



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

Division of State Government Accountability

Catering with a Flair Contract

Department of Agriculture and Markets



Report 2010-S-53

February 2012

Executive Summary

Purpose

To determine if the New York State Fair (Fair) - a division of the Department of Agriculture and Markets (Department) - followed proper procedures in contracting with the firm Catering with a Flair (Contractor); whether the Contractor met the terms of the contract, including capital improvements and reporting of revenue; and whether all the transactions between the Fair and the Contractor were proper and conducted at arm's length.

Background

The Fair, which dates back to 1841, promotes and highlights New York State and its agriculture, commerce, arts and sciences to residents and visitors. The State Fairgrounds hosts more than two million people throughout the year through various events, performances and expositions, including the Fair. The Empire Room is a full service restaurant with banquet facilities used to host wedding celebrations, events and exhibitions at the Fairgrounds throughout the year. In 2002, the Fair contracted with Catering with a Flair to manage the Empire Room and provide catering services in exchange for a percentage of sales and certain required capital improvements. In 2009, the contract was extended through 2014. In August 2010, the Office of the Inspector General issued a report questioning the propriety of several transactions between the Contractor and the former Fair Director, who was subsequently arrested for larceny. At the Inspector General's request, the Department asked the Comptroller to undertake a complete audit of the Fair's catering contract. The Fair's response to the draft of this report stated the contract with Catering with a Flair was terminated on November 30, 2011.

Key Findings

- We concluded that the Department followed proper procedures when contracting with Catering with a Flair and that the Contractor accurately reported revenue and made required capital improvements. However, we also found instances where the Department needed to improve monitoring Contractor compliance with contract terms. For example, since 2002, the Fair has paid utility costs that could have been paid by the Contractor if the Fair had installed separate utility meters for the contracted facility. In addition, Fair officials did not annually obtain menus and audited financial statements from the Contractor as specified in the contract.

Key Recommendations

- Strengthen contract monitoring practices to ensure compliance with all contract terms.
- Assess the feasibility of installing separate utility meters related to space operated by the Contractor.

Other Related Audits/Reports of Interest

[Dept of Agriculture and Markets Controls Over State Fair Revenues 2010-S-52](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

February 8, 2012

Mr. Darrel J. Aubertine
Commissioner
Department of Agriculture and Markets
10 Airline Drive
Albany, NY 12235

Dear Commissioner Aubertine:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage governmental 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 also identify strategies for reducing costs and strengthening controls intended to safeguard assets.

Following is a report of our audit entitled *Catering with a Flair Contract*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution.

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*

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This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Fair (Fair) dates back to 1841 and is a division of the Department. The Fair promotes and highlights New York State and its agriculture, commerce, arts and sciences to residents and visitors. The State Fairgrounds in Syracuse occupies 375 acres and consists of eight primary facilities, as well as temporary RV parking sites, and parking and shuttle services for 23,000 vehicles. The State Fairgrounds hosts events, performances and expositions throughout the year, including the Fair. More than two million people attend these events each year, including almost a million people who attended the 2010 Fair.

The Empire Room is a full restaurant with banquet services located within the Art and Home Center building which is used to host wedding celebrations, events and exhibitions throughout the year. In 2002, the Fair issued a request for proposals for the catering operations in the Empire Room and other rooms located in the Art and Home Center. The contractor was to be responsible for booking and catering the events and in return providing the Fair with a percentage of the gross revenue. The request for proposals also included requirements for the contractor to make capital improvements in the building. The Fair received one bid for the contract and, as a result, *Catering with a Flair* was awarded the contract in 2002. The contract terms were for a seven year period, with an option for an additional five years. In 2009, the Fair exercised its option for an additional five years based on the Contractor's performance. The contract entered into, and subsequently extended, is a licensing fee contract which entitles the Fair to a percentage of the restaurant's gross sales up to an annual cap, above which the Contractor retains all revenue.

In August of 2010, the New York State Office of the Inspector General released a report on the Fair's operations. The report raised concern over the contract with *Catering with a Flair* and, in particular, cited several questionable transactions between the former Fair Director and the Contractor. Also, the New York State Office of the Attorney General issued a report highlighting systemic deficiencies at the Fair in areas such as nepotism, conflicts of interest, inventory controls and gifts. In December 2010, the former Fair Director was arrested on charges of grand larceny, defrauding the government and official misconduct.

At the Inspector General's request, the Department asked the Office of the State Comptroller to undertake a complete audit of the Fair's catering contract. The Fair's response to the draft of this report stated the contract with *Catering with a Flair* was terminated on November 30, 2011.

Audit Findings and Recommendations

In July 2002, the Fair entered into a contract with Catering with a Flair to run the Empire Room and other rooms within the Art and Home Center. We reviewed the contract award process, as well as compliance with five significant deliverables that were specified in the contract: revenue reporting, capital improvements, payment for utilities, submission of audited financial statements, and catering menus. We found the Fair followed proper procedures when contracting with the Contractor and adequately monitored that the Contractor accurately reported revenue and made the required capital improvements. However, there were instances where the Fair did not adequately monitor for compliance with contract terms.

Contract Award

In early 2002, the Fair issued a request for proposal for catering services in the Empire Room. The Contractor was the only vendor to submit a bid. As a result, the Fair contacted non-bidding caterers and ascertained the reasons why they did not bid. We found that the Fair complied with all required procedures related to bidding when it awarded the contract to *Catering with a Flair* for a seven year period, with an option for an additional five years. In 2009, the Fair exercised its option for an additional five years based on the Contractor's performance. The Fair's response to the draft of this report stated the contract with Catering with a Flair was terminated November 30, 2011.

Revenue Reporting

The Contractor is responsible for paying the Fair a license fee based upon a percentage of gross sales realized from the use of the contracted space, up to an annual cap. The Contractor met the cap in four of the eight years of the contract. As part of its contract monitoring, the Fair receives monthly reports from the Contractor stating the events held and the revenue collected.

We audited the invoices for the Contractor's events for five of the eight years of the contract (July 2004 to June 2005 and July 2006 to June 2010) to look for any unusual pricing and circumstances (i.e. large discounts and non arm's length transactions). We reviewed years the cap was, and was not met. We did not find any significant issues. The Contractor provided us with tax returns from 2006 through 2009. We compared gross revenue reported on the tax returns to the revenues deposited into the Contractor's bank account, and to revenues reported by the Contractor to the Fair. Again we did not find any significant differences. Therefore, we concluded the sales reported to the Fair were accurate.

We also tested to see if the license fees were correctly calculated and deposited by the Fair. We reviewed two years (July 2004 to June 2005 and July 2009 to June 2010) of sales reported and found the Fair correctly calculated the fees. We also reviewed two years (July 2005 to June 2006 and July 2009 to June 2010) of the Fair's ledgers and bank statements to verify the license fees were deposited into the proper bank account. We found the Fair correctly deposited all the revenue.

Capital Improvements

The agreement required the Contractor to make certain capital improvements to the building. The original contract detailed the following specific capital improvements to be completed during the contract period, totaling \$83,273:

- Renovation of the Empire Room, hallways, restrooms and the Somerset Room (\$45,000),
 - Furnishing and installing a new carpet (\$35,000), and
 - Furnishing and installing a telephone system (\$3,273).
- (According to Fair officials, it was later determined the telephone system did not need to be replaced and the Contractor was allowed to make other capital improvements.)

We reviewed the list of capital improvements submitted by the Contractor to the Fair and found the Contractor has completed \$116,963 in improvements - exceeding the contract requirement by more than \$33,000 - to the Empire Room, Somerset Room, hallways and bathrooms during the contract period. We toured the Empire and Somerset Rooms and verified the improvements had been made to the two rooms, as well as the bathrooms and hallways. We found the carpet in the Empire Room, which had been restored in 2009, was still in excellent condition and did not need replacing.

We verified the improvements had been paid for during the contract years by tracing the payments made to the vendors performing the work to the Contractor's check disbursement log. Fair officials had previously reviewed and approved the completion of the above improvements. We therefore concluded the Contractor has satisfied the capital improvements requirements.

Utility Costs

According to the contract, the Contractor is responsible for the cost of all utility connections, service charges and usage charges for the contracted space. However, we found from July 1, 2002 through March 1, 2011, the Fair had paid all utility costs associated with the operation of the contracted space. We spoke with the Fair Director who was unaware of the contract clause, even though he signed the contract renewal on June 3, 2009.

There is one electricity meter for the entire State Fairgrounds and one gas meter specifically for the Art and Home Center, where the contracted space is located. The Contractor primarily operates the Empire and Somerset Rooms, totaling 8,900 square feet in the 55,700 square feet building. In 2010, the Fair paid \$25,810 for the Art and Home Center's gas usage and \$292,478 for the State Fairgrounds' electricity usage. Due to the absence of utility meters for the contracted space, we were unable to determine the value of the utilities consumed by the Contractor. According to Fair officials, they are now working to install utility meters for the contracted space.

Financial Statements

The terms of the contract require the Contractor to provide certified financial statements to the Fair within 90 days of the close of each contract year. Audited financial statements help to ensure accountability by providing an independently examined benchmark against which management can compare reported sales and commission payments. They also help to ensure that the entity remains a going concern that will be able to fulfill its obligations in future years, which is important

for a long term contract such as this. However, we found the audited statements were not submitted for any of the contracted years and that no independent audits had been performed.

The Contractor told us the Fair had waived the audit requirement and, since it had no other reason to incur this cost except to meet the contract requirements, the firm never obtained an audit of its financial statements. In contrast, the current Fair Director indicated he had not waived the requirement, and showed that he had requested copies of audited financial statements for the 2008 contract year on June 3, 2009, the same day the Fair renewed the contract. Although these statements were never provided, there is no evidence that other requests for audited financial statements were made during the contract period and the Fair took no steps to ensure that the Contractor had the required audit performed for 2008 or any subsequent year.

Absent these required reports, the Contractor allowed us unfettered access to its internal financial records, including bank statements and tax returns. We were able to perform other audit tests to verify the accuracy of the revenues reported to the Fair. These tests included comparing and analyzing the Contractor's event listings, sales journal and bank deposits, as well as its income and sales tax returns. Our examination showed reported sales were consistent with these other records.

Catering Menus

Additionally, the contract requires the Contractor to provide the Fair with an updated menu for approval each year, on or before April 1st. This requirement exists to provide the Fair with general guidance regarding the pricing of individual events during the year and begins to provide a level of assurance of overall revenue reported. We found the Contractor submitted a menu for the first year of the contract, as part of its original proposal, but has not provided menus for the last seven years. There was no evidence Fair officials requested the menus.

Recommendations

1. Strengthen contract monitoring practices to ensure compliance with all contract terms.
2. Assess the feasibility of installing separate utility meters related to space operated by the Contractor.

(In responding to our draft report, Department officials indicated separate utility meters have now been installed.)

Audit Scope and Methodology

We audited the Fair's contract award process, as well as the Fair's compliance oversight of its contract with Catering with a Flair. Our audit covered the period from January 1, 2000 through March 1, 2011.

To accomplish our objective we interviewed Fair officials, reviewed the request for proposals and examined contract performance documentation. We interviewed Catering with a Flair representatives; reviewed payments made to the Fair by the Contractor; and examined bank deposits, which we then reconciled to Contractor tax returns. We judgmentally selected five years for our audit testing that was comprised of years that the Contractor both reached and did not reach the annual sales cap. We reviewed documentation in support of capital improvements completed by the Contractor, including payments to vendors who performed the work. We also toured the facility to review the capital improvements.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit 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

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

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

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets 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 recommendations were not implemented, the reasons therefor.

Contributors to this Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



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Andrew M. Cuomo
Governor

Darrel J. Aubertine
Commissioner

December 21, 2011

Mr. John F. Buyce, CPA, CIA, CGFM
Division of State Government Accountability
Office of the State Comptroller
110 State Street – 11th Floor
Albany, New York 12236

Dear Mr. Buyce:

We have reviewed the draft audit report (2010-S-53) issued by the Comptroller's Office regarding the Department's contract with *Catering With A Flair* and would like to offer the following response to address the findings and recommendations.

In the background section of the report, reference is made to the actions that took place during the former Director's tenure that led to his eventual arrest. The Department would like to stress that the former Fair Director's tenure spanned from 1995 to 2005. The current Fair administration, installed in 2007, has labored to improve the Fair's tarnished image. Although both the Offices of the Inspector General and the State Attorney General issued reports in 2010, the most egregious acts reported upon occurred five to fifteen years prior. The current administration continues to work toward building a future for the Fair as a fiscally responsible public entity that is accountable to the tax payers of New York.

The contract with *Catering With A Flair* was terminated effective November 30, 2011. The terms and conditions of any future contract for the operation of the Empire Room will be modified to ensure better compliance and monitoring. For example, the future contract will not include a capital improvement clause, relieving Fair management from the approval and oversight of those expenditures assumed by the Contractor. Additionally, audited financial statements will no longer be required. If audited by the Department, Appendix A, Standard Clauses for New York State Contracts, will provide the Department the authority to request the necessary documents to ensure accountability and long term viability. And lastly, separate utility meters have been installed to capture energy usage related to space occupied by the Contractor. Those costs will be recouped through the future contract.

Please contact Ms. Tracy Robbins, the Department's Director of Internal Audit with any questions regarding this response or if any additional information or documentation is required. Ms. Robbins can be reached at (518) 457-1179.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darrel J. Aubertine', written over a horizontal line.

Darrel J. Aubertine
Commissioner