

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 10, 2005

Ms. Bernadette Castro
Commissioner
New York State Office of Parks, Recreation
and Historic Preservation
Agency Building 1, 20th Floor
Albany, NY 12238

Re: Administration of Contract
X000381 (Jones Beach Marine
Theatre) Beach Concerts, Inc.
Report 2004-R-2

Dear Ms. Castro:

Pursuant to the State Comptroller's authority as set forth in Article 5, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have audited the Office of Parks, Recreation and Historic Preservation's (Parks) administration of Contract X000381 with Beach Concerts, Inc. (Beach Concerts) for the operation and maintenance of the Jones Beach Marine Theatre. We audited Beach Concert's compliance with the terms of Contract X000381, including its remittance to Parks of all required payments and deposits, and the effectiveness of Parks' oversight of the contractor revenue operations. The scope period of our audit was February 28, 2000 to August 31, 2004.

A. Background

Parks welcomes 65 million visitors a year to its parks, historic sites and recreation areas. One such facility, Jones Beach State Park on the South shore of Long Island, is the largest bathing facility complex in the world. In addition to the bathing facilities, boardwalk recreation and restaurants, the Jones Beach complex houses the Jones Beach Marine Theatre, known as the Tommy Hilfiger Theatre (Theatre). Tommy Hilfiger is one of a number of patrons who provide sponsorship revenue to Parks. Originally erected in 1952, the Theatre was reconstructed and enhanced in the 1990s, and currently seats 15,200. The Theatre features more than 35 well-known entertainers in an annual music concert series that runs from May to September.

In February 2000, through a Request for Proposal process, Parks granted Beach Concerts, a subsidiary of Clear Channel Communications, a 20-year concession license (Contract X000381) for the Theatre's operation and maintenance. Contractor

responsibilities include promoting musical productions, performances, concerts and other shows; selling tickets for these events; and providing food, beverages, souvenirs and related services. According to the license terms, the contractor is solely responsible for the maintenance, upkeep and necessary facility replacements of the licensee premises.

According to Parks officials, previous uses of the Theatre for Broadway productions and various other forms of entertainment, particularly in the mid to late 1970's, often resulted in annual deficits approaching \$1,000,000 a year for which State first instance appropriations were required to support this revered entertainment venue. Under the current contract, Parks earns in excess of \$3,000,000 annually. This contract was developed in late 1998 and early 1999 with the specific goal of entering into a long-term turnkey theatre operation and maintenance contract. The decision to develop such a contract was based on almost 20 years of concession contracting of theatre operations that were refined over the years as the agency became more experienced in the concert business. This experience resulted in contract refinements such as flat fee rentals for concession operations, and ultimately led to the contract now in force where the State receives rent and police costs with an inflation factor, as well as specific percentages of gross revenue dedicated to the concession operator's maintenance and rehabilitation of the facility. In return for its exclusive license, Beach Concerts is required to:

- remit an annual license fee of \$2.35 million, increased each year by the lesser of the Consumer Price Index (CPI) or 5 percent;
- remit \$5 to Parks for each ticket over 400,000 tickets sold;
- pay annual State Parks Police security service costs of \$200,000, increased annually by the inflation rate;
- invest \$2.42 million in capital improvements over the life of the contract;
- deposit 1 percent and 2 percent of gross monthly receipts, respectively, in a Theatre Replacement and Refurbishment (R&R) account and a Theatre Maintenance (Maintenance) account; and
- remit annually, for calendar year 2002 and 2003, \$361,000 in sponsorship revenue. Then (according to a April 2002 contract amendment), for subsequent (option) years, the greater of \$361,000 or 38 percent of gross sponsor revenue received up to \$500,000 each year.

For calendar years 2002 and 2003, Beach Concerts reported revenues of \$30.7 million and \$25.9 million, respectively. For the same period, there were 54 and 42 performances attended by 537,000 and 404,000 patrons, respectively.

Tickets for Theatre concerts are sold at the Theatre box office or through a ticket agent. Beach Concerts gives each performing artist and Theatre sponsor a negotiated number of complimentary tickets as part of the compensation package/contract, and also issues promotional tickets to radio stations. In addition, Beach Concerts issues "papering" tickets to help fill the house when ticket sales for an event are lower than anticipated. "Papering" tickets made up the overwhelming majority of complimentary tickets issued during the audit period.

Parks oversees Beach Concerts' performance through three offices: the Division of Administration and Finance in Albany (Division); the Long Island Regional Office (Regional Office); and an office at Jones Beach. Parks personnel at the Jones Beach office are the Jones Beach State Park Manager and the Theatre Manager.

B. Audit Scope, Objectives and Methodology

We audited Parks' administration of Contract X000381 with Beach Concerts for the operation and maintenance of the Theatre from February 28, 2000, the contract's inception date, through August 31, 2004. The objectives of our performance audit were to determine whether Beach Concerts complied with the contract's terms, including remitting all required payments and deposits, and to determine whether Parks effectively monitored Beach Concerts' revenue-related compliance with this contract.

To accomplish these objectives, we reviewed the terms of Contract X000381, as well as applicable laws, rules and regulations. We interviewed Parks and Beach Concerts officials and staff. In addition, we reviewed Beach Concerts' annual reports, financial statements, tax returns, accounting records, and concert ticket sales data; observed daily operations related to the receipt, recording and depositing of ticket revenue; examined Beach Concerts' records of sponsorship, merchandise and concession revenues; and verified that Beach Concerts remitted payments and made the deposits required by the contract. Further, we tested Beach Concerts' revenue, including the issuance and disposition of complimentary tickets. We also reviewed the time and attendance records of the Parks' Theatre manager to verify this employee worked the hours paid for.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those Parks' and Beach Concerts' operations within our audit scope. Further, these standards require that we understand Parks' and Beach Concerts' internal control structure and compliance with those laws, rules and regulations relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operations records and applying other auditing procedures we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

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, several of which are performed by the Division of State Services. 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 management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

Our audit determined that Beach Concerts complied with most of the payment provisions of Contract X000381. In addition, we concluded that Beach Concerts' controls over box office operations were generally adequate for collecting, recording and depositing ticket revenue, and that revenue, as reported, was accurate in all material respects. However, we also identified instances of noncompliance. For example, the contractor owes Parks approximately \$8,000 for late deposits, and has deviated from contract requirements regarding the maintenance of certain bank accounts. We also found that, although Beach Concerts issues thousands of complimentary tickets each year, Parks has no written policies regarding the issuance of these tickets, and has not required Beach Concerts to control their use. Lack of control over these assets can invite abuse. In fact, we found that Parks' Theatre Manager, who had received 576 complimentary tickets during the audit period, valued at \$25,417, could have sold these tickets without authorization, and could also have misappropriated the associated revenues from the sale of these tickets because he was not required to account for their disposition. This same Parks employee was also employed by a local township, and had recorded working a questionable number of hours for both employers on numerous occasions. We believe the problems we found are attributable, for the most part, to Parks relying solely on fiscal and operating data provided by Beach Concerts without verification. We recommend that Parks periodically verify Beach Concerts' compliance with the contract's financial requirements, establish effective control over complimentary tickets, and improve time and attendance controls for the Theatre manager at the Jones Beach office.

1. Contractor Compliance

Our tests revealed that ticket sales and other revenues received were properly recorded and deposited, and that Beach Concerts remitted most of the payments required by Contract X000381. However, we also found the contractor had not made deposits to the R&R and Maintenance accounts in a timely manner, and deviated from the contract requirement regarding account maintenance. We also found there are no written policies or procedures over the issuance and control of the thousands of complimentary tickets Beach Concerts issues each season. Without control over the authorization and distribution of such tickets, ticket revenue could be misappropriated. For example, our sampled testing showed that the Theatre Manager, who received six complimentary tickets per show, could not account for most of the complimentary tickets in his charge. This incident was referred by Parks to the State Inspector General's Office for investigation. These problems occurred because Parks has relied on Beach Concerts to monitor its own operations and to self-report financial information, including Theatre revenues.

a. Contract Payments

The contract requires Beach Concerts to remit an annual license fee of \$2.35 million, increased annually by the lesser of five percent or the CPI; to pay Parks the greater of \$361,000 or 38 percent of annual sponsor revenue, effective April 2002; and to pay an additional ticket rent of \$5.00 for each ticket over 400,000 tickets sold. Our audit tests showed that, during our audit period, based on available information, Beach Concerts made

all the above payments, properly adjusted (for the CPI, annual sponsor revenue, or tickets sold), as required.

However, our audit tests determined that Beach Concerts had not paid the full amounts owed for police services. The contract states Beach Concerts is to pay for Parks Police services at an annual rate of \$200,000, increased every year by the inflation rate. We found that, while Beach Concerts paid the base rate of \$200,000 in years 2000 through 2003, it did not adjust its payments for the inflation rate, as required. When we identified this underpayment, Beach Concerts officials agreed they had not done so, and paid Parks a cumulative adjustment totaling \$35,294.

In addition, we found that Beach Concerts did not deposit two percent and one percent of annual revenues, respectively, in the R&R and Maintenance accounts according to the schedule stated in the contract. Beach Concerts is required to deposit these monies on the 15th day of July, August, September and October of each year. However, we determined that Beach Concerts made a single payment to each of these accounts between October and December in each contract year we reviewed. Since the deposits were made late, Parks lost interest revenue on these accounts totaling approximately \$8,000. According to Beach Concerts, the interest due on these accounts for the noted period totals \$4,400. Parks officials are reviewing both calculations to identify the source of the difference and resolve it as appropriate.

We also noted that the accounts are not maintained in the form required by the contract. The contract states that these accounts should be passbook accounts, with the passbooks maintained on Parks premises; that withdrawals require dual-party signatures (one party should be a Parks official); and that copies of deposit slips should be forwarded to Parks. Instead, Beach Concerts maintains these funds in separate checking accounts which are maintained on Parks premises, and in non-passbook, off-shore accounts to which Parks is not attached as a custodian. Although it appears that these checking account monies are being used appropriately, the multiple accounts and single custodianship for the off-shore accounts, and a single signature required on checks, present control and reconciliation issues that could be avoided by complying with contract requirements.

Parks should recover amounts due for interest from Beach Concerts; ensure the contractor makes future R&R and Maintenance account deposits on time; and establish R&R and Maintenance passbook accounts, as called for by the contract's terms. According to Parks officials, Beach Concerts has indicated a willingness to discuss a different banking arrangement should Parks desire such.

b. Contract Revenue

The contract requires Beach Concerts to pay Parks both fixed fees and variable fees (based on gross revenue); to maintain records to account for ticket sales; to document the collection, reporting and deposit of revenues from all sources; including price adjustments and complimentary tickets. Beach Concerts' Profit and Loss Statements for 2002 and 2003 reported revenues of approximately \$30.7 million and \$25.9 million on ticket sales of about \$21.6 million and \$17.7 million, respectively. Based on our tests of Beach Concerts' bank statements, financial books of record and income statements, we concluded that Beach

Concerts has properly accounted for Theatre revenue in all material respects. We found that the contractor could enhance security over ticket processing by improving controls over electronic ticket sales. We also determined that Parks and Beach Concerts should take prompt action to establish control over the issuance and distribution of complimentary tickets to prevent the loss or misappropriation of ticket revenue.

Controls Over Revenue

To assess the accuracy of the contract revenues reported by Beach Concerts, we reviewed the controls over ticket sales and concession revenues, and the adequacy of the accounting system maintained by Beach Concerts for calendar years 2002 and 2003. In addition, we reviewed and compared reported revenues to Beach Concerts' books of record, monthly bank statements, unaudited income statement and income tax returns for the audit period. Our testing and analysis did not identify any material discrepancies.

However, in reviewing box office operations, we found that Beach Concerts should improve controls over ticket processing. Like all operators of computerized systems, Beach Concerts must ensure it has established physical access controls (e.g., an automatic log-off feature) and logical access controls (e.g., passwords) that are adequate to prevent unauthorized access to computer stations where tickets sales are processed, and to systems used to do the processing. Access should be limited to authorized persons so management can ensure its electronic ticket system processes only valid transactions and produces accurate ticket data for use in revenue reporting.

However, our review of system operations identified a number of control weaknesses in the Theatre's computerized box office operations. For example, passwords are not required to be a least eight characters long and contain a mix of characters (alphabetic, numeric and special) to ensure passwords are not easily guessed; passwords are changed only once, at the end of the five-month season; and there is no automatic station log-off after periods of inactivity to reduce the risk of unauthorized access to ticket processing. Although our audit did not identify any instances of unauthorized use of Beach Concerts' ticketing system, the contractor should improve physical and logical access controls to safeguard access to ticket processing and ticket sales information.

According to Parks officials, Ticketmaster maintains the password configuration, log-off and inactivity periods for Beach Concert's ticket issuance operation. Thus, Beach Concerts is unable to address the specific concerns identified in our report. However, Parks officials also believe that the current controls in place at the Theatre Box Office provide reasonable assurance against unauthorized tampering.

Controls Over Complimentary Tickets

Parks should ensure that its licensee in this long-term contract is properly accounting for all event tickets, which have an average value of about \$45 each. It is also in Parks' interest that ticket revenues be as high as possible, since several of the contract's payment provisions are variable (i.e., the \$5 per ticket rent when sales exceed 400,000 tickets; the one percent and two percent of gross monthly revenues deposited in R&R and Maintenance accounts).

According to the contractor's attendance reports, Beach Concerts issued a total of 102,727 complimentary tickets, with an approximate value of \$4.7 million, in 2002 and 2003. We found that neither Parks nor Beach Concerts has any written policies and procedures for the issuance and control of complimentary tickets, and that Parks does not verify the accuracy of Beach Concerts' data on complimentary tickets. Since Parks does not monitor the distribution or use of these tickets, there is a risk that revenue opportunities may be lost, and that tickets may be used for personal gain.

Given the uncontrolled nature of this practice, we requested Beach Concerts' documentation for complimentary tickets issued for a random sample of 20 of the 96 events held in 2002 (10 events) and 2003 (10 events). We found that Beach Concerts did not have documentation to support the numbers of complimentary tickets it reported were issued for these events. We then asked Beach Concerts to provide us with documentation for a selected judgmental sample comprising 6 of the 36 concerts held in 2004. For each sampled concert in 2004, Beach Concerts had detailed listings showing the number of complimentary tickets issued by category (i.e., artist; sponsor; promotion; papering). We verified the number of complimentary tickets issued, by category, against final ticket numbers for these concerts in the Ticketmaster database, and found Beach Concerts' reported total numbers were correct. However, we found no documentation for the authorization of "papering" tickets denoting why the number of tickets was issued, and how or by whom they were to be distributed. Thus, there is no audit trail from the authorization of "papering" tickets to the distribution of these tickets. Without an audit trail to track the disposition of complimentary tickets, there is a significant risk that abuses can occur. In fact, we identified an instance of apparent abuse during our audit, as described below.

We determined that the Theatre Manager, Parks' on-site liaison with Beach Concerts, had received six tickets for each of the 96 concerts held during the 2002 and 2003 concert seasons, or a total of 576 tickets with a collective value of \$25,417. These specific complimentary tickets were not provided for in Beach Concerts' contract with Parks. However, according to Beach Concerts officials, it had been a longstanding practice to provide the Theatre Manager with these tickets, which he reportedly used at his discretion to address situations such as broken/dirty seats, or, in the early 1990s, to reward Parks employees pursuant to a since discontinued State-approved employee recognition program. Officials at Parks Regional Office were aware of this practice, but did not require the Theatre Manager to account for the use of these tickets. The Theatre Manager told us he seldom used the tickets issued to him, and discarded most of them at the end of the season.

To determine what happened to the Theatre Manager's complimentary tickets, we examined 120 of the 576 tickets this employee had received. The 120 tickets comprised the six tickets issued for our sample of 20 judgmentally selected concerts in 2002 and in 2003. The Theatre Manager reported he had used only 20 of the 120 tickets, and had discarded the remaining 100 tickets. However, according to the Theater's entry area ticket scanners, 48 tickets were used by concert-goers. The Theatre Manager could not explain how 28 tickets, which he had reportedly destroyed, were used to gain entrance to concerts. Given the lack of controls over these tickets, the Theatre Manager could have misappropriated revenues from the sale of these tickets. To prevent and detect potential abuse of complimentary tickets in the future, Parks should develop policies for the issuance

and use of complimentary tickets, and require Beach Concerts to implement control procedures to account for their use.

When Parks officials were informed of this situation, they instructed Beach Concerts to stop distributing the six tickets per concert to the Theatre Manger, and they referred this matter to the State Inspector General for investigation.

We also believe Parks should examine the extent to which Beach Concerts uses complimentary tickets to “fill seats” for concerts. Beach Concerts’ practice of regularly issuing thousands of complimentary tickets could negatively impact the contract-related payments Parks receives. If ticket sales are lower than they could be because excessive or unnecessary complimentary tickets are issued routinely, Parks could lose revenue in the form of ticket surcharges (\$5 per ticket on sales of more than 400,000 tickets) and deposits due to the R&R and Maintenance accounts (based on percentages of gross revenues). Parks should work with Beach Concerts to develop sound policies related to complimentary tickets, including setting a cap on the number of complimentary tickets issued for each event.

2. Parks Oversight of Contractor Compliance

Parks is responsible for ensuring that Beach Concerts complies with its contract. The contract grants Parks specific rights of oversight, and requires the contractor to give Parks financial and operational data. However, Parks did not actively monitor Beach Concerts’ operations. As a result, Parks officials did not previously identify that the contractor: owed interest for late payments; had established accounts in the wrong form; and had not accounted for all of the complimentary tickets it issued. We found that the same Parks Theatre Manager who routinely received complimentary tickets was also employed by a local township, and had recorded working a questionable number of hours for both employers on numerous occasions. To monitor contractor performance and to protect its financial interests, Parks should actively oversee Beach Concerts’ conformance to contract requirements. Parks should also regularly review the time and attendance records of its Theatre Manager to verify the validity of his reported work hours.

a. Ensuring Financial Compliance

Although Parks has the right, per contract, and the duty as the contracting agency, to monitor Beach Concerts’ financial compliance, Parks does not actively monitor its contractor to ensure revenues are accurately recorded and promptly deposited, and payments are made according to the contract terms. Parks officials acknowledged they did not regularly review Beach Concerts’ financial data, but stated they relied instead on the contractor’s independent auditors, who certify Beach Concerts’ annual financial statements. However, we found the contractor’s independent auditors do not prepare separate financial statements for Theatre operations, nor did they review Beach Concerts’ compliance with Contract X000381 during the annual audit. Therefore, since neither Parks nor the independent auditor is monitoring the contractor’s compliance with the financial requirements of this contract, Parks officials have no assurance that Beach Concerts is fulfilling its contractual responsibilities. To obtain this assurance, Parks should

periodically perform tests of financial compliance (e.g., cash counts; verification of reported revenue), as provided for in its contract with Beach Concerts.

Parks officials acknowledged that, in general, they did rely on Beach Concerts to monitor its own Theatre operations. According to officials, they relied on Beach Concerts to self-report because Beach Concerts has experience and expertise in the industry, and because the Theatre, under Beach Concerts' management, has produced significantly more revenue for Parks than generated when Parks operated the Theatre. Parks officials also said they review Beach Concerts' certified financial statements, and have a "five-year plan," which includes doing an on-site audit of selected contract operations every five years.

Since the certified financial statements prepared for Clear Channel Communications, Beach Concerts' parent company, do not segregate Theatre operations from its overall regional operations, we do not believe a review of these statements can offer useful insight about Theatre operations. We do support Parks' plan for doing periodic on-site audits of contractor operations. However, considering the length of the contract licensure (20 years), more frequent audits or periodic "limited-scope" audits (e.g., every three years) may be warranted.

b. Dual Employment

Parks should have time and attendance controls in place to ensure its employees work all the hours for which they are paid. During our field work, it came to our attention that Parks' Theatre Manager was also an appointed official in the Town of Islip. The Theatre Manager was scheduled to work 7.5 hours per day (Monday through Friday) at his local job, where he was also on call 24 hours a day. The Manager indicated that, as a senior official in the town, he did not record his starting and ending times at his local job. The Theatre Manager was also required to work at the Theatre on concert days, since he served as the liaison with Parks police and fire and safety officials.

We reviewed the Theatre Manager's reported work hours during the 2002 and 2003 concert seasons. We found that, during the 2002 performance season, the Theatre Manager reportedly worked a combined total of over 12 hours a day on 19 concert days (including the regularly scheduled 7.5 hour-days at his local government job). Specifically, he reported working 13-16 hours on 4 days; 16.5 - 22 hours on 14 days; and 23 hours on 1 day. We made similar observations of unusually long working hours on 19 concert days during the 2003 performance season. On 26 of the 38 work days noted above, the Theatre Manager signed in for work at Parks at 3:30 p.m. Including travel time from one site to the other, these payroll records suggest the Theatre Manager either began his work day at his local government job at about 6:30 a.m. on each of these occasions, or left work early without charging his leave accruals. Since the Theatre Manager and his supervisor, the State Parks Manager, worked at separate locations, it is possible that his reported time and attendance was not monitored effectively.

Parks officials should correct this control weakness and investigate this employee's time records for the audit period. We also asked the local government employer to review the Theatre Manager's relevant time records, and advise us of the results thereof.

Based on the work product produced by the Theatre Manager, and the attestation of the Park Manager, Parks officials are confident that the Theatre Manager is working the hours as reported on his time and attendance records. However, they stated that they will develop a more formal sign-in/sign-out procedure for this employee.

Recommendations

1. *Recover the amount due from Beach Concerts for interest due.*
2. *Require that Beach Concerts makes future payments on time, and adjusted as stated in the contract; revise R&R and Maintenance accounts to conform with contract requirements.*
3. *Require Beach Concerts to work with Ticketmaster to improve its physical and logical access controls in its computerized ticketing system to safeguard access to ticket processing.*
4. *Work with Beach Concerts to develop appropriate guidelines for the issuance of complimentary tickets (e.g., document the justification and authorization of tickets issued, etc).*
5. *Develop control procedures that can account for the use of complimentary tickets and reduce the risk that ticket revenue could be misappropriated. Periodically monitor Beach Concerts' implementation of these control procedures.*
6. *Implement the proposed "Five-Year Plan." If significant issues, discrepancies and deficiencies are identified as a result of these reviews, perform them at more frequent intervals.*
7. *Improve controls over time and attendance to help ensure the Theatre Manager works the hours he is paid for.*

We provided a draft copy of this report to Parks' officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix A. Parks' response reiterated the financial benefits to the State of this long-term turnkey theatre operation and maintenance Contract. In general, Parks' officials agreed with our recommendations and noted that some of them are already being implemented. Parks advised us that the matter related to the dual employment of its Theatre Manager has been referred to the Office of the Inspector General.

Within 90 days after 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 its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Frank Patone, Barry Mordowitz, Roseline David, Carole Le Mieux, Ira Lipper and Nancy Varley.

We wish to thank Parks and Beach Concerts management and staff for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

William P. Chalice
Audit Director

cc: Robert Barnes, Division of the Budget



New York State Office of Parks, Recreation and Historic Preservation
The Governor Nelson A. Rockefeller Empire State Plaza
Agency Building 1, Albany, New York 12238

518-474-0456
Human Resources
518-474-0453
Fiscal Management
518-474-0061
TDD: 518-486-1899

April 29, 2005

Mr. William P. Challice
Audit Director
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 William Street, 21st Floor
New York, New York 10038

Re: Draft Audit Report (2004-R-2)
Contract X000381
Beach Concerts, Inc.

Dear Mr. Challice:

The Draft Audit Report (2004-R-2) (hereinafter the "Report") on the Contract X000381 between the New York State Office of Parks, Recreation, and Historic Preservation ("State Parks" or the "Agency") and Beach Concerts, Inc., ("Beach Concerts") has been received and reviewed by our Agency. We offer the following response as requested in your correspondence of March 14, 2005.

State Parks' concession program is based on the reallocation of capital and operational costs associated with recreational facilities and services from the State to the private sector. The goal is to capture the creativity, entrepreneurial spirit and financial resources of private business in providing first class services at affordable prices in furtherance of State Parks' mission to provide safe and enjoyable recreation to all. Similarly, by leveraging the skills and expertise of the most skilled private sector business people through a concession license State Parks is providing these services in the most cost-effective manner.

The context of this concession license is critical. The RFP for this contract was developed with the specific goal of entering into a long term turnkey theatre operation and maintenance contract. The decision to develop a turnkey operation was based upon almost 20 years of concession contracting of theatre operations that were refined over that period as the agency became more experienced in the concert business. For example, in the earlier concession license agreements for concert presentation items such as souvenir sales, food and beverage as well as numbers of performances, numbers of tickets sold, etc. provided the basis of the revenue stream to State Parks. The impracticality of fully accounting for these various revenue units led to refinements such as flat fee payments for souvenirs and concessions, and ultimately to the contract now in

www.nysparks.com

An Equal Opportunity/Affirmative Action Agency
♻️ printed on recycled paper

Appendix A

Mr. William P. Challice
Response to Audit Report 2001-R-4, Beach Concerts, Inc.

April 29, 2005
Page 2

force where we receive rent with an inflation factor, police costs with an inflation factor, as well as specific percentages of gross revenue for maintenance and rehabilitation. We also have a windfall profit clause that provides for an additional \$5 per ticket for tickets sold in excess of 400,000 in any given operating season.

It is important to note that this turnkey contract provides State Parks with revenue of approximately \$3,000,000 on an annual basis. Previous uses of the theatre for Broadway productions and various other forms of entertainment, particularly in the mid to late 1970's, often resulted in substantial annual deficits for which State first instance appropriations were required to support this revered entertainment venue.

The following is in response to the specific recommendations in the Report:

Recommendation #1:

Recover the amount due from Beach Concerts for interest due.

Response #1:

Past due interest in the amount of \$39,619 has been paid by Beach Concerts; documentation of this payment has been provided to the OSC; an additional \$3,700 remains unresolved. Parks is reviewing the calculations of both Beach Concerts and the OSC to identify the source of the discrepancies and resolve as appropriate.

Recommendation #2:

Require that Beach Concerts makes future payments on time, adjusted as stated in the contract; revise R&R and Maintenance accounts to conform with contract requirements.

Response #2:

As noted on page 4 of the Comptroller's audit, "Our audit determined that Beach Concerts complied with most of the provisions of Contract X000381. In addition, we concluded that Beach Concerts' controls over box office operations were generally adequate for collecting, recording and depositing ticket revenue, and that revenue, as reported, was accurate in all material respects." For the period covered by this audit the total payments to the State were approximately \$18.3 million, and the discrepancies identified through the audit totaled approximately \$39,600, or 0.002 of that total. While in a business context these are minor discrepancies, State Parks concurs that we must strive to ensure that all payments are made consistent with the terms of the contract. We are in discussions with Beach Concerts concerning these matters and will document the agreed upon procedures.

Recommendation #3:

Require Beach Concerts to work with Ticketmaster to improve its physical and logical access controls in its computerized ticketing system to safeguard access to ticket processing.

Response #3:

As indicated in the Comptroller's findings on page 6, "Although our audit did not identify any instances of unauthorized use of Beach Concerts' ticketing system, the contractor should improve physical and logical access controls to safeguard access to ticket processing and ticket sales information." We will work with Beach Concerts to improve protocols for the ticketing system that achieve optimum balance between security and functionality.

Recommendation #4:

Work with Beach Concerts to develop appropriate guidelines for the issuance of complimentary tickets (e.g., document the justification and authorization of tickets issued, etc.).

Response #4:

As indicated in the Comptroller's findings on page 7, "For each sampled concert in 2004, Beach Concerts had detailed listings showing the number of complimentary tickets issued by category (i.e., artist; sponsor; promotion; papering). We verified the number of complimentary tickets issued, by category, against final ticket numbers for these concerts in the Ticket Master database, and found Beach Concerts' reported total numbers were reasonably correct. However, we found no documentation for the authorization of 'papering' tickets denoting why the number of tickets was issued, and how or by whom they were to be distributed." The decision to issue "papering" tickets is a business determination made by Beach Concerts in light of the financial and business circumstances of each show. Obviously, it would not be in Beach Concerts' interests to "paper" tickets if there was a reasonable likelihood of retail sales. It is important to note that even those tickets that are "papered" represent ancillary benefits to State Parks through concession sales. State Parks will work with Beach Concerts to develop a method to reasonably account for papering tickets consistent with industry-wide standards.

Mr. William P. Challice
Response to Audit Report 2001-R-4, Beach Concerts, Inc.

April 29, 2005
Page 4

Recommendation #5:

Develop control procedures that can account for the use of complimentary tickets and reduce the risk that ticket revenue could be misappropriated. Periodically monitor Beach Concerts' implementation of these control procedures.

Response #5:

During the 2004 theater season State Parks relinquished the six complimentary tickets assigned to the Theater Manager to address necessary seating adjustments. Accommodations for patron satisfaction are now managed by Beach Concerts. We have asked for an accounting of these tickets consistent with industry-wide standards and practices to be provided to State Parks on an annual basis. State Parks will work with Beach Concerts to develop a method to reasonably account for complimentary tickets consistent with industry-wide standards.

Recommendation #6:

Implement the proposed "Five Year Plan." If significant issues, discrepancies and deficiencies are identified as a result of these reviews, perform them at more frequent intervals.

Response #6:

As previously indicated to the OSC, Parks' intention has been to audit this contract on a five year cycle. The extensive data collected and reviewed by the OSC over the seven month engagement of the audit revealed a discrepancy totaling less than one quarter of one percent of payments to the State. This provides a valuable baseline for future testing and Parks will proceed accordingly and follow up on the findings and recommendations of OSC with an audit cycle plan.

Recommendation #7:

Improve controls over time and attendance to help insure the Theater Manager works the hours he is paid for.

Response #7:

A thorough review by State Parks of the time and attendance records of the Theater Manager as well as supplementary information disclosed no instances in which the employee was paid for time not worked. State Parks is developing a more formal sign-in/sign-out procedure for the Theater Manager that will better document hours worked. In addition, State Parks formally referred the matter to the Office of the Inspector General for independent

Mr. William P. Challice
Response to Audit Report 2001-R-4, Beach Concerts, Inc.

April 29, 2005
Page 5

investigation. When State Parks receives the Inspector General's report, appropriate action will be taken, if necessary.

Thank you for the opportunity to respond to the recommendations put forth by your staff in the Report.

Sincerely,



Harold H. Hagemann, Jr.
Director, Concessions Management Bureau

cc: Christopher Pushkarsh
J. Dennis Hanrahan
Gail Berley
Paul Laudato, Esq.
Sharon Apholz