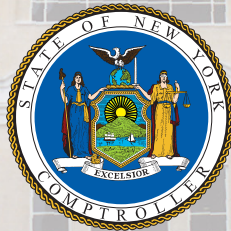




New York Convention Center Operating Corporation

Oversight of Revenue Contracts

Report 2009-S-40



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

December 17, 2009

Mr. Gerald T. McQueen
President and Chief Executive Officer
New York Convention Center Operating Corporation
655 West 34th Street
New York, NY 10001-1188

Dear Mr. McQueen:

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 of the New York Convention Center Operating Corporation's Oversight of Revenue Contracts. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 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 report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine whether the New York Convention Center Operating Corporation (CCOC) is effectively monitoring its revenue contracts to ensure all entitled revenue is billed, collected, and properly deposited in appropriate accounts.

Audit Results - Summary

CCOC uses concession revenue contracts to provide selected services at the Jacob K. Javits Convention Center (Convention Center), located at West 34th Street in New York City. For the two fiscal years ended March 31, 2009, CCOC reportedly received \$8.8 million from the six such contracts in effect during that period. We reviewed CCOC's monitoring of the two largest contracts, which accounted for 95 percent of its contract revenue. They included one contract for food and beverage and related services (representing \$8.1 million in revenue) and another, for forklift equipment, that generated revenues totaling \$281,343.

We found that CCOC, in general, is effectively monitoring these revenue contracts to ensure all entitled revenue is collected and properly deposited in appropriate accounts. One significant control in place is a contractual requirement that the concessionaires submit annual certified auditor's statements to CCOC regarding the revenues generated and the amount of commissions due under the terms of the contract. We did make one recommendation to CCOC to further strengthen its monitoring of the food concession contract. We also observed that CCOC lost \$34,852 in forklift concession revenues, because it was late in implementing a new contract with a higher commission rate.

In response to our draft report, CDDC officials agreed to improve monitoring of the food concession contract.

This report, dated December 17, 2009, is available on our website at: <http://www.osc.state.ny.us>.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The New York Convention Center Operating Corporation (CCOC) was established by the New York State Legislature in 1979 as a public benefit corporation through Title 27 of the Public Authorities Law. CCOC was created to operate and maintain the Convention Center. The Convention Center hosts events including conventions, fashion shows, association meetings and trade shows. CCOC leases the Convention Center from New York State for a nominal amount.

According to CCOC records, for the two fiscal years ended March 31, 2009, CCOC reported revenues totaling \$283.8 million, including \$8.8 million from the six concession revenue contracts CCOC had awarded. The two largest revenue contracts are with Service America Corporation D/B/A Centerplate (Centerplate) and Forklift of New York Incorporated (Forklift). These contracts provided 95 percent of the contract revenue CCOC received for the two-year period ended March 31, 2009.

The Centerplate contract grants the concessionaire a license for the exclusive right to operate all food service areas, bars, restaurants, refreshment stands, and catering services at the Convention Center. Approved on April 26, 2006, this 10-year contract guarantees minimum revenues to CCOC of \$2.5 million a year, for a total of \$25 million. Commissions are based on a percentage of gross receipts for various products sold and services rendered. The contract also requires Centerplate to provide a capital investment of \$7.5 million over the life of the contract - \$3.5 million of which is not required to be invested until the expansion of CCOC. Additional requirements include the set-aside of 1 percent of Centerplate's gross receipts annually to be deposited in a promotional fund; compensation to CCOC for gas and electric at an annual rate of 2.5 percent of gross receipts; and payment to CCOC for removal of the concessionaire's waste material. For the two years ended March 31, 2009, CCOC received a total of \$8,077,627 from the Centerplate contract.

The Forklift contract provides for equipment, including 75 forklifts stationed at the Convention Center, and related services to assist in the setup and dismantling of event shows. Approved on December 21, 2007, this five-year contract is expected to provide CCOC with revenues totaling about \$1,000,000. CCOC and show organizers agree to the number of forklifts to be used at each show. Show organizers are billed and pay Forklift equipment rental fees. Forklift remits to CCOC a 23-percent commission based on gross receipts each month. For the two years ended March 31, 2009, CCOC received total commissions of \$281,343.

**Audit
Scope and
Methodology**

Our audit determined whether CCOC was monitoring its revenue contracts to ensure all entitled revenue is billed, collected, and promptly deposited in appropriate accounts. Our audit period was April 26, 2006 through August 3, 2009.

To achieve our objective, we interviewed CCOC officials and contractor personnel. We selected the two largest revenue contracts for review. These contracts provided 95 percent of the contract revenue CCOC received for the two-year period ended March 31, 2009. With regard to these contracts, we reviewed the contract agreements, as well as other contract-related records maintained by CCOC and the contractors. We reviewed audit reports for fiscal years ended March 31, 2008 and 2009, prepared by contractor-hired certified public accountants, concerning the gross receipts collected by the contractors and the calculation of commissions due to CCOC under these agreements. We also interviewed the certified public accountant that conducted the audit of Centerplate. We reconciled selected revenue reports to amounts deposited by CCOC.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits 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.

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 to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion these functions do not affect our ability to conduct independent audits of program performance.

Authority

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting
Requirements**

A draft copy of this report was provided to CCOC officials for their review and comment. Their comments were considered in preparing this report and are included in their entirety at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the President and Chief Executive Officer of the New York Convention Center Operating Corporation 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 recommendation contained herein, and if the recommendation was not implemented, the reasons therefor.

**Contributors
to the Report**

Major contributors to this report were Frank Houston, Cindi Frieder, Myron Goldmeer, Jeremy Mack, Carole A. Le Mieux, and Linda Thipvoratrum.

Audit Findings and Recommendation

Agency Oversight and Contractor Compliance

We found that CCOC officials have put in place a number of procedures to oversee the two contracts we reviewed. A significant control is the contractual requirement that each contractor (Centerplate and Forklift) submit annually, a certified auditor's statement regarding revenues generated and commissions due, under the contract agreement. We requested, and CCOC provided, the certified auditor reports which they had received from Centerplate for the years ended March 31, 2008 and 2009. The report for the March 31, 2008 year disclosed a \$47,814 underpayment by Centerplate. CCOC records indicate that Centerplate made this payment in July 2008. The later audit report disclosed a \$144 overpayment by Centerplate. The report also confirmed the accuracy of the promotional account. Concerning the Forklift contract, we requested, and CCOC provided the annual certified auditor's report for the year ended December 31, 2008. This report contained the opinion that Forklift's assertion that they complied with specific requirements of the agreement was fairly stated, in all material respects.

Although not contractually required, Centerplate submits monthly statements detailing the gross receipts and commissions due to CCOC. With the monthly statements, Centerplate remits five commission checks to CCOC, comprised of janitorial, utility, and commission payments. CCOC officials state that they review the monthly statements, confirm that the commissions are accurately calculated based on the level of sales reported by the contractor, and confirm that the amounts on the checks match the commissions calculated on the statements. We saw evidence that these monthly reports were submitted to CCOC and that CCOC conducted a review of these statements.

While the contract with Forklift required quarterly accounting of the revenue collected and commissions due to CCOC, we found these reports are submitted to CCOC monthly. These reports list the vendors who rented equipment that month, as well as related revenues collected. CCOC officials told us they review these reports, verify the mathematical accuracy, and match the commissions due with the amounts remitted. When CCOC receives the auditor's annual certified report, they confirm that they received the amount reportedly due. CCOC officials explain that they evaluate the overall reasonableness of Forklift's monthly activity reports, by comparing reported forklift rentals to payroll data CCOC maintains concerning laborers, which include forklift operators. We saw evidence that CCOC conducted these reviews. We also found that CCOC uses forecasts to evaluate the reasonableness of reported contract activity for both the Centerplate and Forklift contracts.

Our audit did find that CCOC lost \$34,852 in forklift concession revenues, because it was late in implementing a new contract with a higher commission rate. We also identified one area where CCOC could increase its monitoring of its food concession contract:

- **Forklift:** We found that CCOC was late in implementing a new contract with Forklift. The new contract provided for a more than 50-percent increase in the commission rate, from 15 percent to 23 percent. As a result, CCOC lost commission revenues. Although the contract was signed December 21, 2007, an inter-office miscommunication resulted in certain CCOC officials being unaware that the contract had been approved - and Forklift was not notified that the new contract was approved. Forklift continued to make payments based on the lower rate of commission until June 1, 2008. We determined the difference between these rates resulted in a loss to CCOC of \$34,852 for the period January through May 2008. CCOC management explained that CCOC previously advised Forklift that it would not seek to impose the higher commission that would have been in effect, since the failure to notify Forklift was an error on the part of CCOC management and Forklift continued to pay commissions due under the old contract rate and to plan its financial affairs accordingly. In April 2009, CCOC revised its concession contract guidelines and procedures. The new guidelines address communication among CCOC departments and concessionaires with respect to contract approval.
- **Centerplate:** We found that Centerplate is not providing CCOC with certain useful monitoring information that is required by the contract. The contract requires Centerplate to provide to CCOC, on a weekly basis, daily food and beverage summary sheets together with copies of validated bank deposit slips. This information would provide CCOC with an independent method of evaluating the accuracy of the monthly summary reports that Centerplate submits. CCOC officials advised us that they did not compel Centerplate to submit these documents, because deposit slips include only cash and check transactions - credit card transactions are not included. However, in responding to our preliminary findings, CCOC officials agreed that the validation of deposit slips would provide an independent method of evaluating the monthly summary reports and agreed to obtain the information and perform this analysis on a sample basis.

Recommendation Obtain daily food and beverage summary sheets and validated deposits from Centerplate as provided for in the contract in order to analyze accuracy of Centerplate reports.

**Revenue
Reconciliations**

In accordance with Section 2569 of the Public Authorities Law, all monies of CCOC, regardless of the source, are to be paid to the Commissioner of Taxation and Finance, as agent for CCOC, and shall be deposited in a separate bank account.

We found that CCOC complied with this requirement. With regard to the Centerplate contract, for the period April 2007 through June 2009, and the Forklift contract for the period January 2008 through June 2009, we found that the amount deposited into this bank account matched the amount recorded in CCOC's general ledger, as well as the commissions calculated on the monthly statements submitted to CCOC.

Agency Comments

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of New York


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Carl H. Loewenson, Jr.
Chairman of the Board

Gerald T. McQueen
President and
Chief Executive Officer

December 7, 2009

Mr. Frank J. Houston
Audit Director
State of New York
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Re: Audit Report #2009-S-40

Dear Mr. Houston:

Enclosed is our response to your draft audit of the New York Convention Center Operating Corporation's Oversight of Operating Revenue Contracts.

The specific management response to the audit recommendation is as follows:

Recommendation #1. Obtain daily food and beverage summary sheets and validated deposits from Centerplate as provided for in the contract in order to analyze the accuracy of the Centerplate reports.

CCOC Response: We will be analyzing the sales and deposits on a monthly basis. We will be using the bank statements that are provided by Centerplate monthly. This document allows us to reconcile the cash and check deposits to the food and beverage summary sheets that are also provided to us monthly.

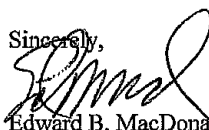
In addition, we are obtaining independent source documents from the credit card suppliers on a monthly basis. Using this independent source documentation, we are able to validate the Centerplate charges that are reported on the daily food and beverage summary sheets.

These tests are being performed monthly in addition to the Gross Profit test that we implemented earlier in the year, along with the independent audit that is performed annually. We believe that in performing these tests we are providing prudent oversight.

I want to thank Cindi Frieder, Myron Goldmeer and his associates Jeremy Mack, Carole A. LeMieux and Linda Thipvoratrum for their professionalism in conducting the audit. They were always constructive and collegial in their approach to all issues and respectful of my staff's time. This is critical to reaching our goal of always improving the Corporation's managing of resources and identifying opportunities for improving operations.

If you need additional clarifications or have other questions regarding this response, please don't hesitate to call me at (212 216-2369).

Sincerely,



Edward B. MacDonald
Senior Vice President and CFO
New York Convention Center Operating Corporation

cc: Thomas Lukacs, Division of the Budget
Cindi Frieder, Chief State Accounts Auditor
Myron Goldmeer, State Program Examiner III