



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Jorge M. Gonzalez, City Manager
VIA: Kathie G. Brooks, Budget and Performance Improvement Director
FROM: James J. Sutter, Internal Auditor

DATE: December 15, 2009
AUDIT: Convention Center Catering and Concession Services Agreement (Centerplate)
PERIOD: March 1, 2007 through March 31, 2009

This report is the result of an audit performed in accordance to our Audit Plan on the agreement between the City of Miami Beach (the "City") and Service America Corporation d/b/a Centerplate for Convention Center Catering and Concession Services.

INTRODUCTION

On April 11, 2006, the City issued Request for Proposals (RFP) No. 22-05/06, to Provide Professional Food and Beverage Facilities Management Services at the Convention Center. The RFP also reflected the City's decision to remove a prohibition restricting the Convention Center's concessionaire from hosting local social catering events. On September 6, 2006, the City adopted Resolution No. 2006-26316, accepting the proposal submitted by Centerplate. Although executed on December 2007, the Catering and Concession Services Agreement with Centerplate commenced its initial term as of March 1, 2007, ending on September 30, 2012, with an option by the City to extend it for two successive five-year terms. Prior to this Agreement, Service America Corporation provided food and beverage services to the Convention Center and the Jackie Gleason Theatre. The Concession Agreement with Service America Corporation expired on February 28, 2007.

At the time the current Agreement was executed, the Convention Center was managed and operated by SMG. However, since October 1, 2008, the facility is being managed and operated by Global Spectrum, a subsidiary of Comcast Spectator. The Director of Tourism and Cultural Development is the City's designee to monitor compliance with the Agreement.

As consideration for the rights to provide Catering and Concession Services at the Convention Center, Centerplate agreed to pay the City or its designee a guaranteed minimum annual rent of \$1,250,000, or an increasing percentage (25.5% to 33.0%) commission based on gross receipts from food and beverage sales, whichever is greater. For any partial contract year, the minimum annual rent shall be pro-rated on a monthly basis. Centerplate also agreed to invest \$800,000 as the Initial Capital Investment for improvements to the facility, as well as contribute annually to the following funds: (1) Capital Reserve – 1.5% of gross receipts from food & beverage sales; (2) Marketing Reserve – 1.5% of gross receipts from catering services, and a one-time deposit of \$50,000 as an advance towards the contribution due; and (3) Scholarship – a contribution of \$20,000. Reports of gross receipts and commission payments were received by SMG and Global Spectrum for the City. Rent and commissions earned for the periods below were as follows:

Internal Audit Report
Convention Center Catering and Concession Services Agreement
December 15, 2009

Period Covered	Prorated Minimum Guarantee	Rent and Commissions Paid	Adjustment For New Contract Rate	Rent and Commissions Earned
03/01/2007 – 09/30/2007 ⁽¹⁾	\$ 729,166	\$ 962,663	(\$233,497)	\$ 729,166
10/01/2007 – 09/30/2008 ⁽¹⁾	\$1,250,000	\$1,140,307	\$233,497	\$1,373,804
10/01/2008 – 09/30/2009 ⁽²⁾	\$1,250,000	\$1,379,187	-0-	\$1,379,187
	\$3,229,166	\$3,482,157	-0-	\$3,482,157

(1) Actual rent and commission payments was greater than shown by \$233,497 for March-September 2007, and less for FY 2008 by the same amount, respectively \$962,663 and \$1,140,307 for each period. This resulted from payment adjustments made in FY 2008 for commission percentage reductions from the old contract (28.5%) to the new contract (25.5%), and the monthly pro-rating for the minimum annual rent of \$1,250,000 for the seven months duration of the partial contract year.

(2) Rents and commission earned for the audit period amounted to \$952,081. The twelve month period for FY2008/09 is reflected in the above table for comparison purpose.

OVERALL OPINION

As a result of our testing during the audit, we were able to confirm that Centerplate is providing the City with adequate reports of gross receipts from food & beverage and catering sales, as well as adequate payment on commissions due based on these sales. Centerplate is also complying with other terms of the Agreement, such as training programs for its personnel, approval of menus and prices, and reserve funds for marketing and scholarship purposes. However, results from our testing identified deficiencies in reference to the initial capital investment and capital reserve fund, insurance coverage, and Global Spectrum's oversight of Centerplate's monthly reports on gross receipts and commission payments. Areas identified for corrective action include the following:

1. The balance of \$155,021 of the initial \$800,000 capital investment remained unspent after the expiration of a twelve month period following execution of the Agreement.
2. Centerplate contributed the required amount to the capital reserve fund during FY 2008, but made an incorrect adjustment for the prior contract year, leaving a shortage of \$37,390 in the reserve account. An Annual Statement of Amounts Expended from the Capital Reserve is not being provided to the City's designee.
3. Centerplate has not obtained coverage of Professional Liability Insurance for claims of negligent errors, acts or omissions. There was also a time gap in coverage for Liquor Liability Insurance from October 1, 2007 to September 30, 2008.
4. Global Spectrum is not reviewing the accuracy of gross receipts and commission payments when they receive the monthly reports from Centerplate.

Additional details regarding the above mentioned areas in need of correction have been provided on the Findings, Recommendations, and Management Responses section of this report.

PURPOSE

The purpose of this audit is to ensure that Centerplate is complying with the terms and provisions of the agreement with the City for Catering and Concession Services at the Convention Center.

SCOPE

1. Determine compliance with the terms of the agreement regarding: monthly payments of minimum annual rent guarantee and commissions for food and beverage sales; liability insurance and performance bond coverage; training of Centerplate personnel; approval of menus and prices; and liquor license requirements.
2. Verify that Global Spectrum is reviewing monthly commission reports to ensure adequacy of payments by Centerplate and recording them in the Convention Center's Financial System in a timely manner.
3. Determine adequacy of funding and expenditures for the Initial Capital Investment and reserve funds.

FINDINGS, RECOMMENDATIONS, AND MANAGEMENT RESPONSES

1. Finding – *Initial Capital Investment Unspent Balance is Owed to the City.*
Pursuant to RFP No. 22-05/06, Section 4.1 of the Agreement required Centerplate to make an initial capital investment of \$800,000 for improvement and/or modifications to the Convention Center's service areas and service equipment. Capital investment expenditures were to be made during the 12 months following execution of the Agreement, i.e., by the end of December 2008. The Agreement also states that if any portion of the initial capital investment remains unspent following the expiration of the twelve month period, Centerplate shall make a lump-sum payment for this amount to the City, within 15 days after receipt of the City's written request.

According to Centerplate's Asset Report (AM260) dated April 21, 2009, a total of \$644,979 was used for capital expenditures through December 31, 2008, leaving \$155,021 as a remaining unspent balance. Various amounts were provided by Centerplate's officials during our audit, including a remaining balance of \$82,850 was provided to the Director of Tourism and Cultural Development on October 6, 2008. However, this and the other amounts mentioned above were based on capital investments that had been discussed or identified as necessary, but not purchased by the end of the twelve month period. We requested evidence of a purchase order or purchase record for these capital assets on several occasions, but it was never provided by Centerplate. Initially, there is no evidence of approval by the City or by SMG/Global Spectrum officials for the deferred purchase and/or installation of capital assets. It was subsequently determined that both the City and the Concessionaire agreed to the deferral of the unspent balance for other ongoing capital projects.

Recommendation(s)

The City and the Concessionaire should better document the justifications and approvals for any unspent balances at the end of the twelve month period following the execution of the Agreement. This should include whether the deferred purchase or installation of capital assets by Centerplate should be allowed as deductions to this remaining balance.

City Management's Response

At the end of the initial period of the City's Agreement with Centerplate, the Kosher Kitchen improvements were not yet completed. After consulting with the City Manager's Office, approval was given to Centerplate to rollover the funds for those improvements. Additionally, at the time, the new walk-in coolers were not order or installed.

Improvements to the Kosher Kitchen are now underway and will cost \$50,000. The new walk-in coolers have since been installed as of August 2009. After these two projects, the current balance in the Capital Investment Fund is \$17,797.

At the time this was originally reviewed, the Administration was considering whether or not to use the remaining funds to improve the 3rd Floor Center Pod area with a revenue generating restaurant operation. The Convention Center Advisory Board (CCAB) reviewed options which were researched by Centerplate and Global Spectrum in October. The CCAB recommended in favor of Sushi Bar in the 3rd Floor Pod using \$10,000 from the remaining balance of Capital funds. The Administration has since reviewed the CCAB's recommendation and authorized Centerplate and Global Spectrum to proceed with the project.

Concessionaire's Response

Centerplate made the City aware of a balance in the capital reinvestment on 10/07/08. The expense of installing the cooler had been expensed to the PAR on one report, but not on another asset report. The actual demolition and installation of the cooler needed to wait until there was some down time so that it would not interfere with servicing events. The kosher kitchen was also on hold until we could get a breakdown of what was actually needed to make it operational. Currently, there is \$17,797 left in the capital reinvestment PAR. We expect that will be applied to the 3rd Floor Pod Restaurant build-out.

2. Finding – Capital Reserve Fund.

Section 5.7 of the Agreement requires that starting October 1, 2007 and each contract year thereafter, Centerplate is to contribute to a capital reserve fund an amount equal to 1.5% of gross receipts from food & beverage sales for the immediately concluded year. The Agreement also states that Centerplate shall use the capital reserve fund for any necessary repairs, maintenance or replacements of the Service Equipment, Facility Goods, and Small wares, and that unused amounts from this fund be carried from year to year, The Agreement further indicates that any funds remaining in the reserve at the end of the initial term, September 30, 2012, and/or a renewal term, shall be paid to the City and requires Centerplate to furnish, no later than April 1st of each contract year, a statement of amounts expended from the reserve during the preceding contract year.

- a) We verified that Centerplate made monthly contributions totaling \$41,830 to the capital reserve fund from March through September 2007, the first contract year or "stub year," although the new Agreement was not executed until December 2007. During this time Centerplate maintained two accounts in its General Ledger, one account (#218901) contained the activity from the old contract and the other account (#218910) for the new contract's activity. Two of the stub year's contributions continued to be posted to the old account and the rest to the new account. Second contract year contributions were made to both contract accounts, but an adjustment of \$41,830 was made for the purpose of reversing the stub year's contribution remaining in these accounts. This resulted in a net fund contribution shortage of \$37,390 for the first two contract years as shown in the table below:

Internal Audit Report
 Convention Center Catering and Concession Services Agreement
 December 15, 2009

Fiscal Year	Gross Receipt	Capital Reserve 1.50%	Net Contributions	Difference
2006/07	\$2,788,684	\$41,830	\$41,830	\$0
2007/08	5,278,246	79,173	41,783	37,390
	<u>\$8,066,930</u>	<u>\$121,003</u>	<u>\$83,613</u>	<u>\$37,390</u>

Centerplate's Controller subsequently acknowledged that he had misunderstood contractual obligations for the stub year when he reduced the new contract's account balance by \$41,830. It should be noted that Centerplate provided reports of additional expenditures absorbed by them amounting to \$125,479, but were not posted to the reserve accounts during the same time period.

- b) For the months reviewed as part of our sample (five out of twenty-four months (21%) randomly selected), we noted that the Monthly Commission Package sent by Centerplate to SMG and Global Spectrum included a summary report of capital reserve accrual, expenses and adjustments, and starting and ending balances. The Director of Tourism and Cultural Development also provided us with a copy of a Balance Sheet Reconciliation report received from Centerplate. However, this is only an internal report used by Centerplate that does not provide a clear statement of capital reserve contributions and expenses for review by a City official.

Recommendation(s)

To ensure compliance with the Agreement, we recommend that Centerplate replenish the balance in the capital reserve fund to its required level by reversing the erroneous adjusting entry of \$41,830. In addition, proper accountability of contributions and expenditures for the capital reserve fund is a matter that requires attention, since the City will have the right to any funds remaining at the end of the initial and/or renewal terms. Therefore, we also recommend that Centerplate furnish the City's designee, the Director of Tourism and Cultural Development, an adequate statement of contributions and amounts expended from the capital reserve fund.

City Management's Response

Management agrees with the recommendation from Internal Audit and will ensure those items are corrected immediately. Monthly reports will now be required with copies to Global Spectrum and the Cultural Arts & Tourism Development Director.

Concessionaire's Response

During the first nineteen (19) months of the new contract, Centerplate absorbed over \$125K in expenses for necessary repairs, maintenance and replacements of the service equipment, facility goods and smallwares. Between Oct 2008 and June 2009, Centerplate had incurred an additional \$47K in expenses above and beyond the contributions and expenses to the replacement reserve. A summary of the \$172K in paid invoices was provided to the city auditor on 06/10/09.

3. Finding – Lack of Insurance Coverage.

Centerplate was not able to provide evidence of coverage for two out of eight types of insurance required under the Agreement [*Commercial/General, Excess/Umbrella, Automobile, Professional, Employment Practices, Liquor, Personal Advertising and Workers*

Internal Audit Report
Convention Center Catering and Concession Services Agreement
December 15, 2009

Compensation]. Professional Liability Insurance with coverage of at least \$1,000,000 was not obtained for the duration of the Agreement for claims of negligent errors, acts or omissions. We also noted a time gap in coverage for Liquor Liability Insurance, for the required coverage limit of \$1,000,000 per occurrence from October 1, 2007 to September 30, 2008. After the conclusion of the audit, the Director of Tourism and Cultural Development provided us with a clarification given by Centerplate's General Manager on Professional Liability Insurance. This indicated that the type of coverage provided by this insurance is not specific to the food and beverage operation provided by Centerplate. The City's Risk Manager was consulted on this matter and he concurred that this type of coverage is not required for Centerplate's operation.

Recommendation(s)

City officials and/or Global Spectrum should ensure that the annual certificates of insurance provided by Centerplate include all the types of insurance coverage required by the Agreement with Centerplate. The City should consider whether an amendment to the Agreement is necessary to remove Professional Liability insurance as one of the required types of insurance coverage.

City Management's Response

This was an oversight that should not have occurred. All insurance requirements are now current, except for the Professional Liability Insurance Coverage. Centerplate has since advised the City that this is not a typical type of insurance coverage they carry as food service operators and Professional Liability Insurance is more commonly known as malpractice coverage or errors and omissions (E&O) coverage; covers liability for damages arising from the rendering of or failure to render professional services. The City's Risk Manager, on July 27, 2009, confirmed this and agreed that it is not required for food and beverage service.

Concessionaire's Response

Centerplate agrees there should be an amendment to the contract removing professional liability coverage as necessary.

4. Finding – Review of Monthly Commission Package from Centerplate.

Global Spectrum receives Monthly Commission Package from Centerplate with various reports of gross receipts from food & beverage and catering sales, supporting documentation, and a check for payment of commissions due from these sales. We discussed the procedures used by Global Spectrum to verify accuracy of gross receipts reported and commission payments received. However, Global Spectrum's Finance Director indicated that the workload during the transition process from SMG to Global Spectrum had not allowed him to do a proper review of the information contained in these reports; which he also considered necessary.

Recommendation(s)

While we did not note any errors in the sample tested (five out of twenty-four months (21%) randomly selected), we recommend that as part of their procedures when receiving the Monthly Commission Package from Centerplate, Global should verify the accuracy of gross receipts reported for food & beverage and catering sales to the supporting documentation provided, to ensure commission payments are proper.

City Management's Response

The City Administration and Global Spectrum conduct monthly internal finance meetings at the end of each month. This item will now become a required agenda item to ensure Global Spectrum verifies the monthly commissions.

Internal Audit Report
Convention Center Catering and Concession Services Agreement
December 15, 2009

Global Spectrum's Response

It is not the intention of the Miami Beach Convention Center to neglect to review any portion of the detailed monthly informational package submitted by Centerplate detailing their sales and commission payments.

Each monthly package contains the Statement of Gross Receipts, Monthly Commission Report, Subcontractor Gross Revenue Reports, Subcontractor Daily Report Copies, Event Summary by Day Report, Event Summary Sales Report Copies, Weekly Sales & Cash Reports, and a Florida State Sales Tax Reconciliation. The Statements of Gross Receipts and Monthly Commission Report summaries are reviewed monthly and used for recording and calculating each event's revenues and commissions.

The detail that is behind the revenue figures have not been reviewed, however, with all of the information available for review at any time and with the current relationship with Centerplate, it is reasonable that we can review and address any issues from previous months if we are unable to review immediately.

Procedures will be established so that every month not only will the revenues and commissions be reviewed, but the detail and supporting documentation will be reviewed and discrepancies addressed.

EXIT CONFERENCE

James Sutter and Luis López held exit meetings with Max Sklar, representing the City, on September 25, 2009, and on, November 13, 2009, with Eric Bayne and Ray Thurston for Centerplate, and Bob Balsam and Dean Sisco representing Global Spectrum; to discuss the audit report and to solicit responses to the findings noted above. Management responses were received shortly thereafter. All were in agreement with the contents of this report.

Audit performed by Luis López, Internal Audit Contractor

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