Thomas P. DiNapoli
COMPTROLLER

OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

FOOD AND BEVERAGE CONCESSION CONTRACT

JONES BEACH STATE PARK

Report 2006-R-2

AUDIT OBJECTIVE

Our objective was to determine whether selected concessionaires of the Office of Parks, Recreation and Historic Preservation (Parks) were complying with contract requirements regarding revenue sharing and administration of the Rehabilitation and Refurbishment account.

AUDIT RESULTS - SUMMARY

Parks has a contract with J&B Restaurant Partners Top Flight Foods LLC (J&B) to operate food and beverage concessions at Jones Beach and Robert Moses State Parks.

J&B is required to pay a monthly commission fee of 15 percent of its gross receipts, less certain specifications to Parks. J&B must also deposit 4 percent of its monthly gross receipts into a Rehabilitation and Refurbishment account (R&R account). According to Parks' records, J&B reported net sales of $10.3 million for the period April 29, 2004, through September 30, 2006. It paid Parks $1.55 million in commission fees, and deposited $412,704 into the R&R account.

We could not determine whether J&B complied with contract requirements regarding revenue sharing since we could not verify whether the revenue J&B reported to Parks reflected actual collections. However, we were able to determine that J&B did not comply with R&R contract terms. In addition, while J&B was required to comply with State and Parks procurement regulations regarding competitive bidding, we found such regulations were not followed by J&B.

J&B uses cash registers as its primary source of collecting and recording revenue. However, neither Parks nor J&B kept complete and accurate records regarding cash register usage. In addition, Parks could not document any periodic attempts to verify the number of registers in use, their specific identities, or their locations. As a result, Parks has no assurance that all J&B collections are being recorded and reported in compliance with contract terms. [Pages 4-5]

Between April 2004 and June 2006, J&B's monthly revenue reports recorded $282,496 in cash register over-rings. An over-ring occurs when a cashier erroneously rings an amount higher than the actual sale. Along with sales tax, these amounts are deducted from reported collections when calculating Parks' share of concession revenue. We reviewed the daily sales reports for May 27 and May 28, 2006, which reported the highest individual over-rings for the period, totaling $79,239. There were no written explanations for the over-rings, or supervisory signatures acknowledging them. This further diminishes assurances that revenue is being reported correctly to the Department. [Pages 5-6]

For the period April 2005 through September 2005, J&B reported $3.7 million in gross revenue to Parks. However, we found that $4.17 million was actually deposited into what J&B stated was its operating account pertaining to this contract: $471,438 more than reported to Parks. Parks needs to investigate this unreconciled difference. [Page 6]

In addition, we observed revenues being collected by cashiers when we visited Jones Beach that could not be traced to the corresponding monthly revenue reports. Accordingly, we cannot attest to the accuracy of J&B revenues reported to Parks. [Pages 4-5]

R&R account expenditures are to be used for replacement and minor refurbishment of the premises and related equipment. All R&R

expenditures must be pre-approved by Parks. R&R account projects awarded to subcontractors are required to be bid out in compliance with State and Parks procurement guidelines. From April 2004 through September 2006, Parks approved R&R expenditures for 74 projects. Due to their respective dollar amounts, 63 of the projects required J&B to solicit telephone quotes or written bids prior to their award. However, for the 63 projects there was no evidence of bid solicitations. [Pages 6-9]

One sub-contractor, which is owned by one of J&B's partners, was awarded 20 of the 74 projects, totaling $109,816. For all 20 projects, J&B noted, on its bid quotation sheets, as having solicited 2 additional vendors for each project. We could not readily verify the existence of the two losing bidders due to incorrect phone numbers and addresses supplied to us by J&B. When we finally were able to contact these two companies, they told us that they did not maintain their files for any bid solicitations they may have received from J&B since they did not win any bids. Further, since J&B did not prepare specifications for its projects, we could not readily determine whether J&B paid a fair amount for the work performed. [Page 8]

Parks also reimbursed J&B $23,000 from the R&R account for maintenance and clean-up work specifically prohibited by the contract. This $23,000 should be redeposited into the account. [Page 9]

Our audit report makes 11 recommendations to improve controls over concession revenue and R&R account administration, and for Parks to follow up on certain matters contained in this report.

This report, dated December 21, 2007, 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

BACKGROUND

The New York State Office of Parks, Recreation and Historic Preservation (Parks) operates 172 parks throughout the State. Parks' Long Island regional office administers all State Park facilities in Nassau and Suffolk Counties, including Jones Beach, Robert Moses, and Captree State Parks**.** Parks has contracts with two Long Island-based vendors to operate food and beverage concessions at these three parks. The contracts outline specific procedures the vendors must follow for collecting and reporting revenue, and for making contract-related expenditures.

In April 2004, Parks entered into a contract with J&B Restaurant Partners Top Flight Foods LLC (J&B) to operate the food and beverage concessions at Jones Beach and Robert Moses State Parks, and 4 Friends, Inc. (4 Friends), to operate the food and beverage concessions at Captree State Park. J&B's current contract expires December 31, 2014, and 4 Friends' contract expires December 31, 2009. Due to the significant issues we identified with the J&B contract during our audit survey, this audit report pertains only to the J&B concession contract.

J&B is required to pay a monthly commission fee of 15 percent of its gross receipts, less sales tax, refunds, and over-rings (an over-ring occurs when a cashier erroneously rings up an amount higher than the actual sale), to Parks. In addition, J&B must deposit 4

percent of its monthly gross receipts into a Rehabilitation and Refurbishment account (R&R account) for concession facility upkeep. According to Parks' records, J&B reported net sales of $10.3 million for the period April 29, 2004, through September 30, 2006. It paid Parks $1.55 million in commission fees, and deposited $412,704 into the R&R account. As of September 30, 2006, $298,347 has been spent on R&R projects. Our audit covered the period April 29, 2004, through October 15, 2006.

AUDIT FINDINGS AND RECOMMENDATIONS

Concession Revenue

J&B operates 13 concession stands at Jones Beach and Robert Moses State Parks. The contract requires J&B to keep accurate books and records to properly account for all concession revenue. J&B uses cash registers as its primary source of collecting and recording revenue. The contract requires J&B to maintain a daily record of sales for each cash register at these concession stands, along with the register's inventory sticker number and location. J&B submits monthly summaries of these records to Parks' regional office as a basis for reporting gross revenue and calculating Parks' monthly commission.

While J&B paid its commissions in compliance with contract time frames, we cannot attest to the accuracy of reported collections. Neither Parks nor J&B kept complete and accurate records regarding the number of cash registers used each day, where they were located on a daily basis, and how much was collected from each. Further, in reviewing a sample of weekly collection reports prepared by J&B, we found that they did not always agree with the monthly summaries submitted to Parks. We also identified that unverified over-rings were deducted from concession revenue data used to calculate Parks' commission. We found discrepancies between reported revenues and contractor bank deposits.

Cash Register Accountability

Parks maintains a database listing each cash register reported to be in use by J&B. The database includes each register's serial number, inventory sticker number assigned by Parks, and assigned location. According to the database, Parks issued inventory stickers for 158 cash registers from contract inception through September 30, 2006. We found that the database was not accurate regarding the number of cash registers being used by J&B or where each register was located. Also, for seven listed registers, there were no corresponding serial numbers. Further, J&B informed us that it did not have its own comprehensive inventory record of its cash registers, and Parks could not document any attempts to verify or reconcile the number of cash registers on its database to the number of registers J&B actually used.

We reviewed J&B's monthly revenue reports for the five months of May through September 2006 (the most active part of the calendar year) and found that the number of cash registers J&B listed on the reports changed from month to month. For the five monthly reports reviewed, J&B listed 165, 166, 144, 153, and 156 cash registers, respectively. J&B officials stated the reason for the variances was that not all of its cash registers are used each month. However, they did not explain how the number of cash registers for two of the months exceeded the 158 that were in Parks' database. Parks officials could not explain the cash register variances either.

To verify the accuracy of Parks' cash register database, we made several visits to Jones Beach and Robert Moses State Parks between July and October 2006 to account for the 158 registers listed, and to trace selected in-use machines back to the associated monthly revenue reports. Our results are as follows:

- We could not initially locate 35 of the 158 cash registers listed on Parks' database. Upon completion of our field work, Parks informed us that they had located most of the missing machines in a locked storage room. Some of the registers we did not locate were either on loan to other J&B business enterprises on the dates of our observations, or discarded. Although J&B machines being in storage or on loan during our visits in and of itself is not a problem, neither Parks nor J&B had an updated record of their actual locations, rendering the detailed information on the database and revenue reports inaccurate.

- At Jones Beach, we observed one portable cash register in use and recording sales on three separate visits in August 2006. This cash register's inventory sticker number was not listed on the August 2006 monthly revenue report as having recorded sales on any day in August. Thus, we could not trace its sales to the monthly revenue report.

  J&B officials also informed Parks that it inadvertently recorded the collections from a register not listed on the August 2006 revenue report under the collections of another listed register.

- We observed two other cash registers with no Parks' inventory stickers attached recording sales on one of our August visits. Since J&B's monthly revenue reports did not list serial numbers, we could not trace the sales from these registers to the August revenue report either.

Parks officials also informed us that, moving forward, they are taking steps to account for all contract-related registers. We recommend that they also perform periodic unannounced field visits to J&B concession areas to help ensure the integrity of the cash register database and monthly revenue reports.

Over-rings

J&B is permitted to deduct over-rings from the gross revenues recorded on its monthly revenue reports to Parks. When an over-ring occurs, cashiers are required to contact their respective supervisor, denote the reason for the over-ring (e.g., slip of the finger) and obtain the supervisor's signature on the daily cashier deposit sheet, illustrating his/her acknowledgement of the over-ring. For example, if the cashier rings up a one-dollar sale as a two-dollar sale, the result is a one-dollar over-ring.

Between April 2004 and June 2006, J&B's monthly revenue reports deducted $282,496 in over-rings from its gross revenues. We reviewed the daily sales reports for May 27 and May 28, 2006, the dates that reported the highest individual over-rings in our review period. J&B staff did not document the nature of these over-rings (e.g., cashier error), which totaled $79,239, nor did they document evidence of supervisor acknowledgement thereof. Therefore we could not verify the validity of these over-rings.

Bank Deposit Discrepancies

To assess the reasonableness of J&B's reported revenue, we attempted to reconcile

its monthly revenue reports for April through September 2005 to amounts deposited by J&B into its concession-related bank account(s) for the same period. We did not perform a similar reconciliation for any months in calendar year 2006 because J&B changed banks for that period, and the new bank statements did not contain sufficient transaction details to isolate revenue deposits.

J&B reported $3.7 million in gross revenue to Parks for our sampled period. However, $4.17 million was actually deposited by J&B into its concession-related bank account(s) for the same period, $471,438 more than reported to Parks. When asked, J&B officials informed us that the difference must be due to timing differences and non-revenue deposits. However, no supporting evidence (such as internally-prepared bank-to-book reconciliations, or account transfer slips) was supplied to support these assertions.

Considering the lack of accountability over J&B cash registers, the collections we were not able to trace to revenue reports, the unreconciled differences between reported revenues and cash deposits, and the absence of Parks oversight, we cannot attest to the accuracy of J&B's reported revenues to Parks.

Recommendations

1. Perform a periodic comprehensive physical inventory of J&B cash registers. Update Parks' cash register database as appropriate and share updates with J&B.
2. Revise J&B's monthly revenue reports to account for all of its cash registers, whether in use or not. Include register serial numbers on the reports.
3. Perform periodic unannounced field visits to J&B concession areas to help ensure the integrity of the database and monthly revenue reports.
4. Require J&B to document the circumstances surrounding each over-ring (e.g., cashier error) as well as supervisory acknowledgement. If not satisfactorily documented, add the over-ring amount back to gross revenues and collect the appropriate commission.
5. Investigate the unreconciled difference between J&B's reported concession revenues and associated bank deposits noted in this report. If unreported revenues are identified, recoup Parks' appropriate share. Perform periodic reconciliations of these records thereafter.

Rehabilitation and Refurbishment Account

According to the contract, J&B was required to establish an R&R account to be used for the replacement and minor refurbishment of concession premises and related equipment. All R&R expenditures must be pre-approved by Parks. Funds from this account are not to be used for routine maintenance and repairs, which are the sole responsibility of J&B. The account is financed by monthly deposits from J&B, calculated as 4 percent of gross sales after sales tax and over-rings. At contract termination, any remaining R&R monies, as well as any purchased equipment items, remain the property of Parks. J&B deposited $412,550 into this account during the audit period.

If requested by Parks, J&B is required to prepare an annual budget scheduling its proposed R&R project expenditures. The budget allows Parks to provide J&B with useful feedback regarding the nature, justification, and estimated cost of proposed projects before any individual projects are initiated. However, neither J&B nor Parks provided us with such a budget for the audit period. Further, Parks officials informed us

that they did not request any annual budgets during our audit period.

Bank statements from this account are required to be mailed directly from the bank to Parks so Parks' officials can monitor R&R account activity (e.g., deposits, payments, etc.). In addition, checks issued on this account require dual signatures (Parks and J&B) to ensure Parks approval before monies are expended. Further, the R&R checkbook is to be maintained in the custody of Parks.

The R&R checks required dual signatures, and the checkbooks were in the custody of Parks. However, J&B received the original bank statements and forwarded photocopies to Parks. We traced selected photocopies to the originals maintained by J&B to assess their integrity. No discrepancies were found.

Our audit of R&R account activity identified a number of questionable expenses and practices.

Competitive Bidding

J&B is responsible for soliciting competitive quotes or bids when awarding R&R contracts to sub-contractors or making contract-related purchases. The purpose of competitive bidding is to obtain the best possible price from a qualified bidder. According to New York State's procurement guidelines, projects over $2,500 require a minimum of three telephone quotes - or for more expensive projects, formal written bids. Under Park's practice, which is more stringent, J&B was required to obtain three quotes for any project over $1,000. Fundamental to soliciting meaningful quotes or bids is that accurate comprehensive project/product specifications should be shared with the potential bidders.

To initiate an R&R expenditure, J&B is required to submit an Authorization Request Form (Authorization form) to Parks. The Authorization form describes the project, estimates the project cost, and proposes a vendor/subcontractor based on quotes and bids received in response to J&B solicitations. J&B requested funds for 80 R&R projects during the period April 2004 through September 2006. At the time of our audit, Parks had approved and paid for 74 of these projects totaling $298,347. Based on Parks' guidelines, 63 of these projects required either competitive quotes or written bids prior to contract award.

We obtained the bid packages from Parks for the 63 projects over $1,000; however, we did not find written bid solicitations to vendors, or project specifications for any of the projects. As such, we do not know which vendors were actually solicited to bid or what the vendors were actually asked to bid on. According to J&B officials, they solicited quotes and bids and gave project specifications by telephone. They documented neither the time and place of such phone calls, nor the specific vendor contacts.

Our further review of project files leads us to conclude that J&B did not employ an open and competitive bidding process. For example, J&B continually awarded, and Parks approved, contracts to the same sub-contractors, thereby preventing other potentially-qualified vendors from competing for the projects. These actions not only violated the terms of the contract, but may have resulted in additional costs to Parks for the work.

We found that one vendor was awarded 20 of the 74 approved projects, totaling $109,816, or 37 percent of the total R&R expenditures. Upon inquiry, we were informed that one of the principals of this vendor was also a principal of J&B. We also noted that, for all

20 projects awarded to this J&B-affiliated vendor, the same 3 vendors were reportedly solicited for quotes in each case. In each of the 20 cases, the affiliated vendor was the consistent low bidder. Upon further inquiry, using the vendor names, addresses and telephone numbers printed on their reported bid quotation sheets, we attempted to verify that the two losing vendors were legitimate businesses. Our verification procedures included internet searches, telephone calls, and visits to reported vendor locations. In both cases, the telephone recordings did not identify the name of the vendors. No one returned our calls when we reached these numbers, and the address for one vendor led us to a building with no indication of a business tenant name. When we presented these issues to J&B, they did not offer immediate responses but said they were sure their bidding activities were appropriate and would get back to us.

In response to our observations, Parks provided us with the names and telephone numbers for the reported principals of the two previously-unlocated vendors. They also provided us with written affidavits from these individuals, indicating that each had moved their respective business locations and changed their telephone numbers during the last year - thus explaining why we could not initially get in touch with them. When we called the new phone numbers, the respective voice mails still did not identify any business enterprise. However, the individuals claiming to be those named in the affidavits did return our call. Although all stated that they recalled having received bid or quote solicitations from J&B in the past, they said they did not maintain any files on these solicitations since they were not awarded the projects. Thus, we could not verify which projects they were solicited for, whether J&B forwarded any project specifications to them, or whether the quotes noted by J&B were the actual quotes cited by these vendors.

During our review of the project files, we also found two memos between Parks' regional staff and its central office staff, dated in April and May 2005, respectively, where regional staff questioned the validity of J&B's bidding process because they saw an insufficient variety of vendors being solicited for R&R projects. Central office officials responded that it was okay to approve the projects as is but that regional staff should inform J&B that a wider variety of bidders should be solicited in the future. No further communications on this issue were available. However, we note that 11 of the 20 projects awarded to the affiliated vendor were awarded after May 2005.

We also found J&B awarded 13 projects for electrical work, totaling $17,605, to another vendor. There was no evidence of bidding for any of these projects.

Considering all the above noted circumstances, Parks must immediately intercede in J&B's R&R account contract award process. Parks must enforce J&B's compliance with State and its own procurement regulations, and correct the noted deficiencies.

Other R&R Issues

We identified the following issues regarding the R&R account:

- We randomly selected 31 of the 74 projects to determine whether the contracted work was actually performed. It was not possible for us to verify all of the 31 projects and purchases, since some projects, such as electrical wiring, were inside a wall or ceiling; and some product parts

were placed inside a larger equipment item. However, we were able to verify 12 readily-visible projects, such as an awning replacement and equipment purchases.

- For the 63 projects that required competitive quotes or bids, there was no evidence of Parks' pre-approval as provided for on the Authorization Request Form. In fact, for 56 of the 74 projects reviewed, work was already completed by sub-contractors before Parks approved the project expenditures. Authorization forms for these 56 projects were dated subsequent to the invoice dates submitted by vendors. In fact, 11 of the projects had already been paid for by J&B before requesting Parks' approval for the project expenditures (a total of $85,992).

  Parks offered reasons for J&B not securing the required prior approvals. For some cases, Parks said that time constraints, such as preparations for the Memorial Day weekend, justified J&B moving ahead with certain projects and seeking subsequent approvals. In other instances, Parks informed us that J&B was under the impression that it had "blanket" approval to perform certain R&R projects.

- Our review of R&R project files also determined that J&B was reimbursed $23,000 for routine maintenance and clean-up work specifically prohibited for R&R reimbursement by the contract. The reimbursement request was paid on November 10, 2005, for work reportedly performed at contract inception, 527 days earlier. In response to this issue, Parks informed us that there was a pre-existing understanding that they would reimburse J&B for these costs but there were insufficient funds available in the account when the work was performed. However, Parks officials said that they did not view this reimbursement as being prohibited by the contract.

We referred these matters to the Office of the State Comptroller's (OSC) Investigations Unit. OSC Investigations plans to refer this matter to local law enforcement.

Recommendations

6. Require J&B to prepare and submit an annual budget and schedule of proposed expenditures to be made from the R&R account, in accordance with the terms of the contract. Do not reimburse J&B for any projects until the required pre-approval is provided.

7. Instruct the R&R account depository to mail the monthly bank statements directly to Parks.

8. Require J&B to prepare written project specifications to accompany all quotes and bid solicitations for projects over $1,000. Do not reimburse J&B for any projects where specifications have not been prepared.

9. Require J&B to develop and utilize an expanded vendor listing to promote true competition when awarding R&R sub-contracts. Periodically assess the integrity of said listing.

10. Investigate J&B's practices noted in our report and take corrective action where appropriate.

11. Recoup the $23,000 paid to J&B paid for required maintenance and clean-up.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. The objective of our audit was to determine whether select Parks' concessionaires were complying with contract requirements regarding revenue sharing and R&R account administration. Our audit covered the period April 29, 2004 (contract inception), through October 15, 2006.

To achieve our objectives, we examined the concession contracts and associated documents, reviewed selected monthly revenue reports, analyzed Parks' database of cash registers, and performed site visits to parks. We also reviewed selected cash register tapes, bank deposits, and bank statements; and interviewed both Parks and contractor staff. In addition, we reviewed R&R project files and performed internet research.

In addition to being the State Auditor, the Comptroller performs 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

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.

REPORTING REQUIREMENTS

We provided Parks officials with a draft copy of this report for their review and comment. Their comments were considered in preparing this report and are included as Appendix A. Parks officials concurred with most of our recommendations. They also indicated that they have asked the State Inspector General's Office for assistance in investigating certain cited practices relating to J&B.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner 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, if not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Frank Patone, Anthony Carbonelli, Peter Blanchett, Aurora Caamano, Carole Le Mieux, Natalie Sherman, and Sue Gold.

APPENDIX A - AUDITEE RESPONSE

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
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Eliot Spitzer
Governor

Carol Ash
Commissioner

November 1, 2007

Mr. Frank Patone
Audit Manager
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 William Street - 21st Floor
New York, New York 10038

Re: Audit Report 2006-R-2
Concession License X000683
J&B Restaurant Partners Top Flight Foods LLC

Dear Mr. Patone:

The draft Audit Report 2006-R-2 (hereinafter the "Report") on the Contract X000683 between the New York State Office of Parks, Recreation, and Historic Preservation ("State Parks" or the "Agency") and J&B Restaurant Partners Top Flight Foods LLC ("J&B") has been received and reviewed by our Agency. We appreciate the Comptroller's office staff review of concession operations at Jones Beach State Park.

The Report finds, on page 7, that "J&B did not employ an open and competitive bidding process", and, on page 9, indicated that these matters have been referred "to the Office of the State Comptroller's Investigations Unit for further review." The Report also recommends (Recommendation # 10 on page 9) that State Parks conduct its own investigation of "J&B's practices as noted in our report and take corrective action where appropriate." We take the findings and recommendations of the State Comptroller's Office very seriously and we have asked the State Inspector General's Office for assistance in this regard. We also have instructed our staff to retain all documents and records relating to this matter pending these further investigations.

Attached is a summary of the agency's staff-level response to the other ten (10) Recommendations contained in the Report. Generally we concur with the recommendations and already have instituted corrective action.

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State Parks recognizes the effort by the OSC audit team, and appreciates the thoroughness of their review. Thank you for the opportunity to respond to the recommendations put forth by your staff in the report.

Sincerely,

Peter C. Finn
Deputy Commissioner for Finance and Administration

cc.: Mr. Glen Bruening, General Counsel
Mr. Daniel Kane, Deputy Commissioner for Operations
Mr. Ronald Foley, Regional Director, Long Island Region

Attachment

Concessions Management Bureau

Memorandum

Date: 31 October 2007

To: Peter Finn
Deputy Commissioner for Finance and Administration

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

Subject: OSC Audit
Concession License X000683, Jones Beach and Robert Moses Food and Beverage
Concessionaire: J&B Restaurant Partners Top Flight Foods LLC

The draft Audit Report 2006-R-2 on Concession License X000683 between the New York State Office of Parks, Recreation, and Historic Preservation ("State Parks" or the "Agency") and J&B Restaurant Partners Top Flight Foods LLC ("J&B") has been received and reviewed by both Albany Office and Long Island Region staff.

The draft Report does appropriately highlight several areas in need of improvement and, as noted in the more detailed response below, most of those recommendations have already been implemented and some were in place during the 2006 season (during the period of audit review). We agree that concession operations at a place like Jones Beach are a potential "high risk" area and require careful scrutiny and tight controls and procedures. We believe our partnership with J&B evidences a commitment by both parties to maintaining a high quality, efficient and revenue-producing operation for years to come.

Response to Draft Report Recommendations

Recommendation #1: Periodically perform a comprehensive physical inventory of J&B cash registers. Update Parks' cash register database as appropriate and share updates with J&B.

> Response: Implemented. The cash register database is now current. As the operating season progresses and additional machines are brought online to meet customer service demands, the Long Island Region will monitor the use of registers and point of sale units on a regular basis through unannounced inspections. Beginning with the 2007 operating season, the Region introduced a new procedure to track movement of machines from one location to another, and in and out of service (such as units taken off premises for repair).

Recommendation #2: Revise J&B's monthly revenue reports to account for all of its cash registers whether in use or not. Include register serial numbers on the reports.

Response: Implemented. The monthly revenue reports currently include a unique State Parks' identification number for each unit, which is linked to the serial number of that unit.

Recommendation #3: Perform periodic unannounced field visits to J&B concession areas to help ensure the integrity of the database and monthly revenue reports.

Response: Implemented. This is standard Agency practice; since the inception of the J&B contract the Region and Albany Office have conducted over 900 cash counts at Jones Beach and Robert Moses State Parks to test the accuracy of the cash register operations. This process will continue, and our inspectors will be instructed to pay particular attention to register identification on the revenue reports.

Recommendation #4: Require J&B to document the circumstances surrounding each over-ring (e.g., cashier error) as well as supervisory acknowledgement. If not satisfactorily documented, add the over-ring amount back to gross revenues and collect the appropriate commission.

Response: Implemented. It is existing Agency practice that over-rings are to be documented, and J&B substantially complies with this procedure. A test sample on Memorial Day 2007 found that all over-rings were satisfactorily documented. We will reinforce to J&B the need for documentation of all over-rings.

Recommendation #5: Investigate the unreconciled difference between J&B's reported concession revenues and associated bank deposits noted in this report. If unreported revenues are identified, recoup Parks' appropriate share. Perform periodic reconciliations of these records thereafter.

Response: No action is necessary. Maintenance of separate depository accounts is not a requirement under the contract. The audit did not identify any unreported revenues and J&B has since changed its accounting and banking practices (as noted in the Report).

Recommendation #6: Require J&B to prepare and submit an annual budget and schedule of proposed expenditures to be made from the R&R account, in accordance with the terms of the contract. Do not reimburse J&B for any projects until the required pre-approval is provided.

Response: Partially Implemented. State Parks meets with J&B on an annual basis to discuss anticipated R&R projects. Pre-approval is not always possible given the nature of the concession; however, no payments are issued until costs are verified as necessary and reasonable.

Recommendation #7: Instruct the R&R account depository to mail the monthly bank statements directly to Parks.

Response: Implemented. The audit team was advised of this before the audit report was issued.

Recommendation #8: Require J&B to prepare written project specifications to accompany all quote and bid solicitations for projects over $1,000. Do not reimburse J&B for any projects where specifications had not been prepared.

Response: Partially Implemented. As noted in the Report, the R&R form used by J&B is outdated, as the $1,000 threshold no longer applies. While the concession license does not specify thresholds for procurements, we have adjusted the level (to $2,500) to reflect prevailing state purchasing procedures. As specified by contract, written specifications are required in those instances in which they assist in confirming reasonableness of price.

Recommendation #9: Require J&B to develop and utilize an expanded vendor listing to promote true competition when awarding R&R subcontracts. Periodically assess the integrity of said listing.

Response: Partially Implemented. We will take adequate measures to assure that the contract standard of reasonableness of price is satisfied.

Recommendation #10: Investigate J&B's practices noted in our report and take corrective action where appropriate.

Response: As noted in the Report, this matter has been referred to OSC Investigations for further review. This agency does not have its own internal investigations capability. Upon completion of the OSC investigation, the appropriate corrective actions will be taken.

Recommendation #11: Recoup the $23,000 paid to J&B for required maintenance and clean-up.

Response: We do not concur. The referenced services were a one-time event, approved by Parks, and consistent with the transition from one operator to another. The costs for the clean up of the concession stands were necessary and reasonable under the circumstances, and we consider this an acceptable use of the R&R Account; no adjustment to the account is required.

It should be noted that the Report implies in several instances that J&B failed to account for all revenues received and, therefore, the state may not have received its full payment under the contract. The record shows that from 2004 to 2006, J&B's gross receipts averaged more than 26% higher than the three prior years, while the license fee payments to the state were 28% greater than through the previous concessionaire. In three years, J&B has taken the concession operations at Jones Beach from $1.8 million per year in gross sales and $265,000 in revenues to the state to $2.8 million per year in gross sales and $418,000 in revenues to the state – an increase of 57%. Revenues to the state on a per visitor basis have increased 43% (more than 14% per year) under J&B.