive actions to monitor the concession operations in a more timely manner.
5. We revised Recommendation 3 to acknowledge the need for Parks to work with the Attorney General's office to pursue the collection of the judgment award.
6. We revised our report as appropriate to correctly note the records that were reviewed.